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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271 and 273

[FNS–2016–0037]

RIN 0584–AE33

Supplemental Nutrition Assistance Program (SNAP): Employment and Training Program Monitoring, Oversight and Reporting Measures

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Final rule.

SUMMARY: The final rule implements the employment and training (E&T) provisions of the Agricultural Act of 2014. This section provided the Department additional oversight authority of State agencies' administration of the Supplemental Nutrition Assistance Program (SNAP) E&T program; required the Department to develop reporting measures and required State agencies to report outcome data to the Department. It also required the Department to monitor and assess State agencies' effectiveness of E&T programs and provided the Department with the authority to require State agencies to make improvements to their programs as necessary. Finally, State agencies are required to submit reports on the impact of certain E&T components, and in certain States, the E&T services provided to able-bodied adults without dependents (ABAWDs). The final rule will strengthen the E&T program through the collection of information to determine the overall effectiveness of the E&T program in reaching the goal of assisting participants in obtaining the skills necessary to obtain and retain employment.

DATES:

Effective date: This rule will become effective January 17, 2025.

Implementation date: State agencies must implement all provisions of this rule no later than October 1, 2025.

FOR FURTHER INFORMATION CONTACT: Marcie Foster, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, 5th Floor, Alexandria, VA 22314, *Marcie.Foster@usda.gov.* Phone: (703) 305–2930.

SUPPLEMENTARY INFORMATION:

List of Acronyms or Abbreviations Used in This Supplementary Discussion

In the discussion of the provisions in this rule, the following acronyms or abbreviations stand in for certain words or phrases:

Phrase	Acronym, abbreviation or symbol
Able-bodied Adults without Dependents	ABAWDs
Code of Federal Regulations	CFR
Employment and Training	E&T
Federal Register	FR
Federal Fiscal Year	FFY
Food and Nutrition Act of 2008, as amended	The Act
Food and Nutrition Service	FNS
Secretary of the U.S. Department of Agriculture	Secretary
Section (when referring to Federal Regulations)	§
Supplemental Nutrition Assistance Program	SNAP
U.S. Department of Agriculture	The Department
U.S. Department of Labor	DOL
Workforce Innovation and Opportunity Act	WIOA

Summary Overview

The final rule implements the E&T provisions of section 4022(a)(2) of the Agricultural Act of 2014 (Pub. L. 113–79). The Department published an interim final rule (IFR) on March 24, 2016 (81 FR 15613), that became effective May 23, 2016, and received 43 comments, 36 of which were substantive.

After the release of the IFR the Department conducted various activities to provide guidance to State agencies on the implementation of the reporting measures. These activities included release of an implementation memo, two-part series of questions and answers and a webinar.[1]

The final rule incorporates changes from the interim final rule that includes specifying the information the Department will use in assessing the effectiveness of State's E&T programs; adding educational reporting measures for attainment of a credential or certificate and measurable skill gains; reporting of employment and earnings measures and educational measures by distinct participant characteristics, such as by race and/or ethnicity; and adding reporting measures for States operating mandatory E&T programs. The final rule also changes the due date of the State agency's submission of the E&T Annual Report from January 1 to April 15.

The final rule establishes information sources that the Food and Nutrition Service (FNS) will use for assessing the effectiveness of E&T programs in preparing E&T participants for employment, including skill attainment and employment retention. The rule specifies the authority of FNS to require a State agency to modify its SNAP E&T State Plan to improve outcomes if determined through an assessment that the E&T outcomes are inadequate.

[1] Interim rule: SNAP Employment and Training Program Monitoring, Oversight and Reporting Measures (*https://www.fns.usda.gov/snap/fr-032416*).

The final rule requires State agencies to identify an outcome reporting measure for every component that is designed to serve at least 100 participants a year in annual E&T State Plan.

The final rule also requires State agencies to submit an E&T Annual Report by April 15 each year that contains the following:

- Employment and earnings reporting measures that consist of four consecutive quarters of data from the two previous Federal Fiscal Years (FFY);
- Educational reporting measures that consist of data from the FFY ending the preceding September 30th;
- Employment and earnings reporting measures and educational reporting measures for each of the seven (7) participant characteristics;
- States that serve mandatory E&T participants will report on the number of SNAP participants required to participate in E&T and referred to E&T and the number and percentage of SNAP participants that were deemed ineligible for SNAP benefits due to failure to comply with E&T requirements;
- Number and percentage of E&T participants for the FFY ending the preceding September 30th by nine (9) participant characteristics;
- Component measures identified in the States' E&T State Plan for components that are designed to serve at least 100 participants a year; and
- States that have committed to offering at-risk ABAWDs, defined as an able-bodied adult without dependents who are at risk of losing SNAP eligibility due to time-limited participation, a slot in a qualifying activity and received an additional allocation of funds will report on:
  - The monthly average number of individuals in the State who meet the conditions of an at-risk ABAWD:
  - The number of individuals the State offers a position in a work program or workfare program;
  - The monthly average number of individuals who participate in such programs; and
  - A description of the types of employment and training programs the State agency offered to at-risk ABAWDs and the availability of those programs throughout the State.

The final rule specifies that State agencies may be required to submit the E&T Annual Report in a standardized format specified by FNS.

The final rule will also reinstate regulatory language in 7 CFR 273.24(a) for the definition of a workfare program for the purposes of meeting the ABAWD work requirement. This definition was inadvertently removed during a prior rulemaking.

The Department would note that this final rule does not address any changes to ABAWD work requirements as a result of the Fiscal Responsibility Act of 2023 (Pub. L. 118–5). Those changes will be addressed through separate rulemaking.

The Department discusses the changes from the interim final rule, as well as a summary of comments and explanation of each of the final regulatory changes in more detail below.

Summary of Changes From Interim Final Rule

- The interim final rule codified the authority of FNS to require a State agency to modify its E&T State Plan to improve outcomes. The final rule includes language that specifies the information sources that FNS will utilize in assessing the effectiveness of a State's E&T program.
- The interim final rule specified a January 1 due date for State agencies' submission of the E&T Annual Report. The final rule changes that due date to April 15.
- The interim final rule established a reporting measure for the completion of an educational, training, work experience or on-the-job training component. The final rule removes and replaces this measure with two educational measures aligned with Workforce Innovation and Opportunity Act (Pub. L. 113–128) (WIOA) programs, for attainment of a credential or certificate, and measurable skill gains.
- The interim final rule required State agencies to disaggregate each of the reporting measures by four (4) key participant characteristics, *e.g.,* of the 100 E&T participants in unsubsidized employment in the second quarter after completion of participation in E&T, 90 had the characteristic of a mandatory E&T participant. The final rule modifies this disaggregation by requiring the reporting of the employment, earnings, and educational measures for each of the key participant characteristics, *e.g.,* of the 90 mandatory E&T participants who completed participation in E&T, 60 mandatory E&T participants are in unsubsidized employment in the second quarter after completion of participation in E&T. The final rule also introduces three (3) additional key participant characteristics, race and/or ethnicity and mandatory E&T participants deemed ineligible due to failure to comply with mandatory E&T.
- The interim final rule required State agencies to report the number and percentage of all E&T participants that participated during the reporting fiscal year by seven (7)participant characteristics, such as gender, age, etc. The final rule is modifying this requirement by adding race and/or ethnicity to the participant characteristics.

Summary of Comments and Explanation of Revisions

FNS received thirty-six (36) relevant and non-duplicative comments. Thirty comments came from advocacy organizations and six comments from State SNAP agencies or State Workforce agencies. Generally, the comments were supportive of the interim final rule and believed that the reporting measures would greatly improve employment and training efforts in States. However, many of the supporters made recommendations for improvement or sought clarification of specific provisions.

General Comments

Many commenters raised general or cross-cutting issues about the overall impact of the interim final rule. We address these issues in this section, followed by comments on each section of the interim final rule.

A. Additional Reporting Requirements

Twenty-seven (27) commenters, while supportive of the interim final rule, believed that additional reporting requirements should be added to adequately evaluate the effectiveness of and need for change to States' E&T programs, specifically for States that serve mandatory E&T participants. Commenters urged that additional reporting measures be added to capture the following:

- The number and percentage of individuals required to participate in E&T;
- The number and percentage who were exempted from participation in E&T;
- The number and percentage who were sanctioned before participating in E&T; and
- The number and percentage of those who were sanctioned after beginning participation in E&T.

Some commenters further suggested that States should be required to report on the sanctioned individuals' employment information and the number and percentage of individuals exempted from participation by exemption reason, noting exemptions as an important outcome in shaping an effective E&T program and remedying ineffective practices. In addition, one commenter proposed that States should report on the employment rates in the

second and fourth quarters after SNAP recipients are mandated to participate and suggested that States should be required to report on the number of mandatory E&T participants who receive a SNAP E&T assessment, as well as the number of those mandated to participate who are later found to be exempt. Three of the commenters urged that the final rule require States to report on the number of individuals who are assigned to SNAP E&T; the activity component to which they are assigned; and the number and percentage of individuals assigned to an activity who are sanctioned by the type of activity.

The Department appreciates the comments and agrees that to assess the effectiveness of a State's E&T program, particularly those that serve mandatory E&T participants, sanction data for those that fail to comply with E&T requirements is an important factor. For this reason, the Department added additional reporting requirements for States that serve mandatory E&T participants in the E&T Program Activity Report (FNS–583) (OMB Control No. 0584–0064; expiration date: 06/30/2027) through the final rule, *Employment and Training Opportunities in the Supplemental Nutrition Assistance Program,* published January 5, 2021 (''2021 final rule'', 86 FR 358). As required in the 2021 final rule, the Department will collect via the FNS–583 report the number of SNAP applicants and participants required to participate in E&T by the State agency and, of those applicants and participants, the number who began participation in an E&T program, the number who began participating in an E&T component, and the number of mandatory E&T participants who were deemed ineligible for failure to comply with E&T requirements. This FNS–583 data is capturing every time an individual is subject to mandatory participation in E&T and the resulting actions. This results in a duplicated count if an individual has multiple certification periods and is subject to mandatory participation in E&T at each of those certification periods in a reporting fiscal year. The FNS–583 report also collects individual participation data and component participation.

To complement and enhance the FNS–583 data, in this final rule, the Department is modifying the regulation at 7 CFR 273.7(c)(17)(iv) by adding to the E&T Annual Report for States that serve mandatory E&T participants the reporting of the unduplicated number of SNAP participants who were required to participate in E&T, the unduplicated number of those individuals who were referred to E&T and the unduplicated number and percentages of SNAP participants who were deemed ineligible for failure to comply with E&T requirements. The Department is adding these reporting elements to analyze the churn [2] of SNAP E&T participants as well as the difference in the number of individuals required to participate and referred to E&T. This change is responsive to the comments received through the IFR. The Department believes the data from the FNS–583 report and the E&T Annual Report, as well as information collected through management evaluations, will provide FNS and State agencies information to assess the effectiveness of a mandatory E&T program.

However, the Department does not believe that the other suggested reporting requirements, such as sanctioned individuals' employment information or the employment rates in the second or fourth quarters after being sanctioned, are necessary due to other changes being included for mandatory E&T programs, *e.g.* employment and earnings measures for participants deemed ineligible due to failure to comply with E&T, and believes that the additional burden these measures would place on State agencies outweighs their benefit in the overall determination of effectiveness of E&T programs. The Department is not addressing these suggested additional reporting requirements in this final rule.

B. Definitions

Eleven commenters stated that the interim final rule failed to define ''completion of participation in E&T'', with nine of the commenters noting that the final rule should clarify that completion of participation in E&T has the same meaning as ''exit'' used in WIOA programs. One commenter asked if, for States that serve mandatory E&T participants, completion of participation in E&T correlates with becoming exempt from work registration for reasons others than employment. One commenter asked if completion of participation in E&T includes a person who (1) participates but leaves an assignment before meeting all obligations of the assignment while remaining a SNAP participant; (2) leaves a component after becoming ineligible for SNAP; or (3) finds unsubsidized employment during component participation.

The Department appreciates the comments and agrees that for clarity and consistency the term ''completion of participation in E&T'' should be defined in the regulations. For the purposes of capturing the reporting measures of employment and earnings, completion of participation in E&T is defined as an E&T participant who has not received any E&T services for at least 90 days with no plans for future services, as discussed in the SNAP E&T Program Monitoring, Oversight and Reporting Measures Questions and Answer, Part II, released May 15, 2017. This timeframe and definition align with the definition of ''exit'' in WIOA programs as provided in Training and Employment Guidance Letter No.10–16, Change 3.[3] The Department clarifies that for States serving mandatory E&T participants, completion of participation in E&T does not in any way relate to participants becoming exempt from work registration for reasons other than employment, unless an E&T participant stops participating in E&T as a direct result of the exemption status. Thus, completion of participation in E&T could include participants who leave an assignment before meeting all the obligations of the assignment while remaining a SNAP recipient, or participants who leave a component when becoming ineligible for SNAP or for participants who find unsubsidized employment during component participation, if those individuals do not receive any E&T services for at least 90 days. Under 7 CFR 271.2 the Department is codifying the definition of ''completion of participation in E&T'' to mean that an E&T participant has not received any E&T services for at least 90 days and no future services are planned.

Twenty-five commenters noted that the Department defines an ''E&T participant,'' for the purposes of reporting, as an individual who is placed in and begins an E&T component. The commenters stated that this definition fails to adequately capture many individuals in SNAP who are required to participate in E&T activities and that the regulation as written would not capture the outcomes of SNAP participants who are required to participate in E&T but are disqualified before they begin an E&T component.

The Department appreciates the comments and agrees that the definition of an ''E&T participant,'' for the

[2] Churn in SNAP is defined as when a household exits SNAP and then re-enters the program within 4 months. (Understanding the Rates, Causes, and Costs in Churning in the SNAP Program, November 2014).

[3] Training and Employment Guidance Letter No.10–16, Change 3 issued September June 11, 2024 (*https://www.dol.gov/sites/dolgov/files/ETA/advisories/TEGL/2023/TEGL%2010-16%20Change%203/TEGL%2010-16%2C%20Change%203.pdf.*

purposes of reporting, discussed in the interim final rule would exclude those individuals who were deemed ineligible for SNAP before they were placed in an E&T component. The interim final rule did not add the definition of an E&T participant. This determination of when an individual could be considered an E&T participant for reporting purposes, as discussed in the interim final rule preamble, was based on an existing definition under 7 CFR 271.2 for ''placed in an employment and training (E&T) program'', which provided that a State agency may count a person as ''placed'' in an E&T program when the individual commences a component. As a result of the changes to the E&T program made through the Agricultural Improvement Act of 2018, the 2021 final rule made several changes to definitions under 7 CFR 271.2. The changes in the 2021 final rule modified definitions of an E&T program and E&T mandatory participant, added definitions for an E&T participant and an E&T voluntary participant, and removed the definition of ''placed in an employment and training (E&T) program.'' An ''E&T program'' is defined as a program operated by each State agency consisting of case management and one or more E&T components. The definition for an ''E&T participant'' is an individual who meets the definition of a mandatory or voluntary E&T participant. Because these definitions do not explicitly establish at what point an individual becomes an E&T participant for reporting on the E&T Program Activity Report (FNS–583) or E&T Annual Report, the Department is modifying the definition of an E&T participant under 7 CFR 271.2 to state that an ''E&T participant'' means an individual who meets the definition of a mandatory or voluntary E&T participant who is referred to E&T and begins at least one part of an E&T program, including orientation, assessment, case management services or a component. Because the purpose of the reporting measures is to measure the impact of the E&T services that an individual receives, the Department is not including mandatory E&T participants who do not appear for E&T services in the definition of an E&T participant. However, the modified definition will include individuals who do begin an E&T program including orientation, assessment, case management services, who were previously not being captured. Therefore, the Department is addressing in this final rule a modification to the definition of an ''E&T participant'' under 7 CFR 271.2.

One commenter suggested that the term ''former E&T participant'' be defined. The Department appreciates the comment and agrees that because the interim final rule under 7 CFR 273.7(c)(17) included the term former participant as one group of participants in the reporting measures that this term should be defined. Former participants are included in these measures to capture those individuals who began participation in an E&T program but who discontinued participation because they are no longer receiving SNAP benefits due to reasons such as failure to recertify. The Department is defining under 7 CFR 271.2 the term ''former E&T participant'' to mean an individual who is no longer participating in E&T services because the individual is no longer receiving SNAP benefits.

One commenter requested definitions for both the numerators and denominators for each of the reporting measures. The Department appreciates the comment and would note that the Department issued guidance [4] through the SNAP E&T Outcome Reporting Interim Final Rule Questions and Answers Part II that was issued May 15, 2017, that provided such definitions and does not believe it necessary to define in regulations. For the measures of unsubsidized employment in the second or fourth after ''completion of participation in E&T'' the denominator includes those E&T participants who have completed participation, defined as not receiving services for 90 days, and the numerator consists of those participants who completed participation in E&T and have earned income in the second or fourth quarters after completion of participation in E&T. As these measures are generally aligned with measures in the WIOA program the Department wishes to retain some level of flexibility to accommodate changes that may be instituted in the WIOA programs. The Department is not including numerator and denominator definitions for these reporting measures in this final rule.

C. Delay Implementation

Two commenters noted that the interim final rule requires States to start collecting complex data elements and that State agencies would need to evaluate the system changes, regulatory changes and new directives they would need to implement to comply with the new reporting requirements. One commenter noted that the State agency would need to seek State statutory changes to access employment and wage outcomes through quarterly wage reporting or the National Directory of New Hires. The commenters recommended that the implementation of the reporting measures be delayed to improve the quality, utility, and clarity of the information to be collected.

The Department recognizes that the introduction of outcome reporting measures might require changes to States' data systems. However, the Department was statutorily required to issue an interim final rule implementing the provisions of section 4022 (c) of the Act within 18 months of enactment. The Department actively worked with State agencies to implement these provisions by conducting readiness assessments during FFY 2016 and FFY 2017 and offering grants for data systems annually beginning with FFY 2017. The Department also conducted a webinar for State agencies that included representatives from the Department of Labor on the use of quarterly wage record data.[5] Because State agencies already collect participant characteristics, such as race and/or ethnicity for the SNAP program and some State agencies report educational measures such as attainment of credential or certificate for educational components in their E&T State Plans, the Department believes that most State agencies will be ready to implement these changes in the final rule. However, the Department is delaying implementation of all the provisions of this final rule until October 1, 2025, in order to allow States sufficient time to make necessary changes to implement the final rule and to ensure that the first Annual Report under the final rule will be comprehensive of all provisions.

D. Annual Report Timeframe

One commenter stated that the preamble for the interim final rule provided each measure under 7 CFR 273.7(c)(17) would be reported using the most recent data available during the reporting period. The commenter stated that the final rule should clarify that different measures will be reported for individuals in different time periods. The Department appreciates the comment and acknowledges that different measures contained within a State's annual report may consist of information from different time periods, due to the lag time for measures such as employment and earnings; therefore, the Department is modifying the regulatory

[4] SNAP E&T Outcome Reporting Interim Final Rule Questions and Answers Part II, issued May 15, 2017 (*https://fns-prod.azureedge.us/sites/default/files/snap/Clarification-SNAP-EandT-Outcome-Reporting-PartII.pdf*).

[5] Webinar: SNAP E&T Outcome Reporting Requirements, August 23, 2017 (*https://www.youtube.com/watch?v=eP-PeKxdEd0*).

text in 7 CFR 273.7(c)(17) to indicate the time period to be reported for each section of the annual report. Due to the lag time in the employment and earnings reporting measures, as well as the lag time in the availability of quarterly wage records, for these measures State agencies will be required to report four (4) consecutive quarters of data from the two previous FFYs. This is consistent with the timeframe reported in annual reports as specified in guidance issued through the SNAP E&T Outcome Reporting Requirements—Questions and Answers (Q&A) Part II. The Department is aware that these lag times create a challenge for State agencies to provide four (4) quarters of data by the required January 1 due date of the annual report. To address this challenge the Department is modifying the due date of the Annual Report to April 15 under 7 CFR 273.7(c)(17). For educational measures added in this final rule for obtainment of a credential or certificate and measurable skill gains, State agencies will report on data from the previous FFY. State agencies will report participant characteristics for those E&T participants served in the E&T program from the previous FFY, consistent with guidance [6] issued under the IFR.

E. County-Administered E&T Programs

Two commenters stated that, for States with county-administered SNAP E&T programs, there should be a requirement that every county track and provide the same data to the State agency. They state that without this requirement the data will lack continuity and comparability between locations and the reports that the State agency provides to the Department will be incomplete. The Department appreciates the comment and would note that section 16(h)(5) of the Food and Nutrition Act of 2008, as amended (''the Act''), places the responsibility with the State agency for establishing component measures that will serve at least 100 individuals a year as well and for submitting the E&T Annual Report. In addition, section 11(a)(2) of the Act states that the responsibility of the agency of State government shall not be affected by whether the program is operated on a State-administered or county-administered basis. It is therefore the responsibility of the State agency to ensure that data is being tracked consistently, whether in a State-administered or county-administered program. The Department is not including additional requirements for county-administered SNAP E&T programs in this final rule.

F. E&T 100 Percent Grants

One commenter noted that language included in the preamble to the interim final rule states that the Department retains the authority to consider outcome data as part of the scope of the impact for a State's E&T program when evaluating requests for additional 100 percent funds. The commenter stated that the April 2016 SNAP E&T State Plan Handbook did not discuss the use of outcome data for these reviews and that the final rule should address whether the Department intends to use outcome data when reviewing additional funds requests and if so, how the Department envisions this working when outcome data will not be available until the out-years.

The Department appreciates the comments and clarifies that the 2021 final rule implemented changes to the Department's process for reallocating unobligated or unexpended Federal E&T 100 percent funds to other State agencies requesting additional E&T funds, codified under 7 CFR 273.7(d)(1)(iii)(E). This change was necessitated by requirements at section 16(h)(1)(C) of the Act, as amended by the Agricultural Improvement Act of 2018, that introduced priorities for the reallocation of funds, including the requirement that the Department determines that the requests funded have the most demonstrable impact on the ability of participants to find and retain employment that leads to increased household income and reduced reliance on public assistance. The Department has provided guidance in the revised 2022 E&T State Plan Handbook [7] and E&T Toolkit [8] regarding the inclusion of information in State agencies' requests for additional funds demonstrating that the planned use of the funds has a demonstrable impact on the ability of participants to find and retain employment that increases the household income. The rule under 7 CFR 273.7(d)(1)(iii) provides that in making reallocations the Department will consider, among other things, whether the employment and training programs and activities for which the State agency is requesting reallocated funds have the ''most demonstrable impact on the ability of participants to find and retain employment that leads to increased household income and reduced reliance on public assistance.'' The Department must also consider the size of the request relative to the State agency's E&T spending in prior years, the specificity of the State's plan for spending the reallocated funds, and the quality of the program and scope of impact for the State's E&T program. The Department considers the information provided by the State agency in their request as well as all performance data, including outcome data such as the reporting measures from prior E&T Annual Reports and E&T Program Activity reports, to fall within the factors already delineated in 7 CFR 273.7(d)(1)(iii). Therefore, it is not necessary to make a change in this final rule.

One commenter noted that State system interfaces currently do not allow for the automated collection of employment and earnings data. The commenter asked if the Department would provide funding to support State system infrastructure costs for ongoing support or system enhancements and if State agencies can direct Department funds for system costs to other agencies responsible for the interfacing system.

The Department notes that State agencies can use the E&T 100 percent Federal grant and 50 percent administrative funds to develop or enhance information management systems used for collecting and reporting E&T data. State agencies choosing to use their E&T funds, whether the 100 percent Federal grant or the 50 percent administrative funds, for system development or modifications should include the anticipated costs of data collection in the estimated operating cost within their annual E&T State Plan. Additionally, the Department periodically makes available additional grant opportunities, such as through E&T Data and Technical Assistance Grants, which are intended to support the development of State SNAP E&T data collection and reporting systems. Since the ability to use those funds for information management systems already exists, it is not necessary to specify available funds in this final rule.

Reporting Measures

Section 4022(a)(2) of the Agricultural Act of 2014 (Pub. L. 113–79) amended section 16(h)(5)(B)(i) and (ii) of the Act to require the Department to develop, in consultation with the Department of Labor (DOL), reporting measures that identify improvements in the skills, training, education, or work experience of members of households participating in SNAP. The measures were to be

[6] SNAP E&T Outcome Reporting Interim Final Rule Questions and Answers Part II, issued May 15, 2017 (*https://fns-prod.azureedge.us/sites/default/files/snap/Clarification-SNAP-EandT-Outcome-Reporting-PartII.pdf*).

[7] E&T State Plan Handbook (*https://www.fns.usda.gov/snap-et/state-plan-handbook*).

[8] SNAP E&T Program Toolkit (*https://www.fns.usda.gov/snap-et/toolkit*).

based on common measures of performance for Federal workforce programs and include additional indicators that reflect the challenges facing the types of members of households participating in SNAP who participate in a specific E&T component. In the interim final rule, the Department, after consultation with DOL, established under 7 CFR 273.7(c)(17)(i)–(iv) that State agencies would report annual outcome data based on measures that were similar to the performance indicators for the core programs in the WIOA, but that reflected the intent of the Act, and the unique characteristics of the SNAP E&T program and its participants. Those reporting measures included:

- The number and percentage of E&T participants and former participants who are in unsubsidized employment during the second quarter after completion of participation in E&T;
- The number and percentage of E&T participants and former participants who are in unsubsidized employment during the fourth quarter after completion of participation in E&T;
- The median quarterly earnings of all the E&T participants and former participants who are in unsubsidized employment during the second quarter after completion of participation in E&T; and
- The total number and percentage of participants that completed a training, educational, work experience or on-the-job training component.

G. Data Sources, Methodology and Method of Collection

Regarding the measures required under 7 CFR 273.7(c)(17)(i) through (iv) one commenter asked if States are required to report on participants who enter E&T during the fiscal year or on individuals under certification in the fiscal year that enter and participate in E&T. The Department is clarifying that for the reporting measures of employment and earnings, due to the nature of these measures, State agencies are reporting on those E&T participants from the previous two FFYs who were referred to E&T, began at least one part of an E&T program including case management services or a component, and had obtained employment six months (second quarter) or one year (fourth quarter) after completion of participation in E&T. Therefore, the Department is modifying the regulatory text at 7 CFR 273.7(c)(17)(i) to indicate that for the reporting measures of employment and earnings State agencies shall report four (4) consecutive quarters of data from the two previous FFYs ending the preceding September 30.

One commenter noted that the E&T State Plan Handbook issued by the Department in April 2016 included options for data sources for reporting measures and State reporting measures not discussed in the interim final rule, including the use of sampling. The commenter stated that the final rule should identify the data sources that States may use to meet the reporting requirements. Another commenter had questions regarding the use of sampling as a data source. They asked if States that choose to use sampling for State- and Federal-reported outcomes will report both outcomes for the same sample of 500 cases, or does the Department expect the sample of 500 cases for State reported outcomes to be different than the sample of 500 cases for the reporting measures. The commenter also asked if States are required to report outcome data in the E&T State Plan or does the E&T plan contain a description of the reporting measures that will be reported for that fiscal year. Another commenter asked if there is a required source of data or methodology for calculating median earnings.

The Department appreciates the comments and notes that FNS issued guidance in the SNAP E&T State Plan Handbook in April 2016 and most recently updated May 2022 which specified that State agencies would determine the data source and the collection methodology it would use to gather the information needed for the annual report. The Department expressed that its preference was for State agencies to use administrative data and provided a list of sources they may consider using. These sources included Quarterly Wage Records (QWR) available through State's Unemployment Insurance (UI) program, the National Directory of New Hires, State's management information systems, manual follow-up or follow-up surveys of E&T participants. This guidance also indicated that State agencies may use sampling as a data collection methodology, rather than tracking all E&T participants. The Department recognized that given the variation in State's E&T programs, including their data collection and tracking procedures, State agencies were in the best position to determine the appropriate data source and collection methodology to employ. However, for the reporting measures of employment and earnings, the Department indicated that the preferred source of data was QWR but understood that State agencies needed lead time to negotiate data agreements, or in some cases require State regulatory or statutory changes granting them access to such data. For that reason, the Department indicated while State agencies moved toward the goal of using QWR for employment and earnings data, they could utilize any of the sources. State agencies indicate in their annual E&T State Plan the data sources they intend to use for reporting measures and component measures. For calculating the median quarterly wages in the second quarter after completion of participation in E&T, the methodology State agencies should employ is to arrange all individual quarterly earnings for participants in numerical order, from smallest to largest, and identify the wage that is in the middle of that list. Regarding the use of sampling, State agencies have discretion as to whether they employ different samples for reporting measures and State component measures, given that the nature and timeframe of the measures may differ. States choosing to use sampling as a collection methodology must also include details regarding the sample design in the E&T State Plan. The regulations under 7 CFR 273.7(c)(6)(xviii) specifies that in the annual E&T State Plan State agencies will provide a component measure for every component that is expected to include 100 or more participants, and those measures will be reported in the annual report specified in paragraph (c)(17). To maintain flexibility to account for variations among States, the Department is not changing in the final rule the data sources or collection methodology States may employ for the annual report.

One commenter noted that UI QWR data does not capture all earnings, such as out of State, Federal or informal employment. The commenter asked if it was feasible for the Department to collect data on employment or to match nationally on behalf of States against the State submission of participants who completed an E&T program. Another commenter noted that the final rule should provide an option for States to request that the Department calculate performance measures related to employment and earnings using the Department's access to national quarterly wage record data or National Directory of New Hires. They indicated that such an option would relieve States of some of the burden imposed on the State to perform such measures and calculations, ensure standardized measurement standards for States participating in such an option, and provide the Department a more robust platform to assess the E&T program. The commenter stressed this as an option

and would not support making this approach mandatory. One commenter stated that the Department should allow the use of automated data exchanges and State wage information to identify the employment status and quarterly wages of former E&T participants. They noted that they have observed that within the first year of reinstating the ABAWD work requirement in their State,[9] E&T vendors reported that the actual employment rate for SNAP participants is significantly higher than the 37% employment rate identified by the State's data. The commenter noted that former E&T participants rarely verify their new employment status after reporting it since there is no incentive for them to do so and they believe that it is essential for States to be able to use wage matches through such sources as Work Number or Equifax to accurate report employment outcomes of E&T participants.

The Department acknowledges that the quarterly wage record data available through State's UI reporting does not capture all earnings, specifically Federal employment or the self-employed. As previously discussed, the Department is not requiring States to use a specific data source for the annual report. However, the Department believes that QWR data is the most reliable and efficient source of information pertaining to employment and earnings of E&T participants and suggest as a best practice the use of QWR data. Further, it would not be feasible for the Department to calculate performance measures related to employment and earnings because quarterly wage record data is not available from a single source at a national level, it resides within each State agency responsible for UI reporting. In addition, this would require the Department to collect individual case records on every E&T participant from each State agency and this would impose additional burden on State agencies. The Department does not collect individual case records in the SNAP program, including the SNAP E&T program. Therefore, the Department is not changing the data sources or method for collection in this final rule.

H. Employment and Earnings Measures

One commenter asked if the fourth quarter employment after completion of E&T was intended to be a proxy for retention. This commenter also asked what if the employer or record from second and fourth quarters are different. The Department understands that the fourth quarter employment measure could be perceived as being a proxy for employment retention. However, the measure is a point in time measure and is only measuring whether an E&T participant is in unsubsidized employment twelve months after completing participation in E&T. Whether the E&T participant was included in the second quarter employment measure bears no relevance to the fourth quarter employment measure; therefore, the Department is not making a change in the final rule.

Three commenters stated that the timeline for reporting employment and earnings measures should consider the six-month lag time in the availability of quarterly wage records (QWR). They noted, for States using QWR information, reporting on fourth quarter employment after completion of E&T by the January 1 due date of the annual report would not be possible for any group completing components in FFY 2017 or thereafter. This lag time in the availability of the QWR gives States little time to perform the matches and analysis before the E&T Annual Report is due on January 1.

One commenter stated that the final rule should provide information addressing how States can request an extension or apply for a waiver of the requirement for States to submit an annual report to the Department on January 1 of each year.

The Department appreciates the comments and acknowledges that the timeframe of the employment and earnings measures as well as the six-month lag time in the availability of quarterly wage records (QWR) impacts State agencies' abilities to submit an E&T Annual Report that consists of four (4) quarters of data from only the preceding FFY on January 1. Therefore, the Department is modifying the regulatory text at 7 CFR 273.7(c)(17) to change the due date of the annual report to April 15. Additionally, the Department is modifying 7 CFR 273.7(c)(17)(i) to reflect that for the employment and earnings measures State agencies shall submit four (4) consecutive quarters of data from the two previous FFYs.

Regarding the quarterly median wage measure, one commenter noted that because the quarterly wage records reflect quarterly earnings and does not include a start date or the number of pay periods, individuals who are hired mid-quarter will appear to have lower wages than their actual hourly rate. The Department appreciates the comment on the limitation of quarterly wage records to reflect the earnings of participants who may obtain employment mid-quarter. However, the Department was required to develop reporting measures, in consultation with the Department of Labor, that were based on common measures of performance for Federal workforce programs and the quarterly median measure is aligned with WIOA programs. The Department believes that, to account for the mid-quarter hires, as well as to ensure consistency, all States would need to modify their collection processes to include capturing the start date of employment for those individuals as well as the wage information. In order to ensure consistency in the State agencies reporting of participant wage information, this would require that all State agencies, as well as E&T providers devote staff time to collect the information necessary from the E&T participants or employers. This would place an undue burden on E&T participants and their employers to provide participant wage information. The Department believes that this burden far outweighs the benefits to account for those mid-quarter hires, therefore, the Department is not modifying the regulations regarding the quarterly median wage measure in this final rule.

One commenter questioned the practical utility of the employment and earnings measures and asked if employment and earnings six or twelve months after E&T participation correlate with the impact of the E&T intervention. Another commenter noted that the employment and earnings measures are reliant on systems outside of State SNAP agency and requires ongoing staffing effort to manually collect and compile the information, calling into question the effort and validity of such measures. The Department appreciates the comments and would note that the provisions of 4022(a) in the Agricultural Act of 2014 charged the Department with the responsibility to assess the effectiveness of SNAP E&T programs in preparing members of households participating in SNAP for employment, including the acquisition of basic skills necessary for employment; and increasing the number of household members who obtain and retain employment subsequent to participation in the SNAP E&T program. This section further required the Department, in consultation with the Department of Labor, to develop reporting measures that would identify improvements in the skills, training, education of SNAP

[9] The American Recovery and Reinvestment Act of 2009 (ARRA) suspended the time limit for individuals subject to the work requirements under section 6(o)(2) of the Food and Nutrition Act, unless the individual did not comply with requirements of a program offered by a State agency. This provision under ARRA expired at the end of FFY 2011.

participants and that were based on common measures of performance for Federal workforce training programs. As noted previously, WIOA established common measures of performance to ensure consistency across all programs under WIOA. These common measures for employment and earnings specified the timeframe of second quarter and fourth quarter after exit from a WIOA program. The Department believes that the adoption of employment and earnings measures aligned with measures for workforce programs under WIOA meets the Department's obligation to assess States for the number of individuals who obtain and retain employment subsequent to participation in E&T programs. The Department is not modifying the provisions for the employment and earnings measures in this final rule.

One commenter stated that while the Department has developed standardized reporting measures as required in the Act, it has not, at least as stated in the guidance provided in the E&T Plan Handbook, standardized the methods states must employ to collect data on those measures. Given that employment outcomes are known to differ based on the modality of data collection, the commenter suggested the final rule should address how the Department plans to adjust for performance differences across States using differing data collection methodologies.

The establishment of reporting measures, as provided in section 16(h)(5)(B) of the Act, was for the purpose of identifying improvements in the skills, training, education or work experience of members of households participating in States' Supplemental Nutrition Assistance Programs. The Act did not require the Secretary to establish reporting measures with performance targets or to compare reporting measures across State agencies. Therefore, the Department is not making changes in the final rule in response to this comment.

I. Completion of Education, Training, Work Experience or OJT Components

One commenter stated that the reporting measures should also include a credential attainment measure consistent with the WIOA primary indicator on credential attainment. This includes measures such as the number and percentage of individuals assigned to E&T who obtain a recognized postsecondary credential, or a secondary school diploma or its recognized equivalent during participation in or within 1 year after exit from SNAP E&T. The commenter noted that measuring credential attainment is an important part of measuring skill-building outcomes. The Department agrees that the reporting measures should include educational measures that are aligned with WIOA.[10] This includes measures such as credential attainment and measurable skill gain that are important factors to consider in assessing and evaluating the effectiveness of a State's E&T program in assisting E&T participants in obtaining skills necessary for employment. Measurable skill gains provide the Department and State agencies with an interim progress of participants who are enrolled in any educational or training program and is triggered by program enrollment rather than on completion of the program. Both measures are in practice by workforce development organizations. An analysis of State's FY 2021 E&T Annual Reports indicates that several State agencies already utilized these as component measures. Because of these factors, the burden on State agencies should be minimal. Therefore, the Department is creating two educational measures for attainment of credential or certificate and measurable skill gains under new 7 CFR 273.7(c)(17)(ii).

State agencies will be required to report the number and percentage of E&T participants enrolled during the preceding FFY in an educational or training program, excluding those in on-the-job training, customized training or transitional jobs, who attain a recognized post-secondary credential, certificate or a secondary school diploma, or its recognized equivalent, during participation in or upon completion of participation in E&T.

State agencies will also be required to report the number and percentage of E&T participants who, during the preceding FFY, were in an education or training program that will lead to a recognized postsecondary credential or employment and who are achieving measurable skill gains, defined as documented academic, technical, occupational, or other forms of progress, towards such a credential or employment. This measure is intended to capture E&T participants who are working towards attainment of a credential or employment but may not have had sufficient time to achieve the intended outcome during the reporting fiscal year. In essence, this measure is reporting E&T participants' progress toward attainment of a credential or employment. Depending on the type of education or training program, documented progress could consist of one of the following:

- Documented achievement of at least one educational functioning level of a participant who is receiving instruction below the postsecondary education level.
- Documented attainment of a secondary school diploma or its recognized equivalent.
- Secondary or postsecondary transcript or report card for a sufficient number of credit hours that shows a participant is meeting the State unit's academic standards.
- Satisfactory or better progress report, towards established milestones, such as completion of one year of an apprenticeship program or similar milestones, from the training provider who is providing training.
- Successful passage of an exam that is required for a particular occupation or progress in attaining technical or occupational skills as evidenced by trade-related benchmarks such as knowledge-based exams.

One commenter, commenting on the collection of the total number and percentage of participants that completed an educational, training, work experience of on-the job training measure, stated that the ability to capture completion of components, specifically an education or training component, is dependent upon a manual, individual-level process and would pose an undue burden on States without clear benefit. They asked what the Department hopes to deduce from this information. Another commenter noted that the ability to capture completion of components must be imbedded in the E&T case management system and would require additional system functionality and would further require direct reporting by participants and data entry by a worker. The commenter asked if the Department would require verification of completion and if documentation of completion would be included in management evaluations or other Federal reviews. One commenter sought clarification for the measure of completion of an educational, training, work experience or on-the-job training component. They asked that ''completion'' be defined, and a clarification of who is included in the denominator, if it is all E&T participants or only those participating in one of the components. One commenter stated that for the completion of educational, training, work experience or on-the-job training components a SNAP client has the potential to complete multiple E&T

[10] Training and Employment Guidance Letter No.10–16, Change 3 issued September June 11, 2024 (*https://www.dol.gov/sites/dolgov/files/ETA/advisories/TEGL/2023/TEGL%2010-16%20Change%203/TEGL%2010-16%2C%20Change%203.pdf.*

activities. They stated that the final rule should clarify whether States should count completion in each of the components or just one and if States should only be reporting completion in one component during the fiscal year, clarify, how States should determine the completion to be reported.

The Department acknowledges that capturing completion of components would necessitate some level of case management, whether through a manual process or through an automated system. However, separate and apart from any reporting requirements, recording when participants begin and complete any activity is a cornerstone of an effective employment and training program, ensuring participants are making progress toward individual goals as well as program goals. The Department would note at the time of the interim final rule, the Department established reporting measure for completion of an education, training, work experience or on-the-job training (OJT) component in 7 CFR 273.17(c)(17)(iv) of the interim final rule as a measure that was specific to the SNAP E&T program. This was done, partly because the Departments of Labor and Education were still in the process of finalizing their policies for the educational common measures of credential or certificate attainment and measurable skill gains, for the WIOA programs. The Department is not aware of other Federal agencies incorporating similar completion measures, and after reconsideration the Department does not believe ''completion'' is a meaningful measure. Therefore, considering the comments, the Department is removing the completion of education, training, work experience and on-the-job training reporting measure under 7 CFR 273.7(c)(17)(iv) and replacing with two educational measures for attainment of credential or certificate and measurable skill gains under new 7 CFR 273.7(c)(17)(ii).

J. Alignment of Measures With WIOA

Three commenters recommended that the Department fully align the proposed measures and reporting requirements with those established in WIOA and the final WIOA regulations to improve service integration and support evaluation of outcomes across programs. One of the commenters further stated that the Department should give States that choose to integrate services across the WIOA and SNAP E&T programs the option of using the common periods of participation with common exit used in WIOA programs. The Department appreciates the recommendation to fully align measures with those established in the WIOA programs. The measures in the interim final rule were closely aligned but not identical to those measures in WIOA. Some of the variation was attributable to differences in the frequency of reporting and difference in data needs. At the time of the interim final rule the Department did not include educational measures that aligned with WIOA, partly because the Departments of Labor and Education were still in the process of finalizing their policy. The Department encourages and applauds coordination and collaboration between WIOA and SNAP E&T to serve E&T participants. WIOA guidance states that common exit occurs when a participant, enrolled in multiple DOL-administered partner programs, has not received services from any DOL-administered program in which the participant is enrolled, to which the common exit policy applies, for at least 90 days, and no future services are planned.[11] In SNAP E&T an individual's eligibility for SNAP E&T services is directly tied to their eligibility and receipt of SNAP benefits, this means that an individual's participation in SNAP E&T ends when they are no longer receiving SNAP benefits. The Department believes that it would place an undue burden on State agencies to apply the common exit principle for those individuals who may be co-enrolled in SNAP E&T and WIOA programs. Therefore, the Department is not making this change in this final rule.

One commenter, while supportive of aligning reporting requirements between E&T and WIOA programs, suggested that the interim final rule should provide additional implementation time to allow States to align those standards. The commenter noted that SNAP E&T programs and WIOA programs are administered by different State agencies and have differences in vendors, outcome data tracking systems, eligibility and participant tracking systems. The commenter believed additional time is necessary to link the various systems and to align the reporting requirements. The Department appreciates the comment and acknowledges that State agencies need additional time to implement measures that are aligned with WIOA. Therefore, the Department will delay implementation of the educational reporting measures specified under the new 7 CFR 273.7(c)(17)(ii) until October 1, 2025.

[11] Training and Employment Guidance Letter No.10–16, Change 3 issued September June 11, 2024 ((*https://www.dol.gov/sites/dolgov/files/ETA/advisories/TEGL/2023/TEGL%2010-16%20Change%203/TEGL%2010-16%2C%20Change%203.pdf*).

K. Performance Standards

One commenter asked if the Department intended to apply performance standards for outcome measures of employment, earnings and completion of education, training, work experience or on-the-job training. The Department would like to clarify that the provisions of section 16(h)(5)(A) of the Food and Nutrition Act of 2008, as amended by the Agricultural Act of 2014, required the Department to assess the effectiveness of States' E&T programs in preparing members of households participating in SNAP for employment, including the acquisition of basic skills necessary for employment, and in increasing the number of household members who obtain and retain employment after participation in SNAP E&T and to implement reporting measures to assist in making the determination of effectiveness. It was not the intent of the Department to apply performance standards or targets, or to compare the effectiveness of one State's E&T program to other States due to State flexibility in the design of their E&T program, such as the participants targeted for services, services to be delivered and the areas of the State for services, as well as the differences in labor markets and targeted occupations.

Disaggregated Characteristics of E&T Participants in Reporting Measures

Section 16(h)(5)(B)(ii) of the Act, as amended by the Agricultural Act of 2014, requires that the reporting measures developed by the Department include additional indicators that reflect the challenges facing the types of members of households participating in SNAP who participate in a specific employment and training component. In the interim final rule, the Department identified three participant characteristics that it believed were the most important to understand the challenges to employment faced by SNAP E&T participants and former participants who are included in the reporting measures. Those characteristics included whether the participants were voluntary or mandatory participants; participants who had received a high school degree (or GED) prior to being provided with E&T services; and were able-bodied adults without dependents (ABAWDs). The interim final rule required States to report the number and percentage of E&T participants reported in each of the reporting measures, a disaggregation of the number, and percentage of those participants and former participants by each of the three characteristics.

In the interim final rule, the disaggregated characteristics for the reporting measures, such as employment in the second or fourth quarters after completion of participation in E&T, reflect the composition of the outcome group. For example, the number of individuals in unsubsidized employment in the second or fourth quarter after completion of participation in E&T who are voluntary participants. The denominator is the number of individuals in unsubsidized employment in the second or fourth quarter after completion of participation in E&T and the numerator is the number of individuals who met one of the three characteristics.

Two commenters requested the Department clarify that the disaggregated characteristics in the interim final rule require reporting the outcomes of the disaggregated groups, not simply of the composition of the group that is used to determine these outcomes. The denominator would then be the total amount of individuals who meet the characteristic, and the numerator would be the number of individuals who meet that characteristic who are in unsubsidized employment in the second or fourth quarter after completion of participation in E&T. For example, the number and percentage of all voluntary participants in unsubsidized employment during quarter two after completion of E&T participation. One of the commenters noted that reporting employment, earnings and credential attainment outcomes for subpopulations will provide valuable information on the effectiveness of different SNAP E&T strategies.

The Department agrees that the disaggregated characteristics for the reporting measures, such as employment in the second or fourth quarters after completion of participation in E&T, should reflect the outcome observed for each characteristic, rather than the composition of the outcome group. The Department further agrees that this change would provide valuable information on the effectiveness of SNAP E&T observed by each participant characteristic. As a result, the Department is modifying the regulation for the disaggregated characteristics of the reporting measures to reflect the outcomes observed by each characteristic under renumbered 7 CFR 273.7(c)(17)(iii).

One commenter stated that individuals assigned to but not participating in E&T should be treated as a subpopulation for reporting purposes, just as are voluntary or mandatory participants, and participants achieving or not achieving a high school degree or its equivalent. The Department appreciates the suggestion that individuals assigned to but not participating in E&T should be treated as a subpopulation for reporting purposes. We agree that this is an important factor in evaluating the effectiveness of an E&T program, and the Department has recently modified the E&T Program Activity Report (FNS–583) to capture additional reporting elements for States that serve mandatory E&T participants through the 2021 final rule. The Department believes the role of outcome measures is to measure the impact of interventions received by participants, so covering individuals who never participated in E&T is not helpful for those outcome measures. However, the Department agrees that outcome measures should reflect those individuals who were required to participate in E&T, referred to E&T, began participating in an E&T program but who were subsequently deemed ineligible for SNAP due to failure to comply with E&T requirements. The Department believes that it is appropriate and would add value to add a characteristic for mandatory E&T participants who are deemed ineligible for SNAP due to a failure to comply with E&T requirements and therefore are adding this as a new characteristic under 7 CFR 273.7(c)(17)(iii).

The Department remains committed in our efforts to advance racial equity and support for underserved communities, as demonstrated in Executive Order 13985 and the USDA Equity Plan. The Department is adding race and/or ethnicity of E&T participants as additional participant characteristics to be reported by State agencies. This is outlined in the race/ethnicity data collection requirements in 7 CFR 272.6(g). As the regulations at 7 CFR 272.6(g) and (h) require State agencies to collect race and ethnicity data on participating households and report the data to FNS, the Department does not believe reporting measures by race and/or ethnicity will cause any additional burden on the part of the State agencies. The Department will use the participant characteristic information collected through the E&T Annual Reports, such as the race and ethnicity data, in conjunction with other data of SNAP participants to better understand and help identify potential equity concerns at various stages of the SNAP E&T service delivery process. This information will be used by the Department in assessing State's effectiveness of the E&T program in meeting the needs of all E&T participants.

State Component Measures

Section 4022(a)(2) of the Agricultural Act of 2014 amended section 16(h)(5)(B)(ii) of the Act to require each State agency to identify in its annual E&T State Plan appropriate reporting measures for each proposed component that serves a threshold of at least 100 participants a year. The State agencies are then required to report on those measures in their E&T Annual Reports to the Department. This section of the Act provided several measures that State agencies could consider, such as the percentage and number of program participants who received E&T services and are in unsubsidized employment subsequent to the receipt of those services. Other examples include State agency-developed measures of a participant's interim progress toward achieving goals of a specific component and the number and percentage of program participants who are meeting program requirements in a component of the State agency's E&T program. Section 16(h)(5)(C)(iii) also charged the Department with the oversight responsibility to ensure that reporting measures are appropriate to identify improvements in skills, training, work and experience for participants in an E&T program component. The interim final rule established under 7 CFR 273.7(c)(6)(xviii) the requirement that State agencies include in the E&T State Plan a reporting measure for every component that is expected to include 100 or more participants and include those measures in the E&T Annual Report. The rule included the list of suggested measures specified in the Act that State agencies could consider adopting. The Department chose a threshold of 100 participants a year to be consistent with the minimum specified in the Act. The Department would clarify that the intent of component measures is to measure the effectiveness of the intervention provided through the component so the ideal measure would be closely tied to the time of the intervention. For example, an appropriate measure for supervised job search is to measure E&T participant's attainment of unsubsidized employment upon completion of the component. To fulfill the Department's oversight responsibility, the Department will work with State agencies through the State Plan approval process to ensure that the State identified measures approved in the State Plan are appropriate for each component.

One commenter noted that the interim final rule allows States to establish their

own component reporting measures subject to the Department's review and approval as part of the SNAP E&T State Plan review process. However, the rule is silent on the criteria by which component measures will be approved. The commenter suggests that the final rule provide that the Department will presumptively approve State component measures which are chosen from those measures suggested in the regulations and set forth the criteria under which the Department will deem other proposed measures appropriate. One commenter stated that, given the flexibility in determining state-designed reporting measures for components provided in the Act and interim final rule, it is essential that the Department defer to the States when reviewing and approving reporting measures in E&T State Plans. The commenter noted that with less than 100 days between the effective date of the interim final rule and the date the State's FFY 2017 E&T plans were due, the States are best situated to determine how they can effectively collect and report data with very little time to plan. One commenter stated that the final rule should describe what flexibility will be provided to change or adjust reporting measures for individual components after approval as part of the annual SNAP E&T Plan, and if a change is approved what measures the State will be required to include in the annual report.

The Department agrees that State agencies are best suited to determine an appropriate component measure that they can collect effectively and efficiently. The primary criteria for a component measure are that the measure be an outcome-based measure and not a process measure. The measure should be relevant to the given component and should be closely tied to the time of when the component was utilized for participants. For example, a measure of a measurable skill gains would not be applicable for a supervised job search component. The regulations under 7 CFR 273.7(c)(8) provide that if a State agency modifies or alters the nature or location of its components or the number or characteristics of persons served, a State Plan amendment must be submitted to the appropriate FNS Regional Office for approval at least 30 days prior to the planned implementation. This requirement extends to any proposed change in a component measure. If the proposed change is approved the State agency would be required to include the revised measure in that year's E&T Annual Report.

One commenter stated that the SNAP E&T Handbook published by the Department on April 25, 2016, appears to include requirements for county-level reporting measures for State supervised, county administered States, while the interim rule does not. They stated they do not believe that the statute provides the Department the authority to require measures below the State level because section 4022(a)(2) states that the Secretary will monitor E&T programs ''carried out by State agencies'' and ''shall develop State reporting measures.'' They do not believe that county-administered States should be held to additional reporting requirements that are not required of State-administered programs. The commenter proposed that the final rule specifically preclude county-level measurement. The commenter recommended that in the absence of such a prohibition, the Department should also provide information to address whether county-level reporting measurements were considered when the Department estimated States' administrative burden in complying with the requirements outlined in the interim rule.

The Department would like to clarify that the table of components offered by each county included in the April 2016 E&T State Plan Handbook was provided as an option that county-administered States may use in completing the E&T State Plan. It was not intended to indicate that additional reporting requirements were placed on county-administered programs. Rather, it was intended to assist State agencies in compiling the data collected from their counties. That optional table has since been modified to remove reporting measures by county. Further, the Department notes that section 11(a)(2) of the Food and Nutrition Act of 2008, as amended, specifies that the responsibility of the agency of State government shall not be affected by whether the program is operated on a State-administered or county-administered basis. Thus, the Act specifically places the responsibility with the State agency for establishing component measures in the annual E&T State Plan and reporting of those measures in the annual report.

Twenty (20) commenters recommended that States should be required to report employment in the second and fourth quarters after completion of E&T and the median quarterly earnings in the second quarter for any component that is expected to include 100 or more participants, in addition to any State measures. Three of the commenters further stated that States should be required to report the completion of any component. The commenters stated that such information at the component level will allow States to assess the effectiveness of various approaches and redirect resources toward components with the greatest likelihood of helping SNAP participants improve their employability.

The Department appreciates the comments but notes that section (16)(h)(5)(B)(iii) of the Act provides flexibility in identifying appropriate reporting measures for every component that serves at least 100 participants a year in the annual E&T State Plans, with the Department's approval. The interim final rule under 7 CFR 273.7(c)(6)(xviii) provided several examples of measures that State agencies could choose, such as the number of program participants that obtain unsubsidized employment subsequent to receipt of the component. States also can identify other measures in addition to the examples provided in the regulation. The Department would note that the intent of individual component measures is to measure the impact of a particular component. The Department does not believe that outcome measures of the E&T program, such as the reporting measures for employment and earnings six or twelve months after an individual's participation in an E&T program, which could consist of multiple components would be useful in measuring the effectiveness of a single component. However, the Department encourages State agencies to consider the full range of measures, including those measures that would provide an interim benchmark for participant's progress toward achieving goals of a specific component.

One commenter stated that the final rule should address how the States are to be required to track component completion after a person is no longer a SNAP recipient. The commenter explained that currently there is no requirement in place for individuals to report their employment or training status upon completing a SNAP E&T component and that it would be very costly and difficult to obtain this information. The Department wishes to clarify that SNAP regulations do not require States to track component completion after a person is no longer a SNAP recipient. Under 7 CFR 273.7(c)(6)(xviii) States have the discretion to identify an appropriate component measure.

One commenter noted States would need additional time to develop evaluation plans and establish effective collaboration with E&T vendors and other stakeholders to develop a comprehensive evaluation plan for each

proposed component serving at least 100 participants a year. They indicated that adequate planning and development time would ensure that collected data accurately measure intended outcomes. The commenter recommended delaying the implementation of reporting requirements. The Department appreciates the comment and acknowledges that adequate planning and development time is essential for ensuring accurate data collection procedures. The interim final regulations were published in the **Federal Register** on March 24, 2016, effective May 23, 2016, and States were required to identify component measures for components that served at least 100 participants annually in the FY 2017 E&T State Plan. While the Department realizes this only allowed States approximately six months to establish data collection procedures for component measures, guidance was issued in the Supplemental Nutrition Assistance Program—section 4022 of the Agricultural Act of 2014—Questions and Answer (Part I), issued July 26, 2016, that indicated that the Department would work with individual States as needed to allow additional lead time for the States to finalize reporting measures and data sources.

In conclusion, the Department codifies the regulatory text in 7 CFR 273.7(c)(6)(xviii) as indicated in the interim final rule.

E&T Participant Characteristics

Section 16(h)(5)(C) of the Act, as amended by the Agricultural Act of 2014, charges the Department with the responsibility for conducting oversight of State E&T program activities and lists four specific oversight activities. One of the activities includes ensuring that program activities are appropriate to meet the needs of the individuals referred by the State agency to an E&T program component. Additionally, as stated previously, section 16(h)(5)(B)(ii) of the Act required that reporting measures include additional indicators that reflect the challenges facing the types of members of households participating in SNAP who participate in a specific E&T component. Because the SNAP work registrant population, like the general SNAP population, is very diverse and faces a myriad of challenges to employment, such as measurable educational attainment, the Department believed that to have a better understanding of the effectiveness of SNAP E&T it must have a more complete picture of the population that is being served in E&T. For that reason, in the interim final rule the Department required State agencies to report the number and percentage of all E&T participants on seven characteristics. Those participant characteristics included the participants who:

- Are voluntary vs. mandatory;
- Have achieved a high school degree (or GED) prior to being provided with E&T services;
- Are ABAWDs;
- Speak English as a second language;
- Are male vs. female; and
- Belong in the following age ranges: 16–17, 18–35, 36–49, 50–59, 60 or older.

One commenter stated that it is unlikely that the six participant characteristics information would be useful in understanding the effectiveness of E&T programs, absent an effective way to establish relationship between participant characteristics, assignments, and outcomes. The commenter further stated that the Department did not have specific statutory authority to require reporting of participant characteristics and suggested more useful information on participant characteristics and the availability of appropriate assignments could be more efficiently obtained through specific research studies. Another commenter stated that the collection of reliable educational levels is problematic, and the utility of collecting is unclear. The commenter stated that SNAP eligibility systems do not collect educational attainment or an indicator for ''speaks English as a second language'' and that it's unclear what FNS intends to do with this information. The commenter also stated that the language of ''prior to being provided with E&T services'' is unclear and asked if SNAP E&T funds must be used to pay for the full cost of a service to be considered ''provided'' and how this applies to referrals to E&T.

The Department appreciates the comments but disagrees that participant characteristics are not useful in understanding the effectiveness of E&T programs. Based on widely reported research and data, women, minorities and individuals with lower education levels face additional obstacles to employment and lower earnings. To understand the overall effectiveness of a program it is important to consider the demographics of the population that is receiving the services, as well as the challenges that face participants that have less than a high school diploma or equivalency prior to participation in E&T or participants that speak English as a second language. The Department further disagrees that the Department does not have the statutory authority to require reporting of participant characteristics. Section 16(h)(5)(B)(ii) of the Act provided broad discretion to the Department in creating reporting metrics by requiring the inclusion of additional indicators that reflect the challenges facing the types of members of households participating in SNAP E&T. Additionally, the Act charges the Department with oversight responsibility for ensuring that program activities are appropriate to meet the needs of the individuals referred by the State agency to an E&T program component. The inclusion of reporting participant characteristics was in direct response to this requirement specified in the Act, so the Department is retaining the participant characteristics reporting and as described earlier, adding race and/or ethnicity as a participant characteristic.

The interim final rule at 7 CFR 273.7(c)(17)(v) required States to include in the annual report the number and percentage of E&T participants who met the characteristic of having obtained a high school diploma (or GED) prior to being provided with E&T services. The Department agrees with the comment that the term ''prior to being provided with E&T services'' is unclear. For that reason, to add clarity, the Department is modifying the regulatory language in 7 CFR 273.7(c)(17)(v) for this characteristic to read ''E&T participants who obtained high school diploma and equivalency prior to referral to E&T.''

One commenter asked for the participant characteristic of education attainment prior to participation in E&T, for States not already tracking this information, how are States expected to capture data for anyone that participates in FFY 2017 or after. The Department appreciates the comment and notes that the Department allowed State agencies who were not already collecting participant's educational attainment prior to participation in E&T in their automated systems to report that characteristic as ''unknown,'' until such time as the State agency could modify their collection procedures to capture this characteristic. Given the guidance, it is not necessary to make this change in the final rule.

Two commenters inquired how participants should be reported if the characteristic, such as ABAWD status, changes multiple times during a reporting year. The Department issued guidance in the SNAP E&T Outcome Reporting Interim Final Rule: Questions and Answers Part II [12] on May 15, 2017, that State agencies should capture and report on a participant's characteristic at

[12] SNAP E&T Outcome Reporting Interim Final Rule: Questions and Answers Part II.

the time the individual begins an E&T program within the reported fiscal year. No change is required in this final rule.

One commenter noted that all references to high school degree or GED should be replaced with ''high school diploma or equivalency.'' The commenter stated that GED is a trademarked name and is only one of several types of high school equivalency exams being used. The Department appreciates the suggestion and is therefore providing a change in the regulatory language under the renumbered 7 CFR 273.7(c)(17)(iii)(F) and 7 CFR 273.7(c)(17)(v)(C) to reference high school diploma or equivalency.

Monitoring, Evaluating and Assessing State's E&T Programs

The Agricultural Act of 2014 amended section 16(h)(5)(A) of the Act to require the Department to monitor and assess the effectiveness of E&T programs carried out by State agencies in preparing members of households participating in SNAP for employment, including the acquisition of basic skills necessary for employment, and increasing the number of household members who obtain and retain employment subsequent to participation in E&T. The Act also established in section 16(h)(5)(C)(i)–(iii) of the Act specific Department oversight activities of E&T programs, that included ensuring:

- Compliance with Federal E&T program rules and regulations;
- That program activities are appropriate to meet the needs of the individuals referred by the State agency to an E&T program component;
- That reporting measures are appropriate to identify improvements in skills, training, work, and experience for participants in an E&T program component.

Section 16(h)(5)(C)(iv) of the Act also specified Department oversight responsibilities for evaluating the compliance of States that receive an additional allocation for ensuring the availability of work opportunities for ABAWDs. This section provided the Department the authority to require any information from these States that were determined appropriate for evaluating compliance. This included requiring a report by the States on the number of individuals meeting ABAWD criteria; the number offered a work opportunity; the number who participated in such opportunities; and a description of the types of opportunities available throughout the State.

Section 16(h)(5)(E) of the Act, as amended by the Agricultural Act of 2014, gives the Department the authority to require a State agency to make modifications to the State's E&T State Plan to improve outcomes if the Department determines that the E&T outcomes are inadequate.

The SNAP regulations at 7 CFR 275.3(a) already requires FNS to conduct management evaluations (ME) reviews of targeted areas of SNAP program areas each year, including E&T. FNS identifies target areas each year based upon a number of considerations, including recent policy changes, risk to Federal funds and risk to program access. For example, FNS may identify program access as an area that the regional offices are required to review in every State, and nutrition education as an area to be reviewed on an at-risk basis, as necessary. This affords FNS maximum flexibility to target resources to those current areas of vulnerability or agency priorities.

In previous years, FNS has not required its regional offices to perform an ME of each State's E&T program. FNS has required its regional offices to review E&T programs in States that operate third-party partner programs, or that have combined Federal and non-Federal budgets over a certain threshold. As part of its general monitoring and oversight responsibilities, FNS will meet the requirement of the Act by continuing to perform MEs of States' E&T programs but will also continue to establish in guidance which target areas to focus attention each year.[13]

In addition, under existing authority FNS is required to review and approve State agencies' E&T plans and budgets. Through this process, FNS ensures that individual components are structured to meet the needs of participants and that the reporting measures for individual components with more than 100 projected participants required by this rule are appropriate to measure the impact of the components on participants.

The interim final rule under 7 CFR 273.7(c)(16) established that FNS may require a State agency to make modifications to its SNAP E&T State Plan to improve outcomes if FNS determines that the E&T outcomes are inadequate.

Two commenters provided remarks on the Department's monitoring, evaluating, and assessing of States' E&T programs. One commenter stated that they were concerned the rule discussed consequences for inadequate performance without any indication as to how performance expectations would be set and what would be considered inadequate. Another commenter stated that the final rule should address how the Department would monitor State E&T programs, assess their effectiveness, and determine that the State agencies' E&T outcomes are inadequate. The commenter asked what standards the Department will use to determine differential performances across States.

The Department appreciates the comments. As stated previously, section 16(h)(5)(A) of the Act charges the Department with the responsibility to assess the effectiveness of E&T programs in preparing members of SNAP households for employment, including the acquisition of skills necessary for employment, and increasing the number of household members who obtain and retain employment subsequent to participation in E&T programs. Section 16(h)(5)(C) of the Act also requires the Department to evaluate State agencies' E&T programs on a periodic basis to ensure compliance with Federal E&T program rules and regulations; that program activities are appropriate to meet the needs of individuals referred by the State agency to an E&T program; and that reporting measures are appropriate to identify improvements in skills, training, work experience for participants in an employment and training program component. As mentioned previously, the interim final rule under 7 CFR 273.7(c)(16) established that FNS may require a State agency to make modifications to its SNAP E&T State Plan to improve outcomes if FNS determines that the E&T outcomes were inadequate. When the Department's oversight responsibilities for the assessment of effectiveness of E&T programs is considered, the Department believes that the term 'outcomes' may be mistakenly assumed to refer only to the reporting measures rather than to outcomes of the overall assessment of E&T programs' effectiveness. The reporting measures from the E&T Annual Report are just one tool the Department will utilize to assess the effectiveness of a State agency's E&T program. Other information the Department will also use includes, but is not limited to, E&T State Plans, E&T Program Activity Reports (FNS–583), and ME reviews. Because State agencies have great flexibility in the design of their E&T program, in terms of targeted population, location of services, range of components, as well as differing labor

[13] Fiscal Year 2023 State Management Evaluation Target Areas (*https://www.fns.usda.gov/snap/fiscal-year-2023-state-management-evaluation-target-areas*).

markets, the Department does not intend to set a benchmark or a threshold for inadequate performance but will rather assess and evaluate each State agency, taking into consideration attributes of a State's E&T program. As discussed further in this section the Department is developing a framework for assessing State's E&T programs. The attributes of a State's E&T program, such as targeted populations and differing labor markets is considered within the design of the framework. The Department does not believe it necessary to include these attributes in the regulations. However, to provide transparency and clarity, the Department is modifying the regulatory text at 7 CFR 273.7(c)(16) to include the sources of information the Department will use to determine the effectiveness of a State's E&T program, such as E&T State Plans, ME reviews, E&T Program Activity Reports, E&T Annual Reports and other factors the Department determines appropriate to the assessment. The Department is also amending this section to stipulate FNS' responsibility to assess that program activities are appropriate to meet the needs of individuals referred by the State agency to an E&T program.

One commenter stated they appreciated that the Department would consider unemployment rates together with other important factors when looking at the unique challenges SNAP E&T participants face. The commenter encouraged the Department to consider a broad array of labor market indicators, including the Bureau of Labor Statistics alternative measures of labor market underutilization. They noted that labor market demand, not only a mismatch of skills to available jobs, is a key driver of the unemployment and underemployment problems many SNAP participants face. One commenter stated that it is critical that any attempt to use long-term data to determine the efficacy of an E&T program take into consideration any external influences that may have an impact on the job retention of an E&T participant but is not caused by the overall effectiveness of the training services received from an E&T vendor. This caution will ensure that States, stakeholders, and advocates are focusing on variables that are within the control of the E&T program, and not those that are outside the program's control. The Department appreciates the comments and agrees that when evaluating the effectiveness of State's E&T programs, external factors, such as the alternative measures of labor market underutilization, are important to consider when looking at the challenges SNAP E&T participants face. As previously mentioned, the Department is adding regulatory text to 7 CFR 273.7(c)(16) to clarify the information the Department will use in evaluating the effectiveness of States' E&T programs.

Currently, under 7 CFR 273.7(c)(16), FNS may require a State agency to make modifications to its SNAP E&T State Plan to improve outcomes if FNS determines that the E&T outcomes were inadequate. FNS will evaluate the effectiveness of SNAP E&T programs in several categories, such as intentional program design, integrated eligibility, deliberate program operations, and meaningful outcomes. FNS is amending 7 CFR 273.7(c)(16) to reflect these considerations. FNS will develop a framework with more detail which will be issued in guidance but anticipates each assessment category will contain various factors that may influence how effective programs are administered. For example, under deliberate program operations, factors may include component availability, component utilization, and whether the components offered are appropriate to meets the needs of the State's targeted population. One factor alone will not indicate whether a State's program is effective, but all the factors when viewed in their totality will provide a roadmap for needed areas of improvement. This assessment is not intended to provide a benchmark or performance target. Nor is the assessment intended to compare one State's E&T program against another. Rather, when determining effectiveness, FNS will consider whether the State's E&T program is designed and implemented with the purpose of meeting the needs of SNAP participants and assisting participants in gaining the skills necessary to obtain and retain employment.

If through this effectiveness assessment of a State's E&T program, which includes, but is not limited to information collected through ME reviews and corrective action plans, and program activity reports, the State is found to have inadequate outcomes, such as inappropriate components for the targeted population the State serves in E&T, FNS will provide technical assistance to the State agency and make recommendations for modifications to the State's E&T State Plan. Depending upon the impact of the inadequate outcome on E&T participants, such as a high rate of individuals being deemed ineligible for SNAP benefits due to failure to comply with E&T requirements, FNS may require State agencies to amend their plan within that FFY. For other instances the State agency may be required to make the necessary modifications no later than in the E&T State Plan submitted for the next FFY. E&T State Plans are due at least 45 days before the start of a FFY as provided under 7 CFR 273.7(c)(8). The Department is modifying the regulation under 7 CFR 273.7(c)(16) to clarify that the modifications must be made before FNS will approve State E&T Plans.

As a consequence for a State agency's failure to modify their E&T State Plan according to the recommendations by FNS to improve the effectiveness of the State's E&T program, FNS will employ the current authorities provided in the regulations under 7 CFR 272.2(e) to deny the State agency's E&T plan and under 7 CFR 273.7(d)(1)(ii)(B) that states a State agency's receipt of its 100 percent Federal E&T grant is contingent on FNS' approval of the State agency's E&T plan. This regulation further stipulates that non-receipt of an E&T grant does not release a State agency from its responsibility to design and operate an E&T program. Additionally, FNS will follow the procedure provided under 7 CFR 276.4 regarding suspension and disallowance of administrative funds due to FNS determination of the efficiency and effectiveness of State agencies administration of SNAP. Under this process, FNS will provide advance warning to the State agency that their failure to modify their E&T State Plan can result in FNS rescinding the prior approval of the State agency's E&T State Plan and the State agency may be at risk of having administrative funds, including the 100 percent E&T Federal grant and E&T 50 percent reimbursement funds, suspended or disallowed until the State comes into compliance.

Procedural Matters

Executive Order 12866, 13563, and 14094

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

This final rule has been determined to be significant under Executive Order 12866, as amended by Executive Order

14094, and was reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Summary of Total Cost Impacts

A regulatory impact analysis must be prepared for regulatory actions that are significant as defined by section 3(f)(1) of E.O. 12866, as amended by E.O. 14904. This final rule does not meet the definition of significant under section 3(f)(1) of E.O. 12866, as amended, and therefore the Department has prepared an economic summary of the rule, rather than a regulatory impact analysis.

This final rule makes changes to the interim final rule (IFR) published by the Department on March 24, 2016, and made effective May 23, 2016. The Department expects several of the final rule provisions to impact FNS or State administrative costs. This final rule is not expected to impact SNAP participants' benefit levels and is expected to minimally impact household burden. For this economic analysis, the Department compares the final rule's costs and savings to a pre-IFR baseline of burden costs, in addition to the currently approved information collection request (ICR) which already incorporates activities of the IFR since it was updated in 2022 (OMB #0584–0614, approved from December 29, 2022, through December 31, 2025). As such, comparisons to the current ICR indicate changes in burden caused by the final rule compared to the IFR.

The following provisions are expected to have measurable impacts:

Final rule provisions that are unchanged from the interim final rule (IFR): These provisions represent a change from the pre-IFR baseline, but no change from the burden hours estimated under the IFR's provisions and the currently approved ICR.

- 7 CFR 273.7(c)(6)(xviii) requires State agencies to identify component measures in their E&T Plans.
- 7 CFR 273.7(c)(17)(i)(A)–(C) requires State agencies to report on employment and earnings measures in an E&T Annual Report, renumbered in this final rule.
- 7 CFR 273.7(c)(17)(vi) requires State agencies to report the component measures identified in its E&T Plan, renumbered in this final rule.
- 7 CFR 273.7(c)(17)(vii) requires ABAWD pledge States that have received additional allocation funds to report information regarding the use of those funds, renumbered in this final rule.
- 7 CFR 272.1(f) mandates E&T Annual Report recordkeeping requirements.

Final rule provisions that are revised or newly added: These provisions represent a change from the pre-IFR baseline and from the burden hours estimated under the IFR's provisions in the currently approved ICR.

- 7 CFR 273.7(c)(17)(ii)(A)–(B) requires State agencies to report on educational measures in an E&T Annual Report.
- 7 CFR 273.7(c)(17)(iii) requires State agencies to report on seven participant characteristics, a change from the four characteristics required in the IFR, for the employment and earnings measures and educational measures in 273.7(c)(17)(i) through (ii).
- 7 CFR 273.7(c)(17)(v) modifies the reporting requirements for E&T participant characteristics established by the IFR to include race and/or ethnicity.
- 7 CFR 273.7(c)(17)(iv) removes the IFR requirement for State agencies to report measures on completion of education, training, work experience, and on-the-job training. Additionally, the final rule adds required reporting for State agencies that serve mandatory E&T participants, which was not included in the IFR.

Below, table 1 provides a summary of the total effects of all provisions in the final rule, compared to the pre-IFR baseline. The *Baseline* column shows the annual costs for each final rule provision, prior to implementation of the IFR. The columns with *FY* headers show the effects of the final rule in that specific fiscal year. FY 2026 is the first implementation year and the first year in which the discount rate is applied. As noted previously, there are no anticipated impacts on SNAP benefit payments to households (transfers) and nominal burden-related costs to SNAP households. The cost for State agencies to conduct ongoing E&T program reporting and recordkeeping over five years (FY 2026 through FY 2030) is $4.33 million. The cost for Federal (FNS) staff to review and analyze the E&T outcome data provided by State agencies over five years is about $50,100. The total combined cost to State and Federal governments over five years, compared to pre-IFR policy, is approximately $4.38 million. All costs, except for those in discounted cost impact rows of table 1, are adjusted annually for inflation using the Consumer Price Index for Uban Wage Earners and Clerical Workers (CPI–W) fiscal year-over-fiscal year projections from OMB's Economic Assumptions for the FY 2025 Midsession Update.

TABLE 1—SUMMARY OF TOTAL COST IMPACTS, COMPARED TO PRE-IFR BASELINE *

[Adjusted annually for inflation **]

	Pre-IFR Baseline: ***	FY 2026	FY 2027	FY 2028	FY 2029	FY 2030	5-Year total
Costs Due to State Agency Burden (in 000s):							
Identifying State component measures	$0	$8.8	$9.1	$9.3	$9.5	$9.7	$46.3
Reporting employment and earnings measures	0	265.4	271.5	277.8	284.2	290.7	1,389.5
Reporting State component measures	0	88.5	90.5	92.6	94.7	96.9	463.2
Additional reporting for ABAWD pledge States	0	8.3	8.5	8.7	8.9	9.1	43.7
E&T Annual Report recordkeeping	0	4.4	4.5	4.6	4.7	4.8	23.2
Reporting educational measures	0	353.9	362.0	370.4	378.9	387.6	1,852.7
Reporting 7 participant characteristics for measures	0	44.2	45.3	46.3	47.4	48.4	231.6
Reporting E&T participant characteristics	0	44.2	45.3	46.3	47.4	48.4	231.6
Mandatory E&T program reporting	0	8.3	8.5	8.7	8.9	9.1	43.7
Total	0	826.2	845.2	864.6	884.5	904.8	4,325.5
Discounted Cost Impact (in 000s):							
7 percent	0	768.4	768.4	768.4	768.4	768.4	3,841.9
3 percent	0	801.4	801.4	801.4	801.4	801.4	4,007.1
Costs Due to Federal Burden (in 000s):							
Reviewing and analyzing E&T outcome data	$0	9.6	9.8	10.0	10.2	10.5	50.1
Discounted Cost Impact:							
7 percent	$0	8.9	8.9	8.9	8.9	8.9	44.5
3 percent	0	9.3	9.3	9.3	9.3	9.3	46.4

* Totals may not sum due to rounding.

** Estimates (excluding those in the discounted cost impact rows) were adjusted for inflation using BLS' CPI–W, from the Office of Management and Budget's Economic Assumptions in the FY 2025 Midsession Update.
*** Prior to the IFR taking effect on May 23, 2016.

The final rule's provisions will result in substantial benefits for FNS, State SNAP E&T programs, and SNAP E&T participants. Currently, research on the effects of SNAP E&T is limited and participant outcomes have not been quantified on a large scale. The improved reporting requirements finalized in this rule will allow FNS and State agencies to better measure and monitor the effectiveness of E&T programs and strategically improve those programs. FNS can use these data to assess which practices work well in SNAP E&T and share those best practices across State agencies. The final rule also allows FNS to require State agencies to modify their E&T State Plan if the data show inadequate outcomes in their E&T program. By improving E&T programs, participants will be better prepared for employment by acquiring the necessary skills to obtain and retain employment upon completion of E&T.

FNS expects State agencies will not incur implementation costs in excess of those incurred as a result of the IFR. The implementation costs associated with this final rule include one-time costs for developing new or modifying existing data collection systems for E&T programs. FNS expects State agencies will incur a small increase in recurring burden costs in excess of those incurred as a result of the IFR. We estimate an increase of 740 total hours from the burden hours included in the currently approved ICR due to the addition of reporting on educational measures and State agencies that serve mandatory E&T participants. As a result, annual State E&T reporting and recordkeeping will cost an additional $61,764 per year in FY 2026 dollars,[14] compared to the estimated costs in the current ICR. However, the Department acknowledges that there are uncertainties which could affect State burden (see *Uncertainties* section). Compared to a pre-IFR baseline, ongoing State agency burden as a result of the final rule are estimated to be approximately 186.8 hours per State, or 9,899 total hours annually.

The Department funds SNAP E&T programs through E&T grants and additional grants for State agencies that pledge to serve all individuals who are subject to the SNAP work requirement for able-bodied adults without dependents (ABAWDs) and are at-risk of losing eligibility due to time-limited participation. The Department allocates these funds annually to State agencies based on the percentage of work registrants and time-limited participants in each State. State agencies may use their 100-percent federally funded E&T grants to pay for all costs associated with the implementation of this final rule. As such, the Department estimates the net cost to State agencies for these activities will be $0. However, the Federal government will provide 50-percent reimbursement for administrative costs that exceed the State agencies' E&T grants.[15]

State Agency Implementation Costs

State agencies may find it necessary to implement system modifications to report on new measures that were not required in the IFR, including educational measures and mandatory E&T program measures. However, the Department estimates the new measures will not add to the overall implementation burden costs associated with the IFR included in the currently approved ICR (see table 2, below). This assumes that State agencies would rely on government entities with which they already have data matching or sharing agreements, but may need to renegotiate those agreements, such as with State Unemployment Insurance agencies for the matching of quarterly wage records, as well as other existing sources to obtain administrative data, including SNAP eligibility systems. The Department acknowledges that the actual number of hours to implement this final rule will vary by State agency (see *Uncertainties* section).

According to the Bureau of Labor Statistics data at time of analysis, the fully loaded median hourly rate for functions performed by State agency workers for SNAP is $77.03 in 2023 dollars.[16] Using this hourly rate and CPI–W projections from OMB to adjust for inflation, the one-time implementation costs associated with all provisions in the final rule, in comparison to the pre-IFR baseline, will total an estimated $2.3 million in FY 2026.

TABLE 2—IMPLEMENTATION COSTS

[In FY2026 dollars]

Number of respondents	Hours per response	Total annual burden hours (IFR)	Total annual burden hours (final rule)	Difference (IFR – final rule)	Total start-up costs
53	520	27,560	27,560	0	$2,300,278

State Agency Ongoing Costs and Savings

The Department notes that States will be permitted to cover the burden-related costs associated with this final rule with 100-percent federally funded E&T grants. Therefore, the Department does not expect State agencies to directly incur ongoing costs because of the final rule. All costs in this section are in FY 2026 dollars and are expected to increase annually due to inflation.

Provisions that are unchanged from the interim final rule (IFR) to the final rule: Burden hours identified in this section are included in the currently approved ICR and are unchanged by the final rule. Costs noted in this section are relative to the pre-IFR baseline.

Identifying State component measures in E&T State Plan. State agencies are

[14] Based on a $57.92 median hourly wage for Computer and Information Systems Managers (11–3021) in May 2023 and multiplied by 1.33 for a fully loaded wage of $77.03. Base wage derived from BLS Occupational Employment and Wage Statistics data (found here: *https://www.bls.gov/oes/current/naics4_999200.htm#11-0000*) and inflated using OMB's FY 2025 Mid-Session CPI–W projections in future years.

[15] Due to the uncertainties around States' decisions to use their E&T grants to fully fund implementation of this rule, the Department cannot quantify costs to the Federal government with more specificity.

[16] Based on a $57.92 median hourly wage for Computer and Information Systems Managers (11–3021) in May 2023 and multiplied by 1.33 for a fully loaded wage of $77.03. Base wage derived from BLS Occupational Employment and Wage Statistics data (found here: *https://www.bls.gov/oes/current/naics4_999200.htm#11-0000*).

required to identify in their E&T State Plan an outcome reporting measure for every component that serves at least 100 participants annually. Each State SNAP agency is estimated to spend two hours annually to identify component measures (106 total hours, annually), with a total annual cost of $8,847. There is no change in burden hours from the currently approved ICR.

Reporting employment and earnings measures. State agencies are required to report on employment and earnings measures for E&T participants and former participants in their E&T Annual Report. Fifty-three State agencies are expected to spend 60 hours annually to report these measures (3,180 total hours, annually), with a total annual cost of $265,417. There is no change in burden hours from the currently approved ICR.

Reporting State component measures: State agencies are required to report component measures for E&T components serving at least 100 participants a year. Each State agency is expected to spend 20 hours per year on this requirement (1,060 total burden hours, annually), with a total annual cost of $88,472. There is no change in burden hours from the currently approved ICR.

Additional reporting for ABAWD pledge States. State agencies that have committed to offering at-risk ABAWDs participation in a qualifying activity and have received additional funds are required to report on the use of those funds. Ten State agencies [17] are each expected to spend 10 hours on this requirement (100 total hours, annually), with a total annual cost of $8,346. There is no change in burden hours from the currently approved ICR.

Recordkeeping for E&T Annual Report: State agencies are required to conduct recordkeeping for the E&T Annual Report. Each State agency is expected to spend one hour on this task per year (53 total hours, annually), with a total annual cost of $4,424. There is no change in burden hours from the currently approved ICR.

Provisions that are revised or new in the final rule: Costs and savings identified in this section differ from those caused by the IFR, which are included in the currently approved ICR. Costs and savings in this section are discussed relative to the currently approved ICR and the pre-IFR baseline.

New requirement to report educational measures, replacing requirement to report E&T annual measures in IFR. State agencies will be required to report on new educational measures for attainment of a credential or certificate and measurable skill gains for all E&T participants enrolled in education or training programs. These measures align with Workforce Innovation and Opportunity Act (WIOA) programs and replace the previous reporting measures in the IFR that required State agencies to report on completion of education, training, work experience, and on-the-job training. Each of the 53 State agencies are expected to spend 80 hours annually reporting these measures (4,240 total hours, annually) with a total annual cost of $353,889. Because the reporting requirements that are being replaced represent 3,600 total burden hours in the currently approved ICR, this change in the final rule results in a net increase of 640 annual burden hours and a net annual cost increase of $53,417.

Modified requirement to report participant characteristics for reporting measures. State agencies are required to report on four participant characteristics for each employment, earnings and educational measures under the IFR. The final rule adds three additional participant characteristics for the reporting measures: race and/or ethnicity, and mandatory E&T participants deemed ineligible due to failure to comply with mandatory E&T. Each State agency is expected to spend 10 hours annually on this requirement (530 total burden hours, annually), with a total annual cost of $44,236. The requirement to report on four participant characteristics, which has become seven characteristics in this final rule, was previously included with another requirement in the IFR (See *Modified requirement to report E&T participant characteristics,* in the next paragraph of this section). That requirement was approved for a total of 1,060 burden hours in the currently approved ICR. The 530 total burden hours for this requirement were transferred from those 1,060 burden hours and do not reflect new burden hours.

Modified requirement to report E&T participant characteristics. The final rule is adding race and/or ethnicity to the list of E&T participant characteristics that State agencies are required to report as established in the IFR. Each of the 53 State agencies are expected to spend 10 hours annually on this requirement, with a total cost of $44,236 annually. State agencies were previously expected to spend 20 hours on this requirement under the currently approved ICR because it included the required reporting on four participant characteristics for reporting measures. However, this participant characteristics reporting requirement has been modified to seven participant characteristics and renumbered in the final rule (see *Modified requirement to report seven participant characteristics for reporting measures* in this section). Ten of the allotted 20 burden hours for this provision were transferred to the seven participant characteristics reporting requirement. Therefore, this modified requirement does not result in an overall change in annual burden hours compared to the currently approved ICR.

New requirement for mandatory E&T program reporting. State agencies that serve mandatory E&T participants will be required to report on the number of SNAP participants who were required to participate in E&T and were referred to E&T, and the number and percentages of SNAP participants who were deemed ineligible for failure to comply with E&T requirements. This is a new provision that was not included in the IFR. Each State agency that serves mandatory E&T participants is expected to spend 10 hours implementing this new requirement. On average, 10 State agencies serve mandatory E&T participants (resulting in 100 total burden hours, annually), with a total annual cost of $8,346.

Annual Federal Government Cost

FNS National Office employees must review and analyze the outcome data provided by State agencies as required by this final rule. An FNS National Office analyst at a GS–13 Step 5 level is expected to spend two hours to review each of the 53 State agencies' outcome data once per year for a total annual cost of $9,480, compared to the pre-IFR baseline.[18] It is also estimated that an FNS National Office analyst at the GS–14 Step 1 level will spend one hour reviewing and approving the information, for a total annual cost of $93.25. The combined Federal costs associated with FNS review and analysis of E&T outcome data is $9,573 in FY 2026 dollars. The final rule does not cause a change in Federal burden hours compared to the currently approved ICR.

Annual Household Administrative Burden

The Department estimates that household burden due to the final rule will be minimal. A small number of E&T participants may face additional

[17] The estimation of 10 ABAWD pledge States is based on the average number of participating States prior to the COVID–19 Public Health Emergency.

[18] Based on fully loaded wage (multiplied by 1.33) in FY 2024. Hourly wage rates available here: *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2024/DCB_h.pdf.*

reporting burden due to the need to contact these individuals to track outcomes. However, the Department expects State agencies to bear the primary burden of tracking and reporting E&T outcomes. The final rule does not cause a change in annual household administrative burden compared to the currently approved ICR.

Uncertainties

There is considerable variation in the size and scope of States' E&T programs. There is also significant variation in the structure and functionality of SNAP E&T data systems and State SNAP eligibility systems. This variability makes it difficult to anticipate the changes that State agencies might need to make to collect and report the required outcome data. For these estimates, the Department assumed that State agencies use a combination of methods to collect data, including using existing automated systems data, collecting new data, and collecting data for a sample of participants. Although the exact methods State agencies use could affect the cost, the Department expects that the total cost of the final rule will be minimal.

Additionally, there is uncertainty regarding how State agencies will fund costs associated with State agency burden hours in this final rule. State agencies will be able to use their 100-percent federally funded E&T grants to pay for all costs associated with this rule, so the Department anticipates that the net cost to State agencies will be $0. However, State agencies may choose not to use their E&T grant funds or to use only a portion of the funds, in which case they would incur administrative expenses.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, it has been certified that this rule would not have a significant impact on a substantial number of small entities. This final rule would not have an impact on small entities because the provisions of this final rule apply to State agencies, which are not small entities as defined by the Regulatory Flexibility Act.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as meeting the criteria in 5 U.S.C. 804(2).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and Tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local or tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This final rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments, or the private sector of $100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

This Supplemental Nutrition Assistance Program is listed in the Catalog of Federal Domestic Assistance under Number 10.551 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132.

The Department has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. Therefore, under section 6(b) of the Executive Order, a federalism summary is not required.

Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions, or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed the final rule, in accordance with the Department Regulation 4300–004, ''Civil Rights Impact Analysis'' to identify and address any major civil rights impacts the final rule might have on minorities, women, and persons with disabilities. FNS specifically prohibits the State and local government agencies that administer the Program from engaging in actions that discriminate based on race, color national origin, sex (including gender identity and sexual orientation), religious creed, age, disability, and political beliefs. SNAP's nondiscrimination regulation can be found at 7 CFR 272.6(a). The final rule does not change these requirements. The final rule will require State agencies to collect and report outcome data on SNAP E&T programs and will not change work requirements or impact the population subject to work requirements. FNS will provide implementation guidance to State agencies through webinars or policy meetings for State agencies requesting technical assistance. FNS will also assist State agencies in improving the collection and analysis of State E&T data systems. FNS will provide information to program stakeholders, including State agencies and the general public, using a variety of communication methods: in-person, written and electronic, including ensuring that program information is generally available in multiple languages, and new materials on FNS' websites are compliant with section 508 of the Rehabilitation Act of 1973.

Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship

between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. This rule will not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Thus, Executive Order 13175 does not apply to this action.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR 1320) requires the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number.

In accordance with the Paperwork Reduction Act of 1995, this final rule will contain information collections that are subject to review and approval by the Office of Management and Budget; therefore, FNS is submitting for public comment the changes in the information collection burden that would result from adoption of the proposals in this final rule.

Comments on this final rule must be received by January 17, 2025. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Title: SNAP: Employment and Training Program Performance Measurement, Monitoring and Reporting Requirements

OMB Number: 0584–0614.

Form Number: Not Applicable.

Expiration Date: December 31, 2025.

Type of Request: Revision of a currently approved collection.

Abstract: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), FNS is submitting this information collection to OMB for its review and approval. The final rule will require State agencies to collect and report annually on: (1) the number and percentage of all E&T participants who are in unsubsidized employment during the second and fourth quarters after completion of participation in E&T; (2) Median quarterly wages of the E&T participants who are in unsubsidized employment during the second quarter after completion of participation in E&T; (3) educational measures for attainment of credential or certificates and measurable skill gains for all E&T participants enrolled in education or training programs; (4) employment, earnings and educational measures for each of seven unique participant characteristics; (5) certain unique characteristics of all E&T participants that participate in E&T during the preceding Federal fiscal year.

The final rule also requires State agencies to identify in the annual E&T State Plan appropriate reporting measures for each proposed component that is projected to serve a threshold of at least 100 participants a year and report on those measures in the E&T Annual Report. Additionally, the final rule requires that State agencies that have committed to offering all ABAWDs at risk of losing eligibility due to time-limited participation a slot in a qualifying activity and have received an additional allocation of funds, to report information regarding the use of those funds.

The information collection for the SNAP E&T Performance Measurement, Monitoring and Reporting Requirements is currently approved under OMB Control No. 0584–0614, expiration date December 31, 2025. The changes made to this information collection because of the final rule is described below. Once OMB approves the information collection request associated with this final rulemaking activity, the agency will publish a separate notice in the **Federal Register** announcing OMB approval.

Change from Interim Final Rule: The interim final rule established a reporting measure for the completion of an educational, training, work experience or on-the-job training component under 7 CFR 273.7(c)(17)(iv). The final rule removes and replaces this measure with two educational measures under the renumbered 7 CFR 273.7(c)(17)(ii).

The interim final rule required State agencies to disaggregate each of the reporting measures by four key participant characteristics under 7 CFR 273.7(c)(17)(vi). The final rule removes this disaggregation requirement and under the renumbered 7 CFR 273.7(c)(17)(iii) requires the State agencies to report the reporting measures of employment, earnings and educational measures for each of the key participant characteristics, including two additional key participant characteristics for race and/or ethnicity and mandatory E&T participants deemed ineligible due to failure to comply with mandatory E&T.

The interim final rule required State agencies to report the number and percentage of all E&T participants that participated during the reporting fiscal year for seven (7) participant characteristics under 7 CFR 273.7(c)(17)(v). The final rule modifies this requirement by adding race and/or ethnicity to the participant characteristics to be reported.

The final rule under 7 CFR 273.7(c)(17)(iv) adds additional reporting requirements for State agencies that serve mandatory E&T participants.

The Department received some comments on the cost and hour burden, as well as comments related to the underlying policy. One commenter noted that the regulations require several data elements that some State agencies currently do not collect that may require system implementation costs, including one-time capital costs, additional reporting costs for collecting and creating the required reporting measures and ongoing costs for operating and maintaining those system. The commenter suggested that the final regulations should explain how the Department determined that the interim rule did not meet the $100 million threshold that would subject the regulation to the Federal Unfunded Mandates Reform Act (UMRA). The commenter also suggested that the final regulations should state the amount of additional funds the Department would make available to States to pay for these implementation costs. The Department appreciates the comment and would note that in determining the cost to implement the Department considered the analysis conducted of FY 2013 State agency E&T State Plans that indicated that thirty-six State agencies tracked the number of E&T participants that enter employment. The Department anticipated that some of the system implementation costs, including the one-time capital costs and the ongoing costs for collecting and reporting, could be paid for using the existing Federal grant funds States receive to operate E&T and that State funds in excess of

those grant funds are reimbursed at a 50 percent rate by the Federal government.

One State agency believed, based on their experience, that the burden estimate for rule implementation was underestimated by the Department. They noted that they had recently completely redesigned their E&T data system that resulted in 14,577 hours of contractor time and 9,400 hours of State agency staff time totaling approximately $1.5 million. The commenter estimated that modifications to implement the new reporting requirements would require at least 4,000 hours of contractor time and 2,600 hours of State staff for an estimated cost of approximately $546,000. The commenter believes that other States would likely need to invest a similar amount of time and money to comply with the new reporting requirements. The Department appreciates the commenter's experience in redesigning their E&T data system, the Department does not believe that this same experience would be borne by other State agencies, due to the different size and complexity of States' E&T programs. In determining the initial reporting and recordkeeping burden estimate, the Department relied on the analysis that indicated thirty-six State agencies had identified reporting measures and collected outcome data and that the remaining States would need to develop systems to collect and report the required data. The Department considered that in the first year that the interim final rule was published, State agencies would need to develop E&T data collection systems, modify existing system, or build interfaces between SNAP eligibility and SNAP E&T data collection systems. Several of the measures, such as employment, earnings, characteristics of E&T participants, State agencies could use a variety of sources to obtain administrative data, such as SNAP eligibility systems. The Department also anticipates that some State agencies would rely on government entities with which they already had agreements and would need to renegotiate those agreements, such as with State's UI agencies for the matching of quarterly wage records.

One State agency stated that they estimated that ongoing reporting and maintenance would total 1,500 hours and that the Department's estimated burden of 231 hours is far below what States would need to spend in ongoing maintenance efforts. This State agency also stated that the burden for reporting participants who complete an educational or training program six months after completing the E&T program was underestimated by the Department. The commenter noted that they do not currently track completion of education or training programs, and this would require a manual process to contact participants six months after completing the E&T program. They estimate that this manual process would result in approximately 2,600 staff hours to collect a single data element and that this is not an efficient use of resources. The State agency acknowledged that the State's quarterly wage records could be used to report participant's employment and earnings after completion. However, they noted that not all individuals have wage information in this data source and that discrepancies in the Federal Employer Identification Number and self-employment contribute to the largest portion of unavailable wage matches for approximately 20 percent of participants. For those cases, the commenter estimates that a manual process to gather quarterly earnings information would result in approximately 750 hours of staff time. Lastly, the State agency noted that they estimate the overall burden to collect and report the required information would be approximately 3,600 hours annually. They do not believe that this is an efficient use of resource for their State E&T program. The Department appreciates the comments and experience of this State agency. The Department again relied on the basis that a vast majority of State agencies already tracked E&T participants for various outcome measures, including obtainment of employment. The Department assumed that State agencies could use a combination of methods to collect the data including existing automated systems data, new data collection, and some contact with SNAP E&T participants. Further, the Department assumed that manual processes, such as contacting E&T participants would be minimal. As stated previously, given the variations of State's E&T programs, the Department does not believe the experience of this one State agency would equate into a similar experience by all State agencies.

Respondents: State, local or Tribal governments.

Estimated Number of Respondents: 53.

Estimated Number of Responses per Respondent: One response per year for each State agency that administers the SNAP E&T program. State agencies will be required to report their outcome data annually.

Estimated Total Annual Responses: 53.

Estimated Time per Respondent: 25.32.

Estimated Total Annual Burden Hours on Respondents: 9,899.

Estimated Hourly Wage Rate (Fully-Loaded): $75.25.

Estimated Total Annual Burden Cost on Respondents: $762,519.97.

According to the Bureau of Labor Statistics as of May 2023, for Occupational Group (11–3021),[19] has an hourly mean wage for functions performed by State agency workers for the SNAP program are estimated at $57.92 median hourly wage per staff. Including 33% for fringe benefits the fully loaded hourly rate per staff is estimated at $77.03 ($57.92 * 33% = $19.11 + $57.92).

ESTIMATED INITIAL REPORTING AND RECORDKEEPING BURDEN HOURS

Description of activity	Number of respondents	Total annual responses	Number of burden hours per response	Total burden hours
One-time capital start-up and operating and maintenance costs	53	53	520	27,560

[19] *https://www.bls.gov/oes/current/naics4_999200.htm#11-0000.*

FNS SNAP ET Reporting Measures Reporting Estimate (OMB Control No. 0584–0614) Final Rule

Respondent category	Type of respondent	Instruments	Form	Number of respondents	Frequency of response	Total annual responses	Hours per response	Annual burden (hours)	Hourly wage rate (fully loaded)	Total annual cost of respondent burden
A	B	C	D	E	F	G = E × F	H	I = G × H	J	K = I × J
State/Local/Tribal Government.	State Agency Staff	Identifying State component measures in E&T State Plan under 7 CFR 273.7(c)(6)(xviii).	Not Applicable ..	53.00	1.00	53.00	2	106.00	$77.03	$8,165.18
State/Local/Tribal Government.	State Agency Staff	Reporting of employment and earnings measures under renumbered 7 CFR 273.7(c)(17)(i)(A)–(C).	Not Applicable ..	53.00	1.00	53.00	60	3,180.00	77.03	244,955.40
State/Local/Tribal Government.	State Agency Staff	** NEW ** Reporting of Educational measures under renumbered 7 CFR 273.7(c)(17)(ii)(A)–(B).	Not Applicable ..	53.00	1.00	53.00	80	4,240.00	77.03	326,607.20
State/Local/Tribal Government.	State Agency Staff	** REMOVED ** Reporting of SNAP E&T Annual report completion of education, training, work experience or OJT under "old" 7 CFR 273.7(c)(17)(iv).	Not Applicable ..	0.00	0.00	0.00	0	0.00	77.03	0.00
State/Local/Tribal Government.	State Agency Staff	** REVISED ** Reporting of Employment and Earnings Measures and Educational Measures for 7 Participant Characteristics under renumbered 7 CFR 273.7(c)(17)(iii).	Not Applicable ..	53.00	1.00	53.00	10	530.00	77.03	40,825.90
State/Local/Tribal Government.	State Agency Staff	** New ** Mandatory E&T Program Reporting under 7 CFR 273.7(c)(iv).	Not Applicable ..	10.00	1.00	10.00	10	100.00	77.03	7,703.00
State/Local/Tribal Government.	State Agency Staff	** REVISED ** Reporting of E&T Participant Characteristics under 7 CFR 273.7(c)(17)(v).	Not Applicable ..	53.00	1.00	53.00	10	530.00	77.03	40,825.90
State/Local/Tribal Government.	State Agency Staff	Reporting of State Component Measures under renumbered 7 CFR 273.7(c)(17)(vi).	Not Applicable ..	53.00	1.00	53.00	20.00	1,060.00	77.03	81,651.80
State/Local/Tribal Government.	State Agency Staff	ABAWD Pledge States Additional Reporting under renumbered 7 CFR 273.7(c)(17)(vii).	Not Applicable ..	10.00	1.00	10.00	10.00	100.00	77.03	7,703.00
State Agency Reporting Burden Total				53.00	6.38	338.00	29.13	9,846.00	77.03	758,437.38

FNS SNAP ET Reporting Measures Recordkeeping Estimate (OMB Control No. 0584–0614) Final Rule

Respondent category	Type of respondent	Instruments	Form	Number of respondents	Frequency of response	Total annual responses	Hours per response	Annual burden (hours)	Hourly wage rate	Total annual cost of respondent burden
A	B	C	D	E	F	G = E × F	H	I = G × H	J	K = I × J
State/Local/Tribal Government.	State Agency Staff	SNAP E&T Annual Report recordkeeping requirements under 7 CFR 272.1(f).	Not Applicable ..	53.00	1.00	53.00	1.00	53.00	$77.03	$4,082.59

FNS SNAP ET REPORTING MEASURES ICR BURDEN ESTIMATE SUMMARY (OMB CONTROL NO. 0584–0614) FINAL RULE

	Number of respondents	Frequency of response	Total annual responses	Hours per response	Annual burden (hours)	Hourly wage rate	Total annual cost of respondent burden
	A	B	C = A × B	D	E = C × D	F	G = E × F
Total Reporting Burden	53.00	6.38	338.00	29.13	9,846.00	$77.03	$758,437.38
Total Recordkeeping Burden	53.00	1.00	53.00	1.00	53.00	77.03	4,082.59
Total Burden for #0584–0614	53.00	7.38	391.00	25.32	9,899.00	77.03	762,519.97

Effect of State Agencies: The Department has estimated that the effect of State agencies will be two-fold. First a one-time capital cost for developing new or modifying existing data collection systems. And second, an annual reporting burden for collecting and reporting data for the required E&T Annual Report. States may also incur annual operating and maintenance costs for their data collection systems.

Prior to Implementation: In the first year that the final rule is published, States may need to modify E&T data systems, or their processes for data collection relating to collecting educational reporting measures.

E-Government Act Compliance

The Department is committed to complying with the E-Government Act, 2002 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.

List of Subjects

7 CFR Part 271

Administrative practice and procedures, Food stamps, Grant programs-social programs.

7 CFR Part 273

Administrative practice and procedures, Food stamps, Grant programs-social programs, Penalties, Reporting and recordkeeping.

Accordingly, 7 CFR parts 271 and 273 are amended to read as follows:

■ 1. The authority citation for parts 271 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

PART 271—GENERAL INFORMATION AND DEFINITIONS

■ 2. Amend § 271.2 by:

■ a. Adding in alphabetical order a definition for ''Completion of participation in E&T'';

■ b. Revising the definition of ''Employment and Training (E&T) participant'';

■ c. Adding in alphabetical order a definition for ''Former E&T participant''.

The additions and revisions read as follows:

§ 271.2 Definitions.

* * * * *

Completion of participation in E&T means that an E&T participant has not received any E&T services for at least 90 days and no future services are planned.

* * * * *

Employment and Training (E&T) participant means an individual who meets the definition of a mandatory or voluntary participant who is referred to E&T and begins at least one part of an E&T program, including orientation, assessment, case management services or a component.

* * * * *

Former E&T participant means an individual who is no longer participating in E&T services because the individual is no longer receiving SNAP benefits.

* * * * *

■ 3. Amend § 271.8 by adding an entry in the table for ''273.7(c)(17)'' in numerical order to read as follows:

§ 271.8 Information collection/ recordkeeping—OMB assigned control numbers.

7 CFR section where requirements are described	Current OMB Control No.
* * * * *	
273.7(c)(17)	0584–0614
* * * * *	

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

■ 4. Amend § 273.7 by revising paragraphs (c)(6)(xvii) and (c)(16) and (17) to read as follows:

§ 273.7 Work provisions.

* * * * *

(c) * * *

(6) * * *

(xviii) For each component that is expected to include 100 or more participants, reporting measures that the State will collect and include in the annual report in paragraph (c)(17) of this section. Such measures may include:

(A) The percentage and number of program participants who received E&T services and are in unsubsidized employment subsequent to the receipt of those services;

(B) The percentage and number of participants who obtain a recognized credential, a registered apprenticeship, or a regular secondary school diploma (or its recognized equivalent), while participating in, or within 1 year after receiving E&T services;

(C) The percentage and number of participants who are in an education or training program that is intended to lead to a recognized credential, a registered apprenticeship an on-the-job training program, a regular secondary school diploma (or its recognized equivalent), or unsubsidized employment;

(D) Measures developed to assess the skills acquisition of E&T program participants that reflect the goals of the specific components including the percentage and number of participants who are meeting program requirements or are gaining skills likely to lead to employment; and

(E) Other indicators approved by FNS in the E&T State Plan; and

* * * * *

(16) FNS will assess the effectiveness of E&T programs in preparing E&T participants for employment, including obtaining of necessary skills and increasing the number of E&T participants who obtain and retain employment upon completion of participation in E&T. FNS will also assess that program activities are appropriate to meet the needs of individuals referred by the State agency to an E&T program. FNS may use all available information, including but not limited to, E&T State Plans, E&T Program Activity Reports, Annual Reports, and Management Evaluations. Based on this information, FNS will assess an E&T program's effectiveness across various categories including, but not limited to, intentional program

design, integrated eligibility, deliberate program operations and meaningful outcomes.

(i) FNS may require a State agency to make modifications to its SNAP E&T plan to improve outcomes if FNS determines that the E&T outcomes are inadequate. FNS will consider these modifications in determining whether to approve a State's E&T plan.

(ii) [Reserved]

(17) The State agency shall submit an annual E&T report by April 15 each year that contains the following:

(i) Employment and Earnings Reporting Measures: State agencies shall report four consecutive quarters of data from the two previous Federal fiscal years ending the preceding September 30 for the following measures:

(A) The number and percentage of E&T participants and former participants who are in unsubsidized employment during the second quarter after completion of participation in E&T.

(B) Median quarterly earnings of the E&T participants and former participants who are in unsubsidized employment during the second quarter after completion of participation in E&T.

(C) The number and percentage of E&T participants and former participants who are in unsubsidized employment during the fourth quarter after completion of participation in E&T.

(ii) Educational Reporting Measures: State agencies shall report data for the Federal fiscal year ending the preceding September 30 for the following measures:

(A) *Attainment of a credential or certificate.* The number and percentage of E&T participants enrolled in an education or training program, excluding those in on-the-job training, customized training or transitional jobs, who attain a recognized postsecondary credential, certificate or a secondary school diploma, or its recognized equivalent, during participation in or upon completion of participation in E&T.

(B) *Measurable skill gains.* The number and percentage of E&T participants who, during the preceding Federal fiscal year, are in an education or training program that leads to a recognized postsecondary credential or employment and who are achieving measurable skill gains, defined as documented academic, technical, occupational, or other forms of progress, towards such a credential or employment.

(iii) State agencies shall report the employment and earnings measures specified in paragraphs (c)(17)(i)(A) through (C) and educational measures specified in paragraphs (c)(17)(ii)(A) and (B) for each of following participant characteristics:

(A) By Race and/or Ethnicity;

(B) Voluntary E&T Participants;

(C) Mandatory E&T Participants;

(D) Mandatory E&T Participants deemed ineligible due to failure to comply with mandatory E&T;

(E) E&T Participants who obtained high school diploma or equivalency prior to participation in E&T; and

(F) ABAWDs.

(iv) State agencies that serve mandatory E&T participants shall report for the Federal fiscal year ending the preceding September 30 the following:

(A) the unduplicated number of SNAP participants who were required to participate in E&T;

(B) of those required to participate the unduplicated number and percentage referred to E&T; and

(C) the unduplicated number and percentage of SNAP participants that were determined ineligible for failure to comply with E&T requirements.

(v) The number and percentage of E&T participants for the Federal fiscal year ending the preceding September 30 who:

(A) Are voluntary E&T participants;

(B) Are mandatory E&T participants;

(C) Have received a high school diploma or equivalent prior to being provided with E&T services;

(D) Are ABAWDs;

(E) Are English language learners;

(F) By Gender identity;

(G) Are within each of the following age ranges: 16–17, 18–35, 36–49, 50–59, 60 or older; and

(H) By Race and/or Ethnicity

(vi) Reports for the measures identified in a State's E&T plan related to components that are designed to serve at least 100 participants a year; and

(vii) States that have committed to offering all at-risk ABAWDs participation in a qualifying activity and have received an additional allocation of funds as specified in paragraph (d)(3) of this section shall include:

(A) The monthly average number of individuals in the State who meet the conditions in paragraph (d)(3)(i) of this section;

(B) The monthly average number of individuals to whom the State offers a position in a program described in § 273.24(a)(3) and (4);

(C) The monthly average number of individuals who participate in such programs; and

(D) A description of the types of employment and training programs the State agency offered to at risk ABAWDs and the availability of those programs throughout the State.

(viii) States may be required to submit the annual report in a standardized format based upon guidance issued by FNS.

* * * * *

■ 5. Amend § 273.24 by adding paragraph (a)(4) to read as follows:

§ 273.24 Time limit for able-bodied adults.

(a) * * *

(4) *Workfare program* means:

(i) A program under § 273.7(m); or

(ii) A comparable program established by a State or political subdivision of a State.

* * * * *

Tameka Owens,

Acting Administrator and Assistant Administrator, Food and Nutrition Service.

[FR Doc. 2024–26809 Filed 11–15–24; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1220

[Doc. No. AMS–LP–23–0079]

Soybean Promotion and Research: Adjustments to Representation on the United Soybean Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule adjusts the number of members on the United Soybean Board (Board) to reflect changes in production levels that have occurred since the Board was last reapportioned in 2021. As required by the Soybean Promotion, Research, and Consumer Information Act (Act), membership on the Board is reviewed every 3-years and adjustments are made accordingly. These adjustments decrease Board membership for the State of North Dakota from four members to three members and increase Board membership for the State of New York from one member to two members, thus the total number of Board members will remain at 77. These changes will be reflected in the Soybean Promotion and Research Order (Order) and become effective with the Secretary of Agriculture's (Secretary) appointments for terms in 2025.

DATES: This final rule is effective as of December 18, 2024.

FOR FURTHER INFORMATION CONTACT: Jason Julian, Research and Promotion Division, at (202) 731–2149; or by email at *jason.julian@usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Orders 12866, 13563 and 14094

USDA issues this final rule in conformance with Executive Orders (E.O.) 12866, 13563, and 14094. Executive Orders 12866 and 13563, and 14094 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. E.O. 14094 reaffirms, supplements, and updates E.O. 12866 and further directs agencies to ask for and consider input from a wide range of affected and interested parties through a variety of means. This final rule is not a significant regulatory action within the meaning of E.O. 12866. So, this action has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 13175

This action has been reviewed per the requirements of E.O. 13175, Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have Tribal implications. The review revealed that this regulation would not have substantial and direct efforts on Tribal governments or significant Tribal implications.

Executive Order 12988

This final rule was reviewed under E.O. 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act (7 U.S.C. 6309) provides that nothing in the Act may be construed to preempt or supersede any other program relating to soybean promotion organized and operated under the laws of the U.S. or any State. There are no administrative proceedings that must be exhausted prior to any judicial challenge to the provisions of this rule.

Paperwork Reduction Act

In accordance with OMB regulations (5 CFR part 1320) that implement the Paperwork Reduction Act of 1995 (44 U.S.C. part 35), the information collection and recordkeeping requirements contained in the Order and accompanying Rules and Regulations have previously been approved by OMB and were assigned OMB control number 0581–0093.

Background

The Board was initially appointed on July 11, 1991, per the provisions of the Act (7 U.S.C. 6301–6311), and the Order (7 CFR part 1220) issued thereunder. The Order set up an initial Board with sixty members, composed of soybean producers. For purposes of setting up the Board, the United States was divided into 31 States and geographical units. Representation on the Board from each unit was determined by the level of production in each unit.

Reapportionment

Section 1220.201(c) of the Order provides that at the end of each 3-year period, the Board shall review soybean production levels in the geographic units throughout the United States. Section 1220.130 of the Order defines a unit as each State, or group of States, which is represented on the Board. The Board may recommend to the Secretary that Board membership for each unit be changed to reflect current production levels.

Section 1220.201(d) of the Order provides that at the end of each 3-year period, the Secretary must review the volume of production of each unit and adjust the boundaries of any unit and the number of Board members from each such unit as necessary to conform with the criteria set forth in § 1220.201(e): (1) To the extent practicable, States with annual average soybean production of less than 3 million bushels shall be grouped into geographically contiguous units, each of which has a combined production level equal to or greater than 3 million bushels, and each such group shall be entitled to at least 1 member on the Board; (2) units with at least 3 million bushels, but fewer than 15 million bushels shall be entitled to 1 board member; (3) units with 15 million bushels or more but fewer than 70 million bushels shall be entitled to 2 Board members; (4) units with 70 million bushels or more but fewer than 200 million bushels shall be entitled to 3 Board members; and (5) units with 200 million bushels or more shall be entitled to 4 Board members.

The Board was last reapportioned in 2021. The total Board membership decreased from 78 to 77 members, with Alabama decreasing one member. The final rule was published in the **Federal Register** (86 FR 61668) on November 8, 2021, and became effective with the 2022 appointments.

This final rule keeps total membership of the Board at 77 members. Production data was used for years 2018–2022 (excluding the crops in years in which production was the highest and in which production was the lowest in each State) was reported by USDA's National Agricultural Statistics Service (NASS). This change does not affect the number of geographical units.

This final rule adjusts representation on the Board as follows:

State	Previous representation	Current representation
New York	1	2
North Dakota	4	3

Board adjustments by this final rule will become effective with the 2025 appointment process.

Summary of Comments

A proposed rule was published in the **Federal Register** (89 FR 51277) on June 17, 2024, with a 30-day comment period. USDA received three comments. One comment communicated displeasure for North Dakota's decreased number from four seats to three seats. Upon reviewing the requirements of the Act and Order, USDA determined that leaving the North Dakota seats at four would not be consistent with the Act and Order, which requires that at the end of each 3-year period, the Secretary review the volume of production of each unit and adjust the boundaries of any unit and the number of Board members from each such unit as necessary to conform with the formula to determine the number of directors for each unit set forth in § 1220.201(e) of the Order. This was done by calculating production data for years 2018–2022 (excluding the crops in years in which production was the highest and in which production was the lowest in each State) as reported by USDA's NASS, resulting in a 3-year average for North Dakota that fell below the required number of bushels to retain four seats under § 1220.201(e)(5) of the Order. Accordingly, no change is made in response to this comment.

One comment was in favor of the seat adjustments for North Dakota and New York.

One comment was not germane to the proposed rule.

Regulatory Flexibility Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) considered the economic effect of this action on small entities and determined that this final rule would not have a significant economic impact on a substantial number of small entities. The purpose of the RFA is to fit regulatory actions to the

scale of businesses subject to such actions in order that small businesses will not be unduly burdened.

Effective August 19, 2019, the Small Business Administration (SBA) (13 CFR 121.201) published an interim final rule (84 FR 34261) that adjusts the monetary-based size standards for inflation. As a result of this rule, the size classification for soybean producers changed from sales of $750,000 or less to sales of $1,000,000 or less. There are an estimated 413,358 soybean producers and an estimated 10,000 first purchasers who collect the assessment, most who would be considered small businesses under the criteria set up by SBA.

According to USDA's NASS 2022 Census of Agriculture, the number of operations in the United States with soybean production totaled 270,851.[1] The most recent (2022) Census of Agriculture data show that roughly 19 percent of producers with soybean production, or 52,756 operations, have annual receipts of $1,000,000 or more.[2] Therefore, most soybean producers, 81 percent, are considered small businesses with the new SBA guidance. It should be noted that producers are only indirectly affected by this final rule.

This final rule imposes no new burden on the industry, as it only adjusts representation on the Board to reflect changes in soybean production. The adjustments are required by the Order and do not result in a change to Board membership, which will remain at 77 members.

AMS is committed to following e-Government Act of 2002 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.

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

List of Subjects in 7 CFR Part 1220

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Reporting and recordkeeping requirements, Soybeans.

For the reasons set forth in the preamble, the Agricultural Marketing Service amends 7 CFR part 1220 as follows:

PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

■ 1. The authority citation for 7 CFR part 1220 continues to read as follows:

Authority: 7 U.S.C. 6301–6311 and 7 U.S.C. 7401.

■ 2. Amend § 1220.201 by revising paragraph (a) to read as follows:

§ 1220.201 Membership of Board.

(a) For the purposes of nominating and appointing producers to the Board, the United States shall be divided into thirty-one geographic units and the number of Board members from each unit, subject to paragraphs (d) and (e) of this section shall be as follows:

TABLE 1 TO PARAGRAPH (a)

State/unit	Number of members
South Dakota	4
Ohio	4
Nebraska	4
Missouri	4
Minnesota	4
Iowa	4
Indiana	4
Illinois	4
North Dakota	3
Wisconsin	3
Tennessee	3
Mississippi	3
Michigan	3
Kentucky	3
Kansas	3
Arkansas	3
Virginia	2
Pennsylvania	2
North Carolina	2
Maryland	2
Louisiana	2
New York	2
Alabama	1
Texas	1
South Carolina	1
Oklahoma	1
New Jersey	1
Georgia	1
Delaware	1
Unit:	
Eastern Region (Connecticut, Florida, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, West Virginia, District of Columbia, and Puerto Rico)	1
Western Region (Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming)	1

[1] *https://www.nass.usda.gov/AgCensus/index.php.*

[2] *https://quickstats.nass.usda.gov/results/F0860BE3-0E1F-33B4-8571-74E2B061CBED.*

* * * * *

Melissa Bailey,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2024–26787 Filed 11–15–24; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 11, 61, 68, and 91

[Docket No. FAA–2024–2580; Amdt. Nos. 11–70, 61–158, 68–3, and 91–380]

RIN 2120–AM06

Regulatory Updates to BasicMed

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule implements, without interpretation, the provisions of sections 815 and 828 of the FAA Reauthorization Act of 2024 (''the Act''). To conform the FAA's regulations to the self-enacting provisions in the Act, this final rule amends certain regulations to: align aircraft conditions and limitations with the term ''covered aircraft'' as defined in section 2307(j) of the FAA Extension, Safety, and Security Act of 2016 to increase the number of allowable passengers from 5 to 6, increase the number of occupants from 6 to 7, and increase the maximum takeoff weight from 6,000 pounds to 12,500 pounds, while excluding certain transport category rotorcraft. This final rule facilitates updates to current standards the medical form a State-licensed physician uses in completing a comprehensive medical examination. Further, this final rule amends regulations to incorporate the statutory expansion of BasicMed medical eligibility to examiners conducting practical tests or proficiency checks if they meet the requirements for operating covered aircraft under BasicMed, as provided in the Act.

DATES: This rule is effective on November 18, 2024.

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this final rule, see ''How to Obtain Additional Information'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Bradley C. Zeigler, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–1100; email: *Bradley.C.Zeigler@faa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

On May 16, 2024, the President signed into law the FAA Reauthorization Act of 2024 (Pub. L. 118–63) (''the Act''), impacting certain requirements for BasicMed in section 815, BasicMed for Examiners Administering Tests or Proficiency Checks, and section 828, Expansion of BasicMed. Specifically, section 815 expanded the privileges of BasicMed to examiners and section 828 amended provisions in section 2307 of the FAA Extension, Safety, and Security Act of 2016 (49 U.S.C. 44703 note) (FESSA) directly applicable to BasicMed. The Act also directed the Administrator of the FAA to implement the amendments made in sections 815 and 828 through rulemaking. Section 828 further provides that the Administrator of the FAA shall update regulations in 14 CFR parts 61 and 68 to implement the amendments made in the Act (*i.e.,* the updated statutory language in FESSA), and within 180 days of the enactment, apply parts 61 and 68 to ensure that an individual may operate as pilot in command of a covered aircraft if the provisions of section 2307 of FESSA are met. The amendments to parts 61 and 68 in this final rule align with the statutory charge set forth by section 828 [1] in the following manner:

- Increase the number of allowable passengers from 5 to 6 and occupants from 6 to 7 for covered aircraft;
- Increase the maximum takeoff weight from 6,000 pounds to 12,500 pounds for covered aircraft;
- Clarify that calendar months will be used in determining the duration of the comprehensive medical examination for those persons acting as the pilot in command or as a required flightcrew member for operations under § 61.113(i);
- Specify that covered aircraft does not include transport category rotorcraft certified to airworthiness standards under part 29; and
- Clarify which versions of FAA Form 8500–8, Application for Airman Medical Certificate, may be used to populate the questions in the BasicMed Comprehensive Medical Examination Checklist.

Section 815, BasicMed For Examiners Administering Tests or Proficiency Checks, provides that an examiner may administer a practical test or proficiency check if such examiner meets the medical eligibility requirements for BasicMed and the flight is conducted in a covered aircraft.[2] While the FAA finds the expansion to be self-enacting, the section provided the FAA with three years to issue a final rule updating the regulations, as well as any related requirements the Administrator finds are in the interest of aviation safety.[3] This final rule will, therefore, update § 61.23 to permit persons performing the duties of an examiner to administer a practical test or proficiency check without holding a medical certificate issued under part 67, provided those persons meet the requirements to operate under the conditions and limitations set forth in § 61.113(i).

Summary of the Costs and Benefits

There are no costs or benefits of this rule relative to the with-statute baseline. This rule conforms FAA regulations to self-implementing legislation in sections 815 and 828 of the FAA Reauthorization Act of 2024. Under the updated Office of Management and Budget (OMB) Circular A–4 guidance,[4] an agency may use a with-statute baseline for estimating costs and benefits for regulations that simply restate statutory requirements in self-implementing legislation. Since the rule does not deviate from the self-implementing statutory provisions, there are no costs or benefits as measured against the with-statute baseline.

II. Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code (49 U.S.C.). 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 final rule is promulgated under the authority described in subtitle VII, part A, subpart iii, section 44701, General Requirements; section 44702, Issuance of Certificates; and section 44703, Airman Certificates. Under these sections, the FAA is charged with prescribing regulations and minimum standards for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. The FAA is also authorized to issue certificates, including airman certificates and medical certificates, to qualified individuals. This final rule is within the scope of that authority.

BasicMed provisions were originally promulgated under section 2307 of

[1] See sec. 828(a).

[2] Sec. 815(a).

[3] Sec. 815(b).

[4] OMB Circular No. A–4 updated November 9, 2023, page 12. Accessed September 30, 2024 at: *https://www.whitehouse.gov/wp-content/uploads/2023/11/CircularA-4.pdf.*

Public Law 114–190, the FAA Extension, Safety and Security Act of 2016. The requirements of this rule continue to be within that authority, as well as under sections 815 and 828 of the FAA Reauthorization Act of 2024.

III. Good Cause for Immediate Adoption

The Administrative Procedure Act (5 U.S.C. 553(b)(B)) requires an agency to conduct notice and comment rulemaking except when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. Additionally, section 553(d) permits agencies, upon a finding of good cause, to issue rules with an effective date less than 30 days from the date of publication. The FAA finds good cause to forgo notice and opportunity for comment and the 30 days notice requirement to implement the statutory amendments as a final rule.

First, as it pertains to section 815, the FAA finds that notice and the opportunity for comment to be unnecessary because the final rule implements the statutory provisions without interpretation. The declaratory provision of section 815(a) became effective on May 16, 2024, immediately upon passage of the Act. While section 815(b) provided three years to conform the regulations with the self-enacting provision, the FAA has simply adopted the statutory language without interpretation and implements that language directly into the regulations, rendering notice and the opportunity for comment unnecessary.

Second, as it pertains to section 828, by effect of section 828(c), which directs the Administrator to ''apply parts 61 and 68, Code of Federal Regulations, in a manner reflecting the amendments made by this section,'' the FAA must implement the provisions of section 828(a) beginning 180 days after passage of the Act (*i.e.,* November 12, 2024). Notice and the opportunity for comment are unnecessary in this action because the FAA is strictly implementing the amendments made to the statutory provisions in section 2307 of FESSA without interpretation. This rule conforms parts 61, 68, and 91 to the specific amended provisions within the Act. Additionally, because the FAA is simply amending the regulations to the language in section 2307 of FESSA, the updated regulations do not impose any additional substantive restrictions or requirements on the persons affected by these regulations. Further, case law supports the concept that the FAA's compliance to implement a rule by the statutorily prescribed deadline of November 12, 2024, makes compliance with section 553 impracticable and supports a finding of good cause to forgo notice and the opportunity for comment.[5]

For similar reasons, the FAA finds good cause to forgo the 30 days delay of effective date requirement under 5 U.S.C. 553(d) because 30 days delay of effective date is impracticable and unnecessary. The FAA is publishing this rule with an immediate effective date to comply with the statutory deadline imposed in section 828 of the Act, which directed the FAA to apply parts 61 and 68 to reflect the amendments beginning 180 days after the Act's enactment. Additionally, because section 815 has been effective since May 14, 2024, (*i.e.,* self-enacting), 30 days notice is unnecessary. Delaying the effective date of this final rule will not stay these requirements from being legally binding and would only cause inconsistency between the FAA's regulations and the statutory provisions already in effect.[6] Therefore, the FAA finds good cause to forgo the 30 days effective date requirement to comply with the Congressional directive and align with FAA's regulations with the self-enacting statutory provisions.

Finally, this final rule makes one technical amendment to add an OMB control number for an already existing and approved information collection to the FAA's regulatory list of control numbers in part 11. The FAA finds that notice and comment is unnecessary for such technical change.[7]

IV. Background

FESSA was enacted on July 15, 2016. Section 2307(a) of FESSA, Medical Certification of Certain Small Aircraft Pilots, directed the FAA to ''issue or revise regulations to ensure that an individual may operate as pilot in command of a covered aircraft'' without having to undergo the medical certification process under 14 CFR part 67 if the pilot and aircraft meet certain prescribed requirements as outlined in FESSA. The FAA implemented, without interpretation, the provisions of section 2307 of FESSA by publishing the Alternative Pilot Physical Examination and Education Requirements final rule on January 11, 2017,[8] which amended parts 61 and 91 and created part 68.[9] These medical eligibility requirements for pilots are collectively known as BasicMed.

On May 16, 2024, the President signed the FAA Reauthorization Act of 2024 (Pub. L. 118–63) into law. Specific to this rulemaking, the FAA Reauthorization Act of 2024, sections 815 and 828, promulgates certain changes to (1) expand the applicability of BasicMed to pilot examiners, (2) expand the definition of a covered aircraft in FESSA, (3) apply consistent usage of the term ''calendar months,'' and (4) permit the FAA to modify forms related to comprehensive medical examination checklists. As discussed herein, certain changes were self-enacting upon enactment of the Reauthorization, while others are self-enacting 180 days from the enactment of the Reauthorization. This final rule conforms FAA regulations as set forth by the Reauthorization.

V. Section 828 Expansion of BasicMed

Section 828(a) of the Act amended certain requirements set forth in FESSA, section 2307, paragraphs (a)(2), (a)(7), (a)(8)(A), (b)(2)(A)(i), (h), and (j). First, section 828 revises the definition of covered aircraft to increase the number of occupants in a BasicMed covered aircraft from 6 to 7, increases the maximum certificated takeoff weight from 6,000 pounds to 12,500 pounds, and excludes transport category rotorcraft certified to airworthiness standards under part 29. Second, section 828(a) also increases the maximum number of passengers from 5 to 6, modifies the duration of time for a comprehensive medical examination from 48 months to 48 calendar months, and updates which medical application form versions the FAA may use to populate the questions of the

[5] *Philadelphia Citizens in Action* v. *Schweiker,* 669 F. 2d 877, 885–86 (3rd Cir. 1982) (finding the need for compliance with a statutorily prescribed deadline to contribute to a finding of good cause).

[6] See *Clay Broadcasting Corp.* v. *United States,* 464 F.2d 1313, 1320 (5th Cir. 1972), rev'd on other grounds sub nom. *National Cable Television Ass'n, Inc.* v. *United States,* 415 U.S. 336 (1974) (finding an effective date in accordance with a Congressional directive supports good cause to forgo the 30 days notice requirement.).

[7] Technical amendments are ''a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public.'' *See Mack Trucks, Inc.* v. *EPA, 682 F.3d 87, 94 (D.C. Cir. 2012))(quotation marks and citation omitted); See also United States v. Mullins,* 2012 WL 3777067, at *4 (D. Vt. Aug. 29, 2012) (explaining that public comment is unnecessary if minor or merely technical amendments in which the public is not particularly interested were involved).

[8] 82 FR 3149.

[9] BasicMed was additionally modified on November 22, 2022, by *Medical Certification Standards for Commercial Balloon Operations* final rule (87 FR 71218) to expand BasicMed to required flightcrew members in addition to persons acting as pilot in command in accordance with section 318 of Public Law 115–254 (''Commercial Balloon Pilot Safety Act of 2018'') and in response to NTSB Safety Recommendation A–17–034.

Comprehensive Medical Examination Checklist (BasicMed), FAA Form 8700–2 (CMEC). While section 828(b) directs the FAA to amend regulations in 14 CFR parts 61 and 68 without imposing a deadline to do so,[10] paragraph (c) requires the FAA to apply parts 61 and 68 in a manner reflecting the amendments made by paragraph (a) within 180 days of the enactment of the Act (*i.e.,* November 12, 2024). The amended requirements of section 828 and the FAA's implementation of those requirements are subsequently discussed.

A. Calendar Month (§ 61.23(c)(3)(i)(D))

Prior to this rule, § 61.23(c)(3)(i)(D) required that, to be eligible to operate under BasicMed, an individual must complete their comprehensive medical examination from a State-licensed physician during the 48 months before acting as a pilot in command or serving as a required flightcrew member in operations under § 61.113(i) and in accordance with the relevant requirements in part 68. This requirement was consistent with the directive of section 2307(a)(7) of FESSA at the time of final rule adoption[11] (*i.e.,* before May 16, 2024). With the exception of § 61.23(c)(3)(i)(D), the FAA has generally used the term ''calendar month'' throughout part 61 to refer to periods of time for the purposes of recency. Further, the usage of the term ''month'' was inconsistent within section 2307 of FESSA, which used the term ''month'' to refer to the duration of a comprehensive medical examination, but ''calendar month'' when referring to the duration of recency for the medical education course. This amendment will implement section 828(a)(1)(B) to correct the term and align the language in § 61.23 with part 61 convention and section 2307(a)(7) of FESSA to state ''calendar month.''

B. Covered Aircraft Requirements (§§ 61.113(i)(1) and 91.319(j))

In section 2307(j) of FESSA, as promulgated in 2016, a covered aircraft was defined as an aircraft that (1) is authorized under Federal law to carry not more than 6 occupants; and (2) has a maximum certificated takeoff weight of not more than 6,000 pounds. These requirements were implemented for aircraft authorized under Federal law.[12] Section 828(a)(4) of the FAA Reauthorization Act of 2024 amended section 2307(j) of FESSA to increase the number of occupants an aircraft is authorized to carry under Federal law from 6 to 7 and to increase the maximum certificated takeoff weight from not more than 6,000 pounds to not more than 12,500 pounds. Additionally, section 828(a)(4) added a third provision to section 2307(j) of FESSA to exclude transport category rotorcraft certificated to airworthiness standards under part 29. To note, these amendments were immediately adopted within 49 U.S.C. 44703 note (FESSA).

For aircraft authorized under Federal law, this final rule revises § 61.113(i)(1) to reflect the provisions of section 2307(j), as amended by section 828(a)(4).[13] Additionally, this final rule revises § 91.319(j) to increase the maximum number of occupants that a person may carry in an experimental aircraft operated under § 61.113(i) from 6 to 7.[14]

C. Passengers in Covered Aircraft (§ 61.113(i)(1))

Section 2307(a)(8) of FESSA established limitations for operations under BasicMed. One operating requirement limited an individual operating in the covered aircraft from carrying more than 5 passengers. Section 828 of the Act amended section 2307(a)(8)(A) (*i.e.,* the operating requirement) by increasing the number of passengers from 5 to 6. This final rule will revise § 61.113(i)(1) to reflect this increased passenger limitation. Therefore, a covered aircraft may now be authorized to carry up to 7 occupants (including any required flight crewmembers) and may be operating with up to 6 passengers on board.[15]

D. Comprehensive Medical Examination Checklist (§ 68.7(a)(1))

To comply with the requirements of BasicMed, a pilot must receive a comprehensive medical examination from a State-licensed physician.[16] The State-licensed physician conducts the examination using the CMEC[17] completed by the recipient prior to the examination. Section 2307(b)(2) of FESSA prescribes the content of the CMEC, implemented in § 68.7. Originally, section 2307(b)(2)(A)(i) specified that the checklist must be populated with specific questions from FAA Form 8500–8 (3–99); however, the 3–99 version of FAA Form 8500–8 is now obsolete and no longer an active form.

Now, section 828(a)(2) of the Act amended section 2307(b)(2)(A)(i) of FESSA to specify that the checklist must include certain questions from the 8500–8 (3–99) or any successor form, which include pertinent medical history of the examination recipient. As a result of the amendment, this final rule amends § 68.7(a)(1) by inserting the language ''(or any successor form)'' following ''FAA Form 8500–8 (3–99).'' In practice, this amendment explicitly facilitates future updates to the FAA Form 8700–2 CMEC and incorporates changes made to specific questions in subsequent versions of FAA Form 8500–8.

VI. Expanding BasicMed for Examiners Administering Tests or Proficiency Checks

Prior to FESSA, the medical eligibility requirements for an examiner mirrored the requirements for the applicant taking the examination. The provisions of section 2307 of FESSA, and subsequent modifications to apply BasicMed to required flightcrew members, did not originally apply to examiners because an examiner does not typically act as pilot in command of the aircraft for a practical test and only

[10] While the statute directs the FAA to amend parts 61 and 68, the FAA notes that in order to implement the expansion of BasicMed to experimental aircraft which are not type certificated as the regulations currently reflect, the FAA must amend part 91. Section 91.319 prescribes operating limitations for aircraft having experimental certificates. This aligns with the approach set forth by the Alternative Pilot Physical Examination and Education Requirements final rule (82 FR 3149).

[11] 82 FR 3149 at 3154.

[12] Comprehensive discussion regarding the FAA's analysis and implementation of ''aircraft authorized under Federal Law'' may be found at 82 FR 3149, at 3154.

[13] Section 61.113 refers to the parameters of aircraft; however, the 2017 preamble unintentionally narrowed the aircraft authorized to type certificated aircraft and experimental aircraft, inadvertently omitting aircraft such as light sport aircraft and special flight permits. In practice, the FAA applies § 61.113 to any aircraft meeting the definition of ''covered aircraft'' and will continue to do so.

[14] As previously stated in footnote 8 of this preamble, the statute directs the FAA to amend parts 61 and 68; however, because experimental aircraft are not type certificated but may be operated under BasicMed given the definitions set forth in FESSA, the FAA finds it appropriate to amend part 91 as well. Because experimental aircraft may be operated under BasicMed, the FAA omitted the word ''certificated'' from ''maximum takeoff weight'' in the 2017 final rule regulatory text, which is also reflected in this final rule.

[15] For additional discussion on the relationship between ''occupants'' and ''passengers'' as it pertains to covered aircraft, see 82 FR 3149 at 3154.

[16] 14 CFR 61.23(c)(3)(D).

[17] During this rulemaking, the FAA discovered that the rule establishing BasicMed, Alternative Pilot Physical Examination and Education Requirements, did not add OMB control number 2120–0770 (approving the new information collection for FAA Form 8700–2) to § 11.201. Section 11.201 sets forth an informational list of current OMB control numbers, organized by 14 CFR part or section, identified and described for reference to the FAA's information collection activities. This final rule corrects the error by adding the OMB control number to the table set forth in § 11.201(b).

serves as a required flightcrew member during portions of a practical test.[18]

Section 815(a) of the FAA Reauthorization Act of 2024 permits examiners to administer a practical test or proficiency check so long as the examiner meets the medical eligibility requirements of BasicMed (*i.e.,* the examiner meets the medical qualification requirements under part 68 and the operation is conducted in a covered aircraft as defined in section 2307(j) of FESSA). While the FAA determined that this provision was self-enacting as of May 16, 2024, section 815(b) of the Act directs the FAA to issue a final rule revising part 61 within three years of enactment. Section 815(b) also permits the Administrator to add ''any related requirements the Administrator finds are in the interest of aviation safety'' to the final rule; however, at this time, the FAA does not find any related requirements warranted and will not be adding any additional related requirements to this final rule. To align the regulations with the self-enacting statute, this final rule adds new § 61.23(c)(1)(vii) [19] to explicitly allow examiners to administer practical tests or proficiency checks for airman certificates, ratings, or authorizations, provided the flight is conducted under the conditions and limitations set forth in § 61.113(i).

The amended provisions in § 61.23(a)(3)(iv) to allow examiners to perform their duties under BasicMed use the phrase ''when meeting the requirements to operate under the conditions and limitations set forth in § 61.113(i)'' rather than ''when operating under the conditions and limitations set forth in § 61.113(i)'' because § 61.113(i) applies to persons exercising private pilot privileges as either pilot in command or as a required flightcrew member. The added phrase ''when meeting the requirements'' was included to clarify that even though the examiner may not be performing a pilot duty as an examiner and not serving as either pilot in command or as a required flightcrew member, that person may serve as an examiner without holding a medical certificate provided that person has otherwise met all the requirements to operate as pilot in command or as a required flightcrew member under BasicMed.

[18] E.g., acting as a safety pilot under 14 CFR 91.109(c)(1).

[19] As a result, this final rule revises § 61.23(c)(1)(v) and (vi) to account for list expansion (*i.e.,* simply removing ''or'' from paragraph (c)(1)(v) and adding ''or'' to paragraph (c)(1)(vi)).

VII. Regulatory Notices and Analyses

Federal agencies consider impacts of regulatory actions under a variety of executive orders and other requirements. First, Executive Order 12866, Executive Order 13563, and Executive Order 14094 (''Modernizing Regulatory Review'') direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify the costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate 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 one year. The current threshold after adjustment for inflation is $183 million using the most current (2023) Implicit Price Deflator for the Gross Domestic Product. This portion of the preamble summarizes the FAA's analysis of the economic impacts of this rule.

In conducting these analyses, the FAA has determined that this final rule: (1) has benefits that justify its costs, (2) is not a ''significant regulatory action'' as defined in section 3(f)(1) of Executive Order 12866, (3) will not create unnecessary obstacles to the foreign commerce of the United States; and (4) will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector by exceeding the threshold identified above. As the FAA finds good cause to forgo notice and opportunity for comment under 5 U.S.C. 553(b)(B) for this final rule, 5 U.S.C. 603 and 604 do not require regulatory flexibility analyses regarding impacts on small entities.

A. Regulatory Evaluation

There are no costs or benefits of this rule relative to the with-statute baseline. This rule conforms FAA regulations to self-implementing legislation in sections 815 and 828 of the FAA Reauthorization Act of 2024. Section 815 allows a pilot examiner to perform authorized examiner duties so long as the examiner can otherwise meet the requirements to operate under BasicMed in the aircraft being used for the practical test or proficiency check. Section 828 expands BasicMed by increasing the number of allowable passengers in a covered aircraft to 6 (up from 5); increasing the allowable number of seats in a covered aircraft to 7 (up from 6); and increasing the maximum certificated takeoff weight of a covered aircraft to 12,500 pounds (up from 6,000 pounds). This expansion of Basic Med does not apply to transport category rotorcraft certified to airworthiness standards under part 29.

Under the updated OMB Circular A–4 guidance,[20] an agency may use a with-statute baseline for estimating costs and benefits for regulations that simply restate statutory requirements in self-implementing legislation. Since the rule does not deviate from the self-implementing statutory provisions, there are no costs or benefits as measured against the with-statute baseline.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA), in 5 U.S.C. 603, requires an agency to prepare an initial regulatory flexibility analysis describing impacts on small entities whenever 5 U.S.C. 553 or any other law requires an agency to publish a general notice of proposed rulemaking for any proposed rule. Similarly, 5 U.S.C. 604 requires an agency to prepare a final regulatory flexibility analysis when an agency issues a final rule under 5 U.S.C. 553 after that section or any other law requires publication of a general notice of proposed rulemaking. The FAA finds good cause to forgo notice and comment and to not delay the effective date for this rule. As 5 U.S.C. 553(b)(B) permits an agency to forgo notice and the opportunity for comment when good cause exists and the FAA finds good cause exists in this situation, 5 U.S.C. 603 and 604 similarly do not require regulatory flexibility analyses.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United

[20] OMB Circular No. A–4 updated November 9, 2023, page 12. Accessed September 30, 2024, at: *https://www.whitehouse.gov/wp-content/uploads/2023/11/CircularA-4.pdf.*

States, so long as the standard has a legitimate domestic objective, such as the protection of safety and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the potential effect of this final rule and determined that it will only have a domestic impact and therefore will not create unnecessary obstacles to the foreign commerce of the United States.

D. Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government, or the private sector to incur direct costs without the Federal government having first provided the funds to pay those costs. The FAA determined that the final rule will not result in the expenditure of $183 million or more by State, local, or tribal governments, in the aggregate, or the private sector, in any one year.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

The FAA has determined that there would be no new information collection associated with the requirement to complete the Comprehensive Medical Examination Checklist associated with this final rule. Approval to collect such information previously was approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and was assigned OMB Control Number 2120–0770.

The FAA lists OMB control numbers assigned to its information collection activities in 14 CFR 11.201(b). Accordingly, this technical amendment updates 14 CFR 11.201(b) to display OMB control number 2120–0770 associated with the information collection activities in the final rule, Alternative Pilot Physical Examination and Education Requirements.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices (SARPs) to the maximum extent practicable. The FAA has reviewed ICAO SARPs applicable to private pilots.

Airmen certificated by the FAA are represented to ICAO as compliant with ICAO standards for private pilots, among other requirements. As FESSA and this final rule describe standards that diverge from ICAO requirements,[21] flights must be geographically limited to operations within the United States, unless authorized by the country in which the flight is conducted.

The FAA will modify certain differences to reflect that certain U.S. private pilots no longer are required to hold a current FAA airman medical certificate. A filing is required for certain ICAO Annex 1 SARPs found in Chapters 1, 2, and 6.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5–6.6f for regulations and involves no extraordinary circumstances.

VIII. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, will not have federalism implications.

[21] Annex 1 to the Convention on International Civil Aviation, ''Personnel Licensing,'' Chapter 6 ''Medical Provisions for Licensing,'' 11th Edition (July 2011).

B. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Consistent with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and FAA Order 1210.20, American Indian and Alaska Native Tribal Consultation Policy and Procedures, the FAA ensures that Federally Recognized Tribes (Tribes) are given the opportunity to provide meaningful and timely input regarding proposed Federal actions that have the potential to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes; or to affect uniquely or significantly their respective Tribes. At this point, the FAA has not identified any unique or significant effects, environmental or otherwise, on Tribes resulting from this final rule.

C. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. The FAA has determined that it is not a ''significant energy action'' under the Executive order and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

D. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609 and has determined that this action will have no effect on international regulatory cooperation.

IX. Additional Information

A. Electronic Access and Filing

A copy of this final rule and all background material may be viewed online at *www.regulations.gov* using the docket number listed above. A copy of this final rule will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365

days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at *www.federalregister.gov* and the Government Publishing Office's website at *www.govinfo.gov.* A copy may also be found at the FAA's Regulations and Policies website at *www.faa.gov/regulations_policies.*

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9677. Requestors must identify the docket or amendment number of this rulemaking.

All documents the FAA considered in developing this final rule, including economic analyses and technical reports, may be accessed from the internet through the Federal eRulemaking Portal referenced above.

B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the internet, visit *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects

14 CFR Part 11

Administrative practice and procedure, Reporting and recordkeeping requirements.

14 CFR Part 61

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 68

Aircraft, Airmen, Health, Reporting and recordkeeping requirements.

14 CFR Part 91

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements, Transportation.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

Part 11—GENERAL RULEMAKING PROCEDURES

■ 1. The authority citation for part 11 continues to read as follows:

Authority: 49 U.S.C. 106(f), 40101, 40103, 40105, 40109, 40113, 44110, 44502, 44701–44702, 44711, and 46102.

■ 2. Amend § 11.201 by revising the table in paragraph (b) to read as follows:

§ 11.201 Office of Management and Budget (OMB) control numbers assigned under the Paperwork Reduction Act.

* * * * *

(b) * * *

14 CFR part or section identified and described	Current OMB control No.
* * * * *	
Part 68	2120–0770
* * * * *	

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

■ 3. The authority citation for part 61 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 40113, 44701–44703, 44707, 44709–44711, 44729, 44903, 45102–45103, 45301–45302; Sec. 2307 Pub. L. 114–190, 130 Stat. 615 (49 U.S.C. 44703 note); sec. 318, Pub. L. 115–254, 132 Stat. 3186 (49 U.S.C. 44703 note); and secs. 815 and 828, Pub. L. 118–63, 138 Stat. 1330 (49 U.S.C. 44703 note).

■ 4. Amend § 61.23 by revising paragraphs (a)(3)(iv), (c)(1)(v) and (vi), adding paragraph (c)(1)(vii), and revising paragraph (c)(3)(i)(D) to read as follows:

§ 61.23 Medical certificates: Requirement and duration.

(a) * * *

(3) * * *

(iv) When performing the duties as an Examiner in an aircraft when administering a practical test or proficiency check for an airman certificate, rating, or authorization, except when meeting the requirements to operate under the conditions and limitations set forth in § 61.113(i).

* * * * *

(c) * * *

(1) * * *

(v) Exercising the privileges of a student, recreational or private pilot certificate if the flight is conducted under the conditions and limitations set forth in § 61.113(i);

(vi) Exercising the privileges of a flight instructor certificate and acting as the pilot in command or as a required flight crewmember if the flight is conducted under the conditions and limitations set forth in § 61.113(i); or

(vii) Serving as an Examiner and administering a practical test or proficiency check for an airman certificate, rating, or authorization if the flight is conducted under the conditions and limitations set forth in § 61.113(i).

* * * * *

(3) * * *

(i) * * *

(D) Receive a comprehensive medical examination from a State-licensed physician during the 48 calendar months before acting as pilot in command or serving as a required flightcrew member of an operation conducted under § 61.113(i) and that medical examination is conducted in accordance with the requirements in part 68 of this chapter; and

* * * * *

■ 5. Amend § 61.113 by revising paragraph (i)(1) to read as follows:

§ 61.113 Private pilot privileges and limitations: Pilot in command.

* * * * *

(i) * * *

(1) The aircraft is authorized to carry not more than 7 occupants, has a maximum takeoff weight of not more than 12,500 pounds, is operated with no more than 6 passengers on board, and is not a transport category rotorcraft certified to airworthiness standards under part 29 of this chapter; and

* * * * *

PART 68—REQUIREMENTS FOR OPERATING CERTAIN SMALL AIRCRAFT WITHOUT A MEDICAL CERTIFICATE

■ 6. The authority citation for part 68 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 44701–44703, sec. 2307 of Pub. L. 114–190, 130 Stat. 615 (49 U.S.C. 44703 note); sec. 828 of Pub. L. 118–63, 138 Stat. 1330 (49 U.S.C. 44703).

■ 7. Amend § 68.7 by revising paragraph (a)(1) to read as follows:

§ 68.7 Comprehensive Medical Examination Checklist.

* * * * *

(a) * * *

(1) Boxes 3 through 13 and boxes 16 through 19 of the FAA Form 8500–8 (3–99), or any successor form; and

* * * * *

Part 91—GENERAL OPERATING AND FLIGHT RULES

■ 8. The authority citation for part 91 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701,

44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534; Pub. L. 114–190, 130 Stat. 615 (49 U.S.C. 44703 note); Sec. 828 of Pub. L. 118–63, 138 Stat. 1330 (49 U.S.C. 44703 note); articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

■ 9. Amend § 91.319 by revising paragraph (j) to read as follows:

§ 91.319 Aircraft having experimental certificates: Operating limitations.

* * * * *

(j) No person may operate an aircraft that has an experimental certificate under § 61.113(i) of this chapter unless the aircraft is carrying not more than 7 occupants.

Issued in Washington, DC, under the authority of 49 U.S.C. 106(f) and secs. 815 and 828 of Public Law 118–63.

Michael Gordon Whitaker,

Administrator.

[FR Doc. 2024–26935 Filed 11–14–24; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1624; Airspace Docket No. 24–ACE–7]

RIN 2120–AA66

Establishment of Class E Airspace; Rose Hill, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Rose Hill, KS to support new public instrument procedures.

DATES: Effective date 0901 UTC, December 26, 2024. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

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: Raul Garza Jr., Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5874.

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 establishes Class E airspace extending upward from 700 feet above the surface at Cook Airfield, Rose Hill, KS, to support instrument flight rule operations at this airport.

History

The FAA published an NPRM for Docket No. FAA 2023–1624 in the **Federal Register** (89 FR 66290; August 15, 2024), proposing to establish the Class E airspace at Rose Hill, KS. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Differences From the NPRM

An FAA database review noted that the incorrect coordinates were used in the NPRM. This Final Rule replaces the incorrect coordinates with the correct coordinates: 37°33′55″ N, long 097°10′29″ W. This action does not change the airspace dimensions or operating requirements.

Incorporation by Reference

Class E airspace designations are published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11J, dated July 31, 2024 and effective September 15, 2024. FAA Order JO 7400.11J is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

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

The Rule

This action amends 14 CFR part 71 by establishing Class E airspace upward from 700 feet above the surface within a 6.6-mile radius of Cook Airfield, Rose Hill, KS.

This action supports new public instrument procedures.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

Authority: 49 U.S.C. 106(f), 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 7400.11J, Airspace Designations and Reporting Points, dated July 31, 2024, and effective September 15, 2024, is amended as follows:

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

* * * * *

ACE KS E5 Rose Hill, KS [Establish]

Cook Airfield, KS
(Lat. 37°33′55″ N, long. 097°10′29″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Cook Airfield.

* * * * *

Issued in Fort Worth, Texas, on November 12, 2024.

Martin A. Skinner,

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

[FR Doc. 2024–26734 Filed 11–15–24; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 230, 274, and 275

[Release Nos. 33–11325; 34–101540; IA–6767; IC–35377]

Conforming Amendments to Commission Rules and Forms

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is adopting amendments to correct certain errors in various rules and forms under the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, and the Investment Advisers Act of 1940. The Commission is also amending a rule that displays control numbers assigned to information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act.

DATES: This rule is effective November 18, 2024.

FOR FURTHER INFORMATION CONTACT: Greg Scopino, Senior Counsel; Blair Burnett, Branch Chief; or Brian McLaughlin Johnson, Assistant Director, Investment Company Regulation Office, at (202) 551–6792, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The Commission is amending the following rules and forms:

Commission reference		CFR citation (17 CFR)
Securities Act of 1933 (''Securities Act'') [1]	Rule 482 [2]	§ 230.482.
Securities Act and Investment Company Act of 1940 (''Act'' or ''Investment Company Act'') [3].	Form N–1A [4]	§§ 239.15A and 274.11A.
	Form N–2 [5]	§§ 239.14 and 274.11a–1.
Securities Exchange Act of 1934 (''Exchange Act'') [6] and Investment Company Act.	Form N–CSR [7]	§§ 249.331 and 274.128.
Investment Company Act	Form N–MFP [8]	§ 274.201.
Investment Advisers Act of 1940 (''Investment Advisers Act'') [9]	Rule 204–2 [10]	§ 275.204–2.
	OMB control numbers [11]	§ 200.800.

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I. Discussion

The Commission is adopting amendments to correct errors in certain Commission rules and forms. Specifically, the amendments correct errors in the formula for calculating yield data reported on Form N–MFP, which requires money market funds to report portfolio and other information to the Commission each month. The amendments also make conforming changes to the risk disclosure statement in rule 482, which requires certain information to be included in mutual fund advertisements and sales literature. The amendments also conform certain provisions of Form N–1A and Form N–2, forms used by open-end management investment companies (''open-end funds'') and closed-end funds, respectively, to register under the Investment Company Act and to offer their shares under the Securities Act. These amendments reflect recent rule changes requiring open-end funds to transmit more concise annual and semi-annual reports to shareholders. Further, the amendments correct outdated cross-

[1] 15 U.S.C. 77a *et seq.* The Securities Act is available at *https://www.govinfo.gov/content/pkg/COMPS-1884/pdf/COMPS-1884.pdf.*

[2] Rule 482 is available at *https://www.ecfr.gov/current/title-17/chapter-II/part-230#230.482.*

[3] 15 U.S.C. 80a–1 *et seq.* Unless otherwise noted, all references to statutory sections are to the Investment Company Act, and all references to rules under the Investment Company Act are to title 17, part 270 of the Code of Federal Regulations [17 CFR part 270]. The Investment Company Act is available at *https://www.govinfo.gov/content/pkg/COMPS-1879/pdf/COMPS-1879.pdf.*

[4] A reference copy of Form N–1A is available at *https://www.sec.gov/files/form-n-1a.pdf.*

[5] A reference copy of Form N–2 is available at *https://www.sec.gov/files/formn-2.pdf.*

[6] 15 U.S.C. 78a *et seq.* The Exchange Act is available at *https://www.govinfo.gov/content/pkg/COMPS-1885/pdf/COMPS-1885.pdf.*

[7] A reference copy of Form N–CSR is available at *https://www.sec.gov/files/formn-csr.pdf.*

[8] A reference copy of Form N–MFP is available at *https://www.sec.gov/files/formn-mfp.pdf.*

[9] 15 U.S.C. 80b–1 *et seq.* The Investment Advisers Act is available at *https://www.govinfo.gov/content/pkg/COMPS-1878/pdf/COMPS-1878.pdf.*

[10] Rule 204–2 is available at *https://www.ecfr.gov/current/title-17/chapter-II/part-275/section-275.204-2.*

[11] 17 CFR 200.800 is available at *https://www.ecfr.gov/current/title-17/chapter-II/part-200/subpart-N.*

references and redesignate the numbering of certain paragraphs within Form N–CSR, a reporting form used by funds to file shareholder reports under the Investment Company Act and the Exchange Act. The amendments also correct an erroneous cross-reference in rule 204–2, which prescribes recordkeeping requirements for investment advisers. Finally, the amendments insert inadvertently omitted Office of Management and Budget (''OMB'') control numbers in 17 CFR 200.800, which is a rule that displays control numbers OMB has assigned to existing information collection requirements pursuant to the Paperwork Reduction Act.

Although the amendments are effective immediately, to the extent that registrants need additional time to conform to the amendments, they may take up to 90 days after the effective date to comply.[12] Given the nature of the amendments, a 90-day compliance period gives registrants adequate time to review these amendments and, if necessary, update their practices to reflect the corrections.

A. Form N–MFP

The Commission is adopting amendments to correct errors in Form N–MFP. Money market funds use Form N–MFP to report portfolio and other information to the Commission each month. Among the items required by Form N–MFP is the reporting of a money market fund's 7-day annualized gross and net yields. The form requires money market funds to report 7-day gross yield at the series level and 7-day net yield at the class level.[13] These standardized metrics give investors the ability to view the yield information of a money market fund over a recent time period, allowing investors to make better informed decisions and, in the aggregate, provide the Commission with useful data for identifying and monitoring trends in the money market fund sector.

In 2023, the Commission adopted a rulemaking that changed the frequency at which funds are required to report the 7-day yield information in their monthly reports on Form N–MFP to require 7-day gross and net yield data for each business day of the month (instead of only the 7 days ended on the last day of the month).[14]

In making this frequency-related change, the phrase ''business days'' was erroneously inserted into the yield calculation formula in a way that inadvertently altered the calculation period from 7 calendar days to 7 business days. A 7-business day period is internally inconsistent with the remainder of the yield calculation formula, which uses a scaling factor intended to annualize yields calculated over 7 calendar days. If used with a 7-business day period, it would result in the reporting of inflated annual yields on Form N–MFP.[15] Based on a review of a sample of recent Form N–MFP filings, Commission staff has not observed any evidence of an increase in reported yield figures relative to yields reported in prior periods, suggesting that money market funds' yield calculations do not reflect the error.[16] In addition, in amending Form N–MFP in 2023, the phrase ''immediately preceding'' was inadvertently inserted into the yield calculation formula, such that the reporting day would not be included in the calculation. The amendments correct these errors, ensuring that Form N–MFP continues to reflect the longstanding method money market funds have used to calculate and report yield figures (measured over seven calendar days) to the Commission in Form N–MFP and in other contexts, including prospectuses, advertisements, and sales literature.[17]

B. Rule 482(b)(4)

We are amending rule 482 to correct outdated cross-references and conform the risk statements that money market funds must include in their advertisements and sales literature to the risk statements that money market funds must include in their prospectuses.[18] Rule 482 applies to advertisements or other sales materials with respect to securities of an investment company registered under the Investment Company Act that is selling or proposing to sell its securities pursuant to a registration statement that has been filed under the Investment Company Act.[19] This rule describes the information that is required to be included in an advertisement, including a disclosure statement that must be used on money market fund advertisements.[20]

In the Money Market Fund Reform Adopting Release, the Commission amended the risk statements that money market funds must include in their prospectuses to align with the changes to money market fund regulations adopted in that release (*e.g.,* the removal of provisions allowing temporary suspensions of redemptions and changes to the liquidity fee framework). However, rule 482 was not included in the amendments and the statements that rule 482 currently requires are inconsistent with the recently amended regulatory framework for money market funds.[21] Further, the risk statements that money market funds were required to include in prospectuses and advertisements have otherwise always been identical and the risk statements should not differ based on whether an investor is reviewing a prospectus or an advertisement.[22]

[12] *See also infra* section I.C (stating that funds may include the updates to Item 10(a)(1)(iii) of Form N–1A in their next annual prospectus update following the adoption of the amendments to Form N–1A).

[13] *See* Items A.19 and B.8 of Form N–MFP.

[14] *See* Money Market Fund Reforms; Form PF Reporting Requirements for Large Liquidity Fund Advisers; Technical Amendments to Form N–CSR and Form N–1A, Investment Company Act Release No. 34959 (July 12, 2023) [88 FR 51404 (Aug. 3, 2023)] (''Money Market Fund Reform Adopting Release''), available at *https://www.federalregister.gov/documents/2023/08/03/2023-15124/money-market-fund-reforms-form-pf-reporting-requirements-for-large-liquidity-fund-advisers-technical.*

[15] The yield calculation formula in Items A.19 and B.8 (by reference to Item 26(a)(1) of Form N–1A) includes a scaling factor of 365/7, which operates to annualize yields calculated over a period of 7 calendar days. Due to the inclusion of weekends and holidays, however, 7 business days span a longer calendar period than 7 calendar days. Accordingly, yields calculated over 7 business days but annualized over 7 calendar days would result in inflated annual yields. *See infra* footnote 45.

[16] *See infra* footnote 45 and accompanying text.

[17] *See* Item 26(a) of Form N–1A (requiring money market funds to base yield calculations on the 7 days ended on the date of the most recent balance sheet included in the registration statement); Item 24(a) of Form N–4 (at 17 CFR 239.17b and 274.11c) (requiring a prospectus for an account or sub-account that holds itself out as a money market account or sub-account to be calculated based on the 7 days ended on the date of the most recent balance sheet of the registrant included in the registration statement); paragraph (e)(1) of 17 CFR 230.482 (requiring that any quotation of a money market fund's yield in an advertisement be based on the methods of computation prescribed in Form N–1A or Form N–4); paragraph (b)(1)(ii) of 17 CFR 270.34b–1 (requiring a money market fund's sales literature that includes any quotation of yield or similar quotations purporting to demonstrate the income earned or distributions made by the fund to be accompanied by a quotation of current yield based on the computation method prescribed in Form N–1A or Form N–4).

[18] *See* amended rule 482(b)(4). The regulations at 17 CFR 270.34b–1 (rule 34b–1) cross reference paragraph (b)(4) of rule 482, so the amendments will update the risk statements that money market funds must include in sales literature under rule 34b–1 as well. For purposes of this release, we use the term ''advertisement'' to include both rule 482 advertisements and rule 34b–1 sales literature, unless otherwise specified.

[19] *See* rule 482(a).

[20] *See* rule 482(b).

[21] *See* Item 4(b)(1)(ii) of Form N–1A.

[22] *See* Revisions to Rules Regulating Money Market Funds, Investment Company Act Release No. 18005 (Feb. 20, 1991) [56 FR 8113 (Feb. 27, 1991)], at text accompanying n.88, available at *https://archives.federalregister.gov/issue_slice/1991/2/27/8112-8130.pdf#page=2;* New Disclosure Option for Open-End Management Investment Companies, Investment Company Act Release No. 23065 (Mar. 13, 1998) [63 FR 13968 (Mar. 23, 1998)], at n.72 and accompanying text, available at *https://www.govinfo.gov/content/pkg/FR-1998-03-*

As a result, rule 482 includes outdated references to concepts that have been removed or significantly modified in underlying money market fund regulations (*e.g.,* allowing temporary suspensions of redemptions). The amendments to rule 482 would correct this error, make certain other conforming edits to further align the language of the risk statements with the risk statements that money market funds must include in their prospectuses, and correct inaccurate cross references to money market fund rules.[23]

C. Form N–1A

We are amending a provision of Form N–1A to correct a cross reference, reflecting changes made in the Tailored Shareholder Reports Adopting Release.[24] Specifically, we are amending Item 10(a)(1)(iii) of Form N–1A. This item requires open-end funds to include prospectus disclosure stating that a discussion regarding the basis for the board of directors approving any advisory contract of the fund is available in the fund's annual or semi-annual report to shareholders, as applicable.[25] In the Tailored Shareholder Reports Adopting Release, however, the Commission adopted amendments requiring discussion regarding the basis for the board's approval of the advisory contract to be included on Form N–CSR rather than in the annual or semi-annual report.[26] We are accordingly amending Item 10(a)(1)(iii) to reference that this disclosure now appears in the fund's reports on Form N–CSR.[27] Because this change simply updates a cross reference, funds may include the updated language in their next annual prospectus update following the adoption of the amendments to Form N–1A and we anticipate funds would update this disclosure at that time. In the interim period before funds make this update, an investor who wants to review the discussion regarding the basis for the board's approval of the advisory contract would look in the fund's shareholder report (which is referenced in the current prospectus disclosure requirement).[28] While this discussion will no longer appear in the fund's shareholder report, the report will include a link to additional information about the fund, which includes the discussion regarding the basis for the board's approval of the advisory contract.

D. Form N–2

We are amending Instruction 8.a to Item 24 of Form N–2 to correct a cross-reference to a provision of Form N–CSR that became outdated when the Commission adopted amendments to Form N–CSR in the Tailored Shareholder Reports Adopting Release. Instruction 8.a refers to Item 7 of Form N–CSR (''Disclosure of Proxy Voting Policies and Procedures for Closed-End Management Investment Companies''), which was redesignated as Item 12 (but not otherwise changed) in the Tailored Shareholder Reports Adopting Release.[29] We are therefore amending the reference in Item 7 in Instruction 8.a to refer instead to Item 12.

E. Form N–CSR

We are amending Items 2, 16, and 19 of Form N–CSR to correct outdated cross-references, remove unnecessary instructions, and redesignate the numbering of certain paragraphs. In the Recovery of Erroneously Awarded Compensation Adopting Release, the Commission added a new Item 18 (''Recovery of Erroneously Awarded Compensation'') to Form N–CSR and redesignated then-current Item 18 (''Exhibits'') as Item 19.[30] References in Item 2 of Form N–CSR, however, erroneously still refer to Item 18.[31] We are therefore amending Item 2 to refer to Item 19 instead of Item 18.

In the Recovery of Erroneously Awarded Compensation Adopting Release, the Commission also added new paragraph (a)(2) to newly designated Item 19 (''Exhibits'') and redesignated paragraph (a)(2) of newly redesignated Item 19 as paragraph (a)(3). Subsequent paragraphs were not renumbered, however, resulting in two paragraphs designated (a)(3). The amendments would correct this error by redesignating existing paragraphs (a)(3) and (a)(4) of newly redesignated Item 19 as paragraphs (a)(4) and (a)(5). We are also correcting the title for the instructions to Item 19, which currently erroneously references Item 13. In addition, we are removing the instruction to paragraph (b) of Item 16 and the instruction to paragraph (a)(3) of Item 19 on Form N–CSR.[32] These instructions were included in Form N–CSR pursuant to the 2016 investment company reporting modernization

23/pdf/98-7071.pdf; Registration Form Used by Open-End Management Investment Companies, Investment Company Act Release No. 23064 (Mar. 13, 1998) [63 FR 13916 (Mar. 23, 1998)], at paragraph accompanying n.41, available at *https://www.govinfo.gov/content/pkg/FR-1998-03-23/pdf/98-7070.pdf;* Money Market Fund Reform; Amendments to Form PF, Investment Company Act Release No. 31166 (July 23, 2014) [79 FR 47736 (Aug. 14, 2024)], at section III.E.1.a., available at *https://www.federalregister.gov/documents/2014/08/14/2014-17747/money-market-fund-reform-amendments-to-form-pf.*

[23] For example, the amendments correct errors in cross references to the definitions of government money market fund and retail money market fund located in 17 CFR 270.2a–7 (rule 2a–7), as well as cross references to the location of liquidity fee provisions in that rule.

[24] *See* Tailored Shareholder Reports for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements, Investment Company Act Release No. 34731 (Oct. 26, 2022) [87 FR 72758 (Nov. 25, 2022)] (''Tailored Shareholder Reports Adopting Release''), available at *https://www.federalregister.gov/documents/2022/11/25/2022-23756/tailored-shareholder-reports-for-mutual-funds-and-exchange-traded-funds-fee-information-in.*

[25] *See* Item 10(a)(1)(iii) of Form N–1A (''Include a statement, adjacent to the disclosure required by paragraph (a)(1)(ii) of this Item, that a discussion regarding the basis for the board of directors approving any investment advisory contract of the Fund is available in the Fund's annual or semi-annual report to shareholders, as applicable, and providing the period covered by the relevant annual or semi-annual report.'').

[26] *See* Form N–CSR Item 11 (Statement Regarding Basis for Approval of Investment Advisory Contract).

[27] As amended, Item 10(a)(1)(iii) will read: ''Include a statement, adjacent to the disclosure required by paragraph (a)(1)(ii) of this Item, that a discussion regarding the basis for the board of directors approving any investment advisory contract of the Fund is available in the Fund's reports filed on Form N–CSR, and providing the period covered by the most recent Form N–CSR report that includes this discussion.''

[28] *See* Item 27A(b)(4) of Form N–1A (shareholder report cover page must include a website address where additional information about the fund, as required under 17 CFR 270.30e–1 (rule 30e–1), is available); rule 30e–1(b)(2) under the Investment Company Act (content requirements for additional information that an open-end fund must make available on a website, including the discussion regarding the basis for the board's approval of the advisory contract).

[29] *See* Tailored Shareholder Reports Adopting Release at amendatory instruction 17.g.

[30] Listing Standards for Recovery of Erroneously Awarded Compensation, Investment Company Act Release No. 34732 (Oct. 26, 2022) [87 FR 73076 (Nov. 28, 2022)] (''Recovery of Erroneously Awarded Compensation Adopting Release''), available at *https://www.federalregister.gov/documents/2022/11/28/2022-23757/listing-standards-for-recovery-of-erroneously-awarded-compensation.*

[31] These references appear in paragraphs (c) and (f) of Item 2.

[32] *See* instruction to paragraph (b) of Item 16 of Form N–CSR (''Until the date that the registrant has filed its first report on Form N–PORT (17 CFR 270.150), the registrant's disclosures required by this Item are limited to any change in the registrant's internal control over financial reporting that occurred during the registrant's last fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.''); *see also* instruction to paragraph (a)(3) of Item 19 on Form N–CSR (''Until the date that the registrant has filed its first report on Form N–PORT (17 CFR 270.150), in the certification required by Item 18(a)(3), the registrant's certifying officers must certify that they have disclosed in the report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.'').

rulemaking to address how registrants should handle certain disclosures during the transition period before all registered management investment companies were required to file Form N–PORT.[33] These instructions are unnecessary as all registered management investment companies are currently required to file Form N–PORT (*i.e.,* the transition period for reporting on Form N–PORT has concluded).

F. Rule 204–2(j)(4)

We are amending rule 204–2 under the Investment Advisers Act to correct an erroneous cross reference. The corrected cross reference in rule 204–2(j)(4) will refer to 17 CFR 270.0–2(b)(2) (rule 0–2(b)(2)) for the definition of non-resident investment adviser (and not rule 0–2(d)(3) under the Investment Advisers Act, which does not exist).

G. OMB Control Numbers

Finally, we are amending 17 CFR 200.800 to display control numbers OMB has assigned to certain existing information collection requirements pursuant to the Paperwork Reduction Act that mistakenly were not previously listed in that rule.

II. Procedural and Other Matters

The Administrative Procedure Act (''APA'') generally requires an agency to publish notice of a rulemaking in the **Federal Register** and provide an opportunity for public comment.[34] This requirement does not apply, however, if the agency ''for good cause, finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' [35] Given the nature of the amendments and the associated minimal exercise of discretion, the Commission finds that notice and public comment are unnecessary and that there is good cause to implement these amendments in a final rule.

The amendments to Form N–MFP correct inadvertent errors that created an inconsistency in the yield calculation formula and represented a departure from the longstanding method money market funds have used to calculate and report yield figures to the Commission. The amendments to rule 482 conform the required risk disclosure to the recently amended regulatory framework for money market funds. The amendments to Form N–1A, Form N–2, Form N–CSR, and rule 204–2 are ministerial in nature. They update incorrect or outdated cross references, redesignate the numbering of certain paragraphs, or remove outdated information. Accordingly, we find good cause that publishing the amendments to Form N–MFP, rule 482, Form N–1A, Form N–2, Form N–CSR, and rule 204–2 for comment is unnecessary. The APA also provides that notice of proposed rulemaking is not required for ''rules of agency organization, procedure, or practice.'' [36] The amendments to 17 CFR 200.800 pertain to agency organization, procedure, or practice, and therefore are not subject to the APA's requirement for advance notice and opportunity for public comment prior to publication.

The APA generally requires publication of a rule at least 30 days before its effective date. This requirement does not apply, however, if the agency finds good cause for making the rule effective sooner.[37] For the same reasons we are forgoing notice and comment, we find good cause to make the amendments effective upon publication in the **Federal Register**. This finding that notice and public comment are unnecessary also satisfies the requirements of the Congressional Review Act, allowing the amendments to become effective at such time that the Commission determines.[38] Pursuant to the Congressional Review Act, the Office of Information and Regulatory Affairs has designated these amendments not a ''major rule,'' as defined by 5 U.S.C. 804(2). The amendments also do not require analysis under the Regulatory Flexibility Act.[39]

III. Economic Analysis

As discussed above, these amendments correct errors in certain Commission rules and forms. The Commission is mindful of the economic effects, including the benefits and costs, of the adopted amendments. The analysis below addresses the likely economic effects of the amendments, including the anticipated and estimated benefits and costs of the amendments and their likely effects on efficiency, competition, and capital formation.[40] We analyze these effects against a baseline that consists of the current regulatory framework and current market practices.

The amendments we are adopting are limited in nature.[41] Therefore, many of the economic effects will be minimal or null. Where we are unable to quantify those economic effects that may exist, we explain why they are impracticable to quantify and we discuss them in qualitative terms. Given the nature of the benefits and the minimal costs expected to result from these amendments, we do not anticipate any changes to efficiency, competition, or capital formation will result from these amendments.

A. Form N–MFP

Baseline. Money market funds report their gross and net yields using public Form N–MFP filings.[42] The instructions accompanying these yields' calculations were inadvertently changed in a 2023 rulemaking.[43] The amendments to Form N–MFP correct this error.[44]

We estimate that this amendment to Form N–MFP will apply to 291 money market funds registered with the Commission as of December 31, 2023. Commission staff have not observed evidence of reported yield changes that would be expected if money market funds had fully implemented the erroneous instructions in their calculations of 7-day annualized gross and net yields.[45]

[33] *See* Investment Company Reporting Modernization, Investment Company Act Release No. 32314 (Oct. 13, 2016) [81 FR 81870 (Nov. 18, 2016)], available at *https://www.federalregister.gov/documents/2016/11/18/2016-25349/investment-company-reporting-modernization.*

[34] 5 U.S.C. 553(b)–(c).

[35] 5 U.S.C. 553(b)(3)(B).

[36] *See* 5 U.S.C. 553(b).

[37] *See* 5 U.S.C. 553(d).

[38] *See* 5 U.S.C. 808(2), allowing the rule amendments to become effective notwithstanding the requirement of 5 U.S.C. 801 (if a Federal agency finds that notice and public comment are impractical, unnecessary, or contrary to the public interest, a rule shall take effect at such time as the Federal agency promulgating the rule determines).

[39] *See* 5 U.S.C. 604(a) (requiring a final regulatory flexibility analysis only for rules required by the APA or other law to undergo notice and comment).

[40] Section 2(a) of the Securities Act, section 3(f) of the Exchange Act, section 2(c) of the Investment Company Act, and section 202(c) of the Investment Advisers Act require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in or consistent with the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act also requires us to consider the effect that the rules will have on competition and prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the Exchange Act.

[41] *See supra* section II.

[42] *See* Form N–MFP Item A.19 for instructions on the calculation of 7-day gross yields at the series level, and Item B.8 for instructions on the calculation of 7-day net yields at the class level.

[43] The change directed the yield calculations to be based on the 7 business days preceding the date for which the yield is reported, instead of the 7 calendar days ended on (and including) that date. *See supra* section I.A.

[44] *See supra* section I.

[45] The scaling factor of 365/7 provided in the instructions to Item A.19 and B.8 (by reference to Item 26(a)(1) of Form N–1A) appropriately annualizes yields calculated over a period of 7 calendar days, but is inconsistent with the longer period of 7 business days as erroneously amended. Specifically, because 7 business days encompasses a longer period than 7 calendar days, a fund that

Economic Effects. The amendments to Form N–MFP will correct errors and ensure that Form N–MFP continues to reflect the longstanding calculation method for money market fund yields, including consistency in calculation methods across Form N–MFP, prospectuses, advertisements, and sales literature.[46] Investors will benefit to the extent that they would have been confused as to the performance of any money market funds that incorporate the errors into their yield calculations.[47] The change may also provide a small benefit to money market funds to the extent that the erroneous instructions and departure from longstanding methods would otherwise complicate their completion of the form.

We expect that money market funds will not incur significant costs associated with these amendments. As mentioned above, a review of a sample of Form N–MFP filings suggests that filers' recent yield calculations do not reflect the error.[48] If there are any money market funds that have implemented the erroneous instructions, those funds will have to make corrections to their internal processes following these amendments. However, we anticipate the one-time costs to do so will be minimal as funds are familiar with the correct method from Form N–MFP prior to the erroneous amendments going into effect, as well as from preparing their prospectuses, advertisements, and sales literature.

B. Rule 482(b)(4)

Baseline. Advertisements and other sales material for securities of a registered investment company that holds itself out to be a money market fund must include certain risk disclosures specified in paragraph (b)(4) of rule 482, as applicable to the fund.[49] Currently, the disclosures required by rule 482(b)(4) do not reflect recent changes to 17 CFR 270.2a–7 (rule 2a–7).[50] In addition, the required wording in these disclosures deviates from the corresponding statements that Form N–1A directs money market funds to include in their prospectuses, which historically had been aligned.[51] The amendment to rule 482 corrects these errors by aligning the risk disclosure language in paragraph (b)(4) to exactly match the corresponding language in Form N–1A.[52]

We estimate that the amendment to rule 482 will apply to 291 money market funds registered with the Commission as of December 2023. Money market funds will have to update their processes for preparing advertisements to incorporate the amended language in rule 482(b)(4), to the extent these processes have not already been updated. Intermediaries that prepare money market fund advertisements are also subject to rule 482(b)(4) and will also have to update their processes, if they have not already done so.

Economic Effects. The amendment will restore the consistency of the aforementioned risk disclosures presented by money market funds across various channels. This change will principally benefit certain prospective investors that may use a fund's advertisement to inform their investment decisions. Specifically, these investors will be presented with information that accurately describes certain requirements of amended rule 2a–7 applicable to the fund, thereby eliminating any confusion stemming from potential inconsistencies in risk disclosures across these channels.

Funds and intermediaries will incur a minimal cost associated with updating their processes for preparing money market fund advertisements as a result of this amendment because the wording changes are not extensive, and they may take up to 90 days to make the changes. In addition, we anticipate that funds or intermediaries generally will update any previously prepared advertisements that are actively in use, but that have not been updated to account for amended rule 2a–7.[53] This cost will scale with the number of these money market fund advertisements maintained by a fund or intermediary, but we expect the costs to funds and intermediaries will be minimal because the wording changes are minor and precisely prescribed, and funds and intermediaries may take up to 90 days to make the changes.

C. Other Amendments

The amendments make several ministerial changes to correct missing or erroneous paragraph numbers, cross-references, and similar administrative text. These changes affect Form N–1A, Form N–CSR, Form N–2, rule 204–2(j)(4), and the OMB control numbers listed in 17 CFR 200.800.

Form N–1A contains inaccurate language, in Item 10(a)(1)(iii), about the location of a discussion regarding the basis for the fund board's approval of the fund's advisory contract: it states the basis will be in the fund's annual or semi-annual report to fund shareholders, but funds are required to include this basis in Form N–CSR filings rather than in reports.[54] Open-end funds use Form N–1A to register with the Commission and to offer their shares; as of December 2023, there are 12,153 open-end funds registered with the Commission.

Correcting the erroneous statement in Form N–1A may benefit certain prospective investors that are inclined to review a fund board's basis for approving the fund's advisory contract. We are unaware of any data that would allow us to estimate the number of prospective investors that are inclined to seek out this information or the number of these prospective investors that would face difficulty obtaining this information in the absence of the technical amendment. However, any benefit will be small because investors can find this information despite the error.[55] Similarly, the costs that funds will undertake to update the wording on Form N–1A to reference Form N–CSR rather than their annual or semi-annual report will be minimal because the wording changes are not extensive and because funds will not need to include the updated language until their next annual prospectus update following the adoption of the amendments to Form N–1A.[56]

annualizes its yields using a scaling factor of 365/7 would overstate its annual yields relative to those yields reported prior to the June 11, 2024, compliance date. Commission staff reviewed Form N–MFP filings from 29 money market funds that filed Form N–MFP in May 2024 (representing 10% of money market funds and $620 billion (9.5%) of money market fund net assets) and did not observe any evidence of any such changes in yield reporting following this compliance date.

[46] *See supra* footnote 17.

[47] *See supra* footnote 45 (explaining why applying the incorrect formula could create misleading yield results).

[48] *See supra* section I.A. *See also supra* footnote 45.

[49] The amendment will update risk statement language that also applies to sales literature under rule 34b–1. *See supra* footnote 18.

[50] Specifically, Rule 482(b)(4) refers to a fund's suspension of redemptions or assessment of fees contingent upon the fund's available liquidity and regulatory minimums. These references are no longer applicable following the Money Market Fund Reform Adopting Release. The rule also includes outdated cross references to rule 2a–7. *See supra* footnote 23.

[51] *See supra* footnote 22 (describing corresponding statements).

[52] *See supra* section I.B.

[53] Pursuant to the Paperwork Reduction Act analysis, we anticipate a one-time internal time burden of half an hour per fund, at a cost of $21,243 across 291 money market funds. *See infra* section IV.

[54] *See supra* section I.C.

[55] *See supra* footnote 28 and accompanying text.

[56] *See id.* and accompanying text.

Form N–CSR contains incorrect cross-references, paragraph numbering, and section headings.[57] As of December 2023, there are 12,851 registered management investment companies that are registered with the Commission and required to file Form N–CSR. Correcting Form N–CSR will benefit users to the extent they may have been confused by the errors. Registered management investment companies will not incur any costs as a result of the corrections, which impose no new obligations.

Form N–2 contains an incorrect cross-reference.[58] Closed-end funds use Form N–2 to register with the Commission and to offer their shares; as of December 2023 there are 683 closed-end funds registered with the Commission. There may be a minimal benefit to closed-end funds resulting from this change if fewer compliance resources are required to correctly complete the form. There will be no cost to closed-end funds or other registrants, as the change does not require any action.

Rule 204–2(j)(4) contains an incorrect cross-reference. Rule 204–2(j)(4) sets books and records requirements for non-resident advisers; as of December 2023, there are 15,478 advisers registered with the Commission. There may be minimal benefit to advisers from this amendment to the extent that the erroneous cross reference caused confusion to some registrants or other individuals.[59] There will be no costs to advisers or other registrants resulting from this change, as no new actions will be required of them.

The table in 17 CFR 200.800 displays current OMB control numbers for information collection requirements codified in title 17 of the CFR, but OMB control numbers for several rules are absent from this display.[60] This amendment may benefit the public to the extent the corrected table improves ease of reference. We expect any benefit to be small. The amendment has no costs to registrants or other market participants.

IV. Paperwork Reduction Act

Certain provisions of the rules and form amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[61] Specifically, the amendments to rule 482(b)(4) of the Securities Act to revise the particular wording of the risk statements that money market funds must include in their advertisements modify an existing ''collection of information.'' The title for the existing collection of information is ''Rule 482 under the Securities Act of 1933, Advertising by an Investment Company as Satisfying Requirements of section 10'' (OMB Control No. 3235–0565). This collection of information will be mandatory for money market funds and the information will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. We are submitting the proposed collections of information to the Office of Management and Budget for review in accordance with the PRA.

In our most recent PRA submission for rule 482, we estimated the annual aggregate burden to comply with the collection of information requirement of rule 482 is 577,847 burden hours with an internal cost burden of $213,133,255.[62] Given that the amendments are one-time updates to the wording of the risk statements already required under current rule 482(b)(4), we believe that, once affected funds have made these one-time changes, the amendments to rule 482(b)(4) will only require money market funds to incur the same costs and hour burdens, per fund, on an ongoing basis as under current rule 482(b)(4).

The table below summarizes our PRA initial and ongoing annual burden estimates associated with the amendments to rule 482. Some money market funds may have already updated the risk statements in their advertisements to conform with the required risk statements in their prospectus. Accordingly, the PRA estimates likely overestimate the costs associated with the final amendments for those funds whose risk statements in their advertisements are currently in line with the risk statements that the amendments would require.

ESTIMATES

	Internal initial burden hours	Internal annual burden hours [1]	Wage rate [2]	Internal time costs [1]
Amended risk statement in advertisement	0.5	[3] 0.17	[4] $429	$73
Number of funds		[5] × 291		[5] × 291
Total estimated burden		49		21,243
Current Burden Estimates		577,847		213,133,255
Revised Burden Estimates		577,896		213,154,498

[1] This estimate includes the initial burden and internal time costs estimates amortized over a three-year period.

[2] The estimated wage figures are based on published rates for the professionals described in this chart, modified to account for an 1800-hour work-year and inflation. The estimated figures for the proposed burdens were multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead. See Securities Industry and Financial Markets Association's Report on Management & Professional Earnings in the Securities Industry 2013.

[3] This estimate assumes that, after the initial 0.5 hours to amend the fund's risk statement, funds would not have an ongoing burden associated with the amendment.

[4] This represents a blended rate for a compliance attorney ($449) and a senior programmer ($408).

[5] The number of funds estimate is based on the number of money market funds reporting to the Commission on Form N–MFP as of Dec. 2023.

The amendments to Form N–MFP, Form N–1A, Form N–2, Form N–CSR, and rule 204–2 do not make any substantive modifications to any existing collection of information requirements or impose any new

[57] Item 2 and Item 19 of Form N–CSR contain incorrect cross-references. In addition, certain paragraphs in Item 19 are incorrectly numbered and one of the headings incorrectly refers to Item 13 instead of Item 19. Also, instructions to Item 16(b) and Item(a)(3) are irrelevant, as they refer to a 2016 rulemaking's pre-compliance transitionary period that is now concluded. *See supra* section I.E.

[58] Instruction 8.a to Item 24 of Form N–2 refers to Item 7 of Form N–CSR; it should instead refer to Item 12. *See supra* section I.D.

[59] Rule 204–2(j)(4) incorrectly cross-references the location of the definition of ''non-resident advisers.'' The erroneous reference does not exist, and the definition appears in the same section as the erroneous reference, so any confusion is likely small. *See supra* section I.F.

[60] *See supra* section I.G.

[61] 44 U.S.C. 3501 *et seq.*

[62] The most recent rule 482 PRA submission was approved in 2022 (OMB Control No. 3235–0565).

substantive recordkeeping or information collection requirements within the meaning of the PRA.[63] Accordingly, we are not revising any burden and cost estimates in connection with these amendments.

Statutory Authority

The Commission is adopting these amendments under the authority set forth in the Securities Act, particularly sections 5, 6, 7, 10, 19, and 28 thereof [15 U.S.C. 77a *et seq.*]; the Exchange Act, particularly section 23 thereof [15 U.S.C. 78a *et seq.*]; the Investment Company Act, particularly sections 8, 24, 30, and 38 thereof [15 U.S.C. 80a *et seq.*]; the Investment Advisers Act, particularly sections 204 and 211 thereof [15 U.S.C. 80b–1 *et seq*]; and 44 U.S.C. 3506, 3507.

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Organization and functions (Government agencies).

17 CFR Part 230

Reporting and recordkeeping requirements, Securities.

17 CFR Part 274

Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 275

Investment advisers, Reporting and recordkeeping requirements.

Text of Rule and Form Amendments

For reasons set forth in the preamble, the Commission is amending title 17, chapter II of the Code of Federal Regulations as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

■ 1. The authority citation for part 200 continues to read as follows:

Authority: 5 U.S.C. 552, 552a, 552b, and 557; 11 U.S.C. 901 and 1109(a); 15 U.S.C. 77c, 77e, 77f, 77g, 77h, 77j, 77o, 77q, 77s, 77u, 77z–3, 77ggg(a), 77hhh, 77sss, 77uuu, 78b, 78c(b), 78d, 78d–1, 78d–2, 78e, 78f, 78g, 78h, 78i, 78k, 78k–1, 78*l*, 78m, 78n, 78*o*, 78*o*–4, 78q, 78q–1, 78w, 78t–1, 78u, 78w, 78*ll*(d), 78mm, 78eee, 80a–8, 80a–20, 80a–24, 80a–29, 80a–37, 80a–41, 80a–44(a), 80a–44(b), 80b–3, 80b–4, 80b–5, 80b–9, 80b–10(a), 80b–11, 7202, and 7211 *et seq.;* 29 U.S.C. 794; 44 U.S.C. 3506 and 3507; Reorganization Plan No. 10 of 1950 (15 U.S.C. 78d nt); sec. 8G, Pub. L. 95–452, 92 Stat. 1101 (5 U.S.C. App.); sec. 913, Pub. L. 111–203, 124 Stat. 1376, 1827; sec. 3(a), Pub. L. 114–185, 130 Stat. 538; E.O. 11222, 30 FR 6469, 3 CFR, 1964–1965 Comp., p. 36; E.O. 12356, 47 FR 14874, 3 CFR, 1982 Comp., p. 166; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235; Information Security Oversight Office Directive No. 1, 47 FR 27836; and 5 CFR 735.104 and 5 CFR parts 2634 and 2635, unless otherwise noted.

■ 2. Revise and republish § 200.800 to read as follows:

§ 200.800 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This subpart collects and displays the control numbers assigned to information collection requirements of the Commission by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, 44 U.S.C. 3500 *et seq.* This subpart displays current OMB control numbers for those information collection requirements of the Commission that are rules and regulations and codified in this title either in full text or incorporated by reference with the approval of the Director of the Office of the Federal Register.

(b) *Display.*

Information collection requirement	17 CFR part or section where identified and described	Current OMB control No.
Regulation S–X	Part 210	3235–0009
Regulation S–B	Part 228	3235–0417
Regulation S–K	Part 229	3235–0071
Rule 139b	230.139b	3235–0769
Rule 154	230.154	3235–0495
Rule 155	230.155	3235–0549
Rule 236	230.236	3235–0095
Rule 237	230.237	3235–0528
Regulation A	230.251 through 230.263	3235–0286
Regulation C	230.400 through 230.494	3235–0074
Rule 425	230.425	3235–0521
Rule 477	230.477	3235–0550
Rule 482	230.482	3235–0565
Rule 489	230.489	3235–0411
Rule 498	230.498	3235–0648
Rule 498A	230.498A	3235–0765
Regulation D	230.500 through 230.508	3235–0076
Regulation E	230.601 through 230.610a	3235–0232
Rule 604	230.604	3235–0232
Rule 605	230.605	3235–0232
Rule 607	230.607	3235–0747
Rule 609	230.609	3235–0233
Rule 701	230.701	3235–0522
Regulation S	230.901 through 230.905	3235–0357
Regulation S–T	Part 232	3235–0424
Form SB–1	239.9	3235–0423
Form SB–2	239.10	3235–0418
Form S–1	239.11	3235–0065
Form S–2	239.12	3235–0072
Form S–3	239.13	3235–0073
Form N–2	239.14	3235–0026
Form N–1A	239.15A	3235–0307
Form S–6	239.16	3235–0184

[63] *See supra* footnote 45 and accompanying text (stating that Commission staff review of a recent sample of Form N–MFP filings suggests that filers' yield calculations do not reflect the error in the Money Market Fund Reform Adopting Release). *See also supra* section I.C (stating that funds may implement the amendments to Form N–1A in a fund's next annual prospectus update following the adoption of these amendments).

Information collection requirement	17 CFR part or section where identified and described	Current OMB control No.
Form S–8	239.16b	3235–0066
Form N–3	239.17a	3235–0316
Form N–4	239.17b	3235–0318
Form S–11	239.18	3235–0067
Form N–14	239.23	3235–0336
Form N–5	239.24	3235–0169
Form S–4	239.25	3235–0324
Form F–1	239.31	3235–0258
Form F–2	239.32	3235–0257
Form F–3	239.33	3235–0256
Form F–4	239.34	3235–0325
Form F–6	239.36	3235–0292
Form F–7	239.37	3235–0383
Form F–8	239.38	3235–0378
Form F–10	239.40	3235–0380
Form F–80	239.41	3235–0404
Form F–X	239.42	3235–0379
Form F–N	239.43	3235–0411
Form ID	239.63	3235–0328
Form SE	239.64	3235–0327
Form TH	239.65	3235–0425
Form 1–A	239.90	3235–0286
Form 2–A	239.91	3235–0286
Form 144	239.144	3235–0101
Form 1–E	239.200	3235–0232
Form CB	239.800	3235–0518
Rule 6a–1	240.6a–1	3235–0017
Rule 6a–3	240.6a–3	3235–0021
Rule 6a–4	240.6a–4	3235–0554
Rule 6h–1	240.6h–1	3235–0555
Rule 8c–1	240.8c–1	3235–0514
Rule 9b–1	240.9b–1	3235–0480
Rule 10a–1	240.10a–1	3235–0475
Rule 10b–10	240.10b–10	3235–0444
Rule 10b–17	240.10b–17	3235–0476
Rule 10b–18	240.10b–18	3235–0474
Rule 10A–1	240.10A–1	3235–0468
Rule 11a1–1(T)	240.11a1–1(T)	3235–0478
Rule 12a–5	240.12a–5	3235–0079
Regulation 12B	240.12b–1 through 240.12b–36	3235–0062
Rule 12d1–3	240.12d1–3	3235–0109
Rule 12d2–1	240.12d2–1	3235–0081
Rule 12d2–2	240.12d2–2	3235–0080
Rule 12f–1	240.12f–1	3235–0128
Rule 13a–16	240.13a–16	3235–0116
Regulation 13D/G	240.13d–1 through 240.13d–7	3235–0145
Schedule 13D	240.13d–101	3235–0145
Schedule 13G	240.13d–102	3235–0145
Rule 13e–1	240.13e–1	3235–0305
Rule 13e–3	240.13e–3	3235–0007
Schedule 13E–3	240.13e–100	3235–0007
Schedule 13e–4F	240.13e–101	3235–0375
Regulation 14A	240.14a–1 through 240.14a–12	3235–0059
Schedule 14A	240.14a–101	3235–0059
Regulation 14C	240.14c–1	3235–0057
Schedule 14C	240.14c–101	3235–0057
Regulation 14D	240.14d–1 through 240.14d–9	3235–0102
Schedule TO	240.14d–100	3235–0515
Schedule 14D–1	240.14d–101	3235–0102
Schedule 14D–9	240.14d–101	3235–0102
Schedule 14D–1F	240.14d–102	3235–0376
Schedule 14D–9F	240.14d–103	3235–0382
Regulation 14E	240.14e–1 through 240.14e–2	3235–0102
Rule 14f–1	240.14f–1	3235–0108
Rule 15a–4	240.15a–4	3235–0010
Rule 15a–6	240.15a–6	3235–0371
Rule 15b1–1	240.15b1–1	3235–0012
Rule 15b6–1(a)	240.15b6–1(a)	3235–0018
Rule 15c1–5	240.15c1–5	3235–0471
Rule 15c1–6	240.15c1–6	3235–0472
Rule 15c1–7	240.15c1–7	3235–0134
Rule 15c2–1	240.15c2–1	3235–0485
Rule 15c2–5	240.15c2–5	3235–0198

Information collection requirement	17 CFR part or section where identified and described	Current OMB control No.
Rule 15c2–7	240.15c2–7	3235–0479
Rule 15c2–8	240.15c2–8	3235–0481
Rule 15c2–11	240.15c2–11	3235–0202
Rule 15c2–12	240.15c2–12	3235–0372
Rule 15c3–1	240.15c3–1	3235–0200
Rule 15c3–1(c)(13)	240.15c3–1(c)(13)	3235–0499
Appendix F to Rule 15c3–1	240.15c–1f	3235–0496
Rule 15c3–3	240.15c3–3	3235–0078
Rule 15c3–4	240.15c3–4	3235–0497
Rule 15d–16	240.15d–16	3235–0116
Rule 15g–2	240.15g–2	3235–0434
Rule 15g–3	240.15g–3	3235–0392
Rule 15g–4	240.15g–4	3235–0393
Rule 15g–5	240.15g–5	3235–0394
Rule 15g–6	240.15g–6	3235–0395
Rule 15g–9	240.15g–9	3235–0385
Rule 15Aj–1	240.15Aj–1	3235–0044
Rule 15Ba2–1	240.15Ba2–1	3235–0083
Rule 15Ba2–5	240.15Ba2–5	3235–0088
Rule 15Bc3–1	240.15Bc3–1	3235–0087
Rule 17a–1	240.17a–1	3235–0208
Rule 17a–2	240.17a–2	3235–0201
Rule 17a–3	240.17a–3	3235–0033
Rule 17a–3(a)(16)	240.17a–3(a)(16)	3235–0508
Rule 17a–4	240.17a–4	3235–0279
Rule 17a–4(b)(10)	240.17a–4(b)(10)	3235–0506
Rule 17a–5	240.17a–5	3235–0123
Rule 17a–5(c)	240.17a–5(c)	3235–0199
Rule 17a–6	240.17a–6	3235–0489
Rule 17a–7	240.17a–7	3235–0131
Rule 17a–8	240.17a–8	3235–0092
Rule 17a–9T	240.17a–9T	3235–0524
Rule 17a–10	240.17a–10	3235–0122
Rule 17a–11	240.17a–11	32350085
Rule 17a–12	240.17a–12	3235–0498
Rule 17a–13	240.17a–13	3235–035
Rule 17a–19	240.17a–19	3235–0133
Rule 17a–22	240.17a–22	3235–0196
Rule 17a–25	240.17a–25	3235–0540
Rule 17f–1(b)	240.17f–1(b)	3235–0032
Rule 17f–1(c)	240.17f–1(c)	3235–0037
Rule 17f–1(g)	240.17f–1(g)	3235–0290
Rule 17f–2(a)	240.17f–2(a)	3235–0034
Rule 17f–2(c)	240.17f–2(c)	3235–0029
Rule 17f–2(d)	240.17f–2(d)	3235–0028
Rule 17f–2(e)	240.17f–2(e)	3235–0031
Rule 17f–5	240.17f–5	3235–0269
Rule 17h–1T	240.17h–1T	3235–0410
Rule 17h–2T	240.17h–2T	3235–0410
Rule 17Ab2–1	240.17Ab2–1	3235–0195
Rule 17Ac2–1	240.17Ac2–1	3235–0084
Rule 17Ad–2(c), (d), and (h)	240.17Ad–2(c), (d), and (h)	3235–0130
Rule 17Ad–3(b)	240.17Ad–3(b)	3235–0473
Rule 17Ad–4(b) and (c)	240.17Ad–4(b) and (c)	3235–0341
Rule 17Ad–6	240.17Ad–6	3235–0291
Rule 17Ad–7	240.17Ad–7	3235–0291
Rule 17Ad–10	240.17Ad–10	3235–0273
Rule 17Ad–11	240.17Ad–11	3235–0274
Rule 17Ad–13	240.17Ad–13	3235–0275
Rule 17Ad–15	240.17Ad–15	3235–0409
Rule 17Ad–16	240.17Ad–16	3235–0413
Rule 17Ad–17	240.17Ad–17	3235–0469
Rule 19b–1	240.19b–1	3235–0354
Rule 19b–4	240.19b–4	3235–0045
Rule 19b–4(e)	240.19b–4(e)	3235–0504
Rule 19b–5	240.19b–5	3235–0507
Rule 19b–7	240.19b–7	3235–0553
Rule 19d–1	240.19d–1	3235–0206
Rule 19d–2	240.19d–2	3235–0205
Rule 19d–3	240.19d–3	3235–0204
Rule 19h–1	240.19h–1	3235–0259
Rule 24b–1	240.24b–1	3235–0194
Rule 101	242.101	3235–0464

Information collection requirement	17 CFR part or section where identified and described	Current OMB control No.
Rule 102	242.102	3235–0467
Rule 103	242.103	3235–0466
Rule 104	242.104	3235–0465
Rule 301	242.301	3235–0509
Rule 302	242.302	3235–0510
Rule 303	242.303	3235–0505
Rule 604	242.604	3235–0462
Rule 605	242.605	3235–0542
Rule 606	242.606	3235–0541
Rule 607	242.607	3235–0435
Rule 608	242.608	3235–0500
Rule 609	242.609	3235–0043
Rule 611	242.611	3235–0600
Regulation S–P	Part 248	3235–0537
Rule 248.30	248.30	3235–0610
Regulation S–ID	248.201	3235–0692
Form 1	249.1	3235–0017
Form 1–N	249.10	3235–0554
Form 25	249.25	3235–0080
Form 26	249.26	3235–0079
Form 3	249.103	3235–0104
Form 4	249.104	3235–0287
Form 5	249.105	3235–0362
Form 8–A	249.208a	3235–0056
Form 10	249.210	3235–0064
Form 10–SB	249.210b	3235–0419
Form 18	249.218	3235–0121
Form 20–F	249.220f	3235–0288
Form 40–F	249.240f	3235–0381
Form 6–K	249.306	3235–0116
Form 8–K	249.308	3235–0060
Form 10–Q	249.308a	3235–0070
Form 10–QSB	249.308b	3235–0416
Form 10–K	249.310	3235–0063
Form 10–KSB	249.310b	3235–0420
Form 11–K	249.311	3235–0082
Form 18–K	249.318	3235–0120
Form 12B–25	249.322	3235–0058
Form 15	249.323	3235–0167
Form 13F	249.325	3235–0006
Form SE	249.444	3235–0327
Form ID	249.446	3235–0328
Form DF	249.448	3235–0482
Form BD	249.501	3235–0012
Form BDW	249.501a	3235–0018
Form BD–N	249.501b	3235–0556
Form X–17A–5	249.617	3235–0123
Form X–17A–19	249.635	3235–0133
Form ATS	249.637	3235–0509
Form ATS–R	249.638	3235–0509
Form CRS	249.640	3235–0766
Form X–15AJ–1	249.802	3235–0044
Form X–15AJ–2	249.803	3235–0044
Form 19b–4	249.819	3235–0045
Form 19b–4(e)	249.820	3235–0504
Form Pilot	249.821	3235–0507
Form SIP	249.1001	3235–0043
Form MSD	249.1100	3235–0083
Form MSDW	249.1110	3235–0087
Form X–17F–1A	249.1200	3235–0037
Form TA–1	249b.100	3235–0084
Form TA–W	249b.101	3235–0151
Form TA–2	249b.102	3235–0337
Form CA–1	249b.200	3235–0195
Rules 7a–15 through 7a–37	260.7a–15 through 260.7a–37	3235–0132
Form T–1	269.1	3235–0110
Form T–2	269.2	3235–0111
Form T–3	269.3	3235–0105
Form T–4	269.4	3235–0107
Form ID	269.7	3235–0328
Form SE	269.8	3235–0327
Form T–6	269.9	3235–0391
Rule 0–1	270.0–1	3235–0531

Information collection requirement	17 CFR part or section where identified and described	Current OMB control No.
Rule 0–2	270.0–2	3235–0636
Rule 0–4	270.0–4	3235–0633
Rule 0–5	270.0–5	3235–0780
Rule 2a–5	270.2a–5	3235–0779
Rule 2a–7	270.2a–7	3235–0268
Rule 2a19–1	270.2a19–1	3235–0332
Rule 3a–4	270.3a–4	3235–0459
Rule 3a–8	270.3a–8	3235–0574
Rule 6c–7	270.6c–7	3235–0276
Rule 6e–2	270.6e–2	3235–0177
Rule 6c–11	270.6c–11	3235–0764
Rule 7d–1	270.7d–1	3235–0311
Rule 7d–2	270.7d–2	3235–0527
Section 8(b) of the Investment Company Act of 1940	270.8b–1 through 270.8b–32	3235–0176
Rule 10f–3	270.10f–3	3235–0226
Rule 11a–2	270.11a–2	3235–0272
Rule 11a–3	270.11a–3	3235–0358
Rule 12b–1	270.12b–1	3235–0212
Rule 12d1–1	270.12d1–1	3235–0584
Rule 12d1–4	270.12d1–4	3235–0639
Rule 12d3–1	270.12d3–1	3235–0561
Rule 17a–6	270.17a–6	3235–0564
Rule 17a–7	270.17a–7	3235–0214
Rule 17a–8	270.17a–8	3235–0235
Rule 17a–10	270.17a–10	3235–0563
Rule 17d–1	270.17d–1	3235–0562
Rule 17e–1	270.17e–1	3235–0217
Rule 17f–1	270.17f–1	3235–0222
Rule 17f–2	270.17f–2	3235–0223
Rule 17f–4	270.17f–4	3235–0225
Rule 17f–6	270.17f–6	3235–0447
Rule 17f–7	270.17f–7	3235–0529
Rule 17g–1(g)	270.17g–1(g)	3235–0213
Rule 17j–1	270.17j–1	3235–0224
Rule 18f–1	270.18f–1	3235–0211
Rule 18f–3	270.18f–3	3235–0441
Rule 18f–4	270.18f–4	3235–0776
Rule 19a–1	270.19a–1	3235–0216
Rule 20a–1	270.20a–1	3235–0158
Rule 22c–1	270.22c–1	3235–0734
Rule 22c–2	270.22c–2	3235–0620
Rule 22d–1	270.22d–1	3235–0310
Rule 22e–3	270.22e–3	3235–0658
Rule 22e–4	270.22e–4	3235–0737
Rule 23c–1	270.23c–1	3235–0260
Rule 23c–3	270.23c–3	3235–0422
Rule 27e–1	270.27e–1	3235–0545
Rule 30b2–1	270.30b2–1	3235–0220
Rule 30e–2	270.30e–2	3235–0494
Rule 30e–1	270.30e–1	3235–0025
Rule 30e–3	270.30e–3	3235–0758
Rule 31a–1	270.31a–1	3235–0178
Rule 31a–2	270.31a–2	3235–0179
Rule 31a–4	270.31a–4	3235–0783
Rule 32a–4	270.32a–4	3235–0530
Rule 34b–1	270.34b–1	3235–0346
Rule 35d–1	270.35d–1	3235–0548
Rule 38a–1	270.38a–1	3235–0586
Investment Company Interactive Data	Part 274	3235–0642
Form N–5	274.5	3235–0169
Form N–8A	274.10	3235–0175
Form N–2	274.11a–1	3235–0026
Form N–3	274.11b	3235–0316
Form N–4	274.11c	3235–0318
Form N–6	274.11d	3235–0503
Form N–8B–2	274.12	3235–0186
Form N–8B–4	274.14	3235–0247
Form N–6F	274.15	3235–0238
Form 24F–2	274.24	3235–0456
Form N–18F–1	274.51	3235–0211
Form N–54A	274.53	3235–0237
Form N–54C	274.54	3235–0236
Form N–CEN	274.101	3235–0729

Information collection requirement	17 CFR part or section where identified and described	Current OMB control No.
Form N–27E–1	274.127e–1	3235–0545
Form N–27F–1	274.127f–1	3235–0546
Form N–CSR	274.128	3235–0570
Form N–PX	274.129	3235–0582
Form N–PORT	274.150	3235–0730
Form N–17D–1	274.200	3235–0229
Form N–MFP	274.201	3235–0657
Form N–8F	274.218	3235–0157
Form N–17F–1	274.219	3235–0359
Form N–17F–2	274.220	3235–0360
Form N–23c–3	274.221	3235–0422
Form N–CR	274.222	3235–0705
Form N–RN	274.223	3235–0754
Form ID	274.402	3235–0328
Form SE	274.403	3235–0327
Rule 0–2	275.0–2	3235–0240
Rule 203–3	275.203–3	3235–0538
Rule 203A–2(d)	275.203A–2(d)	3235–0689
Rule 203A–2(e)	275.203A–2(e)	3235–0559
Rule 204–2	275.204–2	3235–0278
Rule 204–3	275.204–3	3235–0047
Rule 204–5	275.204–5	3235–0767
Rule 204A–1	275.204A–1	3235–0596
Rule 206(3)–2	275.206(3)–2	3235–0243
Rule 206(4)–1	275.206(4)–1	3235–0784
Rule 206(4)–2	275.206(4)–2	3235–0241
Rule 206(4)–3	275.206(4)–3	3235–0242
Rule 206(4)–6	275.206(4)–6	3235–0571
Rule 206(4)–7	275.206(4)–7	3235–0585
Form ADV	279.1	3235–0049
Schedule I to Form ADV	279.1	3235–0490
Form ADV–W	279.2	3235–0313
Form ADV–H	279.3	3235–0538
Form 4–R	279.4	3235–0240
Form 5–R	279.5	3235–0240
Form 6–R	279.6	3235–0240
Form 7–R	279.7	3235–0240
Form ADV–E	279.8	3235–0361
Form PF	279.9	3235–0679

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 3. The authority citation for part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l,* 78m, 78n, 78o, 78o–7 note, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, and Pub. L. 112–106, sec. 201(a), sec. 401, 126 Stat. 313 (2012), unless otherwise noted.

* * * * *

Sections 230.400 to 230.499 issued under secs. 6, 8, 10, 19, 48 Stat. 78, 79, 81, and 85, as amended (15 U.S.C. 77f, 77h, 77j, 77s).

* * * * *

■ 4. Amend § 230.482 by revising paragraph (b)(4) to read as follows:

§ 230.482 Advertising by an investment company as satisfying requirements of section 10.

* * * * *

(b) * * *

(4) *Money market funds.* (i) An advertisement for an investment company that holds itself out to be a money market fund, that is not a government money market fund, as defined in § 270.2a–7(a)(14) of this chapter, or a retail money market fund, as defined in § 270.2a–7(a)(21) of this chapter, must include the following statement:

You could lose money by investing in the Fund. Because the share price of the Fund will fluctuate, when you sell your shares they may be worth more or less than what you originally paid for them. The Fund may impose a fee upon sale of your shares. The Fund generally must impose a fee when net sales of Fund shares exceed certain levels. An investment in the Fund is not a bank account and is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. The Fund's sponsor is not required to reimburse the Fund for losses, and you should not expect that the sponsor will provide financial support to the Fund at any time, including during periods of market stress.

(ii) An advertisement for an investment company that holds itself out to be a money market fund, that is a government money market fund, as defined in § 270.2a–7(a)(14) of this chapter, or a retail money market fund, as defined in § 270.2a–7(a)(21) of this chapter, and that is subject to the requirements of § 270.2a–7(c)(2)(i) of this chapter (or is not subject to the requirements of § 270.2a–7(c)(2)(i) of this chapter pursuant to § 270.2a–7(c)(2)(i)(B) of this chapter, but has chosen to rely on the ability to impose liquidity fees consistent with the requirements of § 270.2a–7(c)(2)(i)), must include the following statement:

You could lose money by investing in the Fund. Although the Fund seeks to preserve the value of your investment at $1.00 per share, it cannot guarantee it will do so. The Fund may impose a fee upon sale of your shares. An investment in the Fund is not a bank account and is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. The Fund's sponsor is not required to reimburse the Fund for losses, and you should not expect that the sponsor will provide financial support to the Fund at any time, including during periods of market stress.

(iii) An advertisement for an investment company that holds itself

out to be a money market fund, that is a government money market fund, as defined in § 270.2a–7(a)(14) of this chapter, that is not subject to the requirements of § 270.2a–7(c)(2)(i) of this chapter pursuant to § 270.2a–7(c)(2)(i)(B) of this chapter, and that has not chosen to rely on the ability to impose liquidity fees consistent with the requirements of § 270.2a–7(c)(2)(i), must include the following statement:

You could lose money by investing in the Fund. Although the Fund seeks to preserve the value of your investment at $1.00 per share, it cannot guarantee it will do so. An investment in the Fund is not a bank account and is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. The Fund's sponsor is not required to reimburse the Fund for losses, and you should not expect that the sponsor will provide financial support to the Fund at any time, including during periods of market stress.

Note 3 to paragraph (b)(4). If an affiliated person, promoter, or principal underwriter of the Fund, or an affiliated person of such a person, has contractually committed to provide financial support to the Fund, the statement may omit the last sentence (''The Fund's sponsor is not required to reimburse the Fund for losses, and you should not expect that the sponsor will provide financial support to the Fund at any time, including during periods of market stress.'') for the term of the agreement. For purposes of this note, the term ''financial support'' includes any capital contribution, purchase of a security from the Fund in reliance on § 270.17a–9 of this chapter, purchase of any defaulted or devalued security at par, execution of letter of credit or letter of indemnity, capital support agreement (whether or not the Fund ultimately received support), performance guarantee, or any other similar action reasonably intended to increase or stabilize the value or liquidity of the fund's portfolio; however, the term ''financial support'' excludes any routine waiver of fees or reimbursement of fund expenses, routine inter-fund lending, routine inter-fund purchases of fund shares, or any action that would qualify as financial support as defined in this note, that the board of directors has otherwise determined not to be reasonably intended to increase or stabilize the value or liquidity of the fund's portfolio.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 5. The authority citation for part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l,* 78m, 78n, 78n–1, 78*o*(d), 80a–8, 80a–24, 80a–26, 80a–29, and sec. 939A, Pub. L. 111–203, 124 Stat. 1376, unless otherwise noted.

■ 6. Amend Form N–1A (referenced in §§ 239.15A and 274.11A) by revising Item 10.

Note: Form N–1A is attached as Appendix A to this document. Form N–1A will not appear in the Code of Federal Regulations.

■ 7. Amend Form N–2 (referenced in §§ 239.14 and 274.11a–1) by revising Instruction 8.a to Item 24.

Note: Form N–2 is attached as Appendix B to this document. Form N–2 will not appear in the Code of Federal Regulations.

■ 8. Revise Form N–CSR (referenced in §§ 249.331 and 274.128) by:

■ a. In Items 2(c) and (f), removing the text ''Item 18(a)(1)'' and adding, in its place, the text ''Item 19(a)(1)'';

■ b. In Item 16, removing the instruction to paragraph (b); and

■ c. In Item 19:

■ i. Removing the instruction to paragraph (a)(3);

■ ii. Redesignating the instructions to Item 13 as instructions to Item 19; and

■ iii. Redesignating Items 19(a)(3) and (4) as Items 19(a)(4) and (5), respectively.

■ 9. Amend Form N–MFP (referenced in § 274.201) by revising Items A.19 and B.8.

Note: Form N–MFP is attached as Appendix C to this document. Form N–MFP will not appear in the Code of Federal Regulations.

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

■ 10. The authority citation for part 275 continues to read, in part, as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(G), 80b–2(a)(11)(H), 80b–2(a)(17), 80b–3, 80b–4, 80b–4a, 80b–6(4), 80b–6a, 80b–11, 1681w(a)(1), 6801–6809, and 6825, unless otherwise noted.

* * * * *

Section 275.204–2 is also issued under 15 U.S.C. 80b–6.

* * * * *

■ 11. Amend § 275.204–2 by revising paragraph (j)(4) to read as follows:

§ 275.204–2 Books and records to be maintained by investment advisers.

* * * * *

(j) * * *

(4) For purposes of this paragraph (j) the term *non-resident investment adviser* shall have the same meaning set out in § 275.0–2(b)(2).

* * * * *

By the Commission.

Dated: November 7, 2024.

Vanessa A. Countryman,

Secretary.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix A—Form N–1A

Form N–1A

* * * * *

Item 10. Management, Organization, and Capital Structure

(a) * * *

(1) * * *

(iii) Include a statement, adjacent to the disclosure required by paragraph (a)(1)(ii) of this Item, that a discussion regarding the basis for the board of directors approving any investment advisory contract of the Fund is available in the Fund's reports filed on Form N–CSR, and providing the period covered by the most recent Form N–CSR report that includes this discussion.

* * * * *

Appendix B—Form N–2

Form N–2

* * * * *

Item 24. Financial Statements

* * * * *

Instructions

* * * * *

8. a. When a Registrant (or financial intermediary through which shares of the Registrant may be purchased or sold) receives a request for a description of the policies and procedures that the Registrant uses to determine how to vote proxies, the Registrant (or financial intermediary) must send the information most recently disclosed in response to Item 18.16 of this Form or Item 12 of Form N–CSR within 3 business days of receipt of the request, by first-class mail or other means designed to ensure equally prompt delivery.

* * * * *

Appendix C—Form N–MFP

Form N–MFP

* * * * *

Item A.19. 7-day gross yield. For each business day, based on the 7 days ended on that business day, calculate the fund's yield by determining the net change, exclusive of capital changes and income other than investment income, in the value of a hypothetical pre-existing account having a balance of one share at the beginning of the period and dividing the difference by the value of the account at the beginning of the base period to obtain the base period return, and then multiplying the base period return by (365/7) with the resulting yield figure carried to at least the nearest hundredth of one percent. The 7-day gross yield should not reflect a deduction of shareholder fees and fund operating expenses. For master funds and feeder funds, report the 7-day gross yield at the master-fund level.

a. 7-day gross yield _____

b. Date _____

* * * * *

Item B.8. 7-day net yield for each business day of the month reported, as calculated under Item 26(a)(1) of Form N–1A (§ 274.11A of this chapter) except based on the 7 days ended on that business day.

a. 7-day net yield _____

b. Date _____

* * * * *

[FR Doc. 2024–26387 Filed 11–15–24; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF THE TREASURY

Office of Investment Security

31 CFR Part 802

RIN 1505–AC88

Definition of Military Installation and the List of Military Installations in the Regulations Pertaining to Certain Transactions by Foreign Persons Involving Real Estate in the United States

Correction

In rule document 2024–25773 beginning on page 88128 in the issue of Thursday, November 7, 2024, make the following correction:

On page 88133, in the second column, in § 802.104 (d), in the third line ''November 8, 2024'' should read ''November 7, 2024''.

[FR Doc. C1–2024–25773 Filed 11–15–24; 8:45 am]

BILLING CODE 0099–10–D

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2024–0878]

Special Local Regulations; San Diego Parade of Lights, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the San Diego Parade of Lights special local regulations on the waters of San Diego Bay, California on December 8, 2024, and December 15, 2024. These special local regulations are necessary to provide for the safety of the participants, crew, spectators, sponsor vessels, and general users of the waterway. During the enforcement period, persons and vessels are prohibited from anchoring, blocking, loitering, or impeding within this regulated area unless authorized by the Captain of the Port Sector San Diego or a designated representative.

DATES: The regulations in 33 CFR 100.1101 will be enforced from 5 p.m. through 8 p.m. on December 8, 2024, and from 5 p.m. through 8 p.m. on December 15, 2024, for Item 5 in Table 1 of Section 100.1101.

FOR FURTHER INFORMATION CONTACT: If you have questions about this publication of enforcement, call or email Lieutenant Shelley Turner, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone (619) 278–7656, email *MarineEventsSD@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulations in 33 CFR 100.1101 for the San Diego Parade of Lights in San Diego Bay, CA in 33 CFR 100.1101, Table 1, Item 5 of that section from 5 p.m. until 8 p.m. on December 8, 2024, and on December 15, 2024. This enforcement action is being taken to provide for the safety of life on navigable waterways during the event. The Coast Guard's regulation for recurring marine events in the San Diego Captain of the Port Zone identifies the regulated entities and area for this event. During the enforcement periods and under the provisions of 33 CFR 100.1101, persons and vessels are prohibited from anchoring, blocking, loitering, or impeding within this regulated area, unless authorized by the Captain of the Port, or his designated representative. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via the Local Notice to Mariners, marine information broadcasts, and local advertising by the event sponsor.

P.C. Dill,

Captain, U.S. Coast Guard, Captain of the Port Sector San Diego.

[FR Doc. 2024–26848 Filed 11–15–24; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2024–0449; FRL–12269–01–R10]

Air Plan Approval; ID; Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; administrative change.

SUMMARY: The Environmental Protection Agency (EPA) is updating the materials that are incorporated by reference (IBR) into the Idaho State Implementation Plan (SIP). The regulations affected by this update have been previously submitted by Idaho and approved by the EPA. In this final rule, the EPA is also notifying the public of corrections and clarifying changes in the Code of Federal Regulations (CFR) tables that identify the materials incorporated by reference into the Idaho SIP. This update affects the materials that are available for public inspection at the National Archives and Records Administration (NARA) and the EPA Regional Office.

DATES: This action is effective November 18, 2024.

ADDRESSES: The SIP materials for which incorporation by reference into 40 CFR part 52 is finalized through this action are available for inspection at the following locations: Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Suite 155, Seattle, WA 98101; and *www.regulations.gov.* To view the materials at the Region 10 Office, the EPA requests that you email 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 Federal holidays.

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

SUPPLEMENTARY INFORMATION:

I. Background

Each state has a SIP containing the control measures and strategies used to attain and maintain the national ambient air quality standards (NAAQS). The SIP is extensive, containing such elements as air pollution control regulations, emission inventories, monitoring networks, attainment

demonstrations, and enforcement mechanisms.

Each state must formally adopt the control measures and strategies in the SIP after the public has had an opportunity to comment on them and then submit the proposed SIP revisions to the EPA. Once these control measures and strategies are approved by the EPA, and after notice and comment, they are incorporated into the federally approved SIP and are identified in title 40 of part 52, ''Approval and Promulgation of Implementation Plans,'' of the Code of Federal Regulations (40 CFR part 52). The full text of the state regulation approved by the EPA is not reproduced in its entirety in 40 CFR part 52 but is ''incorporated by reference.'' This means that the EPA has approved a given state regulation or specified changes to the given regulation with a specific effective date. The public is referred to the location of the full text version should they want to know which measures are contained in a given SIP. The information provided allows the EPA and the public to monitor the extent to which a state implements a SIP to attain and maintain the NAAQS and to take enforcement action for violations of the SIP.

The SIP is a living document which the state can revise as necessary to address the unique air pollution problems in the state. Therefore, the EPA from time to time must take action on proposed revisions containing new or revised state regulations. A submission from a state can revise one or more rules in their entirety, or portions of rules. The state indicates the changes in the submission (such as by using redline/strikethrough text) and the EPA then takes action on the requested changes. The EPA establishes a docket for its actions using a unique Docket Identification Number, which is listed in each action. These dockets and the complete submission are available for viewing on *www.regulations.gov.*

On May 22, 1997 (62 FR 27968), the EPA revised the procedures for incorporating by reference, into the Code of Federal Regulations, materials approved by the EPA into each SIP. These changes revised the format for the identification of the SIP in 40 CFR part 52, streamlined the mechanisms for announcing the EPA approval of revisions to a SIP, and streamlined the mechanisms for the EPA's updating of the IBR information contained for each SIP in 40 CFR part 52. The revised procedures also called for the EPA to maintain ''SIP Compilations'' that contain the federally approved regulations and source-specific permits submitted by each state agency.

The EPA generally updates these SIP Compilations every few years. Under the revised procedures, the EPA must periodically publish an informational document in the rules section of the **Federal Register** notifying the public that updates have been made to a SIP Compilation for a particular state. The EPA began applying the 1997 revised procedures to the Idaho SIP on January 25, 2005 (70 FR 3479). The EPA subsequently published updates to the IBR materials for Idaho on December 28, 2012 (77 FR 76417), April 1, 2015 (80 FR 17333), and July 24, 2020 (85 FR 44741).

A. Approved and Incorporated by Reference Regulatory Materials

Since the last IBR update, the EPA approved and incorporated by reference regulatory materials into the Idaho SIP at 40 CFR 52.670(c) as described in the following paragraphs of this preamble.

1. Action on November 19, 2020 (85 FR 73632):

- IDAPA 58.01.01.006 (general air quality definitions), except section 006.49, 006.50, 006.51, 006.66, 006.67, 006.68.b, 006.116, and 006.118 (State effective 4/11/2019);
- IDAPA 58.01.01.107 (incorporation by reference of Federal standards), except section 107.03.f through 107.03.p (State effective 3/30/2020);
- IDAPA 58.01.01.221 (exemptions from permit to construct requirements for certain pollutants) (State effective 4/11/2019);
- IDAPA 58.01.01.222 (exemptions from permit to construct for certain sources) (State effective 4/11/2019); and
- IDAPA 58.01.01.404 (procedure for issuing permits) (State effective 4/11/2019).

2. Action on May 24, 2022 (87 FR 31429):

- IDAPA 58.01.01.107 (incorporation by reference of Federal standards), except section 107.03.f through 107.03.p (State effective 6/17/2021).

3. Action on March 29, 2023 (88 FR 18426):

- IDAPA 58.01.01.107 (incorporation by reference of Federal standards), except section 107.03.f through 107.03.p (State effective 3/24/2022).

4. Action on May 26, 2023 (88 FR 34091):

- Idaho Code section 39–107(1)(a) (board composition rules) (State effective 7/1/2022).

B. Regulatory Materials Removed From Incorporation by Reference

Since the last IBR update, the EPA also removed the following regulatory materials from the Idaho SIP at 40 CFR 52.670(c).

1. Action on November 19, 2020 (85 FR 73632):

- IDAPA 58.01.01.845 (rules for control of sulfur oxide emissions from sulfuric acid plants) (State effective 5/1/1994);
- IDAPA 58.01.01.846 (emission limits) (State effective 4/5/2000);
- IDAPA 58.01.01.847 (monitoring and testing requirements) (State effective 5/1/1994); and
- IDAPA 58.01.01.848 (compliance schedules) (State effective 4/5/2000).

2. Action on June 15, 2023 (88 FR 39177):

- Ada County Ordinance (motor vehicle emissions control ordinance) (county approval date 6/15/1999);
- City of Boise Ordinance (motor vehicle emissions control ordinance) (city approval date 7/20/1999);
- City of Eagle Ordinance (motor vehicle emissions control ordinance) (city approval date 4/27/1999);
- City of Garden City Ordinance (motor vehicle emission control ordinance) (most recently amended 8/13/1996); and
- City of Meridian Ordinance (motor vehicle emissions control ordinance) (city approval date 6/1/1999).

II. EPA Action

In this action, the EPA is providing notification of an update to the materials incorporated by reference into the Idaho SIP as of September 1, 2024, and identified in 40 CFR 52.670(c) and (d). This update includes SIP materials submitted by Idaho and approved by the EPA since the last IBR update. *See* 85 FR 44741 (July 24, 2020). In addition, The EPA is providing notification of the following corrections and clarifying changes to 40 CFR 52.670(c), (d), and (e):

A. Changes Applicable to Paragraph (c)

1. Revising the introductory text of paragraph (c), ''EPA approved regulations,'' to read ''EPA approved laws and regulations'';

2. Replacing the original table entitled ''EPA Approved Idaho Regulations and Statutes'' with three new tables entitled ''Table 1 to Paragraph (c)—State Regulations'', ''Table 2 to Paragraph (c)—State Statutes'', and ''Table 3 to Paragraph (c)—City and County Codes and Ordinances'';

3. Sorting the entries from the original table into the three new tables;

4. Revising the undesignated heading ''Idaho Administrative Procedures Act (IDAPA) 58.01.01—Rules for the Control of Air Pollution in Idaho'' to read ''Rules for the Control of Air Pollution in Idaho (IDAPA 58.01.01)'';

5. Adding back entries 121 and 122 that were removed in error in the action

on November 19, 2020 (85 FR 73632); and

6. Correcting entries 221 and 222 that should have been revised in the action on November 19, 2020 (85 FR 73632).

B. Changes Applicable to Paragraph (d)

1. Revising the introductory text of paragraph (d), ''EPA approved State Source-specific requirements,'' to read ''EPA approved source-specific requirements''; and

2. Renaming the original table entitled ''EPA Approved Idaho Source-Specific Requirements'' to read ''Table 4 to Paragraph (d)—State Source-Specific Requirements''.

C. Changes Applicable to Paragraph (e)

1. Replacing the original table entitled ''EPA-Approved Idaho Nonregulatory Provisions and Quasi-Regulatory Measures'' with two new tables entitled ''Table 5 to Paragraph (e)—State Provisions Approved but not Incorporated by Reference'', ''Table 6 to Paragraph (e)—State Attainment, Maintenance and Other Plans'';

2. Sorting and grouping the entries from the original table into the two new tables;

3. Correcting the entry for ''Northern Ada County Air Quality Maintenance Area Second 10-year Carbon Monoxide Limited Maintenance Plan'' to list the appropriate geographic area, ''Northern Ada County'', instead of ''state-wide''; and

4. Correcting the entry for ''Regional Haze SIP Revision'' to revise text in the explanations column that was included in error.

III. Good Cause Exemption

The EPA has determined that this action falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make an action effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). This administrative action simply codifies provisions which are already in effect as a matter of law in Federal and approved state programs, makes corrections and clarifying changes to the tables in the CFR, and makes ministerial changes to the prefatory heading to the tables in the CFR. Under section 553 of the APA, an agency may find good cause where procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Public comment for this administrative action is ''unnecessary'' and ''contrary to the public interest'' since the codification (and corrections) only reflect existing law. Immediate notice of this action in the **Federal Register** benefits the public by providing the public notification of the updated Idaho SIP Compilation and notification of corrections to the Idaho ''Identification of Plan'' portion of the CFR. Further, pursuant to section 553(d)(3), making this action immediately effective benefits the public by immediately updating both the SIP Compilation and the CFR ''Identification of plan'' section (which includes table entry corrections).

IV. Incorporation by Reference

In this document, The EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, The EPA is finalizing the incorporation by reference of regulations promulgated by Idaho, previously approved by the EPA and federally effective before September 1, 2024, contained in 40 CFR 52.670(c), *EPA approved laws and regulations,* and 40 CFR 52.670(d), *EPA approved source-specific requirements,* described in section II. of this preamble. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

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

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

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. Executive Order 14096 (Revitalizing Our Nation's Commitment to Environmental Justice for All, 88 FR 25251, April 26, 2023) builds on and supplements Executive Order 12898 and defines EJ as, among other things, the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, or Tribal affiliation, or disability in agency decision-making and other Federal activities that affect human health and the environment.

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

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. The 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).

The EPA also believes that the provisions of section 307(b)(1) of the CAA pertaining to petitions for judicial review are not applicable to this action. This is because prior EPA rulemaking actions for each individual component of the Idaho SIP Compilation previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, the EPA believes judicial review of this action under section 307(b)(1) is not available.

List of Subjects in 40 CFR Part 52

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

Dated: November 7, 2024.

Casey Sixkiller,

Regional Administrator, Region 10.

For the reasons set forth in the preamble, the EPA is amending 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 N—Idaho

■ 2. In § 52.670, paragraphs (b) through (e) are revised to read as follows:

§ 52.670 Identification of plan.

* * * * *

(b) *Incorporation by reference.* (1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to September 1, 2024, was approved for incorporation by reference by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval and notification of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) with EPA approval dates after September 1, 2024, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 10 certifies that the rules/regulations provided by the EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State Implementation Plan as of the dates referenced in paragraph (b)(1) of this section.

(3) Copies of the materials incorporated by reference may be inspected at the Region 10 EPA Office at 1200 Sixth Avenue, Suite 155, Seattle, WA 98101. To obtain the material, please call (206) 553–6357. You may inspect the material with an EPA approval date prior to September 1, 2024, for Idaho at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.*

(c) *EPA approved laws and regulations.*

TABLE 1 TO PARAGRAPH (c)—STATE REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanations
Rules for the Control of Air Pollution in Idaho (IDAPA 58.01.01)				
001	Title and Scope	5/1/1994	1/16/2003, 68 FR 2217.	
004	Catchlines	5/1/1994	1/16/2003, 68 FR 2217.	
005	Definitions	5/1/1994	1/16/2003, 68 FR 2217.	
006	General Definitions	4/11/2019; 4/11/2015, 4/4/2013, 3/30/2007, 4/11/2006, 7/1/2002, 4/5/2000, 3/20/1997, 5/1/1994.	11/19/2020, 85 FR 73632	Except sections 006.49, 006.50, 006.51, 006.66, 006.67, 006.68.b, 006.116, and 006.118.
007	Definitions for the Purposes of Sections 200 through 225 and 400 through 461.	3/30/2007, 4/11/2006, 4/5/2000, 6/30/1995, 5/1/1995, 5/1/1994.	6/9/2011, 76 FR 33647.	
011	Definitions for the Purposes of Sections 790 through 799.	3/15/2002	8/12/2016, 81 FR 53290.	
106	Abbreviations	5/1/1994	1/16/2003, 68 FR 2217.	
107	Incorporations by Reference	3/28/2018, 3/25/2016, 3/20/2014, 3/30/2007, 7/1/1997, 5/1/1994.	8/20/2018, 83 FR 42033	Except sections 107.03.f through 107.03.p.
121	Compliance Requirements by Department.	5/1/1994	1/16/2003, 68 FR 2217.	
122	Information Orders by the Department.	4/5/2000, 5/1/1994	1/16/2003, 68 FR 2217.	
123	Certification of Documents	5/1/1994	1/16/2003, 68 FR 2217.	
124	Truth, Accuracy and Completeness of Documents.	5/1/1994	1/16/2003, 68 FR 2217.	
125	False Statements	3/23/1998	1/16/2003, 68 FR 2217.	
126	Tampering	3/23/1998	1/16/2003, 68 FR 2217.	
127	Format of Responses	5/1/1994	1/16/2003, 68 FR 2217.	
130	Startup, Shutdown, Scheduled Maintenance, Safety Measures, Upset and Breakdown.	4/5/2000	1/16/2003, 68 FR 2217.	
131	Excess Emissions	4/5/2000	1/16/2003, 68 FR 2217.	
132	Correction of Condition	4/5/2000	1/16/2003, 68 FR 2217.	

TABLE 1 TO PARAGRAPH (c)—STATE REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
133	Start-up, Shutdown and Scheduled Maintenance Requirements.	4/11/2006, 4/5/2000, 3/20/1997	11/26/2010, 75 FR 72719.	
134	Upset, Breakdown and Safety Requirements.	4/11/2006, 4/5/2000, 3/20/1997	11/26/2010, 75 FR 72719.	
135	Excess Emission Reports	4/11/2006, 4/5/2000, 3/20/1997	11/26/2010, 75 FR 72719.	
136	Excess Emission Records	4/5/2000, 3/23/1998, 3/20/1997	1/16/2003, 68 FR 2217.	
155	Circumvention	4/11/2006	11/26/2010, 75 FR 72719.	
156	Total Compliance	5/1/1994	1/16/2003, 68 FR 2217.	
157	Test Methods and Procedures	4/11/2015	8/12/2016, 81 FR 53290.	
160	Provisions Governing Specific Activities and Conditions.	4/5/2000	1/16/2003, 68 FR 2217.	
162	Modifying Physical Conditions	5/1/1994	1/16/2003, 68 FR 2217.	
163	Source Density	5/1/1994	1/16/2003, 68 FR 2217.	
164	Polychlorinated Biphenyls (PCBs)	5/1/1994	1/16/2003, 68 FR 2217.	
175	Procedures and Requirements for Permits Establishing a Facility Emissions Cap.	4/11/2015	8/12/2016, 81 FR 53290.	
176	Facility Emissions Cap	4/11/2015	8/12/2016, 81 FR 53290	Except for provisions relating to hazardous air pollutants.
177	Application Procedures	4/11/2015	8/12/2016, 81 FR 53290.	
178	Standard Contents of Permits Establishing a Facility Emissions Cap.	4/11/2015	8/12/2016, 81 FR 53290.	
179	Procedures for Issuing Permits Establishing a Facility Emissions Cap.	4/11/2015	8/12/2016, 81 FR 53290.	
180	Revisions to Permits Establishing a Facility Emissions Cap.	4/11/2015	8/12/2016, 81 FR 53290.	
181	Notice and Recordkeeping of Estimates of Ambient Concentrations.	4/11/2015	8/12/2016, 81 FR 53290.	
200	Procedures and Requirements for Permits to Construct.	3/25/2016	5/12/2017, 82 FR 22083.	
201	Permit to Construct Required	4/11/2006	8/12/2016, 81 FR 53290.	
202	Application Procedures	4/11/2015	8/12/2016, 81 FR 53290.	
203	Permit Requirements for New and Modified Stationary Sources.	5/1/1994	1/16/2003, 68 FR 2217	Except subsection 203.03.
204	Permit Requirements for New Major Facilities or Major Modifications in Nonattainment Areas.	4/2/2008, 3/30/2007, 4/6/2005, 4/5/2000, 5/1/1994.	11/26/2010, 75 FR 72719.	
205	Permit Requirements for New Major Facilities or Major Modifications in Attainment or Unclassifiable Areas.	4/2/2008, 3/30/2007, 4/6/2005	11/26/2010, 75 FR 72719.	
206	Optional Offsets for Permits to Construct.	4/6/2005	11/26/2010, 75 FR 72719.	
207	Requirements for Emission Reduction Credit.	5/1/1994	1/16/2003, 68 FR 2217.	
208	Demonstration of Net Air Quality Benefit.	4/5/2000, 5/1/1994	1/16/2003, 68 FR 2217.	
209	Procedures for Issuing Permits	4/11/2006, 4/6/2005, 5/3/2003, 7/1/2002, 4/5/2000, 3/19/1999, 3/23/1998, 5/1/1994.	11/26/2010, 75 FR 72719.	
211	Conditions for Permits to Construct.	5/1/1994	1/16/2003, 68 FR 2217.	
212	Obligation to Comply	5/1/1994	1/16/2003, 68 FR 2217.	
213	Pre-Permit Construction	4/11/2006, 5/3/2003, 4/5/2000, 3/23/1998.	11/26/2010, 75 FR 72719.	
220	General Exemption Criteria for Permit to Construct Exemptions.	4/4/2013, 4/5/2000	3/3/2014, 79 FR 11711.	
221	Category I Exemption	4/11/2019	11/19/2020, 85 FR 73632.	
222	Category II Exemption	4/11/2019	11/19/2020, 85 FR 73632.	
400	Procedures and Requirements for Tier II Operating Permits.	7/1/2002	11/26/2010, 75 FR 72719.	
401	Tier II Operating Permit	4/11/2015	8/12/2016, 81 FR 53290	Except sections 401.01.a and 401.04.
402	Application Procedures	7/1/2002, 5/1/1994, 4/5/2000, 7/1/2002.	11/26/2010, 75 FR 72719.	
403	Permit Requirements for Tier II Sources.	5/1/1994	1/16/2003, 68 FR 2217.	
404	Procedure for Issuing Permits	4/11/2019	11/19/2020, 85 FR 73632.	
405	Conditions for Tier II Operating Permits.	5/1/1994	1/16/2003, 68 FR 2217.	
406	Obligation to Comply	5/1/1994	1/16/2003, 68 FR 2217.	
460	Requirements for Emission Reduction Credits.	4/11/2006, 4/5/2000, 5/1/1994	11/26/2010, 75 FR 72719.	
461	Requirements for Banking Emission Reduction Credits (ERC's).	4/5/2000, 5/1/1994	1/16/2003, 68 FR 2217.	

TABLE 1 TO PARAGRAPH (c)—STATE REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
500	Registration Procedures and Requirements for Portable Equipment.	5/1/1994	1/16/2003, 68 FR 2217.	
510	Stack Heights and Dispersion Techniques.	5/1/1994	1/16/2003, 68 FR 2217.	
511	Applicability	4/11/2006	11/26/2010, 75 FR 72719.	
512	Definitions	4/11/2006, 5/1/1994, 4/5/2000	11/26/2010, 75 FR 72719.	
513	Requirements	4/11/2006	11/26/2010, 75 FR 72719.	
514	Opportunity for Public Hearing	5/1/1994	1/16/2003, 68 FR 2217.	
515	Approval of Field Studies and Fluid Models.	5/1/1994	1/16/2003, 68 FR 2217.	
516	No Restriction on Actual Stack Height.	5/1/1994	1/16/2003, 68 FR 2217.	
550	Air Pollution Emergency Rule	5/1/1994	1/16/2003, 68 FR 2217.	
551	Episode Criteria	5/1/1994	1/16/2003, 68 FR 2217.	
552	Stages	3/15/2002, 5/1/1994	1/16/2003, 68 FR 2217.	
553	Effect of Stages	3/15/2002	1/16/2003, 68 FR 2217.	
556	Criteria for Defining Levels Within Stages.	3/15/2002, 4/5/2000	1/16/2003, 68 FR 2217.	
557	Public Notification	5/1/1994	1/16/2003, 68 FR 2217.	
558	Information To Be Given	3/15/2002, 5/1/1994	1/16/2003, 68 FR 2217.	
559	Manner and Frequency of Notification.	5/1/1994	1/16/2003, 68 FR 2217.	
560	Notification to Sources	4/11/2006	11/26/2010, 75 FR 72719.	
561	General Rules	4/11/2006, 5/1/1994, 3/15/2002	11/26/2010, 75 FR 72719.	
562	Specific Emergency Episode Abatement Plans for Point Sources.	5/1/1994	1/16/2003, 68 FR 2217.	
563	Transportation Conformity	3/30/2001	4/12/2001, 66 FR 18873.	
564	Incorporation by Reference	3/30/2001	4/12/2001, 66 FR 18873.	
565	Abbreviations	3/30/2001	4/12/2001, 66 FR 18873.	
566	Definitions for the Purpose of Sections 563 Through 574 and 582.	3/30/2001	4/12/2001, 66 FR 18873.	
567	Agencies Affected by Consultation.	3/30/2001	4/12/2001, 66 FR 18873.	
568	ICC Member Roles in Consultation.	3/30/2001	4/12/2001, 66 FR 18873.	
569	ICC Member Responsibilities in Consultation.	3/30/2001	4/12/2001, 66 FR 18873.	
570	General Consultation Process	3/30/2001	4/12/2001, 66 FR 18873.	
571	Consultation Procedures	3/30/2001	4/12/2001, 66 FR 18873.	
572	Final Conformity Determinations by USDOT.	3/30/2001	4/12/2001, 66 FR 18873.	
573	Resolving Conflicts	3/30/2001	4/12/2001, 66 FR 18873.	
574	Public Consultation Procedures	3/30/2001	4/12/2001, 66 FR 18873.	
575	Air Quality Standards and Area Classification.	4/11/2006	11/26/2010, 75 FR 72719.	
576	General Provisions for Ambient Air Quality Standards.	5/1/1994	1/16/2003, 68 FR 2217.	
578	Designation of Attainment, Unclassifiable, and Nonattainment Areas.	5/1/1994	1/16/2003, 68 FR 2217.	
579	Baselines for Prevention of Significant Deterioration.	4/11/2015	8/12/2016, 81 FR 53290.	
580	Classification of Prevention of Significant Deterioration Areas.	4/5/2000, 5/1/1994	1/16/2003, 68 FR 2217.	
581	Prevention of Significant Deterioration (PSD) Increments.	10/6/2010, 4/11/2006, 7/1/1997, 5/1/1994.	7/17/2012, 77 FR 41916.	
600	Rules for Control of Open Burning	4/2/2008	8/1/2008, 73 FR 44915	Previous EPA approval date of 7/11/2005 removed in response to 9th Circuit remand.
601	Fire Permits, Hazardous Materials and Liability.	4/2/2008	8/1/2008, 73 FR 44915	Previous EPA approval date of 7/11/2005 removed in response to 9th Circuit remand.
602	Nonpreemption of Other Jurisdictions.	4/2/2008	8/1/2008, 73 FR 44915	Previous EPA approval date of 7/11/2005 removed in response to 9th Circuit remand.
603	General Restrictions	4/2/2008, 3/21/2003, 5/1/1994	8/1/2008, 73 FR 44915	Previous EPA approval date of 7/11/2005 removed in response to 9th Circuit remand.
606	Categories of Allowable Burning	4/2/2008	8/1/2008, 73 FR 44915	Previous EPA approval date of 7/11/2005 removed in response to 9th Circuit remand.
607	Recreational and Warming Fires	3/21/2003	8/1/2008, 73 FR 44915	Previous EPA approval date of 7/11/2005 removed in response to 9th Circuit remand.
608	Weed Control Fires	5/1/1994	8/1/2008, 73 FR 44915	Previous EPA approval date of 7/11/2005 removed in response to 9th Circuit remand.

TABLE 1 TO PARAGRAPH (c)—STATE REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
609	Training Fires	3/21/2003	8/1/2008, 73 FR 44915	Previous EPA approval date of 7/11/2005 removed in response to 9th Circuit remand.
610	Industrial Flares	3/21/2003	8/1/2008, 73 FR 44915	Previous EPA approval date of 7/11/2005 removed in response to 9th Circuit remand.
611	Residential Solid Waste Disposal Fires.	5/1/1994	1/16/2003, 68 FR 2217.	
612	Landfill Disposal Site Fires	3/21/2003	8/1/2008, 73 FR 44915	Previous EPA approval date of 7/11/2005 removed in response to 9th Circuit remand.
613	Orchard Fires	3/21/2003, 5/1/1994	8/1/2008, 73 FR 44915	Previous EPA approval date of 7/11/2005 removed in response to 9th Circuit remand.
614	Prescribed Burning	5/1/1994	1/16/2003, 68 FR 2217.	
615	Dangerous Material Fires	3/21/2003	8/1/2008, 73 FR 44915	Previous EPA approval date of 7/11/2005 removed in response to 9th Circuit remand.
616	Infectious Waste Burning	3/21/2003	8/1/2008, 73 FR 44915	Previous EPA approval date of 7/11/2005 removed in response to 9th Circuit remand.
617	Crop Residue	7/1/2011, 4/2/2008	3/19/2013,78 FR 16790.	
618	Permit By Rule	7/1/2011, 4/2/2008	3/19/2013, 78 FR 16790.	
619	Registration for Permit By Rule	4/2/2008	8/1/2008, 73 FR 44915.	
620	Burn Fee	4/11/2019	12/9/2019, 84 FR 67189.	
621	Burn Determination	2/28/2018, 4/2/2008	6/19/2018, 83 FR 28382; 8/1/2008, 73 FR 44915.	
622	General Provisions	7/1/2011, 4/2/2008	3/19/2013, 78 FR 16790.	
623	Public Notification	7/1/2011, 4/2/2008	3/19/2013, 78 FR 16790.	
624	Spot Burn, Baled Agricultural Residue Burn, and Propane Flaming Permits.	7/1/2011	3/19/2013, 78 FR 16790.	
625	Visible Emissions	4/2/2008	8/1/2008, 73 FR 44915.	
626	General Restrictions on Visible Emissions from Wigwam Burners.	4/5/2000	1/16/2003, 68 FR 2217.	
650	Rules for Control of Fugitive Dust	5/1/1994	1/16/2003, 68 FR 2217.	
651	General Rules	3/30/2007, 5/1/1994	6/9/2011, 76 FR 33647.	
665	Regional Haze Rules	3/30/2007	6/9/2011, 76 FR 33647.	
666	Reasonable Progress Goals	3/30/2007	6/9/2011, 76 FR 33647.	
667	Long-Term Strategy for Regional Haze.	3/30/2007	6/9/2011, 76 FR 33647.	
668	BART Requirement for Regional Haze.	3/30/2007	6/9/2011, 76 FR 33647.	
675	Fuel Burning Equipment—Particulate Matter.	4/5/2000	1/16/2003, 68 FR 2217.	
676	Standards for New Sources	5/1/1994	1/16/2003, 68 FR 2217.	
677	Standards for Minor and Existing Sources.	5/1/1994	1/16/2003, 68 FR 2217.	
678	Combinations of Fuels	5/1/1994	1/16/2003, 68 FR 2217.	
679	Averaging Period	4/11/2006, 5/1/1994	11/26/2010, 75 FR 72719.	
680	Altitude Correction	5/1/1994	1/16/2003, 68 FR 2217.	
681	Test Methods and Procedures	4/5/2000	1/16/2003, 68 FR 2217.	
700	Particulate Matter Process Weight Limitations.	5/3/2003, 4/5/2000	11/26/2010, 75 FR 72719.	
701	Particulate Matter—New Equipment Process Weight Limitations.	4/5/2000	1/16/2003, 68 FR 2217.	
702	Particulate Matter—Existing Equipment Process Weight Limitations.	4/5/2000, 5/1/1994	1/16/2003, 68 FR 2217.	
703	Particulate Matter—Other Processes.	4/5/2000	1/16/2003, 68 FR 2217.	
725	Rules for Sulfur Content of Fuels	4/11/2015	8/12/2016, 81 FR 53290.	
785	Rules for Control of Incinerators	5/1/1994	1/16/2003, 68 FR 2217.	
786	Emission Limits	4/5/2000	1/16/2003, 68 FR 2217.	
787	Exceptions	3/23/1998	1/16/2003, 68 FR 2217.	
790	Rules for the Control of Nonmetallic Mineral Processing Plants.	3/15/2002	8/12/2016, 81 FR 53290.	
791	General Control Requirements	3/15/2002	8/12/2016, 81 FR 53290.	
793	Emissions Standards for Nonmetallic Mineral Processing Plants not Subject to 40 CFR 60, Subpart OOO.	3/15/2002	8/12/2016, 81 FR 53290.	
794	Permit Requirements	4/11/2015	8/12/2016, 81 FR 53290	Except section 794.04.
795	Permit by Rule Requirements	3/15/2002	8/12/2016, 81 FR 53290.	
796	Applicability	3/15/2002	8/12/2016, 81 FR 53290.	
797	Registration for Permit by Rule	3/15/2002	8/12/2016, 81 FR 53290.	
798	Electrical Generators	3/15/2002	8/12/2016, 81 FR 53290.	

TABLE 1 TO PARAGRAPH (c)—STATE REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
799	Nonmetallic Mineral Processing Plan Fugitive Dust Best Management Practice.	3/15/2002	8/12/2016, 81 FR 53290.	
805	Rules for Control of Hot-mix Asphalt Plants.	5/1/1994	1/16/2003, 68 FR 2217.	
806	Emission Limits	5/1/1994	1/16/2003, 68 FR 2217.	
807	Multiple Stacks	5/1/1994	1/16/2003, 68 FR 2217.	
808	Fugitive Dust Control	5/1/1994	1/16/2003, 68 FR 2217.	
815	Rules for Control of Kraft Pulp Mills.	3/29/2012	4/8/2019, 84 FR 13803.	
818	Kraft Pulp Mill LVHC and HVLC Gas Venting Notification and Reporting.	3/29/2012	4/8/2019, 84 FR 13803.	

TABLE 2 TO PARAGRAPH (c)—STATE STATUTES

State citation	Title/subject	State effective date	EPA approval date	Explanations
Section 4 of Senate Bill 1024, codified at Idaho Code section 39–114.	Open Burning of Crop Residue	2/28/2018	12/9/2019, 84 FR 67189.	
Idaho Code section 39–107(1)(a).	Board—Composition—Officers—Compensation—Powers—Subpoena—Depositions—Review—Rules.	7/1/2022	5/26/2023, 88 FR 34093	To satisfy the requirements of CAA section 128(a)(1) and CAA section 110(a)(2)(E)(ii) for all criteria pollutants.

TABLE 3 TO PARAGRAPH (c)—CITY AND COUNTY CODES AND ORDINANCES

State citation	Title/subject	State effective date	EPA approval date	Explanations
City of Sandpoint Ordinance No. 939.	Material Specifications for Street Sanding Material.	2/22/1994 (City adoption date)	6/26/2002, 67 FR 43006	Sandpoint PM_{10} Nonattainment Area Plan.
City of Sandpoint Chapter 8 Air Quality (4–8–1 through 4–8–14).	Solid Fuel Heating Appliances	9/21/2011 (City adoption date)	4/3/2013, 78 FR 20001	Codified version of City of Sandpoint Ordinance No. 965 as amended by Ordinance No. 1237 and Ordinance No. 1258. Sandpoint PM_{10} Limited Maintenance Plan.
Boise City Ordinance 4432.	Parking Permits	8/13/1979 (City approval date)	6/6/1985, 50 FR 23810	Transportation Control Plan for carbon monoxide, Ada County.
City of Garden City Ordinance 514, 533, and 624.	Solid Fuel Heating Appliance Ordinance of the City of Garden City, Idaho.	5/14/1987, 1/10/1989, 9/13/1994 (City approval dates).	5/30/1996, 61 FR 27019	Northern Ada County PM_{10} Nonattainment Area Plan.
Meridian Ordinance 667.	Meridian Clean Air Ordinance	8/16/1994 (City approval date)	5/30/1996, 61 FR 27019	Northern Ada County PM_{10} Nonattainment Area Plan.
City of Eagle Ordinance 245.	City of Eagle Clean Air Ordinance	4/26/1994 (City approval date)	5/30/1996, 61 FR 27019	Northern Ada County PM_{10} Nonattainment Area Plan.
Ada County Ordinance 254.	Ada County Clean Air Ordinance	11/3/1992 (County adoption date)	5/30/1996, 61 FR 27019	Northern Ada County PM_{10} Nonattainment Area Plan.
Table: Ordinance-1	Explanation of enforcement procedures, responsibilities and sources of funding for the Northern Ada County Wood Burning Control Ordinances.	12/30/1994 (date of table)	5/30/1996, 61 FR 27019	Northern Ada County PM_{10} Nonattainment Area Plan.
City of Pocatello Ordinance 2450.	Residential wood combustion curtailment ordinance.	1/12/1994	7/13/2006, 71 FR 39574	Portneuf Valley Nonattainment Area Plan and Maintenance Plan.
City of Pocatello Ordinance 2726.	Revised air quality curtailment levels.	9/18/2003	7/13/2006, 71 FR 39574	Portneuf Valley Nonattainment Area Plan and Maintenance Plan.
City of Chubbuck Ordinance 403.	Residential wood combustion curtailment ordinance.	11/23/1993	7/13/2006, 71 FR 39574	Portneuf Valley Nonattainment Area Plan and Maintenance Plan.
City of Chubbuck Ordinance 582.	Revised air quality curtailment levels.	12/9/2003	7/13/2006, 71 FR 39574	Portneuf Valley Nonattainment Area Plan and Maintenance Plan.
City of Clifton Ordinance No. 120.	Ordinance No. 120	8/11/2012	3/25/2014, 79 FR 16201	Except Section 9 (Penalty).
City of Dayton Ordinance #287.	Ordinance #287	8/8/2012	3/25/2014, 79 FR 16201	Except Section 9 (Penalty).
Franklin City Ordinance No. 2012–9–12.	Solid Fuel Heating Appliances	9/12/2012	3/25/2014, 79 FR 16201	Except Section 9 (Penalty).
Franklin County Ordinance No. 2012–6–25.	Solid Fuel Heating Appliances	6/25/2012	3/25/2014, 79 FR 16201	Except Section 9 (Penalty).

TABLE 3 TO PARAGRAPH (c)—CITY AND COUNTY CODES AND ORDINANCES—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
City of Oxford Memorandum of Understanding.	Solid Fuel Heating Appliances	10/22/2012	3/25/2014, 79 FR 16201	Except #2 of the MOA and Section 9 of Exhibit A.
City of Preston Ordinance No. 2012–1.	Ordinance No. 2012–1	6/11/2012	3/25/2014, 79 FR 16201	Except Section 9 (Penalty).
City of Weston Ordinance No. 2012–01.	Ordinance No. 2012–01	8/1/2012	3/25/2014, 79 FR 16201	Except Section 9 (Penalty).

(d) *EPA approved source-specific requirements.*

TABLE 4 TO PARAGRAPH (d)—STATE SOURCE-SPECIFIC REQUIREMENTS [1]

Name of source	Permit No.	State effective date	EPA approval date	Explanation
LP Wood Polymers, Inc., Meridian, Idaho.	001–00115	7/12/2002	10/27/2003, 68 FR 61106	The following conditions: 1.1, 1.3, 3.1, and the Appendix. (Boise/Ada County Maintenance Plan).
Consolidated Concrete Company, Boise, Idaho.	001–00046	12/3/2001	10/27/2003, 68 FR 61106	The following conditions: 1.1, 1.3, 2.3, 3.1, 3.2, and the Appendix. (Boise/Ada County Maintenance Plan).
Crookham Company, Caldwell, Idaho.	027–00020	1/18/2002	10/27/2003, 68 FR 61106	The following conditions: 1.1, 1.3, 2.1, 2.3, 3.1, 3.1.1, 3.1.2, 3.2, and the Appendix. (Boise/Ada County Maintenance Plan).
Double D Service Center, Meridian, Idaho.	001–00168	2/4/2002	10/27/2003, 68 FR 61106	The following conditions: 1.1, 1.3, 3.1, 3.2.1, 3.2.2, 3.2.3, and the Appendix. (Boise/Ada County Maintenance Plan).
Plum Creek Northwest Lumber, Inc., Meridian, Idaho.	001–00091	7/12/2002	10/27/2003, 68 FR 61106	The following conditions: 1.1, 1.3, 2.1.2, 3.1, and the Appendix. (Boise/Ada County Maintenance Plan).
C. Wright Construction, Inc., Meridian, Idaho.	T2–000033	7/8/2003	10/27/2003, 68 FR 61106	The following conditions: 2 (heading only), 2.5, (2.12, Table 2.2 as it applies to PM_{10}), 2.14, 3 (heading only), 3.3, Table 3.2, 3.4, 3.5, 3.6, 3.7, 3.8, 3.10, 4 (heading only), 4.2, 4.3, 4.4, 4.7, 5, and Table 5.1. (Boise/Ada County Maintenance Plan).
Nelson Construction Co., Boise, Idaho.	T2–020029	7/21/2003	10/27/2003, 68 FR 61106	The following conditions: 2 (heading only), 2.12, 2.14, 3 (heading only), 3.3, 3.4, 3.6, 3.7, 3.9, 3.10, 3.11, 3.12, 4 (heading only), 4.3, 4.4, 4.5, 4.6, 5, and Table 5.1. (Boise/Ada County Maintenance Plan).
Mike's Sand and Gravel, Nampa, Idaho.	001–00184	7/12/2002	10/27/2003, 68 FR 61106	The following conditions: 1.1, 1.3, 2.2.1, 3.1, and the Appendix. (Boise/Ada County Maintenance Plan).
Idaho Concrete Co., Eagle, Idaho.	T2–020031	7/8/2003	10/27/2003, 68 FR 61106	The following conditions: 2 (heading only), 2.5, 2.13, 3 (heading only), 3.3, 3.4, 3.6, 3.7, 3.8, 4 (heading only), and Table 4.1. (Boise/Ada County Maintenance Plan).
Idaho Concrete Co., Eagle, Idaho.	T2–020032	7/8/2003	10/27/2003, 68 FR 61106	The following conditions: 2 (heading only), 2.5, 2.13, 3 (heading only), 3.3, 3.4, 3.6, 3.7, 3.8, 4 (heading only), and Table 4.1. (Boise/Ada County Maintenance Plan).
Idaho Concrete Co. Eagle, Idaho.	T2–020033	7/8/2003	10/27/2003, 68 FR 61106	The following conditions: 2 (heading only), 2.5, 2.13, 3 (heading only), 3.3, 3.4, 3.6, 3.7, 3.8, 4 (heading only), and Table 4.1. (Boise/Ada County Maintenance Plan).

TABLE 4 TO PARAGRAPH (d)—STATE SOURCE-SPECIFIC REQUIREMENTS [1]—Continued

Name of source	Permit No.	State effective date	EPA approval date	Explanation
The Amalgamated Sugar Company LLC, Nampa, Idaho.	027–00010	9/30/2002	10/27/2003, 68 FR 61106 and 11/1/2004, 69 FR 63324.	The following conditions: 2 (heading only), (2.7, Table 2.2 as it applies to PM_{10},) 2.10, 2.10.1, 2.10.2, 2.11, 2.11.1, 2.11.2, 2.11.3, 2.11.4, 2.11.5, 2.12, 2.12.1, 2.12.2, 2.12.3, 2.13, 2.13.1, 2.13.2, 2.13.3, 2.14, 2.14.1, 2.14.2, 2.16, 3 (heading only), (3.3, Table 3.2 as it applies to PM_{10}), 3.5, 3.7, 3.8, 3.8.1, 3.8.2, 3.8.3, 3.8.4, 3.8.5, 3.8.6, 3.8.7, 3.8.8, 3.9, 4 (heading only), (4.3, Table 4.1 as it applies to PM_{10}), 4.5, 4.6, 4.7, 5 (heading only), (5.3, Table 5.3 as it applies to PM_{10}), 5.5, 5.9, 5.9.1, 5.9.2, 5.9.3, 5.9.4, 5.9.5, 5.9.6, 5.9.7, 5.9.8, 5.9.9, 5.10, 5.11, 6 (heading only), 6.3, Table 6.1, 6.5, 6.6, 6.7, 6.7.1, 6.7.2, 6.8, 7 (heading only), 7.3, Table 7.1 as it applies to PM_{10}, 7.5, 7.7, 7.7.1, 7.7.2, 7.8, 8 (heading only), 8.3, Table 8.1, 8.5, 8.7, 8.7.1, 8.7.2, 8.8, 9 (heading only), 9.3, Table 9.1, 9.5, 9.7, 9.7.1, 9.7.2, 9.8, 10 (heading only), 10.3, Table 10.1, 10.6, 10.8, 10.8.1, 10.8.2, 10.9, 11 (heading only), 11.3, Table 11.2, 11.6, 11.8, 11.8.1, 11.8.2, 11.9, 12 (heading only), 12.3, Table 12.1, 12.5, 12.7, 12.7.1, 12.7.2, 12.8, 13 (heading only), 13.1 (except as it applies to condition 13.3, 13.3.1, 13.3.2, 13.5, 13.5.1, 13.5.2, 13.5.3, 13.6, 13.6.1, 13.6.2 and 13.9), Table 13.1 (except conditions 13.3, 13.5 and 13.6), (13.2, Table 13.2 as it applies to PM_{10}), 13.2.1, 13.4, 13.4.1, 13.4.2, 13.4.3, 13.7, 13.7.1, 13.7.2, 13.8, 13.8.1, 13.8.2, 13.8.3, 13.10, and 13.11. (Boise/Ada County PM_{10} Maintenance Plan).
Lake Pre-Mix, Sandpoint, Idaho.	777–00182	5/17/1996	6/26/2002, 67 FR 43006	The following conditions for the cement silo vent: 1.1, 2.1.1, 2.1.2, 3.1.1, and 3.1.2. (Sandpoint nonattainment area plan).
Interstate Concrete and Asphalt, Sandpoint, Idaho.	017–00048	8/2/1999	6/26/2002, 67 FR 43006	The following conditions: for the asphalt plant, 2.2, 3.1.1, 4.1, 4.1.1, 4.1.2, 4.2.1 (as it applies to the hourly PM_{10} emission limit in Appendix A), 4.2.2, 4.2.2.1, 4.2.2.2, and 4.2.2.3; for the concrete batch plant, 2.1, 3.1.1, 4.1, 4.1.1, and 4.1.2; Appendix A (as it applies to PM_{10} emission rates after 7/1/96) and Appendix B (as it applies after 7/1/96). (Sandpoint nonattainment area plan).
Whiteman Lumber Company, Cataldo, ID.	13–1420–062	7/16/1979 (date issued)	7/28/1982, 47 FR 32530	Silver Valley TSP Nonattainment Area Plan.
Potlatch Corporation, Pulp and Paper Unit, Lewiston, ID.	13–1140–0001–00	7/5/1979 (date issued)	7/28/1982, 47 FR 32530	Lewiston TSP Nonattainment Area Plan.
Potlatch Corporation, Clearwater Unit, Lewiston, ID.	13–1140–0003	7/5/1979 (date issued)	7/28/1982, 47 FR 32530	Lewiston TSP Nonattainment Area Plan.
Coast Trading Company, Inc., Lewiston, ID.	13–1140–0011	6/29/1979 (date issued)	7/28/1982, 47 FR 32530	Lewiston TSP Nonattainment Area Plan.
Lewis-Clark Terminal Association, Lewiston, ID.	13–1140–0010	6/29/1979 (date issued)	7/28/1982, 47 FR 32530	Lewiston TSP Nonattainment Area Plan.
Poe Asphalt, Lewiston, ID	0880–0008	3/1/1976 (effective date)	7/28/1982, 47 FR 32530	Lewiston TSP Nonattainment Area Plan.
FMC Corporation, Pocatello, ID [2].	13–1260–0005	2/26/1980 (date issued)	7/28/1982, 47 FR 32530	Pocatello TSP Nonattainment Area Plan.
J.R. Simplot, Pocatello, ID	13–1260–0006–00	3/4/1980 (date issued)	7/28/1982, 47 FR 32530	Pocatello TSP Nonattainment Area Plan.
Idaho Portland Cement Company, Inkom, ID.	13–0080–0004–00	7/18/1979 (date issued)	7/28/1982, 47 FR 32530	Pocatello TSP Nonattainment Area Plan.
J.R. Simplot Company, Conda, ID.	13–0420–0021–00	7/18/1979 (date issued)	7/28/1982, 47 FR 32530	Soda Springs TSP Nonattainment Area Plan.
Beker Industries, Conda, ID.	13–0420–0003–00	7/18/1979 (date issued)	7/28/1982, 47 FR 32530	Soda Springs TSP Nonattainment Area Plan.
Monsanto, Soda Springs, ID.	13–0420–0001–00	7/18/1979 (date issued)	7/28/1982, 47 FR 32530	Soda Springs TSP Nonattainment Area Plan.
Kerr McGee, Soda Springs, ID.	13–0420–0002–00	7/18/1979 (date issued)	7/28/1982, 47 FR 32530	Soda Springs TSP Nonattainment Area Plan.
J.R. Simplot, Pocatello, Idaho.	Air Pollution Operating Permit No. T1–9507–114–1; Facility Number No. 077–00006.	4/5/2004	7/13/2006, 71 FR 39574	The following conditions: Cover page, facility identification information only, #300 Sulfuric Acid Plant, Permit Conditions 16.1, 16.10, 16.11, #400 Sulfuric Acid Plant, Permit Condition 17.1, 17.7, 17.10, 17.11, Phosphoric acid plant, Permit Condition 12.3, 12.13, Granulation No. 3 Process, Permit Condition 9.2.1, Granulation No. 3 stack, 9.17 (except 9.17.1 through 9.17.6), Reclaim Cooling Towers, Permit Condition 14.2, 14.6.1, Babcock & Wilcox Boiler, Permit Condition 6.4, 6.12, HPB&W Boiler, Permit Condition 5.3, 5.13 through 5.18, 5.21.

TABLE 4 TO PARAGRAPH (d)—STATE SOURCE-SPECIFIC REQUIREMENTS [1]—Continued

Name of source	Permit No.	State effective date	EPA approval date	Explanation
J.R. Simplot, Pocatello, Idaho.	Compliance Agreement & Voluntary Order Idaho Code 39–116A.	4/16/2004	7/13/2006, 71 FR 39574	The following conditions: No. 300 Sulfuric Acid Plant; Condition 8 and 9. No. 400 Sulfuric Acid Plant; Condition 10, 11, and 12. Granulation No.1 Plant; Condition 14. Granulation No.2 Plant; Condition 15. Compliance and Performance Testing; Condition 16.
The Amalgamated Sugar Company LLC—Nampa Factory, Nampa, Idaho.	T2–2009.0105	12/23/2011 (date issued)	4/28/2014, 79 FR 23273	The following conditions: 1.2, including the table of Regulated Emission Point Sources Table, 3.2, 3.3 (first paragraph only), 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.11, 3.13, 3.14, 3.15, 3.16, and 4.1.
P4 Production, L.L.C., Soda Springs, Idaho.	T2–2009.0109	11/17/2009 (date issued)	6/22/2011, 76 FR 36329	The following conditions: 1.2 (including Table 1.1), 2.3, 2.4, 2.5, 2.6, 2.7, and 2.8. (Regional Haze SIP Revision).

[1] EPA does not have the authority to remove these source-specific requirements in the absence of a demonstration that their removal would not interfere with attainment or maintenance of the NAAQS, violate any prevention of significant deterioration increment or result in visibility impairment. Idaho Department of Environmental Quality may request removal by submitting such a demonstration to EPA as a SIP revision.

[2] Only a small portion of this facility is located on State lands. The vast majority of the facility is located in Indian Country. It is EPA's position that unless EPA has explicitly approved a program as applying in Indian country, State or local regulations or permits are not effective within the boundaries of that Indian country land for purposes of complying with the CAA. See 68 FR 2217, 2220 (January 16, 2003).

(e) *EPA approved nonregulatory provisions and quasi-regulatory measures.*

TABLE 5 TO PARAGRAPH (e)—STATE PROVISIONS APPROVED BUT NOT INCORPORATED BY REFERENCE

Name of SIP provision	Applicable geographic or non-attainment area	State submittal date	EPA approval date	Explanations
Appendix A.2—Idaho Environmental Protection and Health Act, Idaho Code Section 39–101 et seq.	State-wide	3/15/2001	1/16/2003, 68 FR 2217.	
Four sections of Appendix A.3—Rules and Regulations for Control of Air Pollution in Idaho—that were approved but not incorporated by reference in section (c).	State-wide	5/17/1994	1/16/2003, 68 FR 2217.	IDAPA 58.01.01.000 (legal authority), 58.01.01.002 (written interpretations), 58.01.01.003 (administrative appeals), and 58.01.01.128 (confidential business information).
Idaho State Board SIP Revision; Idaho Code §§ 59–701 through 705; Ethics in Government Act.	Statewide	9/16/2013	10/24/2013, 78 FR 63394.	To satisfy the requirements of CAA section 128(a)(2) and CAA section 110(a)(2)(E)(ii) for all criteria pollutants.
Idaho Department of Environmental Quality letter dated October 18, 2013 supplementing the May 9, 2013 SIP Submittal.	State-wide	10/24/2013	3/3/2014, 79 FR 11711.	
Road Sanding Agreement, Idaho Transportation Department to Idaho Department of Environmental Quality (Voluntary Measure).	Franklin County, Logan UT–ID $PM_{2.5}$ Nonattainment Area.	12/19/2012	3/25/2014, 79 FR 16201.	Fine Particulate Matter Control Measures; Franklin County.
Letter of Intent $PM_{2.5}$ Reduction, Franklin County Road Department to Department of Environmental Quality (Voluntary Measure).	Franklin County, Logan UT–ID $PM_{2.5}$ Nonattainment Area.	12/19/2012	3/25/2014, 79 FR 16201.	Fine Particulate Matter Control Measures; Franklin County.

TABLE 6 TO PARAGRAPH (e)—STATE ATTAINMENT, MAINTENANCE, AND OTHER PLANS

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanations
Chapter I—Introduction	State-wide	1/15/1980	7/28/1982, 47 FR 32530.	
Chapter II—Administration	State-wide	1/15/1980	7/28/1982, 47 FR 32530.	
Chapter III—Emission Inventory.	State-wide	1/15/1980, 2/14/1980	7/28/1982, 47 FR 32530.	
Chapter IV—Air Quality Monitoring.	State-wide	1/15/1980	7/28/1982, 47 FR 32530.	
Chapter V—Source Surveillance.	State-wide	1/15/1980	7/28/1982, 47 FR 32530.	
Chapter VI—Emergency Episode Plan.	State-wide	1/15/1980	7/28/1982, 47 FR 32530.	
Chapter VIII—Nonattainment Area Plans				
Chapter VIII—a	Silver Valley TSP Nonattainment Area Plan.	1/15/1980	7/28/1982, 47 FR 32530.	
Chapter VIII—b	Lewiston TSP Nonattainment Area Plan.	1/15/1980, 12/4/1980, and 2/5/1981.	7/28/1982, 47 FR 32530.	

TABLE 6 TO PARAGRAPH (e)—STATE ATTAINMENT, MAINTENANCE, AND OTHER PLANS—Continued

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanations
Chapter VIII—c	Transportation Control Plan for carbon monoxide, Ada County.	5/24/1984, 1/3/1985, 3/25/1985, and 6/29/1994.	7/28/1982, 47 FR 32530, 6/6/1985, 50 FR 23810, and 12/1/1994, 59 FR 61546.	
Chapter VIII—d	Pocatello TSP Nonattainment Area Plan.	3/7/1980 and 2/5/1981	7/28/1982, 47 FR 32530.	
Chapter VIII—e	Soda Springs TSP Nonattainment Area Plan.	1/15/1980	7/28/1982, 47 FR 32530.	
Chapter VIII—f	Pinehurst PM–10 Nonattainment Area Plan.	4/14/1992	8/25/1994, 59 FR 43745.	
Chapter VIII—g	Northern Ada County PM_{10} Nonattainment Area Plan.	11/14/1991, 12/30/1994, and 7/13/1995.	5/30/1996, 61 FR 27019.	
Chapter VIII—h	Sandpoint PM_{10} Nonattainment Area Plan.	8/16/1996	6/26/2002, 67 FR 43006.	
Chapter VIII—i	Northern Ada County CO Limited Maintenance Plan.	1/17/2002	10/28/2002, 67 FR 65713.	
Chapter VIII—j	Ada County/Boise Idaho PM–10 Maintenance Plan.	9/27/2002, 7/10/2003, and 7/21/2003.	10/27/2003, 68 FR 61106.	
Chapter IX—Reserved				
Chapter X—Plan for Maintenance of National Ambient Air Quality Standards for Lead.	State-wide	2/3/1984	6/4/1984 (EPA effective date).	
Small Business Assistance Program.	State-wide	1/3/1994	9/19/1994, 59 FR 47801.	
Appendix A—Legal Authority and Other Administrative Matters.	State-wide	1/15/1980	7/28/1982, 47 FR 32530.	
Northern Ada County Air Quality Maintenance Area Second 10-year Carbon Monoxide Limited Maintenance Plan.	Northern Ada County	2/10/2011	8/2/2012, 77 FR 45962.	
Northern Ada County Carbon Monoxide Limited Maintenance Plan Revision.	Northern Ada County	12/29/2022	6/15/2023, 88 FR 39179	Removal of I/M program.
Northern Ada County PM_{10} Second Ten-Year Maintenance Plan.	Northern Ada County	3/11/2013	10/2/2014, 79 FR 59435.	
Portneuf Valley PM_{10} Nonattainment Area Plan and Maintenance Plan.	Portneuf Valley	7/13/2006	71 FR 39574.	
Portneuf Valley PM_{10} Maintenance Plan—Revision.	Portneuf Valley	4/21/2014	7/17/2014, 79 FR 41647.	
Pinehurst PM_{10} Contingency Measures.	Pinehurst/Shoshone County.	7/13/1995	10/2/2014, 79 FR 59435.	
Pinehurst PM_{10} Limited Maintenance Plan.	Shoshone County; Pinehurst Expansion Area and City of Pinehurst.	9/29/2017	9/11/2018, 83 FR 45830.	
Sandpoint PM_{10} Nonattainment Area Limited Maintenance Plan.	Bonner County: Sandpoint Area.	12/14/2011	4/3/2013, 78 FR 20001.	
Fine Particulate Matter Baseline Emissions Inventory.	Franklin County, Logan UT–ID $PM_{2.5}$ Nonattainment Area.	12/19/2012	7/18/2014, 79 FR 41904	Fine Particulate Matter; Franklin County.
Cache Valley Fine Particulate Matter Attainment Plan.	Franklin County, Logan UT–ID $PM_{2.5}$ Nonattainment Area.	12/19/2012, 12/24/2014, 7/31/2018.	1/4/2017, 82 FR 729; 8/8/2017, 82 FR 37025; 2/20/2020, 85 FR 9664.	
Cache Valley Fine Particulate Matter Maintenance Plan.	Franklin County, Logan UT–ID $PM_{2.5}$ Area.	9/13/2019	5/21/2021, 86 FR 27532.	
West Silver Valley $PM_{2.5}$ Maintenance Plan.	West Silver Valley, ID	6/2/2020	11/16/2021, 86 FR 63315.	
Open Burning of Crop Residue State Implementation Plan Revision.	State-wide	5/28/2008	8/1/2008, 73 FR 44915.	
Open Burning of Crop Residue State Implementation Plan Revision.	State-wide	9/22/2017, 10/23/2017	6/19/2018, 83 FR 28382	Original submission and supplemental modeling analyses.

TABLE 6 TO PARAGRAPH (e)—STATE ATTAINMENT, MAINTENANCE, AND OTHER PLANS—Continued

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanations
Interstate Transport State Implementation Plan, May 11, 2010 (see comments).	State-wide	6/28/2010	11/26/2010, 75 FR 72705	For the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS. See docket EPA–R10–OAR–2010–0669.
Section 110(a)(2) Infrastructure Requirements for the 1997 8-hour Ozone NAAQS.	Statewide	9/15/2008, 6/24/2010	7/17/2012, 77 FR 41916	This action addresses following CAA elements or portions thereof: 110(a)(2)(A), (B), (C), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L), and (M).
Section 110(a)(2) Infrastructure Requirements for the 2008 Pb NAAQS.	State-wide	2/14/2012	5/22/2014, 79 FR 29358	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M).
Section 110(a)(2) Infrastructure Requirements for the 1997 $PM_{2.5}$ NAAQS.	State-wide	9/15/2008; 6/28/2010	7/14/2014, 79 FR 40662	This action addresses the following CAA elements or portions thereof: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
Section 110(a)(2) Infrastructure Requirements for the 2006 $PM_{2.5}$ NAAQS.	State-wide	6/28/2010; 8/10/2011	7/14/2014, 79 FR 40662	This action addresses the following CAA elements or portions thereof: 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS.	State-wide	6/28/2010	7/14/2014, 79 FR 40662	This action addresses the following CAA elements or portions thereof: 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
Section 110(a)(2) Infrastructure Requirements for the 2010 NO_2 NAAQS.	State-wide	9/16/2013	8/11/2014, 79 FR 46708	This action addresses the following CAA elements or portions thereof: 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
Section 110(a)(2) Infrastructure Requirements for the 2010 SO_2 NAAQS.	State-wide	9/16/2013	8/11/2014, 79 FR 46708	This action addresses the following CAA elements or portions thereof: 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
Interstate Transport Requirements for the 2006 24-hour $PM_{2.5}$ NAAQS.	State-wide	6/28/2010	4/17/2015, 80 FR 21181	This action addresses the following CAA elements: 110(a)(2)(D)(i)(I).
Interstate Transport Requirements for the 2008 Ozone NAAQS.	State-wide	6/28/2010	12/18/2015, 80 FR 78981	This action addresses the following CAA elements: 110(a)(2)(D)(i)(I).
Interstate Transport Requirements for the 2010 NO_2 NAAQS.	State-wide	12/24/2015	5/5/2016, 81 FR 27017	This action addresses the following CAA elements: 110(a)(2)(D)(i)(I).
Section 110(a)(2) Infrastructure Requirements—2012 $PM_{2.5}$ NAAQS.	State-wide	12/23/2015	12/4/2017, 82 FR 57132	Approves SIP for purposes of CAA sections 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) for the 2012 $PM_{2.5}$ NAAQS.
Interstate Transport Requirements for the 2012 $PM_{2.5}$ NAAQS.	State-wide	12/23/2015	9/24/2018, 83 FR 48240	This action addresses CAA 110(a)(2)(D)(i)(I).
Section 110(a)(2) Infrastructure Requirements—2015 ozone NAAQS.	State-wide	9/27/2018	9/16/2020, 85 FR 57723	Approves SIP for purposes of CAA sections 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) for the 2015 ozone NAAQS.
Interstate Transport Requirements for the 2015 Ozone NAAQS.	State-wide	9/26/2018	10/16/2020, 85 FR 65722	This action addresses CAA 110(a)(2)(D)(i)(I).
Interstate Transport Requirements for the 2010 Sulfur Dioxide NAAQS.	State-wide	12/24/2015	4/9/2021, 86 FR 18457	This action addresses CAA 110(a)(2)(D)(i)(I).
Regional Haze SIP Revision.	State-wide	10/25/2010	6/22/2011, 76 FR 36329	The portion of the Regional Haze SIP revision relating to BART, the calculation of baseline and natural conditions, and the statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any mandatory Class I Federal Area.
Regional Haze SIP Revision.	State-wide	10/25/2010	11/8/2012, 77 FR 66929	The portion of the Regional Haze SIP relating to the reasonable progress goals, long term strategy, monitoring strategy, consultation with states and Federal Land Managers, periodic SIP revisions, and 5-year progress reports.
Regional Haze SIP Revision.	State-wide	6/29/2012	4/28/2014, 79 FR 23273	The portion of the Regional Haze SIP relating to BART for the TASCO, Nampa facility.
Regional Haze 5-Year Progress Report.	State-wide	6/28/2016	7/15/2019, 84 FR 33697.	

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BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 98

RIN 0970–AD11

Increase Flexibility for Tribes in Child Care and Development Fund (CCDF) Eligibility

AGENCY: Office of Child Care (OCC), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This final rule amends the Child Care and Development Fund (CCDF) regulations to provide all Indian Tribes and Tribal Organizations operating CCDF programs the flexibility, at their discretion, to establish and use eligibility criteria regardless of family income or assets.

DATES: *Effective:* November 18, 2024.

FOR FURTHER INFORMATION CONTACT: Megan Campbell, Office of Child Care, 202–690–6499 or *megan.campbell@acf.hhs.gov.*

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I. Statutory Authority

This final rule is being issued under the authority granted to the Secretary of Health and Human Services by the Child Care and Development Block Grant (CCDBG) Act of 1990, as amended (42 U.S.C. 9857 *et seq.*), and section 418 of the Social Security Act (42 U.S.C. 618).

II. Background

In response to requests from Tribal Leaders and Tribal Child Care and Development Fund (CCDF) Lead Agencies for more flexibility on family income eligibility to better meet community needs and to recent statutory changes to eligibility in the Tribal Head Start program, this final rule amends the CCDF regulations to provide all Tribal CCDF Lead Agencies the flexibility to serve Indian children (as defined by the Tribal Lead Agency) in their defined service area regardless of family income or assets. This final rule is also responsive to Executive Order 14112, *Reforming Federal Funding and Support for Tribal Nations To Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination,* which directs agencies to ''increase the accessibility, equity, flexibility, and utility of Federal funding.'' This final rule provides Tribal Nations with more flexibility to better meet community needs, responds to calls for greater Tribal sovereignty and self-determination, and facilitates better alignment between Tribal CCDF and American Indian and Alaska Native (AIAN) Head Start programs.

The CCDBG Act (42 U.S.C. 9857 *et seq.*), hereafter referred to as the ''Act,'' together with section 418 of the Social Security Act (42 U.S.C. 618), authorize the CCDF program, which is the primary federal funding source to Tribes, States, and Territories devoted to supporting families access to child care and to increasing the quality of child care for all children. CCDF plays a vital role in supporting child development and family well-being; facilitating parent employment, training, and education; and improving the economic well-being of participating families. In fiscal year (FY) 2024, 264 Tribal Lead Agencies representing 546 federally recognized Tribal Nations received CCDF grants totaling nearly $600 million.[1] Annual Tribal CCDF awards range from $70,000 to $88 million per year.

The Act does not explicitly apply most of its provisions to the Tribal CCDF program, so with some exceptions and within certain parameters, the Secretary of Health and Human Services has the authority to determine many of the CCDF requirements for Tribal Lead Agencies, including the family income and assets eligibility requirements for children to receive services from Tribal CCDF programs. Previous Tribal CCDF regulations included different family income and assets eligibility requirements and flexibilities based on a Tribal Lead Agency's award allocation size in FY 2016. Tribal Lead Agencies who had allocations under $250,000 in 2016 (155 Tribal Lead Agencies) could serve any Indian child (as defined by the Tribal Lead Agency) in their defined service area, regardless of family income or assets. However, Tribal Lead Agencies with allocations above $250,000 in 2016 were subject to the same CCDF income and assets eligibility standard as States, set forth at § 98.20(a)(2), which meant that family income could not be more than 85 percent of Grantee Median Income (GMI) and family assets could not exceed $1 million.

This final rule extends the existing flexibility for Tribal Lead Agencies with small allocations to disregard family income and assets in determining family eligibility for CCDF to all Tribal Lead Agencies. All Tribal CCDF Lead Agencies may continue to use family income and/or assets criteria for eligibility at their option, but it will no longer be a requirement. Tribal Lead Agencies choosing to use family income or assets criteria for eligibility would have the flexibility to determine the appropriate threshold for their Nation. This final rule does not alter existing flexibilities that permit Tribal Lead Agencies with medium and large allocations to apply categorical eligibility criteria for families under certain conditions.

This final rule will benefit Tribal Nations by better aligning family income eligibility rules in the Tribal CCDF with Head Start programs and providing necessary flexibility to determine how early childhood program

[1] *https://www.acf.hhs.gov/occ/data/gy-2024-ccdf-tribal-allocations-based-appropriations.*

family income or assets determinations can best support their communities. This alignment is particularly salient because many American Indian and Alaskan Native (AIAN) Head Start grant recipients administer a Tribal CCDF program. At the request of Tribal Nations and the Biden-Harris Administration, the Further Consolidated Appropriations Act, 2024 (Public Law (Pub. L.) 118–47, Div. D, Tit. II, Sec. 238) included changes to AIAN Head Start eligibility criteria, to make eligible for Head Start services all age-eligible children in an AIAN program's service area regardless of income. The Head Start Act, unlike the CCDBG Act, required legislative action to make this change.

Effective Dates

This final rule will become effective on the date of publication to expedite Tribal Lead Agencies' ability to implement the flexibilities included in this final rule.

Severability

The provisions of this final rule are intended to be severable, such that, in the event a court were to invalidate any particular provision or deem it to be unenforceable, the remaining provisions would continue to be valid.

III. Development of Regulation

ACF published a notice of proposed rulemaking (NPRM) in the **Federal Register** on July 16, 2024, (89 FR 57835) proposing revisions to CCDF regulations. We provided a 60-day comment period during which interested parties could submit comments in writing electronically.

ACF received 18 comments on the proposed rule (public comments on the proposed rule are available for review on *www.regulations.gov*), including Tribal Nations and Tribal organizations, a state CCDF Lead Agency, non-profit and research organizations, parents, and individual members of the public. Public comments informed the development of content for this final rule.

Tribal consultation and comments. ACF is committed to consulting with Tribal Nations prior to promulgating any regulation that has Tribal implications. ACF held a formal consultation session virtually in August 2024 with Tribal leaders and authorized representatives to discuss the impact of the proposed regulations on Tribes. Tribes and Tribal organizations were informed of these events through formal letters to Tribal leaders and announcements to Tribal CCDF administrators. ACF also distributed materials specifically addressing the impact of the proposed rule on Tribes. ACF will publish a consultation report, which will be posted as a supplemental document in the **Federal Register** and will include information on consultation attendees as well as their specific comments. During consultation, ACF received testimony from one authorized representative who expressed strong support for the proposed change. This final rule was informed by this testimony.

In addition, prior to the development of the NPRM, OCC sought feedback from Tribal Nations and other interested parties on areas where more flexibility and/or different program rules would better serve children, families, and Tribal Nations through a formal Request for Information (RFI), published in the **Federal Register** at 88 FR 48409 (July 27, 2023). Through the RFI process, many Tribal Lead Agencies expressed support for changing eligibility requirements so they can serve Indian children (as defined by the Tribal Lead Agency), regardless of family income. OCC also received feedback on the need for flexibility in eligibility determination at the ACF Tribal Early Childhood Consultation held in July 2024. This final rule was informed by this feedback.

This final rule maintains the structure and organization of the current CCDF regulations. Where language of previous regulations remains unchanged, the preamble explanation and interpretation of that language published with all prior final rules also is retained, unless specifically modified in the preamble to this rule. (See 57 FR 34352, Aug. 4, 1992; 63 FR 39936, Jul. 24, 1998; 72 FR 27972, May 18, 2007; 72 FR 50889, Sep. 5, 2007; 81 FR 67438, Sept. 30, 2016; 89 FR 15366, Mar. 1, 2024).

IV. Discussion of Comments and Regulatory Provisions

This final rule amends § 98.81(b)(1) to provide all CCDF Tribal Lead Agencies the flexibility to determine family eligibility for CCDF without regard to family income and assets. Specifically, the rule revises § 98.81(b)(1)(ii) so that all Tribal Lead Agencies may disregard family income and assets requirements described in § 98.20(a)(2), while retaining the ability for Tribal Lead Agencies with a Tribal median income below a level determined by the Secretary to deem any child in their service area categorically eligible, regardless of work, or training status. Previously, the 40 percent of Tribal Lead Agencies with medium and large allocations were subject to the requirements at § 98.20(a)(2) that children must be in families with incomes below 85 percent Grantee Median Income (GMI) and with assets under $1 million to be eligible for CCDF. Tribes with small allocations were already exempt from the requirements at § 98.20(a)(2). Extending the flexibility to serve any Indian child in the service area regardless of family income or assets to all Tribal Lead Agencies gives the Lead Agencies the authority to better meet the needs of Tribal Nations and their communities and supports Tribal sovereignty and self-determination. It also creates better opportunities for Tribes to align CCDF programs with other Tribal early childhood programs, including Tribal home visiting, Early Head Start, Head Start preschool, and tribally or state funded preschool.

The new flexibility included in this final rule is at the option of the Tribal Lead Agency. Therefore, Tribal Lead Agencies with medium and large allocations may choose to continue using income and/or assets when determining if a child is eligible for CCDF. Tribal Lead Agencies who choose to keep income and/or assets as eligibility criteria are not limited to setting the income threshold at or below 85 percent GMI, or an asset limit at $1 million and may set these thresholds higher.

This final rule does not make any other changes to Tribal CCDF regulations. No other changes were made to family eligibility rules, including existing Tribal categorical eligibility flexibilities, which remain unchanged.

Comment: Commenters unanimously expressed support for the proposed change to provide all Tribal Lead Agencies the flexibility to serve all Indian children (as defined by the Lead Agency) in their service area regardless of family income or assets. Commenters noted that the change is a step toward promoting Tribal sovereignty and enabling Tribal Nations to implement the CCDF program in a way that meets the unique needs of each community. They also noted that the change better aligns with eligibility rules of other early childhood programs, including Head Start, which may lead to more inclusive and equitable services for Native families.

Response: We acknowledge that commenters supported the proposed change and agree that this change supports Tribal sovereignty and have retained the provision as proposed with one minor addition to clarify that Tribal Lead Agencies may disregard eligibility requirements for assets, in addition to

those required for income, which has always been the intent of the rule.

Comment: While all commenters supported the change, some noted that all Tribal Lead Agencies may not have the funding to serve all Indian children in their service areas.

Response: This regulatory change provides a new flexibility for all Tribal Lead Agencies. The rule does not impact Congressionally appropriated funds or Tribal CCDF allocations. Disregarding income and assets as eligibility criteria is an option for Tribal Lead Agencies, not a requirement. Tribal Lead Agencies have flexibility to establish income and asset requirements that balance the needs of the community and resources available.

V. Regulatory Process Matters

Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.,* as amended), all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirements inherent in a proposed or final rule. As required by this Act, we will submit all revised data collection requirements to OMB for review and approval.

The final rule modifies the previously approved ACF–118–A CCDF Tribal Plan information collection (OMB #0970–0198). ACF initiated the process to receive OMB approval to revise and extend approval of the ACF–118–A CCDF Tribal Plan. This began with the initial 60-day comment period, which started on July 2, 2024, (89 FR 54827) and the first comment period ended on September 3, 2024. ACF will include the changes that result from this final rule in the revision request that is submitted to OMB for review and approval. This includes updates to the information collection and the associated burden estimates. This process will include publication of a second **Federal Register** notice soliciting public comments over a 30-day period on the revisions to the ACF–118–A CCDF Tribal Plan.

CCDF title/code	Relevant section in the proposed rule	OMB control No.	Expiration date	Description
ACF–118–A (CCDF Tribal Plan) Part I and Part II.	§ 98.81	0970–0198	4/30/2025	This final rule provides new flexibilities which Tribal lead agencies with medium and large allocations will be required to report on in the CCDF plans.

The table below provides current approved annual burden hours and estimated annual burden hours for these existing information collections that are modified by this final rule.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Current approved average burden hours per response	Current annual burden hours	Estimated average burden hours per response based on final rule	Estimated annual burden hours based on final rule
ACF–118A Part I (for all tribes)	265	1	120	10,600	120	10,600
ACF–118–A Part II (for medium and large Tribes only)	106	1	24	848	24	848

We did not receive any public comments on these burden estimates, which were included in the NPRM.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (see 5 U.S.C. 605(b), as amended by the Small Business Regulatory Enforcement Fairness Act) requires federal agencies to determine, to the extent feasible, a rule's impact on small entities, explore regulatory options for reducing any significant impact on a substantial number of such entities, and explain their regulatory approach. The term ''small entities,'' as defined in the RFA, comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. HHS considers a rule to have a significant impact on a substantial number of small entities if it has at least a 3 percent impact on revenue on at least 5 percent of small entities. The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the RFA (Pub. L. 96–354), that this rulemaking will not result in a significant impact on a substantial number of small entities, as this rulemaking primarily impacts tribes receiving federal CCDF grants. Therefore, a regulatory flexibility analysis is not required for this document.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of regulatory actions on state, local, and tribal governments, and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures by State, local or Tribal governments, in the aggregate, or the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2024 the threshold is approximately $183 million. This final rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $183 million per year. Therefore, ACF is not required to provide a statement, including a cost-benefit analysis, of the impacts of the changes.

Executive Order 13132

Executive Order 13132 requires federal agencies to consult with State and local government officials if they develop regulatory policies with federalism implications. Federalism is rooted in the belief that issues that are

not national in scope or significance are most appropriately addressed by the level of government close to the people. This rulemaking does not have substantial direct impact on the States, on the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, this action does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Assessment of Federal Regulations and Policies on Families

Assessment of Federal Regulations and Policies on Families section 654 of the Treasury and General Government Appropriations Act of 2000 requires federal agencies to determine whether a policy or regulation may negatively affect family well-being. If the agency determines a policy or regulation negatively affects family well-being, then the agency must prepare an impact assessment addressing seven criteria specified in the law. HHS believes it is not necessary to prepare a family policymaking assessment (see Pub. L. 105–277) because the action it takes in this final rule will not have any impact on the autonomy or integrity of the family as an institution.

Regulatory Review

We have examined the impacts of the rule under Executive Order 12866, Executive Order 13563, the RFA (5 U.S.C. 601–612), and the UMRA of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all benefits, costs, and transfers of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity).

The Office of Information and Regulatory Affairs has determined that this final rule is not a significant regulatory action under section 3(f)(1) of Executive Order 12866, as amended by Executive Order 14094. This final rule has, however, been designated ''a significant regulatory action'' under section 3(f) of Executive Order 12866, as amended by Executive Order 14094. Of the nearly $600 million appropriated for 264 Tribal Lead Agencies in FY 2024, approximately $422 million was allocated to grantees that already have discretion to take-up the flexibilities included in this rule. The remaining $173 million is allocated to Tribal Lead Agencies that could be impacted by the change included in this rule. Further, these Tribal Lead Agencies have discretion on whether to adopt this flexibility based on their unique needs. This final rule does not stipulate any new requirements.

VI. Tribal Consultation Statement

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, requires agencies to consult with Indian tribes when regulations have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The discussion in sections III and IV of the preamble serves as the Tribal impact statement and contains a detailed description of the consultation and outreach in this final rule.

(Catalog of Federal Domestic Assistance Program Number 93.575, Child Care and Development Block Grant; 93.596, Child Care Mandatory and Matching Funds)

Dated: November 14, 2024.

Xavier Becerra,

Secretary, Department of Health and Human Services.

List of Subjects in 45 CFR Part 98

Child care, Grant programs-social programs.

For the reasons set forth in the preamble, we amend 45 CFR part 98 as follows:

PART 98—CHILD CARE AND DEVELOPMENT FUND

■ 1. The authority citation for part 98 continues to read as follows:

Authority: 42 U.S.C. 618, 9858,

■ 2. Amend § 98.81 by revising paragraph (b)(1)(ii) to read as follows.

§ 98.81 Application and Plan procedures.

* * * * *

(b) * * *

(1) * * *

(ii) The basis for determining family eligibility may be determined by the Tribe notwithstanding family income or assets as described in § 98.20(a)(2).

* * * * *

[FR Doc. 2024–26909 Filed 11–15–24; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Chapter III

[Docket No. FMCSA–2024–0201]

RIN 2126–AC66

Federal Motor Carrier Safety Regulations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Final rule; general technical, organizational, conforming, and correcting amendments.

SUMMARY: FMCSA amends its regulations by making technical corrections throughout the Federal Motor Carrier Safety Regulations (FMCSRs). The Agency makes minor changes to correct inadvertent errors and omissions, remove or update obsolete references, and improve the clarity and consistency of certain regulatory provisions. The Agency also makes a change to its rules of organization, procedures, and practice. Because the rule does not impose any new material requirements or increase compliance obligations, it is issued without prior notice and opportunity for comment, pursuant to the good cause exception in the Administrative Procedure Act (APA).

DATES: Effective November 18, 2024.

Petitions for Reconsideration of this final rule must be submitted to the FMCSA Administrator no later than December 18, 2024.

FOR FURTHER INFORMATION CONTACT: Mr. Nicholas Lockhart, Regulatory Development Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; (202) 366–2219; *nicholas.lockhart@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Legal Basis for the Rulemaking

Congress delegated certain powers to regulate interstate commerce to DOT in numerous pieces of legislation, most notably in section 6 of the Department of Transportation Act (DOT Act) (Pub. L. 89–670, 80 Stat. 931, 937, Oct. 15, 1966). Section 6 of the DOT Act transferred to DOT the authority of the former Interstate Commerce Commission (ICC) to regulate the qualifications and maximum hours of service of employees, the safety of operations, and the equipment, of motor carriers in interstate commerce (80 Stat. 939). This authority, first granted to the ICC in the Motor Carrier Act of 1935

(Pub. L. 74–255, 49 Stat. 543, Aug. 9, 1935), now appears in 49 U.S.C. chapter 315. The regulations issued under this authority, as well as subsequently enacted laws, became known as the FMCSRs, codified at 49 Code of Federal Regulations (CFR) parts 350–399. The administrative powers to enforce chapter 315 (codified in 49 U.S.C. chapter 5) were also transferred from the ICC to DOT in 1966, assigned first to the Federal Highway Administration (FHWA), and then to FMCSA. The FMCSA Administrator, whose powers and duties are set forth in 49 U.S.C. 113, has been delegated authority by the Secretary of Transportation (the Secretary) under 49 CFR 1.81 to prescribe regulations and to exercise authority over and with respect to any personnel within the organization, and under 49 CFR 1.87 to carry out the motor carrier functions vested in the Secretary.

Between 1984 and 1999, enforcement of the FMCSRs, the Hazardous Materials Regulations, and the Commercial Regulations was added to FHWA's authority. The statutes granting these authorities include the Motor Carrier Safety Act of 1984 (Pub. L. 98–554, Title II, 98 Stat. 2832, Oct. 30, 1984), codified at 49 U.S.C. chapter 311, subchapter III; the Commercial Motor Vehicle Safety Act of 1986 (Pub. L. 99–570, Title XII, 100 Stat. 3207–170, Oct. 27, 1986), codified at 49 U.S.C. chapter 313; the Hazardous Materials Transportation Uniform Safety Act of 1990, as amended (Pub. L. 101–615, 104 Stat. 3244, Nov. 16, 1990), codified at 49 U.S.C. chapter 51; the Omnibus Transportation Employee Testing Act of 1991 (Pub. L. 102–143, Title V, 105 Stat. 917, 952, Oct. 28, 1991), codified at 49 U.S.C. 31306; the ICC Termination Act of 1995 (Pub. L. 104–88, 109 Stat. 803, Dec. 29, 1995), codified at 49 U.S.C. chapters 131–149; and the Transportation Equity Act for the 21st Century (Pub. L. 105–178, 112 Stat. 107, June 9, 1998).

The Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106–159, 113 Stat. 1748, Dec. 9, 1999) established FMCSA as a new operating administration within DOT, effective January 1, 2000, and transferred authorities specifically related to commercial motor vehicle safety to FMCSA. Accordingly, since that time the motor carrier safety, and certain commercial, responsibilities previously assigned to both the ICC and FHWA have been the jurisdiction of FMCSA. These responsibilities also include regulations relating to section 18 of the Noise Control Act of 1972, codified at 42 U.S.C. 4917, which were originally assigned to the Secretary of Transportation (Pub. L. 92–574, 86 Stat. 1249, Oct. 27, 1972) and delegated to FHWA (39 FR 7791, Feb. 28, 1974), and are now the jurisdiction of FMCSA, as codified at 49 U.S.C. 113(f)(1).[1]

Congress subsequently expanded, modified, and amended FMCSA's authority in the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Pub. L. 107–56, 115 Stat. 272, Oct. 26, 2001); the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, 119 Stat. 1144, Aug. 10, 2005); the SAFETEA–LU Technical Corrections Act of 2008 (Pub. L. 110–244, 122 Stat. 1572, June 6, 2008); the Moving Ahead for Progress in the 21st Century Act (MAP–21) (Pub. L. 112–141, 126 Stat. 405, July 6, 2012); Fixing America's Surface Transportation Act (Pub. L. 114–94, 129 Stat. 1312, Dec. 4, 2015); and the Infrastructure Investment and Jobs Act (Pub. L. 117–58, 135 Stat. 429, Nov. 15, 2021).

The specific regulations amended by this rule are based on the statutes detailed above. Generally, the legal authority for each of those provisions was explained when the requirement was originally adopted and is noted at the beginning of each part in Title 49 of the CFR.

The APA specifically provides exceptions to its notice and comment rulemaking procedures when an agency finds there is good cause to dispense with them, and incorporates the finding, and a brief statement of reasons therefore, in the rules issued (5 U.S.C. 553(b)(B)). Good cause exists when an agency determines that notice and public comment procedures are impractical, unnecessary, or contrary to the public interest. The amendments made in this final rule primarily correct inadvertent errors and omissions, remove or update obsolete references, and make minor language changes to improve clarity and consistency. The technical amendments do not impose any new material requirements or increase compliance obligations. For these reasons, FMCSA finds good cause that notice and public comment on this final rule are unnecessary.

In addition to amendments that fall within the APA good cause exception, this rule also contains amendments that fall within the APA exception for rules of agency organization, procedure, or practice. Specifically, the Agency amends 49 CFR 387.307(e) to align with the service rules in part 386 and to specify the same procedures for Agency review of documents filed by brokers notified of a pending suspension of operating authority due to insufficient financial responsibility as are followed by the Agency when such brokers file documents in support of a reinstatement from suspension. These amendments fall within the exception to the APA's notice and comment rulemaking procedures for ''rules of agency organization, procedure, or practice,'' (5 U.S.C. 553(b)(A)) because the procedures for filing such documents are already specified in § 387.307(e) and so are made clearer with this amendment. Similarly, an amendment to part 389 also concerns matters of Agency policy. These changes are therefore excepted from the notice and public comment requirements.

The APA also allows agencies to make rules effective immediately with good cause (5 U.S.C. 553(d)(3)), instead of requiring publication 30 days prior to the effective date. For the reasons already stated, FMCSA finds there is good cause for this rule to be effective immediately.

This rule contains numerous, unrelated provisions that focus on unique aspects of FMCSA's regulations. Therefore, FMCSA finds that the various provisions of this final rule are severable and able to operate functionally if severed from each other. In the event a court were to invalidate one or more of this final rule's unique provisions, the remaining provisions should stand.

II. Section-by-Section Analysis

A. Part 350—Motor Carrier Safety Assistance Program (MCSAP) and High Priority Program

FMCSA amends part 350 to eliminate the current question-and-answer format in favor of standard styling. Thus, all section headings that are phrased as questions will be rephrased as brief descriptive phrases pertaining to the section's content. However, unless specifically described below, this change does not affect the body text of the regulations in this part. FMCSA makes this change because it has determined that the question-and-answer format is cumbersome, difficult to read, and may cause confusion. Moreover, in several instances the title of a section is styled as a question, but the regulatory text does not provide a concise answer to the question asked, somewhat defeating the purpose of the question-and-answer style.

[1] Responsibility for the regulations related to section 18 of the Noise Control Act was given to FMCSA by Congress in section 101 of the Motor Carrier Safety Improvement Act (Pub. L. 106–159, 113 Stat. 1748, 1750, Dec. 9, 1999).

Part 350 previously had section headings styled as brief descriptive phrases, rather than questions, until 2000. That year, FMCSA issued a final rule that comprehensively revised part 350 (65 FR 15092 (March 21, 2000)). The revisions included a series of stylistic changes described in the NPRM: question and answer format, the active voice, and ''Plain English'' (64 FR 11414, 11416 (March 9, 1999)). The Agency intended for the stylistic changes to logically organize the regulations, clearly format the regulations, and make the regulations easily understood. The Agency continues to pursue these goals when drafting regulations and adopts active voice and ''Plain English'' where practical, in new and revised regulations, to achieve these goals. However, the Agency no longer uses a question-and-answer format in new and revised regulations. Most of the FMCSRs, and most federal regulations generally, use a short descriptive phrase for section headings instead of a question-and-answer format. Therefore, the Agency amends each section heading in part 350 to use a short descriptive phrase. FMCSA is also making other amendments to part 350, which are described below.

Section 350.305 What specific variances from the FMCSRs are allowed for State laws and regulations applicable to intrastate commerce and are not subject to Federal jurisdiction?

In addition to revising the title of § 350.305 to use a short descriptive phrase, FMCSA amends the section by adding an introductory sentence specifying that these variances are for State laws and regulations applicable to intrastate commerce and not subject to Federal jurisdiction.

FMCSA also revises § 350.305(d)(3) to eliminate the reference to a 100-air mile radius under § 395.1(e)(1)(i) because it is no longer correct. The regulations in part 350 relate to MCSAP funding, and § 350.305 describes allowable variances in state laws and regulations for States receiving MCSAP funding. Each State that receives MSCAP funds must adopt and enforce laws, regulations, standards, and orders on CMV safety for intrastate commerce that are compatible with the FMCSRs. However, since the early days of MCSAP, some variances for intrastate operations have been allowed. On September 8, 1992, FHWA published what previously had been informal intrastate variances as appendix C to part 350. Section 3(e) provided that exemptions based on the distance traveled from the home terminal were not compatible. However, the prohibition did not apply to exemptions already in the FMCSRs or to the extension of the short-haul mileage exemption for driver hours of service from 100 to 150 miles (57 FR 40946, 40962; Sept. 8, 1992). The short-haul mileage exemption has been placed in several different sections of the CFR over time; it was located in § 350.341(d) prior to moving to its current location in § 350.305(d)(3) when part 350 was rewritten in 2020 (85 FR 37785, 37804; June 24, 2020). The current short-haul mileage exemption references the short-haul mile radius in the hours-of-service regulations, § 395.1(e)(1)(i). On June 1, 2020, FMCSA revised regulations relating to driver hours of service and extended the short-haul exemption in § 395.1(e)(1)(i) to 150 air-miles, effective September 29, 2020 (85 FR 33396, 33451).

Although the allowed air-mile radius is currently the same in §§ 350.305(d)(3) and 395.1(e)(1)(i), it is nevertheless possible that the radius specified in § 395.1(e)(1)(i) could be either expanded or contracted at some time in the future. To correct the discrepancy that currently exists in the regulation while avoiding unintentional effects on the intrastate variance, FMCSA revises § 350.305(d)(3) to read as follows: ''A 150-air mile radius or the air mile radius under § 395.1(e)(1)(i) of this subchapter, whichever is greater.'' The revision affords States the benefit of any future expansion of the air-mile radius in § 395.1(e)(1)(i) and also protects against a decrease of the long-standing 150-mile intrastate variance without full consideration of the impact of any change on intrastate commerce through notice and comment rulemaking. Therefore, there is no substantive impact from this revision.

B. Part 369 Reports of Motor Carriers

Section 369.1 Annual Reports of For-Hire, Non-Exempt Motor Carriers of Property, Motor Carriers of Household Goods, and Dual Property Carriers

Section 369.1 requires certain motor carriers to file the Motor Carrier Annual Report Form M (Form M) with the Agency. The website address provided in § 369.1(b), where the Agency has made Form M available, is no longer valid. FMCSA amends § 369.1(b) to provide a correct website address for Form M and to update the phrasing of the regulation to avoid using the word ''you.''

Section 369.4 Annual Reports of Class I Carriers of Passengers

Section 369.4 requires certain motor carriers of passengers to file the Motor Carrier Annual Report Form MP–1 for Motor Carriers of Passengers (Form MP–1). However, this section does not provide a website address where the form is available. FMCSA amends § 369.4(c) to provide a website address where the form is available for the convenience of motor carriers of passengers.

C. Part 371—Brokers of Property

Section 371.2 Definitions

Section 371.2 provides definitions that apply to FMCSA's property broker regulations in Part 371. FMCSA amends § 371.2 to format the definitions as a list of terms without paragraphs rather than providing the definition for each term in a separate paragraph. The definitions are unchanged by this amendment. This format conforms to the format of other definition sections in Chapter III, Subchapter B, such as § 390.5T, and guidance from the Office of the Federal Register's Document Drafting Handbook (3–33).

D. Part 380—Special Training Requirements

Section 380.301 General Requirements

Section 380.301 contains general requirements for longer combination vehicle driver-instructors. FMCSA amends the introductory text of § 380.301 to avoid using the word ''you,'' and thereby clarify to whom the regulation applies.

Section 380.723 Removal From Training Provider Registry: Procedure

Section 380.723 describes the procedures for removing a training provider from FMCSA's Training Provider Registry, including processes FMCSA follows when it removes a training provider from the registry. In § 380.723, paragraph (b) explains that FMCSA begins the involuntary removal process by issuing a written notice to the provider, and paragraph (c) explains that if the provider wishes to remain on the registry, they must submit a written response to FMCSA within 30 days. Paragraph (c) also explains that the provider can either oppose the notice of proposed removal or take corrective action within 60 days. FMCSA amends paragraph (c) to provide clarification on the timelines for provider responses, as the current regulation may be confusing for providers who choose to take corrective action in response to a notification of proposed removal. Providers that intend to take corrective action must still submit the initial written response described in paragraph (c) within 30 days of the notification. Further, these providers are still

required to submit evidence of corrective action in accordance with (c)(2)(i).

FMCSA also amends section § 380.723 to replace the word ''notice'' with the word ''notification'' wherever it refers to a communication from FMCSA to a training provider, as this section also uses the word ''notice'' to refer to **Federal Register** notices. This change will improve the clarity and readability of the section.

Lastly, FMCSA amends § 380.723(c)(2)(i) to correct an error from a previous amendment. When paragraph (c)(2)(i) was established, it described a 60-day time period that began either on the date the notice of proposed removal was issued or on the date when FMCSA's Director of the Office of Carrier, Driver, and Vehicle Safety Standards subsequently affirmed or modified the notice of proposed removal (81 FR 88732, 88793, Dec. 8, 2016). FMCSA later amended the section, with the intention to remove the reference to that particular director and replace it with a reference to FMCSA (86 FR 57060, 57062, Oct. 14, 2021). Although the word ''Director'' was removed, it was not replaced with ''FMCSA,'' and FMCSA now corrects that inadvertent error by adding the word ''FMCSA'' in the appropriate place.

E. Part 381—Waivers, Exemptions, and Pilot Programs

Section 381.210 How do I request a waiver?

Part 381 covers waiver and exemptions from the FMCSRs, and § 381.210 sets out the process for requesting a waiver and the required contents of the request. The regulations in § 381.210 are authorized by 49 U.S.C. 31315, which is titled ''Waivers, exemptions, and pilot programs.'' The authorizing statute requires certain contents in a waiver request, and while the regulation also requires these contents so that it aligns with the statute, the requirements are phrased differently. The statute requires that a person requesting a waiver explain how, if granted a waiver, they would likely achieve an equivalent or greater level of safety as compared to the level of safety they would achieve absent the waiver. Section 381.210 describes this as a requirement that the person requesting a waiver explain how they would achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the regulation. Though this framing of the requirement has the same effect, FMCSA revises § 381.210 to use the phrasing from the authorizing statute, to avoid any confusion.

Section 381.310 How do I apply for an exemption?

Section 381.310 sets out the process for requesting an exemption, and FMCSA amends it to better align with the authorizing statute, as with § 381.210. The authorizing statute, 49 U.S.C. 31315, requires that a person requesting an exemption explain how they would likely achieve an equivalent or greater level of safety as compared to the level of safety they would achieve absent the exemption. Section 381.210 describes this as a requirement that the person requesting an exemption explain how they would achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the regulation. Though this framing of the requirement has the same effect, FMCSA revises § 381.310 to use the phrasing from the authorizing statute, to avoid any confusion.

Section 381.505 What are the minimum elements required for a pilot program?

Section 381.505 sets out the requirement for a pilot program, and FMCSA amends it to better align with the authorizing statute, as with §§ 381.210 and 381.310. The authorizing statute, 49 U.S.C. 31315, requires that FMCSA ensure that the pilot program is designed to achieve a level of safety that is equivalent to, or greater than, the level of safety that would otherwise be achieved through compliance with the applicable regulations. Section 381.210 describes this as a requirement to ensure that the program is designed to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be achieved by complying with the regulations. Again, though this framing of the requirement has the same effect, FMCSA revises § 381.505 to use the phrasing from the authorizing statute, to avoid any confusion.

F. Part 382—Controlled Substances and Alcohol Use and Testing

Section 382.101 Purpose

Section 382.101 sets out the purpose of part 382 and in doing so, uses the term ''commercial motor vehicles.'' In later sections of part 382, the term is abbreviated as ''CMV,'' and so FMCSA revises § 382.101 to provide the abbreviation for ''commercial motor vehicle(s)'' where it is first used in the part.

Section 382.103 Applicability

Section 382.103 provides the applicability of the controlled substances and alcohol use and testing regulations in part 382. The section cross-references §§ 390.3(f) and 390.5, which are currently suspended. FMCSA revises § 382.103 to cross-reference the equivalent temporary sections §§ 390.3T(f) and 390.5T.

Section 382.107 Definitions

Section 382.107 defines terms that are used in the controlled substances and alcohol use and testing regulations in part 382. The introductory text of § 382.107 cross-references § 390.5, which is currently suspended. FMCSA revises § 382.107 to cross-reference the equivalent temporary section § 390.5T.

One of the terms defined in § 382.107 is ''commercial motor vehicle,'' which is abbreviated to ''CMV'' in the definition of ''actual knowledge'' in the same section and in the table for § 382.303(a) and (b). FMCSA amends the definition of ''commercial motor vehicle'' in § 382.107 to add the definition, for clarity.

Section 382.413 Inquiries for Alcohol and Controlled Substances Information From Previous Employers

Section 382.413 requires employers to request alcohol and controlled substances information from the previous employers of their employees. The section references 49 CFR 40.25, titled ''Must an employer check on the drug and alcohol testing record of employees it is intending to use to perform safety-sensitive duties?'' for specific requirements of the inquiry process. The same requirements are covered within the FMCSRs in § 391.23(e), and so FMCSA amends § 382.413 to reference § 391.23(e) rather than § 40.25, for ease of reference. The amendment also enables paragraph (a) to be simplified. Although paragraph (a) references § 40.25 for the inquiry requirements, it adds that the required time frame for the inquiry of previous employers is 3 years, rather than the 2 years specified in § 40.25. Section 391.23(e) requires a 3-year time frame, and by referencing that section rather than § 40.25, paragraph (a) no longer needs to specify a different time frame.

Section 382.501 Removal From Safety-Sensitive Function

FMCSA revises § 382.501(b) to replace the semicolon after ''functions'' with a comma. This is a punctuation correction.

Section 382.601 Employer Obligation To Promulgate a Policy on the Misuse of Alcohol and Use of Controlled Substances

Section 382.601 requires employers provide educational materials explaining the alcohol and controlled substances regulations in part 382. The materials are required to cover the post-accident testing requirements, and in stating this requirement, § 382.601 references § 382.303(d). FMCSA amends § 382.601 to change these cross-references to instead reference § 382.303 as a whole because there are post-accident testing requirements in other paragraphs of § 382.303 as well.

G. Part 383—Commercial Driver's License Standards; Requirements and Penalties

Section 383.141 General

FMCSA revises § 383.141(b) to change ''state'' to ''State'', to conform with the capitalization used throughout the rest of part 383.

H. Part 384—State Compliance With Commercial Driver's License Program

Section 384.405 Decertification of State CDL Program

FMCSA amends section 384.405 to align the regulatory requirements with the statutory requirements. Specifically, paragraph (a) of the regulation uses permissive language, stating that the Administrator may prohibit a State found to be in substantial noncompliance from performing certain CLP or CDL transactions, and sets out the conditions the Administrator should consider when making a decertification determination. However, 49 U.S.C. 31312 uses mandatory language, stating, ''the Secretary shall issue an order'' to prohibit States from carrying out licensing procedures and issuing CDLs if there is a determination of substantial noncompliance.

The regulatory history does not clearly indicate why there is a discrepancy between the statutory text and the regulatory text. It is clear from the statute that the Administrator is required to prohibit noncompliant states from engaging in the enumerated CLP and CDL transactions. FMCSA therefore replaces the word ''may'' in paragraph (a) with the word ''shall,'' to harmonize the regulation with the statutory text.

I. Part 385—Safety Fitness Procedures

As with part 350, FMCSA also revises part 385, subparts C, D, and E, to eliminate the current question-and-answer format in favor of standard styling. This set of revisions includes revisions to the currently suspended §§ 385.301, 385.303, 385.305, 385.329, 385.405, 385.409, 385.419, and 385.421 to mirror the amendments made to the corresponding temporary sections. All section headings that are phrased as questions will be rephrased as brief descriptive phrases pertaining to the section's content, but the body text of the regulations is unchanged unless otherwise stated below. FMCSA's reasoning for making this change in part 385 is the same as for part 350. As used in these regulations, the question-and-answer format is cumbersome, difficult to read, and may cause confusion, and the Agency finds the regulations are clearer and more useful when standard styling is used. FMCSA also makes other amendments to part 385, which are described below.

Section 385.205 How can an individual who has lost certification to perform a safety audit or investigation, including review, be re-certified?

In addition to revising the heading of § 385.205 to be a short descriptive phrase, FMCSA also amends the section by moving the context for the regulation's requirements from the heading to the body of the regulation, in order to clarify the regulation.

Section 385.407 What conditions must a motor carrier satisfy for FMCSA to issue a safety permit?

In addition to revising the heading of § 385.407 to be a short descriptive phrase, FMCSA also makes a clarifying revision to the section by adding paragraph (a)(2)(iv) regarding the requirement for carriers to maintain the minimum financial responsibility required by § 387.9 in order to receive a safety permit. This addition does not impose new burdens on carriers because 49 CFR part 387 already imposes financial responsibility requirements on motor carriers, including hazardous materials carriers, and these requirements are referenced in the safety fitness standard described in § 385.5. Safety permits and financial responsibility are already linked by § 385.407(a), which requires achieving a ''satisfactory'' safety rating as a prerequisite for issuance of a safety permit, and § 385.421T(a)(8), which specifies that failure to maintain the minimum required financial responsibility is grounds for suspending or revoking a safety permit. This revision will eliminate confusion and ensure consistency between these regulations.

Section 385.409 When may a temporary safety permit be issued to a motor carrier?

In addition to revising the heading of § 385.409 to be a short descriptive phrase, FMCSA also amends the section by removing the paragraph heading of § 385.409(a), which is unnecessary given the revised section heading. Although this section is currently suspended, FMCSA is amending it to mirror the amendments to temporary regulation § 385.409T.

Section 385.409T When may a temporary safety permit be issued to a motor carrier?

In addition to revising the heading of § 385.409T to be a short descriptive phrase, FMCSA also amends the section by removing the paragraph heading of § 385.409T(a), which is unnecessary given the revised section heading.

Section 385.411 Must a motor carrier obtain a safety permit if it has a State permit?

In addition to revising the heading of § 385.411 to be a short descriptive phrase, FMCSA also amends the section by moving the context for the regulation's requirements from the heading to the body of the regulation, in order to clarify the regulation. Finally, § 385.411 contains a cross-reference to § 385.405, which is currently suspended, and FMCSA amends the section to reference § 385.405T instead.

Section 385.413 What happens if a motor carrier receives a proposed safety rating that is less than satisfactory?

In addition to revising the heading of § 385.413 to be a short descriptive phrase, FMCSA also amends the section by moving the context for the regulation's requirements from the heading to the body of the regulation, in order to clarify the regulation.

Appendix B to Part 385—Explanation of Safety Rating Process

Part 385 covers FMCSA's safety fitness procedures, and appendix B to part 385 provides an explanation of the safety rating process. Within appendix B, section III.B. explains that proposed safety ratings of ''conditional'' and ''unsatisfactory'' will become final 45 days after they are received, and the explanation uses the word ''you.'' The use of the word ''you'' is unnecessary and may cause confusion, therefore FMCSA amends the appendix to avoid using it in this instance.

J. Part 387—Minimum Levels of Financial Responsibility for Motor Carriers

Section 387.307 Property Broker Surety Bond or Trust Fund

FMCSA revises § 387.307(e)(5) and (6) to clarify that a broker's or freight forwarder's operating authority registration will be suspended 7 business days after the date a notice of pending suspension is served, not 7 business days after the date printed on the notice. This aligns with the Agency's service rules in part 386 and ensures that, when service is accomplished by mail, brokers and freight forwarders will receive the additional 5 days prescribed in § 386.8(c) to file a response before the suspension takes effect.

FMCSA also revises § 387.307(e)(5) to clarify the Agency's review process when a broker submits information in response to notification from the Agency that the broker's operating authority is pending suspension for failure to maintain adequate financial security. When this rule was issued on November 16, 2023 (88 FR 78656), the procedures specified in § 387.307(e)(6), which apply when a broker seeks reinstatement of its operating authority after being suspended, were also intended to apply to § 387.307(e)(5). However, due to a drafting error, the sentence ''FMCSA will consider such evidence and provide written notice to the broker of its determination'' was omitted from § 387.307(e)(5). FMCSA is therefore adding this sentence to § 387.307(e)(5), to reflect that the Agency's obligation to review evidence a broker submits and provide a response is consistent, regardless of whether the Agency receives information prior to a suspension or after a suspension has occurred.

K. Part 389—Rulemaking Procedures—Federal Motor Carrier Safety Regulations

Section 389.13 Initiation of Rulemaking

Section 389.13(a) describes how the Administrator may initiate a rulemaking, paragraph (b) describes certain steps the Administrator must take when promulgating a major rule, and paragraph (c) describes exceptions to the requirements of paragraph (b). The last sentence of paragraph (c) explains when a proposed rule should be evaluated to determine whether 49 CFR 5.17 applies. Section 5.17 was a former regulation in the CFR titled ''Special procedures for economically significant and high-impact rulemakings'' and was removed in the final rule ''Administrative Rulemaking, Guidance, and Enforcement Procedures'' published on April 2, 2021 (86 FR 17292). When § 5.17 was removed, § 389.13 should have been amended to remove the last sentence of paragraph (c). FMCSA corrects this oversight by amending § 389.13 to remove the reference to § 5.17.

Section 389.41 Severability

FMCSA adds a new section that sets forth the Agency's policy on the severability of regulatory provisions in its final rules. Rules often address numerous provisions that are not inextricably intertwined. Therefore, FMCSA generally considers such provisions to be severable, meaning that if any provision in a rule is later held to be invalid, the remainder of the rule is not affected. If provisions of a rule are so inextricably intertwined that the invalidation of one provision would affect another, FMCSA generally explains the relationship between those provisions in the rule's preamble. Adding this section will improve rulemaking efficiency by allowing FMCSA to cite to the regulation in future rulemakings. Because this new section relates to Agency policy and practice, notice and comment is not required in order for the Agency to codify these practices in a new section of the regulations.

L. Part 390—Federal Motor Carrier Safety Regulations; General

As with part 350, FMCSA also revises part 390, subpart C, to eliminate the current question-and-answer format in favor of standard styling. This set of revisions includes a revision to the currently suspended § 390.40 to mirror the amendment made to the corresponding temporary section. All section headings that are phrased as questions will be rephrased as brief descriptive phrases pertaining to the section's content, but the body text of the regulations is unchanged unless otherwise stated below. FMCSA's reasoning for making this change in part 390 is the same as for part 350. As used in these regulations, the question-and-answer format is cumbersome, difficult to read, and may cause confusion, and the Agency finds the regulations are clearer and more useful when standard styling is used. FMCSA also makes other amendments to part 390, which are described below.

Section 390.27 Locations of Motor Carrier Safety Service Centers

Section 390.27 provides the addresses of the motor carrier safety service centers. FMCSA revises § 390.27 to change the address of the Midwestern Service Center from 4749 Lincoln Mall Drive, Suite 300A, Matteson, Illinois 60443 to 600 Holiday Plaza Drive, Suite 240, Matteson, Illinois 60443. The Midwestern Service Center moved in May 2024, requiring this update to the address.

Section 390.44 What are the procedures to correct the safety record of a motor carrier or an intermodal equipment provider?

In addition to revising the heading of § 390.44 to be a short descriptive phrase, FMCSA also amends the section to relocate the context for the regulation's requirements from the heading to the body.

Section 390.125 Qualified VA Examiner Certification Training

Subpart D of part 390 covers the medical examiner certification requirements for qualified Department of Veterans Affairs (VA) examiners, and § 390.125 requires that they complete certain training as part of the certification process. In June 2018, FMCSA adopted a rule that created an alternative process for certain VA healthcare professionals to be listed on the National Registry of Certified Medical Examiners (National Registry) (83 FR 26846, June 11, 2018). At the time, VA and FMCSA had planned to deliver the training through a web-based system operated by VA. Since that time, the technological capabilities of the National Registry system have been enhanced. Accordingly, VA and FMCSA now plan to deliver the training via the National Registry system, which will be more convenient for the qualified VA examiners. FMCSA revises § 390.125 to reflect this change in training delivery.

Section 390.127 Qualified VA Examiner Certification Testing

Section 390.127 requires that qualified VA examiners pass the medical examiner certification test as part of the certification process. Similar to the training required by § 390.125, the test was previously planned to be administered through a web-based system operated by VA. Because of the enhanced National Registry system capabilities, VA and FMCSA now plan to deliver the testing via the National Registry system, which will be more convenient for the qualified VA examiners. FMCSA revises § 390.127 to reflect this change in test administration.

M. Part 391—Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors

Section 391.45 Persons Who Must Be Medically Examined and Certified

FMCSA revises § 391.45(c) to change ''intra-city'' to ''intracity,'' to conform the styling of the term with its use in other FMCSRs, including § 390.5T, ''Definitions.''

Section 391.49 Alternative Physical Qualification Standards for the Loss or Impairment of Limbs

FMCSA amends § 391.49(d)(3)(i)(B) and (d)(3)(ii)(C) to clarify the meaning, effect, and effective date of the current requirement that individuals must be capable of demonstrating precision prehension and power grasp prehension with each upper limb separately to be eligible for a skill performance evaluation (SPE) certificate issued by FMCSA. An SPE certificate allows individuals who do not meet FMCSA's physical qualification standards in § 391.41(b)(1) for limb loss or (b)(2) for limb impairment to operate a CMV in interstate commerce subject to the terms, conditions, and limitations provided on the certificate.

On December 5, 1985, FHWA published a final rule amending § 391.49 to incorporate its policy that required an individual with upper limb loss or impairment ''to be capable of demonstrating precision prehension . . . and power grasp prehension . . . in each upper limb separately'' (50 FR 49849). FHWA indicated that the requirement was based on the technical expertise and rehabilitation experiences of the personnel of the Krusen Center for Research and Engineering, which developed a report in 1977 for FHWA titled ''Limb Prosthetics for the Bureau of Motor Carrier Safety'' [2] (Krusen Study) (50 FR at 49850–51).

The term *prehension* is commonly defined to mean the act of taking hold, seizing, or grasping.[3] The more specific medical terms *precision prehension* and *power grasp prehension* were used in the regulation to communicate clearly and effectively with the medical professionals who state whether an individual is capable of demonstrating precision prehension and power grasp prehension; however, these medical terms often are not understood by individuals applying for SPE certificates.

The Krusen Study explains the terms in the context of a hand on page II–2 as follows:

> Grasp, or prehension, activities are of two types: power grip and precision grip. The power grip is especially important in the driver's ability to grasp the steering wheel. In the power grip, a clamping force is produced by wrapping the fingers around the wheel against the counterpressure offered by the palm and thumb. In a precision grip, an object like a pencil is held just between the tips of the fingers and the opposing thumb.

Accordingly, demonstrating power grasp prehension requires use of the palm and fingers/thumb of a hand, while demonstrating precision prehension requires use of the fingers/thumb of a hand.

FHWA stated that the effect of the requirement that an individual must be capable of demonstrating precision prehension and power grasp prehension in each upper limb separately was that individuals with loss of a hand or arm will be required to be properly fitted with a functional prosthesis and be proficient in its use prior to applying for a waiver [4] (50 FR at 49849 and 49851). Individuals with upper limb impairment will be required to be fitted with a functional orthotic device and be proficient in its use prior to applying to a waiver, if the individual is not capable of demonstrating precision prehension and power grasp prehension in each upper limb separately without a device (50 FR at 49849 and 49851). Although FHWA included in the regulation that the requirement that an individual must be capable of demonstrating precision prehension and power grasp prehension in each upper limb separately does not apply to an individual who was granted a waiver absent a prosthetic or orthotic device prior to the 1985 amendment, FMCSA has determined that individuals applying for an SPE certificate would benefit from a clearer statement of the effect of the requirement.

For the reasons provided above, FMCSA clarifies § 391.49(d)(3)(i)(B) by changing the explanation of precision prehension from ''(*e.g.,* manipulating knobs and switches)'' to ''(*e.g.,* grasping and manipulating knobs and switches using the fingers/thumb)'' and by changing the explanation of power grasp prehension from ''(*e.g.,* holding and maneuvering the steering wheel)'' to ''(*e.g.,* grasping, holding, and maneuvering the steering wheel using a hand).'' Because precision prehension and power grasp prehension are demonstrated by a hand, FMCSA changes ''with each upper limb separately'' to ''with each hand separately'' for clarity. To clarify the effect of the current requirement, FMCSA adds the following as a new second sentence: ''Prior to applying for an SPE certificate, an applicant with loss of a hand or arm must be fitted and proficient with a proper prosthesis that enables the applicant to demonstrate precision prehension and power grasp prehension with each hand separately.'' In the last sentence, FMCSA adds a date for the requirement by changing ''prior to the publication of this amendment'' to ''prior to January 6, 1986, the effective date of the requirement'' for clarity and the convenience of the reader.

Similarly, FMCSA clarifies § 391.49(d)(3)(ii)(C) by changing the explanation of precision prehension from ''(*e.g.,* manipulating knobs and switches)'' to ''(*e.g.,* grasping and manipulating knobs and switches using the fingers/thumb)'' and by changing the explanation of power grasp prehension from ''(*e.g.,* holding and maneuvering the steering wheel)'' to ''(*e.g.,* grasping, holding, and maneuvering the steering wheel using a hand).'' Because precision prehension and power grasp prehension are demonstrated by a hand, FMCSA changes ''with each upper limb separately'' to ''with each hand separately'' for clarity. To clarify the effect of the current requirement and FMCSA's practice of allowing use of either a prosthesis or orthotic device as appropriate when upper limb impairment is present, FMCSA adds the following as a new second sentence: ''Prior to applying for an SPE certificate, an applicant with upper limb impairment must be fitted and proficient with a proper prosthesis or orthotic device, if the applicant is not capable of demonstrating precision prehension and power grasp prehension with each hand separately without a prosthesis or orthotic device.'' In the last sentence, FMCSA adds a date for the requirement by changing ''prior to the publication of this amendment'' to ''prior to January 6, 1986, the effective date of the requirement'' for clarity and the convenience of the reader. FMCSA also changes ''an SPE certificate'' in the last sentence to ''a waiver'' to make the

[2] Moss Rehabilitation Hospital, Krusen Center for Research and Engineering. Limb Prosthetics for the Bureau of Motor Carrier Safety. Washington: Department of Transportation, Federal Highway Administration, Bureau of Motor Carrier Safety, 1977. Available at *https://www.fmcsa.dot.gov/regulations/medical/krusen-study-limb-prosthetics* (last accessed May 28, 2024).

[3] Merriam-Webster Dictionary. Available at *https://www.merriam-webster.com/dictionary/prehension* (last accessed May 28, 2024).

[4] Beginning in 1964, individuals who did not satisfy the physical qualification requirements for limb loss or impairment were allowed to become medically certified through a waiver process (29 FR 14495, Oct. 22, 1964). After a change to FHWA's waiver authority and the creation of FMCSA in 2000, § 391.49 was amended to reframe the waiver process as an alternative physical qualification standard with SPE certificates instead of waivers (65 FR 25285, May 1, 2000).

sentence factually correct. SPE certificates were not available prior to January 6, 1986. This error occurred in 2000 when a universal change was made to replace ''waiver'' with ''SPE certificate,'' or its equivalent, throughout § 391.49 (65 FR 25285, 25286, May 1, 2000).

Section 391.62 Limited Exemptions for Intra-City Zone Drivers

FMCSA revises the title of § 391.62 to change ''intra-city'' to ''intracity,'' to conform the styling of the term with its use in the body of the section and other FMCSRs, including § 390.5T, ''Definitions.''

N. Part 393—Parts and Accessories Necessary for Safe Operation

As with part 350, FMCSA is also revising part 393, subpart I, to eliminate the current question-and-answer format in favor of standard styling. All section headings that are phrased as questions will be rephrased as brief descriptive phrases pertaining to the section's content, but the body text of the regulations is unchanged unless otherwise stated below. FMCSA's reasoning for making this change in part 393 is the same as for part 350. As used in these regulations, the question-and-answer format is cumbersome, difficult to read, and may cause confusion, and the Agency finds the regulations are clearer and more useful when standard styling is used. FMCSA is also making other amendments to part 393, which are described below.

Section 393.5 Definitions

FMCSA amends the § 393.5 definition of ''longwood'' to expressly include utility poles. This amendment was previously included in a final rule that published June 22, 2006 (71 FR 35819), however, the amendment was not codified in the regulations and utility poles were not expressly included in the definition of ''longwood'' FMCSA amends § 393.5 to correct this oversight.

O. Part 395—Hours of Service of Drivers

Automatic on-board recording devices (AOBRDs) are electric, electronic, electromechanical, or mechanical device used to record information pertinent to a driver's duty status information, for the purpose of tracking the driver's hours of service. As part of the AOBRD final rule, issued on September 30, 1988, § 395.15 codified in the regulations and prescribed the specific requirements for using such devices (53 FR 38670). Subsequently, Congress mandated the use of a different type of device, known as an electronic logging device (ELD), in Section 32301(b) of the Commercial Motor Vehicle Safety Enhancement Act, enacted as part of MAP–21 (Pub. L. 112–141, 126 Stat. 405, 786–788, July 6, 2012). FMCSA implemented this requirement on December 16, 2015, but allowed drivers and motor carriers to continue using certain AOBRDs until December 16, 2019 (80 FR 78292). As this date has passed and all drivers and carriers are now required to use ELDs, FMCSA is now making updates to part 395 to remove the requirements for AOBRDs in § 395.15, as well as multiple references to AOBRDs in other sections.

Section 395.1 Scope of Rules in This Part

Section § 395.1 contains the hours-of-service exceptions for part 395, and paragraph (d) explains the exceptions for oilfield operations. In describing how waiting time should be recorded, paragraph (d) references both §§ 395.8 and 395.15. Since drivers are no longer permitted to use AOBRDs to track hours of service, FMCSA removes the reference to § 395.15 in § 395.1(d).

Section 395.2 Definitions

FMCSA amends § 395.2 by removing the definition for ''automatic on board recording device,'' for the reasons stated above.

Section 395.8 Driver's Record of Duty Status

FMCSA amends § 395.8 to remove cross references to AOBRDs and part § 395.15 for the reasons stated above. Specifically, FMCSA removes § 395.8(a)(1)(ii), renumbers the remaining paragraphs, and updates the cross-references to those paragraphs accordingly. Additionally, FMCSA removes current paragraph (a)(1)(iv)(B) and renumbers the remaining paragraphs accordingly.

FMCSA revises § 395.8(e)(2) and (3) by removing the references to AOBRDs.

Section 395.13 Drivers Ordered Out of Service

FMCSA revises § 395.13 to remove the cross-reference to § 395.15, for the reasons stated above.

Section 395.15 Automatic On-Board Recording Devices [Reserved]

FMCSA removes and reserves § 395.15, for the reasons stated above.

P. Part 397—Transportation of Hazardous Materials; Driving and Parking Rules

Section 397.65 Definitions

Section 397.65 provides definitions that apply to part 397, subpart C—Routing of Non-Radioactive Hazardous Materials, including a definition for the term ''commerce.'' When that definition was adopted, it contained an error, referring to its paragraph (1) as subparagraph (a) (59 FR 51824, 51830 (Oct. 12, 1994)). FMCSA amends this section to correct the error.

III. Regulatory Analyses

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), E.O. 14094 (Modernizing Regulatory Review), and DOT Regulatory Policies and Procedures

FMCSA has considered the impact of this final rule under E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, E.O. 13563 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review, and by E.O. 14094 (88 FR 21879, Apr. 11, 2023), Modernizing Regulatory Review. The Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB) determined that this final rulemaking is not a significant regulatory action under section 3(f) of E.O. 12866, as supplemented by E.O. 13563 and E.O. 14094, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. Accordingly, OMB has not reviewed it under that E.O. In addition, this rule is not significant within the meaning of DOT regulations (49 CFR 5.13(a)). The amendments made in this final rule primarily correct inadvertent errors and omissions, remove or update obsolete references, and make minor language changes to improve clarity and consistency. In accommodating those changes, the Agency is performing nondiscretionary, ministerial acts. Other changes merely align regulatory requirements with the underlying statutory authority. None of the changes in this final rule impose new material requirements or increase compliance obligations; therefore, this final rule imposes no new costs and a full regulatory evaluation is unnecessary.

Changes to §§ 390.125 and 390.127 are expected to result in cost savings. Originally, the Department of Veterans Affairs' (VA) medical examiner training and certification testing were to be delivered through a web-based platform operated by VA. To facilitate this initiative, FMCSA estimated the cost to develop an information technology (IT) connection between the National Registry and the VA platform to be $258,000 with the costs split evenly between FMCSA and VA, *i.e.,* $129,000 each. Because the National Registry has been unavailable, the alternative process

to get VA healthcare providers on the National Registry has not yet been implemented. Under the new approach in which the training and testing are to be delivered via the National Registry, it is no longer necessary to develop the IT connection originally included in the costs of the rule. Therefore, there will be cost savings for VA of at least $129,000 under the new approach.

As part of the National Registry rebuild, FMCSA is scheduled to build mechanisms to deliver training for medical examiners for two other areas within the National Registry system. Once these two mechanisms are built, there will be a platform in existence to deliver training to medical examiners, and only minor modifications will be necessary to add another training area and an area for testing for the qualified VA examiners. Thus, the costs to FMCSA are expected to be minimal and significantly lower than the $129,000 allocated to FMCSA for the IT connection that is no longer needed. Therefore, there will be cost savings for FMCSA of up to $129,000.

B. Congressional Review Act

This rule is not a major rule as defined under the Congressional Review Act (5 U.S.C. 801–808).[5]

C. Regulatory Flexibility Act (Small Entities)

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), FMCSA is not required to prepare a regulatory flexibility analysis under 5 U.S.C. 604(a) for this final rule because FMCSA has not issued a notice of proposed rulemaking prior to this action.

D. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), FMCSA wants to assist small entities in understanding this final rule so they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the final rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman (Office of the National Ombudsman, see *https://www.sba.gov/about-sba/oversight-advocacy/office-national-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 FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their discretionary regulatory actions. 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 $200 million (which is the value equivalent of $100 million in 1995, adjusted for inflation to 2023 levels) or more in any 1 year. Though this final rule would not result in such an expenditure, and the analytical requirements of UMRA do not apply as a result, the Agency discusses the effects of this rule elsewhere in this preamble.

F. Paperwork Reduction Act

This proposed rule contains no new information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

G. E.O. 13132 (Federalism)

A rule has implications for federalism under section 1(a) of E.O. 13132 if it has ''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.'' FMCSA has determined that this rule will not have substantial direct costs on or for States, nor will it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

H. Privacy

The Consolidated Appropriations Act, 2005,[6] requires the Agency to assess the privacy impact of a regulation that will affect the privacy of individuals. Because this rule does not require the collection of personally identifiable information, the Agency is not required to conduct a privacy impact assessment.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency that receives records contained in a system of records from a Federal agency for use in a matching program.

The E-Government Act of 2002,[7] requires Federal agencies to conduct a Privacy Impact Analysis (PIA) for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology will collect, maintain, or disseminate information as a result of this rule. Accordingly, FMCSA has not conducted a PIA.

I. E.O. 13175 (Indian Tribal Governments)

This rule does not have Tribal implications under E.O. 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.

J. National Environmental Policy Act of 1969

FMCSA analyzed this rule pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680), appendix 2, paragraph 6.b and c. These Categorical Exclusions address technical amendments and other minor amendments such as those found in this rulemaking, as well as regulations concerning internal agency functions, organization, or personnel administration. Therefore, preparation

[5] A *major rule* means any rule that the Office of Management and Budget finds has resulted in or is likely to result in (a) an annual effect on the economy of $100 million or more; (b) a major increase in costs or prices for consumers, individual industries, geographic regions, Federal, State, or local government agencies; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (5 U.S.C. 802(4)).

[6] Public Law 108–447, 118 Stat. 2809, 3268, note following 5 U.S.C. 552a (Dec. 4, 2014).

[7] Public Law 107–347, sec. 208, 116 Stat. 2899, 2921 (Dec. 17, 2002).

of an environmental assessment or environmental impact statement is not necessary.

List of Subjects

49 CFR Part 350

Grant programs-transportation, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements, State and local governments.

49 CFR Part 369

Motor carriers, Reporting and recordkeeping requirements.

49 CFR Part 371

Brokers, Motor carriers, Reporting and recordkeeping requirements.

49 CFR Part 380

Administrative practice and procedure, Highway safety, Motor carriers, Reporting and recordkeeping requirements.

49 CFR Part 381

Motor carriers.

49 CFR Parts 382 and 383

Administrative practice and procedure, Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Penalties, Safety, Transportation.

49 CFR Part 384

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

49 CFR Part 385

Administrative practice and procedure, Highway safety, Mexico, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 387

Buses, Freight, Freight forwarders, Hazardous materials transportation, Highway safety, Insurance, Intergovernmental relations, Motor carriers, Motor vehicle safety, Moving of household goods, Penalties, Reporting and recordkeeping requirements, Surety bonds.

49 CFR Part 389

Administrative practice and procedure, Highway safety, Motor carriers, Motor vehicle safety.

49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 391

Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR Part 393

Highway safety, Motor carriers, Motor vehicle safety.

49 CFR Part 395

Highway safety, Motor carriers, Reporting and recordkeeping requirements.

49 CFR Part 397

Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, FMCSA amends 49 CFR chapter III as set forth below:

PART 350—MOTOR CARRIER SAFETY ASSISTANCE PROGRAM (MCSAP) AND HIGH PRIORITY PROGRAM

■ 1. The authority citation for part 350 continues to read as follows:

Authority: 49 U.S.C. 504, 13902, 31101, 31102, 31104, 31106, 31108, 31136, 31141, 31161, 31310, 31311, 31502; secs. 5106 and 5107, Pub. L. 114–94, 129 Stat. 1312, 1530; and 49 CFR 1.87.

■ 2. Amend § 350.101 by revising the section heading to read as follows:

§ 350.101 Purpose.

* * * * *

■ 3. Amend § 350.103 by revising the section heading to read as follows:

§ 350.103 Effective date of changes to financial assistance programs.

* * * * *

■ 4. Amend § 350.105 by revising the section heading to read as follows:

§ 350.105 Definitions.

* * * * *

■ 5. Amend § 350.201 by revising the section heading to read as follows:

§ 350.201 MCSAP administration: Goal and purpose.

* * * * *

■ 6. Amend § 350.203 by revising the section heading to read as follows:

§ 350.203 MCSAP administration: National MCSAP elements.

* * * * *

■ 7. Amend § 350.205 by revising the section heading to read as follows:

§ 350.205 MCSAP administration: Funding eligibility.

* * * * *

■ 8. Amend § 350.207 by revising the section heading to read as follows:

§ 350.207 MCSAP administration: Conditions to qualify for funds.

* * * * *

■ 9. Amend § 350.209 by revising the section heading to read as follows:

§ 350.209 MCSAP administration: Application for funds using a CVSP.

* * * * *

■ 10. Amend § 350.211 by revising the heading to read as follows:

§ 350.211 MCSAP administration: Requirements for the first year of the CVSP.

* * * * *

■ 11. Amend § 350.213 by revising the section heading to read as follows:

§ 350.213 MCSAP administration: Requirements for the second and third years of the CVSP.

* * * * *

■ 12. Amend § 350.215 by revising the section heading to read as follows:

§ 350.215 MCSAP administration: Response to CVSP.

* * * * *

■ 13. Amend § 350.217 by revising the section heading to read as follows:

§ 350.217 MCSAP administration: Allocation of funds.

* * * * *

■ 14. Amend § 350.219 by revising the section heading to read as follows:

§ 350.219 MCSAP administration: Award of funds under a continuing resolution or an extension of FMCSA's authorization.

* * * * *

■ 15. Amend § 350.221 by revising the section heading to read as follows:

§ 350.221 MCSAP administration: Availability of funds.

* * * * *

■ 16. Amend § 350.223 by revising the section heading to read as follows:

§ 350.223 MCSAP administration: Federal and State shares of costs incurred.

* * * * *

■ 17. Amend § 350.225 by revising the section heading to read as follows:

§ 350.225 MCSAP administration: Maintenance of effort to qualify for funds.

* * * * *

■ 18. Amend § 350.227 by revising the section heading to read as follows:

§ 350.227 MCSAP administration: Activities eligible for reimbursement.

* * * * *

■ 19. Amend § 350.229 by revising the section heading to read as follows:

§ 350.229 MCSAP administration: Specific costs eligible for reimbursement.

* * * * *

■ 20. Amend § 350.231 by revising the section heading to read as follows:

§ 350.231 MCSAP administration: Consequences for failure to meet conditions.

* * * * *

■ 21. Amend § 350.301 by revising the section heading to read as follows:

§ 350.301 Compatibility review: Purpose.

* * * * *

■ 22. Amend § 350.303 by revising the section heading to read as follows:

§ 350.303 Compatibility review: State responsibilities.

* * * * *

■ 23. Amend § 350.305 by revising the section heading, adding introductory text, and revising paragraph (d)(3) to read as follows:

§ 350.305 Compatibility review: Allowable variances from the FMCSRs

The following variances are allowed for State laws and regulations applicable to intrastate commerce and are not subject to Federal jurisdiction.

* * * * *

(d) * * *

(3) A 150-air mile radius or the air mile radius under § 395.1(e)(1)(i) of this subchapter, whichever is greater.

* * * * *

■ 24. Amend § 350.307 by revising the section heading to read as follows:

§ 350.307 Compatibility review: Procedures for obtaining a new exemption.

* * * * *

■ 25. Amend § 350.309 by revising the section heading to read as follows:

§ 350.309 Compatibility review: Consequences of incompatible provisions.

* * * * *

■ 26. Amend § 350.401 by revising the section heading to read as follows:

§ 350.401 High Priority Program: Purpose.

* * * * *

■ 27. Amend § 350.403 by revising the section heading to read as follows:

§ 350.403 High Priority Program: Objectives.

* * * * *

■ 28. Amend § 350.405 by revising the section heading to read as follows:

§ 350.405 High Priority Program: Funding conditions and qualifications.

* * * * *

■ 29. Amend § 350.407 by revising the section heading to read as follows:

§ 350.407 High Priority Program: Application procedures.

* * * * *

■ 30. Amend § 350.409 by revising the section heading to read as follows:

§ 350.409 High Priority Program: Responses to applications.

* * * * *

■ 31. Amend § 350.411 by revising the section heading to read as follows:

§ 350.411 High Priority Program: Availability of funds.

* * * * *

■ 32. Amend § 350.413 by revising the section heading to read as follows:

§ 350.413 High Priority Program: Federal and recipient shares of costs.

* * * * *

■ 33. Amend § 350.415 by revising the section heading to read as follows:

§ 350.415 High Priority Program: Activities and projects eligible for reimbursement.

* * * * *

■ 34. Amend § 350.417 by revising the section heading to read as follows:

§ 350.417 High Priority Program: Costs eligible for reimbursement.

* * * * *

PART 369—REPORTS OF MOTOR CARRIERS

■ 35. The authority citation for part 369 continues to read as follows:

Authority: 49 U.S.C. 14123; 49 CFR 1.87.

■ 36. Amend § 369.1 by revising paragraph (b) to read as follows:

§ 369.1 Annual reports of for-hire, non-exempt motor carriers of property, motor carriers of household goods, and dual property carriers.

* * * * *

(b) *Where to file report.* Carriers must file the annual report with the Federal Motor Carrier Safety Administration at the address in § 369.6. Blank copies of the report form are available at the Federal Motor Carrier Safety Administration website *https://www.fmcsa.dot.gov/mission/form-m.*

■ 37. Amend § 369.4 by revising paragraph (c) to read as follows:

§ 369.4 Annual reports of Class I carriers of passengers.

* * * * *

(c) *Where to file report.* The annual report shall be filed on or before March 31 of the year following the year to which it relates. The annual report shall be filed with the Federal Motor Carrier Safety Administration at the address in § 369.6. Blank copies of the report form are available at the Federal Motor Carrier Safety Administration website *https://www.fmcsa.dot.gov/registration/form-mp-1-annual-report-form-and-worksheet-class-i-motor-carriers-passengers.*

PART 371—BROKERS OF PROPERTY

■ 38. The authority citation for part 371 continues to read as follows:

Authority: 49 U.S.C. 13301, 13501, and 14122; subtitle B, title IV of Pub. L. 109–59; and 49 CFR 1.87.

■ 39. Section 371.2 is revised and republished to read as follows:

§ 371.2 Definitions.

Unless specifically defined elsewhere, in this part:

Broker means a person who, for compensation, arranges, or offers to arrange, the transportation of property by an authorized motor carrier. Motor carriers, or persons who are employees or bona fide agents of carriers, are not brokers within the meaning of this section when they arrange or offer to arrange the transportation of shipments which they are authorized to transport and which they have accepted and legally bound themselves to transport.

Bona fide agents are persons who are part of the normal organization of a motor carrier and perform duties under the carrier's directions pursuant to a preexisting agreement which provides for a continuing relationship, precluding the exercise of discretion on the part of the agent in allocating traffic between the carrier and others.

Brokerage or brokerage service is the arranging of transportation or the physical movement of a motor vehicle or of property. It can be performed on behalf of a motor carrier, consignor, or consignee.

Non-brokerage service is all other service performed by a broker on behalf of a motor carrier, consignor, or consignee.

PART 380—SPECIAL TRAINING REQUIREMENTS

■ 40. The authority citation for part 380 continues to read as follows:

Authority: 49 U.S.C. 31133, 31136, 31305, 31307, 31308, 31502; sec. 4007(a) and (b), Pub. L. 102–240, 105 Stat. 1914, 2151–2152; sec. 32304, Pub. L. 112–141, 126 Stat. 405, 791; and 49 CFR 1.87.

■ 41. Amend § 380.301 by revising the introductory text to read as follows:

§ 380.301 General requirements.

There are two types of LCV driver-instructors: Classroom instructors and Skills instructors. Except as provided in § 380.303, an individual must meet the conditions under paragraph (a) or

paragraph (b) of this section to qualify as an LCV driver-instructor.

* * * * *

■ 42. Amend § 380.723 by:

■ a. Revising paragraphs (c) introductory text, (c)(1)(iii), and the first sentence of paragraph (c)(2)(i); and

■ b. Removing the word ''notice'' wherever it appears and adding in its place the word ''notification''.

The revisions read as follows:

§ 380.723 Removal from training provider registry: procedure.

* * * * *

(c) *Response to notification of proposed removal and corrective action.* A training provider that has received a notification of proposed removal and wishes to remain on the TPR must submit a written response to FMCSA no later than 30 days after the date of issuance of the notification. The response must explain why the provider believes that FMCSA has relied on erroneous information in proposing removal from the TPR, in accordance with paragraph (c)(1) of this section, or the response must state that the provider intends to comply with this subpart and complete the corrective action(s) specified in FMCSA's notification of proposed removal, in accordance with paragraph (c)(2) of this section. If the provider responds to the notification of proposed removal by indicating the provider intends to comply and take corrective action, the provider must submit documentation of completion of corrective action(s) in accordance with paragraph (c)(2)(i) of this section.

(1) * * *

(iii) If the provider does not respond in writing within 30 days of the date of issuance of a notification of proposed removal, explaining why the decision is not proper or stating that the provider will complete the corrective actions in accordance with paragraph (c)(2) of this section, the removal becomes effective immediately and the provider will be removed from the TPR. Any training conducted after the removal date is invalid.

(2) * * *

(i) The provider must comply with this subpart and complete the corrective actions specified in the notification of proposed removal no later than 60 days after either the date of issuance of the notification of proposed removal or the date FMCSA subsequently affirms or modifies the notification of proposed removal. * * *

* * * * *

PART 381—WAIVERS, EXEMPTIONS, AND PILOT PROGRAMS

■ 43. The authority citation for part 381 continues to read as follows:

Authority: 49 U.S.C. 31136(e), 31315; and 49 CFR 1.87.

■ 44. Amend § 381.210 by revising paragraph (c)(4) to read as follows:

§ 381.210 How do I request a waiver?

* * * * *

(c) * * *

(4) Explains how you would ensure that you could likely achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained in the absence of the waiver.

■ 45. Amend § 381.310 by revising paragraph (c)(5) to read as follows:

§ 381.310 How do I apply for an exemption?

* * * * *

(c) * * *

(5) Explains how you would ensure that you could likely achieve a level of safety that is equivalent to, or greater than, the level of safety that would be achieved absent such exemption; and

* * * * *

■ 46. Amend § 381.505 by revising paragraph (a) to read as follows:

§ 381.505 What are the minimum elements required for a pilot program?

(a) *Safety measures.* Before granting exemptions for a pilot program, the FMCSA will ensure that the safety measures in a pilot program are designed to achieve a level of safety that is equivalent to, or greater than, the level of safety that would otherwise be achieved through compliance with the regulations prescribed.

* * * * *

PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

■ 47. The authority citation for part 382 continues to read as follows:

Authority: 49 U.S.C. 31133, 31136, 31301 *et seq.,* 31502; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; and 49 CFR 1.87.

§ 382.101 [Amended]

■ 48. Amend § 382.101 by adding ''(CMVs)'' to the end of sentence.

§ 382.103 [Amended]

■ 49. Amend § 382.103 by:

■ a. Removing ''§ 390.3(f)'' wherever it appears and adding in its place''§ 390.3T(f)''; and

■ b. Removing ''§ 390.5'' wherever it appears and adding in its place ''§ 390.5T''.

■ 50. Amend § 382.107 by:

■ a. Revising the introductory text; and

■ b. Revising the defined term of ''Commercial motor vehicle'' to read as ''Commercial motor vehicle (CMV)''.

The revisions read as follows:

§ 382.107 Definitions.

Words or phrases used in this part are defined in §§ 386.2 and 390.5T of this subchapter, and § 40.3 of this title, except as provided in this section—

* * * * *

Commercial motor vehicle (CMV)

* * *

* * * * *

■ 51. Revise § 382.413 to read as follows:

§ 382.413 Inquiries for alcohol and controlled substances information from previous employers.

(a) Employers must request alcohol and controlled substances information from previous employers in accordance with the requirements of § 391.23(e).

(b) As of January 6, 2023, employers must use the Drug and Alcohol Clearinghouse in accordance with § 382.701(a) to comply with the requirements of § 391.23(e) with respect to FMCSA-regulated employers. Exception: When an employee who is subject to follow-up testing has not successfully completed all follow-up tests, employers must request the employee's follow-up testing plan directly from the previous employer in accordance with § 391.23(e)(4)(i).

(c) If an applicant was subject to an alcohol and controlled substance testing program under the requirements of a DOT Agency other than FMCSA, the employer must request the alcohol and controlled substances information required under this section and § 391.23(e) directly from those employers regulated by a DOT Agency other than FMCSA.

§ 382.501 [Amended]

■ 52. Amend § 382.501 paragraph (b) by removing the semicolon and adding in its place a comma.

§ 382.601 [Amended]

■ 53. Amend § 382.601 by removing ''§ 382.303(d)'' wherever it appears and adding in its place ''§ 382.303''.

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

■ 54. The authority citation for part 383 continues to read as follows:

Authority: 49 U.S.C. 521, 31136, 31301 *et seq.,* and 31502; secs. 214 and 215 of Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec.

1012(b) of Pub. L. 107–56, 115 Stat. 272, 297, sec. 4140 of Pub. L. 109–59, 119 Stat. 1144, 1746; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; sec. 23019 of Pub. L. 117–58, 135 Stat. 429, 777; and 49 CFR 1.87.

§ 383.141 [Amended]

■ 55. Amend § 383.141 by removing in the introductory text of paragraph (b) the word ''state'' and adding in its place the word ''State''.

PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM

■ 56. The authority citation for part 384 continues to read as follows:

Authority: 49 U.S.C. 31136, 31301, *et seq.,* and 31502; secs. 103 and 215 of Pub. L. 106–159, 113 Stat. 1748, 1753, 1767; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; sec. 5524 of Pub. L. 114–94, 129 Stat. 1312, 1560; and 49 CFR 1.87.

§ 384.405 [Amended]

■ 57. Amend § 384.405 in paragraph (a) introductory text by removing the word ''may'' and adding in its place the word ''shall''.

PART 385—SAFETY FITNESS PROCEDURES

■ 58. The authority citation for part 385 continues to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5105(d), 5109, 5113, 13901–13905, 13908, 31135, 31136, 31144, 31148, 31151, 31502; sec. 113(a), Pub. L. 103–311, 108 Stat. 1673, 1676; sec. 408, Pub. L. 104–88, 109 Stat. 803, 958; sec. 350, Pub. L. 107–87, 115 Stat. 833, 864; sec. 5205, Pub. L. 114–94, 129 Stat. 1312, 1537; and 49 CFR 1.87.

■ 59. Amend § 385.201 by revising the section heading to read as follows:

§ 385.201 Qualifications for performing a safety audit or investigation.

* * * * *

■ 60. Amend § 385.203 by revising the section heading to read as follows:

§ 385.203 Certification requirements for performing a safety audit or investigation.

* * * * *

■ 61. Revise § 385.205 to read as follows:

§ 385.205 Requirements for re-certification.

An individual who has lost certification to perform a safety audit or investigation, including review, can only be re-certified if they successfully complete the requirements of § 385.203(a) and (b).

■ 62. Amend § 385.207 by revising the section heading to read as follows:

§ 385.207 Requirements to obtain and maintain certification to conduct driver or vehicle inspections.

* * * * *

■ 63. Amend § 385.301 by:
■ a. Lifting the suspension of the section;
■ b. Revising the section heading; and
■ c. Suspending the section indefinitely.
The revision reads as follows:

§ 385.301 Requirements before beginning interstate operations.

* * * * *

■ 64. Amend § 385.301T by revising the section heading to read as follows:

§ 385.301T Requirements before beginning interstate operations.

* * * * *

■ 65. Amend § 385.303 by:
■ a. Lifting the suspension of the section;
■ b. Revising the section heading; and
■ c. Suspending the section indefinitely.
The revision reads as follows:

§ 385.303 How to Register with FMCSA.

* * * * *

■ 66. Amend § 385.303T by revising the section heading to read as follows:

§ 385.303T How to Register with FMCSA.

* * * * *

■ 67. Amend § 385.305 by:
■ a. Lifting the suspension of the section;
■ b. Revising the section heading; and
■ c. Suspending the section indefinitely.
The revision reads as follows:

§ 385.305 Completing the registration process.

* * * * *

■ 68. Amend § 385.305T by revising the section heading to read as follows:

§ 385.305T Completing the registration process.

* * * * *

■ 69. Amend § 385.306 by revising the section heading to read as follows:

§ 385.306 Consequences of furnishing misleading information or making a false statement.

* * * * *

■ 70. Amend § 385.307 by revising the section heading to read as follows:

§ 385.307 New entrant safety monitoring procedures.

* * * * *

■ 71. Amend § 385.308 by revising the section heading to read as follows:

§ 385.308 Expedited safety audits and compliance reviews of new entrants.

* * * * *

■ 72. Amend § 385.309 by revising the section heading to read as follows:

§ 385.309 Safety audit: Purpose.

* * * * *

■ 73. Amend § 385.311 by revising the section heading to read as follows:

§ 385.311 Safety audit: Scope.

* * * * *

■ 74. Amend § 385.313 by revising the section heading to read as follows:

§ 385.313 Safety audit: Auditor.

* * * * *

■ 75. Amend § 385.315 by revising the section heading to read as follows:

§ 385.315 Safety audit: Location.

* * * * *

■ 76. Amend § 385.317 by revising the section heading to read as follows:

§ 385.317 Safety audit: Safety fitness determination.

* * * * *

■ 77. Amend § 385.319 by revising the section heading to read as follows:

§ 385.319 Safety audit: Completion.

* * * * *

■ 78. Amend § 385.321 by revising the section heading to read as follows:

§ 385.321 Safety audit: Failure.

* * * * *

■ 79. Amend § 385.323 by revising the section heading to read as follows:

§ 385.323 Safety audit: Extensions for corrective action.

* * * * *

■ 80. Amend § 385.325 by revising the section heading to read as follows:

§ 385.325 Safety audit: Outcomes of a corrective action notice.

* * * * *

■ 81. Amend § 385.327 by revising the section heading to read as follows:

§ 385.327 Safety audit: Administrative review.

* * * * *

■ 82. Amend § 385.329 by:
■ a. Lifting the suspension of the section;
■ b. Revising the section heading; and
■ c. Suspending the section indefinitely.
The revision reads as follows:

§ 385.329 Re-application.

* * * * *

■ 83. Amend § 385.329T by revising the section heading to read as follows:

§ 385.329T Re-application.

* * * * *

■ 84. Amend § 385.331 by revising the section heading to read as follows:

§ 385.331 New entrant violation of out-of-service order.

* * * * *

■ 85. Amend § 385.333 by revising the section heading to read as follows:

§ 385.333 Conclusion of 18-month safety monitoring period.

* * * * *

■ 86. Amend § 385.335 by revising the section heading to read as follows:

§ 385.335 Compliance review in lieu of safety audit.

* * * * *

■ 87. Amend § 385.337 by revising the section heading to read as follows:

§ 385.337 New entrant refusal to permit safety audit.

* * * * *

■ 88. Amend § 385.401 by revising the section heading to read as follows:

§ 385.401 Hazardous materials safety permits: Purpose and scope.

* * * * *

■ 89. Amend § 385.402 by revising the section heading to read as follows:

§ 385.402 Hazardous materials safety permits: Definitions.

* * * * *

■ 90. Amend § 385.403 by revising the section heading to read as follows:

§ 385.403 Prohibited transportation without safety permit.

* * * * *

■ 91. Amend § 385.405 by:
■ a. Lifting the suspension of the section;
■ b. Revising the section heading; and
■ c. Suspending the section indefinitely.

The revision reads as follows:

§ 385.405 Application for safety permit.

* * * * *

■ 92. Amend § 385.405T by revising the section heading to read as follows:

§ 385.405T Application for safety permit.

* * * * *

■ 93. Amend § 385.407 by revising the section heading and revising and republishing paragraph (a)(2) to read as follows:

§ 385.407 Requirements for a safety permit.

(a) * * *

(2) FMCSA will not issue a safety permit to a motor carrier that:

(i) Does not certify that it has a satisfactory security program as required in § 385.407(b);

(ii) Has a crash rate in the top 30 percent of the national average as indicated in the FMCSA Motor Carrier Management Information System (MCMIS);

(iii) Has a driver, vehicle, hazardous materials, or total out-of-service rate in the top 30 percent of the national average as indicated in the MCMIS; or

(iv) Does not have the minimum financial responsibility required by § 387.9 of this chapter or an applicable State requirement.

* * * * *

■ 94. Amend § 385.409 by:
■ a. Lifting the suspension of the section;
■ b. Revising the section heading;
■ c. Revising and republishing paragraph (a); and
■ d. Suspending the section indefinitely.

The revision reads as follows:

§ 385.409 Temporary safety permit.

(a) If a motor carrier does not meet the criteria of § 385.407(a), FMCSA may issue it a temporary safety permit. To obtain a temporary safety permit, a motor carrier must certify on Form MCSA–1, the URS online application, that it is operating in full compliance with the HMRs, with the FMCSRs, and/or comparable State regulations, whichever is applicable; and with the minimum financial responsibility requirements in part 387 of this subchapter or in State regulations, whichever is applicable.

* * * * *

■ 95. Amend § 385.409T by revising the section heading and revising and republishing paragraph (a) to read as follows:

§ 385.409T Temporary safety permit.

(a) If a motor carrier does not meet the criteria in § 385.407(a), FMCSA may issue it a temporary safety permit. To obtain a temporary safety permit a motor carrier must certify on Form MCS–150B that it is operating in full compliance with the HMRs; with the FMCSRs, and/or comparable State regulations, whichever is applicable; and with the minimum financial responsibility requirements in part 387 of this chapter or in State regulations, whichever is applicable.

* * * * *

■ 96. Revise § 385.411 to read as follows:

§ 385.411 State-issued safety permit.

A motor carrier must comply with the requirements of this subpart even if it has a State-issued safety permit. However, if FMCSA is able to verify that a motor carrier has a safety permit issued by a State under a program that FMCSA has determined to be equivalent to the provisions of this subpart, FMCSA will immediately issue a safety permit to the motor carrier upon receipt of an application in accordance with § 385.405T, without further inspection or investigation.

■ 97. Revise § 385.413 to read as follows:

§ 385.413 Proposed safety rating less than Satisfactory.

(a) If a motor carrier receives a proposed safety rating that is less than Satisfactory and does not already have a safety permit, it will not be issued a safety permit (including a temporary safety permit) unless and until a Satisfactory safety rating is issued to the motor carrier.

(b) If a motor carrier receives a proposed safety rating that is less than Satisfactory and holds a safety permit (including a temporary safety permit), the safety permit will be subject to revocation or suspension (see § 385.421).

■ 98. Amend § 385.415 by revising the section heading to read as follows:

§ 385.415 Operational requirements for the transportation of a hazardous material for which a permit is required.

* * * * *

■ 99. Amend § 385.417 by revising the section heading to read as follows:

§ 385.417 Availability of motor carrier's safety permit number.

* * * * *

■ 100. Amend § 385.419 by:
■ a. Lifting the suspension of the section;
■ b. Revising the section heading; and
■ c. Suspending the section indefinitely.

The revision reads as follows:

§ 385.419 Effective period of safety permit.

* * * * *

■ 101. Amend § 385.419T by revising the section heading to read as follows:

§ 385.419T Effective period of safety permit.

* * * * *

■ 102. Amend § 385.421 by:
■ a. Lifting the suspension of the section;
■ b. Revising the section heading; and
■ c. Suspending the section indefinitely.

The revision reads as follows:

§ 385.421 Revocation or suspension of safety permit.

* * * * *

■ 103. Amend § 385.421T by revising the section heading to read as follows:

§ 385.421T Revocation or suspension of safety permit.

* * * * *

■ 104. Amend § 385.423 by revising the section heading to read as follows:

§ 385.423 Administrative review of a denial, suspension, or revocation of a safety permit.

* * * * *

Appendix B to Part 385 [Amended]

■ 105. Amend Appendix B in section III.B. by removing the words ''you receive'' wherever it appears and adding in its place the words ''receipt of''.

PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

■ 106. The authority citation for part 387 continues to read as follows:

Authority: 49 U.S.C. 13101, 13301, 13906, 13908, 14701, 31138, 31139; sec. 204(a), Pub. L. 104–88, 109 Stat. 803, 941; and 49 CFR 1.87.

■ 107. Amend § 387.307 by revising and republishing paragraphs (e)(5) and (6) to read as follows:

§ 387.307 Property broker surety bond or trust fund.

* * * * *

(e) * * *

(5) Upon notification by the surety company or financial institution in accordance with paragraphs (e)(1) through (4) of this section, FMCSA will provide written notice to the broker that its operating authority registration issued pursuant to part 365 of this chapter will be suspended within 7 business days of service of the notice unless the broker provides written evidence to FMCSA that the notification was sent in error, the surety bond or trust fund has been restored to the $75,000 amount required by this section, or the pending claims have been satisfied without the use of surety bond or trust fund assets. FMCSA will consider such evidence and provide written notice to the broker of its determination.

(6) If the broker fails to respond to the notice within 7 business days of service of the notice, FMCSA will enter a suspension of the broker's authority and provide written notice to the broker that the suspension is in effect. A broker whose authority has been suspended may request that FMCSA lift the suspension by providing written evidence that the notification was sent in error; the surety bond or trust fund has been restored to the $75,000 amount required by this section; or the pending claims have been satisfied without the use of surety bond or trust fund assets. FMCSA will consider such evidence and provide written notice to the broker of its determination.

* * * * *

PART 389—RULEMAKING PROCEDURES—FEDERAL MOTOR CARRIER SAFETY REGULATIONS

■ 108. The authority citation for part 389 continues to read as follows:

Authority: 49 U.S.C. 113, 501 *et seq.,* subchapters I and III of chapter 311, chapter 313, and 31502; sec. 5204 of Pub. L. 114–94, 129 Stat. 1312, 1536; 42 U.S.C. 4917; and 49 CFR 1.87.

§ 389.13 [Amended]

■ 109. Amend § 389.13 by removing the last sentence of paragraph (c).

■ 110. Add § 389.41 to subpart B to read as follows:

§ 389.41 Severability.

If any provision of a rule issued under this part is held invalid, the remaining provisions are not affected unless specifically stated otherwise in the rule.

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

■ 111. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. 113, 504, 508, 31132, 31133, 31134, 31136, 31137, 31144, 31149, 31151, 31502; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; secs. 212 and 217, Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 229, Pub. L. 106–159 (as added and transferred by sec. 4115 and amended by secs. 4130–4132, Pub. L. 109–59, 119 Stat. 1144, 1726, 1743, 1744), 113 Stat. 1748, 1773; sec. 4136, Pub. L. 109–59, 119 Stat. 1144, 1745; secs. 32101(d) and 32934, Pub. L. 112–141, 126 Stat. 405, 778, 830; sec. 2, Pub. L. 113–125, 128 Stat. 1388; secs. 5403, 5518, and 5524, Pub. L. 114–94, 129 Stat. 1312, 1548, 1558, 1560; sec. 2, Pub. L. 115–105, 131 Stat. 2263; and 49 CFR 1.81, 1.81a, 1.87.

■ 112. Amend § 390.27 by revising in the table the entry for ''Midwestern'' to read as follows:

§ 390.27 Locations of motor carrier safety service centers.

Service center	Territory included	Location of office
*	*	*
Midwestern	Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio, Wisconsin.	600 Holiday Plaza Drive, Suite 240, Matteson, Illinois 60443.
*	*	*

* * * * *

■ 113. Amend § 390.40 by:

■ a. Lifting the suspension of the section;

■ b. Revising the section heading; and

■ c. Suspending the section indefinitely.

The revision reads as follows:

§ 390.40 Intermodal equipment providers.

* * * * *

■ 114. Amend § 390.40T by revising the section heading to read as follows:

§ 390.40T Intermodal equipment providers.

* * * * *

■ 115. Amend § 390.42 by revising the section heading to read as follows:

§ 390.42 Drivers and motor carriers operating intermodal equipment.

* * * * *

■ 116. Amend § 390.44 by revising the section heading to read as follows:

§ 390.44 Correcting the safety record of a motor carrier or an intermodal equipment provider.

* * * * *

■ 117. Amend § 390.46 by revising the section heading to read as follows:

§ 390.46 Preemption of State and local laws and regulations on the inspection, repair, and maintenance of intermodal equipment.

* * * * *

■ 118. Revise § 390.125 to read as follows:

§ 390.125 Qualified VA examiner certification training.

A qualified VA examiner applying for certification under §§ 390.123 through 390.135 must complete training developed and provided by FMCSA through the National Registry of Certified Medical Examiners system.

■ 119. Revise § 390.127 to read as follows:

§ 390.127 Qualified VA examiner certification testing.

To receive medical examiner certification from FMCSA under §§ 390.123 through 390.135, a qualified VA examiner must pass the medical examiner certification test developed and provided by FMCSA through the National Registry of Certified Medical Examiners system.

PART 391—QUALIFICATIONS OF DRIVERS AND LONGER COMBINATION VEHICLE (LCV) DRIVER INSTRUCTORS

■ 120. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. 504, 508, 31133, 31136, 31149, 31502; sec. 4007(b), Pub. L. 102–240, 105 Stat. 1914, 2152; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 215, Pub. L. 106–159, 113 Stat. 1748, 1767; sec. 32934, Pub. L. 112–141, 126 Stat. 405, 830; secs. 5403 and 5524, Pub. L. 114–94, 129 Stat. 1312, 1548, 1560; sec. 2, Pub. L. 115–105, 131 Stat. 2263; and 49 CFR 1.87.

§ 391.45 [Amended]

■ 121. Amend § 391.45 by removing the word ''intra-city'' wherever it appears and adding in its place the word ''intracity''.

■ 122. Amend § 391.49 by revising paragraphs (d)(3)(i)(B) and (d)(3)(ii)(C) to read as follows:

§ 391.49 Alternative physical qualification standards for the loss or impairment of limbs.

* * * * *

(d) * * *

(3) * * *

(i) * * *

(B) A statement by the examiner that the applicant is capable of demonstrating precision prehension (*e.g.,* grasping and manipulating knobs and switches using the fingers/thumb) and power grasp prehension (*e.g.,* grasping, holding, and maneuvering the steering wheel using a hand) with each hand separately. Prior to applying for an SPE certificate, an applicant with loss of a hand or arm must be fitted and proficient with a proper prosthesis that enables the applicant to demonstrate precision prehension and power grasp prehension with each hand separately. This requirement does not apply to an individual who was granted a waiver, absent a prosthetic device, prior to January 6, 1986, the effective date of the requirement.

(ii) * * *

(C) A statement by the examiner that the applicant is capable of demonstrating precision prehension (*e.g.,* grasping and manipulating knobs and switches using the fingers/thumb) and power grasp prehension (*e.g.,* grasping, holding, and maneuvering the steering wheel using a hand) with each hand separately. Prior to applying for an SPE certificate, an applicant with upper limb impairment must be fitted and proficient with a proper prosthesis or orthotic device, if the applicant is not capable of demonstrating precision prehension and power grasp prehension with each hand separately without a prosthesis or orthotic device. This requirement does not apply to an individual who was granted a waiver, absent an orthotic device, prior to January 6, 1986, the effective date of the requirement.

* * * * *

■ 123. Amend § 391.62 by revising the section heading to read as follows:

§ 391.62 Limited exemptions for intracity zone drivers.

* * * * *

PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

■ 124. The authority citation for part 393 continues to read as follows:

Authority: 49 U.S.C. 31136, 31151, 31502; sec. 1041(b), Pub. L. 102–240, 105 Stat. 1914, 1993; secs. 5301 and 5524, Pub. L. 114–94, 129 Stat. 1312, 1543, 1560; and 49 CFR 1.87.

■ 125. Amend § 393.5 by revising the definition of ''Longwood'' to read as follows:

§ 393.5 Definitions.

* * * * *

Longwood. All logs, including utility poles, that are not shortwood, *i.e.,* are over 4.9 m (16 feet) long. Such logs are usually described as long logs or treelength.

* * * * *

■ 126. Amend § 393.100 by revising the section heading to read as follows:

§ 393.100 Applicability and general requirements of cargo securement standards.

* * * * *

■ 127. Amend § 393.102 by revising the section heading to read as follows:

§ 393.102 Minimum performance criteria for cargo securement devices and systems.

* * * * *

■ 128. Amend § 393.104 by revising the section heading to read as follows:

§ 393.104 Standards for cargo securement devices and systems.

* * * * *

■ 129. Amend § 393.106 by revising the section heading to read as follows:

§ 393.106 General requirements for securing articles of cargo.

* * * * *

■ 130. Amend § 393.108 by revising the section heading to read as follows:

§ 393.108 Determining the working load limit of a tiedown or the load restraining value of a friction mat.

* * * * *

■ 131. Amend § 393.110 by revising the section heading to read as follows:

§ 393.110 Additional requirements for determining the minimum number of tiedowns.

* * * * *

■ 132. Amend § 393.112 by revising the section heading to read as follows:

§ 393.112 Adjustability of tiedowns.

* * * * *

■ 133. Amend § 393.114 by revising the section heading to read as follows:

§ 393.114 Requirements for front end structures used as part of a cargo securement system.

* * * * *

■ 134. Amend § 393.116 by revising the section heading to read as follows:

§ 393.116 Specific securement requirements for logs.

* * * * *

■ 135. Amend § 393.118 by revising the section heading to read as follows:

§ 393.118 Specific securement requirements for dressed lumber and similar building products.

* * * * *

■ 136. Amend § 393.120 by revising the section heading to read as follows:

§ 393.120 Specific securement requirements for metal coils.

* * * * *

■ 137. Amend § 393.122 by revising the section heading to read as follows:

§ 393.122 Specific securement requirements for paper rolls.

* * * * *

■ 138. Amend § 393.124 by revising the section heading to read as follows:

§ 393.124 Specific securement requirements for concrete pipe.

* * * * *

■ 139. Amend § 393.126 by revising the section heading to read as follows:

§ 393.126 Specific securement requirements for intermodal containers.

* * * * *

■ 140. Amend § 393.128 by revising the section heading to read as follows:

§ 393.128 Specific securement requirements for automobiles, light trucks, and vans.

* * * * *

■ 141. Amend § 393.130 by revising the section heading to read as follows:

§ 393.130 Specific securement requirements for heavy vehicles, equipment, and machinery.

* * * * *

■ 142. Amend § 393.132 by revising the section heading to read as follows:

§ 393.132 Specific securement requirements for flattened or crushed vehicles.

* * * * *

■ 143. Amend § 393.134 by revising the section heading to read as follows:

§ 393.134 Specific securement requirements for roll-on/roll-off and hook lift containers.

* * * * *

■ 144. Amend § 393.136 by revising the section heading to read as follows:

§ 393.136 Specific securement requirements for large boulders.

* * * * *

PART 395—HOURS OF SERVICE OF DRIVERS

■ 145. The authority citation for part 395 continues to read as follows:

Authority: 49 U.S.C. 504, 21104(e), 31133, 31136, 31137, 31502; sec. 113, Pub. L. 103–311, 108 Stat. 1673, 1676; sec. 229, Pub. L. 106–159 (as added and transferred by sec. 4115 and amended by secs. 4130–4132, Pub. L. 109–59, 119 Stat. 1144, 1726, 1743, 1744), 113 Stat. 1748, 1773; sec. 4133, Pub. L. 109–59, 119 Stat. 1144, 1744; sec. 32934, Pub. L. 112–141, 126 Stat. 405, 830; sec. 5206(b), Pub. L. 114–94, 129 Stat. 1312, 1537; and 49 CFR 1.87.

■ 146. Amend § 395.1 by revising and republishing paragraph (d)(2) to read as follows.

§ 395.1 Scope of rules in this part.

* * * * *

(d) * * *

(2) In the case of specially trained drivers of commercial motor vehicles that are specially constructed to service oil wells, on-duty time shall not include waiting time at a natural gas or oil well site. Such waiting time shall be recorded as ''off duty'' for purposes of § 395.8, with remarks or annotations to indicate the specific off-duty periods that are waiting time, or on a separate ''waiting time'' line on the record of duty status to show that off-duty time is also waiting time. Waiting time shall not be included in calculating the 14-hour period in § 395.3(a)(2). Specially trained drivers of such commercial motor vehicles are not eligible to use the provisions of paragraph (e)(1) of this section.

* * * * *

§ 395.2 [Amended]

■ 147. Amend § 395.2 by removing the definition of ''Automatic on-board recording device''.

■ 148. Amend § 395.8 by revising paragraphs (a)(1) and (e)(2) and (3) to read as follows:

§ 395.8 Driver's record of duty status.

(a) (1) Except for a private motor carrier of passengers (nonbusiness), as defined in § 390.5 of this subchapter, a motor carrier subject to the requirements of this part must require each driver used by the motor carrier to record the driver's duty status for each 24-hour period using the method prescribed in paragraphs (a)(1)(i) through (iii) of this section, as applicable.

(i) Subject to paragraph (a)(1)(ii) of this section, a motor carrier operating commercial motor vehicles must install and require each of its drivers to use an ELD to record the driver's duty status in accordance with subpart B of this part no later than December 18, 2017.

(ii)(A) A motor carrier may require a driver to record the driver's duty status manually in accordance with this section, rather than require the use of an ELD, if the driver is operating a commercial motor vehicle:

(*1*) In a manner requiring completion of a record of duty status on not more than 8 days within any 30-day period;

(*2*) In a driveaway-towaway operation in which the vehicle being driven is part of the shipment being delivered;

(*3*) In a driveaway-towaway operation in which the vehicle being transported is a motor home or a recreation vehicle trailer; or

(*4*) That was manufactured before model year 2000, as reflected in the vehicle identification number as shown on the vehicle's registration.

(B) The record of duty status must be recorded in duplicate for each 24-hour period for which recording is required. The duty status shall be recorded on a specified grid, as shown in paragraph (g) of this section. The grid and the requirements of paragraph (d) of this section may be combined with any company form.

(iii) Subject to paragraphs (a)(1)(i) and (ii) of this section, until December 18, 2017, a motor carrier operating commercial motor vehicles shall require each of its drivers to record the driver's record of duty status:

(A) Using an ELD that meets the requirements of subpart B of this part; or

(B) Manually, recorded on a specified grid as shown in paragraph (g) of this section. The grid and the requirements of paragraph (d) of this section may be combined with any company form. The record of duty status must be recorded in duplicate for each 24-hour period for which recording is required.

* * * * *

(e) * * *

(2) No driver or motor carrier may disable, deactivate, disengage, jam, or otherwise block or degrade a signal transmission or reception, or reengineer, reprogram, or otherwise tamper with an ELD so that the device does not accurately record and retain required data.

(3) No driver or motor carrier may permit or require another person to disable, deactivate, disengage, jam, or otherwise block or degrade a signal transmission or reception, or reengineer, reprogram, or otherwise tamper with an ELD so that the device does not accurately record and retain required data.

* * * * *

§ 395.13 [Amended]

■ 149. Amend § 395.13 in paragraph (b)(2) by removing the words ''or § 395.15 of this part''.

§ 395.15 [Removed and Reserved]

■ 150. Remove and reserve § 395.15.

PART 397—TRANSPORTATION OF HAZARDOUS MATERIALS; DRIVING AND PARKING RULES

■ 151. The authority citation for part 397 continues to read as follows:

Authority: 49 U.S.C. 322; 49 CFR 1.87. Subpart A also issued under 49 U.S.C. 5103, 31136, 31502, and 49 CFR 1.97. Subparts C, D, and E also issued under 49 U.S.C. 5112, 5125.

§ 397.65 [Amended]

■ 152. Amend § 397.65 in paragraph (s) of the definition of ''Commerce'', by removing the words ''subparagraph (a)'' and adding in their place the words ''paragraph (1) of this definition''.

Issued under authority delegated in 49 CFR 1.87.

Vincent G. White,

Deputy Administrator.

[FR Doc. 2024–25514 Filed 11–15–24; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 140818679–5356–02; RTID 0648–XE462]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Reopening of the Red Snapper Recreational For-Hire Fishing Season in the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; reopening.

SUMMARY: NMFS is reopening the recreational fishing season for the Federal charter vessel/headboat (for-hire) component for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf) through this temporary rule. The most recent landings data for the red snapper for-hire component in the Gulf indicates the component annual catch target (ACT) for the 2024 fishing year has not yet been reached. Therefore, the red snapper recreational for-hire component in the Gulf EEZ will reopen to allow harvest of the remaining for-hire component ACT. NMFS intends this action to increase benefits to for-hire fishermen while protecting the Gulf red snapper resource by continuing to constrain harvest to the component quota.

DATES: This temporary rule is effective from 12:01 a.m., local time, November 18, 2024, through 12:01 a.m., local time, on January 1, 2025.

FOR FURTHER INFORMATION CONTACT: Frank Helies, NMFS Southeast Regional Office, telephone: 727–551–5719, email: *frank.helies@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery, which includes red snapper, is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council, approved by the Secretary of Commerce, and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The final rule implementing Amendment 40 to the FMP established two components within the recreational sector fishing for Gulf red snapper: the private angling component and the Federal for-hire component (80 FR 22422, April 22, 2015). Amendment 40 also allocated the red snapper recreational annual catch limit (ACL; recreational quota) between the components and established separate seasonal closures for the two components. The Federal for-hire component's red snapper ACT is 9 percent below the for-hire component quota (87 FR 74014, December 2, 2022; 50 CFR 622.41(q)(2)(iii)(B)).

The red snapper for-hire component seasonal closure is projected using the component's ACT to reduce the likelihood of the harvest exceeding the component quota and the total recreational quota. The Federal for-hire component ACT for red snapper in the Gulf EEZ is 3,076,322 pounds (lb)(1,395,396 kilograms (kg)), round weight (50 CFR 622.41(q)(2)(iii)(B)).

NMFS previously determined that the 2024 Federal Gulf red snapper for-hire fishing season would be 88 days based on when landings were expected to reach the component ACT. NMFS made this determination based on catch rates from the 2023 fishing year. For details about the projection for 2024, see *https://www.fisheries.noaa.gov/southeast/sustainable-fisheries/gulf-mexico-recreational-red-snapper-management.* Based on this projection, NMFS announced in the **Federal Register** that the 2024 recreational season for the Federal for-hire component would begin at 12:01 a.m., local time, on June 1, 2024, and close at 12:01 a.m., local time, on August 28, 2024 (89 FR 42815, May 16, 2024).

However, the most recent landings data for the Gulf red snapper for-hire component indicate that approximately 882,612 lb (400,346 kg), round weight, of the for-hire component ACT has not been harvested. NMFS projects that the remaining ACT will allow for harvest through the remainder of the current 2024 fishing year.

Therefore, in accordance with 50 CFR 622.8(c), NMFS reopens the Gulf red snapper Federal for-hire component for remainder of the 2024 fishing year to allow for harvest of the component ACT. The recreational season for the Federal for-hire component will reopen at 12:01 a.m., local time, November 18, 2024, and close at 12:01 a.m., local time, on January 1, 2025. When the for-hire component closes again on January 1, 2025, the bag and possession limits for red snapper for Federal for-hire vessels are zero. When the Federal for-hire component is closed, these bag and possession limits apply in the Gulf on board a vessel for which a valid Federal for-hire permit for Gulf reef fish has been issued, without regard to where such species were harvested, *i.e.,* in state or Federal waters. In addition, a person aboard a vessel that has been issued a charter vessel/headboat permit for Gulf reef fish any time during the fishing year may not harvest or possess red snapper in or from the Gulf EEZ when the Federal charter vessel/headboat component is closed.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is taken under 50 CFR 622.8(c), which was issued pursuant to section 304(b) of the Magnuson-Stevens Act, and is exempt from review under Executive Order 12866, and other applicable laws.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment is unnecessary and contrary to the public interest. Such procedures are unnecessary because the regulation at 50 CFR 622.8(c) has already been subject to notice and comment, and all that remains is to notify the public that additional harvest is available under the established Federal for-hire component ACT, and therefore, the Federal for-hire component for Gulf red snapper will reopen. Such procedures are contrary to the public interest because of need to immediately implement this action to allow persons on board Federal for-hire vessels the opportunity to harvest the remainder of the Federal for-hire component ACT. Prior notice and opportunity for public comment would delay the re-opening and reduce the number available fishing days.

For the aforementioned reasons, there is also good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 13, 2024.

Karen H. Abrams,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024–26828 Filed 11–13–24; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 230316–0077]

RTID 0648–XE470

Fisheries of the Northeastern United States; Atlantic Herring Fishery; 2024 Management Area 1A Possession Limit Adjustment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; possession limit adjustment.

SUMMARY: NMFS is implementing a 2,000-lb (907.2-kg) possession limit for Atlantic herring for Management Area 1A. This is required because NMFS projects that herring catch from Area 1A will reach 92 percent of the Area's sub-annual catch limit before the end of the fishing year. This action is intended to prevent overharvest of herring in Area 1A, which would result in additional catch limit reductions in a subsequent year.

DATES: Effective 0001 hours (hr) local time, November 14, 2024, through December 31, 2024.

FOR FURTHER INFORMATION CONTACT: Colette Tweeddale, Fishery Management Specialist, 978–281–9335.

SUPPLEMENTARY INFORMATION: The Regional Administrator of the Greater Atlantic Regional Office monitors Atlantic herring fishery catch in each Management Area based on vessel and dealer reports, state data, and other available information. Regulations at 50 CFR 648.201(a)(1)(i)(A) require implementation of a 2,000-lb (907.2-kg) possession limit for herring for Area 1A beginning on the date that catch is projected to reach 92 percent of the sub-annual catch limit (ACL) for that area. The Magnuson-Stevens Fishery Conservation and Management Act provides authority to implement the possession limit only to the Secretary of Commerce, which has been delegated to the Regional Administrator.

Based on vessel reports, dealer reports, and other available information the Regional Administrator projects that the herring fleet will have caught 92 percent of the Area 1A sub-ACL by November 13, 2024. Therefore, effective 0001 hr local time November 14, 2024, through December 31, 2024, a person may not attempt or do any of the following: Fish for; possess; transfer; purchase; receive; land; or sell more than 2,000 lb of herring per trip or more than once per calendar day in or from Area 1A.

Vessels that enter port before 0001 hr local time on November 14, 2024, may land and sell more than 2,000 lb (907.2 kg) of herring from Area 1A from that trip, provided that catch is landed in accordance with state management measures. Vessels may transit or land in Area 1A with more than 2,000 lb (907.2 kg) of herring on board, provided that: The herring were caught in an area not subject to a 2,000-lb (907.2-kg) limit; all fishing gear is stowed and not available for immediate use; and the vessel is issued a permit appropriate to the amount of herring on board and the area where the herring was harvested.

Also effective 0001 hr local time, November 14, 2024, through 2400 hr local time, December 31, federally permitted dealers may not attempt or do any of the following: Purchase; receive; possess; have custody or control of; sell; barter; trade; or transfer more than 2,000 lb (907.2 kg) of herring per trip or calendar day from Area 1A, unless it is from a vessel that enters port before 0001 hr local time on November 14, 2024, and catch is landed in accordance with state management measures.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

NMFS finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to waive prior notice and the opportunity for public comment because it is unnecessary, contrary to the public interest, and impracticable. Ample prior notice and opportunity for public comment has been provided for the required implementation of this action. The requirement to implement this possession limit was developed by the New England Fishery Management Council using public meetings that invited public comment on the measures when they were developed and considered along with alternatives. Further, the regulations requiring implementation of this possession limit also were subject to public notice and opportunity to comment, when they were first adopted in 2014. Herring fishing industry participants monitor catch closely and anticipate potential possession limit adjustments as catch totals approach Area sub-ACLs. The regulation is not discretionary and is designed for implementation as quickly as possible to prevent catch from exceeding limits designed to prevent overfishing while allowing the fishery to achieve optimum yield.

The 2024 herring fishing year began on January 1, 2024, and Management Area 1A opened to fishing on June 1, 2024. Data indicating that the herring fleet will have landed at least 92 percent of the 2024 sub-ACL allocated to Area 1A only recently became available. High-volume catch and landings in this fishery can increase total catch relative to the sub-ACL quickly, especially in this fishing year where annual catch limits are unusually low. If implementation of this possession limit adjustment is delayed to solicit prior public comment, the 2024 sub-ACL for Area 1A will likely be exceeded; thereby undermining the conservation objectives of the Herring Fishery Management Plan (FMP). If sub-ACLs are exceeded, the excess must be deducted from a future sub-ACL and would reduce future fishing opportunities. The public expects these actions to occur in a timely way consistent with the FMP's objectives. For the reasons stated above, NMFS also finds good cause to waive the 30-day delayed effectiveness in accordance with 5 U.S.C. 553(d)(3).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 13, 2024.

Karen H. Abrams,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024–26816 Filed 11–13–24; 4:15 pm]

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Proposed Rules

Federal Register
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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 77

[Docket No. FAA–2024–2574; Notice No. 25–01]

RIN 2120–AK77

Requirements To File Notice for Meteorological Towers and Other Wind Energy Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA is proposing to amend requirements applicable to meteorological towers and permanent wind energy systems. This rule would require any person that owns (sponsor) any proposed, altered, or existing meteorological tower to file notice with the Federal Aviation Administration (FAA) if the highest point of the structure is at least 50 feet above ground level (AGL) up to and including 200 feet AGL at its site. The FAA is also proposing marking requirements for meteorological towers constructed or altered after the effective date of a final rule if the highest point of the structure is at least 50 feet AGL up to and including 200 feet AGL at its site. Additionally, the FAA proposes making certain pertinent information about any meteorological tower with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site available on the FAA's official database. The FAA expects these changes to lower the collision risk for aircraft during low-altitude operations. Moreover, these requirements would partially address two statutory mandates and two National Transportation Safety Board (NTSB) recommendations.

DATES: Send comments on or before January 17, 2025.

ADDRESSES: Send comments identified by docket number FAA–2024–2574 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery 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.
- *Facsimile:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at *https://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to 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.

FOR FURTHER INFORMATION CONTACT: Brian Konie, Airspace Rules and Regulations Team, Air Traffic Organization, AJV–P21, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783; email: *brian.konie@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA further proposes amending the notice requirements for any person that owns (sponsors) a proposed or altered permanent wind energy system. The FAA is also proposing to extend the expiration date of the Determination of No Hazard to Air Navigation for permanent wind energy systems and associated meteorological towers.

The FAA is also proposing to clarify that, except for structures that have received an FAA Determination of No Hazard to Air Navigation prior to the effective date of a final rule or any meteorological tower with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site for which construction is complete prior to the effective date of a final rule, all conditions and limitations of any Determination of No Hazard to Air Navigation are mandatory, which includes marking requirements. Finally, the FAA proposes making several miscellaneous conforming and clarifying amendments.

List of Abbreviations and Acronyms Frequently Used in This Document

AC—Advisory Circular
AGL—Above Ground Level
ATC—Air Traffic Control
AWES—Airborne Wind Energy System
DOE—Department of Energy
FCC—Federal Communications Commission
GPS—Global positioning system
NAAA—National Agricultural Aviation Association
NAS—National Airspace System
NTSB—National Transportation Safety Board
OE/AAA—Obstruction Evaluation/Airport Airspace Analysis
SIR—Special Investigation Report
VOR—Very High Frequency Omnidirectional Range

I. Executive Summary

A. Overview of Proposed Rule

This proposed rule would amend title 14 Code of Federal Regulations (14 CFR) part 77, Safe, Efficient Use, and Preservation of the Navigable Airspace, as it applies to all existing meteorological towers, as well as proposals to construct or alter a meteorological tower, with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site.

The FAA proposes requiring a sponsor [1] proposing to construct or alter a meteorological tower at least 50 feet AGL up to and including 200 feet AGL at its site to file notice under § 77.9 pursuant to § 77.7(b).

This rule would also require sponsors of existing meteorological towers with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site to file notice with the FAA within 90 days of the final rule's effective date pursuant to § 77.9.

Additionally, the FAA proposes making certain pertinent information about any meteorological tower with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site available on the FAA's official database, the Digital Obstacle File (DOF), available at *https://www.faa.gov/air_traffic/flight_info/aeronav/digital_products/dof.* The FAA expects that collecting via the notice

[1] The FAA notes that the word ''Sponsor'' is capitalized in Advisory Circular 70/7460–1. However, for purposes of this rulemaking, the word is lower case.

and sharing information on proposed, altered, and existing meteorological towers in the DOF database will improve situational awareness for pilots conducting low-altitude operations.

In addition to the changes affecting meteorological towers, this proposed rule would also add additional requirements addressing permanent wind energy systems. The FAA needs these changes to properly handle the unique attributes of wind energy systems. The FAA proposes the following changes:

- Require notice of proposed construction or alteration of a permanent wind energy system at least 90 days before the start date of the proposed construction or alteration, or the date an application for a construction permit is filed, whichever is earlier; and,
- Amend the expiration date of the Determination of No Hazard to Air Navigation under § 77.33 for permanent wind energy systems and associated meteorological towers to 36 months after the effective date of the determination.

Finally, this proposed rule would make the following changes, clarifying and codifying current agency practice:

- Add a definition of airborne wind energy system (AWES) to § 77.3 for consistency with the FAA's final notice of policy; [2]
- Add a definition of meteorological towers to § 77.3 for consistency with the FAA's final notice of policy; [3]
- Add a definition of sponsor to § 77.3 to clarify the scope of applicability;
- Add a definition of wind energy system to § 77.3 to clarify the scope of applicability;
- Amend § 77.7 to update the methods available to acquire an approved copy of FAA Form 7460–1, Notice of Proposed Construction or Alteration;
- Revise the heading of § 77.9, ''Construction or alteration requiring notice,'' to ''Notice requirements'' to reflect that existing meteorological towers may need to provide notice to the FAA;
- Redesignate § 77.11 as § 77.10, and amend to identify FAA Form 7460–2, Notice of Actual Construction or Alteration, as the form sponsors use to provide supplemental notice;
- Add § 77.11 to require the sponsor to submit additional information upon request throughout the aeronautical study process, which includes all actions required pre- and post-determination;
- Add § 77.12 to clarify that, except for structures that have received an FAA Determination of No Hazard to Air Navigation prior to the effective date of a final rule or any meteorological tower with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site for which construction is complete prior to the effective date of a final rule, a sponsor must comply with any conditions and limitations contained in a Determination of No Hazard to Air Navigation including marking requirements that would be developed in accordance with the FAA Advisory Circular 70/7460–1, Obstruction Marking and Lighting, for proposed or altered meteorological towers with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site;
- Amend § 77.27 to clarify when an aeronautical study is appropriate;
- Add § 77.32 to clarify how a sponsor may request a modification or deviation from the marking and lighting requirements contained in a determination; and,
- Amend § 77.35 to clarify a sponsor's duty to request an extension of the effective period of the determination when the original Federal Communications Commission (FCC) completion date needs to be extended.

The FAA is proposing to revise references to ''Airport/Facility Directory, Alaska Supplement, or Pacific Chart Supplement'' to ''Chart Supplement U.S., Chart Supplement Alaska, or Chart Supplement Pacific.''

The FAA notes that, as discussed in section IV.D. of this preamble, the FAA is proposing to revise references to ''you'' to refer to the sponsor to make clear to whom ''you'' applies.

The FAA also notes that, as discussed in section IV.D of this preamble, the FAA is proposing to revise references to ''marking and lighting recommendations'' to ''marking and lighting requirements'' for consistency with the changes in § 77.12.

The following table summarizes the substantive changes proposed in this rule.

TABLE 1—SUMMARY OF PROPOSED CHANGES

CFR §	Proposed provision
77.1	Establishes the requirement that all conditions and limitations in the determination are mandatory, including the requirement to mark newly constructed or altered meteorological towers with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site.
77.3	Add definitions for ''airborne wind energy system (AWES),'' ''meteorological tower,'' ''sponsor,'' and ''wind energy system.''
77.5	A sponsor of a meteorological tower in existence before the effective date of a final rule must provide notice consistent with § 77.7(d).
	A sponsor proposing any construction or alteration of a meteorological tower with the highest point of the structure at least 50 feet up to and including 200 feet AGL at its site must provide adequate notice to the FAA of that construction or alteration pursuant to § 77.7(b).
77.7	Require a sponsor to file notice at least 45 days before the start of construction or alteration or the date of application for a construction permit for any new meteorological tower, whichever is earlier.
	A sponsor must submit FAA Form 7460–1 for any proposed construction or alteration of a permanent wind energy system and associated meteorological towers at least 90 days before the start date of the proposed construction or alteration, or the date an application for a construction permit is filed, whichever is earlier.
	A sponsor of a meteorological tower that exists prior to the effective date of a final rule with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site must submit FAA Form 7460–1 within 90 days of the effective date of a final rule.
77.9	A sponsor must file notice of any construction or alteration of a meteorological tower with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site.

[2] Airborne Wind Energy Systems (AWES) Policy Statement, 87 FR 78849 (Dec. 23, 2022).

[3] Id.

TABLE 1—SUMMARY OF PROPOSED CHANGES—Continued

CFR §	Proposed provision
	If a sponsor has an existing meteorological tower with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site prior to the effective date of a final rule, the sponsor must file notice consistent with § 77.7(d).
77.10	Makes clear that a sponsor must file supplemental notice if otherwise requested by the FAA.
77.11	If the FAA requests additional information during any part of the aeronautical study process, pre- or post-any determination, the sponsor must provide that information within 30 days.
77.12	Except for structures that have received an FAA Determination of No Hazard to Air Navigation prior to the effective date of a final rule or any meteorological tower with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site for which construction is complete prior to the effective date of a final rule, sponsors must comply with the conditions and limitations contained in a Determination of No Hazard to Air Navigation. This includes requiring newly constructed or altered meteorological towers with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site to mark the tower.
77.27	The FAA will conduct an aeronautical study when: (1) notice required under § 77.9 has been received, or (2) the FAA determines a study is necessary. All other notices filed outside of these parameters will be screened within the automated OE/AAA system and provided an electronic letter response that indicates that no notice is required for the said proposal or alteration, and thus the FAA has no objections to the proposal.
77.32	In order to request a modification or deviation from the marking and lighting requirements contained in a Determination of No Hazard to Air Navigation, the sponsor must submit FAA Form 7460–1, Notice of Proposed Construction or Alteration.
77.33	Unless extended, revised, or terminated, each Determination of No Hazard to Air Navigation issued under subpart D of part 77 regarding a proposed permanent wind energy system, including an airborne wind energy system, and associated meteorological towers, expires 36 months after the effective date of the determination or on the date the proposed construction or alteration is abandoned, whichever is earlier.

B. Summary of Costs and Benefits

Section 2110 of the FAA Extension, Safety, and Security Act of 2016 (FESSA),[4] as amended by section 576 of the FAA Reauthorization Act of 2018 (FAARA),[5] mandates the FAA to require the marking of ''covered towers'' if they are not included in the database described in section 2110, except for meteorological towers. Section 2110(a)(2) requires that all meteorological towers be marked and included within a database. This proposed rule would include meteorological tower information in a database as well as require compliance with any marking requirements that are conditions and limitations in a Determination of No Hazard to Air Navigation for a proposed or altered meteorological tower. The proposed rule would partially satisfy the mandate concerning meteorological towers without placing undue financial burdens on existing towers and partially address two National Transportation Safety Board (NTSB) recommendations.[6] This proposal also includes additional amendments that would allow the FAA more time to study and determine aeronautical effects and any potential national airspace system (NAS) impacts from permanent wind energy systems and associated meteorological towers.

Section 2110, as amended by section 576 of FAARA, requires the clear marking of towers and their inclusion in a database no later than 18 months after the date of enactment of the FAA Reauthorization Act of 2018 or the date of availability of the database, whichever is later. Section 2110(a)(1)(A) requires that towers be clearly marked consistent with applicable guidance in the advisory circular issued December 4, 2015 (AC 70/7460–1L). Consistent with the direction provided by section 2110, the FAA proposes to add new § 77.12, Conditions and limitations. This proposal would clarify that sponsors that receive a Determination of No Hazard to Air Navigation, except for structures that have received an FAA Determination of No Hazard to Air Navigation prior to the effective date of a final rule or any meteorological tower with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site for which construction is complete prior to the effective date of a final rule must comply with the conditions and limitations therein including, at a minimum, marking requirements for newly constructed or altered meteorological towers with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site. Those conditions and limitations as they relate to marking will be derived from the current version of AC 70/7460–1. Existing meteorological towers at least 50 feet AGL and up to and including 200 feet AGL are required to file notice with the FAA within 90 days of the effective date of a final rule. The FAA will study these notices, and the FAA may issue a part 77 determination.

The primary costs of the proposed rule to industry would be the costs to mark new and altered meteorological towers. The estimated costs to mark each new or altered tower is about $14,300 and includes equipment costs for marker balls and sleeves and installing them to new and altered towers, buying a new pre-painted tower, and dismantling a tower. This estimated cost also includes the cost to provide FAA notifications of both existing and dismantling of out-of-service meteorological towers. The FAA would process notifications of existing and new meteorological towers, including notifications of dismantled out-of-service meteorological towers, at a cost of about $41 per existing notification and about $162 per dismantling notification. The FAA is also proposing to extend the expiration date of the Determination of No Hazard to Air Navigation for permanent wind energy systems and associated meteorological towers. Extending the wind turbine determination period from 18 months to 36 months would result in minimal cost savings to industry and the FAA.

The primary benefit of the proposed rule would be enhanced conspicuity to prevent agricultural pilots from colliding with meteorological towers with the highest point of the structure

[4] Public Law 114–190, sec. 2110; 130 Stat. 623 (Jul. 15, 2016).

[5] Public Law 115–254, sec. 576; 132 Stat. 3391 (Oct. 5, 2018).

[6] NTSB Safety Recommendations A–13–16 and A–13–17 (May 2013).

at least 50 feet AGL up to and including 200 feet AGL at its site.

II. Authority for This Proposed Rulemaking

The FAA's authority to issue rules on aviation safety is found in title 49 of the United States Code (49 U.S.C.). 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 issued under the authority described in 49 U.S.C. 40103(b), which vests the Administrator with broad authority to prescribe regulations to ensure the safety of aircraft and the efficient use of airspace, and 49 U.S.C. 44701(a)(5), which requires the Administrator to promulgate regulations and minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security. This rulemaking is also consistent with: (1) the authority in 49 U.S.C. 44718(a), which directs the Secretary of Transportation to require a person to give adequate public notice of the construction, alteration, establishment, or expansion, or the proposed construction, alteration, establishment, or expansion, of a structure or sanitary landfill in furtherance of safety in air commerce and the efficient use and preservation of the navigable airspace and of airport traffic capacity at public-use airports; (2) section 44718(b), which requires the Secretary to conduct an aeronautical study to decide the extent of any adverse impact on the safe and efficient use of the airspace, facilities, or equipment if the Secretary decides that constructing or altering a structure may result in an obstruction of the navigable airspace or an interference with air navigation facilities and equipment or the navigable airspace; and (3) section 44718(c), which requires that in carrying out laws related to a broadcast application and conducting an aeronautical study related to broadcast towers, the FAA Administrator and the FCC shall take action necessary to coordinate efficiently the receipt and consideration of, and action on, the application and the completion of any associated aeronautical study.

Furthermore, the portions of the proposed rule regarding meteorological towers are authorized by section 2110 of the 2016 FESSA, as amended by section 576 of the 2018 FAARA and section 355 of the FAA Reauthorization Act of 2024 (Pub. L. 118–63), that imposed marking and informational requirements on covered towers, including meteorological towers. The following proposed amendments to part 77 are within the scope of this authority. Publication of this NPRM also satisfies the requirement in section 355 of the FAA Reauthorization Act of 2024 [7] that the FAA publish this notice of proposed rulemaking within one year of the date of enactment of that Act.

III. Background

A. Current Regulations and Practices

Part 77 contains the regulations governing the safe, efficient use, and preservation of the navigable airspace. Sponsors proposing to construct or alter a structure that is more than 200 feet AGL must provide the FAA notice per § 77.9(a). Sponsors must provide notice at least 45 days before the start of construction or alteration or the date an application for a construction permit is filed, whichever is earlier, per § 77.7(b).

After receiving notice, the FAA's Obstruction Evaluation Group (OEG) conducts an initial review to verify the information provided and, if appropriate, enters it into the Obstruction Evaluation/Airport Airspace Analysis (OE/AAA) system as a verified proposed structure.

Currently, the FAA will conduct an aeronautical study when requested by the sponsor of any proposed construction or alteration for which a notice is submitted, or the FAA determines a study is necessary.[8] As part of this study, the FAA determines whether the structure exceeds the heights identified in part 77's obstruction standards. A structure exceeding one or more of the heights described in the obstruction standards is presumed a hazard to air navigation unless an aeronautical study determines otherwise. If the proposed structure is a presumed hazard, the FAA sends the sponsor a notice of preliminary findings (which previously was called a Notice of Presumed Hazard) with 60 days to respond.

Upon receipt of the preliminary findings, the sponsor has the option to move or lower the proposed structure, request further study (which may include a public comment period), terminate the proposal, or request a Determination of Hazard. The FAA and the sponsor may also discuss hazard mitigation strategies, such as reducing the structure's height or adjusting the proposed location, prior to the agency's formal determination. Proper mitigation, if appropriate, may result in a Determination of No Hazard to Air Navigation that contains conditions and limitations (*e.g.,* marking, lighting, or supplemental notice filing constraints). Each Determination of No Hazard to Air Navigation issued under subpart B of part 77 expires 18 months after the effective date of the determination, or on the date the proposed construction or alteration is abandoned, whichever is earlier. If the FAA determines that a structure does not pose a hazard to air navigation, the FAA will recommend marking and lighting in the determination, as appropriate, in accordance with the current AC 70/7460–1 to make the structure more conspicuous for aircraft operators to see and avoid.

A sponsor may request a modification from the marking and lighting recommendations contained in a determination by submitting FAA Form 7460–1, Notice of Proposed Construction or Alteration, to the OEG. A request received after the FAA has issued its determination containing marking and lighting conditions and limitations may require a new marking and lighting study and could result in new requirements. If the FAA issues a modification from the marking or lighting conditions and limitations prior to the implementation of the changes, the sponsor may also be required to notify the FCC. Modifications would be based on whether or not they impact aviation safety.

A sponsor may also request a deviation from the marking and lighting conditions and limitations contained in the determination derived from the standards in AC 70/7460–1. Proposed requests to deviate from current marking and lighting conditions and limitations derived from the standards in AC 70/7460–1 for research and development to introduce new technology or improve current standards are generally submitted by email. The FAA will perform a safety assessment for use in the NAS and may request additional information if needed. If at any time the FAA determines the study has created an unsafe condition, the deviation request may be disapproved. Research and development testing is independent of the aeronautical study process and generally requires a more lengthy analysis period for evaluation by the FAA for aviation safety. When testing is complete and the FAA concludes its review, the sponsor will be notified of the determination. Examples of deviations that may be considered include, but are not limited to, alternative painting schemes, colors/types of lights, basic signals and intensity of lights, night/day lighting combinations, and flash rate.

[7] Public Law 118–63, sec. 355 (May 16, 2024).

[8] 14 CFR 77.27.

B. NTSB Investigations of Meteorological Tower Accidents

The NTSB is an independent U.S. government agency responsible for the investigation of civil transportation accidents.[9] Between 2003 and 2011, the NTSB investigated 3 accidents involving meteorological towers below 200 feet AGL. A summary of the investigated accidents follows:

- *December 15, 2003:* During a personal flight from Yakima, Washington, to Walla Walla, Washington, an Erickson SHA Glasair collided with an unmarked meteorological tower (164 feet AGL) near Vansycle, Oregon. The accident resulted in fatalities to the pilot and passenger.[10]
- *May 19, 2005:* During an aerial application flight, an Air Tractor AT–602 collided with an unmarked meteorological tower (197 feet AGL) erected 15 days before the accident near Ralls, Texas. The accident resulted in a pilot fatality.[11]
- *January 10, 2011:* During an aerial application flight, a Rockwell International S–2R collided with an unmarked meteorological tower (198 feet AGL) near Oakley, California. The accident resulted in a pilot fatality.[12]

In 2011, the NTSB issued Safety Alert (SA) 016.[13] The SA warned operators that ''unmarked towers could interfere with low-flying aircraft operations, including those involving helicopter emergency medical services, law enforcement, animal damage control, fish and wildlife, agriculture, and aerial fire suppression.'' In 2013, the NTSB published a Safety Recommendation letter [14] addressed to the FAA Administrator, containing the following 2 recommendations:

- *A–13–16:* Amend part 77 to require that all meteorological towers [15] are registered, marked, and—where feasible—lighted; and,
- A–13–17: Create and maintain a publicly accessible national database for the required registration of all meteorological towers.

In 2014, the NTSB published a Special Investigation Report (SIR) concerning the safety of agricultural aircraft operations.[16] The SIR focused, in part, on the impact of meteorological towers and guy wires, which are cables designed for the support of towers or other structures, on agricultural aircraft operations and reiterated NTSB recommendations A–13–16 and A–13–17. The NTSB concluded that in some of the accidents, the pilot was not previously aware of, and did not see, the obstacle in time to avoid the collision because the obstacle was not visually conspicuous. The report noted the multiple attention demands for pilots engaged in agricultural operations. For instance, pilots must operate the spray application per the instructions of the particular applied substance while simultaneously maneuvering the aircraft at low altitude. In other cases, the pilot knew about the obstacle, having seen it in a previous pass, a survey flight, or during a previous close call, but nevertheless misjudged the aircraft's distance from, and collided with, the obstacle.

The NTSB concluded that these accidents show that obstacle collision risk management requires a multi-faceted approach. In addition to making meteorological towers more visually conspicuous, the NTSB suggested pre-flight planning that would allow a pilot to learn of any structures in the area of their planned operations to reduce the risk of an obstacle collision. Pilots learn of obstacles from many sources, including local residents, area maps (both paper and electronic) that depict obstacles, and ground surveys. The SIR concluded that additional meteorological tower collisions resulting in loss of life would occur without requiring registration, marking, and the creation of a publicly accessible national meteorological tower database.

C. The 2011 Voluntary Meteorological Tower Marking Policy Statement

On January 5, 2011, in response to concerns from agricultural operators over the safety risk of low-flying operations in remote and rural areas and a November 16, 2010, meeting with representatives from the National Agricultural Aviation Association (NAAA) to discuss safety-specific concerns of the aerial application industry, the FAA published a proposed policy statement that recommended voluntary marking of meteorological towers under 200 feet AGL.[17]

The FAA published the final policy on June 24, 2011,[18] and included voluntary marking guidance in AC 70/7460–1L.[19] The FAA continues to modify its voluntary marking criteria in AC 70/7460–1.

D. State Requirements Related to Marking of Meteorological Towers

In the absence of a nationwide requirement for marking meteorological towers, at least sixteen states adopted meteorological tower marking and notice requirements.[20] As a result of individual state requirements, marking and lighting requirements are inconsistent across states and may conflict with FAA AC 70/7460–1 marking requirements, which Congress mandated the FAA to adopt for marking standards.

For example, Colorado [21] requires that certain towers over 50 feet in height be marked and painted or otherwise constructed to be visible in clean air during daylight hours from a distance of not less than 2,000 feet. Colorado requires towers be painted in equal alternating bands of aviation orange and white, beginning with orange at the top of the tower. Additionally, Colorado also requires the attachment of one marker ball to the top third of each outside guy wire and that guy wires have seven-foot-long safety sleeves at each anchor point that extend from the anchor point along each guy wire attached to the anchor point.

Additional states have similar requirements. Wyoming [22] stipulates that any structure that meets the criteria must be marked in a manner that makes the tower recognizable in clear air during daylight hours from a distance of at least 2,000 feet. South Dakota's law [23] mandates that any meteorological tower of 50 feet or more, including the tower, guy wires, and accessory facilities, located outside the boundaries of a municipality must be marked, painted, flagged, or otherwise constructed to be recognizable in clear air during daylight hours. While some similarities exist between these requirements, they are not consistent with FAA AC 70/7460–1 and, considering Colorado's

[9] *See* NTSB's Aviation Accidents Database at *https://data.ntsb.gov/carol-main-public/basic-search*.

[10] NTSB accident number SEA04LA027.

[11] NTSB accident number DFW05LA126.

[12] NTSB accident number WPR11LA094.

[13] NTSB SA–016: The Hazards of Unmarked Towers (March 2011, revised September 2018).

[14] NTSB Safety Recommendation A–13–16 and A–13–17 (May 2013).

[15] While the NTSB and others use the terms ''meteorological evaluation tower'' or ''MET'', the FAA decided to use the term ''meteorological tower''. Meteorological tower is interchangeable with either.

[16] NTSB/SIR–14/01.

[17] *Marking Meteorological Evaluation Towers* Proposed revision to Advisory Circular; request for comments, 76 FR 490 (Jan. 5, 2011).

[18] *Marking Meteorological Evaluation Towers* policy statement, 76 FR 36983 (Jun. 24, 2011).

[19] AC 70–7460–1L, effective December 4, 2015.

[20] As of January 2022, the FAA identified 16 states with marking requirements applicable to meteorological towers: California, Colorado, Idaho, Kansas, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, Washington, and Wyoming.

[21] Colorado Revised Statutes 43–10–117.

[22] Wyo. Stat. Ann. § 10–4–305.

[23] SDCL § 50–9–13.

requirements, are also inconsistent across three shared state lines.

In addition to inconsistent marking requirements, state laws for filing notice of existing, new, and dismantled meteorological towers vary across state lines. Only five states require notice of current meteorological towers, only nine require notice of planned construction for new meteorological towers, and only six require notice of dismantled meteorological towers. The notice requirements directed by states are inconsistent with what the FAA proposes to standardize.

In response to the inconsistent state marking standards, the FAA sent the National Association of State Aviation Officials (NASAO) a letter in 2011.[24] The letter reminded the association that the Federal Government occupied the entire field of airspace management and aviation safety, preempting state and local regulation related to the marking and lighting of structures for aviation safety purposes. The FAA is vested with plenary authority to regulate the use of the airspace as necessary to ensure the safety of aircraft and the efficient use of airspace.[25]

E. Statutory Mandates

Section 2110 of FESSA, revised by section 576 of FAARA, requires either the marking of covered towers as defined in section 2110, which includes meteorological towers, consistent with AC 70/7460–1L or their inclusion within a database, except for meteorological towers. Section 2110 requires all meteorological towers be marked and included in a database. Congress also mandated that the database conform to additional provisions to ensure data security and accuracy.

Section 355 of the FAA Reauthorization Act of 2024 requires that the FAA publish an NPRM within one year of the date of enactment of the 2024 Act.

F. Industry Engagement

The NAAA expressed concerns to the FAA regarding the visibility of meteorological towers less than 200 feet AGL not currently subject to notice requirements, stating that these towers are particularly hazardous to pilots of low-flying aircraft in remote and rural areas.[26] The NAAA referenced its 2019 survey [27] and reported that agricultural operators and pilots considered power lines, communication towers, and meteorological towers as the top three occupational hazards. Additionally, 52 percent of the respondents encountered a wind turbine or an unmarked meteorological tower when making aerial applications.

The NAAA continues to urge the FAA to expand tower marking guidance to include all guy wire and freestanding towers more than 50 feet in height. Further, NAAA asked the FAA to require tower marking and lighting, if feasible.

G. The 2022 Airborne Wind Energy Systems Policy Statement

As noted previously, on December 7, 2011, the FAA published the Notification for Airborne Wind Energy Systems (AWES) notice of policy and request for information in the **Federal Register**.[28] The 2011 notice established policy related to airborne wind energy systems. The 2011 notice also stated that given the altitudes in which airborne wind energy systems can operate and their operating characteristics, the FAA concluded that they should be studied and the potential impacts to the navigable airspace must be identified and addressed.

Accordingly, in the 2011 notice the FAA announced that the provision of part 77 will apply to temporary airborne wind energy systems proposals for data collection purposes. At that time, the FAA found that it could apply the provisions of 14 CFR part 77 to these ''structures'' without the need to amend the regulations. The FAA stated that permanent and operational airborne wind energy systems may be addressed in the future, once further evaluations and risk assessments are performed.

To facilitate the timely manner in which airborne wind energy systems proposals were reviewed, the FAA, in the 2011 proposal, requested airborne wind energy systems developers and operators to limit temporary operations to the following:

(1) Airborne operations of airborne wind energy systems should be temporary in nature for testing and data collection purposes only;

(2) Single airborne wind energy system devices only (*e.g.,* no ''farms'' or multiple simultaneous testing);

(3) Airborne wind energy systems should be limited to a single fixed location (*e.g.,* no mobile ground facilities);

(4) Testing is confined to heights at or below 499 feet AGL;

(5) Airborne flight testing of airborne wind energy systems will only occur during daylight hours; and,

(6) Airborne wind energy systems will be made conspicuous to the flying public.

The FAA sought comments on revising its policy regarding the application of 14 CFR part 77 to airborne wind energy systems. In addition, the notice requested information from airborne wind energy system developers and the public related to these systems so that the FAA could comprehensively analyze the airborne wind energy systems and their integration into the NAS.

On December 23, 2022, the FAA published the Airborne Wind Energy (AWES) Policy Statement in the **Federal Register** in response to the 2011 statement.[29] The 2022 policy summarized and discussed the comments received in response to the 2011 notice. In the 2022 policy statement, the FAA amended the policy set forth in the 2011 notice and stated it will consider part 77 applications for all airborne wind energy systems, including permanent and operational systems. Those entities proposing construction of an AWES that exceeds the parameters in § 77.9 (*e.g.,* an airborne wind energy system constructed at more than 200 feet AGL at its site) must file advance notice with the FAA.

III. The Proposed Rule

A. Requirements Related to Meteorological Towers

1. Definition of Meteorological Tower (§ 77.3)

The FAA proposes to define a meteorological tower in § 77.3 as ''a skeletal or pole-type structure, either freestanding or anchored with guy wires, configured with components to measure wind speed and wind direction at different heights above ground level to assess local wind energy resources.'' The proposed definition incorporates skeletal or pole-type structures, common elements of meteorological towers. There are single tower masts, self-supporting antenna towers, guyed telescopic towers, or telescopic un-guyed towers that can rapidly deploy to heights more than 100 feet AGL. There are also stand-alone towers that do not

[24] FAA letter to NASAO (October 27, 2011).

[25] 49 U.S.C. 40103(b) and 44718.

[26] NAAA *Fact Sheet on the Dangerous Effects of Towers to Low-Level Aviators* (January 2020) and NAAA Facts About the Aerial Application Industry (available at *https://www.agaviation.org/industryfacts*).

[27] Per NAAA, 550 operators and 305 pilots responded to the survey, available at *www.agaviation.org.*

[28] *Notification for Airborne Wind Energy Systems (AWES)* notice of policy and request for information, 76 FR 76333 (Dec. 7, 2011).

[29] Airborne wind Energy System (AWES) Policy Statement, 87 FR 78849 (Dec. 23, 2022).

use guy wires, all of which are covered by this definition.

The definition encompasses permanent and temporary meteorological towers, freestanding meteorological towers, and meteorological towers with guy wires due to the see and avoid safety risks they each pose. Under this proposed definition, the FAA would identify where these towers are located, publish the locations in a database, and have them marked where appropriate in an effort to increase safety at lower altitudes. Temporary towers can be erected in a matter of hours, creating an unexpected safety risk for pilots, even for those familiar with the area. The FAA is including meteorological towers with guy wires, which are freestanding structures with a tensioned cable designed to add stability because, depending upon the materials used, the guy wires may be difficult to see in certain atmospheric conditions.

2. Notice Requirements for Proposed or Altered Meteorological Towers With the Highest Point of the Structure at Least 50 Feet AGL Up to and Including 200 Feet AGL at Its Site (§§ 77.7, 77.9(a)(2))

Consistent with current practice, the FAA would require a sponsor of a meteorological tower with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site to file notice pursuant to § 77.7 before the start of construction or alteration or the date of application for a construction permit for any new meteorological tower, whichever is earlier.[30] Specifically, the sponsor would be required to electronically complete and submit FAA Form 7460–1, Notice of Proposed Construction or Alteration, or FAA Form 7460–2, Notice of Actual Construction or Alteration, via the internet at *https://oeaaa.faa.gov.* Except under limited circumstances, a sponsor required to provide notice would be required to submit FAA Form 7460–1 at least 45 days before the start date of the proposed construction or alteration, or the date an application for a construction permit is filed, whichever is earlier.

The FAA proposes to add a new paragraph (a)(2) to § 77.9 to require notice of the construction or alteration of meteorological towers with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site in order to allow for the tower's inclusion within the FAA's publicly available database; additional study of the structure pursuant to part 77; and the marking of those towers.

[30] § 77.7(a) and (b).

The FAA would also add a new § 77.5(d) to make clear that a sponsor proposing any construction or alteration of a meteorological tower with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site must provide adequate notice to the FAA of that construction or alteration pursuant to § 77.7(b).

If the FAA does not receive a notice, it cannot study the structure or include it in the FAA's public (DOF) database.[31] If the FAA does not include in its DOF database a meteorological tower with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site, operators of low-flying aircraft, including agricultural operators or first responders, may not be aware of the locations of the same. This proposal would direct sponsors to file notice and provide detailed information concerning meteorological towers with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site. Filing notice would enable the FAA to provide this information to the public via a publicly available database. Pilots of agricultural and other low-flying aircraft operators (*e.g.,* emergency medical services aircraft, firefighting aircraft, utility patrol and maintenance aircraft, fish and wildlife service aircraft, aerial survey aircraft, and military aircraft) would have the ability to obtain this information for preflight planning purposes pursuant to § 91.103, which requires each pilot in command to become familiar with all available information concerning that flight.

While markings are critical features that assist pilots of low-flying aircraft to see obstacles in their flightpath, the FAA concludes it is crucial to provide a database of known obstacles for pilots to use during flight planning to increase pilots' situational awareness. Given the number of competing elements for pilot attention during low-altitude flight, whether during routine operations or when experiencing an in-flight anomaly or emergency with limited time to respond safely, a database providing the accurate locations of meteorological towers with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site may reduce the risk of collision accidents to low-flying aircraft. To include meteorological towers in the database for public and pilot awareness, sponsors must file notice with the FAA. Therefore, the FAA determined it is appropriate to propose to amend the current provisions of part 77 to require all sponsors of newly constructed and altered meteorological towers with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site to file advance notice with the FAA on a mandatory basis.

Expanding the existing notice requirement to include existing meteorological towers with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site would also enable the FAA to conduct an aeronautical study. The FAA may issue a part 77 determination. If the FAA issues a determination, pursuant to § 77.12, the FAA would only issue recommended conditions and limitations.

The FAA is proposing notice of meteorological towers with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site. The FAA considered proposing to require notice of a meteorological tower at any height but determined that such a proposal would be unnecessarily broad based on accident data specific to meteorological towers. The FAA excluded towers under 50 feet AGL from this rulemaking as the risk of inadvertent collision is minimal due to the low number of operations that occur at those altitudes. Outside of takeoff and landing as well as crop dusting, few operations occur below 50 feet AGL. Finally, from the data provided by the NTSB, none of the accidents they investigated occurred below 50 feet AGL.

3. Notice Requirements for Existing Meteorological Towers Constructed With the Highest Point of the Structure at Least 50 Feet AGL Up to and Including 200 Feet AGL at Its Site (§§ 77.7(d) and 77.9(b))

Existing meteorological towers with a height at or below 200 feet AGL generally do not meet notice criteria in § 77.9 unless they exceed an imaginary surface or are constructed on an airport under current § 77.9(b) and (d).[32] The

[31] The FAA may include some structures or obstacles on aeronautical charts. In cases where a structure is charted and noted in the FAA database, pilots are responsible for entering the relevant location information in their navigation system. Although Global Positioning System (GPS) equipment is not required by the FAA for visual flight rules (VFR) flight, the FAA believes that most agricultural operators equipped their aircraft with GPS, based on a 2019 NAAA industry survey. This survey also showed that 99% of respondents reported that they use a GPS device for swath guidance. A GPS display can also show the pilot the aircraft's location when the spray was turned on or off and can enable the marking of boundaries, obstacles, and other user-defined inputs.

[32] Some sponsors of meteorological towers with a height less than 200 feet AGL submitted voluntary notifications to the FAA. Because these structures do not meet or exceed the current notification requirements in part 77, the FAA issued a

Continued

FAA proposes amending § 77.7 by adding paragraph (d) and adding § 77.9(b), requiring sponsors of existing meteorological towers with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site to file notice with the FAA within 90 days of the effective date of a final rule. As proposed in § 77.7(d), sponsors would be required to complete and submit notice of existing towers electronically via the internet at *https://oeaaa.faa.gov* using FAA Form 7460–1.

The FAA intends to require the sponsors of any existing meteorological tower, whether in use or not but still standing, to provide the FAA notice of its existence. The FAA determined that existing meteorological towers at the same heights will continue to pose an undue risk to low-flying aircraft unless sponsors file notice with the FAA or dismantle the tower. Upon receiving a notice as proposed, the FAA would create a public record of the meteorological tower in the DOF database, detailing the tower's location, height, and marking or lighting. This database inclusion would ensure availability of the most current information available for pilots to use in preflight planning.

The FAA considers 90 days as a reasonable time for industry to file notice of existing meteorological towers because it will allow for sponsors to dismantle any temporary towers and for the sponsors to gather information. The purpose of requiring existing towers to file is to ensure inclusion of these towers in the FAA's publicly available database as soon as practicable.

The proposed amendment would also subject existing meteorological towers to the provisions in subparts C and D of part 77, such as the requirement to notify the FAA when the structure is abandoned or dismantled in accordance with current § 77.11 (proposed § 77.10). Including these subparts would ensure the FAA's ability to remove the structure from its database when supplemental notice is received by the FAA, thereby increasing the accuracy of information provided to the public.

The FAA also proposes to revise § 77.5(e) to make clear that the FAA would use the notice provided by a sponsor to evaluate the effect of a meteorological tower in existence before the effective date of a final rule on safety in air commerce and the efficient use and preservation of the navigable airspace and of airport traffic capacity at public use airports. The notice would also be used by the FAA to determine whether the effect of a meteorological tower in existence before the effective date of a final rule is a hazard to air navigation. The FAA will study these notices, and the FAA may issue a part 77 determination. If the FAA issues a determination, pursuant to § 77.12, the FAA would only issue recommended conditions and limitations.

Amending part 77 to require notice from sponsors of existing meteorological towers constructed at least 50 feet AGL up to and including 200 feet AGL at their sites, regardless of location, would reduce the potential collision risk with unmarked meteorological towers or their guy wires for pilots of low-flying VFR aircraft. If the FAA adopts the proposed amendment, a pilot or operator would be able to search the FAA's public database, access meteorological tower pertinent information for preflight planning purposes, and input the information into their GPS system (if equipped) to provide additional situational awareness of the tower while airborne.

With this data, agricultural and other low-flying aircraft operators could better manage the risk associated with potential obstacle collisions by exercising pre-flight planning procedures. For that reason, it is particularly important that pilots engaged in low-flying aircraft operations routinely check the FAA's public DOF database for use during pre-flight planning to confirm existing structures or identify new structures where they plan to operate. The FAA urges pilots to use GPS systems to track all obstructions contained in the database. Similarly, the FAA recommends that pilots incorporate obstacle analysis tasks into preflight planning to identify obstacles before conducting survey flights of the area. In fact, the NTSB noted that ''pilots involved in collision accidents in 2013 reported that they performed survey flights but did not see the obstacles that the aircraft eventually hit.'' [33]

B. Partial Implementation of the FESSA

1. Meteorological Towers

The FAA proposes to partially implement section 2110 of FESSA, as amended by section 576 of FAARA of 2018. Section 2110 requires the FAA to have all ''covered towers'' marked consistent with applicable guidance in the advisory circular of the FAA issued December 4, 2015 (AC 70/7460–IL) or entered into a database (meteorological towers must be marked and entered into a database). Congress defined a covered tower as a meteorological tower, self-standing tower, or tower supported by guy wires and ground anchors with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site that meet certain criteria. The FAA is not proposing to require all self-standing towers or all towers supported by guy wires and ground anchors with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site to be marked or be included in a database. The data from the NTSB show that very few accidents involve self-standing towers or towers supported by wires and ground anchors with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site that do not also involve a meteorological tower or a tower that supports electric utility transmission or distribution lines, the latter of which section 2110 excludes. Due to the minimal number of accidents involving towers not excluded by section 2110, the FAA is proposing to limit the tower marking and database requirements to meteorological towers.

Section 2110 sets forth criteria that narrows which towers are considered covered towers. Specifically, Congress stated that a tower should be captured if it meets the following:

- Is 10 feet or less in diameter at the above ground base, excluding concrete footing;
- Has accessory facilities on which an antenna, sensor, camera, meteorological instrument, or other equipment is mounted; and,
- Is located on land that is in a rural area and used for agricultural purposes or immediately adjacent to such land.

The FAA captures these towers but, because the NTSB data demonstrated the majority of the incidents involved meteorological towers regardless of equipment, diameter, or location, expanded its definition to include meteorological towers of all sizes, equipage, and location.

Section 2110 also sets forth those towers that are not considered covered towers. NTSB data demonstrated that the majority of the incidents involved meteorological towers regardless of equipment, diameter, or location. As such, in order to improve safety, the FAA is not proposing to adopt the following exclusions:

- Is adjacent to a house, barn, electric utility station, or other building;
- Is within the curtilage of a farmstead or adjacent to another building or visible structure; or,

Determination of No Hazard without any marking and/or lighting conditions. However, the FAA encourages sponsors to voluntarily comply with marking and lighting standards in FAA AC 70/7460–1.

[33] NTSB/SIR–14/01.

• Is located within the right-of-way of a rail carrier, including within the boundaries of a rail yard, and is used for a railroad purpose.

The FAA is also proposing to not include the following exclusion for towers:

• Has already mitigated any hazard to aviation safety in accordance with FAA guidance or as otherwise approved by the FAA Administrator.

Congress mandated that meteorological towers be entered into a database as well as marked. As supported by NTSB data, the entry into a database via notice to the FAA would ensure aircraft operators are aware in advance of the location of the towers. As such, the FAA is not proposing to exclude these towers if they are independently marked or if the FAA receives notice of a tower to enable inclusion within the FAA's database. Moreover, the FAA wants the opportunity to study each tower and to assess the proper marking and potential lighting requirements. The FAA also wants to be kept abreast of any changes. Without covering these meteorological towers, the FAA will not be able to make an independent assessment about what terms and conditions should apply to ensure safety and the sponsor would not be subject to the ongoing obligations to update the FAA.

This proposal also would not implement section 2110's requirement that sponsors mark meteorological towers that exist at the time of the final rule's effective date. The FAA would require that sponsors of existing meteorological towers file notice with the FAA within 90 days of the effective date of a final rule using FAA Form 7460–1. These notices would enable the FAA to study those towers. Existing meteorological towers at least 50 feet AGL up to and including 200 feet AGL are required to file notice with the FAA within 90 days of the effective date of a final rule. The FAA will study these notices, and the FAA may issue a part 77 determination. If the FAA issues a determination, pursuant to § 77.12, the FAA would only issue recommended conditions and limitations. If a sponsor alters an existing tower, the FAA proposes to then impose marking requirements. The FAA is not proposing to impose retroactive marking requirements as existing towers would already be in the DOF to alert aircraft operators of their presence, sponsors will have marking recommendations, and sponsors will be required to mark a tower if the tower is altered or file notice when dismantling a tower so the FAA may remove it from the DOF database. Finally, in the interest of safety, the FAA is not including section 2110's exclusion and waiver provisions in this proposal due to the need for all meteorological towers at least 50 feet AGL up to and including 200 feet AGL at their sites to be studied and added to the DOF.

The FAA proposes to implement only those provisions of section 2110 applicable to meteorological towers supported by safety data and aviation accidents involving meteorological towers with the highest point of the structure below 201 feet AGL. However, this limitation does not address the risk to the larger population of low-flying aircraft operators identified by NTSB that the FAA seeks to mitigate with this proposal, including the risk to helicopter emergency medical services, law enforcement, animal damage control, fish and wildlife surveys, and aerial fire suppression.[34] The FAA agrees with NTSB that the demonstrated risk to low-flying aviation, as a whole, posed by unmarked meteorological towers justifies requiring notice of meteorological towers regardless of location.[35] The proposal also partially addresses NTSB's 2013 safety recommendations A–13–16 and A–13–17, issued in 2013. In sum, it would provide the FAA with information that will improve the safety of low-flying aircraft.

Newly filed proposed and altered meteorological towers with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at their sites would be subject to the marking requirement. Meteorological towers can come from the manufacturer painted, reducing the burden of painting the structure after delivery. Dismantling an existing tower to paint it would be costly, considering the average deployment of one to three years. Regardless of marking, the existing towers would be included in the database.

2. Database

The FAA plans to partially implement section 2110's database requirement without making regulatory changes beyond those already discussed. Section 2110 requires the FAA to develop or utilize an existing database that contains the location and height of covered towers and to keep the database current to the extent practicable. The agency also must ensure that any proprietary information in the database is protected from disclosure in accordance with law. In addition, the FAA Administrator must ensure that, by virtue of accessing the database, users agree and acknowledge that information in the database may only be used for aviation safety purposes and may not be disclosed for purposes other than aviation safety, regardless of whether or not the information is marked or labeled as proprietary or with a similar designation. Further, the section directs the FAA to ensure that tower information in the database is de-identified and that the information only includes the location, height, and presence of guy wires. The FAA must ensure the information in the dataset is encrypted at rest and in transit and is protected from unauthorized access and acquisition. Additionally, the FAA must ensure registration of towers, database inclusion of proposed towers before construction, and database availability for pilots who intend to conduct low-altitude operations so they may consult the database before flight operations. Lastly, section 2110 states that the database must be available for use within 1 year of the effective date of the rule. The FAA plans to use the existing OE/AAA system to partially implement section 2110's database requirement. The FAA would include any structure filing notice under current regulations, those giving notice pursuant to proposed changes applicable to meteorological towers with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site, and wind turbines in the database.

The existing OE/AAA system meets section 2110's general intent to make information concerning structures that may pose a hazard to aviation available to the flying public. The available data includes structure type, location, latitude, longitude, height, elevation, marking, lighting, and proximity to the nearest town and airport. The information available on the OE/AAA website [36] depicts accurate information received from filed notices of proposed structures that require issuance of an FAA determination.[37]

Although pilots can search for known meteorological towers on the OE/AAA website without having a user account, any interested party can register for, and establish, a user account. Once registered, the interested party can subscribe to receive email notifications

[34] *https://www.ntsb.gov/safety/safety-recs/RecLetters/A-13-016-017.pdf.*

[35] NTSB accident number SEA04LA027 (December 15, 2003): Accident when an aircraft operating for personal flight collided with an unmarked meteorological tower (164 feet AGL).

[36] *https://oeaaa.faa.gov.*

[37] The FAA conducts studies on more than 100,000 structures annually. However, the database is limited to those structures located in close proximity to a public-use airport.

when the FAA receives a request for obstacle construction or modification within a geographic area defined by the user. The OE/AAA website also provides a tool that allows a user to find all obstacles of notice received within a user-defined radius from a location. Source information for this tool comes from a combination of the notices of proposed construction or alteration submitted to the FAA's Obstruction Evaluation Group and the DOF.[38]

Consistent with section 2110, the FAA would update the system to include meteorological towers and create an ability to search for known meteorological towers via the FAA's public OE/AAA website. This update would allow pilots to obtain a list of meteorological towers by location (*e.g.,* state) from the FAA's database. As proposed, filers would also be required to notify the FAA if the structure is dismantled or abandoned [39] to enable the FAA to update its database. In addition, the FAA would add disclaimers to the site consistent with section 2110 to reflect the limits on the use of the available information for aviation safety purposes, and that the information may not be disclosed for purposes other than aviation safety, regardless of whether the information is marked or labeled as proprietary or with a similar designation. The FAA intends to modify the OE/AAA system to coincide with the effective date of the final rule.

The FAA would maintain and update the existing OE/AAA system to meet the objectives of section 2110. This would fully address NTSB 2013 safety recommendation A–13–17. Section 2110's requirement to ensure pilots conducting low-altitude operations consult the relevant parts of the database is outside the scope of this rulemaking and falls under 14 CFR part 91. The FAA recommends that pilots use the DOF database to obtain the most up-to-date information prior to flight.

3. Exclusion and Waiver Authorities

Section 2110 authorizes the FAA administrator to exclude a class, category, or type of tower that is determined to not pose a hazard to aviation safety after public notice and comment. It also directs the FAA to establish a process to waive specific towers from marking requirements if the agency determines the tower does not pose a hazard to aviation safety. Section 2110 requires the Administrator to consider specific factors that may mitigate risk and to consider excluding towers located in a state that has enacted tower marking requirements. As explained earlier, the FAA is limiting this proposal to those towers for which it has accident data to support the regulation. In this case, the proposal applies to meteorological towers with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site. Because the agency determined the expanded definition of a covered tower would include those that do not pose a hazard to aviation safety given the FAA has no accident data involving these structures, the FAA would exclude other structures (a self-standing tower or tower supported by guy wires and ground anchors) meeting the section 2110 definition of a covered tower.

Section 2110 requires the Administrator to consider specific factors that may mitigate risk and to consider excluding towers located in a state that has enacted tower marking requirements. As explained above, the FAA issued a letter reiterating that the Federal Government occupies the entire field of airspace management and aviation safety, preempting state and local regulation related to the marking and lighting of structures for aviation safety purposes. The FAA is vested with plenary authority to regulate the use of the airspace as necessary to ensure the safety of aircraft and the efficient use of airspace.

C. Wind Energy Systems

1. Definition of Wind Energy System and Airborne Wind Energy System (§ 77.3)

The FAA proposes to define a wind energy system in § 77.3 to mean ''structures that convert kinetic energy in the wind to electrical energy. A wind energy system may consist of a single structure or a group of structures.'' This definition is inclusive of all wind energy systems (*e.g.,* airborne wind energy systems (AWES) or wind turbines generally composed of a horizontal turbine nacelle, mounted on a fixed vertical structure or tower or AWES). This definition would provide additional clarity and context for the proposed changes directed exclusively at wind energy systems.

Further, the FAA proposes to define ''airborne wind energy system (AWES)'' in § 77.3, consistent with the FAA's 2022 final notice of policy.[40] AWES would mean a structure, which consists of a self-supported airborne system tethered to a ground station, with an airborne or ground-mounted drivetrain used to convert kinetic energy in the wind to mechanical power for the purpose of generating electricity.

2. Proposal for 90-Day Advance Notice of Construction or Alteration of Wind Energy Systems (§ 77.7(c))

Currently, a sponsor must submit notice 45 days before the start date of the proposed construction or alteration, or the date an application for a construction permit is filed, whichever is earlier. The FAA proposes to add § 77.7(c) requiring sponsors to submit notice of the proposed construction or alteration of a wind energy system with a proposed height greater than 200 feet AGL at least 90 days before the start date of the proposed construction or alteration, or the date an application for construction or alteration permit is filed, whichever is earlier. The FAA would redesignate the provisions currently codified in §§ 77.7(c) and (d) as §§ 77.7(b)(1) and (2), respectively. As part of this proposal, the FAA would clarify that a meteorological tower is associated with a wind energy system when it is included in a wind energy systems project and is intended to be permanent. A meteorological tower is permanent when it is intended to remain in place for the duration of its lifecycle.

Due to the unique physical characteristics of wind energy systems, specifically wind turbine structures, their potential impact to communication, air navigation, and surveillance systems as well as the increasing number of proposals requiring an aeronautical study, the FAA requires additional time to conduct studies of wind turbines and determine potential NAS impacts. This proposal would realistically represent the time it currently takes the FAA to study these complex structures. Provided with a more realistic representation of the obstruction evaluation processes duration, sponsors can better plan their projects.

Wind energy system proposals are significantly more complex than other traditional structures, such as buildings, and more frequently require an in-depth study to analyze their potential effects on air navigation facilities and equipment. The FAA OE/AAA metrics confirm the duration of aeronautical studies for proposed wind turbines exceeds those for other structure types due to air traffic, communication, air navigation, and surveillance (*e.g.,* radar) considerations. While the FAA has made considerable progress in identifying mitigation solutions

[38] *www.faa.gov/air_traffic/flight_info/aeronav/digital_products/dof.*

[39] The FAA considers a structure dismantled when it is taken down and abandoned when a proposed structure is not built.

[40] Airborne Wind Energy Systems (AWES) Policy Statement, 87 FR 78849 (Dec. 23, 2022).

required to issue a Determination of No Hazard to Air Navigation for proposed wind turbines, the current 45-day notice requirement in § 77.7(b) does not allow the FAA adequate time to gather the data and model potential impacts of proposed wind turbine(s) on NAS air navigation facilities and equipment. Additionally, 45 days does not adequately represent the time required to work with the sponsor and identify mitigations necessary to complete the study.

The number of new wind turbine proposals processed by the FAA has increased substantially since the enactment of the Energy Policy Act of 2005 [41] that provided the Wind Energy Production Tax Credit to stimulate investment in wind energy. In 2004, the FAA received and conducted 3,030 wind turbine aeronautical studies. Since then, the FAA received an average of 21,148 wind turbine cases per year, with the highest being 33,396 cases in 2010. According to the Department of Energy's (DOE) 2015 *Wind Vision* Report,[42] which expands upon its 2008 report titled *20% Wind Energy by 2030,*[43] DOE continues to target wind energy as contributing to 20 percent of the U.S. electrical supply by 2030, compared to more than 4.5 percent at the time of publication. Per DOE data, wind electricity generation accounts for 8.4 percent of the total U.S. generation as of 2020.[44] Hence, the FAA expects the demand to evaluate proposed construction and altered wind energy systems will continue and may increase.

Furthermore, the proposed timeline would allow the FAA to request additional information from sponsors as needed for review per the proposed § 77.11 language. While sponsors of proposed wind turbines would provide earlier notification prior to construction or alteration, the FAA expects that the total time for review would remain the same as it does today. The benefits from potentially reducing any delays in construction would likely offset any costs associated with the sponsor providing earlier notification. The FAA also proposes to amend current § 77.7(c) (proposed to be redesignated as § 77.7(e)) by clarifying that the 90-day advance notice requirement applicable to wind turbines is also eligible for a waiver because of an emergency involving essential public services, public health, or public safety.

3. Proposal for Extended Effectiveness Period for Wind Turbine Determinations (§ 77.33(c))

The FAA proposes to amend § 77.33 by extending the effective period for a Determination of No Hazard involving wind turbines and any associated meteorological tower from 18 to 36 months. The FAA would redesignate the provision currently codified in § 77.33(c) as § 77.33(d).

Wind energy systems developers often file notice with the FAA years before their target date to begin construction. They file early to allow time to address environmental and other local land-use requirements, secure financing, acquire materials, and complete tests at proposed locations using meteorological towers to validate the potential benefits of a particular location. As a result, wind turbine project developers routinely ask the FAA for a one-time 18-month extension of the Determination of No Hazard to Air Navigation in accordance with the FAA regulations pursuant to § 77.35(c). However, even with an 18-month extension, the project may not be built within that 3-year period, causing the developer to refile notice with the FAA, essentially starting the process again. Extending the wind turbine determination period from 18 to 36 months would allow industry additional time to validate and begin projects.

Under the current § 77.33(b), each Determination of No Hazard to Air Navigation issued under part 77 expires 18 months after the effective date of the determination, unless extended, revised, or terminated. Due to the increasing size of individual wind turbines and the number of wind turbines needed to accomplish renewable energy goals, the duration to construct wind turbine farms can take considerably more time to construct than single structures. The 18-month effectiveness period is frequently insufficient to allow the sponsor enough time to complete construction, even with a one-time extension. In alignment with proposing to extend wind turbine determination periods, the FAA also proposes to extend determination periods for meteorological towers associated with a wind energy system project from 18 to 36 months. A meteorological tower is associated with a wind energy system when it is included in a wind energy systems project and is intended to be permanent. A meteorological tower is permanent when it is intended to remain in place for the duration of its lifecycle.

D. Other Clarifications Related to the Filing of Notice (§§ 77.10, 77.11, 77.27)

The FAA proposes to redesignate § 77.11 as § 77.10 and amend it to identify the form, FAA Form 7460–2, Notice of Actual Construction or Alteration, sponsors currently use to provide supplemental notice. The revision also makes clear that a sponsor must file supplemental notice if otherwise requested by the FAA.

The FAA proposes to add a new § 77.11 to affirmatively require that if the FAA requests additional information during any part of the aeronautical study process, pre- or post-determination, the sponsor must provide that information within 30 days. The FAA needs this information to conduct complete aeronautical studies and issue accurate determinations.

The FAA proposes to revise § 77.27 to clarify when the FAA would conduct an aeronautical study. Specifically, the FAA will conduct an aeronautical study when: (1) notice required under § 77.9 has been received, or (2) the FAA determines a study is necessary. All other notices filed by the public outside of these parameters, meaning notice is neither requested by the FAA nor required under § 77.9, will be screened within the automated OE/AAA system and, if appropriate, provided an electronic letter response that indicates that no notice is required for the said proposal or alteration, and thus the FAA has no objections to the proposal at this time. This process would reduce the workload burden on the FAA and still provide the public with documentation for local and state requirements at an accelerated rate.

E. General Changes

The FAA proposes to add § 77.12 to formalize the FAA's requirement for sponsors of structures, except for structures that have received an FAA Determination of No Hazard to Air Navigation prior to the effective date of a final rule or any meteorological tower with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site for which construction is complete prior to the effective date of a final rule, to comply with the conditions and limitations contained in a Determination of No Hazard to Air Navigation. The FAA provides conditions and limitations, including marking, in its determinations. Currently, the FAA recommends that sponsors conform with the standards in the AC 70/7460–1. In this rulemaking, the FAA is clarifying that the conditions and

[41] Public Law 109–58, 119 Stat. 594 (Aug. 8, 2005).

[42] *https://www.energy.gov/eere/wind/wind-vision.*

[43] *https://www.energy.gov/eere/wind/20-wind-energy-2030-increasing-wind-energys-contribution-us-electricity-supply.*

[44] *https://www.eia.gov/energyexplained/wind/electricity-generation-from-wind.php.*

limitations themselves are mandatory except for structures that have received an FAA Determination of No Hazard to Air Navigation prior to the effective date of a final rule or any meteorological tower with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site for which construction is complete prior to the effective date of a final rule. This clarifying amendment is necessary to eliminate safety risks that were identified as a result of previous instances of non-compliance. Consistent application of marking requirements ensures the pilot's ability to properly recognize the obstructions and mitigate risk.

Each newly constructed or altered meteorological tower with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site would receive conditions and limitations that include, at a minimum, marking requirements based upon AC 70/7460–1. Under the current part 77, proposed structures that meet notice criteria are subject to an FAA aeronautical study to assess potential impacts on the NAS. When the FAA completes an aeronautical study and issues a determination to the sponsor of a proposed or altered structure, the determination would contain conditions and limitations that include, at a minimum, marking requirements for meteorological towers with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site.

Part 77 does not currently require marking unless recommended by an aeronautical study. Current meteorological towers taller than 200 feet AGL fall under the current regulatory scheme requiring notice, an aeronautical study, and implementation of any FAA-specified risk-mitigation measures. If adopted, the FAA's new rule would require the marking of all proposed and altered meteorological towers with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site in accordance with AC 70/7460–1. Meteorological towers can be erected in a matter of hours. As such, an operator who is familiar with the terrain may unexpectedly encounter a temporary structure. Moreover, depending on the materials used, a meteorological tower may be difficult to see in certain atmospheric conditions. The FAA determined that marking, such as painting towers, adding marker balls or sleeves to guy wires, and, if warranted, lighting new or altered meteorological towers would enhance their conspicuity to pilots who operate at low altitudes, such as agricultural operators, thereby reducing the likelihood of incidents and accidents.

Moreover, although the states discussed in section III.D of this preamble have notice and marking requirements similar in some aspects to this FAA proposal, a NAS-wide application of standards will increase aviation safety, especially for those pilots operating at lower altitudes across state lines where meteorological tower standards may be inconsistent. Consistency may reduce confusion and increase a pilot's ability to see and avoid obstacles, either visually or with onboard electronics, regardless of what state they are flying in. The FAA proposed § 77.32 to codify the existing process contained in the AC 70/7460–1 for requesting modifications to the marking and lighting conditions and limitations. The FAA is updating the process for requesting a deviation by requiring a sponsor to submit FAA Form 7460–1 in the OE/AAA system for processing. The FAA is making this change to standardize the approval process. The proposed § 77.32 would codify this updated process. This change would be necessary if the conditions and limitations become requirements as proposed in this NPRM so that sponsors have a mechanism to seek changes to the requirements after the issuance of a determination.

The FAA proposes to define ''sponsor'' in § 77.3 as the owner of a structure for which notice is required under part 77. This would clarify the person that is required to provide the FAA with notice and is responsible for meeting the requirements of this proposed rule. A sponsor may allow a legally designated representative to fulfill the notice or other part 77 requirements on their behalf; however, the FAA must receive proper notice on the forms submitted to the FAA.

The FAA proposes to revise references to ''Airport/Facility Directory, Alaska Supplement, or Pacific Chart Supplement'' to ''Chart Supplement U.S., Chart Supplement Alaska, or Chart Supplement Pacific'' throughout part 77 for consistency with the publications' current name.

The FAA proposes to change all references throughout part 77 from ''marking and lighting recommendations'' to ''marking and lighting requirements'' for consistency with proposed § 77.12.

Throughout the sections proposed to be revised in this NPRM (including §§§ 77.29(b), and 77.35(a) and (c)(1) through (3)), the FAA proposes to change references from ''you'' to ''sponsor'' to clarify to whom ''you'' refers.

F. Proposed Effective Date

The FAA proposes to make these changes effective 30 days after the final rule is published in the **Federal Register**. This rule would also require sponsors of existing meteorological towers with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site to file notice within 90 days of the final rule's effective date pursuant to § 77.9.

IV. Agency Guidance

If this rule is finalized as proposed, the FAA would make changes to FAA AC 70/7460–1 to reflect that all conditions and limitations in a Determination of No Hazard to Air Navigation are mandatory pursuant to § 77.12, including marking requirements for meteorological towers with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site, except for structures that have received an FAA Determination of No Hazard to Air Navigation prior to the effective date of a final rule or any meteorological tower with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site for which construction is complete prior to the effective date of a final rule. FAA AC 70/7460–1 marking standards would continue to be recommendations when not part of a determination.

The revised AC 70/7460–1 would direct sponsors to the most effective marking standards identified by the agency unless the FAA accepts an equally effective alternative. Revisions to AC 70/7460–1 would contain the most effective painting and marking approaches identified by the FAA. For instance, meteorological towers would need to use spherical markers or cable balls, sleeves, and the identified painting scheme unless the sponsor presents an equally effective alternative accepted by the FAA. The AC would direct sponsors of newly proposed meteorological towers with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site to comply with existing painting standards establishing color and pattern requirements. The AC would also suggest placing a total of 8 high-visibility aviation orange spherical markers or cable balls, 4 attached to guy wires at the top of the tower no further than 15 feet from the top wire connection and 4 at or below the mid-point of the structure on the outer guy wires. The AC would also suggest the placement of two high-visibility sleeves

on each guy wire, one as close to the anchor point as possible and a second midway between the lower sleeve and the connection between wire and tower. The guidance would explain that sponsors may present alternate marking approaches should the FAA deem them equally effective. A copy of the proposed revised AC has been placed in the docket for this rulemaking. The FAA seeks comments on this draft revised AC.

Finally, the FAA is updating the process for requesting a deviation from the marking and lighting standards in the AC during this rulemaking process.

V. Regulatory Notices and Analyses

Federal agencies consider impacts of regulatory actions under a variety of executive orders and other requirements. First, Executive Order 12866, Executive Order 13563, and Executive Order 14094 (''Modernizing Regulatory Review'') direct that each Federal agency propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify the costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year. The current threshold after adjustment for inflation is $183 million, using the most current (2023) Implicit Price Deflator for the Gross Domestic Product. The FAA has provided a detailed Regulatory Impact Analysis (RIA) in the docket for this rulemaking. This portion of the preamble summarizes the FAA's analysis of the economic impacts of this rule.

In conducting these analyses, the FAA has determined that this rule: is not a ''significant regulatory action'' as defined in section 3(f)(1) of Executive Order 12866 as amended by Executive Order 14094; may have a significant economic impact on a substantial number of small entities; will not create unnecessary obstacles to the foreign commerce of the United States; and will not impose an unfunded mandate on State, local, or Tribal governments, or on the private sector.

A. Summary of the Regulatory Evaluation

Congress mandated that the FAA issue regulations to require marking of covered towers and inclusion of covered towers in a public database. The proposed rule would amend part 77 notice requirements as applicable to the construction or alteration of meteorological towers and wind turbines. The proposed rule responds to recommendations from the NTSB and aerial applicator organizations concerning fatal collisions between aerial applicators, private aircraft, and meteorological towers. The proposed rule also includes amendments that would allow the FAA to better study and determine potential impacts to the NAS from wind turbines.

Consistent with the direction provided in section 2110 of FESSA, the FAA proposes to add § 77.12 to require sponsors of new meteorological towers, constructed with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site, to mark the towers in accordance with the determination except for structures that have received an FAA Determination of No Hazard to Air Navigation prior to the effective date of a final rule or any meteorological tower with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site for which construction is complete prior the effective date of a final rule. The FAA notes that the 2018 FAA Reauthorization Act requires the marking of meteorological towers constructed within 18 months after the enactment of the statutory mandate, or when the database is completed, whichever is first. Therefore, in the proposed § 77.12, the FAA proposes to make the terms and conditions of a determination mandatory, which would include, at a minimum, sponsors to mark new or altered towers by the time construction is complete for meteorological towers with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site.

The primary costs of the proposed rule to industry would be the costs to mark new and altered meteorological towers. The estimated additional costs to mark new or altered towers is about $14,300. This cost includes equipment costs for marker balls and sleeves and installing them to new and altered towers, buying a new pre-painted tower, and dismantling a tower. This also includes the cost to provide the FAA notifications of both existing and dismantling of out-of-service meteorological towers. The FAA would process notifications of existing and new meteorological towers, including notifications of dismantled out-of-service meteorological towers. Processing these notifications would cost the FAA about $41 per existing notification and about $163 per dismantling notification. The primary benefit of the proposed rule would be enhanced conspicuity to prevent agricultural pilots from colliding with meteorological towers with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) and the Small Business Jobs Act of 2010 (Pub. L. 111–240), requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The FAA is publishing this Initial Regulatory Flexibility Analysis (IRFA) to aid the public in commenting on the potential impacts to small entities from this proposal. The FAA invites interested parties to submit data and information regarding the potential economic impact that would result from the proposal. The FAA will consider comments when making a determination or when completing a Final Regulatory Flexibility Analysis.

Under Section 603(b) and (c) of the RFA, an IRFA must contain the following:

(1) A description of the reasons why the action by the agency is being considered;

(2) A succinct statement of the objective of, and legal basis for, the proposed rule;

(3) A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

(4) A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type

of professional skills necessary for preparation of the report or record;

(5) An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule; and

(6) A description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

1. Reasons the Action Is Being Considered

This rulemaking proposes to amend part 77 as it applies to the proposed construction or alteration of meteorological towers and wind energy systems. The proposed changes applicable to meteorological towers address safety recommendations from the NTSB and industry recommendations.

This proposal also partially implements the statutory requirements in section 2110 of FESSA. Specifically, the FAA proposes these amendments applicable to meteorological towers:

- Extend notice requirements to the proposed construction or alteration of meteorological towers with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site. Sponsors would be required to file a notice of construction with the FAA within the current timeframe in § 77.7(b); [45] and,
- Extend notice requirements to existing meteorological towers at least 50 feet AGL up to and including 200 feet AGL at its site. Sponsors would be required to file a notice with the FAA within 90 days of the final rule's effective date.

In addition, the FAA proposes the following amendments applicable to wind energy systems to clarify and accurately reflect circumstances unique to these structures:

- Require the earlier filing of notice for the proposed construction or alteration of wind energy systems. Notice would be due 90 days before, as opposed to the current 45 days before, the start date of the proposed construction or alteration, or the date an application for a construction permit is filed, whichever is earlier; and
- Increase the duration of a Determination of No Hazard to Air Navigation with regard to wind energy systems and associated meteorological towers proposals from the current 18 months to 36 months.

[45] Notice requirements for meteorological towers are necessary to give effect to section 2110 that requires inclusion of all meteorological towers in the FAA's public DOF database.

Finally, this proposed rule would make additional non-substantive changes to clarify agency practice as a result of the proposed substantive changes. These changes would:

- Amend purpose in § 77.1 to reflect that part 77 would include requirements for marking proposed meteorological towers;
- Define ''airborne wind energy system (AWES)'' in § 77.3 consistent with the FAA's 2022 final notice of policy. AWES would mean a structure, which consists of a self-supported airborne system tethered to a ground station, with an airborne or ground-mounted drivetrain used to convert kinetic energy in the wind to mechanical power for the purpose of generating electricity;
- Define ''sponsor'' in § 77.3 as the owner of a structure for which notice is required under part 77. This would clarify the person that is required to provide the FAA with notice and is responsible for meeting the requirements of part 77. A sponsor may allow a legally designated representative to fulfill the notice or other part 77 requirements on its behalf; however, the FAA must receive proper notice on the forms submitted to the FAA.
- Redesignate § 77.11 as § 77.10 and clarify the FAA's current practice with regard to supplemental notice. The proposed amendment also identifies the form (FAA Form 7460–2, Notice of Actual Construction or Alteration) sponsors currently use to provide supplemental notice.
- Add § 77.11 to require the sponsor to provide specific data to the FAA after filing a notice of construction when the FAA determines that additional information is necessary to properly complete an aeronautical study.
- Add § 77.12 to require all sponsors to comply with the conditions and limitations contained in their determination except for structures that have received an FAA Determination of No Hazard to Air Navigation prior to the effective date of a final rule or any meteorological tower with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site for which construction is complete prior to the effective date of a final rule. This would require, at a minimum, proposed or altered meteorological towers with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site to mark towers consistent with the conditions and limitations of the determination.
- Add § 77.32 to require sponsors to request a modification from the marking and lighting requirements in a determination to submit FAA Form 7460–1, Notice of Proposed Construction or Alteration.

2. Objectives and Legal Basis of the Proposed Rule

The FAA's authority to issue rules on aviation safety is found in 49 U.S.C. 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 issued under the authority described in 49 U.S.C. 40103(b), which vests the administrator with broad authority to prescribe regulations to ensure the safety of aircraft and the efficient use of airspace, and 49 U.S.C. 44701(a)(5), which requires the Administrator to promulgate regulations and minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security. This rulemaking is also consistent with: the authority in 49 U.S.C. 44718(a), which directs the Secretary of Transportation to require a person to give adequate public notice of the construction, alteration, establishment, or expansion, or the proposed construction, alteration, establishment, or expansion, of a structure or sanitary landfill in furtherance of safety in air commerce and the efficient use and preservation of the navigable airspace and of airport traffic capacity at public-use airports; section 44718(b), which requires the Secretary to conduct an aeronautical study to decide the extent of any adverse impact on the safe and efficient use of the airspace, space navigation facilities, or equipment if the secretary decides that constructing or altering a structure may result in an obstruction of the navigable airspace or an interference with air navigation facilities and equipment or the navigable airspace; and section 44718(c), which requires that in carrying out laws related to a broadcast application and conducting an aeronautical study related to broadcast towers, the FAA Administrator and the FCC shall take action necessary to coordinate efficiently the receipt and consideration of, and action on, the application; and the completion of any associated aeronautical study. These proposed amendments to part 77, applicable to the construction or alteration of meteorological towers and wind energy systems, are within the scope of this authority.

Authority for this rulemaking is further derived from the FAA Reauthorization Act of 2018, section 576, which revised section 2110 of the

FAA Extension, Safety, and Security Act of 2016. Section 2110 requires that the FAA issue regulations to require the marking of meteorological towers. Moreover, section 2110 requires that all covered towers constructed on or after the date on which such regulations take effect be marked or included in the database. Further, the section requires the marking of meteorological towers and their inclusion within an FAA database. Section 2110 also directs the FAA to ''develop a database that contains the location and height of each covered tower [including meteorological towers];'' keep the database current to the extent practicable; and ensure that any proprietary information in the database is protected from disclosure in accordance with the law. This section also requires that by virtue of accessing the database, users agree and acknowledge that information in the database may only be used for aviation safety purposes and may not be disclosed for purposes other than aviation safety, regardless of whether the information is marked or labeled as proprietary or with a similar designation. Publication of this NPRM also satisfies the requirements in 355 of the FAA Reauthorization Act of 2024, which requires the FAA to publish this notice of proposed rulemaking within one year of the date of enactment of the 2024 Act.

3. Description and Estimate of the Number of Small Entities

The FAA used the definition of small entities in the RFA for this analysis. The RFA defines small entities as small businesses, small governmental jurisdictions, or small organizations. In 5 U.S.C. 601(3), the RFA defines ''small business'' to have the same meaning as ''small business concern'' under section 3 of the Small Business Act. The Small Business Act authorizes the Small Business Administration (SBA) to define ''small business'' by issuing regulations. SBA (2023) has established size standards for various types of economic activities or industries under the North American Industry Classification System (NAICS).[46] These size standards generally define small businesses based on the number of employees or annual receipts. Note that the SBA definition of a small business applies to the parent company and all affiliates as a single entity.

To identify small entities, the FAA first identified the primary NAICS of the parent company and then used data from different sources (*e.g.,* company annual reports, Bureau of Transportation Statistics, etc.) to determine whether the parent company meets the applicable size standard. Businesses affected by this rule are classified using the 2022 NAICS[47] under NAICS code 221115 ''Wind Electric Power Generation.'' This industry comprises establishments primarily engaged in operating wind electric power generation facilities. These facilities use wind power to drive a turbine and produce electric energy. The electric energy produced in these establishments is provided to electric power transmission systems or electric power distribution systems. The U.S. SBA defines entities in this industry as ''small''—those that employ fewer than 1,150 employees.[48] With limited information and incomplete data on employment sizes for each of the affected meteorological tower operators, the FAA is uncertain as to how many entities would meet the SBA's small-entity criteria. Furthermore, the FAA is uncertain as to how the burden associated with the proposed rule would be distributed across meteorological tower companies. The FAA requests comments and data on the average annual sales revenues for the affected small businesses and to what extent the costs would impact these entities.

For purposes of this IRFA, the FAA assumes that the private sector costs of this proposed rule would fall entirely on the sponsors of meteorological towers. In the absence of data on annual receipts specific to this industry, the FAA relies on the most recent data available on average revenues for all businesses classified under NAICS 221115 ''Wind Electric Power Generation'' from the 2017 Census Bureau's Statistics of U.S. Businesses (SUSB)[49] to inform the analysis. The data indicates 98 firms with 611 entities in this NAICS.

The proposed rule would affect sponsors, or legally designated representatives, of any proposed meteorological tower, altered meteorological tower, or existing meteorological tower if the highest point of the structure is at least 50 feet AGL up to and including 200 feet AGL at its site. From 2021 to 2023, 39 states submitted 391 voluntary new filings for proposed meteorological towers at least 50 feet AGL up to and including 200 feet AGL at its site to the FAA.

In the absence of more financial data from small entities and the profile of small entities, the FAA is unable to assess the proposed rule's economic impact on them.

4. Projected Reporting, Recordkeeping, and Other Compliance Requirements

In absence of more detailed data on small entities, it is difficult to estimate the number of meteorological towers they own. The FAA assumes that small entities own about two to five meteorological towers per entity. The below estimates the paperwork burden cost to file a notice with the FAA. The FAA estimates a sponsor of a new meteorological tower would incur $14,301 in additional costs per new tower due to the proposed rule.

New meteorological towers would have to be painted and marked. It likely is more economical to purchase a pre-painted meteorological tower, about an additional $2,800, instead of painting a non-marked tower. Eight marker balls costing about $2,000 and eight sleeves costing about $101 would have to be installed as part of the marking requirements.[50] The FAA assumes the installation cost per tower for the marker ball and sleeves to take four hours and cost $390.[51] Based on the industry's experience, the FAA expects minimal additional labor cost for sponsors of new meteorological towers to comply with the proposed rule's marking requirement, because marker balls and sleeves could be attached to the guy wires before raising the new meteorological tower as opposed to incurring costs to lower, mark, and raise the meteorological tower. The FAA estimates that it would take two contractors about two hours to attach marker balls and sleeves to the new meteorological tower. The total hourly compensation per contractor is $97.62.[52]

[46] Small Business Administration (SBA). 2023. Table of Size Standards. Effective March 17, 2023. *https://www.sba.gov/document/support--table-size-standards.*

[47] North American Industry Classification System (NAICS) U.S. Census Bureau *https://www.census.gov/naics/?input=221115&year=2022&details=221115.*

[48] *https://www.sba.gov/sites/default/files/2023-06/Table%20of%20Size%20Standards_Effective%20March%2017%2C%202023%20%282%29.pdf.*

[49] Available at: *https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html,* retrieved on April 15, 2023.

[50] Cost estimates based on a call with NRG Systems on 4/1/2023.

[51] Labor cost to install marker balls/sleeves = (T × W), where T is the total time it would take for contractors to install marker balls and sleeves (T=4 hours); and W is the hourly wage rate for a contractor (W=$97.62).

[52] The hourly wage rate ($63.50) was provided by National Association of Tower Erectors (NATE) on 11/1/2017 and updated with the GDP deflator from 2017 to 2022, 18.8%. U.S. Bureau of Economic Analysis, ''Table 1.1.7. Percent Change From Preceding Period in Prices for Gross Domestic Product'' (accessed on 2/7/2024). The benefit rate

Continued

The cost to dismantle a meteorological tower is between $5,000 and $22,500. The FAA estimates the most likely cost would be around $9,000.[53] Sponsors of out-of-service meteorological towers would choose to dismantle them because the recurring costs to comply with the proposed rule outweigh the costs to dismantle them.

Under § 77.9, the proposed rule would require sponsors of both existing and proposed construction and altered meteorological towers with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site to file notice with the FAA. In addition, § 77.11 would also require sponsors to file FAA Form 7460–2 after dismantling meteorological towers.

To comply with these requirements, an office worker would complete the submission of information required for the FAA aeronautical study, provided they have all the relevant meteorological tower data and the management has all the critical data on the meteorological tower(s). The FAA estimates the fully loaded hourly average wage rate for an office worker to be $28.34.[54]

Respondents: The FAA is unable to estimate the number of existing meteorological towers and the annual number of new meteorological towers with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site due to the lack of federal regulations governing these meteorological towers.

Frequency: Sponsors of all existing meteorological towers with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site would have to file notice to the FAA 90 days after the effective date of a final rule. In addition, sponsors would submit another notice to the FAA whenever they propose to construct or alter meteorological towers. When sponsors decide to dismantle a meteorological tower, the proposed rule would require them to file FAA Form 7460–2.

Annual Burden Estimate: The FAA estimates that it would take a sponsor of a meteorological tower with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site 0.25 hours (or 15 minutes) to file FAA Form 7460–1 electronically. Similarly, FAA Form 7460–2 would take about 0.1 hours (6 minutes) to file notice electronically. The FAA estimates that it would cost about $7 to file Form 7460–1 ($28.34 × 0.25 hours) and $3 to file Form 7460–2 ($28.34 × 0.10 hours).

5. All Federal Rules That May Duplicate, Overlap, or Conflict

There are no Federal rules that may duplicate, overlap, or conflict with the proposed rule.

6. Significant Alternatives Considered

To comply with the proposed rule, the impacted small entities would have to incur a small cost to file notices with the FAA. The FAA found no other alternatives that could meet the objectives of the proposed rule with less burden on these small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this rule and determined that it will only have a domestic impact and, therefore, no effect on international trade.

D. Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal government having first provided the funds to pay those costs. The FAA determined that the proposed rule will not result in the expenditure of $183 million or more by State, local, or Tribal governments, in the aggregate, or the private sector, in any one year.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number. The FAA routinely renews its ongoing information collection under OMB Control Number 2120–0001 and intends to continue to collect notice information via the OMB-approved FAA Forms 7460–1 and 7460–2, which are the instruments of the information collection.

Under § 77.9, the proposed rule would require owners of both existing and proposed construction and altered meteorological towers with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site to file notice with the FAA using Form 7460–1. In addition, § 77.10 would also require owners to file FAA Form 7460–2 after dismantling meteorological towers.

To comply with these requirements, an office worker would complete the submission of information required for the FAA aeronautical study, provided they have all the relevant meteorological tower data and the management has all the critical data on the meteorological tower(s). The FAA estimates the fully loaded hourly average wage rate for an office worker to be $28.34.[55]

Respondents: The FAA cannot estimate the additional number of existing meteorological towers and the annual number of new meteorological towers with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site due to the lack of federal regulations governing these meteorological towers.

Frequency: Sponsors of existing all meteorological towers with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL

of 29.4% was also added to estimate the fully loaded hourly wage rate. *https://www.bls.gov/news.release/archives/ecec_12152023.pdf,* accessed on 1/29/2024.

[53] Cost estimate based on a conference call with NATE on 11/1/2017.

[54] Fully loaded Hourly Wage Rate = hourly wage rate + (benefit rate × hourly wage rate). U.S. Bureau of Labor Statistics: Office and Administrative Support Occupations, $21.90 mean hourly wage rate, *https://www.bls.gov/oes/2022/may/oes_nat.htm#43-0000,* accessed on 4/10/2023. 29.4% benefit rate: *https://www.bls.gov/news.release/archives/ecec_12152023.pdf,* accessed on 1/29/2024.

[55] Fully loaded Hourly Wage Rate = hourly wage rate + (benefit rate × hourly wage rate). U.S. Bureau of Labor Statistics: Office and Administrative Support Occupations, $21.90 mean hourly wage rate, *https://www.bls.gov/oes/2022/may/oes_nat.htm#43-0000,* accessed on 4/10/2023. 29.4% benefit rate: *https://www.bls.gov/news.release/archives/ecec_12152023.pdf,* accessed on 1/29/2024.

at its site would have to file notice to the FAA 90 days after the effective date of a final rule. In addition, sponsors would submit another notice to the FAA whenever they propose to construct or alter a meteorological tower. When sponsors decide to dismantle a meteorological tower, the proposed rule would require them to file FAA Form 7460–2.

Annual Burden Estimate: The FAA estimates that it would take a sponsor of a meteorological tower with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site 0.25 hours (or 15 minutes) to file a notice electronically. Similarly, FAA Form 7460–2 would take about 0.1 hours (6 minutes) to file notice electronically. The FAA estimates that it would cost about $7 to file Form 7460–1 ($28.34 × 0.25 hours) and $3 to file Form 7460–2 ($28.34 × 0.10 hours).

The FAA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the FAA, including whether the information will have practical utility;

(2) Evaluate the accuracy of the FAA's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of collecting information on those who are to respond, including by using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may send comments on the information collection requirement to the address listed in the **ADDRESSES** section at the beginning of this preamble by January 17, 2025. Comments also should be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for FAA, New Executive Office Building, Room 10202, 725 17th Street NW, Washington, DC 20053.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA determined this rulemaking action qualifies for a categorical exclusion per paragraph 5–6.6f for regulations and involves no extraordinary circumstances.

VI. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action would not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government and, therefore, would not have Federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. The agency determined that this action would not be a ''significant energy action'' under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, International Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA analyzed this proposed rule under the policies and agency responsibilities under the executive order and determined that this action would have no effect on international regulatory cooperation.

VII. Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The FAA also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any 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 *https://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.dot.gov/privacy.*

B. Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to the person in the **FOR FURTHER INFORMATION CONTACT** section of this document. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

C. Electronic Access and Filing

A copy of this NPRM, all comments received, any final rule, and all background material may be viewed online at *https://www.regulations.gov* using the docket number listed above. A copy of this proposed rule will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at *https://www.federalregister.gov* and the Government Publishing Office's website at *https://www.govinfo.gov.* A copy may also be found on the FAA's Regulations and Policies website at *https://www.faa.gov/regulations_policies.*

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9677. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed in the electronic docket for this rulemaking.

List of Subjects in 14 CFR Part 77

Aeronautical study, Air Navigation, Airspace, Aviation safety, Construction or Alteration, Determination, Notice, Obstruction, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend chapter I of title 14, Code of Federal Regulations as follows:

PART 77—SAFE, EFFICIENT USE, AND PRESERVATION OF THE NAVIGABLE AIRSPACE

■ 1. The authority citation for part 77 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 40103, 40113–40114, 44502, 44701, 44718, 46101–46102, 46104; Sec. 2110 of Pub. L. 114–190, 130 Stat. 623 (49 U.S.C. 44718 note); Sec. 576 of Pub. L. 115–254, 132 Stat. 3391 (49 U.S.C. 44718 note); Sec. 355 of Pub. L 118–63.

■ 2. Revise § 77.1 to read as follows:

§ 77.1 Purpose.

This part establishes:

(a) The requirements to provide notice to the FAA of the proposed construction, alteration, or existence of certain structures;

(b) The standards used to determine obstructions to air navigation and navigational and communication facilities or equipment;

(c) The process for aeronautical studies of obstructions to air navigation or navigational facilities to determine the effect on the safe and efficient use of navigable airspace, air navigation facilities, or equipment;

(d) The process to petition the FAA for discretionary review of determinations, revisions, and extensions of determinations; and

(e) The requirement to comply with the conditions and limitations contained in a Determination of No Hazard to Air Navigation, including the requirement to mark newly constructed or altered meteorological towers with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site.

■ 3. Amend § 77.3 by adding definitions for ''airborne wind energy system (AWES),'' ''meteorological tower,'' ''sponsor,'' and ''wind energy system'' in alphabetical order to read as follows:

§ 77.3 Definitions.

* * * * *

Airborne wind energy system (AWES) means a structure, which consists of a self-supported airborne system tethered to a ground station, with an airborne or ground-mounted drivetrain used to convert kinetic energy in the wind to mechanical power for the purpose of generating electricity.

Meteorological tower means a skeletal or pole-type structure, either freestanding or anchored with guy wires, configured with components to measure wind speed and wind direction at different heights above ground level to assess local wind energy resources.

* * * * *

Sponsor means the owner of a structure for which notice is required under this part.

* * * * *

Wind energy system means a structure that converts kinetic energy in the wind to electrical energy. A wind energy system may consist of a single structure or a group of structures.

■ 4. Revise the heading of subpart B to read as follows:

Subpart B—Notice and Determination Requirements

■ 5. Revise § 77.5 to read as follows:

§ 77.5 Applicability.

(a) A sponsor of a meteorological tower in existence before the effective date of a final rule must provide notice consistent with § 77.7(d).

(b) A sponsor proposing any construction or alteration described in § 77.9 must provide adequate notice to the FAA of that construction or alteration.

(c) If requested by the FAA, a sponsor must file supplemental notice before the start date and upon completion of certain construction or alterations described in § 77.9.

(d) A sponsor proposing any construction or alteration of a meteorological tower with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site must provide adequate notice to the FAA of that construction or alteration pursuant to § 77.7(b).

(e) Notice received by the FAA under this subpart is used to:

(1) Evaluate the effect of the proposed construction or alteration on safety in air commerce and the efficient use and preservation of the navigable airspace and of airport traffic capacity at public use airports;

(2) Determine whether the effect of proposed construction or alteration is a hazard to air navigation;

(3) Determine appropriate marking and lighting requirements using FAA Advisory Circular 70/7460–1, Obstruction Marking and Lighting.

(4) Determine other appropriate measures required for continued safety of air navigation;

(5) Notify the aviation community of the construction or alteration of objects that affect the navigable airspace, including the revision of charts, when necessary;

(6) Evaluate the effect of a meteorological tower in existence before the effective date of a final rule on safety in air commerce and the efficient use and preservation of the navigable airspace and of airport traffic capacity at public use airports; and

(7) Determine whether the effect of a meteorological tower in existence before the effective date of a final rule is a hazard to air navigation.

■ 6. Revise § 77.7 to read as follows:

§ 77.7 Form and time of notice.

(a) *Forms.* The sponsor must electronically complete and submit FAA Form 7460–1, Notice of Proposed Construction or Alteration, or FAA Form 7460–2, Notice of Actual Construction or Alteration, via the internet at *https://oeaaa.faa.gov.*

(b) *45-day notice.* Except as provided in paragraphs (c), (d), or (e) of this section, a sponsor required to provide notice under § 77.9 must submit FAA Form 7460–1 at least 45 days before the start date of the proposed construction or alteration, or the date an application

for a construction permit is filed, whichever is earlier.

(1) If a sponsor proposes construction or alteration that is also subject to the licensing requirements of the Federal Communications Commission (FCC), the sponsor must submit notice to the FAA on or before the date that the application is filed with the FCC.

(2) If a sponsor proposes construction or alteration to an existing structure that exceeds 2,000 feet in height AGL, the FAA presumes it to be a hazard to air navigation that results in an inefficient use of airspace. The sponsor must include details explaining both why the proposal would not constitute a hazard to air navigation and why it would not cause an inefficient use of airspace.

(c) *Wind energy system notice.* A sponsor must submit FAA Form 7460–1 for any proposed construction or alteration of a permanent wind energy system and associated meteorological tower at least 90 days before the start date of the proposed construction or alteration, or the date an application for a construction permit is filed, whichever is earlier. A meteorological tower is associated with a wind energy system when it is included in a wind energy systems project and is intended to be permanent. A meteorological tower is permanent when it is intended to remain in place for the duration of its lifecycle.

(d) *Existing meteorological tower notice.* A sponsor of a meteorological tower that exists prior to the effective date of a final rule with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site must submit FAA Form 7460–1 within 90 days of the effective date of a final rule.

(e) *Waiver.* The applicable notice requirement is waived if immediate construction or alteration is required because of an emergency involving essential public services, public health, or public safety. The sponsor may provide notice to the FAA by any available, expeditious means. The sponsor must file a completed FAA Form 7460–1 within 5 days of the initial notice to the FAA.

■ 7. Revise § 77.9 to read as follows:

§ 77.9 Notice requirement.

(a) If requested by the FAA, or if the sponsor proposes any of the following types of construction or alteration, a sponsor must file notice with the FAA of:

(1) Any construction or alteration of a structure that is more than 200 feet AGL at its site.

(2) Any construction or alteration of a meteorological tower with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site.

(3) Any construction or alteration that exceeds an imaginary surface extending outward and upward at any of the following slopes:

(i) 100 to 1 for a horizontal distance of 20,000 feet from the nearest point of the nearest runway of each airport described in paragraph (d) of this section with its longest runway more than 3,200 feet in actual length, excluding heliports.

(ii) 50 to 1 for a horizontal distance of 10,000 feet from the nearest point of the nearest runway of each airport described in paragraph (d) of this section with its longest runway no more than 3,200 feet in actual length, excluding heliports.

(iii) 25 to 1 for a horizontal distance of 5,000 feet from the nearest point of the nearest landing and takeoff area of each heliport described in paragraph (d) of this section.

(4) Any highway, railroad, or other traverse way for mobile objects of a height which, if adjusted upward 17 feet for an Interstate Highway that is part of the National System of Military and Interstate Highways where overcrossings are designed for a minimum of 17 feet vertical distance, 15 feet for any other public roadway, 10 feet or the height of the highest mobile object that would normally traverse the road, whichever is greater, for a private road, 23 feet for a railroad, and for a waterway or any other traverse way not previously mentioned, an amount equal to the height of the highest mobile object that would normally traverse it, would exceed a standard of paragraphs (a)(1) through (3) of this section.

(5) Any construction or alteration on any of the following airports and heliports:

(i) A public use airport listed in the Chart Supplement U.S., Chart Supplement Alaska, or Chart Supplement Pacific of the U.S. Government Flight Information Publications;

(ii) A military airport under construction, or an airport under construction that will be available for public use;

(iii) An airport operated by a Federal agency or the DOD; or

(iv) An airport or heliport with at least one FAA-approved instrument approach procedure.

(b) If a sponsor has an existing meteorological tower with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site prior to the effective date of a final rule, the sponsor must file notice consistent with § 77.7(d).

(c) No notice is required of the construction or alteration of:

(1) Any object that will be shielded by existing structures of a permanent and substantial nature or by natural terrain or topographic features of equal or greater height, and will be located in the congested area of a city, town, or settlement where the shielded structure will not adversely affect safety in air navigation;

(2) Any air navigation facility, airport visual approach or landing aid, aircraft arresting device, or meteorological device meeting FAA-approved siting criteria or an appropriate military service siting criteria on military airports, the location and height of which are fixed by its functional purpose;

(3) Any construction or alteration for which notice is required by any other FAA regulation.

(4) Any antenna structure of 20 feet or less in height, except one that would increase the height of another antenna structure.

§ 77.11 [Redesignated as § 77.10]

■ 8. Redesignate § 77.11 as § 77.10.

■ 9. Revise newly redesignated § 77.10 to read as follows:

§ 77.10 Supplemental notice requirements.

(a) A sponsor must file supplemental notice when requested by the FAA:

(1) Before the start of construction or alteration;

(2) After completing actual construction or alteration;

(3) If the proposed construction or alteration is abandoned within five days after the project is abandoned;

(4) If the construction or alteration is dismantled or destroyed, the sponsor must submit notice to the FAA within five days after the construction or alteration is dismantled or destroyed; or

(5) If otherwise requested by the FAA.

(b) The sponsor must submit the supplemental information using FAA Form 7460–2, Notice of Actual Construction or Alteration, to be received within the time limits specified in the FAA determination. If no time limit has been specified, the sponsor must submit the supplemental notice of construction to the FAA within five days after the structure reaches its greatest height.

■ 10. Add new § 77.11 to read as follows:

§ 77.11 Additional information.

If the FAA requests additional information during any part of the aeronautical study process, pre- or post-

any determination, the sponsor must provide that information within 30 days.

■ 11. Add § 77.12 to read as follows:

§ 77.12 Conditions and limitations requirements.

Except for structures that have received an FAA Determination of No Hazard to Air Navigation prior to the effective date of a final rule or any meteorological tower with the highest point of the structure at least 50 feet AGL up to and including 200 feet AGL at its site for which construction is complete prior to the effective date of a final rule, a sponsor must comply with the conditions and limitations contained in its Determination of No Hazard to Air Navigation.

■ 12. Amend § 77.15 by revising paragraph (e)(1) to read as follows:

§ 77.15 Scope.

* * * * *

(e) * * *

(1) Available for public use and is listed in the Chart Supplement U.S., Chart Supplement Alaska, or Chart Supplement Pacific of the U.S. Government Flight Information Publications; or

* * * * *

■ 13. Revise § 77.27 to read as follows:

§ 77.27 Initiation of studies.

The FAA will conduct an aeronautical study when:

(a) Notice is required under § 77.9 and has been received; or

(b) The FAA determines a study is necessary. All other Notices filed by the public outside of these parameters will be screened within the automated OE/AAA system and, if appropriate, provided an electronic letter response that indicates that no notice is required for the said proposal or alteration, and thus the FAA has no objections to the proposal at this time.

■ 14. Amend § 77.29 by revising paragraph (b) to read as follows:

§ 77.29 Evaluating aeronautical effect.

* * * * *

(b) If a sponsor withdraws the proposed construction or alteration or revises it so that it is no longer identified as an obstruction, or if no further aeronautical study is necessary, the FAA may terminate the study.

■ 15. Amend § 77.31 by revising paragraph (d)(4) to read as follows:

§ 77.31 Determinations.

* * * * *

(d) * * *

(4) Marking and lighting requirements, as appropriate.

* * * * *

■ 16. Add § 77.32 to read as follows:

§ 77.32 Marking and lighting requirements.

A sponsor may request a modification or deviation from the marking and lighting requirements in a determination by submitting FAA Form 7460–1, Notice of Proposed Construction or Alteration.

■ 17. Revise § 77.33 to read as follows:

§ 77.33 Effective period of determinations.

(a) The effective date of a determination not subject to discretionary review under § 77.37(b) is the date of issuance. The effective date of all other determinations for a proposed or existing structure is 40 days from the date of issuance, provided a valid petition for review has not been received by the FAA. If a valid petition for review is filed, the determination will not become final pending disposition of the petition.

(b) Except as provided in paragraphs (c) and (d) of this section, unless extended, revised, or terminated, each Determination of No Hazard to Air Navigation issued under this subpart expires 18 months after the effective date of the determination, or on the date the proposed construction or alteration is abandoned, whichever is earlier.

(c) Unless extended, revised, or terminated, each Determination of No Hazard to Air Navigation issued under this subpart regarding a proposed permanent wind energy system, including an airborne wind energy system and associated meteorological towers, expires 36 months after the effective date of the determination or on the date the proposed construction or alteration is abandoned, whichever is earlier. A meteorological tower is associated with a wind energy system when it is included in a wind energy systems project and is intended to be permanent. A meteorological tower is permanent when it is intended to remain in place for the duration of its lifecycle.

(d) A Determination of Hazard to Air Navigation has no expiration date.

■ 18. Amend § 77.35 by revising the introductory text of paragraph (a), and paragraphs (c)(1) through (3) to read as follows:

§ 77.35 Extensions, terminations, revisions, and corrections.

(a) A sponsor may petition the FAA to revise or reconsider the determination based on new facts or to extend the effective period of the determination, provided that:

* * * * *

(c) * * *

(1) The sponsor submits evidence that an application for a construction permit/license was filed with the FCC for the associated site within six months of issuance of the determination; and

(2) The sponsor submits evidence that additional time is warranted because of FCC requirements; and

(3) Where the FCC issues a construction permit, a final Determination of No Hazard to Air Navigation is effective until the date prescribed by the FCC for completion of the construction. If a sponsor needs to extend the original FCC completion date, they must also request an extension of the FAA determination.

* * * * *

■ 19. Revise § 77.37 to read as follows:

§ 77.37 General.

(a) A petition for a discretionary review of a determination, revision, or extension of a determination issued by the FAA may be made by:

(1) The sponsor;

(2) Any person that provided a substantive aeronautical comment on a proposal in an aeronautical study;

(3) Any person that provided a substantive aeronautical comment on the proposal but was not given an opportunity to state it.

(b) A petition for discretionary review for a Determination of No Hazard that is issued for a temporary structure, marking and lighting requirements, or when a proposed structure or alteration does not exceed obstruction standards contained in subpart C of this part may not be filed by any person.

Issued under authority provided by 49 U.S.C. 106(f), 44701(a)(5) and 44718 in Washington, DC.

Alyce Hood-Fleming,

Vice President, Mission Support Services, Air Traffic Organization.

[FR Doc. 2024–26741 Filed 11–15–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

[DOL Docket No. ETA–2024–0001]

RIN 1205–AC15

Employer-Provided Survey Wage Methodology for the Temporary Non-Agricultural Employment H–2B Program

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Labor (Department or DOL) proposes to amend

its regulations for employer-provided wage surveys for the H–2B temporary labor certification program. The regulations were published in the *Wage Methodology for the Temporary Non-Agricultural Employment H–2B Program* final rule (2015 Wage Rule). This notice of proposed rulemaking (NPRM or proposed rule) proposes to amend those regulations consistent with recent Federal litigation by clarifying existing requirements for employer-provided surveys for the H–2B program, proposing new requirements, and proposing to eliminate Form ETA–9165, *Employer-Provided Survey Attestations to Accompany H–2B Prevailing Wage Determination Request Based on a Non-OEWS Survey* (Form ETA–9165).

DATES: Interested persons are invited to submit written comments on the proposed rule on or before January 17, 2025.

ADDRESSES: You may submit comments electronically by the following method:

Federal eRulemaking Portal: https://www.regulations.gov/. Follow the instructions on the website for submitting comments.

Instructions: Include the agency's name and docket number ETA–2024–0001 in your comments. All comments received will become a matter of public record and may be posted without change to *https://www.regulations.gov/.* Comments submitted after the deadline for submission will not be considered. Please do not submit comments containing trade secrets, confidential or proprietary commercial or financial information, personal health information, sensitive personally identifiable information (for example, social security numbers, driver's license or state identification numbers, passport numbers, or financial account numbers), or other information that you do not want to be made available to the public. The agency reserves the right to redact or refrain from posting such information and libelous or otherwise inappropriate comments, including those that contain obscene, indecent, or profane language; that contain threats or defamatory statements; or that contain hate speech directed at race, color, sex, sexual orientation, national origin, ethnicity, age, religion, or disability. Please note that depending on how information is submitted through *regulations.gov*, the agency may not be able to redact the information and instead reserves the right to refrain from posting the information or comment in such situations.

FOR FURTHER INFORMATION CONTACT: Michelle L. Paczynski, Administrator, Office of Policy Development and Research, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–5641, Washington, DC 20210, telephone: (202) 693–3700 (this is not a toll-free number). For persons with a hearing or speech disability who need assistance to use the telephone system, please dial 711 to access telecommunications relay services.

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I. Acronyms and Abbreviations

APA Administrative Procedure Act
BLS Bureau of Labor Statistics
CATA Comité de Apoyo a los Trabajadores Agrícolas
CBA collective bargaining agreement
DBA Davis-Bacon Act
DHS U.S. Department of Homeland Security
DOL U.S. Department of Labor
FAQ Frequently Asked Questions
FY fiscal year
GAL General Administration Letter
HR human resources
HSA Homeland Security Act of 2002
IFR interim final rule
INA Immigration and Nationality Act
MOU memorandum of understanding
NPRM notice of proposed rulemaking
NPWC National Prevailing Wage Center
OES Occupational Employment Statistics
OEWS Occupational Employment and Wage Statistics
OFLC Office of Foreign Labor Certification
OIRA Office of Information and Regulatory Affairs
OMB Office of Management and Budget
PRA Paperwork Reduction Act
PWD prevailing wage determination
SCA McNamara-O'Hara Service Contract Act
SESA State employment service agencies
SOC Standard Occupational Classification
UMRA Unfunded Mandates Reform Act of 1995

II. Background

A. The Statutory and Regulatory Framework

The Immigration and Nationality Act (INA), as amended, establishes the H–2B nonimmigrant classification for a non-agricultural temporary worker ''having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform . . . temporary [non-agricultural] service or labor if unemployed persons capable of performing such service or labor cannot be found in this country.'' 8 U.S.C. 1101(a)(15)(H)(ii)(b).[1] Employers must petition the Department of Homeland Security (DHS) for classification of a prospective temporary worker as an H–2B nonimmigrant. 8 U.S.C. 1184(c)(1). DHS must approve this petition before the beneficiary can be considered eligible for an H–2B visa or H–2B status. *Id.* In addition, the INA requires that ''[t]he question of importing any [foreign worker] as [an H–2B] nonimmigrant . . . in any specific case or specific cases shall be determined by [DHS] [2] after consultation with appropriate agencies of the Government.'' *Id.*

Pursuant to this statutory mandate to consult with ''appropriate agencies of the Government'' to determine eligibility for H–2B status, DHS (and the former Immigration and Naturalization Service) has long recognized that the most effective administration of the H–2B program requires consultation with

[1] For ease of reference, sections of the INA are referred to by their corresponding section in the U.S. Code.

[2] In accordance with sec. 1517 of title XV of the Homeland Security Act of 2002 (HSA), Public Law 107–296, 116 Stat. 2135, any reference to the Attorney General in a provision of the INA describing functions that were transferred from the Attorney General or other Department of Justice official to DHS by the HSA ''shall be deemed to refer to the Secretary'' of Homeland Security. *See* 6 U.S.C. 557 (2002) (codifying HSA, title XV, sec. 1517); 6 U.S.C. 542; 8 U.S.C. 1551).

DOL to advise whether U.S. workers capable of performing the temporary services or labor are available.[3]

Accordingly, DHS regulations require that an H–2B petition for temporary employment in the United States must be accompanied by an approved temporary labor certification from DOL. 8 CFR 214.2(h)(6)(iii)(A) and (iv)(A). The temporary labor certification serves as DOL's advice to DHS with respect to whether a qualified U.S. worker is available to fill the petitioning H–2B employer's job opportunity and whether a foreign worker's employment in the job opportunity will adversely affect the wages or working conditions of similarly employed U.S. workers. *See* 8 CFR 214.2(h)(6)(iii)(A). In addition, as part of DOL's certification, DHS regulations require DOL to ''determine the prevailing wage applicable to an application for temporary labor certification in accordance with the Secretary of Labor's regulation at 20 CFR 655.10.'' 8 CFR 214.2(h)(6)(iii)(D). Section 655.10, in turn, requires that any prospective H–2B employer first obtain from DOL a prevailing wage determination (PWD) before filing its application with DOL for temporary labor certification. 20 CFR 655.10(a).

B. The 2008 Rule, the Related Litigation, and the Attempted 2011 Wage Rule

In 2008, DOL issued regulations related to its role in the H–2B temporary worker program, including a methodology for determining the minimum wage that a prospective H–2B employer must offer, advertise in recruitment, and pay. *Labor Certification Process and Enforcement for Temporary Employment in Occupations Other Than Agriculture or Registered Nursing in the United States (H–2B Workers), and Other Technical Changes* (2008 Rule), 73 FR 78020 (Dec. 19, 2008). The 2008 Rule provided, *inter alia,* that the prevailing wage would be the collective bargaining agreement (CBA) wage rate if the job opportunity was covered by an agreement negotiated at arms' length between a union and the employer; the Occupational Employment and Wage Statistics (OEWS)[4] survey wage rate if there was no CBA; a survey if an employer elected to provide an acceptable survey; or a wage rate under the Davis-Bacon Act (DBA) or the McNamara-O'Hara Service Contract Act (SCA), if one was available for the occupation in the area of intended employment. *Id.* at 78056. The 2008 Rule and the agency guidance implementing it required that when PWDs were based on the OEWS survey, the wage had to be structured to contain four tiers to reflect skill and experience.[5] *Id.* at 78056, 78068. While DOL subjected most provisions of the 2008 Rule to the Administrative Procedure Act's (APA) notice-and-comment requirements, because the agency had already been implementing the four-tier wage structure in the H–2B program pursuant to sub-regulatory guidance, DOL did not seek public comments on the use of the four-tier structure when promulgating the 2008 Rule. *See id.* at 78031.

In 2009, a lawsuit was filed under the APA challenging several aspects of the 2008 Rule. *See Comité de Apoyo a los Trabajadores Agrícolas (CATA)* v. *Solis,* No. 09–cv–240, 2010 WL 3431761 (E.D. Pa. Aug. 30, 2010) (*CATA I*). Among the issues raised in that litigation was the use of the four-tier wage structure in the H–2B program. In its decision, the district court ruled that, substantively, DOL had violated the APA by failing to adequately explain its reasoning for adopting skill and experience levels as part of the H–2B PWD process. *Id.* at *19. The court also found that the four-tier wage structure was a legislative rule subject to the APA's notice-and-comment provision, and that DOL had failed to subject it to notice and comment. *Id.* The court ordered promulgation of ''new rules concerning the calculation of the prevailing wage rate in the H–2B program that are in compliance with the [APA]'' within 120 days. *Id.* at *27.

Consequently, after issuing an NPRM on October 5, 2010, DOL published a final rule on January 19, 2011. *See Wage Methodology for the Temporary Non-Agricultural Employment H–2B Program,* 75 FR 61578 (Oct. 5, 2010); *Wage Methodology for the Temporary Non-Agricultural Employment H–2B Program* (2011 Wage Rule), 76 FR 3452, 3465–3467 (Jan. 19, 2011). The 2011 Wage Rule eliminated the four-tier structure. *Id.* at 3458–3461. The 2011 Wage Rule set the prevailing wage as the highest of the OEWS arithmetic mean for each occupational category in the area of intended employment; the applicable SCA or DBA wage rate; or the CBA wage. The use of employer-provided surveys was eliminated except when the job opportunity: (1) was in a geographic location not included in the Bureau of Labor Statistics' (BLS) data collection for the OEWS (*e.g.,* the Commonwealth of the Northern Mariana Islands); or (2) was not ''accurately represented'' within the OEWS job classification used in those surveys. *Id.* at 3466–3467. In deciding to so limit the submission and use of employer-provided surveys, the Department stated that the OEWS wage survey was ''the most consistent, efficient, and accurate means of determining the prevailing wage rate for the H–2B program.'' *Id.* at 3465.

The effective date of the 2011 Wage Rule was originally set for January 1, 2012—a date the *CATA* plaintiffs challenged, seeking an earlier one—but Congress ultimately short-circuited the dispute by an enacting an appropriations rider prohibiting the Department from implementing the 2011 Wage Rule. Public Law 112–55, 125 Stat. 552, Div. B, title V, sec. 546 (Nov. 18, 2011). DOL therefore extended the effective date to October 1, 2012. 76 FR 82115 (Dec. 30, 2011). Subsequent appropriations contained the same restriction prohibiting DOL's use of appropriated funds to implement, administer, or enforce the 2011 Wage Rule, necessitating additional rulemaking to further delay the effective date of the 2011 Wage Rule.[6] 77 FR 60040 (Oct. 2, 2012) (extending the effective date to March 27, 2013); 78 FR

[3] *See, e.g., Temporary Alien Workers Seeking Classification Under the Immigration and Nationality Act,* 55 FR 2606, 2617 (Jan. 26, 1990) (''The Service must seek advice from the Department of Labor under the H–2B classification because the statute requires a showing that unemployed U.S. workers are not available to perform the services before a petition can be approved. The Department of Labor is the appropriate agency of the Government to make such a labor market finding. The Service supports the process that the Department of Labor uses for testing the labor market and assuring that wages and working conditions of U.S. workers will not be adversely affected by employment of alien workers.'').

[4] Prior to March 31, 2021, this survey—conducted by the Department's Bureau of Labor Statistics (BLS)—was known as the Occupational Employment Statistics (OES) survey. For the sake of consistency, however, the Department uses the term OEWS throughout.

[5] Because the OEWS survey does not capture information on the skills or responsibilities of the workers whose wages are being reported, the four-tiered wage structure, adapted from the statutorily required four tiers applicable to the H–1B visa program under 8 U.S.C. 1182(p), was derived by mathematical formula to reflect ''entry level,'' ''qualified,'' ''experienced,'' and ''fully competent'' workers. *See id.* at 78068; Prevailing Wage Determination Policy Guidance, Nonagricultural Immigration Programs, Revised (revised Nov. 2009) (2009 Prevailing Wage Guidance), *available at https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/NPWHC_Guidance_Revised_11_2009.pdf.*

[6] These include the Consolidated Appropriations Act of 2012, Public Law 112–74, 125 Stat. 786 (Dec. 23, 2011); Continuing Appropriations Resolution, 2013, Public Law 112–175, 126 Stat. 1313 (Sept. 28, 2012); Consolidated and Further Continuing Appropriations Act, 2013, Public Law 113–6, 127 Stat. 198 (Mar. 26, 2013); Continuing Appropriations Act, 2014, Public Law 113–46, 127 Stat. 558 (Oct. 17, 2013); and Joint Resolution Making Further Continuing Appropriations for Fiscal Year 2014, Public Law 113–73, 128 Stat. 3 (Jan. 15, 2014).

19098 (Mar. 29, 2013) (extending the effective date to October 1, 2013).

Given Congress's prohibition against implementation of the 2011 Wage Rule, the Department continued to operate the H–2B program under the 2008 Rule, which *CATA I* had invalidated but not vacated. The *CATA* plaintiffs, however, sued again and on March 31, 2013, obtained a permanent injunction against application and vacatur of the four-tier OEWS structure in the 2008 Rule. *CATA* v. *Solis,* 933 F. Supp. 2d 700, 716 (E.D. Pa. 2013) (*CATA II*). In particular, the court vacated and remanded 20 CFR 655.10(b)(2), giving DOL 30 days to come into compliance with its ruling finding invalid the four-tier OEWS skill level and wage structure. *Id.* In the interim, DOL was unable to issue the vast majority of H–2B PWDs, which were based on the OEWS survey.

C. The 2013 Interim Final Rule

In compliance with the *CATA II* court's ruling, DOL published an interim final rule (IFR). *Wage Methodology for the Temporary Non-Agricultural Employment H–2B Program, Part 2,* 78 FR 24047 (Apr. 24, 2013) (2013 IFR).[7] The 2013 IFR became effective on the date of publication, with the agencies asserting that they had ''good cause'' for an immediate effective date pursuant to 5 U.S.C. 553(d)(3). Given the vacatur of the 2008 Rule, the agencies would have been forced to cease processing employers' requests for PWDs and temporary labor certifications without an immediate effective date and thus unable to continue to provide the advice that DHS had determined to be necessary under 8 U.S.C. 1184(c)(1)—as implemented in the DHS regulation at 8 CFR 214.2(h)(6)—for DHS to fulfill its statutory responsibility to adjudicate H–2B petitions. *Id.* at 24050.

The 2013 IFR did not revise or amend 20 CFR 655.10(f) of the 2008 Rule, leaving intact the permitted use of employer-provided surveys. *Id.* at 24054–24055. Noting that ''DOL still has the concerns expressed in the 2011 rule about the consistency, reliability and validity'' of employer-provided surveys, the 2013 IFR stated that DOL and DHS invited comment on ''whether to permit the continued use of employer-submitted surveys.'' *Id.* at 24055. The 2013 IFR invited comment on the following: all aspects of the prevailing wage methodology of 20 CFR 655.10, including, among other things, whether the OEWS mean was the appropriate basis for determining the prevailing wage; whether wages based on the DBA or the SCA should be used to determine the prevailing wage and if so, to what extent; comments on the accuracy and reliability of private surveys, including ''state-developed'' surveys; and whether the continued use of employer-provided surveys should be permitted and if so, how to better ensure their methodological soundness. *Id.*[8]

The comment period closed on June 10, 2013, and the agencies received over 300 comments on all aspects of the H–2B wage methodology from interested parties.[9] Meanwhile, because Congress continued to prohibit the use of funds to implement the 2011 Wage Rule, DOL indefinitely delayed its effective date. *See Wage Methodology for the Temporary Non-Agricultural Employment H–2B Program; Delay of Effective Date* (Indefinite Delay Rule), 78 FR 53643, 53645 (Aug. 30, 2013). Although the appropriations prohibition was removed as part of the Department's fiscal year (FY) 2014 appropriation, Consolidated Appropriations Act, 2014, Public Law 113–76, 128 Stat. 5, DOL has not since revisited the Indefinite Delay Rule.

D. Vacatur of the 2013 Interim Final Rule

In 2014, the *CATA* plaintiffs sued for the third time, challenging the 2013 IFR's continued allowance of employer-provided surveys to set the prevailing wage under 20 CFR 655.10(f). *See CATA* v. *Perez,* No. 2:14–02657, 2014 WL 4100708 (E.D. Pa. Jul. 23, 2014). In addition, the *CATA* plaintiffs challenged DOL's ongoing use under the 2013 IFR of the 2009 Prevailing Wage Guidance,[10] which continued to permit surveys to incorporate skill levels at least with respect to employer-provided surveys. *Id.* The district court dismissed the case on procedural grounds. On December 5, 2014, however, the Court of Appeals for the Third Circuit reversed, vacating both 20 CFR 655.10(f) and the 2009 Prevailing Wage Guidance. *CATA* v. *Perez,* 774 F.3d 173, 191 (3d Cir. 2014) (*CATA III*).

The *CATA III* court invalidated the use of employer-provided surveys in the H–2B program on both substantive and procedural grounds. First, the court held that DOL's failure to explain the broad acceptance of employer-provided surveys where an OEWS wage is available was procedurally invalid, particularly because this decision was a policy change from the 2011 Wage Rule's prohibition of most employer-provided surveys as an alternative to the OEWS. *Id.* at 187–88. Next, the court held that the employer-provided survey provision of the 2013 IFR, § 655.10(f), was arbitrary, and therefore substantively invalid under the APA, given DOL's findings in the 2011 Wage Rule, 76 FR 3465 (Jan. 19, 2011), that the OEWS is the ''most consistent, efficient, and accurate means of determining the prevailing wage rate for the H–2B program.'' *CATA III,* 774 F.3d 173 at 189. Further, the court held that § 655.10(f) was substantively invalid under the APA because it permitted wealthy employers to commission surveys that resulted in a lower prevailing wage than those paid by less affluent employers without means to produce such surveys and resulted in significant variations in the prevailing wage within a single occupation in the same geographic location. *Id.* at 189–90. Finally, the court held that the 2009 Prevailing Wage Guidance violated the APA because it allowed employer-provided surveys containing tiered wages based on skill levels. This, the court held, conflicted with the *CATA II* order, which invalidated the four-tier OEWS structure. *Id.* at 190–91.

The *CATA III* court ultimately ''direct[ed] that private surveys no longer be used in determining the mean rate of wage for occupations except where an otherwise applicable OE[W]S survey does not provide any data for an

[7] DOL and DHS published the 2013 IFR jointly in light of a then-recent court decision indicating DOL lacked authority to promulgate H–2B rules. *See Bayou Lawn & Landscape Servs.* v. *DOL,* 713 F.3d 1080, 1085 (11th Cir. 2013) (affirming preliminary injunction based in part on plaintiffs' likelihood of succeeding on their claim that DOL lacked authority to promulgate H–2B rules). Subsequent courts, reviewing the matter on the merits, reached the opposite conclusion. *See Outdoor Amusement Bus. Ass'n* v. *DHS,* 983 F.3d 671, 685 (4th Cir. 2020) (DOL has authority to promulgate H–2B rules); *La. Forestry Ass'n* v. *DOL,* 745 F.3d 653, 675 (3d Cir. 2014) (same).

[8] Specifically, the 2013 IFR invited comment on the following questions with respect to employer-provided surveys: ''Are there methodological standards that can or should be included in the regulation that would ensure consistency, validity and reliability of employer-provided surveys? Are there industries in which employers historically and routinely rely on employer-submitted surveys that should be permitted to do so because of the well-developed, historical, industry-wide practice, or for other reasons? Are there state-developed wage surveys, such as state agricultural surveys, or surveys from other agencies, such as maritime agencies, that could provide data that would be useful in setting prevailing wages? Should employer surveys that include data based on wages paid to H–2B or other nonimmigrant workers be permitted in establishing a prevailing wage that does not adversely affect U.S. workers? If so, under what circumstances?'' 78 FR 24055 (Apr. 24, 2013).

[9] A substantial number of comments on the 2013 IFR repeated, to a great extent, the same arguments that had been raised in connection with the 2011 rulemaking. *See* 76 FR 3458–3463 (Jan. 19, 2011).

[10] The 2009 Prevailing Wage Guidance governed the methodology for employer-provided surveys across DOL-administered wage programs. *See* 2009 Prevailing Wage Guidance, *available at https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/NPWHC_Guidance_Revised_11_2009.pdf.*

occupation in a specific geographical location, or where the OE[W]S survey does not accurately represent the relevant job classification.'' *Id.* DOL immediately ceased accepting employer-provided wage surveys. 80 FR at 24151 (Apr. 29, 2015).

E. The 2015 Wage Rule, the 2016 Appropriations Rider, and DOL's Guidance Regarding the Rider's Effect on the Rule

Soon after the *CATA III* decision, the court in *Perez* v. *Perez,* No. 14–cv–682 (N.D. Fla. Mar. 4, 2015), vacated the 2008 Rule and permanently enjoined DOL from applying or enforcing it, thus creating a regulatory void. DOL had to cease operating the H–2B program briefly until it obtained a temporary stay of the *Perez* court's order until May 15, 2015. 80 FR at 24151 (Apr. 29, 2015). On April 29, 2015, DOL and DHS jointly published two rules: the *Temporary Non-Agricultural Employment of H–2B Aliens in the United States* IFR, 80 FR 24042 (Apr. 29, 2015), and the 2015 Wage Rule, *Wage Methodology for the Temporary Non-Agricultural Employment H–2B Program,* 80 FR 24146 (Apr. 29, 2015). The 2015 Wage Rule acknowledged the *CATA III* court's substantive concerns regarding the validity of employer-provided surveys in the H–2B program and stated that ''DOL's options for accepting such surveys under this final rule are now necessarily more limited than under the 2013 IFR.'' *Id.* at 24151. Referring to the questions presented to the public in the 2013 IFR for any ''additional data on the accuracy and reliability of private surveys covering traditional H–2B occupations to allow for further factual findings on the sufficiency of private surveys for setting prevailing wage rates,'' the 2015 Wage Rule discussed the comments submitted by worker advocacy groups, employers and employer associations, and associations of seafood processing employers, among others. *Id.* at 24166–24169.

After reviewing the comments provided, and recognizing the concerns underscored by the *CATA III* decision, the 2015 Wage Rule reiterated DOL's position in the 2011 Wage Rule, stating ''DOL experience reviewing employer-provided surveys since 2011 has not provided any demonstrable evidence that the wage information produced from nongovernment surveys is any more consistent or reliable than DOL determined was the case four years ago.'' *Id.* at 24168. The 2015 Wage Rule went on to state that, given DOL's administrative experience regarding employer-provided surveys, the comments received following the 2013 IFR, and the court's decision in *CATA III,* ''the Departments have decided to allow the submission of employer-provided surveys to set the prevailing wage in H–2B in limited circumstances.'' *Id.* The first two such circumstances tracked those endorsed by the court in *CATA III,* permitting ''the use of a nongovernmental employer-provided survey to set the prevailing wage only where the OE[W]S survey does not provide any data for an occupation in a specific geographical location, or where the OE[W]S survey does not accurately represent the relevant job classification.'' *Id.*

When submitting such a wage survey, an employer was required to include ''specific information about the survey methodology, including such items as sample size and source, sample selection procedures, and survey job descriptions, to allow a determination of the adequacy of the data provided and validity of the statistical methodology used in conducting the survey.'' 20 CFR 655.10(f)(4). Further, the employer was required to attest, via Form ETA–9165, that the survey was not conducted by the employer or its agents, that the surveyor either contacted a randomized sample of relevant employers or attempted to contact them all, and, among other things, that the ''survey includes wage data from at least 30 workers and three employers.'' *Id.* at § 655.10(f)(4)(i) through (iii).

Additionally, the 2015 Wage Rule included a ''third, limited category of acceptable employer-provided surveys, even where the occupation is sufficiently represented in the OE[W]S.'' 80 FR 24169–24170 (Apr. 29, 2015). In reaching this conclusion, the Departments quoted the preamble to the 2011 Wage Rule, which stated ''the prevailing wage rate is best determined through reliable Government surveys of wage rates, rather than employer-provided surveys that employ varying methods, statistics, and surveys.'' *Id.* at 24170 (citing 76 FR 3465, Jan. 19, 2011). The Departments stated that, consistent with their assessment that government surveys are reliable, ''surveys conducted and issued by a state represent an additional category of reliable government surveys.'' *Id.* at 24170. The preamble to the 2015 Wage Rule further reasoned that as the State-conducted surveys were capable of meeting the methodological standards included in the rule, and if issued without regard to the interest of any employer in the outcome of the wage reported from the survey, such surveys would be ''generally reliable and an adequate substitute for the OE[W]S.'' *Id.*

Shortly after promulgation of the 2015 Wage Rule, however, Congress included in the Department's FY 2016 appropriation a provision that mandated broader use of employer-provided surveys:

> The determination of prevailing wage for the purposes of the H–2B program shall be the greater of—(1) the actual wage level paid by the employer to other employees with similar experience and qualifications for such position in the same location; or (2) the prevailing wage level for the occupational classification of the position in the geographic area in which the H–2B nonimmigrant will be employed, based on the best information available at the time of filing the petition. In the determination of prevailing wage for the purposes of the H–2B program, the Secretary shall accept private wage surveys even in instances where Occupational Employment Statistics survey data are available unless the Secretary determines that the methodology and data in the provided survey are not statistically supported.

Consol. Appropriations Act, 2016, Public Law 114–113, sec. 112, 129 Stat. 2242, 2599 (Dec. 18, 2015). Every subsequent Appropriations Act has included the same provision.[11] Shortly after the first of the appropriations riders, DOL published a Frequently Asked Questions (FAQ) on its website stating that it would use the criteria in the 2015 Wage Rule to determine whether an employer-provided survey was ''statistically supported'' within the meaning of the appropriations rider.[12]

F. Invalidation of the 2015 Wage Rule

The United States District Court for the District of Columbia issued a decision on December 23, 2022, holding the 2015 Wage Rule—specifically 20 CFR 655.10(f)(2) and (f)(4)—to be procedurally invalid for failure to comply with the notice-and-comment requirement of the APA, and further

[11] This language has been included in each subsequent appropriation. *See* Further Consol. Appropriations Act, 2024, Public Law 118–47, Div. D, title I, sec. 110, 138 Stat. 460, 646 (2024); Consol. Appropriations Act, 2023, Public Law 117–328, Div. H, title I, sec. 110, 136 Stat. 4459, 4852 (2023); Consol. Appropriations Act, 2022, Public Law 117–103, sec. 110, 136 Stat. 49, 439 (2022); Consol. Appropriations Act, 2021, Public Law 116–260, sec. 110, 134 Stat. 1182, 1564–65 (2020); Further Consol. Appropriations Act, 2020, Public Law 116–94, sec. 110, 133 Stat. 2534, 2554 (2019); Dep't of Defense, Labor, Health and Hum. Serv., and Educ. Appropriations Act, 2019, and Continuing Appropriations Act, 2019, Public Law 115–245, sec. 111, 132 Stat. 2981, 3065 (2018); Consol. Appropriations Act, 2018, Public Law 115–141, sec. 112, 132 Stat. 348, 712 (2018); Consol. Appropriations Act, 2017, Public Law 115–31, sec. 112, 131 Stat. 135, 518–19 (2017).

[12] *See* DOL, Emp't & Training Admin., Effects of the 2016 Dep't of Labor Appropriations Act at 4 (Dec. 29, 2015), *available at https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/H2B_Prevailing_Wage_FAQs_DOL_Appropriations_Act.pdf.*

holding that DOL's application of the 2015 Wage Rule—specifically paragraph (f)(3)—to PWDs accepting a 2021 employer-provided wage survey was unlawful. *Williams, et al.* v. *Walsh, et al.,* 648 F.Supp.3d 70, 75 (D.D.C. 2022). Regarding the first holding, the court reasoned that although the 2015 Wage Rule purported to finalize the 2013 IFR, the *CATA III* decision had vacated the 2013 IFR. *Id.* at 91. As a result of the *CATA III* vacatur, the *Williams* court concluded that the agencies were required to either engage in a new notice-and-comment procedure or invoke the APA's good-cause exception to promulgate the 2015 Wage Rule as an IFR. *Id.* Because the agencies did neither, the court ruled that the 2015 Wage Rule was procedurally deficient, specifically invalidating paragraphs (f)(2) and (f)(4). *Id.* Having reached this conclusion with respect to the 2015 Wage Rule's procedural defects, the Court did not reach Plaintiffs' substantive facial challenges to the 2015 Wage Rule.

Regarding the Plaintiffs' as-applied challenge to the rule, the Court held that DOL erred in accepting the 2021 wage survey that had been submitted by some twenty employers because the survey had been expanded beyond the area of intended employment for stated reasons that did not meet the requirements of paragraph (f)(3). *Id.* at 95–96.

The Court remanded the case to the agencies for further consideration consistent with its opinion. *Id.* at 97–99. This rulemaking is being undertaken consistent with the court's order.

G. The Department's Authority To Promulgate This Rule

As discussed above, the INA obligates DHS to consult with ''appropriate agencies of the Government'' in considering an employer's petition for visas for nonimmigrant workers. 8 U.S.C. 1184(c)(1). DHS regulations designate the Secretary of Labor as an appropriate consultant regarding the H–2B program, specify that the Secretary shall establish procedures for administering the labor certification program, and require an employer's petition to employ H–2B workers to be accompanied by an approved temporary labor certification from the Secretary. 8 CFR 214.2(h)(6)(iii)(D), (iv); *see also* 20 CFR 655.1. The Department's authority to promulgate regulations to structure and administer the H–2B temporary labor certification process, including the determination of the prevailing wage, has been judicially upheld. *Outdoor Amusement Bus. Ass'n* v. *DHS,* 983 F.3d 671, 684–89 (4th Cir. 2020) (DOL possesses independent H–2B rulemaking authority); *La. Forestry Ass'n* v. *DOL,* 745 F.3d 653, 669 (3d Cir. 2014) (same).[13]

In addition, the language in the appropriations riders discussed in Section II.E, above, specifically authorizes the Secretary of Labor to determine whether the ''methodology and data'' used in an employer-provided wage survey is ''statistically supported.'' *See, e.g.,* Further Consol. Appropriations Act, 2024, Public Law 118–47, Div. D, title I, sec. 110, 138 Stat. 460, 646 (2024); Consol. Appropriations Act, 2023, Public Law 117–328, Div. H, title I, sec. 110, 136 Stat. 4459, 4852 (2023). The methodological and data criteria proposed here implement that statutory requirement. Accordingly, as part of its consultative role and based on the language in recent appropriations riders, the Department possesses clear authority to promulgate the proposed rule.

III. Summary of Proposed Revisions to 20 CFR Part 655; Subpart A; 20 CFR 655.10

In compliance with the *Williams* ruling, the Department hereby provides notice and an opportunity to comment on the proposed employer-provided wage survey provisions of 20 CFR 655.10(f). The Department proposes to allow employers to submit wage surveys in the same limited circumstances as the 2015 Wage Rule, the current rule, does. Specifically, if the job opportunity is not covered by a CBA or a professional sports league's rules or regulations, an employer would be permitted to submit a survey only if: (1) the survey was independently conducted and issued by a State, including any State agency, State college, or State university; (2) the survey is submitted for a geographic area where the BLS does not collect OEWS survey data, or in a geographic area where the OEWS survey provides an arithmetic mean only at a national level for workers employed in the Standard Occupational Classification (SOC); or (3) the job opportunity is within an occupational classification of the SOC system designated as an ''All Other'' classification.[14] The proposed rule, however, would eliminate the option that such a survey could report the median wages of workers performing the same or substantially similar job duties in the area of intended employment. Rather, the proposed rule would only allow the submission of a survey that includes the arithmetic mean of the wages of those workers.

The proposed rule, like the current rule, would require an employer-provided survey to contain specific information about the survey methodology, such as sample size and source, sample selection procedures, and survey job descriptions, to allow the National Prevailing Wage Center (NPWC) to determine the adequacy of the survey data and validity of the methodology used to conduct the survey. The proposed rule, however, would eliminate the standard survey attestation form, Form ETA–9165, *Employer-Provided Survey Attestations to Accompany H–2B Prevailing Wage Determination Request Based on a Non-OES Survey* (Form ETA–9165), which H–2B employers must complete and submit under the current rule when they request a survey-based prevailing wage. Instead, the proposed rule would require the employer to submit the survey to the NPWC for evaluation at the same time the employer submits its Form ETA–9141 requesting a PWD from the NPWC.

Additionally, the proposed rule would include new requirements to follow-up at least three times with non-respondents and to keep the survey open for accepting responses for at least 14 calendar days after the issuance of the third follow-up. The follow-up requirement would reduce sampling bias, and the additional 14-calendar day period would maximize the amount of wage data collected. Together, these two new requirements would result in more accurate surveys. The proposed rule would, like the current rule, provide that if the minimum sample size of 3 employers and 30 workers is not met,

[13] Although other courts have reached a different conclusion at the preliminary injunction stage of litigation challenging the Department's authority to issue regulations, *Bayou Lawn & Landscape Servs.,* 713 F.3d 1080, 1085 (11th Cir. 2013) (affirming preliminary injunction, holding the plaintiffs were likely to succeed on claim that DOL lacked authority to promulgate H–2B rules), or under a separate theory of rulemaking authority, *G.H. Daniels* v. *Perez,* 626 F. Appx. 205 (10th Cir. 2015) (DHS's 2008 H–2B rule improperly sub-delegated certification authority to DOL), the Department disagrees with the conclusions reached in those cases—which were either not merits decisions or non-precedential—regarding its rulemaking authority for the reasons explained in this NPRM.

[14] As discussed further in Section III.B, below, the Department recognizes that the language contained in every appropriations act since 2016 supersedes these limitations and requires acceptance of any employer-provided wage survey unless it determines that the methodology and data in the survey are not ''statistically supported.'' *See* n.11, above. The Department proposes to retain the same limitations as in the current rule in the event that the language is eliminated from or modified in future appropriations acts. When Congress annually reenacts a provision in appropriations acts, ''common sense suggests—and courts are free to presume—that Congress did not consider the language as creating permanent law.'' *Atlantic Fish Spotters Ass'n* v. *Evans,* 321 F.3d 220, 227 (1st Cir. 2003) (citing *U.S.* v. *Vulte,* 233 U.S. 509, 514 (1914)).

the geographic area of the survey may be expanded beyond the area of intended employment to other contiguous geographic areas in order to meet the minimum sample size requirement.

The Department seeks public comment on all aspects of this proposed rule discussed in Sections III.A through III.F below, especially the proposed revisions to the current § 655.10(f).

A. Discussion of Proposed Technical Changes to 20 CFR 655.10

Consistent with the 2015 Wage Rule, the Department proposes the following technical changes. First, the proposed rule would retain § 655.10(a) with a technical change to spell out the phrase ''prevailing wage determination'' and placing ''PWD'' in parentheses.

Second, this proposed rule would retain § 655.10(a) and (b), with three technical changes in § 655.10(b) by inserting the word ''Wage'' between the words ''and Statistics'' and inserting a ''W'' into ''OES'' in the parenthetical ''(OES).'' Also, the proposed rule would replace the term ''OFLC'' with ''the NPWC'' in § 655.10(b)(2). These technical changes are for consistency with other sections of this proposed rule.

Third, this proposed rule would retain § 655.10(e) with technical changes to: (1) replace the word ''provide'' with the word ''determine''; (2) change the placement of ''Form'' in the parenthetical ''(ETA Form-9141)'' to precede ''ETA''; and (3) replace ''its'' with the phrase ''the determination and the NPWC's'' for clarity and to be consistent with other sections of this proposed rule.

B. Discussion of Proposed Revisions to 20 CFR 655.10(f)(1)

The Department proposes to allow employers to submit wage surveys in the same three circumstances as the current rule does. The first two circumstances would remain unchanged, and the third would be revised as discussed in Sections III.B.1 through III.B.3, below. The Department, however, does not intend to apply or enforce these limitations on wage surveys as long as the language contained in the appropriations acts discussed above remains in effect. That language requires the Secretary to ''accept private wage surveys even in instances where Occupational Employment Statistics survey data are available unless the Secretary determines that the methodology and data in the provided survey are not statistically supported.'' [15] This language supersedes the current § 655.10(f)(1) and would supersede the proposed § 655.10(f)(1) as long as that language remains in effect. The Department would apply and enforce the proposed § 655.10(f)(1) only if and when Congress eliminates that language.

1. State Conducted Survey

Consistent with current § 655.10(f)(1)(i), this proposal would permit employers to submit prevailing wage surveys that are independently conducted and issued by a State, including any State agency, State college, or State university. As stated in the preamble to the 2015 Wage Rule, the Department continues to believe that surveys that are independently conducted and issued by a State are as reliable as ''Government'' surveys.[16] Since a ''state must independently conduct and issue the survey, [this requirement] means that the state must design and implement the survey without regard to the interest of any employer in the outcome of the wage reported from the survey.'' [17] In addition, a State would have to satisfy the proposed rule's methodological and data requirements to be used to establish a PWD.[18] The Department considers State agencies to generally be neutral third parties that are free from bias and have no self-interest or motivation with respect to the result of the survey. Based on its ''substantial experience with wage surveys conducted by the states,'' the Department continues to think that surveys conducted by a State agency are appropriate as a wage source for the H–2B program provided they meet the methodological standards described below.[19]

Where a State conducts a survey that meets the methodological and data requirements in this proposed rule, an employer may attach the State-conducted wage survey to a prevailing wage request for consideration as a wage source for its job opportunity. While there may be concerns about undue influence over the development and administration of a survey, the Department proposes to allow the use of surveys conducted by State agencies, such as State agriculture or maritime agencies, or State colleges and universities. These entities must design and implement the survey without regard to the interest of any employer in the outcome of the wage reported from the survey. In addition, to satisfy this requirement, a State official must approve the survey.[20]

2. OEWS Data Limitation in Certain Geographic Areas

Consistent with current § 655.10(f)(1)(ii), the Department proposes that employers may submit surveys where the OEWS survey does not collect data in a geographic area, or where the OEWS reports a wage for the SOC based only on national data. For geographic areas where the OEWS does not collect data or does not collect enough data to report a wage (*e.g.,* because the sample size is too small), wage surveys could provide the Department with access to data it simply would not otherwise have. For geographic areas where only an OEWS national wage is available, a wage survey could provide data for the geographic area in which the job opportunity exists. Thus, this proposed rule reflects the Department's view that employers should be permitted to submit wage surveys where the Department does not have readily available or appropriate OEWS data to issue a prevailing wage for the occupation in the area of intended employment where the job opportunity will be performed. Acceptance of private wage surveys in these circumstances was expressly endorsed by the court in *CATA III*.[21]

3. OEWS Data Limitation in Certain SOC Codes

According to the BLS, the SOC system is used ''to classify workers and jobs into occupational categories for the purpose of collecting, calculating, analyzing, or disseminating data.'' [22] Occupations that have similar job duties, and in some cases, similar skills, education, and/or training, are classified in a distinct detailed SOC code.[23] Under the SOC system, occupations are assigned an SOC code based on the worker's job duties, not the worker's job title(s).[24] When workers do not perform job duties described in any distinct detailed occupation, the SOC system classifies the occupation as one contained within an ''All Other'' SOC code.[25] For example, according to the BLS, an ''All Other'' SOC code is 49–9099, Installation, Maintenance, and

[15] *See* n.11, above.

[16] *See* 80 FR 24146, 24170 (Apr. 29, 2015).

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] 80 FR 24146, 24170 (Apr. 29, 2015).

[21] 774 F.3d at 191 (private surveys may be used ''where an otherwise applicable OE[W]S survey does not provide any data for an occupation in a specific geographic location'').

[22] *See* 2018 SOC Manual, *available at https://www.bls.gov/soc/2018/soc_2018_manual.pdf,* at 1.

[23] *Id.*

[24] *Id.* at 23.

[25] *Id.*

Repair Workers, All Other. The BLS provides these examples of occupational titles that would fall under this SOC code: Bowling Alley Mechanic, Fabric Awning Repairer, Fire Extinguisher Installer, Gasoline Pump Installer, Gunsmith, Parachute Repairer, Sail Repairer.[26]

Consistent with the 2015 Wage Rule, this proposed rule would continue to permit employers to submit surveys where the job opportunity is within an ''All Other'' SOC code. This situation, similar to the one described in the preceding section, is one in which a wage survey could provide the Department access to information that it either simply does not have or is more sufficiently tailored to the specific occupation in the employer's job opportunity. To meet this requirement, which is currently in § 655.10(f)(1)(iii)(B), an employer's job opportunity, as entered on the employer's prevailing wage application, must entail job duties requiring ''knowledge, skills, abilities, and work tasks that are significantly different than those in any SOC classification other than [an] 'all other' category.'' [27]

The Department proposes to delete the current § 655.10(f)(1)(iii)(A) and redesignate current § 655.10(f)(1)(iii)(B) as § 655.10(f)(1)(iii). Under the current § 655.10(f)(1)(iii)(A), the Department accepts an employer-provided survey when the employer's job opportunity is not included in an occupational classification of the SOC system; and under the current § 655.10(f)(1)(iii)(B), the Department accepts an employer-provided survey when the job opportunity is within an ''All Other'' SOC code. The Department proposes to delete subordinate paragraph (A) because, in the Department's experience, a more specific SOC code is invariably applicable. In assigning an SOC code, the Department may consider the employer's prior filing history.[28] Acceptance of private wage surveys when the job opportunity falls within an ''All Other'' SOC code is consistent with the court's decision in *CATA III.*[29]

C. Discussion of Proposed Revisions to 20 CFR 655.10(f)(2)

The proposed rule would require that employer-provided wage surveys provide the arithmetic mean of the wages of all workers performing the same or substantially similar job duties. This proposed rule uses the phrase ''substantially similar,'' which is derived from the Department's permanent labor certification regulation at 20 CFR 656.40(d).[30] For purposes of this proposed rule, ''workers performing the same or substantially similar job duties'' refers to workers that are similarly employed in the area of intended employment. The proposed rule would eliminate the exception in the current rule that ''if the survey provides a median but does not provide an arithmetic mean, the prevailing wage applicable to the employer's job opportunity shall be the median of the wages of workers similarly employed in the area of intended employment.'' [31] Under this proposed rule, if an employer submits a survey that provides only the median wage, the NPWC would issue an OEWS wage for such a PWD request.

The Department proposes this change to be consistent with the methodology applied when the OEWS survey is the wage source used to determine the prevailing wage rate. As stated in the preamble to the 2015 Wage Rule, ''[t]he mean is the average of all wages surveyed in an occupation in the geographic area, and in the . . . [occupations in the H–2B program], the mean represents the average wage paid to [workers] to perform that job. If the prevailing wage is set below the mean, the average wage of workers in the occupation would be drawn down, resulting in a depressive effect on U.S. workers' wages overall.'' [32] The preamble went on to note that ''the Department has set the wage rate at the mean rather than at the median because the mean provides equal weight to the wage rate received by each worker in the occupation across the wage spectrum and maintaining the OE[W]S mean provides regulatory continuity. As a result, when the prevailing wage is based on the OE[W]S survey, the Department will set it at the mean because it is the most appropriate wage to use in order to avoid immigration induced labor market distortions inconsistent with the requirements of INA.'' [33]

The Department's experience since the introduction of the 2015 Wage Rule is that H–2B employers have generally submitted surveys with the arithmetic mean of the wages of all workers performing the same or substantially similarly job duties in the area of intended employment for establishing an H–2B survey-based prevailing wage. As a result, the Department does not believe that elimination of the option to provide a survey using a median wage will have a significant practical effect because the NPWC rarely receives surveys that only include a median wage. Moreover, the Department continues to think that setting the wage below the mean would have a depressive effect on wages, and therefore this proposed change is consistent with the Department's obligation to ensure that U.S. workers' wages are not adversely affected when setting a prevailing wage for workers employed in the H–2B program.[34]

Under this proposed paragraph, the Department would continue to require that surveys provide the arithmetic mean of the wages of all workers similarly employed without regard to the immigration status of the workers surveyed. Doing so remains consistent with the Department's historical practice in the H–2B program [35] and would continue to promote consistency with the OEWS survey, which includes wage data from all workers without regard to their immigration status.[36] Further, commercial wage surveys generally do not exclude workers from the survey based on their immigration status, and, where the OEWS does not provide adequate information for the occupation or geographic location, the Department is concerned that requiring the exclusion of nonimmigrant workers would effectively bar employers from using such surveys—thus potentially leaving the Department without a reliable basis on which to set a prevailing wage. Therefore, as stated in the 2015 Wage Rule and continued in this proposed rule, the Department ''will not accept wage surveys that exclude the wages of U.S. workers or exclude the wages of nonimmigrant workers.'' [37]

D. Discussion of 20 CFR 655.10(f)(3)

Consistent with the 2015 Wage Rule, the Department would continue to allow, under proposed § 655.10(f)(3), employer-provided surveys to cover a geographic area beyond the area of intended employment only if: (1) the expansion is limited to geographic areas that are contiguous to the area of

[26] *Id.* at 181. Please note this example is based on the 2018 SOC codes, which are subject to future updates.

[27] 80 FR 24146, 24169 (Apr. 29, 2015).

[28] *See generally* 2018 SOC Manual, *available at https://www.bls.gov/soc/2018/soc_2018_manual.pdf.*

[29] 774 F.3d at 191 (private surveys may be used ''where the OE[W]S survey does not accurately represent the relevant job classification'').

[30] *See* 20 CFR 656.40(d) (''similarly employed'' means ''having substantially comparable jobs in the occupational category in the area of intended employment'').

[31] 20 CFR 655.10(f)(2).

[32] 80 FR 24146, 24159 (Apr. 29, 2015).

[33] *Id.*

[34] *See* 8 U.S.C. 1182(a)(5)(A)(i), (p).

[35] *Id.* at 24172.

[36] *Id.*

[37] *Id.*

intended employment; (2) the expansion is required to meet either the 30-worker or 3-employer minimum; and (3) the geographic area is expanded no more than necessary to meet these minimum requirements.

Consistent with the 2015 Wage Rule, a geographic area may be expanded in two ways. First, if an employer contracts with a surveyor familiar with the area of employment, the surveyor may determine before beginning the survey that the survey will not elicit a sufficient response to meet the regulatory requirements—for example, if there are not enough employers or workers in the local area of employment. In those cases, the surveyor may elect, at the outset, to survey a geographic area larger than the area of employment. In its submission to the NPWC, the survey must explain the decision to expand the survey area at the outset, and describe the extent of the expansion and the reason why the expansion was needed to meet the regulatory requirements.[38]

Second, a survey may be expanded incrementally. Expansion would be permitted only if the survey of the area of intended employment did not yield sufficient wage data to meet the minimum sample size requirements. In such circumstances, consistent with current guidance, ''the geographic area of consideration should not be expanded more than is necessary'' to meet either the 30-worker or 3-employer, or both, requirements of § 655.10(f)(4)(ii).[39] For example, as noted in the guidance, it would be ''appropriate to survey cities and counties that are in close proximity to the area of intended employment rather than using a State-wide average wage rate.'' [40] In all cases where an area larger than the area of intended employment is surveyed, the survey would have to establish that the expansion was necessary to meet either the 30-worker or 3-employer requirements of § 655.10(f)(4)(ii).[41]

Further, consistent with current practice, incremental geographic area expansion beyond the area of intended employment must be consistent with OEWS survey methodology,[42] meaning that a ''survey's expansion may take place across state lines, as long as the new area(s) added to the survey [is] contiguous to the area of intended employment in which the job opportunity is located and the expansion extends only as much as is necessary to satisfy the minimum sample size requirement.'' [43] Any such expansion is limited to geographic areas that are contiguous to the area of intended employment because the NPWC's ''experience demonstrates that some employers have submitted surveys that expanded the survey area using remote geographic areas located far from the job opportunity. [The Department] see[s] no reason for a survey to ignore areas immediately surrounding the job opportunity in favor of geographic areas located large distances from the job.'' [44] For example, in *Williams,* the surveyor expanded the geographic area of the survey without explaining why a statewide survey was needed instead of a ''more incremental approach.'' [45] Thus, the Department continues to believe that areas contiguous to the area of intended employment, which are closest to the area of intended employment, better reflect the wages in the area of intended employment. As such, this proposal seeks to guard against the potential for wage depression that may result when a survey is expanded to geographic areas that are remote from the location of the job opportunity and where wages may be lower.

The Department is proposing clarifying guidance on the steps for conducting geographic area expansion if the area of intended employment surveyed area does not meet the 30-worker and 3-employer requirements under proposed § 655.10(f)(4)(ii). In particular, if a survey is incrementally expanded beyond the area of intended employment to meet the minimum sample size requirements, the surveyor would have to survey the newly added area using the same method used to survey the original area of intended employment for consistency.[46]

Under this proposed rule, if the NPWC determines that the geographic area of an employer-provided survey appears to be broader than permitted by § 655.10(f)(3), the NPWC will review the survey for the reason(s) why and how the geographic area was expanded, as it does under current practice. Then, the NPWC may issue a request for information for an explanation for the reason(s) why and how the geographic area was expanded, if needed. An example of such an explanation, or a part of such an explanation, could be that the expansion was needed to meet the regulatory requirements because there were not enough workers or employers in the area of intended employment and the area of intended employment was fully surveyed (*i.e.,* all geographic components such as counties and townships, etc.). Consistent with current practice, if the NPWC determines the geographic area was improperly expanded, the NPWC would reject the survey and issue an OEWS wage for the employer's job opportunity.

E. Discussion of Proposed Revisions to 20 CFR 655.10(f)(4)

Under the current rule, when an employer requests a PWD based on a survey, the Department requires the employer to submit the Form ETA–9165, *Employer-Provided Survey Attestations to Accompany H–2B Prevailing Wage Determination Request Based on a Non-OES Survey* (''Form ETA–9165''), with the Form ETA–9141, *Application for Prevailing Wage Determination* (''Form ETA–9141''). This proposed rule would eliminate the Form ETA–9165, which was intended to streamline the Department's analysis of employer-provided surveys and yield

[38] *See id.*

[39] *See* General Administration Letter (GAL) 4–95, Interim Prevailing Wage Policy for Nonagricultural Immigration Programs (May 18, 1995) at p. 4, *available at https://www.dol.gov/sites/dolgov/files/ETA/advisories/GAL/1995/GAL4-95_attach.pdf. See infra* n.42.

[40] *Id.*

[41] *See* GAL 2–98, Prevailing Wage Policy for Nonagricultural Immigration Programs (Oct. 31, 1997) at p. 8, *available at https://oui.doleta.gov/dmstree/gal/gal98/gal_0298a.pdf.*

[42] 80 FR 24146, 24174 (Apr. 29, 2015).

[43] *See* OFLC Frequently Asked Questions and Answers, #32 (Sep. 1, 2016), *available at https://foreignlaborcert.doleta.gov/faqsanswers.cfm* (Question: ''The surveyor has not been able to elicit a response to the survey in the occupation and area of intended employment that meets the minimum sample size requirements (*i.e.,* at least 3 employers and 30 workers) of the 2015 H–2B Wage Final Rule. May the surveyor expand the geographic area surveyed?'') and (Answer: ''Yes, under certain limited conditions, the geographic area surveyed may be expanded incrementally until employer-provided survey sample size requirement is met (*i.e.,* at least 3 employers and 30 workers). A survey may be expanded to cover a geographic area larger than the area of intended employment in which the job opportunity is located only where that area of intended employment does not generate a sufficient sample to meet minimum size requirements. Under that condition, the survey may only be expanded to geographic areas that are contiguous to the area of intended employment only to the extent necessary to generate a sample size sufficient to satisfy the minimum sample size requirement. The survey's expansion may take place across state lines, as long as the new area(s) added to the survey are contiguous to the area of intended employment in which the job opportunity is located and the expansion extends only as much as is necessary to satisfy the minimum sample size requirement. If the surveyor determines after surveying the area of intended employment that the survey does not meet minimum sample size requirements, it must either conduct a new random sample of the expanded area (including the area of intended employment) or make a reasonable, good faith effort to survey all employers employing workers in the occupation and expanded area surveyed.'').

[44] 80 FR 24146, 24174 (Apr. 29, 2015).

[45] *Williams,* 648 F. Supp. 3d at 96 (holding DOL erred in accepting a statewide survey where the justification for expansion of the geographic area required by § 655.10(f)(3) had not been provided).

[46] *Id.*

consistent results. In the Department's experience, however, using the current Form ETA–9165 has proven inadequate to determine whether the survey meets the data and methodological requirements of the current rule. The Form ETA–9165 is based on an employer's attestations regarding an independently conducted survey but in practice, the NPWC has requested the survey itself for nearly all survey-based H–2B prevailing wage requests to evaluate whether the survey satisfied the data and methodological requirements of the regulation. The current regulation does not explicitly require that the survey be submitted concurrently with the Form ETA–9141. This has necessitated that the NPWC contact the employer to submit the actual survey instrument. Thus, to align the regulation with the NPWC's practice of reviewing the actual survey instrument alongside the submitted Form ETA–9141, the Department proposes to require the employer to submit the survey simultaneously with the Form ETA–9141 when an employer requests a survey-based H–2B prevailing wage from the NPWC.

The Department therefore proposes to discontinue the Form ETA–9165. Doing so would benefit PWD applicants by eliminating the burden of completing a form, and would benefit the Department by simplifying the survey-based H–2B prevailing wage process. This simplified process, in turn, would assist the Department in maintaining the integrity of the wage determination process for the H–2B program because the Department would have a copy of the survey itself during its review of the employer's Form ETA–9141, without needing to rely on the Form ETA–9165 and without needing to separately request the survey, potentially speeding up the determination process. Consequently, the proposal would better protect U.S. worker wages against the potential adverse effects that the employment of H–2B workers could have as the Department would have all necessary information available to make a determination about the use of the survey.

The elimination of the Form ETA–9165 would not affect how employers complete the Form ETA–9141. The Department does not propose any changes to the Form ETA–9141. Employers would continue to complete the Form ETA–9141 as they have been doing. However, the Department proposes to revise the General Instructions for the Form ETA–9141 by including in the Wage Source Information section instructions to submit the survey concurrently with the Form ETA–9141 when an employer seeks a survey-based PWD.

Also, the proposed rule would replace the phrase ''the adequacy of the data provided and validity of the statistical methodology used in conducting the survey'' in paragraph (f)(4) with ''whether the survey meets all of the requirements of this section, including the following.'' This change is intended to clarify that the survey would have to meet the requirements of proposed § 655.10(f)(4)(i) through (v), in addition to containing specific information about the survey methodology, such as the sample size, sample selection procedures, and survey job descriptions.

1. Discussion of Proposed Revisions to 20 CFR 655.10(f)(4)(i)

Initially, the Department proposes a technical change to the regulatory text at § 655.10(f)(4)(i) to clarify that the ''good faith'' requirement applies to both methods of conducting surveys permitted. That is, the surveyor would have to make a reasonable, good faith attempt to either: (1) contact all employers of workers performing the same or substantially similar job duties in the geographic area surveyed; or (2) conduct a randomized sampling of such employers. The Department continues to believe, as it noted in the preamble of the 2015 Wage Rule, that ''[p]roper randomization requires the surveyor to determine the appropriate 'universe' of employers to be surveyed before beginning the survey and to select randomly a sufficient number of employers to survey to meet the minimum criteria pertaining to the number of employers and workers who must be sampled.'' [47] This proposed provision additionally explains what a good faith attempt consists of, as discussed below.

The proposed rule would make two substantive changes to the current § 655.10(f)(4)(i). First, it would replace the phrase ''in the occupation'' with ''performing the same or substantially similar job duties.'' This change would reflect the reality that the survey is conducted before the employer submits its PWD application and the NPWC assigns an SOC code (identifying the occupation) based on the description of job duties contained in the PWD application. Consequently, a survey conducted based on an occupational classification would necessarily require speculation about which SOC code the NPWC will subsequently assign. As explained in the 2015 Wage Rule preamble, to assess whether workers are performing the ''same or substantially similar'' job duties, ''the surveyor would take into account the nature and duties of the job opportunity, and contact a large enough sample of employers to yield usable data for at least three employers and 30 workers similarly employed'' [48] in the geographic area surveyed.

Second, the proposed rule would add a new requirement to § 655.10(f)(4)(i) that at least three follow-up attempts be made to contact non-respondents. The contact must be made using the same method of contact initially used, and at least two other active methods of contact—such as email, telephone, or site visit—across different business days and times that are most likely to receive the most response. This proposed requirement would reduce sampling bias and therefore yield more accurate and representative survey results.

2. Discussion of Proposed Revisions to 20 CFR 655.10(f)(4)(ii)

Consistent with the 2015 Wage Rule, this proposed rule in § 655.10(f)(4)(ii) would require surveys submitted under this paragraph to include wage data from at least 30 workers and 3 employers. These minimums are based, as they were in the 2015 Wage Rule, on criteria that BLS OEWS itself uses to provide Office of Foreign Labor Certification (OFLC) with wage data not only for the H–2B program, but also for other foreign labor certification programs, such as the H–1B program and the permanent labor certification program. The OEWS survey data has been used by OFLC to produce prevailing wage data for those programs since 1998. In October 2020, this arrangement was formalized in a memorandum of understanding (MOU) between BLS and OFLC, which was amended in January 2021 and runs for 5 years. The MOU describes the standards and procedures BLS uses to provide wage data to OFLC, stating that BLS will ''report wages'' to OFLC for each occupational classification and geographic area ''that pass BLS confidentiality criteria and include a minimum of three (3) establishments . . . representing no fewer than 30 employees reported across the entire wage distribution.'' [49]

These minimum criteria and the other proposed requirements in § 655.10(f) also satisfy the Appropriations Acts' requirement that employer-provided

[47] *Id.*

[48] 80 FR 24146, 24173 (Apr. 29, 2015).

[49] Amended MOU Between the DOL's Employment and Training Administration Office of Foreign Labor Certification and Bureau of Labor Statistics for the Sharing of Occupational Wage Information; *see* 80 FR 24146, 24173 (Apr. 29, 2015).

wage surveys be ''statistically supported.'' *See* Further Consol. Appropriations Act, 2024, Public Law 118–47, Div. D, title I, sec. 110, 138 Stat. 460, 646 (2024). Elsewhere, Congress has used more precise terms of art, the meanings of which are widely accepted by statisticians, such as ''statistically significant'' and ''statistically valid'' (which appears in the INA itself [50]).[51] Here, however, Congress chose to use the term ''statistically supported,'' which does not appear in the U.S. Code. Immediately after Congress first enacted the ''statistically supported'' requirement, the Department published guidance on its website stating that ''[w]e interpret the requirement of the 2016 DOL Appropriations Act that the 'methodology and data' in a private survey be 'statistically supported' to be those methodological criteria for surveys set out in the 2015 Wage Rule.'' [52] Congress subsequently re-enacted the same language in every DOL Appropriations Act since 2016. *See* n.11, *supra.* Congress is ''presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without substantive change.'' [53] DOL continues to believe that surveys that meet the proposed 3-and-30 minimums BLS has used for 25 years to provide OEWS survey data to OFLC, along with the other criteria BLS uses to provide OEWS survey data to OFLC, and the additional survey requirements proposed in § 655.10(f) and explained in this preamble, are ''statistically supported'' as required by the provision in the Department's appropriation.

Under the proposed rule, as a new requirement in paragraph (f)(4)(ii), surveyors would have to continue accepting employer responses for at least 14 calendar days from the date the third notification in proposed paragraph (f)(4)(i) is sent even if responses have been received from 3 employers including the wages of 30 workers. This additional 14-calendar day period would maximize the opportunity to include as much data as possible in the survey so that it is as accurate and representative as possible. Also, the additional 14-day calendar period seeks to prevent the skewing of results by an employer that could occur should the survey conclude as soon as the minimum number of responses are received. If the minimum sample size requirements are not met, the geographic area of the survey may be extended beyond the area of intended employment under proposed § 655.10(f)(3).

Consistent with the 2015 Wage Rule, a survey may not report wages selectively, include responses that are based on only a portion of the workers performing the same or substantially similar job duties or limit the wage survey data to include only enough data to meet the minimum 30-worker threshold. The survey would have to include wage data for all workers performing the same or substantially similar job duties regardless of their level of skill, education, seniority, experience, or immigration status.[54] If, after following-up with non-respondents as described above, a surveyor could not collect wage data from at least 3 employers for at least 30 workers, the surveyor would be permitted to expand the survey beyond the area of intended employment as discussed above in the section on § 655.10(f)(3) of this proposed regulation.

3. Discussion of Proposed Revisions to 20 CFR 655.10(f)(4)(iii)

Consistent with the 2015 Wage Rule, in § 655.10(f)(4)(iii), bona fide third parties would have to conduct any employer-provided surveys submitted under proposed § 655.10(f)(1)(ii) or (iii). This proposed rule clarifies that not only would the H–2B employer, its agent, and its representative be prohibited from conducting the employer's survey, but so would any of the employer's employees and their attorney. The proposed rule would exclude these non-bona fide third parties to prevent their personal self-interests from affecting the reliability of employer-provided surveys, and in the case of employees, prevent an employer from placing any undue pressure on the employee conducting the survey. As the Department stated in the preamble of the 2015 Wage Rule and affirms here, ''[e]ven H–2B employers, representatives, agents, and attorneys who are not directly involved in the application for which the survey is submitted are barred from conducting a wage survey . . . because we conclude that H–2B employers and the entities that represent them are likely to share common interests and biases that may affect the reliability of such surveys.'' [55] The preamble also explained that requiring a bona fide third party to conduct an employer-provided survey would ''not bar an employer from paying an otherwise bona fide third party to conduct the survey. In addition, employers who are eligible to submit a survey under proposed § 655.10(f)(1)(ii) or (iii) would be permitted to submit a survey conducted and issued by a state.'' [56]

4. Discussion of Proposed Revisions to 20 CFR 655.10(f)(4)(iv)

Consistent with the 2015 Wage Rule, the proposed rule would require employer-provided surveys under proposed § 655.10(f)(1) be conducted across industries, which means surveying employers in all industries employing workers performing the same or substantially similar job duties as those contained in the job opportunity in the area of intended employment.[57] This requirement, the purpose of which is to cast as wide a net as possible to obtain the most representative data available, would be consistent with the Department's criteria for review of employer-provided surveys in the H–1B temporary program and permanent labor certification program. Surveying across industries provides a broader representation of wage data for jobs requiring the same or substantially similar duties, irrespective of the sector or segment of the economy where the job duties are being performed. Thus, the proposed rule would clarify that ''across industries'' means all industries that employ workers performing similar or substantially similar job duties. For example, a wage survey for a Landscaping and Groundskeeping Workers job opportunity that surveyed only hotels would not satisfy the ''across industries'' requirements because industries other than hotels employ such workers. Surveying workers performing these job duties not only at hotels, but also workers performing similar or substantially similar job duties at hospitals, schools, country clubs, golf courses, and other outdoor sports venues, among others, would provide a better representation of wages within that occupation.

[50] 8 U.S.C. 1153(b)(5)(E)(iii)(I), (v)(I), (v)(II)(aa), (v)(II)(cc), (F)(i)(II).

[51] For ''statistically significant,'' *see, e.g.,* 29 U.S.C. 1303(a); 20 U.S.C. 6303a; 43 U.S.C. 1748a–2(b)(3); 21 U.S.C. 2109(a)(3); 47 U.S.C. 1303(c)(1); 34 U.S.C. 10554(4)(A), 40101(f)(1). For ''statistically valid,'' *see, e.g.,* 38 U.S.C. 7731(c)(2)(A); 19 U.S.C. 1677f–1(a)(1), (b), (c)(2)(A), (e)(2)(A)(i); 42 U.S.C. 1395(f)(5)(C)(ii)(I), (f)(5)(D); 38 U.S.C. 3122(a)(1). 7731(c)(2)(A); 19 U.S.C. 1677f–1(a)(1), (b), (c)(2)(A), (e)(2)(A)(i); 42 U.S.C. 1395(f)(5)(C)(ii)(I), (f)(5)(D); 38 U.S.C. 3122(a)(1).

[52] Effects of the 2016 Department of Labor Appropriations Act (Dec. 29, 2015), *available at https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/H-2B_Prevailing_Wage_FAQs_DOL_Appropriations_Act.pdf.*

[53] *Forest Grove School District* v. *T.A.,* 557 U.S. 230, 239–40 (2009).

[54] *Id.*

[55] *Id.* at 24174.

[56] *Id.*

[57] *Id.* at 24171.

5. Discussion of Proposed Revisions to 20 CFR 655.10(f)(4)(v)

This proposed rule would continue the requirement under the current rule that all types of pay be included in employer-provided wage surveys. As stated in the preamble of the 2015 Wage Rule, all types of pay include ''the base rate of pay, commissions, cost-of-living allowances, deadheading pay, guaranteed pay, hazard pay, incentive pay, longevity pay, piece rate, portal-to-portal rate, production bonuses, and tips.'' [58] For example, if an employer guarantees a minimum hourly wage, but pays other types of monetary compensation, including tips, commissions, or piece rates, in excess of this minimum hourly wage, the total of the minimum hourly wage and these additional types of compensation would have to be included in the hourly wage paid reported in the survey. This proposal remains consistent with the methodology of the OEWS survey.[59] The Department continues to think that, as explained in the preamble to the 2015 Wage Rule, ''[i]f we did not require inclusion in the survey wage reported of all of the types of pay reported to the OE[W]S, those limited surveys permitted by [the rule] would necessarily undercut the OE[W]S by not reporting the complete wage paid. We understand that employers ordinarily calculate the wage paid for OE[W]S purposes by consulting payroll records.'' [60] While the Department recognizes that this requirement will impose some burden on employers, given that the requirement is consistent with how the OEWS is administered, and given the importance of the Department having a complete picture of the compensation paid, the Department does not think that the burden outweighs the benefit of this requirement.

F. Discussion of Proposed Regulatory Revisions to 20 CFR 655.10(f)(5)

The current rule requires an employer-provided survey to be: (1) the most current edition of the survey; and (2) based on wages paid to workers no more than 24 months before the survey was submitted to the NPWC. The proposed rule would maintain these same two requirements, but the language regarding the second requirement would be changed to reflect the proposed new requirement in paragraph (f)(4) that the survey must be submitted to the NPWC together with the employer's Form ETA–9141.[61] In addition, the proposed rule would eliminate the first sentence currently in § 655.10(f)(5), which states that ''[t]he survey must be based upon recently collected data,'' [62] because the remaining sentence specifies the two components of ''recently collected data,'' as mentioned above. Therefore, the introductory sentence is unnecessary.

The requirement that the survey be based on wages paid to workers in the prior 24 months was originally codified in the 2008 Rule, *Labor Certification Process and Enforcement for Temporary Employment in Occupations Other Than Agriculture or Registered Nursing in the United States (H–2B Workers), and Other Technical Changes,* 73 FR 78020 (Dec. 19, 2008), and retained in the 2015 Wage Rule. The 24-month and most-current-edition standards would, together, continue to protect both U.S. and H–2B workers' wages by ensuring that employer-provided surveys are based on the most recent wage information available.

IV. Administrative Information

A. Executive Order 12866: Regulatory Planning and Review; Executive Order 14094: Modernizing Regulatory Review; and Executive Order 13563: Improving Regulation and Regulatory Review

Under E.O. 12866, the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) determines whether a regulatory action is significant and, therefore, subject to the requirements of the E.O. and review by OMB. 58 FR 51735 (Oct. 4, 1993). Section 3(f) of E.O. 12866, as amended by E.O. 14094, defines a ''significant regulatory action'' as an action that is likely to result in a rule that: (1) has an annual effect on the economy of $200 million or more, or adversely affects in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, Territorial, or Tribal Governments or communities; (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O. 88 FR 21879 (Apr. 11, 2023). OIRA has designated this NPRM as ''not significant'' per E.O. 12866 and waived review.

E.O. 13563 directs agencies to, among other things, propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; the regulation is tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. E.O. 13563 recognizes that some costs and benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

Outline of the Analysis

Section IV.A.1 describes the need for the proposed rule, and Section IV.A.2 describes the process used to estimate the costs of the rule and the general inputs used, such as wages and number of affected entities. Section IV.A.3 explains how the provisions of the proposed rule would result in costs and cost savings and presents the calculations the Department used to estimate them. In addition, Section IV.A.4 provides a description of qualitative benefits. Section IV.A.5 summarizes the estimated 1st-year and 10-year total and annualized costs and cost savings of the proposed rule.

Summary of the Analysis

The Department estimates that the proposed rule would result in costs and cost savings. As shown in Exhibit 1, the proposed rule is expected to have an annualized cost of $1,285, an annualized cost savings of $5,466, and a net cost savings of $4,535 at a discount rate of 2 percent.[63]

[58] *Id.* at 24175.

[59] *See* ''How are 'wages' defined by the OEWS survey?'' OEWS, Frequently Asked Questions, *available at https://www.bls.gov/oes/oes_ques.htm.*

[60] 80 FR 24146, 24175 (Apr. 29, 2015).

[61] For purposes of comparison, OEWS estimates are based on data collected over a 3-year period, with the survey updated every 6 months based on more recent data. The May 2022 estimates are based on responses from six semiannual panels collected over a 3-year period: May 2022, November 2021, May 2021, November 2020, May 2020, and November 2019. *See* Technical Notes for May 2022 OEWS Estimates (bls.gov), *available at https://www.bls.gov/oes/current/oes_tec.htm.* In addition, in the 1990s, the DOL recommended that State employment service agencies (SESAs) use their in-house wage surveys for only 2 years. *See* GAL 4–95 at pp. 9–10 (''SESA Conducted Prevailing Wage Surveys . . . Length of Time Survey Results are Valid . . . SESAs may use survey results for up to 2 years after the data are collected. After 2 years, the results of a new survey should be implemented.'').

[62] 20 CFR 655.10(f)(5).

[63] The proposed rule is expected to have an undiscounted annual cost of $1,369, an

Continued

EXHIBIT 1—ESTIMATED MONETIZED COSTS AND COST SAVINGS OF THE PROPOSED RULE

[2023 $]

	Costs	Cost savings	Net cost savings
1st Year	$12,850	$5,359	−$7,492
Undiscounted Annual	1,285	5,359	4,074
Annualized with at a Discount Rate of 2%	1,431	5,359	4,535

The total cost of the proposed rule is associated with rule familiarization and the new requirements that the surveyor must continue to accept responses for at least 14 calendar days after receiving the third employer response to the survey request. In addition, the surveyor must include no fewer than three contacts with non-respondents, using the same method of contact initially used, and at least two other active methods of contact across different business days and times that are most likely to receive the most response. Cost savings are the results of the elimination of the Form ETA–9165, *Employer-Provided Survey Attestations to Accompany H–2B Prevailing Wage Determination Request Based on a Non-OES Survey.* See the costs and cost savings subsections of Section IV.A.3 (Subject-by-Subject Analysis).

1. Need for Regulation

As discussed further in Section II.F, *supra,* this NPRM is required by a court ruling that, in promulgating the 2015 Wage Rule, the agencies failed to comply with the APA's notice-and-comment requirements. *Williams* v. *Walsh,* 648 F. Supp. 3d 70 (D.D.C. 2022). Consequently, the court remanded the rule ''for further consideration consistent with'' its opinion. *Id.* at 99. Additionally, in light of issues raised (although not decided) in that litigation, OFLC is proposing to revise the data and methodological criteria for employer-provided wage surveys.

2. Analysis Considerations

The Department estimated the costs and the cost savings of the proposed rule relative to the existing baseline (*i.e.,* the current practices for complying, at a minimum, with the H–2B program as currently codified at 20 CFR part 655).

In accordance with the regulatory analysis guidance articulated in OMB's Circular A–4 and consistent with the Department's practices in previous rulemakings, this regulatory analysis focuses on the likely consequences of the proposed rule (*i.e.,* costs, cost savings, and qualitative benefits). The analysis covers 10 years (from 2025 through 2034) to ensure it captures major costs, cost savings, and qualitative benefits that accrue over time. The Department expresses all quantified impacts in 2023 dollars and uses undiscounted annuals and a discount rate of 2 percent, pursuant to Circular A–4.

Exhibit 2 shows the total number of H–2B PWD requests and the number of submissions requesting a survey wage for FYs 2020—2023. The Department used this information to estimate the costs and cost savings of the proposed rule.

EXHIBIT 2—NUMBER OF UNIQUE SUBMISSIONS FOR H–2B SURVEY REQUESTS *

FY	Number of H–2B PWD requests	Number of H–2B wage survey requests	% of total submissions requesting survey wage
2020	11,629	77	0.7
2021	14,748	161	1.1
2022	24,914	378	1.5
2023	24,715	267	1.1
Average	19,002	221	1.1

* Data source: OFLC performance data for FY2020–2023.

a. Compensation Rates

In Section IV.A.3 (Subject-by-Subject Analysis), the Department presents the costs, including labor, associated with the implementation of the provisions of the proposed rule. Exhibit 3 presents the hourly compensation rates for the occupational categories expected to experience a change in the number of hours necessary to comply with the proposed rule. The Department used the mean hourly wage rate for private sector human resources (HR) specialists (SOC code 13–1071).[64] Wage rates are adjusted to reflect total compensation, which includes nonwage factors such as overhead and fringe benefits (*e.g.,* health and retirement benefits). We use an overhead rate of 17 percent [65] and a fringe benefits rate based on the ratio of average total compensation to average wages and salaries in 2023. For private sector employees, we use a fringe benefits rate of 42 percent.[66] We then multiply the loaded wage factor and the overhead rate by the wage rate to calculate an hourly compensation rate. The Department used the hourly compensation rates presented in Exhibit 3 throughout this analysis to estimate the labor costs for each provision.

undiscounted annual cost savings of $4,861, and an undiscounted annual net cost savings of $3,492 in 2023 dollars.

[64] BLS. (2024). May 2023 National Occupational Employment and Wage Estimates: 13–1071—Human Resources Specialists. Retrieved from: *https://www.bls.gov/oes/current/oes131071.htm.*

[65] Cody Rice, U.S. Environmental Protection Agency, ''Wage Rates for Economic Analyses of the Toxics Release Inventory Program,'' June 10, 2002, *https://www.regulations.gov/document?D=EPA-HQ-OPPT-2014-0650-0005.*

[66] BLS. (Mar. 2024). ''Employer Costs for Employee Compensation.'' Retrieved from: *https://www.bls.gov/news.release/ecec.nr0.htm.*

EXHIBIT 3—COMPENSATION RATES

[2023 Dollars]

Position	Grade level	Base hourly wage rate (a)	Loaded wage factor (b)	Overhead costs (c)	Hourly compensation rate (d) = a + b + c
HR Specialist	N/A	$36.573	$15.36 ($36.57 × 0.42)	$6.22 ($36.57 × 0.17)	$58.15

3. Subject-by-Subject Analysis

The Department's analysis below covers the costs, cost savings, and qualitative benefits of the proposed rule. This proposed rule includes the quantified cost of rule familiarization, the unquantified cost of additional survey requirements, and the quantified cost savings of elimination of the Form ETA–9165, and qualitative discussion of benefits.

a. Costs

The following section describes the quantified and unquantified costs of the proposed rule.

i. Rule Familiarization

If the proposed rule takes effect, H–2B employers who are submitting an employer-provided survey would need to familiarize themselves with the new regulations. Consequently, this would impose a one-time cost in the 1st year.

To estimate the 1st-year cost of rule familiarization, the number of unique H–2B employers who are submitting an employer-provided survey (221) was multiplied by the estimated amount of time required to review the rule (1 hour). The Department requests public comments and inputs regarding this estimate. This number was then multiplied by the hourly compensation rate of HR specialists ($58.15 per hour). This calculation results in a one-time undiscounted cost of $12,850 in the 1st year after the proposed rule takes effect. The annualized cost over the 10-year period is $1,431 at a discount rate of 2 percent. An undiscounted annual cost over the 10-year period is $1,285.

ii. Additional Survey Requirements

The Department proposes in the NPRM to revise the data and methodological criteria for employer-provided wage surveys to require that a survey must continue to accept responses for at least 14 calendar days after receiving the minimum number of required responses from at least 3 employers that together include wages for at least 30 workers. In addition, the surveyor must include no fewer than three contacts with non-respondents, using the same method of contact initially used, and at least two other active methods of contact across different business days and times that are most likely to generate responses. The Department expects these new requirements may add a small compliance cost to surveyors, but we cannot quantify it due to the data limitations. The Department seeks public comments and inputs that will help us to quantify this cost impact to surveyors.

b. Cost Savings

The following section describes the cost savings of the proposed rule.

i. Elimination of the Form ETA–9165

The Department proposes to eliminate the Form ETA–9165, *Employer-Provided Survey Attestations to Accompany H–2B Prevailing Wage Determination Request Based on a Non-OES Survey*. Each employer would have spent 25 minutes to fill out the attestation form if it had not been eliminated. To estimate the cost savings per year, the number of unique H–2B employers who are expected to submit an employer-provided survey (221) was multiplied by the estimated amount of time required to fill out the attestation form (25 minutes or 0.417 hours). This number was then multiplied by the hourly compensation rate of HR specialists ($58.15 per hour). This calculation results in an annual cost savings of $5,359 after the proposed rule takes effect. The annualized cost savings over the 10-year period is $5,359 at a discount rate of 2 percent and undiscounted annual cost savings at $5,359.

c. Qualitative Benefits Discussion

The following section describes the benefits of the proposed rule.

i. Improved Accuracy in Prevailing Wage Data

The Department's proposal would benefit H–2B workers and workers in corresponding employment by adding a new condition to § 655.10(f)(4)(i) that at least three follow-up attempts be made to contact non-respondents. This proposed requirement that the surveyor make no fewer than three contacts with non-respondents, first using the same method of contact initially used, and subsequently two other active methods of contact across different business days and times that are most likely to generate responses, is intended to reduce sampling bias and, therefore, yield more accurate survey results.

Additionally, under the proposed rule, as a new requirement, surveyors would have to continue accepting employer responses for at least 14 calendar days from the date the third notification in proposed paragraph (f)(4)(i) is sent, even after receiving responses from 3 employers including the wages of 30 workers. This additional 14-calendar day period would maximize the opportunity to include as much data as possible in the survey so that it is as accurate and representative as possible. Also, the additional 14-day calendar period would prevent: (1) the skewing of results that could occur should the survey conclude as soon as the minimum number of responses are received; and (2) the exclusion of available data from the survey.

ii. Greater Efficiency in Employer-Provided Survey Process

An additional benefit of this proposal would be an increase in efficiency in the employer-provided survey process. Employers would be required to submit the survey with the Form ETA–9141 when an employer requests a survey-based H–2B prevailing wage from the NPWC and such survey should contain the necessary information about the survey methodology (*e.g.,* sample size and source, sample selection procedures, and survey job descriptions). This would reduce the need for the NPWC to routinely issue Requests for Information in most cases involving employer-provided surveys. Efficiency is inherently valuable as a principle of good government and provides benefits to the public at large, including reducing the need to routinely issue Requests for Information necessary for the Department's analyses.

4. Summary of the Analysis

Exhibit 4 summarizes the estimated total costs and cost savings of the proposed rule over the 10-year analysis period. The Department estimates the

annualized costs of the proposed rule at $1,431 for rule familiarization, the annualized cost savings at $5,359 for eliminating the Form ETA–9165 and the annualized net cost savings at $4,535, each at a discount rate of 2 percent. Unquantified costs include the new requirements that the surveyor must continue to accept responses for at least 14 calendar days from the date the third notification is sent even if responses have been received from 3 employers including the wages of 30 workers. The surveyor must also include no fewer than three contacts with non-respondents, using the same method of contact initially used, and at least two other active methods of contact across different business days and times that are most likely to receive the most response. Unquantified benefits include improved accuracy in prevailing wage surveys due to permitting employer-provided surveys in instances where OEWS data is unavailable or insufficient, and increased transparency in the employer survey process.

EXHIBIT 4—ESTIMATED MONETIZED COSTS AND COST SAVINGS OF THE PROPOSED RULE

[2023 $]

Year	Costs	Cost savings	Net cost savings
2025	$12,850	$5,359	$7,492
2026	.....	5,359	5,359
2027	.....	5,359	5,359
2028	.....	5,359	5,359
2029	.....	5,359	5,359
2030	.....	5,359	5,359
2031	.....	5,359	5,359
2032	.....	5,359	5,359
2033	.....	5,359	5,359
2034	.....	5,359	5,359
Undiscounted annual	1,285	5,359	4,074
Annualized with a Discount Rate of 2%	1,431	5,359	4,535

B. Regulatory Flexibility Analysis and Small Business Regulatory Enforcement Fairness Act and Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires agencies to determine whether regulations will have a significant economic impact on a substantial number of small entities. Pursuant to 5 U.S.C. 605(b), the head of the agency (*i.e.,* the undersigned Assistant Secretary for Employment and Training), certifies that the proposed rule does not have a significant economic impact on a substantial number of small entities. On average, small employers who are submitting an employer-provided survey will incur a net cost saving of $20.52 per year at a discount rate of 2 percent.[67] This will be far less than 1 percent of the revenue for the smallest of small H–2B employers. For example, the average annual revenue for firms in the landscaping industry (North American Industry Classification System code 561730) with fewer than five employees is $238,877.[68] $20.52 is about 0.009 percent of the average revenue of $238,877. The Department therefore certifies that the proposed rule does not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The INA, as amended, assigns responsibilities to the Secretary of Labor relating to the entry and employment of certain categories of immigrant and nonimmigrant foreign workers under the permanent labor certification (PERM), H–2B, H–1B, H–1B1, and E–3 programs. The INA requires the Secretary of Labor to certify that the employment of foreign workers under certain visa classifications will not adversely affect the wages and working conditions of similarly employed workers in the United States. To render this certification, the Secretary of Labor determines the prevailing wage for the occupational classification and area of intended employment and ensures the employer offers a wage to the foreign worker that equals at least the prevailing wage. The Department uses Form ETA–9141 to collect information necessary to determine the prevailing wage for the applicable occupation and area of intended employment. This information collection is subject to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless OMB approves it under the PRA and it displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person will generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a), 1320.6. The Department obtained OMB approval for this information collection under Control Number 1205–0508. The Department seeks PRA authorization for this information collection for 3 years.

This information collection request, concerning OMB Control No. 1205–0508, includes the collection of information related to the Department's PWDs. Prior to submitting applications for most labor certifications or a labor condition application to the Secretary of Labor, employers must obtain a prevailing wage for the job opportunity based on the place and type of employment in order to ensure that the employment of foreign workers does not adversely affect the wages and working conditions of U.S. workers similarly employed. Form ETA–9141, *Application for Prevailing Wage Determination,* is used to collect the necessary information from employers to enable the Department to issue a prevailing wage for the occupation and location of the job opportunity. The Form ETA–9141 is used in the PERM, H–2B, H–1B, H–1B1, and E–3 programs administered by the Department. In order to meet its statutory responsibilities under the INA, the Department must request information from employers seeking to hire and import foreign labor. The Department uses the information collected to

[67] $4,535÷221 = $20.52.

[68] 2017 Statistics of U.S. Businesses Annual Data Tables by Establishment Industry, *https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html.*

determine the minimum wage that must be offered, advertised in recruitment, and paid by an employer to foreign workers in most programs.

The collection of information under the current OMB Control No. 1205–0508 was approved by OMB on September 8, 2022, and was implemented into OFLC systems on February 6, 2024.

The Department now proposes revisions to this information collection, covered under OMB Control No. 1205–0508, to further revise the information collection tools based on regulatory changes in this proposed rule. As noted above, the current regulations do not explicitly require that the survey be submitted concurrently with the Form ETA–9141, but the proposed rule, as well as the Form ETA–9141, *General Instruction,* would require that the survey be filed at the same time as submission of the Form ETA–9141. Further, the Department proposes to eliminate the use of the Form ETA–9165, *Employer-Provided Survey Attestations to Accompany H–2B Prevailing Wage Determination Request Based on a Non-OEWS Survey.* The Department proposes to revise the Form ETA–9141 to conform with the proposed rule's requirement that employers, when seeking a survey-based prevailing wage, submit the survey to the Department with the Form ETA–9141 for consideration, rather than complete the Form ETA–9165.

The proposed revisions to the Form ETA–9141, *General Instructions,* and the proposed elimination of Form ETA–9165 and its instructions will align information collection requirements with the Department's proposed regulatory framework and continue the ongoing efforts to provide greater clarity to employers on regulatory requirements greater accuracy in PWDs, and greater standardizing and streamlining this information collection to reduce employer time and burden in preparing applications. The proposed changes will also promote greater efficiency and transparency in the review and issuance of PWDs for the Department's employment-based foreign labor certification and labor condition programs. The information collection includes the Form ETA–9141, *Application for Prevailing Wage Determination* (''Form ETA–9141''); Form ETA–9141, *General Instructions* (''General Instructions''); and Form ETA–9141, Appendix A, *Request for Additional Worksite(s)* (''Appendix A'').

Overview of Information Collection Proposed by This NPRM

Title: Application for Prevailing Wage Determination.

Type of Review: Revision of a Currently Approved Information Collection.

OMB Control Number: 1205–0508.

Affected Public: Private Sector—Businesses or other for-profits, not-for profit institutions, and farms.

Total Estimated Number of Respondents: 120,042.

Total Estimated Number of Responses: 462,470.

Total Estimated Annual Time Burden: 211,425 hours.

Total Estimated Annual Other Costs Burden: $191,769.

D. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4, codified at 2 U.S.C. 1501 *et seq.*) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and Tribal Governments. UMRA requires Federal agencies to assess a regulation's effects on State, local, and Tribal Governments, as well as on the private sector, except to the extent the regulation incorporates requirements specifically set forth in law. Title II of the UMRA requires each Federal agency to prepare a written statement assessing the effects of any regulation that includes any Federal mandate in a proposed or final agency rule that may result in $100 million or more expenditure (adjusted annually for inflation) in any 1 year by State, local, and Tribal Governments, in the aggregate, or by the private sector. A Federal mandate is any provision in a regulation that imposes an enforceable duty upon State, local, or Tribal Governments, or upon the private sector, except as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

This proposed rule does not result in unfunded mandates for the public or private sector because private employers' participation in the program is voluntary, and State governments are reimbursed for performing activities required under the program. The requirements of title II of the UMRA, therefore, do not apply, and the Department has not prepared a statement under the UMRA.

E. Executive Order 13132 (Federalism)

This proposed rule would not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with sec. 6 of E.O. 13132,[69] it is determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

The Department has reviewed this proposed rule in accordance with E.O. 13175 [70] and has determined that it does not have Tribal implications. This proposed rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Tribal Governments.

List of Subjects in 20 CFR Part 655

Administrative practice and procedure, Employment, Employment and training, Enforcement, Foreign workers, Forest and forest products, Fraud, Health professions, Immigration, Labor, Longshore and harbor work, Migrant workers, Nonimmigrant workers, Passports and visas, Penalties, Reporting and recordkeeping requirements, Unemployment, Wages, Working conditions.

For the reasons discussed in the preamble, the Department of Labor proposes to amend 20 CFR part 655 as follows:

PART 655—TEMPORARY EMPLOYMENT OF FOREIGN WORKERS IN THE UNITED STATES

■ 1. The authority citation for § 655.0 of part 655 is revised and the authority citation for subpart A continues to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(E)(iii), 1101(a)(15)(H)(i) and (ii), 8 U.S.C. 1103(a)(6), 1182(m), (n), and (t), 1184(c), (g), and (j), 1188, and 1288(c) and (d); sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; sec. 412(e), Pub. L. 105–277, 112 Stat. 2681 (8 U.S.C. 1182 note); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); 29 U.S.C. 49k; Pub. L. 107–296, 116 Stat. 2135, as amended; Pub. L. 109–423, 120 Stat. 2900; sec. 6, Pub. L. 115–218, 132 Stat. 1547 (48 U.S.C. 1806); div. D, title I, sec. 110, Pub. L. 118–47, 138 Stat. 460, 646; and 8 CFR 214.2(h)(4)(i) and (h)(6)(iii).

[69] E.O. 13132, *Federalism,* 64 FR 43255 (Aug. 10, 1999).

[70] E.O. 13175, Consultation and Coordination with Indian Tribal Governments, 65 FR 67249 (Nov. 9, 2000).

Subpart A issued under 8 CFR 214.2(h).

* * * * *

■ 2. Amend § 655.10 by revising paragraphs (a), (b)(2), (e), and (f) to read as follows:

§ 655.10 Determination of prevailing wage for temporary labor certification purposes.

(a) *Offered wage.* The employer must advertise the position to all potential workers at a wage at least equal to the prevailing wage obtained from the NPWC, or the Federal, State, or local minimum wage, whichever is highest. The employer must offer and pay this wage (or higher) to both its H–2B workers and its workers in corresponding employment. The issuance of a prevailing wage determination (PWD) under this section does not permit an employer to pay a wage lower than the highest wage required by any applicable Federal, State, or local law.

(b) * * *

(1) * * *

(2) If the job opportunity is not covered by a CBA, the prevailing wage for labor certification purposes shall be the arithmetic mean of the wages of workers similarly employed in the area of intended employment using the wage component of the BLS Occupational Employment and Wage Statistics (OEWS) survey, unless the employer provides a survey acceptable to the NPWC under paragraph (f) of this section.

* * * * *

(e) *NPWC action.* The NPWC will determine the PWD, indicate the source, and return the Application for Prevailing Wage Determination (Form ETA–9141) with the determination and the NPWC's endorsement to the employer.

(f) *Employer-provided survey.* (1) If the job opportunity is not covered by a CBA, or by a professional sports league's rules or regulations, the NPWC will consider a survey provided by the employer in making a PWD only if the employer's submission demonstrates that the survey falls into one of the following categories:

(i) The survey was independently conducted and issued by a State, including any State agency, State college, or State university;

(ii) The survey is submitted for a geographic area where the OEWS does not collect data, or in a geographic area where the OEWS provides an arithmetic mean only at a national level for workers employed in the SOC; or

(iii) The job opportunity is within an occupational classification of the SOC system designated as an ''All Other'' classification.

(2) Any such survey must provide the arithmetic mean of the wages of all workers performing the same or substantially similar job duties in the area of intended employment.

(3) Notwithstanding paragraph (f)(2) of this section, the geographic area surveyed may be expanded beyond the area of intended employment, but only as necessary to meet the requirements of paragraph (f)(4)(ii) of this section. Any geographic expansion beyond the area of intended employment must include only those geographic areas that are contiguous to the area of intended employment.

(4) In each case where the employer submits a survey under paragraph (f)(1) of this section, the employer must submit, concurrently with the Form ETA–9141, a copy of the survey containing specific information about the survey methodology, including sample size and source, sample selection procedures, and survey job descriptions, to allow a determination of whether the survey meets all the requirements of this section, in addition to the following:

(i) The surveyor made a reasonable, good faith attempt to either contact all employers of workers performing the same or substantially similar job duties in the geographic area surveyed or conduct a randomized sampling of such employers. No fewer than three contacts with non-respondents must be made, first using the same method of contact initially used, and subsequently two other active methods of contact across different business days and times that are most likely to generate survey responses;

(ii) The survey must include wage data from at least 30 workers performing the same or substantially similar job duties and at least 3 employers of such workers. The survey must continue to remain open to accept responses for at least 14 calendar days from the date the third notification in paragraph (f)(4)(i) of this section was sent to non-respondents;

(iii) If the survey is submitted under paragraph (f)(1)(ii) or (iii) of this section, the survey must be administered by a bona fide third party. Any H–2B employer or H–2B employer's agent, representative, employee, or attorney are not bona fide third parties;

(iv) The survey must be conducted across industries that employ workers performing the same or substantially similar job duties; and

(v) The wage reported in the survey must include all types of pay.

(5) The survey must be the most current edition of the survey and must be based on wages paid not more than 24 months before the date the PWD request is submitted to the NPWC.

* * * * *

José Javier Rodríguez,

Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2024–26481 Filed 11–15–24; 8:45 am]

BILLING CODE 4510–FP–P

Notices

Federal Register
Vol. 89, No. 222
Monday, November 18, 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 AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by December 18, 2024 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Research Service

Title: U.S. National Arboretum Use of the Grounds and Facilities as well as Commercial Photography and Cinematography.

OMB Control Number: 0518–0024.

Summary of Collection: Section 890(b) of the Federal Agriculture Improvement and Reform Act of 1996, Public Law 104–127 (''FAIR ACT'') provided statutory authorities regarding the United States National Arboretum (''USNA''). These authorities include the ability to charge fees for temporary use by individuals or groups of USNA facilities and grounds for any purpose consistent with the mission of the USNA. Also, the authority was provided to charge fees for the use of the USNA for commercial photography and cinematography. The mission of the U.S. National Arboretum (USNA) is to conduct research, provide education, and conserve and display trees, shrubs, flowers, and other plans to enhance the environment. The USNA is a 446-acre public facility. The grounds of the USNA are available to the public for purposes of education and passive recreation. The USNA has many spectacular feature and garden displays which are very popular to visitors and photographers.

Need and Use of the Information: USNA officials will collect the information using applications in the form of questionnaires. The information gathered on the photography form is the applicant's name, name of the organization providing the service, phone/fax numbers, dates and times requested for photography, how many people will be working the project, how many vehicles involved, and an itemization of equipment to be used by the crew. Also, the application requests a detailed description of the project, which specific sites are requested for photography and how the images or pictures will be used.

The collected information is used by USNA management to determine if a requestor's needs can be met, and the request is consistent with the mission and goals of the USNA uses of the information. If the basic information is not collected, USNA officials will not be able to determine if a requestor's needs are met.

Description of Respondents: Business or other for profit; Not-for-profit institutions; Individuals or households; State, Local or Tribal Government.

Number of Respondents: 350.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 88.

Rachelle Ragland-Greene,

Departmental Information Collection Clearance Officer.

[FR Doc. 2024–26788 Filed 11–15–24; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF COMMERCE

Census Bureau

[Docket Number: 241112–0289; RTID 0607–XC079]

The Census Bureau's Proposed Race/Ethnicity Code List for the American Community Survey and the 2030 Census

AGENCY: Census Bureau, Department of Commerce.

ACTION: Notice; request for public comment.

SUMMARY: As part of the Race/Ethnicity Coding Improvement Project, the U.S. Census Bureau (Census Bureau) is seeking feedback on the proposed race/ethnicity code list that will be used when the combined race/ethnicity question is implemented in the American Community Survey (ACS) and the 2030 Census. The Census Bureau aims to enhance and improve the code list that was used in the 2020 Census and is currently used in the ACS to ensure that detailed race and/or ethnicity responses are accurately coded and tabulated in future data collections.

DATES: To ensure consideration, comments must be received on or before February 18, 2025.

ADDRESSES: Comments are being requested through the following method:

Electronic submission: Submit public comments using the Federal eRulemaking Portal.

1. Go to *www.regulations.gov* and enter Docket Number USBC–2024–0022 in the search field.

2. Click the ''Comment Now!'' icon, complete the required fields.

3. Enter or attach your comments.

All comments responding to this document will be a matter of public record. Relevant comments will generally be available on the Federal eRulemaking Portal at: *https://www.regulations.gov.*

All comments received are part of the public record. All Personally Identifiable Information (*e.g.,* name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact: Roberto Ramirez at *Roberto.R.Ramirez@census.gov* or (301) 763–6044. Please direct media inquiries to the Census Bureau's Public Information Office at (301) 763–3030.

SUPPLEMENTARY INFORMATION: The Census Bureau is conducting its Race/Ethnicity Coding Improvement Project, which provides an opportunity for the public to provide feedback on how detailed race and/or ethnicity and American Indian or Alaska Native populations will be coded when the combined race/ethnicity question is implemented in the ACS and the 2030 Census. As in previous updates to the code list, all updates will be based on three criteria: (1) Federal scientific research and evidence; (2) stakeholder feedback, and (3) alignment with the U.S. Office of Management and Budget's updated 2024 Statistical Policy Directive No. 15 (see *https://spd15revision.gov*). The Census Bureau anticipates publishing a summary of the feedback received and the final code list in a future notice. An upcoming live question-and-answer webinar will provide an opportunity for the public to ask any procedural questions about how to respond to this Notice.

The Census Bureau is seeking feedback on how race and/or ethnicity and American Indian or Alaska Native populations are coded, and it is not seeking feedback on how the U.S. Office of Management and Budget defined race/ethnicity categories through Statistical Policy Directive No. 15, which are a minimum set of categories that all Federal agencies must use when collecting information on race and ethnicity, regardless of the collection mechanism, as well as additional guidance on the collection, compilation, and dissemination of these data.

Coding is the process that assigns a numeric code to the responses that are provided in the write-in areas on the race and/or ethnicity question. The numeric codes are used to process and tabulate the data. For example, if a respondent provides a write-in response of ''Ghanaian,'' the code list is used to assign this response code '3180.'

Race and/or ethnicity groups may have several terms on the code list that receive the same code. This may include spelling variations, abbreviations, or in-language names. For example, responses of ''Coeur D'Alene Tribe'' receive the code '5708,' as do responses of ''Coeur D'Alene Tribe of Indians'' and ''Schitsu'umsh.'' In our data products, all responses of ''Coeur D'Alene Tribe,'' ''Coeur D'Alene Tribe of Indians'' and ''Schitsu'umsh'' are tabulated together because they are given the same code, and they are therefore all included in the population count for ''Coeur D'Alene Tribe.''

On the proposed code list, some race and/or ethnicity groups have a range of codes associated with them. An example of this is ''Italian'' (codes 1205–1209), which includes terms that receive the codes '1206' (Italian), '1207' (Sardinian) and '1208' (Sicilian). Providing various groups with their own codes allows the Census Bureau to continue conducting research and see how often the group is reported. Unique codes are often provided for groups when Census Bureau research indicates that there are increasing numbers of people reporting a particular term in the decennial census.

Once the coding operation is completed, the codes are used in the editing process and to tabulate estimates and counts that are published in our ACS and decennial data products. Note that because a group has a unique code, that does not guarantee that data will be published for that group, as population thresholds, editing processes, or other processes may prevent us from publishing data for certain groups regardless of if they have a unique code.

Request for Public Comment

The Census Bureau is soliciting public comment to improve the race/ethnicity code list. This feedback will enable the Census Bureau to more accurately collect, process, and tabulate detailed racial, ethnic, and tribal responses reported in the race/ethnicity question. The Census Bureau is seeking feedback on the following questions, but will consider all comments received on topics germane to this notice:

1. Are there any groups missing from the proposed code list? If so, please identify them and suggest how the groups should be classified and why.

2. Are any groups on the proposed code list misclassified? If so, please identify them and suggest an alternative classification or indicate if the term should be removed.

3. Are there alternative terms, abbreviations, or in-language terms people may use to identify with a specific group that should be added to the proposed code list? If so, please identify them and suggest a classification.

4. The 2020 Census race/ethnicity code list at: *https://www2.census.gov/programs-surveys/decennial/2020/technical-documentation/complete-tech-docs/detailed-demographic-and-housing-characteristics-file-a/2020-hispanic-origin-and-race-code-list.xlsx* was organized into regional categories (*e.g.,* Chinese and Japanese aggregated into East Asian) and counts for these regional categories were published in 2020 Census data products. Based on stakeholder feedback and the challenging nature of categorizing groups into regional categories when the boundaries are not clearly defined, may change over time, or may overlap, the Census Bureau is proposing to remove its definitions and concepts of regional categories so that data users would have more flexibility to create their own regional categories using the disaggregated data. How do you use the data produced for regional categories from the 2020 Census? How would removing regional categories from the code list and tabulated products impact your ability to use the detailed race/ethnicity data? Would the ability to create your own regional categories using disaggregated data be useful to your work?

The proposed race/ethnicity code list can be accessed at: *https://www2.census.gov/programs-surveys/demo/2030-race-and-or-ethnicity-code-list/.*

Robert L. Santos, Director, Census Bureau, approved the publication of this notice in the **Federal Register**.

Dated: November 12, 2024.

Shannon Wink,

Program Analyst, Policy Coordination Office, U.S. Census Bureau.

[FR Doc. 2024–26827 Filed 11–15–24; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Construction Progress Reporting Surveys

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on July 16, 2024 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: U.S. Census Bureau, Department of Commerce.

Title: Construction Progress Reporting Surveys.

OMB Control Number: 0607–0153.

Form Number(s): C–700, C–700R, C–700SL, C–700F.

Type of Request: Regular submission, Request for an Extension, without Change, of a Currently Approved Collection.

Number of Respondents: 22,000 respondents report monthly over the duration of the construction project (an average of 12 months).

Average Hours per Response: 30 minutes for month 1; 10 minutes for months 2 through 12.

Burden Hours: 51,333.

Needs and Uses: The U.S. Census Bureau is requesting an extension of a currently approved collection for forms: C–700, for Private Construction Projects; C–700(R), for Multifamily Residential Projects; C–700(SL), for State and Local Governments Projects; and C–700(F), for Federal Government Projects.

These forms are used to conduct the Construction Progress Reporting Surveys (CPRS) which collect information on the dollar value of construction put in place on non-residential building projects under construction by private companies or individuals, private multifamily residential buildings, and building projects under construction by federal and state and local governments.

The Census Bureau uses the information collected on these forms to publish estimates of the monthly dollar value of construction put in place. Statistics from the CPRS become part of the monthly ''Value of Construction Put in Place'' or ''Construction Spending'' series, a Principal Economic Indicator that is used extensively by the federal government in making policy decisions and is used by the Bureau of Economic Analysis (BEA) to estimate the gross domestic product (GDP). The private sector uses the statistics for market analysis and other research. Construction now accounts for 7.4 percent of GDP.

Published estimates are used by a variety of private business and trade associations to estimate the demand for building materials and to schedule production, distribution, and sales efforts. They also provide various government agencies with a tool to evaluate economic policy. For example, Bureau of Economic Analysis staff use data to develop the construction components of gross private domestic investment in the gross domestic product. The Federal Reserve Board and the Department of the Treasury use the value put in place data to predict the gross domestic product, which is presented to the Board of Governors and has an impact on monetary policy.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Sections 131 and 182.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0607–0153.

Sheleen Dumas,

Departmental PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–26802 Filed 11–15–24; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–082, C–570–083]

Certain Steel Wheels From the People's Republic of China: Continuation of Antidumping Duty and Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) that revocation of the antidumping duty (AD) and countervailing duty (CVD) orders on certain steel wheels (steel wheels) from the People's Republic of China (China) would likely lead to a continuation or recurrence of dumping, countervailable subsidies, and material injury to an industry in the United States, Commerce is publishing a notice of continuation of these AD and CVD orders.

DATES: Applicable November 6, 2024.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5255.

SUPPLEMENTARY INFORMATION:

Background

On May 24, 2019, Commerce published the AD and CVD orders on steel wheels from China.[1] On April 1, 2024, the ITC instituted,[2] and Commerce initiated,[3] the second sunset review of the *Orders,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its reviews, Commerce determined that revocation of the *Orders* would likely lead to continuation or recurrence of dumping and/or countervailable subsidies, and therefore, notified the ITC of the magnitude of the margins of dumping and net countervailable subsidy rates likely to prevail should the *Orders* be revoked.[4]

[1] *See Certain Steel Wheels from the People's Republic of China: Antidumping and Countervailing Duty Orders,* 84 FR 24098 (May 24, 2019)) (collectively, the *Orders*).

[2] *See Steel Wheels from China; Institution of Five-Year Reviews,* 89 FR 22451 (April 1, 2024).

[3] *See Initiation of Five-Year* (*Sunset*) *Reviews,* 89 FR 22373 (April 1, 2024).

[4] *See Certain Steel Wheels from the People's Republic of China: Final Results of Expedited Sunset Review of the Antidumping Duty Order,* 89

Continued

On November 6, 2024, the ITC published its determination pursuant to sections 751(c) and 752(a) of the Act that revocation of the *Orders* would likely lead to the continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5]

Scope of the Orders

The scope of the *Orders* covers certain on the road steel wheels, discs, and rims for tubeless tires, with a nominal rim diameter of 22.5 inches and 24.5 inches, regardless of width. Certain on-the-road steel wheels with a nominal wheel diameter of 22.5 inches and 24.5 inches are generally for Class 6, 7, and 8 commercial vehicles (as classified by the Federal Highway Administration Gross Vehicle Weight Rating system), including tractors, semi-trailers, dump trucks, garbage trucks, concrete mixers, and buses, and are the current standard wheel diameters for such applications. The standard widths of certain on-the-road steel wheels are 7.5 inches, 8.25 inches, and 9.0 inches, but all certain on-the-road steel wheels, regardless of width, are covered by the scope. While 22.5 inches and 24.5 inches are standard wheel sizes used by Class 6, 7, and 8 commercial vehicles, the scope covers sizes that may be adopted in the future for Class 6, 7, and 8 commercial vehicles.

The scope includes certain on-the-road steel wheels with either a ''hub-piloted'' or ''stud- piloted'' mounting configuration, and includes rims and discs for such wheels, whether imported as an assembly or separately. The scope includes certain on the road steel wheels, discs, and rims, of carbon and/or alloy steel composition, whether cladded or not cladded, whether finished or not finished, and whether coated or uncoated. All on-the-road wheels sold in the United States are subject to the requirements of the National Highway Traffic Safety Administration and bear markings, such as the ''DOT'' symbol, indicating compliance with applicable motor vehicle standards. *See* 49 CFR 571.120. The scope includes certain on-the-road steel wheels imported with or without the required markings. Certain on-the-road steel wheels imported as an assembly with a tire mounted on the wheel and/or with a valve stem attached are included. However, if the certain on-the-road steel wheel is imported as an assembly with a tire mounted on the wheel and/or with a valve stem attached, the certain on-the-road steel wheel is covered by the scope, but the tire and/or valve stem is not covered by the scope.

The scope includes rims and discs that have been further processed in a third country, including, but not limited to, the welding and painting of rims and discs from China to form a steel wheel, or any other processing that would not otherwise remove the merchandise from the scope of the proceeding if performed in China. Excluded from the scope are:

(1) Steel wheels for tube-type tires that require a removable side ring;

(2) Aluminum wheels;

(3) Wheels where steel represents less than fifty percent of the product by weight; and

(4) Steel wheels that do not meet National Highway Traffic Safety Administration requirements, other than the rim marking requirements found in 49 CFR 571.120S5.2.

Imports of the subject merchandise are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 8708.70.4530, 8708.70.4560, 8708.70.6030, 8708.70.6060, and 8716.90.5059. Merchandise meeting the scope description may also enter under the following HTSUS subheadings: 4011.20.1015, 4011.20.5020, and 8708.99.4850. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the *Orders* is dispositive.

Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the *Orders* would likely lead to a continuation or recurrence of dumping, countervailable subsidies, and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the *Orders.* U.S. Customs and Border Protection will continue to collect AD and CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of these *Orders* is November 6, 2024. Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next sunset review of these *Orders* no later than 30 days prior to the fifth anniversary of the date of the last determination by the ITC.

Administrative Protective Order (APO)

This notice also serves as a final reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), 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 terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

These five-year sunset reviews and this notice are in accordance with section 751(c) and 751(d)(2) of the Act, and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: November 12, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024–26768 Filed 11–15–24; 8:45 am]

BILLING CODE 3510–DS–P

FR 65314, (August 9, 2024); *see also Certain Steel Wheels from the People's Republic of China: Final Results of Expedited Sunset Review of the Countervailing Duty Order,* 89 FR 65319 (August 9, 2024).

[5] *See Steel Wheels from China; Determinations,* 89 FR 88061 (November 6, 2024).

DEPARTMENT OF COMMERCE

International Trade Administration

Renewable Energy and Energy Efficiency Advisory Committee

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The Renewable Energy and Energy Efficiency Advisory Committee (REEEAC or the Committee) will hold a virtual meeting, accessible to the public online, on Tuesday, December 3, 2024 at the U.S. Department of Commerce in Washington, DC. Registration instructions for the public to attend virtually are provided below.

DATES: Tuesday, December 3, 2024, from approximately 9:30 a.m. to 12 p.m. Eastern Standard Time (EST). Members of the public wishing to participate must register in advance with the Designated Federal Officer (DFO), Cora Dickson, at the contact information below by 5 p.m. EST on Monday December 2, 2024, including any requests to make comments during the meeting or for accommodations or auxiliary aids.

ADDRESSES: To register, please contact Cora Dickson, DFO, Office of Energy and Environmental Industries, Industry

and Analysis, International Trade Administration, U.S. Department of Commerce at (202) 482–6083; email: *Cora.Dickson@trade.gov.*

FOR FURTHER INFORMATION CONTACT: Cora Dickson, DFO, Office of Energy and Environmental Industries, Industry and Analysis, International Trade Administration, U.S. Department of Commerce at (202) 482–6083; email: *Cora.Dickson@trade.gov.* Registered participants joining virtually will be emailed the login information for the meeting, which will be accessible as a livestream via Teams Webinar.

SUPPLEMENTARY INFORMATION:

Background: The Secretary of Commerce established the REEEAC pursuant to discretionary authority and in accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. 1001 *et seq*), on July 14, 2010. The REEEAC was re-chartered most recently for a two-year term on May 24, 2024. The REEEAC provides the Secretary of Commerce with advice from the private sector on the development and administration of programs and policies to expand the export competitiveness of U.S. renewable energy and energy efficiency products and services. More information about the REEEAC, including the list of appointed members for this charter, is published online at *http://trade.gov/reeeac.*

On December 3, 2024, the REEEAC will hold the first meeting of its current charter term. The Committee will conduct organizational activities and hold initial discussions on topics of interest. The agenda will be made available by November 27, 2024 upon request to Cora Dickson, and the most current version of the agenda will also be made available on the REEEAC website.

The meeting will be open to the public and will be accessible to people with disabilities. All guests are required to register in advance by the deadline identified under the **DATES** caption. Requests for auxiliary aids must be submitted by the registration deadline. Last minute requests will be accepted but may not be possible to fill.

A limited amount of time before the close of the meeting will be available for oral comments from members of the public attending the meeting. Members of the public attending virtually who wish to speak during the public comment period must give the DFO advance notice in order to facilitate their access. To accommodate as many speakers as possible, the time for public comments will be limited to two to five minutes per person (depending on number of public participants). Individuals wishing to reserve speaking time during the meeting must contact Cora Dickson using the contact information above and submit a brief statement of the general nature of the comments, as well as the name and address of the proposed participant, by 5 p.m. EST on Monday, December 2, 2024. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the International Trade Administration may conduct a lottery to determine the speakers. Speakers are requested to submit a copy of their oral comments by email to Cora Dickson for distribution to the participants in advance of the meeting.

Any member of the public may submit written comments concerning the REEEAC's affairs at any time before or after the meeting. Comments may be submitted via email to the Renewable Energy and Energy Efficiency Advisory Committee, c/o: Cora Dickson, Designated Federal Officer, Office of Energy and Environmental Industries, U.S. Department of Commerce; *Cora.Dickson@trade.gov.* To be considered during the meeting, public comments must be transmitted to the REEEAC prior to the meeting. As such, written comments must be received no later than 5 p.m. EST on Monday, December 2, 2024. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of REEEAC meeting minutes will be available within 30 days following the meeting.

Man K. Cho,

Deputy Director, Office of Energy and Environmental Industries.

[FR Doc. 2024–26808 Filed 11–15–24; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–079, C–570–080]

Cast Iron Soil Pipe From the People's Republic of China: Continuation of Antidumping and Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) that revocation of the antidumping duty (AD) and countervailing duty (CVD) orders on cast iron soil pipe from the People's Republic of China (China) would likely lead to the continuation or recurrence of dumping, countervailable subsidies, and material injury to an industry in the United States, Commerce is publishing a notice of continuation of these AD and CVD orders.

DATES: Applicable October 24, 2024.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2243.

SUPPLEMENTARY INFORMATION:

Background

On May 3, 2019, Commerce published in the **Federal Register** the AD and CVD orders on cast iron soil pipe from China.[1] On April 1, 2024, the ITC instituted,[2] and Commerce initiated,[3] the first sunset reviews of the *AD Order* and the *CVD Order,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its reviews, Commerce determined that revocation of the *AD Order* and *CVD Order* would likely lead to continuation or recurrence of dumping and countervailable subsidies and, therefore, notified the ITC of the magnitude of the margins of dumping and net countervailable subsidy rates likely to prevail should the *AD Order*[4] and *CVD Order*[5] be revoked.

On October 24, 2024, the ITC published its determinations, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *AD Order* and *CVD Order* would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[6]

[1] *See Cast Iron Soil Pipe from the People's Republic of China: Antidumping Duty Order,* 84 FR 19035 (May 3, 2019) (*AD Order*); *see also Cast Iron Soil Pipe from the People's Republic of China: Countervailing Duty Order,* 84 FR 19039 (May 3, 2019) (*CVD Order*) (collectively, *Orders*).

[2] *See Cast Iron Soil Pipe from China; Institution of Five-Year Reviews,* 89 FR 22448 (April 1, 2024).

[3] *See Initiation of Five-Year (Sunset) Reviews,* 89 FR 22373 (April 1, 2024).

[4] *See Cast Iron Soil Pipe from the People's Republic of China: Final Results of the Expedited First Sunset Review of the Antidumping Duty Order,* 89 FR 64871 (August 8, 2024).

[5] *See Cast Iron Soil Pipe from the People's Republic of China: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order,* 89 FR 64874 (August 8, 2024).

[6] *See Cast Iron Soil Pipe from China Determinations,* 89 FR 84933 (October 24, 2024).

Scope of the Orders

The merchandise covered by the *Orders* is cast iron soil pipe, whether finished or unfinished, regardless of industry or proprietary specifications, and regardless of wall thickness, length, diameter, surface finish, end finish, or stenciling. The scope of these *Orders* includes, but is not limited to, both hubless and hub and spigot cast iron soil pipe. Cast iron soil pipe is nonmalleable iron pipe of various designs and sizes. Cast iron soil pipe is generally distinguished from other types of nonmalleable cast iron pipe by the manner in which it is connected to cast iron soil pipe fittings.

Cast iron soil pipe is classified into two major types—hubless and hub and spigot. Hubless cast iron soil pipe is manufactured without a hub, generally in compliance with Cast Iron Soil Pipe Institute (CISPI) specification 301 and/or American Society for Testing and Materials (ASTM) specification A888, including any revisions to those specifications. Hub and spigot pipe has one or more hubs into which the spigot (plain end) of a fitting is inserted. All pipe meeting the physical description set forth above is covered by the scope of these *Orders,* whether or not produced according to a particular standard.

The subject imports are currently classified in subheading 7303.00.0030 of the Harmonized Tariff Schedule of the United States (HTSUS): Cast iron soil pipe. The HTSUS subheading and specifications are provided for convenience and customs purposes only; the written description of the scope of these *Orders* is dispositive.

Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the *AD Order* and *CVD Order* would likely lead to a continuation or recurrence of dumping, countervailable subsidies, and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the *Orders.* U.S. Customs and Border Protection will continue to collect AD and CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the *Orders* will be October 24, 2024.[7] Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year review of the *Orders* not later than 30 days prior to the fifth anniversary of the date of the last determination by the ITC.

Administrative Protective Order (APO)

This notice also serves as the only reminder to parties subject to an APO of their responsibility concerning the return, destruction, or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply is a violation of the APO which may be subject to sanctions.

Notification to Interested Parties

These five-year sunset reviews and this notice are in accordance with sections 751(c) and 751(d)(2) of the Act, and published in accordance with section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: November 12, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024–26767 Filed 11–15–24; 8:45 am]

BILLING CODE 3510–DS–P

[7] *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–853]

Large Top Mount Combination Refrigerator-Freezers From Thailand: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable November 18, 2024.

FOR FURTHER INFORMATION CONTACT: Benito Ballesteros at (202) 482–7425 AD/CVD Operations, Office IX Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On July 9, 2024, the U.S. Department of Commerce (Commerce) initiated a less-than-fair-value (LTFV) investigation of imports of large top mount combination refrigerator-freezers (refrigerators) from Thailand.[1] On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.[2] Currently, the preliminary determination is due no later than December 3, 2024.

Postponement of Preliminary Determination

Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in a LTFV investigation within 140 days after the date on which Commerce initiated the investigation. However, section 733(c)(1)(A) of the Act permits Commerce to postpone the preliminary determination until no later than 190 days after the date on which Commerce initiated the investigation if: (A) the petitioner makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating, that the investigation is extraordinarily complicated, and that additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.

On November 1, 2024, Electrolux Consumer Products, Inc. (the petitioner) submitted a timely request that Commerce postpone the preliminary determination in the LTFV investigation.[3] The petitioner stated that it requests postponement, ''so that {Commerce} will have sufficient time to collect and analyze information necessary for calculating accurate dumping margins. An extension of the deadline for {Commerce's} preliminary {determination} is necessary and appropriate here given the numerous extensions of time that have been requested by the respondent. An extension of the deadline for the preliminary determination will allow {the p}etitioner sufficient time to comment on these responses and will allow {Commerce} adequate time to issue supplemental questionnaires and to conduct a thorough analysis in this investigation.'' [4]

[1] *See Large Top Mount Combination Refrigerator-Freezers from Thailand: Initiation of Less-Than-Fair-Value Investigation*, 89 FR 57860 (July 16, 2024) (*Initiation Notice*).

[2] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,'' dated July 22, 2024.

[3] *See* Petitioner's Letter, ''Request to Extend Preliminary Determination,'' dated November 1, 2024.

[4] *Id.*

For the reasons stated above and because there are no compelling reasons to deny the request, Commerce, in accordance with section 733(c)(1)(A) of the Act, is postponing the deadline for the preliminary determination by 50 days.[5] As a result, Commerce will issue its preliminary determination no later than January 22, 2025. In accordance with section 735(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determination of this investigation will continue to be 75 days after the date of the preliminary determination, unless postponed at a later date.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: November 8, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024–26771 Filed 11–15–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–869]

Certain New Pneumatic Off-the-Road Tires from India: Amended Final Results of Antidumping Duty Administrative Review; 2022–2023

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) is amending the final results of the administrative review of the antidumping duty order on certain new pneumatic off-the-road tires from India (OTR tires) from India to correct a ministerial error. The period of review (POR) is March 1, 2022, through February 28, 2023.

DATES: Applicable November 18, 2024.

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian, 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) 482–6412.

SUPPLEMENTARY INFORMATION:

Background

On October 17, 2024, Commerce published the *Final Results,* in the **Federal Register**.[1] On October 15, 2024, we received a timely submitted ministerial error allegation from Titan Tire Corporation (the petitioner).[2] We received no other ministerial error comments from interested parties. Because we agree that we made a ministerial error in the *Final Results,* we are amending the *Final Results* to correct the ministerial error the petitioner alleged.

Legal Framework

Section 751(h) of the Tariff Act of 1930, as amended (the Act), defines a ''ministerial error'' as including ''errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other unintentional error which the administering authority considers ministerial.'' [3] With respect to final results of administrative reviews, 19 CFR 351.224(e) provides that Commerce ''will analyze any comments received and, if appropriate, correct any . . . ministerial error by amending the final results of review. . .''

Ministerial Error

In the *Final Results,* we determined that a startup adjustment was not warranted for ATC Tires Private Limited/ATC AP Tires Private Limited (collectively, ATC) and we stated our intention to disallow ATC's claimed startup adjustment in our calculations for the *Final Results*.[4] In its Ministerial Error Comments, the petitioner alleged that, in revising ATC's total cost of manufacturing (TOTCOM) to remove the startup adjustment, Commerce inadvertently granted the startup adjustment in the *Final Results*.[5]

We agree with the petitioner that we made a ministerial error in the *Final Results,* pursuant to section 751(h) of the Act and 19 CFR 51.224(f) and have amended our calculations to remove ATC's startup adjustment from TOTCOM. Pursuant to 19 CFR 351.224(e) and section 751(h) of the Act, we are amending the *Final Results* to correct this ministerial error in the calculation of the weighted-average dumping margin for ATC, which changes from 2.62 percent to 2.66 percent. Furthermore, in the *Final Results,* we calculated the weighted-average dumping margin for the companies that were not selected for individual examination as the weighted average of the dumping margins determined for the two mandatory respondents, weighted by their publicly ranged U.S. sales values.[6] Thus, based on the revised weighted-average dumping margins calculated for ATC,[7] we are also amending the rate for the companies not selected for individual examination in this review, which changes from 2.63 percent to 2.67 percent.[8]

For a complete discussion of the ministerial error allegation, as well as Commerce's analysis, see the accompanying Ministerial Error Memorandum.[9] The Ministerial Error Memorandum is on file electronically via ACCESS. ACCESS is available to registered users at *https://access.trade.gov.*

Amended Final Results of Review

As a result of correcting the ministerial error described above, we determine the following estimated weighted-average dumping margins for the period March 1, 2022, through February 28, 2023:

Exporter or producer	Weighted-average dumping margin (percent)
ATC Tires Private Limited; ATC Tires AP Private Limited	2.66
Companies Not Selected for Individual Review [10]	2.67

Disclosure

Commerce intends to disclose the calculations performed for ATC in connection with these amended final results of review to interested parties 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

[1] *See Certain New Pneumatic Off-the-Road Tires from India: Final Results of Antidumping Duty Administrative Review; 2022–2023,* 89 FR 83641 (October 17, 2024) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

[2] *See* Petitioner's Letter, ''Ministerial Error Comments,'' dated October 15, 2024 (Ministerial Error Comments).

[3] *See* 19 CFR 351.224(f).

[4] *See Final Results* IDM at Comment 3.

[5] *See* Ministerial Error Comments at 3.

[5] Commerce is extending the time period for the preliminary determination to 190 days after the date of initiation (*i.e.,* January 15, 2025). However, because Commerce tolled certain deadlines in this investigation by seven days, the deadline is now January 22, 2025.

[6] *See Final Results,* 89 FR at 83641.

[7] The margin for the other mandatory respondent, Asian Tire Factory Ltd./Lyallpur Rubber Mills (collectively, ATF), remains unchanged from the *Final Results* and continues to be 2.76 percent.

[8] *See* Memorandum, ''Calculation of the Amended Final Cash Deposit Rate for Non-Selected Companies,'' dated concurrently with this notice (Amended Non-Selected Companies Rate Memorandum).

[9] *See* Memorandum, ''Analysis of Ministerial Error Allegation,'' dated concurrently with, and hereby adopted by, this notice (Ministerial Error Memorandum); *see also* Memorandum, ''Amended Final Results Analysis Memorandum for ATC Tires Private Limited,'' dated concurrently with this notice.

[10] *See* Appendix for a full list of these companies.

Federal Register, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the amended final results of this review.

Pursuant to 19 CFR 351.212(b)(1), because ATC reported the entered value of its U.S. sales, we calculated importer-specific ad valorem duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where an importer- (or customer-) specific rate is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce's ''automatic assessment'' practice will apply to entries of subject merchandise during the POR produced by ATC for which it did not know that the merchandise it sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

For the companies listed in the appendix which were not selected for individual examination in this review, we will assign an assessment rate based on the review specific rate, which is equal to the weighted average of the dumping margins calculated for ATC in these amended final results and ATF in the *Final Results.*[11]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the amended final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the *Final Results* of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the amended cash deposit rate for ATC and the other companies not individually examined in this review will be equal to the weighted-average dumping margin that is established in the amended final results of this review, except if the rate is less than 0.50 percent and, therefore, de minimis within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously investigated or reviewed companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, or the less than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the cash deposit rate established for the most recently completed segment for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be zero percent, the all-others rate established in the LTFV investigation.[12] These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(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.

Administrative Protective Order

This notice serves as the final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing these amended final results of review in accordance with sections 751(h) and 777(i) of the Act and 19 CFR 351.224(e).

Dated: November 8, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

Companies Not Selected for Individual Examination Receiving the Review-Specific Rate

1. Apollo Tyres Ltd.
2. Balkrishna Industries Ltd.[13]
3. CEAT Ltd.
4. Emerald Resilient Tyre Manufacturer
5. HRI Tires India
6. JK Tyres and Industries Ltd.
7. K.R.M. Tyres
8. Mahansaria Tyres Private Limited
9. MRF Limited
10. MRL Tyres Limited (Malhotra Rubbers Ltd.)
11. Speedways Rubber Company
12. TVS Srichakra Limited

[FR Doc. 2024–26769 Filed 11–15–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Amended Trade Mission Application Deadline to the Design & Construction Trade Mission to Hong Kong, Taipei, and Ho Chi Minh City

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The United States Department of Commerce, International Trade Administration (ITA), is organizing the Design & Construction Trade Mission to Hong Kong, Taipei, and Ho Chi Minh

[11] *See* Amended Non-Selected Companies Rate Memorandum.

[12] *See Certain Now Pneumatic Off-the-Road Tires from India: Antidumping Duly Order,* 82 FR 12553 (March 6, 2017), 82 FR at 12554 (the dumping margin of 3.67 percent assigned to all other producers/exporters was adjusted for export subsidies found in the companion countervailing duty investigation, resulting in an adjusted cash deposit rate of zero percent).

[13] Subject merchandise produced and exported by Balkrishna Industries Ltd. (BKT) was excluded from the *Order. See Certain New Pneumatic Off-the-Road Tires from India: Notice of Correction to Antidumping Duty Order,* 82 FR 25598 (June 2, 2017). Accordingly, BKT is only covered by this administrative review for subject merchandise produced in India where BKT acted as either the manufacturer or exporter (but not both).

City. This notice is to update the prior **Federal Register** notice to reflect the new dates and new, extended application deadline.

DATES: The original mission dates were October 28–November 1, 2024. The new mission dates are dates of March 24–28, 2025, and new application deadline is now extended to December 31, 2024.

FOR FURTHER INFORMATION CONTACT: Shirreef Loza, Events Management Task Force, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–6397 or email *Shirreef.Loza@trade.gov.*

SUPPLEMENTARY INFORMATION:

PROPOSED TIMETABLE

Day 0—Sunday, Mar 23, 2025	• Trade Mission Participants Arrive in Hong Kong.
Day 1—Monday, Mar 24, 2025	• Morning: Trade Mission/Market Briefing. • Afternoon: B2B Meetings and meetings with industry associations such as Urban Land Institute and Construction Industry Council. • Evening: Networking reception.
Day 2—Tuesday, Mar 25, 2025	• Morning: B2B Meetings, continued. • Midday: Industry Roundtable or Site Visit. • Afternoon/Evening: Departure to Taiwan.
Day 3—Wednesday, Mar 26, 2025	Taipei, Taiwan. • Morning: Country briefing at the American Institute in Taiwan. • Afternoon: Meetings with the National Association of Architects, Architecture Association of the R.O.C., and The American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Taiwan chapter. • Evening: Reception.
Day 4—Thursday, Mar 27, 2025	• Morning: B2B meetings in Taiwan. • Midday/Evening: Departure to Ho Chi Minh City.
Day 5—Thursday, Mar 28, 2025	Ho Chi Minh City. • Morning: Market Briefing by the U.S. Consulate and AmCham: Vietnam Market Overview—Opportunities and Challenges for American companies. • B2G Meetings with the Department of Construction or Department of Planning and Architects and related Associations or Site visit. • Afternoon: B2B Meetings. • Evening: Reception.

* **Note:** The final schedule and potential site visits will depend on the availability of host government and business officials, specific goals of mission participants, and ground transportation.

Amendment to Revise the Trade Mission Dates and Deadline for Submitting Applications

Background

Design & Construction Trade Mission to Hong Kong, Taipei, and Ho Chi Minh City

The International Trade Administration has determined that to allow for enhanced participation the mission has been rescheduled to March 24–28, 2025. Additionally, to allow for optimal execution of recruitment the application deadline has been extended from July 31, 2024, to December 31, 2024. Applications may be accepted after that date if space remains and scheduling constraints permit. Interested U.S. companies and trade associations/organizations that have not already submitted an application are encouraged to do so. The U.S. Department of Commerce will review applications and make selection decisions on a rolling basis in accordance with the 89 FR 51307 (June 17, 2024). The applicants selected will be notified as soon as possible.

Contact

Jasmine Braswell, U.S. Commercial Service—Irvine, CA, +1–949–236–1101, *Jasmine.Braswell@trade.gov*

Geoffrey Parish, U.S. Commercial Service—Hong Kong, +852 2521 5752, *Geoffrey.Parish@trade.gov*

Gemal Brangman,

Director, Trade Events Management Task Force.

[FR Doc. 2024–26789 Filed 11–15–24; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–173]

Vanillin from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of vanillin from the People's Republic of China (China). The period of investigation is January 1, 2023, through December 31, 2023. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable November 18, 2024.

FOR FURTHER INFORMATION CONTACT: Jeff Pedersen, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2769.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this countervailing duty (CVD) investigation on July 1, 2024.[1] On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.[2] On August 13, 2024, Commerce postponed the preliminary determination of this investigation until

[1] *See Vanillin from the People's Republic of China: Initiation of Countervailing Duty Investigation,* 89 FR 54421 (July 1, 2024) (*Initiation Notice*).

[2] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,'' dated July 22, 2024.

November 12, 2024.[3] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[4]

A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov*. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The product covered by this investigation is vanillin from China. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,[5] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, (*i.e.,* scope).[6] No interested party commented on the scope of the investigation as it appeared in the *Initiation Notice.*

Methodology

Commerce is conducting this investigation in accordance with section 701 of 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.[7]

Commerce notes that, in making these findings, it relied, in part, on facts available and, because it finds that one or more respondents did not act to the best of their ability to respond to Commerce's requests for information, it drew an adverse inference where appropriate in selecting from among the facts otherwise available.[8] For further information, *see* the ''Use of Facts Otherwise Available and Adverse Inferences'' section in the Preliminary Decision Memorandum.

Alignment

In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final CVD determination in this investigation with the final determination in the companion antidumping duty (AD) investigation of vanillin from China based on a request made by Solvay USA LLC (the petitioner).[9] Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than March 24, 2025, unless postponed.

All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that, in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any rates that are zero, *de minimis,* or based entirely under section 776 of the Act.

In this investigation, Commerce preliminarily calculated an individual estimated countervailable subsidy rate for Jiaxing Guihua Chemical Import and Export Co., Ltd. (Guihua), the only individually examined exporter/producer in this investigation. Because the only individually calculated rate is not zero, *de minimis,* or based entirely on facts otherwise available, the estimated weighted-average rate calculated for Guihua is the rate preliminarily assigned to all other producers and exporters, pursuant to section 705(c)(5)(A)(i) of the Act.

Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent *ad valorem*)
Jiaxing Guihua Chemical Import and Export Co., Ltd.[10]	27.33
All Others	27.33

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement or, if there is no public announcement, within five days of the date of publication of this notice in the **Federal Register**, accordance with 19 CFR 351.224(b).

Consistent with 19 CFR 351.224(e), Commerce will analyze and, if appropriate, correct any timely allegations of significant ministerial errors by amending the preliminary determination. However, consistent with 19 CFR 351.224(d), Commerce will not consider incomplete allegations that do not address the significance standard under 19 CFR 351.224(g) following the preliminary determination. Instead, Commerce will address such allegations in the final determination together with issues raised in the case briefs or other written comments.

Suspension of Liquidation

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register.** Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

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 or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in the case briefs, may be

[3] *See Vanillin from the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation,* 89 FR 65845 (August 13, 2024).

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination in the Countervailing Duty Investigation of Vanillin from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[6] *See Initiation Notice,* 89 FR at 54421–22.

[7] *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.

[8] *See* sections 776(a) and (b) of the Act.

[9] *See* Petitioner's Letter, ''Request to Align Final Countervailing Duty Determination with the Companion Antidumping Duty Final Determination,'' dated October 17, 2024.

[10] As discussed in the Preliminary Decision Memorandum, Commerce preliminarily finds Guihua to be cross owned with the following companies: Jiaxing Zhongua Chemical Co. Ltd., Zhejiang Zonghua Flavor Co., Ltd., and Jiaxing Zhonghua Thermal Power Development Co., Ltd.

filed not later than five days after the date for filing case briefs.[11] 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.[12]

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 investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[13] 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 determination in this investigation. 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).[14]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, which is limited to covering issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice in the **Federal Register.** Hearing requests should contain 1) the requestor's name, address, and telephone number; 2) the number of participants and whether any participant is a foreign national; and 3) a list of the issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing.[15] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

All submissions, including case and rebuttal briefs, as well as hearing requests, should be filed using ACCESS. An electronically-filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the established deadline.

U.S. International Trade Commission (ITC) Notification

In accordance with section 703(f) of the Act, Commerce will notify the ITC of its determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of vanillin from China are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 703(f) and 777(i) of the Act, and 19 CFR 351.205(c).

Dated: November 12, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by the investigation is vanillin, with the molecular formula $C_8H_8O_3$ or $C_9H_{10}O_3$. For purposes of this investigation, vanillin consists of natural vanillin, synthetic vanillin, bio-sourced synthetic vanillin (biovanillin) (each also known as 4-Hydroxy-3-methoxybenzaldehyde), and ethylvanillin (also known as 3-Ethoxy-4-hydroxybenzaldehyde). Vanillin covered by this investigation is a chemical compound with the Chemical Abstracts Service (CAS) number 121–33–5 or 121–32–4. Vanillin is covered by the investigation regardless of whether it is in a crystalline powder or crystal form. Vanillin is covered by the scope of the investigation, irrespective of purity, particle size, or physical form.

Merchandise subject to the investigation is specified within the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 2912.41.0000 and 2912.42.0000. The HTSUS subheadings and CAS registry numbers are provided for convenience and customs purposes only. The written description of the merchandise covered by the investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Investigation
IV. Scope Comments
V. Alignment
VI. Injury Test
VII. Analysis of China's Financial System
VIII. Diversification of China's Economy
IX. Use of Facts Otherwise Available and Adverse Inferences
X. Subsidies Valuation
XI. Benchmarks
XII. Analysis of Programs
XIII. Recommendation

[FR Doc. 2024–26770 Filed 11–15–24; 8:45 am]

BILLING CODE 3510–DS–P

[11] *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 Final Rule*).

[12] *See* 19 CFR 351.309(c)(2) and (d)(2).

[13] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[14] *See APO and Service Final Rule.*

[15] *See* 19 CFR 351.310(d).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE458]

Nominations for the 2025–2028 General Advisory Committee and the Scientific Advisory Subcommittee to the United States Delegation to the Inter-American Tropical Tuna Commission

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for nominations.

SUMMARY: National Marine Fisheries Service, on behalf of the Secretary of Commerce, is seeking nominations for the General Advisory Committee (GAC) to the U.S. delegation to the Inter-American Tropical Tuna Commission (IATTC or Commission), as well as to a Scientific Advisory Subcommittee (SAS) of the GAC. The purpose of the GAC and its SAS is to provide public input and advice to the U.S. delegation to aid in the formulation of policy and positions for meetings of the IATTC and its subsidiary bodies. The SAS shall also function as the National Scientific Advisory Committee provided for in the Agreement on the International Dolphin Conservation Program.

DATES: Nominations must be received no later than December 17th, 2024.

ADDRESSES: Nominations should be directed to Jennifer Quan, Regional Administrator, NMFS West Coast Region, and may be submitted by the following means:

- Email *wcr.hms@noaa.gov* with the subject line: ''General Advisory Committee and Scientific Advisory Subcommittee nominations''

FOR FURTHER INFORMATION CONTACT: Lucille Bulkeley, West Coast Region, NMFS, at *lucille.bulkeley@noaa.gov,* or at (858)–546–5620.

SUPPLEMENTARY INFORMATION:

General Advisory Committee

The Tuna Conventions Act (TCA) provides that the Secretary of

Commerce, in consultation with the Secretary of State, shall appoint a ''General Advisory Committee'' to advise the U.S. delegation to the IATTC. The GAC shall be composed of no more than 25 individuals who shall be representative of the various groups concerned with the fisheries covered by the IATTC, including non-governmental conservation organizations, providing an equitable balance among such groups to the maximum extent practicable. Members of the GAC shall be invited to attend all non-executive meetings of the U.S. delegation to the IATTC and at such meetings shall be given the opportunity to examine and be heard on all proposed programs of investigation, reports, recommendations, and regulations of the Commission.

The Chair of the Pacific Fishery Management Council's (Pacific Council) Advisory Subpanel for Highly Migratory Fisheries and the Chair of the Western Pacific Fishery Management Council's (Western Pacific Council) Advisory Committee shall be ex-officio members of the GAC by virtue of their positions advising those Councils. GAC members will be eligible to participate as members of the U.S. delegation to the Commission and its working groups to the extent that the Commission rules and space for delegations allow.

Meetings of the GAC, except when in executive session, shall be open to the public, and prior notice of meetings shall be made public in timely fashion. In accordance with Public Law 114–81, the GAC shall not be subject to the Federal Advisory Committee Act (5 U.S.C. app.).

Individuals appointed to serve as a member of the GAC shall serve without pay. While away from their homes or regular places of business to attend meetings of the GAC, they shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently by the Federal Government are allowed expenses under 5 U.S.C. 5703. In addition, individuals appointed to serve as a member of the GAC shall not be considered Federal employees except for the purposes of injury compensation or tort.

Scientific Advisory Subcommittee

The TCA also provides that the Secretary of Commerce, in consultation with the Secretary of State, shall appoint persons to serve on the subcommittee of the GAC, referred to here as the ''Scientific Advisory Subcommittee.'' The SAS shall be composed of no fewer than 5 and no more than 15 qualified scientists with balanced representation from the public and private sectors, including non-governmental conservation organizations. In determining whether a person is a qualified scientist the Secretary may consider, among other things, advanced degrees and/or publications in fields such as fisheries or marine science.

National Scientific Advisory Committee

The SAS shall also function as the National Scientific Advisory Committee which is required to be established pursuant to Article XI of the Agreement on the International Dolphin Conservation Program (AIDCP). In this regard, the SAS shall perform the functions of the National Scientific Advisory Committee as specified in Annex VI of the AIDCP. These functions include, but are not limited to: (1) Receiving and reviewing relevant data, including data provided to NMFS by IATTC staff; (2) Advising and recommending measures and actions to the U.S. Government that should be undertaken to conserve and manage stocks of living marine resources in the eastern Pacific Ocean; (3) Making recommendations to the U.S. Government regarding research needs related to the eastern Pacific Ocean tuna purse seine fishery; (4) Promoting the regular and timely full exchange of data among the AIDCP Parties on a variety of matters related to the implementation of the AIDCP; and (5) Consulting with other experts, as necessary, in order to achieve the objectives of the AIDCP.

Members of the SAS/National Scientific Advisory Committee shall receive no compensation for their service.

General Provisions

Each member of the GAC shall be appointed for a term of 3 years, starting from the date of the appointment, and may be reappointed. The Secretary of Commerce and the Secretary of State shall provide the GAC with relevant information concerning fisheries and international fishery agreements. The Secretary of Commerce shall provide to the GAC such administrative and technical support services that are necessary for its effective functioning in a timely manner.

Procedures for Submitting Applications

Applications for the GAC and the SAS/National Scientific Advisory Committee should be submitted to NMFS West Coast Region (see **ADDRESSES**). This request for applications is for first time nominees, current members whose appointments will end in May 2025, and previous members. Self-nomination applications are acceptable. Applications should include all of the following information: (1) Full name, address (home and business, if different), telephone, and email address of nominee;

(2) Specification about whether the application is for the GAC or the SAS/National Scientific Advisory Committee or both; (3) Nominee's organization(s) or professional affiliation(s) serving as the basis for the nomination; (4) Background statement describing the nominee's qualifications and experience, especially as related to fisheries for tuna and tuna-like species in the eastern Pacific Ocean or other factors relevant to the implementation of the Convention Establishing the IATTC or the AIDCP. Applications to the SAS should highlight advanced degrees and academic publications; and (5) A written statement from the nominee of intent to participate actively and in good faith in the meetings and activities of either the GAC or the SAS/National Scientific Advisory Committee, or both.

Applicants who submitted material in response to the **Federal Register** notice published by NMFS on October 30, 2018 (83 FR 54573), or prior, should resubmit their applications pursuant to this notice.

Authority: 16 U.S.C. 951 *et seq.*

Dated: November 13, 2024.

Karen H. Abrams,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024–26813 Filed 11–15–24; 8:45 am]

BILLING CODE 3510–23–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE476]

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold its American Samoa Archipelago Fishery Ecosystem Plan (FEP) Advisory Panel (AP), Non-Commercial Fisheries Advisory Committee (NCFAC), Mariana Archipelago FEP Commonwealth of the Northern Mariana Islands (CNMI) AP, Fishing Industry Advisory Committee (FIAC), Hawaii Archipelago FEP AP, and the Mariana Archipelago FEP Guam

AP to discuss and make recommendations on fishery management issues in the Western Pacific Region.

DATES: The meetings will be held between December 3 and December 7, 2024. For specific times and agendas, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meetings will be held at different locations. See **SUPPLEMENTARY INFORMATION** for specific locations. Instructions for connecting to the web conference and providing oral public comments will be posted on the Council website at *www.wpcouncil.org.* For assistance with the web conference connection, contact the Council office at (808) 522–8220.

FOR FURTHER INFORMATION CONTACT: Contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council; phone: (808) 522–8220.

SUPPLEMENTARY INFORMATION:

Meeting Locations

The Council will hold its American Samoa Archipelago FEP AP, NCFAC, Mariana Archipelago FEP CNMI AP, FIAC, Hawaii Archipelago FEP AP, and the Mariana Archipelago FEP Guam AP meetings in a hybrid format with in-person and remote participation (Webex) options available for the members and the public. In-person attendance for the American Samoa Archipelago FEP AP members and public will be hosted at the Tedi of Samoa Suite 208B, P8C6+V2F, Fagotogo Village, AS 96799. In-person attendance for the NCFAC and public will be hosted at the Council office, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813. In-person attendance for Mariana Archipelago FEP CNMI AP members and public will be hosted at BRI Building Suite 205, Kopa Di Oru St., Garapan, Saipan 96950. In person attendance for FIAC and Hawaii Archipelago FEP AP members and public will be hosted at the Council office, 1164 Bishop Street, Suite 1400, Honolulu, HI 96813. In-person attendance for Mariana Archipelago FEP Guam AP members and public will be hosted at Cliff Pointe, 304 W O'Brien Drive, Hagatña, GU 96910.

The American Samoa FEP AP will meet on Tuesday, December 3, from 5 p.m. to 7 p.m. (Samoa Standard Time); the NCFAC will meet on Wednesday, December 4, 2024 from 1:30 p.m. to 4:30 p.m. (Hawaii Standard Time[HST]); the Mariana Archipelago FEP CNMI AP will meet on Thursday, December 5, from 6 p.m. to 8 p.m. (Chamorro Standard Time [ChST]); the FIAC will meet on Thursday, December 5, from 2 p.m. to 5 p.m. (HST); the Hawaii Archipelago FEP AP will meet on Friday, December 6, from 9 a.m. to 3 p.m. (HST); and the Mariana Archipelago Guam AP will meet on Saturday, December 7, from 11 a.m. to 1 p.m. (ChST).

Public Comment periods will be provided in the agendas. The order in which agenda items are addressed may change. The meetings will run as late as necessary to complete scheduled business.

Schedule and Agenda for the American Samoa Archipelago FEP AP Meeting

Tuesday, December 3, 2024, 5 p.m.–7 p.m. (Samoa Standard Time)

1. Welcome and Introductions
2. Review of the Last Advisory Panel (AP) Recommendation and Meetings
3. Feedback from the Fleet

A. Fourth Quarter Fisher Observations

B. Fisheries Issues

4. Council Fisheries Issues

A. Options for Hawaii and American Samoa Longline Fisheries Crew Training Requirement

B. Longline Electronic Monitoring Implementation Feasibility

5. Updates from NOAA Fisheries' Social-Ecological and Economic Systems (SEES) Program
6. Review of 2023–2026 AP Action Plan
7. Updates on the Council Inflation Reduction Act (IRA) Projects
8. Other Business
9. Public Comment
10. Discussion and Recommendations

Schedule and Agenda for the Non-Commercial Fisheries Advisory Committee

Wednesday, December 4, 2024, 1:30 p.m.–4:30 p.m.

1. Welcome and Introductions
2. Review of the Last NCFAC Meeting
3. Feedback from the Fleet
4. National Initiatives

A. NOAA Re-envisioning Recreational Fishing Data Collection

B. Marine Recreational Information Program Pacific Islands Regional Implementation Plan

5. Updates on Regional Initiatives

A. Territorial Creel Survey and Annual Report Modules

B. Hawaii

i. Hawaii Marine Recreational Fishing Survey

ii. Main Hawaiian Islands (MHI) Uku Project

6. Updates on Council IRA Projects
7. Other Business
8. Public Comment
9. Discussion and Recommendations

Schedule and Agenda for the Mariana Archipelago FEP CNMI AP Meeting

Thursday, December 5, 2024, 6 p.m.–8 p.m. (Chamorro Standard Time)

1. Welcome and Introductions
2. Review of the Last AP Recommendation and Meetings
3. Feedback from the Fleet

A. Fourth Quarter Fisher Observations

B. Fisheries Issues

4. Council Fisheries Issues

A. Status of Fisheries Development

5. Updates from NOAA Fisheries' SEES Program
6. Review of 2023–2026 AP Action Plan
7. Updates on the Council IRA Projects
8. Other Business
9. Public Comment
10. Discussion and Recommendations

Schedule and Agenda for the FIAC Meeting

Thursday, December 5, 2024, 2 p.m.–5 p.m. (Hawaii Standard Time)

1. Welcome and Introductions
2. Status Review on Previous FIAC recommendations
3. Roundtable update on Fishing/Market Issues/Impacts
4. U.S. Catch Limits for North Pacific Striped Marlin
5. Options for Hawaii and American Samoa Longline Fisheries Crew Training Requirement
6. Development of an Electronic Monitoring Program for Western Pacific Fisheries
7. MHI Bottomfish Market Snapshot
8. Updates on US and Pacific Island Trade Issues
9. Western and Central Pacific Fisheries Commission Updates
10. Other Business
11. Public Comment
12. Discussion and Recommendations

Schedule and Agenda for the Hawaii Archipelago FEP AP Meeting

Friday, December 6, 2024, 9 a.m.–3 p.m. (Hawaii Standard Time)

1. Welcome and Introductions
2. Review of the Last AP Recommendation and Meetings
3. Feedback from the Fleet

A. Fourth Quarter Fisher Observations

B. Fisheries Issues

4. Council Fisheries Issues

A. Options for Hawaii and American Samoa Longline Fisheries Crew Training Requirement

B. Development of an Electronic Monitoring Program for Western Pacific Fisheries

5. Updates from NOAA Fisheries' SEES Program
6. MHI Bottomfish Independent Survey in Hawaii Strategic Shift

7. Review of 2023–2026 AP Action Plan
8. Updates on the Council IRA Projects
9. Other Business
10. Public Comment
11. Discussion and Recommendations

Schedule and Agenda for the Mariana Archipelago FEP Guam AP Meeting

Saturday, December 7, 2024, 11 a.m.–1 p.m. (Chamorro Standard Time)

1. Welcome and Introductions
2. Review of the Last AP Recommendation and Meetings
3. Feedback from the Fleet
A. Fourth Quarter Fisher Observations
B. Fisheries Issues
4. Council Fisheries Issues
A. Modifying the Guam Bottomfish Rebuilding Plan
5. Guam Military Working Group Update
6. Updates from NOAA Fisheries' SEES Program
7. Review of 2023–2026 AP Action Plan
8. Updates on the Council IRA Projects
9. Other Business
10. Public Comment
11. Discussion and Recommendations

Special Accommodations

These meetings are accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 13, 2024.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024–26844 Filed 11–15–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE408]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Request for an Exempted Fishing Permit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of an application for an exempted fishing permit; request for comments.

SUMMARY: NMFS announces the receipt of an application for an exempted fishing permit (EFP) from Texas Sea Grant. If granted by NMFS, the EFP would authorize the continued testing of new designs for bycatch reduction devices (BRDs) for finfish, in the commercial shrimp fishery in Federal waters of the Gulf of Mexico (Gulf). The Better BRDs for the Gulf Shrimp Fleet Project is a collaborative effort to restore finfish populations and reduce finfish bycatch mortality through the development and certification of new BRDs for use by the commercial shrimp industry throughout the Gulf. This notice gives the public an opportunity to provide comments to NMFS regarding the request for an EFP.

DATES: Written comments must be received no later than December 3, 2024.

ADDRESSES: You may submit comments on the application, identified by NOAA–NMFS–2024–0128 by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and type NOAA–NMFS–2024–0128 in the Search box. Click the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit all written public comments to Frank Helies, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *https://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments—enter ''N/A'' in the required fields if you wish to remain anonymous.

An electronic copy of the application may be obtained from the Southeast Regional Office website at *https://www.fisheries.noaa.gov/southeast/commercial-fishing/better-bycatch-reduction-device-gulf-shrimp-fleet-project/.*

FOR FURTHER INFORMATION CONTACT: Frank Helies, phone: 727–824–5305, email: *frank.helies@noaa.gov.*

SUPPLEMENTARY INFORMATION: The EFP is requested under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C 1801 *et seq.*), and regulations at 50 CFR 600.745(b) concerning exempted fishing.

The EFP application submitted to NMFS involves the use of experimental fishing gear (BRDs) on shrimp trawls in Federal waters. Federal regulations require fishermen on shrimp vessels to use NMFS certified BRDs while trawling for shrimp in Gulf Federal waters [50 CFR 622.53(a)]. The applicant is seeking an EFP that would exempt these research activities from the regulations requiring the use of certified BRDs in Federal waters of the Gulf at 50 CFR 622.53(a), and would allow the applicant to replace an existing approved BRD with one of four experimental BRD configurations as determined by the applicant. The specific EFP request is further described below.

The Better BRDs for the Gulf Shrimp Fleet Project is a collaborative effort between Louisiana Sea Grant, Texas Sea Grant, NOAA Restoration Center, and NMFS to restore finfish populations injured by the Deepwater Horizon oil spill through the development and certification of new BRDs for the commercial shrimp industry throughout the Gulf. The project involves the phased testing of new BRD designs in the commercial shrimp fishery in Federal waters of the Gulf. The new BRD designs could demonstrate a greater reduction in bycatch of finfish, over the federally certified Fisheye BRD, which may also lead to an overall increase in shrimp catch.

The project would further identify and develop new bycatch-reducing technology to reduce finfish discard mortality in commercial shrimp trawls. Additionally, the project seeks to advance cost-effective solutions for the Gulf shrimp fleet that would maximize the adoption and use by fishermen of any improved designs for BRDs that could be certified for use in the fishery.

The project is separated into several phases. The first phase that began in 2022 included proof-of-concept testing of new BRD designs by NMFS Gear Research Branch partners. This proof-of-concept testing included both dive and vessel testing aboard the research vessel Caretta. The dive testing was conducted off Panama City, Florida, and the vessel testing was conducted off Pascagoula, Mississippi. New BRD designs that showed the potential to be effective during proof-of-concept testing were accepted for further evaluation during the project's next phase, which involved stakeholder testing. A final phase planned for the future would be pre-certification and certification testing of the selected BRDs, consistent with the requirements in 50 CFR 622.53(a)(2) and

the NMFS Bycatch Reduction Device Testing Manual (*https://www.fisheries.noaa.gov/resource/document/bycatch-reduction-device-testing-manual-2016/*).

On August 26, 2022, NMFS published a notice announcing receipt of an EFP application to allow stakeholder testing of six BRD designs: Toms Fisheye, Large Mesh Sections, Nested Cylinder, Virgil Potter, Flapless Turtle Excluder Devices, and Composite Panel Variations (87 FR 52512). NMFS issued that EFP on October 6, 2024, and it is valid until December 31, 2024. The purpose of the commercial stakeholder testing authorized under the current EFP is to allow for stakeholder input on the strengths and weaknesses of new BRD designs across a variety of species and environmental conditions within the Gulf shrimp fishery. This testing will also aid in the acceptance of new BRDs by the commercial shrimping industry when the most promising designs are later submitted for NMFS certification.

The current EFP allows selection of up to 30 federally-permitted commercial Gulf shrimp vessels to test gear that passed the proof-of-concept testing. The proposed EFP would increase the number of vessels to 50. As with the current EFP, the location of proof-of-concept testing trial vessels under the proposed EFP would be distributed across the Federal Gulf shrimp fishermen and fishing grounds throughout the Gulf in water depths of 10–50 fathoms or 18–91 meters (m). During testing, fishermen on vessels included in the EFP would be surveyed for qualitative information about the new BRDs, and any other use recommendations that are needed. Additional BRD information including time and difficulty to install, longevity, ease of use (*e.g.,* tangling during deployment or retrieval, and shark damage), bycatch and shrimp retention characteristics, and overall cost would be collected by the applicant to assist with promotion of new BRD designs for industry wide usage.

Vessels in the proposed project would be using experimental BRD designs on trips of up to 30 days at sea. Trip duration and the total number of tows with experimental BRD gear may vary based on sea conditions and vessel business factors at the discretion of the vessel operator. During a 30-day trip, approximately 90 tows with BRD-equipped shrimp trawls are expected to occur. Tow times, which is the length of time the gear is pulled through the water, would be variable between different vessels but would be consistent on the same vessel during each trip. Typical tow times average 3 hours but vary from 1 to 5 hours. If all 50 vessels participate and complete each test tow, there is the potential for a maximum of 3,000 tows for this phase of the project.

The proposed EFP would be valid through December 31, 2028. As with the current EFP, all BRD testing on federally permitted shrimp vessels would occur during the course of normal Gulf shrimp fishing operations and all of these operations would comply with all other current Federal shrimp regulations such as closed areas and size limits.

Experimental BRD Configurations

Under the proposed EFP, four experimental BRD configurations could be tested by the applicant and project vessels. Three of these designs are included in the current EFP—Large Mesh Sections, Flapless Turtle Excluder Devices, and Composite Panel Variations. Each type of experimental BRD to be tested under the proposed EFP is listed and summarized below.

Large Mesh Sections

In the Large Mesh Sections BRD, areas of the trawl net are composed of 2-inch (in) or 5-centimeter (cm) or larger stretched mesh that is much larger in size than the minimum dimensions of the mesh in the cod end of the net where the catch collects, and installed anywhere from 4 to 8 feet (ft) or 1.2 to 2.4 m from the trawl tie off rings. The larger mesh provides openings that make it easier for fish to escape the trawl net.

Flapless Turtle Excluder Devices

The project would test two different designs of flapless turtle excluder devices (TEDs) known as the Chauvin TED and the Drury TED. These are both top-shooting TEDs, which have an escape opening on the net closer to the surface, with PVC pieces placed ahead of the TED extension at the leading edge of the escape opening cut in the net. These TEDs are designed to work as both a TED and a BRD. However, neither TED configuration has been tested as a BRD.

The Chauvin TED is a top-shooting TED that contains a ''Chauvin shrimp deflector,'' which is an allowable TED modification [50 CFR 223.207(d)(8)]. A modification to the Drury TED is not an allowable TED modification. Therefore, if the Drury TED modification is tested under this EFP, the applicant would need to obtain an additional TED testing permit from NMFS prior to commencement of testing.

Composite Panel Variations

The Composite Panel BRD is a NMFS-certified design that includes two soft panels with two sets of windows that allow fish to escape on the bottom side of the net and a secondary component of either a cone fish deflector, which is designed to guide fish to the escape windows, or a large mesh section installed further down into the net. There is a potential for differences in BRD characteristics when used with a top versus bottom-shooting TED. There is also potential for differences when installed with the escape openings in a top orientation of the composite panel as opposed to the current certified design that orients the escape openings to the bottom. The EFP would allow for testing of configurations that are not already certified for use by NMFS.

Large TED Openings

Large TED escape openings are certified for industry use to comply with the TED requirements but have not been tested as a BRD. The triangular cut design shows potential for bycatch reduction. This design has an opening with a base no less than 40 in (102 cm) wide across the TED frame. The sides of the triangle taper along the bar and must each measure no less than 53 in (135 cm). Similar to the flapless TEDs, the opening allows fish to escape the net.

NMFS finds the application warrants further consideration based on a preliminary review. Possible conditions the agency may impose on the permit, if granted, include but are not limited to, a prohibition on conducting fishing gear testing within marine protected areas, marine sanctuaries, special management zones, or areas where testing might interfere with managed fisheries without additional authorization. Additionally, NMFS may require special protections for Endangered Species Act-listed species and designated critical habitat, and may require particular gear markings. A final decision on issuance of the EFP will depend on NMFS' review of public comments received on the application, consultations with the appropriate fishery management agencies of the affected states, the Gulf of Mexico Fishery Management Council, and the U.S. Coast Guard, and a determination that the activities to be taken under the EFP are consistent with all applicable laws.

Authority: 16 U.S.C 1801 *et seq.*

Dated: November 8, 2024.

Karen H. Abrams,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024–26763 Filed 11–15–24; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Wednesday, November 20, 2024–10 a.m.

PLACE: Meeting will take place remotely and in person at 4330 East West Highway, Bethesda, Maryland, Room 420.

STATUS: Commission Meeting—Closed to the Public.

MATTERS TO BE CONSIDERED:

Meeting Matter

Briefing Matter.

CONTACT PERSON FOR MORE INFORMATION: Alberta E. Mills, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, 301–504–7479 (Office) or 240–863–8938 (Cell).

Dated: November 13, 2024.

Alberta Mills,

Commission Secretary.

[FR Doc. 2024–26892 Filed 11–14–24; 11:15 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[25–0005206–AFRL/RX]

Notice of Intent To Grant an Exclusive Patent License

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Notice of Intent.

SUMMARY: Pursuant to the Bayh-Dole Act and implementing regulations, the Department of the Air Force hereby gives notice of its intent to grant an exclusive patent license to Trustees of Tufts College, 136 Harrison Avenue, Suite 75K–950, Boston, Massachusetts 02111, USA. Such license is exclusive.

DATES: Written objections must be filed no later than fifteen (15) calendar days after the date of publication of this Notice.

ADDRESSES: Submit written objections to James F. McBride, Air Force Materiel Command Law Office, AFMCLO/JAZ, 2240 B Street, Area B, Building 11, Wright-Patterson AFB, OH 45433–7109; Facsimile: (937) 255–9318; or Email: *afmclo.jaz.tech@us.af.mil.* Include Docket ARX–210727A–PL in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: James F. McBride, Air Force Materiel Command Law Office, AFMCLO/JAZ, 2240 B Street, Area B, Building 11, Wright-Patterson AFB, OH 45433–7109; Telephone: (937) 713–0229; Facsimile: (937) 255–9318; or Email: *afmclo.jaz.tech@us.af.mil.*

SUPPLEMENTARY INFORMATION:

Abstract of Patents and Patent Application(s)

I. Oxygen-sensing materials and methods are disclosed. The materials include oxygen-sensing chromophores embedded in a solid matrix including silk fibroin in an amount by weight of at least 50% of the total weight of the solid matrix. The solid matrix possesses at least partial transparency at relevant wavelengths. The solid matrix is biocompatible and biodegradable. The solid matrix is not a hydrogel. The chromophores are distributed throughout the solid matrix. Tissue oxygenation can be estimated from phosphorescence measurements made from oxygen-sensing materials implanted in subject.

Intellectual Property

Silk-chromophore Composite Materials for in situ Oxygen Sensing. The invention is protected under U.S. Provisional Patent Application Serial No.63/317,929, filed on March 8, 2022, PCT Patent Application Serial No. PCT/US2023/014796, filed on March 8, 2023, U.S. Patent Application Serial No. 18/823,853, filed on September 4, 2024.

The Department of the Air Force may grant the prospective license unless a timely objection is received that sufficiently shows the grant of the license would be inconsistent with the Bayh-Dole Act or implementing regulations. A competing application for a patent license agreement, completed in compliance with 37 CFR 404.8 and received by the Air Force within the period for timely objections, will be treated as an objection and may be considered as an alternative to the proposed license.

Authority: 35 U.S.C. 209; 37 CFR 404.

Tommy W. Lee,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2024–26826 Filed 11–15–24; 8:45 am]

BILLING CODE 3911–44–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Business Board; Notice of Federal Advisory Committee Meeting

AGENCY: Department of Defense (DoD).

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal advisory committee meeting of the Defense Business Board (''the Board'') will take place.

DATES: Closed to the public Tuesday, November 12, 2024 from 7:45 a.m. to 9:45 a.m., 10:55 a.m. to 11:30 a.m., and 4 p.m. to 5 p.m., and Wednesday, November 13, 2024 from 8 a.m. to 9:05 a.m. Open to the public Tuesday, November 12, 2024 from 10 a.m. to 10:55 a.m. and 1:30 p.m. to 4 p.m., and Wednesday, November 13, 2024 from 9:45 a.m. to 11 a.m. All eastern time.

ADDRESSES: The open and closed portions of the meeting will be held in room B4 of the Pentagon Library Conference Center (PLCC), virtually (for public attendance of open portions), room 1E840 in the Pentagon, and Arlington National Cemetery, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Ms. Cara Allison Marshall, Designated Federal Officer (DFO) of the Board in writing at Defense Business Board, 1155 Defense Pentagon, Room 5B1088A, Washington, DC 20301–1155; or by email at *cara.l.allisonmarshall.civ@mail.mil;* or by phone at 703–614–1834.

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Designated Federal Officer, the Defense Business Board was unable to provide public notification required by 41 CFR 102–3.150(a) concerning its November 12–13, 2024 meeting. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

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''); 5 U.S.C. 552b(c); and 41 Code of Federal Regulations (CFR) 102–3.140 and 102–3.150.

Purpose of the Meeting: The mission of the Board is to examine and advise the Secretary and Deputy Secretary of Defense on overall DoD management and governance. The Board provides independent, strategic-level, private sector and academic advice and counsel

on enterprise-wide business management approaches and best practices for business operations and achieving National Defense goals.

Agenda: The Board will begin in closed session in the PLCC, room B4, on November 12 from 7:45 a.m. to 9:45 a.m. The DFO will begin the closed session followed by a welcome by Board Chair, Hon. Deborah James. The Board will receive a classified discussion on the Department's accomplishments across a range of initiatives since 2021, in the areas of capabilities, acquisitions, personnel, and business processes from Hon. Kathleen Hicks, Deputy Secretary of Defense. Next, the Board will receive a classified discussion on ''National Defense Industrial Strategy Implementation Plan'' from Hon. Laura Taylor-Kale, Assistant Secretary for Industrial Base Policy, Office of the Under Secretary of Defense for Acquisition and Sustainment. This discussion will discuss the progress on implementing the National Defense Industrial Strategy, including key investments and initiatives to secure and make more resilient the supply chains upon which the Department depends. The DFO will adjourn the closed session. The Board will convene in open session from 10 a.m. to 10:55 a.m. The DFO will begin the open session followed by a discussion on ''Using Strategic Capital for National Security'' from Dr. Jason Rathje, Director, Office of Strategic Capital (OSC). This discussion will focus on the strategies and partnerships that OSC is using to accelerate and scale private investment for national security to support critical technology areas and improve supply chains. The DFO will adjourn the open session. The DFO will reconvene a closed session from 10:55 a.m. to 11:30 a.m., and the Board will receive a classified discussion on ''DoD Current Affairs'' from Hon. Lloyd Austin, Secretary of Defense. The discussion with Secretary Austin will focus on the state of the current global security environment and its implications for current and future business operations. The DFO will adjourn the closed session and the Board will break for lunch. The Board will convene in open session from 1:30 p.m. to 4 p.m. The DFO will begin the open session followed by a briefing, deliberation, and vote on the study, ''Industry Partnerships for Crises'', which will be presented by the Business Operations Advisory subcommittee. This session will provide the proposed findings and recommendations related to building better relationships with industry to expand capability rapidly in crises for the Board to consider. The open session will continue with a discussion on ''Customer Experience Implementation Plan'' from Mr. Robert G. Salesses, Deputy Director, Washington Headquarters Services (WHS). This discussion from Mr. Salesses will explore WHS' new ''Customer Experience Implementation Plan'', which aims to focus the defense field activity on delivering superior customer service to their clients. The DFO will adjourn the open session. The DFO will begin the closed session from 4 p.m. to 5 p.m. The Board will receive a discussion on ''Air Force and Space Force Management and Budget'' from Ms. Melissa Dalton, Under Secretary of the Air Force. This discussion will brief the Board on her role in organizing, training, and equipping the Air Force and Space Force, including managing the annual budget of over $200 billion. The DFO will adjourn the closed session of the day. The Board will reconvene in a closed session on November 13 in Pentagon room 1E840 from 8 a.m. to 9:05 a.m. The DFO will begin the closed session followed by a welcome by Board Chair, Hon. Deborah James. The Board will receive a classified discussion on U.S. Special Operations Command (SOCOM) from Ms. Melissa Johnson, Acquisition Executive for U.S. Special Operations Command. This discussion will explain how SOCOM engages in acquisition, development, and supply chain management, by placing authority to act at the lowest possible level and eliminating bureaucratic barriers to entry for both established and emerging businesses. The Board will next hear a classified update from Mrs. Fern Sumpter Winbush, Principal Deputy Director for the Defense POW/MIA Accounting Agency (DPAA). This discussion will focus on the efforts in recovering unaccounted DoD personnel listed as prisoners of war and missing in action from designated past conflicts, from countries around the world, including how DPAA manages sensitive relationships with governments that have had conflicts with the U.S. to accomplish its mission. The DFO will adjourn the closed session. After a break, the Board will travel to the Arlington National Cemetery, Arlington, VA. The DFO will begin the open session. The Board will receive their final discussion from 9:45 a.m. to 11 a.m. This briefing will describe the role of the Old Guard at Arlington National Cemetery, provide a tour of the Tomb area, and observe a changing of the Guard ceremony. The tour will provide insight into how rigorous and uncompromising business processes produce one of the military's most precise, disciplined units. This is a publicly available tour and subject to any capacity limitations and security procedures required by the Cemetery of all visitors. The DFO will adjourn the meeting. The latest version of the agenda is available on the Board's website at: *https://dbb.dod.afpims.mil/Meetings/Meeting-November-2024/.*

Meeting Accessibility: In accordance with 5 U.S.C. 1009(d) and 41 CFR 102–3.155, it is hereby determined that portions of the November 12—13 meeting of the Board will include classified information and other matters covered by 5 U.S.C. 552b(c)(1) and that, accordingly, those portions of the meeting will be closed to the public on Tuesday, November 12, 2024 from 7:45 a.m. to 9:45 a.m., 10:55 a.m. to 11:30 a.m. and 4 p.m. to 5 p.m. and closed to the public Wednesday, November 13, 2024 from 8 a.m. to 9:05 a.m. This determination is based on the consideration that it is expected that discussions throughout those portions of the meeting will involve classified matters of national security. Such classified material is so intertwined with the unclassified material that it cannot reasonably be segregated into separate discussions without defeating the effectiveness and meaning of those portions of the meeting. To permit those portions to be open to the public would preclude discussion of such matters and would greatly diminish the ultimate utility of the Board's findings and recommendations to the Secretary of Defense and the Deputy Secretary of Defense. Pursuant to 5 U.S.C. 1009(a)(1) and 41 CFR 102–3.140, the portions of the meeting on November 12 from 10 a.m. to 10:55 a.m. and 1:30 p.m. to 4 p.m. are open to the public virtually. The portion of the meeting on November 13 from 9:45 a.m. to 11 a.m. is open to the public at Arlington National Cemetery. The Board will gather at the Tomb of the Unknown Soldier. Persons desiring to attend the public portions are required to register. To attend the public portions of the meeting, submit your name, affiliation/organization, telephone number, and email contact information to the Board at *osd.pentagon.odam.mbx.defense-business-board@mail.mil.* Requests to attend the public portions must be received no later than 4 p.m. on Thursday, November 7, 2024. Upon receipt of this information, the Board will provide further instructions for virtually attending the meeting.

Written Comments and Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and 5 U.S.C. 1009(a)(3), the public or interested organizations may

submit written comments or statements to the Board in response to the stated agenda of the meeting or regarding the Board's mission in general. Written comments or statements should be submitted to Ms. Cara Allison Marshall, the DFO, via electronic mail (the preferred mode of submission) at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. The DFO must receive written comments or statements submitted in response to the agenda set forth in this notice by 4 p.m. on Friday, November 8, 2024, to be considered by the Board. The DFO will review all timely submitted written comments or statements with the Board Chair and ensure the comments are provided to all members of the Board before the meeting. Written comments or statements received after this date may not be provided to the Board until its next scheduled meeting. Please note that all submitted comments and statements will be treated as public documents and will be made available for public inspection, including, but not limited to, being posted on the Board's website.

Dated: November 13, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–26843 Filed 11–15–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Inland Waterways Users Board Meeting Notice

AGENCY: U.S. Army Corps of Engineers, Department of the Army, Department of Defense.

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the Federal advisory committee meeting of the U.S. Army Corps of Engineers, Inland Waterways Users Board (Board). This meeting is open to the public. For additional information about the Board, please visit the committee's website at *https://www.iwr.usace.army.mil/Missions/Navigation/Inland-Waterways-Users-Board/.*

DATES: The Army Corps of Engineers, Inland Waterways Users Board will conduct a meeting from 9 a.m. to 1 p.m. EST on December 13, 2024.

ADDRESSES: The Inland Waterways Users Board meeting will be conducted at the Hilton Garden Inn Reagan National Airport, Salons 1, 2, & 3, 2020 Richmond Highway, Arlington VA, 22202. The online virtual portion of the Inland Waterways Users Board meeting can be accessed at *https://usace1.webex.com/meet/ndc.nav,* Public Call-in: USA Toll-Free 844–800–2712, USA Caller Paid/International Toll: 1–669–234–1177 Access Code: 199 117 3596, Security Code 1234.

FOR FURTHER INFORMATION CONTACT: Mr. Paul D. Clouse, the Designated Federal Officer (DFO) for the committee, in writing at the Institute for Water Resources, U.S. Army Corps of Engineers, ATTN: CEIWR–NDC, 7701 Telegraph Road, Casey Building (Room H221), Alexandria, VA 22315–3868; by telephone at 202–768–3157; or by email at *Paul.D.Clouse@usace.army.mil.* Alternatively, contact Mr. Steven D. Riley, an Alternate Designated Federal Officer (ADFO), in writing at the Institute for Water Resources, U.S. Army Corps of Engineers, ATTN: CEIWR–NDC, 7701 Telegraph Road, Casey Building, Alexandria, VA 22315–3868; by telephone at 703–659–3097; or by email at *Steven.D.Riley@usace.army.mil.*

SUPPLEMENTARY INFORMATION: This committee 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''), section 552b of title 5, U.S.C. (commonly known as the ''Government in the Sunshine Act''), and §§ 102–3.140 and 102–3.150 of title 41, Code of Federal Regulations (CFR).

Purpose of the Meeting: The Board is chartered to provide independent advice and recommendations to the Secretary of the Army on construction and rehabilitation project investments on the commercial navigation features of the inland waterways system of the United States. At this meeting, the Board will receive briefings and presentations regarding the investments, projects, and status of the inland waterways system of the United States and conduct discussions and deliberations on those matters. The Board is interested in written and verbal comments from the public relevant to these purposes.

Agenda: At this meeting the agenda will include an update on the status of the Inland Waterways Trust Fund (IWTF); 2025 Capital Investment Strategy Update; Cost escalations; Inland waterways modernization project updates for Chickamauga Lock and the Kentucky Lock Addition on the Tennessee River, the Upper Ohio River Montgomery Lock, Lower Monongahela Locks 2,3,& 4, Mississippi River-Illinois Waterway Navigation and Ecosystem Sustainability Program (NESP) Lock 25, and McClellan-Kerr Arkansas River Navigation System (MKARNS) Three Rivers; Asset Management Update; Major Rehabilitation Reports Update; Inland Waterways Users Board Project Advisors.

Availability of Materials for the Meeting: A copy of the agenda or any updates to the agenda for the December 13, 2024, meeting will be available. The final version will be available at the meeting. All materials will be posted to the website for the meeting.

Public Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.1 65, and subject to the availability of space, this meeting is open to the public. Registration of members of the public who wish to participate in the meeting will begin at 8:30 a.m. on the day of the meeting. Participation is on a first-to-arrive basis. Any interested person may participate in the meeting, file written comments or statements with the committee, or make verbal comments during the public meeting, at the times, and in the manner, permitted by the committee, as set forth below.

Special Accommodations: Individuals requiring any special accommodations related to the public meeting or seeking additional information about the procedures, should contact Mr. Paul Clouse, the committee DFO, or Mr. Steven Riley, an ADFO, at the email addresses or telephone numbers listed in the **FOR FURTHER INFORMATION CONTACT** section, at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Written Comments or Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the Board about its mission and/or the topics to be addressed in this public meeting. Written comments or statements should be submitted to Mr. Clouse, the committee DFO, or Mr. Riley, a committee ADFO, via electronic mail, the preferred mode of submission, at the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section in the following formats: Adobe Acrobat or Microsoft Word. The comment or statement must include the author's name, title, affiliation, address, and daytime telephone number. Written

comments or statements being submitted in response to the agenda set forth in this notice must be received by the committee DFO or ADFO at least five (5) business days prior to the meeting so that they may be made available to the Board for its consideration prior to the meeting. Written comments or statements received after this date may not be provided to the Board until its next meeting. Please note that because the Board operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection.

Verbal Comments: Members of the public will be permitted to make verbal comments during the public meeting only at the time and in the manner allowed herein. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least three business (3) days in advance to the committee DFO or ADFO, via electronic mail, the preferred mode of submission, at the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section. The committee DFO and ADFO will log each request to make a comment, in the order received, and determine whether the subject matter of each comment is relevant to the Board's mission and/or the topics to be addressed in this public meeting. A 30-minute period near the end of the meeting will be available for verbal public comments. Members of the public who have requested to make a verbal comment and whose comments have been deemed relevant under the process described above, will be allotted no more than three (3) minutes during this period, and will be invited to speak in the order in which their requests were received by the DFO and ADFO.

Stephen L. Hill,

Director, Operations and Regulatory Programs.

[FR Doc. 2024–26772 Filed 11–15–24; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF ENERGY

Carbon Dioxide Capture, Utilization, and Sequestration Federal Lands Permitting Task Force; Carbon Dioxide Capture, Utilization, and Sequestration Non-Federal Lands Permitting Task Force

AGENCY: Office of Fossil Energy and Carbon Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: The Department of Energy hereby publishes a notice of a joint open meeting of the Carbon Dioxide Capture, Utilization, and Sequestration Federal Lands Permitting Task Force and the Carbon Dioxide Capture, Utilization, and Sequestration Non-Federal Lands Permitting Task Force (CCUS Permitting Task Forces). The Federal Advisory Committee Act (FACA) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, December 11, 2024; 9 a.m. to 5 p.m. eastern time. Start and end times may change slightly. Please visit *https://www.energy.gov/fecm/use-it-act-carbon-dioxide-capture-utilization-and-sequestration-ccus-permitting-task-forces* for the most up to date agenda.

ADDRESSES: This joint meeting of the CCUS Permitting Task Forces will be held in person at the U.S. Geologic Survey National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192, with the option of virtual attendance. Members of the public are encouraged to participate virtually, as physical space to attend onsite is limited to members. The website for the CCUS Permitting Task Forces will be updated with announcements about the meeting, including instructions for registering to attend virtually: *https://www.energy.gov/fecm/use-it-act-carbon-dioxide-capture-utilization-and-sequestration-ccus-permitting-task-forces.*

FOR FURTHER INFORMATION CONTACT: Christina Waldron, Designated Federal Officer, Fossil Energy and Carbon Management, U.S. Department of Energy, Washington, DC 20585; Telephone: (771) 217–0877 or Email: *doe.ccus.permitting.task.force@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In April 2024, Department of Energy (DOE) and the Council on Environmental Quality (CEQ) chartered and appointed members for two new CCUS Permitting Task Forces as required by the Utilizing Significant Emissions with Innovative Technologies (USE IT) Act and in accordance with FACA. The purpose of each Task Force is the same, but the scope differs by geographical area—one Task Force focuses on Federal lands and the Outer Continental Shelf, and the other focuses on non-Federal lands.

Purpose of the Committee: The purpose of the Task Forces is to identify permitting and other challenges and successes that permitting authorities and project developers and operators face in permitting projects in an efficient, orderly, and responsible manner; and improve the performance of the permitting process and regional coordination for the purpose of promoting the efficient, orderly, and responsible development of carbon capture, utilization, and sequestration projects and carbon dioxide pipelines.

To accomplish these objectives, the USE IT Act requires each Task Force to undertake the following activities with respect to its geographic scope: (1) inventory existing or potential Federal and State approaches to facilitate reviews associated with the deployment of carbon capture, utilization, and sequestration projects and carbon dioxide pipelines, including best practices that avoid duplicative reviews to the extent permitted by law, engage stakeholders early in the permitting process, and make the permitting process efficient, orderly, and responsible; (2) develop common models for State-level carbon dioxide pipeline regulation and oversight guidelines that can be shared with States in the geographical area covered by the Task Force; (3) provide technical assistance to States in the geographical area covered by the Task Force in implementing regulatory requirements and any models developed under (2) above; (4) inventory current or emerging activities that transform captured carbon dioxide into a product of commercial value, or as an input to products of commercial value; (5) identify any priority carbon dioxide pipelines needed to enable efficient, orderly, and responsible development of carbon capture, utilization, and sequestration projects at increased scale; (6) identify gaps in the current Federal and State regulatory framework and in existing data for the deployment of carbon capture, utilization, and sequestration projects and carbon dioxide pipelines; (7) identify Federal and State financing mechanisms available to project developers; and (8) develop recommendations for relevant Federal agencies on how to develop and research technologies that can capture carbon dioxide and would be able to be deployed within the region covered by the Task Force, including any projects that have received technical or financial assistance for research under paragraph (6) of section 103(g) of the Clean Air Act (42 U.S.C. 7403(g)).

In carrying out these activities to support the efficient, effective, and responsible permitting of CCUS projects, the Task Forces shall also consider and develop recommendations to address community concerns regarding the climate benefits and environmental justice implications,

including public health and safety, of CCUS. In the development of these recommendations, the Task Forces shall consider and identify recommended mechanisms to ensure just treatment and meaningful involvement of impacted communities.

Tentative Agenda

- Opening remarks
- Presentations on Task Forces' progress on USE IT Act duties
- Public comment period
- Closing remarks

To view the final agenda when available, or for additional information about the Task Forces, the meeting, and the prior meeting of the Task Forces, see the CCUS Permitting Task Forces website at: *https://www.energy.gov/fecm/use-it-act-carbon-dioxide-capture-utilization-and-sequestration-ccus-permitting-task-forces.*

Public Participation: The meeting is open to the public via webcast. The website will be updated with instructions and links to register for the meeting. All attendees are required to register in advance. If you would like to file a written statement with either Task Force, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, please send an email request to Christina Waldron at *doe.ccus.permitting.task.force@hq.doe.gov.* You must make your request for an oral statement by Wednesday, December 4, 2024, at 11:59 a.m. ET. Reasonable provision will be made to include the scheduled oral statements on the agenda. Time allotted per speaker will depend on the number who wish to speak but is not expected to exceed three minutes. The Chairpersons of the Task Forces will conduct the meeting to facilitate the orderly conduct of business.

Minutes: The minutes of this meeting will be available for public review within 45 days at the website of the CCUS Permitting Task Forces at: *https://www.energy.gov/fecm/use-it-act-carbon-dioxide-capture-utilization-and-sequestration-ccus-permitting-task-forces.* They can also be obtained by contacting Ms. Christina Waldron using the contact information above.

Signing Authority: This document of the Department of Energy was signed on November 12, 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 November 13, 2024.

Treena V. Garrett,

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

[FR Doc. 2024–26775 Filed 11–15–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2601–077]

Northbrook Carolina II, LLC; Notice of Availability of Final Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission or FERC) regulations, 18 CFR part 380, Commission staff reviewed Northbrook Carolina II, LLC (licensee) application for surrender of the license for the Bryson Hydroelectric Project No. 2601 and have prepared an Environmental Assessment (EA) for the proposed surrender.[1] The licensee proposes to surrender the license via severing its interconnection with the grid and leaving the dam in place and operational under the regulation of the North Carolina Division of Environmental Quality State Dam Safety Engineer with the reservoir elevation and discharge remaining the same as previous operations. The Bryson Project consists of a multiple arch dam with multiple spillway and overflow sections, a 38-acre reservoir, and two vertical Francis-type generating units located on the Oconaluftee River in Swain County, North Carolina. The project does not occupy any Federal lands.

The final EA contains Commission staff's analysis of the potential environmental effects of the proposed surrender, alternatives to the proposed action, and concludes that the proposed surrender, with appropriate environmental protective measures, would not constitute a major Federal action that would significantly affect the quality of the human environment.

The final EA may be viewed on the Commission's website at *http://www.ferc.gov* using the ''elibrary'' link. Enter the docket number (P–2601) in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

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.*

For further information, contact Michael Calloway at 202–502–8041 or *Michael.calloway@ferc.gov.*

Dated: November 12, 2024.

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2024–26823 Filed 11–15–24; 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: EG25–31–000.

Applicants: Nimbus Wind Farm, LLC.

Description: Nimbus Wind Farm, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 11/12/24.

Accession Number: 20241112–5218.

Comment Date: 5 p.m. ET 12/3/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–2383–026.

Applicants: Safe Harbor Water Power Corporation.

[1] In accordance with the Council on Environmental Quality's regulations, the unique identification number for documents relating to this environmental review is EAXX–019–20–000–1726749058. 40 CFR 1501.5(c)(4) (2024).

Description: Compliance filing: Informational Filing Pursuant to Schedule 2 of the PJM OATT & Request for Waiver to be effective N/A.
Filed Date: 11/8/24.
Accession Number: 20241108–5196.
Comment Date: 5 p.m. ET 11/29/24.
Docket Numbers: ER15–1706–007.
Applicants: Newark Energy Center, LLC.
Description: Compliance filing: Informational Filing Pursuant to Schedule 2 of the PJM OATT & Request for Waiver to be effective N/A.
Filed Date: 11/8/24.
Accession Number: 20241108–5193.
Comment Date: 5 p.m. ET 11/29/24.
Docket Numbers: ER16–1530–003.
Applicants: BIF III Holtwood LLC.
Description: Compliance filing: Informational Filing Pursuant to Schedule 2 of the PJM OATT & Request for Waiver to be effective N/A.
Filed Date: 11/8/24.
Accession Number: 20241108–5184.
Comment Date: 5 p.m. ET 11/29/24.
Docket Numbers: ER20–2446–006.
Applicants: Bitter Ridge Wind Farm, LLC.
Description: Compliance filing: Informational Filing Pursuant to Schedule 2 of the PJM OATT & Request for Waiver to be effective N/A.
Filed Date: 11/8/24.
Accession Number: 20241108–5187.
Comment Date: 5 p.m. ET 11/29/24.
Docket Numbers: ER21–511–006.
Applicants: Safe Harbor Water Power Corporation.
Description: Compliance filing: Informational Filing Pursuant to Schedule 2 of the PJM OATT & Request for Waiver to be effective N/A.
Filed Date: 11/8/24.
Accession Number: 20241108–5201.
Comment Date: 5 p.m. ET 11/29/24.
Docket Numbers: ER21–887–002.
Applicants: Brookfield Power Piney & Deep Creek LLC.
Description: Compliance filing: Informational Filing Pursuant to Schedule 2 of the PJM OATT & Request for Waiver to be effective N/A.
Filed Date: 11/8/24.
Accession Number: 20241108–5190.
Comment Date: 5 p.m. ET 11/29/24.
Docket Numbers: ER22–2292–001.
Applicants: Idaho Power Company.
Description: Compliance filing: Compliance Filing—Order 881 to be effective N/A.
Filed Date: 11/12/24.
Accession Number: 20241112–5164.
Comment Date: 5 p.m. ET 12/3/24.
Docket Numbers: ER22–2303–001.
Applicants: Black Hills Power, Inc.
Description: Compliance filing: Order No. 881 Further Compliance Filing to be effective N/A.
Filed Date: 11/12/24.
Accession Number: 20241112–5130.
Comment Date: 5 p.m. ET 12/3/24.
Docket Numbers: ER22–2305–001.
Applicants: Louisville Gas and Electric Company.
Description: Compliance filing: Order No. 881 Additional Compliance Filing to be effective N/A.
Filed Date: 11/12/24.
Accession Number: 20241112–5005.
Comment Date: 5 p.m. ET 12/3/24.
Docket Numbers: ER22–2306–001.
Applicants: Black Hills Colorado Electric, LLC.
Description: Compliance filing: Order No. 881 Further Compliance Filing to be effective N/A.
Filed Date: 11/12/24.
Accession Number: 20241112–5137.
Comment Date: 5 p.m. ET 12/3/24.
Docket Numbers: ER22–2307–001.
Applicants: Cheyenne Light, Fuel and Power Company.
Description: Compliance filing: Order No. 881 Further Compliance Filing to be effective N/A.
Filed Date: 11/12/24.
Accession Number: 20241112–5141.
Comment Date: 5 p.m. ET 12/3/24.
Docket Numbers: ER22–2335–001.
Applicants: Public Service Company of New Mexico.
Description: Compliance filing: PNM Compliance Order No. 881—Timelines to be effective N/A.
Filed Date: 11/12/24.
Accession Number: 20241112–5312.
Comment Date: 5 p.m. ET 12/3/24.
Docket Numbers: ER22–2339–003.
Applicants: Southwest Power Pool, Inc.
Description: Compliance filing: Fourth Order No. 881 Compliance Filing to Implement Transmission Line Ratings to be effective N/A.
Filed Date: 11/12/24.
Accession Number: 20241112–5179.
Comment Date: 5 p.m. ET 12/3/24.
Docket Numbers: ER22–2341–002.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: Compliance filing: Alabama Power Company submits tariff filing per 35: Order No. 881 Second Compliance Filing to be effective 7/12/2025.
Filed Date: 11/12/24.
Accession Number: 20241112–5308.
Comment Date: 5 p.m. ET 12/3/24.
Docket Numbers: ER22–2345–001.
Applicants: NorthWestern Corporation.
Description: Compliance filing: Order No. 881 2nd Compliance Filing to be effective N/A.
Filed Date: 11/12/24.
Accession Number: 20241112–5007.
Comment Date: 5 p.m. ET 12/3/24.
Docket Numbers: ER22–2346–001.
Applicants: El Paso Electric Company.
Description: Compliance filing: OATT Order No. 881 Compliance Filing—Attachment O to be effective 7/12/2025.
Filed Date: 11/12/24.
Accession Number: 20241112–5226.
Comment Date: 5 p.m. ET 12/3/24.
Docket Numbers: ER22–2348–001.
Applicants: Tucson Electric Power Company.
Description: Compliance filing: Order No. 881 Compliance Filing to be effective N/A.
Filed Date: 11/12/24.
Accession Number: 20241112–5170.
Comment Date: 5 p.m. ET 12/3/24.
Docket Numbers: ER22–2349–001.
Applicants: UNS Electric, Inc.
Description: Compliance filing: Order No. 881 Compliance Filing to be effective N/A.
Filed Date: 11/12/24.
Accession Number: 20241112–5176.
Comment Date: 5 p.m. ET 12/3/24.
Docket Numbers: ER22–2351–001.
Applicants: Avista Corporation.
Description: Compliance filing: Avista Corp Order No. 881 Compliance Filing to be effective 7/11/2025.
Filed Date: 11/8/24.
Accession Number: 20241108–5208.
Comment Date: 5 p.m. ET 11/29/24.
Docket Numbers: ER22–2352–001.
Applicants: Duke Energy Florida, LLC, Duke Energy Progress, LLC, Duke Energy Carolinas, LLC.
Description: Compliance filing: Duke Energy Florida, LLC submits tariff filing per 35: Second Order No. 881 Compliance Filing to be effective N/A.
Filed Date: 11/12/24.
Accession Number: 20241112–5303.
Comment Date: 5 p.m. ET 12/3/24.
Docket Numbers: ER22–2354–001.
Applicants: GridLiance High Plains LLC.
Description: Compliance filing: GHP Order 881 Compliance Filing to be effective N/A.
Filed Date: 11/12/24.
Accession Number: 20241112–5088.
Comment Date: 5 p.m. ET 12/3/24.
Docket Numbers: ER22–2357–002.
Applicants: ISO New England Inc., Eversource Energy Service Company (as agent), Cross-Sound Cable Company, LLC, New England Power Pool Participants Committee, The United Illuminating Company.
Description: Compliance filing: ISO New England Inc. submits tariff filing per 35: ISO–NE—Further Order No. 881 Compliance Filing to be effective N/A.

Filed Date: 11/12/24.
Accession Number: 20241112–5300.
Comment Date: 5 p.m. ET 12/3/24.
Docket Numbers: ER22–2358–002.
Applicants: Versant Power.
Description: Compliance filing: Order 881 Compliance—Versant Pwr-MPD, Explanation of Timelines ER22–2358– to be effective N/A.
Filed Date: 11/12/24.
Accession Number: 20241112–5173.
Comment Date: 5 p.m. ET 12/3/24.
Docket Numbers: ER22–2359–004.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing: Orders Nos. 881 and 881–A Compliance Filing to be effective 7/12/2025.
Filed Date: 11/12/24.
Accession Number: 20241112–5332.
Comment Date: 5 p.m. ET 12/3/24.
Docket Numbers: ER22–2361–001.
Applicants: Puget Sound Energy, Inc.
Description: Compliance filing: Second Order No. 881 Compliance Filing to be effective 7/12/2025.
Filed Date: 11/12/24.
Accession Number: 20241112–5258.
Comment Date: 5 p.m. ET 12/3/24.
Docket Numbers: ER22–2363–002.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2024–11–12_Compliance Filing on Order 881 Managing Transmission Line Ratings to be effective N/A.
Filed Date: 11/12/24.
Accession Number: 20241112–5280.
Comment Date: 5 p.m. ET 12/3/24.
Docket Numbers: ER24–2297–001.
Applicants: Ross County Solar, LLC.
Description: Tariff Amendment: Response to Deficiency Filing to be effective 7/15/2024.
Filed Date: 11/8/24.
Accession Number: 20241108–5188.
Comment Date: 5 p.m. ET 11/29/24.
Docket Numbers: ER24–2832–001.
Applicants: Unitil Power Corp.
Description: Compliance filing: Amendment to Unitil System Agreement to be effective 8/22/2024.
Filed Date: 11/12/24.
Accession Number: 20241112–5224.
Comment Date: 5 p.m. ET 12/3/24.
Docket Numbers: ER25–399–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to WMPA SA No. 5522, AE1–075 to be effective 1/8/2025.
Filed Date: 11/8/24.
Accession Number: 20241108–5203.
Comment Date: 5 p.m. ET 11/29/24.
Docket Numbers: ER25–400–000.
Applicants: El Paso Electric Company.
Description: Compliance filing: OATT Order No. 881 Compliance Filing—Attachment O to be effective 7/12/2025.
Filed Date: 11/12/24.
Accession Number: 20241112–5010.
Comment Date: 5 p.m. ET 12/3/24.
Docket Numbers: ER25–401–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: Brenneman Solar Amended and Restated LGIA Filing to be effective 10/31/2024.
Filed Date: 11/12/24.
Accession Number: 20241112–5065.
Comment Date: 5 p.m. ET 12/3/24.
Docket Numbers: ER25–402–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: 2024–11–12—PSC–WAPA–O&M Agrmt-350–0.2.0–Exh M to be effective 1/11/2025.
Filed Date: 11/12/24.
Accession Number: 20241112–5101.
Comment Date: 5 p.m. ET 12/3/24.
Docket Numbers: ER25–403–000.
Applicants: Black Hills Power, Inc.
Description: § 205(d) Rate Filing: Revisions to Attachment N of Joint Open Access Transmission Tariff to be effective 1/12/2025.
Filed Date: 11/12/24.
Accession Number: 20241112–5159.
Comment Date: 5 p.m. ET 12/3/24.
Docket Numbers: ER25–404–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Initial Filing of Rate Schedule No. 396 and Request for Expedited Treatment to be effective 11/8/2024.
Filed Date: 11/12/24.
Accession Number: 20241112–5186.
Comment Date: 5 p.m. ET 12/3/24.
Docket Numbers: ER25–405–000.
Applicants: San Diego Gas & Electric.
Description: § 205(d) Rate Filing: 2025 TACBAA Update to be effective 1/1/2025.
Filed Date: 11/12/24.
Accession Number: 20241112–5194.
Comment Date: 5 p.m. ET 12/3/24.
Docket Numbers: ER25–406–000.
Applicants: Boomtown Solar Energy LLC.
Description: Tariff Amendment: Filing to Cancel Market-Based Rate Tariff to be effective 9/26/2024.
Filed Date: 11/12/24.
Accession Number: 20241112–5209.
Comment Date: 5 p.m. ET 12/3/24.
Docket Numbers: ER25–407–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Amendment to Rate Schedule FERC No. 5 to be effective 1/12/2025.
Filed Date: 11/12/24.
Accession Number: 20241112–5231.
Comment Date: 5 p.m. ET 12/3/24.
Docket Numbers: ER25–408–000.
Applicants: Midcontinent Independent System Operator, Inc., Duke Energy Indiana, LLC.
Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2024–11–12_SA 4396 DEI-Deriva Energy Solar E&P (J1691 J1786) to be effective 11/13/2024.
Filed Date: 11/12/24.
Accession Number: 20241112–5246.
Comment Date: 5 p.m. ET 12/3/24.
Docket Numbers: ER25–409–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Amendment to Service Agreement FERC No. 901 to be effective 10/14/2024.
Filed Date: 11/12/24.
Accession Number: 20241112–5267.
Comment Date: 5 p.m. ET 12/3/24.
Docket Numbers: ER25–410–000.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.
Description: § 205(d) Rate Filing: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii: Revisions to Attachment C—Available Transfer Capability Methodology to be effective 2/28/2025.
Filed Date: 11/12/24.
Accession Number: 20241112–5287.
Comment Date: 5 p.m. ET 12/3/24.
Docket Numbers: ER25–411–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Initial Filing of Service Agreement No. 113 to be effective 10/15/2024.
Filed Date: 11/12/24.
Accession Number: 20241112–5305.
Comment Date: 5 p.m. ET 12/3/24.
Docket Numbers: ER25–412–000.
Applicants: CEP&G LLC.
Description: Tariff Amendment: Notice of Tariff Cancellation to be effective 11/13/2024.
Filed Date: 11/12/24.
Accession Number: 20241112–5315.
Comment Date: 5 p.m. ET 12/3/24.
Docket Numbers: ER25–413–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Initial Filing of Service Agreement FERC No. 924 to be effective 10/15/2024.
Filed Date: 11/12/24.
Accession Number: 20241112–5325.
Comment Date: 5 p.m. ET 12/3/24.

Take notice that the Commission received the following foreign utility company status filings:

Docket Numbers: FC25–1–000.

Applicants: Sixth Street Partners, LLC.

Description: Sixth Street Partners, LLC submits Notice of Self-Certification of Foreign Utility Company Status.

Filed Date: 11/12/24.

Accession Number: 20241112–5138.

Comment Date: 5 p.m. ET 12/3/24.

Docket Numbers: FC25–2–000.

Applicants: Sixth Street Partners, LLC.

Description: Sixth Street Partners, LLC submits Notice of Self-Certification of Foreign Utility Company Status.

Filed Date: 11/12/24.

Accession Number: 20241112–5145.

Comment Date: 5 p.m. ET 12/3/24.

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.

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Dated: November 12, 2024.

Carlos D. Clay,

Acting Deputy Secretary.

[FR Doc. 2024–26814 Filed 11–15–24; 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: PR25–16–000.

Applicants: Black Hills Energy Arkansas, Inc.

Description: § 284.123(g) Rate Filing: BHEA SOC Filing to be effective 10/14/2024.

Filed Date: 11/7/24.

Accession Number: 20241107–5041.

Comment Date: 5 p.m. ET 11/29/24.

§ 284.123(g) Protest: 5 p.m. ET 1/6/25.

Docket Numbers: RP25–178–000.

Applicants: Northern Natural Gas Company.

Description: § 4(d) Rate Filing: 20241108 Negotiated Rate Filing to be effective 11/9/2024.

Filed Date: 11/8/24.

Accession Number: 20241108–5110.

Comment Date: 5 p.m. ET 11/20/24.

Docket Numbers: RP25–179–000.

Applicants: Portland Natural Gas Transmission System.

Description: § 4(d) Rate Filing: Castleton Negotiated Rate Agreement #307772 to be effective 11/12/2024.

Filed Date: 11/12/24.

Accession Number: 20241112–5094.

Comment Date: 5 p.m. ET 11/25/24.

Docket Numbers: RP25–180–000.

Applicants: Natural Gas Pipeline Company of America LLC.

Description: § 4(d) Rate Filing: Negotiated Rate Agreements Filing-Luminant Energy Company LLC December 2024 to be effective 12/1/2024.

Filed Date: 11/12/24.

Accession Number: 20241112–5166.

Comment Date: 5 p.m. ET 11/25/24.

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.

Filings in Existing Proceedings

Docket Numbers: RP20–1060–011.

Applicants: Columbia Gas Transmission, LLC.

Description: Compliance filing: Modified LPS Plan to be effective N/A.

Filed Date: 11/7/24.

Accession Number: 20241107–5079.*Comment Date:* 5 p.m. ET 11/19/24.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

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: November 12, 2024.

Carlos D. Clay,

Acting Deputy Secretary.

[FR Doc. 2024–26815 Filed 11–15–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2660–038]

Woodland Pulp, Llc; Notice of Intent to Prepare an Environmental Assessment

On October 31, 2023, and supplemented December 15, 2023, Woodland Pulp, LLC (licensee) filed an application to surrender the license for the Forest City Storage Project No. 2660. The project is located on the East Branch of the St. Croix River in Washington and Aroostook counties, Maine. The project does not occupy federal land.

The Commission previously issued a notice of application for surrender of license accepted for filing, soliciting comments, motions to intervene, and

protests on January 25, 2024. The Commission extended the closing date of the comment period by notice on February 20, 2024, and April 18, 2024. The comment period closed on June 28, 2024. On August 22, 2024, the Commission issued a notice granting late intervention to the Peskotomuhkati Nation at Skutik. The Commission received numerous comments and motions to intervene from members of the public, resource agencies, and non-governmental organizations. The January 25, 2024, notice also invited federal, state, local, and Tribal agencies with jurisdiction and/or special expertise with respect to environmental issues affected by the proposal, to cooperate in the preparation of any environmental document. The Commission did not receive any requests to be a cooperating agency.

This notice identifies Commission staff's intention to prepare an environmental assessment (EA) for the project.[1] Commission staff plans to issue an EA by June 30, 2025. Revisions to the schedule may be made as appropriate. The EA will be issued for a 30-day public comment period. All comments filed on the EA will be reviewed by staff and considered in the Commission's final decision on the proceeding.

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 to 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.*

Any questions regarding this notice may be directed to Michael Calloway at 202–502–8041 or *Michael.calloway@ferc.gov*.

Dated: November 12, 2024

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2024–26822 Filed 11–15–24; 8:45 am]

BILLING CODE 6717–01–P

[1] In accordance with the Council on Environmental Quality's regulations, the unique identification number for documents relating to this environmental review is EAXX–019–20–000–1731404846. 40 CFR 1501.5(c)(4) (2024).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP25–10–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Application and Establishing Intervention Deadline

Take notice that on October 29, 2024, Transcontinental Gas Pipe Line Company, LLC (Transco), 2800 Post Oak Boulevard, Houston, Texas 77056–6106, filed an application under sections 7(c) and 7(b) of the Natural Gas Act, and Part 157 of the Commission's regulations requesting authorization for its Southeast Supply Enhancement Project (Project) located in various counties in Virginia, North Carolina, South Carolina, Georgia, and Alabama. The Project consists of Transco replacing certain facilities and expanding its existing system to provide 1,596,900 dekatherms per day of incremental firm transportation capacity in the southeastern United States. Transco estimates the total cost of the Project to be $1,527,002,036 and proposes a negotiated incremental recourse rate under Transco's Rate Schedule FT and Part 284(g) of the Commission's regulations, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Specifically, Transco proposes to construct and operate: (1) approximately 30.8-mile-long, 42-inch-diameter pipeline loop in Pittsylvania County, Virginia and Rockingham County, North Carolina; (2) 24.1-mile-long, 30-inch-diameter pipeline loop in Guilford, Forsyth, and Davidson Counties, North Carolina; (3) additional 45,000 hp at its existing Compressor Station (CS) 165 in Pittsylvania County, Virginia; (4) additional 87,207 hp at its existing CS 155 in Davidson County, North Carolina; (5) additional 15,900 hp at its existing CS 150 in Iredell County, North Carolina; (6) additional 61,500 hp at its existing CS 145 in Cleveland Counties, North Carolina and (7) other related piping and valving modifications located in various counties in North Carolina, South Carolina, Georgia, and Alabama. Transco states that it has executed binding precedent agreements with twelve Project Shippers for 100% of the incremental firm transportation service under the Project.

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 regarding the proposed project should be directed to Antauis Byrd, Regulatory Analyst, Transcontinental Gas Pipe Line Company, LLC, Post Office Box 1396, Houston, Texas 77251, by phone at (713) 215–3741, or by email at *Outreach@williams.com.*

Pursuant to section 157.9 of the Commission's Rules of Practice and Procedure,[1] within 90 days of this Notice the Commission staff will either: complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and State agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Water Quality Certification

Transco stated that a water quality certificate under section 401 of the Clean Water Act is required for the project from the Virginia Department of Environmental Quality, the North Carolina Department of Environmental Quality, the South Carolina Department of Health and Environmental Control,

[1] 18 CFR 157.9.

the Georgia Department of Natural Resources-Environmental Division, and the Alabama Department of Environmental Management. When available, Transco should submit to the Commission a copy of the request for certification for the Commission authorization, including the date the request was submitted to the certifying agency, and either (1) a copy of the certifying agency's decision or (2) evidence of waiver of water quality certification.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file comments on the project, you can protest the filing, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time 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.*

Comments

Any person wishing to comment on the project may do so. Comments may include statements of support or objections, to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be.

Protests

Pursuant to sections 157.10(a)(4)[2] and 385.211[3] of the Commission's regulations under the NGA, any person[4] may file a protest to the application. Protests must comply with the requirements specified in section 385.2001[5] of the Commission's regulations. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

To ensure that your comments or protests are timely and properly recorded, please submit your comments on or before December 3, 2024.

There are three methods you can use to submit your comments or protests to the Commission. In all instances, please reference the Project docket number CP25–10–000 in your submission.

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments or protests electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments or protests by mailing them to the following address below. Your written comments must reference the Project docket number (CP25–10–000).

To file via USPS: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

To file via any other courier: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, the filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding. For instructions on how to intervene, see below.

Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,[6] has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure[7] and the regulations under the NGA[8] 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.*

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket number CP25–10–000 in your submission.

(1) You may file your motion to intervene by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Intervention.'' The eFiling feature includes a document-less intervention option; for more information, visit *https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf;* or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below. Your motion to intervene must reference the Project docket number CP25–10–000.

To file via USPS: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory

[2] 18 CFR 157.10(a)(4).

[3] 18 CFR 385.211.

[4] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[5] 18 CFR 385.2001.

[6] 18 CFR 385.102(d).

[7] 18 CFR 385.214.

[8] 18 CFR 157.10.

Commission, 888 First Street NE, Washington, DC 20426

To file via any other courier: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission encourages electronic filing of motions to intervene (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail at: Antauis Byrd, Regulatory Analyst, Transcontinental Gas Pipe Line Company, LLC, Post Office Box 1396, Houston, Texas 77251, or by email at *Outreach@williams.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online. Service can be via email with a link to the document.

All timely, unopposed [9] motions to intervene are automatically granted by operation of Rule 214(c)(1).[10] 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.[11] A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Intervention Deadline: 5:00 p.m. Eastern Time on December 3, 2024.

Dated: November 12, 2024.

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2024–26825 Filed 11–15–24; 8:45 am]

BILLING CODE 6717–01–P

[9] The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

[10] 18 CFR 385.214(c)(1).

[11] 18 CFR. 385.214(b)(3) and (d).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1922–052]

Ketchikan Public Utilities; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for a new major license to continue to operate and maintain the Beaver Falls Hydroelectric Project No. 1922. The project is located on Beaver Falls Creek in Ketchikan Gateway Borough, Alaska. Commission staff has prepared an Environmental Assessment (EA) for the project.

The EA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major Federal action that would significantly affect the quality of the human environment.

The Commission provides all interested persons with an opportunity to view and/or print the EA via the internet through the Commission's Home Page (*http://www.ferc.gov/*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* or at (866) 208–3676 (toll-free), or (202) 502–8659 (TTY).

You may also register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* For assistance, please contact FERC Online Support. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, 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, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–4639–033.

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.*

For further information, contact Golbahar Mirhosseini at *golbahar.mirhosseini@ferc.gov.*

Dated: November 12, 2024.

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2024–26824 Filed 11–15–24; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0261 and OMB 3060–0270; FR ID 261511]

Information Collections Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as

required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before December 18, 2024.

ADDRESSES: Comments should be sent to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–0261.

Title: Section 90.215, Transmitter Measurements.

Form No.: Not applicable.

Frequency of Response: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions and state, local or tribal Government.

Number of Respondents: 150,081 respondents; 234,439 responses.

Estimated Time per Response: .033 hours.

Frequency of Response: Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 303(f) of the Communications Act of 1934, as amended.

Total Annual Burden: 7,727 hours.

Total Annual Cost: No cost.

Needs and Uses: The information collection requirements contained in Section 90.215 require station licensees to measure the carrier frequency, output power, and modulation of each transmitter authorized to operate with power in excel of two watts when the transmitter is initially installed and when any changes are made which would likely affect the modulation characteristics. Such measurements, which help ensure proper operation of transmitters, are to be made by a qualified engineering measurement service, and are required to be retained in the station records, along with the name and address of the engineering measurement service, and the name of the person making the measurements. The information is normally used by the licensee to ensure that equipment is operating within prescribed tolerances. Prior technical operation of transmitters helps limit interference to other users and provides the licensee with the maximum possible utilization of equipment.

OMB Control No.: 3060–0270.

Title: Section 90.443, Content of Station Records.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondent and Responses: 166,658 respondents; 166,658 responses.

Estimated Time per Response: .25 hours.

Frequency of Response: Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in 47 U.S.C. 303(j), as amended.

Total Annual Burden: 61,665 hours.

Annual Cost Burden: No cost.

Needs and Uses: The information collection requirements contained under Section 90.443(b) require that each licensee of a station shall maintain records for all stations by providing the dates and pertinent details of any maintenance performed on station equipment, along with the name and address of the service technician who did the work. If all maintenance is performed by the same technician or service company, the name and address need be entered only once in the station records.

The information collection requirements under Section 90.443(c) require that at least one licensee participating in the cost arrangement must maintain cost sharing records.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–26819 Filed 11–15–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS24–20]

Appraisal Subcommittee; Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of meeting.

Description: In accordance with section 1104(b) of title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, codified at 12 U.S.C. 3333(b), notice is hereby given that the Appraisal Subcommittee (ASC) will meet in open session for its regular meeting.

Location: This will be a virtual meeting via Webex. Please visit the agency's homepage (*www.asc.gov*) and access the registration link provided in the News and Events section. You MUST register in advance to attend this meeting.

Date: November 20, 2024.

Time: 10 a.m. ET.

Status: Open.

Reports

Chair
Executive Director
Delegated State Compliance Reviews
Grants Director
Financial Manager

Action and Discussion Items

Approval of Minutes
  September 25, 2024 Quarterly Meeting Minutes
Policy on Monitoring and Reviewing the Appraisal Foundation
Notice of Proposed Rulemaking on Enforcement
Compliance Reviews
- Indiana Appraiser Program Compliance Review
- Indiana Appraisal Management Company Program Compliance Review
- South Dakota Appraiser Program Compliance Review
- U.S. Virgin Islands Appraiser Program Compliance Review

How To Attend and Observe an ASC Meeting

The meeting will be open to the public via live webcast only. Visit the agency's homepage (*www.asc.gov*) and access the registration link provided in the News and Events section. The meeting space is intended to accommodate public attendees. However, if the space will not accommodate all requests, the ASC may refuse attendance on that reasonable basis. The use of any video or audio tape recording device, photographing device, or any other electronic or mechanical device designed for similar purposes is prohibited at ASC Meetings.

James R. Park,

Executive Director.

[FR Doc. 2024–26846 Filed 11–15–24; 8:45 am]

BILLING CODE 6700–01–P

FEDERAL MARITIME COMMISSION

National Shipper Advisory Committee December 2024 Meeting

AGENCY: Federal Maritime Commission.

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: Notice is hereby given of a meeting of the National Shipper Advisory Committee (NSAC), pursuant to the Federal Advisory Committee Act. The Committee advises the Federal Maritime Commission. The meeting will be held for the purpose of soliciting and discussing information, insight, and expertise pertaining to conditions in the ocean freight delivery system relevant to the Commission.

DATES: The Committee will meet in person in Washington, DC, on December 3, 2024, from 1 p.m. until 3 p.m. eastern time. Please note that this meeting may adjourn early if the Committee has completed its business.

ADDRESSES: The meeting will be held at the Surface Transportation Board (STB) located at 395 E St. SW, Washington, DC 20423. This meeting will be open to the public. Requests to register should be submitted to *nsac@fmc.gov* and contain ''REGISTER FOR NSAC MEETING'' in the subject line. The deadline for members of the public to register to attend the meeting in person is Tuesday, November 26, 2024, at 5 p.m. eastern time. In-person attendees should be prepared to present a government ID at the STB. The meeting will also stream virtually, and a link will be distributed in advance of the meeting to those who register. Please note in the registration request if you would like to attend in person or virtually.

FOR FURTHER INFORMATION CONTACT: Mr. Dylan Richmond, Designated Federal Officer of the National Shipper Advisory Committee, phone: (202) 523–5810; email: *drichmond@fmc.gov.*

SUPPLEMENTARY INFORMATION:

Background: The National Shipper Advisory Committee is a Federal advisory committee. It operates under the provisions of the Federal Advisory Committee Act, 5 U.S.C. app., and 46 U.S.C. chapter 425. The Committee was established on January 1, 2021, when the National Defense Authorization Act for Fiscal Year 2021 became law. Public Law 116–283, section 8604, 134 Stat. 3388 (2021). The Committee provides information, insight, and expertise pertaining to conditions in the ocean freight delivery system to the Commission. Specifically, the Committee advises the Federal Maritime Commission on policies relating to the competitiveness, reliability, integrity, and fairness of the international ocean freight delivery system. 46 U.S.C. 42502(b).

The Committee will receive an update from each of its subcommittees and a briefing from the Digital Container Shipping Association. The Committee will receive a proposal for a recommendation to the Federal Maritime Commission and plans to vote on these recommendations. Any proposed recommendations and the agenda will be available for the public to view in advance of the meeting on the NSAC's website, *https://www.fmc.gov/about/national-shipper-advisory-committee-nsac/.* The Committee will also take public comment in the meeting.

Public Comments: The Committee will take public comment at its meeting and are particularly interested in receiving feedback regarding their objectives and ongoing discussions.

Members of the public may also submit written comments to NSAC at any time. Comments should be addressed to NSAC, c/o Dylan Richmond, Federal Maritime Commission, 800 North Capitol St. NW, Washington, DC 20573 or *nsac@fmc.gov.*

A copy of all meeting documentation, including meeting minutes, will be available at *www.fmc.gov* following the meeting.

By the Commission.

Dated: November 13, 2024.

David Eng,

Secretary.

[FR Doc. 2024–26793 Filed 11–15–24; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Notice of Board Meeting

DATES: November 21, 2024 at 10 a.m. ET.

ADDRESSES: Telephonic. Dial-in (listen only) information: Number: 1–202–599–1426, Code: 133 325 139 #; or via web: *https://www.frtib.gov/.*

FOR FURTHER INFORMATION CONTACT: Kimberly Weaver, Office of External Affairs, (202) 942–1640.

SUPPLEMENTARY INFORMATION:

Board Meeting Agenda

Open Session

1. Approval of the October 22, 2024, Board Meeting Minutes
2. Monthly Reports
   (a) Participant Report
   (b) Investment Report
   (c) Legislative Report
3. Quarterly Reports
   (d) Metrics Report

Closed Session

4. Information covered under 5 U.S.C. 552b(c)(6), (c)(9)(B), and (c)(10).

(Authority: 5 U.S.C. 552b (e)(1))

Dated: November 13, 2024.

Dharmesh Vashee,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2024–26805 Filed 11–15–24; 8:45 am]

BILLING CODE 6760–01–P

FEDERAL TRADE COMMISSION

[File No. 232 3060]

Sitejabber; 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 December 18, 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 ''Sitejabber; File No. 232 3060'' 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 J), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Joyce Dela Peña (202–326–2722), Attorney, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

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 December 18, 2024. Write ''Sitejabber; File No. 232 3060'' 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 ''Sitejabber; File No. 232 3060'' 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 J), 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 December 18, 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 (''Commission'') has accepted, subject to final approval, an agreement containing a consent order from GGL Projects, Inc., which does business as Sitejabber (''Sitejabber''). The proposed consent order (''proposed order'') has been placed on the public record for thirty days for receipt of comments by interested persons. Comments received

during this period will become part of the public record. After thirty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

This matter involves consumer reviews and ratings of businesses and products that Sitejabber collected on behalf of its clients' businesses. It collected these ratings and reviews from consumers at the time of purchase, before consumers had an opportunity to actually experience the product or service purchased. According to the FTC, Sitejabber used these point-of-purchase results to inflate the ratings and review counts of its clients on the Sitejabber.com review platform and in Google and other search results. The complaint explains that Sitejabber also provided its clients with product review widgets that allowed them to publish, on their own websites, product-specific ratings and reviews that Sitejabber collected.

The complaint alleges that Sitejabber violated section 5(a) of the FTC Act by misrepresenting that point-of-sale ratings and reviews reflected the experiences of consumers who had actually received and had the opportunity to experience the product or services purchased. The complaint further alleges that Sitejabber provided its business clients with the means and instrumentalities to deceive consumers that product reviews and ratings collected at the time of purchase and displayed on the clients' websites were from consumers who had received and had the opportunity to experience the product being reviewed.

The proposed order contains provisions designed to prevent Sitejabber from engaging in these and similar acts and practices in the future. Provision I prohibits Sitejabber from misrepresenting or assisting others in misrepresenting that the average customer rating or total number of ratings or reviews of a product, service, or business reflects the views of customers who had received the product or service purchased and had the opportunity to experience it, or that any rating or review collected at the time or point of purchase was collected from a customer who received the product or service purchased or had the opportunity to experience the product or service purchased. The provision also prohibits misrepresentations about any ratings, average ratings, or reviews that Sitejabber collects, moderates, or displays. Provision II prohibits Sitejabber from providing others with the means or instrumentalities to misrepresent that product or service ratings or reviews collected at the point of purchase were collected from customers who had the opportunity to experience the product or service purchased.

Provisions III through VII of the proposed order contain reporting and compliance provisions. Provision III mandates that Sitejabber acknowledge receipt of the order, distribute the order to principals, officers, and certain employees and agents, and obtain signed acknowledgments from them. Provision IV requires Sitejabber to submit compliance reports to the Commission one year after the order's issuance and submit notifications when certain events occur. Under Provision V, Sitejabber must create certain records for ten years and retain them for five years. Provision VI provides for the FTC's continued compliance monitoring of Sitejabber's activity during the order's effective dates. Finally, Provision VII provides the effective dates of the order, including that, with exceptions, the order will terminate in 20 years.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or proposed order, or to modify in any way the proposed order's terms.

By direction of the Commission.

April J. Tabor,

Secretary.

Concurring Statement of Commissioner Melissa Holyoak

I support today's settlement with Sitejabber, an online review platform that collected customer ratings and reviews about shopping experiences and products through surveys displayed on the checkout screen. The crux of the Complaint is that Sitejabber allegedly (1) misrepresented that customer ratings and reviews displayed on its website and in internet search results were from consumers who had the opportunity to experience the products or services purchased, and (2) provided its clients using the embeddable web widget with the ''means and instrumentalities'' to misrepresent that the displayed customer reviews and ratings were from customers who had actually purchased or experienced the product or service. I write in brief to note our proper use of the ''means and instrumentalities'' doctrine here, a form of primary liability appropriate where the defendant itself engages in deception.[1]

The Complaint alleges that Sitejabber's embeddable web widget, which displayed Instant Feedback Product Reviews (''IFPRs''), was, as designed, an inherently deceptive tool. While Sitejabber collected real feedback about customers' shopping choices at the point-of-sale,[2] Sitejabber's widget displayed it on customer-facing websites as ''star'' ratings of products themselves. According to the Complaint, Sitejabber built a mismatch into IFPRs, limiting real customer reviews to one aspect (shopping choices), while displaying those reviews about an entirely different aspect (the product itself).[3] Importantly, there is no suggestion that Sitejabber's clients had the ability to control or customize the output from the embeddable web widget. Thus, Sitejabber allegedly designed, distributed, and deployed IFPRs for its clients, in short, to mislead consumers about what product ratings signified.

Unlike the Commission's Complaint against review writing platform Rytr,[4] this Complaint properly alleges that Sitejabber provided the ''means and instrumentalities'' to deceive consumers. Whereas Rytr provided a neutral review-writing tool that may have been used deceptively in some instances,[5] we allege here that the only function of Sitejabber's embeddable web widget, as designed, was to enable its clients to display a deceptive description of its instant ratings and reviews on their own websites.

Of course, there is nothing inherently deceptive about the collection, use, and display of consumer reviews, where the output accurately reflects the input. Indeed, such products could be highly valuable to both consumers and the market, enabling businesses to tout real customer reviews about their products

[1] *See, e.g., In re Shell Oil Co.,* 128 F.T.C. 749, 764 (1999) (majority statement) (''It is well settled law that the originator is liable if it passes on a false or misleading representation with knowledge or reason to expect that consumers may possibly be deceived as a result.'') (citing *Regina Corp.* v. *FTC,* 322 F.2d 765 768 (3d Cir. 1963) (affirming liability under means and instrumentalities theory where defendant distributed its own misrepresentative price lists that were used, in turn, to deceive consumers)); *id.* at 766 (Commissioner Swindle, dissenting) (''Means and instrumentalities is a form of primary liability, and a respondent is primarily liable only for its own misrepresentations to consumers.'').

[2] Compl. ¶ 22.

[3] *Id.* ¶¶ 23–25.

[4] Dissenting Statement of Comm'r Melissa Holyoak, Joined by Comm'r Andrew N. Ferguson, *In re Rytr, LLC,* FTC Matter No. 2323052 (Sept. 25, 2024), *https://www.ftc.gov/system/files/ftc_gov/pdf/holyoak-rytr-statement.pdf.*

[5] *See generally id.; see also* Dissenting Statement of Comm'r Andrew N. Ferguson, Joined by Comm'r Melissa Holyoak, *In re Rytr LLC,* Matter No. 232 3052 (Sept. 25, 2024), *https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-rytr-statement.pdf.*

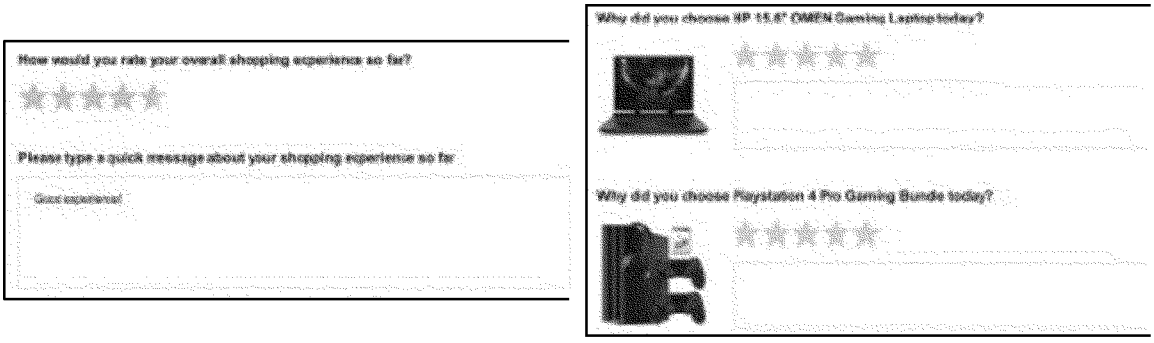
or services and facilitating more informed consumer decisions about their shopping experience or the product itself. But design choices matter when developing these types of products. And Sitejabber's design choice here conflated real customer feedback about shopping choices with an actual rating for a product, harming its clients and consumers.

Concurring Statement of Commissioner Andrew N. Ferguson

Today, the Commission issues an administrative complaint and accepts a proposed consent agreement with Sitejabber.[1] Sitejabber provided its clients, e-commerce stores, with the ability to collect instant shopping-experience and product reviews from customers on order confirmation screens—immediately after placing an order but before the customer could have received or used the products. For posting these reviews and average ratings on its clients' profile pages on *Sitejabber.com*, and misrepresenting that the reviews were from customers who had actually received and used the products, the complaint accuses Sitejabber of deceiving consumers in violation of section 5 of the FTC Act.[2] For giving its clients the ability to embed those same product ratings on their own websites, the complaint accuses Sitejabber of a further section 5 violation for furnishing its clients with the means and instrumentalities to deceive consumers. I concur in both counts.

This case presents some of the same issues presented in the Commission's recent action against the artificial-intelligence platform Rytr, from which I dissented.[3] The Commission raises the same means-and-instrumentalities theory of section 5 liability that it deployed against Rytr for offering an AI-powered consumer review generator. Sitejabber's alleged business practices, however, are very different from Rytr's. Although someone could have used Rytr's tool to deceive consumers, the tool also had substantial lawful uses. Sitejabber's instant product reviews and the widgets by which its clients displayed them on their own websites, however, served no purpose other than to deceive consumers. Indeed, it appears that Sitejabber's very purpose in offering the widgets was to assist its clients in deceiving consumers.

Sitejabber collected two types of reviews from consumers. Instant Feedback Surveys (IFSs) asked customers to comment on their shopping experience immediately after concluding a purchase, and to rate that experience on a scale of one-to-five stars. Instant Feedback Product Reviews (IFPRs) also took the form of a written response and a one-to-five-star rating, but asked customers why they chose the product they had just purchased. Sitejabber would collect these reviews from the consumer on the retailer's web page. Prompts to collect the reviews would pop up on the retailer web page almost immediately after the consumer had finalized a purchase.



Instant Feedback Survey (IFS)

Instant Feedback Product Reviews (IFPRs)

Sitejabber maintained a public profile page on *Sitejabber.com* for each of its retail clients showing their average rating and individual reviews, including IFS-derived ratings and reviews. Additionally, on a ''Products'' tab on that same page, Sitejabber listed the products sold by that client alongside the average IFPR ratings for each.[4] Consumers browsing these profile pages would reasonably believe that all these reviews and ratings were from customers who had received and had a chance to use the products sold by the retailers. The Commission alleges that Sitejabber did not adequately disclose that these reviews and ratings were obtained at the point of sale, before the customers could have received, let alone used, the purchased products. For misrepresenting IFSs and IFPRs as

[1] *In re GGL Projects, Inc., a corporation, also d/b/a Sitejabber,* Complaint & Decision and Order.

[2] 15 U.S.C. 45(a).

[3] Dissenting Statement of Commissioner Andrew N. Ferguson, Joined by Commissioner Melissa Holyoak, *In the Matter of Rytr LLC,* Matter No. 2323052 (Sept. 25, 2024) (''Ferguson Rytr Dissent'').

[4] For some of Sitejabber's clients, the ratings would also incorporate reviews from consumers who had a chance to receive and use the products. Such reviews are not inherently deceptive, and nothing in the Commission's proposed consent order would prohibit Sitejabber from displaying those reviews, and the average ratings derived from them, on its own site or through widgets. See Decision & Order at 5–6 (prohibiting Sitejabber from misrepresenting that reviews collected at the point of sale were from customers who had an opportunity to receive and use the product, from misrepresenting that ratings were derived only from reviews left by customers who had such an opportunity, and from providing the means and instrumentalities to make such misrepresentations). But comingling such reviews with reviews collected at the point-of-sale, before the consumer could have received and used the product, renders the entire star rating deceptive. See *United States* v. *Phillip Morris USA Inc.,* 566 F.3d 1095, 1128 (D.C. Cir. 2009) (''[E]ven partially true statements can be actionable fraud if intentionally misleading as to facts.'').

authentic reviews from customers who had received and had a chance to use the products, the complaint charges Sitejabber with deceptive conduct in violation of section 5.

Sitejabber is also accused of having provided its retail clients with widgets by which the retailers could embed the IFPR-derived product ratings on their own websites. These widgets had no purpose other than to represent that those product ratings were derived from the reviews of consumers who had received and had a chance to use the product in question. This representation was false given that the ratings were obtained from consumers who had not received the product when they provided the rating. For offering this widget, the complaint charges Sitejabber with a further section 5 violation for providing the means and instrumentalities for the commission of deceptive acts and practices.

Sitejabber's condemned business practices are very different from Rytr's. Rytr provided an AI-powered writing tool which could be used to generate draft consumer reviews.[5] Although a consumer or business could have used Rytr's tool to generate a false product review, and that false product review could in some circumstances violate section 5's prohibition on deceptive acts or practices, that was not necessarily the case.[6] Indeed, the Commission did not supply a single example of someone having used Rytr's tool to violate section 5.[7] A consumer also could have used Rytr's tool to generate an initial draft of a perfectly honest consumer review.[8] The mere fact that someone could use a product to commit fraud does not make that product the means and instrumentalities to commit fraud.[9] In my view, the provision of a product or service with potential unlawful uses is not the provision of the means and instrumentalities to violate section 5 unless (1) the instrumentality in question ''has no or de minimis legal use''; [10] (2) the provider of the instrumentality had the purpose of facilitating the section 5 violation; [11] or (3) the provider ''knows, or has reason to know, that the person to whom the product or service was supplied will use it to violate section 5.'' [12]

Whereas Rytr's review generator tool satisfied none of those requirements, the allegations in the complaint here show that Sitejabber's product satisfies all three. First, there is no legitimate purpose for a widget displaying an instant product review rating. No reasonable consumer would be interested in a one-to-five-star product rating derived from reviews left by other consumers who had not yet received or used the product.[13] When a consumer views a product rating, he reasonably assumes that the rating is based on reviewers' experiences with the product, not with the purchasing process. Second, because the widgets had no use other than to deceive consumers, we can reasonably infer that Sitejabber knew that every single one of its clients was using them for that purpose. Finally, there is ample evidence that Sitejabber's very purpose in offering the widgets was to assist in the deception of consumers. The widgets were nothing but an extension of the same deception that Sitejabber was carrying out on its own website using the same deceptive ratings and on behalf of the same clients.

I therefore concur in the Commission's complaint and proposed consent order against Sitejabber.

[FR Doc. 2024–26711 Filed 11–15–24; 8:45 am]

BILLING CODE 6750–01–P

[5] Ferguson Rytr Dissent at 1–2.

[6] *Id.* at 6–7.

[7] *Id.* at 2.

[8] *Id.* at 7.

[9] *Id.* at 5–6.

[10] *Id.* at 6.

[11] *Id.* at 7–9.

[12] *Ibid.*

[13] FTC Policy Statement on Deception, 103 F.T.C. 174, 175 (1984), *https://www.ftc.gov/legal-library/browse/ftc-policy-statement-deception, appended to In Re Cliffdale Assocs., Inc.,* 103 F.T.C. 110 (1984) (in determining whether a practice is deceptive ''we examine the practice from the perspective of a consumer acting reasonably'').

UNITED STATES AGENCY FOR GLOBAL MEDIA

Performance Review Board Members

AGENCY: United States Agency for Global Media.

ACTION: Notice.

SUMMARY: The United States Agency for Global Media (USAGM) announces the members of its SES Performance Review Board (PRB).

ADDRESSES: USAGM Office of Human Resources, 330 Independence Ave. SW, Washington, DC 20237.

FOR FURTHER INFORMATION CONTACT: Ellona Fritschie, Senior Advisor, at *efritschie@usagm.gov* or (202) 920–2400.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314, USAGM publishes this notice announcing the individuals who will serve as members of the PRB for a term of one year. The PRB is responsible for: (1) reviewing performance appraisals and ratings of Senior Executive Service and Senior Level members; and (2) making recommendations on other performance management issues, such as pay adjustments, bonuses, and Presidential Rank Awards. The names, position titles, and appointment types of each member of the PRB are set forth below:

1. Grant Turner, Chief Risk Officer, Career SES
2. David Kotz, Chief Management Officer, Career SES
3. Sylvia Rosabal, Director, Office of Cuban Broadcasting, Non-Career SES
4. Adrienne Fleming, Deputy Director, TSI, Career SES

Dated: November 13, 2024.

Armanda Matthews,

Program Support Specialist, U.S. Agency for Global Media.

[FR Doc. 2024–26849 Filed 11–15–24; 8:45 am]

BILLING CODE 8610–01–P

GULF COAST ECOSYSTEM RESTORATION COUNCIL

[Docket No.: 111132024–1111–05]

Senior Executive Service Performance Review Board Membership

AGENCY: Gulf Coast Ecosystem Restoration Council (GCERC).

ACTION: Notice of Performance Review Board (PRB) appointments.

SUMMARY: This notice announces the members of the Senior Executive Service (SES) Performance Review Board. The PRB is comprised of a Chairperson and a mix of state representatives and career senior executives that meet annually to review and evaluate performance appraisal documents and provide a written recommendation to the Chairperson of the Council for final approval of each executive's performance rating, performance-based pay adjustment, and performance award.

DATES: The board membership is applicable beginning on January 1, 2024 and ending on December 31, 2024.

FOR FURTHER INFORMATION CONTACT: Mary S. Walker, Executive Director, Gulf Coast Ecosystem Restoration Council, telephone 504–210–9982.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the persons named below have been selected to serve on the PRB:

Gulf Coast Ecosystem Restoration Council

Walker, Mary S., Executive Director, *Mary.Walker@restorethegulf.gov*, 504–210–9982

Department of Interior

Blanchard, Mary Josie, Deputy Director, Environmental Protection Compliance, *MaryJosie_Blanchard@ios.doi.gov*, 202–208–3406

State of Florida

Blalock, Adam, Deputy Secretary for Ecosystem Restoration, *Adam.Blalock@floridadep.gov*, 850–245–2118

State of Alabama

Blankenship, Chris, Commissioner, Alabama Department of Conservation and Natural Resources, *Chris.blankenship@dcnr.alabama.gov*, 334–242–3486

Environmental Protection Agency

Wyatt, Marc, Director, Gulf of Mexico Division, *Wyatt.marc@epa.gov*, 228–679–5915

Keala J. Hughes,

Director of External Affairs & Tribal Relations, Gulf Coast Ecosystem Restoration Council.

[FR Doc. 2024–26818 Filed 11–15–24; 8:45 am]

BILLING CODE 6560–58–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Supplemental Evidence and Data Request on Dietary Total Fat Intake and Dietary Polyunsaturated Fatty Acid Intake and Child Growth and Development Outcomes: A Systematic Review

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for supplemental evidence and data submission.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from the public. Scientific information is being solicited to inform our review on *Dietary Total Fat Intake and Dietary Polyunsaturated Fatty Acid Intake and Child Growth and Development Outcomes: A Systematic Review,* which is currently being conducted by the AHRQ's Evidence-based Practice Centers (EPC) Program. Access to published and unpublished pertinent scientific information will improve the quality of this review.

DATES: *Submission Deadline* on or before December 18, 2024.

ADDRESSES:

Email submissions: epc@ahrq.hhs.gov.

Print submissions:

Mailing Address: Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E53A, Rockville, MD 20857.

Shipping Address (FedEx, UPS, etc.): Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E77D, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Kelly Carper, Telephone: 301–427–1656 or Email: *epc@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Agency for Healthcare Research and Quality has commissioned the Evidence-based Practice Centers (EPC) Program to complete a review of the evidence for *Dietary Total Fat Intake and Dietary Polyunsaturated Fatty Acid Intake and Child Growth and Development Outcomes: A Systematic Review.* AHRQ is conducting this review pursuant to Section 902 of the Public Health Service Act, 42 U.S.C. 299a.

The EPC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by requesting information from the public (*e.g.,* details of studies conducted). We are looking for studies that report on *Dietary Total Fat Intake and Dietary Polyunsaturated Fatty Acid Intake and Child Growth and Development Outcomes: A Systematic Review.* The entire research protocol is available online at: *https://effectivehealthcare.ahrq.gov/products/child-growth-development-outcomes/protocol.*

This is to notify the public that the EPC Program would find the following information on *Dietary Total Fat Intake and Dietary Polyunsaturated Fatty Acid Intake and Child Growth and Development Outcomes: A Systematic Review* helpful:

- A list of completed studies that your organization has sponsored for this topic. In the list, please *indicate whether results are available on ClinicalTrials.gov along with the ClinicalTrials.gov trial number.*
- *For completed studies that do not have results on ClinicalTrials.gov,* a summary, including the following elements, if relevant: study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to follow-up/withdrawn/analyzed, effectiveness/efficacy, and safety results.
- *A list of ongoing studies that your organization has sponsored for this topic.* In the list, please provide the *ClinicalTrials.gov* trial number or, if the trial is not registered, the protocol for the study including, if relevant, a study number, the study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, and primary and secondary outcomes.
- Description of whether the above studies constitute *ALL Phase II and above clinical trials* sponsored by your organization for this topic and an index outlining the relevant information in each submitted file.

Your contribution is very beneficial to the Program. Materials submitted must be publicly available or able to be made public. Materials that are considered confidential; marketing materials; study types not included in the review; or information on topics not included in the review cannot be used by the EPC Program. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter.

The draft of this review will be posted on AHRQ's EPC Program website and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *https://effectivehealthcare.ahrq.gov/email-updates.*

The review will answer the following questions. This information is provided as background. AHRQ is not requesting that the public provide answers to these questions.

Key Questions (KQ)

KQ 1: What is the association between dietary intake of omega-6 and/or omega-3 polyunsaturated fatty acids during pregnancy and risk of preterm birth?

KQ 1a: How are these associations affected by intervention/exposure characteristics (for example, the ratio of different fatty acids)?

KQ 2: What is the association between dietary intake of omega-6 and/or omega-3 polyunsaturated fatty acids during pregnancy and/or lactation and infant/child growth and developmental outcomes?

KQ 2a: How are these associations affected by intervention/exposure characteristics (for example, the ratio of different fatty acids)?

KQ 3: What is the association between dietary intake of total fat in individuals birth through 18 years of age and measures of growth and development?

KQ4: What is the association between dietary intake of omega-6 and/or omega-3 polyunsaturated fatty acids in individuals birth through 18 years of age and measures of growth and development?

PICOTS (POPULATION, INTERVENTION, COMPARATOR, OUTCOME, TIMING, SETTING/STUDY DESIGN)

Element	Inclusion criteria	Exclusion criteria
Population	*Exposure population:* • Individuals who are pregnant (KQ1) and/or lactating (KQ2) of any age or individuals from birth through 18 years of age (KQ3 and 4) from the general population (including those with overweight/obesity) not affected by a disease or health-related condition that impacts fat absorption and/or metabolism; or taking medications that alter the absorption or metabolism of dietary fatty acid *Outcome population:* • Offspring of the pregnant individual (birth through 18 years) not taking medications or affected by a disease or health-related condition that impacts fat absorption and/or metabolism *Note:* given the distinction between chronological age versus pubertal stage, as well as heterogeneity in enrollment across age ranges, for studies meeting all other eligibility criteria, we will consider exceptions to the age criterion.[a]	• Non-human participants (*e.g.,* animal studies, in-vitro models). • Studies that enroll participants taking medications or with diseases/health-related conditions that impact fatty acid absorption or metabolism (*e.g.,* Crohn's disease, ulcerative colitis, short-gut syndrome, cystic fibrosis, celiac). This includes cancer and malabsorption syndromes. • Studies that exclusively enroll participants hospitalized with an illness or injury. • Studies designed to induce weight loss or treat overweight and obesity through energy restriction or hypocaloric diets for the purposes of treating additional or other medical conditions. • Studies that exclusively enroll participants with severe undernourishment, underweight, stunting, or wasting. • Studies that enroll participants who are pre- or post-bariatric surgery. • Studies with enrollment *exclusively* of: pre-term babies (gestational age <37 weeks), babies admitted to the NICU, babies that have low birth weight (<2,500g) and/or babies that are small for gestational age (for assessment of infant and child growth parameters and developmental outcomes). • Studies that enroll infants with conditions treated/prevent by dietary supplementation (*e.g.,* G- or GJ-tubes, fatty acid oxidation disorders, necrotizing enterocolitis, attention deficit (and/or hyperactivity) disorder, ADHD, autism, etc.).
Intervention (Exposure)	*KQ1, 2, and 4:* • Dietary intake of total omega-3 PUFA, total omega-6 PUFA, or total PUFA (omega-3 and omega-6) • Dietary intake of individual PUFA (examples: linoleic, alpha-linolenic, EPA, DHA) • Dietary intake of a combination of long-chain PUFA (example: EPA+DHA+DPA; DHA+ARA) • Dietary intake of polyunsaturated fatty acids in terms of a ratio (example, n-6:n-3 PUFA, DHA:ARA) *KQ3:* • Total dietary fat intake (as either grams/day or % of total energy intake from fat) • A dietary pattern that describes and quantifies intake of total dietary carbohydrate, total fat, and total protein content (examples: low/high-fat diet; low/high-carbohydrate diet; high-protein; ketogenic diet) *Note:* Dietary intake can be from foods, supplements, and/or supplemented foods.[b]	*KQ1, 2, and 4:* • Studies that do not quantify PUFA intake as either grams/day or % of total energy intake from PUFA (*e.g.,* studies where exposure is number of fish servings per week). • Studies that do not provide absolute intake of fatty acids included in ratios. • Studies that only assess fatty acid biomarker wt% of total or concentrations. • Studies that only assess fatty acid intake via infusions (parenteral [intralipid] or stable isotope). • Studies that only assess exposure to fatty acids from a single meal, or eating occasion such that usual intake cannot be inferred. • Studies that examine food products or dietary supplements not widely available to U.S. consumers. • Multi-component interventions that do not isolate the effect or association of the PUFA exposure. • Observational studies that do not account for any confounders. • Studies designed to induce weight loss or treat participants who are determined to be overweight and obese through energy restriction or hypocaloric diets for the purposes of treating additional or other medical conditions. *KQ3:* • Studies that do not describe the energy and entire macronutrient distribution of the diet (*i.e.,* studies that do not report total carbohydrate, total fat, and total protein contents of experimental or baseline diets).

PICOTS (POPULATION, INTERVENTION, COMPARATOR, OUTCOME, TIMING, SETTING/STUDY DESIGN)—Continued

Element	Inclusion criteria	Exclusion criteria
Comparator	*KQ1, 2, and 4:* • Placebo • Dietary intake of a different amount of fatty acids relevant to the exposure: ○ Total omega-3 ○ Total omega-6 ○ Individual PUFA ○ Combination of long-chain PUFA ○ Intake of PUFA in terms of a ratio *KQ3:* • Dietary intake of a different amount of total fat	• Diet(s) with an energy intake that is statistically significantly higher or lower than the intervention/exposure diet (*e.g.,* not isocaloric comparison). • Studies that do not have a statistically significant difference between groups in PUFA or total fat intake. • Studies comparing undefined exposures (*e.g.,* comparisons of undefined quartiles).
Outcome	*KQ2, 3, and 4:* Infant and child (birth through 18 years) growth parameters • Birth weight • Weight and Weight-for-age percentile or Z-score adjusted for gestational age • Length or Height and Length-for-age or Height-for-age percentile and Z-score adjusted for gestational age • Head circumference and Head circumference percentile and Z-score adjusted for gestational age Infant and child (birth through 18 years) developmental outcomes [c] • Cognitive/neurological • Language/communication • Movement/physical • Visual function/acuity • Social/emotional learning *KQ1:* • Risk of preterm birth	• BMI, BMI z-score. • Body composition and distribution (*e.g.,* % fat mass, fat-free mass, skin fold thicknesses). • Incidence and prevalence of overweight, obesity.
Timing	• All exposure or intervention durations will be included	
Setting	• Outpatient; all settings except hospital and acute care will be included	• Inpatient; hospital and acute care.
Study Design	• Randomized controlled trials • Prospective cohort studies • Nested case-control studies	• Narrative reviews. • Systematic reviews. • Meta-analyses. • Scoping reviews. • Umbrella reviews. • Retrospective cohort studies. • Non-randomized controlled trials, including quasi-experimental and controlled before-and-after studies. • Cross-sectional studies. • Case-control studies. • All other study designs.
Geographic Location	• Locations with food products or dietary supplements widely available to U.S. and/or Canadian consumers • Countries rated very high on the Human Development Index (HDI) [d] at the time of data collection	• Locations not rated very high on the HDI.
Study Size	• Studies including power calculations or effect sizes • Studies with N ≥30 participants (for randomized clinical trials [RCTs]): ≥10 participants analyzed per study arm)	• Studies with N <30 participants (for RCTs: <10 participants analyzed per study arm), without power calculations or effect sizes. • Case studies and n = 1 samples. • Non-randomized studies that do not account for any potential confounders.
Language	• Articles published in English	• Articles published in languages other than English.
Publication Dates	• Articles published during or after 2000	• Articles published prior to 2000.

[a] For studies meeting all other eligibility criteria, studies enrolling populations aged 0 to older than 19 years will be included if: (a) results are stratified by age group, allowing extraction of data for participants aged through 18 years; or (b) 85% of the population is aged through 18 years, if results are not stratified by age group. The one exception is studies of adolescents; for those meeting all other eligibility criteria, studies enrolling adolescents through age 26, regardless of result stratification or percentage of population aged through 18 years, will be included. See the Study Selection section.

[b] Dietary supplement is defined as a product intended to supplement the diet that contains one or more dietary ingredients (including vitamins, minerals, herbs or other botanicals, amino acids, and other substances) intended to be taken by mouth as a pill, capsule, table, or liquid, and that is labeled on the front panel as being a dietary supplement.

[c] See Section IV for an example table of measures with periodicity.

[d] United Nations Development Programme Human Development Reports, *https://hdr.undp.org/data-center/human-development-index#/indicies/HDI*.

Dated: November 8, 2024.

Marquita Cullom,

Associate Director.

[FR Doc. 2024–26783 Filed 11–15–24; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–25–25AW; Docket No. CDC–2024–0094]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a proposed information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled National Concussion Surveillance System. This data collection is designed to allow CDC to calculate the prevalence and incidence of traumatic brain injuries (TBI) for both adults and children, and the circumstances related to TBIs occurring in the preceding year.

DATES: CDC must receive written comments on or before January 17, 2025.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2024–0094 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected;
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and
5. Assess information collection costs.

Proposed Project

National Concussion Surveillance System—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In 2014, an Institute of Medicine (IOM) report titled ''Sports-Related Concussions in Youth: Improving the Science, Changing the Culture,'' recommended that the U.S. Centers for Disease Control and Prevention (CDC) establish and oversee a national surveillance system to accurately determine the incidence of sports-related concussions [*i.e.,* mild traumatic brain injuries, or TBIs], including those in youth ages five to 21. The report further recommended that the cause, nature, and extent of the concussive injury also should be collected, including the sport or activity, level of competition, and signs and symptoms consistent with a concussion. The IOM recommendation was made because there were significant gaps in understanding of TBI, including concussion, incidence and prevalence estimates. Current non-fatal TBI surveillance estimates typically utilize emergency department (ED) or hospitalization-focused data sources. But these sources cannot account for injuries that go untreated or injuries diagnosed in primary care, urgent care, or specialty care settings, potentially missing information on millions of TBIs sustained each year. Without an accurate understanding of the burden, trends, and characteristics of these injuries, it is challenging to design or focus effective prevention programs, policies, or practices. The consequences from TBI are staggering, with many resulting in intensive and long-term care needs. This data collection could help fill significant knowledge gaps and inform prevention efforts across the country.

The purpose of this data collection is to calculate the 12-month prevalence and incidence of TBI for both adults and children, and the circumstances related to TBIs occurring in the preceding 12 months. The data collection instrument is largely based on the instrument used during the pilot that utilized cognitive testing prior to deployment. Data collected will include reports of head injuries experienced in the preceding 12 months, and the most recent head injury reported will be assessed for symptoms of TBI. We will also query respondents who sustained a head injury regarding the mechanism of injury (cause) and circumstances related to the TBI, medical care received, impact on social and school functioning, and information related to returning to work/school/play.

Data will be analyzed to produce nationally representative 12-month incidence and prevalence estimates of non-fatal TBI in children (ages 5–17) and adults. Data collected are likely to be used by state and local governments, researchers, voluntary health organizations, physicians, health educators, workplace wellness

programs, healthcare systems, and professional and advocacy organizations to guide program investments, provide up-to-date information on symptom presentation, healthcare utilization patterns, and patient recovery among others, and to provide information on prevention of TBI.

Data obtained from this data collection are not available from currently existing databases, and the data needed for analysis cannot be added to existing data collection processes. This data collection will occur over three years. After each data collection year, findings will be reviewed to identify potential modifications to the methodology and survey for following year collection. Depending on the nature and scope of the improvements, a change request or a Revision package will be submitted to OMB for review and approval. CDC requests OMB approval for an estimated 5,656 annual burden hours. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Individuals and Households	Initial Invitation Letter	57,405	1	1/60	957
	Reminder Postcard	53,312	1	1/60	889
	Final Reminder Letter	50,583	1	1/60	843
	Text Message Reminder	27,696	1	1/60	462
	Screener	10,058	1	4/60	671
	Survey, web	8,682	1	11/60	1592
	Survey, phone	1,318	1	11/60	242
Total					5,656

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2024–26777 Filed 11–15–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Solicitation of Nominations for Appointment to the Advisory Committee on Breast Cancer in Young Women

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Centers for Disease Control and Prevention (CDC), within the Department of Health and Human Services (HHS), is seeking nominations for membership on the Advisory Committee on Breast Cancer in Young Women (ACBCYW). The ACBCYW consists of up to 15 experts in fields associated with breast cancer, disease prevention, early detection, diagnosis, public health, social marketing, genetic screening and counseling, treatment, rehabilitation, palliative care, and survivorship in young women, or in related disciplines with a specific focus on young women.

DATES: Nominations for membership on the ACBCYW must be received no later than December 16, 2024. Packages received after this time will not be considered for the current membership cycle.

ADDRESSES: All nominations should be mailed to Kimberly E. Smith, M.B.A., M.H.A., c/o ACBCYW Secretariat, Centers for Disease Control and Prevention, 3719 North Peachtree Road, Building 100, Chamblee, Georgia 30341 or emailed to *acbcyw@cdc.gov.*

FOR FURTHER INFORMATION CONTACT: Kimberly E. Smith, M.B.A., M.H.A., Designated Federal Officer, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Highway NE, Mailstop S107–4, Atlanta, Georgia 30341. Telephone: (404) 498–0073; Email: *acbcyw@cdc.gov.*

SUPPLEMENTARY INFORMATION: Nominations are sought for individuals who have the expertise and qualifications necessary to contribute to the accomplishment of the objectives of the Advisory Committee on Breast Cancer in Young Women (ACBCYW). Nominees will be selected based on expertise in the fields of breast health, breast cancer, disease prevention and risk reduction, survivorship (including metastatic breast cancer), hereditary breast and ovarian cancer, or in related disciplines with a specific focus on young women. Persons with personal experience with early onset breast cancer are also eligible to apply. This includes but may not be limited to breast cancer survivors 45 years of age or younger, and caregivers of said persons. Federal employees will not be considered for membership. Members may be invited to serve up to four-year terms. Selection of members is based on candidates' qualifications to contribute to the accomplishment of ACBCYW objectives (*https://www.cdc.gov/breast-cancer/php/advisory-committee/*).

Department of Health and Human Services (HHS) policy stipulates that committee membership be balanced in terms of points of view represented and the committee's function. Appointments shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, gender identity, HIV status, disability, and cultural, religious, or socioeconomic status. Nominees must be U.S. citizens and cannot be full-time employees of the U.S. Government. Current participation on Federal workgroups or prior experience serving on a Federal advisory committee does not disqualify a candidate; however, HHS policy is to avoid excessive individual service on advisory committees and multiple committee memberships. Committee members are Special Government Employees, requiring the filing of financial disclosure reports at the beginning of and annually during their terms. The Centers for Disease Control and Prevention (CDC) reviews potential candidates for ACBCYW membership each year and provides a slate of

nominees for consideration to the Secretary of HHS for final selection. HHS notifies selected candidates of their appointment near the start of the term in December 2025, or as soon as the HHS selection process is completed. Note that the need for different expertise varies from year to year and a candidate who is not selected in one year may be reconsidered in a subsequent year.

Candidates should submit the following items:

- Current curriculum vitae, including complete contact information (telephone numbers, mailing address, email address).
- At least one letter of recommendation from person(s) not employed by HHS. Candidates may submit letter(s) from current HHS employees if they wish, but at least one letter must be submitted by a person not employed by an HHS agency (*e.g.,* CDC, National Institutes of Health, Food and Drug Administration).
- A short biography (150 words or less).

Nominations may be submitted by the candidate or by the person/organization recommending the candidate.

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2024–26784 Filed 11–15–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–25–24FZ]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Annual Progress Reports for Injury Control Research Centers (ICRC)'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on June 4, 2024 to obtain comments from the public and affected agencies. CDC received one non-substantive comment related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Annual Progress Reports for Injury Control Research Centers (ICRC)—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In 1987, the Centers for Disease Control and Prevention (CDC) and the National Center for Injury Prevention and Control (NCIPC) began funding Injury Control Research Centers (ICRCs) at academic research institutions throughout the United States. ICRCs focus on three core functions—research, training, and outreach—for issues of local and national importance, including the prevention of adverse childhood experiences; child abuse and neglect; drowning; drug overdose; intimate partner violence; older adult falls; sexual violence; suicide; traumatic brain injuries, and the promotion of transportation safety. ICRCs foster multidisciplinary strategies for addressing these complex problems and disseminating research findings. In addition to conducting cutting-edge, multidisciplinary research, ICRCs train and develop the current and next generation of researchers and public health professionals to help ensure that there is an adequate supply of qualified practitioners and researchers for advancing prevention research, addressing new problems, and reaching new populations across the nation. Finally, ICRCs work with states and communities to translate research findings into action. ICRCs provide partner organizations with technical assistance on programs, public health infrastructure, and the integration of resources at the local, state, and national levels. Areas of emphasis within each ICRC are determined by the expertise of the faculty and the public health needs and opportunities identified through the ICRC's outreach activities. This collaborative approach is a vital component in the success of efforts to make an impact on population-level reduction in injury-related harm.

ICRCs form a national network of expertise and innovation in injury prevention and control. ICRC grants are typically funded in five-year funding cycles. The Centers for Disease Control and Prevention (CDC) requests OMB approval to electronically collect annual progress report (APR) information and Success Stories from the 11 currently funded ICRCs. Grantees will report progress and activity information to CDC on an annual schedule.

The information that will be collected will provide crucial data for program performance monitoring and will improve CDC's ability to respond in a timely manner to requests for information about the program from the Department of Health and Human Services (HHS), the White House, Congress, and other sources. The

information that will be collected will also strengthen CDC's ability to monitor grantee progress towards stated grant research, training, and outreach objectives, provide data-driven technical assistance, and disseminate Success Stories about what is working to reduce unintentional and intentional injuries.

To improve and innovate through evaluation, research, and quality improvement; investigate, diagnose, and address health hazards and root causes; communicate effectively to inform and educate; strengthen, support, and mobilize communities and partnerships; and create, champion, and implement policies, plans, and laws are five of the noted public health activities that all public health systems should undertake. CDC ICRC grantees do all of these activities, and the systematic collection of data, annually, is the best way for CDC to understand this work. This APR information collection will enable grantees to submit accurate, reliable, and timely activity and performance data to the CDC.

CDC requests OMB approval for an estimated 231 annual burden hours. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Injury Research Center (ICRC) Grantees	ICRC Indicators Data Collection Annual Progress Report.	11	1	8
	Publication Table	11	1	8
	Success Stories Template	11	5	1

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2024–26779 Filed 11–15–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-25–0728; Docket No. CDC–2024–0095]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled National Notifiable Diseases Surveillance System. This data collection provides the official source of statistics in the United States for nationally notifiable conditions.

DATES: CDC must receive written comments on or before January 17, 2025.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2024–0095 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and

5. Assess information collection costs.

Proposed Project

National Notifiable Diseases Surveillance System (NNDSS) (OMB Control No. 0920–0728, Exp. 3/31/2027)—Revision—Office of Public Health Data, Surveillance, and Technology (OPHDST), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Public Health Services Act (42 U.S.C. 241) authorizes CDC to disseminate nationally notifiable condition information. The National Notifiable Diseases Surveillance System (NNDSS) is based on data collected at the state, territorial and local levels because of legislation and regulations in those jurisdictions that require health care providers, medical laboratories, and other entities to submit health-related data on reportable conditions to public health departments. These reportable conditions, which include infectious and non-infectious diseases, vary by jurisdiction depending upon each jurisdiction's health priorities and needs. Each year, the Council of State and Territorial Epidemiologists (CSTE), supported by CDC, determines which reportable conditions should be designated nationally notifiable or under standardized surveillance.

CDC requests a three-year approval for a Revision for the NNDSS (OMB Control No. 0920–0728, Exp. 03/31/2027). This Revision includes requests for approval to: 1) receive case notification data for Cronobacter and Ehrlichiosis, new notifiable conditions; 2) receive case notification data for Congenital cytomegalovirus infection and Toxoplasmosis, new conditions under standardized surveillance; and 3) receive new disease-specific data elements for Cronobacter, Hansen's Disease (Leprosy,) and Leptospirosis.

The NNDSS currently facilitates the submission and aggregation of case notification data voluntarily submitted to CDC from 60 jurisdictions: public health departments in every U.S. state, New York City, Washington DC, five U.S. territories (American Samoa, the Commonwealth of Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands), and three freely associated states (Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau). This information is shared across jurisdictional boundaries and both surveillance and prevention and control activities are coordinated at regional and national levels.

Approximately 90% of case notifications are encrypted and submitted to NNDSS electronically from already existing databases by automated electronic messages. When automated transmission is not possible, case notifications are faxed, emailed, uploaded to a secure network or entered into a secure website. All case notifications that are faxed or emailed are done so in the form of an aggregate weekly or annual report, not individual cases. These different mechanisms used to send case notifications to CDC vary by the jurisdiction and the disease or condition. Jurisdictions remove most personally identifiable information (PII) before data are submitted to CDC, but some data elements (*e.g.,* date of birth, date of diagnosis, county of residence) could potentially be combined with other information to identify individuals. Private information is not disclosed unless otherwise compelled by law. All data are treated in a secure manner consistent with the technical, administrative, and operational controls required by the Federal Information Security Management Act of 2002 (FISMA) and the 2010 National Institute of Standards and Technology (NIST) Recommended Security Controls for Federal Information Systems and Organizations. Weekly tables of nationally notifiable diseases are available through CDC WONDER and *data.cdc.gov.* Annual summaries of finalized nationally notifiable disease data are published on CDC WONDER and *data.cdc.gov* and disease-specific data are published by individual CDC programs.

The burden estimates include the number of hours that the public health department uses to process and send case notification data from their jurisdiction to CDC. Specifically, the burden estimates include separate burden hours incurred for automated and non-automated transmissions, separate weekly burden hours incurred for modernizing surveillance systems as part of CDC's Data Modernization Initiative (DMI) implementation, separate burden hours incurred for annual data reconciliation and submission, and separate one-time burden hours incurred for the addition of new diseases and data elements. The burden estimates for the one-time burden for reporting jurisdictions are for the addition of case notification data for Cronobacter and Ehrlichiosis, new notifiable conditions; the addition of case notification data for Congenital cytomegalovirus infection and Toxoplasmosis, new conditions under standardized surveillance; and the addition of new disease-specific data elements for Cronobacter, Hansen's Disease (Leprosy) and Leptospirosis. CDC requests OMB approval for an estimated 18,414 annual burden hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
States	Weekly (Automated)	50	52	20/60	867
States	Weekly (Non- automated)	10	52	2	1,040
States	Weekly (DMI Implementation)	50	52	4	10,400
States	Annual	50	1	75	3,750
States	One-time Addition of Diseases and Data Elements.	50	1	3	150
Territories	Weekly (Automated)	5	52	20/60	87
Territories	Weekly, Quarterly (Non-automated)	5	56	20/60	93
Territories	Weekly (DMI Implementation)	5	52	4	1,040
Territories	Annual	5	1	5	25
Territories	One-time Addition of Diseases and Data Elements.	5	1	3	15
Freely Associated States	Weekly (Automated)	3	52	20/60	52
Freely Associated States	Weekly, Quarterly (Non-automated)	3	56	20/60	56
Freely Associated States	Annual	3	1	5	15
Freely Associated States	One-time Addition of Diseases and Data Elements.	3	1	3	9
Cities	Weekly (Automated)	2	52	20/60	35
Cities	Weekly (Non-automated)	2	52	2	208
Cities	Weekly (DMI Implementation)	2	52	4	416

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Cities	Annual	2	1	75	150
Cities	One-time Addition of Diseases and Data Elements.	2	1	3	6
Total					18,414

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2024–26778 Filed 11–15–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–25–24HQ]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Division of Diabetes Translation Programmatic & Participant User Experience Data Collection (DDTDC)'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on July 26, 2024 to obtain comments from the public and affected agencies. CDC received zero comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Division of Diabetes Translation Programmatic & Participant User Experience Data Collection (DDTDC)—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Division of Diabetes Translation (DDT) plays a crucial role in helping prevent Type 2 diabetes, reducing diabetes complications and disability, and reducing diabetes-related disparities across the United States. DDT accomplishes this by providing education, training, technical assistance (TA), and engaging in communication/marketing activities for various key audiences. These customers include national, state, and local partners, grantees, providers (*e.g.,* lifestyle coaches, diabetes educators, healthcare providers, health/medical and community-based organizations), people with prediabetes, diabetes and their family, friends, and caregivers, and other consumers of DDT products and programs.

For DDT to be able to efficiently and effectively do this work and fulfill its mission, it needs to be able to collect information and feedback from intended audiences in a timely manner and with enough frequency to ensure DDT can deliver clear, effective, efficient, and appropriate customer service. This includes, for instance, collecting data on key audiences' needs and on the reach, uptake, use, customer experience and satisfaction with DDT's services, products, and related programs, including its education, training, TA and communications services and products.

However, in the interest of timely provision of services, DDT often forgoes the important step of getting input from its key audiences on the clarity, efficiency, effectiveness, and appropriateness of the services and resources it develops and provides for them. Skipping this information collection step, or doing so with less frequency, avoids the delay involved in the standard OMB review process, but increases the risk of DDT wasting both time and money developing and providing education, training, TA, and communication/marketing that will not achieve the intended objectives and will be unclear, irrelevant, or not fully meet the needs of DDT's audiences. It can also have other unintended consequences, such as jeopardizing the credibility of Federal health officials.

The Division of Diabetes Translation Programmatic & Participant User Experience Data Collection (DDTDC) will enable DDT to collect the information they require in a timely manner to:

- Provide clear, effective, efficient, appropriate, and timely education, communication, training, and technical

assistance to key audiences and other interested groups, including consumer audiences (*e.g.,* people with prediabetes, diabetes, and their family, friends, and caregivers), providers (*e.g.,* lifestyle coaches, diabetes care and education specialists, healthcare and other providers, health/medical and community-based organizations); and partners (national, state, and local partners).

- Ensure quality and prevent duplication in the development and dissemination of prevention and health information and program activities by DDT to consumers, providers, and state and local partners.
- Conduct exploratory/formative assessments to inform DDT's development of education, communication/marketing, training, and programmatic materials, tools, and resources to support and improve the prevention and management of diabetes. For example, identifying key audiences' knowledge, attitudes, behaviors, motivators, and information needs.
- Assess the impact of programs, messages, educational and training materials among recipients and determine to what extent they meet relevant service-related DDT objectives and goals.

The following are examples of the areas of focus that the data collection activities under this generic information collection mechanism may include:

- Reach, uptake, use, customer experience, and satisfaction with the CDC-recognized lifestyle change programs for type 2 diabetes prevention, as well as related outcomes (*e.g.,* participant retention and recruitment rates).
- Satisfaction with CDC-recognized lifestyle change programs toolkits, such as the Personal Success Tool and Champion toolkits.
- Reach, uptake, use, customer experience, and satisfaction with diabetes education, type 2 prevention, and diabetes management innovations (such as the Diabetes Self-Management Education and Support services promotion initiative) and related short-term effects on knowledge, awareness, practices (such as information seeking), and outcomes (such as enrollment of people with diabetes or prediabetes).
- Reach, uptake, satisfaction, customer experience, and short-term outcomes of CDC's training and technical assistance resources (such as a webinar or online toolkit).
- Needs assessments for customer experience with, utilization of, and short-term outcomes of technical assistance and trainings for diabetes prevention and management.
- Understandability, ease of use, and appropriateness of diabetes education messages, toolkits, programs, and marketing materials.
- Exploratory assessments of knowledge, attitudes, behaviors, beliefs, barriers, and facilitators to uptake and use of lifestyle change programs for diabetes type 2 prevention and diabetes management services and related innovations, resources, tools, and materials.

Data collection methods proposed include, but are not limited to in-depth individual interviews, cognitive interviews, intercept interviews, group-based discussions (including focus groups and dyads/triads), surveys or questionnaires, knowledge assessments, observational assessments, and implementation and utilization data reporting. Respondents would include key audiences and stakeholders of CDC's work, including representatives of state and local DDT-funded organizations; national, state, and local DDT partners (not CDC-funded); providers of type 2 diabetes prevention and diabetes management programs and services, including lifestyle coaches, diabetes care and educations specialists, healthcare and other providers; heath/medical and community-based organizations implementing programs and services related to type 2 diabetes prevention and diabetes management; people with—and at risk for—diabetes or with prediabetes; family, friends, and caregivers of people with—and at risk for—diabetes or with prediabetes.

As the methods for data collection and audiences may vary with each request submitted under this proposed generic clearance, for each data collection request unique instruments (*e.g.,* surveys, interview guides) will be developed to address the specific topics that information will be collected on. Questions to be asked may focus, for example, on collecting data on the audiences' needs and on the reach, uptake, use, customer experience and satisfaction with DDT's services, products, and programs. Such information will enable DDT to identify ways to improve its services, products, and programs to better meet its audiences' needs and achieve its mission of supporting the prevention of diabetes and reducing diabetes-related complications and disparities across the United States.

CDC requests a three-year approval for 6,000 burden hours for this proposed Generic package. Based on projections, the estimated annualized hourly burden anticipated for all data collection methods would total 2,000 hours and include eight to ten data collection activities over the course of a year. There is no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Data collection methods	Number of respondents across methods	Number responses per respondent	Average burden per response
Representatives of state and local DDT-funded organizations; national, state, and local DDT partners (not CDC-funded); providers of type 2 diabetes prevention and diabetes management programs and services; heath/medical and community-based organizations implementing programs and services related to type 2 diabetes prevention and diabetes management; people with—and at risk for—diabetes or with prediabetes; family, friends, and caregivers of people with—and at risk for—diabetes or with prediabetes.	Interviews; surveys or questionnaires; knowledge assessments; motivation assessments, observational assessments; implementation and utilization data reporting.	4,000	1	30/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2024–26780 Filed 11–15–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10398 #85]

Medicaid and Children's Health Insurance Program (CHIP) Generic Information Collection Activities: Proposed Collection; Comment Request

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

ACTION: Notice.

SUMMARY: On May 28, 2010, the Office of Management and Budget (OMB) issued Paperwork Reduction Act (PRA) guidance related to the ''generic'' clearance process. Generally, this is an expedited process by which agencies may obtain OMB's approval of collection of information requests that are ''usually voluntary, low-burden, and uncontroversial collections,'' do not raise any substantive or policy issues, and do not require policy or methodological review. The process requires the submission of an overarching plan that defines the scope of the individual collections that would fall under its umbrella. This **Federal Register** notice seeks public comment on one or more of our collection of information requests that we believe are generic and fall within the scope of the umbrella. Interested persons are invited to submit comments regarding our burden estimates or any other aspect of this collection of information, including: the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by December 2, 2024.

ADDRESSES: When commenting, please reference the applicable form number (CMS–10398 #85) and the OMB control number (0938–1148). To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: CMS–10398 #85/OMB control number: 0938–1148, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/medicare/regulations-guidance/legislation/paperwork-reduction-act-1995/pra-listing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at 410–786–4669.

SUPPLEMENTARY INFORMATION: Following is a summary of the use and burden associated with the subject information collection(s). More detailed information can be found in the collection's supporting statement and associated materials (see **ADDRESSES**).

Generic Information Collection

1. *Title of Information Collection:* 3.1–M State Plan Amendment (SPA) Templates for Eligible Juveniles Who are Inmates of a Public Institution; *Type of Information Collection Request:* New information collection request information request; *Use:* Section 5121 of the Consolidated Appropriation Act of 2023 (CAA, 2023) creates a new mandate for states by amending section 1902(a)(84) of the Social Security Act (the Act) (42 U.S.C. 1396a) to require states to provide specific screening and diagnostic services and targeted case management (including referrals) in the 30 days prior to release from incarceration, and targeted case management (TCM) (including referrals) for at least 30 days post release for eligible juveniles who are inmates of a public institution, post adjudication. The requirements are effective January 1, 2025.

To comply with the amendments states must submit a Medicaid SPA attesting that the state has developed an internal operation plan, and in accordance with such plan, will provide coverage during the statutory pre- and post-release period of screening, diagnostic, and TCM services for eligible juveniles who are within 30 days of release post adjudication.

States have the option to lift the Medicaid inmate payment and CHIP eligibility exclusions and provide coverage of pre-release Medicaid and CHIP services (for electing states) and makes available federal matching funds for the full breadth of Medicaid and CHIP benefits to eligible juveniles who are incarcerated and pending disposition of charges. States selecting this state plan option must provide to eligible juveniles all mandatory and optional services to which they are otherwise entitled under the state plan. During the period when an eligible juvenile is incarcerated and pending disposition of charges, this is essentially a full lifting of the Medicaid inmate payment exclusion and CHIP eligibility exclusion. States cannot choose to provide a limited array of state plan services under this option. An operational plan is not required for this state option.

For states that wish to elect the option in section 5122 of the CAA, 2023, states should submit a SPA attesting to CMS that they are also electing coverage for any Medicaid or CHIP state plan services for eligible juveniles pending disposition of charges to which the beneficiary would otherwise be entitled, if not for their incarceration status.

Form Number: CMS–10398 #85 (OMB control number: 0938–1148); *Frequency:* Once and on occasion; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 168; *Total Annual Hours:* 4,872. (For policy questions regarding this collection contact: Marlana Thieler at 410–786–6274.)

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024–26713 Filed 11–15–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–4467]

Agency Information Collection Activities; Proposed Collection; Comment Request; Prescription Drug User Fee Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection associated with FDA's Prescription Drug User Fee program.

DATES: Either electronic or written comments on the collection of information must be submitted by January 17, 2025.

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 January 17, 2025. 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–2024–N–4467 for ''Prescription Drug User Fee Program.'' 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: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Prescription Drug User Fee Program

OMB Control Number 0910–0297—Revision

This information collection supports implementation of the FDA Prescription Drug User Fee program (called ''PDUFA'' in reference to the Prescription Drug User Fee Act). Under the prescription drug user fee provisions of the Federal Food, Drug, and Cosmetic

Act (FD&C Act) (sections 735 and 736 (21 U.S.C. 379g and 379h)), we have the authority to assess and collect annual program fees for prescription drug products approved under certain new drug applications (NDAs) and biologics license applications (BLAs). Also under this authority, pharmaceutical companies pay an application fee for certain NDAs and BLAs submitted to FDA for review. Because the submission of user fees concurrently with applications is required, review of an application by FDA cannot begin until the fee is submitted.

PDUFA must be reauthorized every 5 years. On September 30, 2022, the President signed into law the FDA User Fee Reauthorization Act of 2022, which includes the reauthorization of PDUFA through September 30, 2027 (*https://www.fda.gov/industry/prescription-drug-user-fee-amendments/pdufa-vii-fiscal-years-2023-2027*). PDUFA VII provides for the continued timely review of NDAs and BLAs. Since the initial passage of PDUFA, user fees have played an important role in expediting the drug review and approval process. PDUFA VII reauthorization also includes commitments to meet certain performance goals and procedures. The commitment goals represent the product of FDA's discussions with the regulated industry and public stakeholders, as mandated by Congress.

We are revising the collection to include our current commitment goals, as set forth in the document ''PDUFA Reauthorization Performance Goals and Procedures Fiscal Years 2023 Through 2027,'' found on our website at *https://www.fda.gov/media/151712/download?attachment.* The commitment goals represent the product of FDA's discussions with the regulated industry and public stakeholders, as mandated by Congress. FDA is committed to meeting these goals and to continuous operational improvements associated with PDUFA implementation. The commitment goals provide for the development and issuance of topic-specific guidance. We maintain a searchable guidance database on our website at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents.* In publishing the respective notices of availability for each guidance document, we include an analysis under the PRA and invite public comment on the associated information collection recommendations. In addition, all Agency guidance documents are issued in accordance with our Good Guidance Practices regulations in 21 CFR 10.115, which provide for public comment at any time.

To assist respondents with the information collection, we developed Form FDA 3397 entitled ''Prescription Drug User Fee Cover Sheet.'' Additional information and associated instructions may be found on our website at *https://www.fda.gov/industry/fda-user-fee-programs.* The cover sheet (Form FDA 3397) is submitted for original NDAs, BLAs and resubmissions of these original applications after withdrawal before filing or refusal to file actions. The form is not submitted for certain FDA-regulated products. The list of exempted products is included under the instructions to Form FDA 3397.

Relatedly, sections 735 and 736 of the FD&C Act also provide for waiver, reduction, exemption and refund requests. We developed the guidance document entitled ''Guidance for Industry—Prescription Drug User Fee Act Waivers, Reductions, and Refunds for Drug and Biological Products,'' and Form FDA 3971 (Small Business Waiver and Refund Request), which can be found on our website at *https://www.fda.gov/media/131797/download,* as mandated by Congress.

We also developed Form FDA 4068, ''Prescription Drug User Fee Act; Waivers, Refunds, and Exemptions,'' along with accompanying instructions, to enable sponsors of designated orphan products to request an exemption from applicable fees under PDUFA and included the form in the information collection when the prior renewal was submitted for approval. Use of the form will provide the information required for analysis and application of the orphan exemption from user fees, organizing the requested information for easier data collection and streamlining the review request. We find, however, with this renewal, that use of the form has not been implemented yet, pending development of the OneNexus system for management of the user fee systems. Use of the form is anticipated once the OneNexus system is developed and implemented for the PDUFA program.

The PDUFA information collection and all user fee cover sheets, including the ''Prescription Drug User Fee Cover Sheet'' (Form FDA 3397), are accessed and submitted electronically, as required by statute, through FDA's electronic systems such as the Document Archiving Reporting and Regulatory Tracking System (DARRTS), Electronic Submission Gateway (ESG), and Panorama.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Prescription drug user fee activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Sections 735 and 736 of the FD&C Act (PDUFA waivers and exemptions, not including small business waiver requests).	99	1.828	181	17	3,077
Section 736(d)(1)(C) of the FD&C Act and Form FDA 3971 (small business waivers).	35	1	35	2	70
Reconsideration Requests	13	1.69	22	24	528
Appeal Requests	4	1.5	6	12	72
User Fee Cover Sheet Form FDA 3397 submission with original NDAs and BLAs.	132	1.24	164	0.5 (30 minutes)	82
Total			408		3,829

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of Agency records, we estimate that the number of initial waiver requests submitted annually (excluding small business waiver requests under section 736(d)(1)(C)) of the FD&C Act) is 181, submitted by 99 different applicants.

We estimate that 35 respondents will each submit a small business waiver request annually. We have included in the burden estimate the time for preparation and submission of application fee waivers for small businesses, including completion of Form FDA 3971. Small businesses

requesting a waiver must submit documentation to FDA, including the number of their employees, as well as information that their application is their first human drug application, within the meaning of the FD&C Act, to be submitted to the Agency for approval.

We estimate receiving 22 requests for reconsideration annually (including small business waiver reconsiderations) and assume the average burden for preparing and submitting each request is 24 hours. In addition, we estimate receiving six requests annually for appeal of user fee waiver determinations, and assume the time needed to prepare an appeal is 12 hours. We have included in this estimate both the time needed to prepare the request for appeal to the Chief Scientist and User Fee Appeals Officer within the Office of the Commissioner, and the time needed to create and send a copy of the request for an appeal to the Director Division of User Fee Management within the Office of Management at FDA's Center for Drug Evaluation and Research.

We assume a total of 82 hours of burden for completing and submitting the 164 forms FDA 3397 (Prescription Drug User Fee Coversheet) along with submission of NDAs or BLAs. The burdens associated with submission of NDAs and BLAs are included in OMB control numbers 0910–0001 and 0910–0338, respectively.

The information collection reflects changes and adjustments. We have clarified that the scope of the collection includes provisions found in our current commitment goals letter, negotiated with industry, pertaining to the assessment of fees, waivers, refunds, and exemptions under PDUFA VII. Cumulatively these changes and adjustments have resulted in an increase of three responses and 203 burden hours annually since the prior renewal of the information collection. We attribute this to the steady state of incoming requests for waivers and reconsiderations and normal fluctuations in types of submissions or waivers received.

Dated: October 30, 2024.

Kimberlee Trzeciak,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2024–26801 Filed 11–15–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: Generic Information Collection Request for Health Resources and Services Administration Hotlines, Chatlines, and Online Portals

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than January 17, 2025.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N39, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Joella Roland, the HRSA Information Collection Clearance Officer, at (301) 443–3983.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the ICR title for reference.

Information Collection Request Title: Generic Information Collection Request for Collections Related to HRSA Hotlines, Chatlines, and Online Portals, OMB No. 0906–New.

Abstract: HRSA currently administers approximately 15 hotlines, chatlines, and online portals for use by customers, members of the public, and HRSA funding recipients. These hotlines, chatlines, and online portals are administered by HRSA or a contractor on behalf of HRSA. The purpose of information collections under this generic umbrella ICR package is to allow HRSA to collect information on the operation of such HRSA hotlines, chatlines, and online portals to assist HRSA in improving their operation and determining if these services are helpful. In addition to collecting basic demographic information, the information collections would include questions such as reasons for inquiry, topics covered by inquiry, feedback on provided guidance or the hotline/chatline/online portal user experience. No protected information, such as personal health information or trade secrets, will be disclosed unless specifically required by law.

An illustrative, but not exhaustive, list of examples of information collection activities that would fall under this collection include standardized questions that are asked during the interaction with the public; surveys about their interaction; and information collected about their experience in use of hotlines, chatlines, and online portals. This generic umbrella ICR covers responses to standardized and survey questions relating to public use of HRSA's hotlines, chatlines, and online portals, pursuant to the ''Social Media, Web-Based Interactive Technologies, and the Paperwork Reduction Act'' 2010 White House guidance memo. The memo can be found at: *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/assets/inforeg/SocialMediaGuidance_04072010.pdf.*

Need and Proposed Use of the Information: The purpose of collections under this generic umbrella ICR is for accountability, program management, and oversight purposes. Collecting feedback from members of the public about their interaction with these services will help ensure that HRSA hotlines, chatlines, and online portals are operating to the best of their abilities. While HRSA can evaluate the general need for and the overall practical utility of such information collection in advance, HRSA is unable to determine the details of the specific individual collection methodologies until a later time. Using a generic umbrella ICR will allow HRSA to quickly and nimbly respond to public needs and efficiently provide vital services to grantees and the general public, as the standard 6 to 9 month timeline to comply with a full request under the Paperwork Reduction Act could inhibit HRSA's ability to collect information to inform these activities that involve rapid updates to be responsive to their users. The information collected is expected to be voluntary and low-burden. Therefore, a generic umbrella ICR clearance is requested to allow for quick turnaround

requests for similar information collections related to these activities.

As this generic umbrella ICR will focus on the awareness, understanding, attitudes, preferences, or experiences of customers or other stakeholders relating to HRSA-funded hotlines, chatlines, or portals, the Fast Track Process should apply to this information collection. Therefore, HRSA also requests OMB provide a response on individual information collection requests within the scope of this generic ICR within 5 business days.

Likely Respondents: The most likely respondents include users of a HRSA-funded hotline, chatline, or portal. These users may include members of the public and public or private entities who receive HRSA funding. Responses to any information collections under this generic umbrella ICR are not required to obtain or retain any benefit.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. 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.

The total annual burden hours estimated for this ICR are summarized in the table below. HRSA conducted this estimate based on reviewing hotline and chatline scripts along with online portals, in addition to reviewing the burden estimates of forms from previous HRSA customer service surveys, which were approved under other umbrella or regular packages.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Instrument name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Standardized Hotline Interaction	100,000	1	100,000	0.17	17,000.00
Standardized Chatline Interaction	100,000	1	100,000	0.17	17,000.00
Online Portal Submission	10,000	1	10,000	0.067	670.00
Follow-Up Surveys	51,750	1	51,750	0.083	4,295.25
Total	261,750		261,750		38,965.25

HRSA specifically requests comments on: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2024–26742 Filed 11–15–24; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–23–137: Science Education Partnership Award (SEPA) R25.

Date: December 11–12, 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 (Virtual Meeting).

Contact Person: James J Li, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7849, Bethesda, MD 20892, 301–806–8065, *lijames@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Drug Discovery for Aging, Neurodegenerative and Neurological Disorders—Panel B.

Date: December 11, 2024.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health Rockledge II, 6701 Rockledge Drive Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kathryn Partlow, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1016D, Bethesda, MD 20892 (301) 594–2138 *partlowkc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Specialized Centers of Research Excellence (SCORE) on Sex Differences.

Date: December 11–12, 2024.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Elaine Sierra-Rivera, Ph.D. IRG Chief Center for Scientific Review National Institutes of Health 6701 Rockledge Drive, Room 6182 Bethesda, MD 20892 (301) 435–2514 *riverase@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business-Anti-Infective Therapeutics.

Date: December 11–12, 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, (Virtual Meeting).

Contact Person: Marcus Ferrone, PHARMD Scientific Review Officer Center for Scientific Review National Institutes of Health 6701 Rockledge Drive Bethesda, MD 20892 (301) 402–2371 *marcus.ferrone@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Molecular Oncology.

Date: December 11, 2024.

Time: 11:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Reigh-Yi Lin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4152, MSC 7846, Bethesda, MD 20892, 301–827–6009, *lin.reigh-yi@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neurodevelopment, Neurodegeneration, and Plasticity.

Date: December 12, 2024.

Time: 9:30 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 (Virtual Meeting).

Contact Person: Robert C Elliott, Ph.D., AB, MS Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5190, MSC 7846 Bethesda, MD 20892 301–435–3009 *elliotro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Auditory, Visual and Cognitive Neuroscience.

Date: December 12, 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 (Virtual Meeting).

Contact Person: Alena Valeryevna Savonenko, Ph.D. Scientific Review Officer Center for Scientific Review National Institutes of Health 6701 Rockledge Drive, Room 1009J Bethesda, MD 20892 (301) 594–3444 *savonenkoa2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cancer Therapy.

Date: December 12, 2024.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health Rockledge I 6705 Rockledge Drive Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Syed M Quadri, Ph.D., IRG Chief, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, 301–435–1211, *quadris@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: November 12, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–26757 Filed 11–15–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK U34 Planning Cooperative Agreement Review Meeting.

Date: February 4, 2025.

Time: 2:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, NIDDK Democracy II, Suite 7000A 6707 Democracy Boulevard, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Nisan Bhattacharyya, Ph.D., Scientific Review Officer, National Institute of Diabetes and Digestive and Kidney, National Institute of Health, 6701 Democracy Boulevard, Suite 668 Bethesda, MD 20892, 301–451–2405, *nisan.bhattacharyya@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 12, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–26758 Filed 11–15–24; 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: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–0166.

Project: Government Performance and Results Act (GPRA) Client/Participant Outcomes Measure—(OMB No. 0930–0208)—Revision

SAMHSA is requesting approval for a revision of the CSAT Client-level GPRA instrument to continue the collection of performance and program monitoring data of its substance use services grant programs. Currently, the information collected from this instrument is entered and stored in SAMHSA's Performance Accountability and Reporting System (SPARS). SPARS is a real-time, performance management system that captures information on the substance use services and mental health services delivered through SAMHSA's grant programs across the United States. Continued approval of this information collection will allow SAMHSA to continue to meet Government Performance and Results Modernization Act of 2010 reporting requirements that quantify the effects and accomplishments of its discretionary grant programs, which are consistent with OMB guidance.

SAMHSA will use the data for annual performance reporting required by GPRA and comparing baseline with discharge and follow-up data. The additional information collected through this process will allow SAMHSA to: (1) report results of these performance outcomes; (2) maintain consistency with SAMHSA-specific performance domains, and (3) assess the performance of its discretionary and formula grant programs.

Currently, there are 379,037 total burden hours in the OMB-approved CSAT Client-level GPRA instrument. SAMHSA is now requesting an increase to 631,682 burden hours. The increase of 252,645 burden hours is due to the following:

- Additional time allocated for interviews, but also improved estimates

of the number of clients who would likely consent to complete the interview; and

• Additional time allocated for administrative collection of data by grantees, including the information that is collected for all clients regardless of whether they completed the client-portion of the interview or not.

The estimated time to complete the baseline, follow-up, and discharge interviews is 45 (0.75) minutes each. This includes the completion of the administrative sections of the tool for all clients including those who decline an interview. The estimated time to complete the SBIRT program-specific measures was increased from 12 (0.2) minutes to 15 minutes (0.25).

TABLE 1—ESTIMATES OF ANNUALIZED HOUR BURDEN

SAMHSA tool	Number of respondents	Responses per respondent	Total number of responses	Burden hours per response	Total burden hours	Hourly wage [1]	Total hour cost
Baseline Interview Includes SBIRT Brief TX, Referral to TX, and Program-specific questions	337,857	1	337,857	0.75	253,393	$28.89	$7,320,523
Follow-Up Interview with Program-specific questions [2]	270,286	1	270,286	0.75	202,715	28.89	5,856,436
Discharge Interview with Program-specific questions [3]	175,686	1	175,686	0.75	131,765	28.89	3,806,431
SBIRT Program—Screening Only	150,296	1	150,296	0.17	25,550	28.89	738,140
SBIRT Program—Brief Intervention Only Baseline	31,481	1	31,481	0.25	7,870	28.89	227,364
SBIRT Program—Brief Intervention Only Follow-Up [2]	25,184	1	25,184	0.25	6,296	28.89	181,891
SBIRT Program—Brief Intervention Only Discharge [3]	16,370	1	16,370	0.25	4,093	28.89	118,247
CSAT Total	1,007,160		1,007,160		631,682		18,249,032

[1] The hourly wage estimate is $28.89 based on the Occupational Employment and Wages, Mean Hourly Wage Rate for 21–1011 Substance Abuse and Behavioral Disorder Counselors = $28.89/hr. as of May 11, 2023. (*http://www.bls.gov/oes/current/oes211011.htm.* Accessed on June 20, 2024.)

[2] It is estimated that 80% of baseline clients will complete this interview.

[3] It is estimated that 52% of baseline clients will complete this interview. This estimate is based on Substance Abuse and Mental Health Services Administration (SAMHSA): Treating Concurrent Substance Use Among Adults. SAMHSA Publication No. PEP21–06–02–002. Rockville, MD: National Mental Health and Substance Use Policy Laboratory. Substance Abuse and Mental Health Services Administration, 2021.

Note: Numbers may not add to the totals due to rounding and some individual participants completing more than one form.

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 information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Alicia Broadus,

Public Health Advisor.

[FR Doc. 2024–26785 Filed 11–15–24; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Meeting for the Interdepartmental Substance Use Disorders Coordinating Committee (ISUDCC)

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Secretary of Health and Human Services (Secretary) announces a meeting of the Interdepartmental Substance Use Disorders Coordinating Committee (ISUDCC). The ISUDCC is open to the public and members of the public can attend the meeting via telephone or webcast only, and not in person. Agenda with call-in information will be posted on the SAMHSA website prior to the meeting at: *https://www.samhsa.gov/about-us/advisory-councils/meetings.*

DATES: December 11, 2024, 1 p.m.–4 p.m. EST.

ADDRESSES: The meeting will be open and held virtually. The meeting can be accessed via Zoom.

FOR FURTHER INFORMATION CONTACT: Tracy Goss, ISUDCC Designated Federal Officer, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockville, MD 20857; telephone: 240–276–0759; email: *Tracy.Goss@samhsa.hhs.gov.*

SUPPLEMENTARY INFORMATION: The upcoming meeting will focus on implementation of the ISUDCC's recommendations regarding how the Federal Government can more effectively integrate and coordinate harm reduction approaches across the continuum of prevention, treatment, and recovery policies, programs, and practices. The goal is to build consensus around those that can enhance national efforts to address substance use and substance use disorders and support further reductions in overdose mortality. In addition to discussing these recommendations, the meeting will feature several key presentations:

• Harm Reduction Summit Updates: Presentations will share insights, outcomes, and next steps from the recent Harm Reduction Summit, which focused on advancing harm reduction strategies at a national level.

• Recovery and Harm Reduction Workgroup: A presentation will cover the progress made by the Recovery and Harm Reduction Workgroup, highlighting how recovery-focused harm reduction strategies are being integrated into the broader framework of substance use disorder policy and practice.

• Naloxone Saturation Policy Academy work: An update on the Naloxone Saturation Policy Academy work, an important initiative focused on ensuring access to naloxone, a critical tool in preventing opioid overdose deaths, among groups at highest risk for and most likely to witness an overdose. Three academy cohorts have supported states, communities, and policymakers in developing and implementing effective naloxone distribution strategies. The initiative also includes training and technical assistance to states and local organizations, helping them create robust distribution networks and policies to ensure naloxone is optimally available when needed. This is enhanced by a bi-monthly virtual learning collaborative, open to all states, on different topics related to saturation of naloxone and other opioid overdose reversal medications.

This meeting will offer an important opportunity to continue advancing recommendations and key initiatives through the ISUDCC, fostering deeper collaboration to continue addressing substance use and substance use disorders across the nation.

Committee Name: Interdepartmental Substance Use Disorders Coordinating Committee (ISUDCC).

I. Background and Authority

The Interdepartmental Substance Use Disorders Coordinating Committee is required under Section 7022 of the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act (SUPPORT Act, Public Law 115–271) to accomplish the following duties: (1) identify areas for improved coordination of activities, if any, related to substance use disorders, including research, services, supports, and prevention activities across all relevant federal agencies; (2) identify and provide to the Secretary recommendations for improving federal programs for the prevention and treatment of, and recovery from, substance use disorders, including by expanding access to prevention, treatment, and recovery services; (3) analyze substance use disorder prevention and treatment strategies in different regions of and populations in the United States and evaluate the extent to which federal substance use disorder prevention and treatment strategies are aligned with State and local substance use disorder prevention and treatment strategies; (4) make recommendations to the Secretary regarding any appropriate changes with respect to the activities and strategies described in items (1) through (3) above; (5) make recommendations to the Secretary regarding public participation in decisions relating to substance use disorders and the process by which public feedback can be better integrated into such decisions; and (6) make recommendations to ensure that substance use disorder research, services, supports, and prevention activities of the Department of Health and Human Services and other federal agencies are not unnecessarily duplicative.

Not later than one year after the date of the enactment of this Act, and annually thereafter for the life of the Committee, the Committee shall publish on the internet website of the Department of Health and Human Services, which may include the public information dashboard established under section 1711 of the Public Health Service Act, as added by section 7021, a report summarizing the activities carried out by the Committee pursuant to subsection (e), including any findings resulting from such activities.

II. Membership

This ISUDCC consists of federal members listed below or their designees, and non-federal public members.

Federal Membership: Members include, The Secretary of Health and Human Services; The Attorney General of the United States; The Secretary of Labor; The Secretary of Housing and Urban Development; The Secretary of Education; The Secretary of Veterans Affairs; The Commissioner of Social Security; The Assistant Secretary for Mental Health and Substance Use; The Director of National Drug Control Policy; representatives of other Federal agencies that support or conduct activities or programs related to substance use disorders, as determined appropriate by the Secretary.

Non-federal Membership: Members include, 17 non-federal public members appointed by the Secretary, representing individuals who have received treatment for a diagnosis of a substance use disorder; directors of State substance use agencies; representatives of leading research, advocacy, or service organizations for adults with substance use disorder; physicians, licensed mental health professionals, advance practice registered nurses, and physician assistants, who have experience in treating individuals with substance use disorders; substance use disorder treatment professionals who provide treatment services at a certified opioid treatment program; substance use disorder treatment professionals who have research or clinical experience in working with racial and ethnic minority populations; substance use disorder treatment professionals who have research or clinical mental health experience in working with medically underserved populations; state-certified substance use disorder peer support specialists; drug court judge or a judge with experience in adjudicating cases related to substance use disorder; public safety officers with extensive experience in interacting with adults with a substance use disorder; and individuals with experiences providing services for homeless individuals with a substance use disorder.

The ISUDCC is required to meet at least twice per calendar year.

To attend virtually, submit written or brief oral comments, or request special accommodation for persons with disabilities, contact Tracy Goss. Individuals can also register on-line at: *https://snacregister.samhsa.gov/*

The public comment section will be scheduled at the conclusion of the meeting. Individuals interested in submitting a comment, must notify Tracy Goss on or before December 2, 2024, via email to: *Tracy.Goss@samhsa.hhs.gov.*

Up to two minutes will be allotted for each approved public comment as time permits. Written comments received in advance of the meeting will be considered for inclusion in the official record of the meeting.

Substantive meeting information and a roster of Committee members is available at the SAMHSA's Advisory Councils website: *https://www.samhsa.gov/about-us/advisory-councils.*

Dated: November 12, 2024.

Carlos Castillo,

Committee Management Officer.

[FR Doc. 2024–26759 Filed 11–15–24; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2024–0288]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number 1625–0030

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, 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: 1625–0030, Oil and Hazardous Materials Transfer Materials; without change. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: You may submit comments to the Coast Guard and OIRA on or before December 18, 2024.

ADDRESSES: Comments to the Coast Guard should be submitted using the Federal eRulemaking Portal at *https://www.regulations.gov.* Search for docket number [USCG–2024–0288]. Written comments and recommendations to OIRA for the proposed information collection should be sent within 30 days of publication of this notice to *https://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.

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. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, USCG–2024–0288, and must be received by December 18, 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 to the Coast Guard in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). For more about privacy and submissions to OIRA in response to this document, see the *https://www.reginfo.gov,* comment-submission web page. OIRA posts its decisions on ICRs online at *https://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0030.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (89 FR 70197, August 29, 2024) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collection.

Information Collection Request

Title: Oil and Hazardous Materials Transfer Procedures.

OMB Control Number: 1625–0030.

Summary: Vessels with a capacity of 250 barrels or more of oil or hazardous materials must develop and maintain transfer procedures. Transfer procedures provide basic safety information for operating transfer systems with the goal of pollution prevention.

Need: 33 U.S.C. 1231 authorizes the Coast Guard to prescribe regulations related to the prevention of pollution. 33 CFR part 155 prescribes pollution prevention regulations including those related to transfer procedures.

Forms: Not applicable.

Respondents: Operators of certain vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has decreased from 151 hours to 149 hours a year, due to a decrease in the estimated annual number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. *et seq.,* chapter 35, as amended.

Dated: November 8, 2024.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2024–26839 Filed 11–15–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2024–0289]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number 1625–0064

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, 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: 1625–0064, Plan Approval and Records for Subdivision and Stability Regulations; without change. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: You may submit comments to the Coast Guard and OIRA on or before December 18, 2024.

ADDRESSES: Comments to the Coast Guard should be submitted using the Federal eRulemaking Portal at *https://www.regulations.gov.* Search for docket number [USCG–2024–0289]. Written comments and recommendations to OIRA for the proposed information collection should be sent within 30 days of publication of this notice to *https://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.

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. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, USCG–2024–0289, and must be received by December 18, 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 to the Coast Guard in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). For more about privacy and submissions to OIRA in response to this document, see the *https://www.reginfo.gov,* comment-submission web page. OIRA posts its decisions on ICRs online at *https://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0064.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (89 FR 68914, August 28, 2024) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collection.

Information Collection Request

Title: Plan Approval and Records for Subdivision and Stability Regulations—Title 46 CFR Subchapter S.

OMB Control Number: 1625–0064.

Summary: The regulations require owners, operators, or masters of certain inspected vessels to obtain and/or post various documents as part of the Coast Guard commercial vessel safety program.

Need: 46 U.S.C. 3306 authorizes the Coast Guard to prescribe regulations for the safety of certain vessels. 46 CFR Subchapter S contains the Coast Guard regulations regarding subdivision and stability.

Forms: None.

Respondents: Owners, operators, and masters of vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has increased from 7,193 hours to 8,288 hours a year, due to an increase in the estimated annual number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. *et seq.,* chapter 35, as amended.

Dated: November 8, 2024.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2024–26842 Filed 11–15–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2024–0286]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number 1625–0020

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, 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: 1625–0020, Security Zones, Regulated Navigation Areas, and Safety Zones; without change. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: You may submit comments to the Coast Guard and OIRA on or before December 18, 2024.

ADDRESSES: Comments to the Coast Guard should be submitted using the Federal eRulemaking Portal at *https://www.regulations.gov.* Search for docket number [USCG–2024–0286]. Written comments and recommendations to OIRA for the proposed information collection should be sent within 30 days of publication of this notice to *https://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.

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. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, USCG–2024–0286, and must be received by December 18, 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 to the Coast Guard in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). For more about privacy and submissions to OIRA in response to this document, see the *https://www.reginfo.gov,* comment-submission web page. OIRA posts its decisions on ICRs online at *https://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0020.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (89 FR 68913, August 28, 2024) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collection.

Information Collection Request

Title: Security Zones, Regulated Navigation Areas, and Safety Zones.

OMB Control Number: 1625–0020.

Summary: The Coast Guard collects this information only when someone seeks a security zone, regulated navigation area, or safety zone. It uses the information to assess the need to establish one of these areas.

Need: Sections 70034 and 70051 of 46 U.S. Code, and parts 6 and 165 of 33 CFR give the Coast Guard Captain of the Port (COTP) the authority to designate security zones in the U.S. for as long as the COTP deems necessary to prevent damage or injury. Section 70001 of 46 U.S. Code authorizes the Coast Guard to prescribe rules to control vessel traffic in areas he or she deems hazardous because of reduced visibility, adverse weather, or vessel congestion. Section 70011 of 46 U.S. Code authorizes the Coast Guard to establish rules to allow the designation of safety zones where access is limited to authorized persons, vehicles, or vessels to protect the public from hazardous situations.

Forms: None.

Respondents: Federal, State, and local government agencies, owners and operators of vessels and facilities.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has decreased from 928 hours to 485 hours a year, due to a decrease in the estimated annual number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. *et seq.,* chapter 35, as amended.

Dated: November 8, 2024.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2024–26840 Filed 11–15–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2024–0287]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number 1625–0022

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, 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: 1625–0022, Application for Tonnage Measurement of Vessels; without change. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: You may submit comments to the Coast Guard and OIRA on or before December 18, 2024.

ADDRESSES: Comments to the Coast Guard should be submitted using the Federal eRulemaking Portal at *https://www.regulations.gov.* Search for docket number [USCG–2024–0287]. Written comments and recommendations to OIRA for the proposed information collection should be sent within 30 days of publication of this notice to *https://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.

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. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, USCG–2024–0287, and must be received by December 18, 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 to the Coast Guard in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). For more about privacy and submissions to OIRA in response to this document, see the *https://www.reginfo.gov,* comment-submission web page. OIRA posts its decisions on ICRs online at *https://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0022.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (89 FR 68914, August 28, 2024) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collection.

Information Collection Request

Title: Application for Tonnage Measurement of Vessels.

OMB Control Number: 1625–0022.

Summary: The information is used by the Coast Guard to determine a vessel's tonnage. Tonnage in turn helps to determine licensing, inspection, safety requirements, and operating fees.

Need: Under 46 U.S.C. 14104 certain vessels must be measured for tonnage.

Coast Guard regulations for this measurement are contained in 46 CFR part 69.

Forms: CG–5397, Application for Simplified Measurement.

Respondents: Owners of vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has increased from 15,094 hours to 38,157 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. *et seq.,* chapter 35, as amended.

Dated: November 8, 2024.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2024–26841 Filed 11–15–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6498–N–01]

The Performance Review Board

AGENCY: Office of the Secretary, Housing and Urban Development (HUD).

ACTION: Notice of appointments.

SUMMARY: The Department of Housing and Urban Development announces the establishment of the Departmental Performance Review Board (PRB) to make recommendations to the appointing authority on the performance and compensation of its Senior Executive Service (SES), Senior Level (SL) and Senior Technical (ST) professionals. The following persons may be named to serve on the PRB from 2024 through 2026. They are listed by type of appointment, name, and official title.

FOR FURTHER INFORMATION CONTACT: Persons desiring any further information about the PRB and its members may contact Selina M. Swales, Director, Office of Executive Resources, Department of Housing and Urban Development, Washington, DC 20410. Telephone (202) 402–3450. (This is not a toll-free number.) HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION: The following persons may be named to serve on the PRB from 2024 through 2026. They are listed by type of appointment, name, and official title:

Name	Official title
CAREER SES	
AMMON, MATTHEW E	DIRECTOR, OFFICE OF HEALTHY HOMES AND LEAD HAZARD CONTROL.
BERENBAUM, DAVID L	DEPUTY ASSISTANT SECRETARY, OFFICE OF HOUSING COUNSELING.
BETTS, SUSAN A	DEPUTY ASSISTANT SECRETARY FOR FINANCE AND BUDGET.
BLOM, DOMINQUE G	GENERAL DEPUTY ASSISTANT SECRETARY FOR PUBLIC AND INDIAN HOUSING.
BOHLING, GAYLE E	DEPUTY GENERAL COUNSEL FOR OPERATIONS.
BROWN, AMY L	DEPUTY GENERAL COUNSEL FOR HOUSING PROGRAMS.
BRYON, JEMINE A	DEPUTY ASSISTANT SECRETARY FOR SPECIAL NEEDS.
CLARK, PRISCILLA W	DEPUTY CHIEF HUMAN CAPITAL OFFICER PROGRAMS.
CULLEN, DEANDRA J	ASSOCIATE DEPUTY ASSISTANT SECRETARY FOR ENFORCEMENT COMPLIANCE.
COOPER, GARY J	ASSOCIATE DEPUTY ASSISTANT SECRETARTY FOR NATIVE AMERICAN PROGRAMS.
CORSIGLIA, NANCY E	ASSOCIATE DEPUTY ASSISTANT SECRETARY FOR FINANCE AND BUDGET.
DARLING, KATHERINE M	ASSISTANT CHIEF FINANCIAL OFFICER FOR SYSTEMS.
FERRY, SHYLON C	DEPUTY ASSISTANT SECRETARY FOR OPERATIONS.
FORRESTER, ALTHEA M	ASSOCIATE GENERAL COUNSEL FOR ASSISTED HOUSING AND COMMUNITY DEVELOPMENT.
GAITHER, FELICIA R	DEPUTY ASSISTANT SECRETARY FOR FIELD OPERATIONS.
GETCHIS, JOHN F	SENIOR VICE PRESIDENT, OFFICE OF CAPITAL MARKETS.
GOLRICK, JANET A	NATIONAL DISASTER COORDINATOR.
GRAHAM, WILMER J	CHIEF RISK OFFICER.
HADLEY, JOY L	DIRECTOR, OFFICE OF LENDER ACTIVITIES AND PROGRAMS.
IJAZ, SAIRAH R	CHIEF INFORMATION OFFICER.
JEWITT, BRADLEY S	CHIEF ADMINISTRATIVE OFFICER.
JOHNSON, CALVIN C	DEPUTY ASSISTANT SECRETARY FOR THE OFFICE OF RESEARCH, EVALUATION AND MONITORING.
KEITH, GREGORY A	SENIOR VICE PRESIDENT AND CHIEF RISK OFFICER.
KUBACKI, MELAJO K	ASSISTANT CHIEF FINANCIAL OFFICER FOR FINANCIAL MANAGEMENT.
LOFINMAKIN, ADETOKUNBO	SENIOR VICE PRESIDENT AND CHIEF FINANCIAL OFFICER.
MCNEELY, KEVIN L	DEPUTY DIRECTOR, FIELD POLICY AND MANAGEMENT.
MONTGOMERY, MATISHA D	CHIEF LEARNING OFFICER.
MORRIS, VANCE T	ASSOCIATE GENERAL DEPUTY ASSISTANT SECRETARY FOR HOUSING.
MULRAIN, LISA V	ASSOCIATE GENERAL COUNSEL FOR FINANCE.
NGUYEN, NHEIN T	CHIEF PERFORMANCE OFFICER.
PAO, JEAN LIN	DIRECTOR, OFFICE OF SMALL AND DISADVANTAGED BUSINESS UTILIZATION.
PARKER, TENILLE S	DIRECTOR, DISASTER RECOVERY SPECIAL ISSUES DIVISION.
PETERSON, CHRISTINA M	CHIEF TRANSFORMATION AND STRATEGY OFFICER.
PORDZIK, LESLIE A	SENIOR VICE PRESIDENT, MORTGAGED BACKED SECURITIES.
PRESTON, TAWANNA A	SENIOR VICE PRESIDENT OF ADMINISTRATION AND SENIOR ADVISOR TO OFFICE OF THE PRESIDENT.
RAMOS, RUSSELL A	SENIOR VICE PRESIDENT OF ENTERPRISE DATA AND TECHNOLOGY SOLUTIONS.
REEVES, ANTHONY B	DEPUTY ASSISTANT SECRETARY FOR OPERATIONS.
RICHARDSON, TODD M	GENERAL DEPUTY ASSISTANT SECRETARY FOR POLICY DEVELOPMENT AND RESEARCH.
ROBINSON, JOZETTA M	EXECUTIVE SECRETARIAT.
SHAFFER, JULIE A	ASSOCIATE DEPUTY ASSISTANT SECRETARY FOR SINGLE-FAMILY HOUSING.
SANTA ANNA, AARON	ASSOCIATE GENERAL COUNSEL FOR LEGISLATION AND REGULATIONS.
SARGEANT, JUAN C	DEPUTY CHIEF INFORMATION OFFICER FOR INFRASTRUCTURE AND OPERATIONS.
SARDONE, VIRGINIA M	DIRECTOR, OFFICE OF AFFORDABLE HOUSING.
SAUNDERS, ELISSA O	DIRECTOR, OFFICE OF SINGLE-FAMILY HOUSING PROGRAMS DEVELOPMENT.
TOLBERT, SHERECE M	ASSOCIATE GENERAL COUNSEL FOR INSURED HOUSING AND URBAN DEVELOPMENT.
USOWSKI, KURT G	DEPUTY ASSISTANT SECRETARY FOR ECONOMIC AFFAIRS.
WILLIAMS, WAYNE A	DIRECTOR, OFFICE OF DEPARTMENTAL EQUAL EMPLOYMENT OPPORTUNITY.
NONCAREER SES	
EDELMAN, SARAH J	DEPUTY ASSISTANT SECRETARY FOR SINGLE-FAMILY HOUSING.
GREENE, SOLOMON	PRINCIPAL DEPUTY ASSISTANT SECRETARY FOR POLICY DEVELOPMENT AND RESEARCH.
HANDELMAN, ETHAN D	DEPUTY ASSISTANT SECRETARY FOR MULTI-FAMILY HOUSING.
JOSEPH, JULIENNE Y	SENIOR COUNSELOR.
KLUBES, BENJAMIN	PRINCIPAL DEPUTY GENERAL COUNSEL.
MCFADDEN, MARION	PRINCIPAL DEPUTY ASSISTANT SECRETARY FOR COMMUNITY PLANNING AND DEVELOPMENT.
METRAKAS, EUGENIA M	CHIEF OF STAFF.
MONOCCHIO, RICHARD	PRINCIPAL DEPUTY ASSISTANT SECRETARY FOR PUBLIC AND INDIAN HOUSING.
NIBLOCK, ELIZABETH A	SENIOR ADVISOR FOR DISASTER MANAGEMENT.
REFFETT, ROBERT T	DEPUTY CHIEF OF STAFF.
ROGERS, FAITH	CHIEF OF STAFF.
SAMBERG-CHAMPION, SASHA M	DEPUTY GENERAL COUNSEL FOR ENFORCEMENT.
STEIN, ERIC S	SENIOR ADVISOR.
TAYLOR, PATRICE D	DEPUTY CHIEF OF STAFF.
VALVERDE, SAM I	EXECUTIVE VICE PRESIDENT AND CHIEF OPERATING OFFICER.

Adrianne R. Todman,
Deputy Secretary Performing the Duties of the Secretary of HUD.

[FR Doc. 2024–26774 Filed 11–15–24; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–ES–2024–N027; FF09E41000 245 FXES11130900000]

Endangered Species Act; Issuance of Enhancement of Survival and Incidental Take Permits for Safe Harbor Agreements, Candidate Conservation Agreements, Conservation Plans, and Scientific Activities; January 1, 2023, Through December 31, 2023

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We, the U.S. Fish and Wildlife Service, in accordance with the Endangered Species Act (ESA), provide a list to the public of permits we issued under the ESA during calendar year 2023 for candidate conservation agreements with assurances, safe harbor agreements, habitat conservation plans, and scientific activities. With some exceptions, the ESA prohibits take of listed species unless a Federal permit is issued that authorizes or exempts the taking under the ESA.

FOR FURTHER INFORMATION CONTACT: For general information about the ESA permit process, contact Amanda Murnane, via phone at 703–358–2469 or *viaemailatamanda_murnane@fws.gov.* For information on specific permits, see the contact information for the applicable region under Permits Issued. 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), are publishing this notice in order to provide lists to the public of the permits we issued during calendar year 2023 under sections 10(a)(1)(A) and 10(a)(1)(B) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*), as amended. We are publishing the lists of section 10(a)(1)(A) permits in accordance with section 10(d) of the ESA. We are publishing the lists of section 10(a)(1)(B) permits in accordance with chapter 16 of the *Habitat Conservation Planning and Incidental Take Permit Processing Handbook,* developed by the Service in cooperation with the National Marine Fisheries Service, and available at *https://www.fws.gov/media/habitat-conservation-planning-and-incidental-take-permit-processing-handbook* (December 21, 2016; 81 FR 93702).

With some exceptions, the ESA prohibits take of listed species unless a Federal permit is issued that authorizes the taking, or the take is exempted through section 7 of the ESA. Under section 10(a)(1)(A) of the ESA, we issue scientific permits and enhancement of survival permits in conjunction with conservation agreements (*e.g.,* Candidate Conservation Agreements with Assurances or CCAAs, and Safe Harbor Agreements or SHAs). Section 10(a)(1)(B) permits authorize take of listed species incidental to otherwise lawful activities associated with conservation plans (also known as habitat conservation plans or HCPs). We provide these lists to the public as a summary of our permit issuances for CCAAs, SHAs, HCPs, and scientific permits for calendar year 2023.

We recently revised the implementing regulations for ESA section 10(a) related to enhancement of survival permits supported by SHAs and CCAAs (50 CFR 17.22(c) and (d) and 50 CFR 17.32(c) and (d)) to combine the SHA and CCAA into one type of conservation agreement, called a conservation benefit agreement (89 FR 26070; April 12, 2024). The permits listed in this notice are not affected by this change, as they were all issued prior to May 13, 2024, the effective date of the regulation revisions.

Background

Under the authority of section 10(a)(1)(A) of the ESA, we have issued enhancement of survival permits to conduct activities that provide a conservation benefit for endangered or threatened species, or for unlisted species should they become listed in the future, in response to permit applications that we received in conjunction with a SHA or a CCAA.

Scientific permits have been issued under ESA section 10(a)(1)(A) to allow for take as part of activities conducted for scientific purposes of listed species (*e.g.,* scientific research in order to understand better the species' long-term survival needs).

Under ESA section 10(a)(1)(B), we may issue permits for any taking otherwise prohibited by ESA section 9 if such taking is incidental to, and not the purpose of, carrying out an otherwise lawful activity (known as an incidental take permit (ITP)) and the permit applicant submits a conservation plan or HCP that meets the permit issuance criteria under section 10(a)(2)(B). Typically, applicants seek an ITP to conduct activities such as residential and commercial development, infrastructure development or maintenance, and energy development projects that range in scale from small to landscape-level planning efforts.

The permits associated with SHAs, CCAAs, HCPs, and scientific activities that we issued between January 1 and December 31, 2023, are listed in the tables in this notice.

Under section 10(a)(1)(A), we issued each permit only after we determined that it was applied for in good faith; that granting the permit would not be to the disadvantage of the listed species, or to any unlisted species on the permit should they be listed; and that the terms and conditions of the permits were consistent with the purposes and policy set forth in the ESA.

Under section 10(a)(1)(B), we issued permits only after we determined that the applicant was eligible and had submitted a complete application and HCP that fully met the permit issuance criteria consistent with section 10(a)(2)(B).

Permits Issued

Region 1 (Hawaii, Idaho, Oregon (Except for the Klamath Basin), Washington, American Samoa, Commonwealth of the Northern Mariana Islands, Guam, and the Pacific Trust Territories)

Table 1 shows permits issued by Region 1 of the Service. The table is sorted by type of permit or agreement and date issued. For more information about any of the HCP or CCAA permits, contact the HCP or CCAA permit coordinator by email at *ITEOSpermitsR1ES@fws.gov* or by telephone at 503–231–6131. For more information about any of the scientific permits, contact the Recovery Permit Coordinator by email at *PermitsR1ES@fws.gov* or by telephone at 503–231–6131.

TABLE 1—PERMITS ISSUED BY REGION 1

[Hawaii, Idaho, Oregon (except for Klamath Basin), Washington, American Samoa, Commonwealth of the Northern Mariana Islands, Guam, and the Pacific Trust Territories]

Permit No.	Permit type	Permittee	Date issued
PER3758543	CCAA	Hampton Lumber	7/27/2023
PER3767569	CCAA	Starker Forests, Inc	7/27/2023
91853B	HCP	Kaufman Holdings	2/10/2023
PER1332359	HCP	Kaufman Holdings	3/22/2023
PER0492292	HCP	Exeter 6292 196th Land, LLC	3/22/2023
PER0075870	HCP	Port Blakely Tree Farms L.P	9/28/2023
PER0055668	Scientific	Washington Department of Natural Resources, Northeast Region	1/11/2023
PER0052916	Scientific	Stephen Nyman	1/13/2023
PER0051865	Scientific	National Park Service, Kaloko-Honokohau National Historical Park	1/24/2023
PER0531362	Scientific	Weyerhaeuser Company—Springfield, OR	1/27/2023
PER0043122	Scientific	University of Washington Botanic Gardens Rare Care Program	2/9/2023
PER0055693	Scientific	Hawaii Division of Forestry and Wildlife	2/15/2023
PER0057113	Scientific	Hawaii Volcanoes National Park	3/1/2023
PER1021683	Scientific	Bureau of Land Management	3/23/2023
PER0130817	Scientific	University of Washington, Department of Psychology	4/7/2023
PER1047414	Scientific	Bureau of Land Management Oregon/Washington	4/13/2023
PER1359031	Scientific	Ian Robertson	5/9/2023
PER2493731	Scientific	Ecostudies Institute	5/17/2023
PER0506192	Scientific	Big Island National Wildlife Refuge Complex	5/25/2023
PER2937977	Scientific	Wallowa-Whitman National Forest	6/5/2023
PER2911658	Scientific	Oregon Department of Transportation	6/6/2023
PER3037344	Scientific	Brian Sidlauskas	6/21/2023
PER2617529	Scientific	Kalispel Tribe of Indians	6/26/2023
PER1410319	Scientific	U.S. Bureau of Reclamation—Snake River Area Office	7/6/2023
PER2892324	Scientific	Tessa Francis	7/6/2023
PER3247913	Scientific	Cramer Fish Sciences	7/6/2023
PER1353215	Scientific	Clare Aslan	7/6/2023
PER1973469	Scientific	Isaac Sandlin	7/6/2023
PER3355672	Scientific	Carnahan-Heuker Ranch	7/6/2023
PER0833125	Scientific	U.S. Army Garrison—Hawaii, Directorate of Public Works—Environmental Division.	8/7/2023
PER2682557	Scientific	Bureau of Land Management, Medford District Office	8/7/2023

Region 2 (Arizona, New Mexico, Oklahoma, and Texas)

Table 2 shows permits issued by Region 2 of the Service. The table is sorted by type of permit or agreement and date issued. For more information about any of the HCP, CCAA, or SHA permits, contact the HCP, CCAA, or SHA Permit Coordinator by email at *FW2_HCP_Permits@fws.gov* or by telephone at 505–248–6651. For more information about any of the scientific permits, contact the Recovery Permit Coordinator by email at *PermitsR2ES@fws.gov* or by telephone at 505–248–6649.

TABLE 2—PERMITS ISSUED BY REGION 2

[Arizona, New Mexico, Oklahoma, and Texas]

Permit No.	Permit type	Permittee	Date issued
PER0052444	CCAA	Center of Excellence for Hazardous Materials Management	3/27/2023
PER4612003	CCAA	LCRA Transmission Services Corporation	11/15/2023
PER5891706	CCAA	American Conservation Foundation, Inc	12/15/2023
PER3300079	HCP	Whitewater Springs Property Owners Association, Inc	6/23/2023
181840	HCP	Williamson County, Texas	11/16/2023
33684D	HCP	Davis-McCrary Property Trust	11/16/2023
42299D	HCP	LCRA Transmission Services Corporation	11/16/2023
48571B	HCP	Southern Edwards Plateau HCP—Bexar County & The City of San Antonio.	11/16/2023
PER0046301	Scientific	Landhawk Consulting, LLC	1/25/2023
PER0018550	Scientific	Gary G. Mowad	1/30/2023
PER0046268	Scientific	Matthew Kitchen	2/4/2023
PER0046306	Scientific	Jeffrey T. Jenkerson	2/4/2023
PER0055321	Scientific	Patrick C. Boatright	2/4/2023
PER0055315	Scientific	Maria Musgrave	2/4/2023
PER0056239	Scientific	Alex Ramirez	2/17/2023
PER0065413	Scientific	Travis Audubon Society, Inc	2/17/2023
PER0055325	Scientific	Nicholas S. Gladstone	2/17/2023
PER0056417	Scientific	Casey Cowan	2/17/2023
PER0046251	Scientific	Shawn Carroll	2/21/2023
PER0052329	Scientific	Jacobs Engineering Group	2/25/2023
PER0045962	Scientific	Timothy J. Searl	3/8/2023

TABLE 2—PERMITS ISSUED BY REGION 2—Continued

[Arizona, New Mexico, Oklahoma, and Texas]

Permit No.	Permit type	Permittee	Date issued
PER0116609	Scientific	The Kauffman Group	3/8/2023
PER0051967	Scientific	Heidi Kloeppel	3/8/2023
PER0055691	Scientific	Permits West, Inc	3/8/2023
PER0055729	Scientific	Christopher Francke	3/8/2023
PER0062529	Scientific	SWCA Incorporated	3/8/2023
PER0131239	Scientific	San Antonio Aquarium	3/8/2023
PER0076022	Scientific	U.S. Geological Survey, Oklahoma Cooperative Fish and Wildlife Research Unit.	3/8/2023
PER0070375	Scientific	Brad Clemens	3/8/2023
PER1679339	Scientific	Horizon Environmental Services, Inc	3/29/2023
PER0188309	Scientific	Chauncey Gadek	4/7/2023
PER2325260	Scientific	Baer Engineering and Environmental Consulting, Inc	4/8/2023
PER2325258	Scientific	Rocky Mountain Bird Observatory	4/8/2023
PER0055763	Scientific	Texas State Aquarium	4/11/2023
PER0040910	Scientific	Jeremy Henson	4/11/2023
PER0036384	Scientific	USDA Forest Service—Rocky Mountain Research Station	4/11/2023
PER0087313	Scientific	Victoria Owen	4/17/2023
PER0116336	Scientific	Bureau of Land Management—Tucson Field Office	4/18/2023
PER1906199	Scientific	Paula D. Alsip	4/18/2023
PER0070221	Scientific	Caesar Kleberg Wildlife Research Institute—Texas A&M University—Kingsville.	5/1/2023
PER0716326	Scientific	Glenn Rink	5/1/2023
PER0046267	Scientific	Scott Lillie	5/12/2023
PER0039271	Scientific	Matthew Johnson	5/12/2023
PER1906335	Scientific	Javan Bauder	5/12/2023
PER0666399	Scientific	The Nature Conservancy Arizona	5/12/2023
PER2724981	Scientific	SWCA, Inc	5/25/2023
PER0049999	Scientific	Power Engineers, Inc	6/15/2023
PER2325257	Scientific	Big Bend National Park	6/16/2023
PER3323207	Scientific	Javan Bauder	6/21/2023
PER0658674	Scientific	SWCA Environmental Consultants	6/22/2023
PER0192207	Scientific	Hicks & Company	7/5/2023
PER1906336	Scientific	Loren Ammerman	7/14/2023
PER3806728	Scientific	Loren Ammerman	7/20/2023
PER0038593	Scientific	Dallas Zoo Management, Inc	7/24/2023
PER3851670	Scientific	Amphibian and Reptile Conservancy, LLC	7/25/2023
PER1906333	Scientific	Jessica Ma	7/28/2023
PER4001580	Scientific	Sara Souther	8/4/2023
PER0084202	Scientific	U.S. Fish and Wildlife Service, Region 2	8/21/2023
PER2325254	Scientific	Jeff Renfrow	8/21/2023
PER3855826	Scientific	Catherine E. Young	8/25/2023
PER4478737	Scientific	Loren Ammerman	9/12/2023
PER3004838	Scientific	National Audubon Society	9/12/2023
PER4564679	Scientific	Javan Bauder	9/13/2023
PER0116610	Scientific	Daniel H. Foley	9/15/2023
PER2325256	Scientific	Keith Geluso	9/18/2023
PER1889346	Scientific	Kara Tschirhart	9/18/2023
PER2670793	Scientific	Bruce Christman	9/26/2023
PER3011081	Scientific	Texas A&M University—Galveston	9/26/2023
PER3115167	Scientific	Nicholas Beauregard	9/26/2023
PER4779511	Scientific	SWCA Incorporated	9/28/2023
PER0116052	Scientific	New Mexico Office of the State Engineer/Interstate Stream Commission	9/30/2023
PER0047822	Scientific	Katie Snipes	9/30/2023
PER0115496	Scientific	Aecom Technical Services, Inc	10/5/2023
PER2997785	Scientific	New Mexico Energy, Minerals & Natural Resources Department	10/5/2023
PER0055322	Scientific	East Foundation	10/10/2023
PER1902037	Scientific	Elisa Abeyta	10/17/2023
PER2182168	Scientific	Charles Hathcock	10/20/2023
PER2325259	Scientific	New Mexico Department of Transportation Environmental Bureau	10/20/2023
PER0104851	Scientific	USDA Prescott National Forest	10/21/2023
PER0052843	Scientific	Martina Pernicano	11/14/2023
PER5463680	Scientific	University of Texas at Austin—Marine Science Institute	11/14/2023
PER3012383	Scientific	Nueces County Coastal Parks	11/14/2023
PER2756918	Scientific	Susan Courage	11/18/2023
PER3935824	Scientific	Brown and Gay Engineers, Inc	11/18/2023
PER0115497	Scientific	Steve Frost	11/18/2023
PER0743511	Scientific	USDA Forest Service—Kaibab National Forest	11/29/2023
PER5314965	Scientific	Transition Zone Horticultural Institute Inc	11/30/2023
PER5007101	Scientific	Bureau of Land Management—Phoenix	11/30/2023
PER3587298	Scientific	Anne Arnold	11/30/2023
PER5701709	Scientific	Transition Zone Horticultural Institute, Inc	12/5/2023

TABLE 2—PERMITS ISSUED BY REGION 2—Continued

[Arizona, New Mexico, Oklahoma, and Texas]

Permit No.	Permit type	Permittee	Date issued
PER3870581	Scientific	Underwing Biological LLC	12/19/2023
PER3700881	SHA	N.M. Ranch Properties, Inc	9/13/2023

Region 3 (Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin)

Table 3 shows permits issued by Region 3 of the Service. The table is sorted by type of permit or agreement and date issued. For more information about any of the HCP permits, contact the HCP Permit Coordinator at *permitsR3ES@fws.gov* or by telephone at 612–713–5343. For more information about any of the scientific permits, contact the Recovery Permit Coordinator by email at *PermitsR3ES@fws.gov* or by telephone at 612–713–5343.

TABLE 3—PERMITS ISSUED BY REGION 3

[Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin]

Permit No.	Permit type	Permittee	Date issued
PER0050261	HCP	One Energy Plaza, dba Consumers Energy	1/17/2023
PER0846080	HCP	Michigan Department of Natural Resources	1/30/2023
PER0846081	HCP	Wisconsin Department of Natural Resources	1/30/2023
PER0220777	HCP	Minnesota Department of Natural Resources	2/13/2023
PER0627303	HCP	Apex Clean Energy	4/10/2023
PER0626970	HCP	Consumers Energy Company	7/5/2023
PER3926307	HCP	Capital Power Corporation	8/7/2023
PER0105883	Scientific	Jeremy Sheets	1/23/2023
PER0071467	Scientific	Western Ecosystems Technology, Inc	2/3/2023
PER0070988	Scientific	Jessica Miller	2/6/2023
PER1002329	Scientific	Scott Bergeson	2/6/2023
PER0075443	Scientific	Jeffrey Miller	2/7/2023
PER0075405	Scientific	Brenna Hyzy	2/9/2023
PER0109412	Scientific	Kenneth Mierzwa	2/9/2023
PER1948825	Scientific	Civil and Environmental Consultants, Inc	3/16/2023
PER0038462	Scientific	Emily Grossman	3/28/2023
PER2098254	Scientific	Bat Conservation and Management, Inc	3/31/2023
PER0821809	Scientific	Skelly and Loy, Inc	3/31/2023
PER0090108	Scientific	Ohio Department of Natural Resources	4/5/2023
PER0089187	Scientific	U.S. Geological Survey	4/5/2023
PER0032524	Scientific	The Nature Conservancy	4/5/2023
PER2095614	Scientific	Minnesota Department of Natural Resources	4/5/2023
PER1223955	Scientific	Applied Science & Technology, Inc	4/11/2023
PER1462021	Scientific	Keystone Ecological Services, LLC	4/11/2023
PER0050265	Scientific	Mainstream Commercial Divers, Inc	4/12/2023
PER2259253	Scientific	Herpetological Resource and Management, LLC	4/12/2023
PER2363024	Scientific	U.S. Geological Survey	4/12/2023
PER0109426	Scientific	Mountain State Biosurveys, LLC	4/12/2023
PER1369190	Scientific	Hennepin County Environment and Energy	4/12/2023
PER0610296	Scientific	Ashleigh Cable	4/14/2023
PER2517095	Scientific	RES Kentucky, LLC	4/14/2023
PER0089184	Scientific	Ashley M. Reed	4/14/2023
PER2325625	Scientific	Minnesota Department of Natural Resources	4/14/2023
PER2499667	Scientific	Clarissa Starbuck	4/14/2023
PER2325382	Scientific	Alma Schrage	4/14/2023
PER1966123	Scientific	Midwest Natural Resources, Inc	4/25/2023
PER2465775	Scientific	University of Minnesota—Snell Rood Lab	4/25/2023
PER0037923	Scientific	Thomas L. Estrem	4/26/2023
PER2496109	Scientific	Rex Everett	4/26/2023
PER2644672	Scientific	Power Engineers, Inc	4/28/2023
PER2375951	Scientific	Glenn Johnson	4/28/2023
07730A	Scientific	RES Kentucky, LLC	5/2/2023
PER1867075	Scientific	Jackson County Conservation Board	5/2/2023
PER2537980	Scientific	Minnesota Zoo	5/5/2023
PER1224186	Scientific	Greg Gaulke	5/11/2023
PER1231528	Scientific	Karen Goodell	5/12/2023
PER1672831	Scientific	Randy Mitchell	5/19/2023
PER2934406	Scientific	Sanders Environmental, Inc	5/24/2023
PER0036813	Scientific	Adam Benshoff	5/26/2023
PER3112771	Scientific	Julia Wilson	6/1/2023
PER3110946	Scientific	Carly R. Kalina	6/1/2023
PER3115464	Scientific	Michigan State University	6/1/2023
PER2965067	Scientific	University of Wisconsin, Madison	6/7/2023
PER2965483	Scientific	Elaine Evans	6/7/2023

TABLE 3—PERMITS ISSUED BY REGION 3—Continued

[Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin]

Permit No.	Permit type	Permittee	Date issued
PER3044835	Scientific	Minnesota Pollution Control Agency	6/7/2023
PER1896698	Scientific	Caleb Knerr	6/9/2023
PER3249978	Scientific	Minnesota Zoo	6/14/2023
PER3335374	Scientific	USDA Forest Service	6/30/2023
PER3473736	Scientific	Iowa State University	6/30/2023
PER2764231	Scientific	Larisa Bishop-Boros	7/18/2023
PER3760873	Scientific	Lewis Environmental Consulting, LLC	7/21/2023
PER3764241	Scientific	Elisabeth Hollinden	7/21/2023
PER1224019	Scientific	Eric B. Snyder	7/21/2023
PER3964309	Scientific	National Park Service	8/2/2023
PER0109455	Scientific	Brianne Walters	8/8/2023
PER0723839	Scientific	Jeffrey D. Gordon	8/8/2023
PER2689519	Scientific	Jeanette Bailey	8/24/2023
PER4289673	Scientific	Keystone Ecological Services, LLC	8/24/2023
PER3924084	Scientific	RES Kentucky, LLC	8/25/2023
PER3614742	Scientific	Illinois Natural History Survey	8/25/2023
PER2816274	Scientific	Joe Snavely	8/25/2023
PER2920462	Scientific	Ohio Department of Transportation	8/25/2023
PER2549878	Scientific	Morgan E. Christman	8/25/2023
PER2872883	Scientific	Jeff Huebschman	8/25/2023
PER2885463	Scientific	Kyle Jansky	8/25/2023
PER4768599	Scientific	Joseph Hoyt	9/26/2023
PER4764625	Scientific	Samuel A. Schratz	9/28/2023
PER3193253	Scientific	Applied Science & Technology, Inc	9/29/2023
PER3696350	Scientific	Curtis Hart	9/29/2023
PER4408901	Scientific	Ohio Environmental Protection Agency	9/29/2023
PER3242216	Scientific	Lindsey N. Jakovljevic	9/29/2023
PER3542792	Scientific	Christopher B. Burke Engineering, Ltd	10/2/2023
PER3192519	Scientific	Illinois Natural History Survey	10/12/2023
PER5016185	Scientific	DIEHLUX LLC	10/13/2023
PER4561460	Scientific	Greg Gaulke	10/16/2023
PER3117158	Scientific	EcoAnalysts, Inc	10/20/2023
PER5565091	Scientific	Jason Bracken	12/8/2023
PER4830512	Scientific	Shaun McCoshum	12/11/2023
PER4687585	Scientific	Douglas Kapusinski	12/13/2023

Region 4 (Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands)

Table 4 shows permits issued by Region 4 of the Service. The table is sorted by type of permit or agreement and date issued. For more information about any of the HCP, CCAA, or SHA permits, contact the HCP, CCAA, or SHA Permit Coordinator by email at *PermitsR4ES@fws.gov* or by telephone at 404–679–7140. For more information about any of the scientific permits, contact the Recovery Permit Coordinator by email at *PermitsR4ES@fws.gov* or by telephone at 404–679–7140.

TABLE 4—PERMITS ISSUED BY REGION 4

[Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands]

Permit No.	Permit type	Permittee	Date issued
PER0119056	CCAA	Georgia Wildlife Resources Division	9/20/2023
PER0119117	CCAA	Florida Fish and Wildlife Conservation Commission	9/20/2023
PER0169202	HCP	Bio-Tech Consulting, Inc	1/12/2023
PER0517463	HCP	Barrett Thrasher	1/18/2023
PER0089909	HCP	IRA Innovations, LLC	1/19/2023
PER0095165	HCP	Bruce Krantz	1/23/2023
PER0117369	HCP	Marlaw Investments, LLC	1/23/2023
PER0890513	HCP	Brian Collins, dba BC Construction, LLC	1/30/2023
PER0113556	HCP	Patrick Garrett	1/30/2023
PER0117398	HCP	R&R Real Estate Holdings, LLC	1/30/2023
PER0107632	HCP	Jeffrey Rosen	2/6/2023
PER0039153	HCP	LIT BLV FL Old Lake Wilson Rd Phase 1 Owner, LLC	2/10/2023
PER0089863	HCP	Marc Fenwick	2/14/2023
PER1157521	HCP	Brian Spychalski	2/22/2023
PER0881876	HCP	Karl Williams	2/27/2023
PER0105803	HCP	ERSALLOG	2/27/2023

TABLE 4—PERMITS ISSUED BY REGION 4—Continued

[Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands]

Permit No.	Permit type	Permittee	Date issued
PER1239911	HCP	John Massey	3/1/2023
PER1749417	HCP	Whitson Builders, LLC	3/7/2023
PER0889460	HCP	Sean & Dawn Carmichael	3/10/2023
PER1474857	HCP	Cecilia Wales	3/10/2023
PER1877805	HCP	Island Development Custom Homes, LLC	3/10/2023
PER1558333	HCP	S&J Properties, LLC	3/15/2023
PER1373813	HCP	Randy Ammon	3/24/2023
PER0531313	HCP	Joshua Cain	3/29/2023
PER1171316	HCP	Kathryn Farris	3/30/2023
PER2261730	HCP	Conservation Resource Partners, LLC	4/4/2023
PER1963998	HCP	Seagull, LLC	4/12/2023
PER2064457	HCP	Hayden and Samantha Faison	4/19/2023
PER2258345	HCP	William Johns	4/19/2023
PER0068768	HCP	Luxer Development, LLC	5/10/2023
PER0053113	HCP	Tri-State Solar Project, LLC	5/25/2023
PER0068766	HCP	JDT of Central Florida	5/25/2023
PER0271956	HCP	Sampathkumar Srikanth	5/31/2023
PER3039622	HCP	James M. Hollis	6/2/2023
PER2243374	HCP	Tina Britton	6/8/2023
PER2514410	HCP	Scott Green	6/16/2023
PER3134909	HCP	Chura Residential Holdings AL, LLC	6/23/2023
PER0041055	HCP	R&R Real Estate Holdings, LLC	6/23/2023
PER3480890	HCP	R&R Real Estate Holdings, LLC	6/23/2023
PER2425491	HCP	Thomas Popee	6/23/2023
PER3336798	HCP	Regis Zurchin	6/23/2023
PER0563271	HCP	Remington Stewart, LLP	6/26/2023
PER0109456	HCP	Craig Martin	6/27/2023
PER2867375	HCP	R&R Real Estate Holdings, LLC	6/27/2023
PER3354001	HCP	MAS Development	7/6/2023
PER0046193	HCP	Forestar USA Real Estate Group, Inc	7/6/2023
PER3589973	HCP	Fawzy Sedrak	7/7/2023
PER3642643	HCP	Jesse Cronen	7/10/2023
PER3651568	HCP	David Lawson	7/11/2023
PER3256222	HCP	Finlay & Company, LLC	7/12/2023
PER3239910	HCP	Jason Bond	7/14/2023
PER1098771	HCP	Gulf Beach Subdivision C POA	7/14/2023
PER3694849	HCP	Matthew Bonin	7/14/2023
PER3520740	HCP	R&R Real Estate Holdings, LLC	7/19/2023
PER3339970	HCP	Craig Martin	7/19/2023
PER0284585	HCP	Lux Sand Castle, LLC	7/27/2023
PER0055690	HCP	Ashton Orlando Residential, LLC	7/28/2023
PER3932350	HCP	Conservation Resource Partners, LLC	7/31/2023
PER3664589	HCP	Christopher Prantl	7/31/2023
PER3667321	HCP	Tom M. Gordon	8/1/2023
PER3240371	HCP	Paul Wagner	8/3/2023
PER3573352	HCP	Patrick and Janie Minahan	8/15/2023
PER4141121	HCP	S & W Farms	8/15/2023
PER0607408	HCP	Legacy Westside Apartments, LLC	8/17/2023
PER3169546	HCP	Joshua Napp	8/24/2023
PER2261354	HCP	Malabar PO, LLC	8/31/2023
PER3363287	HCP	Serenity P., LLC	9/7/2023
PER3505063	HCP	Jason Bond	9/8/2023
PER0124344	HCP	Lake County, Hooks Street Extension	9/13/2023
PER4772083	HCP	David and Dorothy Knoepflein	9/29/2023
PER2768044	HCP	Center Point Integrated Solutions, LLC	10/12/2023
PER4722362	HCP	Craig Martin	10/17/2023
PER0046853	HCP	TC Florida Development, Inc	10/19/2023
PER0549463	HCP	Helen J. Crittendon	10/20/2023
PER1097491	HCP	Bio-Tech Consulting, Inc	10/20/2023
PER1368039	HCP	Kimaya, LLC	11/29/2023
PER5687008	HCP	James M. Brown	11/30/2023
PER2423322	HCP	Park Square Enterprises, LLC	12/4/2023
PER5437792	HCP	The Conservation Fund	12/7/2023
PER5670106	HCP	Lisa Norwood	12/15/2023
PER5645271	HCP	Timothy and Lora Carpentier	12/15/2023
PER5619460	HCP	Michelle Garmon	12/15/2023
PER5689661	HCP	Lux Sand Castle, LLC	12/15/2023
PER5710813	HCP	Craig Martin	12/15/2023
PER5712692	HCP	Craig Martin	12/15/2023

TABLE 4—PERMITS ISSUED BY REGION 4—Continued

[Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands]

Permit No.	Permit type	Permittee	Date issued
PER1971641	HCP	Coyote Crossings Holdings and Marion County Board of County Commissioners.	12/18/2023
PER5664161	HCP	John Thomas	12/20/2023
PER0031525	Scientific	U.S. Army Corps of Engineers, Memphis District	1/3/2023
PER0056434	Scientific	Amanda Yong	1/12/2023
PER0056459	Scientific	Jeffrey K. McDaniel	1/12/2023
PER0433409	Scientific	William Peifley	1/17/2023
PER0070437	Scientific	Christopher Daniel	1/20/2023
PER0055492	Scientific	Alanna L. Cohen	1/23/2023
PER0112931	Scientific	Phoebe N. Larkin	1/23/2023
PER0049605	Scientific	U.S. Forest Service	1/25/2023
PER0037593	Scientific	Don W. Hubbs	1/26/2023
PER0044182	Scientific	North Carolina Zoo	1/29/2023
PER0093007	Scientific	William Pruitt	1/30/2023
PER0038324	Scientific	Jesse Robinson	1/31/2023
PER0037812	Scientific	Burton Lim	1/31/2023
PER0125737	Scientific	Jamy I. Swiss	2/1/2023
PER0036439	Scientific	Stephanie A. Legare	2/3/2023
PER0064616	Scientific	Scott M. Cohen	2/6/2023
PER0040482	Scientific	Burns & McDonnell Engineering Company, Inc	2/9/2023
PER0039378	Scientific	Joseph D. Alderman	2/10/2023
PER0054807	Scientific	Kyrsten Beretsky	2/15/2023
PER0042583	Scientific	Jason B. Robinson	2/20/2023
PER0114446	Scientific	George Brice	3/6/2023
PER0972382	Scientific	Jacob Goodman	3/7/2023
PER0506491	Scientific	Jason Dean	3/13/2023
PER0043361	Scientific	Joan L. Morrison	3/14/2023
PER0037015	Scientific	Goethe State Forest	3/15/2023
PER1593428	Scientific	Albert Scott	3/15/2023
PER0012927	Scientific	Florida Museum of Natural History	3/17/2023
PER1090818	Scientific	Biff Roeling	3/20/2023
PER0039990	Scientific	Timothy W. Savidge	3/22/2023
PER0005185	Scientific	Chanston Osborne	3/26/2023
PER0009385	Scientific	Martin J. Melville	3/28/2023
PER1800628	Scientific	David VanBuren	3/29/2023
PER1911361	Scientific	Jacob Goodman	3/30/2023
PER2062544	Scientific	Robert Ossiboff	3/30/2023
PER1602630	Scientific	Sandhills Ecological Institute	3/31/2023
PER0045137	Scientific	Nathan D. Click	3/31/2023
PER0045271	Scientific	John G. Palis	4/7/2023
PER0037843	Scientific	Michael M. Gangloff	4/7/2023
PER0045266	Scientific	FTN Associates, Ltd	4/12/2023
PER0056376	Scientific	Betsie Rothermel	4/12/2023
PER1757755	Scientific	Michelle Gilley	4/14/2023
PER0037085	Scientific	Mississippi Aquarium	4/14/2023
PER0043371	Scientific	Leslie S. Meade	4/24/2023
PER2543013	Scientific	Brian Sharp	4/24/2023
PER1666154	Scientific	Larry Moses	4/25/2023
049502	Scientific	Carola A Haas	4/27/2023
PER0043978	Scientific	Carla Atkinson	4/27/2023
PER2800002	Scientific	Kristen Clemens	5/4/2023
PER0042954	Scientific	Central Florida Zoological Society	5/5/2023
PER1565691	Scientific	Copperhead Environmental Consulting, Inc	5/9/2023
PER1306120	Scientific	Anthony Marinelli	5/9/2023
PER0559193	Scientific	Joy M. O'Keefe	5/10/2023
PER1408431	Scientific	Carnivorous Plant Nursery	5/15/2023
PER0046345	Scientific	USDA Forest Service National Forests in Alabama	5/17/2023
PER0045907	Scientific	David Breininger	5/18/2023
PER0045959	Scientific	Sarah E. Veselka	5/18/2023
PER0047094	Scientific	Arkansas Highway and Transportation Department	6/5/2023
PER0022603	Scientific	Avian Research and Conservation Institute	6/7/2023
PER3190674	Scientific	Joan L. Morrison	6/8/2023
PER2789508	Scientific	Brian Navarrete	6/21/2023
PER2376038	Scientific	Tyrone D. Idleman	6/22/2023
PER2787587	Scientific	Randy Edwards	6/22/2023
PER2117968	Scientific	Robert T. Watts	7/13/2023
PER2500053	Scientific	Cristian Guerra	7/13/2023
PER0397782	Scientific	U.S. Forest Service	7/17/2023
PER2785939	Scientific	Liana Yang	7/17/2023
PER1740250	Scientific	HMB Professional Engineers, Inc	7/23/2023

TABLE 4—PERMITS ISSUED BY REGION 4—Continued

[Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands]

Permit No.	Permit type	Permittee	Date issued
PER0050578	Scientific	Stephen Golladay	7/27/2023
PER3980377	Scientific	Memphis Zoo	8/1/2023
PER0018443	Scientific	U.S. Army Engineer Research & Development Center	8/2/2023
PER0037218	Scientific	Alabama Department of Environmental Management	8/2/2023
PER0056002	Scientific	Atlanta Botanical Garden	8/3/2023
PER2496420	Scientific	Alabama Coastal Foundation	8/3/2023
PER3906467	Scientific	Charlie Brunton	8/7/2023
PER4049100	Scientific	John A. Murray	8/7/2023
PER3522309	Scientific	Ennis Berker	8/8/2023
PER4081887	Scientific	Alabama Department of Environmental Management	8/9/2023
PER0047514	Scientific	Alabama Power Company	8/11/2023
PER3128179	Scientific	McNeese State University	8/11/2023
PER3877606	Scientific	Joan L. Morrison	8/17/2023
PER4231057	Scientific	Georgia Museum of Natural History	8/17/2023
PER0051947	Scientific	Jeffrey Walters	8/24/2023
PER0051449	Scientific	Joshua Adams	8/24/2023
PER1097490	Scientific	Nick M. Haddad	8/25/2023
PER0054639	Scientific	Conservation Fisheries, Inc	8/28/2023
PER0042198	Scientific	Frank N. Ridgley	8/29/2023
PER0048747	Scientific	James W. Gore	9/5/2023
PER0051148	Scientific	Edwards-Pitman Environmental, Inc	9/5/2023
PER4458456	Scientific	Arkansas Highway and Transportation Department	9/5/2023
PER3095066	Scientific	Kelli Miller	9/5/2023
PER4208298	Scientific	Biff Roeling	9/5/2023
PER4319408	Scientific	Joshua J. Schmidt	9/5/2023
PER4327681	Scientific	Jamy I. Swiss	9/5/2023
PER4327682	Scientific	Travis S. Cox	9/5/2023
PER4215438	Scientific	Alyssa Hughes	9/6/2023
PER2974422	Scientific	Reed's Rhacs	9/7/2023
PER4379732	Scientific	Carola A. Haas	9/21/2023
PER0056088	Scientific	Riverside Environmental Consulting	9/22/2023
PER4307556	Scientific	Colin Lindsey	9/28/2023
PER4379651	Scientific	Biff Roeling	9/28/2023
PER0071461	Scientific	Tennessee Wildlife Resources Agency	10/5/2023
PER4458006	Scientific	Leighton Burton	10/19/2023
PER0056542	Scientific	Zoe D. Bryant	10/20/2023
PER3876632	Scientific	Fort Liberty Endangered Species Branch	10/20/2023
PER0718042	Scientific	U.S. Army, Fort Eisenhower	10/20/2023
PER4458115	Scientific	Alex Pepper	10/23/2023
PER3276222	Scientific	University of Florida	10/24/2023
PER4309888	Scientific	Central Florida Zoological Society	10/24/2023
PER0723487	Scientific	UT-Batelle Corp	10/26/2023
PER0056298	Scientific	Phillip Jordan	10/26/2023
PER0351909	Scientific	Pennington and Associates, Inc	11/1/2023
PER4542510	Scientific	Emma Willcox	11/2/2023
PER4179836	Scientific	James Godwin	11/3/2023
PER4898827	Scientific	Alabama Department of Environmental Management	11/6/2023
PER4580721	Scientific	The Creature Conservancy	11/6/2023
PER4620561	Scientific	Cameron Kruse	11/6/2023
PER4439184	Scientific	Christopher Suarez	11/7/2023
PER0388631	Scientific	Gordon-Bryon S Marsh	11/13/2023
PER4057171	Scientific	Kyrsten Beretsky	11/24/2023
PER4772546	Scientific	Ronald Stroupe	11/24/2023
PER4819382	Scientific	Robert T. Watts	11/29/2023
PER0970704	Scientific	Corblu Ecology Group, LLC	11/30/2023
PER4307501	Scientific	Chattahoochee-Oconee National Forests	12/7/2023
PER4243709	Scientific	Powersouth Energy Cooperative	12/7/2023
PER0083636	Scientific	Ray W. Eaton	12/7/2023
PER5127477	Scientific	Natalie Boyer	12/11/2023
PER5664140	Scientific	Richard Pedro	12/12/2023
PER5266683	Scientific	Joseph Simpson	12/18/2023
PER5297521	Scientific	Colin Lindsey	12/18/2023
PER5331768	Scientific	Jacob Goodman	12/18/2023
PER5402147	Scientific	Rebecca Ward	12/18/2023
PER5521499	Scientific	Austin Ackman	12/18/2023
PER1217169	Scientific	Ann Altman	12/20/2023
PER1849047	Scientific	David Eargle	12/20/2023
PER5670912	Scientific	Robert T. Watts	12/20/2023
PER5875950	Scientific	Shivam Patel	12/21/2023
PER0041144	SHA	North Carolina Wildlife Resources Commission	2/10/2023

Region 5 (Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia)

Table 5 shows permits issued by Region 5 of the Service. The table is sorted by date issued. For more information about any of the permits, contact the Recovery Permit Coordinator by email at *PermitsR5ES@fws.gov* or by telephone at 413–253–8212.

TABLE 5—PERMITS ISSUED BY REGION 5

[Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia]

Permit No.	Permit type	Permittee	Date issued
PER0132646	Scientific	Marine Mammal Stranding Center	2/7/2023
PER1313010	Scientific	U.S. Fish and Wildlife Service	2/13/2023
PER1410217	Scientific	Mark Hepner	2/15/2023
PER0048761	Scientific	Rhode Island Zoological Society	2/16/2023
PER1573712	Scientific	National Aquarium in Baltimore	2/23/2023
PER2174719	Scientific	Sea Research Foundation	3/29/2023
PER0047058	Scientific	Massachusetts Division of Fisheries and Wildlife	3/31/2023
PER0055310	Scientific	Gian L. Rocco	4/5/2023
PER1885223	Scientific	Wildlife Restoration Partnerships	4/14/2023
PER2120866	Scientific	Virginia Polytechnic Institute	4/21/2023
PER1540434	Scientific	Steve Tanguay	4/24/2023
PER1373652	Scientific	University of Rhode Island	4/25/2023
PER1541732	Scientific	Emily K. Pody	5/8/2023
PER1745522	Scientific	Zeinab M. Haidar	5/8/2023
PER2989773	Scientific	Wildlife Restoration Partnerships	5/24/2023
PER3025678	Scientific	Sea Turtle Recovery	5/31/2023
PER3049521	Scientific	Atlantic Marine Conservation Society	6/1/2023
PER1541934	Scientific	Audubon Seabird Institute	6/1/2023
PER3160225	Scientific	Massachusetts Division of Fisheries and Wildlife	6/12/2023
PER0046838	Scientific	National Marine Fisheries Service	6/28/2023
PER3529969	Scientific	Riverhead Foundation for Marine Research and Preservation	6/29/2023
PER3577603	Scientific	White Sulphur Springs National Fish Hatchery	7/6/2023
PER0132646	Scientific	Marine Mammal Stranding Center	2/7/2023
PER1313010	Scientific	U.S. Fish and Wildlife Service	2/13/2023
PER1410217	Scientific	Mark Hepner	2/15/2023
PER0048761	Scientific	Rhode Island Zoological Society	2/16/2023

Region 6 (Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming)

Table 6 shows permits issued by Region 6 of the Service. The table is sorted by type of permit or agreement and date issued. For more information about any of the CCAA or HCP permits, contact the CCAA or HCP Permit Coordinator by email at *PermitsR6ES@fws.gov* or by telephone at 303–236–7905. For more information about any of the recovery permits, contact the Recovery Permit Coordinator by email at *PermitsR6ES@fws.gov* or by telephone at 303–236–4224.

Permit No.	Permit type	Permittee	Date issued
PER2352309	CCAA	Eagle Ridge Ranch Co	4/4/2023
PER0085472	HCP	St. Charles Brookside, LLC	3/30/2023
PER3645116	HCP	City of Colorado Springs	7/27/2023
PER0330501	Scientific	National Mississippi River Museum & Aquarium	1/4/2023
PER0048042	Scientific	Horrocks Engineers	1/9/2023
PER0194551	Scientific	Montana Department of Fish, Wildlife And Parks	1/12/2023
PER0013187	Scientific	DJ&A, P.C	1/17/2023
PER0774112	Scientific	South Dakota Game, Fish and Parks Department	1/23/2023
PER0104630	Scientific	U.S. Fish and Wildlife Service	1/26/2023
PER0047113	Scientific	Friends of the Topeka Zoo, Inc	1/30/2023
PER1380073	Scientific	U.S. Geological Survey	2/14/2023
704930	Scientific	U.S. Fish and Wildlife Service	2/14/2023
PER0057787	Scientific	Western Ecosystems Technology	2/17/2023
PER0535647	Scientific	HWA Wildlife Consulting, LLC	3/17/2023
PER0114854	Scientific	Rustin Nordsven	4/17/2023
PER2611714	Scientific	Jim Reiser	4/26/2023
PER1710884	Scientific	Meadowlark Environmental, LLC	4/28/2023
PER2616267	Scientific	Jameson T. Reiser	5/1/2023
PER0056871	Scientific	ERO Resources Corporation	5/4/2023
PER2804602	Scientific	Colorado Natural Heritage Program, Colorado State University	5/4/2023
PER0108217	Scientific	Bluestem Consulting, LLC	5/9/2023

Permit No.	Permit type	Permittee	Date issued
PER2873418	Scientific	Christopher Guy	5/11/2023
PER0045992	Scientific	Prairie Wildlife Research, Inc	5/15/2023
PER2042008	Scientific	North Dakota State University	5/22/2023
PER0050172	Scientific	Cheyenne Mountain Zoo	6/14/2023
PER0380992	Scientific	Josiah J. Nelson	6/14/2023
PER2684529	Scientific	Glen Canyon National Recreation Area	6/23/2023
PER3527015	Scientific	Department of Agriculture and Natural Resources	6/29/2023
PER3596121	Scientific	Lower Brule Sioux Tribe Dept Wildlife, Fish and Recreation	7/6/2023
PER0056247	Scientific	Louisville Zoological Garden	7/10/2023
PER3694848	Scientific	Colorado State University	7/13/2023
PER2041868	Scientific	Wyoming Natural Diversity Database—Zoology Dept	7/13/2023
PER0039146	Scientific	Blanchard Environmental Consulting	8/18/2023
PER4264523	Scientific	Power Engineers, Inc	8/29/2023
PER4415788	Scientific	Interwest Wildlife & Ecological Services, Inc	8/30/2023
PER4449727	Scientific	Zion National Park	9/1/2023
PER4756147	Scientific	National Park Service Niobrara National Scenic River	9/25/2023
PER5060766	Scientific	Lincoln Children's Zoo	10/16/2023
PER4054943	Scientific	Colorado Field Office	11/6/2023
PER5589490	Scientific	Bureau of Land Management—State Office	11/22/2023
PER4488505	Scientific	Felsburg Holt & Ullevig	11/28/2023
PER3038588	Scientific	Denver Botanic Gardens, Inc	12/6/2023
PER5476481	Scientific	University Of Nebraska	12/8/2023
PER6044174	Scientific	New Century Environmental, LLC	12/21/2023

Region 7 (Alaska)

Table 7 shows the recovery permit issued by Region 7 of the Service. For more information, contact the Permit Coordinator, by email at *PermitsR7ES@fws.gov* or by telephone at 907–786–3323.

TABLE 7—PERMIT ISSUED BY REGION 7

[Alaska]

Permit No.	Permit type	Permittee	Date issued
PER0050004	Scientific	Seward Association for the Advancement of Marine Science	10/27/2023

Region 8 (California, Nevada, and the Klamath Basin Portion of Oregon)

Table 8 shows the permits issued by Region 8 of the Service. The table is sorted by type of permit or agreement and date issued. For more information about any of the HCP or SHA permits, contact the HCP or SHA Permit Coordinator, by email at *ITEOSpermitsR8ES@fws.gov* or by telephone at 916–414–6464. For more information about any of the recovery permits, contact the Recovery Permit Coordinator, by email at *PermitsR8ES@fws.gov* or by telephone at 916–414–6464.

TABLE 8—PERMITS ISSUED BY REGION 8

[California, Nevada, and the Klamath Basin Portion of Oregon]

Permit No.	Permit type	Permittee	Date issued
PER1717545	HCP	Spring Mountain Raceway, LLC	3/3/2023
PER2452240	HCP	Element Consulting	4/10/2023
PER2756059	HCP	Los Angeles County Public Works	5/4/2023
PER2809265	HCP	Morgan Krapes-Kiah	5/16/2023
PER2322205	HCP	WECAT, LLC	6/16/2023
PER3596122	HCP	Golden State Water Company	7/25/2023
PER3763569	HCP	G3 Enterprises, Inc	8/21/2023
PER4671392	HCP	Conoco Phillips	9/22/2023
PER4776519	HCP	Sweetwater Authority	9/29/2023
PER4990218	HCP	Clayton Shannon	10/12/2023
PER4956429	HCP	San Diego Gas & Electric	10/20/2023
PER5234254	HCP	Ray Krause	11/14/2023
PER5267797	HCP	Paul Kasson	11/22/2023
PER0117687	HCP	Los Angeles Department of Water and Power	11/28/2023
PER6247735	HCP	Louis Jutras	12/22/2023
PER6099522	HCP	Andris Upitis	12/27/2023
PER0018930	Scientific	National Park Service, Crater Lake National Park	1/4/2023
PER0037722	Scientific	Amy Bakker	1/5/2023
PER0046237	Scientific	Richard Lis	1/5/2023
PER0046335	Scientific	Joel J. Mulder	1/11/2023
PER0045164	Scientific	Environmental Science Associates	1/12/2023

TABLE 8—PERMITS ISSUED BY REGION 8—Continued

[California, Nevada, and the Klamath Basin Portion of Oregon]

Permit No.	Permit type	Permittee	Date issued
PER0036770	Scientific	Thea Benson	1/12/2023
PER0045083	Scientific	Jonathan Aguayo	1/12/2023
PER0046221	Scientific	Sarah Krejca	1/12/2023
PER0045277	Scientific	Glen Y. Kinoshita	1/12/2023
PER0045161	Scientific	Cullen A. Wilkerson	1/18/2023
PER0046264	Scientific	Midpeninsula Regional Open Space District	1/27/2023
PER0040619	Scientific	Tammy Lim	1/27/2023
PER0046364	Scientific	Geoff Hoetker	1/27/2023
PER0046347	Scientific	Elena Gregg	2/7/2023
PER0046261	Scientific	Jeff Gurule	2/7/2023
PER0046234	Scientific	Nathan Moorhatch	2/16/2023
PER0028461	Scientific	Ryan Quilley	2/16/2023
PER0045232	Scientific	U.S. Geological Survey—Western Ecological Research Center	2/23/2023
PER0075531	Scientific	Barry Nerhus	2/23/2023
PER0027380	Scientific	Catalina Island Conservancy	2/24/2023
PER0039159	Scientific	Kimberly Ferree	2/24/2023
PER0022791	Scientific	Recon Environmental, Inc	2/24/2023
PER0036707	Scientific	Spencer Langdon	2/24/2023
PER0032395	Scientific	Tara Baxter	2/24/2023
PER0045963	Scientific	Nina L. Kidd	2/25/2023
PER0045258	Scientific	Alicia Cooper Hill	2/25/2023
PER0050236	Scientific	Kedest Ketsela	2/25/2023
PER0046223	Scientific	Thomas Dayton	2/25/2023
PER0049784	Scientific	Andrew M. Steyers	2/25/2023
PER0040618	Scientific	Jesse Reebs	3/1/2023
PER0046266	Scientific	Brian Lohstroh	3/1/2023
PER0057527	Scientific	Sadie McGarvey	3/1/2023
PER0046275	Scientific	Victor Novik	3/1/2023
PER0049777	Scientific	Melissa Busby	3/1/2023
PER0046188	Scientific	Center for Natural Lands Management	3/1/2023
PER0046276	Scientific	Dale Ritenour	3/1/2023
PER0046179	Scientific	Stefanie Nisich	3/1/2023
PER0046312	Scientific	Jennifer Kendrick	3/1/2023
PER0046257	Scientific	Michael Wilcox	3/1/2023
PER0046258	Scientific	Jeff Priest	3/1/2023
PER0046133	Scientific	Scott Crawford	3/1/2023
PER0036662	Scientific	Point Reyes Bird Observatory	3/2/2023
PER0159654	Scientific	Thomas Gast & Associates Environmental Consultants	3/2/2023
PER0046256	Scientific	San Francisco Zoological Society	3/2/2023
PER0045233	Scientific	Paul C. Keating	3/2/2023
PER0121617	Scientific	Kyle S. Wear	3/2/2023
PER0046426	Scientific	Tetra Tech, Inc	3/3/2023
PER0041933	Scientific	Suk-Ann Yee	3/3/2023
PER0034919	Scientific	Mason Holmes	3/3/2023
PER0046366	Scientific	Kristin E. Smith	3/3/2023
PER0046430	Scientific	Russell Sweet	3/3/2023
PER0050163	Scientific	Anderson Tate-Montenegro	3/3/2023
PER0050168	Scientific	Nicolette E Murphey	3/3/2023
PER0046362	Scientific	Ventana Wildlife Society	3/6/2023
PER0044410	Scientific	Debra S. Barringer	3/8/2023
PER0046238	Scientific	Wendy Knight	3/9/2023
PER0046277	Scientific	Hannah Donaghe	3/9/2023
PER0028403	Scientific	Darrell Steely	3/9/2023
PER0057586	Scientific	Dwayne Oberhoff	3/9/2023
PER0044685	Scientific	Oregon Zoo	3/13/2023
PER0044970	Scientific	Monterey Bay Aquarium Foundation	3/13/2023
PER0036307	Scientific	Kimberly Paradis	3/13/2023
PER0046334	Scientific	Steve Howard	3/13/2023
PER0046132	Scientific	Amy Palkovic	3/14/2023
PER0028351	Scientific	Bryan Mori	3/14/2023
PER0042665	Scientific	Griffith Wildlife Biology	3/28/2023
PER0057234	Scientific	Robert Patton	3/28/2023
PER0038601	Scientific	Monica M. Jacinto	3/28/2023
PER0040959	Scientific	Stillwater Sciences	3/30/2023
PER0046254	Scientific	Stephanie M. Seay	4/3/2023
PER0055978	Scientific	East Bay Municipal Utility District	4/5/2023
PER0039806	Scientific	Jennifer Michaud-Laird	4/5/2023
PER0027498	Scientific	Bumgardner Biological Consulting	4/5/2023
PER0040490	Scientific	Anna L. Erway	4/5/2023
PER2198850	Scientific	Cullen A Wilkerson	4/6/2023
PER0040606	Scientific	Benjamin Carter	4/6/2023

TABLE 8—PERMITS ISSUED BY REGION 8—Continued

[California, Nevada, and the Klamath Basin Portion of Oregon]

Permit No.	Permit type	Permittee	Date issued
PER0050170	Scientific	Brian D. Woodward	4/6/2023
PER0050222	Scientific	Karly Moore	4/21/2023
PER0050221	Scientific	Carolyn Martus	4/21/2023
PER0046227	Scientific	Advanced Solutions for Earth's Future	4/21/2023
PER0046260	Scientific	USDA Forest Service	4/24/2023
PER0057549	Scientific	Kyla Garten	4/24/2023
068799	Scientific	Mikael Romich	4/25/2023
PER0057553	Scientific	Steven Morris	4/25/2023
PER0057230	Scientific	Melissa Blundell	4/25/2023
PER1439930	Scientific	U.S. Geological Survey	4/25/2023
PER0046182	Scientific	Ethan Ripperger	4/27/2023
PER0046263	Scientific	Vollmar Natural Lands Consulting	5/1/2023
PER0045275	Scientific	Kleinfelder	5/1/2023
PER0046274	Scientific	Peter Trenham	5/1/2023
PER1620290	Scientific	Spring Strahm	5/5/2023
PER0057528	Scientific	Condor Country Consulting, Inc	5/9/2023
PER0050169	Scientific	Tanner Lichty	5/9/2023
PER0057237	Scientific	Steven Pruett	5/9/2023
PER0057271	Scientific	William C. Webb, Jr	5/9/2023
PER0121306	Scientific	Matthew Fogarty	5/9/2023
PER0121456	Scientific	Tara Collins	5/9/2023
PER0050210	Scientific	Carol Witham	5/19/2023
PER2479895	Scientific	Dale Powell	6/6/2023
PER0050065	Scientific	Copper Mountain College	6/14/2023
PER0046310	Scientific	California State Parks—Channel Coast District	6/15/2023
PER0050241	Scientific	Rancho Santa Ana Botanic Garden	6/16/2023
PER2424938	Scientific	Westland Resources, Inc	6/30/2023
PER0057236	Scientific	Sophie Siegel	7/6/2023
PER1628411	Scientific	Mira Falicki	7/6/2023
PER1628412	Scientific	Frog Mouth Ecological Services	7/6/2023
PER2367455	Scientific	Miles Hartnett	7/6/2023
PER0057550	Scientific	Katherine McLean	7/7/2023
PER0055445	Scientific	Thomas Ryan	7/12/2023
PER0057554	Scientific	Susan Scatolini	7/19/2023
PER0057582	Scientific	Ron Francis, Jr	7/19/2023
PER0046273	Scientific	Manna Warburton	7/19/2023
PER0137106	Scientific	Jonathan Feenstra	7/19/2023
PER0057557	Scientific	Brennan C. Vettes	7/19/2023
PER0132767	Scientific	Justin Wood	7/19/2023
PER0997674	Scientific	Ian Maunsell	7/19/2023
PER0152185	Scientific	Christine Harvey	7/19/2023
PER0057543	Scientific	Ruben Ramirez	7/19/2023
PER0046431	Scientific	WSP USA Environment & Infrastructure, Inc	7/19/2023
PER0057544	Scientific	Valente Ayala	7/19/2023
PER0133425	Scientific	Los Angeles World Airports	7/24/2023
PER0040403	Scientific	Zoological Society of San Diego	7/24/2023
PER0121441	Scientific	Anna Touchstone	7/27/2023
PER0046336	Scientific	Olofson Environmental, Inc	7/27/2023
PER0034725	Scientific	Emilie Strauss	7/27/2023
PER0032679	Scientific	Avocet Research Associates	7/27/2023
PER2385623	Scientific	Alex Berryman	7/27/2023
PER2385624	Scientific	Ian Jackson	7/27/2023
PER0057548	Scientific	Laura Burris	7/28/2023
PER0046343	Scientific	Zoological Society of San Diego	8/3/2023
PER2452405	Scientific	Vipul Joshi	8/10/2023
PER0057551	Scientific	Jeff Kidd	8/10/2023
PER0057267	Scientific	Blake Claypool	8/10/2023
PER0165960	Scientific	Ingrid Eich	8/10/2023
PER0137107	Scientific	Michael Galloway	8/10/2023
PER2453199	Scientific	Griffin Brungraber	8/10/2023
PER2344464	Scientific	Michael C. Couffer	8/10/2023
PER0046542	Scientific	Douglas Allen	8/10/2023
PER0057556	Scientific	Ryan Winkleman	8/10/2023
PER0051965	Scientific	Steven Chen	8/10/2023
PER0089185	Scientific	Donald W. Alley	8/14/2023
PER0050068	Scientific	David Jacobs	8/14/2023
PER2344252	Scientific	ICF Jones & Stokes, Inc	8/15/2023
PER0046270	Scientific	National Park Service, Pinnacles National Park	8/17/2023
PER0057273	Scientific	Brian T. Pittman	8/29/2023
PER0050191	Scientific	Jeffery T. Wilcox	8/29/2023
PER1656790	Scientific	Michael Scaffidi	8/29/2023

TABLE 8—PERMITS ISSUED BY REGION 8—Continued

[California, Nevada, and the Klamath Basin Portion of Oregon]

Permit No.	Permit type	Permittee	Date issued
PER2452406	Scientific	Eli Rose	8/29/2023
PER2434485	Scientific	David Wolff	8/30/2023
PER2426711	Scientific	Bonnie Peterson	8/30/2023
PER0046272	Scientific	Mesa Biological, LLC	8/30/2023
PER0057269	Scientific	Natalie Reeder	8/30/2023
PER1628413	Scientific	Mario E. Gaytan	8/30/2023
PER2371117	Scientific	Lora Roame	8/30/2023
PER0050226	Scientific	ECORP Consulting, Inc	9/5/2023
PER0057261	Scientific	Dalton Stanfield	9/5/2023
PER0120424	Scientific	John Howard	9/6/2023
PER0122085	Scientific	Allison Rudalevige	9/6/2023
PER2453183	Scientific	Taylor Dee	9/6/2023
PER2449673	Scientific	Thea Wang	9/6/2023
PER2453506	Scientific	Markus Spiegelberg	9/6/2023
PER2469753	Scientific	John Dicus	9/6/2023
PER1383320	Scientific	Conservation Society of California	9/6/2023
PER2344367	Scientific	Jonathan Aguayo	9/6/2023
PER0057547	Scientific	Shelley M. Jaramillo	9/6/2023
PER0121458	Scientific	Donald W. Hardeman Jr	9/6/2023
PER0211375	Scientific	Britney A. Schultz	9/6/2023
PER2385795	Scientific	Peter Y. Drobny	9/6/2023
PER0046425	Scientific	Mantech SRS Technologies, Inc	9/7/2023
PER2481657	Scientific	Jennifer Sexton	9/7/2023
PER2452942	Scientific	Bureau of Land Management—Mother Lode Field Office	9/19/2023
PER2101274	Scientific	Paul Morrissey	9/19/2023
PER2478054	Scientific	LSA Associates, Inc	9/19/2023
PER1171011	Scientific	David Faulkner	9/19/2023
PER2380360	Scientific	Sarah J. Yates	9/19/2023
PER2381586	Scientific	National Park Service Yosemite National Park	9/19/2023
PER2421919	Scientific	Patrick Kong	9/19/2023
PER0057558	Scientific	Cynthia Hartley	9/25/2023
PER0057583	Scientific	McCormick Biological, Inc	9/27/2023
PER2372350	Scientific	Steven Lee	9/27/2023
PER0048094	Scientific	Sequoia Park Zoo—City of Eureka	10/31/2023
PER2805325	Scientific	California Department of Fish and Wildlife	11/7/2023
069171	Scientific	National Park Service, Santa Monica Mountains National Recreation Area	12/11/2023
PER0268927	SHA	Craig Blencowe	1/17/2023
17874C	SHA	Las Vegas Valley Water District	3/30/2023
PER2965862	SHA	USFWS—Carlsbad Fish and Wildlife Office	6/30/2023

Availability of Documents

You may request copies of original application materials, along with public comments we received, from the offices that issued the permits (see contact information for appropriate regions, above). Documents and other information submitted with the applications are available for review subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552), by any party who submits a written request for a copy of such documents.

Authority

We provide this notice under the authority of section 10 of the ESA (16 U.S.C. 1531 *et seq.*).

Ya-Wei Li,

Assistant Director for Ecological Services.

[FR Doc. 2024–26782 Filed 11–15–24; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[256A2100DD/AAKC001030/A0A501010.999900]

Prairie Island Indian Community; Amendments to Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes amendments to the Prairie Island Indian Community's Liquor Control Ordinance. This Ordinance amends and supersedes the existing Prairie Island Mdewakanton Dakota Community Liquor Control Ordinance, adopted on July 10, 1992, by Resolution Number 92–84; and amended on October 14, 1992, by Resolution Number 92–118.

DATES: This ordinance shall become effective December 18, 2024.

FOR FURTHER INFORMATION CONTACT: Sherrel LaPointe, Tribal Operations Officer, Midwest Regional Office, Bureau of Indian Affairs, 5600 American Boulevard West, Suite 500, Bloomington, Minnesota 55437, Telephone: (612) 725–4500, Fax: (612) 713–4401.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor control ordinances for the purpose of regulating liquor transactions in Indian country. On August 9, 2023, the Prairie Island Indian Community Council adopted the amendments to the Community's Liquor Control Ordinance by Resolution Numbers 23–8–9–150. This **Federal Register** Notice comprehensively amends and supersedes the existing

Prairie Island Indian Community Liquor Control Ordinance which was published in the **Federal Register** on December 1, 1992 (57 FR 56960).

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that the Prairie Island Indian Community Tribal Council duly adopted these amendments to the Prairie Island Indian Community Liquor Control Ordinance on August 9, 2023.

Bryan Newland,

Assistant Secretary–Indian Affairs.

The Prairie Island Indian Community's Liquor Control Ordinance, as amended, shall read as follows:

Prairie Island Indian Community

Liquor Control Ordinance

Section 1. Short Title. This Ordinance shall be known and may be cited as the Prairie Island Indian Community Liquor Control Ordinance.

Section 2. Statement of Purpose, Findings, and Authority.

a. Purpose. It is the Community's policy to ensure that any transaction, importation, sale, or consumption involving an alcoholic beverage, while within the Tribe's jurisdiction, shall occur in strict compliance with this Ordinance, the laws of the United States and the State of Minnesota.

b. Findings. [reserved].

c. Authority. This Ordinance is an exercise of the inherent sovereignty of the Community and shall be deemed an exercise of the Community Council's power to protect the welfare, health, peace, morals, and safety of the people of the Community.

Section 3. Definitions.

a. ''Community'' means the Prairie Island Indian Community in the State of Minnesota, a federally recognized Indian Tribe.

b. ''Community Council'' means the constitutionally authorized governing body of the Community.

c. ''Alcoholic beverage'' means any intoxicating liquor, low point beer, or any wine, as defined under the provisions of this Ordinance.

d. ''Application'' means a formal written request for the issuance of a license supported by a verified statement of facts.

e. ''Community'' means the Prairie Island Indian Community in the State of Minnesota, a federally recognized Indian Tribe.

f. ''Community Council'' means the constitutionally authorized governing body of the Community.

g. ''Establishment'' means any liquor store or any on- or off-sale dealer.

h. ''High point beer'' means any beer having an alcoholic content in excess of three and two-tenths per centum (3.2%) of weight.

i. ''Intoxicating liquor'' means any liquid either commonly used, or reasonably adapted to use, for beverages purposes containing in excess of three and two-tenths per centum (3.2%) of alcohol by weight. This shall include any type of wine, regardless of alcoholic content.

j. ''Legal age'' means the age requirements as defined in Section 16.

k. ''Liquor store'' means any store, established by the Community or licensed individual or entity, for the sale of alcoholic beverages.

l. ''Low point beer'' means any liquid either commonly used, or reasonably adapted to use, for beverage purposes, and which is produced wholly or in part from brewing of any grain or grains, malt substitute, and which contains any alcohol whatsoever, but no more than three and two-tenths per centum (3.2%) of alcohol by weight.

m. ''Off-sale'' means the sale of any alcoholic beverages for consumption off the premises where sold.

n. ''On-sale dealer'' means the Community or licensed individual or entity that sells, or keeps for sale any alcoholic beverage authorized under this Ordinance for consumption on the premises where sold.

o. ''On-sale'' means the sale of any alcoholic beverage for consumption only upon the premises where sold.

p. ''Reservation'' means all territory subject to the Community's jurisdiction.

q. ''Sale'' means the transfer of any bagged, bottled, boxed, canned or kegged alcoholic beverage, or the serving of any contents of any bagged, bottled, boxed, canned or kegged alcoholic beverage for a consideration of currency exchange.

r. ''Transaction'' means any transfer of any bagged, bottled, boxed, canned, or kegged alcoholic beverage, or the transfer of any contents of any bagged, bottled, boxed, canned or kegged alcoholic beverage from any liquor store, on-sale dealer or vendor to any person.

s. ''Vendor'' means any person employed or under the supervision by and of a liquor store or on-sale dealer who conducts sales or transactions involving alcoholic beverages.

t. ''Wine'' means any beverage containing alcohol obtained by the fermentation of the natural sugar contents of fruits or other agricultural products, and containing not more than seventeen percent (17%) of alcohol by weight, including sweet wines, fortified with wine spirits, such as port, sherry, muscatel, and angelica.

Section 4. Applicability. [reserved]

Section 5. General Prohibition. It shall be unlawful to manufacture for sale, sell, offer, or keep for sale, possess, transport or conduct any transaction involving any alcoholic beverage except in compliance with the terms, conditions, limitations, and restrictions specified in this Ordinance.

Section 6. Community Control of Alcoholic Beverages. The Council shall have the sole and exclusive right to authorize the importation of alcoholic beverages for sale or for the purpose of conducting transactions therewith, and no person or organization shall so import any such alcoholic beverage into the Reservation unless authorized by the Council.

Section 7. Community Liquor Store. The Council may establish and maintain anywhere on the Reservation that the Council may deem advisable, a community liquor store or stores for storage and off-sale of alcoholic beverages in accordance with the provisions of this Ordinance. The Council may set the prices of alcoholic beverages sold.

Section 8. Community On-Sale Dealer. The Council may establish and maintain anywhere on the Reservation that the Council may deem advisable, a community on-sale dealer or dealers for storage and on-sale of alcoholic beverages in accordance with the provisions of this Ordinance. The Council may set the prices of alcoholic beverages sold.

Section 9. State of Minnesota Licenses. The Council shall notify the State of Minnesota of any Community operated establishment that sells alcoholic beverages or conducts transactions involving alcoholic beverages in compliance with Minn. Stat. 340A.4055.

Section 10. Liability Insurance. For the purpose of complying with 18 U.S.C. 1161 and the Minnesota Liquor Act, the Council, or any entity licensed by the Council, shall demonstrate proof of financial responsibility to the State of Minnesota by obtaining the necessary liability insurance required by Minn. Stat. 340A.409.

Section 11. License Restrictions, General.

a. License Posting. A retail license to sell alcoholic beverages must be posted in a conspicuous place in the premises for which it is used.

b. Gambling Compliance. Gambling on premises where alcoholic beverages are to be sold must be in compliance under the Indian Gaming Regulatory Act of 1988, 25 U.S.C. 2701, et. seq. and

Chapter 349 and 349A of the Minnesota Statutes.

c. License Limited to Space Specified. A retail license to sell any alcoholic beverage is only effective for the compact and contiguous space specified in the approved license application.

Section 12. License Restrictions; Intoxicating Liquor Licenses.

a. Investigation of On-Sale Licenses. The Community Council shall appoint a person to cooperate with any city or county official in the conduct of any preliminary background and/or financial investigation for the purposes of complying with Minn. Stat. 304A.412. However, nothing in this section shall mean and be construed to be a waiver of the Community's sovereign immunity and shall allow any city or county official to conduct any investigation not specifically authorized by the Community Council as documented by a written resolution.

b. Off-sale limitation. The Community shall not apply for more than one off-sale intoxicating liquor license.

c. General compliance. The Community Council shall comply with all prohibitions as stated in Minn. Stat. 340A.412, Subd. 4.

d. Employment of Minors. No person under 18 years of age may serve or sell intoxicating liquor on the Prairie Island Indian Reservation.

Section 13. Restrictions on the Number of Intoxicating Liquor Licenses that May Be Issued.

a. Referendum for Additional On-Sale Licenses. The Community Council may issue on-sale intoxicating liquor licenses over the number permitted under Section 13 when authorized by the voters of the Community at a general or special election.

b. Referendum Questions. The Community Council may direct that either of the following questions be placed on the ballot.

1. ''Shall the Community Council be allowed to issue 'on-sale' licenses for the sale of intoxicating liquor at retail in excess of the number permitted by law?''

2. ''Shall the Community Council be allowed to issue (a number to be determined by the governing body) 'on-sale' licenses for the sale of intoxicating liquor at retail in excess of the number now permitted by law?''

Section 14. Responsibility of Licensee. Every licensee is responsible for the conduct in the licensed establishment and any sale of alcoholic beverages by any employee authorized to sell alcoholic beverages in the establishment is the act of the licensee for the purposes of all provisions of this Ordinance.

Section 15. Sales to Obviously Intoxicated Persons. No person may sell, give, furnish, or in any way procure for another alcoholic beverages for the use of an obviously intoxicated person. Nothing herein shall be construed as a waiver of the Community's sovereign immunity from suit for any violation of this section by a licensee or employee of a Community facility.

Section 16. Persons Under 21 Years of Age; Restrictions.

a. The Council shall enforce the State of Minnesota laws regarding restrictions on those persons under the age of 21 years in any Community establishment operating pursuant to the provisions of this Ordinance.

b. No Community operated or licensed establishment shall sell, barter, furnish, give or allow to be consumed therein alcoholic beverages to and by a person under 21 years of age.

c. Any Community operated or licensed establishment shall require proof of age for purchasing or consuming alcoholic beverages by requiring a valid driver's license or State of Minnesota identification card, or in the case of a foreign national a valid passport to be shown at any time deemed necessary while on the premises of a Community operated or licensed establishment.

d. Any Community operated or licensed establishment shall prohibit all persons under the age of 21 years to enter the establishment except to:

1. perform work if the person is 18, 19, or 20 years of age;

2. consume meals while accompanied by an adult who is the legal guardian or parent of the person; or

3. attend social functions that are held in a portion of the establishment where alcoholic beverages are not sold.

e. No Community operated or licensed establishment shall employ any person under the age of 18 years to serve or sell alcoholic beverages.

Section 17. Hours and Days of Sale.

a. No Community operated or licensed establishment shall sell or furnish alcoholic beverages for on-sale purposes between 1:00 a.m. and 8:00 a.m. on the days of Monday through Saturday, after 1:00 a.m. on Sundays, or otherwise not in compliance with Minn. Stat. 340A.504.

b. No Community operated or licensed establishment shall sell or furnish alcoholic beverages for off-sale purposes: (1) on Sundays; (2) before 8:00 a.m. on Monday through Saturday; (3) after 10:00 p.m. on Monday through Saturday; or (4) otherwise not in compliance with Minn. Stat. 340A.504.

Section 18. Sales of Ethyl and Neutral Spirits Prohibited. No person may sell at retail for beverage purposes ethyl alcohol or neutral spirits, or substitutes thereof, possessing the taste, aroma, and characteristics generally attributed to ethyl alcohol or neutral spirits. Nothing in this section prohibits the manufacture or sale of other products obtained by use of ethyl alcohol or neutral spirits as defined in U.S. Treasury Department, Bureau of Internal Revenue, Regulations 125, Article II, Standards of Identity for Distilled Spirits.

Section 19. Power to License and Tax. The power to establish licenses and levy taxes under the provisions of this Ordinance is vested exclusively with the Council.

Section 20. Community Liquor Licenses. The Council shall issue by resolution, upon proper application and Council approval, a Community liquor license to any establishment wishing to sell, serve, or furnish alcoholic beverages or conduct transactions involving alcoholic beverages within the boundaries of the Reservation.

Section 21. Classes of Licenses. Classes of Community licenses under this Ordinance shall be as follows:

a. Class A Off-Sale Liquor store; and

b. Class B On-Sale Dealer

Section 22. Community Operated Establishments. The Council shall issue by resolution one appropriate license to a Community operated establishment upon determining the site for the establishment, creating an operating infrastructure for the establishment and obtaining the appropriate licensing from the State of Minnesota.

Section 23. No Licenses Issued. The Council shall not issue any licenses to any person or entity other than the Community until this Ordinance is properly amended to authorize the licensing of non-Community persons or entities.

Section 24. Display of Community License. Any establishment licensed pursuant to the provisions of this Ordinance shall display the Community license in a conspicuous place.

Section 25. Distribution of Profits. All profits from the sale of alcoholic beverages on the Reservation are subject to distribution of the Council in accordance with its usual appropriation procedures for essential governmental and social services.

Section 26. Records. [reserved]

Section 27. Miscellaneous Provisions.

a. Sovereign Immunity. Nothing in this Ordinance shall be construed as a waiver of the Prairie Island Indian Community in the State of Minnesota's sovereign immunity.

b. Severability. If any provision of this Ordinance or its application to any

person or circumstance is held invalid, the remainder of this Ordinance, or the application of the provision to other persons or circumstances is not affected.

c. Amendment or Repeal of Ordinance. This Ordinance may be amended or repealed only by a majority vote of the Council in regular session.

[FR Doc. 2024–26812 Filed 11–15–24; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_AK_FRN_MO4500181836; F–14837–A]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: The Bureau of Land Management (BLM) hereby provides constructive notice that it will issue an appealable decision approving conveyance of the surface estate in certain lands to Beaver Kwit'chin Corporation for the Native village of Beaver, pursuant to the Alaska Native Claims Settlement Act of 1971 (ANCSA). The subsurface estate in the same lands will be conveyed to Doyon, Limited, when the surface estate is conveyed to Beaver Kwit'chin Corporation.

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the time limits set out in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: You may obtain a copy of the decision from the Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, AK 99513–7504.

FOR FURTHER INFORMATION CONTACT: Matthew Colburn, Land Law Examiner, Adjudication Section, BLM Alaska State Office, 907–271–5067 or *mcolburn@blm.gov*. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point of contact in the United States.

SUPPLEMENTARY INFORMATION: As required by 43 CFR 2650.7(d), notice is hereby given that the BLM will issue an appealable decision to Beaver Kwit'chin Corporation. The decision approves conveyance of the surface estate in certain lands pursuant to ANCSA (43 U.S.C. 1601, *et seq.*), as amended. As provided by ANCSA, the subsurface estate in the same lands will be conveyed to Doyon, Limited, when the surface estate is conveyed to Beaver Kwit'chin Corporation. The lands are located in the vicinity of Beaver, Alaska, and are described as:

Fairbanks Meridian, Alaska

T. 18 N., R. 1 E.,
Sec. 34.
Containing approximately 40 acres.
T. 17 N., R. 4 E.,
Sec. 31.
Containing 415.69 acres.
Aggregating approximately 456 acres.

The decision addresses public access easements, if any, to be reserved to the United States pursuant to sec. 17(b) of ANCSA (43 U.S.C. 1616(b)), in the lands described above.

The BLM will also publish notice of the decision once a week for four consecutive weeks in the Fairbanks Daily News-Miner newspaper.

Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until December 18, 2024 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4 shall be deemed to have waived their rights. Notices of appeal transmitted by facsimile will not be accepted as timely filed.

Matthew A. Colburn,

Land Law Examiner, Adjudication Section.

[FR Doc. 2024–26766 Filed 11–15–24; 8:45 am]

BILLING CODE 4331–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_AK_FRN_MO4500181078; AA–10010]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: The Bureau of Land Management (BLM) hereby provides constructive notice that it will issue an appealable decision approving conveyance of the surface estate in certain lands to Calista Corporation, an Alaska Native regional corporation, pursuant to the Alaska Native Claims Settlement Act of 1971 (ANCSA), as amended. Ownership of the subsurface estate will be retained by the United States.

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the time limits set out in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: You may obtain a copy of the decision from the Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, AK 99513–7504.

FOR FURTHER INFORMATION CONTACT: Heid C. Wanner, Supervisory Land Law Examiner, BLM Alaska State Office, 907–271–3153 or *hwanner@blm.gov*. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point of contact in the United States.

SUPPLEMENTARY INFORMATION: As required by 43 CFR 2650.7(d), notice is hereby given that the BLM will issue an appealable decision to Calista Corporation. The decision approves conveyance of the surface estate in certain lands pursuant to ANCSA (43 U.S.C. 1601, *et seq.*), as amended. Ownership of the subsurface estate will be retained by the United States.

The lands are located in the Yukon Delta National Wildlife Refuge, within T. 16 N., R. 90 W., Seward Meridian, and containing 5.66 acres.

The decision addresses public access easements, if any, to be reserved to the United States pursuant to sec. 17(b) of ANCSA (43 U.S.C. 1616(b)), in the lands approved for conveyance.

The BLM will also publish notice of the decision once a week for four consecutive weeks in The Delta Discovery, Inc, newspaper.

Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance

with the requirements of 43 CFR part 4 within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until December 18, 2024 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4 shall be deemed to have waived their rights. Notices of appeal transmitted by facsimile will not be accepted as timely filed.

Heidi C. Wanner,

Supervisory Land Law Examiner, Adjudication Section.

[FR Doc. 2024–26764 Filed 11–15–24; 8:45 am]

BILLING CODE 4331–10–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2011–0021; DS63636400 DRT000000.CH7000 256D1113RT; OMB Control Number 1012–0002]

Agency Information Collection Activities: Indian Oil and Gas Valuation

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

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (''PRA''), ONRR is proposing to renew an information collection. Through this Information Collection Request (''ICR''), ONRR seeks renewed authority to collect information for the collection, verification, and disbursement of oil and gas royalties owed to Indian lessors. ONRR uses forms ONRR–4109, ONRR–4110, ONRR–4295, ONRR–4393, ONRR–4410, and ONRR–4411 as part of these information collection requirements.

DATES: Interested persons are invited to submit comments on or before January 17, 2025.

ADDRESSES: All comment submissions must (1) reference ''OMB Control Number 1012–0002'' in the subject line; (2) be sent to ONRR before the close of the comment period listed under **DATES**; and (3) be sent using the following method:

Electronically via the Federal eRulemaking Portal: Please visit *https://www.regulations.gov.* In the Search Box, enter the Docket ID Number for this ICR renewal (''ONRR–2011–0021'') to locate the document and click the ''Comment Now!'' button. Follow the prompts to submit your comment prior to the close of the comment period.

Docket: To access the docket folder to view the ICR **Federal Register** publications, go to *https://www.regulations.gov* and search ''ONRR–2011–0021'' to view renewal notices recently published in the **Federal Register**, publications associated with prior renewals, and applicable public comments received for this ICR. ONRR will make the comments submitted in response to this notice available for public viewing at *https://www.regulations.gov.*

OMB ICR Data: You may also view information collection review data for this ICR, including past OMB approvals, at *https://www.reginfo.gov/public/do/PRASearch.* Under the ''OMB Control Number'' heading enter ''1012–0002'' and click the ''Search'' button located at the bottom of the page. To view the ICR renewal or OMB approval status, click on the most recent entry. On the ''View ICR—OIRA Conclusion'' page, check the box next to ''All'' to display all available ICR information provided by OMB.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, please contact Matthew Coakley, Royalty Valuation, ONRR, by telephone (918) 615–5249, or by email to *Matthew.Coakley@onrr.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: Pursuant to the PRA, 44 U.S.C. 3501, *et seq.,* and 5 CFR 1320.5, all information collections, as defined in 5 CFR 1320.3, require approval by OMB. ONRR may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. As part of ONRR's continuing effort to reduce paperwork and respondent burdens, ONRR is inviting the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information in accordance with the PRA and 5 CFR 1320.8(d)(1). This helps ONRR to assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand ONRR's information collection requirements and provide the requested data in the desired format.

ONRR is especially interested in public comments addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of ONRR's estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. ONRR will include or summarize each comment in its request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask ONRR in your comment to withhold your personal identifying information from public review, ONRR cannot guarantee that it will be able to do so.

Abstract: (a) General Information: The Secretary of the United States Department of the Interior (''Secretary'') is responsible for mineral resource development on Federal and Indian lands and the Outer Continental Shelf. Laws pertaining to Federal and Indian mineral leases are posted at *https://onrr.gov/references/statutes.* Pursuant to the Federal Oil and Gas Royalty Management Act of 1982 (''FOGRMA'') and other laws, the Secretary's responsibilities include maintaining a comprehensive inspection, collection, and fiscal and production accounting and auditing system that: (1) accurately determines mineral royalties, interest, and other payments owed, (2) collects and accounts for such amounts in a timely manner, and (3) disburses the funds collected. *See* 30 U.S.C. 1701 and 1711. ONRR performs these royalty and revenue management responsibilities for the Secretary. *See* Secretarial Order No.

3306. The information collections that ONRR covers in this ICR are found at 30 CFR part 1202, subparts C and J, which pertain to Indian oil and gas royalties; part 1206, subparts B and E, which govern the valuation of oil and gas produced from leases on Indian lands; and part 1207, which pertains to recordkeeping. Indian Tribes and allottees receive all royalties generated from their lands. Determining product valuation is essential to ensure that Indian Tribes and allottees receive payment on the full value of the minerals removed from their lands.

(b) Information Collections: This ICR covers the paperwork requirements under 30 CFR parts 1202, 1206, and 1207 as follows:

(1) *Indian Oil*—Regulations at 30 CFR part 1206, subpart B, govern the valuation for royalty purposes of oil produced from Indian oil and gas leases (Tribal and allotted). These regulations require a lessee to file form ONRR–4110, *Oil Transportation Allowance Report,* when its oil transportation allowance includes costs incurred under non-arm's-length or no-contract transportation situations. ONRR and Tribal audit personnel use the information collected on this form to help verify that the lessee correctly reported its transportation allowance within regulatory allowance limitations and reported and paid the correct amount of royalties.

(2) *Indian Gas*—Regulations at 30 CFR part 1206, subpart E, govern the valuation for royalty purposes of natural gas produced from Indian oil and gas leases (Tribal and allotted). These regulations require reporting on ONRR forms 4109, 4295, 4410, and 4411 as follows:

(a) A lessee must file form ONRR–4109, *Gas Processing Allowance Report,* when its processing allowance includes costs incurred under non-arm's-length or no-contract processing situations. ONRR and Tribal audit personnel use the information collected on this form to verify that the lessee correctly reported its processing allowance within regulatory allowance limitations and reported and paid the correct amount of royalties.

(b) A lessee must file form ONRR–4295, *Gas Transportation Allowance Report,* when its gas transportation allowance includes costs incurred under non-arm's-length or no-contract transportation situations. ONRR and Tribal audit personnel use the information collected on this form to verify that a lessee correctly reported its transportation allowance within regulatory allowance limitations and reported and paid the correct amount of royalties.

(c) A lessee must file form ONRR–4410, *Accounting for Comparison [Dual Accounting],* to certify for an Indian oil and gas lease when dual accounting is not required (part A) or to make an election for actual dual accounting as defined in 30 CFR 1206.176 or alternative dual accounting as defined in 30 CFR 1206.173 when dual accounting is required (part B).

(d) A lessee uses form ONRR–4411, *Safety Net Report,* when it sells gas production from an Indian oil or gas lease in an ONRR-designated index zone beyond the first index pricing point. The safety net calculation establishes the minimum value, for royalty purposes, of natural gas production from Indian oil and gas leases. This reporting requirement helps ensure that Indian lessors receive all royalties due and aids ONRR compliance efforts.

(3) *Indian Oil and Gas*—Regulations at 30 CFR 1206.56(b)(2) and 1206.177(c)(2) and (c)(3) provide that a lessee must submit form ONRR–4393, *Request to Exceed Regulatory Allowance Limitation,* as part of a valid request to exceed the regulatory allowance limit of 50 percent of royalty value for transportation allowances. OMB approved the form ONRR–4393 under OMB Control Number 1012–0005, which otherwise pertains to Federal oil and gas leases. This form provides ONRR with the necessary data to make a decision on whether to approve or deny the request.

The requirement to report is mandatory for form ONRR–4410 and, under certain circumstances, form ONRR–4411. To obtain certain benefits, a lessee must file forms ONRR–4109, ONRR–4110, ONRR–4295, and ONRR–4393.

Title of Collection: Indian Oil and Gas Valuation.

OMB Control Number: 1012–0002.

Bureau Form Number: Forms ONRR–4109, ONRR–4110, ONRR–4295, ONRR–4393, ONRR–4410, and ONRR–4411.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Businesses.

Total Estimated Number of Annual Respondents: 146 Indian lessees.

Total Estimated Number of Annual Responses: 146.

Estimated Completion Time per Response: 8.85 hours.

Total Estimated Number of Annual Burden Hours: 1,299 hours.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: Annual and on occasion.

Total Estimated Annual Non-Hour Burden Cost: ONRR identified no ''non-hour cost'' burden associated with this collection of information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the PRA (44 U.S.C. 3501, *et seq.*).

Howard M. Cantor,

Director, Office of Natural Resources Revenue.

[FR Doc. 2024–26847 Filed 11–15–24; 8:45 am]

BILLING CODE 4335–30–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[EEEE500000–256E1700D2–ET1SF0000.EAQ000]

Notice of Proposed Transfer of Pipelines

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Notice of intent to transfer pipeline ownership and request for submissions of competing interest.

SUMMARY: The Bureau of Safety and Environmental Enforcement (BSEE) is considering whether to authorize the transfer of ownership of certain pipelines in the Gulf of Mexico (GOM).

DATES: Submissions of competing interest are due by December 18, 2024.

ADDRESSES: GOM Regional Supervisor, Regional Field Operations, Bureau of Safety and Environmental Enforcement, 1201 Elmwood Park Blvd., New Orleans, LA 70123–2394. You may also file submissions of competing interest electronically using a subject reference ''Submission of Competing Interest—Pipelines'' at *pipelines@bsee.gov.*

FOR FURTHER INFORMATION CONTACT: Otho Barnes, Bureau of Safety and Environmental Enforcement, Regional Supervisor, at (504) 736–5776, or by email to: *otho.barnes@bsee.gov.*

SUPPLEMENTARY INFORMATION:

Background: BSEE received a written request to acquire certain pipeline segments in the GOM located on rights-of-way (ROW) that have been relinquished pursuant to 30 CFR 250.1019. The associated pipeline segments were relinquished by the ROW holder on August 18, 2019. The party requesting to acquire the pipelines is not a prior ROW holder for these segments.

BSEE has determined that, pursuant to 30 CFR 250.1010(h), these Outer Continental Shelf (OCS) pipelines and any related infrastructure are the property of the United States and may be transferred to private parties. BSEE received the request from a private party seeking to acquire these pipeline segments from the United States, as set forth in the table below:

Pipeline Segments with Pending Applications for Acquisition

Previous ROW holder	Previous PSN	Previous ROW	ROW relinquishment date
Cox Operating, L.L.C	17582	ROW OCS–G 28498	08/18/2019
Cox Operating, L.L.C	20235	ROW OCS–G 28498	08/18/2019

Purpose: The Department of the Interior has determined that these pipeline segments are subject to disposition pursuant to 40 U.S.C. 701 and the General Services Administration Federal Management Regulations at 41 CFR part 102–36. BSEE is providing notice that, until December 18, 2024, it will accept submissions of competing interest for acquisition of these pipeline segments. Depending on the level of interest, BSEE will complete a transfer of ownership of the pipelines to a private party through an appropriate transfer process.

In addition to transferring the pipeline interest, a new ROW will still be required pursuant to 30 CFR part 250, subpart J prior to any use of the pipelines. The transfer of pipeline ownership from the United States to another party will make that party responsible for the pipeline, including future operations, maintenance, and all decommissioning obligations.

Purpose of a Notice of Intent (NOI)

This NOI serves to inform interested parties of BSEE's intent to transfer ownership of pipelines that are located in the previously described relinquished ROWs on the OCS, and to describe BSEE's process for accepting submissions of competing interest.

BSEE will evaluate and respond to all submissions received pursuant to this NOI. If BSEE receives future requests to reuse other pipelines, it will issue similar NOIs to notify the public and to solicit statements of competing interest.

Instructions for the NOI

Parties interested in acquiring the aforementioned pipelines should submit the information outlined in the ''Purpose'' section above to the GOM Regional Supervisor for Regional Field Operations as provided in the **ADDRESSES** section no later than December 18, 2024.

Kathryn Kovacs,

Deputy Assistant Secretary for Land and Minerals Management Exercising the Delegated Authorities of the Director, Bureau of Safety and Environmental Enforcement.

[FR Doc. 2024–26773 Filed 11–15–24; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000 256S180110; S2D2S SS08011000 SX064A000 25XS501520; OMB Control Number 1029–0119]

Agency Information Collection Activities; Contractor Eligibility and the Abandoned Mine Land Contractor Information Form

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before December 18, 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. Please provide a copy of your comments to Mark Gehlhar, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Room 1544–MIB, Washington, DC 20240, or by email to *mgehlhar@osmre.gov.* Please reference OMB Control Number 1029–0119 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mark Gehlhar by email at *mgehlhar@osmre.gov,* or by telephone at (202) 208–2716. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on August 28, 2024 (89 FR 68928). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of

information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: 30 CFR 874.16 requires that every successful bidder for an AML contract must be eligible under 30 CFR 773.15(b)(1) at the time of contract award to receive a permit or conditional permit to conduct surface coal mining operations. Further, the regulation requires the eligibility to be confirmed by OSMRE's automated Applicant/Violator System (AVS) and the contractor must be eligible under the regulations implementing Section 510(c) of the Surface Mining Control and Reclamation Act to receive permits to conduct mining operations. This form provides a tool for OSMRE and the States/Indian tribes to help them prevent persons with outstanding violations from conducting further mining or AML reclamation activities in the State.

Title of Collection: Contractor Eligibility and the Abandoned Mine Land Contractor Information Form.

OMB Control Number: 1029–0119.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Businesses and State governments.

Total Estimated Number of Annual Respondents: 243.

Total Estimated Number of Annual Responses: 243.

Estimated Completion Time per Response: Varies from 15 minutes to 1 hour, depending on activity.

Total Estimated Number of Annual Burden Hours: 125.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: One Time.

Total Estimated Annual Nonhour Burden Cost: $0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Mark J. Gehlhar,

Information Collection Clearance Officer, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 2024–26837 Filed 11–15–24; 8:45 am]

BILLING CODE 4310–05–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–694 and 731–TA–1641–1642 (Final)]

Aluminum Lithographic Printing Plates From China and Japan: Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that an industry in the United States is materially injured by reason of imports of aluminum lithographic printing plates (''ALPs'') from China and Japan, provided for in subheading 3701.30.00 of the Harmonized Tariff Schedule of the United States, that have been found by the U.S. Department of Commerce (''Commerce'') to be sold in the United States at less than fair value (''LTFV''), and subsidized by the government of China.[2] [3] [4]

Background

The Commission instituted these investigations effective September 28, 2023, following receipt of petitions filed with the Commission and Commerce by Eastman Kodak Company, Rochester, New York. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of ALPs from China were subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and imports of ALPs from China and Japan were sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on May 14, 2024 (89 FR 41993).[5] The Commission conducted its hearing on September 17, 2024. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to sections 705(b) and 735(b) of the Act (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)). It completed and filed its determinations in these investigations on November 12, 2024. The views of the Commission are contained in USITC Publication 5559 (November 2024), entitled *Aluminum Lithographic Printing Plates from China and Japan: Investigation Nos. 701–TA–694 and 731–TA–1641–1642 (Final).*

By order of the Commission.

Issued: November 12, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–26740 Filed 11–15–24; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 89 FR 79256, 89 FR 79250, and 89 FR 79248 (September 27, 2024).

[3] Commissioner David S. Johanson dissenting.

[4] The Commission also finds that imports subject to Commerce's affirmative critical circumstances determinations are not likely to undermine seriously the remedial effect of the antidumping and countervailing duty orders on ALPs from China.

[5] A revision to the final phase schedule was published in the **Federal Register** on August 13, 2024 (89 FR 65933).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1423]

Certain Electronic Eyewear Products, Components Thereof, and Related Charging Apparatuses; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 10, 2024, under section 337 of the Tariff Act of 1930, as amended, on behalf of Igeniospec, LLC of San Jose, California. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of

certain electronic eyewear products, components thereof, and related charging apparatuses by reason of the infringement of certain claims of U.S. Patent No. 10,310,296 (''the '296 patent''); U.S. Patent No. 11,762,224 (''the '224 patent''); and U.S. Patent No. 12,078,870 (''the '870 patent''). The complaint further alleges that an industry in the United States exists or is in the process of being established as required by the applicable Federal Statute. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Susan Orndoff, The Office of Docket Services, U.S. International Trade Commission, telephone (202) 205–1802.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2024).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on November 12, 2024, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–15, 17, 18, 20, 21, 23–25, 28–35, and 37 of the '296 patent; claims 27–48 of the '224 patent; and claims 36, 43–53, 55–67, and 69–72 of the '870 patent, and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''eyewear products containing electronic components in the frames and/or lenses, associated components, and related charging apparatuses'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

INGENIOSPEC, LLC, 4010 Moorpark Avenue, Suite 211, San Jose, CA 95129

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

ByteDance, Ltd., Xueyan S Rd., Shuangyushu, Haidian District, Beijing China 100080

ByteDance Inc., 251 Little Falls Drive, Wilmington, Delaware 19808

Qingdao Chuangjian Weilai Technology Co., Ltd., Room 401, 4th Floor, Building 3, Qingdao Research Institute, 393 Songling Road, Laoshan District, Qingdao City, Shangdong Province, P.R. China

Funnico Inc., 1199 Coleman Avenue, San Jose, California 95110

PICO Immersive Pte. Ltd., 1 Raffles Quay, #26–10, Singapore 048583

HTC Corporation, No. 23, Xinghua Rd., Taoyuan Dist., Taoyuan City 330, Taiwan

HTC Europe Co Ltd., Wellington St., Slough, Berkshire, SL1 1YP, UK

HTC Poland SP Z O.O., Aleje Jerozolimskie 146A, 00–001, Warszawa, Poland

Meta Platforms, Inc., 1 Meta Way, Menlo Park, CA 94025

Meta Platforms Technologies, LLC, 1 Hacker Way, Menlo Park, CA 94025

Meta Platforms Technologies Ireland Ltd., Merrion Road, Dublin 4, D04 X2K5, Ireland

Meta Platforms Technologies UK Ltd., 10 Brock Street, Regent's Place, London NQ1, 33FG, United Kingdom

Valve Corporation, 10400 NE 4th Street Suite 1400, Bellevue, WA 98004

Valve GmbH Corporation, Rodingsmarkt 9 D–20459, Hamburg Germany

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: November 13, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–26806 Filed 11–15–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled ''Certain Components for Injection Molding Machines, and Products Containing the Same, DN 3782''; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission,

U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (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 United States International Trade Commission (USITC) at *https://www.usitc.gov* . The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Husky Injection Molding Systems LTD, and Husky Injection Molding Systems, Inc. on November 12, 2024. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain components for injection molding machines, and products containing the same. The complaint names as respondents: NINGBO AO SHENG MOLD CO., LTD., d/b/a AOSIMI of China. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, members of the public, and interested government agencies are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due, notwithstanding § 201.14(a) of the Commission's Rules of Practice and Procedure. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3782'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. Government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: November 12, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–26736 Filed 11–15–24; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

DEPARTMENT OF JUSTICE

[OMB 1140–0022]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Federal Explosives License/Permit Renewal Application—ATF Form 5400.14/5400.15

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until December 18, 2024.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Shawn Stevens, Federal Explosives Licensing Center, 244 Needy Road, Martinsburg WV 25405, by email at *FELC@atf.gov* or *shawn.stevens@atf.gov,* or telephone at 304–616–4400.

SUPPLEMENTARY INFORMATION: The proposed information collection was previously published in the **Federal Register**, 89 FR 75580, on Monday, September 16, 2024, allowing a 60-day comment period. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and/or

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the information collection or the OMB Control Number 1140–0022. This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a previously approved collection.

2. *Title of the Form/Collection:* Federal Explosives License/Permit Renewal Application.

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* ATF Form 5400.14/5400.15.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Affected Public: Individuals or households, Private Sector-for or not for profit institutions.

Abstract: Chapter 40 of title 18 of the United States Code (U.S.C.) provides that no person may engage in the explosives business without first obtaining a license or permit to do so. Licenses or permits are issued for a specific period and are renewable upon the same conditions as the original license or permit. In order to continue uninterrupted in these activities, licenses and permits can be renewed by filing a short renewal application.

5. *Obligation to Respond:* Mandatory. The statutory requirements are implemented in 18 U.S.C. 843(a).

6. *Total Estimated Number of Respondents:* 2,500 respondents.

7. *Estimated Time per Respondent:* 20 minutes.

8. *Frequency:* Once annually.

9. *Total Estimated Annual Time Burden*: 825 hours.

10. *Total Estimated Annual Other Costs Burden:* $1,825.

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W–218 Washington, DC 20530.

Dated: November 13, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024–26790 Filed 11–15–24; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

[OMB 1140–0024]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Demand 2 Program: Report of Firearms Transactions—ATF Form 5300.5

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until December 18, 2024.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Matthew S. Grim, National Tracing Center Division (NTCD)/Tracing Operations Records Management Branch (TORM), 244 Needy Road, Martinsburg, WV 25405, by email at *Matthew.grim@atf.gov,* or telephone at 304–260–3683.

SUPPLEMENTARY INFORMATION: The proposed information collection was previously published in the **Federal Register**, 89 FR 75581, on Monday, September 16, 2024, allowing a 60-day

comment period. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and/or
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the information collection or the OMB Control Number 1140–0024. This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a previously approved collection.

2. *Title of the Form/Collection:* Demand 2 Program: Report of Firearms Transactions.

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* ATF Form 5300.5.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Affected Public: Private Sector-for or not for profit institutions.

Abstract: The Demand 2 Program requires Federal Firearm Licensee's (FFL's) with 25 or more traces with a time to crime of 3 years or less in a calendar year, to submit an annual report followed by quarterly reports of used firearms acquired by the FFL. Due to the increase in Type 07 FFLs meeting Demand 2 criteria and their low or non-existent manufacturing activity, as well as the likelihood that some may turn to a Type 08 license to deal and avoid reporting requirement if Type 08 is not subjected to Demand 2, (IC) OMB # 1140–0024 is being revised to now include Type 07 and 08 FFLs as a population that is subject to the reporting requirements of the Demand 2 program.

5. *Obligation to Respond:* Mandatory under authority 18 U.S.C. 923(g), in the form and manner specified in 27 CFR 478.126(a).

6. *Total Estimated Number of Respondents:* 1,453 respondents.

7. *Estimated Time per Respondent:* 30 minutes.

8. *Frequency:* 4 times annually.

9. *Total Estimated Annual Time Burden:* 2,906 hours.

10. *Total Estimated Annual Other Costs Burden:* $424.00.

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC 20530.

Dated: November 13, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024–26792 Filed 11–15–24; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

[OMB 1140–0067]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Licensed Firearms Manufacturers Records of Production, Disposition and Supporting Data

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until December 18, 2024.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Dawn Smith, Firearms Industry Programs Branch (FIPB), 244 Needy Road, Martinsburg, WV, by email at *fipb-informationcollection@atf.gov* or *dawn.smith@atf.gov,* or telephone at 304–267–1994.

SUPPLEMENTARY INFORMATION: The proposed information collection was previously published in the **Federal Register**, 89 FR 75585, on Monday, September 16, 2024, allowing a 60-day comment period. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and/or
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information

collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the information collection or the OMB Control Number 1140–0067. This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a previously approved collection.

2. *Title of the Form/Collection:* Licensed Firearms Manufacturers Records of Production, Disposition and Supporting Data.

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* None.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Affected Public: Private Sector-for or not for profit institutions.

Abstract: Firearms manufacturers record is a permanent record of firearms manufactured and records of their disposition. These records are vital to support ATF's mission to inquire into the disposition any firearm in the course of a criminal investigation.

5. *Obligation to Respond:* The obligation to respond is mandatory under authority 18 U.S.C. 923(g)(1)(A).

6. *Total Estimated Number of Respondents:* 16,227 respondents.

7. *Estimated Time per Respondent:* 1 minute.

8. *Frequency:* As needed.

9. *Total Estimated Annual Time Burden:* 179,058.

10. *Total Estimated Annual Other Costs Burden:* $0.

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W–218 Washington, DC 20530.

Dated: November 13, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024–26791 Filed 11–15–24; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by Greenbrier Minerals, LLC.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before December 18, 2024.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2024–0074 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2024–0074.

2. *Fax:* 202–693–9441.

3. *Email: petitioncomments@dol.gov.*

4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk, 4th Floor West. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2024–049–C.

Petitioner: Greenbrier Minerals, LLC, 119 Rich Creek Road, Lyburn, WV 25632.

Mines: Powellton #1 Mine, MSHA ID No. 46–09217, located in Logan County, West Virginia; Lower War Eagle, MSHA ID No. 46–09319, located in Wyoming County, West Virginia; Muddy Bridge, Mine ID No. 46–09514, located in Logan County, West Virginia; Eagle No.1 Mine, Mine ID No. 46–09563, located in Logan County, West Virginia.

Regulation Affected: 30 CFR 75.1002(a), Permissible electric equipment.

Modification Request: The petitioner requests a modification of 30 CFR 75.1002(a) to allow the use of an alternative method of respirable dust protection. Specifically, the petitioner is requesting to use a battery powered respirable protection unit called the 3M Versaflo TR–800 powered air-purifying respirator (PAPR) in addition to the CleanSpace EX PAPR within 150 feet of pillar workings and longwall faces.

The petitioner states that:

(a) The petitioner is requesting to utilize the 3M Versaflo TR–800 PAPR in addition to the utilization of the CleanSpace EX PAPR, which was approved through a previous Proposed Decision and Order (PDO) granted by MSHA (MSHA Docket Number M–2022–040–C). It should be noted that North Fork Winifrede Deep Mine, Mine ID No. 46–09583 was included in the original petition but has been abandoned and will be omitted in the amended petition.

(b) The 3M Airstream helmet has been used in mines for over 40 years. 3M has recently faced component disruptions for the Airstream product. This has

caused 3M to discontinue, globally, the Airstream on June 1, 2020. The ability to order an Airstream system and components ended in February 2020, and components were available through June 2020. Currently, there are not any available replacement PAPRs that meet the MSHA standard for permissibility. PAPRs provide a constant flow of filtered air, which offers respiratory protection and comfort in hot working environments. Operators that were using the Airstream, do not have an alternative to provide to this type of protection to its miners.

(c) Greenbrier Minerals, LLC, is seeking alternatives to the 3M Airstream helmet to provide miners with respirable protection against respirable coal mine and silica dust, a protection that can provide long-term health benefits.

(d) Both the CleanSpace EX and 3M Versaflo TR–800 PAPRs provide a constant flow of filtered air inside the half-mask, full mask or helmet. The airflow provides respiratory protection and comfort in hot working conditions. Both PAPRs will be equipped with the following: Particulate protection classified as 100 series under 42 CFR part 84; or Particulate protection classified as High Efficiency ''HE'' under 42 CFR part 84.

(e) Greenbrier Minerals LLC is seeking to continue the use of the CleanSpace EX PAPR and applying to utilize the 3M Versaflo TR–800 PAPR within 150 feet of pillar workings and longwall faces at the aforementioned mines.

(f) CleanSpace EX.

(1) The CleanSpace EX is certified by TestSafe Australia (TSA) according to the IEC 60079–0:2011 (General Requirements) and IEC 60079–11:2011 (Intrinsic Safety) standards. The certificate, issued to PAFtec Australia Pty Ltd (''PAFtec''), allows PAFtec to mark the device as ''Ex ib IIB T4 Gb'' and ''Ex ia I Ma.'' Due to legal and regulatory constraints, the TSA certificate is not accepted by MSHA as evidence that the PAPR is approved for use in US mines. The IEC certification marking that applies to mining, Ex ia I Ma, is discussed below:

(2) The CleanSpace EX is certified to be used in hazardous locations (''Ex''); meets the most onerous level of intrinsic safety protection (''ia''); the level of protection is acceptable for use in mining locations (''I''), and the Equipment Protection Level appropriate for mining equipment, that has a ''very high'' level of protection, with sufficient security that it is unlikely to become an ignition source in normal operation, during expected malfunctions or during rare malfunctions, even when left energized in the presence of an outbreak of gas (''Ma'').

(3) NIOSH researchers, in a paper titled ''An Evaluation of the Relative Safety of U.S. Mining Explosion-Protected Equipment Approval Requirements versus those of International Standards'', have determined that equipment, which meets two-fault intrinsic safety as defined in the ANSI/UL 60079 standard would provide at least an equivalent level of safety as that provided by equipment approved under MSHA criteria.

(4) The UL certification, TSA certification and PAFtec listing material (drawings, certificate and text report) were found to support the conclusion that the CleanSpace EX meet the applicable ''two fault'' intrinsic safety requirements for mining equipment as found in the ANSI/UL standard.

(5) The CleanSpace EX carries an ingress protection rating of IP66. This rating exceeds the minimum rating of IP54 required by the ANSI/UL and IEC standards for intrinsically safe mining equipment.

(6) This product is not MSHA approved, and the manufacturer is not pursuing approval. The standards for the approval of this respirator are an accepted alternative to MSHA's standards and provide the same level of protection.

(g) 3M Versaflo TR–800.

(1) The 3M Versaflo TR–800 PAPR with motor/blower and battery qualifies as intrinsically safe, based on reports by the International Electrotechnical Commission Systems for Certification to Standards Relating to Equipment for Use in Explosive Atmospheres (IECEx). The blower is UL-certified with an intrinsically safe rating of Division 1: Class I, II, III; Division 1: Groups C, D, E, F, G; T4 under the current standard of UL 60079; ATEX-certified with a rating of ''ia''. The 3M Versaflo TR–800 is rated and marked Ex ia I MA, Ex ia IIB T4 Ga, Ex ia IIIC 135oC Da; 120 °C ≤ TA ≤ +55 °C.

(2) The 3M Versaflo TR–800 carries an ingress protection rating of IP64. This rating exceeds the minimum rating of IP54 required by the ANSI/UL and IEC standards for intrinsically safe mining equipment.

(3) This product is not MSHA approved, and the manufacturer is not pursuing approval. The standards for the approval of this respirator are an accepted alternative to MSHA's standards and provide the same level of protection.

(h) The alternative method will guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

The petitioner proposes the following alternative method:

(a) Affected mine employees shall be trained in the proper use and maintenance of the PAPR(s) to be used at the mine, the 3M Versaflo TR–800 and/or the CleanSpace EX, in accordance with established manufacturer guidelines. This training shall alert the affected employee that neither the 3M Versaflo TR–800 nor the CleanSpace EX PAPR is approved under 30 CFR part 18 and therefore shall be de-energized when 1.0 or more percent methane is detected. The training shall also include the proper method to de-energize these PAPRs. In addition to manufacturer guidelines, MSHA shall require that mine employees be trained to inspect the units before use to determine if there is any damage to the units that would negatively impact intrinsic safety as well as all stipulations in the PDO granted by MSHA.

(b) The PAPRs, battery packs, and all associated wiring and connections shall be inspected before use to determine if there is any damage to the units that would negatively impact intrinsic safety. If any defects are found, the PAPR shall be removed from service.

(c) The operator shall maintain a separate logbook for the 3M Versaflo TR–800 and CleanSpace EX PAPRs that shall be kept with the equipment, or in a location with other mine record books and shall be made available to MSHA upon request. The equipment shall be examined at least weekly by a qualified person as defined in 30 CFR 75.512–1 and the examination results recorded in the logbook. Since float coal dust is removed by the air filter prior to reaching the motor, the PAPR user shall conduct regular examinations of the filter and perform periodic testing for proper operation of the ''high filter load alarm'' on the 3M Versaflo TR–800 PAPR, and the ''blocked filter'' alarm on the CleanSpace EX PAPR. Examination entries may be expunged after one year.

(d) All 3M Versaflo TR–800 and CleanSpace EX PAPRs to be used within 150 feet of pillar workings or longwall faces shall be physically examined prior to initial use and each unit shall be assigned a unique identification number. Each unit shall be examined by the person to operate the equipment prior to taking the equipment underground to ensure the equipment is used according to the original equipment manufacturer's recommendations and maintained in a safe operating condition. The

examinations for the 3M Versaflo TR–800 PAPRs shall include:

(1) Check the equipment for any physical damage and the integrity of the case;

(2) Remove the battery and inspect for corrosion;

(3) Inspect the contact points to ensure a secure connection to the battery;

(4) Reinsert the battery and power up and shut down to ensure proper connections;

(5) Check the battery compartment cover or battery attachment to ensure that it is securely fastened; and

(6) For equipment utilizing lithium type cells, ensure that lithium cells and/or packs are not damaged or swelled in size.

(e) All CleanSpace EX PAPRs to be used within 150 feet of pillar workings or longwall faces shall be physically examined prior to initial use and each unit shall be assigned a unique identification number. Each unit shall be examined by the person to operate the equipment prior to taking the equipment underground to ensure the equipment is used according to the original equipment manufacturer's recommendations and maintained in a safe operating condition. The CleanSpace EX PAPR does not have an accessible/removable battery. The internal battery and motor/blower assembly are both contained within the ''power unit'' assembly and the battery cannot be removed, reinserted or fastened. Therefore, examination of the CleanSpace EX PAPR should include any indications of physical damage.

(f) The operator shall ensure that all 3M Versaflo TR–800 and CleanSpace EX PAPR units are serviced according to the manufacturer's recommendations. Dates of service shall be recorded in the equipment's logbook and shall include a description of the work performed.

(g) The 3M Versaflo TR–800 and CleanSpace EX PAPR units that will be used within 150 feet of pillar workings or longwall faces shall not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions of the PDO granted by MSHA.

(h) Prior to energizing the 3M Versaflo TR–800 or the CleanSpace EX PAPR within 150 feet of pillar workings or longwall faces, methane tests shall be made in accordance with 30 CFR 75.323(a).

(i) All hand-held methane detectors shall be MSHA-approved and maintained in permissible and proper operating condition as defined by 30 CFR 75.320. All methane detectors shall provide visual and audible warnings when methane is detected in concentrations at or above 1.0 percent.

(j) A qualified person as defined in 30 CFR 75.151 shall continuously monitor for methane immediately before and during the use of the 3M Versaflo TR–800 or CleanSpace EX PAPR within 150 feet of pillar workings or longwall faces.

(k) Neither the 3M Versaflo TR–800 nor the CleanSpace EX PAPR shall be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more methane is detected while the 3M Versaflo TR–800 or CleanSpace EX PAPR is being used, the equipment shall be de-energized immediately and the equipment withdrawn outby the last open crosscut.

(l) The operation and location of the 3M Versaflo TR–800 and CleanSpace EX PAPRs during underground blasting operations shall be defined in accordance with 30 CFR 75.1312(e)(1), 30 CFR 75.1313(b)(1), and individualized underground blasting permits approved by the District Manager.

(m) Only the 3M TR–830 Battery Pack shall be used, which meets lithium battery safety standard UL 1642 or IEC 62133, in the 3M Versaflo TR–800 PAPR. Use only the CleanSpace EX Power Unit, which meets lithium battery safety standard UL 1642 or IEC 62133, in the CleanSpace EX PAPR.

(n) Before each shift when the 3M Versaflo TR–800 or CleanSpace EX PAPR is to be used, all batteries and power units for the equipment shall be charged sufficiently for the expected usage on that shift. If spare battery packs for the 3M Versaflo TR–800 PAPR are provided, all battery ''change outs'' shall occur in intake air outby the last open crosscut.

(o) The following maintenance and use conditions shall apply to equipment containing lithium-type batteries:

(1) Neither the 3M TR–830 Battery Pack nor the CleanSpace EX Power Unit may be disassembled nor modified by anyone other than permitted by the manufacturer of the equipment.

(2) The 3M TR–830 Battery Pack shall be charged only in an area free of combustible material, readily monitored and located on the surface of the mine. The 3M TR–830 Battery Pack shall be charged only by a manufacturer's recommended battery charger, such as:

(i) 3M Battery Charger Kit TR–641N, which includes one 3M Charger Cradle TR–640 and one 3M Power Supply TR–941N, or

(ii) 3M 4-Station Battery Charger Kit TR–644N, which includes four 3M Charger Cradles TR–640 and one 3M 4-Station Battery Charger Base/Power Supply TR–944N.

(3) The CleanSpace EX internal battery, which is contained within the power unit assembly, shall be charged in areas located outby the last open crosscut in intake air as per 30 CFR 75.340, or in an area free of combustible material, readily monitored and located on the surface of the mine, and only the manufacturer's recommended battery chargers may be used, such as the CleanSpace EX Battery Charger, Product Code PAF–0066.

(4) Neither the 3M TR–830 Battery Pack nor the CleanSpace EX power unit which contains the internal battery, shall be exposed to water, allowed to get wet or immersed in liquid. This does not preclude incidental exposure of the 3M TR–830 Battery Pack or the CleanSpace EX power unit assembly.

(5) Neither the 3M Versaflo TR–800 PAPR nor the CleanSpace EX PAPR, including the internal battery, shall be used, charged or stored in locations where the manufacturer's recommended temperature limits are exceeded. Neither the 3M Versaflo TR–800 PAPR nor the CleanSpace EX PAPR shall be placed in direct sunlight nor stored near a source of heat.

(6) Neither the 3M TR–830 Battery Pack nor the CleanSpace EX PAPR's internal battery shall be used at the end of its life cycle (*i.e.,* when there is a performance decrease of greater than 20 percent in battery-operated equipment). The 3M TR–830 Battery Pack and the CleanSpace EX power unit containing the internal battery shall be disposed of properly.

(p) Personnel engaged in the use of the 3M Versaflo TR–800 and CleanSpace EX PAPRs shall be properly trained to recognize the hazards and limitations associated with the use of the equipment in areas where methane could be present. Additionally, personnel shall be trained regarding proper procedures for donning self-contained self rescuers (SCSRs) during a mine emergency while wearing the 3M Versaflo TR–800 or CleanSpace EX PAPR. The mine operator shall submit proposed revisions to update the Mine Emergency Evacuation and Firefighting Program of Instruction under 30 CFR 75.1502.

(q) Within 60 days after the PDO granted by MSHA becomes final, the operator shall submit proposed revisions for its approved 30 CFR part 48 training plans to the Mine Safety and Health Enforcement District Manager. These proposed revisions shall specify initial and refresher training regarding the terms and conditions stated in the PDO granted by MSHA. When training

is conducted on the terms and conditions in the PDO granted by MSHA, an MSHA Certificate of Training (Form 5000–23) shall be completed. Comments shall be included on the Certificate of Training indicating that the training received was for use of the 3M Versaflo TR–800 or the CleanSpace EX PAPR.

(r) All personnel who will be involved with or affected by the use of the 3M Versaflo TR–800 or CleanSpace EX PAPRs shall receive training in accordance with 30 CFR 48.7 on the requirements of the PDO granted by MSHA within 60 days of the date the PDO granted by MSHA becomes final. Such training shall be completed before any 3M Versaflo TR–800 or CleanSpace EX PAPR can be used within 150 feet of pillar workings or longwall faces. The operator shall keep a record of such training and provide such record to MSHA upon request.

(s) The operator shall provide annual retraining to all personnel who will be involved with or affected by the use of the 3M Versaflo TR–800 or CleanSpace EX PAPRs in accordance with 30 CFR 48.8. The operator shall train new miners on the requirements of the PDO granted by MSHA in accordance with 30 CFR 48.5, and shall train experienced miners on the requirements of the PDO granted by MSHA in accordance with 30 CFR 48.6. The operator shall keep a record of such training and provide such record to MSHA upon request.

(t) The operator shall post the PDO granted by MSHA in unobstructed locations on the bulletin boards and/or in other conspicuous places where notices to miners are ordinarily posted, for a period of not less than 60 consecutive days.

(u) There are no representatives of miners at Greenbrier Minerals LLC, Powellton #1 Mine, Lower War Eagle, Muddy Bridge, or Eagle No. 1 Mine. A copy of this petition has been posted on the bulletin board as of September 12, 2024.

The petitioner asserts that the alternative method will guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2024–26733 Filed 11–15–24; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by Panther Creek Mining, LLC.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before December 18, 2024.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2024–0069 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2024–0069.
2. *Fax:* 202–693–9441.
3. *Email: petitioncomments@dol.gov.*
4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk, 4th Floor West. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2024–046–C.

Petitioner: Panther Creek Mining, LLC, PO Box 99 Dawes, WV 25054.

Mine: Speed Mine, MSHA ID No. 46–05437, located in Kanawha County, West Virginia, and Winchester 2 Mine, MSHA ID No. 46–09615, located in Kanawha County, West Virginia.

Regulation Affected: 30 CFR 75.1002(a), Permissible electric equipment.

Modification Request: The petitioner requests a modification of 30 CFR 75.1002(a) to allow the use of unapproved Powered Air Purifying Respirators (PAPRs) within 150 feet of pillar workings or longwall faces. Specifically, the petitioner is requesting to utilize the CleanSpace EX PAPR and sealed motor/blower/battery power pack assembly, and the 3M Versaflo TR–800 Intrinsically Safe PAPR motor/blower and battery with battery pack.

The petitioner states that:

(a) The 3M Versaflo TR–800 PAPR with motor/blower and battery qualifies as intrinsically safe.

(b) The CleanSpace EX PAPR also qualifies as intrinsically safe.

(c) Both the CleanSpace EX and the 3M Versaflo TR–800 PAPRs provide a constant flow of air inside the mask or helmet. This airflow provides respiratory protection and comfort in hot working conditions.

(d) Neither the 3M Versaflo TR–800 nor the CleanSpace EX PAPR is MSHA-approved as permissible.

(e) Neither the 3M nor the CleanSpace is pursuing MSHA approval.

(f) Speed Mine and Winchester 2 Mine currently make available to all miners NIOSH-approved high efficiency l00 series respirators to protect the miners against potential exposure to respirable coal mine dust, including crystalline silica, during normal mining conditions. Speed Mine and Winchester 2 Mine desire to expand the miners' option in choosing a respirator that provides the greatest degree of protection as well as comfort while being worn. Powered PAPRs provide a constant flow of filtered air and serve that purpose.

(g) On June 17, 2024, a final rule entitled *Lowering Miners' Exposure to Respirable Crystalline Silica and Improving Respiratory Protection* took effect. The rule requires the mine operator to have a written respiratory protection program in place when miners are required to use respirators. Adding the CleanSpace EX and the 3M TR–800 Versaflo PAPRs to the respiratory protection program as additional options will provide the miners with alternatives to the series 100 high efficiency respirators already in use at the mine. The PAPRs will also serve as a respirator option to protect the miners with facial hair who may not be able to pass the ''fit test'' requirement of the program. In addition, the positive flow of filtered air provided by the PAPRs will provide a solution for the miners who are unable to wear a tight-fitting respirator.

(h) Since the 3M Airstream Headgear-Mounted PAPR System has been discontinued by the manufacturer, there are no other MSHA-approved units available that can be used within 150 feet of pillar workings or longwall faces.

(i) The alternative method in the petition will at all times guarantee no less than the same measure of protection afforded to the miners by the standard.

The petitioner proposes the following alternative method:

(a) All miners who will be involved with or affected by the use of the 3M Versaflo TR–800 or CleanSpace EX PAPRs shall receive training in accordance with 30 CFR 48.7 on the requirements of the Proposed Decision and Order (PDO) granted by MSHA and manufacturer guidelines. Such training shall be completed before any 3M Versaflo TR–800 or CleanSpace EX PAPR can be used within 150 feet of pillar workings or longwall faces. The operator shall keep a record of such training and provide such record to MSHA upon request.

(b) The PAPRs, battery packs, and all associated wiring and connections shall be inspected before use to determine if there is any damage to the units that would negatively impact intrinsic safety. If any defects are found, the PAPR shall be removed from service.

(c) A separate logbook shall be maintained for the 3M Versaflo TR–800 and CleanSpace EX PAPRs that will be kept with the equipment, or in a location with other mine record books and shall be made available to MSHA upon request. The equipment shall be examined at least weekly by a qualified person as defined in 30 CFR 75.512–1 and the examination results recorded in the logbook. Examination records shall be maintained for one year.

(d) All 3M Versaflo TR–800 and CleanSpace EX PAPRs to be used within 150 feet of pillar workings or longwall faces shall be physically examined prior to initial use and each unit shall be assigned a unique identification number. Each unit shall be examined by the person to operate the equipment prior to taking the equipment underground to ensure the equipment is used according to the original equipment manufacturer's recommendations and maintained in a safe operating condition. The examinations for the 3M Versaflo TR–800 PAPRs shall include:

(1) Check the equipment for any physical damage and the integrity of the case;

(2) Remove the battery and inspect for corrosion;

(3) Inspect the contact points to ensure a secure connection to the battery;

(4) Reinsert the battery and power up and shut down to ensure proper connections;

(5) Check the battery compartment cover or battery attachment to ensure that it is securely fastened; and

(6) For equipment utilizing lithium type cells, ensure that lithium cells and/or packs are not damaged or swelled in size.

The CleanSpace EX PAPR does not have an accessible/removable battery. The internal battery and motor/blower assembly are both contained within the ''power unit'' assembly and the battery cannot be removed, reinserted or fastened. Therefore, examination of the CleanSpace EX PAPR shall include any indications of physical damage.

(e) All 3M Versaflo TR–800 and CleanSpace EX PAPR units shall be serviced according to the manufacturer's recommendations.

(f) Prior to energizing and during use of the 3M Versaflo TR–800 or the CleanSpace EX PAPR within 150 feet of pillar workings or longwall faces, procedures in accordance with 30 CFR 75.323 shall be followed.

(g) Only the 3M TR–830 Battery Pack, which meets lithium battery safety standard UL 1642 or IEC 62133, in the 3M Versaflo TR–800 PAPR shall be used. Only the CleanSpace EX Power Unit, which meets lithium battery safety standard UL 1642 or IEC 62133, in the CleanSpace EX shall be used.

(h) If battery packs for the 3M Versaflo TR–800 PAPR are provided, all battery ''change outs'' shall occur in intake air outby the last open crosscut.

(i) The following maintenance and use conditions shall apply to equipment containing lithium type batteries:

(1) Neither the 3M TR–830 Battery Pack nor the CleanSpace EX Power Unit shall be disassembled nor modified by anyone other than permitted by the manufacturer of the equipment.

(2) The 3M TR–830 Battery Pack shall be charged only in an area free of combustible material and in intake air outby the last open crosscut. The 3M TR–830 Battery Pack shall be charged only by a manufacturer's recommended battery charger, such as:

(i) 3M Battery Charger Kit TR–641N, which includes one 3M Charger Cradle TR–640 and one 3M Power Supply TR–941N, or,

(ii) 3M 4-Station Battery Charger Kit TR–644N, which includes four 3M Charger Cradles TR–640 and one 3M 4-Station Battery Charger Base/Power Supply TR–944N.

(3) The CleanSpace EX internal battery, which is contained within the power unit assembly, shall be charged in areas located outby the last open crosscut in intake air and only the manufacturer's recommended battery chargers shall be used, such as the CleanSpace EX Battery Charger, Product Code PAF–0066.

(4) Neither the 3M TR–830 Battery Pack nor the CleanSpace EX power unit which contains the internal battery, shall be exposed to water, allowed to get wet or immersed in liquid. This does not preclude incidental exposure of the 3M TR–830 Battery Pack or the CleanSpace EX power unit assembly.

(5) Neither the 3M Versaflo TR–800 PAPR nor the CleanSpace EX PAPR, including the internal battery, shall be used, charged or stored in locations where the manufacturer's recommended temperature limits are exceeded. Neither the 3M Versaflo TR–800 PAPR nor the CleanSpace EX PAPR shall be placed in direct sunlight nor stored near a source of heat.

(j) Annual retraining shall be given to all miners who will be involved with or affected by the use of the 3M Versaflo TR–800 or CleanSpace EX PAPRs in accordance with 30 CFR 48.8. Training of new miners on the requirements of the PDO granted by MSHA in accordance with 30 CFR 48.5, and training of experienced miners on the requirements of the PDO granted by MSHA in accordance with 30 CFR 48.6 shall be given. The operator shall keep a record of such training and provide such record to MSHA upon request.

(k) The miners at Speed Mine and Winchester 2 Mine are not represented by a labor organization and there are no representatives of miners at the mine. A copy of this petition has been posted on the bulletin board at Speed Mine and Winchester 2 Mine, on October 4, 2024.

The petitioner asserts that the alternative method in the petition will at all times guarantee no less than the same measure of protection afforded to the miners by the standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2024–26720 Filed 11–15–24; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by Kingston Mining, Inc.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before December 18, 2024.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2024–0066 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2024–0066.
2. *Fax:* 202–693–9441.
3. *Email: petitioncomments@dol.gov.*
4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk, 4th Floor West. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2024–043–C.

Petitioner: Kingston Mining, Inc., 300 Running Right Way, Julian, WV 25529.

Mine: Kingston No. 2 Mine, MSHA ID No. 46–08932, located in Fayette County, West Virginia.

Regulation Affected: 30 CFR 75.1002(a), Permissible electric equipment.

Modification Request: The petitioner requests a modification of 30 CFR 75.1002(a) to permit alternative methods of compliance to allow the use of additional respirable dust protection. Specifically, the petitioner is requesting to permit the use of the 3M Versaflo TR–800–HIK Intrinsically Safe Powered Air Purifying Respirator motor/blower and battery.

The petitioner states that:

(a) Kingston Mining, Inc., does not currently use a battery powered respirator unit but would like to add a Powered Air Purifying Respirator (''PAPR'') to the units available to miners in certain situations.

(b) Currently there are no battery powered respirators that meet applicable U.S. Mine Safety and Health Administration (MSHA) standards for permissibility. Electronic equipment used in underground mines in potentially explosive atmospheres is required to be approved by MSHA per 30 CFR. 3M and other competitor manufacturers do offer alternative products for many other environments and applications.

(c) One of the main benefits of a PAPR is that they provide a constant flow of air inside the headtop or helmet. This constant airflow helps to provide both respiratory protection and comfort in warm working environments.

(d) A strict application of the standard (*i.e.,* objecting to the use of the requested PAPR) results in a diminution of safety at the mine.

(e) Kingston Mining, Inc., petitions to permit the use of the 3M Versaflo TR–800–HIK Intrinsically Safe Powered Air Purifying Respirator motor/blower and battery.

(f) The Versaflo TR–800–HIK motor/blower and battery qualifies as intrinsically safe in the U.S., Canada, and any other countries accepting IECEx reports. (IECEx is the International Electrotechnical Commissions System for Certification to Standards Relating to Equipment for Use in Explosive Atmospheres). The TR–800–HIK PAPR has a blower that is UL-certified with an intrinsically safe (IS) rating of Division I: IS Class I, II, III; Division I (includes Division 2) Groups C, D, E, F, G; T4, under the most current standard (UL 60079, 6th Edition, 2013), and ATEX-certified with an intrinsically safe (IS) rating of ''ia''. The TR–800 is rated and marked with Exia I Ma, Exia IIB T4 Ga, Ex ia IIIC 135°C Da, $-20\ °C \leq Ta \leq +55\ °C$, under the current standard (IEC 60079).

(g) The 3M Versaflo TR–800 Intrinsically Safe Powered Air Purifying Respirator is not MSHA approved as permissible, and 3M is not pursuing approval to our knowledge.

(h) The standards for approval of these respirators are an acceptable alternative to MSHA's standards and provide an equivalent level of protection.

(i) The alternative method in the petition will at all times guarantee no less than the same measure of protection afforded to the miners by the standard.

The petitioner proposes the following alternative method:

(a) Affected mine employees shall be trained in the proper use and maintenance of the Versaflo TR–800 PAPR in accordance with established manufacturer guidelines. This training shall alert the affected employee that the Versaflo TR–800 PAPR is approved under 30 CFR part 18 and shall be de-energized when 1.0 percent or more percent methane is detected. The training shall also include the proper method to de-energize the PAPR. In addition to manufacturer guidelines, Kingston Mining, Inc. shall require that mine employees be trained to inspect the units before use to determine if there is any damage to the units that would negatively impact intrinsic safety as well as all stipulations in this petition.

(b) The PAPR, battery pack, and all associated wiring and any connections

shall be inspected before use to determine if there is any damage to the units that would negatively impact intrinsic safety. If any defects are found, the PAPR shall be removed from service.

(c) The operator shall maintain a separate logbook for the 3M Versaflo TR–800 PAPR that shall be kept with the equipment, or in a location with other mine record books and shall be made available to MSHA upon request. The equipment shall be examined at least weekly by a qualified person as defined in 30 CFR 75.512–1 and the examination results recorded in the logbook. Since float coal dust is removed by the air filter prior to reaching the motor, the PAPR user shall conduct regular examinations of the filter and perform periodic testing for proper operation of the ''high filter load alarm'' on the 3M Versaflo TR–800 PAPR.

(d) All 3M Versaflo TR–800 PAPRs to be used on the longwall face or within 150 feet of pillar workings, shall be physically examined prior to initial use and each unit shall be assigned a unique identification number. Each unit shall be examined by the person to operate the equipment prior to taking the equipment underground to ensure the equipment is being used according to the original equipment manufacturer's recommendations and maintained in a safe operating condition. The examinations for the 3M Versaflo TR–800 PAPRs shall include:

(1) Check the equipment for any physical damage and the integrity of the case;

(2) Remove the battery and inspect for corrosion;

(3) Inspect the contact points to ensure a secure connection to the battery;

(4) Reinsert the battery and power up and shut down to ensure proper connections;

(5) Check the battery compartment cover or battery attachment to ensure that it is securely fastened; and

(6) For equipment utilizing lithium type cells, ensure that lithium cells and/or packs are not damaged or swelled in size. The pre-use examination is limited to inspecting the equipment for indications of physical damage.

(e) The operator shall ensure that all 3M Versaflo TR–800 units are serviced according to the manufacturer's recommendations. Dates of service shall be recorded in the equipment's logbook and shall include a description of the work performed.

(f) The 3M Versaflo TR–800 units that will be used in the face or within 150 feet of pillar workings, or in areas where methane may enter the air current, shall not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions of the Proposed Decision and Order (PDO) granted by MSHA.

(g) Prior to energizing the 3M Versaflo TR–800 inby the last open crosscut, methane tests shall be made in accordance with 30 CFR 75.323(a).

(h) All hand-held methane detectors shall be MSHA-approved and maintained in permissible and proper operating condition as defined by 30 CFR 75.320. All methane detectors shall provide visual and audible warnings when methane is detected at or above 1.0 percent.

(i) A qualified person as defined in 30 CFR 75.151 shall continuously monitor for methane immediately before and during the use of the 3M Versaflo TR–800 PAPR in the face or within 150 feet of pillar workings or in areas where methane may enter the air current.

(j) The 3M Versaflo TR–800 PAPR shall not be used if methane is detected in concentrations at or above 1.0 percent methane. When 1.0 percent or more of methane is detected while the Versaflo TR–800 is being used, the equipment shall be de-energized immediately and the equipment withdrawn outby the last open crosscut.

(k) Kingston Mining, Inc. shall use only the 3M TR–830 Battery Pack, which meets lithium battery safety standard UL 1642 or IEC 62133, in the 3M Versaflo TR–800 PAPR.

(l) The battery packs shall be ''changed out'' in intake air outby the last open crosscut. Before each shift when the 3M Versaflo TR–800 is to be used, all batteries and power units for the equipment shall be charged sufficiently so that they are not expected to be replaced on that shift.

(m) The following maintenance and use conditions shall apply to equipment containing lithium-type batteries:

(1) Always correctly use and maintain the lithium-ion battery packs. The 3M TR–830 Battery Pack may not be disassembled or modified by anyone other than persons permitted by the manufacturer of the equipment.

(2) The 3M TR–830 Battery Pack shall only be charged in an area free of combustible material, readily monitored and located on the surface of the mine. The 3M TR–830 Battery Pack is to be charged by either:

(i) 3M Battery Charger Kit TR–641N, which includes one 3M Charger Cradle TR–640 and one 3M Power Supply TR–941N; or

(ii) 3M 4-Station Battery Charger Kit TR–644N, which includes four 3M Charger Cradles TR–640 and one 3M 4-Station Battery Charger Base/Power Supply TR–944N.

(iii) The batteries shall not be allowed to get wet. This does not preclude incidental exposure of sealed battery packs.

(iv) The batteries shall not be used, charged or stored m locations where the manufacturer's recommended temperature limits are exceeded. The batteries shall not be placed in direct sunlight or used or stored near a source of heat.

(n) Personnel engaged in the use of the 3M Versaflo TR–800 shall be properly trained to recognize the hazards and limitations associated with the use of the equipment in areas where methane could be present. Additionally, personnel shall be trained regarding proper procedures for donning Self-Contained Self Rescuers (SCSRs) during a mine emergency while wearing the 3M VersaFlo TR–800 PAPR. The mine operator shall submit proposed revisions to update the Mine Emergency Evacuation and Firefighting Program of Instruction under 30 CFR 75.1502 to address this issue.

(o) Within 60 days after the PDO granted by MSHA becomes final, the operator shall submit proposed revisions for its approved 30 CFR part 48 training plans to the Mine Safety and Health Enforcement District Manager. These proposed revisions shall specify initial and refresher training regarding the terms and conditions stated in the PDO granted by MSHA. When training is conducted on the terms and conditions in the PDO granted by MSHA, an MSHA Certificate of Training (Form 5000–23) shall be completed. Comments shall be included on the Certificate of Training indicating that the training received was for use of the 3M Versaflo TR–800.

(p) All personnel who will be involved with or affected by the use of the 3M Versaflo TR–800 PAPR shall receive training in accordance with 30 CFR 48.7 on the requirements of the PDO granted by MSHA within 60 days of the date the PDO granted by MSHA becomes final. Such training shall be completed before any 3M Versaflo TR–800 can be used in the face or within 150 feet of pillar workings. The operator shall keep a record of such training an provide such record to MSHA upon request.

(q) The operator shall provide annual retraining to all personnel who will be involved with or affected by the use of the 3M Versaflo TR–800 PAPR in accordance with 30 CFR 48.8. The operator shall train new miners on the requirements of the PDO granted by

MSHA in accordance with 30 CFR 48.5 and shall train experienced miners on the requirements of the PDO granted by MSHA in accordance with 30 CFR 48.6. The operator shall keep a record of such training and provide such record to MSHA upon request.

(r) The operator shall post the PDO granted by MSHA in unobstructed locations on the bulletin boards and/or in other conspicuous places where notices to miners are ordinarily posted, for a period of not less than 60 consecutive days.

(s) The miners at Kingston Mining, Inc., Kingston No. 2 Mine, are not represented by a labor organization and there are no representatives of miners at the mine and a copy of this petition has been posted on the bulletin board on September 4, 2024.

The petitioner asserts that the alternative method in the petition will at all times guarantee no less than the same measure of protection afforded to the miners by the standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2024–26717 Filed 11–15–24; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by Kingston Mining, Inc.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before December 18, 2024.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2024–0065 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2024–0065.

2. *Fax:* 202–693–9441.

3. *Email: petitioncomments@dol.gov.*

4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk, 4th Floor West. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2024–042–C.

Petitioner: Kingston Mining, Inc., 300 Running Right Way, Julian, WV 25529.

Mine: Kingston No. 2 Mine, MSHA ID No. 46–08932, located in Fayette County, West Virginia.

Regulation Affected: 30 CFR 75.507–1(a), Permissible electric equipment.

Modification Request: The petitioner requests a modification of 30 CFR 75.507–1(a) to permit alternative methods of compliance to allow the use of additional respirable dust protection. Specifically, the petitioner is requesting to permit the use of the 3M Versaflo TR–800–HIK Intrinsically Safe Powered Air Purifying Respirator motor/blower and battery.

The petitioner states that:

(a) Kingston Mining, Inc., does not currently use a battery powered respirator unit but would like to add a Powered Air Purifying Respirator (''PAPR'') to the units available to miners in certain situations.

(b) Currently there are no battery powered respirators that meet applicable U.S. Mine Safety and Health Administration (MSHA) standards for permissibility. Electronic equipment used in underground mines in potentially explosive atmospheres is required to be approved by MSHA per 30 CFR. 3M and other competitor manufacturers do offer alternative products for many other environments and applications.

(c) One of the main benefits of a PAPR is that they provide a constant flow of air inside the headtop or helmet. This constant airflow helps to provide both respiratory protection and comfort in warm working environments.

(d) A strict application of the standard (*i.e.,* objecting to the use of the requested PAPR) results in a diminution of safety at the mine.

(e) Kingston Mining, Inc., petitions to permit the use of the 3M Versaflo TR–800–HIK Intrinsically Safe Powered Air Purifying Respirator motor/blower and battery.

(f) The Versaflo TR–800–HIK motor/blower and battery qualifies as intrinsically safe in the U.S., Canada, and any other countries accepting IECEx reports. (IECEx is the International Electrotechnical Commissions System for Certification to Standards Relating to Equipment for Use in Explosive Atmospheres). The TR–800–HIK PAPR has a blower that is UL-certified with an intrinsically safe (IS) rating of Division I: IS Class I, II, III; Division I (includes Division 2) Groups C, D, E, F, G; T4, under the most current standard (UL 60079, 6th Edition, 2013), and ATEX-certified with an intrinsically safe (IS) rating of ''ia''. The TR–800 is rated and marked with Exia I Ma, Exia IIB T4 Ga, Ex ia IIIC 135°C Da, $-20\,°C \leq Ta \leq +55\,°C$, under the current standard (IEC 60079).

(g) The 3M Versaflo TR–800 Intrinsically Safe Powered Air Purifying Respirator is not MSHA approved as permissible, and 3M is not pursuing approval to our knowledge.

(h) The standards for approval of these respirators are an acceptable alternative to MSHA's standards and provide an equivalent level of protection.

(i) The alternative method in the petition will at all times guarantee no less than the same measure of protection afforded to the miners by the standard.

The petitioner proposes the following alternative method:

(a) Affected mine employees shall be trained in the proper use and maintenance of the Versaflo TR–800 PAPR in accordance with established manufacturer guidelines. This training shall alert the affected employee that the Versaflo TR–800 PAPR is approved under 30 CFR part 18 and shall be de-energized when 1.0 percent or more percent methane is detected. The training shall also include the proper method to de-energize the PAPR. In addition to manufacturer guidelines, Kingston Mining, Inc. shall require that mine employees be trained to inspect the units before use to determine if there is any damage to the units that would negatively impact intrinsic safety as well as all stipulations in this petition.

(b) The PAPR, battery pack, and all associated wiring and any connections shall be inspected before use to determine if there is any damage to the units that would negatively impact intrinsic safety. If any defects are found, the PAPR shall be removed from service.

(c) The operator shall maintain a separate logbook for the 3M Versaflo TR–800 PAPR that shall be kept with the equipment, or in a location with other mine record books and shall be made available to MSHA upon request. The equipment shall be examined at least weekly by a qualified person as defined in 30 CFR 75.512–1 and the examination results recorded in the logbook. Since float coal dust is removed by the air filter prior to reaching the motor, the PAPR user shall conduct regular examinations of the filter and perform periodic testing for proper operation of the ''high filter load alarm'' on the 3M Versaflo TR–800 PAPR.

(d) All 3M Versaflo TR–800 PAPRs to be used on the longwall face or within 150 feet of pillar workings, shall be physically examined prior to initial use and each unit shall be assigned a unique identification number. Each unit shall be examined by the person to operate the equipment prior to taking the equipment underground to ensure the equipment is being used according to the original equipment manufacturer's recommendations and maintained in a safe operating condition. The examinations for the 3M Versaflo TR–800 PAPRs shall include:

(1) Check the equipment for any physical damage and the integrity of the case;

(2) Remove the battery and inspect for corrosion;

(3) Inspect the contact points to ensure a secure connection to the battery;

(4) Reinsert the battery and power up and shut down to ensure proper connections; and

(5) Check the battery compartment cover or battery attachment to ensure that it is securely fastened.

(6) For equipment utilizing lithium type cells, ensure that lithium cells and/or packs are not damaged or swelled in size. The pre-use examination is limited to inspecting the equipment for indications of physical damage.

(e) The operator shall ensure that all 3M Versaflo TR–800 units are serviced according to the manufacturer's recommendations. Dates of service shall be recorded in the equipment's logbook and shall include a description of the work performed.

(f) The 3M Versaflo TR–800 units that will be used in the face or within 150 feet of pillar workings, or in areas where methane may enter the air current, shall not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions of the Proposed Decision and Order (PDO) granted by MSHA.

(g) Prior to energizing the 3M Versaflo TR–800 inby the last open crosscut, methane tests shall be made in accordance with 30 CFR 75.323(a).

(h) All hand-held methane detectors shall be MSHA-approved and maintained in permissible and proper operating condition as defined by 30 CFR 75.320. All methane detectors shall provide visual and audible warnings when methane is detected at or above 1.0 percent.

(i) A qualified person as defined in 30 CFR 75.151 shall continuously monitor for methane immediately before and during the use of the 3M Versaflo TR–800 PAPR in the face or within 150 feet of pillar workings or in areas where methane may enter the air current.

(j) The 3M Versaflo TR–800 PAPR shall not be used if methane is detected in concentrations at or above 1.0 percent methane. When 1.0 percent or more of methane is detected while the Versaflo TR–800 is being used, the equipment shall be de-energized immediately and the equipment withdrawn outby the last open crosscut.

(k) Kingston Mining, Inc. shall use only the 3M TR–830 Battery Pack, which meets lithium battery safety standard UL 1642 or IEC 62133, in the 3M Versaflo TR–800 PAPR.

(l) The battery packs shall be ''changed out'' in intake air outby the last open crosscut. Before each shift when the 3M Versaflo TR–800 is to be used, all batteries and power units for the equipment shall be charged sufficiently so that they are not expected to be replaced on that shift.

(m) The following maintenance and use conditions shall apply to equipment containing lithium-type batteries:

(1) Always correctly use and maintain the lithium-ion battery packs. The 3M TR–830 Battery Pack may not be disassembled or modified by anyone other than persons permitted by the manufacturer of the equipment.

(2) The 3M TR–830 Battery Pack shall only be charged in an area free of combustible material, readily monitored and located on the surface of the mine. The 3M TR–830 Battery Pack is to be charged by either:

(i) 3M Battery Charger Kit TR–641N, which includes one 3M Charger Cradle TR–640 and one 3M Power Supply TR-941N; or

(ii) 3M 4-Station Battery Charger Kit TR–644N, which includes four 3M Charger Cradles TR–640 and one 3M 4-Station Battery Charger Base/Power Supply TR–944N.

(iii) The batteries shall not be allowed to get wet. This does not preclude incidental exposure of sealed battery packs.

(iv) The batteries shall not be used, charged or stored m locations where the manufacturer's recommended temperature limits are exceeded. The batteries shall not be placed in direct sunlight or used or stored near a source of heat.

(n) Personnel engaged in the use of the 3M Versaflo TR–800 shall be properly trained to recognize the hazards and limitations associated with the use of the equipment in areas where methane could be present. Additionally, personnel shall be trained regarding proper procedures for donning Self-Contained Self Rescuers (SCSRs) during a mine emergency while wearing the 3M VersaFlo TR–800 PAPR. The mine operator shall submit proposed revisions to update the Mine Emergency Evacuation and Firefighting Program of Instruction under 30 CFR 75.1502 to address this issue.

(o) Within 60 days after the PDO granted by MSHA becomes final, the operator shall submit proposed revisions for its approved 30 CFR part 48 training plans to the Mine Safety and Health Enforcement District Manager. These proposed revisions shall specify initial and refresher training regarding the terms and conditions stated in the PDO granted by MSHA. When training is conducted on the terms and conditions in the PDO granted by MSHA, an MSHA Certificate of Training (Form 5000–23) shall be completed. Comments shall be included on the Certificate of Training indicating that

the training received was for use of the 3M Versaflo TR–800.

(p) All personnel who will be involved with or affected by the use of the 3M Versaflo TR–800 PAPR shall receive training in accordance with 30 CFR 48.7 on the requirements of the PDO granted by MSHA within 60 days of the date the PDO granted by MSHA becomes final. Such training shall be completed before any 3M Versaflo TR–800 can be used in the face or within 150 feet of pillar workings. The operator shall keep a record of such training an provide such record to MSHA upon request.

(q) The operator shall provide annual retraining to all personnel who will be involved with or affected by the use of the 3M Versaflo TR–800 PAPR in accordance with 30 CFR 48.8. The operator shall train new miners on the requirements of the PDO granted by MSHA in accordance with 30 CFR 48.5 and shall train experienced miners on the requirements of the PDO granted by MSHA in accordance with 30 CFR 48.6. The operator shall keep a record of such training and provide such record to MSHA upon request.

(r) The operator shall post the PDO granted by MSHA in unobstructed locations on the bulletin boards and/or in other conspicuous places where notices to miners are ordinarily posted, for a period of not less than 60 consecutive days.

(s) The miners at Kingston Mining, Inc., Kingston No. 2 Mine, are not represented by a labor organization and there are no representatives of miners at the mine and a copy of this petition has been posted on the bulletin board on September 4, 2024.

The petitioner asserts that the alternative method in the petition will at all times guarantee no less than the same measure of protection afforded to the miners by the standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2024–26727 Filed 11–15–24; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by Greenbrier Minerals, LLC.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before December 18, 2024.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2024–0072 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2024–0072.

2. *Fax:* 202–693–9441.

3. *Email: petitioncomments@dol.gov.*

4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk, 4th Floor West. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2024–047–C.

Petitioner: Greenbrier Minerals, LLC, 119 Rich Creek Road, Lyburn, WV 25632.

Mines: Powellton #1 Mine, MSHA ID No. 46–09217, located in Logan County, West Virginia; Lower War Eagle, MSHA ID No. 46–09319, located in Wyoming County, West Virginia; Muddy Bridge, Mine ID No. 46–09514, located in Logan County, West Virginia; Eagle No. 1 Mine, Mine ID No. 46–09563, located in Logan County, West Virginia.

Regulation Affected: 30 CFR 75.500(d), Permissible electric equipment.

Modification Request: The petitioner requests a modification of 30 CFR 75.500(d) to allow the use of an alternative method of respirable dust protection. Specifically, the petitioner is requesting to use a battery powered respirable protection unit called the 3M Versaflo TR–800 powered air-purifying respirator (PAPR) in addition to the CleanSpace EX PAPR in or inby the last open crosscut.

The petitioner states that:

(a) The petitioner is requesting to utilize the 3M Versaflo TR–800 PAPR in addition to the utilization of the CleanSpace EX PAPR, which was approved through a previous Proposed Decision and Order (PDO) granted by MSHA (MSHA Docket Number M–2022–038–C). It should be noted that North Fork Winifrede Deep Mine, Mine ID No. 46–09583 was included in the original petition but has been abandoned and will be omitted in the amended petition.

(b) The 3M Airstream helmet has been used in mines for over 40 years. 3M has recently faced component disruptions for the Airstream product. This has caused 3M to discontinue, globally, the Airstream on June 1, 2020. The ability to order an Airstream system and components ended in February 2020, and components were available through June 2020. Currently, there are not any available replacement PAPRs that meet the MSHA standard for permissibility. PAPRs provide a constant flow of filtered air, which offers respiratory protection and comfort in hot working environments. Operators that were using the Airstream, do not have an alternative to provide to this type of protection to its miners.

(c) Greenbrier Minerals, LLC, is seeking alternatives to the 3M Airstream helmet to provide miners with respirable protection against respirable

coal mine and silica dust, a protection that can provide long-term health benefits.

(d) Both the CleanSpace EX and 3M Versaflo TR–800 PAPRs provide a constant flow of filtered air inside the half-mask, full mask or helmet. The airflow provides respiratory protection and comfort in hot working conditions. Both PAPRs will be equipped with the following: Particulate protection classified as 100 series under 42 CFR part 84; or Particulate protection classified as High Efficiency ''HE'' under 42 CFR part 84.

(e) Greenbrier Minerals LLC is seeking to continue the use of the CleanSpace EX PAPR and applying to utilize the 3M Versaflo TR–800 PAPR in or inby the last open crosscut at the aforementioned mines.

(f) CleanSpace EX.

(1) The CleanSpace EX is certified by TestSafe Australia (TSA) according to the IEC 60079–0:2011 (General Requirements) and IEC 60079–11:2011 (Intrinsic Safety) standards. The certificate, issued to PAFtec Australia Pty Ltd (''PAFtec''), allows PAFtec to mark the device as ''Ex ib IIB T4 Gb'' and ''Ex ia I Ma.'' Due to legal and regulatory constraints, the TSA certificate is not accepted by MSHA as evidence that the PAPR is approved for use in US mines. The IEC certification marking that applies to mining, Ex ia I Ma, is discussed below:

(2) The CleanSpace EX is certified to be used in hazardous locations (''Ex''); meets the most onerous level of intrinsic safety protection (''ia''); the level of protection is acceptable for use in mining locations (''I''), and the Equipment Protection Level appropriate for mining equipment, that has a ''very high'' level of protection, with sufficient security that it is unlikely to become an ignition source in normal operation, during expected malfunctions or during rare malfunctions, even when left energized in the presence of an outbreak of gas (''Ma'').

(3) NIOSH researchers, in a paper titled ''An Evaluation of the Relative Safety of U.S. Mining Explosion-Protected Equipment Approval Requirements versus those of International Standards'', have determined that equipment, which meets two-fault intrinsic safety as defined in the ANSI/UL 60079 standard would provide at least an equivalent level of safety as that provided by equipment approved under MSHA criteria.

(4) The UL certification, TSA certification and PAFtec listing material (drawings, certificate and text report) were found to support the conclusion that the CleanSpace EX meet the applicable ''two fault'' intrinsic safety requirements for mining equipment as found in the ANSI/UL standard.

(5) The CleanSpace EX carries an ingress protection rating of IP66. This rating exceeds the minimum rating of IP54 required by the ANSI/UL and IEC standards for intrinsically safe mining equipment.

(6) This product is not MSHA-approved, and the manufacturer is not pursuing approval. The standards for the approval of this respirator are an accepted alternative to MSHA's standards and provide the same level of protection.

(g) 3M Versaflo TR–800.

(1) The 3M Versaflo TR–800 PAPR with motor/blower and battery qualifies as intrinsically safe, based on reports by the International Electrotechnical Commission Systems for Certification to Standards Relating to Equipment for Use in Explosive Atmospheres (IECEx). The blower is UL-certified with an intrinsically safe rating of Division 1: Class I, II, III; Division 1: Groups C, D, E, F, G; T4 under the current standard of UL 60079; ATEX-certified with a rating of ''ia''. The 3M Versaflo TR–800 is rated and marked Ex ia I MA, Ex ia IIB T4 Ga, Ex ia IIIC 135oC Da; 120°C≤ TA ≤+55°C.

(2) The 3M Versaflo TR–800 carries an ingress protection rating of IP64. This rating exceeds the minimum rating of IP54 required by the ANSI/UL and IEC standards for intrinsically safe mining equipment.

(3) This product is not MSHA-approved, and the manufacturer is not pursuing approval. The standards for the approval of this respirator are an accepted alternative to MSHA's standards and provide the same level of protection.

(h) The alternative method will guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

The petitioner proposes the following alternative method:

(a) Affected mine employees shall be trained in the proper use and maintenance of the PAPR(s) to be used at the mine, the 3M Versaflo TR–800 and/or the CleanSpace EX, in accordance with established manufacturer guidelines. This training shall alert the affected employee that neither the 3M Versaflo TR–800 nor the CleanSpace EX PAPR is approved under 30 CFR part 18 and therefore shall be de-energized when 1.0 or more percent methane is detected. The training shall also include the proper method to de-energize these PAPRs. In addition to manufacturer guidelines, MSHA shall require that mine employees be trained to inspect the units before use to determine if there is any damage to the units that would negatively impact intrinsic safety as well as all stipulations in the PDO granted by MSHA.

(b) The PAPRs, battery packs, all associated wiring and connections shall be inspected before use to determine if there is any damage to the units that would negatively impact intrinsic safety. If any defects are found, the PAPR shall be removed from service.

(c) The operator shall maintain a separate logbook for the 3M Versaflo TR–800 and CleanSpace EX PAPRs that shall be kept with the equipment, or in a location with other mine record books and shall be made available to MSHA upon request. The equipment shall be examined at least weekly by a qualified person as defined in 30 CFR 75.512–1 and the examination results recorded in the logbook. Since float coal dust is removed by the air filter prior to reaching the motor, the PAPR user shall conduct regular examinations of the filter and perform periodic testing for proper operation of the ''high filter load alarm'' on the 3M Versaflo TR–800 PAPR, and the ''blocked filter'' alarm on the CleanSpace EX PAPR. Examination entries may be expunged after one year.

(d) All 3M Versaflo TR–800 and CleanSpace EX PAPRs to be used in or inby the last open crosscut shall be physically examined prior to initial use and each unit shall be assigned a unique identification number. Each unit shall be examined by the person to operate the equipment prior to taking the equipment underground to ensure the equipment is used according to the original equipment manufacturer's recommendations and maintained in a safe operating condition. The examinations for the 3M Versaflo TR–800 PAPRs shall include:

(1) Check the equipment for any physical damage and the integrity of the case;

(2) Remove the battery and inspect for corrosion;

(3) Inspect the contact points to ensure a secure connection to the battery;

(4) Reinsert the battery and power up and shut down to ensure proper connections;

(5) Check the battery compartment cover or battery attachment to ensure that it is securely fastened; and

(6) For equipment utilizing lithium type cells, ensure that lithium cells and/or packs are not damaged or swelled in size.

(e) All CleanSpace EX PAPRs to be used in or inby the last open crosscut

shall be physically examined prior to initial use and each unit shall be assigned a unique identification number. Each unit shall be examined by the person to operate the equipment prior to taking the equipment underground to ensure the equipment is used according to the original equipment manufacturer's recommendations and maintained in a safe operating condition. The CleanSpace EX PAPR does not have an accessible/removable battery. The internal battery and motor/blower assembly are both contained within the ''power unit'' assembly and the battery cannot be removed, reinserted or fastened. Therefore, examination of the CleanSpace EX PAPR should include any indications of physical damage.

(f) The operator shall ensure that all 3M Versaflo TR–800 and CleanSpace EX PAPR units are serviced according to the manufacturer's recommendations. Dates of service shall be recorded in the equipment's logbook and shall include a description of the work performed.

(g) The 3M Versaflo TR–800 and CleanSpace EX PAPR units that will be used in or inby the last open crosscut shall not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions of the PDO granted by MSHA.

(h) Prior to energizing the 3M Versaflo TR–800 or the CleanSpace EX PAPR in or inby the last open crosscut, methane tests shall be made in accordance with 30 CFR 75.323(a).

(i) All hand-held methane detectors shall be MSHA-approved and maintained in permissible and proper operating condition as defined by 30 CFR 75.320. All methane detectors shall provide visual and audible warnings when methane is detected in concentrations at or above 1.0 percent.

(j) A qualified person as defined in 30 CFR 75.151 shall continuously monitor for methane immediately before and during the use of the 3M Versaflo TR–800 or CleanSpace EX PAPR in or inby the last open crosscut.

(k) Neither the 3M Versaflo TR–800 nor the CleanSpace EX PAPR shall be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more methane is detected while the 3M Versaflo TR–800 or CleanSpace EX PAPR is being used, the equipment shall be de-energized immediately and the equipment withdrawn outby the last open crosscut.

(l) The operation and location of the 3M Versaflo TR–800 and CleanSpace EX PAPRs during underground blasting operations shall be defined in accordance with 30 CFR 75.1312(e)(1), 30 CFR 75.1313(b)(1), and individualized underground blasting permits approved by the District Manager.

(m) Only the 3M TR–830 Battery Pack shall be used, which meets lithium battery safety standard UL 1642 or IEC 62133, in the 3M Versaflo TR–800 PAPR. Use only the CleanSpace EX Power Unit, which meets lithium battery safety standard UL 1642 or IEC 62133, in the CleanSpace EX PAPR.

(n) Before each shift when the 3M Versaflo TR–800 or CleanSpace EX PAPR is to be used, all batteries and power units for the equipment shall be charged sufficiently for the expected usage on that shift. If spare battery packs for the 3M Versaflo TR–800 PAPR are provided, all battery ''change outs'' shall occur in intake air outby the last open crosscut.

(o) The following maintenance and use conditions shall apply to equipment containing lithium-type batteries:

(1) Neither the 3M TR–830 Battery Pack nor the CleanSpace EX Power Unit may be disassembled nor modified by anyone other than permitted by the manufacturer of the equipment.

(2) The 3M TR–830 Battery Pack shall be charged only in an area free of combustible material, readily monitored and located on the surface of the mine. The 3M TR–830 Battery Pack shall be charged only by a manufacturer's recommended battery charger, such as:

(i) 3M Battery Charger Kit TR–641N, which includes one 3M Charger Cradle TR–640 and one 3M Power Supply TR–941N, or

(ii) 3M 4-Station Battery Charger Kit TR–644N, which includes four 3M Charger Cradles TR–640 and one 3M 4-Station Battery Charger Base/Power Supply TR–944N.

(3) The CleanSpace EX internal battery, which is contained within the power unit assembly, shall be charged in areas located outby the last open crosscut in intake air as per 30 CFR 75.340, or in an area free of combustible material, readily monitored and located on the surface of the mine, and only the manufacturer's recommended battery chargers may be used, such as the CleanSpace EX Battery Charger, Product Code PAF–0066.

(4) Neither the 3M TR–830 Battery Pack nor the CleanSpace EX power unit which contains the internal battery, shall be exposed to water, allowed to get wet or immersed in liquid. This does not preclude incidental exposure of the 3M TR–830 Battery Pack or the CleanSpace EX power unit assembly.

(5) Neither the 3M Versaflo TR–800 PAPR nor the CleanSpace EX PAPR, including the internal battery, shall be used, charged or stored in locations where the manufacturer's recommended temperature limits are exceeded. Neither the 3M Versaflo TR–800 PAPR nor the CleanSpace EX PAPR shall be placed in direct sunlight nor stored near a source of heat.

(6) Neither the 3M TR–830 Battery Pack nor the CleanSpace EX PAPR's internal battery shall be used at the end of its life cycle (*i.e.,* when there is a performance decrease of greater than 20 percent in battery-operated equipment). The 3M TR–830 Battery Pack and the CleanSpace EX power unit containing the internal battery shall be disposed of properly.

(p) Personnel engaged in the use of the 3M Versaflo TR–800 and CleanSpace EX PAPRs shall be properly trained to recognize the hazards and limitations associated with the use of the equipment in areas where methane could be present. Additionally, personnel shall be trained regarding proper procedures for donning self-contained self rescuers (SCSRs) during a mine emergency while wearing the 3M Versaflo TR–800 or CleanSpace EX PAPR. The mine operator shall submit proposed revisions to update the Mine Emergency Evacuation and Firefighting Program of Instruction under 30 CFR 75.1502.

(q) Within 60 days after the PDO granted by MSHA becomes final, the operator shall submit proposed revisions for its approved 30 CFR part 48 training plans to the Mine Safety and Health Enforcement District Manager. These proposed revisions shall specify initial and refresher training regarding the terms and conditions stated in the PDO granted by MSHA. When training is conducted on the terms and conditions in the PDO granted by MSHA, an MSHA Certificate of Training (Form 5000–23) shall be completed. Comments shall be included on the Certificate of Training indicating that the training received was for use of the 3M Versaflo TR–800 or the CleanSpace EX PAPR.

(r) All personnel who will be involved with or affected by the use of the 3M Versaflo TR–800 or CleanSpace EX PAPRs shall receive training in accordance with 30 CFR 48.7 on the requirements of the PDO granted by MSHA within 60 days of the date the PDO granted by MSHA becomes final. Such training shall be completed before any 3M Versaflo TR–800 or CleanSpace EX PAPR can be used in or inby the last open crosscut. The operator shall keep a record of such training and provide such record to MSHA upon request.

(s) The operator shall provide annual retraining to all personnel who will be

involved with or affected by the use of the 3M Versaflo TR–800 or CleanSpace EX PAPRs in accordance with 30 CFR 48.8. The operator shall train new miners on the requirements of the PDO granted by MSHA in accordance with 30 CFR 48.5, and shall train experienced miners on the requirements of the PDO granted by MSHA in accordance with 30 CFR 48.6. The operator shall keep a record of such training and provide such record to MSHA upon request.

(t) The operator shall post the PDO granted by MSHA in unobstructed locations on the bulletin boards and/or in other conspicuous places where notices to miners are ordinarily posted, for a period of not less than 60 consecutive days.

(u) There are no representatives of miners at Greenbrier Minerals LLC, Powellton #1 Mine, Lower War Eagle, Muddy Bridge, or Eagle No. 1 Mine. A copy of this petition has been posted on the bulletin board as of September 12, 2024.

The petitioner asserts that the alternative method will guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2024–26732 Filed 11–15–24; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by Kingston Mining, Inc.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before December 18, 2024.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2024–0064 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2024–0064.

2. *Fax:* 202–693–9441.

3. *Email: petitioncomments@dol.gov.*

4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk, 4th Floor West. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2024–041–C.

Petitioner: Kingston Mining, Inc., 300 Running Right Way, Julian, WV 25529.

Mine: Kingston No. 2 Mine, MSHA ID No. 46–08932, located in Fayette County, West Virginia.

Regulation Affected: 30 CFR 75.500(d), Permissible electric equipment.

Modification Request: The petitioner requests a modification of 30 CFR 75.500(d) to permit alternative methods of compliance to allow the use of additional respirable dust protection. Specifically, the petitioner is requesting to permit the use of the 3M Versaflo TR–800–HIK Intrinsically Safe Powered Air Purifying Respirator motor/blower and battery.

The petitioner states that:

(a) Kingston Mining, Inc. does not currently use a battery powered respirator unit but would like to add a Powered Air Purifying Respirator (''PAPR'') to the units available to miners in certain situations.

(b) Currently there are no battery powered respirators that meet applicable U.S. Mine Safety and Health Administration (MSHA) standards for permissibility. Electronic equipment used in underground mines in potentially explosive atmospheres is required to be approved by MSHA per 30 CFR. 3M and other competitor manufacturers do offer alternative products for many other environments and applications.

(c) One of the main benefits of a PAPR is that they provide a constant flow of air inside the headtop or helmet. This constant airflow helps to provide both respiratory protection and comfort in warm working environments.

(d) A strict application of the standard (*i.e.,* objecting to the use of the requested PAPR) results in a diminution of safety at the mine.

(e) Kingston Mining, Inc. petitions to permit the use of the 3M Versaflo TR–800–HIK Intrinsically Safe Powered Air Purifying Respirator motor/blower and battery.

(f) The Versaflo TR–800–HIK motor/blower and battery qualifies as intrinsically safe in the U.S., Canada, and any other countries accepting IECEx reports. (IECEx is the International Electrotechnical Commissions System for Certification to Standards Relating to Equipment for Use in Explosive Atmospheres). The TR–800–HIK PAPR has a blower that is UL-certified with an intrinsically safe (IS) rating of Division I: IS Class I, II, III; Division I (includes Division 2) Groups C, D, E, F, G; T4, under the most current standard (UL 60079, 6th Edition, 2013), and ATEX-certified with an intrinsically safe (IS) rating of ''ia''. The TR–800 is rated and marked with Exia I Ma, Exia IIB T4 Ga, Ex ia IIIC 135 °C Da, $-20\,°C \leq Ta \leq +55\,°C$, under the current standard (IEC 60079).

(g) The 3M Versaflo TR–800 Intrinsically Safe Powered Air Purifying Respirator is not MSHA approved as permissible, and 3M is not pursuing approval to our knowledge.

(h) The standards for approval of these respirators are an acceptable alternative to MSHA's standards and provide an equivalent level of protection.

(i) The alternative method in the petition will at all times guarantee no less than the same measure of protection afforded to the miners by the standard.

The petitioner proposes the following alternative method:

(a) Affected mine employees shall be trained in the proper use and maintenance of the Versaflo TR–800 PAPR in accordance with established manufacturer guidelines. This training shall alert the affected employee that the Versaflo TR–800 PAPR is approved under 30 CFR part 18 and shall be de-energized when 1.0 percent or more percent methane is detected. The training shall also include the proper method to de-energize the PAPR. In addition to manufacturer guidelines, Kingston Mining, Inc. shall require that mine employees be trained to inspect the units before use to determine if there is any damage to the units that would negatively impact intrinsic safety as well as all stipulations in this petition.

(b) The PAPR, battery pack, and all associated wiring and any connections shall be inspected before use to determine if there is any damage to the units that would negatively impact intrinsic safety. If any defects are found, the PAPR shall be removed from service.

(c) The operator shall maintain a separate logbook for the 3M Versaflo TR–800 PAPR that shall be kept with the equipment, or in a location with other mine record books and shall be made available to MSHA upon request. The equipment shall be examined at least weekly by a qualified person as defined in 30 CFR 75.512–1 and the examination results shall be recorded in the logbook. Since float coal dust is removed by the air filter prior to reaching the motor, the PAPR user shall conduct regular examinations of the filter and perform periodic testing for proper operation of the ''high filter load alarm'' on the 3M Versaflo TR–800 PAPR.

(d) All 3M Versaflo TR–800 PAPRs to be used on the longwall face or within 150 feet of pillar workings, shall be physically examined prior to initial use and each unit shall be assigned a unique identification number. Each unit shall be examined by the person to operate the equipment prior to taking the equipment underground to ensure the equipment is being used according to the original equipment manufacturer's recommendations and maintained in a safe operating condition. The examinations for the 3M Versaflo TR–800 PAPRs shall include:

(1) Check the equipment for any physical damage and the integrity of the case;

(2) Remove the battery and inspect for corrosion;

(3) Inspect the contact points to ensure a secure connection to the battery;

(4) Reinsert the battery and power up and shut down to ensure proper connections;

(5) Check the battery compartment cover or battery attachment to ensure that it is securely fastened; and

(6) For equipment utilizing lithium type cells, ensure that lithium cells and/or packs are not damaged or swelled in size. The pre-use examination is limited to inspecting the equipment for indications of physical damage.

(e) The operator shall ensure that all 3M Versaflo TR–800 units are serviced according to the manufacturer's recommendations. Dates of service shall be recorded in the equipment's logbook and shall include a description of the work performed.

(f) The 3M Versaflo TR–800 units that will be used in the face or within 150 feet of pillar workings, or in areas where methane may enter the air current, shall not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions of the Proposed Decision and Order (PDO) granted by MSHA.

(g) Prior to energizing the 3M Versaflo TR–800 inby the last open crosscut, methane tests shall be made in accordance with 30 CFR 75.323(a).

(h) All hand-held methane detectors shall be MSHA-approved and maintained in permissible and proper operating condition as defined by 30 CFR 75.320. All methane detectors shall provide visual and audible warnings when methane is detected at or above 1.0 percent.

(i) A qualified person as defined in 30 CFR 75.151 shall continuously monitor for methane immediately before and during the use of the 3M Versaflo TR–800 PAPR in the face or within 150 feet of pillar workings or in areas where methane may enter the air current.

(j) The 3M Versaflo TR–800 PAPR shall not be used if methane is detected in concentrations at or above 1.0 percent methane. When 1.0 percent or more of methane is detected while the Versaflo TR–800 is being used, the equipment shall be de-energized immediately and the equipment withdrawn outby the last open crosscut.

(k) Kingston Mining, Inc. shall use only the 3M TR–830 Battery Pack, which meets lithium battery safety standard UL 1642 or IEC 62133, in the 3M Versaflo TR–800 PAPR.

(l) The battery packs shall be ''changed out'' in intake air outby the last open crosscut. Before each shift when the 3M Versaflo TR–800 is to be used, all batteries and power units for the equipment shall be charged sufficiently so that they are not expected to be replaced on that shift.

(m) The following maintenance and use conditions shall apply to equipment containing lithium-type batteries:

(1) Always correctly use and maintain the lithium-ion battery packs. The 3M TR–830 Battery Pack may not be disassembled or modified by anyone other than persons permitted by the manufacturer of the equipment.

(2) The 3M TR–830 Battery Pack shall only be charged in an area free of combustible material, readily monitored and located on the surface of the mine. The 3M TR–830 Battery Pack is to be charged by either:

(i) 3M Battery Charger Kit TR–641N, which includes one 3M Charger Cradle TR–640 and one 3M Power Supply TR-941N; or

(ii) 3M 4-Station Battery Charger Kit TR–644N, which includes four 3M Charger Cradles TR–640 and one 3M 4-Station Battery Charger Base/Power Supply TR–944N.

(iii) The batteries shall not be allowed to get wet. This does not preclude incidental exposure of sealed battery packs.

(iv) The batteries shall not be used, charged or stored m locations where the manufacturer's recommended temperature limits are exceeded. The batteries shall not be placed in direct sunlight or used or stored near a source of heat.

(n) Personnel engaged in the use of the 3M Versaflo TR–800 shall be properly trained to recognize the hazards and limitations associated with the use of the equipment in areas where methane could be present. Additionally, personnel shall be trained regarding proper procedures for donning Self-Contained Self Rescuers (SCSRs) during a mine emergency while wearing the 3M VersaFlo TR–800 PAPR. The mine operator shall submit proposed revisions to update the Mine Emergency Evacuation and Firefighting Program of Instruction under 30 CFR 75.1502 to address this issue.

(o) Within 60 days after the PDO granted by MSHA becomes final, the operator shall submit proposed revisions for its approved 30 CFR part 48 training plans to the Mine Safety and Health Enforcement District Manager. These proposed revisions shall specify initial and refresher training regarding the terms and conditions stated in the PDO granted by MSHA. When training is conducted on the terms and conditions in the PDO granted by

MSHA, an MSHA Certificate of Training (Form 5000–23) shall be completed. Comments shall be included on the Certificate of Training indicating that the training received was for use of the 3M Versaflo TR–800.

(p) All personnel who will be involved with or affected by the use of the 3M Versaflo TR–800 PAPR shall receive training in accordance with 30 CFR 48.7 on the requirements of the PDO granted by MSHA within 60 days of the date the PDO granted by MSHA becomes final. Such training shall be completed before any 3M Versaflo TR–800 can be used in the face or within 150 feet of pillar workings. The operator shall keep a record of such training an provide such record to MSHA upon request.

(q) The operator shall provide annual retraining to all personnel who will be involved with or affected by the use of the 3M Versaflo TR–800 PAPR in accordance with 30 CFR 48.8. The operator shall train new miners on the requirements of the PDO granted by MSHA in accordance with 30 CFR 48.5 and shall train experienced miners on the requirements of the PDO granted by MSHA in accordance with 30 CFR 48.6. The operator shall keep a record of such training and provide such record to MSHA upon request.

(r) The operator shall post the PDO granted by MSHA in unobstructed locations on the bulletin boards and/or in other conspicuous places where notices to miners are ordinarily posted, for a period of not less than 60 consecutive days.

(s) The miners at Kingston Mining, Inc., Kingston No. 2 Mine, are not represented by a labor organization and there are no representatives of miners at the mine and a copy of this petition has been posted on the bulletin board on September 4, 2024.

The petitioner asserts that the alternative method in the petition will at all times guarantee no less than the same measure of protection afforded to the miners by the standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2024–26716 Filed 11–15–24; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by Greenbrier Minerals, LLC.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before December 18, 2024.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2024–0073 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2024–0073.
2. *Fax:* 202–693–9441.
3. *Email: petitioncomments@dol.gov.*
4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk, 4th Floor West. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2024–048–C.

Petitioner: Greenbrier Minerals, LLC, 119 Rich Creek Road, Lyburn, WV 25632.

Mines: Powellton #1 Mine, MSHA ID No. 46–09217, located in Logan County, West Virginia; Lower War Eagle, MSHA ID No. 46–09319, located in Wyoming County, West Virginia; Muddy Bridge, Mine ID No. 46–09514, located in Logan County, West Virginia; Eagle No.1 Mine, Mine ID No. 46–09563, located in Logan County, West Virginia.

Regulation Affected: 30 CFR 75.507–1(a), Permissible electric equipment.

Modification Request: The petitioner requests a modification of 30 CFR 75.507–1(a) to allow the use of an alternative method of respirable dust protection. Specifically, the petitioner is requesting to use a battery powered respirable protection unit called the 3M Versaflo TR–800 powered air-purifying respirator (PAPR) in addition to the CleanSpace EX PAPR in the return air outby the last open crosscut.

The petitioner states that:

(a) The petitioner is requesting to utilize the 3M Versaflo TR–800 PAPR in addition to the utilization of the CleanSpace EX PAPR, which was approved through a previous Proposed Decision and Order (PDO) granted by MSHA (MSHA Docket Number M–2022–039–C). It should be noted that North Fork Winifrede Deep Mine, Mine ID No. 46–09583 was included in the original petition but has been abandoned and will be omitted in the amended petition.

(b) The 3M Airstream helmet has been used in mines for over 40 years. 3M has recently faced component disruptions for the Airstream product. This has caused 3M to discontinue, globally, the Airstream on June 1, 2020. The ability to order an Airstream system and components ended in February 2020, and components were available through June 2020. Currently, there are not any available replacement PAPRs that meet the MSHA standard for permissibility. PAPRs provide a constant flow of filtered air, which offers respiratory protection and comfort in hot working

environments. Operators that were using the Airstream, do not have an alternative to provide to this type of protection to its miners.

(c) Greenbrier Minerals, LLC, is seeking alternatives to the 3M Airstream helmet to provide miners with respirable protection against respirable coal mine and silica dust, a protection that can provide long-term health benefits.

(d) Both the CleanSpace EX and 3M Versaflo TR–800 PAPRs provide a constant flow of filtered air inside the half-mask, full mask or helmet. The airflow provides respiratory protection and comfort in hot working conditions. Both PAPRs will be equipped with the following: Particulate protection classified as 100 series under 42 CFR part 84; or Particulate protection classified as High Efficiency ''HE'' under 42 CFR part 84.

(e) Greenbrier Minerals LLC is seeking to continue the use of the CleanSpace EX PAPR and applying to utilize the 3M Versaflo TR–800 PAPR in the return air outby the last open crosscut at the aforementioned mines.

(f) CleanSpace EX.

(1) The CleanSpace EX is certified by TestSafe Australia (TSA) according to the IEC 60079–0:2011 (General Requirements) and IEC 60079–11:2011 (Intrinsic Safety) standards. The certificate, issued to PAFtec Australia Pty Ltd (''PAFtec''), allows PAFtec to mark the device as ''Ex ib IIB T4 Gb'' and ''Ex ia I Ma.'' Due to legal and regulatory constraints, the TSA certificate is not accepted by MSHA as evidence that the PAPR is approved for use in US mines. The IEC certification marking that applies to mining, Ex ia I Ma, is discussed below:

(2) The CleanSpace EX is certified to be used in hazardous locations (''Ex''); meets the most onerous level of intrinsic safety protection (''ia''); the level of protection is acceptable for use in mining locations (''I''), and the Equipment Protection Level appropriate for mining equipment, that has a ''very high'' level of protection, with sufficient security that it is unlikely to become an ignition source in normal operation, during expected malfunctions or during rare malfunctions, even when left energized in the presence of an outbreak of gas (''Ma'').

(3) NIOSH researchers, in a paper titled ''An Evaluation of the Relative Safety of U.S. Mining Explosion-Protected Equipment Approval Requirements versus those of International Standards'', have determined that equipment, which meets two-fault intrinsic safety as defined in the ANSI/UL 60079 standard would provide at least an equivalent level of safety as that provided by equipment approved under MSHA criteria.

(4) The UL certification, TSA certification and PAFtec listing material (drawings, certificate and text report) were found to support the conclusion that the CleanSpace EX meet the applicable ''two fault'' intrinsic safety requirements for mining equipment as found in the ANSI/UL standard.

(5) The CleanSpace EX carries an ingress protection rating of IP66. This rating exceeds the minimum rating of IP54 required by the ANSI/UL and IEC standards for intrinsically safe mining equipment.

(6) This product is not MSHA-approved, and the manufacturer is not pursuing approval. The standards for the approval of this respirator are an accepted alternative to MSHA's standards and provide the same level of protection.

(g) 3M Versaflo TR–800.

(1) The 3M Versaflo TR–800 PAPR with motor/blower and battery qualifies as intrinsically safe, based on reports by the International Electrotechnical Commission Systems for Certification to Standards Relating to Equipment for Use in Explosive Atmospheres (IECEx). The blower is UL-certified with an intrinsically safe rating of Division 1: Class I, II, III; Division 1: Groups C, D, E, F, G; T4 under the current standard of UL 60079; ATEX-certified with a rating of ''ia''. The 3M Versaflo TR–800 is rated and marked Ex ia I MA, Ex ia IIB T4 Ga, Ex ia IIIC 135oC Da; 120°C≤ TA ≤+55°C.

(2) The 3M Versaflo TR–800 carries an ingress protection rating of IP64. This rating exceeds the minimum rating of IP54 required by the ANSI/UL and IEC standards for intrinsically safe mining equipment.

(3) This product is not MSHA approved, and the manufacturer is not pursuing approval. The standards for the approval of this respirator are an accepted alternative to MSHA's standards and provide the same level of protection.

(h) The alternative method will guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

The petitioner proposes the following alternative method:

(a) Affected mine employees shall be trained in the proper use and maintenance of the PAPR(s) to be used at the mine, the 3M Versaflo TR–800 and/or the CleanSpace EX, in accordance with established manufacturer guidelines. This training shall alert the affected employee that neither the 3M Versaflo TR–800 nor the CleanSpace EX PAPR is approved under 30 CFR part 18 and therefore shall be de-energized when 1.0 or more percent methane is detected. The training shall also include the proper method to de-energize these PAPRs. In addition to manufacturer guidelines, MSHA shall require that mine employees be trained to inspect the units before use to determine if there is any damage to the units that would negatively impact intrinsic safety as well as all stipulations in the PDO granted by MSHA.

(b) The PAPRs, battery packs, and all associated wiring and connections shall be inspected before use to determine if there is any damage to the units that would negatively impact intrinsic safety. If any defects are found, the PAPR shall be removed from service.

(c) The operator shall maintain a separate logbook for the 3M Versaflo TR–800 and CleanSpace EX PAPRs that shall be kept with the equipment, or in a location with other mine record books and shall be made available to MSHA upon request. The equipment shall be examined at least weekly by a qualified person as defined in 30 CFR 75.512–1 and the examination results recorded in the logbook. Since float coal dust is removed by the air filter prior to reaching the motor, the PAPR user shall conduct regular examinations of the filter and perform periodic testing for proper operation of the ''high filter load alarm'' on the 3M Versaflo TR–800 PAPR, and the ''blocked filter'' alarm on the CleanSpace EX PAPR. Examination entries may be expunged after one year.

(d) All 3M Versaflo TR–800 and CleanSpace EX PAPRs to be used in the return air outby the last open crosscut shall be physically examined prior to initial use and each unit shall be assigned a unique identification number. Each unit shall be examined by the person to operate the equipment prior to taking the equipment underground to ensure the equipment is used according to the original equipment manufacturer's recommendations and maintained in a safe operating condition. The examinations for the 3M Versaflo TR–800 PAPRs shall include:

(1) Check the equipment for any physical damage and the integrity of the case;

(2) Remove the battery and inspect for corrosion;

(3) Inspect the contact points to ensure a secure connection to the battery;

(4) Reinsert the battery and power up and shut down to ensure proper connections;

(5) Check the battery compartment cover or battery attachment to ensure that it is securely fastened; and

(6) For equipment utilizing lithium type cells, ensure that lithium cells and/or packs are not damaged or swelled in size.

(e) All CleanSpace EX PAPRs to be used in the return air outby the last open crosscut shall be physically examined prior to initial use and each unit shall be assigned a unique identification number. Each unit shall be examined by the person to operate the equipment prior to taking the equipment underground to ensure the equipment is used according to the original equipment manufacturer's recommendations and maintained in a safe operating condition. The CleanSpace EX PAPR does not have an accessible/removable battery. The internal battery and motor/blower assembly are both contained within the ''power unit'' assembly and the battery cannot be removed, reinserted or fastened. Therefore, examination of the CleanSpace EX PAPR should include any indications of physical damage.

(f) The operator shall ensure that all 3M Versaflo TR–800 and CleanSpace EX PAPR units are serviced according to the manufacturer's recommendations. Dates of service shall be recorded in the equipment's logbook and shall include a description of the work performed.

(g) The 3M Versaflo TR–800 and CleanSpace EX PAPR units that will be used in the return air outby the last open crosscut shall not be put into service, until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions of the PDO granted by MSHA.

(h) Prior to energizing the 3M Versaflo TR–800 or the CleanSpace EX PAPR in the return air outby the last open crosscut, methane tests shall be made in accordance with 30 CFR 75.323(a).

(i) All hand-held methane detectors shall be MSHA-approved and maintained in permissible and proper operating condition as defined by 30 CFR 75.320. All methane detectors shall provide visual and audible warnings when methane is detected in concentrations at or above 1.0 percent.

(j) A qualified person as defined in 30 CFR 75.151 shall continuously monitor for methane immediately before and during the use of the 3M Versaflo TR–800 or CleanSpace EX PAPR in the return air outby the last open crosscut.

(k) Neither the 3M Versaflo TR–800 nor the CleanSpace EX PAPR shall be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more methane is detected while the 3M Versaflo TR–800 or CleanSpace EX PAPR is being used, the equipment shall be de-energized immediately and the equipment withdrawn outby the last open crosscut.

(l) The operation and location of the 3M Versaflo TR–800 and CleanSpace EX PAPRs during underground blasting operations shall be defined in accordance with 30 CFR 75.1312(e)(1), 30 CFR 75.1313(b)(1), and individualized underground blasting permits approved by the District Manager.

(m) Only the 3M TR–830 Battery Pack shall be used, which meets lithium battery safety standard UL 1642 or IEC 62133, in the 3M Versaflo TR–800 PAPR. Use only the CleanSpace EX Power Unit, which meets lithium battery safety standard UL 1642 or IEC 62133, in the CleanSpace EX PAPR.

(n) Before each shift when the 3M Versaflo TR–800 or CleanSpace EX PAPR is to be used, all batteries and power units for the equipment shall be charged sufficiently for the expected usage on that shift. If spare battery packs for the 3M Versaflo TR–800 PAPR are provided, all battery ''change outs'' shall occur in intake air outby the last open crosscut.

(o) The following maintenance and use conditions shall apply to equipment containing lithium-type batteries:

(1) Neither the 3M TR–830 Battery Pack nor the CleanSpace EX Power Unit may be disassembled nor modified by anyone other than permitted by the manufacturer of the equipment.

(2) The 3M TR–830 Battery Pack shall be charged only in an area free of combustible material, readily monitored and located on the surface of the mine. The 3M TR–830 Battery Pack shall be charged only by a manufacturer's recommended battery charger, such as:

(i) 3M Battery Charger Kit TR–641N, which includes one 3M Charger Cradle TR–640 and one 3M Power Supply TR–941N, or

(ii) 3M 4-Station Battery Charger Kit TR–644N, which includes four 3M Charger Cradles TR–640 and one 3M 4-Station Battery Charger Base/Power Supply TR–944N.

(3) The CleanSpace EX internal battery, which is contained within the power unit assembly, shall be charged in areas located outby the last open crosscut in intake air as per 30 CFR 75.340, or in an area free of combustible material, readily monitored and located on the surface of the mine, and only the manufacturer's recommended battery chargers may be used, such as the CleanSpace EX Battery Charger, Product Code PAF–0066.

(4) Neither the 3M TR–830 Battery Pack nor the CleanSpace EX power unit which contains the internal battery, shall be exposed to water, allowed to get wet or immersed in liquid. This does not preclude incidental exposure of the 3M TR–830 Battery Pack or the CleanSpace EX power unit assembly.

(5) Neither the 3M Versaflo TR–800 PAPR nor the CleanSpace EX PAPR, including the internal battery, shall be used, charged or stored in locations where the manufacturer's recommended temperature limits are exceeded. Neither the 3M Versaflo TR–800 PAPR nor the CleanSpace EX PAPR shall be placed in direct sunlight nor stored near a source of heat.

(6) Neither the 3M TR–830 Battery Pack nor the CleanSpace EX PAPR's internal battery shall be used at the end of its life cycle (*i.e.,* when there is a performance decrease of greater than 20 percent in battery-operated equipment). The 3M TR–830 Battery Pack and the CleanSpace EX power unit containing the internal battery shall be disposed of properly.

(p) Personnel engaged in the use of the 3M Versaflo TR–800 and CleanSpace EX PAPRs shall be properly trained to recognize the hazards and limitations associated with the use of the equipment in areas where methane could be present. Additionally, personnel shall be trained regarding proper procedures for donning self-contained self rescuers (SCSRs) during a mine emergency while wearing the 3M Versaflo TR–800 or CleanSpace EX PAPR. The mine operator shall submit proposed revisions to update the Mine Emergency Evacuation and Firefighting Program of Instruction under 30 CFR 75.1502.

(q) Within 60 days after the PDO granted by MSHA becomes final, the operator shall submit proposed revisions for its approved 30 CFR part 48 training plans to the Mine Safety and Health Enforcement District Manager. These proposed revisions shall specify initial and refresher training regarding the terms and conditions stated in the PDO granted by MSHA. When training is conducted on the terms and conditions in the PDO granted by MSHA, an MSHA Certificate of Training (Form 5000–23) shall be completed. Comments shall be included on the Certificate of Training indicating that the training received was for use of the 3M Versaflo TR–800 or the CleanSpace EX PAPR.

(r) All personnel who will be involved with or affected by the use of the 3M Versaflo TR–800 or CleanSpace EX PAPRs shall receive training in accordance with 30 CFR 48.7 on the

requirements of the PDO granted by MSHA within 60 days of the date the PDO granted by MSHA becomes final. Such training shall be completed before any 3M Versaflo TR–800 or CleanSpace EX PAPR can be used in the return air outby the last open crosscut. The operator shall keep a record of such training and provide such record to MSHA upon request.

(s) The operator shall provide annual retraining to all personnel who will be involved with or affected by the use of the 3M Versaflo TR–800 or CleanSpace EX PAPRs in accordance with 30 CFR 48.8. The operator shall train new miners on the requirements of the PDO granted by MSHA in accordance with 30 CFR 48.5, and shall train experienced miners on the requirements of the PDO granted by MSHA in accordance with 30 CFR 48.6. The operator shall keep a record of such training and provide such record to MSHA upon request.

(t) The operator shall post the PDO granted by MSHA in unobstructed locations on the bulletin boards and/or in other conspicuous places where notices to miners are ordinarily posted, for a period of not less than 60 consecutive days.

(u) There are no representatives of miners at Greenbrier Minerals LLC, Powellton # 1 Mine, Lower War Eagle, Muddy Bridge, or Eagle No. 1 Mine. A copy of this petition has been posted on the bulletin board as of September 12, 2024.

The petitioner asserts that the alternative method will guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2024–26715 Filed 11–15–24; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by Panther Creek Mining, LLC.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before December 18, 2024.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2024–077 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2024–077.
2. *Fax:* 202–693–9441.
3. *Email: petitioncomments@dol.gov.*
4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk, 4th Floor West. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2024–052–C.

Petitioner: Panther Creek Mining, LLC, 250 West Main Street, Suite 2000 Lexington KY 40507.

Mine: Maple Eagle #1 Mine, MSHA ID No. 46–04236, located in Fayette County, West Virginia.

Regulation Affected: 30 CFR 75.1002(a), Permissible electric equipment.

Modification Request: The petitioner requests a modification of 30 CFR 75.1002(a) to allow the use of unapproved Powered Air Purifying Respirators (PAPRs) within 150 feet of pillar workings or longwall faces. Specifically, the petitioner is requesting to utilize the CleanSpace EX PAPR and sealed motor/blower/battery power pack assembly, and the 3M Versaflo TR–800 Intrinsically Safe PAPR motor/blower and battery with battery pack.

The petitioner states that:

(a) The 3M Versaflo TR–800 PAPR with motor/blower and battery qualifies as intrinsically safe.

(b) The CleanSpace EX PAPR also qualifies as intrinsically safe.

(c) Both the CleanSpace EX and the 3M Versaflo TR–800 PAPRs provide a constant flow of air inside the mask or helmet. This airflow provides respiratory protection and comfort in hot working conditions.

(d) Neither the 3M Versaflo TR–800 nor the CleanSpace EX PAPR is MSHA-approved as permissible.

(e) Neither the 3M nor the CleanSpace is pursuing MSHA approval.

(f) Maple Eagle #1 Mine currently makes available to all miners NIOSH-approved high efficiency l00 series respirators to protect the miners against potential exposure to respirable coal mine dust, including crystalline silica, during normal mining conditions. Maple Eagle #1 Mine desires to expand the miners' option in choosing a respirator that provides the greatest degree of protection as well as comfort while being worn. Powered PAPRs provide a constant flow of filtered air and serve that purpose.

(g) On June 17, 2024, a final rule entitled *Lowering Miners' Exposure to Respirable Crystalline Silica and Improving Respiratory Protection* took effect. This rule requires the mine operator to have a written respiratory protection program in place when miners are required to use respirators. Adding the CleanSpace EX and the 3M TR–800 Versaflo PAPRs to the respiratory protection program as additional options will provide the miners with alternatives to the series 100 high efficiency respirators already in use at the mine. The PAPRs will also serve as a respirator option to protect the miners with facial hair who may not be able to pass the ''fit test'' requirement of the program. In addition, the positive flow of filtered air provided by the

PAPRs will provide a solution for the miners who are unable to wear a tight-fitting respirator.

(h) Since the 3M Airstream Headgear-Mounted PAPR System has been discontinued by the manufacturer, there are no other MSHA-approved units available that can be used within 150 feet of pillar workings or longwall faces.

(i) The alternative method in the petition will at all times guarantee no less than the same measure of protection afforded to the miners by the standard.

The petitioner proposes the following alternative method:

(a) All miners who will be involved with or affected by the use of the 3M Versaflo TR–800 or CleanSpace EX PAPRs shall receive training in accordance with 30 CFR 48.7 on the requirements of the Proposed Decision and Order (PDO) granted by MSHA and manufacturer guidelines. Such training shall be completed before any 3M Versaflo TR–800 or CleanSpace EX PAPR can be used within 150 feet of pillar workings or longwall faces. The operator shall keep a record of such training and provide such record to MSHA upon request.

(b) The PAPRs, battery packs, all associated wiring and connections shall be inspected before use to determine if there is any damage to the units that would negatively impact intrinsic safety. If any defects are found, the PAPR shall be removed from service.

(c) A separate logbook shall be maintained for the 3M Versaflo TR–800 and CleanSpace EX PAPRs that will be kept with the equipment, or in a location with other mine record books and shall be made available to MSHA upon request. The equipment shall be examined at least weekly by a qualified person as defined in 30 CFR 75.512–1 and the examination results recorded in the logbook. Examination records shall be maintained for one year.

(d) All 3M Versaflo TR–800 and CleanSpace EX PAPRs to be used within 150 feet of pillar workings or longwall faces shall be physically examined prior to initial use and each unit shall be assigned a unique identification number. Each unit shall be examined by the person to operate the equipment prior to taking the equipment underground to ensure the equipment is used according to the original equipment manufacturer's recommendations and maintained in a safe operating condition. The examinations for the 3M Versaflo TR–800 PAPRs shall include:

(1) Check the equipment for any physical damage and the integrity of the case;

(2) Remove the battery and inspect for corrosion;

(3) Inspect the contact points to ensure a secure connection to the battery;

(4) Reinsert the battery and power up and shut down to ensure proper connections;

(5) Check the battery compartment cover or battery attachment to ensure that it is securely fastened; and

(6) For equipment utilizing lithium type cells, ensure that lithium cells and/or packs are not damaged or swelled in size.

The CleanSpace EX PAPR does not have an accessible/removable battery. The internal battery and motor/blower assembly are both contained within the ''power unit'' assembly and the battery cannot be removed, reinserted or fastened. Therefore, examination of the CleanSpace EX PAPR shall include any indications of physical damage.

(e) All 3M Versaflo TR–800 and CleanSpace EX PAPR units shall be serviced according to the manufacturer's recommendations.

(f) Prior to energizing and during use of the 3M Versaflo TR–800 or the CleanSpace EX PAPR within 150 feet of pillar workings or longwall faces, procedures in accordance with 30 CFR 75.323 shall be followed.

(g) Only the 3M TR–830 Battery Pack, which meets lithium battery safety standard UL 1642 or IEC 62133, in the 3M Versaflo TR–800 PAPR shall be used. Only the CleanSpace EX Power Unit, which meets lithium battery safety standard UL 1642 or IEC 62133, in the CleanSpace EX shall be used.

(h) If battery packs for the 3M Versaflo TR–800 PAPR are provided, all battery ''change outs'' shall occur in intake air outby the last open crosscut.

(i) The following maintenance and use conditions shall apply to equipment containing lithium type batteries:

(1) Neither the 3M TR–830 Battery Pack nor the CleanSpace EX Power Unit shall be disassembled nor modified by anyone other than permitted by the manufacturer of the equipment.

(2) The 3M TR–830 Battery Pack shall be charged only in an area free of combustible material and in intake air outby the last open crosscut. The 3M TR–830 Battery Pack shall be charged only by a manufacturer's recommended battery charger, such as:

(i) 3M Battery Charger Kit TR–641N, which includes one 3M Charger Cradle TR–640 and one 3M Power Supply TR–941N, or

(ii) 3M 4-Station Battery Charger Kit TR–644N, which includes four 3M Charger Cradles TR–640 and one 3M 4-Station Battery Charger Base/Power Supply TR–944N.

(3) The CleanSpace EX internal battery, which is contained within the power unit assembly, shall be charged in areas located outby the last open crosscut in intake air and only the manufacturer's recommended battery chargers shall be used, such as the CleanSpace EX Battery Charger, Product Code PAF–0066.

(4) Neither the 3M TR–830 Battery Pack nor the CleanSpace EX power unit which contains the internal battery, shall be exposed to water, allowed to get wet or immersed in liquid. This does not preclude incidental exposure of the 3M TR–830 Battery Pack or the CleanSpace EX power unit assembly.

(5) Neither the 3M Versaflo TR–800 PAPR nor the CleanSpace EX PAPR, including the internal battery, shall be used, charged, or stored in locations where the manufacturer's recommended temperature limits are exceeded. Neither the 3M Versaflo TR–800 PAPR nor the CleanSpace EX PAPR shall be placed in direct sunlight nor stored near a source of heat.

(j) Annual retraining shall be given to all miners who will be involved with or affected by the use of the 3M Versaflo TR–800 or CleanSpace EX PAPRs in accordance with 30 CFR 48.8. Training of new miners on the requirements of the PDO granted by MSHA in accordance with 30 CFR 48.5, and training of experienced miners on the requirements of the PDO granted by MSHA in accordance with 30 CFR 48.6 shall be given. The operator shall keep a record of such training and provide such record to MSHA upon request.

(k) The miners at Panther Creek Mining, LLC, Maple Eagle #1 Mine are not represented by a labor organization and there are no representatives of miners at the mine. A copy of this petition has been posted on the bulletin board at Maple Eagle #1 Mine, on October 16, 2024.

The petitioner asserts that the alternative method in the petition will at all times guarantee no less than the same measure of protection afforded to the miners by the standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2024–26718 Filed 11–15–24; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by Panther Creek Mining, LLC.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before December 18, 2024.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2024–0069 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2024–0069.
2. *Fax:* 202–693–9441.
3. *Email: petitioncomments@dol.gov.*
4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk, 4th Floor West. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2024–045–C.

Petitioner: Panther Creek Mining, LLC, PO Box 99 Dawes, WV 25054.

Mine: Speed Mine, MSHA ID No. 46–05437, located in Kanawha County, West Virginia, and Winchester 2 Mine, MSHA ID No. 46–09615, located in Kanawha County, West Virginia.

Regulation Affected: 30 CFR 75.507–1(a), Permissible electric equipment.

Modification Request: The petitioner requests a modification of 30 CFR 75.507–1(a) to allow the use of unapproved Powered Air Purifying Respirators (PAPRs) taken into or used inby the last open crosscut or used in the return air outby the last open crosscut. Specifically, the petitioner is requesting to utilize the CleanSpace EX PAPR and sealed motor/blower/battery power pack assembly, and the 3M Versaflo TR–800 Intrinsically Safe PAPR motor/blower and battery with battery pack.

The petitioner states that:

(a) The 3M Versaflo TR–800 PAPR with motor/blower and battery qualifies as intrinsically safe.

(b) The CleanSpace EX PAPR also qualifies as intrinsically safe.

(c) Both the CleanSpace EX and the 3M Versaflo TR–800 PAPRs provide a constant flow of air inside the mask or helmet. This airflow provides respiratory protection and comfort in hot working conditions.

(d) Neither the 3M Versaflo TR–800 nor the CleanSpace EX PAPR is MSHA-approved as permissible.

(e) Neither the 3M nor the CleanSpace is pursuing MSHA approval.

(f) Speed Mine and Winchester 2 Mine currently make available to all miners NIOSH-approved high efficiency l00 series respirators to protect the miners against potential exposure to respirable coal mine dust, including crystalline silica, during normal mining conditions. Speed Mine and Winchester 2 Mine desire to expand the miners' option in choosing a respirator that provides the greatest degree of protection as well as comfort while being worn. Powered PAPRs provide a constant flow of filtered air and serve that purpose.

(g) On June 17, 2024, a final rule entitled *Lowering Miners' Exposure to Respirable Crystalline Silica and Improving Respiratory Protection* took effect. The rule requires the mine operator to have a written respiratory protection program in place when miners are required to use respirators. Adding the CleanSpace EX and the 3M TR–800 Versaflo PAPRs to the respiratory protection program as additional options will provide the miners with alternatives to the series 100 high efficiency respirators already in use at the mine. The PAPRs will also serve as a respirator option to protect the miners with facial hair who may not be able to pass the ''fit test'' requirement of the program. In addition, the positive flow of filtered air provided by the PAPRs will provide a solution for the miners who are unable to wear a tight-fitting respirator.

(h) Since the 3M Airstream Headgear-Mounted PAPR System has been discontinued by the manufacturer, there are no other MSHA-approved units available that can be taken into or used inby the last open crosscut or used in return air outby the last open crosscut.

(i) The alternative method in the petition will at all times guarantee no less than the same measure of protection afforded to the miners by the standard.

The petitioner proposes the following alternative method:

(a) All miners who will be involved with or affected by the use of the 3M Versaflo TR–800 or CleanSpace EX PAPRs shall receive training in accordance with 30 CFR 48.7 on the requirements of the Proposed Decision and Order (PDO) granted by MSHA and manufacturer guidelines. Such training shall be completed before any 3M Versaflo TR–800 or CleanSpace EX PAPR can be used inby the last open crosscut or in the return air outby the last open crosscut. The operator shall keep a record of such training and provide such record to MSHA upon request.

(b) The PAPRs, battery packs, all associated wiring and connections shall be inspected before use to determine if there is any damage to the units that would negatively impact intrinsic safety. If any defects are found, the PAPR shall be removed from service.

(c) A separate logbook shall be maintained for the 3M Versaflo TR–800 and CleanSpace EX PAPRs that will be kept with the equipment, or in a location with other mine record books and shall be made available to MSHA upon request. The equipment shall be examined at least weekly by a qualified

person as defined in 30 CFR 75.512–1 and the examination results recorded in the logbook. Examination records shall be maintained for one year.

(d) All 3M Versaflo TR–800 and CleanSpace EX PAPRs to be used inby the last open crosscut or in the return air outby the last open crosscut shall be physically examined prior to initial use and each unit shall be assigned a unique identification number. Each unit shall be examined by the person to operate the equipment prior to taking the equipment underground to ensure the equipment is used according to the original equipment manufacturer's recommendations and maintained in a safe operating condition. The examinations for the 3M Versaflo TR–800 PAPRs shall include:

(1) Check the equipment for any physical damage and the integrity of the case;

(2) Remove the battery and inspect for corrosion;

(3) Inspect the contact points to ensure a secure connection to the battery;

(4) Reinsert the battery and power up and shut down to ensure proper connections;

(5) Check the battery compartment cover or battery attachment to ensure that it is securely fastened; and

(6) For equipment utilizing lithium type cells, ensure that lithium cells and/or packs are not damaged or swelled in size.

The CleanSpace EX PAPR does not have an accessible/removable battery. The internal battery and motor/blower assembly are both contained within the ''power unit'' assembly and the battery cannot be removed, reinserted or fastened. Therefore, examination of the CleanSpace EX PAPR shall include any indications of physical damage.

(e) All 3M Versaflo TR–800 and CleanSpace EX PAPR units shall be serviced according to the manufacturer's recommendations.

(f) Prior to energizing and during use of the 3M Versaflo TR–800 or the CleanSpace EX PAPR inby the last open crosscut or in the return air outby the last open crosscut, procedures in accordance with 30 CFR 75.323 shall be followed.

(g) Only the 3M TR–830 Battery Pack, which meets lithium battery safety standard UL 1642 or IEC 62133, in the 3M Versaflo TR–800 PAPR shall be used. Only the CleanSpace EX Power Unit, which meets lithium battery safety standard UL 1642 or IEC 62133, in the CleanSpace EX shall be used.

(h) If battery packs for the 3M Versaflo TR–800 PAPR are provided, all battery ''change outs'' shall occur in intake air outby the last open crosscut.

(i) The following maintenance and use conditions shall apply to equipment containing lithium type batteries:

(1) Neither the 3M TR–830 Battery Pack nor the CleanSpace EX Power Unit shall be disassembled nor modified by anyone other than permitted by the manufacturer of the equipment.

(2) The 3M TR–830 Battery Pack shall be charged only in an area free of combustible material and in intake air outby the last open crosscut. The 3M TR–830 Battery Pack shall be charged only by a manufacturer's recommended battery charger, such as:

(i) 3M Battery Charger Kit TR–641N, which includes one 3M Charger Cradle TR–640 and one 3M Power Supply TR–941N, or,

(ii) 3M 4-Station Battery Charger Kit TR–644N, which includes four 3M Charger Cradles TR–640 and one 3M 4-Station Battery Charger Base/Power Supply TR–944N.

(3) The CleanSpace EX internal battery, which is contained within the power unit assembly, shall be charged in areas located outby the last open crosscut in intake air and only the manufacturer's recommended battery chargers shall be used, such as the CleanSpace EX Battery Charger, Product Code PAF–0066.

(4) Neither the 3M TR–830 Battery Pack nor the CleanSpace EX power unit which contains the internal battery, shall be exposed to water, allowed to get wet or immersed in liquid. This does not preclude incidental exposure of the 3M TR–830 Battery Pack or the CleanSpace EX power unit assembly.

(5) Neither the 3M Versaflo TR–800 PAPR nor the CleanSpace EX PAPR, including the internal battery, shall be used, charged or stored in locations where the manufacturer's recommended temperature limits are exceeded. Neither the 3M Versaflo TR–800 PAPR nor the CleanSpace EX PAPR shall be placed in direct sunlight nor stored near a source of heat.

(j) Annual retraining shall be given to all miners who will be involved with or affected by the use of the 3M Versaflo TR–800 or CleanSpace EX PAPRs in accordance with 30 CFR 48.8. Training of new miners on the requirements of the PDO granted by MSHA in accordance with 30 CFR 48.5, and training of experienced miners on the requirements of the PDO granted by MSHA in accordance with 30 CFR 48.6 shall be given. The operator shall keep a record of such training and provide such record to MSHA upon request.

(k) The miners at Speed Mine and Winchester 2 Mine are not represented by a labor organization and there are no representatives of miners at the mine. A copy of this petition has been posted on the bulletin board at Speed Mine and Winchester 2 Mine, on October 4, 2024.

The petitioner asserts that the alternative method in the petition will at all times guarantee no less than the same measure of protection afforded to the miners by the standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2024–26719 Filed 11–15–24; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by Panther Creek Mining, LLC.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before December 18, 2024.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2024–0075 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2024–0075.
2. *Fax:* 202–693–9441.
3. *Email: petitioncomments@dol.gov.*
4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk, 4th Floor West. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2024–050–C.

Petitioner: Panther Creek Mining, LLC, 250 West Main Street, Suite 2000 Lexington KY 40507.

Mine: Maple Eagle #1 Mine, MSHA ID No. 46–04236, located in Fayette County, West Virginia.

Regulation Affected: 30 CFR 75.500(d), Permissible electric equipment.

Modification Request: The petitioner requests a modification of 30 CFR 75.500(d) to allow the use of unapproved Powered Air Purifying Respirators (PAPRs) taken into or used inby the last open crosscut. Specifically, the petitioner is requesting to utilize the CleanSpace EX PAPR and sealed motor/blower/battery power pack assembly, and the 3M Versaflo TR–800 Intrinsically Safe PAPR motor/blower and battery with battery pack.

The petitioner states that:

(a) The 3M Versaflo TR–800 PAPR with motor/blower and battery qualifies as intrinsically safe.

(b) The CleanSpace EX PAPR also qualifies as intrinsically safe.

(c) Both the CleanSpace EX and the 3M Versaflo TR–800 PAPRs provide a constant flow of air inside the mask or helmet. This airflow provides respiratory protection and comfort in hot working conditions.

(d) Neither the 3M Versaflo TR–800 nor the CleanSpace EX PAPR is MSHA-approved as permissible.

(e) Neither the 3M nor the CleanSpace is pursuing MSHA approval.

(f) Maple Eagle #1 Mine currently makes available to all miners NIOSH-approved high efficiency l00 series respirators to protect the miners against potential exposure to respirable coal mine dust, including crystalline silica, during normal mining conditions. Maple Eagle #1 Mine desires to expand the miners' option in choosing a respirator that provides the greatest degree of protection as well as comfort while being worn. Powered PAPRs provide a constant flow of filtered air and serve that purpose.

(g) On June 17, 2024, a final rule entitled *Lowering Miners' Exposure to Respirable Crystalline Silica and Improving Respiratory Protection* took effect. The rule requires the mine operator to have a written respiratory protection program in place when miners are required to use respirators. Adding the CleanSpace EX and the 3M TR–800 Versaflo PAPRs to the respiratory protection program as additional options will provide the miners with alternatives to the series 100 high efficiency respirators already in use at the mine. The PAPRs will also serve as a respirator option to protect the miners with facial hair who may not be able to pass the ''fit test'' requirement of the program. In addition, the positive flow of filtered air provided by the PAPRs will provide a solution for the miners who are unable to wear a tight-fitting respirator.

(h) Since the 3M Airstream Headgear-Mounted PAPR System has been discontinued by the manufacturer, there are no other MSHA-approved units available that can be taken into or used inby the last open crosscut.

(i) The alternative method in the petition will at all times guarantee no less than the same measure of protection afforded to the miners by the standard.

The petitioner proposes the following alternative method:

(a) All miners who will be involved with or affected by the use of the 3M Versaflo TR–800 or CleanSpace EX PAPRs shall receive training in accordance with 30 CFR 48.7 on the requirements of the Proposed Decision and Order (PDO) granted by MSHA and manufacturer guidelines. Such training shall be completed before any 3M Versaflo TR–800 or CleanSpace EX PAPR can be used inby the last open crosscut. The operator shall keep a record of such training and provide such record to MSHA upon request.

(b) The PAPRs, battery packs, and all associated wiring and connections shall be inspected before use to determine if there is any damage to the units that would negatively impact intrinsic safety. If any defects are found, the PAPR shall be removed from service.

(c) A separate logbook shall be maintained for the 3M Versaflo TR–800 and CleanSpace EX PAPRs that will be kept with the equipment, or in a location with other mine record books and shall be made available to MSHA upon request. The equipment shall be examined at least weekly by a qualified person as defined in 30 CFR 75.512–1 and the examination results shall be recorded in the logbook. Examination records shall be maintained for one year.

(d) All 3M Versaflo TR–800 and CleanSpace EX PAPRs to be used inby the last open crosscut shall be physically examined prior to initial use and each unit shall be assigned a unique identification number. Each unit shall be examined by the person to operate the equipment prior to taking the equipment underground to ensure the equipment is used according to the original equipment manufacturer's recommendations and maintained in a safe operating condition. The examinations for the 3M Versaflo TR–800 PAPRs shall include:

(1) Check the equipment for any physical damage and the integrity of the case;

(2) Remove the battery and inspect for corrosion;

(3) Inspect the contact points to ensure a secure connection to the battery;

(4) Reinsert the battery and power up and shut down to ensure proper connections;

(5) Check the battery compartment cover or battery attachment to ensure that it is securely fastened; and

(6) For equipment utilizing lithium type cells, ensure that lithium cells and/or packs are not damaged or swelled in size.

The CleanSpace EX PAPR does not have an accessible/removable battery. The internal battery and motor/blower assembly are both contained within the ''power unit'' assembly and the battery cannot be removed, reinserted or fastened. Therefore, examination of the CleanSpace EX PAPR shall include any indications of physical damage.

(e) All 3M Versaflo TR–800 and CleanSpace EX PAPR units shall be serviced according to the manufacturer's recommendations.

(f) Prior to energizing and during use of the 3M Versaflo TR–800 or the CleanSpace EX PAPR inby the last open crosscut, procedures in accordance with 30 CFR 75.323 shall be followed.

(g) Only the 3M TR–830 Battery Pack, which meets lithium battery safety standard UL 1642 or IEC 62133, in the

3M Versaflo TR–800 PAPR shall be used. Only the CleanSpace EX Power Unit, which meets lithium battery safety standard UL 1642 or IEC 62133, in the CleanSpace EX shall be used.

(h) If battery packs for the 3M Versaflo TR–800 PAPR are provided, all battery ''change outs'' shall occur in intake air outby the last open crosscut.

(i) The following maintenance and use conditions shall apply to equipment containing lithium type batteries:

(1) Neither the 3M TR–830 Battery Pack nor the CleanSpace EX Power Unit shall be disassembled nor modified by anyone other than permitted by the manufacturer of the equipment.

(2) The 3M TR–830 Battery Pack shall be charged only in an area free of combustible material and in intake air outby the last open crosscut. The 3M TR–830 Battery Pack shall be charged only by a manufacturer's recommended battery charger, such as:

(i) 3M Battery Charger Kit TR–641N, which includes one 3M Charger Cradle TR–640 and one 3M Power Supply TR–941N, or

(ii) 3M 4-Station Battery Charger Kit TR–644N, which includes four 3M Charger Cradles TR–640 and one 3M 4-Station Battery Charger Base/Power Supply TR–944N.

(3) The CleanSpace EX internal battery, which is contained within the power unit assembly, shall be charged in areas located outby the last open crosscut in intake air and only the manufacturer's recommended battery chargers shall be used, such as the CleanSpace EX Battery Charger, Product Code PAF–0066.

(4) Neither the 3M TR–830 Battery Pack nor the CleanSpace EX power unit which contains the internal battery, shall be exposed to water, allowed to get wet or immersed in liquid. This does not preclude incidental exposure of the 3M TR–830 Battery Pack or the CleanSpace EX power unit assembly.

(5) Neither the 3M Versaflo TR–800 PAPR nor the CleanSpace EX PAPR, including the internal battery, shall be used, charged or stored in locations where the manufacturer's recommended temperature limits are exceeded. Neither the 3M Versaflo TR–800 PAPR nor the CleanSpace EX PAPR shall be placed in direct sunlight nor stored near a source of heat.

(j) Annual retraining shall be given to all miners who will be involved with or affected by the use of the 3M Versaflo TR–800 or CleanSpace EX PAPRs in accordance with 30 CFR 48.8. Training of new miners on the requirements of the PDO granted by MSHA in accordance with 30 CFR 48.5, and training of experienced miners on the requirements of the PDO granted by MSHA in accordance with 30 CFR 48.6 shall be given. The operator shall keep a record of such training and provide such record to MSHA upon request.

(k) The miners at Panther Creek Mining, LLC, Maple Eagle #1 Mine are not represented by a labor organization and there are no representatives of miners at the mine. A copy of this petition has been posted on the bulletin board at Maple Eagle #1 Mine, on October 16, 2024.

The petitioner asserts that the alternative method in the petition will at all times guarantee no less than the same measure of protection afforded to the miners by the standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2024–26726 Filed 11–15–24; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by Panther Creek Mining, LLC.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before December 18, 2024.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2024–0076 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2024–0076.

2. *Fax:* 202–693–9441.

3. *Email: petitioncomments@dol.gov.*

4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk, 4th Floor West. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2024–051–C.

Petitioner: Panther Creek Mining, LLC, 250 West Main Street, Suite 2000 Lexington KY 40507.

Mine: Maple Eagle #1 Mine, MSHA ID No. 46–04236, located in Fayette County, West Virginia.

Regulation Affected: 30 CFR 75.507–1(a), Permissible electric equipment.

Modification Request: The petitioner requests a modification of 30 CFR 75.507–1(a) to allow

the use of unapproved Powered Air Purifying Respirators (PAPRs) taken into or used inby the last open crosscut or used in the return air outby the last open crosscut. Specifically, the petitioner is requesting to utilize the CleanSpace EX PAPR and sealed motor/blower/battery power pack assembly, and the 3M Versaflo TR–800 Intrinsically Safe PAPR motor/blower and battery with battery pack.

The petitioner states that:

(a) The 3M Versaflo TR–800 PAPR with motor/blower and battery qualifies as intrinsically safe.

(b) The CleanSpace EX PAPR also qualifies as intrinsically safe.

(c) Both the CleanSpace EX and the 3M Versaflo TR–800 PAPRs provide a constant flow of air inside the mask or helmet. This airflow provides respiratory protection and comfort in hot working conditions.

(d) Neither the 3M Versaflo TR–800 nor the CleanSpace EX PAPR is MSHA-approved as permissible.

(e) Neither the 3M nor the CleanSpace is pursuing MSHA approval.

(f) Maple Eagle #1 Mine currently makes available to all miners NIOSH-approved high efficiency l00 series respirators to protect the miners against potential exposure to respirable coal mine dust, including crystalline silica, during normal mining conditions. Maple Eagle #1 Mine desires to expand the miners' option in choosing a respirator that provides the greatest degree of protection as well as comfort while being worn. Powered PAPRs provide a constant flow of filtered air and serve that purpose.

(g) On June 17, 2024, a final rule entitled *Lowering Miners' Exposure to Respirable Crystalline Silica and Improving Respiratory Protection* took effect. The rule requires the mine operator to have a written respiratory protection program in place when miners are required to use respirators. Adding the CleanSpace EX and the 3M TR–800 Versaflo PAPRs to the respiratory protection program as additional options will provide the miners with alternatives to the series 100 high efficiency respirators already in use at the mine. The PAPRs will also serve as a respirator option to protect the miners with facial hair who may not be able to pass the ''fit test'' requirement of the program. In addition, the positive flow of filtered air provided by the PAPRs will provide a solution for the miners who are unable to wear a tight-fitting respirator.

(h) Since the 3M Airstream Headgear-Mounted PAPR System has been discontinued by the manufacturer, there are no other MSHA-approved units available that can be taken into or used inby the last open crosscut or used in return air outby the last open crosscut.

(i) The alternative method in the petition will at all times guarantee no less than the same measure of protection afforded to the miners by the standard.

The petitioner proposes the following alternative method:

(a) All miners who will be involved with or affected by the use of the 3M Versaflo TR–800 or CleanSpace EX PAPRs shall receive training in accordance with 30 CFR 48.7 on the requirements of the Proposed Decision and Order (PDO) granted by MSHA and manufacturer guidelines. Such training shall be completed before any 3M Versaflo TR–800 or CleanSpace EX PAPR can be used inby the last open crosscut or in the return air outby the last open crosscut. The operator shall keep a record of such training and provide such record to MSHA upon request.

(b) The PAPRs, battery packs, and all associated wiring and connections shall be inspected before use to determine if there is any damage to the units that would negatively impact intrinsic safety. If any defects are found, the PAPR shall be removed from service.

(c) A separate logbook shall be maintained for the 3M Versaflo TR–800 and CleanSpace EX PAPRs that will be kept with the equipment, or in a location with other mine record books and shall be made available to MSHA upon request. The equipment shall be examined at least weekly by a qualified person as defined in 30 CFR 75.512–1 and the examination results recorded in the logbook. Examination records shall be maintained for one year.

(d) All 3M Versaflo TR–800 and CleanSpace EX PAPRs to be used inby the last open crosscut or in the return air outby the last open crosscut shall be physically examined prior to initial use and each unit shall be assigned a unique identification number. Each unit shall be examined by the person to operate the equipment prior to taking the equipment underground to ensure the equipment is used according to the original equipment manufacturer's recommendations and maintained in a safe operating condition. The examinations for the 3M Versaflo TR–800 PAPRs shall include:

(1) Check the equipment for any physical damage and the integrity of the case;

(2) Remove the battery and inspect for corrosion;

(3) Inspect the contact points to ensure a secure connection to the battery;

(4) Reinsert the battery and power up and shut down to ensure proper connections;

(5) Check the battery compartment cover or battery attachment to ensure that it is securely fastened; and

(6) For equipment utilizing lithium type cells, ensure that lithium cells and/or packs are not damaged or swelled in size.

The CleanSpace EX PAPR does not have an accessible/removable battery. The internal battery and motor/blower assembly are both contained within the ''power unit'' assembly and the battery cannot be removed, reinserted or fastened. Therefore, examination of the CleanSpace EX PAPR shall include any indications of physical damage.

(e) All 3M Versaflo TR–800 and CleanSpace EX PAPR units shall be serviced according to the manufacturer's recommendations.

(f) Prior to energizing and during use of the 3M Versaflo TR–800 or the CleanSpace EX PAPR inby the last open crosscut or in the return air outby the last open crosscut, procedures in accordance with 30 CFR 75.323 shall be followed.

(g) Only the 3M TR–830 Battery Pack, which meets lithium battery safety standard UL 1642 or IEC 62133, in the 3M Versaflo TR–800 PAPR shall be used. Only the CleanSpace EX Power Unit, which meets lithium battery safety standard UL 1642 or IEC 62133, in the CleanSpace EX shall be used.

(h) If battery packs for the 3M Versaflo TR–800 PAPR are provided, all battery ''change outs'' shall occur in intake air outby the last open crosscut.

(i) The following maintenance and use conditions shall apply to equipment containing lithium type batteries:

(1) Neither the 3M TR–830 Battery Pack nor the CleanSpace EX Power Unit shall be disassembled nor modified by anyone other than permitted by the manufacturer of the equipment.

(2) The 3M TR–830 Battery Pack shall be charged only in an area free of combustible material and in intake air outby the last open crosscut. The 3M TR–830 Battery Pack shall be charged only by a manufacturer's recommended battery charger, such as the:

(i) 3M Battery Charger Kit TR–641N, which includes one 3M Charger Cradle TR–640 and one 3M Power Supply TR–941N, or

(ii) 3M 4-Station Battery Charger Kit TR–644N, which includes four 3M Charger Cradles TR–640 and one 3M 4-Station Battery Charger Base/Power Supply TR–944N.

(3) The CleanSpace EX internal battery, which is contained within the power unit assembly, shall be charged in areas located outby the last open crosscut in intake air and only the manufacturer's recommended battery chargers shall be used, such as the CleanSpace EX Battery Charger, Product Code PAF–0066.

(4) Neither the 3M TR–830 Battery Pack nor the CleanSpace EX power unit which contains the internal battery, shall be exposed to water, allowed to get wet or immersed in liquid. This does not preclude incidental exposure of the 3M TR–830 Battery Pack or the CleanSpace EX power unit assembly.

(5) Neither the 3M Versaflo TR–800 PAPR nor the CleanSpace EX PAPR, including the internal battery, shall be

used, charged or stored in locations where the manufacturer's recommended temperature limits are exceeded. Neither the 3M Versaflo TR–800 PAPR nor the CleanSpace EX PAPR shall be placed in direct sunlight nor stored near a source of heat.

(j) Annual retraining shall be given to all miners who will be involved with or affected by the use of the 3M Versaflo TR–800 or CleanSpace EX PAPRs in accordance with 30 CFR 48.8. Training of new miners on the requirements of the PDO granted by MSHA in accordance with 30 CFR 48.5, and training of experienced miners on the requirements of the PDO granted by MSHA in accordance with 30 CFR 48.6 shall be given. The operator shall keep a record of such training and provide such record to MSHA upon request.

(k) The miners at Panther Creek Mining, LLC, Maple Eagle #1 Mine are not represented by a labor organization and there are no representatives of miners at the mine. A copy of this petition has been posted on the bulletin board at Maple Eagle #1 Mine on October 16, 2024.

The petitioner asserts that the alternative method in the petition will at all times guarantee no less than the same measure of protection afforded to the miners by the standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2024–26721 Filed 11–15–24; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by Panther Creek Mining, LLC.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before December 18, 2024.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2024–0069 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2024–0069.

2. *Fax:* 202–693–9441.

3. *Email: petitioncomments@dol.gov.*

4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk, 4th Floor West. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2024–044–C.

Petitioner: Panther Creek Mining, LLC, PO Box 99 Dawes, WV 25054.

Mine: Speed Mine, MSHA ID No. 46–05437, located in Kanawha County, West Virginia, and Winchester 2 Mine, MSHA ID No. 46–09615, located in Kanawha County, West Virginia.

Regulation Affected: 30 CFR 75.500(d), Permissible electric equipment.

Modification Request: The petitioner requests a modification of 30 CFR 75.500(d) to allow the use of unapproved Powered Air Purifying Respirators (PAPRs) taken into or used inby the last open crosscut. Specifically, the petitioner is requesting to utilize the CleanSpace EX PAPR and sealed motor/blower/battery power pack assembly, and the 3M Versaflo TR–800 Intrinsically Safe PAPR motor/blower and battery with battery pack.

The petitioner states that:

(a) The 3M Versaflo TR–800 PAPR with motor/blower and battery qualifies as intrinsically safe.

(b) The CleanSpace EX PAPR also qualifies as intrinsically safe.

(c) Both the CleanSpace EX and the 3M Versaflo TR–800 PAPRs provide a constant flow of air inside the mask or helmet. This airflow provides respiratory protection and comfort in hot working conditions.

(d) Neither the 3M Versaflo TR–800 nor the CleanSpace EX PAPR is MSHA-approved as permissible.

(e) Neither the 3M nor the CleanSpace is pursuing MSHA approval.

(f) Speed Mine and Winchester 2 Mine currently make available to all miners NIOSH-approved high efficiency l00 series respirators to protect the miners against potential exposure to respirable coal mine dust, including crystalline silica, during normal mining conditions. Speed Mine and Winchester 2 Mine desire to expand the miners' option in choosing a respirator that provides the greatest degree of protection as well as comfort while being worn. Powered PAPRs provide a constant flow of filtered air and serve that purpose.

(g) On June 17, 2024, a final rule entitled *Lowering Miners' Exposure to Respirable Crystalline Silica and Improving Respiratory Protection* took effect This rule requires the mine operator to have a written respiratory protection program in place when miners are required to use respirators. Adding the CleanSpace EX and the 3M TR–800 Versaflo PAPRs to the respiratory protection program as additional options will provide the miners with alternatives to the series 100 high efficiency respirators already in use at the mine. The PAPRs will also serve as a respirator option to protect the miners with facial hair who may not be able to pass the ''fit test'' requirement of the program. In addition, the positive flow of filtered air provided by the PAPRs will provide a solution for the miners who are unable to wear a tight-fitting respirator.

(h) Since the 3M Airstream Headgear-Mounted PAPR System has been discontinued by the manufacturer, there are no other MSHA-approved units

available that can be taken into or used inby the last open crosscut.

(i) The alternative method in the petition will at all times guarantee no less than the same measure of protection afforded to the miners by the standard.

The petitioner proposes the following alternative method:

(a) All miners who will be involved with or affected by the use of the 3M Versaflo TR–800 or CleanSpace EX PAPRs shall receive training in accordance with 30 CFR 48.7 on the requirements of the Proposed Decision and Order (PDO) granted by MSHA and manufacturer guidelines. Such training shall be completed before any 3M Versaflo TR–800 or CleanSpace EX PAPR can be used inby the last open crosscut. The operator shall keep a record of such training and provide such record to MSHA upon request.

(b) The PAPRs, battery packs, all associated wiring and connections shall be inspected before use to determine if there is any damage to the units that would negatively impact intrinsic safety. If any defects are found, the PAPR shall be removed from service.

(c) A separate logbook shall be maintained for the 3M Versaflo TR–800 and CleanSpace EX PAPRs that will be kept with the equipment, or in a location with other mine record books and shall be made available to MSHA upon request. The equipment shall be examined at least weekly by a qualified person as defined in 30 CFR 75.512–1 and the examination results recorded in the logbook. Examination records shall be maintained for one year.

(d) All 3M Versaflo TR–800 and CleanSpace EX PAPRs to be used inby the last open crosscut shall be physically examined prior to initial use and each unit shall be assigned a unique identification number. Each unit shall be examined by the person to operate the equipment prior to taking the equipment underground to ensure the equipment is used according to the original equipment manufacturer's recommendations and maintained in a safe operating condition. The examinations for the 3M Versaflo TR–800 PAPRs shall include:

(1) Check the equipment for any physical damage and the integrity of the case.

(2) Remove the battery and inspect for corrosion.

(3) Inspect the contact points to ensure a secure connection to the battery.

(4) Reinsert the battery and power up and shut down to ensure proper connections.

(5) Check the battery compartment cover or battery attachment to ensure that it is securely fastened.

(6) For equipment utilizing lithium type cells, ensure that lithium cells and/or packs are not damaged or swelled in size.

The CleanSpace EX PAPR does not have an accessible/removable battery. The internal battery and motor/blower assembly are both contained within the ''power unit'' assembly and the battery cannot be removed, reinserted or fastened. Therefore, examination of the CleanSpace EX PAPR shall include any indications of physical damage.

(e) All 3M Versaflo TR–800 and CleanSpace EX PAPR units shall be serviced according to the manufacturer's recommendations.

(f) Prior to energizing and during use of the 3M Versaflo TR–800 or the CleanSpace EX PAPR inby the last open crosscut, procedures in accordance with 30 CFR 75.323 shall be followed.

(g) Only the 3M TR–830 Battery Pack, which meets lithium battery safety standard UL 1642 or IEC 62133, in the 3M Versaflo TR–800 PAPR shall be used. Only the CleanSpace EX Power Unit, which meets lithium battery safety standard UL 1642 or IEC 62133, in the CleanSpace EX shall be used.

(h) If battery packs for the 3M Versaflo TR–800 PAPR are provided, all battery ''change outs'' shall occur in intake air outby the last open crosscut.

(i) The following maintenance and use conditions shall apply to equipment containing lithium type batteries:

(1) Neither the 3M TR–830 Battery Pack nor the CleanSpace EX Power Unit shall be disassembled nor modified by anyone other than permitted by the manufacturer of the equipment.

(2) The 3M TR–830 Battery Pack shall be charged only in an area free of combustible material and in intake air outby the last open crosscut. The 3M TR–830 Battery Pack shall be charged only by a manufacturer's recommended battery charger, such as the:

(i) 3M Battery Charger Kit TR–641N, which includes one 3M Charger Cradle TR–640 and one 3M Power Supply TR–941N, or,

(ii) 3M 4-Station Battery Charger Kit TR–644N, which includes four 3M Charger Cradles TR–640 and one 3M 4-Station Battery Charger Base/Power Supply TR–944N.

(3) The CleanSpace EX internal battery, which is contained within the power unit assembly, shall be charged in areas located outby the last open crosscut in intake air and only the manufacturer's recommended battery chargers shall be used, such as the CleanSpace EX Battery Charger, Product Code PAF–0066.

(4) Neither the 3M TR–830 Battery Pack nor the CleanSpace EX power unit which contains the internal battery, shall be exposed to water, allowed to get wet or immersed in liquid. This does not preclude incidental exposure of the 3M TR–830 Battery Pack or the CleanSpace EX power unit assembly.

(5) Neither the 3M Versaflo TR–800 PAPR nor the CleanSpace EX PAPR, including the internal battery, shall be used, charged or stored in locations where the manufacturer's recommended temperature limits are exceeded. Neither the 3M Versaflo TR–800 PAPR nor the CleanSpace EX PAPR shall be placed in direct sunlight nor stored near a source of heat.

(j) Annual retraining shall be given to all miners who will be involved with or affected by the use of the 3M Versaflo TR–800 or CleanSpace EX PAPRs in accordance with 30 CFR 48.8. Training of new miners on the requirements of the PDO granted by MSHA in accordance with 30 CFR 48.5, and training of experienced miners on the requirements of the PDO granted by MSHA in accordance with 30 CFR 48.6 shall be given. The operator shall keep a record of such training and provide such record to MSHA upon request.

(k) The miners at Speed Mine and Winchester 2 Mine are not represented by a labor organization and there are no representatives of miners at the mine. A copy of this petition has been posted on the bulletin board at Speed Mine and Winchester 2 Mine, on October 4, 2024.

The petitioner asserts that the alternative method in the petition will at all times guarantee no less than the same measure of protection afforded to the miners by the standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2024–26724 Filed 11–15–24; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standard

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by Marfork Coal Company, LLC.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before December 18, 2024.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2024–0078 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2024–0078.

2. *Fax:* 202–693–9441.

3. *Email: petitioncomments@dol.gov.*

4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, 4th Floor West, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk, 4th Floor West. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2024–053–C.

Petitioner: Marfork Coal Company, LLC, P.O. Box 457, Whitesville, West Virginia 25209.

Mine: Black Eagle Mine, MSHA ID No. 46–09550, located in Raleigh County, West Virginia.

Regulation Affected: 30 CFR 75.312(c) (Main mine fan examinations and records).

Modification Request: The petitioner requests a modification of 30 CFR 75.312(c) to permit testing the automatic fan stopping signal device without shutting down the mine fan and removing the miners.

The petitioner states that:

(a) The mine extracts coal by the room and pillar method of mining and operates three continuous miner sections producing coal five to six days per week.

(b) The mine has personnel underground 24 hours per day, 7 days per week.

(c) The mine is ventilated by one, Jeffrey model 8HUA117, 1,500 horsepower (hp) and 895 revolutions per minute (rpm), mine fan.

(d) The fan operates at approximately 10 inches of water gauge and moves approximately 635,000 cubic feet per minute.

(e) The mine liberates 777,272 cubic feet of methane every 24 hours as of April 16, 2024.

(f) Currently, the mine fan stops every 31 days to check the fan signal device.

(g) If fan outage lasts longer than 1, 3, or 48 hours, then the fan is required to run for 1, 2, or 3 hours, respectively, before a certified examiner can re-enter the mine to conduct the required examinations.

(h) It is unfavorable to stop the fan and disrupt the ventilation due to the mine liberating methane and personnel being underground 24 hours per day, 7 days per week, making it impossible to schedule a time when the fan stoppage signal can be checked without miners being underground.

The petitioner proposes the following alternative method:

(a) The main fine fan shall be provided with a fan alarm signal system consisting of the following:

(1) A ridged plastic tubing protected by steel conduit extending from the fan ductwork to a Photohelic gauge and chart recorder to continuously monitor the fan operating pressure. An automatic fan signal is activated when the fan pressure falls below 50 percent of the normal operating pressure (which currently equals 5 inches of water gauge) as measured by the Photohelic gauge. This alarm shall be visible and audible in the dispatcher's office.

(2) A Pyott Boone Belt (PBE) model #1610 TA analog scanner monitors the fan. When the fan loses electrical power, the PBE scanner sends a signal to the dispatch office which sounds an alarm. This additional alarm provides a backup in the event the Photohelic gauge or its contacts fail to automatically signal.

(b) The automatic fan signal device shall be tested every seven days by manually operating a valve (Ham-Let valve) near the Photohelic gauge and fan pressure recording chart reducing the pressure on the water gauge to simulate a fan stoppage, causing the activation of the fan signal. The actuation of the fan alarm shall be verified by a responsible person at the location where the responsible person is always on duty when anyone is underground. Once this seven-day test of the alternative method has been successfully repeated for four consecutive weeks, the test frequency shall change to at least every 31 days.

(c) The automatic fan signal device and signal alarm shall be tested every six months by stopping the fan to ensure that the automatic signal device causes the alarm to activate when the fan shuts down.

(d) By the end of the shift on which the test of the automatic fan signal device is completed, person(s) performing the test shall record the result of the test in a secure book. The record book shall be retained at a surface location at the mine for at least one year and shall be made available for inspection by an Authorized Representative of the Secretary.

(e) Within 60 days of the Proposed Decision and Order (PDO) granted by MSHA, Marfork shall submit proposed revisions for its approved 30 CFR 48 training plan to the MSHA District Manager. These proposed revisions shall include initial and refresher training regarding compliance with the PDO granted by MSHA. Miners who are to perform the test under the PDO granted by MSHA shall be trained at least annually on the proper method of testing upon his or her initial assignment to these responsibilities.

(f) The petitioner asserts that this Petition for Modification of Application of Mandatory Standard has been posted on the employee bulletin board at the Black Eagle Mine as of August 30, 2024, and there are no representatives of miners at this operation.

The petitioner asserts that the alternate method proposed will at all times guarantee no less than the same

measure of protection afforded the miners under the mandatory standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2024–26722 Filed 11–15–24; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2022–0011]

Maritime Advisory Committee on Occupational Safety and Health (MACOSH); Notice of Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of MACOSH meeting.

SUMMARY: The Maritime Advisory Committee on Occupational Safety and Health (MACOSH) will meet December 3, 2024. Committee members and the public will meet virtually via WebEx.

DATES:

MACOSH full Committee meeting: MACOSH will meet from 9 a.m. to 10:30 a.m., eastern standard time (EST), Tuesday, December 3, 2024.

MACOSH Workgroup meetings: The MACOSH Shipyard and Longshoring Workgroups will meet from 10:30 a.m. to 12 p.m., EST, Tuesday, December 3, 2024.

ADDRESSES: *Submission of comments and requests to speak:* Comments and requests to speak at the MACOSH meeting, including attachments, must be submitted electronically at *www.regulations.gov,* the eRulemaking Portal by November 22, 2024. Comments must be identified by the docket number for this **Federal Register** notice (Docket No. OSHA–2022–0011). Follow the online instructions for submitting comments.

Registration: All persons wishing to attend this virtual meeting must register via the registration link on the MACOSH web page at *https://www.osha.gov/advisorycommittee/macosh.* Upon registration, virtual attendees will receive a WebEx link for remote access to the meeting.

Requests for special accommodations: Submit requests for special accommodations, including translation services, for this MACOSH meeting by November 22, 2024, to Ms. Carla Marcellus, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone: (202) 693–1865; email: *marcellus.carla@dol.gov.*

Instructions: All submissions must include the agency name and the OSHA docket number for this **Federal Register** notice (Docket No. OSHA–2022–0011). OSHA will place comments, including personal information, in the public docket, which may be made available online. Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birthdates.

Docket: To read or download documents in the public docket for this MACOSH meeting, go to *www.regulations.gov.* All documents in the public docket are listed in the index; however, some documents (*e.g.,* copyrighted material) are not publicly available to read or download through *www.regulations.gov.* All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

For general information about MACOSH: Ms. Amy Wangdahl, Director, Office of Maritime and Agriculture, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone: (202) 693–2066; email: *wangdahl.amy@dol.gov.*

Telecommunication requirements: For additional information about the telecommunication requirements for the meeting, please contact Ms. Carla Marcellus, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone: (202) 693–1865; email: *marcellus.carla@dol.gov.*

For copies of this ***Federal Register*** *Notice:* Electronic copies of this **Federal Register** notice are available at *www.regulations.gov.* This notice, as well as news releases and other relevant information, are also available at OSHA's web page at *www.osha.gov.*

SUPPLEMENTARY INFORMATION:

I. Meeting Information

MACOSH Meeting

MACOSH will meet from 9 a.m.–10:30 a.m., EST, Tuesday, December 3, 2024. Public attendance will be virtual via WebEx. Meeting information will be posted in the docket (Docket No. OSHA–2022–0011) and on the MACOSH web page, *https://www.osha.gov/advisorycommittee/macosh,* prior to the meeting.

The tentative agenda for the full Committee meeting will include reports from the Shipyard and Longshoring workgroups, a presentation on OSHA's National Emphasis Program on Falls and the National Safety Stand-Down to prevent falls, and a presentation from NIOSH on emerging technology in the maritime industry.

MACOSH Workgroup Meetings

The MACOSH Shipyard and Longshoring Workgroups will meet from 10:30 a.m.–12 p.m., EST, Tuesday, December 3, 2024.

Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice under the authority granted by 29 U.S.C. 655(b)(1) and 656(d), 5 U.S.C. 10, Secretary of Labor's Order No. 8–2020 (85 FR 58393), and 29 CFR part 1912.

Signed at Washington, DC.

James S. Frederick,

Deputy Assistant Secretary for Occupational Safety and Health.

[FR Doc. 2024–26817 Filed 11–15–24; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2016–0005]

Notice of Meeting in Advance of the United Nations Sub-Committee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals Session

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that OSHA will conduct a virtual public meeting on November 13, 2024, in advance of the 47th session of the United Nations Sub-Committee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals (UNSCEGHS) to be held as an in-person meeting December 4–6, 2024, in Geneva, Switzerland. OSHA, along with the U.S. Interagency Globally Harmonized System of Classification and Labelling of Chemicals (GHS) Coordinating Group, plans to consider the comments and information gathered at the November 13, 2024, public meeting when developing the U.S. Government positions for the UNSCEGHS meeting December 4–6, 2024.

DATES: OSHA's virtual public meeting will take place on November 13, 2024. Specific information for the meeting

will be posted when available on the OSHA website at *https://www.osha.gov/hazcom/international#meeting-notice.*

ADDRESSES: This meeting will be held virtually, meaning it will be an online meeting where participants interact through digital platforms using video, audio and text communication technologies, and will be hosted by the Department of Labor on November 13, 2024, from 1–4 p.m.

Written Comments: Interested parties may submit written comments until December 4, 2024, on the Working and Informal Papers for the 47th session of the UNSCEGHS to the docket established for International/Globally Harmonized System (GHS) efforts at: *https://www.regulations.gov,* Docket No. OSHA–2016–0005.

Registration to Attend and/or to Participate in the Public Meeting: Registration information and how to participate for the OSHA session will be posted when available on the OSHA website at *https://www.osha.gov/hazcom/international#meeting-notice.*

If you need interpretation or alternative formats or services because of a disability, such as sign language or other ancillary aids, please contact the person listed in the FOR **FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Please contact Ms. Janet Carter, OSHA Directorate of Standards and Guidance, Department of Labor, telephone: (202) 693–2370, email *carter.janet@dol.gov.*

SUPPLEMENTARY INFORMATION: OSHA will conduct a virtual public meeting on November 13, 2024, to discuss proposals in preparation for the in-person 47th session of the UNSCEGHS December 4–6, 2024, in Geneva, Switzerland. Advance registration information for OSHA's virtual public meeting will be posted on the OSHA website.

OSHA will solicit public input on U.S. government positions regarding proposals submitted by member countries until December 4, 2024. Information on the work of the UNSCEGHS, including meeting agendas, working and informal papers, reports, and documents from previous sessions can be found on the United Nations Economic Commission for Europe (UNECE) Transport Division website located at: *https://unece.org/info/Transport/Dangerous-Goods/events/387211.*

Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, authorized the preparation of this notice under the authority granted by sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), and Secretary's Order 8–2020 (85 FR 58393) (Sept. 18, 2020).

Signed at Washington, DC, on November 7, 2024.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2024–26712 Filed 11–15–24; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Submission for Office of Management and Budget (OMB) Review, Comment Request, Proposed Collection: Museum Assessment Program Application and Survey Forms

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Submission for OMB review, request for comments, collection of information.

SUMMARY: The Institute of Museum and Library Services announces that the following information collection has been submitted to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. This Notice proposes the clearance of four forms associated with the application process and five customer feedback surveys for the Museum Assessment Program. A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before December 18, 2024.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this Notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Institute of Museum and Library Services'' under ''Currently Under Review;'' then check ''Only Show ICR for Public Comment'' checkbox. Once you have found this information collection request, select ''Comment,'' and enter or upload your comment and information. Alternatively, please mail your written comments to Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, or call (202) 395–7316.

OMB is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

FOR FURTHER INFORMATION CONTACT: Sarah Minnaert, Associate Deputy Director, Office of Museum Services, Institute of Museum and Library Services, 955 L'Enfant Plaza North, SW, Suite 4000, Washington, DC 20024–2135. Ms. Minnaert may be reached by telephone at 202–653–4614, or by email at *sminnaert@imls.gov.* Persons who are deaf or hard of hearing (TTY users) may contact IMLS at 202–207–7858 via 711 for TTY-Based Telecommunications Relay Service.

SUPPLEMENTARY INFORMATION: The Institute of Museum and Library Services is the primary source of federal support for the nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. To learn more, visit *www.imls.gov.*

Current Actions: This Notice proposes the clearance of Museum Assessment Program (MAP) application forms and surveys. The 60-day Notice was published in the **Federal Register** on September 4, 2024 (89 FR 71937)

(Document Number: 2024–19821). The agency received no comments in response to this Notice.

Agency: Institute of Museum and Library Services.

Title: Museum Assessment Program Application Forms.

OMB Control Number: 3137–0101.

Agency Number: 3137.

Respondents/Affected Public: Museum staff.

Total Number of Respondents: 415.

Frequency of Response: Once per request.

Average Hours/Minutes per Response: 13 hours 30 minutes.

Total Estimated Annual Burden Hours: 811.25.

Total Annual Cost Burden: $27,469.

Total Annual Federal Costs: $4,440.

Dated: November 12, 2024.

Suzanne Mbollo,

Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2024–26738 Filed 11–15–24; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request: NSF Research Experience and Mentoring Survey

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register**, and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAmain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Send comments to address below.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Room E6447, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

Comments: Comments regarding (a) whether the proposed collection of information is necessary for the proper performance of the functions of the NSF, including whether the information shall have practical utility; (b) the accuracy of the NSF's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, use, and clarity of the information on respondents; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to the points of contact in the **FOR FURTHER INFORMATION CONTACT** section.

Copies of the submission may be obtained by calling 703–292–7556. NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number, and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: NSF Research Experience and Mentoring Survey.

OMB Number: 3145–0261.

Type of Request: Intent to seek approval to renew an information collection.

Abstract:

The Research Experience and Mentoring (REM) Program supports the active involvement of research participants (RPs) that include high school students, Science, Technology, Engineering and Mathematics (STEM) teachers, undergraduate STEM students, faculty, and veterans, in hands-on research in order to bring participants into contact with STEM mentors and expose them to a summer research experience. Research participants are recruited as cohorts in order to facilitate mentoring and research activities, community building, and provide mutual student support. The main goals of the REM Program are to provide research experiences and mentored opportunities to STEM students and/or educators that may ultimately enhance their career and academic trajectories while enhancing NSF research projects by the Emerging Frontiers in Research and Innovation (EFRI) program, the Engineering Research Centers (ERC), and the Industry-University Cooperative Research Centers (IUCRC). The REM Program may also enable the building of long-term collaborative partnerships among EFRI-,ERC-, and ICUCR-supported researchers, community colleges, local four-year colleges, and local school districts.

A REM supplement of maximum of $110,000 over a 1-year period. Activities that are innovative and site-specific are encouraged. Effective REM programs typically have many of the following characteristics, which are provided here as general guidelines: mentorship training for researchers and affiliated graduate students or postdoctoral researchers; well-designed, introductory training for RPs; Six to ten weeks of summer research (full time); Continued mentorship of RPs throughout the academic year; Participation of RPs in research team meetings and topic-related conferences or workshops; and guidance for RPs in co-authoring publications and/or posters.

NSF is requesting OMB approval for the REM program to collect information from past and present research participants and mentors. The REM program seeks to collect data from research participants and mentors to: (1) *inform REM programming* (*e.g.,* to identify areas of growth); and (2) *conduct retrospective analysis of the REM program* to assess the success of REM historically.

Use of the Information: The information collected is primarily for the use of the NSF REM program to assess the success of the program and for informing decisions NSF will make regarding future programming and support provided to research participants.

Estimate burden on the public: Estimated at 116 hours annually.

Respondents: All REM research participants and mentors will be invited to respond to the survey. The REM research participants include high school students, STEM teachers, undergraduate STEM students, faculty, and veterans.

Estimated number of respondents: 351.

Average Time per Reporting: The online survey is comprised primarily of closed-ended questions and is designed to be completed by respondents in under 20 minutes.

Frequency: Annually.

Dated: November 13, 2024.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2024–26829 Filed 11–15–24; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

721st Meeting of the Advisory Committee on Reactor Safeguards (ACRS)

In accordance with the purposes of sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232(b)), the Advisory Committee on Reactor Safeguards (ACRS) will hold meetings on December 4–6, 2024. The Committee will be conducting meetings that will include some Members being physically present at the NRC while other Members participate remotely. Interested members of the public are encouraged to participate remotely in any open sessions via MS Teams or via phone at 301–576–2978, passcode 881273578 #. A more detailed agenda including the MSTeams link may be found at the ACRS public website at *https://www.nrc.gov/reading-rm/doc-collections/acrs/agenda/index.html.* If you would like the MSTeams link forwarded to you, please contact the Designated Federal Officer (DFO) as follows: *Quynh.Nguyen@nrc.gov,* or *Lawrence.Burkhart@nrc.gov.*

Wednesday, December 4, 2024

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chair (Open)—The ACRS Chair will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:30 a.m.: Material Reliability Program: Pressurized Water Reactor Internals Inspection and Evaluation Guidelines (MRP–227, Revision 2) (Open)—The Committee will have presentations and discussions with applicant representatives and the NRC staff regarding the subject topic.

10:30 a.m.–12:00 p.m.: Committee Deliberation on MRP–227, Revision 2 (Open)—The Committee will deliberate with the NRC staff regarding the subject topic.

2:00 p.m.–6:00 p.m.: Planning and Procedures Session/Future ACRS Activities/Reconciliation of ACRS Comments and Recommendations/Preparation of Reports (Open/Closed)—The Committee will hear discussion of the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS meetings, and/or proceed to preparation of reports.

*[**Note:** Pursuant to 5 U.S.C. 552b(c)(2), a portion of this meeting may be closed to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS.]*

*[**Note:** Pursuant to 5 U.S.C. 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.].*

Thursday, December 5, 2024

8:30 a.m.–5:00 p.m.: Committee Deliberation and Preparation of Reports (Open)—The Committee will proceed to preparation of reports and Committee deliberation.

Friday, December 6, 2024

8:30 a.m.–5:00 p.m.: Committee Deliberation and Preparation of Reports (Open)—The Committee will proceed to preparation of reports and Committee deliberation.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on June 13, 2019 (84 FR 27662). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Quynh Nguyen, Cognizant ACRS Staff and the DFO (Telephone: 301–415–5844, Email: *Quynh.Nguyen@nrc.gov*), 5 days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chair as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the cognizant ACRS staff if such rescheduling would result in major inconvenience.

An electronic copy of each presentation should be emailed to the cognizant ACRS staff at least one day before the meeting.

In accordance with Subsection 10(d) of Public Law 92–463 and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chair. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agendas, meeting transcripts, and letter reports are available through the NRC Public Document Room (PDR) at *pdr.resource@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System component of NRC's Agencywide Documents Access and Management System, which is accessible from the NRC website at *https://www.nrc.gov/reading-rm/adams.html* or *https://www.nrc.gov/reading-rm/doc-collections/#ACRS/.*

Dated: November 12, 2024.

Russell E. Chazell,

Federal Advisory Committee Management Officer, Office of the Secretary.

[FR Doc. 2024–26739 Filed 11–15–24; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2024–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of November 18, 25, and December 2, 9, 16, 23, 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 November 18, 2024

There are no meetings scheduled for the week of November 18, 2024.

Week of November 25, 2024—Tentative

There are no meetings scheduled for the week of November 25, 2024.

Week of December 2, 2024—Tentative

Thursday, December 5, 2024

10:00 a.m. Briefing on Equal Employment Opportunity, Affirmative Employment, and Small Business (Public Meeting) (Contact: Erin Deeds: 301–415–2887)

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 December 9, 2024—Tentative

There are no meetings scheduled for the week of December 9, 2024.

Week of December 16, 2024—Tentative

There are no meetings scheduled for the week of December 16, 2024.

Week of December 23, 2024—Tentative

There are no meetings scheduled for the week of December 23, 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: November 13, 2024.

For the Nuclear Regulatory Commission.

Wesley W. Held

Policy Coordinator, Office of the Secretary.

[FR Doc. 2024–26859 Filed 11–14–24; 11:15 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2020–196; CP2024–126; CP2024–423; MC2025–335; MC2025–336; MC2025–337; MC2025–338; MC2025–339; MC2025–340; MC2025–341; MC2025–342; MC2025–343; MC2025–344; MC2025–345; MC2025–346; MC2025–347; MC2025–348; MC2025–349; MC2025–350; MC2025–351; MC2025–352; MC2025–353; K2025–333; K2025–334; K2025–335; K2025–336; K2025–337; K2025–338; K2025–339; K2025–340; K2025–341; K2025–342; K2025–343; K2025–344; K2025–345; K2025–346; K2025–347; K2025–348; K2025–349; K2025–350; K2025–351]

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:* November 20, 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. Public Proceeding(s)
III. Summary Proceeding(s)

I. Introduction

Pursuant to 39 CFR 3041.405, the Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to Competitive negotiated service agreement(s). The request(s) may propose the addition of a negotiated service agreement from the Competitive product list or the modification of an existing product currently appearing on the Competitive product list.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

Section II identifies the docket number(s) associated with each Postal Service request, if any, that will be reviewed in a public proceeding as defined by 39 CFR 3010.101(p), the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each such request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 and 39 CFR 3000.114 (Public Representative). Section II also establishes comment deadline(s) pertaining to each such request.

The Commission invites comments on whether the Postal Service's request(s) identified in Section II, if any, are consistent with the policies of title 39. Applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3041. Comment deadline(s) for each such request, if any, appear in Section II.

Section III identifies the docket number(s) associated with each Postal Service request, if any, to add a standardized distinct product to the Competitive product list or to amend a standardized distinct product, the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. Standardized distinct products are negotiated service agreements that are variations of one or more Competitive products, and for which financial models, minimum rates, and classification criteria have undergone advance Commission review. *See* 39 CFR 3041.110(n); 39 CFR 3041.205(a). Such requests are reviewed in summary proceedings pursuant to 39 CFR 3041.325(c)(2) and 39 CFR 3041.505(f)(1). Pursuant to 39 CFR 3041.405(c)–(d), the Commission does not appoint a Public Representative or request public comment in proceedings to review such requests.

II. Public Proceeding(s)

1. *Docket No(s).:* CP2020–196; *Filing Title:* Request of the United States Postal Service Concerning Modification Four to Global Reseller Expedited Package 2 Negotiated Service Agreement, Which Includes an Extension of That Agreement; *Filing Acceptance Date:* November 8, 2024; *Filing Authority:* 39 CFR 3035.105, 39 CFR 3041.505, and 39 CFR 3041.515; *Public Representative:* Katalin Clendenin; *Comments Due:* November 20, 2024.

2. *Docket No(s).:* CP2024–126; *Filing Title:* Request of the United States Postal Service Concerning Modification One to Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 31, Which Includes an Extension of That Agreement; *Filing Acceptance Date:* November 8, 2024; *Filing Authority:* 39 CFR 3035.105, 39 CFR 3041.505, and 39 CFR 3041.515; *Public Representative:* Katalin Clendenin; *Comments Due:* November 20, 2024.

3. *Docket No(s).:* CP2024–423; *Filing Title:* USPS Request Concerning Amendment One to Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 151, with Material Filed Under Seal; *Filing Acceptance Date:* November 8, 2024; *Filing Authority:* 39 CFR 3035.105, 39 CFR 3041.505, and 39 CFR 3041.515; *Public Representative:* Katalin Clendenin; *Comments Due:* November 19, 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).

4. *Docket No(s).:* MC2025–335 and K2025–333; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 672 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 8, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Almaroof Agoro; *Comments Due:* November 20, 2024.

5. *Docket No(s).:* MC2025–336 and K2025–334; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 673 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 8, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Almaroof Agoro; *Comments Due:* November 20, 2024.

6. *Docket No(s).:* MC2025–337 and K2025–335; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 674 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 8, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Almaroof Agoro; *Comments Due:* November 20, 2024.

7. *Docket No(s).:* MC2025–338 and K2025–336; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 675 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 8, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Gregory Stanton; *Comments Due:* November 20, 2024.

8. *Docket No(s).:* MC2025–339 and K2025–337; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 676 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 8, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Jennaca Upperman; *Comments Due:* November 20, 2024.

9. *Docket No(s).:* MC2025–340 and K2025–338; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 677 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 8, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Gregory Stanton; *Comments Due:* November 20, 2024.

10. *Docket No(s).:* MC2025–341 and K2025–339; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 446 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 8, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Jennaca Upperman; *Comments Due:* November 20, 2024.

11. *Docket No(s).:* MC2025–342 and K2025–340; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 678 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 8, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Elsie Lee-Robbins; *Comments Due:* November 20, 2024.

12. *Docket No(s).:* MC2025–343 and K2025–341; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 679 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 8, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Elsie Lee-Robbins; *Comments Due:* November 20, 2024.

13. *Docket No(s).:* MC2025–344 and K2025–342; *Filing Title:* USPS Request to Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 51 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 8, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Katalin Clendenin; *Comments Due:* November 20, 2024.

14. *Docket No(s).:* MC2025–345 and K2025–343; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 680 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 8, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Elsie Lee-Robbins; *Comments Due:* November 20, 2024.

15. *Docket No(s).:* MC2025–346 and K2025–344; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 681 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 8, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Christopher Mohr; *Comments Due:* November 20, 2024.

16. *Docket No(s).:* MC2025–347 and K2025–345; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 682 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 8, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Christopher Mohr; *Comments Due:* November 20, 2024.

17. *Docket No(s).:* MC2025–348 and K2025–346; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 447 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 8, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Christopher Mohr; *Comments Due:* November 20, 2024.

18. *Docket No(s).:* MC2025–349 and K2025–347; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 683 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 8, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Jana Slovinska; *Comments Due:* November 20, 2024.

19. *Docket No(s).:* MC2025–350 and K2025–348; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 684 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 8, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Kenneth Moeller; *Comments Due:* November 20, 2024.

20. *Docket No(s).:* MC2025–351 and K2025–349; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 685 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 8, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Kenneth Moeller; *Comments Due:* November 20, 2024.

21. *Docket No(s).:* MC2025–352 and K2025–350; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 448 to the

Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 8, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Jennaca Upperman; *Comments Due:* November 20, 2024.

22. *Docket No(s).:* MC2025–353 and K2025–351; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 686 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 8, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Jana Slovinska; *Comments Due:* November 20, 2024.

III. Summary Proceeding(s)

None. *See* Section II for public proceedings.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2024–26838 Filed 11–15–24; 8:45 am]

BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Statement Regarding Contributions and Support of Children; OMB 3220–0195.

Section 2(d)(4) of the Railroad Retirement Act (RRA) (45 U.S.C. 231a), provides, in part, that a child is deemed dependent if the conditions set forth in section 202(d)(3), (4) and (9) of the Social Security Act are met. Section 202(d)(4) of the Social Security Act, as amended by Public Law 104–121, requires as a condition of dependency, that a child receives one-half of his or her support from the stepparent. This dependency impacts upon the entitlement of a spouse or survivor of an employee whose entitlement is based upon having a stepchild of the employee in care, or on an individual seeking a child's annuity as a stepchild of an employee. Therefore, depending on the employee for at least one-half support is a condition affecting eligibility for increasing an employee or spouse annuity under the social security overall minimum provisions on the basis of the presence of a dependent child, the employee's natural child in limited situations, adopted children, stepchildren, grandchildren, step-grandchildren and equitably adopted children. The regulations outlining child support and dependency requirements are prescribed in 20 CFR 222.50–57.

To correctly determine if an applicant is entitled to a child's annuity based on actual dependency, the RRB uses Form G–139, Statement Regarding Contributions and Support of Children, to obtain financial information needed to make a comparison between the amount of support received from the railroad employee and the amount received from other sources. Completion is required to obtain a benefit. One response is required of each respondent. The RRB proposes minor editorial changes to Form G–139 to change the example dates under section 1 ''General Instructions''.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form number	Annual responses	Time (minutes)	Burden (hours)
G–139	400	60	400

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material or comments regarding the information collection should be addressed to Brian Foster, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–1275 or emailed to *Brian.Foster@rrb.gov.* Written comments should be received within 60 days of this notice.

Brian Foster,

Clearance Officer.

[FR Doc. 2024–26735 Filed 11–15–24; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101576; File No. SR–NYSEARCA–2024–91]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Service for Virtual Control Circuits in the Connectivity Fee Schedule

November 12, 2024.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 30, 2024, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the service for virtual control circuits in the Connectivity Fee Schedule. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the existing service for virtual control circuits (''VCCs'') in the Connectivity Fee Schedule.

A VCC (previously called a ''peer to peer'' connection) is a unicast connection through which two participants can establish a connection between two points over dedicated bandwidth, to be used for any purpose. At the Mahwah, New Jersey data center (''MDC'')[4] the Exchange offers VCCs between two Users.[5] The recurring monthly fees are based upon the bandwidth requirements per VCC connection between two Users.[6]

However, not all VCCs are between two Users in the MDC. Although all VCCs have at least one end that is a User inside the MDC, the other party may be a non-User outside of the MDC at a remote access center, or the VCC can be between a User in the MDC and the same User outside of the MDC at a remote access center. A VCC that goes outside of the MDC herein is called a ''MDC VCC.''

Accordingly, the Exchange proposes to amend the Connectivity Fee Schedule to delete ''between two Users'' after ''Virtual Control Circuit.'' Fees for the service would not change and, as now, connectivity to a VCC would require the permission of the non-billed party before the Exchange would establish the connection.

As background, Users require wired circuits to connect into and out of the MDC. A User's equipment in the MDC's colocation hall connects to a circuit leading out of the MDC, which connects to the User's equipment in their back office or another data center.

Before 2013, all such circuits were provided by ICE's predecessor, NYSE Euronext. In response to customer demand for more connectivity options, in 2013, the MDC opened two ''meet-me-rooms'' to telecommunications service providers (''Telecoms''),[7] to enable Telecoms to offer circuits into the MDC in competition with NYSE Euronext. Currently, 16 Telecoms operate in the meet-me-rooms and provide circuit options to Users requiring connectivity into and out of the MDC.

In addition, FIDS provides two different types of circuits, Optic Low Latency and Optic Access. Optic Access,[8] which is more similar to the MDC VCC, is a circuit between the MDC and the FIDS access centers at five third-party owned data centers: (1) 111 Eighth Avenue, New York, NY; (2) 32 Avenue of the Americas, New York, NY; (3) 165 Halsey, Newark, NJ; (4) Secaucus, NJ; and (5) Carteret, NJ.

Ultimately, the MDC VCCs are similar to the Optic Access FIDS circuits in that, like Optic Access, the MDC VCCs run between the MDC and five FIDS access centers as well as, in the case of the MDC VCCs, additional U.S. FIDS access centers. They are smaller than the Optic Access FIDS circuits, however. While the Exchange has no visibility into how a User utilizes its connections, the Exchange believes that the Optic Access FIDS circuit is used for items that require more bandwidth, like market data, while the MDC VCCs are used for items that require smaller amounts of bandwidth, such as messaging, pre- and post-trade data, or clearing information, as determined by the User. Accordingly, if a User wants a smaller connection to a U.S. access center, or wants to reach an access center that Optic Access does not reach, the MDC VCCs are a viable option.

General

The proposed rule change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. As is currently the case, the Fee Schedule would be applied uniformly to all Users. FIDS does not expect that the proposed rule change will result in new Users.

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that customers would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[11] because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable.

Although all VCCs have at least one end that is a User inside the MDC, the other party may be a non-User outside of the MDC at a remote access center, or the VCC can be between a User in the

[4] Through its Fixed Income and Data Services (''FIDS'') (previously ICE Data Services) business, Intercontinental Exchange, Inc. (''ICE'') operates the MDC. The Exchange and the New York Stock Exchange LLC, NYSE American LLC, NYSE Chicago, Inc. and NYSE National, Inc. (together, the ''Affiliate SROs'') are indirect subsidiaries of ICE.

[5] For purposes of the Exchange's colocation services, a ''User'' means any market participant that requests to receive colocation services directly from the Exchange. *See* Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR–NYSEArca–2015–82). As specified in the Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the Affiliate SROs. Each Affiliate SRO has submitted substantially the same proposed rule change to propose the change described herein. *See* SR–NYSE–2024–69, SR–NYSEAMER–2024–64, SR–NYSECHX–2024–31, and SR–NYSENAT–2024–28.

[6] *See* Securities Exchange Act Release No. 80310 (March 24, 2017), 82 FR 15763 (March 30, 2017) (SR–NYSEArca–2016–89).

[7] Telecommunication service providers that choose to provide circuits at the MDC are referred to as ''Telecoms.'' Telecoms are licensed by the Federal Communications Commission (''FCC'') and are not required to be, or be affiliated with, a member of the Exchange or an Affiliate SRO.

[8] The ''Optic Low Latency'' circuits are lower latency. *See* Securities Exchange Act Release No. 99166 (December 14, 2023), 88 FR 88178 (December 20, 2023) (SR–NYSEARCA–2023–83).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(4).

MDC and the same User outside of the MDC at a remote access center. Accordingly, the proposed change is reasonable because it would make the Connectivity Fee Schedule more accurately reflect the usage of VCCs. It would ensure that the description of VCCs was complete, accessible and transparent, and thereby provide market participants with greater clarity.

In considering the reasonableness of proposed services and fees, the Commission's market-based test considers ''whether the exchange was subject to significant competitive forces in setting the terms of its proposal. . . . including the level of any fees.'' [12] If the Exchange meets that burden, ''the Commission will find that its proposal is consistent with the Act unless 'there is a substantial countervailing basis to find that the terms' of the proposal violate the Act or the rules thereunder.'' [13] Here, the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because substantially similar substitutes are available, and the third-party vendors are not at a competitive disadvantage created by the Exchange.

MDC VCCs would compete with circuits currently offered by the 16 third-party Telecoms that have installed their equipment in the MDC's two meet-me-rooms. The Telecom circuits are reasonable substitutes for the MDC VCCs. The Commission has recognized that products do not need to be identical to be considered substitutable; it is sufficient that they be substantially similar.[14] The MDC VCCs, the FIDS circuits, and the circuits provided by the Telecoms all perform the same function: connecting into and out of the MDC. The providers of the MDC VCCs, VCCs between Users, FIDS circuits and Telecom circuits design them to perform with particular combinations of latency, bandwidth, price, termination point, and other factors that they believe will attract Users, and Users choose from among these competing services on the basis of their business needs.

The MDC VCCs are sufficiently similar substitutes to the circuits offered by the 16 Telecoms even though the MDC VCCs all terminate in one of the U.S. remote access centers, while circuits from the 16 Telecoms could terminate in those locations or additional locations. While neither the Exchange nor FIDS knows the end point of any particular Telecom circuit, the Exchange understands that the Telecoms can offer circuits terminating in any location, including the remote access centers where the MDC VCCs would terminate. Moreover, the Telecoms may offer smaller circuits that are the same as or similar size to the MDC VCCs. Ultimately, Users can choose to configure their pathway leading out of colocation in the way that best suits their business needs, which may include connecting to the User's equipment at one of the U.S. remote access center locations that serve as termination points for MDC VCCs, or connecting first to one of those remote access centers with a FIDS- or Telecom-supplied circuit and then further connecting to another remote location using a telecommunication provider-supplied circuit.

Neither the MDC VCCs, Optic Access circuits, nor the Optic Low Latency circuits have a distance or latency advantage over the Telecoms' circuits within the MDC. FIDS has normalized (a) the distance between the meet-me-rooms and the colocation halls and (b) the distance between the rooms where the FIDS circuits and the MDC VCCs exit the MDC and the colocation halls. As a result, a User choosing whether to use the MDC VCCs or Telecom circuits does not face any difference in the distances or latency within the MDC.

The Exchange also believes that the MDC VCCs do not have any latency or bandwidth advantage over the Telecoms' circuits outside of the MDC. The Exchange believes that the Telecoms operating in the meet-me-rooms offer circuits with a variety of latency and bandwidth specifications, some of which may exceed the specifications of the proposed MDC VCCs.[15] The Exchange believes that Users consider these latency and bandwidth factors—as well as other factors, such as price and termination point—in determining which offerings will best serve their business needs.

In sum, the Exchange does not believe that there is anything about the MDC VCCs that would make the Telecoms' circuits inadequate substitutes.

Nor does the Exchange have a competitive advantage over any third-party competitors by virtue of the fact that it owns and operates the MDC's meet-me-rooms. In most cases, circuits coming out of the MDC are provided by the Telecoms.[16] Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level [17] so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.[18] Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to

[12] Securities Exchange Act Release No. 90209 (October 15, 2020), 85 FR 67044, 67049 (October 21, 2020) (Order Granting Accelerated Approval to Establish a Wireless Fee Schedule Setting Forth Available Wireless Bandwidth Connections and Wireless Market Data Connections) (SR–NYSE–2020–05, SR–NYSEAMER–2020–05, SR–NYSEArca–2020–08, SR–NYSECHX–2020–02, SR–NYSENAT–2020–03, SR–NYSE–2020–11, SR–NYSEAMER–2020–10, SR–NYSEArca–2020–15, SR–NYSECHX–2020–05, SR–NYSENAT–2020–08) (''Wireless Approval Order''), citing Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008) (''2008 ArcaBook Approval Order''). *See NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[13] Wireless Approval Order, *supra* note 12, at 67049, citing 2008 ArcaBook Approval Order, *supra* note 12, at 74781.

[14] *See* 2008 ArcaBook Approval Order, *supra* note 12, at 74789 and note 295 (recognizing that products need not be identical to be substitutable).

[15] The specifications of FIDS's competitors' circuits are not publicly known. The Exchange understands that FIDS has gleaned any information it has about its competitors through anecdotal communications, by observing customers' purchasing choices in the competitive market, and from its own experience as a purchaser of circuits from telecommunications providers to build FIDS's own networks.

[16] Note that in the case of wireless connectivity, a User in colocation still requires a fiber circuit to transport data. If a Telecom is used, the data is transmitted wirelessly to the relevant pole, and then from the pole to the meet-me-room using a fiber circuit.

[17] *See* Securities Exchange Act Release No. 98000 (July 26, 2023), 88 FR 50244 (August 1, 2023) (SR–NYSEARCA–2023–47).

[18] *See id.* at 50246. Importantly, the Exchange is prevented from making any alteration to its meet-me-room services or fees without filing a proposal for such changes with the Commission.

provide services to compete with the Exchange's services.

If the Exchange were to set the price of the MDC VCCs too high, Users would likely respond by choosing one of the many alternative options offered by the 16 Telecoms. Conversely, if the Exchange were to offer the MDC VCCs at prices aimed at undercutting comparable Telecom circuits, the Telecoms might reassess whether it makes financial sense for them to continue to participate in the MDC's meet-me-rooms. Their departure might negatively impact User participation in colocation and on the Exchange. As a result, the Exchange is not motivated to undercut the prices of Telecom circuits.

For these reasons, the proposed change is reasonable.

The Proposed Change Is Equitable

The Exchange believes that the proposed change provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers because it is not designed to permit unfair discrimination between market participants. The proposed change would apply equally to all types and sizes of market participants. It would clarify that all VCCs, irrespective of whether between two Users, a User and non-User outside of the VCC, or the same User, are subject to the same size and cost provisions. In addition, the Exchange believes that the proposal is equitable because only market participants that voluntarily select to receive MDC VCCs would be charged for them.

Moreover, the proposed change would ensure that the Connectivity Fee Schedule accurately reflects the usage of VCCs. It would ensure that the description of VCCs was complete, accessible and transparent, and provide market participants with greater clarity.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes its proposal is not unfairly discriminatory. The proposed change does not apply differently to distinct types or sizes of market participants. Rather, it applies to all market participants equally. The purchase of any proposed service is completely voluntary and the Fee Schedule will be applied uniformly to all market participants.

In addition, the Exchange believes that the proposal is equitable because only market participants that voluntarily select to receive MDC VCCs would be charged for them. The MDC VCCs are available to all market participants on an equal basis, and all market participants that voluntarily choose to purchase a MDC VCC are charged the same amount as all other market participants purchasing that type of MDC VCC.

For the reasons above, the proposed change does not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms, and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.[19] The proposed rule change is designed to ensure that the provision on VCCs clarifies that all VCCs, irrespective of whether between two Users, a User and non-User outside of the VCC, or the same User, are subject to the same size and cost provisions. It is not meant to address intramarket or intermarket competition.

The proposed change would enhance competition in the market for circuits transmitting data into and out of colocation at the MDC by adding VCCs, in addition to the 16 Telecoms that also sell circuits to Users and the FIDS circuits. The MDC VCCs do not have any latency, bandwidth, or other advantage over the Telecoms' circuits. The proposal would not burden competition in the sale of such circuits, but rather, enhance it by providing Users with an additional choice for their circuit needs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[20] and Rule 19b–4(f)(6) thereunder.[21] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[22]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[23] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEARCA–2024–91 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEARCA–2024–91. This file number should be included on the subject line if email is used. To help the Commission process and review your

[19] 15 U.S.C. 78f(b)(8).

[20] 15 U.S.C. 78s(b)(3)(A)(iii).

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[23] 15 U.S.C. 78s(b)(2)(B).

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–SR–NYSEARCA–2024–91 and should be submitted on or before December 9, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–26745 Filed 11–15–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101575; File No. SR–NYSEAMER–2024–64]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend the Service for Virtual Control Circuits in the Connectivity Fee Schedule

November 12, 2024.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 30, 2024, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the service for virtual control circuits in the Connectivity Fee Schedule. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the existing service for virtual control circuits (''VCCs'') in the Connectivity Fee Schedule.

A VCC (previously called a ''peer to peer'' connection) is a unicast connection through which two participants can establish a connection between two points over dedicated bandwidth, to be used for any purpose. At the Mahwah, New Jersey data center (''MDC'')[4] the Exchange offers VCCs between two Users.[5] The recurring monthly fees are based upon the bandwidth requirements per VCC connection between two Users.[6]

However, not all VCCs are between two Users in the MDC. Although all VCCs have at least one end that is a User inside the MDC, the other party may be a non-User outside of the MDC at a remote access center, or the VCC can be between a User in the MDC and the same User outside of the MDC at a remote access center. A VCC that goes outside of the MDC herein is called a ''MDC VCC.''

Accordingly, the Exchange proposes to amend the Connectivity Fee Schedule to delete ''between two Users'' after ''Virtual Control Circuit.'' Fees for the service would not change and, as now, connectivity to a VCC would require the permission of the non-billed party before the Exchange would establish the connection.

As background, Users require wired circuits to connect into and out of the MDC. A User's equipment in the MDC's colocation hall connects to a circuit leading out of the MDC, which connects to the User's equipment in their back office or another data center.

Before 2013, all such circuits were provided by ICE's predecessor, NYSE Euronext. In response to customer demand for more connectivity options, in 2013, the MDC opened two ''meet-me-rooms'' to telecommunications service providers (''Telecoms''),[7] to enable Telecoms to offer circuits into the MDC in competition with NYSE Euronext. Currently, 16 Telecoms operate in the meet-me-rooms and provide circuit options to Users requiring connectivity into and out of the MDC.

In addition, FIDS provides two different types of circuits, Optic Low Latency and Optic Access. Optic Access,[8] which is more similar to the MDC VCC, is a circuit between the MDC and the FIDS access centers at five

[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Through its Fixed Income and Data Services (''FIDS'') (previously ICE Data Services) business, Intercontinental Exchange, Inc. (''ICE'') operates the MDC. The Exchange and the New York Stock Exchange LLC, NYSE Arca, Inc., NYSE Chicago, Inc. and NYSE National, Inc. (together, the ''Affiliate SROs'') are indirect subsidiaries of ICE.

[5] For purposes of the Exchange's colocation services, a ''User'' means any market participant that requests to receive colocation services directly from the Exchange. *See* Securities Exchange Act Release No. 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR–NYSEMKT–2015–67). As specified in the Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the Affiliate SROs. Each Affiliate SRO has submitted substantially the same proposed rule change to propose the change described herein. *See* SR–NYSE–2024–69, SR–NYSEARCA–2024–91, SR–NYSECHX–2024–31, and SR–NYSENAT–2024–28.

[6] *See* Securities Exchange Act Release No. 80309 (March 24, 2017), 82 FR 15725 (March 30, 2017) (SR–NYSEMKT–2016–63).

[7] Telecommunication service providers that choose to provide circuits at the MDC are referred to as ''Telecoms.'' Telecoms are licensed by the Federal Communications Commission (''FCC'') and are not required to be, or be affiliated with, a member of the Exchange or an Affiliate SRO.

[8] The ''Optic Low Latency'' circuits are lower latency. *See* Securities Exchange Act Release No. 99179 (December 14, 2023), 88 FR 88155 (December 20, 2023) (SR–NYSEAmer–2023–65).

third-party owned data centers: (1) 111 Eighth Avenue, New York, NY; (2) 32 Avenue of the Americas, New York, NY; (3) 165 Halsey, Newark, NJ; (4) Secaucus, NJ; and (5) Carteret, NJ.

Ultimately, the MDC VCCs are similar to the Optic Access FIDS circuits in that, like Optic Access, the MDC VCCs run between the MDC and five FIDS access centers as well as, in the case of the MDC VCCs, additional U.S. FIDS access centers. They are smaller than the Optic Access FIDS circuits, however. While the Exchange has no visibility into how a User utilizes its connections, the Exchange believes that the Optic Access FIDS circuit is used for items that require more bandwidth, like market data, while the MDC VCCs are used for items that require smaller amounts of bandwidth, such as messaging, pre- and post-trade data, or clearing information, as determined by the User. Accordingly, if a User wants a smaller connection to a U.S. access center, or wants to reach an access center that Optic Access does not reach, the MDC VCCs are a viable option.

General

The proposed rule change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. As is currently the case, the Fee Schedule would be applied uniformly to all Users. FIDS does not expect that the proposed rule change will result in new Users.

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that customers would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[11] because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable.

Although all VCCs have at least one end that is a User inside the MDC, the other party may be a non-User outside of the MDC at a remote access center, or the VCC can be between a User in the MDC and the same User outside of the MDC at a remote access center. Accordingly, the proposed change is reasonable because it would make the Connectivity Fee Schedule more accurately reflect the usage of VCCs. It would ensure that the description of VCCs was complete, accessible and transparent, and thereby provide market participants with greater clarity.

In considering the reasonableness of proposed services and fees, the Commission's market-based test considers ''whether the exchange was subject to significant competitive forces in setting the terms of its proposal . . . , including the level of any fees.'' [12] If the Exchange meets that burden, ''the Commission will find that its proposal is consistent with the Act unless 'there is a substantial countervailing basis to find that the terms' of the proposal violate the Act or the rules thereunder.'' [13] Here, the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because substantially similar substitutes are available, and the third-party vendors are not at a competitive disadvantage created by the Exchange.

MDC VCCs would compete with circuits currently offered by the 16 third-party Telecoms that have installed their equipment in the MDC's two meet-me-rooms. The Telecom circuits are reasonable substitutes for the MDC VCCs. The Commission has recognized that products do not need to be identical to be considered substitutable; it is sufficient that they be substantially similar.[14] The MDC VCCs, the FIDS circuits, and the circuits provided by the Telecoms all perform the same function: connecting into and out of the MDC. The providers of the MDC VCCs, VCCs between Users, FIDS circuits and Telecom circuits design them to perform with particular combinations of latency, bandwidth, price, termination point, and other factors that they believe will attract Users, and Users choose from among these competing services on the basis of their business needs.

The MDC VCCs are sufficiently similar substitutes to the circuits offered by the 16 Telecoms even though the MDC VCCs all terminate in one of the U.S. remote access centers, while circuits from the 16 Telecoms could terminate in those locations or additional locations. While neither the Exchange nor FIDS knows the end point of any particular Telecom circuit, the Exchange understands that the Telecoms can offer circuits terminating in any location, including the remote access centers where the MDC VCCs would terminate. Moreover, the Telecoms may offer smaller circuits that are the same as or similar size to the MDC VCCs. Ultimately, Users can choose to configure their pathway leading out of colocation in the way that best suits their business needs, which may include connecting to the User's equipment at one of the U.S. remote access center locations that serve as termination points for MDC VCCs, or connecting first to one of those remote access centers with a FIDS- or Telecom-supplied circuit and then further connecting to another remote location using a telecommunication provider-supplied circuit.

Neither the MDC VCCs, Optic Access circuits, nor the Optic Low Latency circuits have a distance or latency advantage over the Telecoms' circuits within the MDC. FIDS has normalized (a) the distance between the meet-me-rooms and the colocation halls and (b) the distance between the rooms where the FIDS circuits and the MDC VCCs exit the MDC and the colocation halls. As a result, a User choosing whether to

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(4).

[12] Securities Exchange Act Release No. 90209 (October 15, 2020), 85 FR 67044, 67049 (October 21, 2020) (Order Granting Accelerated Approval to Establish a Wireless Fee Schedule Setting Forth Available Wireless Bandwidth Connections and Wireless Market Data Connections) (SR–NYSE–2020–05, SR–NYSEAMER–2020–05, SR–NYSEArca–2020–08, SR–NYSECHX–2020–02, SR–NYSENAT–2020–03, SR–NYSE–2020–11, SR–NYSEAMER–2020–10, SR–NYSEArca–2020–15, SR–NYSECHX–2020–05, SR–NYSENAT–2020–08) (''Wireless Approval Order''), citing Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008) (''2008 ArcaBook Approval Order''). *See NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[13] Wireless Approval Order, *supra* note 12, at 67049, citing 2008 ArcaBook Approval Order, *supra* note 12, at 74781.

[14] *See* 2008 ArcaBook Approval Order, *supra* note 12, at 74789 and note 295 (recognizing that products need not be identical to be substitutable).

use the MDC VCCs or Telecom circuits does not face any difference in the distances or latency within the MDC.

The Exchange also believes that the MDC VCCs do not have any latency or bandwidth advantage over the Telecoms' circuits outside of the MDC. The Exchange believes that the Telecoms operating in the meet-me-rooms offer circuits with a variety of latency and bandwidth specifications, some of which may exceed the specifications of the proposed MDC VCCs.[15] The Exchange believes that Users consider these latency and bandwidth factors—as well as other factors, such as price and termination point—in determining which offerings will best serve their business needs.

In sum, the Exchange does not believe that there is anything about the MDC VCCs that would make the Telecoms' circuits inadequate substitutes.

Nor does the Exchange have a competitive advantage over any third-party competitors by virtue of the fact that it owns and operates the MDC's meet-me-rooms. In most cases, circuits coming out of the MDC are provided by the Telecoms.[16] Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level [17] so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.[18] Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

If the Exchange were to set the price of the MDC VCCs too high, Users would likely respond by choosing one of the many alternative options offered by the 16 Telecoms. Conversely, if the Exchange were to offer the MDC VCCs at prices aimed at undercutting comparable Telecom circuits, the Telecoms might reassess whether it makes financial sense for them to continue to participate in the MDC's meet-me-rooms. Their departure might negatively impact User participation in colocation and on the Exchange. As a result, the Exchange is not motivated to undercut the prices of Telecom circuits.

For these reasons, the proposed change is reasonable.

The Proposed Change Is Equitable

The Exchange believes that the proposed change provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers because it is not designed to permit unfair discrimination between market participants. The proposed change would apply equally to all types and sizes of market participants. It would clarify that all VCCs, irrespective of whether between two Users, a User and non-User outside of the VCC, or the same User, are subject to the same size and cost provisions. In addition, the Exchange believes that the proposal is equitable because only market participants that voluntarily select to receive MDC VCCs would be charged for them.

Moreover, the proposed change would ensure that the Connectivity Fee Schedule accurately reflects the usage of VCCs. It would ensure that the description of VCCs was complete, accessible and transparent, and provide market participants with greater clarity.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes its proposal is not unfairly discriminatory. The proposed change does not apply differently to distinct types or sizes of market participants. Rather, it applies to all market participants equally. The purchase of any proposed service is completely voluntary and the Fee Schedule will be applied uniformly to all market participants.

In addition, the Exchange believes that the proposal is equitable because only market participants that voluntarily select to receive MDC VCCs would be charged for them. The MDC VCCs are available to all market participants on an equal basis, and all market participants that voluntarily choose to purchase a MDC VCC are charged the same amount as all other market participants purchasing that type of MDC VCC.

For the reasons above, the proposed change does not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms, and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.[19] The proposed rule change is designed to ensure that the provision on VCCs clarifies that all VCCs, irrespective of whether between two Users, a User and non-User outside of the VCC, or the same User, are subject to the same size and cost provisions. It is not meant to address intramarket or intermarket competition.

The proposed change would enhance competition in the market for circuits transmitting data into and out of colocation at the MDC by adding VCCs, in addition to the 16 Telecoms that also sell circuits to Users and the FIDS circuits. The MDC VCCs do not have any latency, bandwidth, or other advantage over the Telecoms' circuits.

[15] The specifications of FIDS's competitors' circuits are not publicly known. The Exchange understands that FIDS has gleaned any information it has about its competitors through anecdotal communications, by observing customers' purchasing choices in the competitive market, and from its own experience as a purchaser of circuits from telecommunications providers to build FIDS's own networks.

[16] Note that in the case of wireless connectivity, a User in colocation still requires a fiber circuit to transport data. If a Telecom is used, the data is transmitted wirelessly to the relevant pole, and then from the pole to the meet-me-room using a fiber circuit.

[17] *See* Securities Exchange Act Release No. 97999 (July 26, 2023), 88 FR 50190 (August 1, 2023) (SR–NYSEAMER–2023–36).

[18] *See id.* at 50193. Importantly, the Exchange is prevented from making any alteration to its meet-me-room services or fees without filing a proposal for such changes with the Commission.

[19] 15 U.S.C. 78f(b)(8).

The proposal would not burden competition in the sale of such circuits, but rather, enhance it by providing Users with an additional choice for their circuit needs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [20] and Rule 19b–4(f)(6) thereunder.[21] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[22]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [23] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[20] 15 U.S.C. 78s(b)(3)(A)(iii).

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[23] 15 U.S.C. 78s(b)(2)(B).

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–NYSEAMER–2024–64 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEAMER–2024–64. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEAMER–2024–64 and should be submitted on or before December 9, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Sherry R. Haywood,

Assistant Secretary.

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[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101584; File No. SR–LTSE–2024–08]

Self-Regulatory Organizations; Long-Term Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule To Adopt Certain Market Data Fees

November 12, 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 November 1, 2024, Long-Term Stock Exchange, Inc. (''LTSE'' or Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the LTSE Fee Schedule (the ''Fee Schedule'') to adopt certain market data fees effective November 1, 2024. The Exchange notes that it submitted a separate filing with the Commission pursuant to Section 19(b)(3)(A) of the Act to establish the Fee Schedule and adopt transaction fees upon commencement of its transition to a new trading platform on September 23, 2024.

The text of the proposed rule change is available at the Exchange's website at *https://longtermstockexchange.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement on 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 self-regulatory organization has

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 is proposing to establish a new section (D. Market Data Fees) in the Long-Term Stock Exchange Fee Schedule and adopt fees for its proprietary market data feeds, Depth of Book, Top of Book and Last Sale (collectively, the ''Exchange Data Feeds''). The Exchange is proposing to implement the proposed fees effective November 1, 2024.

Proposed Market Data Pricing

The Exchange offers three separate data feeds to subscribers—Depth of Book, Top of Book and Last Sale. The Exchange notes that there is no requirement that any Firm subscribe to a particular Exchange Data Feed or any Exchange Data Feed whatsoever, but instead, a Firm may choose to maintain subscriptions to those Exchange Data Feeds they deem appropriate based on their business model. The proposed fee will not apply differently based upon the size or type of Firm, but rather based upon the subscriptions a Firm has to Exchange Data Feeds and their use thereof, which are in turn based upon factors deemed relevant by each Firm. The proposed pricing for each of the Exchange Data Feeds is set forth below.

Depth of Book

The Depth of Book feed is a LTSE-only market data feed that contains all displayed orders for securities trading on the Exchange (*i.e.,* top and depth-of-book order data), order executions (*i.e.,* last sale data), order cancellations, order modifications, order identification numbers, and administrative messages.[3] For the receipt of access to the Depth of Book feed the Exchange proposes to charge $2,500 per month. The proposed fee would be charged to any data recipient that receives the Depth of Book feed for the purpose of either internal distribution within the Company and/or with Affiliates[4] or external distribution to External Parties.[5] The proposed fee for Depth of Book will be charged only once per month per subscribing entity (''Firm'').

Top of Book

The Top of Book feed is a LTSE-only market data feed that contains top of book quotations based on equity orders entered into the System as well as administrative messages.[6] For the receipt of access to the Top of Book feed the Exchange proposes to charge $500 per month. The proposed fee would be charged to any data recipient that receives the Top of Book feed for the purpose of either internal distribution within the Company and/or with Affiliates or external distribution to External Parties. The proposed fee for Top of Book will be charged only once per month per subscribing entity Firm.

Last Sale

The Last Sale feed is a LTSE-only market data feed that contains only execution information based on equity orders entered into the System as well as administrative messages.[7] For the receipt of access to the Last Sale feed the Exchange proposes to charge $0 per month.

In proposing to charge fees for Exchange Data Feeds, the Exchange has sought to be especially diligent in assessing those fees in a transparent way against its own aggregate costs of providing the related services, and also carefully and transparently assessing the impact on Members—both generally and in relation to other Members, *i.e.,* to assure the fee will not create a financial burden on any participant and will not have an undue impact in particular on smaller Members and competition among Members in general. The Exchange believes that this level diligence and transparency is called for by the requirements of Section 19(b)(1) under the Act,[8] and Rule 19b–4 thereunder,[9] with respect to the types of information self-regulatory organizations (''SROs'') should provide when filing fee changes, and Section 6(b) of the Act,[10] which requires, among other things, that exchange fees be reasonable and equitably allocated,[11] not designed to permit unfair discrimination,[12] and that they not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[13] This rule change proposal addresses those requirements, and the analysis and data in each of the sections that follow are designed to clearly and comprehensively show how they are met.[14]

Cost Analysis

The Exchange notes it operates a unique model where the LTSE trading system and services are provided on an outsourced basis by MEMX Technologies LLC.[15] As such, most of the Exchange's technology costs, including those related to Exchange Data Feeds are incorporated into the overall fees that the Exchange pays MEMX Technologies as part of its multi-year arrangement to provide a trading system and associated services. Because of this arrangement, the Exchange does not possess the same level of specificity for cost drivers related to Exchange Data Feeds as other exchanges have detailed within their own similar filings. However, the Exchange recognizes that the costs associated with building out and maintaining a state-of-the-art network infrastructure for LTSE were extensive and in line with the costs that MEMX LLC, an exchange that also uses the trading system and associated services of MEMX Technologies, outlined in its own filing establishing market data fees for Members and Non-Members.[16] These include costs associated with maintaining and expanding a team of highly-skilled engineers, fees charged by the third-party data center operator, and costs

[3] *See* LTSE Rule 11.330(a)(1).

[4] Internal distribution includes the sharing of any Exchange data product to other legal entities affiliated with the Firm that have been disclosed to the Exchange. For instance, if a company has multiple affiliated broker-dealers under the same holding company, that company could have one of the broker-dealers or a non broker-dealer affiliate subscribe to an Exchange Data product and then share the data with other affiliates that have a need for the data. This sharing with affiliates would not be considered external distribution to a third party but instead would be considered internal distribution to data recipients within the Distributor's own organization.

[5] External distribution would be defined to mean a Firm that receives an Exchange data product and then distributes that data to a third party or one or more data recipients outside the Firm's organization.

[6] *See* LTSE Rule 11.330(a)(2).

[7] *See* LTSE Rule 11.330(a)(3).

[8] 15 U.S.C. 78s(b)(1).

[9] 17 CFR 240.19b–4.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78(b)(5) [sic].

[13] 15 U.S.C. 78f(b)(8).

[14] In 2019, Commission staff published guidance suggesting the types of information that SROs may use to demonstrate that their fee filings comply with the standards of the Exchange Act (''Fee Guidance''). While LTSE understands that the Fee Guidance does not create new legal obligations on SROs, the Fee Guidance is consistent with LTSE's view about the type and level of transparency that exchanges should meet to demonstrate compliance with their existing obligations when they seek to charge new fees. See Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019).

[15] The Exchange and MEMX Technologies executed a Development, License and Services Agreement on January 23, 2024, with accompanying Schedules (collectively, the ''DLSA''). MEMX Technologies, an affiliate of the MEMX Exchange, is in the business of developing technology systems for use in the financial industry. *See* SR–LTSE–2024–03.

[16] *See* Securities Exchange Act Release No. 34–97130 (March 13, 2023), 88 FR 16491 (March 17, 2013) (SR–MEMX–2023–04).

associated with fully-supporting advances in infrastructure and expansion of network level services, including customer monitoring, alerting and reporting. There are also significant technology expenses related to establishing and maintaining Information Security services, enhanced network monitoring and customer reporting, as well as Regulation SCI mandated processes, associated with the MEMX Technologies network technology. Because of this structure, the Exchange is unable to separate out the costs for servicing and providing Exchange Market Data, as these are intricately combined in its DSLA with MEMX Technologies.

Further, while the Exchange has been operating since September 2020, it only entered the DLSA with MEMX Technologies LLC in January of this year and launched the new trading system in September 2024. Therefore, the Exchange's most recent publicly available financial statement (2023 Audited Unconsolidated Financial Statement) is not an accurate reflection of the total annual costs associated with the development and operation of Market Data on LTSE. Accordingly, the Exchange believes it is more appropriate to justify its fees using cost figures that are isolated specifically for LTSE on an annualized basis, and utilizing a recent monthly billing cycle and extrapolated annualized costs on a going-forward basis.

LTSE recently calculated its aggregate monthly costs for providing Market Data at $212,963 beginning October 1, 2024. Before the launch of the new trading system in September 2024 the Exchange did not offer any market data products. Now, in order to cover some of the aggregate costs of providing Market Data to market participants (both Members and non-Members) the Exchange is proposing to modify its Fee Schedule and charge the Market Data fees detailed above.

In order to determine the Exchange's costs for providing the services associated with the Market Data Fees, the Exchange conducted an extensive review in which the Exchange analyzed every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the services associated with the Market Data Fees, and, if such expense did so relate, what portion (or percentage) of such expense actually supports those services. The sum of all such portions of expenses represents the total cost of the Exchange to provide the services associated with the Market Data Fees. For the avoidance of doubt, no expense amount was allocated twice. The Exchange is also providing detailed information regarding the Exchange's cost allocation methodology—namely, information that explains the Exchange's rationale for determining that it was reasonable to allocate certain expenses described in this filing towards the total cost to provide Exchange Data Feeds.

The Exchange believes that the Market Data Fees are fair and reasonable because they will not result in excessive pricing or supra-competitive profit, when comparing the total annual expense that the Exchange projects to incur in connection with providing the services associated with the proposed Market Data Fees versus the total annual revenue of the Exchange projects to collect in connection with providing those services.

Costs Related to Offering Market Data

The following chart details the individual line-item costs considered by LTSE to be related to offering market data as well as the percentage of the Exchange's overall costs per year such costs represent for such area (*e.g.,* as set forth below, the Exchange allocated approximately 10% of its overall Human Resources cost to offering market data).

Cost drivers	Yearly costs	% of all
Third-Party Expenses	$1,854,420	32
Human Resources	543,100	10
Data Center	158,040	30
Total	2,555,560	

Below are additional details regarding each of the line-item costs considered by LTSE to be related to offering the Exchange Data Feeds.

Third-Party Expenses

As discussed above, LTSE has undertaken a unique model where it has outsourced its technology to a third-party technology provider. As such the costs associated with Exchange Data Feeds for this provider include (1) the network infrastructure costs that includes cabling and switches required to generate and disseminate the Exchange Data Feeds. These costs also include the servers used at the Exchange's primary and back-up data centers specifically for the Exchange Data Feeds; (2) costs the third-party provider incurs to provide physical connectivity in the data centers where it maintains its equipment—such as dedicated space, security services, cooling and power, (3) hardware and software licenses used to operate and monitor physical assets necessary to offer the Exchange Data Feeds, and (4) depreciation of physical assets and software, which also includes assets used for generating and disseminating the Exchange Data Feeds.

Human Resources

For personnel costs (Human Resources), LTSE calculated an allocation of LTSE employee time for employees whose functions include providing services necessary to offer the Exchange Data Feeds, including performance thereof, as well as personnel with ancillary functions related to establishing and providing such services (such as information security and finance personnel). The Exchange notes that it has fewer than fifty (50) employees and each department leader has direct knowledge of the time spent by each employee with respect to the various tasks necessary to operate the Exchange. The estimates of Human Resources cost were therefore determined by consulting with such department leaders, determining which employees are involved in tasks related to providing the Exchange Data Feeds, and confirming that the proposed allocations were reasonable based on an understanding of the percentage of their time such employees devote to tasks related to market data. The Exchange notes that senior level executives were only allocated Human Resources costs to the extent the Exchange believed they were involved in overseeing tasks related to providing the Exchange Data Feeds. The Human Resources cost was calculated using a blended rate of compensation reflecting salary, equity and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions.

Data Center

Data Center costs include an allocation of the costs the Exchange incurs to monitor its trading platform and the Exchange Data Feeds in third-party data centers where it maintains its equipment as well as related costs (the Exchange does not own the Primary Data Center or the Secondary Data Center, but instead, leases space in data centers operated by third parties).

Proposed Fees—Additional Discussion

In conducting its Cost Analysis, the Exchange did not allocate any of its expenses in full to any core service and did not double-count any expenses. Instead, as described above, the Exchange identified and allocated applicable cost drivers across its core services and used the same approach to analyzing costs to form the basis of a separate proposal to adopt fees for connectivity services (the ''Connectivity Filing'') [17] and this filing proposing fees for Exchange Data Feeds. Thus, the Exchange's allocations of cost across core services were based on real costs of operating the Exchange and were not double-counted across the core services or their associated revenue streams.

The Exchange anticipates that the proposed fees for Exchange Data Feeds will generate approximately $50,000 monthly ($600,000 annually) based on the subscriptions to Exchange Data Feeds in the last six weeks, as well as projections of new subscriptions as the Exchange ramps up trading within its new trading platform. The proposed fees for Exchange Data Feeds are designed to permit the Exchange to cover a portion of costs for providing Exchange Data Feeds, which the Exchange believes is fair and reasonable after taking into account the costs related to creating, generating, and disseminating the Exchange Data Feeds and the fact that the Exchange will need to fund future expenditures (increased costs, improvements, etc.). LTSE notes that like other exchanges, it is after all, a for-profit business. Accordingly, while the Exchange believes in transparency around costs and potential margins, as well as periodic review of revenues and applicable costs (as discussed below), the Exchange does not believe that these estimates should form the sole basis of whether or not a proposed fee is reasonable or can be adopted. Instead, the Exchange believes that the information should be used solely to confirm that an Exchange is not earning supra-competitive profits, and the Exchange believes its Cost Analysis and related projections demonstrate this fact. As a general matter, the Exchange believes that its costs will remain relatively similar in future years. It is possible however that such costs will either decrease or increase. To the extent the Exchange sees growth in use of Exchange Data Feeds it will receive additional revenue to offset future cost increases. However, if use of Exchange Data Feeds is static or decreases, the Exchange might not realize the revenue that it anticipates or needs in order to cover applicable costs. Accordingly, the Exchange is committing to conduct a one-year review after implementation of these fees. The Exchange expects that it may propose to adjust fees at that time, to increase fees in the event that revenues fail to cover costs and a reasonable mark-up of such costs.

Similarly, the Exchange expects that it would propose to decrease fees in the event that revenue materially exceeds current projections. In addition, the Exchange will periodically conduct a review to inform its decision making on whether a fee change is appropriate (*e.g.,* to monitor for costs increasing/decreasing or subscribers increasing/decreasing, etc. in ways that suggest the then-current fees are becoming dislocated from the prior cost-based analysis) and expects that it would propose to increase fees in the event that revenues fail to cover its costs and a reasonable mark-up, or decrease fees in the event that revenue or the mark-up materially exceeds current projections. In the event that the Exchange determines to propose a fee change, the results of a timely review, including an updated cost estimate, will be included in the rule filing proposing the fee change. More generally, the Exchange believes that it is appropriate for an exchange to refresh and update information about its relevant costs and revenues in seeking any future changes to fees, and the Exchange commits to do so.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) [18] of the Act in general, and furthers the objectives of Section 6(b)(4) [19] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. Additionally, the Exchange believes that the proposed fees are consistent with the objectives of Section 6(b)(5) [20] of the Act in that they are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to a free and open market and national market system, and, in general, to protect investors and the public interest, and, particularly, are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange notes prior to addressing the specific reasons the Exchange believes the proposed fees and fee structure are reasonable, equitably allocated and not unreasonably discriminatory, that the proposed definitions and fee structure described above are consistent with the definitions and fee structure used by most U.S. securities exchanges, and the Investors Exchange LLC (''IEX'') [21] in particular. As such, the Exchange believes it is adopting a model that is easily understood by Members and non-Members, most of which also subscribe to market data products from other exchanges. For this reason, the Exchange believes that the proposed definitions and fee structure described above are consistent with the Act generally, and Section 6(b)(5) [22] of the Act in particular.

Reasonableness

With regard to reasonableness, the Exchange understands that the Commission has traditionally taken a market-based approach to examine whether the SRO making the fee proposal was subject to significant competitive forces in setting the terms of the proposal. The Exchange understands that in general the analysis considers whether the SRO has demonstrated in its filing that (i) there are reasonable substitutes for the product or service; (ii) ''platform'' competition constrains the ability to set the fee; and/or (iii) revenue and cost analysis shows the fee would not result in the SRO taking supracompetitive profits. If the SRO demonstrates that the fee is subject to significant competitive forces, the Exchange understands that in general the analysis will next consider whether there is any substantial countervailing basis to suggest the fee's terms fail to meet one or more standards under the Exchange Act. The Exchange

[17] *See* Securities Exchange Act Release No. 34–101320 (October 11, 2024), 89 FR 83731 (October 17, 2024) (SR–LTSE–2024–07).

[18] 15 U.S.C. 78f.

[19] 15 U.S.C. 78f(b)(4).

[20] 15 U.S.C. 78f(b)(5).

[21] IEX charges $2,500 per month for its Depth of Book Feed (DEEP Feed) and $500 per month for its Top of Book Feed (TOPS Feed). All other market data products on IEX are free.

[22] 15 U.S.C. 78f(b)(5).

further understands that if the filing fails to demonstrate that the fee is constrained by competitive forces, the SRO must provide a substantial basis, other than competition, to show that it is consistent with the Exchange Act, which may include production of relevant revenue and cost data pertaining to the product or service.

The Exchange has not determined its proposed overall market data fees based on assumptions about market competition, instead relying upon a cost-plus model to determine a reasonable fee structure that is informed by the Exchange's understanding of different uses of the products by different types of participants. In this context, the Exchange believes the proposed fees overall are fair and reasonable as a form of cost recovery plus the possibility of a reasonable return for Exchange's aggregate costs of offering the Exchange Data Feeds. The Exchange believes the proposed fees are reasonable because they are designed to generate annual revenue to recoup some of Exchange's annual costs of providing market data. Accordingly, the Exchange believes that this fee methodology is reasonable because it allows the Exchange to recoup some or all of its expenses for providing market data products. The Exchange also believes that the proposed fees are reasonable because they are generally less than the fees charged by competing equities exchanges for comparable market data products, notwithstanding that the competing exchanges may have different system architectures that may result in different cost structures for the provision of market data.

The Exchange believes the proposed fees for the Exchange Data Feeds are reasonable when compared to fees for comparable products, such as the MEMX LLC (''MEMX'') [23] MEMOIR Depth Feed,[24] MEMOIR Top Feed [25] and MEMOIR Last Sale Feed [26] compared to which the Exchange's proposed fees are generally lower, as well as other comparable data feeds priced significantly higher than the Exchange's proposed fees for the Exchange Data Feeds. Specifically with respect to the Depth of Book feed, the Exchange believes that the proposed fees for such feed are reasonable because they represent not only the value of the data available from the Top of Book and Last Sale data feeds, which have lower proposed fees, but also the value of receiving the depth-of-book data on an order-by order basis. The Exchange believes it is reasonable to have pricing based, in part, upon the amount of information contained in each data feed and the value of that information to market participants. The Top of Book and Last Sale data feeds, as described above, can be utilized to trade on the Exchange but contain less information than that is available on the Depth of Book feed (*i.e.,* even for a subscriber who takes both feeds, such feeds do not contain depth-of-book information). Thus, the Exchange believes it reasonable for the products to be priced as proposed, with Last Sale having the lowest price, Top of Book the next lowest price, and Depth of Book the highest price (and more than Last Sale and Top of Book combined).

Equitable Allocation

The Exchange believes that its proposed fees are reasonable, fair, and equitable, and not unfairly discriminatory because they are designed to align fees with services provided. The Exchange believes the proposed fees for the Exchange Data Feeds are allocated fairly and equitably among the various categories of users of the feeds, and any differences among categories of users are justified and appropriate. The Exchange believes that the proposed fees are equitably allocated because they will apply uniformly to all data recipients that choose to subscribe to the Exchange Data Feeds. Any subscriber or vendor that chooses to subscribe to one or more Exchange Data Feeds is subject to the same Fee Schedule, regardless of what type of business they operate, and the decision to subscribe to one or more Exchange Data Feeds is based on objective differences in usage of Exchange Data Feeds among different Firms, which are still ultimately in the control of any particular Firm. The Exchange believes the proposed pricing between Exchange Data Feeds is equitably allocated because it is based, in part, upon the amount of information contained in each data feed and the value of that information to market participants. The Top of Book and Last Sale data feeds, as described above, can be utilized to trade on the Exchange but contain less information than that is available on the Depth of Book feed (*i.e.,* even for a subscriber who takes both feeds, such feeds do not contain depth-of-book information). Thus, the Exchange believes it is an equitable allocation of fees for the products to be priced as proposed, with Last Sale having the lowest price, Top of Book the next lowest price, and Depth of Book the highest price (and more than Last Sale and Top of Book combined).

The Proposed Fees Are Not Unfairly Discriminatory

The Exchange believes that the proposed fees are not unfairly discriminatory because they would apply to all data recipients that choose to subscribe to the same Exchange Data Feed(s). Any vendor or subscriber that chooses to subscribe to the Exchange Data Feeds is subject to the same Fee Schedule, regardless of what type of business they operate. Because the proposed fees for Depth of Book are higher, vendors and subscribers seeking lower cost options may instead choose to receive data from the SIPs or through the Top of Book and/or Last Sale feed for a lower cost. Alternatively, vendors and subscribers can choose to pay for the Depth of Book feed in order to receive data in a single feed with depth-of-book information if such information is valuable to such vendors or subscribers. The Exchange notes that vendors or subscribers can also choose to subscribe to a combination of data feeds for redundancy purposes or to use different feeds for different purposes. In sum, each vendor or subscriber has the ability to choose the best business solution for itself. The Exchange does not believe it is unfairly discriminatory to base pricing upon the amount of information contained in each data feed and the value of that information to market participants. As described above, the Top of Book and Last Sale data feeds, can be utilized to trade on the Exchange but contain less information than that is available on the Depth of Book feed (*i.e.,* even for a subscriber who takes both feeds, such feeds do not contain depth-of-book information). Thus, the Exchange believes it is not unfairly discriminatory for the products to be priced as proposed, with Last Sale having the lowest price, Top of Book the next lowest price, and Depth of Book the highest price (and more than Last Sale and Top of Book combined).

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[27] the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[23] See the MEMX fee schedule, available at: *https://info.memxtrading.com/equities-trading-resources/us-equities-fee-schedule/.*

[24] MEMX charges between $1,500 and $5,000 for its Depth of Book Feed.

[25] MEMX charges between $750 and $10,000 for its Top of Book Feed.

[26] MEMX charges between $500 and $10,000 for its Last Sale Feed.

[27] 15 U.S.C. 78f(b)(8).

Intramarket Competition

The Exchange does not believe that the proposed fees for Exchange Data Feeds place certain market participants at a relative disadvantage to other market participants because, as noted above, the proposed fees are associated with usage of Exchange Data Feeds by each market participant based on the type of business they operate, and the decision to subscribe to one or more Exchange Data Feeds is based on objective differences in usage of Exchange Data Feeds among different Firms, which are still ultimately in the control of any particular Firm, and such fees do not impose a barrier to entry to smaller participants. Accordingly, the proposed fees for Exchange Data Feeds do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the proposed fees reflects the types of Exchange Data Feeds consumed by various market participants and their usage thereof.

Intermarket Competition

The Exchange does not believe the proposed fees place an undue burden on competition on other SROs that is not necessary or appropriate. In particular, market participants are not forced to subscribe to any of the Exchange Data Feeds, as described above. Additionally, other exchanges have similar market data fees in place for their participants, but with comparable and in many cases higher rates for market data feeds. The proposed fees are based on actual costs and are designed to enable the Exchange to recoup its applicable costs with the possibility of a reasonable profit on its investment as described in the Purpose and Statutory Basis sections. Competing equities exchanges are free to adopt comparable fee structures subject to the SEC rule filing process.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This proposed rule change establishes dues, fees or other charges among its members and, as such, may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)(ii) of the Act[28] and paragraph (f)(2) of Rule 19b–4 thereunder.[29] Accordingly, the proposed rule change would take effect upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further 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–LTSE–2024–08 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–LTSE–2024–08. 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–LTSE–2024–08 and should be submitted on or before December 9, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–26751 Filed 11–15–24; 8:45 am]

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[28] 15 U.S.C. 78s(b)(3)(A)(ii).

[29] 17 CFR 240.19b–4(f)(2).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101589; File No. SR–SAPPHIRE–2024–35]

Self-Regulatory Organizations; MIAX Sapphire, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by MIAX Sapphire LLC To Extend the Sunset Provision Relating to the Options Regulatory Fee (ORF)

November 12, 2024.

Pursuant to the provisions of 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 October 31, 2024, MIAX Sapphire, LLC (''MIAX Sapphire'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a 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 is filing a proposal to amend the MIAX Sapphire Options Exchange Fee Schedule (the ''Fee Schedule'') relating to the Options Regulatory Fee (''ORF'') to extend the current sunset date of October 31, 2024 to May 31, 2025.

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-options/all-options-exchanges/rule-*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

filings, at MIAX Sapphire's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule related to the ORF to extend the current sunset date of October 31, 2024 to May 31, 2025, and thus continue charging the previously established ORF in the amount of $0.0013 per contract side through May 31, 2025. As discussed herein, the ORF sunset date of October 31, 2024 was initially proposed to provide time for the Exchange to inform its approach to ORF and discuss alternative ORF models with market participants, so that it may compete on equal footing with each of the other option exchanges that charge similar regulatory fees. However, those discussions have made clear that there is not yet consensus among market participants on a path forward that would address industry concerns in a manner that would effect change broadly across all U.S. options exchanges. Thus, the Exchange proposes to extend the automatic sunset date of October 31, 2024 until May 31, 2025 in order to provide it additional time to inform its approach to the ORF after the sunset date while continuing to fund a portion of its regulatory program via ORF so that it may operate on equal footing with each of the seventeen (17) other options exchanges that charge similar regulatory fees in amounts that far exceed the relatively modest amounts collected by the Exchange.

As background, on August 7, 2024 the Exchange initially filed this proposal to establish an ORF in the amount of $0.0013 per contract side that would automatically sunset on October 31, 2024 (SR–SAPPHIRE–2024–14). The Exchange withdrew SR–SAPPHIRE–2024–14, and on August 21, 2024 replaced it with SR–SAPPHIRE–2024–25 (the ''Initial ORF Filing'').[3] The Initial ORF Filing was published for comment in the **Federal Register** on September 3, 2024.[4] To date, the Securities and Exchange Commission (the ''Commission'') received no comments on the Initial ORF Filing.

The ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of Members'[5] customer options business, including performing routine surveillances and investigations, as well as policy, rulemaking, interpretive and enforcement activities. The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees and fines, will cover a material portion, but not all, of the Exchange's regulatory costs. Currently, all other registered options exchanges impose ORF on their members, and those exchanges also charge ORF for executions occurring on the Exchange cleared by their customers.[6]

The Exchange recognizes that in 2019, the Commission issued suspensions of and orders instituting proceedings to determine whether to approve or disapprove a proposed rule change to modify the Options Regulatory Fee of NYSE American, NYSE Arca, MIAX Options, MIAX PEARL, MIAX Emerald, Cboe, Cboe EDGX Options, and C2.[7] Each of those exchanges had filed to increase their ORF, and the Commission indicated that each of those filings lacked detail and specificity, signaling that more information was needed to speak to whether the proposed increased ORFs were reasonable, equitably allocated and not unfairly discriminatory, particularly given that the ORF is assessed on transactions that clear in the ''customer'' range and regardless of the exchange on which the transaction occurs. The Commission

[3] *See* Securities Exchange Act Release No. 100824 (August 27, 2024), 89 FR 71496 (September 3, 2024) (SR–SAPPHIRE–2024–25).

[4] *See* Supra note 3.

[5] The term ''Member'' means an individual or organization that is registered with the Exchange pursuant to Chapter II of MIAX Sapphire Rules for purposes of trading on the Exchange as an ''Electronic Exchange Member'' or ''Market Maker.'' Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[6] *See* Securities Exchange Act Release Nos. 58817 (October 20, 2008), 73 FR 63744 (October 27, 2008) (SR–CBOE–2008–05) (notice of filing and immediate effectiveness of Cboe adopting an ORF applicable to transactions across all options exchanges); 61133 (December 9, 2009), 74 FR 66715 (December 16, 2009) (SR–Phlx–2009–100) (notice of filing and immediate effectiveness of Phlx adopting an ORF applicable to transactions across all options exchanges); 61154 (December 11, 2009), 74 FR 67278 (December 18, 2009) (SR–ISE–2009–105) (notice of filing and immediate effectiveness of ISE adopting an ORF applicable to transactions across all options exchanges); 61388 (January 20, 2010), 75 FR 4431 (January 27, 2010) (SR–BX–2010–001) (notice of filing and immediate effectiveness of Nasdaq OMX BX, Inc. (''BX'') adopting an ORF applicable to transactions across all options exchanges); 70200 (August 14, 2013) 78 FR 51242 (August 20, 2013) (SR–Topaz–2013–01)) (notice of filing and immediate effectiveness of GEMX, formerly known as ISE Gemini and Topaz Exchange, adopting an ORF applicable to transactions across all options exchanges); 64400 (May 4, 2011), 76 FR 27118 (May 10, 2011) (SR–NYSEAmex–2011–27) (notice of filing and immediate effectiveness of NYSE AMEX adopting an ORF applicable to transactions across all options exchanges); 64399 (May 4, 2011), 76 FR 27114 (May 10, 2011) (SR–NYSEArca–2011–20) (notice of filing and immediate effectiveness of NYSE Arca adopting an ORF applicable to transactions across all options exchanges); 65913 (December 8, 2011), 76 FR 77883 (December 14, 2011) (SR–NASDAQ–2011–163) (notice of filing and immediate effectiveness of Nasdaq Options Market (''NOM'') adopting an ORF applicable to transactions across all options exchanges); 66979 (May 14, 2012), 77 FR 29740 (May 18, 2012) (SR–BOX–2012–002) (notice of filing and immediate effectiveness of BOX adopting an ORF applicable to transactions across all options exchanges); 67596 (August 6, 2012), 77 FR 47902 (August 10, 2012) (SR–C2–2012–023) (notice of filing and immediate effectiveness of C2 Options Exchange, Inc. (''C2'') adopting an ORF applicable to transactions across all options exchanges); 68711 (January 23, 2013) 78 FR 6155 (January 29, 2013) (SR–MIAX–2013–01) (notice of filing and immediate effectiveness of MIAX Options adopting an ORF applicable to transactions across all options exchanges); 74214 (February 5, 2015), 80 FR 7665 (February 11, 2015) (SR–BATS–2015–08) (notice of filing and immediate effectiveness of BZX formerly known as BATS, adopting an ORF applicable to transactions across all options exchanges); 80025 (February 13, 2017) 82 FR 11081 (February 17, 2017) (SR–BatsEDGX–2017–04) (notice of filing and immediate effectiveness of EDGX formerly known as Bats EDGX Exchange, Inc., adopting an ORF applicable to transactions across all options exchanges); 80875 (June 7, 2017) 82 FR 27096 (June 13, 2017) (SR–PEARL–2017–26) (notice of filing and immediate effectiveness of MIAX PEARL adopting an ORF applicable to transactions across all options exchanges); 85127 (February 13, 2019) 84 FR 5173 (February 20, 2019) (SR–MRX–2019–03) (notice of filing and immediate effectiveness of Nasdaq MRX, LLC (''MRX'') adopting an ORF applicable to transactions across all options exchanges); 85251 (March 6, 2019) 84 FR 8931 (March 12, 2019) (SR–EMERALD–2019–01) (notice of filing and immediate effectiveness of MIAX Emerald adopting an ORF applicable to transactions across all options exchanges).

[7] *See* Securities Exchange Act Release No. 87168 (September 30, 2019), 84 FR 53210 (October 4, 2019) (SR–Emerald–2019–29); Securities Exchange Act Release No. 87167 (September 30, 2019), 84 FR 53189 (October 4, 2019) (SR–PEARL–2019–23); Securities Exchange Act Release No. 87169 (September 30, 2019), 84 FR 53195 (October 4, 2019) (SR–MIAX–2019–35); Securities Exchange Act Release No. 87170 (September 30, 2019), 84 FR 53213 (October 4, 2019) (SRCBOE–2019–040); Securities Exchange Act Release No. 87172 (September 30, 2019) 84 FR 53192 (October 4, 2019) (SR–CboeEDGX–2019–051); Securities Exchange Act Release No 87171 (September 30, 2019), 84 FR 53200 (October 4, 2019) (SR–C2–2019–018); Securities Exchange Act Release No. 86832 (August 30, 2019), 84 FR 46980 (September 6, 2019) (SR–NYSEArca–2019–49); Securities Exchange Act Release No. 86833 (August 30, 2019) 84 FR 47029 (September 6, 2019) (SR–NYSEAMER–2019–27).

also noted that the filings provided only broad general statements regarding options transaction volume and did not provide any information on those exchanges' historic or projected options regulatory costs (including the costs of regulating activity that cleared in the ''customer'' range and the costs of regulating activity that occurred off exchange), the amount of regulatory revenue they had generated and expected to generate from the ORF as well as other sources, or the ''material portion'' of options regulatory expenses that they sought to recover from the ORF. Each of those exchanges withdrew their filings, but continue charging ORF today as discussed above. The Exchange would be at an unfair competitive disadvantage if it were not allowed to charge the ORF to recover a material portion, but not all, of the Exchange's regulatory costs for the supervision and regulation of activity of its Members which as noted above, is charged by all currently operating options exchanges.

The Exchange recognizes that an alternative model is being pursued among industry participants but that a consensus has not yet been reached. As such, the Exchange proposes additional time to work towards a permanent ORF solution by gathering relevant data internally as well from other industry participants, while continuing to charge as other options exchanges currently do, until May 31, 2025, at which time its ORF will automatically sunset.

The Exchange notes that if, during the proposed sunset period of October 31, 2024 through May 31, 2025, a viable alternative methodology for the ORF presents itself, the Exchange would endeavor to implement said alternative prior to the proposed sunset date. In other words, the existence of the sunset date of May 31, 2025 to the Exchange's current ORF would not preclude it from filing to modify its ORF methodology prior to that date, if applicable.

As a new exchange, not having the opportunity to fund its regulatory program through the same regulatory fee charged by every other options exchange would place an undue competitive disadvantage upon the Exchange's regulatory program and options business as a whole. Further, the Exchange emphasizes that other exchanges will be charging ORF for transactions occurring on MIAX Sapphire, and as such, it follows that the exchange that is primarily responsible for monitoring those transactions should also be able to charge the ORF for activity occurring on its own market, as well as transactions it surveils on away markets. Again, the Exchange is committed to facilitating and joining efforts to revamp the ORF, however, it must be afforded additional time to do so while recouping a portion of its regulatory costs via the ORF as all other options exchanges do.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [8] in general, and furthers the objectives of Section 6(b)(4) of the Act [9] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act [10] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The ORF is designed to recover a material portion of the costs of supervising and regulating Members' customer options business including performing routine surveillances and investigations, as well as policy, rulemaking, interpretive, and enforcement activities. Extending the current ORF sunset date to May 31, 2025 is reasonable because continued collection of ORF will serve to balance the Exchange's regulatory revenue against the anticipated regulatory costs, thereby ensuring proper regulatory funding. Moreover, the Exchange's ORF rate is lower than the amount of ORF assessed on other exchanges.[11]

Extending the sunset date is also reasonable because doing so would allow the Exchange additional time to inform its approach to ORF moving forward while recouping a portion of its regulatory expenses via the ORF as other options exchanges do. If the Exchange were not allowed to charge an ORF during this additional time period, then after the sunset date of October 31, 2024, it would be forced to pay for its regulatory program solely out of business revenues while working towards an alternative ORF solution, unlike every other competing exchange, each of which would continue to assess an ORF, including on transactions executed on the Exchange, indefinitely. This would impact the Exchange's ability to assure adequate funding of its regulatory program.

Extending the ORF sunset date to May 31, 2025 is also equitable and not unfairly discriminatory because prior to the proposed sunset date, the ORF would continue to be objectively allocated to Members in a manner that is consistent with the ORF imposed by the other seventeen (17) options exchanges. The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs.

B. Self-Regulatory Organization's Statement on Burden on Competition

MIAX Sapphire 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. This proposal will not create an unnecessary or inappropriate intra-market burden on competition because the ORF will apply to all customer activity, and is designed to enable the Exchange to recover a material portion of the Exchange's cost related to its regulatory activities. This proposal will not create an unnecessary or inappropriate inter-market burden on competition because it will be a regulatory fee that supports regulation in furtherance of the purposes of the Act. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs. MIAX Sapphire's ORF, is lower than, or comparable to, fees charged by other options exchanges for the same or similar services.

The Exchange notes that while it does not believe that its proposed ORF will impose any burden on inter-market competition, the Exchange not charging an ORF or being precluded from charging an ORF after October 31, 2024 but prior to the proposed sunset date of May 31, 2025 would, in-fact, represent a significant burden on the Exchange's ability to assure adequate funding of its regulatory program. As noted above, the

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78f(b)(5).

[11] *See, e.g.,* NYSE Arca Options Fees and Charges, ORF and NYSE American Options Fees Schedule, Section VII(A), which provide that ORF is assessed at a rate of $0.0055 per contract for each respective exchange. *See* also Nasdaq PHLX, Options 7 Pricing Schedule, Section 6(D), which provides for an ORF rate of $0.0034 per contract; Cboe Options Fee Schedule, which provides an ORF rate of $0.0017 per contract; Nasdaq Options Market, Options 7 Pricing Schedule, Section 5, which provides an ORF rate of $0.0016 per contract; BOX Options Fee Schedule Section II(C), which provides an ORF rate of $0.00295 per contract; MIAX Options Fee Schedule, Section 2(b), which provides an ORF rate of $0.0019 per contract; MIAX Pearl Fee Schedule, Section 2(b), which provides an ORF rate of $0.0018 per contract; and the MEMX Fee Schedule which provides an ORF rate of $0.0015.

Exchange is a new entrant in the highly competitive environment for equity options trading. Also, as noted above, all registered options exchanges currently impose the ORF on their members, and such ORF fees imposed by other options exchanges currently do and will continue to extend to executions occurring on the Exchange. The Exchange believes that it is likely that a viable ORF alternative may be presented during the proposed sunset period. The Exchange believes that in order to compete with these existing options exchanges, it must, in fact, impose an ORF on its Members during this additional sunset period, and that the inability to do so would result in an unfair competitive disadvantage to the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[12] and Rule 19b 4(f)(2)[13] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission 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–SAPPHIRE–2024–35 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–SAPPHIRE–2024–35. 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–SAPPHIRE–2024–35 and should be submitted on or before December 9, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–26755 Filed 11–15–24; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b 4(f)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, November 21, 2024.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: November 14, 2024.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–26929 Filed 11–14–24; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101588; File No. SR–MEMX–2024–42]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Fee Schedule to Extend the Sunset Provision Related to the Options Regulatory Fee (ORF)

November 12, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 31, 2024, MEMX LLC (''MEMX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''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 is filing with the Commission a proposed rule change to amend the Exchange's fee schedule applicable to Members [3] and non-Members of the Exchange (the ''Fee Schedule'') pursuant to Exchange Rules 15.1(a) and (c) to extend the current sunset date of October 31, 2024 applicable to the Options Regulatory Fee (''ORF'') to May 31, 2025. The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal immediately. The text of the proposed rule change is provided in Exhibit 5.

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.

[3] *See* Exchange Rule 1.5(p).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Options Fee Schedule related to the ORF to extend the current sunset date of October 31, 2024 to May 31, 2025, and thus continue charging the previously established ORF in the amount of $0.0015 per contract side through May 31, 2025. As discussed herein, the ORF sunset date was initially proposed to provide time for the Exchange to discuss alternative ORF models with its Members. However, those discussions have made clear that there is there is [sic] not yet consensus among market participants on a path forward that would address industry concerns in a manner that would effect change broadly across all U.S. options exchanges. In addition, one of the Exchange's competitors has recently proposed a new model with respect to ORF that the Exchange is still reviewing and which has yet to receive public feedback from the industry.[4] Thus, the Exchange proposes to extend the automatic sunset date of October 31, 2024 until May 31, 2025, in order to provide it additional time to inform its approach to the ORF after the sunset date while continuing to fund a portion of its regulatory program via ORF so that it may operate on equal footing with each of the seventeen (17) other options exchanges that charge similar regulatory fees in amounts that far exceed the relatively modest amounts collected by the Exchange.

As background, MEMX previously filed a proposal to establish an ORF in the amount of $0.0015 per contract side that would automatically sunset on September 30, 2024 (the ''Initial ORF Filing'').[5] The Initial ORF Filing was published for comment in the **Federal Register** on October 4, 2023.[6] The Commission received no comments on the Initial ORF Filing before November 24, 2023. On that date, the Commission issued a Suspension of and Order Instituting Proceedings to Determine whether to Approve or Disapprove a Proposed Rule Change to Amend its Fee Schedule to Establish an Options Regulatory Fee (the ''OIP'') and requested public comment and additional information on various aspects of the Initial ORF Filing.[7] To date, the Commission has received no comment letters in response to the OIP. The Exchange withdrew the Initial ORF Filing on December 1, 2023 and submitted a new proposal for immediate effectiveness (''Second ORF Filing'').[8]

The Second Filing and Subsequent Filings proposed the same fee as in the Initial ORF Filing, but with a modified sunset date of May 31, 2024, which was four months prior to the proposed sunset date in the Initial ORF Filing. On May 1, 2024, the Exchange proposed to remove the automatic sunset date of May 31, 2024 altogether,[9] however, the Exchange withdrew that filing and replaced it with a new filing that proposed a new sunset date of October 31, 2024 in order to provide more time to attempt to reach a consensus on ORF moving forward, while also operating on a level playing field with incumbent options exchanges that are allowed to recoup a portion of their regulatory costs via the ORF.[10] In order to make certain clarifying changes, on May 23, 2024, the Exchange withdrew that proposal and replaced it with SR–MEMX–2024–22. Lastly, in order to correct an inadvertent error, on May 28, 2024, the Exchange withdrew SR–MEMX–2024–22 and replaced it with

[4] Proposals have been filed for each of the six options markets operated by Nasdaq OMX and affiliates (collectively, the ''Nasdaq Proposals''); *see, e.g.,* SR–Nasdaq–2024–58, which was filed by the Nasdaq Stock Market LLC on October 23, 2024, available at: *https://listingcenter.nasdaq.com/rulebook/NASDAQ/rulefilings;* and SR–Phlx–2024–50, which was filed by Nasdaq PHLX LLC on October 23, 2024, available at: *https://listingcenter.nasdaq.com/rulebook/phlx/rulefilings.*

[5] *See* Securities Exchange Act Release No. 98585 (September 28, 2023), 88 FR 68692 (October 4, 2023) (SR–MEMX–2023–25).

[6] *See supra* note 5.

[7] *See* Securities Exchange Act Release No. 99017 (November 24, 2023), 88 FR 83590 (November 30, 2023) (SR–MEMX–2023–25). Additionally, on November 24, 2023, solely for the purposes of consistent billing for the entire month of November 2023, the Exchange filed SR–MEMX–2023–31 with the Commission, which proposed to keep the Initial ORF rate of $0.0015 per contract side that had been charged since September 27th in place for November 24 through November 30, 2023. *See* Securities Exchange Act Release No. 99112 (December 7, 2023), 88 FR 86417 (SR–MEMX–2023–31).

[8] *See* SR–MEMX–2023–33. In order to make certain clarifying changes, the Exchange withdrew the Second ORF Filing on December 13, 2023, and submitted a third proposal for immediate effectiveness (''Third ORF Filing''). *See* SR–MEMX–2023–34. Again, in order to make certain clarifying changes, the Exchange withdrew the Third ORF Filing on December 19, 2023, and submitted a fourth proposal for immediate effectiveness (''Fourth ORF Filing''). *See* SR–MEMX–2023–36. On December 20, 2023, in order to correct an inadvertent administrative error, the Exchange withdrew the Fourth ORF Filing and submitted a fifth proposal for immediate effectiveness (''Fifth ORF Filing'' and together with the Third ORF Filing and Fourth ORF Filing, the ''Subsequent Filings''). *See* Securities Exchange Act Release No. 99259 (January 2, 2024), 89 FR 965 (January 8, 2024) SR–MEMX–2023–38.

[9] *See* SR–MEMX–2024–17.

[10] *See* SR–MEMX–2024–20.

SR–MEMX–2024–23.[11] Accordingly, the Exchange's collection of ORF is currently scheduled to sunset on October 31, 2024. The Exchange proposes to extend the existing sunset to May 31, 2025, for the reasons described herein.

The ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of Members' customer options business, including performing routine surveillances and investigations, as well as policy, rulemaking, interpretive and enforcement activities. The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees and fines, will cover a material portion, but not all, of the Exchange's regulatory costs. Currently, all other registered options exchanges impose ORF on their members, and those exchanges also charge ORF for executions occurring on MEMX Options cleared by their customers.[12]

The Exchange notes that in 2019, the Commission issued suspensions of and orders instituting proceedings to determine whether to approve or disapprove a proposed rule change to modify the Options Regulatory Fee of NYSE American, NYSE Arca, MIAX, MIAX Pearl, MIAX Emerald, Cboe, Cboe EDGX Options, and C2.[13] Each of those exchanges had filed to increase their ORF, and the Commission indicated that each of those filings lacked detail and specificity, signaling that more information was needed to speak to whether the proposed increased ORFs were reasonable, equitably allocated and not unfairly discriminatory, particularly given that the ORF is assessed on transactions that clear in the ''customer'' range and regardless of the exchange on which the transaction occurs. The Commission also noted that the filings provided only broad general statements regarding options transaction volume and did not provide any information on those exchanges' historic or projected options regulatory costs (including the costs of regulating activity that cleared in the ''customer'' range and the costs of regulating activity that occurred off exchange), the amount of regulatory revenue they had generated and expected to generate from the ORF as well as other sources, or the ''material portion'' of options regulatory expenses that they sought to recover from the ORF. Each of those exchanges withdrew their filings, but continue charging ORF today as discussed above. Since that time, MEMX Options launched and commenced operations and as noted previously, its Initial ORF Filing was also suspended.[14] Unlike its competitors noted above, however, the Exchange did not have a previously implemented ORF to continue charging notwithstanding said suspensions. As such, the Exchange proposed to establish an ORF but has maintained a sunset date, in order to allow it time to inform its approach to the ORF moving forward.

MEMX is a new exchange operator founded by a diverse group of market participants to bring competition to the U.S. securities markets. Over the past year, the Exchange has engaged with retail brokers, market makers, and other options market participants on potential paths to address industry concerns about existing ORF practices. The result of those efforts have made clear that there is not yet consensus among market participants on a path forward that would address their stated concerns in a manner that would effect change broadly across all U.S. options exchanges. As such, the Exchange proposes additional time to work towards a permanent ORF solution by gathering relevant data internally as well from other industry participants, while continuing to charge as other options exchanges currently do, until May 31, 2025, at which time its ORF will automatically sunset.

The Exchange notes that if, during the proposed sunset period of October 31, 2024 through May 31, 2025, a viable alternative methodology for the ORF presents itself, including the possibility that the Exchange proposes to implement a model based on the Nasdaq Proposals or an alternative to such proposals, the Exchange would endeavor to implement said alternative prior to the proposed sunset date. In other words, the existence of the sunset date of May 31, 2025, for the Exchange's current ORF would not preclude the

[11] *See* Securities Exchange Act Release No. 100253 (May 31, 2024), 89 FR 48473 (June 6, 2024 (SR–MEMX–2024–23).

[12] *See* Securities Exchange Act Release Nos. 58817 (October 20, 2008), 73 FR 63744 (October 27, 2008) (SR–CBOE–2008–05) (notice of filing and immediate effectiveness of Cboe Exchange, Inc. (''CBOE'') adopting an ORF applicable to transactions across all options exchanges); 61133 (December 9, 2009), 74 FR 66715 (December 16, 2009) (SR–Phlx–2009–100) (notice of filing and immediate effectiveness of Nasdaq PHLX LLC (''Phlx'') adopting an ORF applicable to transactions across all options exchanges); 61154 (December 11, 2009), 74 FR 67278 (December 18, 2009) (SR–ISE–2009–105) (notice of filing and immediate effectiveness of Nasdaq ISE, LLC (''ISE'') adopting an ORF applicable to transactions across all options exchanges); 61388 (January 20, 2010), 75 FR 4431 (January 27, 2010) (SR–BX–2010–001) (notice of filing and immediate effectiveness of Nasdaq OMX BX, Inc. (''BX'') adopting an ORF applicable to transactions across all options exchanges); 70200 (August 14, 2013) 78 FR 51242 (August 20, 2013) (SR–Topaz–2013–01)) (notice of filing and immediate effectiveness of Nasdaq GEMX, LLC (''GEMX''), formerly known as ISE Gemini and Topaz Exchange, adopting an ORF applicable to transactions across all options exchanges); 64400 (May 4, 2011), 76 FR 27118 (May 10, 2011) (SR–NYSEAmex-2011–27) (notice of filing and immediate effectiveness of NYSE Amex LLC (''NYSE AMEX'') adopting an ORF applicable to transactions across all options exchanges); 64399 (May 4, 2011), 76 FR 27114 (May 10, 2011) (SR–NYSEArca–2011–20) (notice of filing and immediate effectiveness of NYSE Arca, Inc. (''NYSE Arca'') adopting an ORF applicable to transactions across all options exchanges); 65913 (December 8, 2011), 76 FR 77883 (December 14, 2011) (SR–NASDAQ–2011–163) (notice of filing and immediate effectiveness of Nasdaq Options Market (''NOM'') adopting an ORF applicable to transactions across all options exchanges); 66979 (May 14, 2012), 77 FR 29740 (May 18, 2012) (SR–BOX–2012–002) (notice of filing and immediate effectiveness of BOX Options Exchange LLC (''BOX'') adopting an ORF applicable to transactions across all options exchanges); 67596 (August 6, 2012), 77 FR 47902 (August 10, 2012) (SR–C2–2012–023) (notice of filing and immediate effectiveness of C2 Options Exchange, Inc. (''C2'') adopting an ORF applicable to transactions across all options exchanges); 68711 (January 23, 2013) 78 FR 6155 (January 29, 2013) (SR–MIAX–2013–01) (notice of filing and immediate effectiveness of Miami International Securities Exchange LLC (''MIAX'') adopting an ORF applicable to transactions across all options exchanges); 74214 (February 5, 2015), 80 FR 7665 (February 11, 2015) (SR–BATS–2015–08) (notice of filing and immediate effectiveness of Cboe BZX Exchange, Inc. (''BZX'') formerly known as BATS, adopting an ORF applicable to transactions across all options exchanges); 80025 (February 13, 2017) 82 FR 11081 (February 17, 2017) (SR–BatsEDGX–2017–04) (notice of filing and immediate effectiveness of Cboe EDGX Exchange, Inc. (''EDGX'') formerly known as Bats EDGX Exchange, Inc., adopting an ORF applicable to transactions across all options exchanges); 80875 (June 7, 2017) 82 FR 27096 (June 13, 2017) (SR–PEARL–2017–26) (notice of filing and immediate effectiveness of MIAX Pearl, LLC (''MIAX Pearl'') adopting an ORF applicable to transactions across all options exchanges); 85127 (February 13, 2019) 84 FR 5173 (February 20, 2019) (SR–MRX–2019–03) (notice of filing and immediate effectiveness of Nasdaq MRX, LLC (''MRX'') adopting an ORF applicable to transactions across all options exchanges); 85251 (March 6, 2019) 84 FR 8931 (March 12, 2019) (SR–EMERALD–2019–01) (notice of filing and immediate effectiveness of MIAX Emerald LLC (''MIAX Emerald'') adopting an ORF applicable to transactions across all options exchanges).

[13] *See* Securities Exchange Act Release No. 87168 (September 30, 2019), 84 FR 53210 (October 4, 2019) (SR–Emerald-2019–29); Securities Exchange Act Release No. 87167 (September 30, 2019), 84 FR 53189 (October 4, 2019) (SR–PEARL–2019–23); Securities Exchange Act Release No. 87169 (September 30, 2019), 84 FR 53195 (October 4, 2019) (SR–MIAX–2019–35); Securities Exchange Act Release No. 87170 (September 30, 2019), 84 FR 53213 (October 4, 2019) (SR–CBOE–2019–040); Securities Exchange Act Release No. 87172 (September 30, 2019) 84 FR 53192 (October 4, 2019) (SR–CboeEDGX–2019–051); Securities Exchange Act Release No 87171 (September 30, 2019), 84 FR 53200 (October 4, 2019) (SR–C2–2019–018); Securities Exchange Act Release No. 86832 (August 30, 2019), 84 FR 46980 (September 6, 2019) (SR–NYSEArca-2019–49); Securities Exchange Act Release No. 86833 (August 30, 2019) 84 FR 47029 (September 6, 2019) (SR–NYSEAMER–2019–27).

[14] *See supra* note 7.

Exchange from filing to modify its ORF methodology prior to that date, if applicable.

As a new exchange, not having the opportunity to fund a portion of its regulatory program through the same regulatory fee charged by every other options exchange would place an undue disadvantage upon the Exchange's regulatory program and options business as a whole. Further, the Exchange emphasizes that other exchanges will be charging ORF for transactions occurring on MEMX Options, and as such, it follows that the Exchange that is primarily responsible for monitoring those transactions should also be able to charge the ORF for activity occurring on its own market, as well as transactions it surveils on away markets. Again, the Exchange is committed to facilitating and joining efforts to revamp the ORF, however, it must be afforded additional time to gather data and analysis both internally and externally, while recouping a portion of its regulatory costs via the ORF as all other options exchanges currently do.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [15] in general, and furthers the objectives of Section 6(b)(4) of the Act [16] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act [17] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The ORF is designed to recover a material portion of the costs of supervising and regulating Members' customer options business including performing routine surveillances and investigations, as well as policy, rulemaking, interpretive, and enforcement activities. Extending the current ORF sunset date to May 31, 2025 is reasonable because continued collection of ORF will serve to balance the Exchange's regulatory revenue against the anticipated regulatory costs, thereby ensuring proper regulatory funding. Moreover, the Exchange's ORF rate is significantly lower than the amount of ORF assessed by other exchange groups.[18]

The Exchange notes that while certain individual options exchanges do charge a lower ORF than that currently charged by the Exchange, each of these options exchanges is part of an exchange ''group'' (*i.e.,* affiliated with other options exchanges). In turn, each of these exchange groups charges more than two (2) to five (5) times the amount of ORF as a group when compared to the Exchange's ORF rate.[19] While each additional options exchange is its own legal entity with regulatory obligations under the Act to regulate its members, there is significant scale that can be achieved for an exchange group that operates multiple exchanges, including with respect to regulation, and this scale allows such options exchanges to operate with a lower assessment of ORF. In other words, the initial fixed costs associated with implementing an exchange group's options regulatory program are scalable as additional options exchanges are launched by that exchange group.

Extending the sunset date is also reasonable because doing so would allow the Exchange additional time to inform its approach to ORF moving forward while recouping a portion of its regulatory expenses via the ORF as other options exchanges do. If the Exchange were not allowed to charge an ORF during this additional time period, then after the sunset date of October 31, 2024, it would be forced to pay for its regulatory program solely out of business revenues while working towards an alternative ORF solution, unlike every other competing exchange, each of which would continue to assess an ORF, including on transactions executed on MEMX Options, indefinitely. This would impact MEMX's ability to assure adequate funding of its regulatory program.

Extending the ORF sunset date to May 31, 2025, is also equitable and not unfairly discriminatory because prior to the proposed sunset date, the ORF would continue to be objectively allocated to Members in a manner that is consistent with the ORF currently imposed by the other seventeen (17) options exchanges. The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The Exchange has designed the ORF to generate revenues that, when combined with all of the Exchange's other regulatory fees, will be less than 75% of the Exchange's regulatory costs, which is consistent with the Exchange's by-laws that state in Section 17.4(b): ''[a]ny Regulatory Funds shall not be used for non-regulatory purposes or distributed, advanced or allocated to any Company Member, but rather, shall be applied to fund regulatory operations of the Company (including surveillance and enforcement activities) . . .'' [20]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. This proposal will not create an unnecessary or inappropriate intra-market burden on competition because the Exchange's ORF is designed to enable the Exchange to recover a material portion of the Exchange's cost related to its regulatory activities. This proposal will not create an unnecessary or inappropriate inter-market burden on competition because it will be a regulatory fee that supports regulation and customer protection in furtherance of the purposes of the Act. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the ORF, in combination

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(4).

[17] 15 U.S.C. 78f(b)(5).

[18] *See, e.g.,* NYSE Arca Options Fees and Charges, Options Regulatory Fee (''ORF'') and NYSE American Options Fees Schedule, Section VII(A), which provide that ORF is assessed at a rate of $0.0055 per contract for each respective exchange. *See also* Nasdaq PHLX, Options 7 Pricing Schedule, Section 6(D), which provides for an ORF rate of $0.0034 per contract, Cboe Options Fee Schedule, which provides an ORF rate of $0.0017 per contract, Nasdaq Options Market, Options 7 Pricing Schedule, Section 5, which provides an ORF rate of $0.0016 per contract, BOX Options Fee Schedule Section II(C), which provides an ORF rate of $0.00295 per contract, MIAX Options Fee Schedule, Section 2(b), which provides an ORF rate of $0.0019 per contract, MIAX Pearl Fee Schedule, Section 2(b), which provides an ORF rate of $0.0018 per contract.

[19] Each of MIAX Emerald, Cboe BZX Options, Cboe C2 Options, Cboe EDGX Options, Nasdaq ISE Gemini, Nasdaq ISE and Nasdaq BX Options charges a lower rate than $0.0015 per contract, which is the rate proposed by the Exchange. However, the Cboe exchanges, comprised of four options exchanges, charges an aggregate ORF rate of $0.0021 per contract (more than the Exchange's current rate), the MIAX exchanges, comprised of four options exchanges, charges an aggregate ORF rate of $0.0056 per contract (nearly 4 times the Exchange's current rate); and the Nasdaq exchanges, comprised of six options exchanges, charges an aggregate ORF rate of $0.0084 per contract (nearly 6 times the Exchange's current rate). The Exchange notes that the NYSE exchanges, comprised of two options exchanges, charges an aggregate ORF rate of $0.011 per contract (over 7 times the Exchange's current rate).

[20] *See* MEMX LLC—LLC Agreement at *https://info.memxtrading.com/regulation/governance/*.

with its other regulatory fees and fines, does not exceed regulatory costs.

The Exchange's ORF, as described herein, is lower than or comparable to fees charged by other options exchanges (though as noted above, some exchange groups do have options exchanges operating with a lower ORF on a standalone basis).

The Exchange notes that while it does not believe that its ORF will impose any burden on inter-market competition, the Exchange being precluded from charging an ORF after October 31, 2024, while other options exchanges are permitted to continue to charge ORF would, in-fact, significantly burden the Exchange's ability to assure adequate funding of its regulatory program. As noted above, the Exchange is a new entrant in the highly competitive environment for equity options trading. As also noted above, all seventeen (17) other registered options exchanges currently impose the ORF on their members, and such ORF fees imposed by other options exchanges currently do and will continue to extend to executions occurring on the Exchange. The Exchange believes that it is possible that it and other exchanges may adopt ORF fees based on the Nasdaq Proposals or based on an alternative model during the proposed sunset period, and the Exchange is not precluded from adopting said alternative during the proposed sunset period. However, in order to be treated similarly to these exchanges, it must, in fact, impose an ORF on its Members during this additional sunset period, and the inability to do so would result in an unfair disadvantage to the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

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 [21] and Rule 19b–4(f)(2) [22] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–MEMX–2024–42 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–MEMX–2024–42. 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–MEMX–2024–42 and should be submitted on or before December 9, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–26754 Filed 11–15–24; 8:45 am]

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[21] 15 U.S.C. 78s(b)(3)(A)(ii).

[22] 17 CFR 240.19b–4(f)(2).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101578; File No. SR–NYSENAT–2024–28]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Service for Virtual Control Circuits in the Connectivity Fee Schedule

November 12, 2024.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on October 30, 2024, NYSE National, Inc. (''NYSE National'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the service for virtual control circuits in the Connectivity Fee Schedule. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the existing service for virtual control circuits (''VCCs'') in the Connectivity Fee Schedule.

A VCC (previously called a ''peer to peer'' connection) is a unicast connection through which two participants can establish a connection between two points over dedicated bandwidth, to be used for any purpose. At the Mahwah, New Jersey data center (''MDC'')[4] the Exchange offers VCCs between two Users.[5] The recurring monthly fees are based upon the bandwidth requirements per VCC connection between two Users.[6]

However, not all VCCs are between two Users in the MDC. Although all VCCs have at least one end that is a User inside the MDC, the other party may be a non-User outside of the MDC at a remote access center, or the VCC can be between a User in the MDC and the same User outside of the MDC at a remote access center. A VCC that goes outside of the MDC herein is called a ''MDC VCC.''

Accordingly, the Exchange proposes to amend the Connectivity Fee Schedule to delete ''between two Users'' after ''Virtual Control Circuit.'' Fees for the service would not change and, as now, connectivity to a VCC would require the permission of the non-billed party before the Exchange would establish the connection.

As background, Users require wired circuits to connect into and out of the MDC. A User's equipment in the MDC's colocation hall connects to a circuit leading out of the MDC, which connects to the User's equipment in their back office or another data center.

Before 2013, all such circuits were provided by ICE's predecessor, NYSE Euronext. In response to customer demand for more connectivity options, in 2013, the MDC opened two ''meet-me-rooms'' to telecommunications service providers (''Telecoms''),[7] to enable Telecoms to offer circuits into the MDC in competition with NYSE Euronext. Currently, 16 Telecoms operate in the meet-me-rooms and provide circuit options to Users requiring connectivity into and out of the MDC.

In addition, FIDS provides two different types of circuits, Optic Low Latency and Optic Access. Optic Access,[8] which is more similar to the MDC VCC, is a circuit between the MDC and the FIDS access centers at five third-party owned data centers: (1) 111 Eighth Avenue, New York, NY; (2) 32 Avenue of the Americas, New York, NY; (3) 165 Halsey, Newark, NJ; (4) Secaucus, NJ; and (5) Carteret, NJ.

Ultimately, the MDC VCCs are similar to the Optic Access FIDS circuits in that, like Optic Access, the MDC VCCs run between the MDC and five FIDS access centers as well as, in the case of the MDC VCCs, additional U.S. FIDS access centers. They are smaller than the Optic Access FIDS circuits, however. While the Exchange has no visibility into how a User utilizes its connections, the Exchange believes that the Optic Access FIDS circuit is used for items that require more bandwidth, like market data, while the MDC VCCs are used for items that require smaller amounts of bandwidth, such as messaging, pre- and post-trade data, or clearing information, as determined by the User. Accordingly, if a User wants a smaller connection to a U.S. access center, or wants to reach an access center that Optic Access does not reach, the MDC VCCs are a viable option.

General

The proposed rule change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. As is currently the case, the Fee Schedule would be applied uniformly to all Users. FIDS does not expect that the proposed rule change will result in new Users.

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that customers would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[11] because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable.

Although all VCCs have at least one end that is a User inside the MDC, the other party may be a non-User outside of the MDC at a remote access center, or the VCC can be between a User in the MDC and the same User outside of the MDC at a remote access center. Accordingly, the proposed change is reasonable because it would make the Connectivity Fee Schedule more accurately reflect the usage of VCCs. It would ensure that the description of VCCs was complete, accessible and transparent, and thereby provide market participants with greater clarity.

In considering the reasonableness of proposed services and fees, the Commission's market-based test considers ''whether the exchange was

[4] Through its Fixed Income and Data Services (''FIDS'') (previously ICE Data Services) business, Intercontinental Exchange, Inc. (''ICE'') operates the MDC. The Exchange and the New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., and NYSE Chicago, Inc. (together, the ''Affiliate SROs'') are indirect subsidiaries of ICE.

[5] For purposes of the Exchange's colocation services, a ''User'' means any market participant that requests to receive colocation services directly from the Exchange. *See* Securities Exchange Act Release No. 83351 (May 31, 2018), 83 FR 26314 at n.9 (June 6, 2018) (SR–NYSENAT–2018–07). As specified in the Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the Affiliate SROs. Each Affiliate SRO has submitted substantially the same proposed rule change to propose the change described herein. *See*SR–NYSE–2024–69, SR–NYSEAMER–2024–64, SR–NYSEARCA–2024–91, and SR–NYSECHX–2024–31.

[6] *See* 83 FR 26314, *supra* note 5, at 26318.

[7] Telecommunication service providers that choose to provide circuits at the MDC are referred to as ''Telecoms.'' Telecoms are licensed by the Federal Communications Commission (''FCC'') and are not required to be, or be affiliated with, a member of the Exchange or an Affiliate SRO.

[8] The ''Optic Low Latency'' circuits are lower latency. *See* Securities Exchange Act Release No. 99168 (December 14, 2023), 88 FR 88152 (December 20, 2023) (SR–NYSENAT–2023–29).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(4).

subject to significant competitive forces in setting the terms of its proposal. . . . including the level of any fees.'' [12] If the Exchange meets that burden, ''the Commission will find that its proposal is consistent with the Act unless 'there is a substantial countervailing basis to find that the terms' of the proposal violate the Act or the rules thereunder.'' [13] Here, the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because substantially similar substitutes are available, and the third-party vendors are not at a competitive disadvantage created by the Exchange.

MDC VCCs would compete with circuits currently offered by the 16 third-party Telecoms that have installed their equipment in the MDC's two meet-me-rooms. The Telecom circuits are reasonable substitutes for the MDC VCCs. The Commission has recognized that products do not need to be identical to be considered substitutable; it is sufficient that they be substantially similar.[14] The MDC VCCs, the FIDS circuits, and the circuits provided by the Telecoms all perform the same function: connecting into and out of the MDC. The providers of the MDC VCCs, VCCs between Users, FIDS circuits and Telecom circuits design them to perform with particular combinations of latency, bandwidth, price, termination point, and other factors that they believe will attract Users, and Users choose from among these competing services on the basis of their business needs.

The MDC VCCs are sufficiently similar substitutes to the circuits offered by the 16 Telecoms even though the MDC VCCs all terminate in one of the U.S. remote access centers, while circuits from the 16 Telecoms could terminate in those locations or additional locations. While neither the Exchange nor FIDS knows the end point of any particular Telecom circuit, the Exchange understands that the Telecoms can offer circuits terminating in any location, including the remote access centers where the MDC VCCs would terminate. Moreover, the Telecoms may offer smaller circuits that are the same as or similar size to the MDC VCCs. Ultimately, Users can choose to configure their pathway leading out of colocation in the way that best suits their business needs, which may include connecting to the User's equipment at one of the U.S. remote access center locations that serve as termination points for MDC VCCs, or connecting first to one of those remote access centers with a FIDS- or Telecom-supplied circuit and then further connecting to another remote location using a telecommunication provider-supplied circuit.

Neither the MDC VCCs, Optic Access circuits, nor the Optic Low Latency circuits have a distance or latency advantage over the Telecoms' circuits within the MDC. FIDS has normalized (a) the distance between the meet-me-rooms and the colocation halls and (b) the distance between the rooms where the FIDS circuits and the MDC VCCs exit the MDC and the colocation halls. As a result, a User choosing whether to use the MDC VCCs or Telecom circuits does not face any difference in the distances or latency within the MDC.

The Exchange also believes that the MDC VCCs do not have any latency or bandwidth advantage over the Telecoms' circuits outside of the MDC. The Exchange believes that the Telecoms operating in the meet-me-rooms offer circuits with a variety of latency and bandwidth specifications, some of which may exceed the specifications of the proposed MDC VCCs.[15] The Exchange believes that Users consider these latency and bandwidth factors—as well as other factors, such as price and termination point—in determining which offerings will best serve their business needs.

In sum, the Exchange does not believe that there is anything about the MDC VCCs that would make the Telecoms' circuits inadequate substitutes.

Nor does the Exchange have a competitive advantage over any third-party competitors by virtue of the fact that it owns and operates the MDC's meet-me-rooms. In most cases, circuits coming out of the MDC are provided by the Telecoms.[16] Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level [17] so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.[18] Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

If the Exchange were to set the price of the MDC VCCs too high, Users would likely respond by choosing one of the many alternative options offered by the 16 Telecoms. Conversely, if the Exchange were to offer the MDC VCCs at prices aimed at undercutting comparable Telecom circuits, the Telecoms might reassess whether it makes financial sense for them to continue to participate in the MDC's meet-me-rooms. Their departure might negatively impact User participation in

[12] Securities Exchange Act Release No. 90209 (October 15, 2020), 85 FR 67044, 67049 (October 21, 2020) (Order Granting Accelerated Approval to Establish a Wireless Fee Schedule Setting Forth Available Wireless Bandwidth Connections and Wireless Market Data Connections) (SR–NYSE–2020–05, SR–NYSEAMER–2020–05, SR–NYSEArca–2020–08, SR–NYSECHX–2020–02, SR–NYSENAT–2020–03, SR–NYSE–2020–11, SR–NYSEAMER–2020–10, SR–NYSEArca–2020–15, SR–NYSECHX–2020–05, SR–NYSENAT–2020–08) (''Wireless Approval Order''), citing Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008) (''2008 ArcaBook Approval Order''). *See NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[13] Wireless Approval Order, *supra* note 12, at 67049, citing 2008 ArcaBook Approval Order, *supra* note 12, at 74781.

[14] *See* 2008 ArcaBook Approval Order, *supra* note 12, at 74789 and note 295 (recognizing that products need not be identical to be substitutable).

[15] The specifications of FIDS's competitors' circuits are not publicly known. The Exchange understands that FIDS has gleaned any information it has about its competitors through anecdotal communications, by observing customers' purchasing choices in the competitive market, and from its own experience as a purchaser of circuits from telecommunications providers to build FIDS's own networks.

[16] Note that in the case of wireless connectivity, a User in colocation still requires a fiber circuit to transport data. If a Telecom is used, the data is transmitted wirelessly to the relevant pole, and then from the pole to the meet-me-room using a fiber circuit.

[17] *See* Securities Exchange Act Release No. 98002 (July 26, 2023), 88 FR 50232 (August 1, 2023) (SR–NYSENAT–2023–12).

[18] *See id.* at 50235. Importantly, the Exchange is prevented from making any alteration to its meet-me-room services or fees without filing a proposal for such changes with the Commission.

colocation and on the Exchange. As a result, the Exchange is not motivated to undercut the prices of Telecom circuits.

For these reasons, the proposed change is reasonable.

The Proposed Change Is Equitable

The Exchange believes that the proposed change provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers because it is not designed to permit unfair discrimination between market participants. The proposed change would apply equally to all types and sizes of market participants. It would clarify that all VCCs, irrespective of whether between two Users, a User and non-User outside of the VCC, or the same User, are subject to the same size and cost provisions. In addition, the Exchange believes that the proposal is equitable because only market participants that voluntarily select to receive MDC VCCs would be charged for them.

Moreover, the proposed change would ensure that the Connectivity Fee Schedule accurately reflects the usage of VCCs. It would ensure that the description of VCCs was complete, accessible and transparent, and provide market participants with greater clarity.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes its proposal is not unfairly discriminatory. The proposed change does not apply differently to distinct types or sizes of market participants. Rather, it applies to all market participants equally. The purchase of any proposed service is completely voluntary and the Fee Schedule will be applied uniformly to all market participants.

In addition, the Exchange believes that the proposal is equitable because only market participants that voluntarily select to receive MDC VCCs would be charged for them. The MDC VCCs are available to all market participants on an equal basis, and all market participants that voluntarily choose to purchase a MDC VCC are charged the same amount as all other market participants purchasing that type of MDC VCC.

For the reasons above, the proposed change does not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms, and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.[19] The proposed rule change is designed to ensure that the provision on VCCs clarifies that all VCCs, irrespective of whether between two Users, a User and non-User outside of the VCC, or the same User, are subject to the same size and cost provisions. It is not meant to address intramarket or intermarket competition.

The proposed change would enhance competition in the market for circuits transmitting data into and out of colocation at the MDC by adding VCCs, in addition to the 16 Telecoms that also sell circuits to Users and the FIDS circuits. The MDC VCCs do not have any latency, bandwidth, or other advantage over the Telecoms' circuits. The proposal would not burden competition in the sale of such circuits, but rather, enhance it by providing Users with an additional choice for their circuit needs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[20] and Rule 19b–4(f)(6) thereunder.[21] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[22]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[23] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–NYSENAT–2024–28 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSENAT–2024–28. 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

[19] 15 U.S.C. 78f(b)(8).

[20] 15 U.S.C. 78s(b)(3)(A)(iii).

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[23] 15 U.S.C. 78s(b)(2)(B).

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–NYSENAT–2024–28 and should be submitted on or before December 9, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–26747 Filed 11–15–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101586; File No. SR–NYSEAMER–2024–66]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the NYSE American Options Fee Schedule

November 12, 2024.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 1, 2024, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE American Options Fee Schedule. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing [sic] to amend the Fee Schedule to increase the maximum combined credits and rebates available to Floor Brokers for qualifying Qualified Contingent Cross Trades (''QCCs''). The Exchange proposes to implement the rule change on November 1, 2024.

The Exchange proposes to modify Section I.F. and Section III.E.1. to increase the maximum combined Floor Broker credits and rebates paid through the Manual Billable Rebate Program, respectively, for qualifying QCCs to $2,750,000 per month per Floor Broker firm, an increase from the current monthly amount of 2,500,000 (the ''Maximum Combined Rebate/Credit'' or ''QCC Cap'').[4] The proposed increase is designed to encourage Floor Broker firms to continue to direct transactions to the Exchange, despite increasing industry volumes making it less difficult to attain the maximum rebate. By increasing the QCC Cap, Floor Brokers are eligible to achieve more QCC credits and rebates, thus making the Exchange a more attractive venue for QCC transactions.[5]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[7] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The proposed change [sic] to the Fee Schedule are reasonable, equitable, and not unfairly discriminatory. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [8]

There are currently 17 [sic] registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[9] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in September of 2024, the Exchange had 7.64% market share of executed volume of multiply-listed equity & ETF options trades.[10] In such

[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* proposed Fee Schedule, Sections III.E.1 and I.F. (providing, in relevant, part that Floor Broker credits paid for QCC trades and rebates paid through the Manual Billable Rebate Program shall not combine to exceed $2,500,000 per month per Floor Broker firm). The Exchange notes that the Manual Billable Rebate Program is available only to Floor Brokers that participate in the FB Prepay Program. *See* Fee Schedule, Section III.E.1. As such, the proposed increase to the QCC Cap would likewise encourage more Floor Brokers to participate in this Program.

[5] The Exchange notes that the Manual Billable Rebate Program is available only to Floor Brokers that participate in the FB Prepay Program. *See* Fee Schedule, Section III.E.1. As such, the proposed increase to the QCC Cap would likewise encourage more Floor Brokers to participate in this Program.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

[8] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (''Reg NMS Adopting Release'').

[9] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: *https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.*

[10] Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of equity-based ETF options, *see id.,* the Exchanges market share in equity-based

a low-concentrated and highly competitive market, no single options exchange possesses significant pricing power in the execution of option order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to remain competitive and to continue to attract QCC transactions to the Exchange.

The Exchange believes that the proposed increase of the QCC Cap is reasonable, equitable, and not unfairly discriminatory because it is intended to encourage Floor Brokers to direct QCC transactions to the Exchange. The Exchange believes the proposed increase to the QCC Cap is reasonable given that increasing industry volumes make it less difficult to attain the QCC Cap. Floor Brokers that exceed the monthly QCC Cap may be incentivized to direct additional QCC volume (in that same month) away from the Exchange to another venue that offers more favorable pricing.

The proposed change is intended to encourage the role performed by Floor Brokers in facilitating the execution of orders via open outcry, a function which the Exchange wishes to support for the benefit of all market participants. Floor Brokers have the option to execute QCC transactions on the Exchange to earn the various proposed credits and rebates or not. The credits and rebates for QCC transactions (and whether a Floor Broker exceeds the increased QCC Cap) are based on the amount and type of business a Floor Broker transacts on the Exchange and are available—and apply equally to all similarly situated Floor Brokers. As such, the proposed increase to the QCC Cap is an equitable allocation of its fees and credits that is not unfairly discriminatory.

To the extent that the proposed changes attract more volume to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution, which, in turn, promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system. The Exchange notes that all market participants stand to benefit from any increase in volume by Floor Brokers, which could promote market depth, facilitate tighter spreads and enhance price discovery, to the extent the proposed change encourages Floor Brokers to utilize the Exchange as a primary trading venue, and may lead to a corresponding increase in order flow from other market participants. In addition, any increased liquidity on the Exchange would result in enhanced market quality for all participants.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [11]

Intramarket Competition. The proposed increase of the QCC Cap would apply equally to all similarly-situated Floor Brokers and is design [sic] to continue to incent Floor Brokers to execute QCC transactions on the Exchange. To the extent that the proposed change achieves its purpose in attracting more Floor Broker volume to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for, among other things, order execution. Thus, the Exchange believes the proposed rule changes would improve market quality for all market participants on the Exchange and, therefore, attract more order flow to the Exchange, thereby improving market-wide quality and price discovery. To the extent that there is an additional competitive burden on non-Floor Brokers, the Exchange believes that any such burden would be appropriate because Floor Brokers serve an important function in facilitating the execution of orders and price discovery for all market participants.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 17 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[12] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in September 2024 the Exchange had less than 8% market share of executed volume of multiply-listed equity and ETF options trades.[13]

The Exchange believes that the proposed change reflects this competitive environment because it modifies the Exchange's fees and credits in a manner designed to continue to incent Floor Brokers to direct trading interest (particularly QCC transactions) to the Exchange, to provide liquidity and to attract order flow. To the extent that Floor Brokers are encouraged to try to meet the QCC Cap and/or incentivized to utilize the Exchange as a primary trading venue for all transactions, all of the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

options increased from 7.31% for the month of September 2023 to 7.64% for the month of September 2024.

[11] *See* Reg NMS Adopting Release, *supra* note 8, at 37499.

[12] *See* note 9, *supra.*

[13] *See* note 10, *supra.*

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [14] of the Act and subparagraph (f)(2) of Rule 19b–4 [15] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [16] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–NYSEAMER–2024–66 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEAMER–2024–66. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEAMER–2024–66 and should be submitted on or before December 9, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–26752 Filed 11–15–24; 8:45 am]

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[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(2).

[16] 15 U.S.C. 78s(b)(2)(B).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101583; File No. SR–CboeEDGX–2024–075]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Fees for Its New Offering of Market Data Reports

November 12, 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 November 7, 2024, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') proposes to adopt fees for its new offering of market data reports. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fee schedule to adopt fees for Cboe Timestamping Service reports, effective November 1, 2024.[3] The Exchange recently adopted a new data product known as the Cboe Timestamping Service.[4] The Cboe Timestamping Service provides timestamp information for orders and cancels for market participants. More specifically, the Cboe Timestamping Service reports provide various timestamps relating to the message lifecycle throughout the exchange system. The first report—the Missed Liquidity Report—covers order messages of the Member only and the second report—Cancels Report—covers cancel messages of the Member only. The reports are optional products that are available to all Members and Members may opt to choose both reports, one report, or neither report.

[3] The Exchange initially filed the proposed change on November 1, 2024 (SR–EDGX–2024–074). On November 7, 2024, the Exchange withdrew that filing and submitted this filing.

[4] *See* Securities Exchange Act Release No. 100802 (August 28, 2024), 89 FR 68952 (August 22, 2024) (SR–CboeEDGX–2024–053).

The Cancels Report provides response time details for orders that rest on the book where the Member attempted to cancel that resting order or any other resting order but was unable to do so as the resting order was executed before the system processed the cancel message. The Cancels Report assists the Member in determining by how much time that order missed being canceled instead of executing.

The Missed Liquidity Report provides time details for executions of orders that rest on the book where the Member attempted to execute against that resting order within an Exchange-determined amount of time (not to exceed 1 millisecond) after receipt of the first attempt to execute against the resting order and within an Exchange-determined amount of time (not to exceed 100 microseconds) before receipt of the first attempt to execute against the resting order.

Both the Missed Liquidity Report and Cancels Report include the following data elements for orders [5] and cancel messages,[6] respectively: (1) Member Firm ID; (2) Symbol; (3) Execution ID; [7] (3) Exchange System Timestamps for orders and cancels; [8] (4) Matching Unit number; [9] (5) Queued; [10] (6) Port Type; [11] and (7) Aggressor Order Type.[12] No specific information about resting orders on the Exchange book are provided.

These reports are in response to requests from Members for additional data concerning the timeliness of their incoming orders, cancel messages and executions against resting orders. The Exchange believes these reports will increase transparency by providing Members with an opportunity to learn more about better opportunities to access liquidity and receive better execution rates and improve order cancel success.

The Exchange notes that the data included in the reports are based only on the data of the market participant that opts to subscribe to the reports (''Recipient Member'') and do not include information related to any Member other than the Recipient Member. Additionally, neither report includes real-time market data. Rather, the reports contain historical data from the prior trading day and are available after the end of the trading day, generally on a T+1 basis.

The Exchange now proposes to assess the following monthly fees for Members that wish to purchase the Cancels Report and/or the Missed Liquidity Report. The Exchange proposes a monthly flat fee of $1,000 for the Cancels Report for a subscribing Member. The Exchange also proposes a progressive monthly fee structure for the Missed Liquidity Report based on the Member's subscribing logical (FIX or BOE) order entry ports (the ''Ports'') [13] with the following tiers: $1,500 for 1–10 Ports, $2,000 for 11–20 Ports and $2,500 for 21 and more Ports.[14] For a mid-month subscription, the monthly fee(s) shall be prorated based on the initial date of the subscription.[15]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[16] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [17] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [18] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[19] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (''SROs'') and broker dealers increased authority and flexibility to offer new and unique market data to consumers of such data. It was believed that this authority would expand the amount of data available to users and consumers of such data and also spur innovation and competition for the provision of market data. The Exchange believes that the proposed reports are the sort of market data product that the Commission envisioned when it adopted Regulation NMS.

The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition: ''[E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are

[5] The Missed Liquidity Report only includes trade events which are triggered by an order that removed liquidity on entry and will exclude trade events resulting from: elected stop orders, orders routed and executed at away venues, and peg order movements, and auctions.

[6] Includes individual order cancellations, mass cancels, and purge orders messages that are sent via Financial Information Exchange (''FIX'') protocol or Binary Order Entry (BOE) protocol by a subscriber.

[7] The Execution ID is a unique reference number assigned by the Exchange for each trade.

[8] Includes Network Discovery Time (which is a network hardware switch timestamp taken at the network capture point); Order Handler NIC Timestamp (which is a hardware timestamp that represents when a BOE order handler server NIC observed the message); Order Handler Received Timestamp (which is software timestamp that represents when the FIX or BOE order handler has begun processing the order after the socket read); Order Handler Send Timestamp (which represents when the FIX or BOE order handler has finished processing the order and begun sending to the matching engine); Matching Engine NIC Timestamp (which is a hardware timestamp that represents when the target matching engine server NIC observed the message); and Matching Engine Transaction Timestamp (which is a software timestamp that represents when the matching engine has started processing an event).

[9] Represents the matching unit number.

[10] Flag to indicate whether a message was delayed due to message in flight limits (*i.e.,* a limit on the total number of messages in flight between an order handler and a matching engine).

[11] Refers to the port type used by the session to send the applicable message.

[12] Indicates whether the order type of the response order that executed against the resting order was a new order or modify message.

[13] Based on a Members' unique needs, Members may choose which Ports (if any) it would like to subscribe to the Missed Liquidity Report. For example, a Member that has 20 Ports, but is only interested in receiving data on 10 of their Ports would then be charged the $1,500 tier fee for its subscribing Ports.

[14] The Exchange proposes to make clear in the Fees Schedule that the proposed fees are not progressive (*i.e.,* if a Member requests the Missed Liquidity Report for 20 Ports, it will be assessed $2,000 per month).

[15] Fees will be assessed on a look-back basis based on the maximum number of subscribing Ports a Member had in the prior calendar month. For example, if a Member had 10 Ports that were subscribed to the Missed Liquidity Report from September 1st—September 26th and the Member added an additional Port to the Missed Liquidity Report on September 27th (for a total of 11 subscribing Ports), the Member would then be assessed a fee of $2,000 for the month of September for the Missed Liquidity Report. Additionally, the Exchange proposes to make clear in its fee schedule that new subscribers will be charged a prorated for a for a mid-month subscription based on the initial date of the subscription.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] *Id.*

[19] 15 U.S.C 78f(b)(4).

not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.'' [20]

By removing ''unnecessary regulatory restrictions'' on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. The Cboe Timestamping Service (*i.e.,* the Missed Liquidity and Cancels Reports) provides investors with new options for receiving market data, which was a primary goal of the market data amendments adopted by Regulation NMS.[21]

The reports are designed for Members that are interested in gaining insight into latency in connection with their respective (1) orders that failed to execute against an order resting on the Exchange order book and/or (2) cancel messages that failed to cancel resting orders. The Exchange believes that providing this optional data to interested Members for a fee is consistent with facilitating transactions in securities, removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest because it provides Members with an opportunity to receive additional information and insight into their trading activity on the Exchange.

The Exchange believes the fee proposals for both the Missed Liquidity Report and Cancels Report are reasonable as the Exchange is offering any Member access to subscribe to one or both report(s) in the Member's sole discretion based on their unique business needs. The reports are optional for Members to subscribe to if they believe it to be helpful and are not required for Members to purchase in order to access the Exchange. Additionally, Members may cancel their usage of this report at any time.

The Exchange believes that the fee structure for the Missing Liquidity Report reflects an equitable allocation and will not be unfairly discriminatory as it is a voluntary product designed to ensure that the amount of the charge is tailored to the specific port usage patterns of the Recipient Member. The range of fee options further ensures that Recipient Members are not charged a fee that is inequitably disproportionate to the use that they make of the product. Additionally, Recipient Members aren't required to pay the set threshold for all Ports it has in a given month, instead, Members are able to select which Ports (if any) they would like to subscribe to the Missing Liquidity Report for a given month in order to study its orders in the market to be better informed market participants. Members are under no obligation to subscribe to the Missing Liquidity Report if it does not desire to do so.

The fee structure for the Missing Liquidity Report closely aligns to the fee structure of the previously offered Missed Opportunity—Latency report as part of its NASDAQ Trader Insights offering.[22] However, the NASDAQ Missed Opportunity—Latency report included an additional tier with a higher price than the Exchange's proposed fee structure.[23] The NASDAQ structure included an additional tier level that imposes a monthly fee of $3,500 for subscribers that have over 25 ports [24] while the Exchange fee structure would provide its similar report for a fee of $2,500 for a Recipient Member that has 25 ports.

The Exchange believes its proposed fee for the Cancels Report is reasonable as it's a modest, flat fee of $1,000/month. As the Exchange offers mass cancels through Purge Ports in addition to standard cancels through the Ports, and since cancels may occur through a variety of port types as opposed to just the Ports, the Exchange found a modest, flat fee to be more appropriate for the Cancels Report.

The proposed fees are also reasonable as they are lower than the fees assessed for similar reports offered by other exchanges. For example, the MIAX Emerald Liquidity Taker Event Report is substantially similar to the Missed Liquidity Report and Cancels Report [25] and has a monthly fee of $4,000 or an annual fee of $24,000.[26] A Member is able to receive both the Cancels Report and the Missed Liquidity Report for a monthly fee no greater than $3,500 a month- making the Cboe Timestamping Reports less than the MIAX Emerald report. With the Exchange's approach of (i) bifurcating the orders and cancels to two separate and distinct offerings (Missing Liquidity Report and Cancels Report) and (ii) allowing Members to select its subscribing Ports for the Missed Liquidity Report, it allows Members to further curb costs if they choose to subscribe to one or both of these reports. As such, the Exchange believes that the proposed fees for the both the Missed Liquidity Report and Cancels Report are fair and reasonable as they are set at a level either similar to or lower than other exchanges that offer similar reports.

The proposal would also not permit unfair discrimination as both the Cancels Report and Missed Liquidity Report will be available to all Members, who may opt to subscribe to one, both, or neither, and will help to protect a free and open market by continuing to provide additional non-core data (offered on an optional basis for a fee) to the marketplace and by providing investors with greater choices.[27] As such, the Exchange believes that the proposed fees are reasonable and set at a level to compete with other exchanges that may choose to offer similar reports. Moreover, if a market participant views another exchange's potential report as more attractive, then such market participant can merely choose not to purchase the Exchange's reports and instead purchase another exchange's similar data product(s), which may offer similar data points, albeit based on that other market's trading activity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose

[20] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (''Regulation NMS Adopting Release'').

[21] *See* Regulation NMS Adopting Release, supra, at 37503.

[22] *See* Securities Exchange Act Release No. 78886 (September 20, 2016), 81 FR 66113 (September 26, 2016) (SR–NASDAQ–2016–101) (Order Granting Approval of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Add NASDAQ Rule 7046 (Nasdaq Trading Insights).

[23] *See* Securities Exchange Act Release No. 79035 (October 11, 2016), 81 FR 70207 (October 4, 2016) (SR–NASDAQ–2016–124).

[24] *Id.*

[25] *See e.g.,* MIAX Emerald Rule 531. *See also* Securities Exchange Act Release No. 91356 (March 18, 2021), 86 FR 15759 (March 24, 2021) (SR–EMERALD–2021–09). Although not clearly defined, the Exchange believes that MIAX Emerald's Liquidity Taker Event Report also provides information relating to cancel messages. Particularly, MIAX Emerald Liquidity Taker Event Report provides, among other things, data relating to the ''type of each response submitted by the Recipient Member.'' *See* MIAX Emerald Rule 5.31(a)(iii)(C). MIAX Emerald's technical specifications outline the various types of available liquidity messages including, Simple Mass Quote Cancel Request and Mass Liquidity Cancel Request See MIAX Express Interface for Quoting and Trading Options, MEI Interface Specification, Section 4.1 (Liquidity Messages), available at: *MIAX_Express_Interface_MEI_v2.2a.pdf* (*miaxglobal.com*).

[26] *See* MIAX Emerald Fee Schedule, Section 7, Reports.

[27] *See* Sec. Indus. Fin. Mkts. Ass'n (SIFMA), Initial Decision Release No. 1015, 2016 SEC LEXIS 2278 (ALJ June 1, 2016) (finding the existence of vigorous competition with respect to non-core market data). *See also* the decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC*, 615 F.3d 525 (D.C. Cir. 2010) (''NetCoalition I'') (upholding the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data).

any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the reports will contribute to robust competition among national securities exchanges. The Missed Liquidity Report and Late Cancels Report further enhances competition between exchanges by allowing the Exchange to expand its product offerings to include reports similar to reports that are currently offered by other exchanges.[28]

The Exchange also does not believe the proposed fees would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to introduce their own comparable reports with lower prices to better compete with the Exchange's offerings. The Exchange operates in a highly competitive environment, and its ability to price the reports is constrained by competition among exchanges who choose to adopt similar products. The Exchange must consider this in its pricing discipline in order to compete for subscribers of the Exchange's market data via the reports. For example, proposing fees that are excessively higher than fees for potentially similar data products would simply serve to reduce demand for the Exchange's reports, which as discussed, Members are under no obligation to utilize. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposed fees apply uniformly to any purchaser in that the Exchange does not differentiate between the different Members that may purchase the reports. While the Exchange does propose to implement tiered pricing for its Missed Liquidity Report (similar to the pricing used for NASDAQ Trader Insight offering),[29] the tiered pricing shall apply to all Members that wish to purchase the Missed Liquidity Report and this proposed pricing structure is reflective of the specific port usage patterns of the Recipient Member. The proposed fees are set at a modest level that would allow any interested Member to purchase such data based on their business needs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[30] and paragraph (f) of Rule 19b–4[31] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeEDGX–2024–075 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–CboeEDGX–2024–075. 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–CboeEDGX–2024–075 and should be submitted on or before December 9, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–26750 Filed 11–15–24; 8:45 am]

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[28] *See e.g.,* MIAX Emerald Rule 531.

[29] *See* Securities Exchange Act Release No. 79035 (October 11, 2016), 81 FR 70207 (October 4, 2016) (SR–NASDAQ–2016–124).

[30] 15 U.S.C. 78s(b)(3)(A).

[31] 17 CFR 240.19b–4(f).

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101577; File No. SR–NYSECHX–2024–31]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Service for Virtual Control Circuits in the Connectivity Fee Schedule

November 12, 2024.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 30, 2024, the NYSE Chicago, Inc. (''NYSE Chicago'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the service for virtual control circuits in the Connectivity Fee Schedule. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the existing service for virtual control circuits (''VCCs'') in the Connectivity Fee Schedule.

A VCC (previously called a ''peer to peer'' connection) is a unicast connection through which two participants can establish a connection between two points over dedicated bandwidth, to be used for any purpose. At the Mahwah, New Jersey data center (''MDC'')[4] the Exchange offers VCCs between two Users.[5] The recurring monthly fees are based upon the bandwidth requirements per VCC connection between two Users.[6]

However, not all VCCs are between two Users in the MDC. Although all VCCs have at least one end that is a User inside the MDC, the other party may be a non-User outside of the MDC at a remote access center, or the VCC can be between a User in the MDC and the same User outside of the MDC at a remote access center. A VCC that goes outside of the MDC herein is called a ''MDC VCC.''

Accordingly, the Exchange proposes to amend the Connectivity Fee Schedule to delete ''between two Users'' after ''Virtual Control Circuit.'' Fees for the service would not change and, as now, connectivity to a VCC would require the permission of the non-billed party before the Exchange would establish the connection.

As background, Users require wired circuits to connect into and out of the MDC. A User's equipment in the MDC's colocation hall connects to a circuit leading out of the MDC, which connects to the User's equipment in their back office or another data center.

Before 2013, all such circuits were provided by ICE's predecessor, NYSE Euronext. In response to customer demand for more connectivity options, in 2013, the MDC opened two ''meet-me-rooms'' to telecommunications service providers (''Telecoms''),[7] to enable Telecoms to offer circuits into the MDC in competition with NYSE Euronext. Currently, 16 Telecoms operate in the meet-me-rooms and provide circuit options to Users requiring connectivity into and out of the MDC.

In addition, FIDS provides two different types of circuits, Optic Low Latency and Optic Access. Optic Access,[8] which is more similar to the MDC VCC, is a circuit between the MDC and the FIDS access centers at five third-party owned data centers: (1) 111 Eighth Avenue, New York, NY; (2) 32 Avenue of the Americas, New York, NY; (3) 165 Halsey, Newark, NJ; (4) Secaucus, NJ; and (5) Carteret, NJ.

Ultimately, the MDC VCCs are similar to the Optic Access FIDS circuits in that, like Optic Access, the MDC VCCs run between the MDC and five FIDS access centers as well as, in the case of the MDC VCCs, additional U.S. FIDS access centers. They are smaller than the Optic Access FIDS circuits, however. While the Exchange has no visibility into how a User utilizes its connections, the Exchange believes that the Optic Access FIDS circuit is used for items that require more bandwidth, like market data, while the MDC VCCs are used for items that require smaller amounts of bandwidth, such as messaging, pre- and post-trade data, or clearing information, as determined by the User. Accordingly, if a User wants a smaller connection to a U.S. access center, or wants to reach an access center that Optic Access does not reach, the MDC VCCs are a viable option.

General

The proposed rule change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. As is currently the case, the Fee Schedule would be applied uniformly to all Users. FIDS does not expect that the proposed rule change will result in new Users.

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that customers would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[11] because it provides for the equitable allocation of

[4] Through its Fixed Income and Data Services (''FIDS'') (previously ICE Data Services) business, Intercontinental Exchange, Inc. (''ICE'') operates the MDC. The Exchange and the New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., and NYSE National, Inc. (together, the ''Affiliate SROs'') are indirect subsidiaries of ICE.

[5] For purposes of the Exchange's colocation services, a ''User'' means any market participant that requests to receive colocation services directly from the Exchange. *See* Securities Exchange Act Release No. 87408 (October 28, 2019), 84 FR 58778 at n.6 (November 1, 2019) (SR–NYSECHX–2019–12). As specified in the Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the Affiliate SROs. Each Affiliate SRO has submitted substantially the same proposed rule change to propose the change described herein. *See* SR–NYSE–2024–69, SR–NYSEAMER–2024–64, SR–NYSEARCA–2024–91, and SR–NYSENAT–28.

[6] *See* 84 FR 58778, *supra* note 5, at 58782.

[7] Telecommunication service providers that choose to provide circuits at the MDC are referred to as ''Telecoms.'' Telecoms are licensed by the Federal Communications Commission (''FCC'') and are not required to be, or be affiliated with, a member of the Exchange or an Affiliate SRO.

[8] The ''Optic Low Latency'' circuits are lower latency. *See* Securities Exchange Act Release No. 99167 (December 14, 2023), 88 FR 88141 (December 20, 2023) (SR–NYSECHX–2023–24).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(4).

reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable.

Although all VCCs have at least one end that is a User inside the MDC, the other party may be a non-User outside of the MDC at a remote access center, or the VCC can be between a User in the MDC and the same User outside of the MDC at a remote access center. Accordingly, the proposed change is reasonable because it would make the Connectivity Fee Schedule more accurately reflect the usage of VCCs. It would ensure that the description of VCCs was complete, accessible and transparent, and thereby provide market participants with greater clarity.

In considering the reasonableness of proposed services and fees, the Commission's market-based test considers ''whether the exchange was subject to significant competitive forces in setting the terms of its proposal . . . , including the level of any fees.'' [12] If the Exchange meets that burden, ''the Commission will find that its proposal is consistent with the Act unless 'there is a substantial countervailing basis to find that the terms' of the proposal violate the Act or the rules thereunder.'' [13] Here, the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because substantially similar substitutes are available, and the third-party vendors are not at a competitive disadvantage created by the Exchange.

MDC VCCs would compete with circuits currently offered by the 16 third-party Telecoms that have installed their equipment in the MDC's two meet-me-rooms. The Telecom circuits are reasonable substitutes for the MDC VCCs. The Commission has recognized that products do not need to be identical to be considered substitutable; it is sufficient that they be substantially similar.[14] The MDC VCCs, the FIDS circuits, and the circuits provided by the Telecoms all perform the same function: connecting into and out of the MDC. The providers of the MDC VCCs, VCCs between Users, FIDS circuits and Telecom circuits design them to perform with particular combinations of latency, bandwidth, price, termination point, and other factors that they believe will attract Users, and Users choose from among these competing services on the basis of their business needs.

The MDC VCCs are sufficiently similar substitutes to the circuits offered by the 16 Telecoms even though the MDC VCCs all terminate in one of the U.S. remote access centers, while circuits from the 16 Telecoms could terminate in those locations or additional locations. While neither the Exchange nor FIDS knows the end point of any particular Telecom circuit, the Exchange understands that the Telecoms can offer circuits terminating in any location, including the remote access centers where the MDC VCCs would terminate. Moreover, the Telecoms may offer smaller circuits that are the same as or similar size to the MDC VCCs. Ultimately, Users can choose to configure their pathway leading out of colocation in the way that best suits their business needs, which may include connecting to the User's equipment at one of the U.S. remote access center locations that serve as termination points for MDC VCCs, or connecting first to one of those remote access centers with a FIDS- or Telecom-supplied circuit and then further connecting to another remote location using a telecommunication provider-supplied circuit.

Neither the MDC VCCs, Optic Access circuits, nor the Optic Low Latency circuits have a distance or latency advantage over the Telecoms' circuits within the MDC. FIDS has normalized (a) the distance between the meet-me-rooms and the colocation halls and (b) the distance between the rooms where the FIDS circuits and the MDC VCCs exit the MDC and the colocation halls. As a result, a User choosing whether to use the MDC VCCs or Telecom circuits does not face any difference in the distances or latency within the MDC.

The Exchange also believes that the MDC VCCs do not have any latency or bandwidth advantage over the Telecoms' circuits outside of the MDC. The Exchange believes that the Telecoms operating in the meet-me-rooms offer circuits with a variety of latency and bandwidth specifications, some of which may exceed the specifications of the proposed MDC VCCs.[15] The Exchange believes that Users consider these latency and bandwidth factors—as well as other factors, such as price and termination point—in determining which offerings will best serve their business needs.

In sum, the Exchange does not believe that there is anything about the MDC VCCs that would make the Telecoms' circuits inadequate substitutes.

Nor does the Exchange have a competitive advantage over any third-party competitors by virtue of the fact that it owns and operates the MDC's meet-me-rooms. In most cases, circuits coming out of the MDC are provided by the Telecoms.[16] Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level [17] so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it

[12] Securities Exchange Act Release No. 90209 (October 15, 2020), 85 FR 67044, 67049 (October 21, 2020) (Order Granting Accelerated Approval to Establish a Wireless Fee Schedule Setting Forth Available Wireless Bandwidth Connections and Wireless Market Data Connections) (SR–NYSE–2020–05, SR–NYSEAMER–2020–05, SR–NYSEArca–2020–08, SR–NYSECHX–2020–02, SR–NYSENAT–2020–03, SR–NYSE–2020–11, SR–NYSEAMER–2020–10, SR–NYSEArca–2020–15, SR–NYSECHX–2020–05, SR–NYSENAT–2020–08) (''Wireless Approval Order''), citing Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008) (''2008 ArcaBook Approval Order''). *See NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[13] Wireless Approval Order, *supra* note 12, at 67049, citing 2008 ArcaBook Approval Order, *supra* note 12, at 74781.

[14] *See* 2008 ArcaBook Approval Order, *supra* note 12, at 74789 and note 295 (recognizing that products need not be identical to be substitutable).

[15] The specifications of FIDS's competitors' circuits are not publicly known. The Exchange understands that FIDS has gleaned any information it has about its competitors through anecdotal communications, by observing customers' purchasing choices in the competitive market, and from its own experience as a purchaser of circuits from telecommunications providers to build FIDS's own networks.

[16] Note that in the case of wireless connectivity, a User in colocation still requires a fiber circuit to transport data. If a Telecom is used, the data is transmitted wirelessly to the relevant pole, and then from the pole to the meet-me-room using a fiber circuit.

[17] *See* Securities Exchange Act Release No. 98001 (July 26, 2023), 88 FR 50196 (August 1, 2023) (SR–NYSECHX–2023–14).

sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.[18] Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

If the Exchange were to set the price of the MDC VCCs too high, Users would likely respond by choosing one of the many alternative options offered by the 16 Telecoms. Conversely, if the Exchange were to offer the MDC VCCs at prices aimed at undercutting comparable Telecom circuits, the Telecoms might reassess whether it makes financial sense for them to continue to participate in the MDC's meet-me-rooms. Their departure might negatively impact User participation in colocation and on the Exchange. As a result, the Exchange is not motivated to undercut the prices of Telecom circuits.

For these reasons, the proposed change is reasonable.

The Proposed Change Is Equitable

The Exchange believes that the proposed change provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers because it is not designed to permit unfair discrimination between market participants. The proposed change would apply equally to all types and sizes of market participants. It would clarify that all VCCs, irrespective of whether between two Users, a User and non-User outside of the VCC, or the same User, are subject to the same size and cost provisions. In addition, the Exchange believes that the proposal is equitable because only market participants that voluntarily select to receive MDC VCCs would be charged for them.

Moreover, the proposed change would ensure that the Connectivity Fee Schedule accurately reflects the usage of VCCs. It would ensure that the description of VCCs was complete, accessible and transparent, and provide market participants with greater clarity.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes its proposal is not unfairly discriminatory. The proposed change does not apply differently to distinct types or sizes of market participants. Rather, it applies to all market participants equally. The purchase of any proposed service is completely voluntary and the Fee Schedule will be applied uniformly to all market participants.

In addition, the Exchange believes that the proposal is equitable because only market participants that voluntarily select to receive MDC VCCs would be charged for them. The MDC VCCs are available to all market participants on an equal basis, and all market participants that voluntarily choose to purchase a MDC VCC are charged the same amount as all other market participants purchasing that type of MDC VCC.

For the reasons above, the proposed change does not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms, and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.[19] The proposed rule change is designed to ensure that the provision on VCCs clarifies that all VCCs, irrespective of whether between two Users, a User and non-User outside of the VCC, or the same User, are subject to the same size and cost provisions. It is not meant to address intramarket or intermarket competition.

The proposed change would enhance competition in the market for circuits transmitting data into and out of colocation at the MDC by adding VCCs, in addition to the 16 Telecoms that also sell circuits to Users and the FIDS circuits. The MDC VCCs do not have any latency, bandwidth, or other advantage over the Telecoms' circuits. The proposal would not burden competition in the sale of such circuits, but rather, enhance it by providing Users with an additional choice for their circuit needs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[20] and Rule 19b–4(f)(6) thereunder.[21] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[22]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[23] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or

[18] *See id.* at 50199. Importantly, the Exchange is prevented from making any alteration to its meet-me-room services or fees without filing a proposal for such changes with the Commission.

[19] 15 U.S.C. 78f(b)(8).

[20] 15 U.S.C. 78s(b)(3)(A)(iii).

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[23] 15 U.S.C. 78s(b)(2)(B).

• Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSECHX–2024–31 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSECHX–2024–31. 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–NYSECHX–2024–31 and should be submitted on or before December 9, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–26746 Filed 11–15–24; 8:45 am]

BILLING CODE 8011–01–P

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35382; 812–15642]

Redwood Real Estate Income Fund and Redwood Investment Management, LLC

November 12, 2024.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 18(a)(2), 18(c) and 18(i) of the Act, under sections 6(c) and 23(c) of the Act for an exemption from rule 23c–3 under the Act, and for an order pursuant to section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end investment companies to issue multiple classes of shares and to impose asset-based distribution and/or service fees and early withdrawal charges.

APPLICANTS: Redwood Real Estate Income Fund and Redwood Investment Management, LLC.

FILING DATES: The application was filed on October 15, 2024.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on December 9, 2024, and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Joshua B. Deringer, Esq., Faegre Drinker Biddle & Reath LLP, *joshua.deringer@faegredrinker.com,* with a copy to Richard Duff, Redwood Investment Management, LLC, *rduff@redwoodim.com.*

FOR FURTHER INFORMATION CONTACT: Trace W. Rakestraw, Senior Special Counsel, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' application, dated October 15, 2024, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–26761 Filed 11–15–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101581; File No. SR–CboeEDGA–2024–046]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Fees for Its New Offering of Market Data Reports

November 12, 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 November 1, 2024, Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') proposes to adopt fees for its new offering of market

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

data reports. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/edga/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fee schedule to adopt fees for Cboe Timestamping Service reports, effective November 1, 2024. The Exchange recently adopted a new data product known as the Cboe Timestamping Service.[3] The Cboe Timestamping Service provides timestamp information for orders and cancels for market participants. More specifically, the Cboe Timestamping Service reports provide various timestamps relating to the message lifecycle throughout the exchange system. The first report—the Missed Liquidity Report—covers order messages of the Member only and the second report—Cancels Report—covers cancel messages of the Member only. The reports are optional products that are available to all Members and Members may opt to choose both reports, one report, or neither report.

The Cancels Report provides response time details for orders that rest on the book where the Member attempted to cancel that resting order or any other resting order but was unable to do so as the resting order was executed before the system processed the cancel message. The Cancels Report assists the Member in determining by how much time that order missed being canceled instead of executing.

The Missed Liquidity Report provides time details for executions of orders that rest on the book where the Member attempted to execute against that resting order within an Exchange-determined amount of time (not to exceed 1 millisecond) after receipt of the first attempt to execute against the resting order and within an Exchange-determined amount of time (not to exceed 100 microseconds) before receipt of the first attempt to execute against the resting order.

Both the Missed Liquidity Report and Cancels Report include the following data elements for orders [4] and cancel messages,[5] respectively: (1) Member Firm ID; (2) Symbol; (3) Execution ID; [6] (3) Exchange System Timestamps for orders and cancels; [7] (4) Matching Unit number; [8] (5) Queued; [9] (6) Port Type; [10] and (7) Aggressor Order Type.[11] No specific information about resting orders on the Exchange book are provided.

These reports are in response to requests from Members for additional data concerning the timeliness of their incoming orders, cancel messages and executions against resting orders. The Exchange believes these reports will increase transparency by providing Members with an opportunity to learn more about better opportunities to access liquidity and receive better execution rates and improve order cancel success.

The Exchange notes that the data included in the reports are based only on the data of the market participant that opts to subscribe to the reports (''Recipient Member'') and do not include information related to any Member other than the Recipient Member. Additionally, neither report includes real-time market data. Rather, the reports contain historical data from the prior trading day and are available after the end of the trading day, generally on a T+1 basis.

The Exchange now proposes to assess the following monthly fees for Members that wish to purchase the Cancels Report and/or the Missed Liquidity Report. The Exchange proposes a monthly flat fee of $1,000 for the Cancels Report for a subscribing Member. The Exchange also proposes a progressive monthly fee structure for the Missed Liquidity Report based on the Member's subscribing logical (FIX or BOE) order entry ports (the ''Ports'') [12] with the following tiers: $1,500 for 1–10 Ports, $2,000 for 11–20 Ports and $2,500 for 21 and more Ports.[13] For a mid-month subscription, the monthly fee(s) shall be prorated based on the initial date of the subscription.[14]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[15] Specifically, the Exchange believes the proposed rule change is consistent with the Section

[3] *See* Securities Exchange Act Release No. 100803 (August 28, 2024), 89 FR 68948 (August 22, 2024) (SR–CboeEDGA–2024–034).

[4] The Missed Liquidity Report only includes trade events which are triggered by an order that removed liquidity on entry and will exclude trade events resulting from: elected stop orders, orders routed and executed at away venues, and peg order movements, and auctions.

[5] Includes individual order cancellations, mass cancels, and purge orders messages that are sent via Financial Information Exchange (''FIX'') protocol or Binary Order Entry (BOE) protocol by a subscriber.

[6] The Execution ID is a unique reference number assigned by the Exchange for each trade.

[7] Includes Network Discovery Time (which is a network hardware switch timestamp taken at the network capture point); Order Handler NIC Timestamp (which is a hardware timestamp that represents when a BOE order handler server NIC observed the message); Order Handler Received Timestamp (which is software timestamp that represents when the FIX or BOE order handler has begun processing the order after the socket read); Order Handler Send Timestamp (which represents when the FIX or BOE order handler has finished processing the order and begun sending to the matching engine); Matching Engine NIC Timestamp (which is a hardware timestamp that represents when the target matching engine server NIC observed the message); and Matching Engine Transaction Timestamp (which is a software timestamp that represents when the matching engine has started processing an event).

[8] Represents the matching unit number.

[9] Flag to indicate whether a message was delayed due to message in flight limits (*i.e.,* a limit on the total number of messages in flight between an order handler and a matching engine).

[10] Refers to the port type used by the session to send the applicable message.

[11] Indicates whether the order type of the response order that executed against the resting order was a new order or modify message.

[12] Based on a Members' unique needs, Members may choose which Ports (if any) it would like to subscribe to the Missed Liquidity Report. For example, a Member that has 20 Ports, but is only interested in receiving data on 10 of their Ports would then be charged the $1,500 tier fee for its subscribing Ports.

[13] The Exchange proposes to make clear in the Fees Schedule that the proposed fees are not progressive (*i.e.,* if a Member requests the Missed Liquidity Report for 20 Ports, it will be assessed $2,000 per month).

[14] Fees will be assessed on a look-back basis based on the maximum number of subscribing Ports a Member had in the prior calendar month. For example, if a Member had 10 Ports that were subscribed to the Missed Liquidity Report from September 1st–September 26th and the Member added an additional Port to the Missed Liquidity Report on September 27th (for a total of 11 subscribing Ports), the Member would then be assessed a fee of $2,000 for the month of September for the Missed Liquidity Report. Additionally, the Exchange proposes to make clear in its fee schedule that new subscribers will be charged a prorated fee for a mid-month subscription based on the initial date of the subscription.

[15] 15 U.S.C. 78f(b).

6(b)(5) [16] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [17] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[18] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (''SROs'') and broker dealers increased authority and flexibility to offer new and unique market data to consumers of such data. It was believed that this authority would expand the amount of data available to users and consumers of such data and also spur innovation and competition for the provision of market data. The Exchange believes that the proposed reports are the sort of market data product that the Commission envisioned when it adopted Regulation NMS.

The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition: ''[E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.'' [19]

By removing ''unnecessary regulatory restrictions'' on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. The Cboe Timestamping Service (*i.e.,* the Missed Liquidity and Cancels Reports) provides investors with new options for receiving market data, which was a primary goal of the market data amendments adopted by Regulation NMS.[20]

The reports are designed for Members that are interested in gaining insight into latency in connection with their respective (1) orders that failed to execute against an order resting on the Exchange order book and/or (2) cancel messages that failed to cancel resting orders. The Exchange believes that providing this optional data to interested Members for a fee is consistent with facilitating transactions in securities, removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest because it provides Members with an opportunity to receive additional information and insight into their trading activity on the Exchange.

The Exchange believes the fee proposals for both the Missed Liquidity Report and Cancels Report are reasonable as the Exchange is offering any Member access to subscribe to one or both report(s) in the Member's sole discretion based on their unique business needs. The reports are optional for Members to subscribe to if they believe it to be helpful and are not required for Members to purchase in order to access the Exchange. Additionally, Members may cancel their usage of this report at any time.

The Exchange believes that the fee structure for the Missing Liquidity Report reflects an equitable allocation and will not be unfairly discriminatory as it is a voluntary product designed to ensure that the amount of the charge is tailored to the specific port usage patterns of the Recipient Member. The range of fee options further ensures that Recipient Members are not charged a fee that is inequitably disproportionate to the use that they make of the product. Additionally, Recipient Members aren't required to pay the set threshold for all Ports it has in a given month, instead, Members are able to select which Ports (if any) they would like to subscribe to the Missing Liquidity Report for a given month in order to study its orders in the market to be better informed market participants. Members are under no obligation to subscribe to the Missing Liquidity Report if it does not desire to do so.

The fee structure for the Missing Liquidity Report closely aligns to the fee structure of the previously offered Missed Opportunity—Latency report as part of its NASDAQ Trader Insights offering.[21] However, the NASDAQ Missed Opportunity—Latency report included an additional tier with a higher price than the Exchange's proposed fee structure.[22] The NASDAQ structure included an additional tier level that imposes a monthly fee of $3,500 for subscribers that have over 25 ports [23] while the Exchange fee structure would provide its similar report for a fee of $2,500 for a Recipient Member that has 25 ports.

The Exchange believes its proposed fee for the Cancels Report is reasonable as it's a modest, flat fee of $1,000/month. As the Exchange offers mass cancels through Purge Ports in addition to standard cancels through the Ports, and since cancels may occur through a variety of port types as opposed to just the Ports, the Exchange found a modest, flat fee to be more appropriate for the Cancels Report.

The proposed fees are also reasonable as they are lower than the fees assessed for similar reports offered by other exchanges. For example, the MIAX Emerald Liquidity Taker Event Report is substantially similar to the Missed Liquidity Report and Cancels Report [24] and has a monthly fee of $4,000 or an annual fee of $24,000.[25] A Member is

[16] 15 U.S.C. 78f(b)(5).

[17] *Id.*

[18] 15 U.S.C. 78f(b)(4).

[19] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (''Regulation NMS Adopting Release'').

[20] *See* Regulation NMS Adopting Release, supra, at 37503.

[21] *See* Securities Exchange Act Release No. 78886 (September 20, 2016), 81 FR 66113 (September 26, 2016) (SR–NASDAQ–2016–101) (Order Granting Approval of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Add NASDAQ Rule 7046)(Nasdaq Trading Insights).

[22] *See* Securities Exchange Act Release No. 79035 (October 11, 2016), 81 FR 70207 (October 4, 2016) (SR–NASDAQ–2016–124).

[23] *Id.*

[24] *See e.g.,* MIAX Emerald Rule 531. *See also* Securities Exchange Act Release No. 91356 (March 18, 2021), 86 FR 15759 (March 24, 2021) (SR–EMERALD–2021–09). Although not clearly defined, the Exchange believes that MIAX Emerald's Liquidity Taker Event Report also provides information relating to cancel messages. Particularly, MIAX Emerald Liquidity Taker Event Report provides, among other things, data relating to the ''type of each response submitted by the Recipient Member.'' *See* MIAX Emerald Rule 5.31(a)(iii)(C). MIAX Emerald's technical specifications outline the various types of available liquidity messages including, Simple Mass Quote Cancel Request and Mass Liquidity Cancel Request See MIAX Express Interface for Quoting and Trading Options, MEI Interface Specification, Section 4.1 (Liquidity Messages), available at: MIAX_Express_Interface_MEI_v2.2a.pdf (miaxglobal.com).

[25] *See* MIAX Emerald Fee Schedule, Section 7, Reports.

able to receive both the Cancels Report and the Missed Liquidity Report for a monthly fee no greater than $3,500 a month—making the Cboe Timestamping Reports less than the MIAX Emerald report. With the Exchange's approach of (i) bifurcating the orders and cancels to two separate and distinct offerings (Missing Liquidity Report and Cancels Report) and (ii) allowing Members to select its subscribing Ports for the Missed Liquidity Report, it allows Members to further curb costs if they choose to subscribe to one or both of these reports. As such, the Exchange believes that the proposed fees for the both the Missed Liquidity Report and Cancels Report are fair and reasonable as they are set at a level either similar to or lower than other exchanges that offer similar reports.

The proposal would also not permit unfair discrimination as both the Cancels Report and Missed Liquidity Report will be available to all Members, who may opt to subscribe to one, both, or neither, and will help to protect a free and open market by continuing to provide additional non-core data (offered on an optional basis for a fee) to the marketplace and by providing investors with greater choices.[26] As such, the Exchange believes that the proposed fees are reasonable and set at a level to compete with other exchanges that may choose to offer similar reports. Moreover, if a market participant views another exchange's potential report as more attractive, then such market participant can merely choose not to purchase the Exchange's reports and instead purchase another exchange's similar data product(s), which may offer similar data points, albeit based on that other market's trading activity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the reports will contribute to robust competition among national securities exchanges. The Missed Liquidity Report and Late Cancels Report further enhances competition between exchanges by allowing the Exchange to expand its product offerings to include reports similar to reports that are currently offered by other exchanges.[27]

The Exchange also does not believe the proposed fees would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to introduce their own comparable reports with lower prices to better compete with the Exchange's offerings. The Exchange operates in a highly competitive environment, and its ability to price the reports is constrained by competition among exchanges who choose to adopt similar products. The Exchange must consider this in its pricing discipline in order to compete for subscribers of the Exchange's market data via the reports. For example, proposing fees that are excessively higher than fees for potentially similar data products would simply serve to reduce demand for the Exchange's reports, which as discussed, Members are under no obligation to utilize. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposed fees apply uniformly to any purchaser in that the Exchange does not differentiate between the different Members that may purchase the reports. While the Exchange does propose to implement tiered pricing for its Missed Liquidity Report (similar to the pricing used for NASDAQ Trader Insight offering),[28] the tiered pricing shall apply to all Members that wish to purchase the Missed Liquidity Report and this proposed pricing structure is reflective of the specific port usage patterns of the Recipient Member. The proposed fees are set at a modest level that would allow any interested Member to purchase such data based on their business needs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

[26] *See* Sec. Indus. Fin. Mkts. Ass'n (SIFMA), Initial Decision Release No. 1015, 2016 SEC LEXIS 2278 (ALJ June 1, 2016) (finding the existence of vigorous competition with respect to non-core market data). *See also* the decision of the United States Court of Appeals for the District of Columbia Circuit in NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010) (''NetCoalition I'') (upholding the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data).

[27] *See e.g.,* MIAX Emerald Rule 531.

[28] *See* Securities Exchange Act Release No. 79035 (October 11, 2016), 81 FR 70207 (October 4, 2016) (SR–NASDAQ–2016–124).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [29] and paragraph (f) of Rule 19b–4 [30] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–CboeEDGA–2024–046 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–CboeEDGA–2024–046. 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

[29] 15 U.S.C. 78s(b)(3)(A).

[30] 17 CFR 240.19b–4(f).

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–CboeEDGA–2024–046 and should be submitted on or before December 9, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–26748 Filed 11–15–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35381; 812–15645]

Destra Multi-Alternative Fund and Destra Capital Advisors LLC

November 12, 2024.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 19(b) of the Act and rule 19b–1 under the Act to permit registered closed-end investment companies to make periodic distributions of long-term capital gains more frequently than permitted by section 19(b) or rule 19b–1.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end management investment companies to pay as frequently as twelve times in any one taxable year in respect of its common stock and as often as specified by, or determined in accordance with the terms of, any preferred stock issued by the investment company subject to the terms and conditions stated in the application.

APPLICANTS: Destra Multi-Alternative Fund and Destra Capital Advisors LLC.

FILING DATES: The application was filed on October 18, 2024.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on December 9, 2024, and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Joshua B. Deringer, Esq., Faegre Drinker Biddle & Reath LLP, *joshua.deringer@faegredrinker.com,* with a copy to Robert A. Watson, Destra Capital Advisors LLC, *rob.watson@destracapital.com.*

FOR FURTHER INFORMATION CONTACT: Trace W. Rakestraw, Senior Special Counsel, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' application, dated October 18, 2024, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–26760 Filed 11–15–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101587; File No. SR–CboeBZX–2024–026]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Withdrawal of a Proposed Rule Change To Permit the Generic Listing and Trading of Multi-Class ETF Shares

November 12, 2024.

On April 15, 2024, Cboe BZX Exchange, Inc. (''BZX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend BZX Rule 14.11(l) to permit the generic listing and trading of Multi-Class ETF Shares. The proposed rule change was published for comment in the **Federal Register** on May 1, 2024.[3]

On May 30, 2024, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On July 12, 2024, the Commission instituted proceedings pursuant to Section 19(b)(2)(B) of the Act[6] to determine whether to disapprove the proposed rule change,[7] and on October 23, 2024, the Commission designated a longer period for Commission action on the proposed rule change.[8] On November 8, 2024, the Exchange withdrew the proposed rule change (SR–CboeBZX–2024–026).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–26753 Filed 11–15–24; 8:45 am]

BILLING CODE 8011–01–P

[31] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 100034 (April 25, 2024), 89 FR 35255.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 100248, 89 FR 48202 (June 5, 2024).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 100522, 89 FR 58463 (July 18, 2024).

[8] *See* Securities Exchange Act Release No. 101422, 89 FR 86393 (October 30, 2024).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101582; File No. SR–NYSE–2024–69]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Service for Virtual Control Circuits in the Connectivity Fee Schedule

November 12, 2024.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b 4 thereunder,[3] notice is hereby given that on October 30, 2024, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the service for virtual control circuits in the Connectivity Fee Schedule. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the existing service for virtual control circuits (''VCCs'') in the Connectivity Fee Schedule.

A VCC (previously called a ''peer to peer'' connection) is a unicast connection through which two participants can establish a connection between two points over dedicated bandwidth, to be used for any purpose. At the Mahwah, New Jersey data center (''MDC'') [4] the Exchange offers VCCs between two Users.[5] The recurring monthly fees are based upon the bandwidth requirements per VCC connection between two Users.[6]

However, not all VCCs are between two Users in the MDC. Although all VCCs have at least one end that is a User inside the MDC, the other party may be a non-User outside of the MDC at a remote access center, or the VCC can be between a User in the MDC and the same User outside of the MDC at a remote access center. A VCC that goes outside of the MDC herein is called a ''MDC VCC.''

Accordingly, the Exchange proposes to amend the Connectivity Fee Schedule to delete ''between two Users'' after ''Virtual Control Circuit.'' Fees for the service would not change and, as now, connectivity to a VCC would require the permission of the non-billed party before the Exchange would establish the connection.

As background, Users require wired circuits to connect into and out of the MDC. A User's equipment in the MDC's colocation hall connects to a circuit leading out of the MDC, which connects to the User's equipment in their back office or another data center.

Before 2013, all such circuits were provided by ICE's predecessor, NYSE Euronext. In response to customer demand for more connectivity options, in 2013, the MDC opened two ''meet-me-rooms'' to telecommunications service providers (''Telecoms''),[7] to enable Telecoms to offer circuits into the MDC in competition with NYSE Euronext. Currently, 16 Telecoms operate in the meet-me-rooms and provide circuit options to Users requiring connectivity into and out of the MDC.

In addition, FIDS provides two different types of circuits, Optic Low Latency and Optic Access. Optic Access,[8] which is more similar to the MDC VCC, is a circuit between the MDC and the FIDS access centers at five third-party owned data centers: (1) 111 Eighth Avenue, New York, NY; (2) 32 Avenue of the Americas, New York, NY; (3) 165 Halsey, Newark, NJ; (4) Secaucus, NJ; and (5) Carteret, NJ.

Ultimately, the MDC VCCs are similar to the Optic Access FIDS circuits in that, like Optic Access, the MDC VCCs run between the MDC and five FIDS access centers as well as, in the case of the MDC VCCs, additional U.S. FIDS access centers. They are smaller than the Optic Access FIDS circuits, however. While the Exchange has no visibility into how a User utilizes its connections, the Exchange believes that the Optic Access FIDS circuit is used for items that require more bandwidth, like market data, while the MDC VCCs are used for items that require smaller amounts of bandwidth, such as messaging, pre- and post-trade data, or clearing information, as determined by the User. Accordingly, if a User wants a smaller connection to a U.S. access center, or wants to reach an access center that Optic Access does not reach, the MDC VCCs are a viable option.

General

The proposed rule change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. As is currently the case, the Fee Schedule would be applied uniformly to all Users. FIDS does not expect that the proposed rule change will result in new Users.

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that customers would have in complying with the proposed change.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b 4.

[4] Through its Fixed Income and Data Services (''FIDS'') (previously ICE Data Services) business, Intercontinental Exchange, Inc. (''ICE'') operates the MDC. The Exchange and NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc. and NYSE National, Inc. (together, the ''Affiliate SROs'') are indirect subsidiaries of ICE.

[5] For purposes of the Exchange's colocation services, a ''User'' means any market participant that requests to receive colocation services directly from the Exchange. *See* Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR–NYSE–2015–40). As specified in the Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the Affiliate SROs. Each Affiliate SRO has submitted substantially the same proposed rule change to propose the change described herein. *See* SR–NYSEAMER–2024–64, SR–NYSEARCA–2024–91, SR–NYSECHX–2024–31, and SR–NYSENAT–2024–28.

[6] *See* Securities Exchange Act Release No. 80311 (March 24, 2017), 82 FR 15741 (March 30, 2017) (SR–NYSE–2016–45).

[7] Telecommunication service providers that choose to provide circuits at the MDC are referred to as ''Telecoms.'' Telecoms are licensed by the Federal Communications Commission (''FCC'') and are not required to be, or be affiliated with, a member of the Exchange or an Affiliate SRO.

[8] The ''Optic Low Latency'' circuits are lower latency. *See* Securities Exchange Act Release No. 99165 (December 13, 2023), 88 FR 87832 (December 19, 2023) (SR–NYSE–2023–48).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[11] because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable.

Although all VCCs have at least one end that is a User inside the MDC, the other party may be a non-User outside of the MDC at a remote access center, or the VCC can be between a User in the MDC and the same User outside of the MDC at a remote access center. Accordingly, the proposed change is reasonable because it would make the Connectivity Fee Schedule more accurately reflect the usage of VCCs. It would ensure that the description of VCCs was complete, accessible and transparent, and thereby provide market participants with greater clarity.

In considering the reasonableness of proposed services and fees, the Commission's market-based test considers ''whether the exchange was subject to significant competitive forces in setting the terms of its proposal . . . , including the level of any fees.'' [12] If the Exchange meets that burden, ''the Commission will find that its proposal is consistent with the Act unless 'there is a substantial countervailing basis to find that the terms' of the proposal violate the Act or the rules thereunder.'' [13] Here, the Exchange is subject to significant competitive forces in setting the terms on which it offers its proposal, in particular because substantially similar substitutes are available, and the third-party vendors are not at a competitive disadvantage created by the Exchange.

MDC VCCs would compete with circuits currently offered by the 16 third-party Telecoms that have installed their equipment in the MDC's two meet-me-rooms. The Telecom circuits are reasonable substitutes for the MDC VCCs. The Commission has recognized that products do not need to be identical to be considered substitutable; it is sufficient that they be substantially similar.[14] The MDC VCCs, the FIDS circuits, and the circuits provided by the Telecoms all perform the same function: connecting into and out of the MDC. The providers of the MDC VCCs, VCCs between Users, FIDS circuits and Telecom circuits design them to perform with particular combinations of latency, bandwidth, price, termination point, and other factors that they believe will attract Users, and Users choose from among these competing services on the basis of their business needs.

The MDC VCCs are sufficiently similar substitutes to the circuits offered by the 16 Telecoms even though the MDC VCCs all terminate in one of the U.S. remote access centers, while circuits from the 16 Telecoms could terminate in those locations or additional locations. While neither the Exchange nor FIDS knows the end point of any particular Telecom circuit, the Exchange understands that the Telecoms can offer circuits terminating in any location, including the remote access centers where the MDC VCCs would terminate. Moreover, the Telecoms may offer smaller circuits that are the same as or similar size to the MDC VCCs. Ultimately, Users can choose to configure their pathway leading out of colocation in the way that best suits their business needs, which may include connecting to the User's equipment at one of the U.S. remote access center locations that serve as termination points for MDC VCCs, or connecting first to one of those remote access centers with a FIDS- or Telecom-supplied circuit and then further connecting to another remote location using a telecommunication provider-supplied circuit.

Neither the MDC VCCs, Optic Access circuits, nor the Optic Low Latency circuits have a distance or latency advantage over the Telecoms' circuits within the MDC. FIDS has normalized (a) the distance between the meet-me-rooms and the colocation halls and (b) the distance between the rooms where the FIDS circuits and the MDC VCCs exit the MDC and the colocation halls. As a result, a User choosing whether to use the MDC VCCs or Telecom circuits does not face any difference in the distances or latency within the MDC.

The Exchange also believes that the MDC VCCs do not have any latency or bandwidth advantage over the Telecoms' circuits outside of the MDC. The Exchange believes that the Telecoms operating in the meet-me-rooms offer circuits with a variety of latency and bandwidth specifications, some of which may exceed the specifications of the proposed MDC VCCs.[15] The Exchange believes that Users consider these latency and bandwidth factors—as well as other factors, such as price and termination point—in determining which offerings will best serve their business needs.

In sum, the Exchange does not believe that there is anything about the MDC VCCs that would make the Telecoms' circuits inadequate substitutes.

Nor does the Exchange have a competitive advantage over any third-party competitors by virtue of the fact that it owns and operates the MDC's meet-me-rooms. In most cases, circuits coming out of the MDC are provided by the Telecoms.[16] Currently, 16 Telecoms operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set the

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(4).

[12] Securities Exchange Act Release No. 90209 (October 15, 2020), 85 FR 67044, 67049 (October 21, 2020) (Order Granting Accelerated Approval to Establish a Wireless Fee Schedule Setting Forth Available Wireless Bandwidth Connections and Wireless Market Data Connections) (SR–NYSE–2020–05, SR–NYSEAMER–2020–05, SR–NYSEArca–2020–08, SR–NYSECHX–2020–02, SR–NYSENAT–2020–03, SR–NYSE–2020–11, SR–NYSEAMER–2020–10, SR–NYSEArca–2020–15, SR–NYSECHX–2020–05, SR–NYSENAT–2020–08) (''Wireless Approval Order''), citing Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008) (''2008 ArcaBook Approval Order''). *See NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[13] Wireless Approval Order, *supra* note 12, at 67049, citing 2008 ArcaBook Approval Order, *supra* note 12, at 74781.

[14] *See* 2008 ArcaBook Approval Order, *supra* note 12, at 74789 and note 295 (recognizing that products need not be identical to be substitutable).

[15] The specifications of FIDS's competitors' circuits are not publicly known. The Exchange understands that FIDS has gleaned any information it has about its competitors through anecdotal communications, by observing customers' purchasing choices in the competitive market, and from its own experience as a purchaser of circuits from telecommunications providers to build FIDS's own networks.

[16] Note that in the case of wireless connectivity, a User in colocation still requires a fiber circuit to transport data. If a Telecom is used, the data is transmitted wirelessly to the relevant pole, and then from the pole to the meet-me-room using a fiber circuit.

fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level [17] so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.[18] Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

If the Exchange were to set the price of the MDC VCCs too high, Users would likely respond by choosing one of the many alternative options offered by the 16 Telecoms. Conversely, if the Exchange were to offer the MDC VCCs at prices aimed at undercutting comparable Telecom circuits, the Telecoms might reassess whether it makes financial sense for them to continue to participate in the MDC's meet-me-rooms. Their departure might negatively impact User participation in colocation and on the Exchange. As a result, the Exchange is not motivated to undercut the prices of Telecom circuits.

For these reasons, the proposed change is reasonable.

The Proposed Change Is Equitable

The Exchange believes that the proposed change provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers because it is not designed to permit unfair discrimination between market participants. The proposed change would apply equally to all types and sizes of market participants. It would clarify that all VCCs, irrespective of whether between two Users, a User and non-User outside of the VCC, or the same User, are subject to the same size and cost provisions. In addition, the Exchange believes that the proposal is equitable because only market participants that voluntarily select to receive MDC VCCs would be charged for them.

Moreover, the proposed change would ensure that the Connectivity Fee Schedule accurately reflects the usage of VCCs. It would ensure that the description of VCCs was complete, accessible and transparent, and provide market participants with greater clarity.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes its proposal is not unfairly discriminatory. The proposed change does not apply differently to distinct types or sizes of market participants. Rather, it applies to all market participants equally. The purchase of any proposed service is completely voluntary and the Fee Schedule will be applied uniformly to all market participants.

In addition, the Exchange believes that the proposal is equitable because only market participants that voluntarily select to receive MDC VCCs would be charged for them. The MDC VCCs are available to all market participants on an equal basis, and all market participants that voluntarily choose to purchase a MDC VCC are charged the same amount as all other market participants purchasing that type of MDC VCC.

For the reasons above, the proposed change does not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms, and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.[19] The proposed rule change is designed to ensure that the provision on VCCs clarifies that all VCCs, irrespective of whether between two Users, a User and non-User outside of the VCC, or the same User, are subject to the same size and cost provisions. It is not meant to address intramarket or intermarket competition.

The proposed change would enhance competition in the market for circuits transmitting data into and out of colocation at the MDC by adding VCCs, in addition to the 16 Telecoms that also sell circuits to Users and the FIDS circuits. The MDC VCCs do not have any latency, bandwidth, or other advantage over the Telecoms' circuits. The proposal would not burden competition in the sale of such circuits, but rather, enhance it by providing Users with an additional choice for their circuit needs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [20] and Rule 19b–4(f)(6) thereunder.[21] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[22]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may

[17] *See* Securities Exchange Act Release No. 97998 (July 26, 2023), 88 FR 50238 (August 1, 2023) (SR–NYSE–2023–27).

[18] *See id.* at 50241. Importantly, the Exchange is prevented from making any alteration to its meet-me-room services or fees without filing a proposal for such changes with the Commission.

[19] 15 U.S.C. 78f(b)(8).

[20] 15 U.S.C. 78s(b)(3)(A)(iii).

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [23] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSE–2024–69 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSE–2024–69. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSE–2024–69 and should be submitted on or before December 9, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–26749 Filed 11–15–24; 8:45 am]

BILLING CODE 8011–01–P

[23] 15 U.S.C. 78s(b)(2)(B).

[24] 17 CFR 200.30–3(a)(12).

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 3.

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.

Incident: Tropical Storm Helene.

DATES: Issued on November 13, 2024.

Incident Period: September 25, 2024, and continuing.

Physical Loan Application Deadline Date: January 7, 2025.

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 North Carolina, dated September 28, 2024, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to January 7, 2025.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Alejandro Contreras,

Acting Deputy Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2024–26810 Filed 11–15–24; 8:45 am]

BILLING CODE 8026–09–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 55 (Sub-No. 818X)]

CSX Transportation, Inc.—Abandonment Exemption—in Marion County, Ind.

CSX Transportation, Inc. (CSXT), has filed a verified notice of exemption [1] under 49 CFR part 1152 subpart F—Exempt Abandonments to abandon an approximately 1.8-mile rail line that runs between Lat/Long (39.74752, −86.18469) and Lat/Long (39.7294, −86.20626) on its Northeast Great Lakes Division, Indianapolis Terminal Subdivision, Craven Industrial track in Marion County, Ind. (the Line). The Line traverses U.S. Postal Service Zip Codes 46221 and 46251.

CSXT has certified that: (1) no local rail traffic has moved over the Line during the past two years; (2) any overhead traffic on the Line can be and has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government on behalf of such user) regarding cessation of service over the Line is pending with either the Surface Transportation Board (Board) or any U.S. District Court or has been decided in favor of a complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(b) and 1105.8(c) (notice of environmental and historic reports), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to government agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

[1] The verified notice was initially filed on October 28, 2024. On October 29, 2024, CSXT filed a supplement to correct a typo regarding the mileage in Exhibit A. Accordingly, the verified notice of exemption will be deemed to have been filed on October 29, 2024.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received,[2] this exemption will be effective on December 18, 2024, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues [3] must be filed by November 27, 2024. Formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2) and interim trail use/rail banking requests under 49 CFR 1152.29 must be filed by November 29, 2024.[4] Petitions to reopen and requests for public use conditions under 49 CFR 1152.28 must be filed by December 9, 2024.

All pleadings, referring to Docket No. AB 55 (Sub-No. 818X), 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, a 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.

If the verified notice contains false or misleading information, the exemption is void ab initio.

CSXT has filed a combined environmental and historic report that addresses the potential effects, if any, of the abandonment on the environment and historic resources. OEA will issue a Draft Environmental Assessment (Draft EA) by November 22, 2024. The Draft EA will be available to interested persons on the Board's website, by writing to OEA, or by calling OEA at (202) 245–0294. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245–0245. Comments on environmental or historic preservation matters must be filed within 15 days after the Draft EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by CSXT's filing of a notice of consummation by November 18, 2025, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available at *www.stb.gov.*

Decided: November 13, 2024.

By the Board, Valerie O. Quinn, Acting Director, Office of Proceedings.

Stefan Rice,

Clearance Clerk.

[FR Doc. 2024–26797 Filed 11–15–24; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Fiscal Year 2025 Competitive Funding Opportunity: Bus Safety and Accessibility Research Program

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of funding opportunity (NOFO).

SUMMARY: The Federal Transit Administration (FTA) announces the opportunity to submit applications for the Bus Safety and Accessibility Research Program for up to $10,000,000 under the Public Transportation Innovation Program in multiple fiscal years. The strategic goal for this program is to make existing and new buses safer for their operators and vulnerable road users, and safer and more accessible for their passengers. The Bus Safety and Accessibility Research Program seeks proposals to research standard bus designs, safety innovations and systems, and bus compartments that support these safety and accessibility goals. Additionally, this NOFO will require the development of detailed design specifications and production of a prototype that is available through a retrofit on existing buses and for installation in new buses.

DATES: Complete proposals must be submitted electronically through the *grants.gov* ''APPLY'' function by 11:59 p.m. eastern time on January 17, 2025.

Prospective applicants should initiate the process by registering on the *grants.gov* website promptly to ensure completion of the application process before the submission deadline. Instructions for applying can be found on FTA's website at *https://www.transit.dot.gov/*howtoapply and in the ''FIND'' module of *grants.gov*. The funding opportunity ID is FTA–2025–003–TRI. Mail and fax submissions will not be accepted.

FOR FURTHER INFORMATION CONTACT: Maria Roell, FTA Office of Research, Demonstration, and Innovation, phone (202) 366–9214, or email: *maria.roell@dot.gov.*

SUPPLEMENTARY INFORMATION:

SUMMARY OVERVIEW OF KEY INFORMATION: FTA BUS SAFETY AND ACCESSIBILITY RESEARCH COMPETITIVE FUNDING OPPORTUNITY

Issuing Agency	Federal Transit Administration, U.S. Department of Transportation.
Program Overview	To establish a Bus Safety and Accessibility Research Program under 49 U.S.C. 5312 to research standard designs and prototypes to make existing and new buses safer for their operators and vulnerable road users, and safer and more accessible for their passengers.
Eligible Applicants	Departments, agencies, and instrumentalities of the Government, including Federal laboratories; State and local governmental entities; providers of public transportation; private or non-profit organizations; institutions of higher education; and technical and community colleges.
Eligible Project	Engineering, design, and protype production of a bus or bus components that improve safety of operator and VRUs and increases accessibility for passengers.
Funding Amount	$10,000,000. Additional funds made available prior to project selection may be allocated to eligible projects.
Deadline	January 17, 2025 at 11:59 p.m. Eastern Time.
Cost share	The maximum Federal share of project costs under this program is 80 percent.

[2] Persons interested in submitting an OFA must first file a formal expression of intent to file an offer, indicating the type of financial assistance they wish to provide (*i.e.,* subsidy or purchase) and demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(2)(i).

[3] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[4] Filing fees for OFAs and trail use requests can be found at 49 CFR 1002.2(f)(25) and (27), respectively.

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A. Program Description

Under FTA's Public Transportation Innovation Program (49 U.S.C. 5312), FTA may make grants or enter into contracts or cooperative agreements for research, development, demonstration, and deployment projects and evaluation of research and technology of national significance to public transportation. This notice of funding opportunity (NOFO) (Federal Assistance Listing: 20.531) is issued under this authority.

The Bus Safety and Accessibility Research Program addresses critical safety issues and technology opportunities in public transit vehicle design. For this program accessibility refers to the ability of people with disabilities to: independently ascertain if an arriving bus is the one they intend to take; board; pay any fares or scan Paratransit ID cards; identify a seat or wheelchair accessible spot; secure any mobility equipment on the bus; receive any visual or audible stop announcements; identify the correct stop at which they intend to deboard; indicate by pressing buttons or communicating verbally with the driver that they would like to deboard at the next stop; and exit the vehicle without encountering any physical, communication, or attitudinal barriers.

Critical safety issues include rising operator assaults, continued accessibility issues for people with disabilities in and around transit buses, the need to increase operator visibility and minimize blind spots to ensure safety around a bus for passengers, pedestrians, bicyclists, and all who encounter a transit vehicle. It addresses FTA's strategic goal of enhancing the safety of transit fleets. According to safety performance data reported to the National Transit Database (NTD), major event injuries per 100 million vehicle revenue miles are rising with non-rail modes having 273.94 injuries in 2022 and 302.82 injuries in 2023. It is essential that action is taken to reverse this trend.

The strategic goal for this program is to make existing and new buses safer for their operators and vulnerable road users, and safer and more accessible for their passengers. The program objectives include research on bus designs, innovations, and technologies, as well as production of a prototype that is available through a retro fit on existing buses and for installation in new buses. The program's key focus areas are:

- *Driver Safety Systems*—Changes made to the transit vehicle and technology upgrades that protect the operator and enhance the safety of those outside of the vehicle including VRUs.
- *Passenger Safety Systems*—Changes made to the transit vehicle and technology upgrades that protect and increase accessibility of the passengers.

All applicants will also be expected to produce results that follow three major principles. These principles represent the values on which FTA will judge whether objectives have been met.

- Partnerships:
  - Recipients will collaborate across multiple industry sectors including all or some of these priority groups:
    - Transit Vehicle Manufacturers (TVMs)
    - Transit Agencies
    - Transit Labor Unions
    - Disability Organizations
    - Transit riders
    - Domestic and International Research Groups
    - Component Manufacturers
- Widely Implementable:
  - Proposals are encouraged to be innovative but must consider risks to implementation and interoperability to ensure nationwide relevancy and adoption. Proposals should be able to be adopted quickly, on a wide scale.
  - Deliverables should be applicable to current and new 35- and 40-ft or articulated bus models that have passed Altoona testing, comply with all other applicable Federal requirements, and are manufactured by companies eligible to compete for FTA-funded contracts.
- *Economic Vitality*
  - Recipients will support the U.S. industrial base by complying with Buy America. Recognizing Executive Order 14005, ''Ensuring the Future Is Made in All of America by All of America's Workers'' (86 FR 7475); proposed projects must support economic vitality at the national and regional level, including advancing domestic industry and promoting domestic development of intellectual property.

Applicants must note how they will incorporate the key focus areas, meet program objectives, and follow program principles. Applications should include performance standards and measures for ensuring the success of each key focus area with a specific, measurable, attainable, relevant, and time-bound task plan. These measures should show minimum performance specifications and a quality assurance surveillance plan to ensure quality. Applicants must show a detailed understanding of the needs and opportunities of this program.

Building on Previous Research

This NOFO seeks innovations that will lead to a safer more accessible bus, as well as a design and production of a prototype that is available through a retrofit on existing buses and for installation in new buses. It builds upon previous research by FTA and the Transit Cooperative Research Program, especially regarding increasing protection for bus operators through secure bus compartments.

The Bus Operator Compartment Redesign Program (BCP) was awarded in 2020 to improve operator and public safety. Key findings included issues with current bus operator compartment designs, such as ineffective barriers, large blind spots, and poor ergonomics for operators. The installation of barriers led to an increased feeling of safety for some operators. FTA also held a listening session in 2023 to receive stakeholder input on bus design including accessibility, safety, and emerging bus technologies. Major themes of the feedback included bus operator health and safety, road safety, accessibility, and passenger compartment enhancements. Resources, including available reports and listening session documentation, are available on the Bus Safety and Accessibility Research Program website *(https://www.transit.dot.gov/research-innovation/bus-future-redesign-transit-bus-operator-compartment-improve-safety-operational).*

Additionally, the Transportation Cooperative Research Program (TCRP) finalized a bus compartment study titled ''Bus Operator Barrier Design: Guidelines and Considerations''. The report on that study, TCRP Report 249, is available for download at the following link: *https://nap.nationalacademies.org/catalog/27877/bus-operator-barrier-design-guidelines-and-considerations.*

B. Federal Award Information

This notice makes available up to $10,000,000 in Public Transportation Innovation Program (49 U.S.C. 5312) funds for a single cooperative agreement. Only proposals from eligible recipients for eligible activities will be considered for funding.

FTA seeks a project that can begin implementation within two months of award of the cooperative agreement. The maximum period of performance allowed for the work covered by the

award should not exceed two years from the date of award. FTA may, at its discretion, provide additional funding under this notice from FTA's Public Transportation Innovation (49 U.S.C. 5312), subject to the availability of funds.

Pre-award authority is subject to FTA approval and is only available for costs incurred after the announcement of project selection on FTA's website.

The project selected under this competition is for research and development and, as such, FTA Research Circular 6100.1E (available at *https://www.fta.dot.gov/regulations-and-guidance/fta-circulars/research-technical-assistance-and-training-program*) guidance will apply in administering the program.

An applicant whose proposal is selected for funding will enter into a cooperative agreement with FTA, to be administered according to Circular 6100.1E. FTA will have substantial involvement in the administration of the cooperative agreement. FTA's role in the cooperative agreement will include meeting at least quarterly with the recipient and key stakeholders engaged in the program; assistance with outreach on achievement of successful results; review and approval of proposed designs; and participation in key decisions, including if there is a need to redirect or reprioritize project activities, goals, and deliverables.

C. Eligibility Information

Eligible Applicants

Eligible applicants under this notice are:

- Departments, agencies, and instrumentalities of the Federal Government, including Federal laboratories;
- State and local governmental entities, including multi-jurisdictional partnerships, and organizations such as Metropolitan Planning Organizations;
- Providers of public transportation;
- Private for-profit or not-for-profit organizations incorporated in a jurisdiction of the United States; and
- Institutions of higher education and technical and community colleges.

On the application form, eligible applicants are strongly encouraged to identify one or more project partners with a substantial interest and involvement in the project activities or objectives to participate in the implementation of the project, including partners from Minority Serving Institutions.

An application may be submitted in partnership with other eligible entities, including eligible subrecipients, bus manufacturers, or component manufacturers that intend to participate in the implementation of the project. If an application with such a partnership is selected for funding, the competitive selection process will be deemed to satisfy the requirement for a competitive procurement under 49 U.S.C. 5325(a) for the named entities. Applicants are advised that any changes to the proposed partners after the award will require FTA written approval and must be consistent with the scope of the approved project. Post-award changes to vendors will be subject to ordinary procurement standards.

The applicant must be able to carry out the proposed agreement and procurements, if needed, with project partners in compliance with all applicable Federal, State, and local laws.

To be considered eligible, applicants must be able to demonstrate the requisite legal, financial, and technical capabilities to receive and administer Federal funds under this program.

Cost Sharing or Matching

The maximum Federal share of project costs under this program is 80 percent. Applicants may seek a lower Federal contribution. The applicant must provide the non-Federal share of the net project cost in cash or in-kind and must document in its application the source of the non-Federal match. Eligible sources of non-Federal match are detailed in FTA Circular 6100.1E.

Eligible Projects

This notice solicits applications to assess the need and develop public transportation vehicle designs as well as appropriate best practices, guidance, and tools to produce those designs to provide better public transportation services. Proposed tasks and activities must adhere to Federal regulations regarding eligible costs.

FTA has identified a list of elements for projects divided into ''required'' and ''desired.'' Required elements are the ones that will be considered for the evaluation criteria. Applicants must demonstrate knowledge or experience in addressing these elements. Additional knowledge or experience with desired elements will yield additional consideration. Applicants are encouraged to add other elements that will further the program goal—especially elements that can be adopted quickly on a wide scale, to be considered in the evaluation. The elements are noted below.

Required:

- All projects must ensure highly reliable and accurate data especially where it can impact the safety of the operator, passengers, or VRU including, but not limited to sensors, vehicle location, battery condition, vehicle maintenance, or other advanced diagnostic indicators.
- Driver Safety Systems:
  - Standardization of the operator compartment: ergonomics of chair/seat, operator barrier. The recipient under this program must produce a functional prototype of the operator compartment improvements.
  - Standardization of design and component placement to eliminate blind spots: A-pillar, mirrors, cameras, fareboxes, etc. Designs should be prescriptive about safety requirements (*e.g.,* mirror placement).
  - VRU safety sensors: Focus on reliable and simplified user interface for the bus operator.
- Passenger Safety Systems:
  - Accessible passenger compartment design: Entry and egress for riders with mobility devices and strollers, consideration of minimizing fare collection footprint.
  - Constraint systems: Ability for riders using a wheelchair to be more safely, efficiently, and, if possible, independently secured in the vehicle.
  - Standardization of emergency call buttons.

Desired:

- Advanced Driver Assistance Systems (ADAS):
  - Lane departure
  - Collision avoidance
  - Pedestrian alerts

D. Application and Submission Information

Address To Request Application

A complete proposal submission consists of four forms and their supporting attachments. The Forms are: (1) Standard Form-424 ''Application for Federal Assistance''; (2) SF–424A ''Budget Information for Non-Construction Programs''; (3) SF–424B ''Assurances for Non-Construction Programs''; and (4) the supplemental form for the Bus Safety and Accessibility Research NOFO. Forms are downloadable from grants.gov or the FTA website at *https://www.transit.dot.gov/notices-funding/fiscal-year-2025-bus-safety-and-accessibility-research-notice-funding.*

All applications must be submitted electronically through grants.gov by the deadline below. FTA will not accept applications by mail, email, or any other delivery method.

Content and Form of Application Submission

a. Proposal Submission

i. The SF–424 provides basic information about the applicant and the project, including details such as the applicant's name, unique entity identifier (UEI), key contact information, and a summary of the project. The SF–424A form is used to present a detailed budget for the project, ensuring that all financial aspects are accounted for and justified. The SF–424B form outlines the assurance that the applicant agrees to comply with the terms and conditions set forth by the Federal Government.

ii. For the budget, applicants must provide a summary and a high-level overview of estimated activity costs, organized by major cost elements. The budget should clearly differentiate between the Federal funding share and non-Federal share funds, including the value of any in-kind contributions. The budget form must not include previously incurred expenses or costs incurred before the award time. All budget information must be presented using the SF–424A form.

iii. In addition to these standard forms, the proposal must include a supplemental form, a project narrative, and a summary budget narrative. The supplemental form and project overview should be prepared in Microsoft Word, PDF, or another compatible file format and must address all required elements outlined in the notice of funding opportunity (NOFO).

The narrative proposal should be in the format outlined in the ''Proposal Preparation and Content'' section below. A narrative proposal submission may contain additional supporting documentation as attachments. Once completed, the narrative proposal and any supporting documents must be placed in the ''Attachments'' section of the SF–424. The applicant must attach the narrative proposal file to its submission in grants.gov to successfully complete the application process. The applicant must respond to all sections of the SF–424 Application for Federal Assistance and the requirements of this Notice. The information in the narrative proposal will be used to determine applicant and project eligibility for the program and to evaluate the proposal against the selection criteria described in this notice. The applicant should carefully review the criteria noted in Section E and ensure its proposal addresses the factors listed.

Failure to submit the information as requested can delay review or disqualify the application.

b. Proposal Preparation and Content

i. Consolidated Budget Form: The Consolidated Budget Form must align with the dollar amount specified in the SF–424 and meet the eligible use requirements outlined in the notice of funding opportunity (NOFO). It includes a budget narrative and a detailed budget spreadsheet, with costs consistent with project scope and allowable under relevant regulations. If indirect costs are included, documentation such as a negotiated indirect cost rate agreement is required.

ii. Allowable costs are determined in accordance with the cost principles identified in 2 CFR part 200, including Subpart E of such regulations, and in 48 CFR part 31 for commercial organizations. The detailed budget spreadsheet must reflect the cost categories that appear on the SF–424A and include itemized calculations for each cost placed under those categories. If indirect costs are included in the proposed budget, the applicant must provide a copy of its approved negotiated indirect cost rate agreement if this rate was negotiated with a cognizant Federal agency or otherwise document those indirect costs consistent with 2 CFR 200.414.

iii. Required Standard Federal Financial Assistance Forms and Documentation: The applicant must submit the SF–424, SF–424A, and SF–424B forms, along with any Negotiated Indirect Cost Rate Agreement and Data Management Plan.

iv. The SF–424 and supplemental form prompt applicants for essential information such as applicant details, project description, and budget breakdown. This includes a detailed project budget specifying Federal and local shares, funding sources, and matching funds. Additionally, it covers descriptions of project benefits, implementation strategy, scalability, and a detailed project timeline.

v. The project overview, submitted as a one-page document, should include a header with project title and lead applicant, along with brief description of innovation, benefits, team and partners, and approach. The format aligns with templates available on grants.gov and the FTA web page.

vi. Budget Narrative: The budget narrative provides detailed explanations of proposed costs, aligning with the detailed budget spreadsheet and only including allowable expenses within the project scope. It should describe each cost item and its basis, including the Federal share, non-Federal share, and any in-kind contributions. Any indirect costs must be accompanied by relevant documentation. The narrative also explains leveraged resources and ensures consistency with SF–424 and SF–424A forms.

vii. Grant Funds, Sources and Uses of Project Funds- Project budgets should show how different funding sources will share in each activity and present the data in dollars and percentages. The budget should identify other Federal funds the applicant is applying for, has been awarded, or intends to use. Funding sources should be grouped into three categories: non-Federal, current application, and other Federal with specific amounts for each funding source.

The applicant must submit one electronic file for Proposals in a Microsoft Word, PDF, or compatible file format, double-spaced using Times New Roman, 12-point font. The proposal must contain the following components and adhere to the specified maximum lengths:

(1) *Cover Sheet* (not to exceed 1 page): The cover sheet must include the entity submitting the proposal, principal's name, title, and contact information (*e.g.,* address, office and mobile phone, and email). The cover sheet must also include name and contact information for the entity's point of contact for all cooperative agreement administrative activities (if different from principal).

(2) *Abstract* (not to exceed 1 page): The Abstract must include background, purpose, methodology, intended outputs, outcomes, impacts, and plan for accomplishing the goals and objectives as outlined in this Notice.

(3) *Table of Contents* (not to exceed 1 page): The Table of Contents must list each section of the proposal (including Appendices) by title and page number.

(4) *Project Budget* (not to exceed 5 pages): Project budgets should show how different funding sources will share in each activity and present those data in dollars and percentages. The budget should identify other Federal funds the applicant is applying for or has been awarded, if any, that the applicant intends to use. The proposed project budget must account for multiple years and outline the total cost of all services and products, including salaries and fringe benefits, supplies, travel, equipment, and proposed contractual arrangements (*e.g.,* subcontracts, consultant services) and how these estimated costs are connected to the project scope.

(5) *Project Work Plan* (not to exceed 10 pages total): The proposed project work plan must include the following information:

a. *Methodology*—Provide a methodology for addressing the goals

described above and under Section A of this Notice.

b. *Statement of Work*—Provide proposed work tasks for the project and how the goals will be accomplished with a detailed set of objectives and activities. Include the tasks for proposed activities, resources, milestones, with a timeline that also notes critical path milestones. Note in the proposal how risk management related to barriers to deployment will be addressed. Please also note a sustainability strategy for how this work will be maintained in the future.

c. *Staffing Plan*—Describe the approach for managing the project team, including the distribution of responsibilities among project partners, and what activities each project team member will perform.

d. *Coordination with FTA*—Identify the plan for coordinating the project team's activities and deliverables with the FTA's Research office including suggesting a methodology for a regular review of research results and a process to select research ready for deployment.

e. *Research and Data Collection*—Identify activities and the plan for electronic collection, maintenance, storage, and dissemination of data for use by the project team, stakeholders, FTA, and other customers.

f. *Communication Plan*—Provide a plan for communication of project results. The plan should identify innovative communication strategies including, but not limited to, the following: webinars, in-person presentations at industry events, social media (*e.g.,* Facebook, Twitter, YouTube), text alerts, email, website publication, and toll-free telephone numbers.

g. *Performance Measures*—Identify multiple performance measures that FTA should use to assess the Program's overall effectiveness.

h. *Deliverables*—Provide a list of proposed deliverables (*e.g.,* guides, plans, reports, services, prototypes, etc.). Include quarterly reports, financial forms, guidance documents, and final reports to be submitted to FTA.

(6) *Staff Qualifications* (not to exceed 5 pages total):

a. *Organizational Capacity*—Provide a narrative that briefly describes the structure of the applicant, including its history and experience in R&D, prototype construction, technology transfer, and the national deployment of research findings, preferably in the transportation sector. Include a narrative of the proposer's understanding of the activities in this solicitation and its responsibility for the data collection and results deployment called for in this Notice. Include the proposer's organization chart.

b. *Project Team Structure*—Provide a narrative that briefly describes the structure and makeup of the project team. Provide resumes or biographies of key staff to highlight the relevant skills and experience of the proposed team. The applicant is encouraged to identify in its proposal one or more project partners with a substantial interest and involvement in the project activities or objectives.

Applications submitted in response to this NOFO become the records of FTA and may be subject to Freedom of Information Act requests. Please segregate and clearly mark any portions of the application containing confidential or privileged trade secrets or commercial or financial information. FTA may share application information within the Department of Transportation or with other Federal agencies if FTA determines that sharing is relevant to the respective program's objectives.

Unique Entity Identifier and System for Award Management (SAM)

Each applicant is required to: (1) be registered in *SAM.GOV* before submitting an application; (2) provide a valid unique entity identifier in its application; and (3) maintain an active *SAM.GOV* registration with current information at all times during which the applicant has an active Federal award or an application or plan under consideration by FTA. FTA may not make an award until the applicant has complied with all applicable unique entity identifier and *SAM.GOV* requirements. If an applicant has not fully complied with the requirements by the time FTA is ready to make an award, FTA may determine that the applicant is not qualified to receive an award and use that determination as a basis for making a Federal award to another applicant. These requirements do not apply if the applicant has an exception approved by FTA or the U.S. Office of Management and Budget under 2 CFR 25.110(c) or (d). SAM registration takes approximately 3–5 business days, but FTA recommends allowing ample time, up to several weeks, for completion of all steps. For additional information on obtaining a unique entity identifier, please visit *https://www.sam.gov.*

Submission Dates and Times

Project proposals must be submitted electronically through *grants.gov* by 11:59 p.m. Eastern time on January 17, 2025. *Grants.Gov* attaches a time stamp to each application at the time of submission. Mail and fax submissions will not be accepted.

FTA urges applicants to submit applications at least 72 hours prior to the due date to allow time to correct any problems that may have caused either grants.gov or FTA systems to reject the submission. *Grants.gov* attaches a time stamp to each application at the time of submission. Proposals submitted after the deadline will be considered only if lateness was due to extraordinary circumstances not under the applicant's control. *Grants.gov* scheduled maintenance and outage times are announced in advance on the grants.gov website. Deadlines will not be extended due to scheduled website maintenance.

Within 48 hours after submitting an electronic application, the applicant should receive an email message from *grants.gov* with confirmation of successful transmission to *grants.gov*. If a notice of failed validation or incomplete materials is received, the applicant must address the reason for the failed validation, as described in the email notice, and resubmit before the submission deadline. If making a resubmission for any reason, include all original attachments regardless of which attachments were updated, and check the box on the supplemental form indicating this is a resubmission.

Applicants are encouraged to begin the registration process on the grants.gov site well before the submission deadline. Registration is a multi-step process, which may take several weeks or months to complete before an application can be submitted. Registered applicants may still be required to take steps to keep their registration up to date before submissions can be made successfully: (1) registration in *sam.gov* is renewed annually, and (2) persons making submissions on behalf of the Authorized Organization Representative (AOR) must be authorized in grants.gov by the AOR to submit.

Funding Restrictions

Funds available under this NOFO cannot be used to reimburse applicants for otherwise eligible expenses incurred prior to FTA issuing pre-award authority for the selected applicant.

Refer to section C.3., Eligible Projects, for information on activities that are allowable. Allowable direct and indirect expenses must be consistent with the Governmentwide Uniform Administrative Requirements and Cost Principles (2 CFR part 200) and the current version of FTA Circular 5010.

E. Application Review Information

Criteria

Applications will be evaluated on the responses provided in the supplemental form and the attached program summary and statement of objectives. Additional information may be provided to support the responses. All additional documentation, including the file names, must be directly referenced on the supplemental form. The applicant must complete the supplemental form and the program attachments. FTA will evaluate proposals based on the criteria described in this notice.

a. Demonstration of Transit Vehicle Design Experience

The application should provide evidence of the applicant's experience developing transit vehicle designs or manufacturing transit vehicles or their component parts. The proposal should detail the applicant's knowledge of general transit vehicle components, subsystems and systems, functionalities, standards, general experience, and knowledge of transit vehicle design development and testing, including awareness of potential barriers or challenges to production.

b. Demonstration of Understanding in Emerging Transit Needs and Demands

The application should clearly demonstrate a thorough understanding of existing conditions in a wide range of topics and areas in transit. This includes the required and desired design elements listed in the Section A. Program Description. It may also include understanding of industry safety and the safe systems approach, mobility, and operation needs; accessibility and usability of systems to comply with the Americans with Disabilities Act and Title VI of the Civil Rights Act; process improvement in training, maintenance, and procurement; or work experience or familiarity with new and emerging safety technologies.

c. Key Personnel Experience and Organizational Capacity

The application should note the individuals who will be involved in the project, specifically identifying its proposed key personnel. The application should include details of relevant experience of leadership in managing multi-stakeholder projects and the technical expertise of the project team. The application should explain how the applicant will ensure the key personnel will have enough time and expertise to carry out project objectives to assess data, coordinate with stakeholders, develop designs, and oversee prototype productions in the program duration.

d. Program Implementation Strategy

The application will be evaluated on an overall program implementation strategy, including proposed workplan tasks, schedule, and interim deliverables. In assessing whether the proposed implementation plans are reasonable and complete, FTA will review the proposed program work plan, including all necessary milestones and the overall program timeline. FTA will consider the risks to program implementation and the extent to which the program implementation strategy addresses these risks. Potential risks include the capacity to implement the program within two years after receiving an award and the ability to complete the program. FTA will also consider if the program's implementation addresses how the project will support USDOT's data collection, sharing policies, and meeting the data management plan requirement (see below).

e. Technical, Legal, and Financial Capacity

The applicant must demonstrate the financial and organizational capacity and managerial experience to oversee and implement this program successfully. FTA may review relevant oversight assessments and records to determine whether any outstanding legal, technical, or financial issues with the applicant would affect the outcome of the proposed program. An applicant with outstanding legal, technical, or financial compliance issues from an FTA compliance review or Federal Transit Administration grant-related Single Audit finding must explain how corrective actions will mitigate negative impacts on the proposed program. For applications that include named project partners, FTA will also consider the proposed partners' technical, legal, and financial capacity.

f. Planning and Partnerships

The applicant must identify all program partners and their specific roles. FTA will evaluate the extent to which the program contains strong, cohesive partnerships and the collaboration necessary to implement the proposed program successfully. The application should describe how program partners will work collaboratively and should show evidence of strong commitment and cooperation among program partners through letters of support, memorandums of understanding, or agreements among the partners. For a proposed program that will require formal coordination, approvals, or permits from government agencies or program partners, the applicant must demonstrate coordination with these organizations and their support for the program.

g. Financial Commitment

The applicant must identify the source of the non-Federal cost share and describe whether such funds are currently available for the program or will need to be secured if the program is selected for funding. FTA will consider the availability of the non-Federal cost share as evidence of the applicant's financial commitment to the program. Additional consideration may be given to those programs with a higher non-Federal share of costs and for which non-Federal funds have already been made available or reserved. The applicant should submit evidence of the availability of funds for the program, for example, by including a board resolution, a letter of support from the State, a budget document highlighting the line item or section committing funds to the proposed program, or other documentation of the source of non-Federal funds.

Review and Selection Process

An FTA technical evaluation committee will evaluate proposals based on the published evaluation criteria and rating guidance specific to this NOFO. Members of the technical evaluation committee may request additional information from applicants if necessary. Based on the technical evaluation committee review, the FTA Administrator will determine the final selection for program funding.

Performance and Integrity

Prior to making an award, FTA is required to review and consider any information about the applicant that is in the Federal Awardee Performance and Integrity Information System (FAPIIS) accessible through *SAM.GOV.* An applicant may review and comment on any information about itself that a Federal awarding agency previously entered. FTA will consider any comments by the applicant, in addition to the other information in the designated integrity and performance system, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in the Office of Management and Budget's Uniform Requirements for Federal Awards (2 CFR 200.206).

F. Federal Award Administration Information

Federal Award Notices

FTA will notify the successful applicant and may announce the selection on its website, *https://www.transit.dot.gov.* Following notification, the successful applicant will be required to submit an application through the FTA Transit Award Management System (TrAMS).

Administrative and National Policy Requirements

a. Pre-Award Authority

At the time the program selection is announced, FTA may extend pre-award authority for the selected program. There is no blanket pre-award authority before the announcement. FTA will issue specific guidance to the recipient regarding pre-award authority at the time of selection. FTA does not consider requests for pre-award authority for these competitive funds until after a program recipient is selected, and additional Federal requirements must be met before costs are incurred. For more information about FTA's policy on pre-award authority, please see the most recent Apportionments, Allocations, and Program Information Notice at *https://www.transit.dot.gov.*

b. Cooperative Agreement Requirements

If selected, the recipient will apply for a cooperative agreement through FTA's Transit Award Management System (TrAMS). The successful applicant must be prepared to submit a final statement of work and complete the application in TrAMS within 60 days of notification of selection. The recipient must follow the requirements of FTA Circular 6100.1E. Technical assistance regarding these requirements is available from FTA.

c. Data Management Plan

FTA seeks to improve public transportation for America's communities by sharing digital data or source code collected or developed through its research with the public. This allows research organizations, public transportation agencies, State DOTs, and other stakeholders to learn from and expand upon the insights developed from FTA-funded research.

An award made pursuant to this Notice will be subject to the latest version of FTA's Master Agreement (available at *https://www.transit.dot.gov/funding/granteeresources/sample-fta-agreements/fta-grant-agreements*), including Section 17 Patent Rights and Section 18 Rights in Data and Copyrights. All work conducted under this award must follow the Department data policies outlined in the USDOT Public Access Plan at: *https://ntl.bts.gov/public-access/*how-comply. The recipient is required to include these obligations in any sub-awards or other related funding agreements.

Public Data Access requirements include developing a Data Management Plan (DMP) and submitting the DMP for FTA review. A DMP is a document that describes how the recipient plans to handle digital datasets, software, or code generated over the course of a research project pursuant to Federal and Departmental requirements. A DMP must be provided as a condition of receiving FTA funds under the Section 5312 Research Program and should adequately identify: (1) The data to be collected; (2) how the data will further the goals of this effort; (3) how the data will be made accessible; and (4) how the data will be stored. DMPs can be updated over time if the scope of the project or the type of data that will be collected changes. FTA staff is available to assist recipients with complying with public data access requirements.

FTA expects recipients to remove confidential business information (CBI) and Personally Identifiable Information (PII) before providing public access to project data. Recipients must ensure the appropriate data are accessible to FTA or the public for a minimum of five years after the award's performance period expires.

Recipients must make available to the Department copies of all work developed in performance of a project funded under this notice, including but not limited to software and data. Data rights must be in accordance with 2 CFR 200.315, Intangible Property, and the latest version of FTA's Master Agreement, available at *https://www.transit.dot.gov/sites/fta.dot.gov/files/2024-05/FTA-Master-Agreement-v31-05-02-2024.pdf.*

d. Buy America and Domestic Preferences for Infrastructure Projects

As expressed in Executive Order 14005, Ensuring the Future Is Made in All of America by All of America's Workers (86 FR 7475), the Executive Branch should maximize, consistent with law, the use of goods, products, and materials produced in, and services offered in, the United States. Therefore, all procurements must comply with FTA's Buy America requirements (49 U.S.C. 5323(j) and 49 CFR part 661), which require that all iron, steel, and manufactured products, including rolling stock, be produced in the United States. In addition, any award must comply with the Build America, Buy America Act (BABA) (Pub. L. 117–58, sections 70901–70927). BABA provides that none of the funds provided under an award made pursuant to this notice may be used for a project unless all iron, steel, manufactured products, and construction materials are produced in the United States. FTA's Buy America requirements are consistent with BABA requirements for iron, steel, and manufactured products.

Any proposal that will require a waiver of any domestic preference standard must identify the items for which a waiver will be sought in the application. Applicants should not proceed with the expectation that waivers will be granted.

e. Americans With Disabilities Act

All FTA recipients must comply with Department of Transportation regulations implementing the transportation provisions of the Americans with Disabilities Act of 1990 (ADA), codified at 49 CFR parts 27, 37, 38, and 39. Compliance is required regardless of the receipt of Federal funding, but is also a condition of eligibility for Federal funding. All vehicles and vehicle components must comply with the standards for accessibility for buses and vans found in 49 CFR part 38. Additionally, recipients for this program should account for the updated standards issued by the U.S. Access Board at 36 CFR part 1192.

Of particular note is the requirement under 49 CFR 37.165(f), which requires personnel to assist individuals with disabilities with the use of securement systems, ramps and lifts, and requires personnel to leave their seats to provide such assistance if necessary. It will therefore be important to ensure that any bus driver compartments not only do not interfere with the boarding and disembarking of persons with disabilities, including wheelchair users, but that they not do so when in the open or closed position. Designs for autonomous vehicles should presume the presence of on-board personnel.

f. Disadvantaged Business Enterprise

FTA requires that its recipients receiving planning, capital, or operating assistance that will award prime contracts exceeding $670,000 in FTA funds in a Federal fiscal year comply with the U.S. Department of Transportation's Disadvantaged Business Enterprise (DBE) program regulations (49 CFR part 26). If an applicant also receives FTA planning, capital, or operating assistance, it should expect to include any funds awarded, excluding those to be used for vehicle procurements, in setting its

overall DBE goal. Note, however, that projects, including vehicle procurements, remain subject to the DBE program regulations.

f. Rehabilitation Act

The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) is charged with enforcing Executive Order 11246, section 503 of the Rehabilitation Act of 1973, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974. OFCCP has a Mega Construction Project Program through which it engages with project sponsors as early as the design phase to help promote compliance with non-discrimination and affirmative action obligations. OFCCP will identify projects that receive an award under this notice and are required to participate in OFCCP's Mega Construction Project Program from a wide range of Federally assisted projects over which OFCCP has jurisdiction and that have a project cost above $35 million. Under that partnership, OFCCP will ask these project sponsors to make clear to prime contractors in the pre-bid phase that project sponsor's award terms will require their participation in the Mega Construction Project Program. Additional information on how OFCCP makes their selections for participation in the Mega Construction Project Program is outlined under ''Scheduling'' on the Department of Labor website: *https://www.dol.gov/agencies/ofccp/faqs/construction-compliance.*

g. Automated Vehicle Safety

If an applicant is proposing to implement automated vehicles or other innovative motor vehicle technology, the application should demonstrate that all vehicles will comply with applicable safety requirements, including those administered by the National Highway Traffic Safety Administration (NHTSA) and the Federal Motor Carrier Safety Administration (FMCSA). Specifically, the application should show that vehicles acquired for the proposed project will comply with applicable Federal Motor Vehicle Safety Standards (FMVSS) and Federal Motor Carrier Safety Regulations (FMCSR). If the vehicles may not comply, the application should either (1) show that the vehicles and their proposed operations are within the scope of an exemption or waiver that has already been granted by NHTSA, FMCSA, or both agencies or (2) directly address whether the project will require exemptions or waivers from the FMVSS, FMCSR, or any other regulation and, if the project will require exemptions or waivers, present a plan for obtaining them. If applicable, FTA will also consider the extent to which the application presents a plan to address workforce impacts of automated vehicles or other innovative motor vehicle technology.

h. Standard Assurances

If an applicant receives an award, the applicant must ensure that it will comply with all applicable Federal statutes, regulations, executive orders, directives, FTA circulars, and other Federal administrative requirements in carrying out any project supported by the FTA award. The applicant acknowledges that it will be under a continuing obligation to comply with the terms and conditions of the agreement issued for its project with FTA. The applicant understands that Federal laws, regulations, policies, and administrative practices might be modified from time to time and may affect the implementation of the project. The most recent Federal requirements will apply to the project unless FTA issues a written determination otherwise. The applicant must submit the most recent FTA Certifications and Assurances before receiving an award if it does not have current certifications on file.

i. External Communications

The recipient must communicate with the FTA Program Manager prior to engaging in any external communications regarding the program. This includes any work developing news or magazine stories with media organizations, including print, video, online, or otherwise. Additionally, the FTA program manager must be notified and approve if project information, including results and metrics, will be shared during a webinar or other presentation open to the public by the recipient or another organization. The recipient should consult with the FTA Program Manager at the beginning of the agreement to discuss and plan any external communications about the program.

j. Intellectual Property Provisions

Any intellectual property developed as a part of this solicitation will be subject to provisions of 2 CFR 200.315 Intangible Property and FTA's Master Agreement related to patent rights and rights in data and copyrights and may be disseminated to the public for its use.

k. FTA Funds Reimbursement

If selected, the recipient must disburse funds from its cooperative agreement using DOT's Delphi system. Drawdowns using ECHO are prohibited. FTA staff are available to assist recipient with gaining access and using the Delphi system.

l. Termination for Failure To Make Progress on an Award

After providing written notice to the recipient of a project selected for funding, FTA may withdraw its support for the selected project (if a cooperative agreement has not yet been awarded) or suspend or terminate all or any part of the Federal assistance for the award if the recipient has failed to make reasonable progress implementing the project. FTA may withdraw its support for a project or terminate an award agreement if, among other reasons:

1. A recipient has not completed its application for funding in TrAMS within 60 days of the date FTA announces project selection.

2. A recipient has not begun its demonstration project within one year after funding was awarded in TrAMS.

3. A recipient has not delivered a project evaluation to FTA within one year of completing its demonstration project.

4. The proposed activities are no longer needed, or the recipient has violated the terms of FTA's Annual Agreement.

m. Performance and Program Evaluation

As a condition of grant award, grant recipients may be required to participate in an evaluation undertaken by DOT or another agency or partner. The evaluation may take different forms such as an implementation assessment across grant recipients, an impact and/or outcomes analysis of all or selected sites within or across grant recipients, or a benefit/cost analysis or assessment of return on investment. DOT may require applicants to collect data elements to aid the evaluation and/or use information available through other reporting. As a part of the evaluation, as a condition of award, grant recipients must agree to: (1) make records available to the evaluation contractor or DOT staff; (2) provide access to program records, and any other relevant documents to calculate costs and benefits; (3) in the case of an impact analysis, facilitate the access to relevant information as requested; and (4) follow evaluation procedures as specified by the evaluation contractor or DOT staff.

Recipients and subrecipients are also encouraged to incorporate program evaluation including associated data collection activities from the outset of their program design and implementation to meaningfully document and measure their progress towards meeting an agency priority

goal(s). Title I of the Foundations for Evidence-Based Policymaking Act of 2018 (Evidence Act), (Pub. L. 115–435) urges Federal awarding agencies and Federal assistance recipients and subrecipients to use program evaluation as a critical tool to learn, to improve equitable delivery, and to elevate program service and delivery across the program lifecycle. Evaluation means ''an assessment using systematic data collection and analysis of one or more programs, policies, and organizations intended to assess their effectiveness and efficiency.'' 5 U.S.C. 311. Credible program evaluation activities are implemented with relevance and utility, rigor, independence and objectivity, transparency, and ethics (OMB Circular A–11, part 6 section 290).

Reporting and Payment

Post-award reporting requirements include the electronic submission of Federal Financial Reports and Milestone Progress Reports in TrAMS quarterly. Documentation is required for payment. Additional reporting may be required specific to the program prescribed in this Notice, and the recipient may be expected to participate in events or peer networks related to the goals and objectives of the program. The Federal Financial Accountability and Transparency Act (FFATA) requires data entry at the FFATA Sub Award Reporting System (*https://www.FSRS.gov*) for all sub-awards and sub-contracts issued for $30,000 or more, as well as addressing executive compensation for both award recipients and sub-award organizations. The recipient will be required to disburse via Delphi and E-invoicing.

The successful applicant should include any goals, targets, and indicators referenced in its application in the Executive Summary of the TrAMS application.

As part of completing the annual certifications and assurances required of FTA grant recipients, a successful applicant must report on the suspension or debarment status of itself and its principals.

If the recipient's active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceed $10,000,000 for any period during the period of performance of an award made pursuant to this Notice, the recipient must comply with the Recipient Integrity and Performance Matters reporting requirements described in appendix XII to 2 CFR part 200.

G. Federal Awarding Agency Contacts

For further information concerning this notice, please contact the Bus Safety and Accessibility Research Program Manager, Maria Roell, in the FTA Office of Infrastructure, Safety and Asset Innovation, by email at *maria.roell@dot.gov.* A TDD is available for individuals who are deaf or hard of hearing at 800–877–8339. In addition, FTA will post answers to questions and requests for clarifications on FTA's website at *https://www.transit.dot.gov/notices-funding/fiscal-year-2025-bus-safety-and-accessibility-research-notice-funding.*

To ensure applicants receive accurate information about eligibility or the program, applicants are encouraged to contact FTA directly with questions rather than through intermediaries or third parties. FTA staff may also conduct briefings on the competitive applications selection and award process upon request.

For issues with *grants.gov*, please contact *grants.gov* by phone at 1–800–518–4726 or by email at *support@grants.gov.*

H. Other Information

This program is not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' There are resources available that may help in responding to this Notice, as listed below. The FTA website has information about FTA, application forms, statutory and administrative requirements, etc. Applicants are encouraged to use the FTA link provided and other information, as listed, as much as is needed.

Veronica Vanterpool,

Deputy Administrator.

[FR Doc. 2024–26835 Filed 11–15–24; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2024–0007]

Notice of Extension of Partial Buy America Waiver for Vans and Minivans

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of extension of Buy America waiver.

SUMMARY: Following consideration of comments, and because the Federal Transit Administration (FTA) has been unable to identify any manufacturer of non-Americans with Disabilities Act (ADA)-accessible vans and minivans that fully complies with Buy America, FTA is extending its partial, time-limited, general nonavailability waiver from the requirements of Buy America for a period of five years, or upon publication of a recission notice if FTA determines that a fully Buy America-compliant vehicle has become available, whichever occurs first. The waiver terms are described in this notice.

DATES: The waiver extension is applicable on November 18, 2024.

FOR FURTHER INFORMATION CONTACT: Jason Luebbers, FTA Attorney-Advisor, at (202) 366–8864 or *jason.luebbers@dot.gov.*

SUPPLEMENTARY INFORMATION: This notice grants an extension of FTA's October 25, 2022, partial general nonavailability waiver for mass-produced, unmodified vans and minivans (87 FR 64534). The waiver extension will expire after five years, or upon publication of a recission notice if FTA determines that a fully Buy America-compliant vehicle has become available, whichever occurs first.

Background

On November 15, 2021, President Biden signed into law the Build America, Buy America Act (BABA), enacted as title IX of the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117–58, div. G, sections 70901–70927). BABA requires Federal agencies periodically to review existing general applicability waivers of Buy America requirements by publishing in the **Federal Register** a notice that: (i) describes the justification for a general applicability waiver and (ii) requests public comments for a period of not less than 30 days on the continued need for the general applicability waiver. BABA section 70914(d).

FTA is issuing this waiver extension following its review of comments received in response to its Notice of FTA's Review of Its Partial Waiver of Buy America Requirements for Vans and Minivans and Request for Comment, published in the **Federal Register** on August 22, 2024 (89 FR 68027).

Partial General Buy America Waiver for Vans and Minivans

Under FTA's Buy America statute (49 U.S.C. 5323(j)), FTA may obligate funds for a project to procure rolling stock only if the cost of components and subcomponents produced in the United States is more than 70 percent of the cost of all components of the rolling stock, and final assembly of the rolling

stock occurs in the United States. 49 U.S.C. 5323(j)(2)(C). A manufacturer of rolling stock must submit to pre-award and post-delivery audits and independent inspections to verify its compliance with Buy America. 49 U.S.C. 5323(m).

On October 25, 2022, following multiple individual requests for a Buy America waiver for non-ADA-accessible vans or minivans that can be used in federally funded vanpool programs, FTA issued a partial, time-limited, general nonavailability waiver from the Buy America requirements for mass-produced, unmodified, non-ADA-accessible vans and minivans with seating capacity for at least six adults, not including the driver (87 FR 64534). FTA issued a partial waiver to maximize the use of materials produced in the United States, consistent with Executive Order 14005, Ensuring the Future Is Made in All of America by All of America's Workers (86 FR 7475). In lieu of applying the general Buy America standards for rolling stock, the 2022 waiver required the following:

(1) Final assembly must occur in the United States, as reported to the National Traffic Safety Administration (NHTSA) under the American Automobile Labeling Act (AALA); and

(2) The country of origin of the engine or motor must be the United States, as reported to NHTSA under the AALA. *See* 49 U.S.C. 32304 and 49 CFR part 583.

FTA also limited its 2022 waiver to expire automatically after two years.

In its August 22, 2024, notice, FTA requested comments from all interested parties regarding whether FTA should extend the waiver, modify the waiver, or allow it to lapse. FTA also asked six questions related to the waiver, and requested that commenters, in answering the questions, explain the likely impacts of the suggested course of action for FTA on administering and delivering FTA-funded projects and on supporting domestic manufacturing and jobs. The questions are reprinted below.

In accordance with subsection 70916(c) of the Build America, Buy America Act (BABA) (Title IX of the Infrastructure Investment and Jobs Act, Pub. L. 117–58), FTA consulted with the National Institute of Standards and Technology's Hollings Manufacturing Extension Partnership (MEP) concerning a possible waiver extension, which determined that no domestic entity currently manufactures the subject vans and minivans in compliance with Buy America requirements.

General Considerations

FTA's August 22, 2024, notice posed the following questions to the public concerning a possible waiver extension.

1. Are there any unmodified non-ADA-accessible vans or minivans with seating capacity for at least six adults, not including the driver, for which the cost of components and subcomponents produced in the United States is more than 70 percent of the cost of all components, and final assembly of the vehicle occurs in the United States?

a. If so, which vehicles?

b. If so, in what quantity are they available?

2. Do the market conditions that led to FTA's decision to issue the partial van and minivan waiver still exist and, if so, do they warrant continuing the waiver?

3. What actions could FTA take, if any, to promote the domestic production of Buy America-compliant vans and minivans?

4. Is there a publicly available source better suited than AALA reports (*https://www.nhtsa.gov/part-583-american-automobile-labeling-act-reports*) to determine the domestic content and country of final assembly for vans and minivans? If so, please specify the data source and explain why it is preferred.

Considerations for Modifying the Waiver

5. If FTA were to modify the van and minivan waiver, what would be the likely impact on administering and delivering Federal transit projects? In what ways could modifications to the waiver promote or hinder the effective and efficient delivery of Federal transit projects across the United States? As examples, commenters may wish to consider the following modifications to the van and minivan waiver, specifying the likely impact of each and explaining why that impact is likely to occur:

a. In addition to engines and motors, require U.S.-manufactured transmissions as reported to NHTSA under the AALA.

b. Add a requirement that a vehicle contain some minimum percentage of ''Content US/Canada,'' as defined by and reported to NHTSA under the AALA.

6. FTA is also interested in any other proposals to modify the waiver not listed here that would meet the goals of promoting the efficient delivery of Federal transit projects and supporting domestic manufacturing and jobs. For each proposal, please explain how the waiver modification proposed achieves both goals and provide supporting information or documentation, where applicable.

Response to Comments

FTA received 51 comments from 56 different commenters, including transit operators, associations, state departments of transportation, metropolitan planning organizations, and the general public. All but one comment supported extending the waiver.

The comments in favor of an extension tended to be broadly supportive of the waiver and did not for the most part respond to specific questions FTA posed to the public. The supportive comments concurred that no known manufacturer currently meets all of FTA's Buy America requirements. Comments described the important role of vanpools to combat climate change, lower traffic congestion, and support commuters and equitable service, including service to the elderly, persons with disabilities that do not require ADA accessible vehicles, and rural communities for which full-sized buses are inappropriate. Comments from vanpool operators described their efforts to update or expand their aging fleets, and said they cannot succeed without an extension of the waiver. The supportive comments affirmed the necessity of extending the waiver to allow transit operators to continue purchasing vans and minivans using FTA grant funds.

Comment Opposed To Extending the Waiver

The single comment opposed to extending the waiver stated: ''Buy America can rely on used van and minivan parts in junkyards across America that are being totally ignored''. The comment did not provide any further detail about the junkyard suggestion. While junk or salvage yards may be excellent sources for vehicle parts in some situations, FTA considers the junkyard option an impractical alternative for transit operators, who in almost all cases require new vehicles for their fleet purchases.

Requests To Lengthen the Waiver Period

When FTA approved the 2022 waiver, it set the waiver to expire automatically after two years. Twenty-eight comments requested extending the waiver for a period longer than two-years. Five comments suggested a five-year extension. One of these comments said five years is an appropriate length because the relatively small percentage of vans and minivans purchased using FTA funds means the availability of Buy America-compliant vans or minivans is unlikely to change in the foreseeable future, and because a five-year review

period is what BABA specifies for general waivers. BABA § 70914(d)(1) (''An existing general applicability waiver or a general applicability waiver . . . shall be reviewed every 5 years after the date on which the waiver is issued''). One comment suggested that the waiver should be of indefinite duration, pending the availability of a Buy America-compliant product.

FTA agrees with the comments that suggested a five-year extension. An expiration after five years accords with BABA's requirement that general waivers be reviewed quinquennially, and the Made in America Office's national policy that general waivers have expiration dates. FTA also agrees that the availability of Buy America-compliant vans or minivans is unlikely to change in the foreseeable future. Therefore, a waiver of a shorter duration would add uncertainty and administrative burdens by requiring more frequent extensions, without generating any public benefit. FTA can rescind the waiver at any time if a Buy America-compliant van or minivan becomes available before the end of the five years.

Support for Extending the Domestic Requirements of the 2022 Partial Waiver

To maximize domestic content, the 2022 waiver required U.S. manufactured engines and final assembly. FTA sought comment from the public as to whether it should revise these requirements in a waiver extension.

Twenty-seven comments recommended extending the waiver with the same domestic manufacturing requirements as the 2022 waiver. Comments generally supported the current waiver as maximizing domestic content among van and minivan options while at the same time allowing transit operators to replace or expand their fleets using FTA funds.

Three comments asserted the requirements of the 2022 waiver are too restrictive. One of these comments said there is a shortage of vehicles that comply with the 2022 waiver, and this has led to difficulty expanding and updating vanpool fleets. However, this comment did not recommend any particular change to the waiver, and did not provide any specific data regarding how the requirements of the 2022 waiver have impaired the commenter's ability to replace or add vehicles.

One comment suggested relaxing the restrictions in the 2022 waiver to allow manufacturing and assembly anywhere in North America. This comment suggested doing so would make more hybrid and electric vehicles available, but it did not identify particular models to which it was referring.

Another comment requested that FTA eliminate the requirement that the vehicle's engine be manufactured in the United States. This comment stated the engine requirement excludes numerous vehicles that otherwise have high levels of domestic content according to the AALA reports.

In response to these comments that requested that FTA relax the requirements of the 2022 waiver, FTA notes the following: Notwithstanding that relaxation of the waiver's requirements would result in a greater selection of vehicles to purchase, none of the commenters said they were unable to comply with the 2022 waiver's requirements, or that they have been unable to obtain the type of vehicles they require under the 2022 waiver. With regard to the comment that the engine requirement of the 2022 waiver excludes vehicles with high domestic content reported under the AALA, the AALA reports show a value for combined U.S. and Canadian content, not U.S. content by itself. Absent more specific information about the U.S. content in these excluded vehicles, it is difficult for FTA to weigh the relative benefits to U.S. industry of eliminating the engine requirement, and so FTA declines to revise the waiver in response to this comment.

FTA agrees with the majority of comments that request maintaining the requirements of the 2022 waiver.

Other Comments

Some comments raised issues that were not germane to the pending waiver proposal. Two comments complained in general terms about the cost of complying with Buy America. One comment claimed Buy America causes $30,000 to $40,000 of ''add-ons'' to the Ram ProMaster in order for the vehicle to achieve 70% domestic content by cost, and that this is pushing vehicles beyond affordability. These comments are beyond the scope of the present action. FTA is not proposing revisions to Buy America requirements generally; it is only considering a limited, partial waiver of Buy America requirements to allow the purchase of certain vans and minivans.

Two comments complained that there exist vehicles with high domestic content, that are produced in the United States, but which the commenters cannot buy because of ''foreign ownership'' or ''because they are Japanese or Korean owned companies''. These comments appear to indicate a misunderstanding of Buy America and the 2022 waiver. Buy America's standards for rolling stock require a minimum percentage of U.S. components and subcomponents by cost and U.S. final assembly. Neither Buy America nor the 2022 waiver excludes vehicles based on the countries where their global brands are headquartered or historically originated.[1]

Finding on Waiver

For the reasons stated in FTA's August 22, 2024, notice, and based on comments received from the public, FTA is extending the October 25, 2022, waiver for vans and minivans.

For mass-produced, unmodified non-ADA accessible vans and minivans with seating capacity for at least six adults not including the driver, in lieu of applying the Buy America standards for rolling stock, FTA will require:

(1) Final assembly must be in the United States, as reported to NHTSA under the AALA; and

(2) The country of origin of the engine (or electric vehicle motor) must be the United States, as reported to NHTSA under the AALA.

The waiver is available to all FTA grant recipients. FTA recipients do not need to submit individual applications for nonavailability waivers for these vehicles. The waiver applies to contracts recipients award during the waiver period. This waiver expires five years after the effective date of this notice as published in the **Federal Register**. FTA will review this waiver twice during the waiver period to assess whether it remains necessary. Based on the results of that review, FTA will take such action as deemed appropriate, including but not limited to rescinding, or narrowing the scope or duration of the waiver.

Veronica Vanterpool,

Deputy Administrator.

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BILLING CODE 4910–57–P

[1] While this is true of Buy America requirements, there are other laws that restrict vehicle purchases based on the country where the vehicle manufacturer is headquartered or has corporate relations. See FTA's guidance regarding the National Defense Authorization Act of 2020: *https://www.transit.dot.gov/funding/procurement/frequently-asked-questions-regarding-section-7613-national-defense.*

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2024–0176]

Pipeline Safety: Identification and Evaluation of Potential Hard Spots—In-Line Inspection Tools and Analysis

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation.

ACTION: Notice; issuance of advisory bulletin.

SUMMARY: PHMSA is issuing this advisory bulletin to notify pipeline owners and operators of the importance of evaluating their pipeline facilities for the existence and potential threat of hard spots in the pipe body. That susceptibility comes from the plate and pipe manufacturing and is broader than previously understood; recent data and incident investigations indicate that hard spots could affect multiple pipelines manufactured prior to 1970. Hard spots, if not identified and mitigated, pose a threat to the integrity of the pipeline from interacting threats such as coating degradation, soil chemistry, and/or increased hydrogen exposure, which can result in hydrogen-induced cracking. Pipeline owners and operators should consider expanding their hard spot threat evaluation to all pipe manufactured prior to 1970, regardless of manufacturer; collecting and analyzing data associated with hard spot magnetic flux leakage in-line inspection tools; and following industry best practices when conducting in-line inspection data analysis.

FOR FURTHER INFORMATION CONTACT: Max Kieba, Director, Engineering & Research Division, at 202–420–9169 or *Max.Kieba@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of this advisory bulletin is to notify owners and operators of gas, hazardous liquid, and carbon dioxide pipelines of the importance of evaluating their pipeline facilities for the existence and potential threat of hard spots in the pipe body. A major tenet of PHMSA's pipeline safety oversight program is that pipeline operators must know and understand their pipeline systems, and use appropriate technologies and procedures to address risks to prevent pipeline failures while considering the inherent limitations of such technology. PHMSA prescribes factors that must be addressed to mitigate risk and conducts inspections to ensure adequate measures are carried out effectively.

A hard spot is a defect that is created at the time the steel plates are rolled during the pipe manufacturing process. The creation of hard spots in manufacturing is not attached to the in-service product. Even where a pipe may have an intended service at the time of manufacture, the intended service may change after manufacture. A localized increase in hardness produced during the hot rolling of steel plates as a result of localized cooling can form a hard spot. Localized hardening may also occur through the unintentional quenching during the manufacturing process or by cold work. Although hard spots are more prevalent in plate-formed pipe, seamless pipe can also be susceptible to hard spots when poor controls in the manufacturing process result in material property variations, including hardness.[1]

Hardness can be measured in any condition, at any time, and is determined by measuring the depth of an indentation made by a calibrated indentation device. There are three industry standards that address hardness testing: (1) ASTM E92 Standard Test Methods for Vickers Hardness of Metallic Materials; (2) ASTM E10–18 Standard Test Methods for Brinell Hardness of Metallic Materials; and (3) ASTM E18–22 Standard Test Methods for Rockwell Harness of Metallic Materials. Hard spots found by in-line inspection (ILI) analysis can be verified through the use of calibrated devices that press a specific tool into the plate's surface and then measure the resulting width or depth of the indentation.[2] American Petroleum Institute (API) Specification 5L states that ''[a]ny hard spot larger than 50 mm (2.0 in) in any direction shall be classified as a defect if its hardness exceeds 35 HRC, 345 HV10 or 327 HBW, based upon individual indentations.''[3] [4] However, recent improvements in technology have revealed incidents on hard spots with lower hardness measures.

Hard spots generally form on the surface of pipe and, by themselves, can be considered a stable threat. Unfortunately, hard spots can become unstable when the threat is activated by a change in service conditions such as coating degradation, effects of soil chemistry, and/or influence of the cathodic protection hydrogen film. The presence of hydrogen can result in hydrogen-induced cracking due to hydrogen accumulation at inclusions, impurities, and lattice structure irregularities in the presence of stress on the steel (*e.g.,* from operating pressures). Typically, coatings insulate hard spots from exposure to hydrogen generated by the cathodic protection system, but coatings can deteriorate over time. Recent Pipeline Research Council International (PRCI) research indicates that the level of cathodic protection may also contribute to hydrogen cracking.[5]

PHMSA has previously discussed, in public meetings and workshops, the threat evaluations of pipelines constructed with pipe manufactured by A.O. Smith Corporation (A.O. Smith) from 1948 through 1952 due to the pipe's susceptibility to hard spot related hydrogen cracking.[6] In the past 20 years, the following five incidents highlight hydrogen-induced cracking of hard spots. All but one of the incidents occurred on pipe manufactured by A.O. Smith.

- On July 18, 2013, a 30-inch natural gas pipeline ruptured in Natchitoches, Louisiana. The pipe was manufactured in 1952 by A.O. Smith. Evidence suggested the failure was caused by hydrogen-induced cracking in a hard spot that was previously reinforced with a Type A sleeve. The leak, in this instance, was repaired with a Type B sleeve.
- On January 14, 2015, a 30-inch natural gas pipeline ruptured in

[1] *See* Jeremy Faissat et al., ''*Pipeline Hard Spots: How Hard is Hard?*,'' Pipeline Technology Conf. 2021 (Apr. 1, 2021), *https://www.pipeline-conference.com/abstracts/pipeline-hard-spots-how-hard-hard; see also* Rosen Group, Presentation, ''*Hard Spot Assessment & Integrity Analyses*,'' slide 6 (Dec. 13, 2022), *https://primis-meetings.phmsa.dot.gov/archive/Day_1_AM_1050_Hard_Spot_Assessment_-_Integrity_Analysis.pdf* (National Tube pipe).

[2] The three hardness units—HRC, HB and HV_{10}—can be converted using a standard conversion table.

[3] API Specification 5L, ''Specification for Line Pipe,'' section 9.10.6, (46th ed., Apr. 2018) (incorporated by reference under 49 CFR 192.7 and 195.3).

[4] 49 CFR 192.3 defines a ''hard spot'' as ''an area on steel pipe material with a minimum dimension greater than two inches (50.8 mm) in any direction and hardness greater than or equal to Rockwell 35 HRC (Brinell 327 HB or Vickers 345 HV_{10}).''

[5] Zoe H. Shall, Presentation, ''*PRCI Efforts on Hard Spots: Past, Present, and Future*,'' slide 15 (Dec. 13, 2022), *https://primis-meetings.phmsa.dot.gov/archive/Day_1_AM_1020_PRCI_Efforts_on_Hard_Spots_Dec_2022.pdf.*

[6] Gery Bauman & Mary McDaniel, Presentation, ''Recent Case Study hard Spts and NTSB Recommendation P–22–3,'' slide 20 (Dec. 13, 2022), *https://primis-meetings.phmsa.dot.gov/archive/MtgHome.mtg@mtg=161.html; see generally,* PHMSA, ''Class Location Special Permits: FAQs,'' FAQ 34 (June 16, 2010) (providing that hard spots are a safety condition that may reduce the toughness of pipe body), *https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.phmsa.dot.gov%2Fsites%2Fphmsa.dot.gov%2Ffiles%2Fdocs%2Ftechnical-resources%2Fpipeline%2Fclass-location-special-permits%2F64051%2Ffaqsclass-location-special-permits20180726.docx&wdOrigin=BROWSELINK.*

Brandon, Mississippi. The pipe was manufactured in 1952 by A.O. Smith. The failure was caused by hydrogen-induced cracking in a hard spot greater than two inches in length, previously reinforced with a Type A sleeve. Hardness testing could not be performed with the sleeve in place.

- On August 1, 2019, a 30-inch natural gas pipeline ruptured in Danville, Kentucky. The pipe was manufactured in 1957 by A.O. Smith. The failure was caused by hydrogen-induced cracking in a hard spot. Hardness testing by the National Transportation Safety Board (NTSB) identified the origin hard spot was 5.85 inches by 3 inches, and had hardness values between 362 and 381 Brinell. Hardness readings extended through the pipe wall.
- On February 13, 2022, an 18-inch natural gas pipeline ruptured in Perry County, Mississippi. The pipe was manufactured in 1950 by A.O. Smith. The failure was caused by hydrogen-induced cracking in a hard spot. Metallurgical testing found hardness values between 35 to 45 Rockwell, and was measured at approximately 0.6-inch by 2.5-inch.
- On March 8, 2023, a 30-inch natural gas pipeline ruptured in Fauquier County, Virginia. The pipe was manufactured in 1957 by Bethlehem Steel. The failure was caused by hydrogen-induced cracking in a hard spot. Post incident ILI identified six hard spot features, and hardness values were confirmed from four features that ranged from 192–208 Brinell, which was slightly harder than base hardness (approximately 170 to 180 Brinell). In this instance, the operator did conduct a re-analysis of its data that resulted in updated results to identify the presence of additional hard spots.

The NTSB conducted an investigation following the August 1, 2019, Danville, Kentucky, incident, and made findings and recommendations regarding identification and evaluation of hard spots.[7] Specifically, the NTSB issued recommendation P–22–003 to PHMSA to ''[a]dvise natural gas transmission pipeline operators of the possible data limitations associated with hard spot magnetic flux leakage in-line inspection tools and analyses used in hard spot management programs and reinforce the need to follow industry best practices when conducting in-line inspection data analysis.''

Following the NTSB investigation into the Danville incident, PHMSA reviewed accident data and information regarding hard spots and the appropriate methodologies and technologies for detecting hard spots. PHMSA met with industry and technology companies to gather more information regarding hard spot management programs; communicate the results of the data analysis; and discuss appropriate ILI technologies for different anomalies, including hard spot detection. Additionally, PHMSA hosted an informational three-day public meeting in December 2022, in Houston, Texas, to discuss topics relevant to the pipeline industry.[8] One topic in particular included a discussion of both the NTSB's findings and hard spot safety concerns. PHMSA presented an overview of the NTSB's PIR–22/02 report into the Danville incident. During the December 2022 meeting, PHMSA invited stakeholders to present information related to hard spot methodologies/technologies used for detecting hard spots and discussed the circumstances of this incident. PHMSA has continued to meet with technology companies to review hard spot studies and hard spot management programs. As a result of the studies and communications, PHMSA has identified more pipe manufacturers and pipe manufacture vintages that could have issues with hard spots. In addition to A.O. Smith pipe, Bethlehem Steel Corporation, Kaiser Steel Corporation, National Tube Supply, Consolidated Pipe & Supply, Youngstown Sheet and Tube, United States Steel, Claymont Steel, and Republic Steel have been identified as manufacturers with manufacture dates as recent as 1970 whose pipe may experience hard spots.[9]

In addition, new technologies and advancements in ILI have resulted in the ability to learn more using previously obtained ILI data. For example, in the August 2019 Danville, Kentucky, hard spot failure, the NTSB investigation determined that the initial 2011 ILI data analysis had identified 16 hard spots in the relevant line section yet the 2019 re-analysis of the 2011 data identified 441. The NTSB attributed this discrepancy in identifications to significant improvements in computer hardware, software, and data analysis.[10] PHMSA and researchers have found that older data can be re-analyzed, and previously unidentified hard spots can be identified. It is important when analyzing the possibility of hard spots to verify the capabilities of the tool and verify the data collected. PHMSA believes that data verification should not be limited in scope and should include a thorough review of all relevant data.

PHMSA provides this advisory bulletin to help gas, hazardous liquid, and carbon dioxide pipeline owners and operators and the public understand the threat of hard spots and how to better comply with the existing requirements under federal pipeline safety regulations. Guidance and advisory bulletins are not substantive rules; are not meant to bind the public in any way; and do not assign duties, create legally enforceable rights, or impose new obligations that are not otherwise contained in those regulations.

II. Advisory Bulletin (ADB–2024–01)

To: Owners and Operators of Gas, Hazardous Liquid, and Carbon Dioxide Pipeline Systems.

Subject: Identification and Evaluation of Potential Hard Spots—In-line Inspection Tools and Analysis.

Advisory: PHMSA is issuing this advisory bulletin to advise gas, hazardous liquid, and carbon dioxide pipeline owners and operators of new information regarding the potential for the presence of hard spots in pipelines, and their associated safety and environmental risks of leaks or ruptures. This advisory alerts operators of advancements in knowledge of hard spot susceptibility, most notably that what was once considered to be an issue confined to a single manufacturer (A.O. Smith) of specific, limited manufacturing years, is now understood to include potentially other manufacturers and manufacturing years. Additionally, the presence of hydrogen may result in hydrogen-induced cracking due to hydrogen accumulation at inclusions, impurities, and lattice structure irregularities in the presence of stress on the steel. For pipelines, the stress is typically operational pressure. Typically, coatings isolate hard spots from exposure to hydrogen generated by the cathodic protection system, but coatings can and do deteriorate over time. Recent PRCI research indicates that the level of cathodic protection and the chemistry of the surrounding soil may contribute to hydrogen cracking.

[7] NTSB, Pipeline Investigation Report PIR–22/02, ''*Enbridge Inc. Natural Gas Transission Pipeline Rupture and Fire, Danville Kentucky, Aug. 1, 2019*'' (Aug. 15, 2022), *https://www.ntsb.gov/investigations/AccidentReports/Reports/PIR22002.pdf.*

[8] Information and presentations for this December 2022 public meeting are available at *https://primis-meetings.phmsa.dot.gov/archive/MtgHome.mtg@mtg=161.html.*

[9] Rosen Group, Presentation, ''*Hard Spot Assessment & Integrity Analyses*'' (Dec. 13, 2022), *https://primis-meetings.phmsa.dot.gov/archive/Day_1_AM_1050_Hard_Spot_Assessment_-_Integrity_Analysis.pdf.*

[10] NTSB, PIR–22/02 at 29.

New technologies and advancements in ILI have resulted in the ability to better identify features associated with hard spots. Additionally, PHMSA and researchers have found that significant improvements in computer hardware, software, and data analysis have enabled the use of older data to be re-analyzed, and previously unknown features identified. It is important to verify the capabilities of the tool and verify the data when analyzing for the possibility of hard spots.

For these reasons, pipeline operators should consider taking the following actions to ensure pipeline safety:

1. Review all design and construction records to ensure they are traceable, verifiable, and complete to determine whether enough information is available to identify the pipe manufacturer, the steel plate manufacturer, and the date of manufacturing.
2. Review and determine whether or not the types of pipes in the system are susceptible to hard spots;
3. Review and determine if known integrity issues have been experienced on those pipelines;
4. Develop and implement an enhanced assessment program to establish the best approach to material hardness anomaly validations;
5. Re-evaluate existing ILI data to support current feature identification; and
6. Continue sharing information used to evaluate the identification of hard spots and the other factors that may contribute to the destabilization of hard spots in industry and public pipeline technical meetings and conferences.

Issued in Washington, DC, on November 1, 2024, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2024–26725 Filed 11–15–24; 8:45 am]

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DEPARTMENT OF TRANSPORTAION

Office of the Secretary

[Docket No. DOT–OST–2024–0003]

Privacy Act of 1974; System of Records

AGENCY: Office of the Departmental Chief Information Officer, Office of the Secretary of Transportation (DOT).

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Transportation (DOT), Office of the Secretary (OST), proposes to rename, update and reissue an existing system of records notice currently titled ''DOT/All 11, Integrated Personnel and Payroll System (IPPS).'' The name of this system of records notice will be changed to ''DOT/ALL 11, Consolidated Automated System for Time and Labor Entry (CASTLE).'' The modified system of records notice (hereafter referred to as ''Notice'') uses records in this system for fiscal operations related to payroll, attendance, leave, insurance, taxes, retirement, budget, and cost accounting programs. This system is also used to control and facilitate payment of salaries to DOT employees.

DATES: Submit comments on or before December 18, 2024. The Department may publish an amended Systems of Records Notice considering any comments received. This modified system will be effective immediately upon publication. The routine uses will be effective December 18, 2024.

ADDRESSES: You may submit comments, identified by docket number DOT–OST–2024–0003 by one of the following methods:

- *Federal e-Rulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Transportation Docket Management, Room W12–140, 1200 New Jersey Ave. SE, Washington, DC 20590.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Instructions:* You must include the agency name and docket number DOT–OST–2024–0003.
- *Instructions:* You must include the agency name and docket number DOT–OST–2024–0003. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. You may review the Department of Transportation's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Privacy Act: Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* or to the street address listed above. Follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: For questions, please contact Karyn Gorman, Departmental Chief Privacy Officer, Privacy Office, Department of Transportation, Washington, DC 20590; email: *privacy@dot.gov;* or 202–366–3140.

SUPPLEMENTARY INFORMATION:

Notice Updates

This Notice includes both substantive changes and non-substantive changes to the previously published Notice. The substantive changes have been made to the system name, system location, system manager, authority for maintenance of the system, purpose of the system, categories of individuals covered by the system, categories of records in the system, routine uses maintained in the system, policies and practices for storage of record, policies and practices for retrieval, retention and disposal of the records in the system, and administrative, technical, and physical safeguards. Non-substantive changes have been made to record access procedures and contesting record procedures as well as revisions to align with the requirements of Office of Management and Budget Memoranda (OMB) A–108 and to ensure consistency with other Notices issued by the Department of Transportation.

Background

In accordance with the Privacy Act of 1974, the Department of Transportation proposes to modify and re-issue an existing system of records titled ''DOT/ALL 11, Integrated Personal and Payroll System, (IPPS)'' and change the name to ''Consolidated Automated System for Time and Labor Entry, (CASTLE).'' This system of records covers records collected and maintained for the purposes of fiscal operations related to payroll, attendance, leave, insurance, taxes, retirement, budget, and cost accounting programs. This system is also used to control and facilitate payment of salaries to DOT employees. The following substantive changes have been made to the Notice:

1. *System Name:* This Notice updates the system name to ''Consolidated Automated System for Time and Labor Entry, (CASTLE)'' from the previous system name of ''DOT/ALL 11, Integrated Personal and Payroll System, (IPPS)''. The update to the system name is to better align with the collection of personally identifiable information in the system and the purpose of the collection. This system is also used to facilitate payment of salaries of DOT employees.

2. *System Location:* This Notice updates the system locations to notify

the public the location maintaining the system is changed for all of DOT and its Operating Administrations. The previous SORN had an outdated address and information listed as U.S. DOT, OST, 400 7th Street SW, Washington DC 20590 and additional information that no longer applies.

3. *System Manager:* This Notice updates the system manager name and address to reflect the change in system owner and address. The previous address listed was U.S. DOT, 400 7th Street SW, Washington, DC 20590.

4. *Authority:* This Notice updates the authorities of Maintenance of the System to expand and include relevant regulations to align with the collection of personally identifiable information and data in the system.

5. *Purpose:* This Notice updates the purpose to better clarify the how records are used in the system and for what purpose.

6. *Categories of Individuals:* This Notice updates categories of individuals to clearly define and identify who is covered by this system of records.

7. *Categories of Records:* This Notice updates categories of records to better describe the type of records maintained in the system to include employee biographical and employment information, salary and benefits information, timekeeping information.

8. *Routine Uses:* This Notice updates routine uses to include system specific routine uses that allows sharing between the DOT and the Department of Interior for payroll purposes. This notice also includes the Department of Transportation's general routine uses applicable to this system as they were previously only incorporated by reference. OMB Circular A–108 recommends that agencies include all routine uses in one notice rather than incorporating general routine uses by reference.

9. *Records Storage:* This Notice updates policies and practices for the storage of records to inform the public that records are no longer stored on magnetic tape or disks, microfiche, and paper and now are digitized and input records are maintained on electronic storage media.

10. *Records Retrieval:* This Notice updates the policies and practices for the retrieval of records to inform the public records may be retrieved by a combination of Social Security Number (SSN), employee ID number, organization code or home address.

11. *Retention and Disposal:* This Notice updates the policies and practices for the retrieval of records to reflect updated NARA record schedules. The previous NARA record schedule no longer applies to the records in the system.

12. *Administrative, Technical, and Physical Safeguards:* Updated to account for the agency's transition from paper to electronic recordkeeping and the Information Technology measures that are in place to protect the records.

The following non-substantive changes have been made to the Notice:

13. *Record Access:* This Notice updates the record access procedures to reflect signatures on signed requests for records must either be notarized or accompanied by a statement made under penalty of perjury in compliance with 28 U.S.C. 1746.

Privacy Act

The Privacy Act (5 U.S.C. 552a) governs the means by which the Federal Government collects, maintains, and uses personally identifiable information (PII) in a System of Records. A ''System of Records'' is a group of any records under the control of a Federal agency from which information about individuals is retrieved by name or other personal identifier. The Privacy Act requires each agency to publish in the **Federal Register** a System of Records Notice (SORN) identifying and describing each System of Records the agency maintains, including the purposes for which the agency uses PII in the system, the routine uses for which the agency discloses such information outside the agency, and how individuals to whom a Privacy Act record pertains can exercise their rights under the Privacy Act (*e.g.,* to determine if the system contains information about them and to contest inaccurate information). In accordance with 5 U.S.C. 552a(r), DOT has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM NAME AND NUMBER:

Department of Transportation, DOT/ALL 11, Consolidated Automated System for Time and Labor Entry (CASTLE).

SECURITY CLASSIFICATION:

Sensitive, Unclassified.

SYSTEM LOCATION:

Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169.

SYSTEM MANAGER(S):

Director of Financial Management, OST–B30, 1200 New Jersey Avenue SE, Washington, DC 20590.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 322, 5 U.S.C. 5101, 5 U.S.C. 3512; and E.O. 9397 (SSN), as amended.

PURPOSE(S) OF THE SYSTEM:

Records in this system are used for fiscal operations related to payroll, attendance, leave, insurance, taxes, retirement, budget, telework, remote work, employee offboarding and cost accounting programs. This system is also used to facilitate payment of salaries of DOT employees.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current and former U.S. DOT Federal employees and DOT components. This system may include limited information regarding employee family members, emergency contacts, and medical provider contact information.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee Biographical and Employment Information: Employee name, other names used, union and association affiliation, Social Security Number (SSN), records related to position, occupation, duty location, medical information, disability information, personal and/or work telephone number, personal and/or work email address, home mailing address, involuntary debt (garnishments or child support payments), employee common identifier (ECI), organization code, user identification and any other employment information. Family member information, emergency contact, and medical provider contact information. Salary and Benefits Information: Salary data, retirement fund data, retirement plan, tax data, deductions, health benefit enrollment code and deduction, union dues, flexible spending account deduction, Thrift Savings Plan deductions, pay plan, and award amount. Timekeeping Information: Time and attendance records and leave records. This system may also contain correspondence, documents and other relevant information required to administer payroll, leave, and related functions.

RECORD SOURCE CATEGORIES:

Data are collected from individual employees, time and attendance clerks, supervisors, official personnel records, personal financial statements, correspondence with the debtor, records relating to hearings on the debt, and from the Departmental Accounting and Financial Information system of records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or portion of the records or information contained in this system may be disclosed outside of DOT as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

System Specific Routine Uses:

1. To the Department of Interior Federal Personnel and Payroll System (DOI FPPS) for the purpose of facilitating employee wage payments.

Departmental Routine Uses:

2. In the event that a system of records maintained by DOT to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

3. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a DOT decision concerning the hiring or retention of an employee and/or the issuance of a security clearance.

4a. Routine Use for Disclosure for Use in Litigation. It shall be a routine use of the records in this system of records to disclose them to the Department of Justice or other Federal agency conducting litigation when—

(a) DOT, or any agency thereof, or

(b) Any employee of DOT or any agency thereof, in his/her official capacity, or

(c) Any employee of DOT or any agency thereof, in his/her individual capacity where the Department of Justice has agreed to represent the employee, or

(d) The United States or any agency thereof, where DOT determines that litigation is likely to affect the United States, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or other Federal agency conducting the litigation is deemed by DOT to be relevant and necessary in the litigation, provided, however, that in each case, DOT determines that disclosure of the records in the litigation is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

4b. Routine Use for Agency Disclosure in Other Proceedings. It shall be a routine use of records in this system to disclose them in proceedings before any court or adjudicative or administrative body before which DOT or any agency thereof, appears, when—

(a) DOT, or any agency thereof, or

(b) Any employee of DOT or any agency thereof in his/her official capacity, or

(c) Any employee of DOT or any agency in his/her individual capacity where DOT has agreed to represent the employee, or

(d) The United States or any agency thereof, where DOT determines that the proceeding is likely to affect the United States, is a party to the proceeding or has an interest in such proceeding, and DOT determines that use of such records is relevant and necessary in the proceeding, provided, however, that in each case, DOT determines that disclosure of the records in the proceeding is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

5. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual. In such cases, however, the Congressional office does not have greater rights to records than the individual. Thus, the disclosure may be withheld from delivery to the individual where the file contains investigative or actual information or other materials which are being used, or are expected to be used, to support prosecution or fines against the individual for violations of a statute, or of regulations of the Department based on statutory authority. No such limitations apply to records requested for Congressional oversight or legislative purposes; release is authorized under 49 CFR 10.35(9).

6. One or more records from a system of records may be disclosed routinely to the National Archives and Records Administration in records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

7a. To appropriate agencies, entities, and persons when (1) DOT suspects or has confirmed that there has been a breach of the system of records; (2) DOT has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DOT (including its information systems, programs, and operations), the Federal (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DOT's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

7b. To another Federal agency or Federal entity, when DOT determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach. resolving disputes between FOIA requesters and Federal agencies and reviewing agencies' policies, procedures, and compliance in order to recommend policy changes to Congress and the President.

8. DOT may disclose records from this system, as a routine use, to an agency, organization, or individual for the purpose of performing audit or oversight operations related to this system of records, but only such records as are necessary and relevant to the audit or oversight activity. This routine use does not apply to intra-agency sharing authorized under Section (b)(1) of the Privacy Act.

9. DOT may disclose from this system, as a routine use, records consisting of, or relating to, terrorism information (6 U.S.C. 485(a)(5)), homeland security information (6 U.S.C. 482(f)(1)), or Law enforcement information (Guideline 2 Report attached to White House Memorandum, ''Information Sharing Environment, November 22, 2006) to a Federal, State, local, tribal, territorial, foreign government and/or multinational agency, either in response to its request or upon the initiative of the Component, for purposes of sharing such information as is necessary and relevant for the agencies to detect, prevent, disrupt, preempt, and mitigate the effects of terrorist activities against the territory, people, and interests of the United States of America, as contemplated by the Intelligence Reform and Terrorism Prevention Act of 2004 (Pub. L. 108–458) and Executive Order 13388 (October 25, 2005).

10. Disclosure pursuant to 5 U.S.C. 552a (b)(12). Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Pre-existing paper and microfiche records were digitized. Input records are maintained digitally on electronic storage media in accordance with the safeguards below.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records can be retrieved by name, SSN, employee IDs, organizational code, home address, or a combination of the information listed in the categories of records.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records in the system are maintained in accordance with the following NARA's records retention and schedules: General Records Schedule (GRS) 2.3, Employee Relations Records, Item 10, *Employee relations programs' administrative records,* DAA–GRS–2018–0002–0001, Temporary. Destroy when 3 years old, but longer retention is authorized if required for business use; Item 40, *Telework/alternate worksite program,* DAA GRS–2018–0002–0004, Temporary. Destroy when 3 years old, but longer retention is authorized if required for business use. GRS 2.4, *Employee Compensation and Benefits Records,* Item 10, Records used to calculate payroll, arrange paycheck deposit, and change previously issued paychecks, DAA–2018–0002–0001: Temporary. Destroy when 3 years old, but longer retention is authorized if required for business use. Item 30, Time and attendance records, DAAGRS–2019–0004–0002, Temporary, destroy when 3 years old, but longer retention is authorized if required for business use. Item 40, Agency payroll record for each pay period, DAA–GRS–2016–00015–0004, Destroy when 56 years old. GRS 4.2, *Information Access, and Protection Records,* Item 130, Personally identifiable information extracts, DAA–GRS–2013–0007–0012, Temporary. Destroy when 90 days old or no longer needed pursuant to supervisory authorization, whichever is appropriate.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Administrative Procedures: Access to the records is limited to person(s) responsible for servicing the records in performance of their official duties, who are properly screened, trained on policies and procedures, and cleared for need to-know. Personnel who access the system and its data must take security awareness training and sign a Rules of Behavior initially (prior to access) and, at least, annually thereafter. Technical: Regular monitoring of users and the system are implemented to ensure only authorized personnel have access to information in the system. Strict controls are in place to minimize the compromise of stored or accessed in the system. Physical: The system and the data are housed in secure data center.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address inquiries to the System Manager at the address identified in ''System Manager and Address'' above. Request must be in writing, include SORN ID and name of this system of records notice, information on the Operating Administration-Department, specific date range and specific type of records seeking. Request must be signed by the requester, must be notarized as required by 28 U.S.C. 1746 in the following format: If executed without the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)''. If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)''.

CONTESTING RECORD PROCEDURES:

See ''Records Access Procedures'' above.

NOTIFICATION PROCEDURES:

See ''Records Access Procedures'' above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

A full notice of this system of records, DOT/ALL 11, Integrated Personnel Payroll System, was published in the **Federal Register** on November 7, 2008 (73 FR 66285), April 11, 2000 (65 FR 19845).

Issued in Washington, DC.

Karyn Gorman,

Chief Privacy Officer.

[FR Doc. 2024–26743 Filed 11–15–24; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0890]

Agency Information Collection Activity Under OMB Review: Industry Standard Forms for Completing an Appraisal Required by VA

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, 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 December 18, 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. 2900–0890.''

SUPPLEMENTARY INFORMATION:

Title: Industry Standard Forms for Completing an Appraisal Required by VA FNMA Forms 1004, 1004C, 1004D, 1004 (Desktop), 1025, 1073, 1075 and 2055

OMB Control Number: 2900–0890.

Type of Review: Extension without change of a currently approved collection.

Abstract: This information collection package seeks approval of VA's requirement that appraisers utilize certain industry-standard forms in completing an appraisal. 38 U.S.C. 3731 authorizes the VA Secretary to establish a panel of appraisers, prescribe qualifications for such appraisers, and determine reasonable value of a property, construction, repairs or alterations based on an appraisal report provided by a panel appraiser for the purpose of guaranteeing a loan.

VA is requesting approval to authorize collection of these forms because accurate and thorough appraisal reporting is critical to the accuracy of underwriting for the mortgage process.

Additionally, VA is looking to expand the list of authorized forms for use due to ongoing needs related to the pandemic. This collection of information provides a more thorough and complete appraisal of prospective VA-guaranteed properties ensuring that mortgages are acceptable for VA guarantee and thereby protect the interest of VA, taxpayers, and the Veterans Housing Benefit Program Fund. Policies and procedures for governing the VA appraisal program are set forth in Chapter 36, Title 38 of the CFR.

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 73508, September 10, 2024.

Affected Public: Individuals or Households.

Estimated Annual Burden: 10,833.

Estimated Average Burden per Respondent: 1 minute.

Frequency of Response: One time.

Estimated Number of Respondents: 650,000.

(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. 2024–26803 Filed 11–15–24; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Findings of Research MisconductC

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA), gives notice, pursuant to Veterans Health Administration (VHA) Directive 1058.02 ''Research Misconduct'' section 8.l, that the Department has made findings of research misconduct against Alan Lichtenstein, M.D. (''Respondent''), a former staff physician at the VA Greater Los Angeles Healthcare System, Los Angeles, CA. The Respondent did not appeal the findings or corrective actions against him.

FOR FURTHER INFORMATION CONTACT: Shara Kabak, Research Misconduct Officer, Office of Research Oversight (10RO), 810 Vermont Avenue NW, Washington, DC 20420, (202) 632–7620 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: VA has made final findings of research misconduct against Alan Lichtenstein, M.D. (''Respondent''), a former staff physician at the VA Greater Los Angeles Healthcare System in Los Angeles, CA.

Based on the recommended findings of a joint investigation conducted by VA Greater Los Angeles Healthcare System and University of California, Los Angeles School of Medicine, the Department found that the Respondent engaged in research misconduct by recklessly falsifying data included in at least ten of the following thirteen published papers:

- DEPTOR is linked to a TORC1-p21 survival proliferation pathway in multiple myeloma. *Genes & Cancer.* 2014 Nov;5(11–12):407–19. doi: 10.18632/genesandcancer.44 (hereafter, ''*Genes Cancer* 2014'').
- Cytotoxic properties of a DEPTOR-mTOR inhibitor in multiple myeloma cells. *Cancer Research.* 2016 Oct 1;76(19):5822–5831. doi: 10.1158/0008–5472. CAN–16–1019 (hereafter, ''*Cancer Res. 2016*'').
- Interleukin-6 activates phosphoinositol-3 kinase in multiple myeloma tumor cells by signaling through RAS-dependent and, separately, through p85-dependent pathways. *Oncogene.* 2004 Apr 22;23(19):3368–75. doi: 10.1038/sj.onc.1207459 (hereafter, ''*Oncogene* 2004'').
- MNK1-induced eIF–4E phosphorylation in myeloma cells: a pathway mediating IL–6-induced expansion and expression of genes involved in metabolic and proteotoxic responses. *PLoS One.* 2014 Apr 8;9(4):e94011. doi: 10.1371/journal.pone.0094011 (hereafter, ''*PLoS One 2014*''). Retraction in: *PLoS One.* 2023 Sep 8;18(9):e0291491. doi: 10.1371/journal.pone.0291491.
- Mammalian target of rapamycin inhibitors activate the AKT kinase in multiple myeloma cells by up-regulating the insulin-like growth factor receptor/insulin receptor substrate-1/phosphatidylinositol 3-kinase cascade. *Molecular Cancer Therapeutics.* 2005 Oct;4(10):1533–40. doi: 10.1158/1535–7163.MCT–05–0068 (hereafter, ''*Mol Cancer Ther.* 2005'').
- Inhibition of SAPK2/p38 enhances sensitivity to mTORC1 inhibition by blocking IRES-mediated translation initiation in glioblastoma. *Molecular Cancer Therapeutics.* 2011 10:2244–2256 Dec;10(12):2244–56. doi: 10.1158/1535–7163.MCT–11–0478 (hereafter, ''*Mol Cancer Ther. 2011*'').
- Specific blockade of Rictor-mTOR association inhibits mTORC2 activity and is cytotoxic in glioblastoma. *PLoS One.* 2017; Apr 28;12(4):e0176599. doi: 10.1371/journal.pone.0176599 (hereafter, ''*PLoS One 2017*''). Correction in: *PLoS One.* 2019 Feb 6;14(2):e0212160. doi: 10.1371/journal.pone.0212160. Retraction in: *PLoS One.* 2023 Sep 8;18(9):e0291490. doi: 10.1371/journal.pone.0291490.
- MNK kinases facilitate c-myc IRES activity in rapamycin-treated multiple myeloma. *Oncogene.* 2013 Jan 10;32(2):190–7. doi: 10.1038/onc.2012.43 (hereafter, ''*Oncogene 2013*''). Expression of Concern in: *Oncogene.* 2023 Oct;42(41):3088. doi: 10.1038/s41388–023–02818–z.
- The PP242 mammalian target of rapamycin (mTOR) inhibitor activates extracellular signal-regulated kinase (ERK) in multiple myeloma cells via a target of rapamycin complex 1 (TORC1)/eukaryotic translation initiation factor 4E (eIF–4E)/RAF pathway and activation is a mechanism of resistance. *Journal of Biological Chemistry.* 2012 Jun 22;287(26):21796–805. doi: 10.1074/jbc.M111.304626 (hereafter, ''*J Biol Chem. 2012*'').
- Therapeutic potential of targeting IRES-dependent c-myc translation in multiple myeloma cells during ER stress. *Oncogene.* 2016 Feb 25;35(8):1015–24. doi: 10.1038/onc.2015.156 (hereafter, ''*Oncogene 2016*''). Retraction in: *Oncogene.* 2023 Sep;42(40):3016. doi: 10.1038/s41388–023–02820–5.
- SGK kinase activity in multiple myeloma cells protects against ER stress apoptosis via a SEK-dependent mechanism. *Molecular Cancer Research.* 2016 Apr;14(4):397–407. doi: 10.1158/1541–7786.MCR–15–0422 (hereafter, ''*Mol Cancer Res. 2016*'').
- A novel therapeutic induces DEPTOR degradation in multiple myeloma cells with resulting tumor cytotoxicity. *Molecular Cancer Therapeutics.* 2019 Oct;18(10):1822–1831. doi: 10.1158/1535–7163.MCT–19–0115 (hereafter, ''*Mol Cancer Ther.* 2019'').
- Downstream effectors of oncogenic ras in multiple myeloma cells. *Blood.* 2003 Apr 15;101(8):3126–35. doi: 10.1182/blood–2002–08–2640 (hereafter, ''*Blood* 2003'').

Specifically, the Department found that the Respondent recklessly committed research misconduct by reusing the same Western blot or kinase assay image to falsely represent the results related to the following pairs of experiments such that at least one of the sets of images in each of the pairs listed below is inaccurate:

- p-4E–BP1–T37/46, p–4E–BP1–S65 and Tubulin expression in Figure 3B of *Genes Cancer 2014* and Figure 1F of *Cancer Res. 2016.*

• P–AKT–S473 expression in Figure 3C in *Genes Cancer 2014* and lanes 1–4 of DEPTOR expression in Figure 3C of *Cancer Res. 2016* with resizing.

• Lanes 7–9 of p70S6K1 expression in Figure 1A of *Genes Cancer 2014* and DEPTOR expression in Figure 4C of *Cancer Res. 2016.*

• STAT3 associated kinase activity in Figure 4A and lanes 1–4 of p110 mu associated kinase activity in Figure 5B of *Oncogene 2004.*

• Lanes 7–8 of ACTIN expression in Figure 1A and lanes 7–8 of ACTIN expression in Figure 1C of *PLoS One 2014.*

• Lanes 3–4 of P–MNK and T–MNK expression in Figure 1C of *PloS One 2014* and lanes 1–2 of FKHD–P and FKHD–T expression (top panels) in Figure 1B of *Mol Cancer Ther. 2005.*

• Lanes 4–8 of P–AKT (S473) and actin expression in Figure 2A of *Mol Cancer Ther. 2011* and AKT and S6K expression in Figure 1F of *PloS One 2017* with a 180 degree rotation of the P–AKT/AKT panels.

• Lanes 1–2 of T–HSP27 expression and lanes 4–5 of GAPDH expression in Figure 2B of *Oncogene 2013.*

• Lanes 1–3 of p–erk and lanes 2–4 of t-erk expression in Figure 3B and lanes 1–3 of erk(T202/Y204) and erk expression in Figure 4A of *J Biol Chem. 2012.*

• α-tubulin expression in Figure 4D and 4E of *Genes Cancer 2014.*

• C-myc expression in Figure 1B and lanes 1–4 of T-p70 expression in Figure 1E of *Oncogene 2016.*

• T–4E–BP1 (α, β and γ phosphorylated forms) expression (middle panel) and lanes 1–4 of T–4E–BP (α, β and γ phosphorylated forms) expression (right panel) of Supplemental Figure 2A of *Oncogene 2016.*

• T–S6 expression and C–myc expression in Figure 1F of *Oncogene 2016.*

• Lanes 2–5 of MNK–P and MNK–T expression (left panel) in Figure 3A and ERK–T and Hsp–27–T expression in Figure 4A of *Oncogene 2016.*

• MNK1, MNK2 and GAPDH expression in Figure 3E of *Oncogene 2016* and MNK1, MNK2 and GAPDH expression in Figure 3A of *PloS One 2014.*

• ire–1–total expression (right panel) in Figure 5B of *Mol Cancer Res. 2016* and mTor expression in Figure 8A of *Genes Cancer 2014* with resizing.

• The right panel of ACTIN expression in Figure 2A and the right panel of ACTIN expression in Figure 2g of *Mol Cancer Ther.* 2019.

• Lanes 1–6 of DEPTOR and mTOR expression in Figure 1A of *Genes Cancer 2014* and DEPTOR and mTor expression in Figure 6A of *Mol Cancer Ther.* 2019.

• IRS–1 expression in lanes 4–5 and lanes 8–9 in Figure 6B of *Mol Cancer Ther. 2005.*

• AKT expression (bottom panel) in Figure 1Aand lanes 7–9 of IRS–1 expression in Figure 6B of *Mol Cancer Ther. 2005.*

• Lanes 4–6 of IGF–R expression and lanes 4–6 of FLAG expression in Figure 5B of *Mol Cancer Ther. 2005* with a 180-degree rotation.

• Lanes 2–3 of AKT–T expression (4th panel) in and lanes 1–2 of AKT–T expression (6th panel) in Figure 1C of *Mol Cancer Ther. 2005.*

• Lanes 1–2 of AKT–P expression (top panel) and lanes 1–2 of AKT–P expression (5th panel) in Figure 1E of *Mol Cancer Ther. 2005.*

• Lanes 1–3 and lanes 5–7 of FKH–T expression in Figure 3C of *Blood 2003.*

• Lane 1 of p70 expression and Ser411 expression in Figure 4B and lane 4 of Ser411 expression and lanes 1–2 of Ser411 expression in Figure 4c of *Blood 2003.*

• Lanes 1 and 3 of ERK–P expression and lanes 2 and 4 of ERK–T expression in Figure 2C of *Blood 2003.*

Based on these findings of research misconduct, which the Respondent did not appeal, the Department has imposed the following corrective actions:

(1) Prohibition from conducting VA research for at least 2 years;

(2) Notification to the relevant journals of the research misconduct findings.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, signed and approved this document on November 12, 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.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2024–26756 Filed 11–15–24; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0012]

Agency Information Collection Activity Under OMB Review: Application for Cash Surrender or Policy Loan and Application for Cash Surrender (Docusign)

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, 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 December 18, 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. 2900–0012.''

FOR FURTHER INFORMATION CONTACT: VA PRA information: Maribel Aponte, (202) 461–8900, *vacopaperworkreduact@va.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for Cash Surrender or Policy Loan (VA Form 29–1546). Application for Cash Surrender (VA Form 29–1546e—DocuSign).

OMB Control Number: 2900–0012—*https://www.reginfo.gov/public/do/PRASearch.*

Type of Review: Extension without change of a currently approved collection.

Abstract: The Application for Cash Surrender or Policy Loan solicits information needed from Veterans to apply for cash surrender value or policy loan on his/her insurance. The VA Form 29–1546e has been added to this collection. This is an electronic version of the 29–1546 but is for cash surrender only. This form was created so Veterans can apply for a cash surrender of their policy online. This will not affect the number of respondents but will make it

easier and reduce the time it takes for Veterans to receive the cash value of their policy. The information on this form is required by law, 38 U.S.C. 1906 and 1944, 38 CFR 6.115, 6.116, 6.117, 8.27, 6.100, 6.101 and 8.28.

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 73507, September 10, 2024.

Affected Public: Individuals or Households.

Estimated Annual Burden: 4,939 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Upon Request.

Estimated Number of Respondents: 29,636.

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. 2024–26799 Filed 11–15–24; 8:45 am]

BILLING CODE 8320–01–P



FEDERAL REGISTER

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Part II

Consumer Financial Protection Bureau

12 CFR Parts 1001 and 1033
Required Rulemaking on Personal Financial Data Rights; Final Rule

CONSUMER FINANCIAL PROTECTION BUREAU

12 CFR Parts 1001 and 1033

[Docket No. CFPB–2023–0052]

RIN 3170–AA78

Required Rulemaking on Personal Financial Data Rights

AGENCY: Consumer Financial Protection Bureau.

ACTION: Final rule.

SUMMARY: The Consumer Financial Protection Bureau (CFPB) is issuing a final rule to carry out the personal financial data rights established by the Consumer Financial Protection Act of 2010 (CFPA). The final rule requires banks, credit unions, and other financial service providers to make consumers' data available upon request to consumers and authorized third parties in a secure and reliable manner; defines obligations for third parties accessing consumers' data, including important privacy protections; and promotes fair, open, and inclusive industry standards.

DATES: This final rule is effective January 17, 2025.

Compliance dates: Data providers must comply with the requirements in 12 CFR part 1033, subparts B and C beginning April 1, 2026; April 1, 2027; April 1, 2028; April 1, 2029; or April 1, 2030, pursuant to the criteria set forth in § 1033.121(c).

FOR FURTHER INFORMATION CONTACT: George Karithanom, Regulatory Implementation and Guidance Program Analyst, Office of Regulations, at 202–435–7700 or *https://reginquiries.consumerfinance.gov/*. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

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Abbreviations and Acronyms

ACH = Automated Clearing House
ANPR = Advance Notice of Proposed Rulemaking
API = Application programming interface
APR = Annual percentage rate
APY = Annual percentage yield
ATO = Account takeover
BLS = U.S. Bureau of Labor Statistics
BNPL = Buy Now Pay Later
EBT = Electronic benefit transfer
FDIC = Federal Deposit Insurance Corporation
FFIEC = Federal Financial Institutions Examination Council
FRFA = Final regulatory flexibility analysis
FTC = Federal Trade Commission
IRFA = Initial regulatory flexibility analysis
LEI = Legal Entity Identifier
MSA = Metropolitan statistical area
NAICS = North American Industry Classification System
NCUA = National Credit Union Administration
NPRM = Notice of Proposed Rulemaking
OCC = Office of the Comptroller of the Currency (U.S. Department of the Treasury)
OFAC = Office of Foreign Assets Control (U.S. Department of the Treasury)
OMB = Office of Management and Budget (Executive Office of the President)
RFI = Request for Information
SBA = U.S. Small Business Administration
SBA Advocacy = U.S. Small Business Administration Office of Advocacy
SNAP = Supplemental Nutrition Assistance Program
SSN = Social Security number
TAN = Tokenized account number
URL = Uniform resource locator
USDA = U.S. Department of Agriculture

I. Overview

A. Summary of the Final Rule

When Congress established the Consumer Financial Protection Bureau in the Consumer Financial Protection Act (CFPA), it sought to ensure that markets for consumer financial products and services are fair, transparent, and competitive.[1] CFPA section 1033 lets consumers take action by giving them a right to access their account information and authorize certain third parties acting on their behalf to access that information. This right enables consumers to evaluate their account relationships and switch providers that are not benefiting them, and allows consumers to authorize third parties to access data on their behalf to provide valuable products and services they request. Increased competition can lead to innovation, attractive rates, quality service, and other benefits.

Specifically, CFPA section 1033(a) and (b) provide that, subject to rules prescribed by the CFPB, a covered person shall make available to a consumer, upon request, information in the control or possession of the covered person concerning the consumer financial product or service that the consumer obtained from such covered person, subject to certain exceptions. The information must be made available in an electronic form usable by consumers. In addition, Congress mandated in section 1033(d) that the CFPB prescribe standards to promote the development and use of standardized formats for data made available under section 1033.

This final rule carries out these objectives by empowering consumers to access account data controlled by providers of certain consumer financial products or services in a safe, secure, reliable, and competitive manner. When implemented, consumers will be able to access their own data and authorize third parties to access their data safely and with confidence that the third party is acting on their behalf, which means not collecting, using, or retaining consumer data for the benefit of entities other than the consumer. Consumers and authorized third parties will be able access data securely, ensuring that a baseline set of security standards apply across the market. They also will be able to access data reliably, promoting the accurate and consistent transmission of usable data. Consumer-authorized data access under the final rule also will occur in a manner that promotes competition through standardization and other measures to avoid entrenching incumbent data providers, intermediaries, and third parties that

[1] 12 U.S.C. 5511(a). The CFPA is title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376, 2008 (2010).

have commercial interests not always aligned with the interests of consumers and competition generally.

Coverage

In general, the final rule requires a ''data provider'' to make ''covered data'' about ''covered financial products and services'' available in electronic form to consumers and to certain ''authorized third parties.'' For this purpose, an authorized third party is a third party that has complied with the authorization procedures set forth in subpart D of part 1033.

A ''data provider'' includes depository institutions (including credit unions) and nondepository institutions that issue credit cards, hold transaction accounts, issue devices to access an account, or provide other types of payment facilitation products or services. The final rule does not apply to certain small depository institutions as defined in the rule. In general, ''covered data'' includes information about transactions, costs, charges, and usage. This coverage is intended to prioritize some of the most beneficial use cases for consumers and leverage data providers' existing capabilities. Clarifying the scope of the data access right will also promote consistency in the data made available to consumers, reduce costs of arranging for access to such data, and focus the development of technical standards around such data.

Access Requirements

The final rule generally requires a data provider to make covered data available to consumers and authorized third parties upon request. The rule includes a number of functional requirements intended to ensure data providers make covered data available reliably, securely, and in a way that promotes competition. A data provider must make covered data available to authorized third parties in a standardized and machine-readable format and in a commercially reasonable manner, including by meeting a minimum response rate with respect to requests for covered data. A data provider must not unreasonably restrict the frequency with which it receives or responds to requests for covered data from an authorized third party. In addition, the data provider cannot comply with the requirement to make data available to authorized third parties by allowing the third party to engage in ''screen scraping,'' an access method that uses consumer credentials to log in to consumer accounts to retrieve data.[2] The final rule also prohibits fees or charges related to consumer and third party data access. The final rule also requires a data provider to publicly disclose certain information about itself to facilitate access to covered data and to promote accountability.

The rule uses the term ''developer interface'' to refer to the functionality through which a data provider receives requests for covered data and makes the data available in electronic form usable by authorized third parties. Similarly, the rule uses the term ''consumer interface'' as a label for the functionality with respect to consumer access. In neither case does the rule require the use of any particular technology.

Authorized Third Parties

To become an authorized third party, a third party must seek access to covered data on behalf of a consumer to provide a product or service that the consumer requested and: (1) provide the consumer with an authorization disclosure containing certain key terms of the data access; (2) provide a statement to the consumer in the authorization disclosure certifying that the third party agrees to certain obligations set forth in the final rule; and (3) obtain the consumer's express informed consent to access covered data on behalf of the consumer by obtaining an authorization disclosure that is signed by the consumer electronically or in writing.

Under the final rule, a third party must certify to limit its collection, use, and retention of covered data to what is reasonably necessary to provide the consumer's requested product or service. For purposes of this certification, targeted advertising, cross-selling, and the sale of covered data are not part of, or reasonably necessary to provide, any other product or service. The final rule includes examples of uses that are considered reasonably necessary to provide consumer requested products or services.

In addition to this general limit on collection, use, and retention of covered data, the third party also must certify to limit the duration of collection of covered data pursuant to a given authorization to a maximum period of one year. To continue collection, the third party must obtain a new authorization from the consumer no later than the anniversary of the most recent authorization. If a consumer does not provide a new authorization or if a consumer revokes authorization, the third party will cease its collection of covered data and cease its use and retention of covered data that was previously collected unless use or retention of that covered data remains reasonably necessary to provide the consumer's requested product or service.

Under the final rule, a third party must also certify to:

- Have written policies and procedures that are reasonably designed to ensure that covered data are accurately received from a data provider and, if applicable, accurately provided to other third parties.
- Apply an information security program to its systems for the collection, use, and retention of covered data. Generally, the program must satisfy the applicable rules issued pursuant to the Safeguards Framework of the Gramm-Leach-Bliley Act (GLBA), 15 U.S.C. 6801 *et seq.* (GLBA Safeguards Framework).[3]
- Provide the consumer with a copy of the authorization disclosure that the consumer has signed electronically or in writing and contact information that enables a consumer to receive answers to questions about the third party's access to the consumer's covered data.
- Have reasonable written policies and procedures designed to ensure that the third party provides to the consumer, upon request, certain information about the third party's access to the consumer's covered data.
- Provide the consumer with a method to revoke the third party's authorization. Additionally, the third party will certify that it will notify the data provider, any data aggregator, and other third parties to which it has provided the consumer's covered data when the third party receives a consumer's revocation request.

[2] Unless otherwise stated, the term ''screen scraping'' in this final rule refers to credential-based screen scraping, which is prevalent in the market today.

[3] The GLBA Safeguards Framework in this final rule refers the rules issued by the FTC and the guidelines issued by the prudential regulators that generally implement the GLBA's data security safeguards framework, pursuant to sections 501 (15 U.S.C. 6801) and 505 (15 U.S.C. 6805) of the GLBA. *See* Safeguards Rule, 16 CFR part 314; *Interagency Guidelines Establishing Standards for Safety and Soundness,* 12 CFR part 30, app. A (OCC); 12 CFR part 208, app. D–1 (Bd. of Governors of the Fed. Rsrv. Sys.); 12 CFR part 364, app. A (FDIC); and 12 CFR 748, app. A (NCUA). The GLBA Safeguards Framework sets forth standards for administrative, technical, and physical safeguards with respect to financial institutions' customer information. These standards generally apply to the security and confidentiality of customer records and information, anticipated threats or hazards to the security or integrity of such records, and unauthorized access to or use of such records or information that could result in substantial harm or inconvenience to any customer.

• Require other third parties, by contract, to comply with specified third party obligations before providing covered data to them.

Data Aggregators

The final rule permits data aggregators to perform the authorization procedures described in the final rule on behalf of the third party seeking the consumer's authorization. The third party seeking the consumer's authorization remains responsible for compliance with the authorization procedures even if it uses a data aggregator to perform the authorization procedures. If the third party will use a data aggregator to assist with accessing covered data, the data aggregator must certify to the consumer that it will satisfy the third party obligations discussed above (except the obligation to ensure consumers are informed, including the obligation to provide a copy of the authorization disclosure and contact information, and the obligation to provide a revocation mechanism), and this certification must be provided to the consumer. The third party may include this certification in the authorization disclosure or the data aggregator may provide it separately. Additionally, the third party's authorization disclosure must include the data aggregator's name and a description of the services that the data aggregator will provide in connection with accessing the consumer's covered data.

Policies and Procedures, and Recordkeeping for Data Providers and Third Parties

The final rule requires a data provider to have written policies and procedures that are reasonably designed to achieve certain objectives, including those related to what covered data are generally made available, how a data provider responds to requests for developer interface access and requests for information, the accuracy of data transmitted through an interface, and record retention.

A third party that is a covered person or service provider as defined in the CFPA (12 U.S.C. 5481(6) and (26)), must establish and maintain written policies and procedures that are reasonably designed to ensure retention of records that are evidence of compliance for a reasonable period of time, not less than three years after a third party obtains the consumer's most recent authorization.

Financial Products or Services (Part 1001)

The final rule defines financial products or services under the CFPA to ensure that it includes providing financial data processing. This provides additional assurance that financial data processing by third parties or others is subject to the CFPA and its prohibition on unfair, deceptive, and abusive acts or practices.

B. Market Background

Digitization in consumer finance has the potential to facilitate more seamless consumer switching and greater competition. Consumers' ability to easily switch providers of consumer financial products and services creates strong competitive incentives that result in superior customer service and more favorable terms for consumers. Consumer-authorized sharing of personal financial data can produce positive market outcomes, but without appropriate safeguards it can also lead to misuse and abuse of consumer data.

Development of Electronic Data Access and Open Banking

Most consumers with a bank account are enrolled in digital banking through online banking or mobile applications, and more than two-thirds use it as their primary method of account access.[4] Consumer interfaces generally provide free access to information such as balances, transactions, and at least some terms of service. These consumer interfaces may provide additional functionality, such as allowing consumers to move money, manage their accounts, and download financial data.[5] Building on these developments, open banking [6] emerged in the early 2000s, along with interfaces designed for developers of products or services to request consumer information, and related industry standard setting activity.[7] Third parties, such as personal financial advisors, often outsourced establishing and maintaining connections with data providers to data aggregators. These intermediaries largely relied on ''screen scraping.'' Widespread screen scraping allowed open banking to grow quickly in the U.S. Screen scraping became a significant point of contention between third parties and data providers, in part due to its inherent risks, such as the proliferation of shared consumer credentials and overcollection of data.[8]

In recent years, the open banking system has continued to grow as consumer reliance on products and services powered by consumer-authorized data access has expanded. However, this growth has been uneven, with various disputes among system participants continuing to arise. Despite these challenges, financial institutions are dedicating more resources to developing open banking infrastructure, indicating significant consumer demand for open banking use cases, as well as interest among incumbents in maintaining some control over the system.

State of the Open Banking System

The CFPB estimates that, as of 2022, at least 100 million consumers had authorized a third party to access their account data. In 2022, the number of individual instances in which third parties accessed or attempted to access consumer financial accounts is estimated to have exceeded 50 billion and may have been as high as 100 billion, figures that vastly exceed the comparable public figures from some other jurisdictions' open banking systems, even on a per-capita basis.[9] These figures are likely to grow as consumer engagement continues and use cases expand.

The open banking system also engages a large number of entities, including thousands of depository institutions and third parties. A growing number of entities now serve as both data

[4] Fed. Deposit Ins. Corp., *National Survey of Unbanked and Underbanked Households* (2021), *https://www.fdic.gov/analysis/household-survey/2021report.pdf.*

[5] For a more detailed discussion of the history of digital banking, *see* the NPRM, 88 FR 74796, 74797–98 (Oct. 31, 2023).

[6] This final rule generally uses the term ''open banking'' to refer to the network of entities sharing personal financial data with consumer authorization. Some stakeholders use the term ''open finance'' because of the role of nondepositories as important data sources. The CFPB views the two terms as interchangeable, but generally uses ''open banking'' because that term is more commonly used in the U.S.

[7] Maria Trombly, *Citibank's Aggregation Portal a Big Draw,* Computerworld (Sept. 18, 2000), *https://www.computerworld.com/article/2597099/citibank-s-aggregation-portal-a-big-draw.html;* Off. of the Comptroller of the Currency, *Bank-Provided Account Aggregation Services: Guidance to Banks* (2001), *https://www.occ.treas.gov/news-issuances/bulletins/2001/bulletin-2001-12.html;* CNET, *Net earnings: E-commerce in 1997* (Dec. 24, 1997), *https://www.cnet.com/tech/tech-industry/net-earnings-e-commerce-in-1997/;* Microsoft, *OFX Consortium Expands with Bank of America, Citigroup, Corillian, E*TRADE and TD Waterhouse* (Oct. 2, 2001), *https://news.microsoft.com/2001/10/02/ofx-consortium-expands-with-bank-of-america-citigroup-corillian-etrade-and-td-waterhouse/.*

[8] For a more detailed discussion of the history of screen scraping, *see* NPRM, 88 FR 74796, 74797–99 (Oct. 31, 2023).

[9] *See* Press Release, Open Banking Ltd., *Open banking marks major milestone of 10 million users* (July 23, 2024), *https://www.openbanking.org.uk/news/open-banking-marks-major-milestone-of-10-million-users/;* and Consumer Data Right, *Performance, Overview, API Invocations, https://www.cdr.gov.au/performance* (scroll down to ''Overview'' dashboard; then, near the top right of dashboard, select ''Date Slider''; then update date range from ''1/1/2022'' to ''12/31/2022''; then view updated ''API Invocations'' data on the bottom left of dashboard) (last visited Oct. 16, 2024).

providers and third parties. For example, many depositories now act as third parties by offering personal financial management tools, while some entities offering so-called neobank accounts and digital wallets act as data providers. Most third party access is effectuated via a small number of aggregators, although some third parties elect to access at least some data directly.[10]

Third party data access is generally enabled via screen scraping or developer interfaces.[11] Based on feedback received through public comments and stakeholder outreach, there is nearly universal consensus that safer forms of data access should supplant screen scraping.[12] However, to this point, such a transition has required data providers to choose to develop and maintain safer forms of data access, and required agreement between such providers and third parties on the resulting terms of data access, both of which have proved to be challenging propositions.[13] In spite of these challenges, open banking use cases continue to emerge and develop. Major use cases include personal financial management tools, payment applications and digital wallets, credit underwriting (including cashflow underwriting), and identity verification. While many major use cases began as innovative offerings by third parties, incumbent financial institutions have adopted many of them in response to consumer demand.

Challenges in the Open Banking System

Though the open banking system in the U.S. has grown considerably, significant challenges remain to achieving safe, secure, reliable, and competitive open banking. Divergent interests in the market with respect to the scope, terms, and mechanics of data access, and problems with the responsible collection, use, and retention of data have impeded the transition to safer forms of data access and the development of market-wide standards. This leads to inconsistent data access for consumers and market inefficiencies. These dynamics also impel third parties to rely on intermediaries, which have interests that may not always advance open banking since they stand to benefit from existing private network effects.

Market participants' interests may diverge due to interrelated competitive, legal, and regulatory factors. For example, data providers may limit the data they share or refrain from sharing altogether to protect their market position, while third parties may collect more data than they reasonably need to provide the products or services sought by the consumer.[14] Such unnecessary collection, use, and retention of consumer data by third parties does not benefit consumers and needlessly encroaches on consumers' privacy interests.

Impacts of These Challenges on the Open Banking System

The challenges described above have impeded progress on safer forms of data access and hampered multilateral efforts by industry to establish open banking standards.[15] This stasis has forced the open banking system to depend heavily on a handful of data aggregators that accrue economic benefits from the system's inability to scale safer forms of data access and open industry standards. Dependency on a handful of data aggregators creates incentives for them to rent-seek and self-preference. In a more open system where safer forms of data access are appropriately accessible and third parties are easily verified, third parties and data providers may choose to connect without intermediaries if they wish, or continue to use them to the extent they offer compelling value.

When the challenges impeding progress described above are resolved, consumers should be able to safely, securely, and reliably exercise their data access rights in a competitive open banking system not dominated by the interests of any one segment of the market.

II. The Proposal and Other Procedural Background

A. Outreach

In addition to the industry and community outreach described in the proposal,[16] in 2016, the CFPB published in the **Federal Register** an RFI Regarding Consumer Access to Financial Information on topics including consumer-authorized data access [17] and in 2020 held a symposium with stakeholders [18] and published an ANPR in the **Federal Register**.[19] Pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA),[20] the CFPB in 2022 issued its Outline of Proposals and Alternatives under Consideration for the Required Rulemaking on Personal Financial Data Rights (Outline or SBREFA Outline) [21] and in 2023 convened a SBREFA Panel,[22] which issued a report (Panel Report or SBREFA Panel Report).[23] In December 2023, CFPB staff met with the Consumer Advisory Board, the Community Bank Advisory Council, and the Credit Union Advisory Council to receive feedback on the proposed rule.[24]

[10] For a more detailed discussion of the makeup of the market, *see* NPRM, 88 FR 74796, 74798 (Oct. 31, 2023).

[11] For a more detailed discussion of these methods, *see id.*

[12] *See, e.g.,* Consumer Fin. Prot. Bureau, *Bureau Symposium: Consumer Access to Financial Records Report,* at 3–4 (July 2020), *https://files.consumerfinance.gov/f/documents/cfpb_bureau-symposium-consumer-access-financial-records_report.pdf.*

[13] For a more detailed discussion of this transition, *see* NPRM, 88 FR 74796, 74798–99 (Oct. 31, 2023).

[14] For a more detailed discussion of divergent interests present in the market and the risks created by particular practices, including screen scraping, *see id.* at 74798–99.

[15] For a more detailed discussion of how such progress has been hampered, *see id.* at 74799.

[16] *See* 88 FR 74796, 74799 (Oct. 31, 2023). This outreach included the issuance of two sets of market monitoring orders under CFPA section 1022(c)(4) (described in the proposed rule as the ''Provider Collection'' and ''Aggregator Collection''), and engagement with CFPB advisory boards and committees.

[17] *See* 81 FR 83806 (Nov. 22, 2016). In 2017, the CFPB published a summary of comments received in response to the RFI and other stakeholder meetings. *See* Consumer Fin. Prot. Bureau, *Consumer-authorized financial data sharing and aggregation: Stakeholder insights that inform the Consumer Protection Principles* (Oct. 18, 2017), *https://www.consumerfinance.gov/data-research/research-reports/consumer-protection-principles-consumer-authorized-financial-data-sharing-and-aggregation/.*

[18] *See* Consumer Fin. Prot. Bureau, *Bureau Symposium: Consumer Access to Financial Records: A summary of the proceedings* (July 2020), *https://files.consumerfinance.gov/f/documents/cfpb_bureau-symposium-consumer-access-financial-records_report.pdf.*

[19] *See* 85 FR 71003 (Nov. 6, 2020).

[20] Public Law 104–121, 110 Stat. 857 (1996).

[21] Consumer Fin. Prot. Bureau, *Small Business Advisory Review Panel for Required Rulemaking on Personal Financial Data Rights, Outline of Proposals and Alternatives under Consideration* (Oct. 27, 2022), *https://files.consumerfinance.gov/f/documents/cfpb_data-rights-rulemaking-1033-SBREFA_outline_2022-10.pdf.*

[22] The Panel consisted of a representative from the CFPB, the Chief Counsel for Advocacy of the Small Business Administration, and a representative from the Office of Information and Regulatory Affairs in OMB.

[23] Consumer Fin. Prot. Bureau, *Final Report of the Small Business Review Panel on the CFPB's Proposals and Alternatives Under Consideration for the Required Rulemaking on Personal Financial Data Rights* (Mar. 30, 2023), *https://files.consumerfinance.gov/f/documents/cfpb_1033-data-rights-rule-sbrefa-panel-report_2023-03.pdf.* As required under the Regulatory Flexibility Act, the CFPB considered the Panel's findings in its IRFA, as set out in the NPRM. *See* 88 FR 74796, 74862 (Oct. 31, 2023). The CFPB considered the feedback it received from small entity representatives and the findings and recommendations of the Panel. The CFPB invited other stakeholders to submit feedback on the SBREFA Outline, which was not considered by the Panel and is not reflected in the Panel Report. *See https://www.regulations.gov/document/CFPB-2023-0011-0001/comment.*

[24] This feedback was submitted to the rulemaking docket. *See https://www.regulations.gov/comment/CFPB-2023-0052-11086* (Community Bank Advisory

Continued

Before and after issuing the proposal, CFPB staff met on numerous occasions to obtain feedback from staff from the Board of Governors of the Federal Reserve System, OCC, FDIC, NCUA, and FTC, including on the subjects in CFPA sections 1022(b)(2)(B) and 1033(e). CFPB staff has also met with staff from other Federal agencies, including staff from the USDA, the U.S. Department of the Treasury, the U.S. Department of Justice, the U.S. Department of Commerce, the Federal Housing Finance Agency, as well as staff from State agencies.

B. Summary of the Proposed Rule

On October 19, 2023, the CFPB released the notice of proposed rulemaking for the Required Rulemaking on Personal Financial Data Rights. The proposal was published in the **Federal Register** on October 31, 2023, and the public comment period closed on December 29, 2023. *See* 88 FR 74796 (Oct. 31, 2023).

Part 1033

The proposal would have implemented CFPA section 1033 by ensuring consumers and third parties who are authorized to access covered data on behalf of consumers can access covered data in an electronic form from data providers. In general, the proposal sought to foster a data access framework that is safe, by ensuring third parties are acting on behalf of consumers when accessing their data, including with respect to consumers' privacy interests; secure, by applying a consistent set of security standards across the market; reliable, by promoting the accurate and consistent transmission of data that are usable by consumers and authorized third parties; and competitive, by promoting standardization and not entrenching the roles of incumbent data providers, intermediaries, and third parties whose commercial interests might not align with the interests of consumers and competition generally. The proposed rule sought to foster this kind of framework by direct regulation of practices in the market and by identifying areas in which fair, open, and inclusive standards can develop to provide additional guidance to the market. Consistent with the statutory mandate in CFPA section 1033(d), various provisions in the proposed rule sought to promote the use and development of standardized formats. The proposal identified six general objectives to be achieved by its various provisions.

First, the proposal would have clarified the scope of data access rights under CFPA section 1033 by defining key terms, establishing which covered persons would be required to make data available to consumers, and defining which data would need to be made available to consumers. Second, the proposal would have established basic standards for data access by requiring data providers to maintain a consumer interface for consumers and a developer interface for third parties to access consumer-authorized data under CFPA section 1033. Data providers would have been required to make available covered data to authorized third parties in a standardized format, in a commercially reasonable manner, without unreasonable access caps, and pursuant to certain security specifications. In addition, data providers would have had to follow certain procedures to disclose information about themselves and their developer interfaces, and to establish and maintain certain written policies and procedures to ensure compliance with the provisions of the rule and promote the objectives of CFPA section 1033. Third, the proposal would have prevented data providers from allowing a third party to access the system using consumer interface credentials. This and the proposals described above were intended to transition the market from screen scraping towards an access method that complies with CFPA section 1033. Fourth, the proposal would have defined the mechanics of data access by proposing certain requirements and clarifications with respect to when a data provider must make available covered data upon request to consumers and authorized third parties. Fifth, the proposal sought to ensure third parties are acting on behalf of consumers through requirements that a third party certify to consumers that it will only collect, use, and retain the consumer's data to the extent reasonably necessary to provide the consumer's requested product or service. The proposed rule also sought to improve consumers' understanding of third parties' data practices by requiring a clear and conspicuous authorization disclosure including key facts about the third party and its practices. Other key protections in the proposed rule would have included limiting the length of data access authorizations and requiring deletion of consumer data in many cases when a consumer's authorization expires or is revoked. Sixth, the proposal sought to promote fair, open, and inclusive industry standards by proposing that conformance with ''qualified industry standards'' issued by standard-setting bodies recognized by the CFPB would provide some indicia of compliance with various rule provisions.

Part 1001

Separately, the proposed rule would have defined financial products or services under the CFPA in 12 CFR part 1001 to ensure that the definition includes providing financial data processing. The proposal explained that this would provide additional assurance that financial data processing by third parties or others is subject to the CFPA and its prohibition on unfair, deceptive, and abusive acts or practices.

Comments

The CFPB received approximately 11,120 public comments on the proposal during the comment period.[25] Approximately 290 of these comments were unique, detailed comment letters. These commenters included data providers and third parties, including banks of different sizes, credit unions, a variety of nondepository entities, and data aggregators;[26] trade associations representing a diverse array of interests; standard-setting bodies;[27] consumer advocates;[28] researchers and a variety of research institutes; members of Congress; government agencies; law firms; and individual commenters not affiliated with or representing any organization.

In addition, the CFPB considered comments received after the comment period closed via approximately 60 ex parte submissions and meetings.[29] These materials, including all ex parte submissions and summaries of ex parte meetings, will be available on the public docket for this rulemaking.[30]

Council); *https://www.regulations.gov/comment/CFPB-2023-0052-11087* (Credit Union Advisory Council); *https://www.regulations.gov/comment/CFPB-2023-0052-11088* (Consumer Advisory Board).

[25] *See https://www.regulations.gov/docket/CFPB-2023-0052/comments.*

[26] Depending on the context and its activities, a particular entity might be a data provider, a third party, a data aggregator acting on behalf of a third party, or some combination thereof. The description of commenters in this final rule attempts to characterize the commenter based on the expressed or inferred capacity in which they provided feedback.

[27] As used in this final rule, this term refers to nonprofit entities that described themselves principally as an industry standard-setting body. The CFPB recognizes, however, that a variety of other commenters might be involved in standard-setting activities.

[28] As used in this final rule, this term refers broadly to all types of consumer advocates, including privacy advocates and community groups.

[29] *See* Consumer Fin. Prot. Bureau, *Policy on Ex Parte Presentations in Rulemaking Proceedings,* 82 FR 18687 (Apr. 21, 2017).

[30] *See https://www.regulations.gov/docket/CFPB-2023-0052.*

The remaining comments included some duplicate submissions (*i.e.,* letters with the same content from the same commenter submitted through multiple channels, or letters with the same content submitted by multiple people on behalf of the same commenting organization) as well as comments that appeared to be part of several comment submission campaigns. Such comment campaigns typically advocated for or against particular provisions in the proposal and urged additional changes. These comments were considered by the CFPB along with all other comments received, including any additional remarks included in otherwise identical comment letters.

The CFPB received comments on nearly all aspects of the proposed rule, and on its analyses of the proposed rule's impacts. Relevant information received via comment letters, as well as ex parte submissions, is discussed below in subsequent parts of this document, as applicable. The CFPB considered all the comments it received regarding the proposal, made certain modifications, and is adopting the final rule as described in part IV below.

C. 2024 Industry Standard-Setting Final Rule

In June 2024, the CFPB finalized the proposal in part, establishing attributes a standard-setting body must possess to receive CFPB recognition for purposes of issuing standards that provide some indicia of compliance with certain substantive provisions of part 1033, as well as establishing the application process for CFPB recognition. *See* 89 FR 49084 (June 11, 2024) (Industry Standard-Setting Final Rule).

III. Legal Authority

A. CFPA Section 1033

CFPA section 1033(a) and (b) provide that, subject to rules prescribed by the CFPB, a covered person shall make available to a consumer, upon request, information in the control or possession of the covered person concerning the consumer financial product or service that the consumer obtained from such covered person, subject to certain exceptions. The information must be made available in an electronic form usable by consumers. Section 1002 of the CFPA defines certain terms used in CFPA section 1033, including defining ''consumer'' as ''an individual or an agent, trustee, or representative acting on behalf of an individual.'' In light of these purposes and objectives of section 1033 and the CFPA generally, the CFPB interprets CFPA section 1033 as authority to establish a framework that ensures data providers readily make available to consumers and third parties acting on behalf of consumers (including authorized third parties offering competing products and services), upon request, covered data in a usable electronic form. In addition, CFPA section 1033(d) provides that the CFPB, by rule, shall prescribe standards applicable to covered persons to promote the development and use of standardized formats for information, including through the use of machine-readable files, to be made available to consumers under this section. Moreover, the CFPB interprets CFPA section 1033 as authority to specify procedures to ensure third parties are truly acting on behalf of consumers when accessing covered data. These procedures help ensure the market for consumer-authorized data operates fairly, transparently, and competitively.

CFPA section 1033(c) provides that nothing in CFPA section 1033 shall be construed to impose any duty on a covered person to maintain or keep any information about a consumer. Further, CFPA section 1033(e) requires that the CFPB consult with the prudential regulators and the FTC to ensure, to the extent appropriate, that certain objectives are met.

B. CFPA Sections 1022(b) and 1024(b)(7)

CFPA section 1022(b)(1) authorizes the CFPB to, among other things, prescribe rules ''as may be necessary or appropriate to enable the [CFPB] to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.'' The CFPA is a Federal consumer financial law.[31] Accordingly, in issuing the proposed rule, the CFPB is exercising its authority under CFPA section 1022(b) to prescribe rules that carry out the purposes and objectives of the CFPA and to prevent evasions thereof. This would include, at least in part, provisions to require covered persons or service providers to establish and maintain reasonable policies and procedures, such as those to create and maintain records that demonstrate compliance with the rule after the applicable compliance date. CFPA section 1024(b)(7) also grants the CFPB authority to impose record retention requirements on CFPB-supervised nondepository covered persons ''for the purposes of facilitating supervision of such persons and assessing and detecting risks to consumers.''

C. CFPA Section 1002

Certain provisions of the CFPA, such as its prohibition on unfair, deceptive, or abusive acts or practices, apply in connection with a consumer financial product or service. Under CFPA section 1002(5), this is generally defined as a financial product or service that is ''offered or provided for use by consumers primarily for personal, family, or household purposes.'' In turn, CFPA section 1002(15) defines a financial product or service by reference to a number of categories. In addition, CFPA section 1002(15)(A)(xi)(II) authorizes the CFPB to issue a regulation to define as a financial product or service, for purposes of the CFPA, ''such other financial product or service'' that the CFPB finds is ''permissible for a bank or for a financial holding company to offer or to provide under any provision of a Federal law or regulation applicable to a bank or a financial holding company, and has, or likely will have, a material impact on consumers.'' The CFPB is exercising this authority in finalizing § 1001.2(b).

IV. Discussion of the Final Rule

12 CFR Part 1033

General Comments Received on the Proposal

High-level and general comments received on the CFPB's proposed rule to implement CFPA section 1033 are discussed here, followed by a discussion of comments specifically addressing the rulemaking process, liability among commercial entities, and overlaps with other consumer financial laws and CFPB rulemaking activity. Comments received on specific aspects of the CFPB's proposed rule, as well as regarding the CFPB's legal authority to adopt specific aspects of the rule, and the anticipated effects of particular provisions, are discussed in turn in the sections that follow in this part IV. Comments regarding the CFPB's analysis of impacts are discussed in parts VI through VIII.

1. High-Level and General Comments on the Proposal

General Support

Most commenters, including data providers, third parties, data aggregators, trade associations, consumer advocates, and others, supported the overall goals of the rulemaking articulated in the proposal. Many commenters supported implementing the data access rights in CFPA section 1033 to include direct

[31] *See* 12 U.S.C. 5481(14) (defining ''Federal consumer financial law'' to include the provisions of the CFPA).

consumer and third party access that would allow consumers and authorized third parties to access data more reliably and securely compared to current market practices. A research institute commenter stated that the proposal would assure a robust regime of third party access with respect to its coverage, while building in flexibility to allow the regime to evolve along with changes in market standards and technology.

Many third party commenters, consumer advocates, and others stated consumer-authorized access would help consumers, including those underserved by their existing account providers, manage their financial lives and access new and competing products and services. A community bank commenter indicated the proposal would help ensure community banks remain vital in the areas they serve.

Many commenters, including third parties, data providers, consumer advocates, and others also stated that the rule would generally increase competition overall by reducing barriers to entry and other impediments for market participants to compete with incumbent depository and nondepository institutions. For example, a credit union commenter stated that the standardization of third party data access would allow smaller institutions to rely on the same technology as larger institutions, decreasing incumbents' market power. Other commenters believed that the proposal's approach to standard-setting would reduce the influence of incumbents and increase consumers' bargaining power and access to services offered by different providers. Some data provider commenters stated that the proposal would support competition by limiting third party secondary use of consumer-authorized data and ensuring third parties are subject to a basic standard for data security.

Some commenters specifically indicated that the rule would have competitive benefits in certain markets. For example, a trade association for certain third parties stated that open banking can spur competition in the payments sector, lowering transaction costs and mitigating the durable market power of certain incumbents. The commenter noted that the proposal's prohibition on fees for third party access would allow cost-sensitive merchants to accept lower-cost payments.

Commenters also emphasized the benefits of informed consent and consumer control when sharing data with third parties and the need for consumer protection in consumer-authorized access. Many data providers, third parties, consumer advocates, and others also supported the rule's efforts to protect consumers by enabling them to control their data effectively. For example, a consumer advocate expressed general support for the proposal, characterizing it as a strong, protective rule that would ensure that consumers can share account data free of misuse or exploitation. This commenter also stated the consumer protections in the rule should serve as a model for how to safeguard consumer control and privacy when a consumer grants permission to a business to use their data.

General Opposition

While many commenters supported the proposal overall, some data providers, third parties, and others were critical of some or all aspects of the proposal. A number of data provider commenters, particularly credit unions and community banks, expressed opposition to the proposal as a whole, and questioned whether a rule was necessary or appropriate to achieve the CFPB's stated goals, including with respect to competition, and questioned the CFPB's legal authority to issue rules for open banking.

In addition, a wide variety of commenters, including data providers and third parties, raised what they described as significant concerns about the costs of the proposal, often with respect to specific provisions. In particular, data providers were most concerned with potential compliance costs related to the Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681 *et seq.,* the costs of providing access to third parties in compliance with the rule as proposed (including the prohibition on charging fees for access), the costs associated with managing third party risk, and how liability would be allocated for third party breaches or fraud. A number of entities—mainly though not exclusively third parties that use consumer-authorized data—asserted that the proposed third party limitation on collection, use, and retention of covered data would foundationally undermine the rule and restrict consumers' ability to share their data. A large number of smaller financial institutions and related trade associations expressed concern that the proposal would disadvantage small entities.

A variety of commenters suggested that the proposal would undermine competition in various ways. Some commenters, including research institutes, third parties, and data providers asserted that the proposal's coverage was too narrow to support competition. For example, a data aggregator stated that the proposal's limited coverage of products and data types would reduce third party innovation, and a research institute stated that the limited coverage of data providers would give them an incentive to block data access outside of the rule's coverage, further limiting third party access to data. A research institute and a data provider commenter stated that the proposal would undermine competition by limiting the role of industry standard-setting bodies that are not recognized by the CFPB.

Some credit union and community bank commenters stated that the rule as a whole would unfairly force data providers to maintain data access systems and bear other costs, effectively subsidizing competition from third parties, particularly as a result of the proposed fee prohibition for third party data access. Several of these commenters noted that this result would benefit nondepositories that are excluded from the data provider definition and would come at the expense of depository institutions, which would disproportionately disadvantage credit unions and community banks. Data providers expressed concern that they would unfairly bear the burden of managing liability risks presented by nondepository third parties that are not subject to the same regulatory oversight. Several data provider commenters expressed concern that third parties would use consumer data to harm data providers, such as by reverse-engineering sensitive commercial information. A data aggregator commenter stated that the proposal would consolidate the market of data aggregators by forcing data providers to grant access to third parties, ultimately stifling innovation.

Credit union and community bank commenters also expressed concern that the proposal would disadvantage them relative to larger and better resourced data providers. These commenters stated that the proposal would impose disproportionate and unsustainable costs on smaller data providers and would force some to exit the market or otherwise consolidate the banking industry, reducing consumer access to products and services. A number of commenters stated that smaller depository institutions that rely on core service providers would be less able to manage the costs of a prohibition on fees for third party access. One data provider commenter stated that the proposed rule would force less-resourced data providers to adhere to standards established by the largest data providers, which would reduce their profitability. Another data provider

commenter stated that forcing some data providers to make data available to third parties while exempting community banks would put community banks at a competitive disadvantage relative to large data providers.

As discussed in part IV.D.4, a variety of third party commenters expressed concern that the proposed limitation on collection, use, and retention of covered data would restrict innovation by third parties or limit the ability of new entrants and providers of new products and services to provide innovative products. For example, a trade association representing nondepository institutions argued that the final rule should allow broader use of covered data for advertising purposes to support competition, while numerous commenters, including research institutes and others, expressed concern about the limitation on use of de-identified data, including for research purposes. Other commenters argued the proposed limitation on collection, use, and retention of covered data would not only disadvantage third parties relative to other market participants, but also reduce the competitiveness of the U.S. overall. Some commenters also asserted that the proposed third party obligations, including the limit on collection, use, and retention of covered data, would put third parties at a significant competitive disadvantage to data providers that are unrestricted by the limitations. For example, some commenters stated that the proposed limitation on a third party's duration of authorization would disadvantage third parties engaged in payments relative to incumbents that do not rely on consumer-authorized data. Some third party commenters also stated that the proposal's allowance of tokenized account numbers would result in anticompetitive conduct by data providers.

Several commenters argued that the market for consumer-authorized data is already competitive and that a rulemaking to increase competition among data providers, intermediaries, and third parties, would be unnecessary or would yield few benefits. As evidence of the level of competition in the U.S., commenters noted that third parties access (or attempt to access) consumer-authorized data more frequently in the U.S. than in other countries; noted that the market is already moving toward the use of APIs and away from screen scraping; and asserted that the market for data provider products and services (including for credit card and deposit accounts) is robust and provides high levels of customer service. Some commenters representing community banks asserted that consumers are not demanding third party data access, but that community banks would provide it if consumers did demand it.

Some commenters, particularly community banks and credit unions stated that the proposal would not meet its objectives related to privacy and security for various reasons. Some commenters suggested this would be the case because of a lack of regular examinations of third parties. Others took issue more generally with the obligation to make data available to third parties, which they said would open the door to fraud and security breaches of personally identifiable data. Many data providers expressed concern that they would be obligated to ensure the data security of third parties.

Some data provider and third party commenters also raised concerns about the CFPB's legal authority for parts of the proposal. Some commenters also suggested that the CFPB consider consumer data sharing rules in other jurisdictions in drafting the final rule, but without clear consensus on what did or did not work in other jurisdictions.

Response to Comments

The CFPB agrees with the general comments about implementing CFPA section 1033 to ensure data providers not only provide data access to consumers directly but also provide access for consumers' authorized third party representatives. As discussed in part III and part IV.C.2, this aspect of the rule is consistent with the plain language and objectives of section 1033 and the CFPA more broadly. In addition, the CFPB agrees that this aspect of the rule will increase opportunities for both depository and nondepository institutions to provide better products or services to consumers and enable consumers to manage their financial lives using data under the control or possession of data providers.

The CFPB also agrees with commenters that supported the general approach to third party access. As discussed in part IV.D, the third party access provisions of the final rule are designed to ensure, consistent with carrying out the objectives of CFPA section 1033, that consumers provide informed consent to third parties that access covered data pursuant to the final rule's framework, that consumers retain control over third parties' access, and that third parties act on behalf of consumers when collecting, using, and retaining covered data.

With respect to comments opposing the proposal, including due to concerns about the impact on competition, the final rule carries out Congress' objectives in CFPA section 1033(a) and the mandate at CFPA section 1033(d) to prescribe standards to promote the development and use of standardized formats. As discussed further in part IV.D.1, Congress intended for consumers to be able to authorize third parties to access data under the statute on their behalf. Congress also directed the CFPB to prescribe standards to promote the development and use of standardized formats of information. The final rule carries out those objectives. For more discussion on the costs and benefits of the final rule, including impacts on competition, see parts VI and VII below.

The final rule will help ensure that markets for consumer financial products and services are competitive overall. Consumers will have even greater ability to take advantage of the many products or services already available, and data providers will have stronger incentives to enhance their products and services to retain their customers. The CFPB disagrees with arguments that consumers are not interested in third party data access, and notes that many consumers of institutions both large and small share data with third parties. But even where data providers already make data available voluntarily, the CFPB has determined the rulemaking is needed to address the challenges that have arisen in open banking, as discussed in the proposal. *See* 88 FR 74796, 74798–99 (Oct. 31, 2023).

As discussed further in part IV.A.3, the CFPB has determined it is appropriate to implement the product coverage of CFPA section 1033 in a staged manner. With respect to concerns about data provider incentives to block screen scraping, those incentives exist independent of the final rule. As safer forms of data access become functional, the CFPB expects that parties will move away from screen scraping. However, as discussed further in part IV.C.3, data providers must exercise caution when blocking screen scraping outside the rule's coverage.

With respect to the impact on the market for data aggregation, in the current market, and in the absence of implementing CFPA section 1033, open banking activity has already consolidated to data aggregators for the reasons discussed in the proposal. *See* 88 FR 74796, 74798–99 (Oct. 31, 2023). The impact of the rule on the value of intermediation arises from carrying out congressional intent to make consumer data more portable, including as a result of the interoperability objective inherent in CFPA section 1033(d)'s mandate to

promote standardized formats. Additionally, whether an authorized third party relies on an aggregator is a business decision of the authorized third party. The final rule will reduce costs for authorized third parties generally, including the cost of using an aggregator, and should make it easier to access data directly from data providers over time, due to various aspects of the final rule including the requirements related to standardized formats, the prohibition on fees, and the rule's recognition of industry standard-setting as an important aspect of an effective and efficient open banking system.

With respect to concerns about competitive disadvantages for smaller data providers, the CFPB is not finalizing the rule with respect to depository institutions under the coverage threshold at § 1033.111(d) and is providing smaller data providers that are covered additional time to comply, as discussed in part IV.A.5. The rule also presents opportunities for small data providers to better compete by offering products and services to a wider range of consumers. One commenter expressed concern that excluding smaller data providers would disadvantage small data providers relative to large data providers that continued to have the obligation, but for which they would not offer developer interfaces. The CFPB disagrees with this premise and notes that many large data providers are already offering developer interfaces and that small data providers can participate in open banking voluntarily.

Some commenters expressed concern that the rule would force small data providers to rely on standards developed by large data providers with more resources. During the SBREFA process, the CFPB received feedback that standardization can reduce costs for small entities, including data providers and third parties.[32] Consistent with the mandate in CFPA section 1033(d), the final rule includes various provisions to promote the development and use of standardized data formats. Further, consensus standards (discussed in part IV.A.6 below) that can serve as indicia of compliance with various rule provisions, must be issued by a recognized standard setter that demonstrates balance, as discussed further in the Industry Standard-Setting Final Rule.

With respect to commenters that expressed concerns about obligations for authorized third parties, including the limitation on third party collection, use, and retention of covered data, the CFPB notes that those provisions ensure that consumers provide express informed consent to third parties that access covered data, that consumers retain control over third parties' access, and that third parties act on behalf of consumers when accessing covered data. The CFPB's responses to commenter concerns related to the third party authorization procedures and obligations are discussed below in part IV.D. Further, and as discussed in part IV.D.4, the CFPB disagrees with commenters' assertions that the rule would competitively disadvantage third parties relative to data providers. Data providers and third parties may use data that result from direct consumer relationships without adhering to the third party authorization procedures and obligations, and the final rule also does not treat covered data providers differently than other third parties when they act as authorized third parties themselves. With respect to comments about the competitiveness of the U.S. generally, the purpose of this rule is to ensure that third parties are acting on behalf of consumers. With respect to comments about third party oversight and data security, see the discussion below in part IV.3, IV.5, IV.C.4–5, and IV.D.4.

2. Comments Regarding the Rulemaking Process

The CFPB issued the proposed rule on its website on October 19, 2023, and published it in the **Federal Register** on October 31, 2023, with comments due by December 29, 2023. Some commenters asserted that the CFPB's comment period should have been longer. One commenter disagreed and suggested that requests to extend the comment period were pretextual efforts to delay implementation.

The Administrative Procedure Act does not specify a particular period of time for a public comment period,[33] and the comment period in this rulemaking was sufficient. This is illustrated by, among other things, the many detailed comments the CFPB received from stakeholders of all types, sizes, and viewpoints. Additionally, as noted above in part II, the CFPB has engaged in extensive public outreach since 2016 related to consumer-authorized data sharing, including through an RFI, an ANPR, and the SBREFA process. The CFPB also has taken various steps in response to the specific concerns raised with respect to the substantive provisions of the proposal. In particular, as discussed in part IV.A.4, the CFPB has determined to not finalize the rule with respect to small depository institution data providers.

3. Comments Regarding Liability Among Commercial Entities

Comments Received

Many commenters addressed the general topic of liability. A number of data provider commenters, academic researchers, and research institute commenters predicted that the final rule would increase the volume of sensitive financial data accessed by third parties, particularly sensitive information to initiate a payment (under proposed § 1033.211(c)), which they viewed as increasing the risk of unauthorized transactions or other harms arising from the compromise of a data provider's or third party's information systems, such as the risk of inaccurate data transmission. A number of data provider commenters noted that consumers might seek to hold data providers responsible for damages, or that data providers would face increased costs related to reimbursing consumers for a third party having fraudulently induced the consumer's authorization to access covered data. These commenters expressed concern that this would subject data providers to losses arising from liability and other compliance obligations, such as costs due to Regulation E and Z error investigations, preventing monetary losses to accounts, seeking reimbursement from third parties, and safety and soundness standards. Commenters also noted other laws, including State laws, related to ''fraud,'' ''negligence,'' ''privacy,'' ''identity theft,'' and ''data security,'' but did not otherwise identify sources of liability. Several commenters also raised questions about the applicability of the FCRA, which are described separately below in part IV.4.

Many data provider commenters asserted that the proposal had not accounted for data providers' potential exposure to liability-related costs or ensured third parties had incentives to manage liability and otherwise demonstrate capacity to cover losses directly caused by third parties. Some of these commenters stated that the proposal had incorrectly assumed that liability could be allocated adequately through private agreements (including private payment network rules and bilateral contracts), the Electronic Fund Transfer Act (EFTA), 15 U.S.C. 1691 *et seq.,* the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.,* and their implementing regulations. Commenters generally suggested the CFPB address liability by mandating a comprehensive approach to assigning liability or safe

[32] *See, e.g.,* SBREFA Panel Report at 28, 44.

[33] *See* 5 U.S.C. 553(c).

harbors for data providers, clarifying the role of bilateral data access agreements to allocate liability, or take other steps to reduce harms that might create liability risk. By contrast, a trade association representing third parties and a data aggregator stated that the liability allocation under EFTA and TILA, combined with the third party data security and privacy obligations under the proposal, would be adequate to address liability concerns, although these commenters also expressed concern about relying on bilateral contracts to allocate liability. One commenter stated that liability should flow with the data, but that data providers and authorized third parties should be permitted to allocate liability amongst themselves by contract.

In particular, a data provider commenter expressed criticisms of private network rules, stating that they do not give data providers sufficient ability to recoup losses among multiple third parties, some of which might not be financially viable or be downstream of the authorized third party and outside of contractual privity; they do not provide for a clear liability framework or sufficient fraud or data security protections for higher-risk ''pay-by-bank'' transactions; and they do not fully address the costs of error investigations or other customer service particularly where consumers expect data providers to make them whole following a data breach.

With respect to bilateral contracts, several data provider and third party commenters stated that they are costly to negotiate and enforce (including against third parties that might not be financially viable), would result in uneven liability allocations across the market, and would generally protect the interests of the largest data providers. Several third party commenters also expressed concern that they might include unnecessary terms based on an overbroad interpretation of third party risk management obligations or be used to deny access pretextually.

Data provider commenters also asserted that third party compliance with GLBA Safeguards Framework, as contemplated under the proposal, would be insufficient to protect consumers or data providers from liability risk because third parties would lack incentives to manage their data security if they were not financially liable for their conduct, and because they are not subject to supervision. A consumer advocate commenter also stated that clear expectations for liability would provide third parties greater incentive to manage data security risks.

To address these concerns, a wide range of data provider commenters, a trade association representing third parties, an academic researcher, and a consumer advocate recommended that the regulatory text include a comprehensive liability-allocation provision for any losses arising from the third party's misuse of a consumer's payment credentials to conduct a fraudulent transaction, losses arising from the unauthorized access of payment credentials due to a data breach, or other losses arising from harms occurring from data in that party's possession. Several data provider commenters and academic researcher commenters noted that other open banking regimes around the world take a similar approach. One trade association noted that, while liability is traditionally determined based on which party has possession of the data, the rule does not indicate that this is the case. Other data provider commenters, including a number of credit union commenters, recommended that the final rule establish a ''safe harbor'' for data providers required to make data available under the final rule that protects the data provider from claims from consumers and third parties. Some commenters presented different versions of such an approach, such as by conditioning the absence of liability on whether the data provider had actual knowledge of the third party's data security risk, or the third party making representations about its data security practices, or on the third party's possession of a certification or credential.

While some data provider and third party commenters expressed concern with reliance on bilateral data access agreements to allocate liability, some of these data provider commenters stated that they could be used to address liability concerns. Several data provider commenters recommended that the final rule address liability by clarifying that data providers are not precluded from exercising discretion to comply with prudential safety and soundness obligations, including third party risk management expectations. Several of these commenters recommended that data providers be permitted to deny third parties, including data aggregators, access to a developer interface if they did not accept contractual terms related to liability, such as indemnification and insurance obligations. Several data provider commenters and related trade associations recommended that third parties be required to have or certify that they have adequate capital or insurance to cover losses. However, a data aggregator commenter stated that the rule should affirm the adequacy of the existing liability framework under EFTA and Regulation E and TILA and Regulation Z to help limit liability disputes during negotiations of bilateral data access agreements. Comments related to the role of such agreements in managing third party risk are discussed in greater detail in part IV.C.4 below.

Data provider commenters also recommended that the rule address liability by subjecting third parties to additional data security obligations, such as the FFIEC information security handbook appliable to depository institutions (discussed further below in part IV.D) or CFPB supervision. A research institute commenter also supported clarifying the CFPB's intent to supervise third parties as a way to reduce concerns related to liability.

A data provider commenter requested that the final rule clarify whether the data provider has any liability in the context of specific provisions of the proposal: (1) if a third party collects more information than is necessary to offer a specific product or service; and (2) if a data breach occurs because an authorized third party does not delete data after a consumer revokes its authorization or does not timely communicate the revocation to a data aggregator.

Response to Comments

The CFPB has determined it would not be appropriate for this rule to impose a comprehensive approach to assigning liability among commercial entities or safe harbors from the requirements of EFTA and Regulation E or TILA and Regulation Z. The ability of payees to initiate electronic payments has existed for decades and the Regulation E concerns raised by commenters are not specific to CFPA section 1033. Although this rule facilitates sharing of payment initiation information with third parties so that they can initiate electronic payments, the rule does not require account write access or otherwise require payment initiation. Applicable payment authorization requirements continue to separately apply. As noted in the proposal, consumers have a statutory right under EFTA to resolve errors through their financial institution, while private network rules, contracts, and other laws address which payment market participant is ultimately liable for unauthorized transfers and other payment errors. As discussed further below, the U.S. payment system allows non-bank payees to initiate payments through their depository institution, and those partner depository institutions

also bear responsibility for who is allowed to access the payment networks.

The CFPB is aware that it is common for non-bank payees, such as utility companies, charities, non-bank lenders, community organizations, and other billers, to initiate payments through their depository institution. The payee's depository institution, referred to as an originating depository financial institution in the context of ACH payments, is responsible for ensuring that any payments it initiates on the payee's behalf are correct and authorized, as they are subject to private network rules and safety and soundness requirements related to risk management.[34] Data providers that are Regulation E financial institutions will continue to have error resolution obligations for transfers initiated using payment information shared under this rule, just as they do today when a consumer shares information with a payee or a consumer's payment credentials are compromised, and can seek reimbursement from an originating depository financial institution according to private network rules, contracts, and commercial law. For example, although a consumer's financial institution is required to reimburse the consumer for an unauthorized transfer under Regulation E, ACH private network rules generally dictate that the receiving depository financial institution is entitled to reimbursement from the originating depository financial institution that initiated the unauthorized payment. Similarly, data providers that are Regulation Z credit card issuers will continue to have error resolution obligations under TILA. Commenters did not identify a plausible method through which the proposal would increase the risk of credit card fraud. The final rule does not require data providers to make available credit card payment information. For both Regulation E accounts and Regulation Z credit cards, because the final rule only requires data providers to share information and does not require that they allow third parties to initiate payments using that information, any costs arising from error investigations and the recoupment of losses by data providers are a function of how private network rules operate. The final rule does not impinge on such private arrangements.

Commenters suggested that consumer-authorized data sharing may create risks to consumers and financial costs to financial institutions arising from an increased risk of unauthorized transactions and other errors, especially when data access relies on screen scraping. In implementing CFPA section 1033, the CFPB is finalizing a variety of measures to mitigate unauthorized transfer and privacy risks to data providers and consumers, including allowing data providers to share TANs; not allowing data providers to rely on credential-based screen scraping to satisfy their obligations under CFPA section 1033; clarifying that data providers can engage in reasonable risk management activities; implementing authorization procedures for third parties that would require they commit to data access, use, and retention limitations; implementing policies and procedures regarding data accuracy; and requiring compliance with the GLBA Safeguards Framework. These provisions are intended to drive market adoption of safer data sharing practices. With respect to commenters' suggestions to reduce costs associated with liability through data access agreements or other conditions for third parties attempting to access consumer data, see parts IV.C.4 and IV.D.4. With respect to the suggestion that authorized third parties certify to consumers as to capital adequacy or insurance, see part IV.D.1 for discussion of comments.

Finally, the CFPB does not believe it would be appropriate to attempt to establish a comprehensive approach to addressing liability (including through safe harbors) for laws it does not administer, such as State laws dealing with data security, privacy, identity theft, negligence, and fraud. The extent of data providers' liability for failure to comply with their obligations under this final rule is provided for under the CFPA.

The CFPB also notes that commenters did not provide legal analysis or factual evidence about the likelihood that data providers would actually incur legal liability under these laws when consumers request, or Federal law requires, they make data available to a third party that subsequently misuses or mishandles the data. While some commenters stated that consumers would be likely to seek to recoup from the data provider losses arising from third party conduct, it is not clear to what extent that is likely to occur when losses arise from a third party to which the consumer requested the data provider make information available. To the contrary, a trade association commenter indicated that liability typically resides with the party that experiences a data breach. Nor did commenters provide evidence of the extent to which data providers actually defend against claims of such liability, despite data providers' long-standing practice of consumer-authorized third party data sharing. To the extent there are complex factual or legal questions about a data provider's liability for directly contributing to consumer harm, commenters did not identify particular scenarios, and the CFPB does not believe it would be appropriate to make statements about a data provider's liability in this final rule. As an additional and independent reason, commenters did not identify the legal authority the CFPB could rely on to modify laws it does not administer.

4. Comments Regarding Potential Overlaps With Other Consumer Financial Laws and CFPB Rulemaking Activity

Electronic Fund Transfer Act and Regulation E

Comments

In addition to the liability comments discussed above, some data provider commenters specifically commented on the applicability of EFTA and Regulation E. Some data provider commenters asked the CFPB to apply Regulation E error investigation requirements to all third parties. A few data provider commenters stated that the CFPB should clarify that data aggregators are Regulation E service providers, asserting that the data aggregator is in the best position to control for risks related to the transactions it permits a consumer to conduct through its system. A trade association representing data providers asked the CFPB to clarify that a data access agreement between an aggregator and data provider is an ''agreement'' for purposes of the Regulation E service

[34] *See, e.g.,* OCC Bulletin 2006–39, *Automated Clearing House Activities: Risk Management Guidance* (Sept. 1, 2006), *https://www.occ.gov/news-issuances/bulletins/2006/bulletin-2006-39.html;* NACHA Operating Rules Section 2.2: Warranties and Liabilities of Originating Depository Financial Institutions; NACHA Operating Rules Subsection 2.2.3 Liability for Breach of Warranty (''Each ODFI breaching any of the preceding warranties shall indemnify each RDFI, ACH Operator, and Association from and against any and all claim, demand, loss, liability, or expense, including attorney's fees and costs, that result directly or indirectly from the breach of warranty or the debiting or crediting of the entry to the Receiver's account. This indemnity includes, without limitation, any claim, demand, loss, liability, or expense based on the ground that the debiting of an entry to an account resulted, either directly or indirectly, in the return of one or more items or entries of the Receiver due to insufficient funds. This indemnity also includes, in the case of a Consumer Account, without limitation, any claim, demand, loss, liability, or expense based on the ground that the failure of the ODFI to comply with any provision of these rules resulted, either directly or indirectly, in the violation by an RDFI of the Federal Electronic Fund Transfer Act or Federal Reserve Board Regulation E.'').

provider provision. A data provider commenter asked the CFPB to clarify that, if a third party is a Regulation E financial institution, such as a digital wallet provider that obtains permissioned data access under CFPA section 1033, it would have error resolution responsibilities for payments initiated using data obtained from the developer interface and that such digital wallet providers should be required to provide their contact information to consumers.

Response to Comments

The CFPB has determined that it is not appropriate or practical to deny consumers their statutory right to resolve errors through their financial institution and this final rule does not change such rights under EFTA and Regulation E. The Regulation E definition of financial institution means a bank, savings association, credit union, or any other person that directly or indirectly holds an account belonging to a consumer, or that issues an access device and agrees with a consumer to provide electronic fund transfer services.[35] The CFPB declines to expand the scope of the Regulation E service provider provision to data aggregators, because doing so would limit consumers' ability to resolve errors and unauthorized transactions through their account-holding financial institution. Whether a given entity is a service provider for a given electronic fund transfer will depend on the relationship between the entities involved in making that individual transfer, not whether the payee used payment credentials shared under this final rule to initiate the payment. Negating a consumer's statutory right to go to their financial institution to resolve errors also would result in an illogical and harmful error resolution regime. From the consumer's perspective, they may not know whether an error is related to data that was shared under CFPA section 1033. The CFPB is aware that some financial institutions attempted to have consumers enter into agreements to waive EFTA rights in situations where they shared account credentials or other information with a third party, even though such agreements violated the EFTA anti-waiver provision in 15 U.S.C. 1693l.[36] It was unclear at the time how exactly the depository institutions intended to enforce this waiver language. One concern was that it would be used to deny all Regulation E error resolutions rights to consumers who had shared any information with a data aggregator, even if the financial institution did not know whether the error was related to that shared information. It also would be burdensome and likely infeasible for the consumer to sort out when they should go to their financial institution for help versus a third party versus another entity for a transaction that they do not recognize.

Data providers and third parties that are Regulation E financial institutions—including digital wallet providers, person-to-person payment providers, entities that refer to themselves as neobanks, and traditional depository institutions—have and will continue to have error resolution obligations in the event of a data breach where stolen account or ACH credentials are used to initiate an unauthorized transfer from a consumer's account and the consumer provides proper notice. These error resolution obligations include requirements on the financial institution to provide consumers with the financial institution's contact information.

Fair Credit Reporting Act and Regulation V

The proposal noted that a third party engaged in data aggregation activities could be a consumer reporting agency under the FCRA if it met the elements of the FCRA's definition of ''consumer reporting agency.''

Comments

Some commenters addressed the applicability of the FCRA. Many data providers and data provider trade association commenters stated that the final rule should provide that data providers are not furnishers when they provide data pursuant to consumer authorization. These commenters asserted that the compliance burden of being a furnisher is significant and could overwhelm smaller financial institutions. They also argued that, unlike traditional furnishing, data providers sharing data under CFPA section 1033 are simply facilitating consumers' requests to access their data.

Other commenters, primarily data aggregators, stated that data aggregators should not be considered consumer reporting agencies when they transfer data pursuant to consumer authorization. These commenters argued that consumer-authorized data sharing is different from the provision of consumer reports because consumers have control over the sharing of their data, because data aggregators act as mere conduits for transmission of the data, and because consumers have direct relationships with data aggregators. One data aggregator commenter predicted that if data aggregators could be consumer reporting agencies, then data providers that are FCRA-covered furnishers would deny access unless the aggregators agreed to data access agreements with terms related to indemnification for FCRA liability. A third party trade association commenter contended that data providers that are FCRA-covered furnishers could deny access to data aggregators in the absence of a data access agreement. Other commenters stated that treating data aggregators as consumer reporting agencies would result in unintended consequences. For example, a third party trade association commenter asserted that compliance with the FCRA could require data aggregators to access and retain more data than they do currently. And a data aggregator commenter stated that consumers might be confused if they attempt to correct the accuracy of any information transferred by a data aggregator, because data aggregators do not hold the underlying data; therefore, the data held by the data aggregator may differ from the versions held by the data provider and other third parties.

Some commenters requested that the final rule exclude FCRA-covered entities and data from the rule's coverage. Several consumer reporting agency commenters and a consumer reporting agency trade association commenter asserted that consumer reporting agencies should be excluded from coverage because they are already subject to extensive regulation under the FCRA. A data aggregator commenter suggested that the CFPB rely on existing authorities and not impose new regulations on the collection, use, and retention of covered data where such collection, use, and retention may be addressed by other laws, such as the FCRA. And a consumer reporting agency commenter stated that consumer reports should be excluded from the definition of ''covered data'' because otherwise the limited purposes that authorize consumer reporting agencies to share consumer reports might conflict with the purposes for which consumers might authorize sharing of their covered data. The consumer reporting agency trade association commenter stated that the proposed limitations on use and retention of covered data might complicate FCRA compliance by entities offering products that rely on indefinite consumer authorization, including products that allow

[35] 12 CFR 1005.2(i).

[36] *See* Consumer Fin. Prot. Bureau, *Regulation E FAQs, Error Resolution: Unauthorized EFTs #8, https://www.consumerfinance.gov/compliance/compliance-resources/deposit-accounts-resources/electronic-fund-transfers/electronic-fund-transfers-faqs/* (last updated June 4, 2021).

consumers to self-report rental and utility payment information to their credit file to enhance their credit histories. Data aggregator commenters and a third party trade association commenter claimed that the FCRA's framework is complex and confusing when applied in the context of consumer-authorized data access. And a data aggregator commenter asserted that the proposed rule's consumer protections would be more appropriate for consumer-authorized data access than FCRA requirements.

Several commenters raised questions about the intersection of the final rule and the FCRA, including the extent of overlap, duplication, or conflict between the final rule and the FCRA. These commenters asked for clarification on various specific questions, including: which activities would make a data provider an FCRA-covered furnisher; which use limitation standard applies if consumer-authorized data are subject to both the final rule and the FCRA; which activities would make a data aggregator a consumer reporting agency; whether data aggregators that are consumer reporting agencies would have to provide consumer reports to consumers at their request; how data aggregators that are consumer reporting agencies would comply with their FCRA dispute obligations if data providers are not FCRA-covered furnishers; how data aggregators that are consumer reporting agencies could maintain accurate consumer reports given the proposed limits on retention; which uses of covered data constitute permissible purposes under the FCRA; whether third parties can be both data aggregators under the final rule and consumer reporting agencies under the FCRA; whether financial institutions may combine disclosures and consent forms required by the final rule and the FCRA; whether specialty consumer reporting agencies may collect and retain consumer-authorized transaction data to comply with the FCRA; and whether information from de-identified consumer reports used for research purposes could also be covered data subject to the proposed restrictions on secondary use.

Finally, some commenters stated that the CFPB should coordinate the FCRA and Personal Financial Data Rights rulemakings.[37] A bank trade association and credit union trade association stated that until one of these rules had been finalized, they could not fully understand the impacts of one rule on the other. A data provider/third party trade association commenter suggested pausing the FCRA rulemaking until the Personal Financial Data Rights rulemaking is finalized to fully understand each rule's impact. A consumer reporting agency commenter, an industry trade association commenter, and a financial holding company commenter requested that the Personal Financial Data Rights final rule be issued before the FCRA proposed rule. The industry trade association commenter and financial holding company commenter asserted that concurrent rulemaking adversely impacts the public's ability to meaningfully comment on each proposal. A bank trade association commenter recommended postponing compliance with this final rule until after an FCRA rule is finalized, while a data aggregator commenter asked the CFPB to wait until after this rule is finalized to address the applicability of the FCRA to data aggregators. And a research institute commenter suggested that certain definitions, such as those relating to data aggregators and FCRA-covered furnishers, be harmonized between the final rule and the FCRA rulemaking.

Response to Comments

As an initial matter, the CFPB has determined that this final rule does not affect a person's obligations or duties under the FCRA. The final rule does not alter the types of data, parties, or permissible purposes covered by the FCRA. Because the final rule does not change substantive requirements under the FCRA or Regulation V, the commenters that raised questions about the intersection of the FCRA with CFPA section 1033 and how to comply with FCRA obligations and duties must look to the FCRA and Regulation V to determine how to comply with a particular FCRA requirement. For example, whether a third party, such as a data aggregator, is a consumer reporting agency under the FCRA depends on whether the third party falls within the definition of ''consumer reporting agency'' in the FCRA.[38] Similarly, whether a certain use of covered data constitutes a permissible purpose is determined by looking to the FCRA.[39] This is true with respect to any question about what a person subject to this final rule must do to comply with the FCRA and Regulation V.

The CFPB also has determined that the requirements of this final rule are not inconsistent with the FCRA or Regulation V. Some commenters noted that certain uses of data might be permitted by the FCRA but not authorized by the Personal Financial Data Rights rule as proposed. Compliance with this final rule does not, however, require a person to violate the FCRA or Regulation V. Therefore, a person that is subject to this final rule and the FCRA/Regulation V must comply with both. This is no different than for any person who is subject to several overlapping laws and regulations. For example, a third party may have to contemporaneously provide disclosures relating to Regulation E accounts, Regulation Z credit cards, and the GLBA and Regulation P. When applicable, a third party subject to all these laws must satisfy their respective requirements. Complying with CFPA section 1033 and the final rule is no different. Thus, it is unnecessary to exclude certain parties, such as consumer reporting agencies, or FCRA-covered uses from the rule's coverage.

The CFPB also received comments about whether data providers are furnishers under the FCRA. The CFPB would not consider data providers under this final rule to be furnishers solely by virtue of permitting data access pursuant to an authorization that is consistent with the final rule. This is the case even assuming data are provided to a data aggregator that qualifies as a consumer reporting agency. In these unique circumstances, the consumer, and not the data provider, would be the party that is furnishing data to the consumer reporting agency. This is the case because of a particular combination of circumstances, including that the data are only shared with the aggregator after the data provider is asked to do so by the consumer; the data are shared pursuant to a written authorization designed to ensure that the consumer has meaningful control of the uses of the specific data that are shared; the data are further protected by use restrictions to ensure they continue to be used for the benefit of the consumer; and the data provider is not exercising its own agency or control or benefiting from the arrangement, but rather is simply

[37] The CFPB assumes commenters were contemplating an FCRA rulemaking with a scope similar to what was described in the CFPB's FCRA 2023 SBREFA Outline, which included proposals under consideration related to data broker activities and medical debt information. *See* Consumer Fin. Prot. Bureau, *Small Business Advisory Review Panel for Consumer Reporting Rulemaking Outline of Proposals and Alternatives Under Consideration* (Sept. 15, 2023), *https://files.consumerfinance.gov/f/documents/cfpb_consumer-reporting-rule-sbrefa_outline-of-proposals.pdf.*

[38] *See* 15 U.S.C. 1681a(f) (defining consumer reporting agency).

[39] *See* 15 U.S.C. 1681b (identifying permissible purposes).

facilitating the consumer's decision to furnish.[40]

The CFPB received comments seeking clarification about whether data aggregators are consumer reporting agencies under the FCRA. However, this final rule does not cause data aggregators to incur legal liability under the FCRA that they would not otherwise assume through their ordinary operations. Addressing this topic is not necessary to finalize this rulemaking because whether a data aggregator is a consumer reporting agency under the FCRA requires a fact-specific inquiry of considerations beyond the scope of this final rule. Data aggregators may engage in a variety of activities and have multiple business models, and whether a data aggregator is a consumer reporting agency will depend on the satisfaction of all components of the statutory definition in the FCRA—a determination not affected by this final rule.

The CFPB disagrees that the sequencing of the Personal Financial Data Rights and FCRA rulemakings adversely impacted the public's ability to comment on the Personal Financial Data Rights proposed rule. After issuing the Personal Financial Data Rights proposed rule, the CFPB published a proposed rule regarding medical information under the FCRA. *See* 89 FR 51682 (June 18, 2024) (Medical Debt Proposed Rule). The Medical Debt Proposed Rule would remove a regulatory exception in Regulation V from the limitation in the FCRA on creditors obtaining or using information on medical debts for credit eligibility determinations and would limit the circumstances under which consumer reporting agencies are permitted to furnish consumer reports containing medical debt information to creditors when making credit eligibility determinations. The CFPB is also engaged in a rulemaking focused on data broker activities (Data Broker Rulemaking).

With respect to the sequencing of the Personal Financial Data Rights and the Medical Debt and Data Broker rulemakings, the fact that this final rule does not change what a person would need to do to comply with its existing obligations under the FCRA means that completing the Medical Debt and Data Broker rulemakings is not necessary to finalize this rulemaking. The CFPB will consider feedback received in the course of the Medical Debt and Data Broker rulemakings, evaluate the further steps it may take in those rulemakings, and will respond to comments as appropriate.

The CFPB acknowledges that the potential applicability of the FCRA to uses of covered data under the final rule presents operational complexity, and the CFPB is taking steps to coordinate the final rule with the ongoing FCRA rulemakings. As described in part IV.A.5, the CFPB is substantially revising the compliance deadlines for data providers under the final rule. The CFPB has determined that the extension of the compliance deadlines strikes the appropriate balance between carrying out the objectives of the statute while also providing an entity covered by the final rule with more time to work through these operational challenges and understand the entity's compliance obligations under the final rule in light of the FCRA.

Gramm-Leach-Bliley Act and Regulation P

A few commenters addressed the general applicability of the GLBA and Regulation P, 12 CFR part 1016. Several commenters asked for clarity about how financial institutions should comply when data are subject to both the GLBA and the Personal Financial Data Rights rule. For example, a bank commenter and a bank trade association commenter asked which use limitation standard would apply. A third party commenter suggested that the CFPB rely on existing authorities and not impose new regulations on the collection, use, and retention of covered data where the collection, use, and retention of the data may be addressed by other laws, including the GLBA. A research institute commenter asserted that consumers might be confused if they received multiple disclosures.

Response to Comments

The CFPB has determined that the final rule does not affect a person's obligations or duties under the GLBA. In addition, the CFPB has determined that the final rule is not inconsistent with the GLBA or Regulation P. As with the FCRA, some commenters sought clarification about how a person would comply when data are subject to the GLBA and CFPA section 1033, including whether the limitations on collection, use, and retention of data under the final rule would apply where such limitations are not imposed under the GLBA and Regulation P. While the GLBA and Regulation P may permit some uses of information that may not be permitted under the final rule, compliance with the final rule does not require a person to violate the GLBA or Regulation P. Moreover, the CFPB expects that a person covered by the final rule is experienced with managing the respective requirements of applicable State and Federal laws, including the implementation of overlapping disclosure requirements.

Other commenters raised broader issues. For example, a data aggregator commenter suggested that the CFPB should encourage Congress to amend GLBA or pass a Federal data privacy law. This commenter also suggested that the CFPB undertake a GLBA rulemaking. These comments are outside the scope of this rulemaking.

The CFPB declines to rely on existing legal frameworks, including the GLBA and Regulation P, to regulate consumer privacy. The purposes and objectives of CFPA section 1033, which are described in part III.A, differ in certain respects from the purposes and objectives of other laws (such as the GLBA). The requirements set forth in the final rule are better suited to the open banking context, and could not be substituted by applying existing authorities to consumer-authorized access of covered data.

Comments addressing the GLBA in relation to a specific proposed provision, such as comments recommending the final rule adopt Regulation P's privacy protections for third parties, are addressed in part IV.C and D.4.

CFPA Section 1034(c)

Section 1034(c) of the CFPA generally requires large financial institutions to comply with consumer requests for information concerning their accounts in a timely manner, subject to certain statutory exceptions.[41] In October 2023, prior to the proposal, the CFPB issued an advisory opinion on CFPA section 1034(c) that interprets this provision for the purpose of highlighting the obligations it imposes upon large financial institutions.[42] One commenter asked the CFPB to clarify the extent to which the scope of data covered by CFPA section 1033 and by the CFPA section 1034(c) advisory opinion overlap, and how that may impact obligations for data providers.

CFPA sections 1033(b) and 1034(c)(2) both generally apply to ''information in the control or possession'' of a covered

[40] *See, e.g.,* 12 CFR 1022.41(c)(3) (Under the Furnisher Rule in Regulation V, when the consumer furnishes information to a CRA about themselves, the consumer is not considered a ''furnisher.'').

[41] Specifically, CFPA section 1034(c) applies to insured depository institutions (including credit unions) that offer or provide consumer financial products or services and that have total assets of more than $10 billion, as well as their affiliates.

[42] Consumer Fin. Prot. Bureau, *Consumer Information Requests to Large Banks and Credit Unions,* 88 FR 71279 (Oct. 16, 2023).

person ''concerning the consumer financial product or service that the consumer obtained from such covered person.'' However, the statutes differ in several respects, including the types of covered persons subject to, the exceptions to information covered by, and the form in which information must be provided pursuant to the statutes.

The statutes impose separate obligations on large depository institutions (including credit unions), and how the statutes impact institutions' obligations will depend on the facts.[43] As noted in the advisory opinion:

> [S]ection 1033 governs consumer authorized third-party access to data made available in electronic form in connection with third-party provision of other products or services—including for example, the provision of a potentially competing account offering. This is why, for example, section 1033 is limited to data available in the normal course, and why section 1033 requires data to be 'made available . . . in electronic form.'[44]

See also part IV.C regarding a comparison between CFPA sections 1034(c) and 1033 with respect to the final rule's prohibition on fees for data access.

5. Other Comments

A number of commenters sought information on how the CFPB will conduct oversight of third parties. Commenters stated that many authorized third parties are outside the CFPB's enforcement or supervisory jurisdiction, and asserted that data aggregators pose relatively greater risks to consumers than authorized third parties. Some commenters also asked whether the CFPB would consider complaints from industry participants when setting supervision and enforcement priorities, and asked that the CFPB encourage consumers to submit complaints to its consumer complaint program.[45] Several commenters sought information on how the CFPB would provide guidance after the final rule is issued. In addition, a consumer advocate recommended that the CFPB engage in a consumer education campaign to inform consumers of their rights under the rule. The commenter explained that improved consumer understanding of consumer-authorized data sharing would increase consumer confidence in sharing data and protect them from bad actors.

SBA Advocacy requested that the CFPB determine whether the final rule is necessary in light of current State law (citing the California Consumer Privacy Act as an example) and whether the final rule conflicts with State laws. Other commenters questioned whether the CFPB had taken proper account of international open banking regimes in developing the proposal.

With respect to questions about how the CFPB intends to enforce and supervise for the requirements that apply to third parties, § 1001.2(b) of the final rule provides additional assurance that financial data processing by third parties, among others, is subject to the CFPA. This includes enforcement and, where appropriate, supervision, by the CFPB. In addition, the CFPB and FTC coordinate law enforcement activities regarding the offering or provision of consumer financial products and services by covered persons within the FTC's jurisdiction under the FTC Act, including conducting joint investigations where appropriate, to minimize duplication of efforts and burden on FTC-covered industry participants. This may include coordination on enforcement activities regarding the CFPA prohibition on unfair, deceptive, or abusive acts or practices and the FTC Safeguards Rule. The CFPB also coordinates with State attorneys general and State regulators. With respect to questions about the role of consumer complaints in establishing supervision and enforcement priorities, the CFPB prioritizes supervisory and enforcement activity on the basis of risk, taking into account, among other factors, the size of each entity, the volume of its transactions involving consumer financial products or services, the size and risk presented by the markets in which it is a participant, the extent of relevant State oversight, and any field and market information that the CFPB has on the entity. Such field and market information can include, for example, information from complaints and any other information the CFPB has about risks to consumers and to markets posed by a particular entity. In response to comments advocating for CFPB supervision of third parties, including data aggregators, the CFPB's supervisory authority is defined by the CFPA. The CFPB agrees that supervision of data aggregators is important. Supervisory examinations over one or more data aggregators, including larger participants in the consumer reporting market, are scheduled or ongoing,[46] and the CFPB will continue to engage in this supervision as necessary.

With respect to guidance after the final rule is issued, the CFPB plans to make available a range of resources to assist with effective implementation of the rule, including a small entity compliance guide. The CFPB also has a regulatory support program that can provide assistance. With respect to comments about improving consumer awareness of their rights under this rule, the CFPB notes that the consumer protections in this rule are intended to ensure that consumers can access their own data and can authorize access by third parties that are acting on their behalf. For more discussion of consumer awareness of third party access, see part IV.D below. The CFPB intends to further consider how to increase consumer awareness of and confidence in authorized third party data access.

The CFPB has considered State law and international legal frameworks to inform the final rule's approach to data providers' obligations to make data available upon request and third parties' obligations to act on behalf of consumers in order to access such data. Several States impose obligations on businesses to make information available to consumers in a portable, structured format, where technologically feasible.[47] Several States also impose privacy obligations on businesses. However, these State laws differ in terms of their scope and substantive requirements. In addition, a number of States include exemptions for businesses or data covered by certain Federal consumer financial laws, like the GLBA.[48] The CFPB believes it is appropriate to carry out congressional intent to issue Federal regulations pursuant to CFPA section 1033, including the interoperability objectives of CFPA section 1033(d), by issuing requirements applicable nationwide to promote safe, secure, reliable, and competitive data access. The CFPB is not aware of conflicts between State law and the final rule. See parts VI and VII for further discussion of the impacts of State law.

As part of this rulemaking, the CFPB has considered international open banking models, as discussed in the proposed rule and further below. The CFPB's authority and policy approach

[43] As noted in the advisory opinion, the CFPB does not interpret section 1034(c) to preempt or otherwise supersede the requirements of other Federal or State laws and regulations designed to protect privacy and data security, including, for example, any restrictions that may be imposed in the CFPB's upcoming rule implementing section 1033. *See* 88 FR 71279, 71279 n.27 (Oct. 16, 2023).

[44] *See id.* at 71279 n.23.

[45] *See generally* Consumer Fin. Prot. Bureau, *Submit a complaint about a financial product or service, https://www.consumerfinance.gov/complaint/* (last visited Oct. 17, 2024).

[46] *See* Supervisory Highlights, Issue 30, Summer 2023, 88 FR 52131, 52142 (Aug. 7, 2023).

[47] *See, e.g.,* Cal. Consumer Privacy Act of 2018 section 1798.130(a)(3)(B)(i)–(iii).

[48] *See, e.g., id.* section 1798.145(e). *See also* SBREFA Outline at 46 n.50.

in this final rule are not identical to those of other jurisdictions. In particular, as discussed in part IV.3, IV.C.2, and elsewhere in part IV, the final rule does not require data providers to initiate payments, unlike some other open banking regimes. The final rule instead implements CFPA section 1033 with respect to a data provider's obligation to make available covered data to consumers and third parties authorized to access such data on their behalf. The CFPB has taken account of the experience of international jurisdictions in developing the final rule generally and as discussed in part IV.C.2 with respect to the prohibition on fees for third party access, part IV.C.3 with respect to commercially reasonable performance standards, and the final rule's approach to screen scraping, as discussed in part IV.D.1. The CFPB believes any differences between the approach of this final rule and those of other jurisdictions are appropriate in light of the particular market and regulatory frameworks applicable to the U.S. See parts VI and VII for further discussion of international jurisdictions.

A. Subpart A—General

1. Overview

Subpart A of the final rule establishes the coverage and terminology necessary to implement CFPA section 1033 for this rule, beginning with § 1033.101, which describes the authority, purpose, and organization of the regulation in part 1033. Subpart A defines the coverage of the final rule, sets forth tiered compliance dates, defines terms appearing throughout the regulatory text, and, as finalized in the Industry Standard-Setting Final Rule, sets forth criteria for recognized standard setters.

2. Authority, Purpose, and Organization (§ 1033.101)

In the proposed rule, the CFPB proposed § 1033.101(a) to describe the CFPB's legal authority to issue the rule for the purposes described in proposed § 1033.101(b). Proposed § 1033.101(c) described the organization of the proposed rule within part 1033. The Industry Standard-Setting Final Rule finalized the language in proposed § 1033.101(a) and a more limited version of proposed § 1033.101(b) and (c), to reflect the limited purpose and organization of the Industry Standard-Setting Final Rule. The CFPB did not receive comment on the proposed rule's proposed language in § 1033.101.

In this final rule, the CFPB is not making changes to the legal authority language in § 1033.101(a) that was finalized by the Industry Standard-Setting Final Rule. The CFPB is amending the language finalized by the Industry Standard-Setting Final Rule at § 1033.101(b) and (c), as originally proposed by the proposed rule, to reflect the purpose and organization of this final rule. Final § 1033.101(c) also refers to the appendix containing standard setter recognition procedures that was finalized as part of the Industry Standard-Setting Final Rule. Other than with respect to § 1033.101, the final rule published in this **Federal Register** document does not amend any of the provisions of the Industry Standard-Setting Final Rule. The regulatory text published in this **Federal Register** document restates the regulatory text finalized in the Industry Standard-Setting Final Rule (other than with respect to § 1033.101) for clarity and ease of reading.

3. Coverage of Data Providers (§ 1033.111(a) Through (c))

Proposal

Section 1033(a) applies to ''covered persons,'' as defined in the CFPA. In the proposal, the CFPB explained its intent to implement the broad coverage of CFPA section 1033 through this and supplemental rulemaking. For this first rule to implement coverage and other substantive provisions of CFPA section 1033(a), the CFPB proposed to define a subset of covered persons that would be required to make data available with respect to certain consumer financial products or services: Regulation E asset accounts, Regulation Z credit cards, and products or services that facilitate payments from a Regulation E account or a Regulation Z credit card. The CFPB explained that the last of these categories would clarify that the proposed rule would cover all consumer-facing entities involved in facilitating Regulation E account and Regulation Z credit card transactions.

In the proposed rule, the CFPB discussed how payment data from these products and services support common beneficial consumer use cases today, including transaction-based underwriting and payment initiation. Specifically, the CFPB proposed in § 1033.111(b) to define covered consumer financial product or service to mean (1) a Regulation E account, a defined term that would have the same meaning as defined in 12 CFR 1005.2(b); (2) a Regulation Z credit card, a defined term that would have the same meaning as defined in 12 CFR 1026.2(a)(15)(i); and (3) the facilitation of payments from a Regulation E account or Regulation Z credit card. The CFPB proposed in § 1033.111(c) to define data provider to mean a covered person, as defined in 12 U.S.C. 5481(6), that is (1) a Regulation E financial institution, as defined in 12 CFR 1005.2(i); (2) a Regulation Z card issuer, as defined in 12 CFR 1026.2(a)(7); or (3) any other person that controls or possesses information concerning a covered consumer financial product or service the consumer obtained from that person. In example 1 to § 1033.111(c), the CFPB proposed to provide an example that a digital wallet provider is a data provider. The CFPB requested comment on the proposed definitions.

The proposed rule also explained that the CFPB was considering adding EBT-related data to the final rule, or reaching EBT cards in a subsequent rulemaking. State and local administered needs-tested benefits are exempt from EFTA coverage by statute. When distributed electronically, needs-based benefits established under State or local law or administered by a State or local agency are primarily issued to consumers via EBT cards. EBT-related data are mainly accessed directly by the consumer through private entities that have contracted with State or local governments that administer programs for Federal Government agencies. The CFPB requested comment on whether the most appropriate way to solve issues related to EBT data accessed directly by the consumer is through section 1033 of the CFPA, and whether it should do so as part of this first rulemaking related to payments data or a subsequent rule under CFPA section 1033. The CFPB also requested comment on third party practices related to consumer-authorized EBT data, and the benefits and drawbacks of enabling third party access to EBT-related data, including with respect to data security.

Comments

Many commenters, including third parties and consumer advocates, stated that the proposed coverage was too narrow. Advocated additions included all covered persons and financial products and services under the CFPA, all Regulation Z creditors (such as mortgage, auto, and payday lenders), payroll providers, holders of tax records, electronic bill presentment providers, investment products, retirement accounts, and small business lenders. Some third party commenters asserted that data providers will otherwise restrict or fail to offer access to these data. One bank data provider commenter stated that the narrow scope of coverage could cause consumer confusion. A non-bank data provider that also acts as a third party stated that

coverage should be broader because much or all of the covered data are already made available by banks today.

Conversely, many data provider commenters requested narrower coverage, and that the CFPB clarify the rule's applicability, particularly with regard to pass-through payments and payment facilitation providers. Some commenters asked for specific exclusions for products or entities that they asserted are excluded from the CFPB's authority under the CFPA, such as corporate credit cards and merchants. Several third party and trade association commenters asked the CFPB to clarify that the rule does not cover other entities that initiate payments on the payee's behalf, such as embedded payment service providers that provide payment processing services exclusively for merchants, third party marketplaces operated prominently in the name of their affiliate company, and loan servicers. One non-bank data provider that also acts as a third party asked the CFPB to exclude online marketplaces and ride sharing apps. Two data provider trade associations asked the CFPB to exclude inactive or closed accounts.

Two trade associations commenting on the CFPB's TILA interpretive rule regarding credit products marketed as BNPL,[49] along with a provider of BNPL products, stated that the Personal Financial Data Rights rule should not apply to BNPL providers because they lacked notice that such providers are card issuers under Regulation Z and that the proposal did not adequately account for the impact on BNPL providers. A third party trade association supported coverage of BNPL providers as data providers, explaining in a comment on the CFPB's TILA interpretative rule that it supports the consumer right to share their balance and transaction information for any and all of their credit accounts. A few bank data provider trade associations commenting on the TILA interpretive rule recommended that the CFPB clarify that nonbank BNPL providers are held to the same standards as banks with regard to consumer protections generally.

With regards to pass-through payments, bank data providers, a large nondepository data provider, and trades representing bank and nondepository data providers stated that data related to those products would be duplicative, introduce errors, provide limited consumer benefit relative to the increased burden on digital wallet providers, and conflict with their belief that the account-holding bank should control access to that data. One data provider trade association asserted that data providers should only be permitted to share data that is unique to them. The commenter stated that banks cannot conduct due diligence on the authorized third party that is requesting data access through the digital wallet provider, and this could lead to consumer confusion and other risks. The commenter asserted that these digital wallets do not possess data pertaining to a consumer financial product or service that the consumer obtained from the data provider. Some bank data provider commenters cited security and liability concerns about allowing pass-through payment providers to share data with third parties, rather than requiring the third parties to go to the underlying bank.

A few commenters stated that the proposal was unclear as to whether any entity that controls or possesses covered data would have obligations under the rule, even if a consumer did not obtain a covered consumer financial product or service from the data provider and even if the data do not concern a covered consumer financial product or service. A few trade associations and other commenters asserted that the CFPB needed to clarify whether point of sale terminal providers and other payment service providers are covered under § 1033.111(c). One bank trade association asked the CFPB to clarify that the obligation to make available covered data would not apply to consumers who are domiciled outside of the U.S., stating that without this clarification foreign requirements for data protection and privacy will be triggered, impacting data handling and protection that vary widely across countries.

The CFPB received many comments from individual consumers, consumer groups, other nonprofit organizations, third parties, and Members of Congress in support of covering EBT providers in this stage of the rulemaking. Their reasons were similar to those raised during the SBREFA process, including how consumers would benefit from increased access to their EBT data and how such access could help identify fraud. Some of these commenters also asserted that excluding EBT providers from this rulemaking could worsen existing issues related to data access and service. A few commenters supported a subsequent rulemaking to cover EBT providers if they are not covered under this rule.

Some commenters, including industry trade associations and a Member of Congress, cautioned against including EBT providers in this or any future rulemaking. Although these commenters raised concerns the CFPB considered in the proposed rule, like the potential for fraud to increase and the lack of EFTA protections, some commenters also asserted that the CFPB is not the right agency to address EBT data access. These commenters asserted that Congress specifically excluded EBT from being regulated as demand deposit accounts and instead largely granted authority to regulate EBT to USDA. A payments trade association commenter cautioned that agencies that administer EBT will not have contractual relationships with entities involved with third party access and therefore these entities will not need to comply with certain restrictions put in place by the governing agencies.

Final Rule

For the reasons discussed herein, the CFPB is finalizing § 1033.111(a) through (c) as proposed, with some clarifying changes to the definition of covered consumer financial product or service in § 1033.111(b)(3). This facilitation of payments prong in § 1033.111(b)(3) is finalized to include facilitation of payments from a Regulation E account or Regulation Z credit card, excluding products or services that merely facilitate first party payments. For purposes of part 1033, a first party payment is a transfer initiated by the payee or an agent acting on behalf of the underlying payee. First party payments include payments initiated by loan servicers.

As in the proposal, § 1033.111(c) defines data provider to mean a covered person, as defined in 12 U.S.C. 5481(6), that is: (1) A financial institution, as defined in Regulation E, 12 CFR 1005.2(i); (2) A card issuer, as defined in Regulation Z, 12 CFR 1026.2(a)(7); or (3) Any other person that controls or possesses information concerning a covered consumer financial product or service that the consumer obtained from that person. Example 1 to paragraph (c) states that a digital wallet provider is a data provider.

Payment data from these products and services support common beneficial consumer use cases today, including transaction-based underwriting, payments, deposit account switching, and comparison shopping for bank and credit card accounts. Data from checking accounts, savings accounts, and other Regulation E accounts allow a consumer or third party to view a consumer's income, expenses, fees, and spending. Digital wallet providers hold similar valuable data that can provide a complete understanding of a consumer's

[49] *Truth in Lending (Regulation Z); Use of Digital User Accounts To Access Buy Now, Pay Later Loans,* 89 FR 47068 (May 31, 2024).

finances. Today, a digital wallet can initiate payments from multiple credit cards, prepaid accounts, and checking accounts. A digital wallet can facilitate payments from accounts that the digital wallet provider offers through depository institution partners, or from linked accounts issued by other institutions (sometimes referred to as pass-through payments). Regulation Z credit cards are increasingly used as payment devices for everyday expenses, and credit card transaction data have in some cases become interchangeable with Regulation E account transaction data. Given the foreign applicability provisions of Regulation E and Regulation Z, covered consumer financial products and services in this rule are limited to products and services obtained by consumers who reside in the U.S. See Regulation E comment 3(a)–3 and Regulation Z comment 1(c)–1 for a discussion of foreign applicability.

Covering Regulation E accounts, Regulation Z credit cards, and payment facilitation products and services leverage existing infrastructure for consumer-authorized data sharing, thus facilitating implementation. Data providers generally share these covered data on consumer interfaces today, and some share covered data with third parties. Given how consumers' payment data are commonly shared and can be used to access consumer funds or track household spending, it is appropriate to prioritize these data for greater protection under this rule. As discussed in part IV.C and D, the CFPB is also finalizing a number of measures to foster a safe and secure data access framework.

In addition, consumers benefit from being able to permission access to digital wallet pass-through data and the marginal burden on digital wallet providers is generally limited. Digital wallet providers and entities that refer to themselves as neobanks generally qualify as Regulation E financial institutions; some also may be Regulation Z card issuers. Digital wallet providers that facilitate pass-through payments typically also provide a funds-holding asset account or credit card, so would already be subject to the requirements of this rule, including the requirement to maintain interfaces under § 1033.301. The few digital wallet providers who do not yet offer these products in conjunction with their pass-through products tend to be very large, sophisticated technology companies that commonly access and use data as third parties. Although digital wallet providers today typically qualify as Regulation E financial institutions under § 1033.111(c)(1), including § 1033.111(c)(3) provides clarity that all digital wallet providers are data providers and ensures coverage as payment products evolve. This provision makes clear that the rule covers consumer-facing entities involved in facilitating Regulation E account and Regulation Z credit card transactions, except, as discussed below, products or services that merely facilitate first party payments. Given that digital wallet providers—including pass-through providers—typically are Regulation E financial institutions, the marginal compliance burden of including the payment facilitation prong is limited.

Moreover, the potential consumer benefit is clear. Digital wallets are ubiquitous today, with both remote and point of sale acceptance. Some companies that originated as non-financial providers, such as search engines, social media companies, and retail merchants, are steadily offering asset accounts and credit cards themselves—sometimes leveraging data they have obtained from depository institutions for underwriting or other purposes. As consumers increasingly connect multiple financial products to these non-bank providers, and these providers increasingly offer asset accounts and credit cards in conjunction with other services, non-bank providers may control or possess different or more robust covered data than the underlying depository institution. Consumers may also find it more convenient to permission access through the digital wallet provider or other payment facilitation provider, and may expect to be able to do so. Accordingly, requiring digital wallet data providers to make available data for both pass through and non-pass through accounts may best align the rule with consumer expectations, ease sharing for consumers who connect multiple payment methods to their digital wallets or otherwise frequently use their digital wallets, and provide consumers with access to more robust payment transaction data. The CFPB agrees with commenters that pass-through data providers should not be required to make available information to initiate payment to or from a Regulation E account under § 1033.211(c); changes to the covered data provision are discussed below in connection with subpart B.

The CFPB is clarifying the definition of covered consumer financial product or service in § 1033.111(b)(3) to exclude situations where an entity is solely facilitating first party payments, such as a merchant or mortgage loan servicer initiating a payment from the consumer's account to itself. First party payments are distinct from payment facilitation products. Accordingly, the CFPB is finalizing § 1033.111(b)(3) with language to explicitly exclude products or services that merely facilitate first party payments. For purposes of this definition, a first party payment is a transfer initiated by the payee or an agent on behalf of the underlying payee. First party payments include payments initiated by a loan servicer.

Situations where an entity is merely initiating a payment to itself for a product or service it provided to the consumer would not be enough to qualify as a covered consumer financial product or service. For example, a mortgage servicer that merely initiates a payment to fulfill the consumer's mortgage obligation would not qualify as facilitation of payments under § 1033.111(b)(3), as the mortgage servicer is initiating a payment to itself or is otherwise acting an agent to the underlying mortgage holder. Similarly, an online merchant initiating a payment to itself for goods it sold directly to the consumer, or a utility company initiating payment to satisfy a consumer's electric bill, would not qualify as facilitation of payments under § 1033.111(b)(3). However, some first party payments continue to fall within the definition of covered consumer financial product or service, such as situations where the data provider is initiating a transfer to itself in conjunction with a product that facilitates payments to other payees, or the data provider is otherwise providing a Regulation E or Regulation Z account. For example, § 1033.111(b) includes a digital wallet provider initiating a transfer from an external bank account to the consumer's digital wallet held by that same provider, a digital wallet provider initiating a pass through transfer from the consumer's Regulation E or Regulation Z account to another payee that participates in the debit or credit card network, and a credit card provider initiating a credit card payment from the consumer's external bank account to itself.

As stated in § 1033.201(a)(1), a data provider's obligation to make available data is limited to covered data in the data provider's control or possession concerning a covered consumer financial product or service that the consumer obtained from the data provider, in an electronic form usable by consumers and authorized third parties. For clarity, the CFPB is adding language to § 1033.111(a) to reiterate that a data provider's obligations are limited to covered data concerning a covered consumer financial product or

service that the consumer obtained from the data provider.

With regard to excluding products that are not subject to the CFPB's authority, any such exclusions would be superfluous, potentially confusing, and create risk that they would be misused to undermine coverage of payment facilitation products that do fall within the CFPB's authority. The § 1033.111(b) definition of covered consumer financial product or service is expressly limited to a consumer financial product or service as defined in 12 U.S.C. 5481(5). The CFPB has decided not to add exclusions, such as an exclusion for online marketplaces that are not otherwise subject to the CFPB's authority, because that may create detrimental loopholes for products that also provide a payment facilitation or other Regulation E access device function. For example, an online marketplace may involve payments to the data provider for products or services sold by that same data provider, but also facilitate payments to other merchants.

The CFPB intends to implement CFPA section 1033 with respect to other covered persons and consumer financial products or services through future rulemaking. The CFPB declines to expand the scope of covered data and consumer financial products and services in this final rule. Prioritizing Regulation E accounts, Regulation Z credit cards, and payment facilitation products and services advances competition goals across a broader range of markets while addressing pressing consumer use cases and risks. The CFPB also has considered that the marginal risks to consumers of including these covered consumer financial products and services is limited by Regulation E and Regulation Z error protections applying to all the products covered by this final rule; in addition, most (if not all) such covered data are shared with third parties to some extent today. The CFPB has considered that EBT cards are exempt from EFTA coverage by statute, but that pursuant to the Consolidated Appropriations Act of 2023, the USDA has been directed to engage in a rulemaking and issue guidance on EBT card security practices. The Spring 2024 Unified Agenda shows that this USDA rulemaking is in the proposed rulemaking stage, indicating that completion of a final rule remains some period away.

In order to determine coverage, entities need to determine whether they control or possess covered data concerning a covered consumer financial product or service that the consumer obtained from that entity, and whether they otherwise meet the definition of data provider in § 1033.111(c). This coverage determination is the same for all entities, including those that in providing BNPL products may qualify as card issuers under Regulation Z. BNPL providers had sufficient notice of their potential inclusion in the rule because they received notice that the CFPB proposed to cover Regulation Z card issuers and credit cards under CFPA section 1033.

4. Coverage Threshold for Depository Institution Data Providers (§ 1033.111(d))

Proposal

In § 1033.111(d), the CFPB proposed to exclude from the requirements of this rule data providers that are depository institutions without a consumer interface. The CFPB noted that such institutions tend to be very small, may not have resources to support or maintain online or mobile banking systems, and may use a relationship banking model that provides a more personalized relationship with their customers. The CFPB also proposed to limit the exclusion to depository institutions, preliminarily determining that the complicating factors that exist for depository institutions are less likely to exist for nondepository institutions. The proposed rule also noted that nondepository institution data providers within the scope of the proposed rule tend to use business models built on the ability to innovate using technology and to move quickly to implement technological solutions. The CFPB sought comment on various issues, including whether different or additional criteria, such as an institution's asset size or activity level, should be taken into consideration when determining what depository institutions would be covered by the rule.

Comments Received

Though a few commenters stated that all institutions should be required to comply with the rule, the vast majority of those who commented on this provision stated that some institutions should not. Many credit union, bank, and credit union and bank trade associations commenters stated that the proposed exemption was too limited. Many of these commenters also stated that coverage should be based on asset size, instead of the presence of a consumer interface, and suggested thresholds ranging from $850 million to $10 billion in total assets. Others stated that number of deposit accounts or customers should be relevant to coverage, or that depository institutions under a certain size should be able to ''opt out'' of the rule's requirements. A few credit union trade association commenters and one credit union commenter stated that there should be tiered exemptions where different tiers of depository institutions would not need to comply with various requirements of the rule: data providers with no consumer interface should be completely excluded, depository institutions that meet the SBA definition of a small business should only be required to provide a consumer interface, and minimum technical specifications should not apply to developer interfaces of depository institutions holding less than $50 billion in assets.

Several nondepository entity trade association commenters and one technology service provider commenter stated that nondepository institutions that do not have digital banking should be exempt from the rule. One nondepository institution trade association commenter stated that there are many nondepository institutions that do not have a consumer interface, including debt collectors.

While one bank commenter stated that depository institutions that elect to eliminate their consumer interfaces after the rule's effective date should not remain subject to the rule, a nondepository entity trade association commenter stated that they should. One nondepository entity trade association commenter stated that depository institutions should be given a grace period to comply with the rule's requirements when establishing a consumer interface while another stated that they should not. Finally, SBA Advocacy stated that the CFPB should consider third party exemptions that will not compromise data security and privacy.

Final Rule

For the reasons discussed herein, the CFPB is finalizing § 1033.111(d) with modifications. Unlike the proposed rule, final § 1033.111(d) bases coverage on a depository institution data provider's total assets, not on the presence of a consumer interface. As in the proposed rule, all nondepository institution data providers are covered by the rule.

Final § 1033.111(d) states that the requirements of subparts B and C do not apply to data providers defined under § 1033.111(c)(1) through (3) that are depository institutions that hold total assets equal to or less than the SBA size standard for the data provider's appropriate NAICS code for commercial

banking, credit unions, savings institutions and other depository credit intermediation, or credit card issuing, as codified in 13 CFR 121.201. The current size standard for all the relevant NAICS codes is $850 million. Section 1033.111(d) also states that, if at any point, a depository institution that held total assets greater than that SBA size standard as of the final rule's effective date, subsequently holds total assets below that amount, the requirements of subparts B and C continue to apply. Section 1033.111(d)(1) provides information on how to determine the SBA standard based on specific NAICS codes. Section 1033.111(d)(2) explains that total assets held by a depository institution are determined by averaging the assets reported on its four preceding quarterly call report data submissions to the FFIEC or NCUA, as applicable, or its submissions to the appropriate oversight body to the extent it does not submit such reports to the FFIEC or NCUA. Relatedly, and as more fully discussed in the discussion of compliance dates, § 1033.121(c) addresses how to determine compliance dates for depository institutions that hold total assets at or below the SBA size standard but that subsequently cross that threshold.

Unlike the proposed rule, the final rule bases coverage on the total assets held by a depository institution data provider and provides those entities a reasonable amount of time to comply with the part's requirements upon reaching the coverage floor. Asset size is a more accurate proxy than the mere existence of a consumer interface to help approximate a depository institution's resources and ability to comply with the rule's requirements. An institution that may offer a basic consumer interface may nevertheless not possess the resources or technological sophistication to upgrade that interface and create a compliant developer interface. A depository institution's total asset size, however, provides information about an institution's size, sophistication, and relative resources to comply with the rule because an institution's size measured by assets will generally correlate with its resources. In addition, the CFPB does not have information to indicate that any depository institution data provider over the current $850 million size standard lacks a consumer interface.[50]

Under the final rule, to streamline compliance, the specified depository institution data providers are not subject to any requirement to make data available through an interface. However, most depository institution data providers with total assets at or below the current $850 million size standards already have some form of consumer interface, and the CFPB expects that such institutions will continue to provide their customers with that service. The CFPB also understands that many depository institution data providers with total assets at or below the current $850 million size standards make at least some covered data available to consumer-authorized third parties, and expects that such institutions will continue doing so, including by offering developer interfaces when the benefits of doing so are commensurate with the institution's resources.

As with the proposed rule, the final rule covers all nondepository institution data providers. Though a few commenters stated that nondepository institution data providers without consumer interfaces should not be covered by the rule's requirements, they did not offer grounds to rebut the proposed rule's determination that nondepository institution data providers lack the same complicating factors that exist for their depository institution counterparts. Nondepository institution data providers within the scope of the final rule tend to use business models built on the ability to innovate with respect to technology and move quickly to implement technological changes and solutions.

As explained, the final rule does not cover depository institution data providers that hold total assets below the SBA size standard for the specific NAICS code that encompasses each depository institution data provider subject to this rule. The size standard for each of the named NAICS codes, currently $850 million, is re-evaluated by the SBA at least once every five years. In theory, the size standards of the named NAICS codes could diverge during that re-evaluation. The CFPB has determined that, given the historical standards, the likelihood of that occurring is minimal.

The CFPB believes the SBA size standard is an appropriate threshold to determine depository institution data provider coverage at this time. Several credit union trade associations and a trade association of community banks stated that an $850 million threshold would address concerns about the costs of providing data access to third parties under the terms of the rule. In particular, a credit union trade association believed such a threshold would be appropriate to address concerns about the ability of smaller credit unions to remain competitive, noting that those below the threshold might discontinue services if they had to comply with the rule. As discussed further in part VI.E.1, many community banks, credit unions, and trade associations commented that they expect the costs for small depository institutions of providing required data access to be much higher than those estimated by the CFPB in the proposal. Though they did not provide additional data or information that would allow the CFPB to precisely update the cost estimates, the CFPB acknowledges that small depository institutions might face additional challenges in implementing the rule at this time. The CFPB believes that the SBA size standard is an appropriate metric to ensure the rule does not unduly burden entities that are not dominant in their field and may have difficulty competing under the rule without sacrificing products or services.

At least one bank trade association commenter recommended generally that the coverage threshold be $10 billion in total assets, although the commenter stated that if the threshold is not set at $10 billion, then an asset threshold of $850 million would be appropriate.[51] This commenter did not provide reasoning for this position, and based on other comments received, the CFPB believes depository institutions with assets above the SBA size standard in the final rule will not face the same types of constraints as those below. For example, a credit union trade association recommended that credit unions with assets between $850 million and $50 billion should be subject to the data provider requirements of the rule, with the exception of minimum technical performance requirements. As discussed in part IV.C.3, the CFPB has made the minimum response rate requirement in § 1033.311(c) more flexible relative to the proposal and has lengthened the compliance timelines for all data providers. Further, not covering depository institutions with total assets of $10 billion and under would not cover a large share of total accounts, at approximately 31 percent of covered accounts. In contrast, setting the threshold at depository institutions with more than $850 million in total assets

[50] If there were hypothetically such depository institutions, their number would be very small and creating an exemption solely for such institutions would add complexity to the regulatory regime and not be proportionate.

[51] The CFPB also received one comment from a software developer stating that, until an accreditation process has been developed, financial institutions with less than $10 billion in assets should not be required to comply with the rule.

excludes approximately 10 percent of covered accounts.

For now, in light of the reasons herein, the CFPB is not extending coverage to depository institutions with assets of $850 million or below. However, the CFPB anticipates that, as the process of building out systems capable of complying with the rule's requirements plays out and data providers, core providers, and other vendors work to streamline the resources and processes necessary to comply, the costs of compliance will go down, potentially making coverage for smaller depository institutions more appropriate. Relative to the alternative of a higher coverage threshold such as $10 billion in assets, covering a larger share of depository institution data providers with this rule—and, in particular, covering depository institution data providers that use the same vendors and core providers as smaller depository institutions—increases the likelihood that resources to facilitate third party access will be available for smaller depository institution data providers that seek to integrate them in the future. The CFPB will continue to monitor market conditions and engage with relevant vendors and other service providers to determine if changes to the rule's coverage are warranted.

Section 1033.111(d)(2) states that a depository institution data provider's total assets are calculated by averaging its assets reported on its four preceding quarterly call report submissions to the FFIEC or NCUA, as applicable. Averaging total assets over a year provides a more accurate financial picture than using the total assets at one point in time. Additionally, the SBA calculates whether a specific institution meets its size standards by averaging the assets reported on its four quarterly financial statements for the preceding year. *See* 13 CFR 121.201 n.8.

Section 1033.111(d)(3) outlines the process by which a depository institution data provider determines total assets when there is a merger or acquisition where the surviving depository institution does not have four quarterly call report submissions. The surviving depository institution shall use the combined assets reported on the quarterly call report submissions by all predecessor depository institutions for quarterly assets prior to the merger. For quarterly assets after the merger or acquisition, quarterly assets shall be determined by using the assets reported on the quarterly call report submissions by the surviving depository institution. Total assets shall be determined by using the average of the quarterly assets for the four preceding quarters, whether the quarterly assets are the combined assets of the predecessor depository institutions or from the surviving depository institution. The rule does not include explicit instructions on how newly formed depository institution data providers with no predecessor depository institutions determine total assets. The regulatory text is clear that four quarterly call report submissions are necessary to determine total assets and thus, a newly formed depository institution data provider with no predecessor depository institutions will determine total assets once it has four of its quarterly call report submissions available to make that determination.

As of the rule's effective date, depository institution data providers must determine their total assets by averaging their assets on the four preceding call report data submissions. If that total falls under the coverage threshold, the institution is not then subject to the rule's requirements, but it must continue to calculate total assets going forward based on the formula laid out in § 1033.111(d)(2) to determine if its assets have increased enough such that it becomes covered by the rule.[52]

The final rule does not allow depository institution data providers to fall out of coverage because their asset holdings dip from above to below the threshold. Once a depository institution data provider has become capable of building and maintaining data access in accordance with the rule's requirements, it will need to meet the data access requirements of the rule; ongoing costs of compliance will be minimal, even if their total assets held have diminished.

5. Compliance Dates (§ 1033.121)

Proposal

The CFPB proposed in § 1033.121 to stagger data provider compliance dates into four tiers, so as to ensure timely compliance based on asset size or revenue, depending on the type of data provider. A number of factors might affect how quickly a data provider could comply with the rule, including, for example, a data provider's size, relative technological sophistication, use of third party service providers to build and maintain software and hardware systems, and, in the case of many data providers, the existence of multiple legacy hardware and software systems that increase cost or otherwise impact their ability to layer on new technology. Nondepository institution data providers do not face these same obstacles. They do not have as many vendors and information technology systems that would need to be connected, and implementation could generally occur in-house. Thus, they could move faster to implement the rule's requirements. In preamble, the CFPB noted that data providers might need to transition third parties to developer interfaces in a staggered order; proposed § 1033.321 provided flexibility in that respect.

Subject to the limitations of proposed §§ 1033.321 and 1033.111(d), proposed § 1033.121 would have required data providers to make data access available by four compliance dates, all tied to publication of the final rule in the **Federal Register***:* (1) depository institutions with $500 billion in total assets and nondepository institutions that generate $10 billion in revenue in the preceding calendar year or that are projected to generate $10 billion in revenue in the current calendar year would have been required to comply approximately six months after **Federal Register** publication; (2) depository institutions with between $50 billion and $500 billion in total assets and nondepository institutions that generate less than $10 billion in the preceding calendar year and are projected to generate less than $10 billion in the current calendar year would have been required to comply approximately one year after **Federal Register** publication; (3) depository institutions with between $850 million and $50 billion in total assets would have been required to comply approximately 2.5 years after **Federal Register** publication; and (4) depository institutions with under $850 million in total assets would have been required to comply approximately four years after **Federal Register** publication.

The CFPB sought comment on a number of issues, including whether different or additional criteria should be taken into consideration when determining compliance dates, on the structure of each tier, and whether nondepository institutions should be included in all tiers. The CFPB also sought comment on whether the final rule should include language clarifying the time allowed to fully transition third parties to data access, so as to ensure that data providers do not impede timely third party access to an interface while also accounting for reasonable risk management.

[52] Section 1033.121(c) describes compliance dates for depository institution data providers that hold total assets less than the SBA size standard as of the effective date but subsequently cross that threshold.

Comments Received

Most commenters that addressed this section stated that a tiered implementation schedule was appropriate, while a few nondepository entity trade association, consumer advocate, and bank trade association and bank commenters stated that such implementation would incentivize data aggregators and third parties to prioritize and work with larger entities and would temporarily create gaps in consumer data access across the market. One consumer advocate commenter also stated that tiered compliance may inadvertently disadvantage smaller institutions because the current speed of digital transformation can benefit larger, more resourced providers who will have a head start on developing norms for interfaces while less resourced providers will have less of a say in how those interfaces are developed. A nondepository entity trade association and a research institute commenter suggested that the CFPB should allow transition time once an API is available to move access gradually to the API and provide for a transition period rather than final compliance dates. Commenters did not specify how the final rule should structure a transition period without final compliance dates. A data aggregator and a third party nondepository entity commenter also suggested that the final rule impose different compliance dates on different requirements in the final rule. One data aggregator commenter suggested specific API endpoints by which to set different deadlines for specific separate requirements.

Most commenters who addressed this section recommended that compliance dates account for the timeline for development of consensus standards (with some specific suggestions regarding standard file format and developer interface standardized format) and occur after the CFPB's recognition of a standard-setting body, occur after the issuance of a qualified industry standard, or some combination of the above. See the discussion of § 1033.311(b) in part IV.C.3 below regarding the timing of the issuance of consensus standards by recognized standard setters.

Though a consumer advocate and a couple third party nondepository commenters saw the proposed compliance dates as appropriate, the majority of commenters, including banks, credit unions, credit union and bank trade associations, and nondepository entity trade associations, on this section described them as too short. Commenters explained that data providers would need to work with third parties, taking care not to put existing consumer account connections at risk when migrating and onboarding third parties to compliant data access, and would also need to ensure compliance with other rules, including any FCRA rules issued by the CFPB. Bank, credit union, and bank and credit union trade association commenters also noted many other actions data providers would have to engage in to comply, including updating public-facing websites to meet disclosure requirements, generating and publishing performance metrics, ensuring data are provided in a standardized format, ensuring support for required data elements that are not currently shared, build new functionality pertaining to machine-readable files accessible for consumers, and managing new access duration requirements, among other actions. Credit union trade association commenters described the potential for a bottleneck in the proposed third tier because it would cover over 1,000 banks and credit unions, and requested an additional tier that would allow five years for implementation. One bank commenter stated that banks with less than $10 billion in total assets exclusively rely on third parties to provide digital banking, including bill payment portals, and core processing systems. One law firm commenter stated that nondepository institution data providers would have the most burden in complying because they are less likely to already have interfaces and policies in place to timely receive and respond to requests for data. Different commenters offered various time periods for how long compliance should be. Suggestions ranged from allowing an additional six to 18 months for all tiers, 24 months for the largest data providers, four to six years for small providers, and at least 10 years for all data providers.

Some bank, bank trade association, third party nondepository entity, and nondepository entity trade association commenters requested compliance dates for third parties and aggregators. One stated that the CFPB should ensure that the compliance date for the largest data providers is feasible not only for the relevant data providers but also for data recipients. Another stated that there should be a 12-month compliance period for aggregators and merchants that use aggregators, and a six-month grace period thereafter for aggregators to cure any technical violations that do not result in direct instances of consumer harm.

Finally, one bank trade association commenter asked for clarification as to how ownership structure influences which tier an entity falls into as some entities are comprised of multiple types of companies.

Final Rule

For the reasons discussed herein, the CFPB is finalizing § 1033.121 with revisions to increase the number of compliance date tiers, redefine the types of depository institutions included in each tier, change the metrics used to define the types of data providers included in each tier, extend compliance deadlines for all tiers, and provide clarification for how depository institution data providers determine compliance deadlines when their total assets do not meet the threshold for coverage as of the effective date but subsequently cross that threshold. Specifically, § 1033.121(b) provides that, in the first tier, depository institution data providers that hold at least $250 billion in total assets and nondepository institution data providers that generated at least $10 billion in total receipts in either calendar year 2023 or calendar year 2024 must comply by April 1, 2026. In the second tier, depository institution data providers that hold at least $10 billion in total assets but less than $250 billion in total assets and nondepository institution data providers that generated less than $10 billion in total receipts in both calendar year 2023 and calendar year 2024 must comply by April 1, 2027. In the third tier, depository institution data providers that hold at least $3 billion in total assets but less than $10 billion in total assets must comply by April 1, 2028. In the fourth tier, depository institution data providers that hold at least $1.5 billion in total assets but less than $3 billion in total assets must comply by April 1, 2029. In the final tier, depository institution data providers that hold less than $1.5 billion in total assets but more than $850 million in total assets must comply by April 1, 2030.

Data providers must have established functioning developer and consumer interfaces required under § 1033.301(a) that are technically capable of complying with the requirements in subparts B and C of part 1033 by their compliance deadline. For example, developer interfaces must be able to make available all covered data (as defined in § 1033.211) in a standardized format (§ 1033.311(b)) and be capable of performing in a commercially reasonable manner (§ 1033.311(c)). Some data providers will be able to receive requests from authorized third parties for covered data through their developer interface by then. However, the CFPB recognizes that other data

providers may need to transition existing third party access arrangements or otherwise onboard new third parties after their compliance deadline as necessary to avoid violating other legal obligations and to manage the technical integration process.

The CFPB recognizes that data providers may need time to onboard third parties in a staggered manner in accordance with sound risk management. It is permissible under the final rule to manage the onboarding process a staged manner, to the extent permitted under § 1033.321. As discussed further in part IV.C.4 below, a data provider could rely on § 1033.321 to deny a third party access to the developer interface temporarily, consistent with policies and procedures reasonably designed to comply with safety and soundness standards of a prudential regulator (among other legal obligations), and if the denial complies with § 1033.321(b). Once a third party has access to the developer interface, a data provider must respond to requests for covered data in accordance with the rule.

It will raise significant concerns if a data provider seeks to rely on § 1033.321 to justify noncompliance with the technical requirements of subparts B and C of the final rule, such as those impacting functionality, commercially reasonable performance, or security of the developer interface. Such requirements are independent of whether a data provider can deny a third party access under § 1033.321. For example, it likely would be impermissible for a data provider to deny a third party access under § 1033.321 temporarily, in connection with onboarding, solely because the data provider's developer interface could not scale to achieve the 99.5 percent response rate required under § 1033.311(c)(1) for periods with a high volume of requests.

To be clear, § 1033.321 does not allow data providers to delay access during the onboarding process unreasonably. For example, a data provider could not manage the onboarding process in an inconsistent or discriminatory manner. Establishing policies and procedures to manage the onboarding process as expeditiously as possible in a way that properly accounts for relevant risk management considerations will help ensure data providers do not unlawfully avoid their obligations to implement CFPA section 1033. In managing the onboarding process, data providers are also subject to the rule's anti-evasion provision in § 1033.201(a)(2) and other applicable consumer financial laws, including the prohibition on unfair, deceptive, or abusive acts or practices.

Section 1033.121(a) provides that a data provider's compliance date is based upon the calculation of total assets or total receipts, as appropriate. Section 1033.121(a)(1) also provides that, for depository institution data providers, total assets are determined by averaging the assets reported on its 2023 third quarter, 2023 fourth quarter, 2024 first quarter, and 2024 second quarter call report data submissions to the FFIEC or NCUA, as applicable, or its submissions to the appropriate oversight body to the extent it does not submit such reports to the FFIEC or NCUA. With respect a commenter's request to clarify how ownership structure influences which tier a depository institution falls into for compliance purposes, the regulatory text makes clear that a depository institution data provider looks to the total assets it reports on its call report data submissions. Section 1033.121(a)(2) provides that, for nondepository institution data providers, total receipts are calculated based on the SBA definition of receipts, as codified in 13 CFR 121.104(a). Section 1033.121(c) states compliance timelines for depository institution data providers that do not meet the coverage threshold as of the rule's effective date, but that subsequently cross that threshold. It provides that a depository institution data provider has a reasonable amount of time to comply with the rule after exceeding the size standard, and that the reasonable amount of time shall not exceed five years. This period is counted from the submission of a data provider's fourth call report described in the asset size calculation in § 1033.111(d)(2), the analysis of which, under such calculation, results in an asset size that crosses the size threshold.

The compliance periods for each tier in the final rule will ensure that data providers of different sizes and resources will have the appropriate amount of time to comply, in part, because the largest, most resourced data providers will be complying first and smaller depository institution data providers who are most likely to be relying on core providers and other third parties will be split into additional, smaller, more manageable tiers. The largest data providers, many of which already have the required interfaces in development, have until April 1, 2026, to comply, which will provide them with sufficient time to meet the rule's requirements. Comments received from the largest depository institution data providers, as well as data provider trade associations and a few smaller banks and credit unions, requested 24 months for the largest depository institution data providers to comply, but also noted that many of the largest depository institution data providers already have interfaces that could be adapted to comply with the final rule's requirements when issued and did not specify why 24 months would be necessary to build the developer interface required by the rule. In addition, some commenters requesting 24 months identified aspects of implementation related to onboarding third parties onto a developer interface and processing requests. As discussed above, data providers must have established functioning interfaces by their compliance dates and are permitted to manage granting third parties access to the developer interface, consistent with § 1033.321.

The second tier of data providers will have more than two years to comply, which will allow them to learn from the experience coming into compliance of the first tier of data providers; the same is true for the third tier of data providers with more than three years for compliance. The fourth and fifth tiers, which constitute the smallest depository institution data providers by asset size and the entities most likely to depend on core processors or other third parties to assist with compliance, will be able to learn from the experiences of the data providers that had to comply earlier and should have a smoother transition than they might otherwise. These periods balance the need for effective compliance with the provision of sufficient time to ensure a smooth transition and minimize time between tier compliance to ensure that any temporary data access gaps will be short lived. The CFPB has revised the compliance date tiers in response to comments, to reduce the total number of depository institutions in each tier. This should reduce the burden on core processors and other third parties, easing overall compliance efforts.

Consistent with the proposed rule, nondepository institution data providers must comply with the final rule's requirements as part of the first or second tiers. But these tiers now have more time to achieve compliance. Further, though one law firm commenter stated that nondepository institution data providers are most likely not to already have interfaces and policies in place to timely receive and respond to requests for data, this assertion does not negate the CFPB's finding, through the SBREFA process and ongoing market monitoring, that such data providers do not have as many vendors and information

technology systems that will need to be connected and that implementation by nondepository institution data providers can occur in-house without the need to engage core processors or other third party vendors. These data providers also tend to have business models that are based on the ability to adopt to technological innovations relatively quickly. Thus, these data providers will be able to move more quickly to implement the rule's requirements.

The final rule clarifies that, for purposes of determining an institution's compliance date, a depository institution data provider must look at the average total assets over a defined year of call report data. Averaging total assets over the course of one year provides a more accurate picture of asset holdings than just using assets as of the end of a single calendar quarter. A nondepository institution data provider must look at its total receipts, as calculated based on the SBA definition of receipts in 13 CFR 121.104(a). The SBA definition of receipts is widely used in many regulations and provides a comprehensive, consistent definition for nondepository institution data providers to benchmark their revenue. These provisions will ensure that all institutions are using consistent metrics to determine compliance periods.

Section 1033.111(d) addresses asset limitations to coverage for depository institution data providers and specifies asset calculation methods. Section 1033.121(c) discusses compliance timing for depository institution data providers that are at or below the asset threshold at the effective date but later exceed the applicable threshold. This provision allows such institutions a reasonable time to comply after they exceed the applicable threshold, not to exceed five years. The smallest depository institution data providers subject to the rule's requirements as of the rule's effective date will have approximately five years to comply, making this a logical ceiling for compliance timing for depository institution data providers that subsequently become subject to the rule's requirements. However, as more time passes and more institutions implement the rule's requirements, compliance will become less onerous, less expensive and require less time. Thus, what constitutes a reasonable amount of time for compliance may evolve downward with time.

The final rule does not set explicit compliance dates for third parties because they are unnecessary. The CFPB is providing additional time for the largest data providers to come into compliance with the rule, which will give third parties and aggregators additional time to prepare for implementation of the rule. In addition, transitioning the market from screen scraping will further incentivize third parties and aggregators to meet the requirements to request proper access under the terms of the rule. See part IV.4 above for a discussion of whether data providers complying with this rule are furnishers under the FCRA.

6. Definitions (§ 1033.131)

Card Issuer, Covered Consumer Financial Product or Service, Covered Data, Data Provider, Financial Institution, Recognized Standard Setter, Regulation E Account, and Regulation Z Credit Card

Consistent with the proposed rule, the coverage-related terms—card issuer, covered consumer financial product or service, covered data, data provider, financial institution, Regulation E account, and Regulation Z credit card—are listed under § 1033.131 with cross-references to the full definitions in §§ 1033.111 and 1033.211 (covered data).

The term recognized standard setter, which was finalized in the Industry Standard-Setting Final Rule, is also listed under § 1033.131 with a cross-reference to the full definition in § 1033.141. As finalized in that rule, the term refers to a standard-setting body with certain attributes listed in § 1033.141(a) (finalized as part of the Industry Standard-Setting Final Rule), including recognition by the CFPB pursuant to certain application procedures. The CFPB began accepting applications from standard-setting bodies seeking recognition in the summer of 2024.

Authorized Third Party

The CFPB proposed under section 1033(a) to require data providers to make available covered data to certain third parties ''acting on behalf'' of a consumer. The CFPB proposed in § 1033.131 to define the term authorized third party as a third party that has complied with the authorization procedures described in proposed § 1033.401. Proposed § 1033.401 specified what requirements a third party would have to satisfy to become an authorized third party, and thus be entitled to access covered data on behalf of a consumer.

Few commenters addressed the proposed definition of authorized third party. A third party commenter stated that data aggregators sometimes function as authorized third parties. The commenter recommended that the rule clarify how the definition applies to a data aggregator that follows the authorization procedures, stating that the definitions of authorized third party and data aggregator could be modified to note that an entity could be both. More generally, several commenters raised concerns about the scope of third parties that should be permitted under the rule to access covered data on behalf of consumers. These comments are addressed in part IV.D.1 below.

For the reasons discussed herein, the CFPB is adopting the definition of authorized third party as proposed to mean a third party that has complied with the authorization procedures in § 1033.401. As discussed in more detail in part IV.D, the authorization procedures are designed to ensure that third parties accessing covered data under section 1033(a) of the CFPA pursuant to the rule's framework are ''acting on behalf'' of a consumer, and therefore consistent with the definition of consumer in CFPA section 1002(4). This definition of an authorized third party provides a term to designate which third parties are entitled to access consumer information, on the consumer's behalf, pursuant to the rule's framework.

It is not necessary for the definition of authorized third party to specify that a data aggregator may also function as an authorized third party in other circumstances. A third party may play different roles in different circumstances. However, for a particular request for access to covered data, an entity would play only one role. The definition of authorized third party (like the definitions of data aggregator and data provider) is designed only to identify what role an entity plays for that particular request for access to covered data.

Consensus Standard

The CFPB proposed in § 1033.131 to define the term qualified industry standard to mean a standard issued by a standard-setting body that is fair, open, and inclusive in accordance with § 1033.141(a), which includes CFPB recognition. In the Industry Standard-Setting Final Rule, the CFPB addressed comments regarding the proposed qualified industry standard definition, the attributes of a standard-setting body, and the process for CFPB recognition. The Industry Standard-Setting Final Rule revised the definition of qualified industry standard in proposed § 1033.131 and renamed it a ''consensus standard.''

While the Industry Standard-Setting Final Rule adopted this term, it did not

address the role consensus standards would play in this final rule. The CFPB generally proposed that conformance to a qualified industry standard would provide ''indicia,'' or partial evidence, of data providers' and third parties' compliance with specified provisions. Generally, conformance to a qualified industry standard would not be required to comply nor would it constitute compliance with a specified provision.[53] No provision in the proposal would have required a data provider or third party to comply with a qualified industry standard.

Many commenters addressed the role consensus standards should play in the implementation of the final rule. Generally, commenters supported inclusion of standards set by voluntary standard-setting bodies, and focused on whether the standards should be indicia of compliance or something else, such as a safe harbor. Some commenters believed consensus standards should play no role in the final rulemaking and should rather be wholly determined by private standard-setting bodies.

One civil rights group commenter supported the proposal's approach to weighing standards as indicia of compliance. Further, data provider commenters preferred to consider compliance with consensus standards as an indicator of compliance rather than a requirement for compliance.

Some data provider and third party commenters recommended that consensus standards provide a legal safe harbor for compliance with various provisions of the final rule. These commenters suggested that a safe harbor would provide certainty and clarity to market participants and would encourage participants to invest in the setting of and compliance with appropriate standards. Further, commenters expressed concern that some participants may not expend the resources to conform to consensus standards if doing so could still result in noncompliance with regulatory requirements. Additionally, some bank commenters recommended that if the rule does not employ consensus standards as safe harbors, it should instead use a ''commercially reasonable'' standard. These commenters expressed concern that the ''indicia of compliance'' terminology could receive excessive weight by market participants, and effectively become the implicit compliance regime of the rule.

A variety of commenters opposed the framework for recognizing standard-setting bodies. Some commenters stated that CFPA section 1033 does not address the CFPB's authority to recognize standard-setting bodies as capable of issuing consensus standards for data providers and third parties, and that the proposed standards framework could conflict with prudential requirements imposed on data providers. One research institute commenter opposed the consensus standards framework on the grounds that the Federal Government should not interfere with the internal governance of private standard-setting bodies.

Generally, the CFPB has determined that consensus standards can usefully serve as indicia of compliance for various provisions stated throughout the final rule. If the final rule provided safe harbors, as some commenters suggested, recognized standard setters could play a regulatory role, rather than a consensus standard-setting one. Such an approach would also ignore the fact that a standard may be insufficient in some respect (for example, for incompleteness given the rule requirement on point) or in particular, idiosyncratic circumstances. The indicia of compliance framework maintains part 1033 as the applicable legal standard while giving due weight to a fair, open, and inclusive consensus standard as evidence of compliance with the rule.[54] Consensus standards can assist entities in fulfilling their legal obligations but do not relieve an entity from its duty to confirm that it is complying with the rule.[55] By the same token, consensus standards are not mandates.

While some commenters advocated for a ''commercially reasonable'' test as a substitute for consensus standards, the CFPB believes that looking exclusively at commercial reasonableness would ignore the potential benefits of more specific consensus standards developed through a fair, open, and inclusive process involving all stakeholders. As discussed below, in the context of § 1033.311(c)(1), a developer interface must provide a response within a commercially reasonable amount of time and indicia of such a response includes conformance to an applicable consensus standard.

Regarding the comment opposing Federal Government involvement in the governance of private standard-setting bodies, the CFPB notes that it has a legitimate interest in ensuring that standard-setting bodies follow an appropriate process when issuing standards as to which conformance carries some indicia of compliance with a CFPB rule. Moreover, no existing or future private entity is required to become a CFPB-recognized standard-setting body, and a range of external standards may continue to be of utility and value to regulated entities even if they are not consensus standards adopted by recognized standard setters. The CFPB is finalizing the provisions of the final rule that cite consensus standards using its rulemaking authority under CFPA section 1033(a) and (d) and section 1022(b)(1). These provisions carry out the objectives of section 1033 by encouraging the development of fair, open, and inclusive industry standards that will facilitate implementation of the final rule.

Regarding some commenters' concern that consensus standards could conflict with prudential requirements, CFPA section 1033(e) requires that the CFPB consult with the prudential regulators and the FTC so that certain objectives are met. In compliance with this provision, prior to issuing the Industry Standard-Setting Final Rule the CFPB consulted on several occasions with staff from the prudential regulators and the FTC to discuss various aspects of the rule, including criteria for and processes with respect to standard-setting bodies. Such discussions were, in part, to achieve effective alignment between the Industry Standard-Setting Final Rule and prudential requirements. The CFPB has conducted further consultations after the release of the Industry Standard-Setting Final Rule and is not aware of conflicts with prudential requirements. In addition, because consensus standards serve as indicia, nothing in a consensus standard could legally override a Federal legal obligation, prudential or otherwise. A hypothesized conflict, accordingly, could not be meaningful.

Details about the role of consensus standards with regard to particular requirements of the final rule can be found in the discussion below.

[53] The one exception to that approach was with respect to the proposed requirement that a data provider's developer interface make covered data available in a ''standardized format'' in proposed § 1033.311(b). In that case, adherence to a qualified industry standard would have been deemed to satisfy the requirement. The final rule instead uses the indicia-of-compliance approach in that context, for the reasons explained in the discussion of final § 1033.311 below.

[54] In this respect, the CFPB encourages recognized standard setters to ensure a consensus standard complies with the final rule and that they maintain procedures that allow regulated entities to straightforwardly evidence their conformance to a consensus standard at negligible cost.

[55] The CFPB may be able to provide additional guidance about particular consensus standards, especially if market participants seek that in particular cases. However, that is different from providing a safe harbor for all the consensus standards that may have some bearing on rule compliance, as requested by some commenters.

Consumer

The CFPB proposed in § 1033.131 to define the term consumer for purposes of part 1033 to mean a natural person. The proposed definition specified that trusts established for tax or estate planning purposes would be considered natural persons. The preamble to the proposal explained that the proposed definition differs from the definition of consumer in CFPA section 1002(4), which defines a consumer as ''an individual or an agent, trustee, or representative acting on behalf of an individual.'' The preamble explained the proposed definition was designed to distinguish the term consumer from third parties that are authorized to access covered data on behalf of a consumer pursuant to the proposed procedures in subpart D.

A bank and some trade associations for banks supported the proposed approach not to refer to ''agents'' in the definition of consumer, because they said including agents could cause significant confusion or complication as there are numerous parties which could act as the consumer's agent and would have access to covered data pursuant to the third party authorization procedures in subpart D. Some commenters, including third parties and data aggregators, noted what they described as potential confusion related to the proposed definition being different from the statutory definition. Others, like data aggregators and third parties, stated that the final rule should align the definition of consumer to the statutory definition.

Commenters also asked for additional changes and clarifications related to the definition of consumer. For example, a data provider and trade associations for banks requested clarification around the proposed rule's inclusion of trusts established for tax or estate planning purposes as natural persons, and how a trust could authorize a third party to access the trust's data. Trade associations for third parties suggested the definition of consumer should be narrowed to include only consumers with at least one current account with the data provider. Additionally, a consumer advocate stated that the final rule should include in the definition of consumer small businesses seeking access to their financial data.

Finally, some banks, trade associations for data providers, third parties, and data aggregators focused on how smaller commercial third parties, or parties that traditionally would not require authorization through section 1033 to access consumer data, might be impacted by the rule (*e.g.,* how a small broker-dealer might be treated if they are not considered a consumer; and how custodians, guardians, and other authorized agents may authorize third parties).

For the reasons discussed herein, the CFPB is finalizing the definition of ''consumer'' in the rule as proposed with a modification to specify that the term includes guardians, trustees, custodians, or similar natural persons acting on behalf of a consumer pursuant to State law.

The term consumer is commonly used in various consumer finance-related contexts to refer to individuals, *i.e.,* natural persons. *See, e.g.,* Regulation E, 12 CFR 1005.2(e). The final rule accounts for the CFPA's definition, which also includes ''an agent, trustee, or representative acting on behalf of an individual,'' by establishing third party authorization procedures described in subpart D to ensure all relevant parties may access covered data. Accordingly, the substance of the rule aligns with the CFPA's definition of consumer, and nothing in the CFPA prevents the CFPB from using different vocabulary within such a rule.

Further, as described above, some commenters requested clarification regarding the inclusion of trusts as natural persons for purposes of the definition of consumer. Trusts are referred to as natural persons in other consumer finance-related contexts. *See, e.g.,* Regulation Z comment 3(a)–10 (''Credit extended for consumer purposes to certain trusts is considered to be credit extended to a natural person rather than credit extended to an organization.''). In the context of CFPA section 1033, a data provider would control or possess the covered data concerning a consumer financial product or service that the trust obtained from the data provider. As such, trusts established for estate or tax planning purposes are appropriately considered consumers in the context of CFPA section 1033.

In the proposed rule, the CFPB requested comment on how individuals who are not account owners currently use existing legal mechanisms to directly access covered data. As described above, some commenters sought clarification on how parties that traditionally would not require authorization through CFPA section 1033 to access consumer data might be impacted by the rule. For example, some commenters cited guardians and custodians as examples of natural persons who might manage certain accounts and therefore attempt to authorize third parties to access covered data. After considering these comments, the CFPB is including in the definition of consumer a statement that consumers include guardians, trustees, custodians, or similar natural persons acting on behalf of a consumer pursuant to State law. In these circumstances, natural persons who manage consumer accounts through legal instrumentation are granted authority to manage those assets. Custodial accounts, for example, may be established by financial institutions under the Uniform Gifts to Minors Act (*see generally* 8A U.L.A. 405 (1983)) or the Uniform Transfers to Minors Act (*see generally* 8A U.L.A. 153 (Supp. 1987)), and are set up and managed by an adult for the benefit of a minor until the minor reaches the age of majority. Guardianships, trusts, and custodian accounts function similarly: existing legal processes, unrelated to CFPA section 1033's data access rights, establish rights for a natural person to manage the assets and income for another natural person. In these cases, it would be appropriate for the natural person duly authorized to manage another natural person's covered financial products or services to also authorize third parties to access the covered data related to those products or services pursuant to section 1033. Further, the State statutory and common law protections in place that cover these persons are sufficient such that these persons can be considered consumers when acting in those capacities for another person, and it is not necessary to apply the provisions of subpart D to them.

The CFPB is aware that some corporate terms and conditions contain provisions by which consumers purportedly appear to consent, upon acceptance, to the corporate entities' limited powers of attorney to act as agents for the consumers. These circumstances would not position such corporate entities as consumers under the revised definition in final § 1033.131 of the rule because they are factually and legally different from those circumstances addressed by the final rule's definition of consumer. The natural persons considered consumers under the final rule have broad authority established through State law mechanisms to stand directly in the shoes of the consumer with respect to the covered financial product or service associated with the consumer.

Finally, as described above, some commenters suggested the CFPB narrow the final rule to include only consumers with at least one current account with the data provider. The CFPB has determined that §§ 1033.201(a) and 1033.331 and the authorization procedures described in § 1033.401

sufficiently ensure that consumers who have covered data and accounts with the data provider can authorize third parties to access covered data, while the exceptions in CFPA section 1033(b) and § 1033.221 ensure that data providers are not required to provide information that they cannot provide in the ordinary course of business. A commenter also suggested the final rule include small businesses in the definition of consumer. However, CFPA section 1033 applies only to ''consumer financial products and services'' as defined in CFPA section 1002(5). Accordingly, expanding the final rule to include small business accounts would be inconsistent with the statutory text. However, the CFPB expects that small business account providers may find the framework of part 1033 to be a useful model for enabling small businesses to share data about their accounts, and therefore may choose to use their developer interfaces to facilitate that access.

Consumer Interface

The CFPB proposed in § 1033.131 to define consumer interface as an interface through which a data provider receives requests for covered data and makes available covered data in an electronic form usable by consumers in response to the requests.

No commenters objected to the proposal's general approach of a framework under which authorized third parties would not be entitled under part 1033 to access individual consumers' covered data through providers' functionality designed for consumers. Depository institutions and depository institution trade associations stated, however, that the proposed definition was insufficiently clear because under the proposal a depository institution data provider would have been exempt from part 1033 if it did not have a consumer interface. They said that a data provider with relatively basic online banking functionality for its consumer account holders would not be able to determine with sufficient certainty whether that functionality qualified as a ''consumer interface'' thereby subjecting the data provider to the requirements of part 1033.

Under the final rule, the application or non-application of part 1033 to a depository institution data provider does not depend in whole or in part on whether or not the data provider has functionality for providing covered data to individual consumers. Instead, as discussed elsewhere, it is determined by whether the data provider is above a certain asset size. As a result, a data provider above that asset size and thus subject to part 1033 does not need to determine whether the functionality through which it makes covered data available to individual consumers meets the definition, but instead must ensure that it offers functionality for making covered data available that meets the requirements of subparts B and C of part 1033.[56] Accordingly, the rule's label for that functionality—the ''consumer interface'' definition—does not need modification and the CFPB adopts the definition as proposed for the reasons discussed herein.

Data Aggregator

The CFPB proposed in § 1033.131 to define the term data aggregator to mean an entity that is retained by and provides services to the authorized third party to enable access to covered data. The proposed rule noted that some third parties retain data aggregators for assistance in obtaining access to data from data providers. Certain provisions in proposed § 1033.431 specified what role data aggregators would play in the third party authorization procedures, what information about data aggregators would have to be included in the authorization disclosure, and what conditions data aggregators would have to certify that they agree to as part of the third party authorization procedures. The CFPB requested comment on whether data aggregator is an appropriate term for describing third parties that may provide assistance in accessing covered data or whether there are other terms, such as ''data intermediary,'' that would be more appropriate.

Some commenters stated that the proposed definition was too broad. A research institute commenter stated that the proposed definition would sweep in any service provider or subcontractor that contributes in any way to a third party being able to access consumer data from a data provider. The commenter recommended narrowing the definition to avoid imposing burdens on service providers that have no direct relationship to consumers or their data. A nondepository entity commenter stated that data aggregator is a generic term that could lead to confusion and recommended that the rule provide more granular definitions of the different types of services provided, with the term data aggregator applying only to entities that aggregate all types of financial data. A data aggregator commenter stated that the rule should use the term data access platform instead of data aggregator because the term data aggregator does not fully reflect the role that such entities play and that data access platform is a market standard term.

In contrast, a bank and a bank trade association commenter stated that the proposed definition of data aggregator was too narrow. The bank commenter requested that the definition of data aggregator be expanded to include data aggregators that assist non-authorized third parties in accessing consumer data.

Several commenters recommended that the CFPB clarify the proposed definition of data aggregator. A research institute commenter stated that the CFPB should clarify whether a data aggregator can be an authorized third party. Two credit union trade associations recommended that the rule clarify what ''retained by'' means in the context of a third party that uses a wholly owned subsidiary as a data aggregator, and also what ''enable access to covered data'' means for a credentialing service that facilitates a data provider's risk management and data security review. Finally, they stated that the rule should clarify whether ''enabling access'' requires a data aggregator to be the party connected to a developer interface.

For the reasons discussed herein, the CFPB is finalizing the definition of data aggregator with a minor change from the proposal. The proposal defined data aggregator to mean an entity that is retained by and provides services to the authorized third party to enable access to covered data. The term ''person'' as used elsewhere in the rule and in the CFPA includes both natural persons and entities. In most situations, a data aggregator will be an entity rather than a natural person. However, to account for the situation in which a data aggregator is not an entity and for consistency with other definitions, such as third party, the CFPB is revising the definition to change ''entity'' to ''person,'' so that data aggregator means a person that is retained by and provides services to the authorized third party to enable access to covered data. This definition of data aggregator strikes an appropriate balance. It is broad enough to include persons that provide various types of services to authorized third parties that enable access to covered data, ensuring that the consumer protections related to data aggregators will apply to persons involved in accessing and collecting covered data. It is not limited to persons that are connected to a developer

[56] If a data provider has more than one mechanism through which it makes available covered data to consumers, each of the mechanisms does not individually need to satisfy the requirements of part 1033. Collectively, the mechanisms must do so.

interface, as it also covers persons collecting, processing, or combining covered data.

However, by limiting the scope of the definition to persons that provide services to the authorized third party to enable access to covered data, the definition avoids sweeping in persons that are providing services that are only incidentally connected to data access. Contrary to the concerns raised by one commenter, the definition does not cover a person that contributes in any way to accessing covered data; the person must provide services that enable access to covered data in order to meet the definition of a data aggregator. The CFPB has determined that it would not be appropriate to adopt more granular definitions based on the specific services that entities provide. The purpose of the data aggregator definition is to identify persons that, regardless of the specific services they provide, are subject to various consumer protections in the rule because of their involvement with and proximity to covered data.

As noted above in connection with the discussion of the definition of authorized third party, the CFPB recognizes that persons may play different roles in different transactions and that an entity may be a data aggregator in some transactions and an authorized third party in others. The definitions of data aggregator and authorized third party are intended to identify what role an entity is playing with respect to a particular request for covered data and are not fixed terms. Regarding the comment about whether a wholly owned subsidiary of a third party could be a data aggregator, the CFPB notes that, assuming the subsidiary is a separate person from the third party, the subsidiary could be a data aggregator.

The CFPB declines to expand the scope of the data aggregator definition to include data aggregators that serve non-authorized third parties. The data aggregator definition, and the provisions related to data aggregators in § 1033.431, are designed to specify what obligations data aggregators must satisfy when they assist authorized third parties that access covered data on a consumer's behalf pursuant to the rule's framework. Expanding the definition of data aggregator to include persons that provide data aggregation services to non-authorized third parties would go beyond the scope of the consumer-authorized data access framework described in the rule.

The CFPB also declines to further expand upon what ''enable access to covered data'' means in specific contexts, as requested by some commenters. The definition is designed to capture a variety of different arrangements and accordingly is sufficiently clear. Finally, the CFPB declines to adopt a term other than data aggregator. Only one commenter recommended using a different term, and data aggregator is a widely used and understood term.

Depository Institution

The CFPB is adding a definition of depository institution to the final rule for clarity and to facilitate compliance with the rule. The definition of depository institution is any depository institution as defined in the Federal Deposit Insurance Act, 12 U.S.C. 1813(c)(1), or any credit union as defined in the NCUA's regulation at 12 CFR 700.2. This definition provides additional clarity that all depository institutions, not just bank entities, are included when the rule refers to depository institutions.

Developer Interface

The CFPB proposed in § 1033.131 to define developer interface as an interface through which a data provider receives requests for covered data and makes available covered data in an electronic form usable by authorized third parties in response to the requests.

Commenters generally did not express concern with the proposed definition. A few blockchain-related nondepository and individual consumer commenters, however, stated that the CFPB should require data providers to grant developer interface access to individual consumers upon the consumers' submission of sufficient information to the data providers (*i.e.,* sufficient to enable the providers to comply with their interface access and risk assessment obligations under part 1033 and other laws). These commenters said that such a requirement would help empower consumers to serve as their own personal financial data custodians if they so desire.

The final rule does not require data providers to grant developer interface access to individual consumers (though it also does not bar them from doing so). Such a requirement could burden data providers in ways the CFPB has not adequately evaluated by necessitating that they consider a high number of requests for consumer access to their developer interfaces. In addition, consumers may obtain their financial data—including in machine-readable form—through consumer interfaces.

For the reasons discussed herein, the CFPB is finalizing the definition of developer interface as proposed. The definition does not require use of any particular technology. Instead, it facilitates the readability of part 1033 by establishing a brief label—''developer interface''—by which other provisions in part 1033 may refer to the functionality through which a data provider receives and responds to requests for covered data from authorized third parties in accordance with the requirements of the rule. The very limited comments on this definition indicate that relevant industry participants do not object to the utility of the term for these purposes.

Third Party

The CFPB proposed in § 1033.131 to define the term third party as any person or entity that is not the consumer about whom the covered data pertains or the data provider that controls or possesses the consumer's covered data. The proposed rule used the term third party to refer to entities seeking access to covered data and to other parties, including data aggregators.

A trade association for nondepository entities stated that the definitions of third party and data provider (addressed in § 1033.111(c)) were unclear. The commenter stated that an entity could be construed as either, such as when a fintech partners with a bank.

For the reasons discussed herein, the CFPB is finalizing the definition of third party with a minor change from the proposal. The proposed definition referred to ''any person or entity.'' The term ''person'' as used elsewhere in this rule and in the CFPA includes both natural persons and entities, so the phrase ''or entity'' in the definition of third party is unnecessary. Accordingly, the final rule defines third party to mean any person that is not the consumer about whom the covered data pertains or the data provider that controls or possesses the consumer's covered data.

As discussed above in connection with the definitions of authorized third party and data aggregator, an entity may play different roles in different transactions and may serve as a data provider in one transaction and a third party in another transaction. The definitions are intended to identify what roles the parties are playing in a particular request for access to covered data. The CFPB concludes that additional clarifications in the definitions are not necessary.

B. Subpart B—Making Covered Data Available

1. Overview

Disagreements around the data that should be available to consumers and authorized third parties have limited consumers' ability to use their data and imposed costs on data providers and third parties. Subpart B of part 1033 addresses these obstacles by establishing a framework for the general categories of data that must be made available, including specific data fields that have been significant sources of disagreement, and exceptions from these requirements. Subpart B also restates the general requirement in CFPA section 1033(a) for data providers to make covered data available in an electronic form usable by consumers and includes a prohibition against evasion.

2. Availability and Anti-Evasion (§ 1033.201)

General Obligation (§ 1033.201(a)(1))

Consistent with the general obligation in CFPA section 1033(a), the CFPB proposed in § 1033.201(a) to require a data provider to make available to a consumer and an authorized third party, upon request, covered data in the data provider's control or possession concerning a covered consumer financial product or service that the consumer obtained from the data provider, in an electronic form usable by consumers and authorized third parties. It also stated that compliance with the requirements in §§ 1033.301 and 1033.311 is also required.

The CFPB received only a few comments addressing the restatement of the statutory obligation in proposed § 1033.201(a). Of those, none objected to it and some, including consumer advocates in particular, supported the restatement. They argued that specific regulatory provisions could become outdated as technology evolves and that restating data providers' general statutory obligation in part 1033 would help make clear that the general obligation to make consumers' data available to them and to their authorized third party representatives stands nonetheless. A few data provider commenters requested that the rule be explicit that the ''electronic form'' of covered data may differ as between the consumer interface and the developer interface.[57]

For the reasons discussed herein, the CFPB is finalizing its restatement of CFPA's section 1033(a) general statutory obligation as § 1033.201(a)(1). The CFPB has removed the proposed additional sentence that referred to §§ 1033.301 and 1033.311, as it is unnecessary to state here that data provider obligations under § 1033.201(a)(1) are in addition to the data provider obligations under other provisions of subparts B and C. (Final § 1033.201(a)(2), regarding anti-evasion, is discussed below.)

The restatement in § 1033.201(a)(1) of the general obligation under CFPA section 1033(a) to make covered data available establishes the core obligation of data providers in part 1033. This obligation is in addition to the other requirements established by part 1033. As commenters observed, technology and business practices will continue to evolve over time. As they do, data providers' general statutory obligation to make covered data available will remain in place, implemented by § 1033.201(a)(1), as will data providers' obligations to comply with the other requirements of the rule set forth in subparts B and C of part 1033. To be clear, there may be overlap as to the substance of the requirements established by § 1033.201(a)(1) and the substance of the other requirements in subparts B and C, but that does not affect data providers' obligation to comply with the entirety of subparts B and C including § 1033.201(a)(1). There may also be obligations under § 1033.201(a)(1) that do not overlap with other requirements in subparts B and C; this likewise does not affect data providers' obligation to comply with § 1033.201(a)(1). Similarly, there may be requirements under the other provisions of subparts B and C that do not overlap with § 1033.201(a)(1); that does not affect data providers' obligation to comply with the other provisions of subparts B and C.

Under current industry practice, it is typical for the electronic form of data made available through data providers' consumer interfaces to differ from the electronic form of data made available through their developer interfaces. Nothing in § 1033.201(a)(1) or any other provision of part 1033 requires that aspect of current industry practice to change. Section 1033.201(a)(1) requires data providers to make covered data available in an electronic form usable by consumers and authorized third parties, but the electronic form usable by consumers need not be the same as the electronic form usable by authorized third parties.

Covered Data in Natural Language

In the proposal, the CFPB stated that statutory requirement set forth in § 1033.201(a) that a data provider make available covered data in its control or possession obligates the data provider to make a consumer's covered data available in Spanish or English (or any other language) if that is the language in which the data provider maintains the consumer's covered data. A few data provider commenters argued that the requirement should not apply to the developer interface.

That statement from the proposal remains an accurate description of data providers' obligations under § 1033.201(a); accordingly, the CFPB reaffirms it here. Some elements of covered data, discussed in more detail under § 1033.211, are non-numeric—that is, they include natural language. When a data provider controls or possesses covered data that includes natural language, the data provider must make available the data in the language in which the data provider controls or possesses the covered data (whether that language is Spanish, English, or any other language). Further, this obligation applies to both consumer and developer interfaces.

Anti-Evasion Provision (§ 1033.201(a)(2))

The CFPB requested comment on whether part 1033 should set forth an explicit prohibition against data provider conduct that would evade the objectives of CFPA section 1033, pursuant to the authority provided to the CFPB by CFPA section 1022(b)(1). More specifically, the CFPB requested comment on whether it should set forth explicit prohibitions against (1) actions that a data provider knows or should know are likely to interfere with a consumer's or authorized third party's ability to request covered data, or (2) making available information in a form or manner that a data provider knows or should know is likely to render the covered data unusable. The CFPB also requested comment on whether it should prohibit practices that might effectively make data unavailable or unusable to consumers and authorized third parties.

The CFPB received only a few comments addressing whether its final rule should include a prohibition against evasion. Data provider commenters that addressed the issue opposed such a prohibition on the grounds that it would be premature because actual evasive activity remains

[57] The CFPB also received comments requesting that it undertake a consumer education campaign to ensure that consumers are aware of their rights under CFPA section 1033. While the CFPB continues to consider these suggestions, they are outside the scope of this rulemaking and the CFPB does not address them here.

speculative. In contrast, third party commenters that addressed the issue supported inclusion of a prohibition against evasion. These commenters asserted that the proposed rule did not do enough to prevent data providers from interfering with access, such as by varying the performance of their interfaces, by implementing systems in non-standard ways that limit interoperability, or by imposing excessive burdens or procedures that restrict or delay access to covered data depending on which third party is requesting access. They also asserted that there is a history of data provider efforts to delay or interfere with data access by authorized third parties.

The CFPB has determined that is necessary and appropriate to include in part 1033 a prohibition against evasion, pursuant to the CFPB's authority under CFPA section 1022(b)(1). Accordingly, the CFPB is adopting § 1033.201(a)(2) for the reasons discussed herein, which states that a data provider must not take any action (1) with the intent of evading the requirements of subparts B and C of part 1033; (2) that the data provider knows or should know is likely to render unusable the covered data that the data provider makes available; or (3) that the data provider knows or should know is likely to prevent, interfere with, or materially discourage a consumer or authorized third party from accessing covered data consistent with part 1033.

The anti-evasion provision in § 1033.201(a)(2) prohibits data provider conduct that is taken to evade the requirements of this final rule but which the CFPB may not, or could not, have fully anticipated in developing the rule. Part 1033 contains certain requirements that are targeted at potential data provider evasion and which rely in part on the CFPB's authority to prevent evasion under CFPA section 1022(b)(1). However, the CFPB cannot anticipate every possible way in which data providers might seek to evade the requirements of part 1033. The CFPB has determined that § 1033.201(a)(2) provides flexibility to address future data provider conduct taken to evade part 1033. The CFPB has also determined that the evasion prohibition will enhance the effectiveness of the final rule's specific, substantive requirements, and thereby preserve the consumer rights provided by part 1033. In adopting the evasion prohibition, the CFPB's judgment is informed by concerns that commercial actors might be able to use their market power and incumbency to privilege their concerns and interests above fair competition that could benefit consumers.

Current Data (§ 1033.201(b))

Proposal

In the facilitation of payment transactions, data providers regularly refresh covered data, and such data are often necessary to enable common beneficial use cases, like transaction-based underwriting and personal financial management. Both depository and nondepository data providers typically make available recently updated transaction and account balance data through online or mobile banking applications. However, the CFPB received questions during the SBREFA process about whether data providers could simply provide the last monthly statement rather than being required to make available recent transactions and current account balance. Proposed § 1033.201(b) interpreted CFPA section 1033(a) to require that, in complying with proposed § 1033.201(a), a data provider would need to make available the most recently updated covered data that it has in its control or possession at the time of a request. It also specified that a data provider would need to make available information concerning authorized but not yet settled debit card transactions. The preamble discussed how this debit card transaction situation was an example and asked for comment on whether the provision regarding current data would benefit from additional examples or other clarifications.

When consumers make a request for information concerning a consumer financial product or service, the most recently updated information in a data provider's control or possession is likely to be most usable. However, the proposal explained that § 1033.201(b) was not intended to limit a consumer's right to access historical covered data. The CFPB requested comment on whether the provision regarding current data would benefit from additional examples or other clarifications. The CFPB also requested input on issues in the market today with data providers making available only older information that is not fully responsive to a consumer's request.

Comments

Commenters did not object to a general requirement to make available the most recently updated covered data in the data provider's control or possession at the time of the request. One large data aggregator stated that the proposed data requirement is sufficiently clear, especially because it explains that pending transaction information must be made available. Some data provider commenters asserted that the CFPB should not require information concerning authorized but not yet settled debit card transactions. One data provider commenter stated that requiring pending transaction information is like asking financial institutions to look into a crystal ball to predict the future. The commenter asserted that some merchants, such as gas stations and hotels, send pre-authorizations for dollar amounts higher than the actual transaction amounts to ensure funds are available. Data provider commenters raised similar concerns about pending transaction information with regards to covered data under § 1033.211(a); those comments are discussed further below.

Final Rule

For the reasons discussed herein, the CFPB is finalizing § 1033.201(b) as proposed with an edit to clarify the example of authorized but not yet settled transactions. The current data provision in § 1033.201(b) requires that, in complying with paragraph (a) of this section, a data provider must make available the most recently updated covered data that it has in its control or possession at the time of a request. A data provider must make available information concerning authorized but not yet settled transactions. The CFPB notes that § 1033.201(b) does not limit a consumer's right to access historical covered data.

Finalizing this current data requirement helps ensure that data providers make available the most current data in their control or possession. Current data includes information regarding pending transactions that have not yet settled, including but not limited to pending debit card, credit card, and bill payment transactions. As discussed below with regards to transaction data in § 1033.211(a), pending transaction information can be helpful for a variety of use cases, including personal financial management. Although such information may ultimately change, consumers and third parties may need access to pending transaction information in order to plan for imminent withdrawals. Such information may also be necessary for a consumer or third party to determine whether a consumer needs to deposit additional funds into an account or is approaching a credit limit and thus should delay additional purchases. Data providers could limit funds or credit availability in response to pending transactions, and a consumer may need to know about pending transactions to understand any associated changes in

available funds or credit. Given how authorized but not yet settled transactions may encompass a variety of payment types now and in the future, including credit card and certain bill pay transactions, and the risk that the debit card example might be misinterpreted to narrow the scope of this current data requirement, the final rule text removes the term ''debit card'' to more generally explain that a data provider must make available information concerning authorized but not yet settled transactions.

3. Covered Data (§ 1033.211)

In General

Proposal

CFPA section 1033(a) generally requires data providers to make available, upon request, ''information in the control or possession of the covered person concerning the consumer financial product or service that the consumer obtained from such covered person, including information relating to any transaction, series of transactions, or to the account including costs, charges and usage data.'' The CFPB proposed in § 1033.211 to implement this by defining the information that a data provider would need to make available under the general obligation to make covered data available in proposed § 1033.201(a). Proposed § 1033.211 used the term covered data instead of the statutory term ''information'' and defined covered data to encompass several categories of information, as applicable: transaction information (including historical transaction information), account balance, information to initiate payment to or from a Regulation E account, terms and conditions, upcoming bill information, and basic account verification information.

The proposal explained that this covered data definition would leverage existing operational and legal infrastructure and that requiring data that are generally made available to consumers today would support most beneficial consumer use cases. The CFPB noted that certain proposed categories of data, such as upcoming bill information, historical transaction information, information to initiate a transfer to or from a Regulation E account, and basic account identity information can support account switching because it can ease the account opening process, identify recurring payments that need to be set up at the new account, and transfer funds out of the old account. The CFPB requested comment on the benefits and data needs for consumers who are in the process of switching accounts.

The CFPB preliminarily concluded that the covered data definition also would address several issues in the consumer-authorized data sharing system today, including clarifying which data must be made available under the consumer's CFPA section 1033 right. Currently, data providers provide authorized third parties with inconsistent access to data. Pricing terms, like APR, have been particularly contested. Inconsistent access to consumer-authorized data may prevent the development of new use cases and the improvement of existing use cases. In addition, inconsistent access to consumer-authorized data may be hindering standardization in the market, and therefore further hindering competition and innovation, as parties must negotiate individual categories of information to be made available.

To address concerns about data providers restricting access to specific pieces of information, the proposed rule also gave examples of information that would fall within the covered data categories. The CFPB explained that these examples were illustrative and were not an exhaustive list of data that a data provider would be required to make available under the proposed rule. Under the proposed rule, a data provider would only have an obligation to make available applicable covered data; for example, a Regulation E financial institution providing only a Regulation E account would not need to make available a credit card APR or billing statement. The CFPB requested comment on whether additional data fields should be specified to minimize disputes about whether the information would fall within the covered data definition. The CFPB explained that, as proposed, the rule would allow flexibility as industry standards develop while minimizing ambiguity over the types of information that must be made available. The CFPB also requested comment on whether the proposed categories of information provide sufficient flexibility to market participants to develop qualified industry standards.

The CFPB explained that these provisions would carry out the objectives of CFPA section 1033 of ensuring data are usable by consumers and authorized third parties by focusing on data that stakeholders report are valuable for third party use cases and that are generally under the control or possession of all covered persons. These provisions also would promote the use and development of standardized formats for carrying out the objectives of CFPA section 1033(d) by encouraging industry to focus format standardization efforts around these data categories.

Comments

Data providers, third parties, and other commenters generally supported the CFPB's categories and examples approach to defining covered data, noting that the categories-plus-examples approach allows market flexibility. Commenters also stated that the proposed categories of covered data would leverage existing legal and operational infrastructure, and that these covered data are generally available on consumer interfaces today. However, some commenters requested additional clarity or narrowing of the covered data categories, such as explaining that the covered data obligations only apply with regards to the covered consumer financial product or service. A few data provider commenters stated that the data categories should be narrowed significantly because they asserted that covering categories like pending transactions, terms and conditions, and upcoming bill information would exceed the CFPB's CFPA section 1033 authority. A few data provider commenters requested more specificity, such as defining all required data fields.

Some third party, consumer advocate, and other commenters requested that the CFPB expand the scope of covered data. For example, one consumer advocate commenter stated that covered data should include login usernames and passwords, challenge question responses, and customer service history. As another example, a third party commenter asked the CFPB to include a consumer identification number that could be linked to all consumer accounts, a consumer's date of birth, the date an account was opened, an account's transferability status, and other account status information. A large data aggregator asked the CFPB to specifically require data providers to provide the consumer's periodic statements as PDF documents. One commenter asked for clarification that, where a data provider is obligated to make available licensed information pursuant to the rule, the data provider does not provide a license to the authorized third party.

Final Rule

For the reasons discussed herein, the CFPB is finalizing the proposed approach to covered data—that is, defining a list of categories of data that data providers must make available together with non-exhaustive examples of data fields that fall within those

categories. The categories and examples approach to covered data appropriately balances resolving areas of market disagreement with avoiding detailed specifications, such as defining all individual data fields, that could interfere with efficiency and innovation.

The CFPB declines to expand the scope of covered data in this first rule to implement the substantive provisions of CFPA section 1033. The covered data definition in this final rule leverages existing operational and legal infrastructure: data providers generally make this covered data available through consumer interfaces, and existing laws require most of the categories of information to be disclosed through periodic statement and account disclosure requirements. Requiring data that are generally made available to consumers today supports most beneficial consumer use cases, including transaction-based underwriting, payment credential verification, comparison shopping, account switching, and personal financial management. This covered data definition addresses several issues in the consumer-authorized data sharing system today, including (1) maximizing consumer benefits by clarifying which data must be made available under the consumer's CFPA section 1033 right; (2) addressing potential data provider anticompetitive conduct and incentives to withhold particular data fields; and (3) promoting conditions for standardization in the market. These covered data fall within the CFPB's authority under section 1033 as they are information in the control or possession of the covered person concerning the consumer financial product or service that the consumer obtained from such covered person. With respect to whether the data provider necessarily provides a license to authorized third parties to licensed information required to be made available under the rule, the rule does not require data providers to do so. Authorized third parties are subject to the limitations on collection, use, and retention under § 1033.421. At the same time, the rule requires covered data to be made available upon request, subject to the exceptions at § 1033.221, including an exception for confidential commercial information. The commenter did not specify what type of information might be subject to a license, but it is unlikely that the covered data defined at § 1033.211 would be subject to a license; and such information is generally made available to consumers today.

Comments received on the proposed categories and examples, and changes made in the final rule, are discussed below.

Transaction Information (§ 1033.211(a))

The CFPB proposed in § 1033.211(a) to make available transaction information as covered data, providing examples of amount, date, payment type, pending or authorized status, payee or merchant name, rewards credits, and fees or finance charges. The CFPB explained that this category would refer to information about individual transactions, and discussed SBREFA feedback from bank data providers to exclude pending transactions. The CFPB preliminarily concluded that pending transaction information would support a variety of beneficial use cases.

The CFPB also proposed to include historical transaction information in the control or possession of the data provider. Proposed § 1033.211(a) explained that a data provider would be deemed to make available sufficient historical transaction information for purposes of § 1033.201(a) if it makes available at least 24 months of such information. The CFPB explained that historical transaction data supports a variety of use cases, including transaction-based underwriting, account switching, and personal financial management, but also observed that data providers do not make a consistent amount of historical transaction information available.

The CFPB discussed how many stakeholders, including third party small entity representatives during the SBREFA process, have provided feedback that 24 months of historical transaction data would support the vast majority of consumer use cases. Some data provider and consumer advocate stakeholders have explained that 24 months would be consistent with the recordkeeping requirements in Regulation E and Regulation Z. The CFPB preliminarily concluded that setting a safe harbor at a minimum of 24 months would ensure that consumers have access to sufficient historical transaction data for common beneficial use cases, while providing compliance certainty to data providers. This length of time would also be consistent with the existing recordkeeping timeframes in Regulation E, 12 CFR 1005.13, and Regulation Z, 12 CFR 1026.25. The CFPB also noted that data providers typically control or possess more than 24 months of historical transaction data and may continue to make more than 24 months available.

The CFPB requested comment on whether the transaction information examples were sufficiently detailed and consistent with market practices, whether to retain the safe harbor for historical transaction data, and whether a different amount of historical transaction data would be more appropriate. The CFPB also requested comment on whether and how the rule should require that data providers make available historical data for other categories of information, such as account terms and conditions, whether such historical data are kept in the ordinary course of business today, and the use cases for such data.

Comments

Commenters generally did not oppose inclusion of transaction information within the scope of covered data, with some data provider commenters asserting that this information is clearly required under CFPA section 1033. A few data provider commenters asked for additional clarification, such as whether the merchant name field refers to the merchant shown in the transaction description in the periodic statement or other sources like a web-based search about the merchant. Many data provider commenters opposed covering pending transaction information and reiterated concerns raised during the SBREFA process, including arguments that such information is not provided on monthly account statements, falls outside the CFPB's 1033 authority as it is not concerning a product that the consumer ''obtained'' from the data provider, is confusing for consumers, and could change at settlement so introduces error risk.

Some commenters opposed the rewards credits example, stating that this information is proprietary, difficult to disclose, subject to misinterpretation, not disclosed today, and could erode the incentives of data providers to invest in merchant categorization tools. A few of these commenters asked the CFPB to limit the information to rewards balance, which they explained is typically made available today.

Third party commenters generally supported the 24-month safe harbor for historical transaction data, stating that 24 months would support most use cases and is consistent with market practices today. A consumer advocate commenter supported the consistency between this period and Regulation Z, 12 CFR 1026.25(a) and Regulation E, 12 CFR 1005.13(b), as both require retention of records for two years to document compliance with their requirements. One third party commenter asked the CFPB to require seven years of historical transaction data and a consumer advocate commenter suggested a period of three years. Some

data provider commenters and SBA Advocacy recommended that the safe harbor should be narrowed to a shorter period, such as six or 12 months. A trade association representing data providers stated that the historical data provision would be inconsistent with section 1033(c), which states, ''Nothing in [CFPA section 1033] shall be construed to impose any duty on a covered person to maintain or keep any information about a consumer.'' 12 U.S.C. 5533(c).

Final Rule

For the reasons discussed herein, the CFPB is finalizing the transaction information requirement as proposed, including the requirement to provide historical transaction information and the 24-month safe harbor, with a minor edit to clarify that the example is referring to transaction date. The CFPB has determined that this pending transaction information is beneficial to consumers given how it supports use cases like personal financial management and fraud prevention, and is generally made available to consumers and third parties today. The CFPB has determined that a 24-month safe harbor period will support most use cases, will encourage more consistent data access across institutions, is consistent with market practices today, aligns with existing record retention requirements in Regulation E and Regulation Z, and appropriately balances providing compliance certainty and encouraging standard market practices with allowing flexibility in case there are data providers who do not control or possess 24 months of historical transaction information notwithstanding their other regulatory obligations. A shorter safe harbor, such as 6 months, would not sufficiently support common use cases like personal financial management and loan underwriting, which typically require more historical transaction information and may be particularly reliant on more data when a consumer's income has seasonal variations. Given that data providers can determine how much historical transaction information to make available according to how much is in the data provider's control or possession rather than by taking advantage of this safe harbor, this provision is consistent with CFPA section 1033(c), which states that nothing in this section shall be construed to impose any duty on a covered person to maintain or keep any information about a consumer. However, the CFPB expects that data providers generally will have at least 24-months of historical transaction information in their control or possession given the existing Regulation E and Z record retention requirements.

Account Balance (§ 1033.211(b))

The CFPB proposed in § 1033.211(b) to require data providers to make available account balance. The CFPB explained that in preamble that this category would include available funds in an asset account and any credit card balance. The CFPB requested comment on whether this term is sufficiently defined or whether additional examples of account balance, such as the remaining credit available on a credit card, are necessary.

A few data provider and third party commenters asked for specific clarifications related to account balance, such as stating that account balance means ''current balance and statement balance,'' balance for credit cards means ''total balance owed,'' and that the CFPB should require currency information. One data provider commenter requested that the CFPB require detailed account balance specifications based on payment type given differences in how various payment networks determine the available balance, ledger balance, and settlement.

For the reasons discussed herein, the CFPB is finalizing the requirement to provide account balance information as covered data. The CFPB has determined that account balance is not a commonly disputed category and that the market will benefit from flexibility in determining how to break down various account balances that apply to an account. However, the CFPB recognizes that a variety of account balances can apply to a product and use case—such as cash advance balance, statement balance, and current balance—and will monitor the market to ensure that data providers are making available this information in a manner usable by consumers and third parties.

Information To Initiate Payment to or From a Regulation E Account (§ 1033.211(c))

In § 1033.211(c), the CFPB proposed to require a data provider to make available information to initiate a payment to or from the consumer's Regulation E account. An example would have explained that this category includes a tokenized account and routing number that can be used to initiate an ACH transaction. It also explained that a data provider would be permitted to make available a tokenized account and routing number instead of, or in addition to, a non-tokenized account and routing number.

The CFPB discussed how Regulation E account numbers are typically shared through consumer interfaces and are required to be disclosed under existing Regulation E periodic statement provisions. Account numbers and routing numbers can be used to initiate a transfer of funds to or from a Regulation E account over the ACH network, enabling common use cases like initiating payments and depositing loan proceeds. Although data providers have recourse under private contracts, private network rules, and commercial law to recover funds stolen by an unauthorized entity, many data providers have expressed concern about their Regulation E obligations and urged the CFPB to allow the sharing of TANs with authorized third parties. The CFPB discussed how these TANs, which are in use today, may help mitigate fraud risks to consumers and data providers. TANs allow data providers to identify compromised points more easily and revoke payment credentials on a targeted basis (rather than issuing a new account number to the consumer). However, some third parties have asserted that TANs do not support certain use cases, such as allowing third parties to print checks to pay vendors, initiating payments by check or wire, and detecting fraud.

The CFPB preliminarily concluded that TANs allow third parties to enable most beneficial payment use cases while mitigating fraud risks, and therefore data providers should have the option of making TANs available to authorized third parties in lieu of full account and routing numbers. The CFPB noted that a TAN would only meet this requirement if it contained sufficient information to initiate payment to or from a Regulation E account. The CFPB requested comment on whether to allow TANs in lieu of non-tokenized account and routing numbers, including whether TANs would mitigate fraud risks and, in contrast, whether TANs have any limitations that could interfere with beneficial consumer use cases, and whether and how adoption and use of TANs might be informed by qualified industry standards. The CFPB also requested comment on whether data providers should also be required to make available information to initiate payments from a Regulation Z credit card.

Comments

Some data providers and trade associations opposed the proposed requirement to make available information to initiate payment to or from a Regulation E account, stating that sharing such information would

introduce liability risks to data providers and consumers and asserting that payment initiation falls outside the CFPB's authority under CFPA section 1033. In contrast, a few other commenters stated that requiring account number would be appropriate and that they generally make this information available to consumers and third parties today. Some data provider commenters expressed their opposition to the growing usage of ''pay-by-bank,'' a phrase sometimes used to describe consumer-to-merchant payment alternatives to the debit and credit card networks. These commenters asserted that the ACH network is not appropriate for third party payments and therefore the CFPB should not require data providers to make available ACH payment initiation information. One trade association representing bank data providers asked the CFPB to clarify that this category does not include the ability to of a third party to initiate credit-push payments from a consumer's account.

A few data provider commenters asked the CFPB to clarify the scope of the required information and whether account and routing number would satisfy the obligation. Data provider commenters also raised ambiguity and overbreadth concerns, asserting that this provision could be read to require wire transfer information and other payment information within the data provider's control or possession. Several data provider commenters opposed adding a requirement to make available information to initiate payment from a credit card account, asserting that requiring credit card number would introduce significant risks to consumers and data providers and that the CFPB had not sufficiently considered the risks of requiring such data. Some third party and data provider commenters stated that some account information is necessary to allow consumers and third parties to differentiate accounts, including situations where a consumer needs to identify which account they are permissioning access to, or when a third party is verifying a consumer's assets for loan underwriting.

Many third party commenters supported including information to initiate payment, with some asking the CFPB to clarify that it includes other payment types beyond ACH. For example, one data provider commenter that is also a third party asserted that the category should be expanded to include all means to initiate payments, including debit card information and FedNow information.

The CFPB received mixed comments on the allowance for TANs. Although some data providers focused their comments on concerns related to providing payment initiation information generally, others noted the potential security benefits of TANs and supported the proposed approach. Commenters supporting use of TANs stated that they enable data providers to identify the point of compromise in case of a breach; enable consumers and data providers to revoke compromised payment credentials on a targeted basis; enable data providers and consumers to limit risks of bank account fraud, as they can be restricted to a particular third party; and offer simple implementation and reliable technology given that they exist in the market today and can be easily adopted. One commenter stated that TANs would allow a data provider to create a token for a specific third party, so that any transactions on that token can be attributed to the third party. Commenters also stated that consumers can more easily revoke TANs when a payee is misusing the token or the consumer otherwise wants to revoke authorization, rather than needing to completely close an account and disrupt other account payment activity. Tokens also enable data providers to better identify the source of a cybersecurity incident or fraud, and would allow data providers to quickly stop fraud on a compromised token by restricting the ability to transact with that token. One large data aggregator stated that allowing TANs in lieu of non-tokenized account numbers could encourage further development of pay-by-bank functionality. This commenter also requested several significant modifications to the TAN option, such as allowing the third party to obtain the non-tokenized account and routing number if a TAN does not meet the third party's particular use case, and requiring data providers who share a TAN to also make available a unique user identifier. A payment network governance organization supporting TANs stated that industry does not tokenize routing numbers.

Some third parties opposed allowing data providers to make available TANs in lieu of non-tokenized account and routing numbers as proposed. These commenters asked the CFPB to remove the allowance for TANs and only allow non-tokenized account and routing numbers, asserting that the ability to revoke TANs introduces risks of fraud perpetrated by consumers, TAN payments are more likely to fail, there is potential for data providers to issue TANs in an anticompetitive manner, TANs should be addressed in a separate rulemaking, and TANs do not support some consumer and third party use cases like generating paper checks, assessing the likelihood of payment failure, and interfering with fraud controls that track a particular account's payment activity. A few third parties also asserted that there is no market-wide standard for TANs and that TANs are not interoperable among the payment networks used today, including FedNow, Real-Time Payments (RTP), and ACH. These commenters differed on whether it would be appropriate to defer to a standard-setting body to determine the specifications for TANs. Some shared concerns that if the CFPB finalized the TAN option, the rule should adopt specific TAN revocation and expiration provisions. One trade association commenter and a third party commenter stated that non-tokenized account and routing number information is not that sensitive because it is printed on paper checks and already needs to be encrypted according to private network rules. A third party commenter asserted that industry-wide controls serve as better protective tools than optional use of TANs, as the ACH network already monitors for high returns rates in order to identify fraudsters running unauthorized debits against stolen ACH numbers, banks who sponsor third party senders into the ACH system are required to perform due diligence on those senders, consumers have rights under Regulation E to have their bank reverse an unauthorized payment, and banks regularly honor consumer claims of unauthorized account activity even if there is no evidence that the account activity was unauthorized.

Final Rule

For the reasons discussed herein, the CFPB is finalizing the § 1033.211(c) category of information to initiate payment to or from a Regulation E account, including language allowing data providers to make available TANs in lieu of non-tokenized account numbers, with some clarifications.

The CFPB has determined that information to initiate payment to or from a Regulation E account supports many essential consumer use cases such as account switching and making payments. The CFPB understands that consumers use account and routing numbers today to support use cases like signing up for direct deposit, making bill payments, and designating an account to accept loan proceeds. Consumers can provide this information directly to third parties, but making it available through a data provider has a variety of benefits, including accuracy

of the number sequence, ensuring that a correct and valid account is being accessed, and reduced friction in how quickly and easily that information shared. This information falls within the CFPB's authority under section 1033 as it is information in the control or possession of the covered person concerning the consumer financial product or service that the consumer obtained from such covered person. As discussed above in part IV.3, the rule does not require account write access or otherwise require payment initiation. Part IV.3 includes additional discussion of comments related to concerns about liability.

Some data provider and trade association commenters asked the CFPB to clarify that pre-existing payment authorization requirements continue to apply. The CFPB agrees with commenters that regardless of whether a third party obtains information to initiate payment from a consumer or from an authorized third party, that third party would need to obtain appropriate payment authorization from the consumer. If the third party is not a depository institution, it would need to go through an originating depository institution to access the ACH payment network, and that originating depository institution continues to have due diligence, Know-Your-Customer, and private network obligations in terms of warranting that the third party's payment order is valid. The consumer's receiving depository financial institution and any other financial institutions in the transaction would also have Regulation E obligations, including error resolution obligations for any unauthorized payments. However, according to private network rules, the receiving depository financial institution can seek remediation for errors from the originating depository financial institution and third party that facilitate the erroneous payment.

Given the benefits of making this information available, how it is required to be disclosed under Regulation E periodic statement requirements, how it is generally made available to consumers and third parties today, applicable Regulation E error protections for consumers in the event the information is misused, existing private network and safety and soundness obligations of originating depository institutions that facilitate a third party's payment, and the ability of the depository data providers to seek redress from originating depository institutions for erroneous payments, the CFPB has determined that data providers must make available information to initiate payment to or from a Regulation E account held by the data provider.

Instead of using the term ''account and routing number'' to define this covered data category, the CFPB is finalizing the broader proposed ''information to initiate payment'' language for two forward-looking reasons. First, the payments market may start to shift away from account and routing number as security and data practices evolve, and this broader language provides the market with flexibility to share data in accordance with those shifts. Second, since third parties typically use account and routing number to complete ACH payments today, using the ''account and routing number'' term may be misinterpreted to limit the types of payments that the information can be used to initiate. As the payment market evolves and more broadly adopts alternatives to the ACH network, such as RTP and FedNow, data providers may control or possess other payment initiation information that can be retrieved in the ordinary course of business—and accordingly such information would need to be made available. This information could include information sufficient to submit a request for payment. However, this provision is limited to information sharing and accordingly does not include the ability of a third party to access and push payment out of a consumer's account, also referred to as ''write'' access.

To clarify the scope of this information and address commenters' concerns about ambiguity, the CFPB is finalizing a clarification that this category is limited to information to initiate payment to or from a Regulation E account held directly or indirectly by the data provider. The final rule also explains that the requirement to make available this information does not apply to data providers who do not directly or indirectly hold the underlying Regulation E account. For example, a data provider that merely facilitates pass-through payments to third parties would not be required to make available account and routing number for the underlying Regulation E account.

The CFPB notes that CFPA section 1033(b)(4) and the final rule at §§ 1033.211(c) and 1033.221(d) only require data providers to share payment initiation information that they can retrieve in the ordinary course of business. In the current market, account number is clearly retrievable in the ordinary course of business given that it is typically shared through consumer and developer interfaces today and is required to be disclosed on the Regulation E periodic statement. The CFPB is not requiring payment initiation information that is not retrievable in the ordinary course of business. For purposes of this rule, the CFPB is making the determination that debit card numbers are data that are not retrievable in the ordinary course because of a unique historically-driven combination of factors that together suffice to put this data outside the scope of the rule, including the physical way—plastic cards—in which providers have typically chosen to make debit card credentials available to consumers, and the specific nature of how longstanding private payment network rules govern which entities can issue and control debit card payment credentials. As noted above, as the payment market adopts alternatives to the ACH network, such as RTP and FedNow, data providers may control or possess other payment initiation information that data providers can retrieve in the ordinary course of business—and accordingly such information would need to be made available.

This provision does not impact other requirements for initiating payment or accessing the payment networks. Section 1033.211(c) requires that data providers make available information to initiate payment to or from a Regulation E account; payment authorization requirements continue to separately apply. The CFPB confirms that, in order to initiate payment, third parties would need proper payment authorization from the consumer subject to, without limitation, Regulation E preauthorized electronic fund transfer provisions and private network rule authorization requirements. The CFPB notes that, in order to access the payment network and initiate an ACH or similar payment, a third party would need an originating depository financial institution relationship. With regards to payment initiation, this provision does not alter due diligence and network requirements that apply to originating depository financial institutions providing access to the ACH payment network.

The CFPB is also finalizing, with modifications, the proposed example that would allow data providers to share a tokenized account number instead of, or in addition to, a non-tokenized account number. This clarification is now moved into the rule text paragraph and no longer is labeled as an example. To address commenters' concerns about anticompetitive issuance of TANs, the rule text also now states that such tokenization is appropriate so long as it is not used as a pretext to restrict

competitive use of payment initiation information; the reference to ''routing number'' has been removed in light of comments that routing number is not typically tokenized. TANs, used appropriately, can meet consumer use cases for electronic payments. The CFPB notes that use of TANs in conformance with applicable consensus standards can serve to indicate appropriate use. In addition, data providers have legitimate reasons to use TANs because they can protect the security of the relevant payment system and thus benefit its participants, including the consumer. In particular, TANs lower the risk of unauthorized transactions by limiting the potential for payment credentials to be misused for purposes the consumer did not intend or authorize, by helping to identify the source of a data breach, and by causing less disruption to consumers and the payment system when a credential is appropriately replaced. These benefits apply even though non-tokenized account numbers appear on paper checks and may need to be stored in an encrypted form according to private network rules. The CFPB notes that a data provider's provision of a TAN in lieu of non-tokenized account number is optional and that sometimes consumers share non-tokenized account and routing numbers directly with third parties.

With regard to concerns from some third party commenters that TANs can interfere with fraud controls that track an account's payment history, third parties can use the account identifier described under § 1033.211(f) to distinguish consumer accounts. However, the CFPB cautions that § 1033.421(a) limits authorized third party use of covered data, including TANs, to what is reasonably necessary to provide the consumer's requested product or service. The general limitation standard, including uses that are reasonably necessary to protect against actual or potential fraud, is discussed below regarding § 1033.421(a) and (c). TANs do allow consumers to more easily revoke their payment authorizations, but ease of revocation is a consumer benefit of TANs as it allows consumers to exercise more precise and immediate control over their account in the event that they have concerns about a payee. The interaction between TANs and revocation is discussed further in § 1033.331(e). In response to a third party commenter's statement that industry controls are more effective than TANs, the CFPB notes that unauthorized payment fraud exists in the market today and the CFPB has taken public action against financial institutions that do not comply with their error resolution requirements.

This final rule does not require data providers to grant access to, or facilitate payments on, any particular payment network. Accordingly, the CFPB does not require that TANs be interoperable across multiple payment networks. However, to the extent that data providers pretextually use TANs to frustrate consumers' ability to provide functioning payment initiation information to authorized third parties of their choice, such pretextual use would violate the anti-evasion provision at § 1033.201(a)(2). The CFPB intends to monitor the market for any such pretextual use of the allowance for TANs, and will issue future guidance about the use of TANs in lieu of a full account number if needed.

Terms and Conditions (§ 1033.211(d))

The CFPB proposed to require terms and conditions be made available as covered data in § 1033.211(d). The CFPB explained that terms and conditions generally refer to the contractual terms under which a data provider provides a covered consumer financial product or service. The proposed rule included several non-exhaustive examples of information that would constitute terms and conditions.

The CFPB discussed how certain terms and conditions, such as pricing, reward programs terms, and whether an arbitration agreement applies to the product, support beneficial use cases, like comparison shopping and personal financial management. Authorized third parties could use this information to help consumers more easily understand and compare the terms applicable to a covered consumer financial product or service. Since pricing is a fundamental term that is provided in account opening disclosures and change in terms disclosures, the CFPB proposed to include APR, APY, fees, and other pricing information in this category. The CFPB also discussed how this provision would benefit consumers because they may not be able to easily find this information through a consumer interface today, and some data providers may not be consistently sharing it with third parties. The CFPB requested comment on whether the final rule should include more examples of information that must be made available under terms and conditions.

Comments

Data provider commenters generally did not dispute including APR and APY as examples of covered data, although a few opposed sharing that information. Some bank data provider and related trade association commenters opposed including information other than realized fees, such as applicable fee schedule. Some data provider commenters opposed including other examples in the final rule, such as rewards program terms, overdraft opt-in status, and whether an account was subject to an arbitration agreement, arguing that such information falls within the exceptions in § 1033.221 or otherwise falls outside the CFPB's 1033 authority as it is not related to the covered consumer financial product or service and is not cost, charges, or usage data. One credit union trade association stated that arbitration information will make consumers targets for predatory attorneys and contradicts statements in a separate CFPB rulemaking regarding covered form contracts used by nonbanks.

Many data provider commenters raised technical and burden concerns about this category, stating that terms and conditions are not well suited to developer interfaces, as some terms cannot be reduced to numerical or binary data fields. Other stated concerns included: (1) lack of clarity over whether the rule is requiring a PDF of an entire terms and conditions document; (2) the number of terms and conditions documents applicable to an account, and whether all of them must be made available; (3) full terms and conditions documents are not useful or desirable for third parties to receive; (4) sharing full terms and conditions documents entails sharing of extraneous information; and (5) sharing current terms and conditions documents is overly burdensome and infeasible. A data aggregator commenter asserted that full terms and conditions contain some substantial legal terms that are neither supportive of any existing use cases nor easily transformed into a machine-readable format. This commenter requested that the CFPB identify the data elements that may be maintained in the terms and conditions and require that those elements—rather than the full terms and conditions—be made available in a machine-readable format.

One bank trade association commenter asked the CFPB to allow data providers to share a PDF of the complete terms and conditions rather than through data fields, and another suggested allowing data providers to post terms on their website rather than making them available through the developer portal. A large data aggregator commenter explained that some third party interfaces allow PDF documents to be shared today.

Final Rule

For the reasons discussed herein, the CFPB is finalizing the requirement to make available terms and conditions as covered data, with some additional limitations. The CFPB is aware that a variety of terms and conditions may impact a covered consumer financial product or service and some of those terms may not support current consumer use cases. The CFPB agrees with commenters that terms and conditions can be defined to provide compliance clarity to data providers and limit the extent of information they need to make available, while supporting current and potential use cases. Accordingly, the CFPB is finalizing a definition of the terms and conditions category limited to data in agreements evidencing the terms of the legal obligation between a data provider and a consumer for a covered consumer financial product or service, such as data in the account opening agreement and any amendments or additions to that agreement, including pricing information.

The CFPB has determined that the proposed non-exhaustive examples of terms and conditions are helpful to clarify the terms and conditions category and minimize market disagreements about whether certain pieces of information must be made available. The applicable fee schedule is important information for comparison shopping and personal financial management as consumers need to anticipate what fees can be charged in order to evaluate a product's true cost and plan spending. Rewards programs are an important factor to a consumer's decision to obtain and use a consumer financial product or service, and the CFPB has determined that it is appropriate to require that these rewards program terms be made available under § 1033.201(a)(1). Similarly, whether a consumer has opted into overdraft coverage or is subject to an arbitration agreement is relevant to how a consumer may decide to use or comparison shop for a product or service, including determining applicable fees and their rights with respect to that product or service. All of these non-exhaustive examples reflect the terms and conditions of the legal obligation between a data provider and a consumer for a covered consumer financial product or service. In response to a comment that arbitration information will be used to target consumers or otherwise relates to other CFPB policies related to form contracts, this information is not being collected by the CFPB and will not be shared unless the consumer chooses to do so.

The CFPB has added credit limit to the list of non-exhaustive examples of terms and conditions. Credit limit is a key term that is typically determined and disclosed when a consumer obtains a Regulation Z credit card, and account agreements generally permit the provider to make changes to the credit limit. Although the CFPB asked for comment on credit availability with regard to account balance in § 1033.211(b), the CFPB has determined that it would be clearer to include credit limit as an example under this terms and conditions category. The CFPB is finalizing example 2 to § 1033.211(d) to state that this category includes the applicable fee schedule, any APR or APY, credit limit, rewards program terms, whether a consumer has opted into overdraft coverage, and whether a consumer has entered into an arbitration agreement.

In the current market, certain terms and conditions are commonly requested and made available as discrete data fields in developer interfaces. For example, discrete data fields for applicable APRs and APYs are typically shared in third party interfaces to support comparison shopping and personal account management. The CFPB expects that such commonly requested terms and conditions will continue to be made available as discrete callable data fields, as § 1033.311 requires developer interfaces to make data available in a standardized and machine-readable format that is widely used by other data providers and designed to be readily usable by authorized third parties.

As use cases develop, third parties may seek access to terms and conditions that are not commonly used today. For example, a third party may need a specific term from the account opening agreement to provide a product or service requested by the consumer. If that term falls within terms and conditions as defined in § 1033.211(d), the term is covered data and the provider's developer interface must make that data available. However, the data provider's developer interface would not necessarily need to make that specific term available as a discrete ''callable'' data field. Instead, it could make it available within a broader section of the agreement or by making available the full account opening agreement, subject to the standardized and machine-readable format requirements in § 1033.311(b). As discussed in § 1033.421(b), the general limitation on use and retention of covered data in § 1033.421(a) would apply to that data. The CFPB concludes that given how some account agreement terms are not translatable to discrete numerical or binary data fields, it is appropriate for data providers to have flexibility in how they share terms and conditions information through the developer interface in a machine-readable format. (See part IV.C.2 for a discussion of the machine-readability requirement applicable to the developer interface.) Some data providers already appear to be sharing longer documents, such as statements, through developer interfaces today.[58] The CFPB also concludes that because (1) most account agreement terms are publicly available, broadly applicable and not specific to a particular consumer, and (2) third parties are restricted in terms of what information they can use and retain under § 1033.421(a), the privacy concerns are limited in this particular situation.

Upcoming Bill Information (§ 1033.211(e))

The CFPB proposed in § 1033.211(e) to require upcoming bill information to be made available as covered data. An example explained that upcoming bill information would include information about third party bill payments scheduled through the data provider and any upcoming payments due from the consumer to the data provider. For example, it would include the minimum amount due on the data provider's credit card billing statement, or a utility payment scheduled through a depository institution's online bill payment service. The CFPB preliminarily concluded that this information would be necessary to support personal financial management and consumers who are switching accounts. The CFPB requested comment on whether this category was sufficiently detailed to support situations where a consumer is trying to switch recurring bill payments to a new asset account, such as transferring a monthly credit card payment to a new bank.

Comments

Some data provider commenters stated that upcoming bill information should not be included or should be significantly narrowed. These commenters asserted that this information is outside the CFPB's section 1033 statutory authority, is burdensome to collect and share, is unrelated to the covered consumer financial product or service, is sensitive

[58] *See, e.g.,* Plaid, *Statements, https://plaid.com/docs/statements/* (last visited Oct. 16, 2024).

because it contains payee data, is subject to change, and would not support account switching. A few data providers stated that it is unclear whether this information also includes payments scheduled through a third party, rather than being limited to bill payments scheduled through the data provider's platform. One data provider commenter stated that this information should be excluded as confidential commercial information because contracts with billers and bill service provider prohibit its disclosure. One commenter stated that this information should be limited to bills related to financial products, like mortgage bills.

Final Rule

For the reasons discussed herein, the CFPB is finalizing this provision as proposed, including the example discussing information about third party bill payments scheduled through the data provider and any upcoming payments due from the consumer to the data provider. Upcoming bill information will support several important consumer use cases, including personal financial management and account switching. In response to comments regarding whether payments scheduled through a third party are also meant to be covered, the CFPB confirms that data providers are not required to make available information that is not in the control or possession of the data provider, and upcoming bill payments scheduled outside of the data provider's bill payment platform may not be in their control or possession and thus are not considered covered data. For example, when a consumer uses a cell phone company's website to schedule a bill payment from their bank account, the consumer's bank may not control or possess that information unless the cell phone company is sharing that preauthorization information with the bank. In contrast, a bank does control or possess information about a cell phone payment a consumer scheduled through the bank's consumer interface, and so is required to make available that bill payment information under § 1033.201(a)(1). Contrary to commenters' assertions about the scope of the data access right, information about scheduled bill payments is squarely within the scope of CFPA section 1033(a); specifically, upcoming bill payments relate directly to a ''series of transactions''—*i.e.,* the consumer's pattern of paying bills through the data provider. As discussed in the context of the general limitation standard in subpart D, third parties will be limited to collecting, using, and retaining covered data only to the extent it is reasonably necessary to provide the consumer's requested product or service, and therefore sharing of covered data will be limited to what is reasonably necessary. The CFPB notes that the general exceptions under CFPA section 1033(b) continue to apply, subject to the anti-evasion provision in § 1033.201(a)(2).

Basic Account Verification Information (§ 1033.211(f))

The CFPB proposed in § 1033.211(f) to require basic account verification information be made available as covered data, which would be limited to the name, address, email address, and phone number associated with the covered consumer financial product or service.

The CFPB discussed how certain pieces of identifying consumer information are commonly shared with third parties today to support several beneficial use cases. For example, a lender may seek to verify that loan disbursements will be deposited into an account that belongs to the consumer who is applying for the loan, or a mortgage underwriter may seek to verify that funds in a savings account belong to the mortgage applicant. On the other hand, third parties have raised concerns during the SBREFA process that data providers sometimes limit access to this information, and requested that the CFPB require that account verification information be shared.

The CFPB preliminarily concluded that requiring data providers to share basic account verification information is necessary to ensure the usability of the covered data. For example, confirming that funds in a savings account do, in fact, belong to the consumer applying for a mortgage loan is necessary to determine whether the mortgage underwriter can rely on that information. Similarly, a loan provider is mitigating fraud risks when it ensures that the name, address, email address, and phone number on a recipient account matches the information of the loan applicant; matching information helps ensure that the funds are going to the correct account, and that the account opening notifications are not going to someone who stole the consumer's identity. Email addresses and phone numbers are increasingly being used as substitutes for consumer and account identifiers, particularly in the payments market where such information can be used to send a person-to-person payment. Accordingly, the CFPB preliminarily determined that limiting basic account verification information to the name, address, email address, and phone number associated with the covered consumer financial product or service would facilitate the most common use cases and is consistent with market practices today.

The CFPB considered whether to include SSNs as part of basic account verification information, as SSNs are shared for some beneficial consumer use cases, like mortgage underwriting. However, the sharing of SSNs is not ubiquitous. The CFPB preliminarily concluded that SSNs may continue to be shared as appropriate but, given the risks to consumers, the proposed rule did not require data providers to make them available.

The CFPB requested comment on whether the proposed basic account verification information category would accommodate or unduly interfere with beneficial consumer use cases. Given privacy and security concerns about unintentionally covering other kinds of information that are not typically shared today, the CFPB also requested comment on whether it is appropriate to limit this category to only a few specific pieces of information.

Comments

Both consumer advocate and bank data providers generally supported the CFPB's approach to allowing some basic account verification information but limiting the category to specified data fields. These commenters agreed that this approach would appropriately balance supporting common beneficial use cases with limiting consumer privacy risks and data provider implementation costs. Many of these commenters also specifically requested that the CFPB not expand the category to include SSN or other personally identifiable information. A trade association representing data providers asked that the CFPB not expand this category to any information a data provider uses to securely authenticate the identity of its customer as part of a payment initiation process, such as a one-time verification code, as such information would pose significant risks to the integrity of various payment security standards and would conflict with the FFIEC's guidance on Authentication and Access to Financial Institution Services and Systems. Some data provider commenters opposed sharing any basic account verification information, asserting that such information presents fraud risks, has no benefit, and can be obtained directly from consumers. A trade association representing large depository data providers stated that additional account information could help consumers identify which account data they would

like to share. This commenter asserted that the CFPB could add ''number of the account'' to this category, with an allowance for use of tokens or truncated account numbers, and that it is common practice today for truncated account numbers to be used for this purpose. A third party commenter stated that account identification is necessary for underwriting so that a third party knows whether a consumer's assets have already been accounted for. Another third party commenter asked the CFPB to include a consumer identification number that could be linked to all consumer accounts, a consumer's date of birth, the date an account was opened, an account's transferability status, and other account status information.

Final Rule

For the reasons discussed herein, the CFPB is finalizing basic account verification information as proposed, with the addition of certain account-identifier information for situations where a data provider directly or indirectly holds a Regulation E or Regulation Z account.

The CFPB has determined that this approach sufficiently enables beneficial consumer use cases in the market today and avoids introducing risks from adding account verification information that is not commonly made available. The information specified in § 1033.211(f) supports a variety of use cases and thus is appropriate to require, including ensuring that loan proceeds are being deposited into an account belonging to the consumer, confirming that the consumer applying for credit does hold the asset accounts being used for underwriting, and reducing friction during account opening. In order to verify an account, third parties often need to match the information provided by the consumer with the identification information held by the data provider. Consumers and third parties may need to identify an account in order to permission access and differentiate a consumer's assets.

In response to comments about the need to differentiate accounts, the CFPB is adding language to require that if a data provider directly or indirectly holds a Regulation E or Regulation Z account belonging to the consumer, the data provider must also make available a truncated account number or other identifier for that account. Given the more sensitive nature of other personally identifiable information requested by some commenters, such as SSN, at this time the CFPB is limiting this category to name, address, email address, and phone number associated with the covered consumer financial product or service, and, as applicable, account identifier. Data providers are permitted to provide additional information as appropriate and the CFPB will monitor whether to expand the scope of required information as account verification practices evolve.

4. Exceptions (§ 1033.221)

Proposal

The CFPB proposed, in § 1033.221, four exceptions to the requirement that data providers make data available under the proposed rule, along with some clarifications of data that do not fall within these exceptions. The exceptions would implement section 1033(b) of the CFPA by restating the statutory language and providing certain interpretations. The first exception was for any confidential commercial information, including an algorithm used to derive credit scores or other risk scores or predictors. Some data providers have asserted that certain account information falls within this statutory exception because such information is an input or output to a proprietary model. The CFPB proposed to clarify that such information would not qualify for this exception merely because it is an input to, or an output of, an algorithm, risk score, or predictor. For example, APR and other pricing information are sometimes determined by an internal algorithm or predictor, but such information would not fall within this exception.

The second exception was for any information collected by a data provider for the purpose of preventing fraud or money laundering, or detecting, or making any report regarding other unlawful or potentially unlawful conduct. During the SBREFA process, a third party stated that at least one data provider has cited this exception when declining to provide general account information, such as the name on the account. To avoid misuse of this exception where information has multiple applications, the CFPB proposed to clarify that information collected for other purposes does not fall within this exception. For example, name and other basic account verification information would not fall within this exception.

The third exception was for information required to be kept confidential by any other provision of law. Information would not qualify for this exception merely because the data provider must protect it for the benefit of the consumer. The proposed example to this exception stated that the data provider cannot restrict access to the consumer's own information merely because that information is subject to privacy protections.

The final exception was for any information that a data provider cannot retrieve in the ordinary course of its business with respect to that information.

The CFPB explained that the definition of covered data in § 1033.211 would generally include information made available to consumers and authorized third parties today or that is required to be disclosed under other laws. The CFPB noted that the exceptions proposed in § 1033.221 were narrow, and the information specified as covered data would not typically qualify for any of these exceptions.

The CFPB requested comment on whether it should include additional examples of data that would or would not fall within the exceptions, and whether this provision sufficiently mitigates concerns that data providers may cite these exceptions on a pretextual basis.

Comments

Comments on the exceptions took a variety of positions. With respect to the CFPB's implementation of the statutory exceptions overall, some data provider and related trade association commenters asked the CFPB to add more examples of excepted information and expand the exception provisions. These commenters stated that the statutory exceptions should be interpreted broadly to allow data providers discretion in denying access to covered data. One commenter stated that it is premature to have concerns about data provider abuse of the exceptions. A bank trade association commenter asked the CFPB to except any data that is not available in the consumer interface, explaining that such data pose an undue burden on financial institutions and introduce data security risks and operational challenges. In contrast, many third party commenters asserted that the CFPB should interpret the exceptions narrowly as they are vulnerable to pretextual use by data providers. One large bank trade association commenter asked the CFPB to finalize the exceptions as exemptions to make clear that data described under the statutory exceptions are not covered by the rule.

On the first proposed exception for confidential commercial information, many data provider commenters asserted that rewards programs terms and credits are proprietary and should fall under this exception, and that the rule should prohibit reverse engineering. A large data aggregator also

requested that the rule prohibit reverse engineering of confidential commercial information, suggesting that such a prohibition could be incorporated into the data privacy protections. A trade association representing data providers asked that the CFPB distinguish between data that might be useful for a consumer for consumer purposes versus data that would be of primarily commercial value (such as metadata regarding the exact time and place of transactions), and stated that data providers should not be required to reveal analytically enriched data if the consumer does not ordinarily see such data and cannot be said to substantially rely upon it when making decisions about the selection of consumer products or services. This commenter asserted that the exception must make clear that it also extends to information that cannot be shared for contractual reasons and attorney work product related to an account and any active litigation.

A large data aggregator commenter supported the proposed examples for the first exception as sufficient and appropriate, stating that the proposed clarification that the exception for proprietary algorithms only applies to the algorithm itself, and not to the covered data that goes into or is an output from the algorithm, appropriately balances a data provider's right to protect its trade secrets and intellectual property with a consumer's right to data access and portability. Absent this clarification, the commenter cautioned that the exception could swallow the rule, explaining that today myriad terms, conditions, rates, fees, and features of an account are the result of some proprietary algorithmic decision making by the financial institution. A few consumer advocate commenters asked the CFPB to narrow this exception to clarify that credit scores and other risk scores are not considered confidential commercial information, and therefore must be made available.

On the second proposed exception for any information collected by a data provider for the purpose of preventing fraud or money laundering, or detecting, or making any report regarding other unlawful or potentially unlawful conduct, a bank trade association commenter asserted that it was too narrow and should be revised to remove the term ''sole.'' This commenter explained that very limited information is collected solely for fraud prevention. Another data provider trade association offered examples of information it believes fall within the statutory exception, such as information related to security incidents and internal account flags, and requested that the CFPB reconsider its approach to this exception.

On the third exception for information required to be kept confidential by any other provision of law, a few data provider commenters requested that the exception be expanded. One asked for examples of laws that would require a data provider to withhold information from a consumer, and a few urged the CFPB to add a good faith compliance standard for data providers to withhold information if they reasonably believe that the information must be kept confidential by law.

On the fourth exception regarding information that a data provider cannot retrieve in the ordinary course of its business, one research institute commenter requested that it be narrowed as it may allow data providers to find loopholes or shield themselves from disclosing information that they should be required to provide to consumers. A data aggregator commenter requested changes so that data providers cannot evade their obligations to provide covered data by deliberately making it difficult to retrieve data in the ordinary course of business. The commenter suggested adding a presumption that all covered data are retrievable in the ordinary course at least for a period stretching from the present back at least 24 months and adopt an interpretation of the phrase ''in the ordinary course'' that relies on an objective industry standard and would not permit a data provider to adopt an unreasonable policy to evade data access obligations. A data provider commenter asked the CFPB to add examples of information that are within the scope of this exception, explaining that it believes terms and conditions and payments scheduled through third parties would be excepted. Another data provider commenter stated that 24 months of historical transaction data are not retrievable in the ordinary course of business, and that a shorter safe harbor of six months would be more appropriate.

One Member of Congress commenter cited the discussion in the proposal of how the exceptions proposed in § 1033.221 are narrow and that proposed § 1033.351(b)(1) would require a data provider to create a record of what covered data are not made available pursuant to an exception in proposed § 1033.221 and explain why the exception applies. This commenter asserted that proposed § 1033.221 and the interaction with proposed § 1033.351(b)(1) will ensure that consumer data are not withheld for anticompetitive reasons.

Final Rule

For the reasons discussed herein, the CFPB is finalizing the exceptions, including the examples of data that do not fall within the exceptions, as proposed. The CFPB has concluded that additional examples of information that fall within the exceptions, as requested by some commenters, are not necessary at this time. The CFPB intends to monitor the market for pretextual use of the CFPA section 1033 exceptions and more generally for violations of the prohibition against evasion in § 1033.201(a)(2).With respect to a commenter's request to use rulemaking authority to reclassify the statutory term ''exceptions'' to ''exemptions,'' the commenter did not explain why this change from the statute was necessary to clarify that these data types are not covered by the rule. The CFPB is thus finalizing the heading for § 1033.221 using the statutory language.

Confidential Commercial Information

Final § 1033.221(a) restates the exception at section 1033(b)(1) for any confidential commercial information, including an algorithm used to derive credit scores or other risk scores or predictors. Final § 1033.221(a) further clarifies that information does not qualify for this exception merely because it is an input to, or an output of, an algorithm, risk score, or predictor. Final § 1033.221(a) includes an example of APR and other pricing terms as data that are sometimes determined by an internal algorithm or predictor but do not fall within this exception.

With respect to comments that rewards programs terms, rewards credits, and terms and conditions are proprietary and should fall under the first exception for confidential commercial information, the CFPB has determined that these data do not fall within the definition of confidential commercial information. Today, rewards program terms are a factor in how consumers decide to use and select credit cards. They concern the covered consumer financial product or service obtained from the data provider, and they support important consumer use cases like comparison shopping, personal financial management, and account switching. These terms are commonly shared with consumers, just like general terms and conditions for an account—similarly, the credits that a consumer has in a rewards program are shared with the consumer, and are necessary in order for the consumer to be able to use those rewards. Because

these data are shared with consumers, must be shared for rewards programs and products to function, and are necessary for consumers to comparison shop and make informed choices about how to use their account, they are not confidential commercial information.

With respect to a commenter that suggested the CFPB should further define confidential commercial information on the basis of data's utility to a consumer relative to its commercial value to a data provider, the CFPB has determined that this suggested additional restriction of data availability is inconsistent with Congress's delineation of limited exceptions to the consumer access data right. Congress did not include an additional balancing test in CFPA section 1033, and imposing one in this final rule would risk subverting consumers' right to access data. However, the CFPB notes that the § 1033.421(a) general limitation standard limits third parties' collection, use, and retention of covered data to that which is reasonably necessary to provide the product or service that the consumer requested. If particular data points are not relevant to any product or service that a consumer might request, then a third party would generally not be able to request those data points. In this way, the final rule already accommodates the commercial usefulness of covered data without the inclusion of an explicit balancing test.

With respect to information that cannot be shared for contractual reasons and attorney work product related to an account and any active litigation, commenters did not identify specific items of covered data that would potentially fall under these conditions. A data provider cannot limit a consumer's access to data simply because the consumer and the data provider are engaged in a legal dispute. While there is a separate exception for data that must be kept confidential by any other provision of law, as discussed later in this section this exception does not apply merely because the data provider must protect it for the consumer. Furthermore, if a data provider were to structure legal arrangements with the intent of subjecting covered data to this exclusion with the likely effect of frustrating consumers' data access rights, such behavior could violate the anti-evasion provision in final § 1033.201(a)(2).

For a discussion of comments related to reverse engineering of covered data, see part IV.D.3.

Information Collected for the Sole Purpose of Preventing Fraud and Certain Other Unlawful Activities

Final § 1033.221(b) restates the exception at section 1033(b)(2) any for information collected by the data provider for the ''sole'' purpose of preventing fraud or money laundering, or detecting, or making any report regarding other unlawful or potentially unlawful conduct. Final § 1033.221(b) further clarifies that information collected for other purposes does not fall within this exception, and states that, for example, name and other basic account verification information do not fall within this exception. The final rule retains the word ''sole'' because the CFPB understands that data providers use a variety of data in the context of identifying and preventing unlawful activity, and therefore expanding the exception to cover all information used for these purposes would create an exception that risks swallowing the rule.

Similarly, basic account verification information is necessary to support a variety of use cases for which the third party needs to ensure that the name on the account matches the name of the consumer. Expanding the exception to cover this kind of basic data—which is collected by data providers for a variety of reasons unrelated to preventing unlawful activity—would frustrate consumers' data access right in a way that would conflict with Congress's intent.

Information Required To Be Kept Confidential

Final § 1033.221(c) restates the exception at section 1033(b)(3) for any information required to be kept confidential by any other provision of law. Final § 1033.221(c) further clarifies that information does not qualify for this exception merely because the data provider must protect it for the consumer. Final § 1033.221(c) also states, as an example, that the data provider cannot restrict access to the consumer's own information merely because that information is subject to privacy protections. In response to comments requesting that the CFPB identify laws that might require information to be kept confidential, the final rule does not include specific examples, because of the potential for both over- and under-inclusiveness. However, the CFPB notes that, as an example, financial institutions are prohibited from notifying an individual that a suspicious activity report has been filed against them, and this might constitute an example of when a data provider would be required to keep that specific information confidential.

In response to comments requesting a good faith compliance standard for data providers to withhold information if they reasonably believe that the information must be kept confidential by law, the CFPB notes that, under final § 1033.351(b)(1), indicia of whether a data provider's record of data fields it makes available complies with the policies and procedures requirement of final § 1033.351(b) include whether that record conforms to a consensus standard. Thus, to the extent that a data provider conforms with a consensus standard in making particular data fields available (and not making other data fields available), conformance with the consensus standard would carry some indication of compliance.

Information That Cannot Be Retrieved in the Ordinary Course of Business

Final § 1033.221(d) restates the exception at CFPA section 1033(b)(4) for any information that the data provider cannot retrieve in the ordinary course of its business with respect to that information.

Terms and conditions information is typically retrievable in the ordinary course of business as data providers are required to disclose and make available such information under other laws, including but not limited to Regulation E and Regulation Z.[59] The other suggestions raised by commenters—such as security incident information and one-time verification codes—generally do not fall within the covered data definition in § 1033.221 or otherwise are not in the control or possession of the data provider. For example, as discussed above in part IV.B.3 with respect to upcoming bill information, bill payments scheduled directly with merchants or other payees—and not on the data provider's bill payment platform—are not typically in the control or possession of the data provider. Generally, a data provider would not be permitted to categorically refuse access to data specifically included in the definition of covered data under this exception, absent some additional showing that the data were

[59] For example, 12 U.S.C. 4303(a) of the Truth in Savings Act (TISA), 12 U.S.C. 4301 *et seq.* states: ''Each depository institution shall maintain a schedule of fees, charges, interest rates, and terms and conditions applicable to each class of accounts offered by the depository institution, in accordance with the requirements of this section and regulations which the [CFPB] shall prescribe.'' Further, 12 U.S.C. 4305(a) requires a depository institution to make the required schedule available to any person upon request. TISA is implemented in the CFPB's Regulation DD (12 CFR part 1030) and the NCUA's 12 CFR part 707.

not retrievable in the ordinary course of its business with respect to that information. The CFPB understands from comments that historical terms and conditions information may sometimes be stored as image files. If it would require extraordinary, manual effort to collect and translate this information into a machine-readable, electronic form, that information may not be retrievable in a data provider's ordinary course of business with respect to that information. However, the CFPB does not expect current terms and conditions to be subject to any such exception given the legal requirements noted above.

One commenter asked the CFPB to lower the historical transaction data safe harbor in § 1033.211(a) from 24 months to 6 months because it does not believe that 24 months of transaction data are retrievable in the ordinary course of business. As discussed above in § 1033.211(a), the CFPB understands that data providers generally retain 24 months of transaction data according to their record retention requirements in Regulation E and Regulation Z. If a data provider cannot retrieve 24 months of data in the ordinary course of business notwithstanding its other compliance obligations, it cannot take advantage of the safe harbor but would be able to make available less information. With regard to comments requesting that this section include a prohibition on reverse engineering, such a prohibition would not be appropriate for exceptions to the requirement to make available covered data. However, third party use of data for reverse engineering of proprietary algorithms is addressed in the discussion of § 1033.421(a)(2).

In response to the comments suggesting that the final rule narrow this exception to avoid evasion of the final rule, this concern is addressed in the anti-evasion provision in final § 1033.201(a)(2). A data provider that designs its systems to make data less available to access, with the intent of evading the requirements of subparts B and C of part 1033, or that the data provider knows or should know is likely to render unusable covered data or is likely to prevent, interfere with, or materially discourage a consumer or authorized third party from accessing covered data, would violate the anti-evasion provision.

C. Subpart C—Data Provider Interfaces; Responding to Requests

1. Overview

Subpart C establishes how covered data are to be made available and the mechanics of data access, including basic operational, performance, and security standards, and other policies and procedures. In particular, certain provisions ensure that data providers make covered data available to authorized third parties through functionality fit for that purpose—labeled a ''developer interface''—rather than through screen scraping of a consumer interface. Other provisions require data providers to disclose information that helps third parties request data and to establish and maintain written policies and procedures reasonably designed to achieve the objectives of subparts B and C. In addition, to prevent data providers from inhibiting consumers' exercise of their statutory data access right, subpart C prohibits data providers from charging fees for establishing or maintaining the required interfaces or for receiving requests or making available covered data in response to requests.

2. General Requirements (§ 1033.301)

Requirement To Maintain Interfaces (§ 1033.301(a))

The CFPB proposed in § 1033.301(a) to require a data provider subject to the requirements of part 1033 to maintain a consumer interface and to establish and maintain a developer interface. The CFPB preliminarily determined that the requirement would carry out the objectives of CFPA section 1033 by ensuring consumers and authorized third parties can make requests for and receive timely and reliable access to covered data in a usable electronic form. Proposed § 1033.301(a) also stated that the consumer interface and the developer interface must satisfy the requirements set forth in § 1033.301 (*i.e.,* § 1033.301(b) and (c), discussed in this part IV.C.2 below) and that the developer interface must satisfy the additional requirements set forth in § 1033.311 (discussed in part IV.C.3 below).

Requirement To Maintain Consumer Interface

Under the CFPB's proposal, not every interface that a data provider might offer—such as a mobile banking portal and an online banking portal—would have been required to satisfy all of the proposed requirements that would apply to consumer interfaces (discussed below), as long as collectively the provider's interfaces satisfy the requirements. The CFPB requested comment on whether data providers inform consumers using mobile banking applications that additional information might be available through providers' online banking applications.

All commenters, including data providers, third parties, and consumer advocate commenters, who addressed the requirement to maintain a consumer interface supported it. Data providers stated that they maintain those interfaces today. Consumer advocates suggested that the CFPB adopt additional requirements for consumer interfaces, such as being intuitive or user friendly. They also suggested that the rule require a data provider to disclose in the consumer interface the third parties accessing a consumer's covered data and, if the data provider provides a mechanism for the consumer to revoke such access, how the consumer can revoke such access. They argued that these disclosures are important to facilitate consumer awareness of the third parties with which they have shared their data and consumer action if they do not want the data sharing to continue. In response to the CFPB's request for comment, they requested that the CFPB require a data provider to provide through its mobile application the same information as through a desktop application, because many low- and moderate-income consumers only have a mobile phone for internet access.

For the reasons discussed herein, final § 1033.301(a) requires a data provider to maintain a consumer interface. This is necessary and appropriate to implement the statutory requirement in CFPA section 1033(a) that data providers make covered data available to consumers in a usable electronic form. The requirement will impose limited cost on data providers because they generally maintain these interfaces today. It will ensure that consumers benefit from ready access to their own financial data.

The CFPB declines to adopt the additional requirements for the interfaces suggested by consumer advocates. Under the final rule, as under the proposal, not every data provider consumer interface must satisfy the requirements of part 1033, as long as collectively the provider's consumer interfaces satisfy the requirements. Competition among data providers for customers will continue to appropriately incentivize them to invest in and improve the various consumer interfaces they make available to consumers. In contrast, the CFPB is adopting more prescriptive requirements for developer interfaces in § 1033.311 (discussed below) because consumers are unlikely to comparison shop among data providers based on the performance of those interfaces.

Requirement To Maintain Developer Interface

The CFPB received numerous comments related to its proposal in § 1033.301(a) to require data providers to establish and maintain a developer interface. Third party commenters requested clarification as to how the provision would apply to a service provider that the data provider employs to establish and maintain the data provider's developer interface. More specifically, they requested that the rule clarify that, in such a situation, the data provider's service provider may not impose any conditions or restrictions on interface access that the data provider itself may not impose and must comply with all rule provisions applicable to developer interfaces. Commenters of all types—including third parties, consumer advocates, research and academic institutions, data providers and associations thereof—expressed general support for the CFPB's framework in part 1033 of moving away from screen scraping for data access, but requested technological neutrality for how a data provider may implement the required interface. Some commenters, including both data providers and third parties, stated that implementing APIs would be overly difficult or costly for some data providers such as small depository institutions. These commenters requested that the rule allow data providers the choice of implementing a developer interface, permitting screen scraping of the consumer interface, or prohibiting access to covered data by all third parties.

Some data provider commenters and a data aggregator questioned or objected to the CFPB's proposal to require data providers to establish a developer interface. These commenters asserted that the requirement is beyond the authority CFPA section 1033 provides to the CFPB and that it is in their view not appropriate for a regulation, as opposed to a statute, to require entities to implement what they characterized as a new financial product such as a developer interface. In particular, these commenters asserted that the CFPB had incorrectly interpreted the term ''consumer'' to include consumers' third party representatives. They also asserted that the CFPB lacked authority to require data providers to enable ''open banking,'' which they described as a matter of vast economic and political significance subject to the ''major questions'' doctrine.

One commenter stated that Congress could not have intended this broad result because in 2010, when Congress adopted the CFPA, the data sharing market did not include the wide variety of third party fintech firms that the CFPB proposed to include as consumers. The commenter also stated that the proposal was inconsistent with the structure of CFPA section 1033 because it would require a developer interface that is exclusively accessible to third parties and a consumer interface that is exclusively accessible by consumers. The commenter also maintained that Congress would not have intended section 1033 to authorize the CFPB to launch open banking unilaterally without providing for a greater role for other agencies, beyond what it described as a narrow degree of consultation about certain topics. The commenter did not believe the CFPB had given those agencies a meaningful role in the process. Finally, the commenter stated that efforts to create an open banking system would restrict technological innovation and consolidate the number of incumbent data aggregators in the market.

For the reasons discussed herein, the CFPB is finalizing the requirement in § 1033.301(a) that a data provider maintain a developer interface. No change in substance from the proposal is intended or effected by simplifying the proposed rule's ''establish and maintain'' to ''maintain'' in final § 1033.301(a). Under the proposed rule, a data provider was exempt from the proposal if it did not have a consumer interface. The CFPB proposed that a data provider with a consumer interface but without a developer interface would be required to ''maintain'' the consumer interface and to ''establish and maintain'' a developer interface. Under final part 1033, the question of whether a data provider has a consumer interface is not relevant to determining whether the data provider is subject to part 1033. A data provider subject to part 1033 must have functionality for making covered data available to consumers (a consumer interface) and functionality for making covered data available to authorized third parties (a developer interface). If a data provider subject to part 1033 does not currently have such functionality for authorized third parties, the part 1033 requirement that the data provider maintain such functionality—a ''developer interface''—includes and incorporates the proposed requirement that the provider establish the developer interface.

The requirement is necessary and appropriate to ensure data providers make available covered data upon request in a usable electronic form to third parties that are authorized to access covered data on behalf of consumers. The developer interface requirements in the rule, including the requirement that the interface not allow third parties to access covered data using consumer credentials, are not a requirement to use any specific technology to enable data access. As discussed under the definitions above, the term ''developer interface'' is simply a label of convenience for data access functionality that meets rule requirements. The technological means by which data providers choose to achieve that functionality is entirely up to providers.

The requirements and prohibitions in subparts B and C of part 1033 apply to data providers. A data provider may not by contract transfer its legal obligation to comply with the part 1033 requirements and prohibitions to a vendor. A data provider may enter into a contract with a vendor under the terms of which the vendor agrees to perform activities that satisfy the data provider's compliance obligations under part 1033, but in that situation it remains the data provider's legal responsibility to comply with the requirements and prohibitions of subparts B and C of part 1033, and the data provider violates part 1033 if its vendor fails to fully fulfill the relevant compliance obligations. For example, if the data provider and its vendor collectively fail to fully fulfill one or more of the data provider's obligations under part 1033, the CFPB (or other regulator) may supervise and enforce that compliance failure against the data provider.

In final part 1033, the CFPB has taken steps to ensure the feasibility and technological neutrality of the § 1033.301(a) requirement that a data provider maintain a developer interface, including for small data providers. The final rule does not require the use of any specific technology in order to comply. Specifically, in § 1033.311(e) (discussed in part IV.C.3 below), the CFPB is incorporating an example that makes explicit that a data provider may satisfy its obligation to maintain the required data access by entering into a contract with its service provider (for example, a core processor) pursuant to which the service provider screen scrapes covered data from the data provider's consumer interface and makes the covered data available to authorized third parties through a developer interface that the service provider maintains on behalf of the data provider. The CFPB believes that this ''self-scraping'' approach will meaningfully reduce the burden of the developer interface requirement through economies of scale: a small number of larger service providers will be able to

maintain developer interfaces on behalf of a large number of smaller data providers. In this situation, as discussed above, the obligation for the developer interface to satisfy the requirements and prohibitions of part 1033 nonetheless continues to rest with the data provider.

The CFPB has determined that the CFPA provides the CFPB with authority to require data providers to maintain developer interfaces and that the rule does not run afoul of the major questions doctrine. As proposed (and as discussed above), § 1033.131 defines ''developer interface'' as functionality through which a data provider receives requests for covered data from authorized third parties and makes covered data available electronically in response to the requests. Requiring data providers to maintain this functionality does not constitute requiring them to provide a new consumer financial product or service; instead, it merely requires them to maintain a secure mechanism through which they make consumers' covered data available to consumers' authorized third party representatives. Elsewhere in this document, the CFPB estimates the costs part 1033 will impose on data providers (including but not limited to the developer interface requirement). The costs are orders of magnitude lower than any level that would implicate the major questions doctrine. There is also no political controversy on the topic of developer interfaces of the magnitude that suggests it is a major question.

To the extent that commenters meant to argue that requiring data providers to provide covered data to consumers' authorized third party representatives implicates the major questions doctrine, the CFPB disagrees. As noted above, the costs of providing covered data to third parties are orders of magnitude lower than any level that would implicate the major questions doctrine, and there is also no political controversy of the kind that has supported a finding that there is a major question. Moreover, the plain meaning of CFPA section 1033, in combination with the CFPA's definition of consumer in CFPA section 1002(4), requires data providers to make covered data available to consumers' authorized third party representatives. Thus, any purportedly ''major'' consequences from that requirement flow from Congress' decision to enact 1033, not the CFPB's rule. This is not a situation where an agency discovers in a long-extant statute an unheralded power. Instead, this is simply the first CFPB rule to execute Congress' instructions on the topic, after a multiyear rulemaking process.

The CFPB notes that the U.S. consumer data sharing market encompassed consumers' authorized third party representatives at the time Congress enacted the CFPA in 2010. For example, many consumer-authorized third party representatives were providing personal financial management use cases well before 2010.[60] Thus, Congress in fact did intend that the 2010 CFPA and the CFPB's rule implementing it (as expressly authorized by CFPA section 1033(a)) would broaden and deepen the consumer-permissioned data sharing market that existed at that time by requiring data providers to share financial data with consumers' authorized third party representatives. And nothing in the language of CFPA section 1033 limits it to the use cases that existed in 2010.[61]

This view of congressional intent is fully consistent with the plain meaning of CFPA sections 1033 and 1002(4) described above, the interoperability objectives of CFPA section 1033(d), and the ongoing evolution of the U.S. data sharing market. That is, a rule requiring only that data providers make financial information available to individual consumers, as opposed to also requiring them to make the information available to third parties authorized by consumers, would significantly impair the uses to which consumers, through authorized third parties, are actually putting their financial data today. In sum, therefore, the CFPB can discern no textual, historical, or consumer-protection basis for limiting part 1033 in the artificially cramped way that these commenters suggest.

Similarly, ''open banking'' as the CFPB uses that term (which is not legally defined) already exists in the U.S. The proposed rule noted that the CFPB ''uses the term 'open banking' to refer to the network of entities sharing personal financial data with consumer authorization.'' 88 FR 74796, 74797 (Oct. 31, 2023). U.S. data providers already do that. Further, such sharing is what CFPA section 1033 mandates and what part 1033 requires. Of course, other jurisdictions might use the term ''open banking'' differently. For example, part 1033 does not require data providers to permit authorized third parties to *make changes* (commonly referred to as ''write access'') to consumers' financial data or to transfer funds to or from consumers' financial accounts. In contrast, other ''open banking'' frameworks around the world, such as the European Union Payment Services Directive and the United Kingdom's Open Banking framework, address write access. While these limitations might be in contrast to other jurisdictions' use of the term ''open banking,'' such semantics do not change the fact that part 1033 adheres closely and appropriately to the open-banking framework Congress enacted in CFPA section 1033.

The CFPB also finds that the part 1033 developer interface requirement is justified by the factual record and will not stifle innovation nor result in anti-consumer consolidation. Specifically, the rulemaking record provides ample evidence that a CFPB regulation condoning or requiring data provider provision of consumers' data to authorized third parties through the mechanism of screen scraping of data providers' consumer interfaces would present inappropriate data security and data accuracy risks to consumers, as well as to data providers, and would reduce consumers' control over the portion of their financial data that they share. The CFPB finds that the permitted self-scraping approach described above does not entail these risks because data providers contractually govern and are responsible for the ''self scraping'' that data providers' service providers, such as core processors, will conduct under that approach.

The CFPB considered a form of screen scraping known as ''tokenized'' screen scraping, which is more secure than regular screen scraping. However, even tokenized scraping results in third parties accessing a larger portion of consumers' financial data than they need to provide the financial services that consumers are requesting. Like non-tokenized screen scraping, it also requires third parties to parse and transpose financial information from human-readable form. The CFPB received feedback that this activity risks inaccuracy and undermines the interoperability benefit of standardized data formats, which CFPA section 1033(d) requires the CFPB to promote. Such data would not be usable to consumers or authorized third parties, as required by CFPA section 1033(a). The CFPB therefore is not adopting that alternative.

In light of the risks and imprecision of screen scraping, and within the bounds of the rulemaking discretion granted to it by CFPA section 1033(a), the CFPB has determined that the best way to effectuate the CFPA requirement that data providers make covered data

[60] Pre-2010 providers of these use cases include Mint, Mvelopes, Quicken, Wesabe, and Yodlee.

[61] To the contrary, Congress intended for the CFPB to have ''enough flexibility to address future problems as they arise,'' and that ''[e]xperience has shown that consumer protections must adapt to new practices and new industries.'' S. Rep. 111–176 at 11 (2010).

electronically available to consumers' authorized third party representatives, and also make the data available securely and accurately, is to require data providers to maintain a ''developer interface,'' *i.e.,* to maintain functionality fit for purpose through which they electronically receive and respond to requests for covered data from authorized third parties in accordance with the requirements of part 1033. As noted, CFPA section 1033(a), in combination with the CFPA's consumer definition, makes clear that the CFPA requires data providers to make covered data available to consumers' authorized third party representatives. The CFPB therefore declines to permit a data provider to comply with CFPA section 1033(a) by blocking all third party access to covered data.

Some commenters asserted that this approach would restrict technological innovation or result in consolidation of the data aggregation market. As noted above, the rule implements Congress' decision for data providers to make available consumer data to third parties directly. Further, the rule will foster competition and innovation, as many commenters believed it would. In particular, the standardization and machine-readability of data types and formats and communications protocols across data providers that is enabled by developer interface functionality, as opposed to screen scraping, will facilitate, not restrict, direct access to consumers' financial data by authorized third parties, including new entrants and those providing products and services that compete with those offered by the consumer's existing account provider. That is, it will reduce authorized third parties' reliance on data aggregators for accessing consumers' financial data from data providers. This is because screen scraping—the data ingestion, parsing, and mapping it entails (let alone all its risks and inaccuracies)—is not easy, which is why many smaller authorized third parties today rely on data aggregators to do it. Because the standardization enabled by developer interfaces will facilitate direct access by authorized third parties, the number of authorized third parties should increase (the opposite of consolidation) and the variety of products and services they offer should also increase (the opposite of restricting innovation). Further, competition among data aggregators for the business of authorized third parties should increase too.

It is also not true, in contrast to commenters' assertions, that part 1033 requires a data provider to maintain developer interface functionality that is *exclusively* accessible by authorized third parties and a consumer interface that is exclusively accessible by individual consumers. Instead, part 1033 permits (but does not require) data providers to grant developer interface access to individual consumers and to grant consumer interface access to authorized third parties. Further, part 1033 does not require that a data provider's consumer interface and its developer interface be separate and distinct from each other. Instead, part 1033 permits (but does not require) a data provider to provide its developer interface and its consumer interface through the same mechanism (or set of mechanisms), provided that the mechanism satisfies the part 1033 requirements applicable to developer interfaces and the requirements applicable to consumer interfaces.

The CFPB discusses elsewhere in this final rule the consultation processes that it has engaged in with Federal and State regulators. In contrast to commenters' assertions, the CFPB in fact gave other agencies a very meaningful role in the process and, in any event, has complied with the consultation obligations that the law places on the CFPB.

Machine-Readable Files (§ 1033.301(b))

The CFPB proposed in § 1033.301(b) to require a data provider to make available, upon specific request, covered data in a machine-readable file that can be retained by a consumer or an authorized third party and transferred for processing into a separate information system that is reasonably available to and in the control of the consumer or authorized third party. The CFPB also proposed an example of how data providers could make available covered data in a machine-readable file that can be retained. The CFPB preliminarily determined that § 1033.301(b) would provide important benefits to consumers, such as by enabling them to share their data with others, including providers of competing financial products and services.[62]

Consumer advocate and third party commenters generally did not address the proposed § 1033.301(b) requirement.[63] Data provider commenters did not object to it, but suggested modifications and clarifications. They requested that the provision differentiate more clearly between developer and consumer interfaces, arguing that their file formats are, and should remain, different from each other. They also requested that the rule define ''machine-readable,'' particularly with respect to the consumer interface. They noted that the proposed rule preamble stated the CFPB's view that today's consumer interfaces generally perform in an acceptable manner and that the CFPB did not intend its proposal to result in material changes to consumer interfaces. Some commenters asserted, however, that the proposed provision could be interpreted to include burdensome requirements for the consumer interface. They stated that data providers' consumer interfaces today typically make covered data available in PDF files that consumers can print and download, but do not make all covered data available in a single file, nor do they make all covered data available in files that are machine-readable (such as CSV, XLS, or XML files) but instead only make transaction history available in such files. They asserted that if proposed § 1033.301(b) were interpreted to include such requirements—*e.g.,* that all of a consumer's covered data be made available in a single machine-readable file through the consumer interface—the provision would result in costly modifications to data providers' consumer interfaces when only few consumers actually request machine-readable files through consumer interfaces. One commenter expressed fraud concerns with respect to making machine-readable files available through the consumer interface but did not elaborate.

The CFPB is finalizing § 1033.301(b) with certain changes. Except as discussed below, the provision requires that upon request for covered data in a machine-readable file, a data provider must make available to a consumer or an authorized third party covered data in a file that is machine-readable and that the consumer or authorized third party can retain and transfer for processing into a separate information system that is reasonably available to and in the control of the consumer or authorized third party. These requirements will provide important benefits to consumers, such as by ensuring that they continue to be able to share their data with others, including providers of competing financial products and services. However, to ensure these benefits without imposing inappropriate burden on data providers,

[62] *See, e.g.,* Michael S. Barr *et al., Consumer Autonomy and Pathways to Portability in Banking and Financial Services,* Univ. of Mich. Ctr. on Fin., L. & Policy Working Paper No. 1 (Nov. 1, 2019), *https://financelawpolicy.umich.edu/sites/cflp/files/2021-07/umich-cflp-working-paper-consumer-autonomy-and-data-portability-pathways-Nov-3.pdf.*

[63] One third party stated that machine-readable formats would advance self-sovereign-identity principles.

particularly with respect to their consumer interfaces, it is necessary and appropriate to differentiate between the consumer interface and the developer interface, to not apply certain requirements to the consumer interface, and to provide clarity regarding how the developer interface satisfies the requirements, as follows.

Data providers' consumer interfaces generally provide covered data to consumers in an acceptable manner. The CFPB intends and expects that its final rule will not require material changes to data providers' existing consumer interfaces. Unlike the proposal, the final rule for consumer interfaces, as set forth in § 1033.301(b)(1)(i), does not apply the machine-readability requirements of § 1033.301(b) to payment initiation information (described in § 1033.211(c)) or to account verification information (described in § 1033.211(f)). Nonetheless, the consumer interface is required to make that information available in an electronic form usable by consumers, such as a human-readable form, pursuant to the general availability requirement in § 1033.201(a). In contrast to how this information must be made available to third parties through the developer interface, requiring this information be made available directly to consumers in machine-readable files would provide limited additional utility to consumers relative to their ability to access this information in human-readable form.

Moreover, and also unlike the proposal, pursuant to § 1033.301(b)(1)(ii), the final rule does not require consumer interfaces to make available the account terms and conditions (described in § 1033.211(d)) in machine-readable form. Instead, that information need only be made available in a retainable form. Many data providers make terms and conditions available to consumers, as well as the general public, in retainable form. The CFPB understands that data providers generally also make certain important terms and conditions—such as the rates and fees applicable to accounts and balances—available in human-readable form in the consumer interface; additionally, many terms and conditions applicable to accounts are restated in periodic statement communications, which are also generally made available through consumer interfaces. The CFPB intends and expects that these changes from its proposed rule will mean that the requirements of § 1033.301(b) for consumer interfaces do not result in material burden for data providers; *i.e.,* do not result in material changes from data providers' current consumer interface systems and practices.

For consumer interfaces, the covered data that remains subject to § 1033.301(b) is the following: transaction information (described in § 1033.211(a)), account balances (described in § 1033.211(b)), and upcoming bill information (described in § 1033.211(e)). Data providers' consumer interfaces today generally make that portion of covered data available to consumers in machine-readable files. Accordingly, applying the requirements of § 1033.301(b) to that portion of covered data will not require material changes to data providers' existing consumer interfaces.

In final § 1033.301(b), the CFPB has deleted the word ''specific'' (*i.e.,* has deleted it from the proposal's phrase ''upon specific request''). The CFPB neither intends nor effectuates any change of substance by this revision. It remains the case, as under the proposal, that the consumer must explicitly request covered data in a machine-readable file in order for the requirements of § 1033.301(b) to be triggered. While the rule does not specify the functionality (or functionalities) that a data provider must supply to consumers through which they may request covered data in machine-readable form, the data provider must supply at least one readily discoverable mechanism through which consumers may do so. It is acceptable for a data provider to supply the mechanism only to consumers who have ''logged in.'' It is also acceptable for the data provider to guide consumers to the mechanism. For example, if a consumer calls the data provider, the provider may verbally guide the consumer to the mechanism. Similarly, if a consumer emails the data provider, the provider may reply by email with a link to or instructions for how to access the mechanism. Further, the data provider's mechanism should not require a consumer to say ''magic words'' in order for the data provider to deem the consumer to have requested data in machine-readable form. For example, if a consumer were to request ''a spreadsheet'' of transactions, the data provider should consider the consumer to have requested a machine-readable file.

Like the proposal, final § 1033.301(b) does not require a data provider to make all covered data available to a consumer in a single file—for example, the entirety of the consumer's transaction history with the data provider in one file. It does (like the proposal) require the provider to make the data available to the consumer in one or more files. Section 1033.211(a) provides that a data provider is deemed to make available sufficient historical transaction information if it makes available at least 24 months of such information. It is feasible for the provider to make available that amount of historical information in one file. The provider could also make the information available in multiple files if it chooses to do so.

The requirement to make portions of covered data available in machine-readable files through the consumer interface, as described above, will not result in inappropriate fraud risk. As noted, the requirement is consistent with data providers' existing practices for making data available through their consumer interfaces. Further, the requirements in part 1033 to make covered data available (whether in machine-readable files or otherwise) do not include any requirement to permit consumers or authorized third parties to initiate payments through the consumer interface. Instead, it remains up to a data provider's discretion—as opposed to a requirement of part 1033 or any other CFPB rule—whether to grant consumers permission to initiate payments through the data provider's consumer interface.

With respect to the requirement in proposed § 1033.301(b) that a data provider make covered data available through its *developer* interface in machine-readable form, the CFPB has determined that the requirement in § 1033.311(b) (discussed below) that the developer interface make the covered data available in a standardized and machine-readable format is sufficient. Section 1033.301(a) requires a data provider to maintain a developer interface, which § 1033.131 defines as an interface through which a data provider receives requests for covered data and makes available covered data in an electronic form usable by authorized third parties in response to the requests. Further, § 1033.311(b)(2) requires the developer interface to make available covered data in a standardized and machine-readable format. A data provider that maintains a developer interface, as required by § 1033.301(a) and defined by § 1033.131, that complies with § 1033.311(b) thereby makes available to authorized third parties covered data in a machine-readable form that the authorized third parties can retain and process in separate information systems reasonably available to them. Accordingly, § 1033.301(b)(2) states that a data provider's developer interface satisfies the requirements of § 1033.301(b) if the interface makes available covered data

in a form that satisfies the requirements of § 1033.311(b).

Fees Prohibited (§ 1033.301(c))

The CFPB proposed in § 1033.301(c) to prohibit a data provider from imposing any fees or charges on a consumer or authorized third party for establishing or maintaining the interfaces required by § 1033.301(a) or for receiving requests or making available covered data in response to requests as required by part 1033. The CFPB preliminarily determined that the proposed prohibition was necessary and appropriate to ensure that fees do not impede consumers and authorized third parties from exercising consumers' statutory rights. The CFPB requested comment on whether any clear parameters exist such that, subject to such parameters, data providers could charge reasonable, standardized fees that neither obstruct the access right due to cost nor impede third parties' access to data provider interfaces due to negotiations over fee amounts or schedules.

Few commenters addressed the prohibition of fees for providing covered data to individual consumers through the consumer interface. Those commenters who addressed this issue did not object and stated that data providers do not charge fees today for providing covered data through their consumer interfaces.

Many commenters addressed fees for providing covered data to authorized third parties through the developer interface. Third party and consumer advocate commenters generally supported the proposed fee prohibition on the grounds that covered data belongs to consumers and that the statute gives consumers the right to access and share the data with the authorized third parties that they choose. These commenters also suggested modifications to the prohibition to ensure that data providers do not evade it by, for example, charging higher fees for other financial products and services to consumers and authorized third parties for exercising their section 1033 data access rights. Third party commenters suggested that the CFPB make clear that the fee prohibition applies to data providers' service providers, in addition to applying to data providers themselves.

SBA Advocacy compared data providers' provision of covered data to Federal agencies' provision of information in response to Freedom of Information Act (FOIA), 5 U.S.C. 552, requests and stated that it seems inconsistent that agencies are permitted to charge for providing information whereas data providers are prohibited from doing so.

Data provider commenters opposed the developer interface fee prohibition. They asserted that the CFPB lacks authority to prohibit fees under CFPA section 1033. They also stated (as noted above) that they would incur costs to implement the developer interface and that, in light of those costs, the fee prohibition is an impermissible taking because it commandeers data providers' infrastructure and resources for the benefit of third parties, which may access covered data without paying a fee and then charge fees to other third parties for the data. These commenters also stated that the prohibition is inconsistent with the CFPB's 1034(c) advisory opinion, which permits large institutions to charge fees for providing data in some limited circumstances, such as where a consumer had already repeatedly requested and received the same information regarding their account. It is also inconsistent, they stated, with OCC regulations (12 CFR 7.4002), which according to the commenters give national banks discretion to set prices for the banking services they provide. No commenters provided any information regarding possible parameters for standardized fees.

For the reasons discussed herein, consistent with the proposal, final § 1033.301(c) prohibits a data provider from imposing any fees or charges on a consumer or authorized third party for establishing or maintaining the interfaces required by part 1033 or for receiving requests or making covered data in response to requests as required by part 1033. This prohibition ensures that data providers do not inhibit consumers' ability to access their data, authorize third parties to access their data, or choose which third parties to authorize to access their data.

The CFPB is issuing § 1033.301(c) pursuant to its authorities under sections 1033(a) and 1022(b)(1) of the CFPA. Section 1033(a) states that data providers ''shall'' make covered data available to consumers ''upon request,'' ''[s]ubject to rules prescribed by the Bureau,'' subject to certain statutory exemptions in section 1033(b), and without any other condition. Congress did not authorize fees. In fact, it specified in section 1033(b)(4) that a data provider need not make available information it ''cannot retrieve in the ordinary course of its business,'' which weighs against an argument that Congress intended data providers to be able to decide to condition data access on payment of a fee. Congress dealt with the policy issue of potential burden on data providers by cabining the information they are required to retrieve, rather than through compensation. Even assuming Congress did not foreclose fees when consumers exercise their statutory rights under section 1033, in exercising the CFFB's rulemaking authority to regulate the specifics of data sharing under section 1033, the CFPB is not permitting fees. In particular, the CFPB is concerned that allowing them would obstruct the data access right that Congress contemplated. As discussed later, the CFPB has not identified, and no commenter has put forward, a suitable alternative that protects the data access right.

The fee prohibition is also independently authorized by section 1022(b)(1) of the CFPA in order to prevent evasion of Federal consumer financial law. CFPA section 1033 and this final rule are both Federal consumer financial laws. If data providers could decide what fee to charge, they could limit or eliminate the right that CFPA section 1033 confers. Congress would not have enacted CFPA section 1033 if it trusted data providers to be fully forthcoming with covered data. And, in the CFPB's assessment, those data providers that perceive CFPA section 1033 to be a threat to their competitive positions have strong incentives to withhold information. The CFPB has not identified a suitable alternative that would prevent such evasion of the data access right.

The CFPB notes that the fee prohibition is far from a novel use of rulemaking authority. Other longstanding consumer financial regulations prohibit fees when consumers seek to exercise statutory rights under Federal consumer financial laws that are otherwise silent on whether an entity may charge fees. For example, Regulation E (12 CFR part 1005) and Regulation Z (12 CFR part 1026) both prohibit fees for error resolution when an error has occurred and require avoidance of ''any chilling effect on the good-faith assertion of errors that might result if charges are assessed when no billing error has occurred.'' [64]

The CFPB also notes that the fee prohibition is not inconsistent with FOIA. There, the applicable statute expressly permits fees, whereas here it does not. Further, the information agencies provide through FOIA typically does not pertain directly to the requestors of the information, whereas under CFPA section 1033 the information provided by data providers

[64] Regulation E comment 11(c)–3; Regulation Z comment 13–2.

pertains directly to the requestor—the consumer—because it is information about the financial product or service the consumer obtained from the data provider. Finally, FOIA addresses information that may not be readily available for agencies to find and disclose, whereas CFPA section 1033 addresses information that data providers can retrieve in the ordinary course of business.

The fee prohibition does not make this rule a taking. The addition of the fee prohibition does not make the rule a permanent physical invasion of property, nor does it limit data providers' control or discretion to the point that they are deprived of all economically beneficial use of property. Further, data providers do not generally charge consumers or third parties for data access today, indicating that the economic impact of the prohibition, along with any potential interference with investment-backed expectations, is not so large as to be considered a taking. Any hypothetical investment-backed expectations are further attenuated by the fact that Congress enacted section 1033 over fourteen years ago, and the CFPB has been engaged in a lengthy rulemaking process which will be followed by staggered compliance dates over a period of years. Data providers have long been on notice that a CFPB rulemaking will impact data sharing. The character of this rule is also far removed from a taking. The rule adjusts the benefits and burdens of economic life, specifically by providing consumers with greater access to data about their financial accounts, in some cases with the assistance of companies acting as their representatives.

The fee prohibition is not inconsistent with CFPA section 1034(c) which, as noted in the CFPB's advisory opinion, permits fees in certain limited circumstances, such as when a large bank or credit union charges a fee to a consumer who repeatedly requested and received the same information regarding their account. *See* 88 FR 71279, 71282 (Oct. 16, 2023). Section 1034(c) imposes an obligation to ''comply'' with a consumer request for information, and the CFPB explained that, in the context of repeated requests, the large bank or credit union would have already met its obligation under section 1034(c) by ''comply[ing]'' with the consumer's earlier requests. *Id.* By contrast, section 1033 imposes an obligation to ''make available'' information upon the consumer's request. 12 U.S.C. 5533(a). By referring to information being made ''available,'' section 1033 contemplates an ongoing obligation to grant consumers access to information, rather than an obligation that could be satisfied by providing information a single time.

Moreover, the CFPB did not promulgate the CFPA section 1034(c) opinion through the notice-and-comment rulemaking process. As such, the opinion was and is limited to setting forth the CFPB's interpretation of existing law. In contrast, the CFPB is establishing part 1033 in accordance with the Administrative Procedure Act's notice-and-comment rulemaking procedures. The CFPB's promulgation of part 1033 may therefore establish new requirements, including by limiting fees more strictly than does section 1034(c), if the CFPB determines that is warranted using the discretionary rulemaking authority that Congress has delegated.

The fee prohibition is also not inconsistent with the OCC regulation cited by commenters. The OCC regulation, 12 CFR 7.4002, generally provides that national banks have authority to charge their customers non-interest charges and fees but does not override other Federal laws or regulations that expressly bar specific charges and fees. For example, as noted above, when an error has occurred the CFPB's Regulation E and Regulation Z prohibit fees for resolving the error and the OCC's regulation does not override those prohibitions.

Data provider commenters additionally argued that part 1033 should permit them to charge fees because data providers' systems are key to making covered data available and establishing and maintaining those systems requires resources. They argued that a rule prohibiting them from offsetting those costs by charging fees to third parties could necessitate recoupment of the costs through fees to their consumer account holders for other banking services. They also argued that the fee prohibition would discourage data providers from implementing and investing in data sharing systems that exceed the minimum legal requirements. In contrast, they argued, permitting reasonable fees would incentivize both data provider investment and third party data minimization. That is, they argued, third parties accessing more data through developer interfaces would impose more burden on those interfaces and therefore should incur greater fees than those accessing less data. Data provider commenters also asserted that in other jurisdictions, such as the E.U., fee prohibitions have led to underinvestment and suboptimal open finance ecosystems. They further argued that in light of these considerations, E.U. rules proposed in November 2023 would permit data providers to request reasonable compensation when providing data to other businesses.

As part of the rulemaking process, the CFPB has taken steps to reduce data providers' data access costs, as reflected in the final rule. First, the CFPB proposed and is finalizing that data providers must make available a narrower set of covered data than the CFPB was considering at the SBREFA stage. Second, in contrast to the proposed rule, the final rule does not apply to depository institutions that are small businesses as defined in SBA's regulations (irrespective of whether those institutions have a consumer interface). These institutions therefore will not incur any data access costs under the final rule. Third, many depository institutions that are not small businesses, and are therefore subject to part 1033, already have developer interfaces and therefore should be able to bring those interfaces into compliance with part 1033 at reasonable cost. Fourth, the final rule adopts a substantially more extended implementation timeframe than the CFPB proposed. Fifth, the CFPB continues to develop guidance materials and to work with industry standard setters to foster appropriate standards. These steps will give data providers more certainty regarding how to come into compliance with the rule in the extended implementation timeframe, thereby reducing their costs. And sixth, § 1033.311(e) (discussed in part IV.C.3 below) makes clear that a data provider's developer interface may function by permitting the data provider's service provider (such as a core processor) to screen scrape the data provider's consumer interface and to make the data available through a developer interface that the service provider establishes and maintains on the data provider's behalf. This approach offers data providers a low-cost path to providing a developer interface and is widely used in the market today.

The CFPB does not expect that the fee prohibition will discourage data providers from implementing and investing in their data sharing systems. The CFPB is not aware that regulatory requirements or prohibitions in other areas, such as Regulation E and Regulation Z error resolution, inappropriately discourage investment in systems in those areas. To the contrary, regulatory requirements and prohibitions encourage robust systems and make it less likely that an industry participant with such systems will be driven from the market by participants without them. Additionally, data

providers generally invest significantly in continually improving their consumer interfaces, which data providers generally do not charge any kind of fees to access. The CFPB is also aware, including from the Provider Collection, that some data providers and service providers (such as core providers) made significant investments to develop, implement, and maintain developer interfaces even prior to this rulemaking, and, as noted above, data providers do not generally charge fees to third parties for accessing developer interfaces.

Data provider fees are not the appropriate means by which third parties' data minimization is incentivized and accomplished. Instead, third parties themselves must and should comply with part 1033's data minimization requirements. Section 1033.311(d) (discussed below) permits data providers to impose reasonable access caps, further undermining the appropriateness of permitting data providers to charge fees to third parties in order to achieve data minimization or, more broadly, to incentivize third parties to comply with part 1033.

By its terms, the § 1033.301(c) fee prohibition applies to data providers and will be supervised and enforced against data providers (just like all of the other provisions in subparts B and C). But the fee prohibition encompasses a data provider's vendor, in addition to the data provider itself. For example, assume a data provider asserts that it is complying with part 1033 because it makes covered data available to authorized third parties through a developer interface that the data provider's vendor maintains on behalf of the data provider. The data provider would not comply with the fee prohibition in § 1033.301(c) if its vendor charged (or sought to charge) fees to authorized third parties in connection with making covered data available to them through the developer interface that the vendor maintains on behalf of the data provider.

Data sharing in the U.S. is distinguishable in relevant respects from the E.U. American consumers already expect third party data access capabilities, and the U.S. market consists of a higher number of depository institutions (and card issuers) than most other jurisdictions. Further, the E.U. proposal to permit fees is only a proposal and, if adopted, would permit only limited, standardized fees. As a result, the CFPB believes it is premature to conclude that any difficulties that might have resulted from prohibiting fees for data access in the E.U. will be replicated here. As noted, the CFPB requested comment on parameters for reasonable, standardized fees that neither obstruct the access right nor impede access to interfaces. No commenters provided information in response to that request, and the CFPB does not currently have information to suggest it would be appropriate or feasible to use a standardized fee schedule to account for the wide variety of circumstances in the open banking system. The CFPB will continue to actively monitor and engage with open banking stakeholders. As the CFPB proceeds to implement this first rule under CFPA section 1033, and to ensure consumers' data rights are respected across consumer financial markets, it invites continuing input if entities believe that a regime of standardized fees along the lines of those described above is appropriate and feasible.

Data provider commenters also opposed the fee prohibition on the grounds that it would unfairly disadvantage them relative to data aggregators, which are not prohibited from charging fees to other third parties in connection with providing data they obtained through providers' developer interfaces. A few data providers, in addition to opposing it, asserted that if kept the prohibition must be accompanied by restrictions on third parties' secondary uses of covered data to ensure that the benefits of data sharing accrue to consumers, as opposed to data aggregators. These commenters argued that if the CFPB were to loosen such restrictions in the final rule then this ''consumer benefit'' principle would no longer apply and data provider fees to third parties should be permitted.

The fee prohibition does not unfairly advantage data aggregators relative to data providers. CFPA section 1033 describes a consumer right to access data from data providers—and gives no indication that providers may properly impinge on that right by charging for its exercise. In contrast, CFPA section 1033 does not include a right for consumers to require data aggregators to provide covered data. Instead, the data aggregators' participation in the data-sharing process is voluntary. Fundamentally, an authorized third party's choice to use a service provider, such as a data aggregator, and a consumer's exercise of a statutory right, are entirely different things—there is no equivalence and accordingly no unfairness. Moreover, a data provider controls consumers' covered data concerning the financial product or service that the consumer obtained from the data provider, such that competitive pressures do not readily limit the data access fees that data providers might seek to charge. In contrast, data aggregators are service providers chosen by authorized third parties, who can select a different aggregator for price reasons—or connect to the data provider directly. As a result, competition should naturally put downward pressure on fees that aggregators charge third party clients.

For reasons discussed under subpart D below, the final rule does not materially increase third parties' permissible secondary uses of covered data relative to the proposal. Accordingly, it is not necessary or appropriate to permit data providers to charge fees in light of possible secondary uses that the CFPB did not propose to permit and is not permitting in this final rule. In any event, the breadth (or narrowness) of data aggregators' and other third parties' potential uses of covered data does not logically control the issue of whether data providers should be prohibited from charging fees. Competitive pressure between third parties will naturally put downward pressure on fees they are able to charge. In light of this competitive pressure, permitting data providers to charge fees would not cause the benefits of data sharing to ''shift'' from third parties to consumers; instead, it would cause the benefits to shift from consumers to the data providers that hold and control consumers' financial data.

Allowing cost-based fees, regardless of whether or not they are charged on a per-request basis, would not better effectuate the consumer data access right described in section 1033. The CFPB received feedback during the SBREFA process that allowing data providers to charge fees, including fees to integrate with a developer interface, could pose a barrier to consumers' use of their data through smaller authorized third parties. *See* SBREFA Panel Report at 28. Data providers have the ability and incentive to restrict third party data access through fees and allowing data providers to charge different fees to different third parties also is likely to result in harm to consumers and third parties. *See* 88 FR 74796, 74814 (Oct. 31, 2023). In light of this, allowing data providers to charge what they see as commercially reasonable fees is likely to obstruct consumers' ability to use their data, particularly through smaller authorized third parties. In addition, as noted above, no stakeholder offered any concrete indication of a workable and administrable standard for ''reasonable

fees'' despite the CFPB's solicitation of comment on point.[65]

3. Requirements Applicable to Developer Interfaces (§ 1033.311)

General (§ 1033.311(a))

Proposed § 1033.311(a) stated that a developer interface required by § 1033.301(a) must satisfy the requirements set forth in § 1033.311. The CFPB received no comments objecting to this provision and the CFPB adopts it as proposed.

Standardized Format (§ 1033.311(b))

Proposal

The CFPB proposed in § 1033.311(b) to require a developer interface to make available covered data in a standardized format. The CFPB proposed that the interface would be deemed to satisfy this requirement if it makes covered data available in a format set forth in a qualified industry standard, or, in the absence of such a standard, if it makes available covered data in a format that is widely used by the developer interfaces of other similarly situated data providers with respect to similar data and is readily usable by authorized third parties. The CFPB preliminarily determined that this proposed requirement and accompanying safe harbors were necessary and appropriate to implement the mandate in CFPA section 1033(d) that the CFPB prescribe standards to promote the use and development of standardized formats. More specifically, the CFPB preliminarily determined that, consistent with CFPA section 1033(a) and (d), the proposal to require covered data to be made available in a usable and standardized format would reduce variation across the market and promote greater consistency of data formats. In particular, the proposed provision sought to ensure that the information systems of new-entrant and small-third parties can process covered data from the full range of data providers across the market by reducing varied formats that impel reliance on intermediaries to provide data in a usable format.

The CFPB did not propose a definition of ''format,'' requesting comment on whether one is needed and whether the term should be defined to mean the specifications for data fields, status codes, communication protocols, or other elements to ensure third party systems can communicate with the developer interface. The CFPB also requested comment on the above safe harbors that it proposed.

Comments

All commenters, including data providers, third parties, and consumer advocates, that addressed the proposed requirement that the developer interface make available covered data in a standardized format supported it. Further, all commenters that addressed the CFPB's request for comment stated that the rule should include a definition of format and that the definition should include, in addition to data field specifications, a data model and communication protocol for requests and responses for covered data to be exchanged.[66] Commenters stated that this broader approach to the standardized format requirement would help effectuate interoperability to support data sharing. Several data provider commenters stated that the rule should also apply its standardized format requirement to data aggregators. They argued that doing so would encourage competition and benefit consumers by facilitating the ability of an authorized third party to switch data aggregators.

Commenters' views were mixed on the CFPB's proposed approach to safe harbors for standardized formats. Commenters generally supported the proposed safe harbor for use of a standardized format set forth in a qualified industry standard, but were uncertain that one would exist by the time of the applicable compliance date for part 1033. Because of that uncertainty, commenters generally did not object to the proposed safe harbor for a widely used format, although views were mixed on that point. Specifically, some commenters expressed concern that a safe harbor for a widely used format could lead to more than one widely used format, which might not be an improvement over format differences in place today. Further, many commenters expressed concern with the CFPB's proposal that a widely used format would receive a safe harbor only in the absence of a qualified industry standard. These commenters expressed concern that this approach could make data providers reluctant to implement their developer interfaces now with a widely used format because, were they to do so and were a qualified industry standard later to adopt a different format, the providers with the widely used format would lose their safe harbor status and could feel compelled to redo their interfaces using the qualified industry standard formats. These commenters stated that the CFPB could reduce issues of multiple formats and incentivize faster deployment of developer interfaces—thereby increasing data quality and consumer safety relative to screen scraping—by working with industry participants to establish a consensus standard for data formats as soon as possible.

Final Rule

For the reasons discussed herein, the CFPB is adopting final § 1033.311(b) to require a data provider's developer interface to make available covered data in a standardized and machine-readable format. The final rule also provides that indicia that the format satisfies this requirement include that it conforms to a consensus standard. The final rule defines both ''format'' and ''standardized.'' Format is defined in § 1033.311(b)(1) to include structures and definitions of covered data and requirements and protocols for communicating requests and responses for covered data. Standardized is defined in § 1033.311(b)(2) to mean that it conforms to a format widely used by other data providers and designed to be readily usable by authorized third parties.

The CFPB is not providing examples of ''machine-readable'' file types because technology regarding automated, digital ingestion of data may evolve such that any such examples could become outdated. Section 1033.211, discussed above, defines covered data for purposes of part 1033. Section 1033.301(b), also discussed above, provides that a data provider's developer interface complies with part 1033's machine-readability requirement if it makes covered data available in a form that satisfies the requirements of § 1033.311(b). Further, as noted, § 1033.311(b) requires the developer interface to make covered data available in a format that is standardized and machine-readable and provides that indicia that the format satisfies this requirement include that the format conforms to a consensus standard.

The format definition that the CFPB is adopting gives a data provider some flexibility as to the structures and definitions of covered data made available via its developer interface so it can adapt over time to new and evolving use cases. Nonetheless, in all cases, the

[65] It is not just the fact or level of fees that impedes consumers' exercise of statutory rights, but their potential variance as well. For example, variation in fees across data providers and variation in fees at one data provider across third parties would likely introduce material negotiating costs to third parties, thereby further impeding consumers' ability to use their data.

[66] One commenter stated that the rule's standardized format requirement should include security standards applicable to authenticating and reviewing authorization of third parties. This comment is discussed in the preamble to § 1033.331(b), which addresses how those procedures factor into the final rule.

format must be standardized, *i.e.,* it must be widely used by other data providers and designed to be readily usable by authorized third parties. The CFPB believes that this level of flexibility is necessary and appropriate, both because, as noted, technology is rapidly evolving, and because there will inevitably be new use cases for which authorized third parties request covered data. As new uses cases develop, the best and most readily usable format for a given set of covered data could change.

For example, under § 1033.211(d) covered data includes account terms and conditions (as defined in that section), and terms and conditions include many components, some of which may be numerical and some of which may be natural language. As authorized third parties' use cases for covered data change over time, the best standardized and machine-readable format, or formats, for data providers' developer interfaces to use in making available the many components of terms and conditions will also likely change. More specifically, as authorized third parties' use cases change, the components of terms and conditions that are made available as machine-readable, discrete ''callable'' data fields will likely increase, and those components made available as machine-readable, lengthier ''text'' data fields will likely decrease.[67] Over the course of these ongoing changes in authorized third parties' use cases and pursuant to the ''readily usable by authorized third parties'' prong of the definition of ''standardized'' in § 1033.311(b), the CFPB expects that data providers will in good faith take reasonable steps to make the appropriate components of terms and conditions available through their developer interfaces as discrete callable data fields.

Defining format to include structures and definitions of covered data and requirements and protocols for communicating requests and responses for covered data will facilitate interoperability across data providers and third parties, including new-entrant third parties that wish to access covered data directly from data providers' developer interfaces, as opposed to through data aggregators. Interoperability is also facilitated by the two-pronged definition of standardized, under which format, to be standardized, must be both widely used by other data providers and designed to be readily usable by authorized third parties. The final rule includes a non-exhaustive list of components of format because whether a standard includes any particular component of format will depend to some degree on the standard selected.

The final rule's definition of format is necessary and appropriate to implement CFPA section 1033(a) and (d). Standardized structures and definitions of covered data and requirements and protocols for communicating requests and responses will help ensure covered data are readily made available in a usable electronic form to a wide array of authorized third parties. This facilitation of interoperability also implements the mandate of CFPA section 1033(d) that the CFPB by rule promote standardized formats for information, including through the use of machine-readable files. Without standard protocols for communicating requests and responses, data providers would forfeit the economies of scale they can achieve by making covered data available in common ways through their service providers, such as core processors, and authorized third parties would incur costs to build custom integrations to access covered data from various data providers. These costs would undermine the benefits of requiring data providers to make available covered data in the first place. Accordingly, the § 1033.311(b) requirement to use standard protocols for communicating requests and responses for covered data is necessary and appropriate to promote the development and use of standardized formats for covered data.

The CFPB proposed that a developer interface would be deemed to satisfy the standardized format requirement if it made covered data available in a format widely used by other data providers and readily usable by authorized third parties. The CFPB believes that those attributes of a format—that it is widely used by other data providers and designed to be readily usable by authorized third parties—go directly to what it means for a format to be ''standardized'' and best effectuate the statute's objectives of promoting interoperability of systems to process covered data and ensuring data providers make available covered data in a usable electronic form upon request. Accordingly, the final rule adopts those attributes as components of the definition of standardized in § 1033.311(b)(2). The CFPB emphasizes that, under the definition of standardized in § 1033.311(b)(2), wide use by other data providers of a format is necessary but not sufficient for the format to qualify as standardized. For the format to qualify as standardized, the format must also be one that is designed to be readily usable by authorized third parties. This two-pronged approach—widely used by data providers and readily usable by authorized third parties—is necessary and appropriate to ensure that third parties, including in particular new-entrant and small third parties, can process covered data from a wide range of data providers across the market.

Final § 1033.311(b) makes several changes from the text of proposed § 1033.311(b)(2) to address concerns from commenters that the proposed regulatory text could have resulted in fragmentation of data formats, and for additional clarity. The proposed provision would have deemed a format standardized in the absence of a qualified industry standard if the format is widely used by the ''developer interfaces of similarly situated data providers with respect to similar data'' and is readily usable by authorized third parties. The final rule replaces the phrase ''similarly situated data providers,'' with ''other data providers.'' This is intended to further promote the development and use of standardized data, whereas the proposed approach could have resulted in fragmentation of format standards. The final rule also omits the phrase ''with respect to similar data'' as superfluous because both the proposed and final regulatory text apply the standardized format requirement to ''covered data.'' In addition, the phrase ''with respect to similar data'' contained in the proposed text might have inadvertently resulted in fragmentation of data formats. The final rule also omits the phrase ''developer interface'' as superfluous, with no change in meaning intended.

The CFPB proposed that a data provider would be deemed to satisfy the standardized format requirement if it makes covered data available in a format set forth in a qualified industry standard. In contrast, under the final rule, indicia that the standardized format requirement is satisfied include that it makes covered data available in a format set forth in a consensus standard. The CFPB is making this change—from safe harbor of compliance

[67] If it is necessary for a data provider to make available a PDF file for the purpose of complying with § 1033.311(b), the PDF file should be machine-readable. While this may be possible for some PDF files, other PDF files, such as those that include covered data as images, would generally not be considered machine-readable. Section 1033.221(d), which restates the statutory exception for any information that the data provider cannot retrieve in the ordinary course of its business with respect to that information, might apply in limited circumstances when historical terms and conditions are stored as image files, as discussed in part IV.B.4 above. However, the CFPB does not expect current terms and conditions to be subject to any such exception given applicable legal requirements, as discussed with respect to § 1033.221(d) above.

to indicia of compliance—because, as described above, the CFPB is defining format (which the proposal did not) to include communications protocols and requirements, as opposed to only data structures and definitions. As noted, all commenters who addressed this issue—including data providers, third parties, and consumer advocates—supported defining format and defining it in this broader way. Nonetheless, in light of this broader definition, the CFPB believes that it is possible or even likely that a given consensus standard will address only certain aspects of format as defined. As a result, a data provider may reasonably seek to incorporate more than one consensus standard into its developer interface's systems and processes. For example, at a high level, the data provider might incorporate one standard for data structures and another for communication protocols. In addition, a given standard might have components within it that are not geared toward interoperability and therefore do not warrant safe harbor status. Accordingly, the CFPB has determined that it is more appropriate for conformance to a consensus standard to serve as indicia that the data provider's developer interface meets the standardized format requirement, rather than to serve as a safe harbor.

The change from the proposal's safe harbor approach to the final rule's indicia approach to consensus standards within § 1033.311(b) does not change the CFPB's determination that the objective of both CFPA section 1033(d) and the standardized format requirement in § 1033.311(b) is interoperability, *i.e.,* is to ensure that (1) a data provider's developer interface can expect and use a standardized data structure and communication protocol for receiving requests from and making covered data available to all third parties that request covered data through the interface[68] and (2) a third party can use and expect a standardized data structure and communication protocol for submitting requests to and receiving covered data from all data providers' developer interfaces. The CFPB does not anticipate taking action against data providers' and third parties' approach to achieving interoperability, so long as entities comply with the standardized format requirement of § 1033.311(b).

Incorporating ''widely used'' into the meaning of ''standardized'' and shifting to an approach in which a consensus standard serves as indicia of compliance (rather than a safe harbor) also addresses commenters' concerns that data providers might have responded to the rule as proposed by ''waiting'' to build their developer interfaces until a consensus standard format was adopted. Of course, the lengthening of compliance periods in the final rule provides more assurance that consensus standards will be available before compliance begins. But in any event a data provider will have certainty that its developer interface format complies with the requirement to be standardized, so long as the format is widely used by other data providers and designed to be readily usable by authorized third parties. In the event that an applicable consensus standard becomes available after the relevant compliance date, data providers can be assured of their continued compliance. They will not need to effectuate some instantaneous ''redo'' of the developer interface to match the consensus standard format, but, as appropriate, can simply take steps to transition to the consensus standard format in an orderly fashion.

Commercially Reasonable Performance (§ 1033.311(c))

The CFPB proposed in § 1033.311(c)(1) to require that performance of the interface must be commercially reasonable. All commenters who addressed the proposed requirement supported it. The CFPB has determined that the commercially reasonable performance requirement for the developer interface carries out CFPA section 1033(a) by establishing how a data provider satisfies the requirement in CFPA section 1033(a) that the data provider make covered data available in an electronic form usable by authorized third parties. The CFPB adopts the requirement, renumbered as § 1033.311(c), with technical non-substantive edits.

Response Rate; Quantitative Minimum Performance Specification (§ 1033.311(c)(1))

Proposal

The CFPB proposed in § 1033.311(c)(1)(i) a quantitative minimum performance specification for a data provider's developer interface beneath which the performance of the interface could not be commercially reasonable. Specifically, the proposed quantitative minimum performance specification was a response rate of at least 99.5 percent. The CFPB proposed to calculate the response rate as the number of proper responses by the interface divided by the total number of queries for covered data to the interface. For clarity and consistency with other provisions in part 1033, final § 1033.311(c)(1) uses ''request'' in lieu of ''query.'' The CFPB neither intends nor effectuates any change to the substance of the provision as a result.

The CFPB proposed in § 1033.311(c)(1)(i)(D) to define a proper response as a response, other than any message such as an error message provided during unscheduled downtime of the interface, that meets the following three criteria: (1) the response either fulfills the query or explains why the query was not fulfilled; (2) the response is consistent with the reasonable written policies and procedures the data provider establishes and maintains pursuant to § 1033.351(a); and (3) the response is provided by the interface within a commercially reasonable amount of time. The CFPB proposed that the amount of time cannot be commercially reasonable if it is more than 3,500 milliseconds.

The CFPB proposed in § 1033.311(c)(1)(i)(A) that responses by and queries to the interface during scheduled downtime for the interface must be excluded from the calculation of the proper response rate. The CFPB also proposed in § 1033.311(c)(1)(i)(C) that the total amount of scheduled downtime for the interface in the relevant time period, such as a month, must be reasonable and in § 1033.311(c)(1)(i)(B) that in order for any downtime of the interface to qualify as scheduled downtime, the data provider must have provided reasonable notice of the downtime to all third parties to which the data provider has granted access to the interface. Finally, the CFPB proposed for both § 1033.311(c)(1)(i)(B) and (C), that adherence to a consensus standard would be an indication that the amount and notice of downtime were reasonable.

Comments

Both third party and data provider commenters expressed certain concerns about the CFPB's proposed quantitative minimum requirements. Third party commenters generally supported the adoption of minimum quantitative performance requirements, but they saw the proposed rule as not including a broad enough set of such requirements. Those requirements it did include they described as too lax because they were below the performance levels actually being achieved in the market under third parties' extant data access agreements with data providers. They

[68] Consistent with § 1033.311(b), data providers may reasonably require authorized third parties to use standardized and machine-readable formats when submitting requests for covered data.

argued that the rule as proposed could unintentionally cause a race to the bottom in performance levels. More specifically, they argued that the proposed 3,500 millisecond response time was too slow and too vague. They suggested a better requirement would take the form ''less than x milliseconds at least x percent of the time'' and should be stricter for certain data request types, such as for authorization or account balance. Third parties also wanted quantified maximum scheduled downtimes and minimum advance notice of such downtimes.

Data provider commenters opposed the CFPB's adoption of minimum quantitative performance requirements. While not addressing current actual interface performance under their extant data access agreements, they asserted that the proposed 99.5 percent response rate would be too onerous and would impose costs without commensurate consumer benefit, particularly with respect to smaller providers that have fewer consumer account holders and that today do not have any developer interfaces. They also asserted that the proposed provisions underlying the response rate—such as downtimes, notices thereof, and 3,500 millisecond response times—were unclear and that the CFPB did not provide a sufficient factual justification for them. They argued, for example, that the CFPB needed to provide more specificity on how to measure an interface's response time (*e.g.,* when and how to calculate the beginning and end of the response period) and on whether and how the timeframe would apply to requests for large amounts of data where transmission might take longer than the proposed 3,500 milliseconds. They argued that to the extent the CFPB purported to justify the measurements it proposed by pointing to other jurisdictions, those other jurisdictions have different factual situations and are not properly comparable for these purposes. In addition, they argued that consensus standards should have no role in interface performance requirements because standards' role has traditionally been achieving interoperability, whereas the performance requirements do not pertain to interoperability. One argued that the CFPB is effectively promoting particular technologies, in contravention of CFPA section 1033(e), by requiring specific performance standards for the developer interface. Finally, they argued that the CFPA does not provide authority to adopt the proposed quantitative specifications.

Final Rule

For the reasons discussed herein, the CFPB is finalizing the quantitative minimum performance specification in proposed § 1033.311(c)(1)(i), renumbered as § 1033.311(c)(1), with certain modifications. First, the final rule does not include a numeric threshold for the time within which the interface must provide a response in order for the time to be commercially reasonable. Instead, the final rule (in § 1033.311(c)(1)(iv)(C)) requires that a proper response be provided within a commercially reasonable amount of time and that indicia that the response time is commercially reasonable include conformance to an applicable consensus standard. The CFPB adopts this approach in the final rule because the proposed 3,500 millisecond response time may not adequately take into account the variety of types and sizes of requests for covered data that data providers' developer interfaces will receive. In addition, final § 1033.311(c)(1) requires that the response rate be equal to or greater than 99.5 percent ''in each calendar month,'' as opposed to the proposed ''relevant time period, such as a month.'' The CFPB makes this change for two reasons: first, to prevent a data provider from calculating its developer interface's response rate over some other time period, or varying the time period, to make appear better its interface's response rate; and second, to align the calculation time period with the calendar month disclosure time period in § 1033.341(d).

Information available to the CFPB indicates that the performance of data providers' developer interfaces is neither uniform nor always on par with what one would reasonably expect given the state of technology. Specifically, the state of technology enables consumer interfaces to operate at consistently high availability, performance, and data freshness levels, which many data providers' developer interfaces do not meet. With respect to uniformity, data from the Provider Collection indicates that providers report widely varying uptime and response time or latency measurements. This non-uniformity persists both across similarly situated providers and across the various consumer or developer interfaces a data provider may make available. *See* 88 FR 74796, 74815–16 (Oct. 31, 2023). Accordingly, the performance of data providers' developer interfaces needs both to improve and to become more consistent and predictable from where that performance is today.

The quantitative minimum 99.5 percent response rate requirement in final § 1033.311(c)(1) reflects the CFPB's determination that developer interface performance beneath that level cannot constitute commercially reasonable performance. The requirement ensures that data providers' developer interfaces perform at a sufficiently consistent and predictable level. The requirement implements CFPA section 1033(a), which requires data providers to make covered data available in an electronic form usable by authorized third parties, and ensures consistent availability of covered data, while contemplating that limited, unscheduled downtimes may occur.

The CFPB has determined that the quantitative minimum 99.5 percent response rate is not too onerous. The minimum is in line with the results reported to the CFPB through the Provider Collection. *See* 88 FR 74796, 74816 (Oct. 31, 2023). Further, based on public comments from third parties and results reported to the CFPB through the Provider Collection and the Aggregator Collection, the minimum is below levels being achieved by larger data providers' developer interfaces today pursuant to their data access agreements with third parties. That is significant evidence that where a given data provider today has a developer interface in place, it will be reasonably feasible for the data provider's interface to continue to meet the quantitative minimum performance requirement established by § 1033.311(c)(1). It is possible over time that part 1033 going into effect will itself lead to an increased volume of data requests to larger data providers' extant developer interfaces. Nonetheless, in the CFPB's assessment, it is reasonably feasible for data providers to invest in and maintain their developer interfaces in a manner such that the increased volume does not degrade the interfaces' performance from their current levels, which, as noted, are above the quantitative minimum established in § 1033.311(c)(1). The CFPB's establishment of the 99.5 percent minimum response rate is based on the rulemaking record before it and does not rely on required performance levels in other jurisdictions. As the record demonstrates, the CFPB did consider other jurisdictions' requirements and factual situations. However, the U.S. data sharing market is differentiable from other jurisdictions (for example, the U.S. has more depository institutions than is typical in other jurisdictions) and the CFPB's legal authorities are of course specific to U.S.

law. The CFPB's determination that interface performance beneath the 99.5 percent minimum cannot be commercially reasonable appropriately reflects the rulemaking record, the U.S. data sharing market, and the CFPB's authority.

The 99.5 percent response rate minimum is below levels commonly achieved by data providers' consumer interfaces today, even for consumer interfaces maintained by data providers with no developer interface. As the CFPB noted in the proposed rule, data providers through their consumer interfaces commonly make available an amount and variety of data broader than the set of covered data that is subject to part 1033. *See* 88 FR 74796, 74816 (Oct. 31, 2023). These facts indicate that where a given data provider today has a consumer interface but does not have a developer interface, it will be reasonable for the data provider to implement a developer interface that meets the minimum performance level required by § 1033.311(c)(1). Moreover, the minimum will not apply to small depository institution data providers, because the final rule does not cover such depositories. All depository institutions subject to the final rule appear to maintain a consumer interface already and can reasonably implement a developer interface that meets the final rule's minimum performance requirements. In that regard, the final rule makes explicit that a data provider may be able to satisfy its developer interface obligation, including the 99.5 percent response rate requirement, through contract with its service provider under which the service provider screen scrapes covered data from the data provider's consumer interface and makes the covered data available to authorized third parties through a developer interface that the service provider maintains on behalf of the data provider. This type of approach can meaningfully reduce the burden of performance requirements—including the quantitative minimum—through economies of scale achieved by service providers.

The proper response definition in final § 1033.311(c)(1)(iv) underlies the required 99.5 percent response rate. The CFPB proposed (in § 1033.311(c)(1)(i)(D)) a proper response definition that excluded ''any message such as an error message provided during unscheduled downtime of the interface.'' The final rule (in § 1033.311(c)(1)(iv)) excludes from the proper response definition ''any message provided during unscheduled downtime of the interface.'' The CFPB neither intends nor effectuates any change to the substance of the proposed provision by omitting the clause ''such as an error message.'' Under the final rule, as under the proposal, the proper response definition excludes any message provided during unscheduled downtime of the interface.

The proper response definition does not require in every case that covered data be returned. For example, assume a data provider has in place reasonable access caps, which comply with § 1033.311(d), limiting the frequency with which the data provider receives and responds to requests for covered data from an authorized third party through its developer interface. Assume also the data provider has in place reasonable written policies and procedures, which comply with § 1033.351(a), setting forth and describing such frequency restrictions and setting forth and describing the explanations the data provider's interface may provide for why a request to the interface was not fulfilled. Further, assume that the interface receives a request in excess of the documented reasonable frequency restrictions. Finally, assume that the interface provides a response to that request that (1) explains why the request was not fulfilled (in accord with § 1033.311(c)(1)(iv)(A)), (2) is consistent with the reasonable § 1033.351(a) policies and procedures (in accord with § 1033.311(c)(1)(iv)(B)), and (3) is provided within a commercially reasonable amount of time (in accord with § 1033.311(c)(1)(iv)(C)). That response is a proper response under § 1033.311(c)(1)(iv) and counts favorably toward the 99.5 percent response rate set forth in § 1033.311(c)(1).

The CFPB has determined that the quantitative minimum 99.5 percent response rate in § 1033.311(c)(1) is sufficiently robust and will not result in a race to the bottom. Many smaller data providers that today do not have a developer interface will be required by the final rule to establish one. Section 1033.311(c)(1) establishes a necessary and appropriate floor for developer interface performance in these circumstances, beneath which interface performance cannot be commercially reasonable. At the same time, and particularly with respect to larger data providers, the CFPB emphasizes that the quantitative minimum is not a safe harbor. That is, it does not follow from a data provider's developer interface having met the quantitative minimum that the interface has satisfied the requirement of commercially reasonable performance established in § 1033.311(c). In addition to the quantitative minimum, § 1033.311(c)(2), discussed below, establishes indicia of what constitutes commercially reasonable performance. Those indicia include comparisons of a data provider's developer interface performance to consensus standards; to the developer interface performance of other similarly situated data providers, such as other larger data providers when the data provider is a larger data provider; and, to the performance of the data provider's consumer interface. These comparisons could indicate that a data provider's developer interface performance, and particularly a larger data provider's developer interface performance, is not commercially reasonable even if the performance meets the quantitative minimum. In other words, consideration of the indicia in § 1033.311(c)(2) could result in a determination, by an examiner for example, that a data provider's interface has not complied with the commercially reasonable performance requirement established in § 1033.311(c) notwithstanding that the interface met the quantitative minimum in § 1033.311(c)(1).

CFPA section 1021(b) states that the CFPA's objectives include, among other things, authorizing the CFPB to exercise its authorities under Federal consumer financial law, which includes CFPA section 1033, to ensure that consumers, defined in CFPA section 1002(4) to include consumers' authorized third party representatives, are provided with timely and understandable information. In addition, the title of CFPA section 1033 indicates that its objective is to establish a consumer right to access information. The requirements of § 1033.311(c)(1) carry out these CFPA objectives by ensuring data providers respond to consumers' authorized third party representatives upon request in a manner that is commercially reasonable and that enables the representatives to access covered data in a usable electronic form. The requirements are consistent with the objective stated in CFPA section 1033(e) of not requiring or promoting a particular technology; a data provider may use any technology or technologies it wishes so long as its systems perform at the required level. Further, the rulemaking record described in part II.A establishes that data providers' competitive incentives do not align with those of authorized third parties. In light of those differing incentives, the quantitative minimum performance requirement in § 1033.311(c)(1) is necessary and appropriate to ensure covered persons do not avoid the requirement to make

covered data available to authorized third parties through their developer interfaces. Beneath that minimum, performance levels would not be sufficient to enable effective realization of the CFPA's goals.

Indicia of Compliance (§ 1033.311(c)(2))

Proposal

The CFPB proposed in § 1033.311(c)(1)(ii) two indicia of whether performance of the interface is commercially reasonable. The first was whether performance meets the applicable performance specifications set forth in a qualified industry standard. The second was whether the interface's performance meets the applicable performance specifications achieved by the developer interfaces established and maintained by similarly situated data providers. As with the quantitative minimum discussed above, the CFPB proposed these indicia pursuant to its preliminary determination that the performance of data providers' developer interfaces should improve over time and become more consistent and predictable. The CFPB requested comment on whether additional indicia would be appropriate and, if so, what they should be. The CFPB also requested comment on whether the final rule, instead of referring broadly to ''applicable performance specifications,'' should name and describe certain specifications, such as the latency and uptime.

Comments

Data provider commenters opposed the indicia. They stated that the requirement of commercially reasonable performance is sufficient and appropriate in and of itself. They further argued that qualified industry standards should not serve as indicia of commercially reasonable performance because the general purpose of standards has traditionally been interoperability and the level of developer interface performance does not relate to interoperability. If qualified industry standards *were* to serve for measuring commercially reasonable performance, however, many data providers thought they should serve as a safe harbor to give providers greater compliance certainty. They also argued that the performance of similarly situated providers' interfaces should not be among the indicia, because that would result in an ever-spiraling-upward level of required performance. Moreover, they argued that under the CFPB's proposed rule they would have no way to ascertain the performance levels of similarly situated data providers' developer interfaces because there would be no public source for that information.

Third party commenters supported the indicia. They argued that the indicia should reflect all metrics incorporated in the quantitative minimum specification in proposed § 1033.311(c)(1)(i) (discussed above), such as response rate, response time, total downtime, total scheduled downtime, and notice of downtime. They also argued that the indicia of whether the interface meets the performance level of the interfaces of other providers should be supported by a regulatory disclosure mechanism for publicly reporting all of the metrics. This disclosure requirement is discussed under § 1033.341(d) below.

Final Rule

For the reasons discussed herein, the CFPB is finalizing § 1033.311(c)(1)(ii), renumbered as § 1033.311(c)(2), with modifications. Final § 1033.311(c)(2)(i) adds a third indicia: comparison to the performance of the data provider's consumer interface. As a result, under final § 1033.311(c)(2)(i), indicia that a developer interface's performance is commercially reasonable as required by § 1033.311(c) include (1) whether the interface's performance conforms to a consensus standard that is applicable to the data provider; (2) how the interface's performance compares to the performance levels achieved by the developer interfaces of similarly situated data providers; and (3) how the interface's performance compares to the performance levels achieved by the data provider's consumer interface.

The CFPB proposed in § 1033.311(c)(1)(ii) that these indicia would be based on ''applicable performance specifications.'' In lieu of the general reference to applicable performance specifications, final § 1033.311(c)(2)(ii) states that, for each of the above three indicia, relevant performance specifications include: (1) the interface's response rate as defined in § 1033.311(c)(1) through (c)(1)(iv) (discussed above); (2) the interface's total amount of scheduled downtime; (3) the amount of time in advance of any scheduled downtime by which notice of the downtime is provided; (4) the interface's total amount of unscheduled downtime; and (5) the interface's response time.[69]

The CFPB has determined that the specificity of final § 1033.311(c)(2), relative to the proposed rule, gives sufficient clarity to data providers for how commercial reasonability of developer interface performance will be assessed. So long as developer interfaces meet the quantitative minimum performance requirement in § 1033.311(c)(1), it is necessary and appropriate for commercial reasonability to be assessed against indicia that can take account of changing technological advancements and other factors that may bear on reasonableness in this context. By the same token, removing these indicia references altogether would result in an insufficiently robust and overly vague requirement.

It is appropriate for a consensus standard applicable to the data provider to serve as one of the three indicia of whether the performance of the data provider's developer interface is commercially reasonable. Standards bodies and the participants therein have expertise relevant to open banking issues, including but not limited to developer interface performance. The CFPB fully expects there will be give and take across industry participants in developing consensus standards for commercially reasonable developer interface performance. Consensus standards will serve as indicia, as relevant indicators, thereof, but will not be determinative. The CFPB believes it is appropriate for consensus standards to play this role.

It is also appropriate for the developer interface performance of similarly situated data providers to serve as the second of the three indicia. The CFPB believes that comparing interface performance to the interfaces of other providers will not result in too onerous (or unstable) a standard. Such performance is among other indicia, and does not create a requirement to be better than peer performance. But to the extent that performance lies outside that norm, that can fairly serve as indicia that performance may lack commercial reasonableness. Black's Law Dictionary defines ''commercially reasonable'' as ''conducted in good faith and in accordance with commonly accepted commercial practice.'' [70] Article 4A of the Uniform Commercial Code states that the commercial reasonableness of a security procedure is to be determined by considering, among other things, ''security procedures in general use by

[69] Section 1033.341(d) (discussed below) requires data providers to disclose each calendar month the response rates of their developer interfaces; nothing in part 1033 precludes data providers from reviewing such data to help them assess the commercial reasonableness of their own performance.

[70] *Commercially reasonable,* Black's Law Dictionary (12th ed. 2024).

customers and receiving banks similarly situated.'' UCC 4A–202(c).

The performance of the data provider's consumer interface also serves appropriately as indicia of compliance. Data providers' consumer interfaces today generally achieve a level of performance that is on a par with the standards of commercial reasonability set forth in § 1033.311(c). In light of the functionality of consumer interfaces, their performance indicates that it is reasonable to expect developer interfaces to perform at similar levels. In addition, as the performance of consumer interfaces improves over time due to ongoing technological advancements, that improvement and those advancements will also indicate that it is reasonable for the performance of providers' developer interfaces to improve similarly. With these indicia, competitive pressure on consumer interface performance can also help ensure that data providers appropriately maintain the performance of developer interfaces, and do not allow that to revert to some mean below the level of commercially reasonable performance.

Access Caps (§ 1033.311(d))

The CFPB proposed in § 1033.311(c)(2) to prohibit a data provider from unreasonably restricting the frequency with which it receives and responds to requests for covered data from an authorized third party through its developer interface. In other words, the CFPB proposed to permit a data provider to employ reasonable ''access caps.'' The CFPB preliminarily determined that this would appropriately effectuate data access rights by permitting the data provider to prevent an authorized third party from unduly burdening the data provider's interface and thereby negatively impacting its ability to respond to requests from other authorized third parties. At the same time, by prohibiting *un*reasonable caps, the proposed rule would have prevented the data provider from unduly impeding the data access of that authorized third party. The CFPB also proposed that access caps must be applied in a non-discriminatory manner and consistent with the reasonable written policies and procedures that the data provider establishes and maintains pursuant to § 1033.351(a). Finally, the CFPB proposed that indicia that access caps are reasonable include that they adhere to a qualified industry standard. The CFPB requested comment on whether the final rule should differentiate between ''consumer present'' data requests, where the consumer is online with the third party at the time of the request, versus other requests, where the third party is refreshing the consumer's data without the consumer being online at that time.

Many commenters addressed the proposed treatment of access caps. Third party commenters generally opposed it as insufficient to prevent data providers from using such caps for pretextual reasons. They argued that a consumer is the one requesting data through an authorized third party and that applying an access cap thereby harms the consumer. In their view, the final rule should prohibit access caps by default and require data providers to demonstrate the reasonableness of any departure from that default.

Data provider commenters generally supported the CFPB's proposal. One association representing small depository institutions argued that the CFPB should finalize the provision as proposed. Some argued, however, that data providers should have greater or total discretion to impose access caps. One questioned the CFPB's authority to impose any limit on such caps, asserting that automated batch requests from third parties do not count as consumer ''requests'' under CFPA section 1033(a). A few argued that qualified industry standards should have no bearing on the reasonability of an access cap, because standards to date have not played such a role.

Some third party and some data provider commenters stated that it would be appropriate for the CFPB's rule to distinguish between consumer-present requests versus other requests. These commenters stated that it would generally not be reasonable for a data provider to impose any cap on consumer-present data requests, whereas it would, or at least could, be reasonable in some circumstances for a data provider to impose such limits on other requests. Some also noted that third parties can and do address restrictions on consumer-not-present requests by, for example, submitting requests at off-peak times.

For the reasons discussed herein, the CFPB is finalizing § 1033.311(c)(2), renumbered as § 1033.311(d), as proposed, but with technical non-substantive edits for additional clarity. Reasonable access caps help ensure that requests from one authorized third party do not unduly burden the data provider's developer interface and thereby impede its ability to respond to requests from other authorized third parties. Barring unreasonable caps remains necessary to help ensure that caps do not unduly impede an authorized third party's data access.

Under the final rule, indicia of reasonableness include adherence to a consensus standard on point. The CFPB believes that this provision will appropriately incentivize industry participants—data providers and third parties, including data aggregators—to work together towards workable standards that can take account of evolving data access technology and thereby provide a useful and enduring compliance resource. At the same time, such standards do not unduly restrict data providers because they do not represent regulatory requirements.

On the basis of its own expertise and feedback from commenters of all types that access caps on consumer-present data requests would be detrimental to consumers and to the financial products and services that consumers are using or seek to use, the CFPB observes that access caps on consumer-present data requests generally will be unreasonable and that reasonable access caps will be confined to other requests such as ''batch'' requests—although that confinement is not enough, alone, to make them reasonable.[71] Consumer presence indicates that the failure to provide a response promptly would have an immediate harmful effect on the consumer, especially if a consumer were enrolling in a new product or service for the first time, such that access caps would be unreasonable for this type of request, at least in the absence of some exceptional justification specific to the facts at hand. Industry participants continue to work to ensure interface availability for consumer-present requests by implementing adjustments on consumer-not-present requests. Accordingly, permitting reasonable access caps, with consensus standards being indicia thereof, will encourage continued industry progress toward appropriate differentiation between consumer-present and consumer-not-present requests.

Security Specifications (§ 1033.311(e))

Access Credentials (§ 1033.311(e)(1))

The CFPB proposed in § 1033.311(d)(1) to prohibit a data provider from allowing third parties to access its developer interface by using any credentials that a consumer uses to access the consumer interface. The

[71] Contrary to some commenter assertions, the CFPB has the statutory authority to address access caps imposed on consumer-not-present requests, such as batch requests. The CFPA defines ''consumer'' to include consumers' representatives, such as authorized third parties. That a data request comes from an authorized third party, as opposed to from an individual consumer, accordingly has no bearing on whether the submission qualifies as a ''request'' as that term is used in CFPA section 1033. Similarly, that section does not differentiate between batched and non-batched consumer requests for data.

proposal explained that the possession and use of consumer credentials by third parties, such as through credential-based screen scraping, raises significant security, privacy, and accuracy risks to consumers and to the market for consumer-authorized data access. For example, consumers whose credentials are exposed in a third party data breach might suffer invasions of privacy or financial harms. The proposal covered funds-storing and payment accounts, so stolen credentials could enable bad actors to cause unauthorized transactions or fraudulent use of consumers' personal financial data. The proposal also explained that credential-based screen scraping posed challenges to risk-management, including the difficulty of distinguishing legitimate from illegitimate access attempts.

The CFPB requested feedback on two specific issues. First, the CFPB asked about arrangements in which a third party procures the consumer's authority to access data, then ''passes'' the consumer directly to the data provider, which then authenticates the consumer using the consumer's digital banking credentials, before ultimately providing the third party with a secure access token. Second, the CFPB asked about situations in which a third party acts as both a third party and a service provider that develops and maintains a developer interface on behalf of a data provider.

Although the proposal would have prevented data providers from using credential-based screen scraping to comply with their developer interface requirements, the proposal did not explicitly state whether data providers could block screen scraping. The proposal noted that during the rule's implementation period, and for data accessed outside its coverage, the CFPB plans to monitor the market to evaluate whether data providers are blocking screen scraping without a bona fide and particularized risk management concern or without making a more secure and structured method of data access available.

The CFPB received several comments on proposed § 1033.311(d)(1). Numerous commenters compared APIs to screen scraping in discussing proposed § 1033.311(d)(1). These commenters were nearly unanimous in stating that APIs have advantages over screen scraping in accuracy, consumer privacy, and data security. For example, a trade association commenter stated that APIs are created to limit access to specifically authorized consumer data, which prevents third parties from accessing unnecessary consumer data. Other commenters stated that high-volume screen scraping can impact the availability of financial institution consumer-facing websites. However, a few credit union commenters stated that APIs introduced security risks that could allow bad actors to compromise consumers' accounts. And a community bank trade association commenter said that discouraging screen scraping in favor of developer interface requirements could violate CFPA section 1033(e)'s provision regarding ''require[ing] or promot[ing] the use of any particular technology in order to develop systems for compliance.''

A data aggregator commenter asked for confirmation that consumer credentials may be used in access portals that redirect consumers to enter credentials on the data provider's website. Another data aggregator commenter asked the CFPB to allow arrangements in which third parties provide information sufficient for the data provider to authenticate the consumer rather than having data providers directly authenticate the consumer themselves. Another data aggregator commenter said that existing data access agreements that allow for credential-based access should be permitted while data providers establish their developer interfaces. A group of industry commenters and an academic institution requested clarity on whether existing data access connections would need to be re-established.

Several data providers and data provider trade association commenters asked the CFPB to authorize data providers to block screen scraping. One commenter stated that data providers should be required to take reasonable steps to prevent screen scraping once they have established developer interfaces. These commenters echoed many of the security, privacy, and accuracy risks of screen scraping discussed in the proposal. A few of these commenters asked whether data providers were obligated to permit screen scraping if their developer interfaces failed to meet the final rule's performance standards. One data provider commenter asked how data providers should treat screen scraping of non-covered data.

The CFPB is renumbering proposed § 1033.311(d)(1) as § 1033.311(e)(1) and finalizing the substance of the provision largely as proposed for the reasons discussed herein, with additional clarity regarding service providers. Final § 1033.311(e)(1) provides that a data provider must not allow a third party to access the data provider's developer interface by using any credentials that a consumer uses to access the consumer interface. Final § 1033.311(e)(1) also provides that a contract between a data provider and the data provider's service provider, pursuant to which the service provider establishes or maintains the data provider's developer interface, does not violate § 1033.311(e)(1) if the contract provides that the service provider will make covered data available, in a form and manner that satisfies the requirements of part 1033, to authorized third parties through the developer interface by means of the service provider using a consumer's credentials to access the data from the data provider's consumer interface.

As discussed in the proposal, credential-based screen scraping creates risks to consumer privacy, accuracy, and data security, and poses challenges to data providers' systems. A core objective of the final rule is to transition the market away from using screen scraping to access covered data. Final § 1033.311(e)(1) supports this goal by preventing data providers from relying on a third party's use of consumer credentials to access the developer interface.

The CFPB disagrees with the suggestion that final § 1033.311(e)(1) risks inappropriately promoting any particular technology. Final § 1033.311(e)(1) sets forth a requirement regarding the use of consumer credentials to access the developer interface, but it allows data providers to use any technology in designing their developer interfaces.

Entities that act as service providers to data providers may, on behalf of those data providers, develop, deploy, and maintain developer interfaces whose technical specifications and requirements entail those service providers retaining and using consumers' credentials. Final § 1033.311(e)(1) does not restrict a data provider from allowing its own service provider that develops, deploys, or maintains the data provider's developer interface to use or possess consumer credentials to facilitate the provision of covered data to a consumer, even if the data provider's service provider also operates as an authorized third party. The final rule clarifies this point by stating in § 1033.311(e)(1) that a contract between a data provider and the data provider's service provider, pursuant to which the service provider maintains the data provider's developer interface, does not violate § 1033.311(e)(1) if the contract provides that the service provider will make covered data available, in a form and manner that satisfies the requirements of part 1033, to authorized third parties through the developer interface by means of the service provider using a consumer's

credentials to access the data from the data provider's consumer interface.

The central factor in analyzing various arrangements between data provider and third party for providing access through the developer interface is whether the third party uses consumer credentials to access the developer interface. For example, a third party might procure the consumer's authority to access data, then ''pass'' the consumer directly to the data provider, which then authenticates the consumer using the consumer's consumer interface credentials. This arrangement would not violate final § 1033.311(e)(1) because the authorized third party itself never accesses, uses, or retains the consumer's credentials. But if a third party such as a data aggregator sought to access or retain consumer credentials as a service to support access to consumer permissioned data by a variety of additional third parties, such an arrangement would violate final § 1033.311(e)(1) because the third party itself accesses and retains the consumer's credentials.

Nothing in the proposal would have precluded data providers from blocking screen scraping, and nothing in the final rule does so. However, data providers may act improperly if they attempt to block screen scraping across the board without making the requested data available through a more secure alternative. Depending on the facts and circumstances, such interference with the consumer's ability to share their personal financial data may violate the CFPA's prohibition on acts or practices that are unfair, deceptive, or abusive. However, if a data provider has established a developer interface that complies with—or in markets not yet covered by this final rule, conforms to—the requirements of this final rule, then blocking screen scraping may further consumer privacy and data security while ensuring that consumers are able to authorize access to their financial data in a manner that is safe, secure, reliable and promoting of competition. Regarding third parties with prior arrangements that relied on credential-based access, once data providers have enabled the safe, secure, and reliable forms of data access envisioned in this rule, the CFPB cautions that screen scraping attempts by third parties to reach data covered by such arrangements could well be limited by the CFPA's prohibition on unfair, deceptive, or abusive acts or practices. 12 U.S.C. 5531.

Security Program (§ 1033.311(e)(2))

Proposed § 1033.311(d)(2)(i) would have required data providers to apply to their developer interfaces an information security program that satisfies the applicable rules issued pursuant to section 501 of the GLBA, 15 U.S.C. 6801. Under proposed § 1033.311(d)(2)(ii), a data provider that is not subject to section 501 of the GLBA would have been required to apply to its developer interface the information security program required by the FTC's Standards for Safeguarding Customer Information, 16 CFR part 314. The CFPB preliminarily determined that the GLBA Safeguards Framework appropriately addresses data security risks for developer interfaces in the market for consumer-authorized financial data. The CFPB requested comment as to whether a general policies-and-procedures requirement would be more appropriate than the GLBA Safeguards Framework.

In the proposal, the CFPB noted that the GLBA Safeguards Framework generally requires each financial institution to develop, implement, and maintain a comprehensive written information security program that contains safeguards that are appropriate to the institution's size and complexity, the nature and scope of the institutions' activities, and the sensitivity of the customer information at issue. These safeguards must address specific elements set forth in the GLBA Safeguards Framework. The CFPB noted the GLBA Safeguards Framework provides a process for ensuring that such a program is commensurate with the risks faced by the financial institution rather than a rigid list of prescriptions. The proposal noted that this flexible, risk-based approach allows the GLBA Safeguards Framework to adapt to changing technology and emerging data security threats.

Many commenters from different interest groups supported this use of the GLBA Safeguards Framework. One data provider commenter stated that the GLBA Safeguards Framework would ensure consistent data security standards for all ecosystem participants. Additionally, one consumer advocate commenter said the proposed rule would close gaps in data security coverage. On the other hand, some data provider commenters opposed the use of the GLBA Safeguards Framework on the grounds that the data providers are already subject to data security requirements. Additionally, some commenters pointed out that the FTC's Safeguards Rule was not identical to prudential regulators' Safeguards Guidelines and is not subject to FTC supervision. Specifically, commenters were concerned that the FTC lacks supervisory authority and cannot examine institutions under its jurisdiction for compliance with its Safeguards Rule.

For the reasons discussed herein, the CFPB is finalizing § 1033.311(e)(2) as proposed. As such, under § 1033.311(e)(2)(i), a data provider must apply to the developer interface an information security program that satisfies the applicable rules issued pursuant to section 501 of the GLBA, 15 U.S.C. 6801. Alternatively, under § 1033.311(e)(2)(ii), if the data provider is not subject to section 501 of the GLBA, the data provider must apply to its developer interface the information security program required by the FTC's Standards for Safeguarding Customer Information, 16 CFR part 314.

The CFPB has determined that the GLBA Safeguards Framework will best mitigate information security weaknesses within open banking transactions. The flexible nature of the Safeguards approach allows data providers some discretion in how they protect customers from emerging threats to their data. As noted in the proposal, the FTC's Safeguards Rule includes slightly more prescriptive requirements, such as encryption, for certain elements, because the Safeguards Rule must be usable by a financial institution to determine appropriate data security measures without regular interaction with an examiner from a supervising agency.

Additionally, subjecting data providers to the GLBA Safeguards Framework is not a duplicative requirement on data providers. The Safeguards Framework allows information security programs to adapt to risks specific to the developer interface. Without this provision and its specific application to the developer interface, it is not clear consumers would have the same protection over their data across different types of data provider entities. Further, the CFPB needs to be able to adequately supervise data providers for their data security compliance. Private rules such as NACHA data security requirements or Payment Card Industry Data Security Standards require a private entity to determine what conduct complies with the rule without oversight from the CFPB. Conversely, the GLBA Safeguards Framework provides a consistent, yet flexible approach that is not dictated by a private entity.

Section 1033.311(e)(2) implements CFPA section 1033(a) by clarifying how a data provider must make available data upon request to a consumer, including an authorized third party. Establishing a consistent set of data security requirements will help ensure that developer interfaces are only

making data available to consumers and authorized third parties consistent with the scope of a consumer's request and do not present unreasonable risks to the security, confidentiality, and integrity of covered data.

4. Interface Access (§ 1033.321)

The CFPB proposed in § 1033.321 to clarify the circumstances under which a data provider would be permitted to block a consumer's or third party's access to its consumer or developer interface without violating the general obligation of CFPA section 1033(a). The proposal explained that it would be inconsistent with CFPA section 1033(a) for a data provider to make available covered data to persons or entities that present unreasonable risks to the security of the data provider's safety and soundness, information systems, or consumers, or where a data provider could not take steps to ensure they are making available covered data to an actual consumer or authorized third party.

For the reasons discussed herein, the CFPB is finalizing § 1033.321 with several changes designed to clarify the operation of each paragraph, reduce the risk of unjustified denials, and reduce the burden on data providers of assessing third party risks. As discussed in greater detail below, final § 1033.321(a) generally provides that a data provider does not violate the general obligation in § 1033.201(a)(1) by denying a consumer or third party access to all elements of the interface described in § 1033.301(a) if granting access would be inconsistent with policies and procedures reasonably designed to comply with legal requirements described in § 1033.321(a)(1)(i) through (iii), and if the denial is reasonable pursuant to § 1033.321(b). Final § 1033.321(b) describes requirements that a denial must meet to be reasonable. Final § 1033.321(c) lists indicia bearing on the reasonableness of a denial pursuant to § 1033.321(b). And final § 1033.321(d) provides conditions that are each a sufficient basis for denying access to a third party.

Denials Related to Risk Management (§ 1033.321(a))

Proposal

Proposed § 1033.321(a) generally would have provided that a data provider could deny a consumer or third party access to its consumer or developer interface based on risk management concerns. Specifically, the proposal provided that, subject to a reasonableness standard described in proposed § 1033.321(b), a denial is not unreasonable if it is necessary to comply with the section 39 of the Federal Deposit Insurance Act or section 501 of the GLBA.

In proposing to allow data providers to deny access based on risk management concerns, the CFPB recognized that depository institutions have legal obligations to operate in a safe and sound manner, and both depository and nondepository institutions have other information security-related obligations.[72] The prudential regulators have issued supervisory guidance that sets forth risk management principles and other considerations that depository institutions can leverage when developing and implementing risk management practices. For example, in 2023 the prudential regulators issued the Interagency Guidance on Third-Party Relationships: Risk Management.[73] The proposal also recognized that consumers might suffer harm if the final rule did not allow data providers to deny a third party access to the data provider's developer interface where the data provider has legitimate risk management concerns. Indeed, the proposal stated that it would be inconsistent with CFPA section 1033(a) for a data provider to make available covered data to persons or entities that present unreasonable risks to safety and soundness or information security. At the same time, the CFPB expressed concern about risk management being used to frustrate a consumer's right to access data under CFPA section 1033, and about incentives that data providers might have to deny access. Proposed § 1033.321 was intended to accommodate these considerations.

The proposal also sought to illuminate various aspects of proposed § 1033.321's operation. For example, the CFPB generally described denials of access as applicable to third parties or consumers, rather than to specific data fields requested by third parties or consumers. This was because, in the CFPB's view, third parties are in the best position to determine what covered data are reasonably necessary to provide the consumer's requested product or service. *See* 88 FR 74796, 74823 (Oct. 31, 2023). And the CFPB explained that the exceptions under CFPA section 1033, set forth in proposed § 1033.221, generally would not be appropriate for data providers to use to address risk management concerns. *See* 88 FR 74796, 74820 (Oct. 31, 2023).

The CFPB requested comment on additional ways to harmonize the risk management obligations of data providers with CFPA section 1033's data access right for consumers and authorized third parties. The CFPB also requested comment on the extent to which CFPB rules or guidance, or other sources, should address whether a data provider's denial of third party access to a developer interface under § 1033.321(a) would be reasonable with respect to any particular risk management practices.

Comments

The CFPB received numerous comments on this proposed provision. Several commenters, mostly data providers and data provider associations, said the proposal properly incorporates third party risk management principles to third party access. Many data provider commenters asserted that their prudential regulators expect a relatively high degree of vetting of third parties accessing data with consumer authorization. Several data provider commenters, and a research institute commenter, stated that third party risk management obligations applied even to third party relationships not initiated by the data provider.

Although these commenters generally supported allowing data providers to deny access to third parties, most were concerned that the proposed grounds for reasonable denials might be too narrow. For example, several data provider trade association commenters sought clarification that reasonable grounds for denying access would include concerns over fraud, reputational risk, or safety and soundness.

Some of these commenters stated that safety and soundness risks might be raised by the volume of data requested by a third party, by an unmanageable pace in onboarding third parties, or by third parties with insufficient financial resources to reimburse the data provider for unauthorized transfers. Several data providers and trade association commenters said that data providers reasonably should be able to deny access consistent with interagency guidance on third party risk management. Several commenters stated that data providers should be able to

[72] *See, e.g.,* 12 U.S.C. 1831p–1; *Interagency Guidelines Establishing Standards for Safety and Soundness,* 12 CFR part 30, app. A (OCC), 12 CFR part 208, app. D–1 (Bd. of Governors of the Fed. Rsrv. Sys.); and 12 CFR part 364, app. A (FDIC).

[73] 88 FR 37920 (June 9, 2023). *See also* Bd. of Governors of the Fed. Rsrv. Sys., FDIC, OCC, *Third-Party Relationships: A Guide for Community Banks* (May 2024), *https://occ.gov/news-issuances/news-releases/2024/pub-third-party-risk-management-guide-for-community-banks.pdf;* Bd. of Governors of the Fed. Rsrv. Sys, FDIC, OCC, *Conducting Due Diligence on Financial Technology Companies A Guide for Community Banks,* (Aug. 2021), *https://www.occ.gov/news-issuances/news-releases/2021/nr-ia-2021-85a.pdf.*

deny access based on the conduct of the third party, such as its data minimization practices, its compliance with EFTA and Regulation E, the content of its privacy policies, and its ability to manage downstream data recipients. Several commenters asked the CFPB to provide that a third party's refusal to agree to reasonable risk-related contractual terms would justify denying access. A group of data provider trade association commenters asked for guidance related to international third parties, and one trade association commenter stated that communicating denial reasons to a third party on an OFAC sanctions list might require a data provider to violate the law. A trade association commenter asked for general examples of reasonable and unreasonable denials, and a bank commenter asked for clarification that data providers may deny access to data aggregators. A bank commenter stated that the rule should clarify that the obligation on data providers to make covered data available to authorized third parties would apply only for authorized third parties domiciled in the U.S. The commenter stated that third parties that are not domiciled in the U.S. may be subject to different privacy or data protection laws and that sharing data with such entities could undermine consumer protections and complicate risk management and liability.

Many data providers and data provider trade association commenters stated that the proposed rule appeared to contemplate a level of vetting of third parties that is infeasible. These commenters stated that data providers could be overwhelmed by the number of third parties attempting to access consumer data and would lack the resources to vet each third party to the degree required for service providers.

These commenters recommended that the final rule include various changes to reduce the burden of vetting third parties. Several data providers and data provider trade association commenters stated that the rule should provide a safe harbor for data providers who grant access to third parties making representations of their data security practices. Other data provider commenters requested safe harbor from liability for any harm caused by third parties. A few commenters stated that data providers should be allowed to negotiate data access agreements with provisions governing indemnification, insurance, and other risk-related terms. Two commenters stated that data providers should be given a reasonable period of time to vet third parties. Finally, several commenters said that the CFPB should supervise data aggregators and third parties, which would reduce the perceived risk of third parties.

In contrast, other commenters, including many third parties, and a few consumer advocates and research organizations, stated that the proposal improperly suggests that data providers should vet third parties as if they were service providers. Unlike other third party relationships, these commenters said, in the context of consumer-authorized data sharing, a third party is operating as the consumer rather than providing services to the data provider. A data aggregator commenter stated that data providers' interests were often opposed to the interests of third parties, which incentivized denying access.

These commenters requested the final rule include additional changes designed to reduce the risk that data providers deny access on illegitimate grounds or otherwise impair consumer-authorized data access. Specifically, a research institute commenter stated that the rule should accommodate existing data access methods that are similar to the final rule's requirements so that data providers do not block them once the final rule takes effect. A few commenters recommended requiring data providers to use a standardized risk assessment method. One third party commenter stated that denials should be justified by policies and procedures that have been approved by the data provider's prudential regulator. A few of these commenters recommended prohibiting data access agreements between data providers and third parties because, they said, such agreements increase transaction costs and create inconsistent demands on third parties. Some of these commenters recommended changes related to the transparency of denials, such as requiring data providers to disclose information about their denials or the performance of their developer interfaces. Some commenters recommended changes to the process of onboarding, such as requiring data providers to operate in good faith, creating a presumption that delays in granting access of greater than two months violate the final rule, and requiring data providers to grant access once a third party has established a remediation plan for any risk identified by a data provider. Finally, a few commenters said that third parties and consumer advocates should be allowed to formally dispute any denials of access by reporting them to the CFPB.

Many types of commenters, including third parties and data providers, asked the CFPB to coordinate with the prudential regulators on risk management issues. Some of these commenters asked for guidance specific to consumer-authorized data access, while others offered specific suggestions. Several third parties and research institute commenters stated that the CFPB and prudential regulators should clarify that risk management for authorized third parties is limited to data security or that the agencies' third party risk management guidance is inapplicable. A data provider and a trade association commenter stated that the FFIEC should identify an accreditation standard for third party information security. One bank commenter stated that the CFPB should provide guidance on risk management for data providers not subject to prudential regulation. Two commenters recommended that the agencies provide guidance stating that Regulations E and Z sufficiently address liability for any harms resulting from third party data access. Two commenters asked the CFPB and the prudential regulators to develop a process for resolving any potential conflicts between the final rule and prudential standards.

Final Rule

For the reasons discussed herein, the CFPB is finalizing § 1033.321(a) with certain substantive, clarifying, and organizational changes. Final § 1033.321(a) provides that a data provider does not violate the general obligation in § 1033.201(a)(1) by denying a consumer or third party [74] access to all elements of the interface described in § 1033.301(a) if: (1) granting access would be inconsistent with policies and procedures reasonably designed to comply with: (i) safety and soundness standards of a prudential regulator, as defined at 12 U.S.C. 5481(24), of the data provider; (ii) information security standards required by section 501 of the GLBA, 15 U.S.C. 6801; or (iii) other applicable laws and regulations regarding risk management; and (2) the denial is reasonable pursuant to § 1033.321(b).

As discussed in the proposal, the CFPB recognizes that data providers have obligations regarding risk management. For example, depository institutions must operate in a safe and sound manner in compliance with applicable laws and regulations. And depository institutions and other data providers subject to the GLBA must ensure the security of the customer

[74] Regarding comments asking whether a data provider may deny access to a data aggregator, the term ''third party'' is defined in the final rule to include data aggregators.

information that they collect and maintain. A final rule that compels data access regardless of these other legal obligations would create risks to data providers and consumers. But the CFPB also understands that data providers face some competitive incentives to deny access to third parties in ways that could threaten a consumer's right to access their data under CFPA section 1033.

The CFPB has made several changes to clarify the operation of the different elements in § 1033.321(a). First, the CFPB has revised aspects of the general standard proposed in § 1033.321(a). Specifically, the proposed rule referred to denials ''based on risk management concerns'' but did not specify the nature of these concerns or the meaning of denying access ''based on'' these concerns. Commenters also sought clarity about the relationship between the authorities cited in proposed § 1033.321(a) and the section's general term for risk management obligations.

Final § 1033.321(a) has been restructured to clarify that safety and soundness standards and information security standards are two legal requirements that might justify denying access, rather than specify an exhaustive list of grounds for denial. The CFPB has modified the proposed description of safety and soundness by removing the reference to section 39 of the Federal Deposit Insurance Act. This change reflects the fact that safety and soundness standards originate from a broader array of legal authorities and avoids implying that banks and savings associations are the only depository institutions with safety and soundness obligations. The final rule provides these specific examples because the CFPB understands that they are especially relevant to decisions regarding third party access. But final § 1033.321(a)(2)(iii) also provides a catchall provision for other applicable laws and regulations regarding risk management to make clear that obligations regarding risk management may be found in other sources, including those raised by commenters. For example, denials may be justified by a third party's presence on a list released by OFAC, such as the Specially Designated Nationals and Blocked Persons list,[75] or by requirements to prevent money laundering and terrorist financing under the Bank Secrecy Act and the Corporate Transparency Act. *See* 31 U.S.C. 5311, 5336. This catchall provision also ensures that data providers that are not supervised by the prudential regulators are able to deny access when warranted under the rule.

In response to commenters who requested the ability to deny access using guidance issued by the prudential regulators, the CFPB has determined that denials must ultimately be grounded in legal requirements. The final rule implements consumers' data access rights in a binding, enforceable regulation. Failure to ground a denial in another legal obligation could allow non-binding, unenforceable guidance to override the final rule, which would frustrate Congress's purposes in enacting CFPA section 1033. The obligations enumerated in § 1033.321(a)(1)—safety and soundness standards, information security standards, and other laws and regulations regarding risk management—are all binding, enforceable legal requirements. However, the CFPB understands that data providers develop and apply risk management policies and procedures to support their compliance with underlying statutes and regulations, an exercise that may be informed by non-binding guidance, among other sources. To reflect the role of policies and procedures and avoid excessively restricting the sources of information relevant to compliance, final § 1033.321(a)(1) refers to ''policies and procedures reasonably designed to comply with'' legal requirements. The CFPB assesses that these changes answer many of the questions raised by commenters regarding the types of risks covered by § 1033.321(a), whether specific references to authorities are illustrative or exhaustive, and how agency guidance relates to denial decisions.

Final § 1033.321(a)(1) also provides that a denial is justified if granting access would be ''inconsistent'' with policies and procedures ''reasonably designed'' to comply with the enumerated legal requirements. In using the term ''necessary'' in reference to specific statutory obligations, the proposed rule could have been read to apply a strict necessity standard to risk management obligations that a data provider might use to justify a denial. The CFPB has determined that a different approach is more appropriate to the nature of risk management. The CFPB understands that requirements to avoid unsafe or unsound practices and threats to the security of customer information generally are not defined with precision. Instead, they are evaluated based on constantly changing factual circumstances and managed by programs that are flexible enough to consider various factors.

The final rule's approach is intended to account for the flexibility and discretion that data providers exercise in designing and implementing policies and procedures regarding risk management. In the context of consumers' data access rights, the CFPB has determined that it is appropriate for data providers to exercise this discretion by attempting to grant access unless doing so would be inconsistent with reasonably designed policies and procedures. Whether a denial is the result of policies and procedures that are ''reasonably designed'' will depend on the circumstances. If a data provider identifies a risk that might call for denying access to a third party, it must effectively consider how those policies and procedures can tailor any restriction on data access to the risk presented. In analyzing the extent of the risks presented by the third party, the data provider should take into account the fact that a consumer will have authorized the third party to access data, or that certain risks are mitigated by operation of part 1033. Policies and procedures would not be reasonably designed, for instance if they do not account for the protections of subpart D of this rule that address a third party's potential use of consumer-authorized data. In evaluating for whether policies and procedures are reasonably designed, the CFPB will closely evaluate whether the data provider has effectively considered how to avoid burdening the CFPA section 1033 access right while also complying with applicable laws and regulations regarding risk management. Policies and procedures will not be ''reasonably designed'' for purposes of § 1033.321(a)(1) if their design does not take account of whether alternative practices would be comparably effective but less burdensome to the CFPA section 1033 access right.

The final rule also separately enumerates the reasonableness element of a denial from the other requirements justifying the denial. Under final § 1033.321, a denial would have to be justified by at least one of three legal requirements provided in § 1033.321(a)(1) and would have to be reasonable pursuant to § 1033.321(a)(2). The reasonableness element in § 1033.321(a)(2) is elaborated on in § 1033.321(b), which provides requirements for reasonable denials. Final § 1033.321(a) also adds the new phrase ''all elements of'' the interface described in § 1033.301(a). This change better reflects the fact that denials of access under § 1033.321 involve a

[75] Off. of Foreign Asset Control, U.S. Dep't of Treas., *Sanctions List Service, https://ofac.treasury.gov/sanctions-list-service* (last visited Oct. 16, 2024).

denial of access in its entirety. A denial would not be appropriate if it applied only to certain aspects of the developer interface, or only to certain data fields, because it would not affect ''all elements'' of the interface. As stated in the proposal, the CFPB has determined that consumers and third parties are in the best position to know which covered data fields are reasonably necessary to provide a requested product or service. Similarly, a denial would not be reasonable if it were based on the volume of data a third party requested to provide the consumer's requested product or service. Concerns over the volume of data requested are appropriately addressed by final § 1033.311(d), which provides data providers flexibility regarding the frequency with which they receive or respond to requests for covered data, subject to certain limitations.

Final § 1033.321 does not require data providers to vet third parties. Instead, it recognizes that data providers will need to take account of their risk management obligations in this context. Several comments seemed premised on the existence of tension between granting third parties access to data with consumer authorization and managing risk. In general, the CFPB views data providers' risk management practices as fundamentally compatible with CFPA section 1033's data access obligations. Indeed, the final rule is designed to enable data access in a safe and secure manner, which will align the final rule with prudential imperatives. But in cases where a data provider's legal requirements regarding risk management would call for denying access, final § 1033.321 prevents data providers from having to choose between conflicting legal responsibilities.

The CFPB offers several additional points in response to comments regarding situations that might justify a denial. First, denials would be unjustified if they are based solely on a data provider's policies and procedures that override the substantive protections found in the final rule, such as asserting that the authorization procedures and obligations for third parties seeking to access covered data on consumers' behalf are insufficient. See part IV.D below. Depending on the circumstances, such a denial could be the result of policies and procedures that are not reasonably designed under § 1033.321(a)(1), or it could be unreasonable under § 1033.321(a)(2). The final rule provides a means for consumers to effectuate their right under CFPA section 1033 to authorize access to their covered data. And the final rule contains numerous provisions that the CFPB has determined will allow consumers to realize the benefits of data access while ensuring that third parties are acting on behalf of consumers. Denying access because a third party intends to follow the final rule's protections rather than a data provider's alternative protections would infringe on a consumer's data access rights. For example, it would be unreasonable for a data provider to deny access because a third party refuses to comply with a secondary use limitation that forbids the third party from using covered data to improve the product or service the consumer requested, as permitted under final § 1033.421(c). Similarly, it would be unreasonable for a data provider to deny access because a third party's certification statement reflects the fact that it is subject to the GLBA Safeguards Rule rather than the interagency Safeguards Guidelines.

Second, the CFPB intends for final § 1033.321 to give data providers sufficient flexibility to manage the onboarding of third parties. The CFPB understands that data providers may need to onboard third parties in a staggered manner, and that failure to manage this process could incapacitate data providers' systems and the security of consumers' data. Accordingly, denying access to a third party until it can be properly onboarded may be necessary to comply with a data provider's legal obligations regarding risk management. Moreover, as described in part I, most third party access is currently achieved through the use of data aggregators. The CFPB anticipates that this arrangement will continue for the immediate future, which should reduce any implementation burden on data providers associated with the volume of third party requests. Regarding onboarding third parties that are not domiciled in the U.S., final § 1033.321 gives data providers appropriate flexibility to deny access based on risk management obligations.

Regarding data access agreements, the final rule does not prohibit specific contractual arrangements. A blanket prohibition on such agreements would be unjustified because they may be a valid tool for managing risk. But denials based on failure to agree to certain arrangements would need to satisfy the requirements of final § 1033.321. For the same reason, the CFPB declines to create either express regulatory authorization for or prohibition against onboarding arrangements that seek third parties' assumption of particular allocations of liability. Similarly, the CFPB declines to create regulatory authorization for or prohibition against similar terms seeking specific warranties of insurance associated with such allocations. The same principles regarding denials under final § 1033.321 apply to denials in this context as well. If ''required'' onboarding arrangements are impermissible under final § 1033.321, a refusal to enable interface access would be improper. If such arrangements are permissible under final § 1033.321, a refusal to accept them can justify a denial of access.

Given the range of situations involving consumer-authorized data access, these principles do not yield simple one-size-fits-all requirements such as ''all liabilities run with the data'' or ''no liability allocation can be reached in onboarding agreements.'' In response to the range of comments provided, however, the CFPB is providing additional guidance here as to onboarding arrangements that it considers more likely to raise concerns under § 1033.321.

First, a data provider seeking to onboard a third party to a developer interface in accordance with obligations under this rule and under applicable risk management requirements is not engaged in an arms-length commercial transaction. As a result, any exertion of market power in seeking particular terms in an onboarding arrangement will raise significant concerns about the permissibility of a denial under § 1033.321. In this context, any arrangements not related to the effective implementation of this rule and associated risk management requirements would need to ensure they do not violate CFPA section 1033 or the anti-evasion provision of § 1033.201(a)(2).

Second, the CFPB also would have concerns under § 1033.321 if data providers demand arrangements that would effectively relieve them of their own obligations to follow the law. Such arrangements may indicate the data provider is not motivated by legal compliance, and such arrangements are likely not directly related to a specific risk presented by the third party. The potential liabilities that commenters raised, as a general matter, are provided for under applicable law, including existing law on how such liabilities may be allocated. To the extent that data providers and third parties are seeking to use onboarding arrangements to reduce the transaction costs associated with such back-end allocations, thereby lowering the systemic costs of open banking, such arrangements are less likely to raise concerns under § 1033.321. Permissibility in this context is likely to depend on whether

parties are mutually attempting to reduce transaction costs, or whether one party is instead seeking to undo or change the substantive allocative outcomes that existing legal regimes would otherwise produce for the parties involved, both in terms of where law would put the loss initially and where the loss would be allocated under law.

By the same token, wholesale indemnification or ''hold harmless'' terms, which a number of commenters requested be imposed by or given safe harbor status under the rule, also will raise significant concerns under § 1033.321. To the extent that an indemnity seeks, effectively, to recast one party's potential liability as another's, it almost inevitably seeks to undo the substantive outcome that existing law would otherwise realize.

Third, the CFPB is particularly skeptical of, and as a result intends to carefully scrutinize for reasonableness, data provider insistence on onboarding arrangements that would allocate to third parties liability for losses associated with unauthorized transactions from accounts maintained by that data provider and where that liability arises under Regulation E.[76] Under Regulation E, financial institutions have an obligation to protect their customers against unauthorized transactions. Private network rules provide a means for financial institutions to allocate that liability. Financial institutions should continue to manage liability through appropriately developed private network rules, not one-off agreements that may manifest some improper, unilateral exertion of market power. Depositories should not use the final rule's recognition that data access onboarding needs to proceed in accordance with risk management obligations as grounds to negate the effect of their own Regulation E obligations or the need to manage liability through private network rules.

Finally, the CFPB observes that onboarding arrangements that adhere to consensus standards will carry indicia of reasonableness under § 1033.321(b).[77] For example, their development by recognized standard setters means they are likely to be directly related to a specific risk, rather than an overbroad product of a data provider's or third party's market power. The use of standard form onboarding arrangements that have been developed through the kind of processes that recognized standard setters maintain can provide an efficient model for data providers and third parties.

Regarding comments about the potential burden on data providers of vetting third parties, the CFPB notes that final § 1033.321 does not require data providers to vet third parties. Any requirements regarding vetting are the result of data providers' existing requirements regarding risk management, such as the GLBA Safeguards Framework or safety and soundness standards. To be clear, acting on the authorization of a consumer to access their personal financial data pursuant to this final rule does not, in any way, make a third party a service provider to a data provider; and the same holds true for an aggregator with respect to its use by that third party. Authorized third parties interact with data providers for the limited purpose of accessing a consumer's covered data at the consumer's express direction, and do so within the final rule's procedural and substantive protections regarding the features of the developer interface and the collection, use, and retention of that data. This context differs from other contexts in which data providers are choosing third party business partners or service providers, or are providing data outside the safe, secure, and reliable framework that the final rule is intended to establish.

Additionally, the final rule includes various provisions designed to reduce the burden of vetting. In particular, final § 1033.321(c) allows for conformance with certain consensus standards and certifications to serve as indicia bearing on the reasonableness of a denial under § 1033.321(b), and final § 1033.321(d) lists conditions sufficient to justify a denial without the need for any further evaluation by the data provider. With respect to comments advocating CFPB supervision of data aggregators and third parties, as noted in part IV.5 above the CFPB intends to exercise its supervisory authorities in circumstances where that is appropriate. However, the CFPB's confidential supervisory process is distinct from any vetting that a data provider undertakes for its own risk management purposes.

The CFPB declines to make certain burden-related changes suggested by some commenters. Specifically, final § 1033.321 does not prescribe timing requirements applicable to denials. New timing standards would not be appropriate because final § 1033.321 is intended to work within data providers' existing processes for risk management. And the CFPB understands that risk management is an ongoing process that is difficult to reduce to a single decision point to which a deadline could be attached. Regarding liability, the CFPB declines to change the existing frameworks under Regulation E and Regulation Z for the reasons described in part IV.5 above. And the CFPB cannot create a safe harbor from data providers' existing legal obligations regarding risk management because those obligations are implemented and enforced by other agencies.

Regarding comments requesting additional changes designed to reduce the risk of improper denials, the CFPB has adopted several new indicia of reasonableness in final § 1033.321(c) that will help ensure that any denials are justified, as discussed below. These indicia, combined with the other requirements of final § 1033.321, will provide an appropriate check against improper denials. The CFPB believes that certain other suggestions are unnecessary because they are provided for elsewhere in the final rule. For example, nothing in the final rule prevents third parties, consumer advocates, or consumers from reporting denials to the CFPB or other appropriate officials, such as prudential regulators or State attorneys general. And as discussed in the analysis of final § 1033.351(b)(2), the final rule provides for transparency in denials by requiring data providers to adopt policies and procedures recording the basis for denial and communicating this basis to third parties. For commenters concerned about data providers blocking existing methods of data access before making developer interfaces available, the CFPB has explained in the discussion of final § 1033.311(e)(1) that such attempts could constitute unfair, deceptive, or abusive acts or practices under the CFPA.

Finally, the CFPB agrees with commenters that interagency coordination is essential to the successful operation of an open banking system. Such coordination is especially important here because data providers' legal obligations regarding risk management are generally implemented and enforced by other agencies such as the prudential regulators. Accordingly, the CFPB anticipates that it will continue to work closely with other regulators to implement the rule and provide additional guidance applicable to the consumer-authorized data sharing context.

Requirements for Reasonable Denials (§ 1033.321(b))

Proposed § 1033.321(b) would have provided that any denials under

[76] The CFPB has the same view with respect to comments raising concerns about the allocation of any liability under Regulation Z.

[77] The presence of such onboarding arrangements might also suggest that a data provider's policies and procedures are ''reasonably designed'' under § 1033.321(a)(1).

§ 1033.321 would be subject to a reasonableness standard. The proposed rule stated that to be reasonable pursuant to § 1033.321(a), a denial must, at a minimum, be directly related to a specific risk of which the data provider is aware, such as a failure of a third party to maintain adequate data security, and must be applied in a consistent and non-discriminatory manner.

A few commenters responded to proposed § 1033.321(b)'s requirement that a denial must, at a minimum, be directly related to a specific risk of which the data provider is aware. A bank and a trade association commenter asserted this condition was too narrow because, they said, data providers must anticipate potential risks that have yet to materialize. However, a data aggregator commenter said that the term ''specific risk'' might be overbroad if it encompasses concerns like reputational risk. A research organization requested more detail on the meaning of specific risk.

For the reasons discussed herein, the CFPB is finalizing § 1033.321(b) with certain changes for clarity about the role of this provision. Final § 1033.321(b) provides that a denial is reasonable pursuant to § 1033.321(a)(2) if it is: (1) directly related to a specific risk of which the data provider is aware, such as a failure of a third party to maintain adequate data security; and (2) applied in a consistent and non-discriminatory manner.

Final § 1033.321(b) describes these paragraphs as requirements for reasonableness rather than minimum conditions because satisfying both conditions is sufficient for a denial to be reasonable under this provision. Further guidance about the application of these requirements is found in the indicia of reasonableness are described in connection with § 1033.321(c).

The CFPB has determined that this approach provides greater clarity than the proposed use of the phrase ''at a minimum,'' which could have implied the existence of an unknown number of unstated additional conditions. The requirements in § 1033.321(b) are designed to ensure that data providers are making denial decisions in a principled manner. The CFPB has determined that denials made in violation of these procedures carry a significant risk of being pretextual or otherwise infringing consumers' access rights under CFPA section 1033.

Final § 1033.321(b)(1) provides that a denial must be directly related to a specific risk of which the data provider is aware, such as a failure of a third party to maintain adequate data security. This requirement is designed to ensure that the concerns motivating a denial are appropriately tailored and concrete to justify denying access to a third party. The CFPB disagrees with commenters who stated that requiring data providers to articulate a specific risk would prevent them from addressing risks that have yet to materialize. Final § 1033.321(b)(1) does not require that a given harm have actually occurred before a denial is justified; only that it be articulable with specificity and based on circumstances that the data provider is aware of.

The CFPB declines to state that certain safety and soundness risks can never be stated with specificity. Final § 1033.321(b)(1) provides a procedural limit on denials of access but does not substantively restrict the risks that a data provider may articulate. However, any denial must also be necessary to avoid being inconsistent with policies and procedures reasonably designed to comply with the legal requirements described in § 1033.321(a)(1). And final § 1033.321(c) lists indicia that can assist entities in complying with § 1033.321(b). Similarly, in response to concerns that the ''specific risk'' standard is insufficiently clear, the CFPB notes that it is designed to operate alongside the other provisions of this section.

Final § 1033.321(b)(1) provides that a denial must be ''directly related'' to a specific risk. In general, a denial is directly related to a risk if it is appropriately tailored to that risk. For example, if a data provider denies access to a third party during the onboarding process because it is missing information about that third party's information security practices, then it should grant access once it receives information that establishes the sufficiency of those practices. Under these circumstances, an indefinite denial would not be directly related to the risk justifying the denial.

Final § 1033.321(b)(2) also provides that a denial must be applied in a consistent and non-discriminatory manner. This provision is intended to ensure that data providers make similar denial decisions across third parties that present materially similar risk management concerns. As noted in the proposal, the term ''non-discriminatory'' in this provision carries its ordinary meaning and is not intended to refer to discrimination on a prohibited basis under Federal fair lending law.

Regarding comments recommending that the final rule require denials to be based on existing policies and procedures approved by a data provider's regulator, the CFPB believes that this comment relates to the consistency element of reasonableness. Specifically, denials based on previously adopted written policies and procedures may be more likely to be genuinely responsive to the risks described in those policies and procedures, while denials based on newly announced concerns raise heightened risks of being unreasonable under final § 1033.321(b).

Indicia Bearing on Reasonableness ((§ 1033.321(c))

Proposed § 1033.321(c) provided that indicia that a denial pursuant to § 1033.321(a) is reasonable would include whether access is denied to adhere to a qualified industry standard related to data security or third party risk management. The proposal explained that conformance with an industry standard alone would not necessarily settle the question of reasonableness.

Many commenters addressed the role of standard-setting bodies or credentialing bodies. Several commenters recommended that the CFPB itself develop, or encourage the development of, an accreditation process for third parties that entitles them to data access, while others supported a registry created by a standard-setting body or by the CFPB. However, data providers and data provider trade association commenters stated that any credentialing process or consensus standard should not be dispositive. These commenters stated that risk management is specific to each third party relationship and were concerned that industry standards might conflict with the prudential regulators' standards. A few commenters stated that no standard-setting body currently has plans to issue standards related to risk management or data security. A standard-setting body commented that they do not plan to pursue authentication and data security specifications, or liability determinations.

Other commenters recommended that the final rule include additional factors relevant to a denial of access. One data aggregator commenter recommended creating a presumption in favor of access for third parties that attest to following appropriate data security standards. This commenter also suggested including indicia of unreasonable denials for denials made despite a third party certifying to the adequacy of its security measures or conforming to an accreditation developed by the CFPB or a standard-setting body. A trade association commenter recommended that the final

rule give conclusive weight to similar factors related to unreasonable denials, such as certification by the third party, conformance to an industry standard, or supervision by a regulatory agency.

For the reasons discussed herein, the CFPB is finalizing § 1033.321(c) with several new indicia bearing on the reasonableness of a denial under § 1033.321(b). Final § 1033.321(c) states that indicia bearing on the reasonableness of a denial under § 1033.321(b) include: (1) whether the denial adheres to a consensus standard related to risk management; (2) whether the denial proceeds from standardized risk management criteria that are available to the third party upon request; and (3) whether the third party has a certification or other identification of fitness to access covered data that is maintained or recognized by a recognized standard setter or the CFPB.

The indicia listed in final § 1033.321(c) include factors that the can further guide compliance with § 1033.321(b). The indicia do not serve as conclusive evidence or presumptions of compliance because the CFPB understands that the circumstances surrounding a denial may render it unreasonable or reasonable for purposes of § 1033.321(b) despite the presence or absence of these indicia. For example, a third party might possess a certification regarding the adequacy of its information security program, but a data provider might nevertheless reasonably deny access if it discovers deficiencies in that program such that providing access would be inconsistent with policies and procedures reasonably designed to comply with a legal requirement regarding risk management.

Final § 1033.321(c)(1) largely restates the proposal's indicia related to qualified industry standards, with changes to conform to the final rule's use of the term ''consensus standard'' and § 1033.321's use of the term ''risk management'' to capture various legal obligations related to safe and sound practices, information security, and similar applicable statutory or regulatory obligations. A denial made according to a consensus standard may be likely to be reasonable because it reflects a consistent set of standards developed with the participation of a variety of stakeholders, including data providers and third parties. The CFPB believes this provision will promote safe and competitive third party access.

Final § 1033.321(c)(2) relates to whether the denial proceeds from standardized criteria regarding risk management available to the third party upon request. The CFPB agrees with commenters about the value of a standardized risk assessment method. Denials made according to standardized, knowable criteria may be likely to be reasonable because they are the product of a principled decision-making process. At the same time, the CFPB recognizes that in rare cases a data provider might face an unanticipated risk that justifies denying access. Additionally, there may be aspects of a risk management policy that would undermine the policy's effectiveness if disclosed to a third party. For that reason, final § 1033.321(c)(2) is among the indicia of reasonableness rather than a requirement of reasonableness.

Final § 1033.321(c)(3) relates to credentials or other identifications of fitness to access covered data. The CFPB agrees with commenters who stated that a credentialing or registry system could serve a useful role in the open banking system. But the CFPB also recognizes that such a credential could not supplant data providers' risk management obligations. Such credentials would reduce both the burden of vetting and the risk of unreasonable denials under § 1033.321(b). A denial of a credentialed third party may be likely to be unreasonable under § 1033.321(b) because, among other things, the third party has presented evidence of its fitness to access covered data, supported either directly or indirectly by a relevant regulator. Conversely, a denial of a noncredentialled third party may be likely to be reasonable under § 1033.321(b) if such credential were customary among third parties. Final § 1033.321(c)(3) allows for a broad range of credentials to serve as indicia, including lists of approved third parties, and for a broad range of entities that may produce or validate such a credential.

The CFPB acknowledges comments stating that no consensus standard or credentialing entity relevant to denials is likely to exist in the immediate future. Regarding comments requesting standards or entities directly approved by the CFPB, the CFPB believes that these measures would be most effective and efficient if done on a coordinated basis with other regulators. Final § 1033.321(c)(3) does not commit the CFPB (or other regulators) to recognizing such a credential or credentialing entity. But given the interest commenters expressed in this type of accreditation, the CFPB believes that developments in this direction would promote consistent and non-discriminatory practices with respect to managing third party data access. Therefore, final § 1033.321(c)(3) accommodates the creation of such standards or entities.

The CFPB believes the indicia provided in final § 1033.321(c) incorporate many of the suggestions made by commenters for improving the efficiency of third party data access. The CFPB declines to adopt all suggested indicia because the final rule prioritizes indicia the CFPB believes are likely to be most relevant and impactful to evaluating the reasonableness of a data provider's denial under § 1033.321(b). Final § 1033.321(c) is not an exhaustive list of factors that can guide compliance with § 1033.321(b).

Conditions Sufficient To Justify a Denial (§ 1033.321(d))

The CFPB proposed in § 1033.321(d)(1) to clarify that a data provider would have a reasonable basis for denying access to a third party under § 1033.321(a) if the third party does not present evidence that its data security practices are adequate to safeguard the covered data, provided the denial of access is not otherwise unreasonable. The CFPB explained that this provision was intended to alleviate the concerns related to the potential burden of vetting on smaller data providers because if the third party does not present such evidence, the data provider may deny access without vetting the third party.

The CFPB proposed in § 1033.321(d)(2) to clarify that a data provider would have a reasonable basis for denying a third party access if the third party does not make public certain information about itself. This information consisted of data that the CFPB believed would benefit the efficiency of the open banking system, such as the third party's legal name and any assumed name it is using when doing business with the consumer, a link to its website, and its LEI. Proposed § 1033.321(d)(2) would have also permitted the data provider to deny access if the information was not made available in both human-readable and machine-readable formats, and if the information is not readily identifiable to members of the public (meaning the information must be at least as available as it would be on a public website).

The CFPB requested comment on whether to specify the types of evidence a third party would need to present about its data security practices that would give a data provider a reasonable basis to deny access, and what types of evidence might provide such a basis. The CFPB also requested comment on whether developing an accreditation system could reduce diligence costs for both data providers and third parties and increase compliance certainty for

data providers, and on the steps necessary to develop such a credential and how the CFPB or other regulators could support such efforts.

The CFPB also requested comment on whether it should indicate that conformance to a specific standard or a qualified industry standard would be relevant indicia for a third party's machine-readability compliance; whether it should issue regulations or guidance that would make it easier for data providers and other members of the public to identify a particular third party's information; whether it should provide that a data provider is permitted to deny access if the third party does not submit to the CFPB the link to the website on which this information is disclosed; and whether data providers should have to provide information or notice to the CFPB regarding their procedures and decisions to approve or deny third parties for access to their developer interfaces.

Several commenters addressed proposed § 1033.321(d)(1). Several commenters, including third parties, research organizations, and consumer advocates, commented that the final rule should identify the types of evidence that would establish the adequacy of a third party's data security practices. Types of evidence suggested by these commenters typically included a credential issued by an independent entity or an industry standard provided by a standard-setting body. These commenters differed on whether such evidence should be dispositive. One trade association said that the CFPB should not specify the types of evidence that would establish that a third party's data security practices are adequate.

The CFPB also received several comments on proposed § 1033.321(d)(2). A bank commenter stated that the rule should not require a third party to provide a phone number that any outside party could use to inquire about security practices because doing so might compromise the third party's security. A consumer advocate commenter said that any directory should include only approved third parties to prevent public confusion. Regarding the LEI, one commenter stated that the LEI could be used to identify a third party's legal name, while another commenter said that an LEI was useful but not sufficient for verifying a third party's identity. A data aggregator commenter asserted that because many third parties currently lack LEIs and the process for obtaining one was difficult, the final rule should also permit third parties to use alternative identifiers such as a tax identification number or employer identification number.

For the reasons discussed herein, the CFPB is finalizing § 1033.321(d) with certain organizational and clarifying changes to improve the function of this provision in the broader context of § 1033.321. Final § 1033.321(d)(1) provides that each of the following is a sufficient basis for denying access to a third party: (1) The third party does not present any evidence that its information security practices are adequate to safeguard the covered data; or (2) The third party does not make the following information available in both human-readable and machine-readable formats, and readily identifiable to members of the public, meaning the information must be at least as available as it would be on a public website: (i) Its legal name and, if applicable, any assumed name it is using while doing business with the consumer; (ii) A link to its website; (iii) Its LEI that is issued by: (A) A utility endorsed by the LEI Regulatory Oversight Committee, or (B) A utility endorsed or otherwise governed by the Global LEI Foundation (or any successor thereof) after the Global LEI Foundation assumes operational governance of the global LEI system; and (iv) Contact information a data provider can use to inquire about the third party's information security and compliance practices.

Final § 1033.321(d) is intended to reduce burden on data providers by listing conditions that, if met, justify denying access without expending any further resources on vetting a third party. Accordingly, final § 1033.321(d)(1) clarifies that a denial is justified if a third party does not present ''any'' evidence of the adequacy of its information security practices. As proposed, the CFPB believes that this provision could have been read to require third parties to present a certain type of evidence regarding their information security practices that would entitle the third party to access consumer data. Understandably, many commenters focused on the kinds of evidence that could satisfy such a requirement. Many of these commenters discussed credentialling functions and consensus standards, and the CFPB has reflected this feedback in finalizing indicia related to this evidence in § 1033.321(c)(1) and (3). But the CFPB's intent for final § 1033.321(d)(1) is more limited. It is designed as a means of streamlining the vetting process by clarifying that data providers may deny third parties that failed to clear the minimum bar necessary for data providers to evaluate the third party's practices. Such evidence might take different forms, including a third party's policies and procedures, or audits or reports. But if a third party cannot present any evidence that its information security practices are adequate, then a data provider may deny access without additional investigation.

Final § 1033.321(d)(2) lists certain information that a third party must make available. As explained in the proposal, the CFPB finds that this information will aid the efficiency of the open banking system by helping data providers authenticate the identities of third parties and facilitating any outreach to the third party that may be required as part of the data provider's due diligence. The information required by final § 1033.321(d)(2) is largely the same as the information the CFPB proposed, with a minor change. Specifically, to avoid implying that data providers absolutely may not inquire about topics other than information security, final § 1033.321(d)(2)(iv) describes a third party's contact information as information a data provider can use to inquire about the third party's information security ''and compliance'' practices. The CFPB disagrees that such disclosing such contact information might compromise a third party's security. The final rule does not require disclosing any substantive information about a third party's information security program.

The CFPB declines to add alternative identifying information other than the LEI, such as tax identification number or employer identification number. An LEI allows users to link an entity to its corporate family, which improves data providers' ability to identify the third party seeking access. Additionally, the CFPB has not found that LEIs are unduly burdensome to obtain in its experience administering the Home Mortgage Disclosure Act and Small Business Lending rules, both of which require financial institutions to report an LEI.

5. Responding to Requests for Information (§ 1033.331)

Responding to Requests—Access by Consumers (§ 1033.331(a))

The CFPB proposed in § 1033.331(a) to prescribe the conditions that apply when consumers are seeking covered data. Under proposed § 1033.331(a), to comply with proposed § 1033.201(a), upon request from a consumer, a data provider would be required to make available covered data when it receives information sufficient to: (1) authenticate the consumer's identity and (2) identify the scope of the data

requested. The CFPB explained that proposed § 1033.331(a) is not a requirement to authenticate the consumer's identity and identify the scope of the data requested. Rather, proposed § 1033.331(a) identifies the point in time that a data provider must respond to the request. The CFPB received limited comments on this provision. Several commenters asked that the CFPB clarify how data providers may verify consumers' identities when consumers access information under the rule.

For the reasons herein, the CFPB is finalizing § 1033.331(a) as proposed with an updated cross-reference. Section 1033.331(a) carries out the objective of CFPA section 1033(a) for data providers to make covered data available upon request to a consumer by defining what information triggers a data provider's obligation to make covered data available to a consumer. As noted in the proposal, these conditions would be satisfied through procedures in use by most consumer interfaces today. With regard to the comments requesting clarification on how a data provider may verify a consumer's identity for purposes of § 1033.331(a), the CFPB notes that the only requirement in the rule related to how a data provider must authenticate a consumer's identity is the requirement at § 1033.311(e)(2) with respect to the GLBA Safeguards Framework.

Responding to Requests—Access by Third Parties (§ 1033.331(b))

Conditions That Apply to Requests From Third Parties (§ 1033.331(b)(1))

Proposal

Under proposed § 1033.331(b)(1), a data provider would have been required under § 1033.201(a) to make available covered data to a third party, when it receives certain information described in § 1033.311(b)(i) through (iv). The CFPB proposed in § 1033.331(b)(1)(i) that a data provider would need to receive information sufficient to authenticate the consumer's identity. The CFPB explained that before a data provider grants a third party access to covered data today, the consumer is typically redirected from a third party's interface to the data provider's interface to authenticate the consumer's identity, usually by providing account credentials. Where consumers provide their credentials directly to the data provider through such an interface, the data provider would generally receive information sufficient to authenticate the consumer's identity for purposes of proposed § 1033.331(b)(1)(i).

Under proposed § 1033.331(b)(1)(ii), the data provider would need to receive information sufficient to authenticate the third party's identity. The CFPB explained that an example of such information would include an access token obtained by the third party that has been approved to access the data provider's interface. Under proposed § 1033.331(b)(1)(iii), a data provider would need to receive information sufficient to confirm the third party has followed the authorization procedures in proposed § 1033.401. The CFPB explained that this step would generally be satisfied where the data provider receives a copy of the authorization disclosure the third party provided to the consumer and that the consumer has signed.

Finally, under proposed § 1033.331(b)(1)(iv), a data provider would need to receive information sufficient to identify the scope of the data requested. The CFPB explained that in certain situations, the scope of information requested by an authorized third party might be ambiguous. In these situations, under proposed § 1033.331(b)(1)(iv), a data provider could seek to clarify the scope of an authorized third party's request with a consumer. For example, the CFPB explained that there might be circumstances in which a data provider could seek to clarify whether a consumer intended to consent to share information from particular accounts or particular types of information not specified in the consumer's third party authorization.

The CFPB requested comment on the potential for technology to evolve such that a data provider could satisfy appropriate data security and other risk management standards without receiving a consumer's account credentials directly from the consumer. The CFPB also requested comment on whether clarifications are needed regarding what information would be sufficient to confirm the third party has followed the authorization procedures in the context of automated requests received through a developer interface. Finally, the CFPB requested comment on whether additional clarifications or procedures are needed to ensure a data provider does not design its developer interface to receive information sufficient to satisfy the conditions set forth in proposed § 1033.331(b)(1) but in a way that frustrates the ability of authorized third parties to receive timely responses to requests for covered data.

Comments

A consumer advocate commenter supported the proposed conditions in § 1033.331(b)(1) for data providers to verify a third party's authorization to access consumer data and authenticate the identity of third parties before they make available covered data. However, this commenter, along with others, seemed to interpret proposed § 1033.331(b)(1) as setting forth strict requirements, as opposed to conditions that define the trigger for when a request must be responded to by a data provider, which data provider commenters were concerned would be overly burdensome with respect to confirming a third party's authorization. This concern was twofold: (1) data providers would not have actual knowledge of how the third party received authorization, which they suggested could have been gathered through unfair, deceptive or abusive third party authorization procedures; and (2) confirming that every authorized third party complied with the authorization procedures would be resource-intensive. Further, bank commenters that interpreted the provision to be an obligation were generally unclear as to what was required of them to authenticate the consumer or third party or to confirm the third party followed the proposed § 1033.401 authorization procedures.

Bank commenters offered a number of suggestions for revisions. Some bank commenters recommended that the CFPB modify the regulatory text in proposed § 1033.331(b)(1)(iii) to clarify that a data provider has the right but not the obligation to ''confirm the third party has followed the authorization procedures in § 1033.401.'' One bank trade association commenter recommended that the CFPB change the ''confirm'' language in proposed § 1033.331(b)(1)(iii) to ''reasonably confirm,'' arguing that this would give data providers more discretion to determine whether the third party authorization actually represents the ''consumer's express informed consent'' as required by proposed § 1033.401(c). At least one bank commenter understood proposed § 1033.331(b) as setting forth requirements applicable every time a third party requests data from the developer interface, even where the consumer had authorized the third party to access data multiple times within an extended duration. In such cases, one data provider trade association commenter recommended that the CFPB distinguish between initial requests in which an authorization is first presented to the

data provider, and subsequent requests that were authorized under the initial request. The commenter stated that this would give data providers more flexibility with respect to reviewing subsequent requests. Specifically, the commenter suggested that data requests by authorized third parties relying on an existing, unchanged authorization should not require additional authentication by the data provider.

Third party commenters were generally concerned that data providers could unduly delay the processing of requests to promote the data provider's own product or service. One third party commenter suggested the final rule state that a data provider should provide a prompt response to legitimate requests by third parties. This commenter explained that some data providers have purposefully frustrated request procedures by ignoring requests to discuss API access or by misconstruing their direct data connection.

Final Rule

For the reasons discussed herein, the CFPB is finalizing § 1033.331(b)(1) with a minor change for clarity and an updated cross-reference. Section 1033.331(b)(1) carries out the objective of CFPA section 1033(a) for data providers to make covered data available upon request to a consumer by defining what information triggers a data provider's obligation to make covered data available to a third party purporting to be authorized to act on behalf of a consumer. Under § 1033.331(b)(1), to comply with the requirements in § 1033.201(a)(1), upon request from an authorized third party, a data provider must make available covered data when it receives certain information. This information consists of: information sufficient to authenticate the consumer's identity under § 1033.331(b)(1)(i); information sufficient to authenticate the third party's identity under § 1033.331(b)(1)(ii); information sufficient to document the third party has followed the § 1033.401 authorization procedures under § 1033.331(b)(1)(iii); and information sufficient to identify the scope of the data requested under § 1033.331(b)(1)(iv).

Consistent with the proposal, § 1033.331(b)(1) does not impose obligations on data providers to obtain certain information prior to responding to a request for covered data. Rather, § 1033.331(b)(1) sets forth the trigger for when a data provider is obligated to make covered data available to an authorized third party pursuant to the rule. Section 1033.331(b)(1) does not by its terms require a data provider to authenticate consumers or third parties, or confirm authorizations of third parties. However, the CFPB expects data providers generally will do so to ensure they are responding to consumers' requests and to comply with the GLBA Safeguards Framework (consistent with § 1033.311(e)(2)), any safety and soundness requirements, and other legal obligations, such as the CFPA prohibition against unfair, deceptive, or abusive acts or practices, as applicable. In particular, the CFPB does not believe § 1033.331(b)(1)(iii) imposes significant burden with respect to how a data provider processes information about a third party's compliance with the rule's authorization procedures. The CFPB has determined that data providers should not be responsible for obtaining a consumer's authorization for a third party because third parties are in the best position to determine what data elements are reasonably necessary. However, § 1033.331(b)(1)(iii) does not require a data provider to independently verify the third party has followed each of the § 1033.401 authorization procedures, but instead describes a condition in which the data provider receives information sufficient to document such authorization. As discussed in the proposal, receipt of a copy of the signed authorization disclosure should constitute information sufficient to confirm third party authorization, absent facts to the contrary. However, in light of comments, the CFPB appreciates that the use of ''confirm'' in proposed § 1033.331(b)(1)(iii) could suggest a rigorous due diligence obligation. Accordingly, the final rule uses ''document'' rather than ''confirm'' to clarify the nature of § 1033.331(b)(1)(iii).

In response to bank commenter questions about whether any particular method of authentication is necessary or sufficient, the final rule does not so specify. The final rule only requires data providers to satisfy the data security requirements in § 1033.311(e) regarding the use of consumer credentials and compliance with the Safeguards Framework. The CFPB believes the Safeguards Framework is sufficiently clear that data providers must take some reasonable steps to authenticate who is accessing the data, and the CFPB does not believe it is necessary to prescribe a single means of authentication in the final rule. The final rule does not preclude a data provider from applying different treatment to initial and subsequent data requests covered by the same authorization, if otherwise permissible under § 1033.311(e). The CFPB notes that standard-setting bodies have created standards in this space and consensus standards could be useful to demonstrating whether a trigger has been met. Accordingly, indicia that bear on whether a trigger in § 1033.331(b) has been met include conformance to a consensus standard.

Third party commenters affirmed the concern identified by the CFPB in its request for comment that a data provider could frustrate the ability of authorized third parties to receive timely responses to requests. As discussed in detail above, final § 1033.201(a)(2) includes an anti-evasion provision limiting data providers' ability to frustrate an authorized third party's receipt of covered data. To illustrate how § 1033.201(a)(2) applies to § 1033.331(b), the rule includes an example of conduct that violates the anti-evasion provision in the context of requests, as discussed below with respect to § 1033.331(b)(2) below. The CFPB has determined the anti-evasion provision can more flexibly address the variety of conduct that could interfere with requests than more detailed procedural requirements.

A third party's authorization could extend to multiple requests, depending on the duration and frequency of access authorized by the consumer. As noted in the proposal, data providers today often issue third parties accessing their systems a token that can be presented for subsequent requests covered by a single authorization. If the data provider adequately designs its developer interface, review of the initial request by the third party should give the data provider adequate opportunity to obtain evidence of the third party's authorization including, if appropriate, confirmation by the consumer. In general, it should not be necessary to keep confirming the third party's authorization with the consumer in connection with each previously authorized request. If a data provider continues to request this information, then the data provider will raise concerns about interfering with the access right, in violation of the anti-evasion provision in § 1033.201(a)(2).

Confirmation of Third Party Authorization (§ 1033.331(b)(2))

The CFPB proposed in § 1033.331(b)(2) that a data provider would be permitted to confirm the scope of a third party's authorization to access the consumer's data by asking the consumer to confirm (1) the account(s) to which the third party is seeking access and (2) the categories of covered data the third party is requesting to

access, as disclosed by the third party pursuant to proposed § 1033.411(b)(4). The proposed rule explained that data providers might need to confirm the account(s) to which the third party is seeking access because that information might not be clear from the authorization disclosure, such as where a consumer has multiple accounts. Additionally, the proposed rule explained that permitting the data provider to confirm the categories of covered data would give the consumer an opportunity to review what data they would be authorizing and give data providers greater certainty that the consumer has authorized the request. The proposed rule requested comment on whether the final rule should instead permit data providers to confirm § 1033.331(b)(2) information with the consumer only where reasonably necessary.

In general, bank commenters supported proposed § 1033.331(b)(2). One consumer advocate commenter said the CFPB should require, rather than permit, the data provider to send a confirmation to the consumer when it receives a third party request. Third party commenters opposed proposed § 1033.331(b)(2) on the grounds that it would cause undue friction in the data access process and suggested certain revisions. For example, one third party commenter recommended that data providers not be allowed to confirm an authorization if the third party transmits a record of the consumer's account selection. Another commenter noted that the proposal did not set forth a requirement for how or how quickly the data provider confirm third party authorization, and noted that an anticompetitive data provider could decide to confirm each request via certified mail. Additionally, some third party commenters recommended that the CFPB revise proposed § 1033.331(b)(2) to require data providers to collect account confirmation via the developer interface and not from the consumer.

The CFPB is finalizing § 1033.331(b)(2) as proposed and has added an example to address concerns raised by commenters about interference by data providers, as discussed below. Section 1033.331(b)(2) carries out the objective of CFPA section 1033(a) by clarifying that data provider is permitted to take certain steps to confirm the scope of information requested by a third party purporting to be authorized to act on behalf of a consumer. Allowing data providers to confirm authorizations directly with the consumer, as described in § 1033.331(b)(2)(i) and (ii), can reduce the risk of unintended or fraudulent authorizations and may be a necessary part of data providers' risk management program. However, requiring data providers to obtain consumer confirmation in every case could impose an undue burden on the data provider and the access right, especially in light of the protections in § 1033.311(e)(2) and data providers' other applicable legal obligations. In response to third party commenters' suggestions for alternative procedures to obviate the need for data providers to confirm authorization, it is not clear that it would be feasible to require data providers to transmit records of consumers' accounts to third parties before a third party has initially requested access to covered data.

While data providers are permitted to confirm authorizations with consumers pursuant to § 1033.331(b)(2)(i) and (ii), data providers must avoid interfering with the statutory access right pursuant to § 1033.201(a)(2). As discussed above with respect to § 1033.331(b)(1), a data provider will create risks of violating the anti-evasion provision at § 1033.201(a)(2) if it seeks reconfirmation with consumers after it has already documented the third party's authorization to access covered data. In response to commenter concerns about undue friction introduce by data providers, the final rule includes an example that illustrates how a data provider would violate § 1033.201(a)(2) if a data provider knows or should know its confirmation procedures would be likely to prevent, interfere with, or materially discourage access to covered data.

Covered Data Not Required To Be Made Available (§ 1033.331(c))

Proposed § 1033.331(c) stated that, notwithstanding § 1033.331(a) and (b) (*i.e.,* the general triggers for making covered data available in response to consumer or third party requests), a data provider is not required to make covered data available in response to a request in four circumstances: if the data are withheld because an exception described in § 1033.221 applies (§ 1033.331(c)(1)); if the data provider has a basis to deny access pursuant to risk management concerns in accordance with § 1033.321(a) (§ 1033.331(c)(2)); if its interface is not available when the data provider receives a request, although the performance specifications at § 1033.311 would still apply (§ 1033.331(c)(3)); or if the request is for access by a third party but the consumer's authorization is not valid for one of three reasons: (1) the consumer has revoked the third party's authorization pursuant to proposed § 1033.331(e); (2) the data provider has received notice that the consumer has revoked the third party's authorization pursuant to proposed § 1033.421(h)(2); or (3) the consumer has not provided a new authorization to the third party after the maximum duration period, as described in proposed § 1033.421(b)(2) (§ 1033.331(c)(4)). The CFPB requested comment on whether additional clarification was needed to reduce the opportunity for data providers to deny requests without justification under the proposed provision.

One consumer advocate suggested limiting the scope of § 1033.331(c)(1) by narrowing the scope of the exceptions under § 1033.221(a) and (d), discussed above in part IV.B.4. The commenter asserted fewer exceptions to the requirement that data providers make information available make it more transparent to consumers how data providers use their data. Several data provider commenters recommended that final § 1033.331(c) clarify that failure to meet the conditions in § 1033.331(a) and (b) does not require a data provider to make covered data available in response to a request. Further, some bank commenters suggested that small data providers would be overburdened by what they interpreted as a requirement under proposed § 1033.331(c) to track all individual authorization and access requests.

For the reasons discussed herein, the CFPB is finalizing § 1033.331(c) with certain revisions. Final § 1033.331(c) lists five circumstances under which a data provider is not required to make covered data available in response to a request. The final rule adopts § 1033.331(c)(1), (3), and (4) as proposed. As discussed below, final § 1033.331(c)(2) now lists the circumstance in which data are not in the data provider's control or possession, consistent with the requirement in § 1033.201(a)(1). Also as discussed below, the final rule also includes new § 1033.331(c)(5), which describes the circumstance in which the data provider has not received information sufficient to satisfy the conditions in § 1033.331(a) or (b), with conforming changes to the first sentence of § 1033.331(c). The final rule also revises the heading to paragraph § 1033.331(c), from ''Response not required,'' to ''Covered data not required to be made available.'' The final language more accurately reflects the operation of the rule because certain responses are required even if covered data are not available, pursuant to policies and procedures required under

§ 1033.351(b). Section 1033.331(c) carries out the objective of CFPA section 1033(a) for data providers to make covered data available ''upon request'' by clarifying when a data provider is not required to make data available in response to a request.

Proposed § 1033.331(c)(2) would have stated that a data provider is not required to respond to a request when the data provider has a basis to deny access pursuant to risk management concerns in accordance with proposed § 1033.321(a). As discussed in the proposal, proposed § 1033.321 was intended to apply to a consumer's or third party's access to the interface as a whole, rather than access to specific data fields requested. In terms of the operation of § 1033.331, where a third party that previously had been granted access to an interface is subsequently denied access pursuant to § 1033.321, the data provider would be denying the request because it could not authenticate the third party's identity pursuant to § 1033.331(b)(1)(ii). Consistent with the purpose of the clarification in final § 1033.321(a) that data providers can deny a consumer or a third party access to ''all elements'' of the interface, the CFPB is revising final § 1033.331(c) to treat a denial by operation of § 1033.321 as a failure to authenticate under § 1033.331(a) or (b). For these reasons, the CFPB is not adopting § 1033.331(c)(2) as proposed. This change does not alter the operation of § 1033.321 that was intended by the proposal. In place of the text in proposed § 1033.331(c)(2) regarding § 1033.321, the final rule includes new § 1033.331(c)(2) to specify a circumstance that had not been identified in the proposal but that nonetheless would justify a denial of information requested: when the data are not in the data provider's control or possession, consistent with the general requirement in § 1033.201(a)(1). This change is intended to clarify the operation of the rule as a whole, rather than identify a new basis that a data provider could deny a request.

Additionally, the final rule includes new § 1033.331(c)(5) in response to comments requesting clarification that § 1033.331(a) and (b) do not require a data provider to make covered data available in response to a request. The CFPB agrees with commenters that this addition would facilitate compliance by clarifying the operation of the rule. The general conditions that trigger a data provider's obligation to make covered data available are set forth in § 1033.331(a) with respect to consumer requests and § 1033.331(b) with respect to third party requests. A data provider would not be required to make information available if those conditions were not met. The proposed rule did not list those explicitly as bases under § 1033.331(c), but generally explained that a data provider would not be required to make covered data available in response to a request as set forth in paragraphs (c)(1) through (4) ''[n]otwithstanding the general rules in § 1033.331(a) and (b).'' The CFPB believes that identifying these bases more directly will better facilitate compliance with the rule, including with respect to § 1033.351(b)(3), discussed below in part IV.C.7. Thus, final § 1033.331(c) no longer includes the introductory clause, ''[n]otwithstanding the general rules in paragraphs (a) and (b) of this section.''

Responses to comments regarding the exceptions in § 1033.221 are discussed in part IV.B.4. Regarding commenters' concern that small data providers would be overburdened by what they interpreted as a requirement under proposed § 1033.331(c) to track all authorizations and data access requests of their customers, § 1033.331(c) does not require recordkeeping. With respect to concerns regarding the burden of policies and procedures requirements in § 1033.351(b) and (d) regarding responses to denials and record retention, the CFPB believes these requirements will not overburden data provider, as discussed more fully below in part IV.C.7 below. Additionally, as discussed in part IV.A.4, the final rule does not cover small depository institution data providers.

Jointly Held Accounts (§ 1033.331(d))

CFPA section 1033(a) generally requires data providers to make available ''to a consumer, upon request, information in the control or possession of the covered person concerning the consumer financial product or service that the consumer obtained.'' The statute does not directly address how this obligation applies with respect to jointly held accounts. The CFPB proposed in § 1033.331(d) to require a data provider that receives a request for covered data from a consumer that jointly holds an account or from an authorized third party acting on behalf of such a consumer to make available covered data to that consumer or authorized third party, subject to the other requirements of § 1033.331. The CFPB noted that this provision would not affect data providers' existing obligations to provide information directly to consumers under other Federal consumer financial laws, such as EFTA, TISA, and TILA, and their implementing regulations. Those regulations generally permit data providers to satisfy the relevant information disclosure requirements by providing the information to any one of the consumers on the account.[78] The CFPB requested comment on whether other account holders should receive authorization disclosures or otherwise be notified, or should have an opportunity to object, when an account holder authorizes access to consumer information. The CFPB also requested comment on whether the rule should specifically address whether authorized users of credit cards should have similar access, even if they are not a joint holder of the credit card account.

A nondepository commenter requested that the CFPB clarify that authorization from a single account holder is sufficient and that there is no requirement to notify other account holders. The commenter stated that this approach is consistent with other activity by an account holder, such as writing a check or accessing the account through a consumer interface, and that providing other account holders with notice and an opportunity to object would create legal questions and consumer friction for data access. A trade association for nondepository entities recommended that other account holders not be required to approve when an account holder authorizes access but that they should be notified and receive authorization disclosures. Another trade association for nondepository entities stated that the rule should require all account holders to provide authorization for access to covered data. The commenter stated that if the rule does not require authorization from all account holders, the other account holders should be notified and have an opportunity to object and prevent the authorization. A consumer advocate commenter stated that other account holders should not have the right to object but that they should receive notice unless the consumer authorizing access actively indicates that such notice would be harmful because it poses a risk to their safety.

For the reasons discussed herein, the CFPB is adopting § 1033.331(d) as proposed with one minor change. As finalized, § 1033.331(d) provides that a data provider that receives a request for covered data from a consumer that jointly holds an account or from an authorized third party acting on behalf of such a consumer must make available covered data to that consumer or authorized third party, subject to the other provisions of § 1033.331. The final rule changes ''requirements'' to

[78] *See* 12 CFR 1005.4(c), 1030.3(d), 1026.5(d).

''provisions'' in the last phrase in § 1033.331(d) because the other parts of the rule that identify circumstances in which a data provider may not be obligated to make available covered data are more accurately described as ''provisions'' than ''requirements.'' Section 1033.331(d) carries out the objectives of CFPA section 1033(a) by clarifying whether a data provider must make available covered data in response to a request by one consumer with respect to covered data concerning a jointly held account.

Allowing a single account holder to request covered data or to authorize a third party to access covered data on behalf of the account holders is consistent with the broad authority that joint account owners have over the account. Given that broad authority, the CFPB concludes it would be unnecessarily burdensome at this time to require that other account holders approve in advance a request for covered data or authorize a third party to access covered data on behalf of a joint account holder. Likewise, the data provider or authorized third party is not required to provide notice or a copy of the authorization disclosure to other account holders. While a notice or authorization disclosure would inform the other account holders that account information is being accessed, the benefits of such a disclosure or notice are unclear and would depend on the circumstances, including the terms of the account and the relationship of the account holders. Each joint account holder already has significant authority over the account, including the ability to provide account information or expend funds. Moreover, when a joint account holder authorizes a third party to access covered data, the consumer protections in § 1033.421, including the limitations on collection, retention and use by authorized third parties, impose boundaries on the data that can be accessed by third parties and how that data can be used. Accordingly, the data provider is not required to provide a notice or copy of the disclosure to all joint account holders, though nothing in the rule prohibits data providers from doing so if they see fit.

Data Provider Revocation (§ 1033.331(e))

Proposed Rule

The CFPB proposed in § 1033.331(e) to permit a data provider to make available to the consumer a reasonable method by which the consumer could revoke any third party's authorization to access all of the consumer's covered data. Under the proposed rule, to be reasonable, the revocation method would need to be, at a minimum, unlikely to interfere with, prevent, or materially discourage consumers' access to or use of the data, including access to and use of the data by an authorized third party. Indicia that the data provider's revocation method was reasonable would include its conformance to a qualified industry standard. Finally, under the proposed rule, a data provider that received a revocation request from consumers through a revocation method would be required to notify the authorized third party of the request.

The proposal stated that this provision, along with the proposed third party revocation requirements in § 1033.421(h), were intended to ensure consumers would have multiple outlets through which they could revoke third party authorization to access covered data. But the CFPB preliminarily determined that requiring data providers to make a revocation method available might burden smaller entities. The proposed rule also noted that stakeholders had expressed concerns during SBREFA about anticompetitive behaviors from data providers. Accordingly, the proposed rule would not have permitted data providers to make available a method through which the consumer could partially revoke a third party's access to covered data, as this would be inconsistent with proposed § 1033.201(a), requiring data providers to make covered data available upon request based on the terms of the consumer's authorization. The proposed rule stated that partial revocations could result in consumers losing utility of data access for certain use cases. To further account for anticompetitive concerns, proposed § 1033.331(e) included a list of non-exhaustive requirements to ensure the optional revocation method would be reasonable, which were drawn from the definition of ''information blocking'' in section 3022(a) of the Public Health Service Act. The proposed rule stated that this language would promote consumers' ability to access and share their data by ensuring data providers do not impose obstacles that effectively evade their obligations to make available covered data under CFPA section 1033. Regarding the proposed notification requirement, the proposed rule explained that a third party whose authorization to access data is revoked by a consumer would need to understand that the consumer has chosen to end their authorization, and that the data provider did not terminate the access for another reason.

Comments Received

The concept of revocation, including permitting data providers to provide consumers with a revocation method, received general support from commenters, with many agreeing that consumers benefit significantly from multiple opportunities to revoke third party authorizations. Some commenters, including a consumer advocate, a trade association for banks, and a third party commenter, stated that the CFPB should require, rather than permit, revocation through a data provider. A trade association for data providers stated that requiring revocation through data providers would not be a burden for smaller entities because core processors can supply interfaces that include revocation methods.

Some banks and consumer advocates expressed concerns about qualified industry standards related to revocation, stating that qualified industry standards are inappropriate for revocation and could conflict with federally supervised entities' regulatory obligations. Additionally, some data provider, third party, and data aggregator commenters expressed concern about the proposed notification requirement, and suggested the following changes: require notification in as close to real-time as possible; require data providers to provide 24-hour notice to the third party before terminating access in case of pending transactions or fraud attempts; require consumers to notify all parties of their revocation and free data providers from possible liability that results from revocation; and ensure data providers do not have to furnish notification to any third party but the authorized third party. Third party commenters suggested that without more guardrails around the notification requirement, or around data providers' ability to solicit revocations from consumers, the rule would not adequately account for the potential for anticompetitive activities from data providers. In contrast, a trade association for banks requested that the CFPB make clear that a reasonable revocation method would allow the data provider to provide clear disclosures about data access to their customers.

Commenters also provided feedback on whether the permitted revocation method should allow partial revocations. Some data providers and data provider trade associations stated that the final rule should allow for partial revocations through the data provider for the consumer's added control. They also stated that the proposed rule overstated concerns about consumers not realizing the impacts of revocation on data access, commenting

that consumers making post-authorization decisions to revoke reflect intention to control and terminate third party authorizations. Other data provider and credit union trade association commenters stated that partial revocation is costly and burdensome and could result in unfair competition.

A trade association for third parties and other stakeholders raised concerns about consumer revocation through the data provider in relation to TANs. Several third parties stated that consumer revocation could result in the consumer, intentionally or unintentionally, causing the data provider to revoke the consumer's TAN after the consumer obtains the third party product or service but before the payment settles. Commenters suggested that the proposed rule's strict all-or-nothing revocation method for data providers could contribute to the unintended consequence of third party payment failure when a consumer had authorized a third party to access a TAN and other covered data.

Finally, commenters suggested that the CFPB: clarify that data providers must recognize revocation requests in joint accounts if one account holder makes the request; clarify the ''all or nothing'' requirement and how revocation works for joint account holders; clarify what constitutes a ''reasonable method'' and provide examples of when revocation mechanisms are likely to interfere with, prevent, or materially discourage consumers and how deceptive design might manifest in revocation mechanisms.

Final Rule

For the reasons discussed herein, the CFPB is finalizing § 1033.331(e) with certain changes and one technical correction described below, to provide that a data provider does not violate the general obligation in § 1033.201(a)(1) by making available to the consumer a reasonable method to revoke any third party's authorization to access all of the consumer's data, provided that such method does not violate § 1033.201(a)(2). Indicia that the data provider's revocation method is reasonable include its conformance to a consensus standard. A data provider that receives a revocation request from a consumer through a revocation method it makes available must revoke the authorized third party's access and notify the authorized third party of the request in a timely manner. Section 1033.331(e) carries out the objectives of CFPA section 1033(a) by clarifying that a data provider is permitted to establish certain procedures allowing a consumer to communicate efficiently and directly with the data provider when a third party is no longer authorized to act on the consumer's behalf to access covered data.

While consumers benefit from multiple methods of revoking third party authorization to access covered data, the CFPB has determined that requiring data providers to make available a revocation method would not be necessary and could be burdensome for some data providers. The CFPB expects that consumers seeking to revoke access to a requested product or service are most likely to do so from the third party with whom they have the ongoing customer relationship. As discussed above, while one commenter stated that requiring revocation through data providers would not be burdensome because entities could request core processors to include a method as part of their consumer interfaces, other commenters raised concerns about the burdens associated with maintaining an optional revocation method that adheres to the rule's requirements. Though providing a revocation method itself could be relatively straightforward, the CFPB acknowledges commenters' concerns that ongoing costs associated with maintaining it could be burdensome. As such, the final rule permits, but does not require, data providers to provide a revocation method to consumers.

The proposed rule stated that, to be reasonable, the revocation method would, at a minimum, need to be unlikely to interfere with, prevent, or materially discourage consumers' access to or use of the data, including access to and use of the data by an authorized third party. This language was intended to ensure data providers offering an optional revocation method did not impose obstacles that evade their obligations to make available covered data under CFPA section 1033. The final rule instead states that data providers do not violate their general obligation in the rule by making available to the consumer a reasonable method to revoke any third party's authorization to access all of the consumer's covered data, provided that such method does not violate § 1033.201(a)(2). This change is meant to ensure that any revocation method a data provider offers to consumers adheres to the prohibition against evasion, which applies to all other data provider activities, and is meant to achieve the same effect behind the proposed rule's language: data providers must not violate their general obligation to make available covered data through the offering of the optional revocation method. Potential examples of actions that might violate the prohibition against evasion in providing an optional method for consumers to revoke third party authorizations are intentionally soliciting consumers to revoke authorizations based on misleading statements about the third parties' collection, use, or retention of covered data, or providing granular revocations or disabling a TAN without the consumer's consent, discussed further below.

As discussed above, some commenters were concerned that consensus standards could be inappropriate for revocation and could conflict with federally supervised entities' regulatory obligations. The CFPB notes that consensus standards are indicia of compliance, not mandatory for compliance, and the revocation method itself is optional. Without suggesting that any such conflict exists, the CFPB is accordingly confident that data providers can avoid any hypothesized conflict with other obligations.

The CFPB remains concerned that data providers are likely to have commercial interests contrary to those of authorized third parties offering competing products or services. As such, the final rule requires data providers that provide consumers a revocation method to make available a method through which the consumer can revoke access to all of the consumer's covered data, adhere to the final rule's anti-evasion provision in § 1033.201(a)(2) and notify the authorized third party of the request in a timely manner. This language will ensure that any revocation method provided to consumers is provided in accordance with the anti-evasion provision in § 1033.201(a)(2).

While some commenters argued that data providers should be allowed to provide consumers the option to request partial revocations through the data provider, the final rule only allows for all-or-nothing revocations. Commenters did not describe in detail data providers' view into the functionality of products or services, and therefore it remains unclear how a data provider could effectively determine how to provide partial revocations that do not result in harms to consumers or authorized third parties as they continue to access covered data for products and services for which the authorization is intended to remain in place. As discussed above regarding data providers responding to requests under § 1033.331(b)(1), some data provider commenters expressed concern that data providers were not positioned

to have actual knowledge of third parties' receipt of authorization from consumers. The CFPB has determined that, just as data providers are not in the best position to manage third party authorizations, data providers are likewise not in the best position to allow consumers to seek partial revocations, a consequence of which would be termination of third parties' access to potentially reasonably necessary data elements. Further, data providers' incentives to provide partial revocations are unclear, and may not be aligned with consumers' incentives to control the authorizations they provide to third parties in order to receive products or services. As discussed above regarding data providers responding to requests under § 1033.331(b)(1), data providers may have strong incentives to limit the scope of data available to third parties, especially those providing a competing product or service. These potentially competing incentives may result in competition harms or consumer harms if data providers are permitted to provide consumers with the ability to only partially revoke third party authorizations to access covered data.

Additionally, as described above, some commenters suggested that the proposal's all-or-nothing revocation method for data providers could contribute to the unintended consequence of third party payment failure when a consumer had authorized a third party to access a TAN and other covered data and the consumer subsequently requests revocation of that information. Commenters expressed concern that a consumer's revocation of TAN information would also result in a data provider disabling a TAN's functionality. However, there are multiple reasons a consumer might revoke a third party's access to TAN information. A consumer may revoke access to the TAN information because they do in fact want to stop a third party's ability to initiate payments—therefore, the revocation would be intended for both the information and the functionality. Sometimes the consumer may just intend to revoke the third party's ability to access information, but intend for the TAN to remain functional. To avoid violating the anti-evasion provision in § 1033.201(a)(2), data providers must be aware that disabling a TAN without the consumer's consent might render unusable the covered data that the data provider makes available or prevent, interfere with, or materially discourage a consumer in accessing covered data. Whether revocation of TAN information or TAN functionality following a consumer's revocation request is a material interference with the third party's access to covered data will depend on the facts. However, general awareness of the possibility of unintended consequences of revocation, without more, will not be enough to violate this standard.

Further, the CFPB agrees with commenters that § 1033.331(e) should specify that revocation must occur in a timely manner and thus has included language to that effect in the final rule. Failure to timely revoke data access is likely to interfere with a consumer's express desire to revoke a third party's authority to access covered data. Similarly, failure to notify third parties of consumers' revocation requests in a timely manner could result in the third party continuing to seek access to covered data and receiving denials to those requests. As such, to ensure revocation is timely following a revocation request, and that notification is provided to the authorized third party in a timely manner, the final rule requires that: (1) the third party's access to the data must be revoked in a timely manner; and (2) a data provider that receives a revocation request from a consumer through a revocation method it makes available must notify the authorized third party of the request in a timely manner. While commenters suggested other specific changes to the notification requirements, described above, the CFPB has determined that additional changes are unnecessary.

Finally, a data provider commenter and trade associations for banks asked that the final rule provide information about how revocation works for joint account holders. As discussed related to § 1033.331(d), a consumer that jointly holds an account may request access to covered data or may authorize third party access to covered data. Likewise, the revocation method described in § 1033.331(e) pertains to a consumer that jointly holds an account. Any consumer that jointly holds an account may revoke third party authorization to access covered data related to that account, if provided for under the terms of the account. The CFPB has made a technical correction to the last sentence in proposed § 1033.331(e) to refer to revocation requests received from ''a consumer,'' instead of the plural ''consumers,'' which could have otherwise implied both joint account holders always need to provide the revocation request.

6. Public Disclosure Requirements (§ 1033.341)

Public Disclosure and Human- and Machine-Readability Requirements (§ 1033.341(a))

Proposed § 1033.341(a) would have required data providers to make the information described in proposed § 1033.341(b) through (d)—which address identifying information about the data provider, developer interface documentation, and performance specification—readily identifiable to members of the public. Proposed § 1033.341(a)(1) defined this to mean that the information must be at least as available as it would be on a public website. Under proposed § 1033.341(a)(2), the information would have been required to be available in both human- and machine-readable formats. The CFPB preliminarily determined that making the data available in a machine-readable format could enable third parties and other stakeholders to use automated processes to ingest the relevant information into their systems for processing and review, which will make the process of obtaining this information more efficient. The CFPB requested comment on whether it should indicate that conformance to a specific standard or a qualified industry standard would be relevant indicia for a data provider's compliance with the machine-readability requirement in proposed § 1033.341(a)(2). Additionally, the CFPB requested comment on whether it should issue rules or guidance that would make it easier for third parties and other members of the public to identify a particular data provider's information.

Commenters generally supported the requirement to make information about the data provider readily identifiable. Some commenters recommended the rule go further regarding public disclosure requirements. One bank commenter recommended that the rule allow for multiple data providers to publish their required disclosures in one location. The commenter suggested that this may be more efficient for data providers and might reduce search costs for members of the public seeking to access disclosures from multiple data providers. Further, one standard-setting body commenter suggested that an already-existing registry where data providers self-report data to help third parties connect to their data might also function as a repository for disclosures of developer interface documentation.

Regarding the proposed requirement to make information available in both human-readable and machine-readable

formats, a research institute and a trade association suggested that data provider disclosures should meet the proposed machine-readability requirement if a data provider makes the information available in a format that consumers can print or retain. In response to the request for comment, one industry commenter recommended that the CFPB should either provide a standard for machine-readability or make conformance with a consensus standard indicia of compliance.

For the reasons discussed herein, the CFPB is finalizing § 1033.341(a) as proposed. The CFPB agrees with the commenters that a central repository could benefit the public by reducing search costs. A data provider could comply with § 1033.341(a) by publishing on its website a link, readily identifiable to members of the public, that redirects consumers to the disclosures required in § 1033.341(b) through (d), published on a publicly available central repository, provided the data provider does not otherwise impede the public's ability to readily locate the disclosures.

In response to comments, information that is only available in a human-readable format that a consumer can print or retain, but that is not also available in a machine-readable format, would not comply with § 1033.341(a). As explained in the proposal, making the data available in a machine-readable format enables third parties and other stakeholders to use automated processes to ingest the relevant information into their systems for processing and review, which will make the process of obtaining this information more efficient.

Final § 1033.341(a), as well as final § 1033.341(b) through (c), will carry out the objectives of CFPA section 1033 by ensuring that third parties can efficiently access information necessary to make requests for covered data and use a developer interface. By enabling third parties to obtain information about how to use the developer interface, § 1033.341(a) through (c) also promotes the use and development of standardized formats available through the developer interface.

Disclosure of Identity Information and Contact Information (§ 1033.341(b))

The CFPB proposed in § 1033.341(b) to require data providers to disclose certain identifying information in the manner described in proposed § 1033.341(a). Specifically, proposed § 1033.341(b)(1) through (3) would require data providers to publicly disclose certain identifying information: their legal name and, if applicable, any assumed name they are using when doing business with the consumer; a link to their website; and an LEI issued by a utility endorsed by the LEI Regulatory Oversight Committee or a utility endorsed or otherwise governed by the Global LEI Foundation (or any successor thereof) after the Global LEI Foundation assumes operational governance of the global LEI system. Proposed § 1033.341(b)(4) would have required data providers to disclose contact information that enables a consumer or third party to receive answers to questions about accessing covered data under part 1033.

Commenters provided little feedback about proposed § 1033.341(b). One LEI nondepository entity commenter supported the requirement for data providers to disclose their LEI, noting that consistent use of these identifiers will enable a more efficient data sharing process. Two credit union trade association commenters suggested that smaller data providers that use a separate vendor to maintain their developer interface should be able to provide that vendor's contact information for inquiries related to the interface.

For the reasons discussed herein, the CFPB is finalizing § 1033.341(b) as proposed. A data provider is permitted to provide the contact information for the vendor that maintains the developer interface for inquiries related to the developer interface. The rule does not require that a data provider itself respond to inquiries related to its developer interface. The rule does not require that a data provider itself respond to such inquiries. Rather, it requires that data providers provide contact information that enables a consumer or third party to receive answers to questions about accessing covered data, which reasonably allows a data provider to direct such inquiries to a vendor that develops and maintains the interface.

Disclosure of Developer Interface Documentation and Access Location (§ 1033.341(c))

The CFPB proposed to require in § 1033.341(c) that a data provider disclose for its developer interface, in the manner described in proposed § 1033.341(a), documentation, including metadata describing all covered data and their corresponding data fields, and other documentation sufficient for a third party to access and use the interface. Under proposed § 1033.341(c), a data provider would need to maintain and update documentation as the developer interface is updated. The CFPB also proposed that the documentation include information on how third parties can get technical support and report issues with the interface. Finally, the CFPB generally proposed to require that developer interface documentation must be easy to understand and use. The CFPB preliminarily determined that it is common practice for data providers that have interfaces to disclose such metadata and documentation. Additionally, the CFPB preliminarily determined that a requirement to publicly disclose documentation and metadata would not materially increase the cost of compliance and would substantially enhance the usability of the interface.

One commenter that provides services to data providers highlighted generally the types of challenges industry participants might have in accessing data from a data provider. The commenter did not identify any particular challenges stemming from the proposal but emphasized the importance of industry alignment on the type of information needed to access and use APIs effectively. The commenter focused on the challenges of accessing and using a production API when its specifications are not publicly available and regularly maintained.[79] Another industry commenter supported the proposed requirement that data providers disclose information sufficient for a third party to access and use the interface.

However, several data provider commenters and a research institute commenter were critical of the proposed requirement that data providers disclose developer interface documentation and metadata sufficient for a third party to access and use the interface. These commenters stated that it is not common practice for data providers to make developer interface metadata and documentation available to the public and would subject data providers to security risks. These commenters recommended that the information required to be disclosed publicly should not be sufficient, on its own, for a third party to access and use the interface.

A bank commenter, research institute commenter, and bank trade association commenter opposed the requirement in proposed § 1033.341(c)(1) to update documentation as the developer interface is updated. These commenters

[79] *See, e.g.,* Dr. Paul M. Cray, *Open API Specifications in the Real World,* at 5–15 (APIContext, White Paper, Aug. 2024), *https://www.regulations.gov/comment/CFPB-2023-0052-11139* (noting, generally, that public disclosure of performance specifications poses some challenges for data providers, but overall is the correct approach for industry).

explained that this requirement would be unduly burdensome to data providers. These commenters noted that a developer interface typically requires frequent, minor changes that do not significantly affect access or use, and the proposed requirement would be costly to implement. These commenters suggested instead that data providers be required to reasonably cooperate with authorized third parties to make available documentation in a timely manner that enables the connectivity requirements provided in part 1033.

For the reasons discussed herein, the CFPB is finalizing § 1033.341(c) with certain revisions to address commenters' concerns about the information security risks and burden. Specifically, final § 1033.341(c) requires a data provider to disclose in the manner required by § 1033.341(a) documentation about its developer interface, including metadata describing all covered data and their corresponding data fields, and other documentation sufficient for a third party to access and use the interface. Final § 1033.341(c) provides that a data provider is not required to make publicly available information that would impede the data provider's ability to deny a third party access to its developer interface, consistent with § 1033.321. Indicia that documentation is sufficient for a third party to access and use a developer interface include conformance to a consensus standard.

Final § 1033.341(c) also provides that the documentation must be maintained and updated as reasonably necessary for third parties to access and use the interface in accordance with the terms to which data providers are subject under part 1033. Further, the documentation must include how third parties can get technical support and report issues with the interface. In addition, the documentation must be easy to understand and use, similar to data providers' documentation for other commercially available products. Publishing information about how third parties can access and use the developer interface, including metadata describing all covered data and their corresponding data fields, will promote the development and use of standardized formats of information, consistent with CFPA section 1033(d).

In proposing § 1033.341(c), the CFPB did not intend for data providers to make publicly available access keys to the developer interface or other information that would undermine the purpose of § 1033.321. To address commenters' concerns that the proposal might interfere with their ability to engage in appropriate risk management, the final rule clarifies that a data provider is not required to make publicly available information that would impede its ability to reasonably deny a third party access to its developer interface, consistent with § 1033.321. The final rule's inclusion of a consensus standard as indicia for what documentation is sufficient to access and use a developer interface is intended to promote standardization with respect to the type of documentation that facilitates third parties' access to and use of covered data, while accounting for information security risks to data providers.

The proposal would have required documentation to be updated ''as the developer interface is updated.'' To address concerns regarding the potential burden of documenting frequent minor updates to developer interfaces, final § 1033.341(c)(1) provides that such documentation must be maintained and updated ''as reasonably necessary for third parties to access and use the interface in accordance with the terms to which data providers are subject'' under part 1033. This change from the proposal provides flexibility for data providers to make minor updates to their interfaces without requiring an update to the corresponding documentation, as long as third parties can still access and use the interface as required by the final rule.

The CFPB declines to adopt commenters' recommendation to require data providers to cooperate with third parties to make documentation available in a timely manner. The CFPB is concerned this could imply that third parties engage in some affirmative conduct to obtain updated documentation, which could undermine the rule's affirmative requirement to make the information publicly available, which could create inefficiencies for many third parties. Further, the CFPB does not believe this change is necessary in light of revisions to § 1033.341(c)(1).

Performance Disclosure (§ 1033.341(d))

Proposed § 1033.341(d) would have required that a data provider disclose, in the manner described in proposed § 1033.341(a), information about the performance of its developer interface for each month. Specifically, the CFPB proposed that on or before the 10th calendar day of each month, the data provider would disclose the quantitative minimum performance specification in proposed § 1033.311(c)(1)(i) achieved in the previous calendar month. The CFPB proposed to require that the data provider's disclosure include at least a rolling 13 months of the required monthly figure, except that the disclosure need not include the monthly figure for months prior to the compliance date applicable to the data provider. The CFPB proposed to require that the data provider disclose the metric as a percentage rounded to four decimal places, such as ''99.9999 percent.''

The CFPB requested comment on whether the final rule should require data providers to disclose additional performance metrics, including those required to be disclosed in other jurisdictions' open banking systems, such as the volume of requests, the number of accounts and/or consumers with active authorizations, uptime, planned and unplanned downtime, and response time.

One data aggregator commenter recommended that a final rule include additional performance metrics. Specifically, this commenter suggested the disclosures include information about when access caps were put in place and how long they lasted, uptime, latency, days of planned and unplanned downtime, and days of notice for unplanned downtime. This commenter stated that disclosure of these metrics would help the CFPB determine whether consumers benefit from their data access rights and identify areas where further guidance or action is advisable. Finally, this commenter stated that these additional metrics would help third parties determine if they were being treated in a discriminatory manner compared to other third parties.

A bank commenter, a research institute commenter, and a bank trade association commenter stated that ten calendar days after the end of a month is not enough time to publish performance data for that month on the grounds that more time is necessary for the data provider to ensure the accuracy of the data being transmitted. These commenters stated that it can take more than a week for data providers' internal databases to populate the required information for the performance metrics. These commenters suggested that the period for data providers to disclose performance statistics should be 45 days or, at a minimum, ten business days after the close of the month. A data provider trade association also recommended that data providers be able to make these disclosures on a quarterly basis. By contrast, a data aggregator commenter suggested that performance data should be available in real time and on demand on the grounds that real-time availability would help data providers discover and address security

vulnerabilities in their developer interfaces.

A bank trade association commenter suggested that the CFPB use more precise language in § 1033.341(d) as to which disclosures are intended to be visible to the public, as opposed to disclosures that should be available only for third parties seeking access to the developer interface. A bank research institute commenter and a bank trade association commenter stated that the final rule should allow for multiple data providers to publish their disclosures of developer interface performance data in one location. These commenters suggested that a single location may be more cost-effective for data providers and might reduce search costs for members of the public seeking to access disclosures from multiple data providers. Additionally, these commenters recommended that the CFPB clarify that data providers would meet the requirements to make performance metrics readily identifiable to the public if multiple data providers published their metrics in one location. A bank trade association commenter stated that the proposed requirement to disclose performance metrics would not result in any consumer benefit. This commenter further stated that such a requirement would increase costs for data providers but that consumers cannot benefit from knowledge of metrics about a process in which consumers do not directly participate.

For the reasons discussed herein, the CFPB is finalizing the requirement in § 1033.341(d), with minor modifications. Publicly available performance data will inform consumers and authorized third parties about whether a data provider is maintaining commercially reasonable performance, which will promote data provider accountability. Contrary to some commenters' belief, performance metrics will also help consumers who struggle to connect a third party mobile banking application to their account with a data provider to understand the source of the issue. As an additional benefit, consistent with the CFPA's objective under section 1021 that markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation, availability of performance metrics should also help consumers select a data provider by allowing them to shop and select a data provider based on their developer interface performance.

Final § 1033.341(d) requires a data provider to disclose, on or before the final day of each calendar month, in the manner required by § 1033.341(a), the quantitative minimum performance specification for the response rate described in § 1033.311(c)(1)(i) through (iv) that the data provider's developer interface achieved in the previous calendar month. The data provider's disclosure must include at least a rolling 13 months of the required monthly figure, except that the disclosure need not include the monthly figure for months prior to the compliance date applicable to the data provider. The data provider must disclose the metric as a percentage rounded to four decimal places, such as ''99.9999 percent.'' The final rule also modifies the heading of § 1033.341(d) to ''Performance disclosure'' to more accurately reflect the requirement.

Final § 1033.341(d) does not require disclosure of developer interface performance metrics other than proper response, as defined in final § 1033.311(c)(1)(i) through (iv). Regarding a commenter's request that the CFPB require disclosure of additional performance metrics, the CFPB notes that it did not propose specific definitions for latency, uptime, or downtime, nor did the commenter provide definitions. The CFPB believes such metrics would benefit from further analysis to ensure disclosures are made consistently to enable meaningful comparisons and analysis of commercially reasonable performance. The CFPB likewise declines to add disclosures about data access caps to the final § 1033.341(d). Data access caps must be reasonable under final § 1033.311(d), but this requirement is not part of the quantitative minimum performance specification of § 1033.311(c). Access caps may vary based on a number of factors, including the threshold metric, the type of request, and the period of time they are in place The proposal did not define how an access cap (or caps) could be disclosed and the CFPB is concerned such a disclosure would be complex and disclosed inconsistently, and thus would not provide meaningful information to the public.

To address commenters' concerns regarding the timing for disclosures, final § 1033.341(d) provides that data providers must make their disclosures by the final day of each calendar month, rather than by the tenth calendar day as proposed. Requiring disclosure by the end of the next month should give data providers a reasonable amount of time to run and audit the required reports to calculate the quantitative minimum performance specification, as this is longer than the ten business days some commenters suggested as the minimum time needed to perform these analyses. A full month to disclose the required performance metrics should promote quality control of the data and will ensure that the information will be made publicly available on a predictable basis. Requiring data providers make these disclosures less frequently, such as on a quarterly basis, would reduce the incentive for data providers to remedy performance deficiencies in a timely manner.

Requiring real-time reporting of the quantitative minimum performance specification as suggested by one commenter, however, is unlikely to assist in the identification of security vulnerabilities. This metric merely tracks the rate at which the developer interface gives proper responses to requests and would likely provide little insight into whether an update to the interface had introduced a security vulnerability. The CFPB is thus not adopting a real-time reporting requirement.

Final § 1033.341(d) carries out the objectives of CFPA section1033(a).[80] Publicly available performance data are relevant for consumers and authorized third parties seeking reliable access to consumer-authorized data. As an additional benefit, consistent with the CFPA's objective under section 1021 that markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation, availability of performance metrics should also help consumers select a data provider by allowing them to shop and select a data provider based on their developer interface performance.

7. Policies and Procedures (§ 1033.351)

Reasonable Written Policies and Procedures (§ 1033.351(a))

The CFPB proposed in § 1033.351(a) to set forth a general obligation that data providers establish and maintain written policies and procedures that are reasonably designed to achieve the objectives set forth in proposed subparts B and C of the rule, including proposed § 1033.351(b) through (d). Under the proposal, a data provider would need to periodically review the policies and procedures required by proposed § 1033.351 and update them as appropriate to ensure their continued effectiveness. The CFPB explained that, to minimize impacts on data providers, including avoiding conflicts with any overlapping compliance obligations, proposed § 1033.351(a) required data providers to tailor these policies and

[80] The proposal preliminarily relied on section 1032 of the CFPA, but it is not necessary to rely on that authority in this final rule.

procedures to the size, nature, and complexity of their activities.

Commenters including banks, third parties, and consumer advocacy groups, generally supported the proposed requirements for data provider policies and procedures. One data provider industry commenter specifically supported the statement that data provider policies and procedures be appropriate to the size, nature, and complexity of the data provider's activities. Some commenters recommended revisions to specific policies and procedures provisions or challenged the CFPB's authority to issue a particular policies and procedures requirement. These comments are discussed in more detail in this section below.

For the reasons discussed herein, the CFPB is finalizing § 1033.351(a) generally as proposed, with one clarification. Under the final rule, as proposed, a data provider must establish and maintain written policies and procedures that are reasonably designed to achieve the objectives set forth in subparts B and C of the final rule. Policies and procedures must be appropriate to the size, nature, and complexity of the data provider's activities. Further, as proposed, a data provider must periodically review the policies and procedures required by this section and update them as appropriate to ensure their continued effectiveness.

In light of comments, the final rule includes new language stating that a data provider has flexibility to design policies and procedures to avoid acting inconsistently with its other legal obligations or in a way that could reasonably hinder enforcement against unlawful or potentially unlawful conduct. This revision is discussed in more detail in the discussion of § 1033.351(b)(2), below.

Policies and Procedures for Making Covered Data Available and Responding to Requests (§ 1033.351(b))

Making Covered Data Available (§ 1033.351(b)(1))

Proposed § 1033.351(b) would have required data providers to establish policies and procedures reasonably designed to make covered data available. Proposed § 1033.351(b)(1) would have required that the policies and procedures required by proposed § 1033.351(a) are reasonably designed to ensure that data providers create a record of the data fields that are covered data in the data provider's control or possession, what covered data are not made available through a consumer or developer interface pursuant to an exception in § 1033.221, and the reasons the exception applies. The CFPB explained that documentation of the fields that are made available in accordance with the covered data definition could help the CFPB identify compliance gaps in what the data provider makes available, streamline negotiations between data providers and third parties by establishing the available data fields, and encourage the market to adopt more consistent data sharing practices.

Under the proposal, a data provider would have been permitted to comply with the proposed § 1033.351(b)(1) requirement by incorporating the data fields defined by a qualified industry standard, provided doing so is appropriate to the size, nature, and complexity of the data provider's activities. However, exclusive reliance on data fields defined by such a standard would not be appropriate if such data fields failed to identify all the covered data in the data provider's control or possession. The CFPB preliminarily concluded that allowing a data provider to cite data fields defined by a qualified industry standard, to the extent that standard identifies covered data in the data provider's control or possession, could ease the compliance burden on data providers and promote market standardization according to CFPA section 1033(d). The CFPB proposed these requirements to facilitate compliance with and enforcement of the general obligation in proposed § 1033.201.

The CFPB received some support for the provisions in proposed § 1033.351(b)(1). One Member of Congress supported this requirement, stating that it would help ensure that consumer data are not withheld for anticompetitive reasons. Some data provider commenters expressed concern that the provision's reference to qualified industry standards would be of little utility to data providers, on the grounds that data providers would not be able to rely on the qualified industry standard to demonstrate compliance because such standard likely would not define all the data in the control or possession of the data provider. One data provider trade association stated that neither the statutory text nor the congressional intent of CFPA section 1033 calls for data providers to create and maintain the enumerated records. This commenter suggested that data providers already have supervisory obligations and that the CFPB does not have the authority for streamlining the negotiations of private commercial actors.

For the reasons discussed herein, the CFPB is finalizing § 1033.351(b)(1) with modifications to further clarify what data fields are required to be made available. Final § 1033.351(b)(1) states that indicia that a data provider's record of applicable data fields complies with the requirements of § 1033.351(b)(1) include listing data fields that conform to those published by a consensus standard. The final rule does not include the proposed regulatory text that would have stipulated that exclusive reliance on data fields defined by a qualified industry standard would not be appropriate if such data fields failed to identify all the covered data in the data provider's control or possession. This change conforms § 1033.351(b)(1) to other parts of the rule that utilize consensus standards as indicia of compliance. Additionally, the indicia approach addresses commenters' concerns that such standards may not reflect all of the data in control or possession of a data provider, while signaling to data providers that they may have additional data fields beyond the consensus standard that must be disclosed under the rule. For example, some of the terms and condition examples in § 1033.211(d) might be data fields that are not included in a consensus standard but would still be required under § 1033.351(b)(1).[81]

The CFPB is finalizing the other provisions in § 1033.351(b)(1) largely as proposed. As such, under § 1033.351(b)(1) a data provider is required to maintain policies and procedures reasonably designed to ensure that the data provider creates a record of the data fields of covered data in the data provider's control or possession. Section 1033.351(b)(1) also requires a data provider to record what covered data are not made available through a consumer or developer interface pursuant to an exception in § 1033.221, and the reason(s) the exception applies.

The CFPB is finalizing § 1033.351(b)(1) pursuant to its authority provided by CFPA sections 1033(a) and 1022(b)(1). The policies and procedures in § 1033.351(b) will carry out the objectives of CFPA section 1033(a) to make available information upon request by ensuring data providers are accountable for their decisions to make available covered data in response to requests, and in granting third parties access to the developer interface.

[81] As discussed in part IV.A.6 (definition of consensus standard), as a general matter, the indicia of compliance framework maintains the final rule as the applicable legal standard while giving due weight to a fair, open, and inclusive consensus standard as evidence of compliance with the rule.

Importantly, the policies and procedures required in § 1033.351(b)(1) are intended to ensure ongoing, consistent availability of the consumer's covered data fields. While data providers may be subject to supervisory requests for information related to their current data fields, as one commenter suggested, such a supervisory inquiry would likely occur after a consumer is harmed. Conversely, with proposed § 1033.351(b)(1), the consumer or the consumer's authorized third party have the opportunity to understand why covered data was not made available and potentially raise an issue with the data provider, or alternatively to adjust their own future requests for covered data to avoid repeated denials.

Efficiencies in onboarding third parties onto data providers' developer interfaces will enable the CFPB to administer and carry out the objectives of CFPA section 1033(a) to make available information upon request as well as the standardization objectives of CFPA section 1033(d). Creating a record of what data fields are covered data in the control or possession of the data provider will further the objectives of CFPA section 1033(a) and § 1033.211, by defining what constitutes ''covered data'' with respect to the data provider under the rule. Further, the record of data fields required under § 1033.351(b)(1) will ensure that data providers carry out their obligation to make ''covered data'' available, and that data providers do so in a consistent, objective manner, that can be reviewed and compared with data providers' actual practices by regulators in the course of supervisory and enforcement activities. This will ensure data providers are consistently making data available to all third parties and will reduce the costs of the onboarding process, which has been a problem in the past. This standardization is consistent with the objectives of CFPA section 1033(d).

Denials of Requests for Developer Interface Access and Requests for Information (§ 1033.351(b)(2) and (3))

Proposed § 1033.351(b)(2) would have required data providers to have policies and procedures that are reasonably designed to ensure that when a data provider denies a third party access to a developer interface pursuant to § 1033.321, the data provider: (1) creates a record explaining the basis for denial; and (2) communicates to the third party, electronically or in writing, the reason(s) for the denial, and that the communication occurs as quickly as is practicable. Additionally, under proposed § 1033.351(b)(3) a data provider would have been required to reasonably design its policies and procedures to ensure that when it denies a request for information pursuant to § 1033.331, the data provider: (1) creates a record explaining the basis for denial; and (2) communicates to the consumer or the third party, electronically or in writing, the type(s) of information denied and the reason(s) for the denial, and that the communication occurs as quickly as is practicable. The CFPB requested comment on whether the final rule should provide examples or further clarify how data providers could reasonably design policies and procedures to account for data security or risk management concerns.

A third party commenter and a consumer advocacy group commenter recommended that the data provider be required to explain what actions or steps a consumer or third party must take to address a denial under proposed § 1033.351(b)(2) and (3). A bank trade association suggested that some third parties may be on a sanctions list [82] and asked the CFPB to clarify that the data provider does not need to engage with these third parties or inform them of the reason for the denial. Additionally, one bank commenter suggested that under proposed § 1033.351(b)(3) it would be difficult for a data provider to communicate to a consumer why a § 1033.331 denial occurred, on the grounds that this denial would typically happen before the data provider authenticated the consumer's identity. Finally, a bank trade association commenter suggested that the CFPB clarify that records explaining why a data provider denied a particular request do not need to include the data provider's specific risk management conclusions, on the grounds that divulging specific risk management information could present additional security risks to the data provider.

For the reasons discussed herein, the CFPB is finalizing § 1033.351(b)(2) and (3) with certain revisions discussed below. Section 1033.351(b)(2) and (3) will carry out the objectives of CFPA section 1033 by enabling consumers and prospective authorized third parties to understand and satisfy data provider conditions necessary to make requests. Additionally, these provisions will prevent evasion by ensuring data providers do not avoid their obligations under CFPA section 1033 by denying developer interface access or information requests for unstated impermissible reasons.

Under final § 1033.351(b)(2) a data provider is required to reasonably design its policies and procedures to ensure that when the data provider denies a third party access to a developer interface pursuant to § 1033.321, the data provider: (1) creates a record substantiating the basis for denial; and (2) communicates in a timely manner to the third party, electronically or in writing, the reason(s) for the denial. Likewise, under final § 1033.351(b)(3), a data provider is required to reasonably design its policies and procedures to ensure that when the data provider denies a request for information pursuant to § 1033.331, to the extent the communication of the denial is not required to be standardized by § 1033.311(b), the data provider: (1) creates a record substantiating the basis for denial; and (2) communicates in a timely manner to the consumer or third party, electronically or in writing, the type(s) of information denied, if applicable, and the reason(s) for the denial.

The final rule revises the ''as quickly as practicable'' language from proposed § 1033.351(b)(2) and (3) to ''in a timely manner'' to conform to similar language about timeliness used in the regulation in the example to § 1033.331(b) and in § 1033.331(e), and is not intended as a substantive change. For clarity, the final rule clarifies that the requirement for policies and procedures to be designed to communicate the reasons for denials applies to when a denial occurs for a reason described in § 1033.331(c), as discussed in part IV.C.5 above, § 1033.331(c) cross-references the provisions of the rule that allow a data provider to deny a request for information. Additionally, the final rule requires policies and procedures to provide information when information is denied pursuant to a consumer or third party request ''if applicable.'' A request for information will not always be denied for reasons related to specific information requested. For example, a denial under § 1033.331 could occur due to the data provider not having sufficient information to authenticate or confirm authorization under § 1033.331(a) and (b), or because the interface is unavailable, and thus there would be no specific information to be specified in those cases.

Section 1033.351(b)(2) and (3) will provide data providers rule with appropriate flexibility to allow them to comply with other regulatory obligations, while still generally enabling consumers and third parties to understand reasons for denials in a

[82] For example, a list released by the OFAC, such as the Specially Designated Nationals and Blocked Persons list.

timely manner and reduce the potential for pretextual denials. Without these policies and procedures requirements, compliance obligations with §§ 1033.321 and 1033.331 would be difficult to administer, ultimately harming the consumer as a result.

Revisions in § 1033.351(b)(3) are intended to distinguish denials from the standardized format requirement in § 1033.311(b). The text in § 1033.351(b)(3) retains the ability of the data provider to have flexible policies and procedures governing denials of information requests. These denials differ, somewhat, from § 1033.311(b) error codes, because the conditions of § 1033.331(b) are not intended to impose specific expectations as to how the data provider considers these conditions, whereas § 1033.311(b) error codes have more prescriptive requirements, as discussed in this section below.

For purposes of § 1033.351(b)(3), a denial of an information request occurs when the data provider does not make data available pursuant to § 1033.331(c). Such a denial might be communicated pursuant to standardized communication protocols under § 1033.311(b), such as through an error code. These communication protocols might also include communications of other responses that are not denials but are relevant to fulfilling the request. For example, when an authorized third party requests a nonexistent data field, under § 1033.311(b) a standardized response is required to be given to the requestor, informing them of the deficient request. Conversely, under a § 1033.351(b)(3) denial, a data provider is informing the requestor that they are not being granted access to particular information in the developer interface pursuant to § 1033.331. After this communication, the data provider's obligations to the consumer or third party are satisfied, save for the records to be retained under § 1033.351(d). Under § 1033.351(d)(2)(i) and (ii), discussed below, a data provider must establish and maintain policies and procedures to retain records of, among other things, requests for a third party's access to an interface and records of requests for information. Additionally, under final § 1033.351(d)(2)(v), a data provider must establish and maintain policies and procedures to retain records of § 1033.311(c)(2) commercially reasonable performance specifications. Accordingly, records of both standardized error code denials pursuant to § 1033.311(c)(2) and denials of information requests under § 1033.351(b)(3) must be retained.

For clarity, final § 1033.351(b)(2)(i) and (3)(i) uses ''substantiating'' in place of ''explaining.'' The proposed rule used the terms interchangeably. The use of ''substantiate'' in the final rule clarifies that associated evidence for the denial should be retained as part of the data provider's required policies and procedures. Additionally, this change will not create a substantial documentation burden for data providers, given that these records are already being kept. Including a requirement for data providers to explain the process for the consumer or third party to remedy a reason for denial, as suggested by some commenters, would be an unnecessary addition to the final rule. The CFPB did not propose these appeal processes, and, if there were a denial under § 1033.351(b)(3), the process would be for the consumer or third party to again request access to the covered data after correcting the deficiency explained under § 1033.351(b)(3)(ii). If the data provider denied a valid request, then the data provider would likely be in violation of the prohibition against evasion in § 1033.201(a)(2).

One commenter was concerned that it would be difficult for a data provider to communicate to a consumer why a § 1033.331 denial occurred when the denial occurs before the data provider has authenticated the consumer's identity. Proposed § 1033.351(b)(3) would not have required a data provider to communicate why a denial has occurred before the data provider has authenticated a consumer's identity. If a data provider denies a request because the data provider has not authenticated the consumer, § 1033.351(d)(3)(ii) would simply require that, pursuant to reasonable policies and procedures, the data provider communicate that the data provider had not authenticated the consumer.

The CFPB understands that in limited cases, disclosure of the specific reason for a denial of access to an interface or for information on an interface might be prohibited by law or otherwise be inconsistent with compliance obligations or hinder law enforcement. Proposed § 1033.351(a) sought to provide flexibility to data providers in designing their policies and procedures regarding denials of information or interface access by providing in § 1033.351(a) that policies and procedures must be ''appropriate to the size, nature, and complexity of the data provider's activities.''

The CFPB believes this language alone would have been sufficient to provide data providers flexibility to avoid acting in a manner inconsistent with legal obligations or effective law enforcement. However, given the nature of concerns in this context, the CFPB believes it will facilitate compliance to more clearly state in final § 1033.351(a) that a data provider has flexibility to design policies and procedures to avoid acting inconsistently with its other legal obligations, or in a way that could reasonably hinder enforcement against unlawful or potentially unlawful conduct. A reasonable policy and procedure designed to communicate the reasons for a denial of information or access would not mandate communication or disclosure of material that would require a data provider to violate the law or hinder law enforcement. For example, § 1033.351(b)(2) does not require a data provider to inform a third party that a ''Suspicious Activity Report'' was involved in a decision to deny information or interface access, because including such information could undermine ongoing and future law enforcement investigations by tipping off suspects or present other risks.

However, even if data providers have a legitimate basis not to communicate the reason for a denial, under § 1033.351(b)(2)(i) and (b)(3)(i) the data provider must create a record substantiating the basis for denial. For example, a data provider that denies a third party access pursuant to safety and soundness concerns, must create a record that substantiates the basis for the denial under § 1033.321(a). Under § 1033.351(d), the data provider's policies and procedures must account for retention of that record, but the final rule does not require that this record be disclosed to consumers or third parties. Denials of access or information present significant risks of frustrating congressional intent, and § 1033.351(b)(2)(i) and (3)(i) helps ensure compliance with data providers' core obligation under the rule to make covered data available.

Policies and Procedures for Ensuring Accuracy (§ 1033.351(c))

Under proposed § 1033.351(c)(1), the policies and procedures data providers would be required to establish and maintain by proposed § 1033.351(a) must be reasonably designed to ensure that covered data are accurately made available. Proposed § 1033.351(c)(2) listed elements that data providers would need to consider when designing their policies and procedures regarding accuracy, for example: (1) implementing the format requirements of proposed § 1033.311(b); and (2) addressing information provided by a consumer or a third party regarding inaccuracies in

the covered data made available through its developer interface. Under proposed § 1033.351(c)(3), indicia that a data provider's policies and procedures regarding accuracy are reasonable would include whether they conform to a qualified industry standard regarding accuracy. The proposed rule explained that a qualified industry standard regarding accuracy is relevant to the reasonableness of a data provider's policies and procedures because it reflects the openness, balance, consensus, transparency, and other requirements of proposed § 1033.141.

The CFPB preliminarily determined that a data provider's policies and procedures should focus on the accuracy of transmission rather than the underlying accuracy of the information in the data provider's systems. The CFPB clarified that this means the policies and procedures should be designed to ensure that the covered data that a data provider makes available through its developer interface matches the information that it possesses in its systems. The CFPB explained that it was likely the data provider was already subject to several legal requirements regarding accuracy, such as Regulation E's protection of consumers against errors, and Regulation Z's protection of consumers against billing errors. *See* 12 CFR part 1005; 12 CFR 1026.13. The CFPB sought comment on whether the final rule should include additional elements bearing on the reasonableness of a third party's policies and procedures regarding accuracy.

Few commenters expressed concerns regarding proposed § 1033.351(c). At least one bank trade association commenter, one research institute commenter and one Member of Congress supported the proposed rule's focus on the accuracy of transmission rather than the underlying accuracy of the information in the data provider's systems. The research institute commenter went further to say the CFPB should consider adding ''accuracy testing'' as an element of reasonableness for purposes of § 1033.351(c). A consumer advocacy group commenter recommended that the CFPB include dispute resolution requirements in § 1033.351(c), explaining that some regulatory regimes, such as the regulations enumerated in the proposal, have strict time limits for exercise of their dispute rights. Finally, a bank commenter opposed the reference to qualified industry standards in proposed § 1033.351(c)(3), stating that industry standard-setting organizations are not well positioned to weigh in on the adequacy of accuracy policies and procedures, and generally have not done so to date.

For the reasons discussed herein, the CFPB is finalizing § 1033.351(c) as proposed with one terminology change. Section 1033.351(c) is authorized under CFPA section 1033(a) for the reasons stated above in the discussion of § 1033.351(a) as well as under CFPA section 1033(d). Policies and procedures for accuracy will promote the use and development of standardized formats by ensuring data providers are taking reasonable measures to share covered data in standardized formats. The CFPB has determined the mechanisms in part 1033, including the requirements in § 1033.311(b) with respect to standardized formats (discussed in part IV.C.3), are sufficient to ensure data providers transmit information accurately. There is insufficient information in the current rulemaking record that establishes that more detailed procedures are necessary to resolve disputes regarding inaccurately transmitted covered data. The CFPB will monitor the market and engage in future rulemaking, as necessary.

With respect to the role of consensus standards in § 1033.351(c), recognized standard setters are well-suited to address the adequacy of accuracy policies and procedures. A consensus standard (as revised from the term qualified industry standard used in the proposal) regarding accuracy may be relevant to the reasonableness of a data provider's policies and procedures because it is produced through a process that takes into account the perspectives of all parties making available, receiving, and using covered data, consistent with the openness, balance, consensus, transparency, and other requirements of § 1033.141. Such standards, used in connection with accuracy policies and procedures, may indicate that covered data transmitted pursuant to an applicable consensus standard will be usable by authorized third parties.

Policies and Procedures for Record Retention (§ 1033.351(d))

Proposed § 1033.351(d) would have provided that the policies and procedures required by § 1033.351(a) must be reasonably designed to ensure retention of records that are evidence of compliance with proposed subparts B and C of part 1033. The proposal's preamble explained that these requirements would give data providers flexibility to craft policies and procedures that are appropriate to the ''size, nature, and complexity'' of the individual data provider's activities, as required by proposed § 1033.351(a). The CFPB explained that this flexibility was intended to help data providers avoid conflicts with other legal obligations, manage data security risks, and minimize unnecessary impacts, consistent with the SBREFA Panel's recommendation.

Additionally, under proposed § 1033.351(d)(1), records related to a data provider's response to a consumer's or third party's request for information or a third party's request to access a developer interface would have had to be retained for at least three years after a data provider has responded to the request. The CFPB explained that this duration would provide sufficient time to administer enforcement of proposed subparts B and C. The proposed rule also stated that all other records that are evidence of compliance with subparts B and C of part 1033 would need to be retained for a reasonable period of time.

To mitigate the risk that the flexibility of the record retention policies and procedures proposal might result in the absence of critical evidence of compliance, proposed § 1033.351(d)(2) identified examples records that would need to be retained. Proposed § 1033.351(d)(2) would have required that records retained pursuant to policies and procedures under proposed § 1033.351(a) include, without limitation: (1) records of requests for a third party's access to an interface, actions taken in response to such requests, and reasons for denying access, if applicable; (2) records of requests for information, actions taken in response to such requests, and reasons for not making the information available, if applicable; (3) copies of a third party's authorization to access data on behalf of a consumer; and (4) records of actions taken by a consumer and a data provider to revoke a third party's access pursuant to any revocation mechanism made available by a data provider. The CFPB requested comment on the types of records that should be retained, the length of the retention period, and the date from which the retention obligation should be measured.

Commenters generally supported the proposal. Some bank trade association commenters supported proposed § 1033.351(d)'s measuring of the retention period from the time of response, and at least one such commenter supported the proposed three-year retention period. Some data provider commenters suggested that the retention period be for a shorter duration, such as two years, which they stated would be similar to the record retention requirements of Regulations E and Z and would reduce the amount of

time records could be exposed to security risks. One trade association recommended that the final rule reduce the retention period applicable to responses to requests made through the developer interface. Some third party commenters recommended that the final rule include records of data providers' limitations of third party access, and that all communications of denials be submitted to the CFPB on a rolling basis. A trade association stated that retaining records on all third party requests would be unduly burdensome for data providers. Data provider commenters recommended that the final rule clarify that the provision does not require the retention of every login to the consumer interface or copies of data made available through the developer interface, explaining that such a retention would lead to significant costs. One bank commenter suggested that the final rule clarify what is meant by ''copies of a third party's authorization'' in proposed § 1033.351(d)(2)(iii). The commenter stated this could be interpreted by some data providers as a requirement to obtain and retain a copy of the full authorization disclosure provided by the third party to the consumer on the third party's own website or mobile application, which would be very hard for data providers to operationalize. Additionally, one trade association recommended that retaining records on all third party requests would be unduly burdensome for data providers. Further, some data provider commenters asserted that proposed § 1033.351(d) conflicts with CFPA section 1033(c), which provides that ''[n]othing in [CFPA section 1033] shall be construed to impose any duty on a covered person to maintain or keep any information about a consumer.''

For the reasons discussed herein, the CFPB is finalizing § 1033.351(d) with revisions to conform terminology and clarify the types of records to be retained, as well as revisions to specify the duration for which records should be retained pursuant to policies and procedures.

Retention Period (§ 1033.351(d)(1))

Final § 1033.351(d)(1) provides that records that are evidence of a data provider's actions in response to a consumer's or third party's request for information or a third party's request to access a developer interface must be retained for at least three years after a data provider has responded to the request. All other records that are evidence of compliance with subparts B and C of part 1033 must be retained for a reasonable period of time of at least three years from the date of the action required under subparts B and C of part 1033.

Final § 1033.351(d)(1) revises the proposed language to the general obligation to clarify the nature of records to be retained pursuant to policies and procedures. The proposal described records ''related to'' a data provider's response to a consumer's or third party's request for information or a third party's request to access a developer interface. The final rule contains new language clarifying that data providers must retain records ''that are evidence of'' a data provider's ''actions in response to'' a consumer's or third party's request for information or access to a developer interface.'' Including the phrase ''evidence of'' in the first sentence of § 1033.351(d)(1) is more consistent with the language used in the second sentence of that paragraph. For purposes of § 1033.351(d), relevant records are those that demonstrate overall fulfillment of requests for information. The final rule does not require retention of metadata related to individual consumer logins or activity on the consumer interface. Similarly, data providers do not need to retain copies of every request to the developer interface, or copies of data elements made available in response to each request, to the extent requests are fulfilled.

Section 1033.351(d)(1) must be read together with § 1033.351(a), which states, ''[p]olicies and procedures must be appropriate to the size, nature, and complexity of the data provider's activities.'' For example, to the extent data providers fulfill consumer or third party requests, accurate aggregate data evidencing fulfillment, such as evidence of general availability of a consumer interface or a developer interface, would comply with § 1033.351(d). Of course, additional records would be necessary to the extent data providers do not make data available to consumers or third parties. For instance, if all or part of a consumer or developer interface is unavailable for a period of time to all consumers and third parties, data providers could retain records of the general unavailability of the interface. More detailed records will need to be retained to demonstrate maintenance of other policies and procedures requiring the creation of records, such as § 1033.351(b)(2)(i) and (b)(3)(i) with respect to records of denials of interface access and information requests. A data provider also might need to retain detailed information for some period of time as part of other policies and procedures required under § 1033.351. For instance, data providers might need to retain some information about responses to third party requests as part of maintaining accuracy-related policies and procedures pursuant to § 1033.351(c)(2)(ii).

Section 1033.351(d)(1) requires that records providing evidence of a data provider's actions in response to a consumer's or third party's requests for information and records of a third party's request to access a developer interface must be retained for at least three years after a data provider has responded to the request. The nature of the records retained will determine the most appropriate method of demonstrating compliance with this retention period.

In response to requests for clarity of the phrase ''reasonable period of time'' in the second sentence of § 1033.351(d)(1), final § 1033.351(d) includes new language specifying a more concrete period. Final § 1033.351(d) states, ''[a]ll other records that are evidence of compliance with subparts B and C of this part must be retained for a reasonable period of time of at least three years from the date of the action required under subparts B and C of this part.'' This aligns with the time period referenced in the first sentence with respect to responses to requests for information and access.

The CFPB believes a three-year record retention period set forth in § 1033.351(d)(1) is an appropriate duration to ensure retention of records that evidence compliance with data provider obligations under subparts B and C. Regulations E and Z, as codified in 12 CFR part 1005 and 12 CFR part 1026, respectively, implement EFTA and TILA, and the record retention requirements under Regulations E and Z offered for comparison by commenters are substantively different from that under § 1033.351(d). Records required under Regulation E and Regulation Z relate to regulated entities' disclosures to consumers pertaining to electronic fund transfers and consumer credit, respectively. Such disclosures to individual consumers are likely to be stale after a period of two years. Three years of records will allow for analysis of the patterns in a data provider's compliance with part 1033 over time. Moreover, based on the CFPB's supervisory and enforcement experience, a three-year retention period is an appropriate amount of time to enable the CFPB and other enforcement agencies to examine or conduct enforcement investigations. A shorter record retention period would make it more difficult to ensure that the necessary records are available.

The CFPB is issuing final § 1033.351(d) pursuant to CFPA section 1022(b)(1), which authorizes the CFPB to prescribe rules as may be necessary or appropriate to enable the CFPB to administer and carry out the purposes and objectives of the Federal consumer financial laws, including carrying out the objectives of CFPA section 1033, and to prevent evasions thereof. Section 1033.351(d) will assist the CFPB and other enforcement agencies with administering CFPA section 1033 by ensuring records are available to evaluate compliance with data providers' obligations under the rule. CFPA section 1033(c) does not indicate otherwise, for two independent reasons. First, § 1033.351(d) is a rule issued pursuant to CFPA section 1022(b)(1), while section 1033(c) is a rule of construction concerning ''this section,'' *i.e.,* CFPA section 1033. Second, § 1033.351(d) does not require data providers to keep records ''about a consumer.'' Rather, it requires data providers to establish policies and procedures to maintain records related to their compliance with part 1033.

Final § 1033.351(d) does not override congressional intent with respect to CFPA section 1033(b)(4) or (c). Final § 1033.351(d) only requires records providing evidence of compliance with subparts B and C of part 1033, and pursuant to § 1033.221, data providers are not required to make available any covered data that falls under the statutory exceptions at CFPA section 1033(b). Nor does § 1033.351(d) require data providers to maintain the underlying covered data that must be made available pursuant to CFPA section 1033(a).

Certain Records Retained Pursuant to Policies and Procedures (§ 1033.351(d)(2))

As proposed, final § 1033.351(d)(2) provides, ''Records retained pursuant to policies and procedures required under paragraph (a) of this section must include'' categories enumerated in subsequent paragraphs, ''without limitation.'' The CFPB is finalizing the enumerated categories under § 1033.351(d)(2) with revisions to clarify the types of records to be retained, and other revisions to clarify how the three-year period in § 1033.351(d)(1) applies to those records. In response to questions about the types of records required and to conform to language in final § 1033.351(d)(1), some provisions refer to requiring records ''providing evidence of'' certain activity, discussed below. To provide greater clarity on how the three-year time period applies to the requirements of subparts B and C, final § 1033.351(d) includes additional categories of records that a data provider's policies and procedures must include and how the three-year period applies, as discussed below.

Final § 1033.351(d)(2)(i) specifies records documenting requests for a third party's access to an interface, actions taken in response to such requests, and reasons for denying access, if applicable, for at least three years after the data provider has responded to the request. Proposed § 1033.351(d)(2)(i) specified that data provider policies and procedures must include ''records of'' requests for a third party's access to an interface, actions taken in response to such requests, and reasons for denying access, if applicable; and did not specify a retention period.

Final § 1033.351(d)(2)(i) revises this language to clarify that data providers' policies and procedures must include records ''documenting'' requests for third party access, actions taken, and reasons for denying access, if applicable. The term ''documenting'' is intended to clarify that policies and procedures must be designed to capture documentary evidence of requests to access the interface, and can include but does not require retention of actual copies of information. The CFPB is making this revision in light of how consequential granting access to a third party is, with respect to the number of consumers potentially affected by the decision, the risks of pretextual denials, and the complex factors involved in granting access, as discussed in part IV.C.4 with respect to § 1033.321. The final rule also includes new language clarifying how the three-year period applies to these records. Records documenting decisions around onboarding will be particularly important for enforcement of §§ 1033.201 and 1033.321.

Final § 1033.351(d)(2)(ii) specifies records providing evidence of fulfillment of requests for information, actions taken in response to such requests, and reasons for not making the information available, if applicable, for at least three years after the data provider has responded to the request. Proposed § 1033.351(d)(2)(ii) would have required a data provider's policies and procedures to include ''records of'' requests for information, actions taken in response to such requests, and reasons for not making the information available, if applicable; and did not specify a retention period. The final rule revises the language with respect to requests for information to records ''providing evidence of fulfillment of requests.'' This revision is intended to clarify the scope of records required, as discussed above with respect to § 1033.351(d)(1).

Final § 1033.351(d)(2)(iii) specifies records documenting that the third party has followed the authorization procedures in § 1033.401 to access data on behalf of a consumer, for at least three years after such records are generated. Proposed § 1033.351(d)(2)(iii) would have required data provider policies and procedures to include ''[c]opies of a third party's authorization to access data on behalf of a consumer,'' and would not have specified a retention period. The final rule revises that language to refer to ''[r]ecords documenting that the third party has followed the authorization procedures,'' to conform to the language in § 1033.331(b)(1)(iii). The final rule recognizes that, by virtue of its transmission to the data provider through the developer interface, the authorization disclosure received by the data provider might not be identical to the form received by the third party.

Final § 1033.351(d)(2)(iv) specifies records providing evidence of actions taken by a consumer and a data provider to revoke a third party's access pursuant to any revocation method made available by a data provider, for at least three years after the revocation. Proposed § 1033.351(d)(2)(iv) would have required data provider policies and procedures to include ''records of'' actions taken by a consumer and a data provider to revoke a third party's access pursuant to any revocation ''mechanism'' made available by a data provider; and would not have specified a retention period. Final § 1033.351(d)(2)(iv) uses the phrase ''records providing evidence of'' to clarify that identical records are not required. In addition, § 1033.351(d)(2)(iv) uses the term ''method'' rather than ''mechanism,'' to conform this provision to final § 1033.331(e).

The final rule also specifies in § 1033.351(d)(2) three categories of records that would need to be retained for a three-year period: evidence of commercially reasonable performance specifications (§ 1033.351(d)(2)(v)), written policies and procedures required under § 1033.351 (§ 1033.351(d)(vi)), and disclosures made under proposed § 1033.341 (§ 1033.351(d)(2)(vii)). Although the proposal did not specify that data providers' policies and procedures regarding recordkeeping include these records, proposed § 1033.351(d)(2) indicated that the records specified were not exhaustive. As noted above, proposed § 1033.351(d) stated that ''[t]he policies and procedures required

by paragraph (a) of this section must be reasonably designed to ensure retention of records that are evidence of compliance with subparts B and C of this part.'' Proposed § 1033.351(d)(2) stated that records retained pursuant to policies and procedures required under paragraph (a) of this section must include, ''without limitation,'' certain categories of records.

Final § 1033.351(d)(2)(v) specifies records of commercially reasonable performance described in § 1033.311(c)(2)(ii), for at least three years after the period recorded, which will enable enforcement and supervision of final § 1033.311(c). Final § 1033.351(d)(2)(vi) specifies written policies and procedures required under § 1033.351 for three years from the time such material was last applicable. And final § 1033.351(d)(2)(vii) specifies disclosures required under § 1033.341, for three years from the time such material was disclosed to the public.

A commenter's suggestion to explicitly require data providers to keep records that demonstrate justification for limiting third party access is already covered in the rule. As proposed, final § 1033.351(d)(2)(ii) requires policies and procedure to create ''[r]ecords of requests for information,'' as well as the ''actions taken in response to such requests.'' The final rule does not require data providers to report access denials monthly. Such a requirement would be burdensome without significant additional benefit. Data providers must have policies and procedures to substantiate reasons for denying access under § 1033.351(b) and the CFPB believes administrative enforcement and supervision will be sufficient to monitor compliance.

D. Subpart D—Authorized Third Parties

1. Overview

Subpart D establishes authorization procedures and obligations for third parties seeking to access covered data from data providers pursuant to the final rule's framework. The authorization procedures require a third party to obtain the consumer's express informed consent to the third party's access of the consumer's covered data. The third party must provide the consumer with an authorization disclosure that meets certain content and other requirements set forth in subpart D. Among other things, the authorization disclosure must include a statement whereby the third party certifies that it will meet the third party obligations set forth in subpart D, including limits on the third party's collection, use, and retention of the consumer's covered data. Subpart D also includes specific requirements that apply when the third party is using a data aggregator, and policy and procedure requirements related to record retention that apply if the third party is also a covered person or service provider pursuant to the CFPA.

Similar to the final rule, the proposed rule would have included authorization procedures and third party obligations designed to ensure that third parties accessing covered data pursuant to the rule's framework are acting on behalf of the consumer whose covered data are being accessed. It would have also included specific requirements that apply when a third party is using a data aggregator and policy and procedure requirements related to retaining evidence of compliance. A wide variety of commenters, including data providers, third parties, research institutes, consumer advocates, and a Member of Congress, generally supported the proposed approach to authorized third party data access in subpart D. As discussed below, other commenters expressed concerns about the proposed approach, including concerns related to the CFPB's legal authority.

Legal Authority

Some commenters asserted that the CFPB lacks the legal authority for some or all of the provisions in proposed subpart D. Specifically, a law firm commenter described authorized third parties as consumers' agents and asserted that the CFPB lacks authority to prescribe how consumers authorize agents to access data or how agents later use that data. A trade association for nondepositories argued that the third party obligations should not limit a third party's collection and use of covered data. This commenter argued that the proposed rule conflicted with traditional agency law, which permits an agent to take an action that does not necessarily benefit the principal.[83] They further contended that the proposed rule would impermissibly override consumers' choices regarding how third parties authorized to receive data may later use that data.

Other commenters criticized subpart D but for opposite reasons. Specifically, these commenters argued that the proposed approach exceeded the CFPB's authority because it would give an overly broad set of third parties access to covered data. According to one third party commenter, the term ''representative'' should be read as similar to, and connected with, ''agent'' and ''trustee'' in accordance with the interpretive canon that ''a word is known by the company it keeps'' and the canon that when ''a more general term follows more specific terms in a list, the general term is usually understood to embrace only objects similar in nature to those objects enumerated by the preceding specific words.'' [84] According to this commenter, representatives must have a fiduciary relationship with the consumer similar to a principal-agent and trustor-trustee relationship.[85] The commenter argued that it would be inappropriate to allow entities that deal with consumers at arm's length in the marketplace and are not in a fiduciary relationship with the consumer to act as authorized third parties. Similarly, two trade associations for credit unions asserted that third party access on behalf of a consumer should be limited to situations where the third party and consumer have a legal relationship that necessitates the access.

As discussed in more detail below in part IV.D.4 regarding third party obligations, some commenters asserted that the CFPB lacked authority regarding certain proposed limits on an authorized third party's use of covered data.

After considering the comments discussed above as well as other relevant comments discussed throughout part IV.D, the CFPB has determined that the provisions in subpart D align with congressional intent and are within the CFPB's rulemaking authority. The plain language of CFPA section 1033(a) provides that, subject to rules prescribed by the CFPB, a covered person shall make available to a ''consumer,'' upon request, certain information in the control or possession of the covered person. CFPA section 1002(4) defines ''consumer'' as ''an individual or an agent, trustee, or representative acting on behalf of an individual.'' [86] For convenience, part 1033 generally refers to the individual as the ''consumer'' and an agent, trustee, or representative acting on behalf of that individual as an ''authorized third party.'' As noted elsewhere, the substance of the rule aligns with the CFPA's definition of

[83] This commenter cited the Restatement (Third) of Agency (2006).

[84] The commenter quoted *Dubin* v. *United States,* 599 U.S. 110 (2023), and *Epic Sys. Corp.* v. *Lewis,* 584 U.S. 497 (2018).

[85] The commenter cited the Restatement (Third) of Agency (2006) and also the Restatement (Third) of Trusts (2003).

[86] For example, Merriam Webster defines ''on behalf of'' to mean ''in the interest of.'' *https://www.merriam-webster.com/dictionary/on%20behalf%20of.*

consumer, and nothing in the CFPA prevents the CFPB from using different vocabulary within the rule.

The provisions in subpart D are designed to ensure that, consistent with carrying out the objectives of CFPA section 1033, consumers provide informed consent to third parties that access covered data pursuant to the final rule's framework, that consumers retain control over third parties' access, and that third parties act on behalf of consumers when collecting, using, and retaining covered data pursuant the final rule's framework. Accordingly, the final rule requires third parties accessing covered data pursuant to the final rule's framework to adhere to the authorization procedures and third party obligations in subpart D, including the specific requirements for data aggregators (as applicable). These authorization procedures and third party obligations ensure that third parties accessing a consumer's covered data are acting on the consumer's behalf. They ensure the consumer is effectively informed about and has provided meaningful consent for the third party's collection, use, and retention of the consumer's covered data, and that the consumer retains the ability to control access to that covered data. The authorization procedures and third party obligations also ensure that the third party's access to covered data accords with the consumer's intent and reasonable expectations and is for the consumer's benefit.

As noted above, commenters relied upon an analogy between the definition of ''consumer'' in CFPA section 1002(4) and agency law, but they drew opposite conclusions from that analogy. The final rule establishes that a third party has a duty to act for the principal's benefit in its collection, use, and retention of data, which is in line with well-established principles of agency law. Under agency law, an agent is required to subordinate the agent's interests to those of the principal and to place the principal's interests first on all matters connected with the agency relationship.[87] Similarly, here, the final rule limits third party collection, use, and retention of covered data to what is reasonably necessary to provide the consumer's requested product or service. Furthermore, as a commenter indicated, agency law does sometimes permit a principal to consent to conduct by an agent that would otherwise breach the agent's duties to the principal, but only if the consent is the product of an adequately informed judgment by the principal.[88] Likewise, as explained below, the final rule permits third parties to access covered data for certain purposes, including targeted advertising, cross-selling of other products or services, and data sales, if data access for these purposes are separately authorized as a standalone product or service. Including those purposes as part of an authorization for the consumer's requested product or service would run contrary to the third party's obligations to the consumer. However, where the consumer affirmatively requests targeted advertising, cross-selling of other products and services, or data sales, the third party can obtain meaningful consent through a separate authorization for a standalone product or service. Thus, the final rule is consistent with common law agency principles.

The CFPB does not agree with some commenters that the effect of subpart D is to override consumers' choices. Instead, subpart D establishes a framework to ensure that consumers have a meaningful opportunity to understand and consent to uses of data on their behalf. The evident congressional purpose of CFPA section 1033(a) is to give consumers greater control of data concerning their financial accounts, and this purpose would be fatally undermined if third parties could use the data in ways that consumers would not expect and would reject if given an unobstructed choice. As part of its rulemaking role assigned by Congress, the CFPB has crafted a framework in subpart D to ensure that consumers are able to make informed choices.

The CFPB does not agree with other commenters that suggest that only a narrow class of certain fiduciaries should be recognized as authorized third parties. The CFPB has framed subpart D precisely to ensure that covered data are available only to agents, trustees, and representatives acting on behalf of the consumer. Regardless of whether entities engaged in the current open banking system would qualify for that category, if an entity satisfies the final rule's conditions—including the obligations to act on behalf of the consumer—it is appropriate to recognize it as an authorized third party.

Accordingly, subpart D is consistent with CFPA section 1033 and with the definition of ''consumer'' in CFPA section 1002(4). Moreover, even assuming for the sake of argument that commenters' narrower or broader readings of CFPA section 1002(4) were accepted, the CFPB notes that Congress has conferred express rulemaking authority on the CFPB in CFPA section 1033(a) and has done so in broad terms. Because all data sharing under section 1033 of the CFPA is ''[s]ubject to rules prescribed by the Bureau,'' the CFPB has authority to place conditions on data access in order to carry out CFPA section 1033 and realize its objective of meaningful consumer control of the data that is shared pursuant to the statute.

Finally, although commenters did not specifically challenge the basis for the proposed provision requiring certain third parties to establish and maintain policies and procedures for record retention, this provision is authorized under CFPA sections 1022(b)(1) and 1024(b)(7), as discussed in part IV.D.6.

Other Concerns Related to the Proposed Approach to Authorizing Third Party Data Access

Some commenters raised concerns with the general approach to third party access to covered data in proposed subpart D. As further discussed elsewhere in this part IV.D, the CFPB concludes that the general approach to third party access to covered data in subpart D of the final rule, including the authorization procedures and third party obligations, best aligns with congressional intent to ensure that third parties accessing covered data are acting on behalf of consumers. Additional discussion of these comments and the rationale for the CFPB's determination can be found in the remainder of this part IV.D as well as in the *General Comments Received on the Proposal* discussion of part IV and in part IV.C.5.

Some data providers and trade associations for data providers stated that the rule should mandate that third parties certify that they accept liability in certain circumstances, are adequately capitalized, and carry sufficient indemnity insurance to fulfill their liability obligations. However, the purpose of the third party obligations in subpart D is to ensure that third parties accessing covered data are doing so on the consumer's behalf. Content related to the allocation of liability between data providers and third parties would be outside the scope of this purpose. This is also the case for capitalization and indemnity insurance requirements.

A bank commenter suggested that once the rule becomes effective, it should apply to covered data currently held by third parties, to ensure that data are uniformly and consistently protected. However, the third party authorization procedures in subpart D provide procedures and obligations for

[87] *See* Restatement (Third) of Agency section 8.01 (2006).

[88] *See id.* section 8.06 and section 8.06 cmt. b.

third parties seeking to access covered data pursuant to the final rule's framework. As such, the final rule does not apply to covered data accessed by third parties prior to the final rule's effective date.

Third Party Access Outside the Subpart D Framework

Two trade associations representing nondepository entities commented that the CFPB should clarify that the rule does not prohibit third parties from accessing covered data outside the rule's data access framework. One of these trade association commenters stated that the scope of CFPA section 1033 is limited and does not authorize the rule to prohibit third parties from obtaining a consumer's financial information outside the rule's framework. The commenter requested that the CFPB clarify that the rule does not establish the exclusive means for a third party to obtain covered data and does not impose restrictions on third parties that access such data without relying on the CFPA section 1033 access right. Another bank commenter stated the rule does not address how it affects existing contracts providing for access to consumer financial data and recommended that the CFPB provide for the grandfathering of such contracts.

Several bank commenters and bank trade association commenters stated that the rule's protections should apply to third parties attempting to access covered data, even if those third parties do not attempt to become authorized third parties and rely on the rule's framework to obtain access to covered data. They stated that third parties could evade the rule's protections by declining to become authorized third parties, by not trying to access covered data through the rule's framework, and by relying on other methods to access covered data.

CFPA section 1033 provides consumers, and third parties acting on behalf of consumers, with a right to access their data, and the rule creates a framework to implement that right. The CFPB expects that third parties and covered data providers will employ the rule's framework for arranging third party access to covered data authorized by the consumer. The CFPB has determined that the rule's framework will provide significant benefits to data providers, third parties, and consumers. Data providers will receive assurance that third parties have authorization from the consumer to access data and a commitment from third parties that they will comply with certain consumer protections and other obligations, which will promote data minimization and sound risk management. Moreover, as noted above, the CFPB would not consider data providers under this final rule to be furnishers solely by virtue of permitting data access pursuant to an authorization that is consistent with the final rule. Third parties seeking to access covered data on behalf of consumers to provide products or services generally will receive that access if they comply with the authorization procedures and other conditions of the rule. Most importantly, the rule will provide significant protections to consumers by ensuring that third parties are accessing covered data on behalf of consumers—as the CFPA envisions—and are taking appropriate steps to protect their covered data. The rule does not address the topic of any data sharing outside the rule's framework, including through existing contracts. However, the prohibitions in the CFPA against unfair, deceptive, or abusive acts or practices will bear on any claimed effort to proceed outside of the safe, secure, reliable and competitive open banking framework that is enabled by this final rule. The CFPB will closely monitor the market to determine whether attempts to arrange for consumer authorized access to covered data outside the framework constitute unfair, deceptive, or abusive acts or practices.

Screen Scraping by Third Parties

In the proposal, the CFPB expressed the goal of transitioning the market away from screen scraping and noted the nearly universal consensus that developer interfaces should supplant screen scraping. The proposed rule also discussed the overcollection, data security, accuracy, and infrastructural burden concerns related to screen scraping. As discussed in part IV.C.3 above, to facilitate a transition, the CFPB proposed to prevent data providers from relying on screen scraping as a means of enabling third parties to access consumer data, even though it did not formally prohibit screen scraping. The CFPB did not propose requiring that data providers permit screen scraping as an alternative method of access, such as to address unavailability when the data provider's system interface is down for maintenance. The proposed rule explained that screen scraping generally presents risks to consumers and the market and that relying on credential-based screen scraping would complicate the mechanics of data access, particularly with respect to authentication and authorization procedures.

Several commenters addressed screen scraping by third parties. Some data provider and data provider trade association commenters asked the CFPB to prohibit third parties from screen scraping or to require third parties to include commitments to avoid screen scraping in their certification statements. These commenters generally stated that screen scraping can be difficult for data providers to identify and prevent. According to these commenters, detecting and preventing screen scraping requires significant resources even for large banks, and cannot be accomplished with certainty. Given the risks involved in screen scraping, these commenters stated, the obligation to prevent it should rest with the third party, which is most directly able to control the practice.

Several commenters tied their concerns regarding screen scraping to the coverage of the rule. For example, several data providers and trade associations for data providers stated that because the proposal would not require all third parties to access data through the developer interface, and would apply only to covered data, some third parties could still attempt to screen scrape outside the scope of the rule. One bank commenter stated that third parties that scrape non-covered data could easily scrape covered data at the same time. A data aggregator commenter asked for clarity on the use of screen scraping for non-covered data or when developer interfaces are unavailable.

Several other commenters suggested that the incentive to access data through a developer interface might be insufficient to channel data flows through the framework in the proposed rule. For example, a researcher and a service provider commenter stated that screen scraping persisted in Australia and Europe despite the development of API access. One of these commenters asserted that poor API quality caused the persistence of screen scraping in Australia, while the other claimed that the lack of a ban on screen scraping was responsible for the continuation of the practice in Europe.

In contrast, several commenters, mainly third parties and nonprofit organizations, recommended that the final rule expressly permit screen scraping in limited circumstances. These commenters generally suggested two circumstances to permit screen scraping: (1) when developer interfaces are unavailable; and (2) when data made available through developer interfaces is unreliable. A few commenters recommended allowing screen scraping until data providers have established

developer interfaces. A nonprofit organization commenter suggested that the possibility of screen scraping would serve as a check on anticompetitive conduct by data providers and a way of incentivizing developer interface quality. Another nonprofit organization commenter recommended allowing tokenized screen scraping as a more secure alternative to traditional screen scraping. A researcher commenter stated that any prohibition on third parties using consumer credentials to access developer interfaces risked leaving third parties without means of accessing data if the interface is unavailable. A nonprofit organization commenter stated that screen scraping might be the only means of accessing non-covered data from some data providers. Finally, some community banks, credit unions, and related trade association commenters also requested that the final rule permit screen scraping. These commenters generally believed that data providers should have the flexibility to permit screen scraping by trusted third parties instead of enabling access through developer interfaces.

Conversely, many large data providers and trade associations for data providers opposed any screen scraping exception. These commenters generally stated that any fallback option for screen scraping would create the same consumer transparency, control, security, and privacy risks the proposal was trying to avoid. Finally, some community banks, credit unions, and related trade association commenters also requested that the final rule permit screen scraping. These commenters generally believed that data providers should have the flexibility to permit screen scraping by trusted third parties or build developer interfaces.

The CFPB has determined that specifically prohibiting third parties from screen scraping when they obtain covered data through the final rule, or requiring them to make a certification to that effect, is unnecessary. The final rule's authorization and authentication requirements do not accommodate data access arrangements in which a third party retains consumers' access credentials. And the final rule imposes limitations on the collection, use, and retention of covered data that third parties could not feasibly meet through screen scraping.

Once data providers have enabled the safe, secure, and reliable forms of data access envisioned in this rule, the CFPB cautions that screen scraping attempts by third parties to reach data covered by such arrangements could well be limited by the CFPA's prohibition on unfair, deceptive, and abusive acts or practices.[89] As discussed throughout this document, screen scraping poses risks to consumer privacy and data security. The CFPB understands that in some circumstances, screen scraping may be the only practical means by which third parties can access consumer data. For example, a third party might seek to access non-covered data or data held by a financial institution that has not established a developer interface. But if a third party attempts to screen scrape consumer data when a more secure, structured alternative means of access is available, such as the developer interface or a substantially similar interface, then the third party would be needlessly exposing consumers to harm. Depending on the facts and circumstances, such activity might well constitute an unfair, deceptive, or abusive act or practice.

Finally, the CFPB has decided against providing for screen scraping as a fallback means of third party access under the final rule. The final rule attempts to reduce the risks of screen scraping by facilitating the market's transition toward more secure methods of consumer-authorized data access. Providing for screen scraping as an alternative method of data access would undermine this important goal. Certain technologies, such as tokenized screen scraping, could mitigate some of the risks of credential-based screen scraping. But even tokenized screen scraping would not alleviate the risks to privacy and accuracy, or meaningfully advance the statutory mandate to promote the development and use of standardized formats.

Regarding concerns that the absence of a screen scraping alternative might leave consumers without a means of authorizing access to their covered data, the CFPB has determined that the performance standards for developer interfaces will ensure that consumers and third parties have reliable access to covered data. To the extent that such access is interrupted by maintenance or reliability issues, it is not clear that screen scraping would serve as a practical alternative. If third parties collected consumer credentials in advance of a potential availability issue, the resulting mass accumulation of consumer credentials by third parties would effectively undermine the final rule's efforts to encourage safer and more structured means of data access. But waiting until the developer interface is unavailable might also be impractical because the sudden request for credentials might confuse consumers, and the unavailability might extend to the interface the third party seeks to screen scrape.

To the extent that small data provider commenters viewed screen scraping as a way to alleviate the burden of implementation, the CFPB has provided alternative means of reducing burden on small entities. For example, part IV.C.3 discusses how data providers may use service providers that rely on screen scraping to facilitate access to the developer interface. And part IV.A.5 discusses the tiered compliance dates designed to ease the burden on smaller data providers.

2. Third Party Authorization Procedures (§ 1033.401)

Proposed § 1033.401 specified what requirements a third party would have to satisfy to become an authorized third party entitled to access covered data on behalf of a consumer. The CFPB preliminarily determined that these proposed requirements would, among other things, help ensure that a consumer understands and would be able to exercise control over what covered data the third party would collect and how it would be used. The CFPB also preliminarily determined that the proposed procedures would help ensure that the third party would take appropriate steps to protect the consumer's data and that the consumer would provide express informed consent for the third party to collect, use, and retain the covered data. The CFPB preliminarily determined that these requirements would help ensure that a third party accessing covered data is doing so on behalf of a consumer and not for the third party's own benefit, consistent with the definition of consumer in CFPA section 1002(4) and as used in section 1033.

Proposed § 1033.401 would have provided that, to become an authorized third party, the third party must seek access to covered data from a data provider on behalf of a consumer to provide a product or service the consumer requested. This proposed requirement was intended to ensure that the third party is acting on behalf of the consumer—by accessing covered data to provide the product or service requested by the consumer—and is not seeking access to covered data for its own purposes.

Proposed § 1033.401 also provided that a third party would have to satisfy the prescribed authorization procedures to become an authorized third party. Under proposed § 1033.401, the three-part authorization procedures would require a third party to: (a) provide the consumer with an authorization disclosure as described in proposed

[89] *See* 12 U.S.C. 5531.

§ 1033.411; (b) provide a statement to the consumer in the authorization disclosure, as provided in proposed § 1033.411(b)(5), certifying that the third party agrees to the obligations described in proposed § 1033.421; and (c) obtain the consumer's express informed consent to access covered data on behalf of the consumer by obtaining an authorization disclosure that is signed by the consumer electronically or in writing.

The proposed requirement in § 1033.401(a) that a third party provide an authorization disclosure to the consumer was intended to help ensure that the consumer understands the key terms of access and can make an informed decision about whether to grant the third party access to the consumer's financial data. The proposed requirement in § 1033.401(b) that a third party provide a statement to the consumer certifying that the third party will comply with certain obligations would help ensure that the third party is acting on behalf of the consumer in accessing the covered data. The proposed requirement in § 1033.401(c) that the third party obtain the consumer's express informed consent to access covered data would ensure that the consumer has agreed to allow the third party to access that data on the consumer's behalf.

As discussed above in connection with § 1033.331(d), the CFPB proposed that a data provider that receives a request for covered data from a consumer that jointly holds an account or from an authorized third party acting on behalf of such a consumer must provide covered data to that consumer or authorized third party. Consistent with that proposed approach, for a jointly held account, a third party would have to comply with the third party authorization procedures in proposed § 1033.401 for the joint account holder on whose behalf the third party is requesting access. The CFPB requested comment on whether other account holders should receive authorization disclosures or otherwise be notified, or should have an opportunity to object, when an account holder authorizes a third party to access covered data from a jointly held account.

The CFPB also requested comment on whether the authorization procedures in proposed § 1033.401 would be sufficient to ensure that a third party is acting on behalf of a consumer in obtaining access to covered data or whether the CFPB should consider alternative procedures. The CFPB additionally requested comment on whether the authorization disclosure, including the statement that the third party will comply with certain third party obligations, would be sufficient to ensure that the consumer would be able provide express informed consent for the third party to access covered data on behalf of the consumer. The CFPB requested comment on whether the rule should include other protections or clarifications, such as express prohibitions on false or misleading representations or omissions to induce the consumer to consent to the third party's access to covered data.

Additionally, the CFPB proposed in § 1033.401 to apply a consistent set of procedures to all third parties attempting to access covered data. The CFPB requested comment about whether there are certain third parties, such as smaller or non-commercial parties, for which proposed § 1033.401 would not be appropriate. The CFPB also requested comment about whether the authorization procedures described in proposed § 1033.401 should be streamlined for certain third parties. In addition, the CFPB requested comment on whether there are certain circumstances involving the transmission of data to third parties for which proposed § 1033.401 would not be appropriate. Finally, to help the CFPB assess the need for potential exemptions to proposed § 1033.401, the CFPB requested comment on how individuals who are not account owners currently use existing legal mechanisms to directly access covered data.

Several nondepository entity commenters supported the proposed authorization procedures. One stated that the proposed authorization procedures will help consumers understand and consent to third parties accessing their data and that the procedures are sufficiently clear and flexible.

Commenters generally did not oppose the three-step authorization procedures, but some commenters recommended certain revisions or clarifications. One nondepository entity commenter urged the CFPB to consider streamlined authorization procedures when the consumer already has authorized access and is seeking to change the authorization by, for example, giving access to more or less data or permissioning data to additional parties. A bank trade association commenter recommended that the CFPB clarify the third party authorization procedures when material terms in the authorization change, such as when aspects of the requested product change, additional data are needed, or the service provider or data aggregator changes. This commenter urged the CFPB to require new disclosures and a new authorization when material terms in the authorization change. A trade association commenter stated that it was unclear whether third parties are required to comply with the proposed certification, disclosure, and use limitation requirements for non-covered data.

Several commenters stated that data providers should play a more significant role in the third party authorization process. Several commenters, including banks and a trade association, maintained that data providers, rather than third parties, are best positioned to obtain consumers' authorizations. A trade association commenter stated that data providers hold consumers' accounts and have account verification and access procedures to verify consumers' requests.

Several commenters addressed whether, as part of the authorization procedures, the rule should impose regulatory obligations directly on third parties, including data aggregators. Several bank and bank trade association commenters recommended that the rule impose obligations directly on third parties, rather than requiring them to certify that they will abide by certain obligations as a condition for becoming authorized to access covered data. These commenters raised concerns about how the obligations would be enforced against third parties. They also stated that the CFPB should supervise third parties, particularly data aggregators, to ensure that they comply with the third party obligations in the rule.

Several commenters recommended that the rule include additional consumer protections. A consumer advocate commenter requested that the CFPB consider additional provisions to ensure that consumers provide express informed consent for third parties accessing covered data. That commenter recommended that the rule include prohibitions on false or misleading representations to induce the consumer to provide consent to the third party's access to the consumer's covered data. Another consumer advocate commenter recommended additional consumer protections, including requiring privacy impact statements and authorizing private rights of action for consumers to pursue penalties that violate third party obligations. A consumer advocate commenter and a data aggregator commenter recommended that the privacy protections apply to any parties subject to the rule. Finally, a consumer advocate commenter suggested that the CFPB require a waiting period of fourteen days before allowing third parties to solicit any additional products or services or at least before requesting

authorization for certain additional uses, like debt collection, marketing for harmful high-cost credit products, and others.

A bank trade association requested that the rule clarify that a consumer's electronic signature on an authorization disclosure is intended to comport with the ESIGN Act. One commenter suggested that the rule should permit ''clear affirmative consent.'' This commenter asked that the rule clarify that a clear affirmative action that a consumer takes on a digital interface, such as clicking ''Agree'' or ''Continue,'' after being presented with the authorization disclosure, would satisfy the requirement that an authorization disclosure be signed electronically. The commenter suggested that ''full electronic signatures'' are an unusual method of obtaining express informed consent on a digital interface, such as an internet browser or application, would be inconsistent with seeking innovative products and services, and could create a barrier for consumers. Another commenter requested that the rule confirm a third party may rely on ''click through acceptance'' of the authorization disclosure and suggested that clicking ''agree'' or ''proceed'' should satisfy the express informed consent requirement. Conversely, a consumer advocate commenter suggested that the rule not permit the use of click through boxes and suggested toggles for ''on/off'' authorization.

Several commenters addressed how the authorization procedures should function for joint accounts. These comments are described in part IV.C in connection with the discussion of § 1033.331(d).

Several commenters addressed whether the authorization procedures should apply to all third parties or whether there should be exceptions for certain third parties, such as smaller third parties or non-commercial third parties. A bank trade association commenter stated that data providers already have procedures for providing information to natural third parties, such as agents, attorneys, accountants, and guardians. This commenter argued that such individuals should not be required to go through a developer interface, and that the rule should exempt natural third parties. A consumer advocate commenter stated that the CFPB should consider whether there should be exceptions for verified non-commercial third parties, such as family members or nonprofit counselors, that may need read-only access to data to help consumers manage their finances. Another consumer advocate commenter and a bank commenter recommended that the rule not provide any exceptions for third parties. The consumer advocate commenter stated that there may be situations in which non-commercial users, such as executors or guardians, should be able to access covered data through a consumer interface.

For the reasons discussed herein, the CFPB is finalizing the three-step authorization procedures as proposed. To become an authorized third party, under proposed § 1033.401, a third party must: (a) provide the consumer with an authorization disclosure as described in § 1033.411; (b) provide a statement to the consumer in the authorization disclosure certifying that the third party agrees to certain obligations described in § 1033.421; and (c) obtain the consumer's express informed consent to access covered data on behalf of the consumer by obtaining an authorization disclosure that is signed by the consumer electronically or in writing.

The CFPB has determined that the authorization procedures, as described in more detail below, appropriately ensure that a third party accessing covered data pursuant to the rule is doing so on behalf of a consumer and not for the third party's own benefit, consistent with the definition of consumer in CFPA section 1002(4) and used in section 1033. The authorization procedures will help ensure that a consumer understands and can exercise full control over what covered data the third party collects and how that data will be used. The authorization procedures also will help ensure that consumers are not unknowingly or reluctantly acquiescing to forms of data access that they do not want. In addition, the authorization procedures will help ensure that the third party will take appropriate steps to protect the consumer's data and that the consumer provides express informed consent for the third party to collect, use, and retain the covered data. The authorization procedures clearly apply only to third parties that are attempting to access covered data through the rule's framework and the CFPB has concluded that additional clarification is not needed to specify that the authorization procedures do not apply when entities are attempting to access non-covered data.

As noted above, some commenters recommended that data providers play a larger role in the authorization process and have primary responsibility for consumer authorizations. The CFPB has determined that it is appropriate for third parties to obtain consumer authorization for third party access to covered data. The third party is providing the product or service to the consumer and understands what covered data are reasonably necessary for providing that product or service. Assigning responsibility for consumer authorization to the data provider could create friction and impair access to covered data by authorized third parties. The third party authorization procedures ensure that third parties are acting on behalf of consumers and that consumers understand and maintain control over third party access to their covered data. While the third party is responsible for obtaining the consumer's authorization, as discussed in part IV.C.5, a data provider must make available covered data when it receives certain information, including, as provided in § 1033.331(b)(1)(iii), information sufficient to document the third party has followed the § 1033.401 authorization procedures.

The CFPB has concluded that streamlined authorization procedures would not be appropriate when the consumer or authorized third party seek to change the terms of the authorization, such as to expand or narrow the scope of access to covered data. When the parties seek to change the terms of the authorization, the authorized third party must obtain a new authorization to ensure that the consumer understands and provides express informed consent for new terms for the authorized third party's access to covered data.

The CFPB also has concluded that the approach in § 1033.401(b) to require third parties to certify to abide by certain obligations related to the data access is appropriate. As part of the authorization procedures, third parties must certify to consumers that they will comply with certain obligations as condition of becoming authorized third parties entitled to access covered data on behalf of consumers. Similarly, data aggregators also must certify to consumers that they will comply with certain obligations. The CFPB concludes that this certification-based approach is the appropriate approach for ensuring that third parties are acting on behalf of consumers when they are accessing covered data. Some commenters had urged the CFPB to impose obligations directly on third parties, including data aggregators, and to supervise third parties, including data aggregators, to ensure compliance. They raised concerns about how the obligations could be enforced under a certification-based approach if the authorized third party or data aggregator fails to comply with their obligations. The CFPB has concluded that these obligations can be

enforced effectively under the certification-based approach in various ways, including by the CFPB using its authority to prevent unfair, deceptive, or abusive acts or practices; by other regulators; and potentially by consumers under other applicable statutes or common law. With respect to supervision of third parties, as discussed in part IV.5, the CFPB's supervisory authority is defined by the CFPA. The CFPB will continue to monitor the market, including by using its supervisory authority, and will consider whether additional rulemakings are appropriate to expand the scope of the CFPB's supervision with respect to part 1033.

The CFPB declines to include in the final rule additional protections requested by commenters. The authorization procedures provide significant protections for consumers to ensure that third parties accessing covered data are acting on behalf of the consumers. The CFPB has concluded that it is unnecessary to include in the rule specific prohibitions on false or misleading representations or omissions to induce consumers to consent to third party access to covered data. Other provisions of law, including the protections of the CFPA against unfair, deceptive, or abusive acts or practices, already would address such conduct. The CFPB also declines to impose a waiting period before a third party can solicit additional authorizations. The limitation on a consumer's requested product or service is intended to be flexible for consumers to determine for themselves if they want multiple products or services, which they can authorize separately through the authorization procedures. The CFPB also notes that the rule includes a clear limitation that third parties must not expand collection, use, or retention of covered data beyond the scope of the product or service described in the consumer's authorization.

To avoid being overly prescriptive, and in light of CFPA section 1033(e)'s objective of technological neutrality, the final rule does not specify methods or mechanisms that third parties must use to obtain express informed consent electronically. Regardless of the method or mechanism used, the third party must obtain a written or electronic signature that the consumer executes or adopts with the intent to sign the authorization disclosure. When determining the method or mechanism that it will use to obtain an authorization disclosure signed in writing or electronically by the consumer, a third party must consider all of the final rule's provisions related to the authorization disclosure as well as the CFPA's prohibition on unfair, deceptive, or abusive acts or practices and other applicable law. For example, under final § 1033.411(a), the third party must provide the authorization disclosure electronically or in writing. Under final § 1033.421(g), a third party must certify that it will provide a consumer with a copy of the authorization disclosure that has been signed by the consumer electronically or in writing and that reflects the date of the consumer's electronic or written signature. Certain third parties also must establish and maintain written policies and procedures that are reasonably designed to ensure retention of records that are evidence of compliance with the requirements of subpart D. A third party may not be able to satisfy these requirements if it obtains a consumer's electronic signature by certain methods or mechanisms. For example, the CFPB expects that in order to ensure accuracy, record integrity, and to preserve the ability to access the signed authorization disclosure, the authorization disclosure and the electronic signature establishing consumer consent cannot as a matter of regular course be provided orally and still satisfy all of the final rule's requirements.[90]

The final rule has adopted the proposed approach to authorization by joint account holders. As provided in § 1033.331(d), a data provider that receives a request for a covered data from a consumer that jointly holds an account or from an authorized third party acting on behalf of that consumer must provide covered data to that consumer or authorized third party. When a third party is seeking covered data on behalf of a consumer that jointly holds an account, the third party must comply with the authorization procedures for the joint account holder on whose behalf the third party is requesting access. Consistent with the discussion in part IV.C.5 in connection with § 1033.331(d), an authorization from a single account holder is sufficient for an authorized third party to access covered data, and the CFPB declines to require that other joint account holders be notified or receive copies of the authorization disclosure.

Finally, the CFPB declines to establish any exceptions to the authorization procedures for certain third parties, such as smaller third parties or non-commercial third parties. The CFPB has concluded that it would be difficult to define the appropriate scope of any such exceptions at this time and is concerned that such exceptions could create loopholes. The CFPB has designed the authorization procedures so that they should not be overly difficult for third parties to navigate. Moreover, the rule does not prohibit persons such as attorneys or accountants from making arrangements for the consumer to provide financial information, included covered data.

3. Authorization Disclosure (§ 1033.411)

Proposed § 1033.411 specified format and content requirements for the authorization disclosure that third parties would provide to consumers in order to be authorized to access covered data on behalf of the consumer, as set forth in proposed § 1033.401. As discussed below, the final rule maintains format and content requirements for the authorization disclosure with several adjustments.

General Requirements (§ 1033.411(a))

Proposed § 1033.411(a) would have required that, to comply with proposed § 1033.401(a), a third party must provide the consumer with an authorization disclosure electronically or in writing. It also would have set forth general format requirements for the authorization disclosure. Specifically, the CFPB proposed that the authorization disclosure must be clear, conspicuous, and segregated from other material. The CFPB preliminarily determined that these requirements would facilitate consumer understanding of the authorization disclosure. The CFPB also preliminarily determined that requiring the authorization disclosure to appear segregated from other material would help ensure consumers read and understand the authorization disclosure by avoiding overwhelming consumers with extraneous information and diluting the informational value of the authorization disclosure.

The CFPB sought comment on whether these formatting requirements would aid consumer understanding and whether additional requirements should be included in the rule. Specifically, the CFPB sought comment on whether the rule should contain more prescriptive requirements, such as specifying a word count or setting a reading level. The CFPB also sought comment on whether the rule should include a timing requirement, such as a requirement that the authorization disclosure be provided close in time to when the third party

[90] Programs, goods, and services provided to the general public must be accessible to consumers with disabilities. Third parties should ensure that their authorization and consent procedures enable, when appropriate, the use of assistive technologies that may be warranted under the ADA or other applicable law.

would need consumer data to provide the product or service. Additionally, the CFPB sought comment on whether indicia that the authorization disclosure is clear, conspicuous, and segregated from other material should include utilizing a format or sample form that is set forth in a qualified industry standard.

As stated in the proposed rule, the CFPB considered proposing specific guidance for accessibility of the authorization disclosure for individuals with disabilities but preliminarily determined that the Americans with Disabilities Act (ADA) and its implementing regulations [91] would already require that the authorization disclosure be provided in an accessible format. The CFPB sought comment on whether the rule should contain requirements relating to the accessibility of the authorization disclosure.

The CFPB received a number of comments on the authorization disclosure's general requirements. A variety of commenters, including data providers and trade associations for certain data providers, some third parties and trade associations for certain third parties, and a research institute, supported the proposed formatting requirements because the commenters thought that the proposed requirements are clear, straightforward, and meaningful. A commenter suggested that the proposed provisions related to written authorization disclosures should be removed because they are unnecessary.

A variety of commenters, including data providers and trade associations for certain data providers, some third parties, consumer advocates, and a research institute, supported adding various requirements for the authorization disclosure, including plain language, reading level, or understandability requirements. One consumer advocate commenter supported a word count limit for consumer understandability, but a research institute commenter opposed a word count limit. This commenter said that a word count limit would not be feasible based on the amount of information that may need to be included in the authorization disclosure.

A consumer advocate commenter and two data provider commenters supported adding authorization disclosure timing requirements to the rule. The consumer advocate commenter suggested that the rule specify that the authorization disclosure be provided no earlier than 14 days prior to the time that the third party begins providing the product or service to the consumer. One of the data provider commenters suggested that the authorization disclosure should be provided close in time to when the third party would need covered data to provide a product or service, and the other data provider commenter similarly suggested that the authorization disclosure be provided close in time to when the third party first accesses covered data. The consumer advocate commenter and two data provider commenters suggested that timing standards could increase the chances that a consumer is making an informed choice to authorize a third party to access covered data and reduce the risk that a consumer forgets that they previously authorized a third party to access covered data.

A variety of commenters, including data providers, third parties, a consumer advocate, and a research institute, suggested adding other formatting requirements to increase consumer understanding. Some data providers, trade associations for certain data providers, and a third party commenter requested additional clarity on the meaning of ''clear and conspicuous.'' A trade association for data providers requested that the final rule prohibit extraneous language that could cause consumer confusion or obscure key terms of access. One third party commenter expressed concern that the proposed requirement to segregate the disclosure from other material would cause consumers to over-focus on the authorization disclosure. This commenter supported allowing the authorization disclosure to be combined with other materials, including disclosures required under Regulation E or Regulation Z. However, several commenters supported requiring that the authorization disclosure be segregated from other material.

A standard-setting body commenter asserted that the use of qualified industry standards regarding the authorization disclosure would not be appropriate for establishing regulatory compliance or as indicia of compliance, but stated that specifications and best practices might evolve to match the final rule and be used as suggestive tools. Some trade association commenters and a credit union commenter supported a role for industry standards in authorization disclosure formatting because, they said, it would improve consistency in the disclosures. A third party commenter stated that when consumers have multiple accounts, the rule should ensure that consumers check a box or similarly identify the accounts to which consumers are granting access, noting that this requirement could be defined by industry standards.

Commenters also provided feedback on whether the CFPB should provide model forms for the authorization disclosure in addition to setting forth general formatting requirements in the rule. A variety of commenters, including data providers, consumer advocates, and a research institute, suggested that the CFPB provide model forms or clauses for all or part of the authorization disclosure to save time and resources and ensure effectiveness, consistency, and compliance. Two consumer advocate commenters and a bank commenter suggested that model forms would be beneficial for consumers. A bank trade association commenter and a data aggregator commenter suggested that use of model forms should provide a safe harbor. Conversely, one trade association commenter specifically opposed model forms. This commenter opposed over-engineered and overly prescriptive requirements for the authorization disclosure. One third party commenter preferred flexible standards that would allow authorization disclosures to shift with market innovations and new technologies.

A consumer advocate commenter requested a disability accessibility requirement to prevent any ambiguity in case there is a disagreement about the applicability of the ADA.

For the reasons discussed herein, the CFPB is finalizing the language of § 1033.411(a) as proposed, with an additional requirement. Specifically, the CFPB is adding to final § 1033.411(a) a requirement that the names included in the authorization disclosure, as required by §§ 1033.411(b)(1) and (2) and by § 1033.431(b), must be readily understandable to the consumer. The CFPB has determined that this requirement will help ensure that consumers are able to easily identify the entities in the authorization disclosure. Unlike a legal or trade name which may or may not be familiar to a consumer depending on the particular entity, the ''readily understandable'' requirement directly addresses consumer understanding to facilitate informed consent.

The CFPB is not eliminating the option for third parties to provide the authorization disclosure in writing as suggested by a commenter. Retaining this option permits flexibility in circumstances that may necessitate the authorization disclosure to be provided in a non-electronic form.

[91] *See* 42 U.S.C. 12132, 12182(a); 28 CFR 35.130, 35.160(a), 36.201, 36.303(c).

The CFPB is not including the additional formatting requirements requested by commenters, including plain language or reading level requirements or word count limits, because ''clear and conspicuous'' is a common standard that is flexible enough to cover a variety of circumstances and ensure consumer understanding of the authorization disclosure. The meaning of ''clear and conspicuous'' in this final rule should be informed by how the standard has been interpreted in other contexts, including by the FTC in assessing whether disclosures in advertisements are clear and conspicuous.[92]

The CFPB is not including timing requirements, as suggested by some commenters, in order to maintain flexibility in light of the variety of products and services for which third parties may seek to access covered data. For example, a third party may need to access covered data periodically, may only need to access covered data at or near the time that the consumer obtains the product or service, or may only need to access covered data at a later time. Additionally, the final rule's duration and reauthorization requirements act as added protections against potential harms related to third parties accessing covered data based on long-term authorizations.

The CFPB is maintaining the proposed segregation requirement for the authorization disclosure. Combining disclosures or other materials that serve varying purposes in the manner that a third party commenter suggested could result in consumer confusion. Although Regulation E and Regulation Z disclosures provide important consumer protections, they do not serve the same purposes as the authorization disclosure, which is to ensure that third parties are acting on behalf of consumers when accessing covered data. Simply placing the authorization disclosure at the top of a combined disclosure form would not sufficiently alleviate the risk of consumer confusion. Moreover, segregating the authorization disclosure from other material, including other important disclosures, allows the consumer to consider the content of each disclosure or other document in turn.

The CFPB is not providing model forms or clauses for the authorization disclosure. The final rule provides flexibility in how third parties meet the disclosure requirements given the range of potential third parties that may seek authorization to access covered data pursuant to the final rule's framework and the potential for innovation and the development of new technologies. As one research institute commenter noted when discussing a word count limit, there may be feasibility issues with providing a model disclosure because it potentially would need to be useable for multiple different types of products and services, multiple data providers, and multiple third parties. The CFPB will monitor the market and consider developing model forms or clauses in the future, as appropriate.

The final rule does not reference a consensus standard regarding authorization disclosure format because the clear and conspicuous standard is well established in Federal consumer financial law, as well as other consumer protection frameworks in both State and Federal law. Additionally, the CFPB encourages third parties and other interested stakeholders to apply to test authorization disclosures through the CFPB's Trial Disclosure Policy.[93]

The CFPB is not including disability accessibility requirements in the final rule because the ADA addresses these requirements, and the CFPB does not want to create potentially conflicting requirements.

Authorization Disclosure Content (§ 1033.411(b))

Proposed § 1033.411(b) would have required inclusion of the following key terms of access in the authorization disclosure: (1) the name of the third party that will be authorized to access covered data pursuant to the third party authorization procedures in proposed § 1033.401; (2) the name of the data provider that controls or possesses the covered data that the third party seeks to access on the consumer's behalf; (3) a brief description of the product or service that the consumer has requested the third party provide and a statement that the third party will collect, use, and retain the consumer's data only for the purpose of providing that product or service to the consumer; (4) the categories of covered data that will be accessed; (5) the certification statement described in proposed § 1033.401(b); and (6) a description of the revocation mechanism described in proposed § 1033.421(h)(1). Additionally, proposed § 1033.431(b) would have required the authorization disclosure to include the name of any data aggregator that would assist the third party with accessing covered data and a brief description of the services the data aggregator would provide.

The proposed content requirements for the authorization disclosure aimed to strike a balance between providing consumers with sufficient information to enable informed consent to data access and keeping the disclosure sufficiently short to increase the likelihood that consumers will read and understand it. The CFPB preliminarily concluded that the proposed requirements would be important for consumers to understand the terms of data access and would help ensure that third parties accessing covered data are acting on behalf of consumers by enabling informed consent.

The CFPB sought comment on any obstacles to including the proposed authorization disclosure content and on whether additional content was needed to ensure consumers have enough information to provide informed consent. Specifically, the CFPB sought comment on whether the rule should include any additional requirements to ensure: (1) the consumer can identify the third party and data aggregator, such as by requiring inclusion of legal names, trade names, or both; (2) the description of the consumer's requested product or service is narrowly tailored and specific such that it accurately describes the particular product or service that the consumer has requested; (3) the consumer can locate the third party obligations, such as by requiring a link to the text of proposed § 1033.421; and (4) the consumer can readily understand what types of data will be accessed, such as by requiring third parties to refer to the covered data they will access using the categories in proposed § 1033.211. The CFPB also sought comment on whether the authorization disclosure should include additional content such as the names of other parties with whom data may be shared, the third party's contact information, or how frequently data will be collected from the consumer's account(s).

A variety of commenters supported the authorization disclosure content included in the proposed rule on the grounds that it would provide consumers with information that would enable informed consent. A variety of commenters also stressed the importance of keeping the authorization disclosure short to avoid information overload for consumers. One research

[92] The FTC has articulated the ''4 Ps''—prominence, presentation, placement, and proximity—as a way of evaluating whether disclosures are clear and conspicuous. Lesley Fair, *Full Disclosure,* FTC Bus. Blog (Sept. 23, 2014), *https://www.ftc.gov/business-guidance/blog/2014/09/full-disclosure.*

[93] Consumer Fin. Prot. Bureau, *Competition and innovation at CFPB, https://www.consumerfinance.gov/rules-policy/competition-innovation/* (last visited Oct. 16, 2024). Under this policy, companies can obtain a safe harbor for testing disclosures that improve upon existing disclosures for a limited period of time while sharing data with the CFPB.

institute commenter requested harmonization of the authorization disclosure with other privacy laws to reduce compliance challenges and consumer confusion.

A variety of commenters suggested that additional content be included in the authorization disclosure.[94] A bank, bank trade association, and a consumer advocate also recommended that additional content be included through a hyperlink on the authorization disclosure.

Other commenters, including a data aggregator, a trade association for certain third parties, a data provider, a consumer advocate, and a research institute, suggested that the content should be limited. Two of these commenters expressed concern about information overload, and two commenters expressed concern about the burden of including additional information in the authorization disclosure. A data provider commenter requested that the final rule remove the requirement to include the data provider's name in the authorization disclosure.

Some commenters, including a credit union commenter, trade association commenters, and a consumer advocate commenter, supported additional requirements to ensure the description of the consumer's requested product or service is narrowly tailored and specific. One data aggregator commenter requested clarification on the description needed to identify the categories of data that will be accessed. This commenter suggested that it should be sufficient to use categories such as ''transactional history'' or ''account balance'' and that it should not be necessary to describe more specific data fields.

For the reasons discussed herein, the CFPB is finalizing § 1033.411(b) with modifications. First, the final rule adds a requirement, as § 1033.411(b)(6), that the authorization disclosure include a brief description of the expected duration of data collection and a statement that collection will not last longer than one year after the consumer's most recent reauthorization. The content of proposed § 1033.411(b)(6) is finalized as § 1033.411(b)(7). Second, the final rule removes the word ''covered'' from § 1033.411(b)(4) and specifies that the disclosure for categories of data that will be accessed must have a substantially similar level of specificity as the categories in § 1033.211. The other modifications are non-substantive adjustments for clarity and consistency.

The CFPB is finalizing in § 1033.411(b)(6) a requirement that third parties include a description of the expected duration of data access because this requirement is important for consumers to understand the terms of data access. In particular, including information about the revocation method in the authorization disclosure without information about the duration of collection could leave consumers under the mistaken impression that the only way for data access to end is through utilizing the revocation method. Duration is also a key term that may help consumers decide whether to consent to third party data access. In the case of a one-time data pull, this additional information lets consumers know the data sharing will not continue. In the case of authorizing data access without a set duration, this additional information ensures consumers know about the one-year reauthorization requirement.

By removing the word ''covered'' from § 1033.411(b)(4), the final rule allows the authorization disclosure to include categories of non-covered data. This gives third parties the flexibility to utilize the authorization procedures to access non-covered data in addition to covered data. The additional requirement that the categories used in the authorization disclosure must have a substantially similar level of specificity as the categories in § 1033.211 will help ensure that consumers have enough information about what types of data are being accessed while also ensuring that the authorization disclosure does not become too lengthy due to a long list of very specific data types.

Beyond these modifications, the CFPB is not adding or eliminating content requirements for the authorization disclosure in the final rule, as requested by some commenters. The content requirements strike an appropriate balance between providing consumers with sufficient information to enable informed consent to data access and keeping the disclosure sufficiently short to increase the likelihood that consumers will read and understand it. Regarding the commenter suggesting clarification on the description of the categories of data to be accessed, the CFPB notes that the categories of data that will be accessed must have a substantially similar level of specificity as the categories in § 1033.211. Finally, the CFPB has determined that third parties can comply with the authorization disclosure content requirements in § 1033.411(b) while also complying with other applicable privacy laws.

Language Access (§ 1033.411(c))

Proposed § 1033.411(c)(1) would have required that the authorization disclosure be provided in the same language as the communication in which the third party conveys the authorization disclosure to the consumer. It also would have required any translation of the authorization disclosure to be complete and accurate. Proposed § 1033.411(c)(2) stated that if the authorization disclosure is in a language other than English, it must include a link to an English-language translation. Additionally, proposed § 1033.411(c)(2) stated that, if the authorization disclosure is in English, it would be permitted to include links to translations in other languages.

The proposed rule stated that consumers with limited English proficiency may benefit from receiving a complete and accurate translation of the authorization disclosure, and some third parties may want to respond to the needs of consumers with limited English proficiency using translated disclosures. At the same time, the CFPB preliminarily determined that requiring third parties to identify such consumers and provide complete and accurate translations in the myriad languages that consumers speak may impose a significant burden on third parties.

The proposed rule stated that some consumers who receive translated disclosures may also want to receive English-language disclosures, either because they are fluent in English, or because they wish to share the disclosures with an English-speaking family member or assistance provider. It also stated that English-language disclosures may also allow consumers to confirm the accuracy of the translation.

The CFPB received few comments on the proposed language access provisions. One trade association for nondepositories indicated that the

[94] One or more commenters requested that one or more of the following be included in the authorization disclosure: the legal and trade name of the third party; a description of the data security and privacy standards to which the third party will adhere in relation to the consumer's data; contact information for the third party, aggregator, and/or the CFPB; a link to the third party's website; information about the frequency (how often data are accessed), recurrence (such as one time data access or recurring access), and duration of data access or retention (time period when data are accessed or retained); a description of any alternatives to sharing covered data that would allow a consumer to access the product or service (for example, providing a credit score for credit underwriting or microtransfers to the consumer's bank account to verify the account); the names of other third parties with whom data may be shared; a brief explanation of the ways in which data that identifies the consumer can be used by the third party accessing the data; and the specific purposes for which the third party collects and uses the consumer's data.

language access provision is satisfactory. A consumer advocate commenter requested that the CFPB require the authorization disclosure to be translated into languages used in marketing. Another consumer advocate commenter requested a Spanish language disclosure and stated that the rule should require third parties to automatically provide the authorization disclosure and other documents in Spanish to all consumers. This commenter also suggested that the rule improve language access throughout the entirety of the data gathering process and hold data aggregators and lenders to comparable standards. A bank trade association commenter suggested that the language access provision in the proposed rule necessitated additional discussion or clarity regarding how principles regarding unfair, deceptive, or abusive acts or practices apply more generally to financial products and services on an end-to-end basis.

For the reasons discussed herein, the CFPB is finalizing the language access provisions in § 1033.411(c) as proposed, with nonsubstantive clarifying changes. The final rule's language access requirement applies to the authorization disclosure and, where applicable, the data aggregator certification. The language access provisions in the final rule ensure that a consumer understands and is able to exercise control over what covered data the third party would collect, use, and retain. The CFPB has determined that it would not be appropriate to require authorization disclosures to be provided to all consumers in Spanish, as requested by one commenter. The requirement in § 1033.411(c)(1) to provide the authorization disclosure in the same language as the communication in which the authorization disclosure is conveyed to the consumer should help ensure that consumers receive the disclosure in a language they understand, without a broad requirement that all authorization disclosures be provided in Spanish, which would result in additional burden on third parties. A broad statement about the interaction of principles regarding unfair, deceptive, or abusive acts or practices and language access more generally is outside the scope of this rulemaking.

4. Third Party Obligations (§ 1033.421)

Proposed § 1033.421 described obligations to which third parties would be required to certify in order to be authorized to access covered data. The proposed third party obligations included: a limit on third party collection, use, and retention of covered data to what is reasonably necessary to provide the consumer's requested product or service; a maximum duration of collection of one year after the consumer's most recent authorization unless the consumer provides a new authorization; and certifications that the third party would provide consumers a simple way to revoke access, maintain certain accuracy and data security obligations, and ensure consumers have access to information about the third party's authorization to access data. The CFPB stated that it was proposing these certification requirements to ensure that third parties accessing covered data are acting on behalf of the consumer.

The proposed third party obligations received a range of feedback from commenters, with some commenters offering general support for the proposed approach to requiring third parties to certify to the obligations in proposed § 1033.421, while other commenters expressed concern with the proposed obligations and the associated privacy protections.[95] Some commenters suggested that aspects of the proposed obligations do not accord with congressional intent to ensure consumers can use their own data for their own preferences, and that the CFPB lacks authority to prescribe the proposed obligations. Other commenters said the obligations are not strong enough to protect consumers' privacy. Specific comments are discussed in more detail in the sections regarding third party obligations, below.

The CFPB is prescribing the third party obligations in § 1033.421 to ensure that third parties accessing covered data are acting on behalf of consumers, consistent with CFPA section 1033. As explained above in the legal authority discussion in part IV.D.1, the plain language of CFPA section 1033(a) provides that, subject to rules prescribed by the CFPB, a covered person shall make available to a ''consumer,'' upon request, certain information in the control or possession of the covered person. CFPA section 1002(4) defines ''consumer'' as ''an individual or an agent, trustee, or representative acting on behalf of an individual.'' For convenience, part 1033 generally refers to the individual as the ''consumer'' and an agent, trustee, or representative acting on behalf of that individual as an ''authorized third party.'' Congress intended, through CFPA section 1033, that the consumer would have the right to access their covered data for their own benefit, and would be able to authorize representatives to act on their behalf to that end. As such, the final rule requires third parties accessing covered data to adhere to the procedures and obligations in subpart D, including certifying to limit collection, use, and retention of covered data to what is reasonably necessary to provide the consumer's requested product or service, so as to ensure that the third party is accessing data as a representative acting on behalf of the consumer and that the consumer is the primary beneficiary of that data access. In addition, as noted above, the CFPB has rulemaking authority to adopt § 1033.421 to carry out the objectives of CFPA section 1033.

By adhering to the obligations in § 1033.421, a third party, as a representative acting on behalf of the consumer, ensures consumers are best positioned to understand the data access they are authorizing and accordingly are best positioned to exercise meaningful control with respect to such access. As such, the obligations in § 1033.421 ensure the consumer is effectively informed about the scope of the third party's access to covered data and ensure that the third party's access accords with the intent and reasonable expectations of the consumer. For example, the third party's adherence to § 1033.421(a) ensures the consumer understands and clearly directs how and for what purposes their data will be collected, used, and retained.

For the reasons discussed herein, final § 1033.421 generally adopts the proposed third party obligations. Changes related to specific aspects of the proposed obligations are described in detail below.

General Standard To Limit Collection, Use, and Retention (§ 1033.421(a))

Under proposed § 1033.421(a)(1), third parties would have been required to limit collection, use, and retention of covered data to what is reasonably necessary to provide the consumer's requested product or service. Proposed § 1033.421(a)(2) would have provided that, for purposes of the limitation in proposed § 1033.421(a)(1), certain listed activities would not be part of, or reasonably necessary to provide, any other product or service. Under these proposed provisions, third parties would seek and obtain consumer authorization to access covered data only as reasonably necessary for the provision of the product or service that the consumer requested, and not for uses that are secondary to that purpose.

[95] A research institute commenter stated that the final rule should clarify that data generated by a third party in the course of providing the consumer's requested product or service is not subject to the third party obligations. Use of generated data is discussed below related to § 1033.421(c).

The proposed rule explained that the limit on collection, use, and retention of covered data in § 1033.421(a) was designed to ensure that, consistent with carrying out the objectives of CFPA section 1033, third parties that access covered data would act on behalf of consumers, and that third party collection, use, and retention of covered data would proceed in alignment with consumer control and truly informed consent. Specifically, proposed § 1033.421(a) was aimed at ensuring that third parties access covered data for the consumer's benefit, that consumers retain meaningful control over their data when authorizing third party access to that data, and that consumers are best positioned to understand the scope of that authorization. In addition, proposed § 1033.421(a) was aimed at ensuring consumers do not unknowingly or reluctantly acquiesce to data collection, use, and retention that they do not want. Further, the proposed rule noted that covered data that third parties would collect, use, and retain pursuant to consumer authorization would include sensitive financial data that might subject consumers to fraud or identity theft if it were exposed.[96] The proposed rule stated that the limitation in § 1033.421(a) was designed to ensure that third parties would act on behalf of consumers when accessing that sensitive data.

The CFPB is generally finalizing § 1033.421(a) as proposed. Feedback from commenters, and the CFPB's approach in the final rule, are discussed further below related to each aspect of the general data limitation standard.

In General (§ 1033.421(a)(1))

The CFPB is finalizing § 1033.421(a)(1) as proposed. Under final § 1033.421(a)(1), third parties must certify to limit collection, use, and retention of covered data to what is reasonably necessary to provide the consumer's requested product or service. Specific aspects of the standard in § 1033.421(a)(1), including comments received and rationale for the final provisions, are discussed below.

Reasonably Necessary

As described in the proposed rule, the reasonably necessary standard was designed to ensure that the consumer is the primary beneficiary of any authorized data access, and that the resulting collection, use, and retention of covered data align with consumer control and informed consent. The CFPB considered a range of alternatives to this standard, including evaluating limitation standards in other data privacy regimes.[97] For example, the CFPB considered whether data collection, use, and retention should be limited to what is ''strictly necessary,'' ''adequate,'' ''relevant,'' or ''legitimate.'' The CFPB preliminarily determined that a reasonably necessary standard would be flexible enough that third parties could use data for a variety of purposes to provide the product or service the consumer requested, but would still sufficiently minimize third party collection, use, and retention to ensure third parties accessing covered data are acting on behalf of the consumer.

The reasonably necessary standard received general support from many commenters, including data providers, consumer advocates, third parties, data aggregators, Members of Congress, trade associations for data providers, and others. These commenters expressed support for third parties generally limiting their collection, use, and retention of data based on what is reasonably necessary. Some commenters who supported the reasonably necessary standard offered for consideration various clarifications or feedback on other aspects of the rule, like how the standard might apply to collection, use, or retention separately. These comments are discussed below related to those provisions.

Some commenters—mostly third parties and related trade associations, but also some banks, trade associations for data providers, and consumer advocates—expressed concerns about the proposed reasonably necessary standard. Some of these commenters posited that the proposed standard is stricter than other privacy regimes, might result in unintended consequences for consumers, does not give consumers meaningful control, or would result in an unlevel playing field between data providers and third parties. Other commenters suggested that the reasonably necessary standard does not go far enough to constrain downstream data uses not requested by consumers or to curb activities by data aggregators that would not be necessary for the provision of the product or service. Other commenters suggested alternative standards, either from industry or from other privacy laws, regulations, and principles. Some commenters suggested that collection, use, and retention each should be governed by different standards. In contrast, some third party commenters stated that the reasonably necessary standard for collection is too rigid and impractical for some products and services. Comments related to the application of the general limitation standard to collection, use, and retention are discussed separately below in more detail.

For the reasons discussed herein, the CFPB is finalizing the reasonably necessary standard in § 1033.421(a) as proposed. The CFPB considered whether a stricter standard should apply to more sensitive types of data, and generally whether other standards would be more consumer protective. After considering comments received and the CFPB's evaluation of alternatives, the CFPB has determined that the reasonably necessary standard is sufficiently flexible for third parties to collect, use, and retain covered data for a variety of purposes to provide the product or service the consumer requested, but will still sufficiently minimize third party collection, use, and retention to ensure third parties accessing covered data are acting on behalf of the consumer. The CFPB disagrees with commenters that suggested the standard is too rigid or impractical, or too permissive for third parties such that it would not protect consumers from downstream uses or result in other unintended consequences. The reasonably necessary standard will protect consumers from unwanted data collection, use, and retention while giving third parties sufficient flexibility to collect, use, and retain data to provide consumers the products or services they request. As such, the CFPB declines to make commenters' suggested changes to the proposed standard.

As described further below, the CFPB has determined that collection, use, and retention of covered data beyond what is reasonably necessary for the product or service the consumer requested would undermine the consumer's understanding of the authorizations they provided and would thus undermine a consumer's ability to control their data. The third party obligations, including the limit on collection, use, and retention of covered data, are designed to ensure that the third party is accessing covered data for the consumer and that accordingly the

[96] These sensitive data also could impact persons or entities besides the consumer from whom they are sourced, especially when collected, used, and retained in large amounts, such as where the data are matched with other consumer data sets.

[97] The proposed rule stated that the reasonably necessary standard in proposed § 1033.421(a)(1) would be similar to standards in several data privacy frameworks that minimize third parties' collection, use, and retention of data. *See, e.g., Competition and Consumer (Consumer Data Right) Rules 2020,* div. 1.3 (Austl.) (minimizing consumer data requests to what is ''reasonably needed''); Reg. 2016/679, art. 5(1)(c), 2016 O.J. (L 119) 7 (EU) (''Personal data shall be . . . limited to what is necessary in relation to the purposes for which they are processed.'').

consumer is the primary beneficiary of that data access. Third parties can benefit from access to covered data, but only by collecting, using, and retaining data as reasonably necessary to provide the consumer's requested product or service.[98] A third party that collects, uses, or retains data in a manner that benefits the third party but that is not reasonably necessary for the product or service the consumer requested would not be acting on behalf of the consumer. In that situation, the third party would be advancing their own the interests, and not the interests of the consumer, and as such would not be acting as a representative acting on behalf of the consumer within the meaning of CFPA section 1002(4).

Consumer's Requested Product or Service

Under proposed § 1033.421(a)(1), third parties would have been required to limit collection, use, and retention of covered data to what is reasonably necessary to provide the consumer's requested product or service. The second aspect of this standard, ''the consumer's requested product or service,'' was designed to carry out the objectives of CFPA section 1033. The proposed rule explained that consumers generally go into the market seeking the core function of a product or service and, when authorizing data access, intend for their data to be accessed for that purpose. The proposed rule explained further that third parties can significantly benefit from accessing consumers' covered data, and consumers often do not know about various data uses, do not want companies to use their data broadly, and also generally lack bargaining power to adequately protect their data privacy. The proposed rule stated that, as a result of this imbalance, third parties often broadly collect, use, and retain covered data for their own benefit. The CFPB preliminarily determined that the proposed standard being grounded in the ''consumer's requested product or service'' would ensure third parties only collect, use, and retain covered data on consumers' behalf, pursuant to informed consent.

To avoid circumvention of this standard, the CFPB proposed to treat the product or service as the core function that the consumer sought in the market and that accrues to the consumer's benefit. The preamble to the proposed rule explained that the scope of the product or service would not be defined by disclosures, and the CFPB noted its concern that disclosures could be used to create technical loopholes by expanding the scope of the product or service the consumer requested to include any activity the company would choose, including those that would benefit the third party, not the consumer. As such, proposed § 1033.421(a)(1) was intended to help ensure that third parties act for the benefit of consumers, that consumers retain control over their authorizations for data access, and that consumers are best positioned to provide meaningfully informed consent to third party collection, use, and retention of their covered data.

Some commenters requested clarifications or suggested that the proposed general standard should be changed with respect to its approach to the consumer's requested product or service. A data aggregator commenter stated that the final rule should rely on ''reasonably necessary'' only, and should not limit collection, use, or retention by the consumer's requested product or service. This commenter stated that this change would allow third parties to use previously collected data as reasonably necessary to provide additional products or services the consumer requests at a later time. Other commenters requested clarifications about the proposal's approach to the consumer's requested product or service. For example, a trade association for data providers, a data provider, and a third party requested that the phrase ''consumer's requested product or service'' be defined or clarified. A trade association for data providers further stated that the description of the consumer's requested product or service in the preamble to the proposed rule gave the impression that the CFPB intended to decide on a case-by-case basis, based on specific consumer understanding, what the scope of a requested product or service is and then determine whether data access based on that scope was reasonably necessary. A third party stated that the scope of a consumer's requested product or service would be unclear in light of how products or services are currently offered to consumers in the market, as the preamble to the proposed rule potentially would have divided a product or service by its core functions or component parts.

For the reasons discussed herein, the CFPB is finalizing § 1033.421(a) as proposed. Under final § 1033.421(a), a third party's collection, use, and retention of covered data must be reasonably necessary to provide the ''consumer's requested product or service.'' By limiting third party collection, use, and retention of covered data based on ''the consumer's requested product of service,'' the final rule ensures that such collection, use, and retention is for the consumer's benefit, that consumers retain control over their authorizations for data access, and that consumers are best positioned to providing meaningfully informed consent to third party collection, use, and retention of covered data. As such, the CFPB declines to adopt commenters' suggestions to finalize the general limitation standard without reference to the ''consumer's requested product or service,'' or to otherwise expand the general limitation standard in ways that would allow for covered data to be used for additional products or services or other purposes.

To address commenters' concerns about potential confusion, the CFPB notes that ''the consumer's requested product or service'' in § 1033.421(a) is not intended to result in a case-by-case inquiry into a specific consumer's understanding of the requested product or service. Rather, what constitutes a consumer's requested product or service is informed by context, such as general public understanding of what attributes a given product or service has or how the product or service functions in the market. The third party cannot rely on disclosures to expand the scope of a consumer's requested product or service or use disclosures to create technical loopholes and include any purposes the company chooses. The CFPB notes that, in the course of seeking authorization to access covered data, some third parties might attempt to expand the scope of products or services offered to consumers in an effort to access covered data for purposes that do not primarily benefit consumers. Along those same lines, some third parties might purport to offer a product or service to a consumer that is merely a pretext for collecting, using, and retaining covered data from the consumer.[99] Where third parties seek to use data to advance their own interests, rather than to act for the consumer, such actions would not be on

[98] Consumers benefit by authorizing third parties to collect, use, or retain their data for the product or service they request, and from having confidence third parties will not do so other purposes. The third party's obligations to the consumer do not prevent the third party from benefiting from access to covered data. As noted above, third parties can benefit from such access by collecting, using, and retaining data as reasonably necessary to provide the consumer's requested product or service. In other words, the way a third party can benefit is through the opportunity to provide the consumer the product or service that they are requesting.

[99] The CFPB notes that such a practice would be inconsistent with § 1033.401, which provides that third parties must seek access to covered data on behalf of the consumer to provide a product or service the consumer requested.

behalf of the consumer, and thus would not be in accordance with the text of sections 1002 and 1033 of the CFPA.

Additionally, the CFPB notes that the discussion in the proposal's preamble related to the product or service's core function was not intended to suggest that each product or service would necessarily have only a single attribute. As described above, if a consumer requests a product or service with a commonly understood set of attributes, the third party cannot expand the scope of the product or service for purposes of § 1033.421(a) by including in its disclosures to consumers attributes that are not consistent with the general public understanding of that product or service or how that product or service functions in the market. Whether attributes are associated with a product or service could be indicated if those attributes are widely available as, or generally compose, those products or services. While a third party might offer to a consumer, even within a single mobile application, two products or services for which a consumer might authorize data access, like a budgeting service and a payments service, these services are sufficiently different as to necessitate two separate authorizations for the purposes of § 1033.421(a). Similarly, while a credit card and a prepaid card share many attributes, they are, and are commonly understood to be, different types of products. Accordingly, authorization for data access to provide a credit card would not be sufficient authorization for data access to provide a prepaid card.

Specific Purposes (§ 1033.421(a)(2))

Proposed Rule

In addition to the general limitation on collection, use, and retention of covered data in § 1033.421(a)(1), proposed § 1033.421(a)(2) stated that targeted advertising, cross-selling of other products or services, or the sale of covered data would not be part of, or reasonably necessary to provide, any other product or service. Relying on stakeholder feedback and research, the proposed rule described that third parties generally do not include these activities in products or services for consumers' benefit, but instead do so for their own benefit.[100] These activities are pervasive in the market, consumers often lack choices about whether their data can be used for these purposes, and consumers often do not expect their data to be used for them. In addition, the CFPB stated that consumers often do not understand these activities' potential for harm, while also noting that third parties can greatly benefit from these activities. For all these reasons, the CFPB preliminarily determined that when a third party combines targeted advertising, cross-selling, and data sales with any other consumer requested products or services, it is generally doing so for its own benefit, and that such combination would interfere with consumer control and understanding. The CFPB also preliminarily determined that it would not be consistent with carrying out the objectives of CFPA section 1033 for a third party to consider collection, use, or retention of data for these purposes to be within the scope of the consumer's requested product or service for purposes of proposed § 1033.421(a)(1).

The CFPB explained that proposed § 1033.421(a)(2) would not prevent third parties from engaging in the specified activities as standalone products. To the extent the core function that the consumer seeks out in the market is such an activity, a third party could potentially provide that core function to the consumer consistent with, and subject to, the terms of the proposed rule. Any such offering would be subject to other applicable laws, including the CFPA's prohibition on unfair, deceptive, and abusive practices.

Comments Received

Commenter feedback on the proposed limitation on targeted advertising, cross-selling of other products or services, and data sales was varied. Some consumer advocates, data providers, and trade associations representing data providers expressed support for the proposed limitation in § 1033.431(a)(2). For example, some trade associations representing data providers stated that dark patterns or other deceptive practices from third parties result in consumers giving consent to activities consumers are not aware of, especially related to data sales and targeted marketing, and that requiring third parties to separately follow the authorization procedures to obtain consumer authorizations for these activities would be beneficial to consumers. An individual commenter similarly stated that consumers should not become subject to ''surveillance capitalism'' through authorization of third parties' use of covered data.

Various commenters, including trade associations for data providers, data providers, trade associations for nondepositories, data aggregators, consumer advocates, and others, appeared to have different understandings about whether the proposed limitation in § 1033.421(a)(2) would prohibit consumers from authorizing their data to be accessed for these purposes. Some commenters appeared to interpret the proposal as a prohibition on such authorization. Others appeared to understand the proposal as permitting third parties, using covered data pursuant to consumer authorization, to engage in targeted advertising, cross-selling, and data sales as standalone products the consumer seeks out in the market. At least one trade association for data providers appeared unsure if the proposal would prohibit these activities, stating that the meaning of the phrase in the rule ''any other product or service'' is unclear.

Various commenters, including data providers, trade associations for data providers, consumer advocates, and other trade associations, asked for definitions of targeted advertising, cross-selling, and data sales. A consumer advocate and a trade association representing data providers proffered potential definitions. These commenters suggested that, without clarity on the bounds of these terms, the rule would lack sufficient clarity because the terms have broad and varied meaning in the market. For example, these commenters said the term targeted advertising is potentially broad and could cover advertising that uses consumers' personal characteristics and could also potentially include other concepts like contextual marketing that does not require precise identifiers. These commenters were also concerned about the definition of cross-selling because, as described by these commenters, the term could include some traditional attributes of personal financial management services that offer recommendations to consumers. A data provider commenter noted that the CFPB has not previously defined cross-selling of other products or services or data sales. A consumer advocate commenter suggested that the CFPB define data sales as the ''sale, rental, exchange, or other transfer or use not otherwise authorized.'' Finally, two trade associations representing data

[100] *See, e.g.,* Rodney John Garratt & Michael Junho Lee, *Monetizing Privacy,* at 4, Fed. Rsrv. Bank of N.Y. Staff Rep. No. 958 (Jan. 2021), *https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr958.pdf* (''Most of the gains from consumer data do not go to consumers.''); Raheel A. Chaudhry & Paul D. Berger, *Ethics in Data Collection and Advertising,* 2 GPH Int'l J. of Bus. Mgmt. 1, 5–6 (2019), *http://www.gphjournal.org/index.php/bm/article/view/240/110* (stating that targeted advertising and data monetization allow companies to collect, use, and retain ''consumer data without the user being any the wiser,'' and that targeted advertising and data monetization elevate ''the risk involved in data breaches and malicious parties buying consumer data on the secondary data market'').

providers requested that the CFPB develop a clear concept or definition of what ''any other product or service,'' means, and what ''standalone product'' means, as these terms may not have been clear in the proposed rule.

Some commenters, including research organizations and third parties, expressed concern that proposed § 1033.421(a)(2) might result in a prohibition on targeted ads, cross-selling, and data sales because, at least in some circumstances, they may not be traditionally offered as standalone products or services. A research organization and a third party commenter stated that the proposal might preclude third parties from using covered data for these purposes where they are traditionally a component of a product or service and are not standalone products or services. These commenters offered examples of products or services that might benefit consumers and might include targeted advertising or cross-selling. Some commenters, like trade associations for nondepositories, third parties, research institutes, consumer advocates, and data aggregators, asserted that proposed § 1033.421(a)(2) could result in consumer harms, such as higher prices, hindered choice, and others. These commenters expressed concerns about competition harms, like increased barriers to market entry for new companies who would traditionally rely on targeted advertising and cross-selling to generate growth, decreased innovation of new products, services, or business models, and increased consolidation in existing market players. These commenters stated that the CFPB did not account for the benefits to consumers through targeted advertising and cross-selling, and overstated potential harms. For example, some of these commenters cited studies they characterize as showing that consumers consistently authorize targeted advertising when given choices, significantly benefit from targeted advertising, and benefit from the competition that targeted advertising generates within the market.[101]

Some trade associations and third parties stated that the proposed limitation on targeted advertising, cross-selling of other products and services, and data sales would not ensure consumers are able to consent to third party products or services consumers might want and would therefore be a restriction on consumer choice. A trade association for nondepositories also stated that, if a consumer consents to third party collection of covered data for certain uses, like targeted advertising, then a prohibition on that use would run afoul of the First Amendment.

Finally, some commenters, including trade associations for nondepositories, a law firm, third party commenters, and data aggregators suggested that proposed § 1033.421(a)(2) is contrary to the congressional intent of CFPA section 1033 to ensure consumers can access data to use for their own preferences. These commenters stated that the CFPB generally lacks authority to prescribe limitations on the use of covered data, especially as it relates to targeted advertising, cross-selling of other products and services, and data sales. These commenters also objected to the CFPB's rationale for these proposed provisions and stated that the proposed rule did not evidence reasoned decision making or meaningful consideration of the consequences of intrusion into private, consent-based consumer relationships with third parties. Specifically, a trade association and law firm stated that CFPA section 1033 provides consumers an affirmative right to access their financial data but does not permit the CFPB to limit a third party's collection, use, and retention of covered data if the consumer has agreed to it. These commenters also stated that Congress intended that representatives acting on behalf of consumers would adhere to principles of agency law, which they said would result in authorizations from consumers to third parties that would carry regardless of whether the consumer benefits from the authorization. These commenters stated that if the consumer agrees to terms of data access, then the third party is acting on the consumer's behalf.

Final Rule

For the reasons discussed herein, the CFPB is finalizing § 1033.421(a)(2) with minor modifications. Final § 1033.421(a)(2) provides that, for the purposes of the general limitation standard § 1033.421(a)(1), the following are not part of, or reasonably necessary to provide, any other product or service: (i) targeted advertising; (ii) cross-selling of other products or services; or (iii) the sale of covered data. For clarity, the CFPB is removing the term ''activities'' from the text of final § 1033.421(a)(2) and replacing the term with ''purposes'' in that provision's heading.

With respect to commenter concerns regarding consumer authorization for the purposes listed in § 1033.421(a)(2), the CFPB notes that § 1033.421(a)(2) does not prevent third parties from obtaining authorizations from a consumer to collect, use, and retain their covered data for any one of these specified purposes if offered as a standalone product or service. To the extent that the consumer seeks a product or service in the market which functions as targeted advertising, cross-selling of other products or services, or the sale of covered data, a third party could obtain a consumer's authorization to collect, use, and retain their covered data to provide that product or service to the consumer consistent with, and subject to, the terms of subpart D of part 1033.[102] Collection, use, and retention of covered data to provide such a product or service would be subject to other applicable laws, including the CFPA's prohibition on unfair, deceptive, and abusive practices.

To be a ''standalone'' product or service, it must be clear that the targeted advertising, cross-selling, or sale of covered data is a distinct product or service the consumer could obtain in the market without obtaining other products or services.[103] As such, one provider could offer multiple products to a consumer, including targeted advertising, cross-selling, or sale of covered data as standalone products, obtain separate authorizations for consumer's data to be used for those

[101] *See, e.g.,* J. Howard Beales & Andrew Stivers, *An Information Economy Without Data,* at 15–16 (Nov. 2022); Patrick Grieve, *Personalized Customer Service: What It Is and How to Provide It,* ZenDesk (Feb. 2023), *https://www.zendesk.com/blog/start-providing-personalized-customer-service/;* Holly Pauzer, *71% of Consumers Prefer Personalized Ads,* Adlucent (2016), *https://www.adlucent.com/resources/blog/71-of-consumers-prefer-personalized-ads/;* Yan Lau, *A Brief Primer on the Economics of Targeted Advertising,* FTC 11–12 (Jan. 2020), *https://www.ftc.gov/system/files/documents/reports/brief-primer-economics-targeted-advertising/economic_issues_paper_-_economics_of_targeted_advertising.pdf;* Bus. Wire, *ICSC's Small Business Consumer Survey Reveals the Ongoing Importance of Small Businesses in the Lives of Consumers and Communities in the U.S.* (May 2, 2022), *https://bwnews.pr/3rZ2KF3.*

[102] The CFPB has previously issued guidance related to commingling of targeting and delivery of advertisements to consumers. *See generally* Consumer Fin. Prot. Bureau, *Limited Applicability of Consumer Financial Protection Act's 'Time or Space' Exception With Respect to Digital Marketing Providers,* 87 FR 50556 (Aug. 17, 2022).

[103] As described above related to the consumer's requested product or service, the CFPB does not intend to suggest a ''standalone product or service'' would necessarily have only a single attribute. While many standalone products or services might have only one attribute, as in cases where third parties sell covered data, others may have more than one attribute. A third party might provide to consumers a standalone product or service of targeted advertising, which could have multiple attributes to ensure the consumer is receiving the product or service they would expect. For example, a ''standalone product'' that involves targeted advertising might both evaluate a consumer's data for the purpose of identifying lower cost credit cards for a particular consumer and send that consumer advertisements for such lower cost credit cards.

products or services, and provide those products or services to the consumer. This would be similar to a bank that may offer checking accounts, savings accounts, and credit cards to a consumer, even while allowing those services to be managed on one banking app.

Further, as described in the proposed rule, the CFPB is concerned that consumers do not seek in the market targeted advertising, cross-selling of other products and services, and data sales.[104] Commenters suggested that consumers can significantly benefit specifically from, and continue to sign up for, targeted advertising and cross-selling in various contexts. As described above, commenters provided some evidence that consumers sign up for targeted advertising and cross-selling and receive certain benefits from them. Other research suggests that any such benefits are uncertain at best and may be difficult to quantify. Regardless, the CFPB recognizes that consumers might continue to sign up for, and in some cases can benefit from, targeted advertising, cross-selling, and data sales. However, this does not indicate that consumers understand the consequences of third parties using data for these purposes,[105] are the primary beneficiary of collection, use, and retention for these purposes,[106] or that consumers specifically sought them out.[107] Instead, this might indicate that consumers have little choice but to sign up for, or unknowingly or reluctantly acquiesce to, targeted advertising and cross-selling to receive more preferable or free services.[108]

The CFPB understands that it is possible for consumers to benefit from targeted advertising, cross-selling, and data sales and the final rule ensures that consumers can authorize their covered data to be collected, used, and retained for these purposes, with provisions to ensure consumers are able to make a meaningful choice to do so.[109] The final rule recognizes that consumers should not have to unknowingly or reluctantly acquiesce to their covered data being collected, used, and retained for these purposes in order to receive a product or service they have sought in the market. As such, the CFPB affirms that, under the final rule, consumers can authorize their data to be collected, used, and retained for targeted advertising, cross-selling, or data sales if offered as standalone products or services—this authorization simply cannot be combined in one authorization for data access for other products or services.

As noted above, some commenters stated that proposed § 1033.421(a)(2) was contrary to the congressional intent of CFPA section 1033 to ensure consumers can access their own data for their own preferences. These commenters also stated that the proposed rule would otherwise result in a restriction of consumer choice. However, § 1033.421(a)(2) does not restrict consumer choice or inhibit consumers from accessing their data for their own preferences. Under the final rule, third parties can, pursuant to consumer authorization, collect, use, and retain covered data to provide, targeted advertising, cross-selling of other products or services, or data sales as standalone products or services.

As described above, a trade association for nondepositories argued that the provision related to cross-selling, targeted advertising, and data sales would violate the First Amendment's protections on commercial speech if it prohibited data to be collected, used, and retained by third parties for these purposes when a consumer otherwise consents. However, the final rule does not infringe on any First Amendment rights. Even assuming the final rule could be construed to restrain speech, it would readily survive the applicable standard of scrutiny for commercial speech. Under the Supreme Court's commercial speech framework, if the speech is not misleading and relates to lawful activity, the government may impose restrictions that advance a substantial government interest and are no more extensive than is necessary to serve that interest. As explained elsewhere, the final rule advances several substantial interests,

[104] *See, e.g.,* Rodney John Garratt & Michael Junho Lee, *Monetizing Privacy,* at 4, Fed. Rsrv. Bank of N.Y. Staff Rep. No. 958 (Jan. 2021), *https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr958.pdf* (stating that ''[m]ost of the gains from consumer data do not go to consumers''); Raheel A. Chaudhry & Paul D. Berger, *Ethics in Data Collection and Advertising,* 2 GPH Int'l J. Bus. Mgmt. 1, 5–6 (2019), *http://www.gphjournal.org/index.php/bm/article/view/240/110* (stating that targeted advertising and data monetization allow companies to collect, use, and retain ''consumer data without the user being any the wiser,'' and that targeted advertising and data monetization elevate ''the risk involved in data breaches and malicious parties buying consumer data on the secondary data market''); Yan Lau, *A Brief Primer on the Economics of Targeted Advertising,* Bureau of Econ., Fed. Trade Comm'n, at 9–10 (2020), *https://www.ftc.gov/system/files/documents/reports/brief-primer-economics-targeted-advertising/economic_issues_paper_-_economics_of_targeted_advertising.pdf* (describing that, while consumers can benefit from targeted advertising, there are multiple consumer harms that result from targeted advertising, such as: consumers may underestimate the ''degree and consequence of the personal data collection websites carry out in exchange for providing free digital goods and services''; consumers may feel the benefits of targeted advertising do not outweigh the ''perceived intrusiveness of the advertising''; and consumers may experience harms related to data breaches or misuse of their data).

[105] *See generally* Brooke Auxier *et al., Americans and Privacy: Concerned, Confused and Feeling Lack of Control Over Their Personal Information,* Pew Rsch. Ctr. (Nov. 15, 2019), *https://www.pewresearch.org/internet/2019/11/15/americans-and-privacy-concerned-confused-and-feeling-lack-of-control-over-their-personal-information/* (describing findings that only ''one-in-five adults overall say they always (9 percent) or often (13 percent) read a company's privacy policy before agreeing to it'' and that 59 percent say ''they understand very little or nothing about'' what companies do with data they collect); Neil Richards & Woodrow Hartzog, *The Pathologies of Digital Consent,* 96 Wash. U.L. Rev. 1461, 1479 (2019), *https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=6460&context=law_lawreview* (''[F]ar too often, far too many people in the digital environment have little to no idea about what data practices or exposure that they are consenting to.'').

[106] *See generally* Eduardo Abraham *et al., Behavioral Advertising and Consumer Welfare: An Empirical Investigation,* SSRN Elec. J., at 2 (2023), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4398428* (''[L]ittle is known about the manner and extent to which targeted ads affect consumers' welfare. In fact, the relationship between a product being associated with targeted ads and its price, quality, or novelty . . . has not been explored. Some models suggest that, if consumers had to make a voluntary decision to provide personal information to advertisers, only those who benefit from it would do so, and therefore targeted advertising should be strictly beneficial to them.'').

[107] *See generally* Charlotte A. Tschider, *Meaningful Choice: A History of Consent and Alternatives to the Consent Myth,* 22 N.C. J.L. & Tech. 617, 635–37, 639 (2021) (explaining that while consumers might consent to certain activities presented to them, their consent might not reflect autonomous choice from the consumer or the consumer's desires).

[108] *See* April Falcon Doss, *Cyber Privacy,* at 54 (BenBella Books, Inc. 2020) (explaining that the business model of companies that monetize consumer data are able to exploit information asymmetries and bargaining power imbalances such that, even if a consumer has a higher risk tolerance and is willing to share more data for the purposes of monetization of that data, digital platforms offer consumers very little choice to exercise those preferences); Charlotte A. Tschider, *Meaningful Choice: A History of Consent and Alternatives to the Consent Myth,* 22 N.C. J.L. & Tech. 617, 637 (2021) (positing that consumers who consent to products or services might struggle to understand the differences of primary uses from secondary uses where the two are bundled into contracts of adhesion, of which consumers might only want some aspects but not all of what they authorized).

[109] *See generally* Alessandro Acquisti *et al., Behavioral Advertising and Consumer Welfare,* at 16 (2023), *https://dx.doi.org/10.2139/ssrn.4398428* (''The results suggest that a search will, on average, make consumers who are price focused and have low search costs (relative to the price of the product) better off. These results also highlight that display advertisements may be a useful channel for smaller vendors to reach consumers: some of these vendors may seldom (if ever) appear in organic search. Such results highlight the complex nature of consumer welfare effects from targeted advertising. If search costs are sufficiently low and consumers are generally aware of the product categories which interest them, targeted ads are unlikely to improve their surplus. Surplus gains are even less likely to accrue to consumers if they need to vet the lesser known vendors that appear in display advertising. More than likely, this additional effort is better used seeking out relevant products via traditional search.'').

including the need for consumer control of personal financial data and privacy protections. The requirements set forth in the rule are also appropriately tailored to achieve these interests. As previously noted, the CFPB affirms that collection of covered data for certain uses, including cross-selling, targeted ads, and data sales, may be separately authorized as a standalone product or service. This regulatory structure provides the appropriate balance to ensure consumers are given a meaningful choice before engaging in targeted advertising, cross-selling, and data sales, and that they are shielded from signing up for purposes that they do not understand or do not request.

Additionally, as described above, commenters asked for and suggested definitions for targeted advertising, cross-selling of other products or services, and data sales. For the purposes of § 1033.421(a)(2), the CFPB intends to take the position that targeted advertising is advertising that comprises the identification or selection of prospective customers or the selection or placement of content to affect consumer engagement, including purchase or adoption behavior. Cross-selling of other products and services is the advertising, sale, or referral of the third party's own products or services to the third party's existing customers. Data sales is selling, renting, releasing, disclosing, disseminating, making available, transferring, or otherwise communicating personal information for monetary or other valuable consideration.

Limitations on Collection of Covered Data (§ 1033.421(b))

Proposed § 1033.421(b) contained third party obligations related to collection of covered data. Under proposed § 1033.421(b), as a condition of being authorized to access covered data on a consumer's behalf, the third party would be required to (1) limit its collection of covered data, including the scope of covered data, to what is reasonably necessary to provide the consumer's requested product or service, consistent with § 1033.421(a); (2) limit the duration of collection of covered data to the maximum durational period; (3) obtain a new authorization from the consumer, in a reasonable manner, to collect covered data beyond the maximum durational period; and (4) abide by certain limitations on collection, use, and retention of covered data beyond the maximum durational period if the third party does not obtain a new authorization from the consumer.

The specific provisions of § 1033.421(b) are discussed below.

In General (§ 1033.421(b)(1))

Proposed § 1033.421(b)(1) stated that, for purposes of the general limitation on collection, use, and retention of covered data in proposed § 1033.421(a), collection of covered data would include the scope of covered data collected and the duration and frequency of collection of covered data.

Some commenters, including consumer advocates, data providers, trade associations for data providers, and research organizations, stated general support for the proposed limitations on collection. Some commenters, including consumer advocates and third parties, suggested that consumers should have more control than what the proposed rule would have required over how long and how often third parties collect covered data, and that the proposed standard to limit collection might not adequately account for third parties' ongoing relationships with consumers. Other commenters, particularly data providers and third parties, suggested that data providers should have a role in ending third party access if collection exceeds the scope of the consumer's authorization.

For the reasons discussed herein, the CFPB is generally finalizing § 1033.421(b) as proposed, with one modification. The CFPB has determined that third parties are the commercial actors in the best position to understand the covered data they need to collect from the data provider to facilitate provision of products or services, and to therefore limit that collection to only what is reasonably necessary to provide the consumer's requested product or service. The CFPB has also determined that the standard to limit collection to what is reasonably necessary provides third parties with sufficient flexibility to account for the needs of the requested product or service.

The CFPB is revising the language of proposed § 1033.421(b)(1) to state that collection includes the scope of covered data ''requested,'' instead of the proposed ''collected.'' This clarifies that, in certifying to limit the collection of covered data pursuant to § 1033.421(a), third parties must tailor their request for covered data to only what is reasonably necessary to provide the consumer's requested product or service.

The CFPB notes that, in some circumstances, the third party might receive from the data provider more data than the third party requests. For example, this could happen when, pursuant to § 1033.211(d), the third party requests terms and conditions data from the data provider and the data provider provides more data elements than the third party requested, or more than is reasonably necessary to provide the consumer's requested product or service consistent with § 1033.421(a). Additionally, third parties could receive data after a consumer has revoked the third party's access to the data pursuant to § 1033.421(h), before the data provider has processed the request. In circumstances where the third party receives more data than they request, the general limitation on use and retention in § 1033.421(a) would not allow third parties to use that data if such use is not reasonably necessary. Section 1033.421(a) would allow a third party to retain covered data for as long as reasonably necessary to locate and delete the data.

Further, pursuant to the certifications related to collection in § 1033.421(a) and (b), if a third party receives information that indicates the consumer may no longer expect to receive the product or service, the third party should confirm collection of covered data remains reasonably necessary.

Maximum Duration (§ 1033.421(b)(2))

Under proposed § 1033.421(b)(2), third parties would be required to certify to limit the duration of collection of covered data to a maximum period of one year after the consumer's most recent authorization. The proposed rule described this as the maximum durational limit.

Regarding the maximum durational limit, the proposed rule noted that some products or services, like bill pay, overdraft prevention, or personal financial management, require long-term access. For such products or services, the proposed rule stated that the general limitation standard may not be sufficient to ensure that third parties act on behalf of consumers when collecting data longer term. The proposed rule stated that consumer needs or expectations may change in ways that may not be apparent to the third party, as could happen when a consumer stops using a product or service and forgets that they authorized third party data access. The proposed rule stated that, in other cases, consumers may have attempted to end third party access without actually doing so, such as when a consumer deletes an application from a device with the intent of stopping data collection, use and retention. At the same time, the proposed rule also acknowledged that there are other cases where consumers request products or

services that require long-term data collection and want to authorize ongoing third party data access. In those cases, the CFPB preliminarily determined that it would frustrate consumer intent and burden third parties to terminate third party access or require frequent reauthorizations. The proposed rule stated that a maximum durational limitation would provide a helpful backstop on the duration of third party authorization for these consumers.

Comments were mixed between supporting the proposed provision and recommending changes. Commenters that supported a maximum durational limitation, mostly banks, credit unions, community banks, trade associations for data providers, and research institutes, stated that such a limit promotes consumer control by requiring third parties to seek periodic reauthorization. Commenters that were critical of the proposal to impose a maximum durational period, mostly third parties, trade associations for third parties, and consumer advocates, stated that, if implemented, a maximum duration requirement would ultimately result in consumer harms, like: increased and unhelpful friction because of required reauthorization; disruption of valuable products and services that require ongoing collection, use, and retention in cases where consumers do not reauthorize; and disruption to the user experience if consumers utilize a product or service continually but must still reauthorize.

Commenters who supported a one-year maximum duration limitation commended the provision for reducing friction as compared to other privacy regimes that require shorter durational periods and therefore increased requests for reauthorization. In contrast, a trade association for third parties stated the CFPB did not provide adequate support for the proposed one-year maximum durational period and would not be consistent with the consumer's consent for the third party to continually collect their data. A data aggregator suggested amending the maximum durational period to 13 months, rather than 12, to better account for products and services that may have a slightly longer cycle of relevance for consumers, like tax preparation software. Further, various third parties and trade associations for nondepository commenters suggested the CFPB account for payments products or services through more narrow or more flexible durational limits, including by incorporating flexibilities based on the consumer's use of the product or service. These commenters suggested consumer authorization should last as long as consumers actively use the product or service, or suggested other activity-based flexibilities or restrictions. Finally, a trade association for community banks stated that the final rule should make clear that the general limitation standard of reasonable necessity would mean many short-term products and services would end before the maximum durational period ends.

For the reasons discussed herein, the CFPB is finalizing in § 1033.421(b)(2) a maximum durational limit of one year after the consumer's most recent authorization. This approach protects consumers by helping prevent unwanted, long term data collection, and also ensures consumers are able to periodically revisit the authorizations they have provided to third parties and ensure third party data access reflects consumers' wishes. Specifically, the one-year durational limit provides a helpful backstop to consumers who sign up for products or services that include ongoing data collection. For these reasons, the CFPB declines to allow for authorizations longer than 12 months when a consumer is actively using a product or service, as requested by some commenters. While, as described above, some commenters raised concerns about added friction for consumers related to a maximum durational limit, some of this friction is a necessary and helpful aspect of the consumer's relationship with the authorized third parties, as it provides consumers opportunities to carefully consider their choices. The maximum durational limit and the general obligation to limit collection to what is reasonably necessary to provide the consumers' requested product or service account for the wide variety of products or services the consumer might seek. For products or services that necessitate shorter durations of collection, like traditional underwriting and identity verification, the general data limitation standard will result in collection of covered data for a shorter period than one year. And, as noted above and in the proposed rule, consumers benefit from a one-year maximum durational period in cases where the general limitation standard may not be sufficient to ensure that third parties act on behalf of consumers when collecting data longer term.

Reauthorization After Maximum Duration (§ 1033.421(b)(3))

Under proposed § 1033.421(b)(3), the third party would certify that, to collect covered data beyond the one-year maximum durational period, the third party would obtain a new authorization from the consumer no later than the anniversary of the most recent authorization from the consumer. Under the proposed rule, the third party would be permitted to ask the consumer for a new authorization in a reasonable manner. The proposed rule stated that indicia that a new authorization request would be reasonable would include its conformance to a qualified industry standard.

The proposed rule stated that consumers would benefit from the combination of a maximum durational limit of one year and from the control that reauthorization requirements might provide. The proposed rule further stated that the CFPB preliminarily determined that third parties might need to seek new authorizations multiple times or otherwise explain to consumers why they are seeking new authorizations, but that this might unnecessarily burden consumers if they receive too many requests, or requests for products or services they no longer want. The proposed rule stated that the CFPB sought to strike a balance between these competing considerations. The proposed rule also acknowledged that additional guidelines regarding reauthorization requests might facilitate compliance. As such, the proposed rule stated that indicia that a new authorization request is reasonable include its conformance with a qualified industry standard.

Some commenters—including banks, trade associations for credit unions, and third parties—offered support for the proposed reauthorization provision, stating that consumers often forget about their connections and could benefit from opportunities to reauthorize. Some data aggregators, trade associations for banks, consumer advocates, and research organizations did not clearly oppose the proposed rule but offered narrow critiques or suggested changes, discussed below.

Some trade associations for third parties and data aggregators expressed concern that consumers would not provide a new authorization at the end of a maximum duration limit when they might otherwise want their authorizations to continue, which could result in harm to consumers. For example, one third party suggested that if a consumer never reauthorizes, the consumer might be directly harmed by the cut-off of the maximum durational period before the consumer accrues the benefits of long-term data collection.

Commenters' suggested modifications, clarifications, or additions to the implementation of reauthorization include: specify in the rule that a consumer's most recent authorization includes when a consumer requests a third party to refresh their data, or every time a payment goes through; finalize more specific limitations for requesting reauthorization, including limiting pop-ups and notices, the number of requests, or requests that could be threatening, misleading, or otherwise negatively impact consumers; allow the consumer to provide more streamlined reauthorizations as compared the initial authorization, or fewer reauthorization for certain products or services with which consumers regularly interact, like peer-to-peer or periodic payment products; allow flexibility for reasonable reauthorization methods, including directly to consumers via electronic means; allow third parties to simply notify the consumer of ongoing collection, use, and retention; and clarify the reasonable manner requirement related to reauthorization.

For the reasons discussed herein, the CFPB is finalizing § 1033.421(b)(3) as proposed with a terminology change to conform to the final rule's use of the term ''consensus standard.'' Specifically, final § 1033.421(b)(3) provides that, to collect covered data beyond the one-year maximum period described in § 1033.421(b)(2), the third party will obtain a new authorization from the consumer pursuant to § 1033.401 no later than the anniversary of the most recent authorization from the consumer. Final § 1033.421(b)(3) further provides that the third party is permitted to ask the consumer for a new authorization pursuant to § 1033.401 in a reasonable manner. Final § 1033.421(b)(3) further provides that indicia that a new authorization request is reasonable include its conformance to a consensus standard.

The CFPB acknowledges that this approach may result in some increased friction for consumers, but it will also allow consumers to periodically confirm their previous choices, including that they continue to want the third party to access their data for the requested product or service. Commenters appeared to assume that consumers generally will not reauthorize at the end of one year, but did not provide evidence that consumers, on the whole, will not reauthorize after a maximum duration period of one year, at least in circumstances in which they want data access to continue. As such, after considering this feedback, the CFPB is not making changes to the proposed reauthorization requirement.

Some commenters suggested the final rule should allow third parties to provide streamlined reauthorization requests to consumers, including suggesting that facilitated payments could serve as periodic reauthorizations for consumers. The CFPB has determined that consumers could benefit significantly from the authorization procedures as described in § 1033.401, including the authorization disclosure, and that streamlined reauthorization procedures would not effectively ensure consumers remain informed and in appropriate control of data access. The CFPB is thus not adopting commenters' suggested modifications to streamline reauthorization requests.

Effects of Maximum Duration (§ 1033.421(b)(4))

Proposed § 1033.421(b)(4) would have required the third party to certify that, if a consumer does not provide a new authorization before the maximum durational periods, the third party would (1) no longer collect covered data pursuant to the most recent authorization, and (2) no longer use or retain covered data that was previously collected pursuant to the most recent authorization unless use or retention of that covered data remains reasonably necessary to provide the consumer's requested product or service under proposed § 1033.421(a). The CFPB is finalizing these provisions, without substantive change, in § 1033.421(i), discussed below. Comments regarding proposed § 1033.421(b)(4) are discussed in detail below related to § 1033.421(i).

Limitations on Use of Covered Data (§ 1033.421(c))

Proposed Rule

As discussed above, the CFPB proposed in § 1033.421(a) that, to be authorized to access covered data, a third party must certify to using covered data only as reasonably necessary to provide the consumer's requested product or service. Preamble to the proposed rule explained that use of covered data that is not reasonably necessary to provide the consumer's requested product or service would be ''secondary use,'' and would not be permitted as part of the third party's authorization to access the consumer's covered data. The proposed rule specified in § 1033.421(c) that, in addition to limiting the third party's own use of covered data, third parties would not be able to provide covered data to other third parties unless doing so would be reasonably necessary to provide the consumer's requested product or service.

Further, for clarity, proposed § 1033.421(c) provided the following examples of uses of covered data that would be permitted as reasonably necessary under proposed § 1033.421(a): (1) uses that are specifically required under other provisions of law, including to comply with a properly authorized subpoena or summons or to respond to a judicial process or government regulatory authority; (2) uses that are reasonably necessary to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability; and (3) servicing or processing the product or service the consumer requested. The proposed rule stated that these examples would provide third parties with additional clarity on how the limitation standard would apply with respect to certain business activities. The CFPB sought feedback on whether it should include in the final rule other examples of business activities that are reasonably necessary to provide consumer requested products or services.

The proposed rule also sought feedback on whether the final rule should permit third parties to solicit consumers' opt-in consent to some secondary uses of consumer data to provide flexibility to third parties while maintaining important consumer protections. For example, the proposed rule sought feedback on whether the final rule should permit third parties to solicit consumers' opt-in consent to secondary uses as part of a third party's authorization to access covered data, while requiring third parties to certify not to use covered data for certain higher-risk secondary uses. The proposed rule also sought feedback on whether the final rule should permit third parties to solicit a consumer's opt-in consent to engage in secondary uses with de-identified data, and if so, what de-identification standard the rule should provide. The proposed rule sought feedback on how any opt-in approach could be structured to ensure that consumers are providing express informed consent to any secondary data uses, and whether the proposed authorization disclosure would be an appropriate vehicle for soliciting granular consumer choices about data use, such as through a secondary use opt-in mechanism. Finally, the proposed rule sought feedback on how opt-in mechanisms could be implemented to prevent third parties from using ''dark patterns'' or deceptive practices aimed at soliciting consumer consent.

Comments Received

Commenter feedback on the proposed limitation on use was varied. Regarding the examples in proposed § 1033.421(c), many commenters, including third parties and third party trade associations, privacy organizations, Members of Congress, and data aggregators, requested that the CFPB specify additional uses that would be permissible under the final rule. Other examples of additional uses that commenters requested the CFPB specify in the final rule included product improvement, new product development, prevention of crime or illegality, offering beneficial products or services to consumers, supplemental primary uses, reporting of data, and internal and external research. Some research institutes, a third party, and a trade association raised concerns about the proposed examples of reasonably necessary uses set forth in proposed § 1033.421(c), and specifically raised concerns that the example for servicing or processing the consumer's requested product or service was too narrow. These commenters suggested additions that would broaden that example, like ''assessing the consumer's eligibility for or delivering, servicing, or processing the product or service the consumer requested,'' allowing third parties to service or process products or services on which the consumer's requested product or service relies, or providing more elaboration or clarification about the meaning of servicing or processing.

Regarding the proposed limitation on secondary uses, a wide range of commenters, including data providers, consumer groups, and research organizations, were generally supportive of strong restrictions on secondary use, but most commenters asserted that the proposed secondary use limitation would be overly restrictive. Many commenters stated that a prohibition on secondary use, without modification and limited exceptions, would negatively affect product innovation, overly restrict consumer choices for potentially beneficial products, and put third parties at a significant competitive disadvantage to data providers that are unrestricted by the limitation. Some of these commenters suggested alternative approaches, including categories of permissible uses that are not primary or secondary. Some third parties, Members of Congress, and research institutes raised concerns about how a strict limitation on secondary uses might impact beneficial products or services for consumers, like cash-flow underwriting. Some third party commenters requested that the final rule permit more expansive uses related to fraud prevention. And many third parties asserted that the proposed secondary use restrictions would harm consumers and raise costs or reduce revenues for third parties. They stated that such restrictions would reduce competition and innovation, limit their ability to detect and prevent fraud, and prevent third parties from improving their products and services. Some commenters asserted that the prohibition on secondary use would be an outlier among existing privacy regimes. A few third party commenters recommended that the final rule allow uses that are also permitted by the GLBA and Regulation P because, these commenters claimed, different use limitations would unfairly disadvantage third parties and confuse consumers.

Commenters suggested a range of revisions to address these concerns in the final rule, including that the CFPB permit some secondary uses, like those listed above, and should more strictly prohibit some specific uses. For example, some commenters, like data providers and trade associations for data providers, stated that the CFPB should specifically prohibit certain uses, like uses of data for reverse engineering of proprietary algorithms.

Some commenters, including third parties, third party trade associations, and some privacy organizations, advocated for the final rule to permit consumers to opt into secondary data uses. These commenters stated that opt-in consents would benefit consumers and could increase consumer control over the uses of their data. Some of these commenters identified certain high-risk uses to which consumers should not be permitted to opt in. For example, consumer advocates and trade associations stated that certain types of loans that have resulted in enforcement actions, targeted marketing for predatory products, uses of wealth indicators that result in discriminatory algorithms, and behavioral insights derived from location, among others, are high risk uses that should not be permitted under the final rule, even through opt-in consent. And one trade association for data providers also stated that financial institutions, when acting as third parties, should be permitted to solicit opt-ins from consumers for some secondary uses of covered data, because such institutions must adhere to regulations to maintain sensitive data.

Other commenters, including third parties, data aggregators, trade associations, and research institutes, offered support for an opt-out option for consumers, citing examples from other privacy regimes that rely on opt-out mechanisms. These commenters stated that third parties should permit consumers to opt out of secondary uses that would be allowed in certain contexts, like when compatible with the product or service or through streamlined consent frameworks that benefit consumers. A data aggregator provided an example of a third party cross-selling a savings account to a consumer who already has a checking account with the third party, and stated that consumers should be able to opt out from these kinds of secondary uses.

In contrast, some commenters, including research institutes and third parties, expressed caution about an opt-in or opt-out approach. For example, a research institute stated that consumers presented with granular choice options would experience choice overload and decision paralysis and elect not to proceed with a transaction.[110] A third party stated that authorizations for any secondary uses should include enhanced disclosure requirements and should prohibit other parties from additional secondary uses, and suggested that these kinds of protections are not compatible with opt-in methods. A research institute stated that evidence shows opt-in consents result in significantly reduced participation rates.[111] Some commenters recommended that the final rule address concerns about the secondary use proposal being overly restrictive through additional clarifications of reasonably necessary uses and exceptions for certain secondary uses. Further, commenters stated that there might be significant limits to the benefits of opt-in approaches. For example, as described in more detail below, a group of academic researchers and consumer advocates stated their concerns that employing opt-ins for

[110] *See generally* Alexander Chernev *et al., Choice Overload: A Conceptual Review and Meta Analysis* (2015); Choice Overload, *https://www.researchgate.net/publication/265170803_Choice_Overload_A_Conceptual_Review_and_Meta-Analysis.*

[111] *See generally* Joseph W. Sakshaug *et al., Evaluating Active (Opt-In) and Passive (Opt-Out) Consent Bias in the Transfer of Federal Contact Data to a Third-Party Survey Agency,* 4 (3) J. Survey Stats. & Methodology, at 382–416 (Sept. 2016), *https://www.researchgate.net/publication/307625870_Evaluating_Active_Opt-In_and_Passive_Opt-Out_Consent_Bias_in_the_Transfer_of_Federal_Contact_Data_to_a_Third-Party_Survey_Agency;* and Yvonne de Man, Ph.D. *et al., Opt-In and Opt-Out Consent Procedures for the Reuse of Routinely Recorded Health Data in Scientific Research and Their Consequences for Consent Rate and Consent Bias: Systematic Review,* J. Med. Internet Rsch. (Feb. 2023), *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10015347/.*

research might significantly degrade the quality of the data.

Many commenters addressed the use of de-identified data by third parties. Numerous commenters, including research organizations, consumer advocates, and third parties, supported allowing third parties to use de-identified data for secondary purposes. These commenters stated that de-identified data enables a variety of uses that benefit consumers. For example, commenters said that de-identified data allows businesses to develop new products and services, improve existing products and services, and improve account security and fraud prevention. Commenters also said that de-identified data allows for research that serves the public interest. For example, a third party and a data aggregator commenter said that third parties had shared de-identified data with government agencies to improve policymaking. A research institute commenter stated that the CFPB's Consumer Credit Panel and credit card agreement database use de-identified data. However, a consumer advocate commenter stated that even de-identified data could be exploited for commercial ends like marketing, and therefore recommended limiting the use of de-identified data to research purposes.

Some commenters addressed the consent standard that should apply to uses of de-identified data. Academic, research institute, and consumer advocate commenters stated that opt-in consent would impair the value of any de-identified data used for research purposes. These commenters stated that frequent opt-in requests could overwhelm consumers and that consumers who opt in to sharing their data are non-representative of the general population, which undermines the validity of any research based on such consumers. However, a government commenter and a consumer advocate commenter said that opt-out frameworks have been shown to minimize sample biases and preserve the utility of data in other research contexts. A data provider commenter said that opt-in consent should be required for any use of de-identified data.

Some third party commenters were concerned about what they described as anticompetitive effects of the proposed limitation on using de-identified data. For example, a research institute and several third party commenters said that new market entrants need access to de-identified data to train machine learning models or otherwise ensure that their products function properly. Third party commenters also said that the proposed rule would limit their use of covered data in ways that existing law does not limit data providers' use of the same data. One third party commenter stated that it was not fair that a bank could use de-identified data for nearly any purpose if obtained directly from a customer, but a third party could not use the same data for any secondary purposes if obtained under the rule as proposed.

Commenters also stated that allowing third parties to use de-identified data would also create consistency between the final rule to implement CFPA section 1033 and various State, Federal, and international privacy regimes. One research institute commenter stated that GLBA and FCRA allow greater flexibility in using de-identified data. Several commenters believed that U.S. businesses would face a competitive disadvantage if the final rule were more restrictive than the E.U. General Data Protection Regulation (GDPR).

However, a few data providers and trade associations for data providers opposed allowing third parties to use de-identified data for secondary purposes. Two bank commenters asserted that de-identified data could be re-identified, which would invade consumer privacy. In contrast, a research institute commenter stated that most high-profile examples of re-identification involved data that was never properly de-identified initially. This commenter also said that risks of re-identification were low if the data was limited to internal use and not shared with other third parties.

Final Rule

For the reasons discussed herein, the CFPB is finalizing § 1033.421(c) with an additional example of reasonably necessary uses. Final § 1033.421(c) states that use of covered data for purposes of § 1033.421(a) includes both the third party's own use of covered data and provision of covered data by that third party to other third parties. Final § 1033.421(c) further states that examples of uses of covered data that are permitted under § 1033.421(a) include: uses that are specifically required under other provisions of law, including to comply with a properly authorized subpoena or summons or to respond to a judicial process or government regulatory authority; uses that are reasonably necessary to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability; servicing or processing the product or service the consumer requested; and uses that are reasonably necessary to improve the product or service the consumer requested. The CFPB has determined that, generally, consumers expect covered data might be used for these purposes and that third parties will benefit from additional clarity, provided by these examples, on uses that are reasonably necessary to provide the consumer's requested product or service under the standard in § 1033.421(a). The examples in § 1033.421(c) are illustrative and are not comprehensive of uses of covered data that will be reasonably necessary under the general limitation standard.

The CFPB is aware that third parties might need to use covered data to comply with legal requirements or to protect against fraud, unauthorized transactions, and similar purposes. The final rule is not intended to restrict uses of covered data that effect compliance with applicable laws, like anti-money laundering laws or other applicable rules or regulations, or to block criminal law enforcement activity. For example, in many cases, it would be reasonably necessary for third parties to use basic account verification information to confirm that the consumer is authorizing information from an account that does in fact belong to that particular consumer. One third party commenter explained that third parties might use covered data to determine the likelihood of consumers' future payments failing by monitoring past instances of consumers freezing their accounts or inability to transfer funds, describing those uses of data as being for fraud prevention purposes. The CFPB cautions that the example in § 1033.421(c)(2) is limited to uses to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability if such uses are reasonably necessary. The examples in § 1033.421(c) do not expand the scope the general limitation standard in § 1033.421(a) and, to be permissible, the uses described in the examples in § 1033.421(c) must be reasonably necessary in a given context.

After considering comments, the CFPB is finalizing in § 1033.421(c) an additional example of permitted uses of covered data: uses that are reasonably necessary to allow for improvement of the consumer's requested product or service. The CFPB agrees with commenters that the reasonably necessary standard of § 1033.421(a) would generally permit third parties to use covered data to improve the requested product or service. Generally, consumers expect that products or services they have requested that rely on consumer-permissioned data will be improved over time and, as such, the CFPB is finalizing this additional

example in § 1033.421(c)(4) to provide clarity, which will assist third parties providing products and services that consumers request.

The CFPB considered commenters' suggestions to add other examples of uses that are permissible under the general standard in § 1033.421(a) but declines to do at this time. The CFPB believes the examples in the final rule provide sufficient guidance to third parties on uses that are permissible as reasonably necessary to provide the consumer's requested product or service. The examples provided in the final rule are non-exhaustive, and other uses are permissible as reasonably necessary to provide the consumer's requested product or service.

The CFPB considered comments suggesting additional prohibitions related to certain uses, like uses of data for reverse engineering of proprietary algorithms, price discovery in capital markets, or behavioral monitoring and algorithm development. As stated in the proposed rule, uses that are not reasonably necessary to provide the consumer's requested product or service are secondary uses, and are not permitted as part of the third party's authorization to access the consumer's covered data for purposes of providing that product or service. Many of commenters' suggested additions would generally be considered secondary uses in as much as they would not be reasonably necessary to provide the consumer's requested product or service.[112] And other uses of covered data for the purposes of targeted advertising, cross-selling of other products or services, and data sales are sufficiently limited by the requirement in § 1033.421(a)(2) that those purposes are not part of, or reasonably necessary for, any other product or service and therefore must be offered as a standalone product.

The CFPB considered additional flexibilities, like providing consumers an opt-in to certain secondary uses or permitting secondary uses through the use of de-identified data. The CFPB agrees with commenters who described opt-in, or opt-out, approaches as not sufficiently protective to consumers. The CFPB declines to allow third parties, including financial institutions acting as third parties under this rule, to solicit opt-in or opt-out consents from consumers to use covered data obtained pursuant to consumer authorization for secondary uses. The CFPB is concerned that consumers might not receive adequate information through granular choice mechanisms that would result in meaningful consent.[113] The CFPB is also concerned that if offered too many opt-in choices in the course of a single authorization process, consumers might experience decision fatigue or choice paralysis, and therefore might agree to terms they have not considered or instead might not complete authorization.[114] The CFPB also agrees with commenters' concerns regarding opt-in or other granular choice options for consumers, particularly related to de-identified data, as these choices might result in selection bias issues that make the use of the data consumers opted into sharing unhelpful for research purposes. Additionally, the CFPB is concerned that when consumers experience decision fatigue or choice paralysis, an opt-in or opt-out approach might result in greater data sharing than they would choose if in a position to make a considered choice. Generally, the authorization procedures pursuant to § 1033.401 are designed to ensure both that consumers understand the scope of a requested product or service and that third parties do not impermissibly expand the scope of their collection, use, and retention beyond what is reasonably necessary to provide that product or service. In addition, the rule does not prevent third parties from offering consumers more than one product by means of additional, separate authorizations that comply with subpart D. The CFPB determines that separate authorizations pursuant to the procedures in § 1033.401 will afford consumers with more meaningful consent to data access than consumers would have through traditional opt-in requests, which the CFPB understands to combine requests for data access for a product or service the consumer is seeking with requests for consumer consent for data access for additional purposes. Such combined requests might not allow consumers to make considered choices to the same degree as separate authorizations, and therefore the procedures in § 1033.401 will provide consumers more control over their data access authorizations.

At this time, the CFPB is not including a provision that would allow third parties to use de-identified data for purposes that are not reasonably necessary to provide the consumer's requested product or service. As discussed with regard to the general limitation standard in final § 1033.421(a), limiting third parties to using covered data only as reasonably necessary for the provision of the product or service that the consumer requested ensures that consumers understand the scope of their authorization and retain control over their data. The CFPB is concerned, based on the current rulemaking record, that an exception to the secondary use prohibition for de-identified data would be inconsistent with the kind of meaningful consumer control that the final rule seeks to achieve, and might enable third parties to offer products and services that are primarily designed to accumulate large amounts of de-identified consumer data. Additionally, the CFPB notes that, as with identifiable covered data, the final rule does not prohibit third parties from using de-identified data as reasonably necessary to provide the consumer's requested product or service, or from seeking a separate authorization to use de-identified data for other purposes that the consumer may choose. Indeed, to the extent that covered data can be de-identified and still used to provide the product or service, the CFPB expects that third parties may take that step because it will provide a better means of safeguarding data.

Importantly, many of the beneficial purposes for which commenters seek to use de-identified data typically would not be secondary uses under the general limitation standard provided in § 1033.421(a). For example, § 1033.421(c) includes as an example that covered data—whether identifiable or de-identified—could be used as reasonably necessary to prevent fraud, service or process the consumer's requested product or service, and to improve the consumer's requested product or service. These examples of uses that are reasonably necessary to

[112] With respect to the comment suggesting the CFPB prohibit uses of data for reverse engineering of proprietary algorithms, the CFPB expects that such uses would not be reasonably necessary for a consumer's requested product or service. The CFPB will closely monitor the market to determine whether third parties are using covered data for these purposes.

[113] *See* Neil Richards & Woodrow Hartzog, *The Pathologies of Digital Consent,* 96 Wash. U.L. Rev. 1461, 1479–1486 (2019), *https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=6460&context=law_lawreview* (describing numerous ways in which a consumer might consent to choice options without understanding what they are authorizing); Woodrow Hartzog & Neil Richards, *Privacy's Constitutional Moment and the Limits of Data Protection,* 61 B.C. L. Rev. 1687, 1734 (2020) (stating that even when the consumer is functioning under ideal circumstances when giving consent, consumers' ability to give informed and meaningful consent is finite and cannot scale to all the privacy choices a consumer must make).

[114] *See* Neil Richards & Woodrow Hartzog, *The Pathologies of Digital Consent,* 96 Wash. U.L. Rev. 1461, 1484, 1486 (2019), *https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=6460&context=law_lawreview* (describing how a consumer might experience decision fatigue if presented with detail to provide sufficient information to make granular choices).

provide the consumer's requested product or service pursuant to § 1033.421(a) generally address the data uses described by commenters. For example, with appropriate safeguards pursuant to their third party obligations, third parties are generally permitted to use data, including de-identified data, to train a fraud detection algorithm or to improve the budgeting recommendation attribute of a personal financial management service.[115]

The CFPB acknowledges commenters' representations regarding the value of de-identified data for research purposes. Indeed, the CFPB uses de-identified data itself for research and market monitoring. But the use limitations in § 1033.421(a) and (c) operate in a particular context, where it is necessary to ensure that third parties that represent that they are acting on a specific consumer's behalf are actually doing so. Importantly, nothing prohibits a third party from seeking the consumer's separate authorization to use de-identified data for research purposes if that purpose is properly presented as an authorization for data access for a standalone product or service. Nonetheless, the CFPB recognizes that public interest research may present unique considerations not developed in the current rulemaking record. Accordingly, the CFPB will consider whether a follow-on rulemaking would be appropriate to allow for public interest research uses of de-identified data outside of the general standard finalized in this rule.

The CFPB disagrees with commenters' assertions that the restrictions on secondary use would harm competition and therefore consumers by overly limiting potentially beneficial data uses. Under the final rule, third parties can use covered data as reasonably necessary to provide consumer-requested products and services, including uses that are reasonably necessary to improve those products and services. The CFPB expects that this will result in robust competition with respect to consumer-requested products and services. Further, the CFPB notes that the final rule does not restrict a third party's ability to obtain or use data in other ways unrelated to the final rule's data-access procedures, nor does the final rule prevent third parties from obtaining authorization from consumers to use covered data for additional products and services, including for research purposes. In addition, to the extent it is reasonably necessary to provide the consumer's requested product or service, third parties may use covered data as one input to the generation of new data that is not subject to the requirements of subpart D, including the limitations on secondary use (although other State and Federal laws may impose applicable restrictions).

For these same reasons, the CFPB also disagrees with comments suggesting that the rule, including not adopting the GLBA's privacy standard, creates an illogical or unfair distinction between data providers and third parties. Both data providers and third parties may use data that result from direct consumer relationships without adhering to the general limitation standard in § 1033.421(a), such as by using it as permitted under the GLBA and Regulation P, to the extent applicable. The final rule also does not treat covered data providers differently than other third parties when they act as authorized third parties themselves—while they may use the data they generate in the course of providing their products or services in any manner allowable by law, they are still subject to the prohibition on secondary uses when accessing data from other data providers pursuant to the rule's procedures. The CFPB considers the final rule's approach to the use of generated data to be straightforward, but to the extent parties seek any additional guidance, the CFPB may publish responsive guidance as appropriate.

Accuracy (§ 1033.421(d))

Proposed § 1033.421(d) would have required third parties to establish and maintain written policies and procedures that are reasonably designed to ensure that covered data are accurately received from a data provider and accurately provided to another third party, if applicable. Under the proposed rule, a third party would have flexibility to determine its policies and procedures in light of the size, nature, and complexity of its activities, but the third party would be required to periodically review its policies and procedures and update them as appropriate to ensure their continued effectiveness. The proposed rule provided two examples of elements in § 1033.421(d)(3) that third parties would have been required to consider when developing their policies and procedures regarding accuracy: (1) accepting covered data in the format required by the standards for developer interfaces in § 1033.311(b) and (2) addressing information provided by a consumer, data provider, or another third party regarding inaccuracies in the covered data. Finally, the proposed rule stated that indicia that a third party's policies and procedures are reasonable would include whether the policies and procedures conform to a qualified industry standard regarding accuracy.

The CFPB explained that proposed § 1033.421(d) would limit the scope of a third party's required policies and procedures to the accuracy of transmission—that is, receiving covered data from a data provider and, if applicable, subsequently providing it to another third party. The CFPB provided several reasons for limiting this scope. First, existing Federal law already protects consumers against some of the most harmful inaccuracies in the use of financial data.[116] Second, the CFPB noted that most SBREFA comments addressing accuracy focused on transmission of data from data providers to third parties as the source of accuracy issues. In adopting a similar focus, proposed § 1033.421(d) reflected this feedback. Finally, the CFPB explained many third parties are small entities, and accuracy requirements covering all aspects of the collection, use, and provision of consumer data might be overly burdensome.

The CFPB sought comment on whether any additional elements bearing on the reasonableness of a third party's policies and procedures regarding accuracy should be included.

One Member of Congress expressed support for the proposed accuracy requirements. This commenter stated that inaccuracies would limit the ability of covered data to serve consumers and the financial system. On the other hand, some commenters opposed the inclusion of certain requirements. Some commenters believed that industry standards would be poorly suited to accuracy requirements. For example, a bank trade association stated that standardizing accuracy across the diverse universe of third parties may not be possible, given the broad array of interests.

Additionally, while not opposing the proposed requirement, a number of data provider and data provider trade association commenters recommended

[115] Additionally, as described elsewhere, the general standard to retain covered data as reasonably necessary would allow third parties to retain covered data used for these purposes for as long as reasonably necessary to locate the data and delete it. The CFPB is aware that it could be practically infeasible for third parties to delete data in certain circumstances, and as such, it would be consistent with the general limitation standard for the third parties to retain the data. In one such circumstance, for example, it might be practically infeasible for a third party using covered data in fraud prevention and product improvement models to extract from those models data no longer connected to a consumer who requests revocation.

[116] For example, Regulation E protects consumers against unauthorized electronic fund transfers and other errors, and Regulation Z protects consumers against certain billing and servicing errors. *See* 12 CFR part 1005; 12 CFR part 1026.

that the final rule do more to account for the fact that most third parties will receive data from data aggregators using proprietary formats rather than directly from data providers. Specifically, a few commenters recommended that the CFPB either prescribe a standardized format or remove the provision requiring third parties to consider accepting data in the format required for data providers' developer interfaces. One research organization commented that the CFPB might want to more clearly distinguish the obligations of third party data recipients and third party data aggregators.

Further, some third party commenters and one consumer advocate group commenter recommended the final rule contain a more robust dispute process. In particular, the consumer advocate group recommended a dispute process similar to that provided under the FCRA, wherein the consumer can dispute inaccuracies and require that a reasonable investigation is conducted.

For the reasons discussed herein, the CFPB is finalizing § 1033.421(d) as proposed, with one clarifying change to conform to the final rule's use of the term ''consensus standard.''

Accurate transmission of covered data is important for the effective functioning of the market for consumer-authorized data sharing. Inaccuracies in covered data impair third parties' ability to use that data for innovative purposes, undermining the benefits of data sharing for consumers. Accuracy standards also help ensure that authorized third parties are acting on behalf of consumers. Third parties that fail to take reasonable steps to ensure accuracy when receiving or transmitting covered data would not be acting in the interests of the consumers to whom the data relates. The specific arrangement that a third party makes to receive covered data affects the reasonableness of its policies and procedures regarding accuracy. For example, the CFPB understands that third parties frequently use data aggregators to obtain access to consumers' covered data. Such third parties should account for the involvement of a data aggregator by ensuring that their policies and procedures include measures to reduce inaccuracies that might be introduced by using an intermediary.

Standard-setting bodies can facilitate a comprehensive set of policies and procedures for accuracy that may be used by third parties throughout the consumer-authorized data sharing market. In particular, standard-setting bodies are likely to develop standards that are relevant to reasonable policies and procedures for accuracy—such as standardized data formats—that will increase the interoperability of the final rule. Further, recognized standard setters will need to consider input from both data providers and third parties, and as part of the balance attribute of § 1033.141(a), will specifically need to consider the input of small entity data providers. Accordingly, a recognized standard setter can—contrary to the suggestion of one commenter—issue consensus standards flexible enough to accommodate the wide array of third party data recipients.

Regarding comments concerning transmission of standardized formats, accepting data in the format in which it is transferred is relevant to ensuring accuracy. Section 1033.421(d)(3) does not preclude third parties from accepting covered data from a data aggregator in a standardized format. The flexibility provided by the policies and procedures allows the third party to accept covered data in a way that is best for the size and nature of the third party.

Additionally, CFPA section 1033(d) requires the CFPB to prescribe standards applicable to covered persons to promote the development and use of standardized formats for information. As discussed in more detail under § 1001.2(b) below, CFPA section 1002(15)(A)(vii) defines as a financial product or service ''providing payments and other financial data processing to a consumer by any technological means'' and data aggregators are therefore covered persons under the CFPA.[117] The CFPB intends to monitor the market to evaluate whether data aggregators and authorized third parties are using standardized and machine-readable formats for covered data.

Regarding comments for a more robust dispute process, the CFPB has determined that forgoing overly prescriptive dispute requirements can facilitate consistency with robust accuracy requirements.[118] As the CFPB has noted, third parties are likely to be highly diverse in size and sophistication. The dispute requirement attempts to ensure that the burden of considering disputes is appropriate to the role that a third party played in the ecosystem. All third parties will need to consider ''addressing information provided by a consumer, data provider, or another third party regarding inaccuracies in the covered data,'' but what is ''reasonable'' will depend on the size and sophistication of the third party. For example, data aggregators will likely have more extensive dispute processes than third parties that merely receive data. Further, the overall flexible nature of the policies and procedures accuracy requirement will allow third parties leverage existing systems for addressing disputes to the extent that such disputes also relate to the transfer of covered data.

The CFPB has determined that consumers will benefit from accuracy requirements for third parties. Third parties that fail to accurately receive data from a data provider, or fail to accurately provide data to another third party (when that is appropriate under the general limitation on data use), limit the effectiveness of the data access right fundamental to CFPA section 1033. Such inaccuracies also impair the development of an innovative, competitive market for alternative consumer financial products and services. Third party accuracy requirements also benefit third parties that rely on intermediaries to facilitate consumer-authorized access.

Data Security (§ 1033.421(e))

Proposed § 1033.421(e)(1) would have required a third party to certify that it will apply to its systems for the collection, use, and retention of covered data an information security program that satisfies the applicable rules issued pursuant to section 501 of the GLBA (15 U.S.C. 6801). Under proposed § 1033.421(e)(2), if the third party is not subject to section 501 of the GLBA, the third party will apply to its systems for the collection, use, and retention of covered data the information security program required by the FTC's Standards for Safeguarding Customer Information, 16 CFR part 314. The CFPB preliminarily determined that the GLBA Safeguards Framework could be used by third parties to appropriately protect consumer-authorized financial data.

A range of commenters supported the use of the GLBA Safeguards Framework for third party data security. One bank commenter stated that the GLBA Safeguards Framework would ensure consistent data security standards for all ecosystem participants. Additionally, one consumer advocate group commenter said the proposed rule would close gaps in data security coverage. Another bank commenter stated that third parties should, at a

[117] CFPA section 1002(4) defines ''consumer'' to include ''an agent, trustee, or representative acting on behalf of'' a consumer. Therefore, when a data aggregator provides financial data processing to an authorized third party, the aggregator is also necessarily providing financial data processing to a consumer.

[118] As discussed above in part IV.4, certain entities, such as data aggregators, may have dispute resolution obligations under other statutes, such as the FCRA. The analysis for this provision is limited to obligations arising under part 1033 and does not supplant other accuracy dispute requirements.

minimum, follow the GLBA Safeguards Framework.

On the other hand, one third party commenter argued that the Safeguards Framework should not be applied to third parties, because compliance would be overly burdensome for third parties. Additionally, some commenters believed the final rule should add more specificity to the Safeguards requirements, for example, by creating a presumption of compliance for previously utilized standards, or consensus standards.

A number of bank commenters argued that the final rule should apply the same GLBA Safeguards Framework guidelines used by the Federal functional regulators [119] to supervise financial institutions. In particular, some data providers and trade associations for data providers stated that the FTC Safeguards rule was less prescriptive and not supported by regular supervision. Similarly, a few commenters requested that the final rule address liability by subjecting third parties to additional data security obligations, such as the FFIEC Information Technology Examination Handbook because, they said, it was more detailed than the FTC Safeguards Rule.

Additionally, one third party merchant commenter and one third party commenter argued that the final rule should not require third parties that are merchants to certify to follow the GLBA framework when they use consumer-permissioned data to facilitate payments for services provided by the merchant. These commenters' concern was threefold. First, the commenters argued that the proposed rule was inconsistent with the CFPA's limits on the CFPB's authority with respect to merchants. Second, the commenters stated that merchants are already subject to data security requirements under the National Automated Clearing House Association (NACHA) and the payment card industry data security standards (PCI DSS), and, given these previous compliance obligations, adding the safeguards condition would be overly burdensome for the merchant third party. Finally, the commenters stated that, under the proposed rule, merchants could be incentivized to avoid GLBA Safeguards Rule standards by asking the consumer to go around the open banking transaction, for example, by requiring the consumer to type in their ACH account and routing number, or by asking the consumer for a payment card rather than using an open finance application.

For the reasons discussed herein, the CFPB is finalizing § 1033.421(e) as proposed. Final § 1033.421(e)(1) requires a third party to apply to its systems for the collection, use, and retention of covered data an information security program that satisfies the applicable rules issued pursuant to section 501 of the Gramm-Leach-Bliley Act (15 U.S.C. 6801). Under § 1033.421(e)(2), if the third party is not subject to section 501 of the Gramm-Leach-Bliley Act, the third party will apply to its systems for the collection, use, and retention of covered data the information security program required by the Federal Trade Commission's Standards for Safeguarding Customer Information, 16 CFR part 314.

Requiring third parties to certify that they will comply with the GLBA Safeguards Framework will appropriately protect covered data. The rule's requirement for third parties to certify that they will follow the GLBA Safeguards Framework ensures consistency in protection as covered data moves from a data provider to one or more third parties because all or substantially all data providers are already subject to the GLBA Safeguards Framework,[120] most likely the Interagency Guidelines Establishing Information Security Standards issued by the Federal functional regulators.

The CFPB declines to include greater specificity in the data security certification for third parties, as requested by some commenters. Regarding comments requesting incorporation of industry standards into third party data security provisions, the CFPB notes that changing the security framework beyond the proposed approach would create a new, CFPA section 1033-specific data security standard, which could add complexity for third parties. The CFPB has determined that by not incorporating industry standards or overly prescriptive standards relating specifically to data security, the rule better facilitates compliance with CFPA section 1033.

Regarding comments on the inadequacy of the FTC Safeguards Rule compared to the Safeguards Guidelines, for reasons stated in the proposed rule, the CFPB has determined the FTC Safeguards Rule provides adequate protection. The commenters failed to engage with the proposed rule's explanation that the FTC's Safeguards Rule includes slightly more prescriptive requirements, such as encryption, for certain elements, because the Safeguards Rule must be usable by a financial institution to determine appropriate data security measures without regular interaction with an examiner from a supervising agency. Additionally, concerning third party liability, the CFPB finds that the final rule's data security requirements will help protect against data breaches and any ensuing losses that third parties or data providers might suffer.

The CFPB has determined merchant third parties that are authorized third parties under the rule should be required to certify to comply with the same data security obligations as other third parties. Although merchant commenters expressed concern that merchants are already subject to data security requirements through NACHA and PCI rules, the CFPB has determined the relative similarities between these rules and the FTC Safeguards Rule suggests that the burden imposed on the merchants by the final rule would be minor. The FTC Safeguards Rule requires financial institutions to design an information security program that addresses several elements, including designating a qualified individual, performing a risk assessment, implementing controls such as encryption and multi-factor authentication, and testing or monitoring the effectiveness of the program's controls. Similarly, NACHA and PCI rules requires covered financial institutions to develop, implement, and maintain an information security program with administrative, technical, and physical safeguards designed to protect customer information.

Further, contrary to one merchant commenter's concern with what it felt was a one-size-fits-all approach in the proposed rule, the flexibility of the Safeguards Rule would allow for some discretion in how the merchant third parties structure their data security systems. Additionally, treating NACHA or PCI standards as sufficient for purposes of a third party's data security certification would allow a private entity to determine the substance of the final rule's data security standards. This approach creates a risk that future NACHA or PCI standards might diverge from the CFPB's views about the proper data security obligations for authorized third parties.

Regarding comments stating that the CFPB does not have the authority over merchant third parties to require those third parties to certify to comply with the FTC Safeguards rule, the CFPB notes

[119] The term ''functional regulators'' is the term that the GLBA uses to identify applicable agencies.

[120] Section 501 of the GLBA (15 U.S.C. 6801) applies to financial institutions, which are defined as companies that offer consumers financial products or services like loans, financial or investment advice, or insurance.

that the certification requirement in § 1033.421(e), for merchants and all third parties, is a condition to access covered data and not a freestanding requirement.

Provision of Covered Data to Other Third Parties (§ 1033.421(f))

The CFPB proposed in § 1033.421(f) to require a third party to certify that, before providing covered data to another third party, it will require that other third party by contract to comply with certain obligations. The proposed rule noted that, in some circumstances, third parties that are authorized to access covered data from a data provider on behalf of a consumer would need to share that data with another third party. The authorized third party's ability to share covered data would be limited by the conditions in proposed § 1033.421(a) and (c), under which the authorized third party would limit its use of covered data, including sharing data with other third parties, to what is reasonably necessary to provide the consumer's requested product or service. Subject to that limitation, the authorized third party would be permitted to provide the data to another third party.

The CFPB proposed that the consumer protections provided by the third party obligations in proposed § 1033.421 generally would apply when the covered data are provided by the authorized third party to another third party. The CFPB noted that, otherwise, the third party that receives the data from the authorized third party would not be subject to, for example, the limitations on use or the requirements for data privacy and data security that apply to the authorized third party, and the consumer would lose these important protections for the covered data, which ensure that data are used on their behalf.

Accordingly, the CFPB proposed in § 1033.421(f) that, before providing the covered data to another third party, the authorized third party would certify that it will require the other third party by contract to comply with the third party obligations in proposed § 1033.421(a) through (g) and the condition in proposed § 1033.421(h)(3), upon receipt of the notice described in proposed § 1033.421(h)(2). Proposed § 1033.421(f) stated that any provision of covered data to another third party would be subject to the restriction in proposed § 1033.421(c), which specifies that provision of data to other third parties is a type of use of covered data that would be limited by proposed § 1033.421(a) to what is reasonably necessary to provide the consumer's requested product or service requested. Proposed § 1033.421(f) did not require the authorized third party to certify that it will bind the other third party by contract to comply with all of the third party obligations in proposed § 1033.421. The CFPB preliminarily determined that certain of the third party obligations would be of limited applicability to the other third party, including the obligation to provide certain information to the consumer in proposed § 1033.421(g) and the revocation obligation in proposed § 1033.421(h). The CFPB requested comment on whether the approach in proposed § 1033.421(f) would provide sufficient protection to consumers and their covered data when an authorized third party provides that data to another third party. The CFPB also requested comment on which third party obligations in proposed § 1033.421 should be included in this approach.

A number of commenters addressed the proposed approach in § 1033.421(f). A bank trade association commenter and a trade association representing nonbank entities both supported the proposed rule's approach to applying third party obligations when third parties provide covered data to downstream parties. Other commenters, including a bank trade association, a bank, and a consumer advocate, maintained that the proposed approach in § 1033.421(f) would not provide sufficient protections for consumers' covered data when an authorized third party provided that data to downstream parties. The bank and bank trade association commenters and the bank commenter stated that the proposed approach of requiring the authorized third party to certify that it will include contractual provisions obligating downstream parties to comply with certain obligations in proposed § 1033.421 would be insufficient and that the rule should impose those obligations directly on downstream parties. The trade association commenter recommended that, at a minimum, the rule should provide that, in addition to including contractual provisions requiring a downstream party to comply with the obligations, the authorized party must also ensure that the downstream parties comply with the obligations. The bank trade association commenter and a bank commenter also recommended that the rule should require the authorized third party to disclose to the consumer and the data provider which other third parties will be provided with the covered data. The bank trade association commenter stated that disclosing this information would provide consumers with transparency and control over their data and would allow data providers to conduct risk assessments of downstream parties.

Some commenters, including a bank, a bank trade association, and a consumer advocate, recommended that the rule clarify when an authorized third party may share covered data with a downstream party. They noted that an authorized third party would be permitted to access covered data only for the purpose of providing the consumer's requested product or service, so they stated that it is not clear when it would be permissible for the authorized third party to share the covered data with additional third parties. A research institute commenter stated that proposed § 1033.421(f) would not appear to be flexible enough to permit sharing with a downstream third party when the authorized third party accesses the covered data for certain products that involve the sharing of covered data. For example, the research institute commenter stated that it was not clear if the proposed approach would permit an authorized third party to access covered data to identify rent, cell phone, and utility payments and share that information by reporting those payments to CRAs to help build the consumer's credit.

For the reasons discussed herein, the CFPB is adopting § 1033.421(f) as proposed with two minor changes. As finalized, § 1033.421(f) provides that, before providing covered data to another third party, subject to the limitation described in § 1033.421(a) and (c), the third party must certify that it will require the other third party by contract to comply with the third party obligations in § 1033.421(a) through (f) and the condition in § 1033.421(i) upon receipt of the notice described in § 1033.421(h)(2).

Under the proposed rule, third parties also would have been required to certify that they would require downstream parties to comply with the provisions in § 1033.421(g) (related to keeping consumers informed). However, the provisions in § 1033.421(g) would be of limited relevance for downstream parties and the CFPB concludes that an authorized third party therefore should not be required to certify that it will include them in contracts with downstream parties with which it will share covered data. Section 1033.421(g)(1) requires a third party to provide the consumer with a copy of the authorization disclosure. The downstream third party would be receiving the covered data for the purpose of providing the product or

service requested by the consumer from the authorized third party, and the authorized third party, not the downstream party would have provided the authorization disclosure to the consumer. Section 1033.421(g)(2) also requires a third party to provide contact information that enables a consumer to receive answers to questions about the third party's access to the consumer's covered data. The authorized third party, not a downstream party, is more likely to have a relationship with the consumer and the consumer is more likely to attempt to contact the authorized third party with questions about access to the consumer's covered data. Section 1033.421(g)(3) requires the third party to establish and maintain reasonable policies and procedures to ensure that the third party, upon request, provides certain information to the consumer. Again, the consumer is more likely to contact the authorized third party to obtain information and the information listed in § 1033.421(g)(3) is primarily information possessed by the authorized third party. Accordingly, the final rule does not require an authorized third party to include the obligations in § 1033.421(g) in contractual provisions with downstream parties. In addition, the final rule changes the reference from § 1033.421(h)(3) to § 1033.421(i) because, as described below, the final rule includes a new § 1033.421(i) that includes provisions from proposed § 1033.421(b)(4) and (h)(3).

The CFPB has determined that requiring a third party to certify that it will include contract provisions requiring downstream parties to abide by the specified obligations will provide sufficient protections, including protections that impose limitations on use and requirements for data security. As discussed above in connection with the authorization procedures in § 1033.401, requiring a third party to certify that it will include contractual provisions requiring downstream parties to abide by the specified obligations will provide sufficient protection. If a downstream party breaches the obligation, the CFPB could enforce those obligations using its authority to prevent unfair, deceptive, or abusive acts or practices, and other regulators, the consumer, and the data provider also may be able to enforce those provisions.

The CFPB has concluded that further clarification of when an authorized third party may share covered data with downstream parties is not necessary. Section 1033.421(f) specifically references the limitations in § 1033.421(a) and (c), so the authorized third party is able to share data with other third parties only as reasonably necessary to provide the product or service requested by the consumer from the authorized third party. Accordingly, downstream parties will be able to use the data only to assist the authorized third party with providing the requested product or service and not for their own purposes. The CFPB also has determined that the approach in § 1033.421(f) is sufficiently flexible to accommodate products like those suggested by the research institute commenter for which sharing of data is part of the product. Sharing the data in those circumstances would be reasonably necessary to provide the product requested by the consumer.

The CFPB declines to require that the authorized third party certify that it will disclose the identity of any third parties with which it will share the consumer's covered data. With respect to data aggregators, § 1033.431(b) requires the authorization disclosure to include the name of any data aggregator that will assist the third party seeking authorization with accessing covered data and a brief description of the services the data provider will provide. However, at the time of the authorization, the third party seeking authorization may not know if it will be sharing covered data with other third parties and, if it will, the identity of those third parties. Moreover, the limitations in § 1033.421(a) and (c) restrict the circumstances in which an authorized third party is permitted to share covered data with other third parties. Finally, a consumer that wants to obtain additional information from the authorized third party about such data sharing may do so, as provided in § 1033.421(g). Accordingly, the CFPB has determined that it is not necessary to provide information during authorization about sharing covered data with downstream parties.

As noted above, a bank trade association recommended that § 1033.421(f) require the authorized third party to certify that it also will ensure that any downstream parties that they provide with covered data are abiding by their contractual obligations. The CFPB expects that, in addition to certifying that they will include contract provisions obligating downstream parties with which they share data to comply with certain obligations, authorized third parties will take reasonable steps to ensure that those downstream parties are complying with those obligations. Authorized third parties are permitted to share covered data with downstream parties only as reasonably necessary to provide the consumer's requested product or service. The CFPB expects that authorized third parties will, in the interest of maintaining relationships with consumers and avoiding potential liability for violating their own certifications to consumers, including the certification that covered data will only be collected, used, and retained as reasonably necessary to provide the consumer's requested product or service, perform due diligence in determining which downstream parties they select to assist in providing the consumer's requested product or service and take reasonable steps to monitor those downstream parties.

Ensuring Consumers Are Informed (§ 1033.421(g))

The CFPB proposed in § 1033.421(g) to require a third party to certify that it agrees to certain obligations designed to ensure that consumers can obtain information about the third party's access to their data.

Under proposed § 1033.421(g)(1), a third party would have been required to certify that it would provide the consumer with a copy of the authorization disclosure that is signed or otherwise agreed to by the consumer and reflects the date of the consumer's signature or other written or electronic consent. Upon obtaining authorization to access covered data on the consumer's behalf, the third party would deliver a copy to the consumer or make it available in a location that is readily accessible to the consumer, such as the third party's interface. The proposed rule specified that, if the third party made the authorization disclosure available in such a location, the third party also would have been required to certify that it would ensure it is accessible to the consumer until the third party's access to the consumer's covered data terminates. The CFPB sought comment on whether this is the right time period. The CFPB proposed § 1033.421(g)(1) because it preliminarily determined that consumers would benefit from being able to access authorization disclosures they have previously signed. For example, the consumer may not recall which third parties are accessing their data, what data are being accessed, and for what reasons. Without this information, it would be difficult for a consumer to decide whether to continue authorizing data access.

Under proposed § 1033.421(g)(2), a third party would have been required to certify that it would provide readily identifiable contact information that enables a consumer to receive answers to questions about the third party's

access to the consumer's covered data. The proposal stated that a third party could satisfy proposed § 1033.421(g)(2) through its existing customer service functions, provided that this function is equipped to handle the relevant questions. The CFPB proposed § 1033.421(g)(2) because it preliminarily determined that the consumer should be able to contact the third party to receive answers to questions about the third party's access to the consumer's covered data. The proposed rule stated that the authorization disclosure would contain a limited amount of information pursuant to proposed § 1033.411(b), so it may not address every question the consumer has about the third party's data access. The CFPB sought comment on additional requirements regarding the nature of the contact that the consumer can access through the contact information provided by the third party, such as whether the consumer must be able to access a human contact or whether the consumer must receive a response within a specified timeframe.

Under proposed § 1033.421(g)(3), third parties would have been required to certify that they would establish and maintain reasonable written policies and procedures designed to ensure that the third party provides to the consumer, upon request, the following information about the third party's access to the consumer's covered data: (1) categories of covered data collected; (2) reasons for collecting the covered data; (3) names of parties with which the covered data was shared; (4) reasons for sharing the covered data; (5) status of the third party's authorization; and (6) how the consumer can revoke the third party's authorization to access the consumer's covered data and verification the third party has adhered to requests for revocation. Proposed § 1033.421(g)(3) stated that the third party had flexibility to determine its policies and procedures in light of the size, nature, and complexity of its activities, and the third party would periodically review its policies and procedures and update them as appropriate to ensure their continued effectiveness. The CFPB proposed § 1033.421(g)(3) because it preliminarily determined that, at any time during the third party's access to the consumer's data, the consumer should be able to obtain this information from the third party. The CFPB proposed to require a third party to certify that it would provide the names of parties with whom the covered data are shared because the CFPB preliminarily determined that this information would be valuable for consumers to know to protect their privacy, exercise control over which parties are accessing their covered data, and evaluate whether to continue sharing data with the third party. The CFPB proposed to require a third party to certify that it would provide information about the status of the third party's authorization because it may not be apparent to the consumer whether the third party's authorization is still active or whether the third party is currently collecting data.

With respect to the information about the categories of covered data the third party is collecting, the reasons for collecting the covered data, and information about how the consumer can revoke the third party's access to the consumer's data, the proposed rule stated that some consumers may want to obtain this information by contacting the third party. The CFPB preliminarily determined that it would be appropriate to require the third party to certify that it would provide this information on request given that the third party originally provided this information on the authorization disclosure. The CFPB sought comment on whether the list in proposed § 1033.421(g)(3) should be modified, including whether additional categories of information should be added.

The CFPB received a few comments on proposed § 1033.421(g). A bank trade association commenter, a Member of Congress, and a consumer advocate commenter supported the proposed rule's general approach to requiring third parties to keep consumers informed because it would allow consumers to make decisions with respect to their sensitive financial data.

The bank trade association commenter requested that the method for accessing this information be easy and intuitive and that information on the duration of data sharing be made available to consumers. The Congressmember's comment supported information about data security being made available to consumers.

A different bank trade association commenter requested that any separate data aggregator certification be available to the consumer upon request from either the third party or the data aggregator. A consumer advocate commenter requested more formal requirements for transparency into downstream data flows, detailing each onward transfer as well as the purposes of the transfer to allow consumers visibility and control on how financial information would get subsequently utilized. Another consumer advocate commenter and an individual commenter asserted that third parties should be required to provide information on how the third party makes decisions using data, including what data are used. A data provider commenter requested that the data provider name be made available on a platform such as a consumer revocation dashboard rather than on the authorization disclosure.

For the reasons described herein, the CFPB is finalizing § 1033.421(g) with modifications. First, the CFPB is finalizing in § 1033.421(g)(3)(vii) an additional requirement that the third party certify to maintain policies and procedures to provide to consumers, upon request, a copy of any data aggregator certification statement that was provided to the consumer separate from the authorization disclosure, pursuant to § 1033.431(c)(2). The CFPB is finalizing § 1033.421(g)(3)(vii) to ensure that consumers have access to the same information regardless of whether a data aggregator certification was included in the authorization disclosure or in a separate data aggregator certification. Second, the CFPB is modifying the language of proposed § 1033.421(g)(3)(iii) to specify that names of any parties with which covered data was shared must be made available in a form that is readily understandable to consumers for consistency with the authorization disclosure. Third, the CFPB is modifying the language of proposed § 1033.421(g)(3)(iii) to better align with the requirements in §§ 1033.401(c) and 1033.411(a). Final § 1033.401(c) does not include language stating that a third party can obtain a consumer's express informed consent by having the consumer ''otherwise agree'' to the authorization disclosure. Finally, the final rule makes non-substantive changes to the language of proposed § 1033.421(g)(3).

The CFPB is not modifying its approach regarding downstream data flows or notification of sharing with downstream parties because the proposed rule required third parties to provide the ''names of parties with which the covered data was shared.'' The CFPB is not adding a requirement to provide information about how the third party uses data to make decisions because doing so would be outside the intended scope of a provision regarding providing information about data access. Additionally, such information may be, in whole or in part, proprietary information. The CFPB is not modifying § 1033.421(c) to include the data provider's name or information about duration of data access because the consumer will have this information in the authorization disclosure. Finally,

the CFPB is not adding a requirement to include information about data security because this information may be highly technical and is unlikely to be useful to consumers.

Revocation of Authorization (§ 1033.421(h))

Proposed § 1033.421(h) included three components related to the third party's certification to provide the consumer with a mechanism to revoke the third party's authorization to access the consumer's covered data. These components are discussed below.

Provision of Revocation Method (§ 1033.421(h)(1))

Under proposed § 1033.421(h)(1), the third party would certify to provide the consumer with a mechanism to revoke the third party's authorization to access the consumer's covered data that is as easy to access and operate as the initial authorization. Proposed § 1033.421(h)(1) also stated that the third party would also ensure the consumer is not subject to costs or penalties for revoking the third party's authorization.

The proposed rule stated that the CFPB preliminarily determined that for the consumer's authorization for third party data access to be meaningful, consumers need to be able revoke that authorization at any time. The proposed rule also stated that a mechanism being as easy as the initial authorization would ensure third parties would not bury the revocation mechanism or otherwise obfuscate consumers' ability to utilize it. Additionally, the proposed rule stated that, for revocation of authorization to be free of cost or penalties to the consumer, consumers should be able to revoke their authorization to data access for purposes of one product or service but maintain that same third party's data access for purposes of another product or service. Therefore, as part of proposed § 1033.421(h)(1), third parties would certify to allow consumers to revoke consent to data access for a particular product or service and maintain consent to data access for any others.

Comments about this aspect of the proposed rule from a Member of Congress, consumer advocates, research organizations, trade associations for credit unions and banks, third parties, data aggregators, and individuals were generally supportive of the proposed approach to requiring third parties to provide consumers with a method to revoke third party authorizations to access covered data. Commenters' suggested amendments, clarifications, or additions to the proposed rule included: consumers' ability to revoke should be nonwaivable and the mechanism should be provided ''without friction or delay;'' the mechanism should allow revocations at the granular level, including allowing consumers to expressly select the account for which authorization is revoked; the mechanism should allow the consumer to revoke authorization for any entity involved with the data sharing transaction; the final rule should specify a time limit by which third parties must notify other parties of the revocation request; and data aggregators should be required to provide consumers with a revocation request.

After considering comments, and for the reasons discussed herein, the CFPB is finalizing proposed § 1033.421(h)(1) without substantive change. The CFPB is making a non-substantive modification to change ''mechanism to revoke'' to ''method to revoke'' for consistency with the provision that allows data providers to provide a revocation method to consumers. As described above, some commenters suggested the CFPB should state that revocation is nonwaivable and should be provided without friction or delay, or should allow for more granular choices. The CFPB declines to make these changes because § 1033.421(h)(1) sufficiently ensures consumers may revoke third party authorizations at any point. Further, the CFPB has determined that third parties are in the best position to understand the covered data they need to collect to facilitate provision of a consumer's requested product or service. Offering consumers granular revocations might confuse consumers or frustrate the third parties' ability to provide that product or service.

The CFPB affirms that, for revocation of authorization to be free of cost or penalties to the consumer, consumers should be able to revoke their authorization to data access for purposes of one product or service but maintain that same third party's data access for purposes of another product or service they are receiving from the third party. In other words, third parties conditioning the provision of one product or service on the consumer providing consent to data access for another product or service is a cost or penalty on the consumer. Therefore, as part of § 1033.421(h)(1), third parties must certify that they will allow consumers to revoke consent to data access for a particular product or service and maintain consent to data access for any others.

For the consumer's authorization for third party data access to be meaningful, consumers need to be able revoke that authorization at any time. For this reason, § 1033.421(h)(1) is designed to ensure consumers can provide meaningful authorization to third party data access and can easily and effectively revoke that authorization whenever they choose. Ensuring the revocation method is as easy to access and operate as the initial authorization ensures third parties do not bury the revocation mechanism or otherwise obfuscate, block, or interfere with consumers' ability to utilize it.

Notice of Revocation (§ 1033.421(h)(2))

Under proposed § 1033.421(h)(2), the third party would certify to notify the data provider, any data aggregator, and other third parties to whom it has provided the consumer's covered data when the third party receives a revocation request from the consumer. The CFPB proposed to require authorized third parties to certify that they will notify other third parties of the consumer's revocation to ensure that those third parties that receive covered data from the authorized third party are aware of the status of the consumer's authorization and can, accordingly, meet applicable certifications related to use and retention of that data. The CFPB also proposed in § 1033.421(h)(2) to require authorized third parties to notify data providers of the consumer's revocation to ensure data providers are aware of the status of the consumer's authorization.

For the reasons discussed herein, the CFPB is finalizing § 1033.421(h)(2) as proposed. As described above, some commenters suggested that the final rule specify a time limit by which third parties must notify other parties of the revocation request. The CFPB has considered these comments but concludes that § 1033.421(h)(1) sufficiently addresses the timing of the third party's notice of consumer revocation to other third parties, since it requires such notification when the third party receives the consumer's revocation request.

Effect of Revocation

Proposed § 1033.421(h)(3) would have required the third party to certify that, upon receipt of a consumer's revocation request or notice of a revocation request pursuant to proposed § 1033.331(e), the third party will (1) no longer collect covered data pursuant to the most recent authorization, and (2) no longer use or retain covered data that was previously collected pursuant to the most recent authorization unless use or retention of that covered data remains reasonably necessary to provide the consumer's requested product or service

under proposed § 1033.421(a). The CFPB is finalizing these provisions without substantive change in § 1033.421(i), discussed below. Comments regarding proposed § 1033.421(h)(3) are discussed in detail below related to § 1033.421(i).

Effects of Maximum Duration and Revocation on Collection, Use, and Retention (§ 1033.421(i))

Proposed Rule

As described above, proposed § 1033.421(b)(4) and (h)(3) addressed the effects of maximum duration and receipt of a revocation notice on collection, use, and retention of consumers' covered data. With respect to the effect of maximum duration and revocation on use and retention, proposed § 1033.421(b)(4)(ii) and (h)(3)(ii) would have specified, consistent with the general limitation in proposed § 1033.421(a), that when the maximum durational period ends and the consumer does not provide a new authorization, or upon receipt of a consumer's revocation request or notice of a revocation request pursuant to proposed § 1033.331(e), the third party may no longer use or retain covered data that was previously collected unless use or retention remains reasonably necessary to provide the consumer's requested product or service under proposed § 1033.421(a). The proposed rule stated that, in the current market, third parties use and retain consumer data for reasons unrelated to providing a consumer-requested product or service, including after a consumer no longer receives the product or service from the third party. The proposed rule further stated that such residual use and retention, which seldom occurs with consumer awareness, can result in significant privacy and security risks to consumers and can undermine the consumer's ability to control access to their covered data. Proposed § 1033.421(b)(4)(ii) and (h)(3)(ii) would address this concern by making clear that the general limitation on use and retention in proposed § 1033.421(a) applies to use and retention of covered data after a one-year maximum durational period ends and the consumer does not provide a new authorization, or when a consumer requests revocation pursuant to proposed § 1033.421(h) or § 1033.331(e).

The proposed rule stated that, while use and retention of covered data will not be reasonably necessary for most purposes after the third party's authorization ends, it may continue in some circumstances. The proposed rule provided the following examples for when use and retention might continue: a subpoena could require the retention, beyond the maximum period, of specific data collected in that period; meeting such legal requirements can continue to remain reasonably necessary even if only in connection with providing the product prior to the expiration of the maximum period. The proposed rule also stated that the consumer could provide a clear, affirmative indication that they want to continue to use the product beyond the maximum period in a manner supported by the use and retention of data collected prior to expiration of that period. In that context, use and retention of some or all of the data could meet the general standard in proposed § 1033.421(a) even as the consumer no longer makes use of the product in any manner that would require continued data collection.

The proposed rule explained that the CFPB preliminarily determined that proposed § 1033.421(b)(4)(ii) and (h)(3)(ii) would provide third parties with sufficient flexibility to address circumstances in which continued use or retention of previously collected data might be permitted under the general standard in proposed § 1033.421(a), while ensuring that consumer data are not used and retained in a manner that does not properly reflect the control afforded the consumer under that same general standard.

Comments Received

Support for the standard in proposed § 1033.421(a) included support for the general limitation principles as they would apply to third party retention of covered data. For example, a Member of Congress, a third party, and a trade association for data providers supported the general standard as it applies to retention. The third party stated that data should not be retained except to fulfill the service requested, while the trade association said cybersecurity risks increase when third parties can accumulate and store data.

Feedback on this aspect of the proposed rule fell into various categories, most notably: (1) seeking an exception to, or variation of, the general limitation standard related to retention; (2) asserting that consumers should have a role in determining how long data are retained; (3) asserting that the general limitation standard and the proposed rule's explanation do not provide enough clarity as to when third parties must no longer retain covered data; and (4) asserting that the retention standard is too general and not strong enough.

Commenters who requested an exception or variation on the limitation standard in the context of retention, mostly trade associations for third parties and research organizations, suggested that the proposed rule on retention is too restrictive. Commenters with this view stated that the final rule should allow retention of de-identified or pseudonymized data for specific purposes, like supplemental primary uses, public secondary uses, or research, or allow retention of historical data for some period so the product, service, or tool remains populated if a consumer reauthorizes shortly after the durational period expires. Commenters also stated that a restrictive retention limit would be harmful to beneficial products and services that rely on historical data, like cash-flow underwriting. A trade association for banks asked that the final rule allow third parties to retain data as long as necessary to defend themselves from consumer complaints. Finally, a research organization suggested the final rule should implement affirmative data deletion deadlines and require that data retention beyond three years be supported by documentation that the data continues to be reasonably necessary for the provision of the consumer's requested products or services, unless retention is required for compliance with other laws.

Commenters that suggested that consumers should have a role in determining how long data are retained—mostly trade associations for banks and research organizations—stated that consumers should be able to consent to how long data are retained or should be able to opt in to retention of de-identified data. The same commenters suggested that the proposed rule was too vague for consumers to understand what will be retained or for third parties to know how to comply. Some commenters in this category suggested finalizing an explicit requirement to delete upon the expiration of duration or when a consumer revokes.

Some commenters, including research organizations and trade associations for banks, asserted that the retention standard is too general and not strong enough. One commenter stated that the proposed rule would only discourage indefinite retention and that the final rule should be more prohibitive. Another suggested the final rule should implement mandatory time periods by which third parties must delete all data.

Finally, one third party commenter asked that the final rule clarify what happens to ''copied data'' held by authorized third parties and data aggregators.

Final Rule

For the reasons described herein, the CFPB is finalizing in § 1033.421(i) the provision related to the effect of maximum duration on collection, use, and retention in proposed § 1033.421(c)(4) and consumers' revocation requests in proposed § 1033.421(h)(3). As such, under § 1033.421(i), if a consumer does not provide a new authorization as described in § 1033.421(b)(3), or if a third party receives a revocation request as described in § 1033.421(h)(1) or notice of a consumer's revocation request as described in § 1033.331(e), a third party will: (1) no longer collect covered data pursuant to the most recent authorization; and (2) no longer use or retain covered data that was previously collected pursuant to the most recent authorization unless use or retention of that covered data remains reasonably necessary to provide the consumer's requested product or service under § 1033.421(a).

With respect to § 1033.421(i)(1), the CFPB has determined that the general limitation in § 1033.421(a) will require third parties to stop collecting covered data when the maximum durational period ends and the consumer has not provided a new authorization or when the consumer requests revocation. In those circumstances, collection would no longer be reasonably necessary to provide the consumer's requested product or service. Ensuring that collection stops at these points affords consumers control over the collection of covered data.

With respect to § 1033.421(i)(2), the CFPB has determined that the general limitation in § 1033.421(a) will, in most circumstances, require the third party to no longer use or retain covered data when the maximum durational period ends and the consumer has not provided a new authorization or when the consumer requests revocation. The consumer revoking third party authorization or not providing a new authorization after one year, all other things being equal, indicates that the existing authorization, without more, no longer supports use or retention of covered data that has been collected under its terms. However, specific circumstances may justify departure from this normal course and, consistent with the general standard in § 1033.421(a), allow continued use or retention of some or all previously collected covered data, even when collection of new covered data has stopped.[121]

As described above, one commenter asked that the final rule clarify what happens to ''copied data'' that third parties might have following revocation. The commenter did not elaborate on the meaning of ''copied data,'' but assuming copied data refers to copies of covered data that third parties receive or make, the CFPB notes that the general limitation under § 1033.421(a) would apply and such copied data could only be used or retained as reasonably necessary to provide the consumer's requested product or service.

Additionally, as described related to § 1033.421(b), in unusual circumstances a data provider might provide a third party more data than the third party requested. This may result in the third party involuntarily collecting more data than is reasonably necessary to provide the consumer's requested product or service. The CFPB notes that, in those circumstances, the general limitation on use and retention in § 1033.421(a) would apply to that data. While use of that data would not be reasonably necessary to provide the consumer's requested product or service, the general limitation standard would allow third parties to retain covered data for as long as reasonably necessary to locate and delete that data.

Finally, as noted above in § 1033.421(b) regarding collection, when the third party receives information that indicates the consumer may no longer expect to receive the product or service, the third party should confirm collection of covered data remains reasonably necessary. In those circumstances, use and retention of covered data may no longer be reasonably necessary. The CFPB has determined that § 1033.421(i)(2) provides third parties with sufficient flexibility to address circumstances in which continued use or retention of previously collected data might be justified under the general limitation. The certification in § 1033.421(i)(2) also ensures that covered data are not used and retained in a manner that does not properly reflect the control afforded the consumer when they do not provide a new authorization after a maximum durational period has ended or when they request revocation.

5. Use of Data Aggregator (§ 1033.431)

The CFPB proposed certain requirements for the third party authorization procedures when a third party uses a data aggregator to assist with accessing covered data on behalf of a consumer. Currently, many third parties rely on data aggregators to assist with accessing and processing consumer financial data. The CFPB proposed in § 1033.431 to assign certain responsibilities for the authorization procedures and impose certain conditions on the third party and the data aggregator.

A number of commenters addressed how the rule generally should treat data aggregators. Several commenters, including bank and bank trade association commenters stated that the rule should impose strong limitations on data aggregators. One bank trade association commenter stated that data aggregators often possess far greater bargaining power than third parties, so they can dictate terms, and that the final rule should provide that data aggregators are jointly and severally liable for issues that occur at the third party to which it is providing services. A bank commenter stated that the proposal underestimates the systemic risks posed by data aggregators, noting that they likely have more consumer data than the largest banks and will continue to control vast amounts of data after the rule takes effect. Another bank trade association commenter and a credit union commenter stated that data aggregator should face even more stringent controls on their use of covered data because consumers have no meaningful choice over the aggregator that is used. Two bank trade association commenters recommended that the rule prohibit data aggregators from using covered data for their own purposes. Several commenters, including bank and bank trade association commenters, maintained that the rule should impose obligations directly on data aggregators, stating that the CFPB should be responsible for enforcing those obligations, rather than relying on the certification-based approach and relying on authorized third parties, consumers or data providers to ensure that data aggregators comply with the obligations. Several commenters, including bank and bank trade association commenters, requested that the CFPB exercise supervisory authority over data aggregators to ensure that they comply with the rule.

For the reasons discussed herein, the CFPB is generally adopting the approach to data aggregators as proposed, with certain changes in § 1033.431(c) regarding data aggregator certification. Those provisions are described in more detail below.

As finalized, § 1033.431 imposes various obligations on data aggregators, including the requirement in

[121] A third party commenter suggested that the proposed rule contained a technical error that would not provide sufficient flexibility for third parties to retain previously collected data for permissible uses. However, as noted, the final rule contains flexibility when circumstances justify such continued retention.

§ 1033.431(c) that data aggregators must certify to the consumer that they will comply with specified obligations. The CFPB declines to provide that data aggregators are jointly and severally liable for issues that occur at the third party to which the data aggregator is providing services. Depending on the context, those issues could arise from conduct unrelated to the services provided by the data aggregator, so the CFPB has determined that generally imposing joint and several liability would not be appropriate. The rule does, however, require data aggregators to certify to the consumer that they will comply with specified obligations, and in the event that data aggregators breach those obligations, the CFPB can use its authority to prevent unfair, deceptive, or abusive acts or practices, as appropriate, to enforce those obligations against data aggregators. For the reasons discussed in part IV.D.2, the CFPB has determined that the certification-based approach is appropriate for third parties, including data aggregators, and declines to impose additional obligations on third parties in this rule.

As noted above, some commenters urged the CFPB to impose additional restrictions on data aggregator use of covered data. The obligations in § 1033.421(a) and (c) limit the circumstances in which third parties can collect, use and retain covered data, and data aggregators must certify to consumers that they will comply with those obligations. Among other things, the covered data can only be used as reasonably necessary to provide the product or service requested by the consumer from the authorized third party. Accordingly, these provisions will prevent a data aggregator from using the covered data for its own purposes, and the CFPB has determined that additional restrictions on data aggregator use of covered data are unnecessary. With respect to supervision of data aggregators, as discussed in part IV.5, the CFPB's supervisory authority is defined by the CFPA. The CFPB will continue to monitor the market, including by using its supervisory authority, and will consider whether additional rulemakings are appropriate to expand the scope of the CFPB's supervision with respect to part 1033.

Responsibility for Authorization Procedures (§ 1033.431(a))

The CFPB proposed in § 1033.431(a) to allow, but not require, a data aggregator to perform the third party authorization procedures on behalf of the third party. Proposed § 1033.431(a) also provided that the third party would remain responsible for compliance with the third party authorization procedures and that data aggregators would have to comply with the data aggregator certification requirements in proposed § 1033.431(c).

The CFPB preliminarily determined that the third party should be responsible for compliance with the third party authorization procedures. The CFPB noted that the third party is providing a product or service to the consumer and is likely to have the primary relationship with the consumer, so the consumer may be more comfortable receiving and responding to communications from the third party. The third party also likely would be more involved in using and retaining covered data and therefore may play a greater role than the data aggregator. Moreover, the data aggregator is assisting the third party in accessing covered data, so the CFPB preliminarily determined that the third party should be responsible for compliance with the third party authorization procedures.

The CFPB noted, however, that some third parties may want to rely on data aggregators to perform the authorization procedures on their behalf and that, in some circumstances, it may be more efficient for data aggregators to do so. Therefore, the CFPB proposed to allow, but not require, a data aggregator to perform the authorization procedures on behalf of a third party. The CFPB noted that if a data aggregator performs the authorization procedures on behalf of the third party, the consumer's authorization would grant authority to the third party to access covered data on behalf of the consumer. The third party would retain the flexibility to discontinue using the data aggregator or switch to a different aggregator.

Several commenters addressed how to allocate responsibility for the authorization procedures when a data aggregator is involved. Commenters including a bank, a bank trade association, and a nondepository entity all supported the proposed approach of assigning responsibility for the authorization procedures to the third party seeking authorization but permitting the data aggregator to perform the authorization procedures on behalf of the third party.

A number of commenters recommended that the CFPB revise or clarify how the authorization procedures can be performed when an authorized third party retains a data aggregator. A bank commenter stated that the CFPB should clarify which authorization procedures may be performed by a data aggregator and which ones must be performed by the authorized third party. The bank commenter stated that the authorized third party should be responsible for describing the product or service to the consumer and providing a certification statement. The bank commenter also urged the CFPB to clarify that the requested product or service is referring to the product or service offered by the authorized third party and not a product or service offered by the data aggregator. The bank commenter also stated that the CFPB should clarify that when a data aggregator performs the authorization procedures on behalf of the authorized third party, the authorized third party remains responsible for its own compliance with the specified obligations. The bank commenter also urged the CFPB to distinguish the data aggregator's role when it is acting as an intermediary on behalf of an authorized third party from when it is attempting to become an authorized third party. The bank commenter also recommended that when a data aggregator is acting on behalf of an authorized third party, the data aggregator must fulfill all of its obligations under the rule independent of other connections the data aggregator may have fulfilled for the same consumer on behalf of a different third party. A credit union commenter recommended that the CFPB remove all references to data aggregators from the rule and instead require data aggregators to comply with all of the requirements of an authorized third party. A third party commenter stated that the rule should clarify that data aggregators may perform the authorization procedures on their own behalf when they are operating as authorized third parties. A research institute commenter stated that the rule should encourage data aggregators to take on additional roles and responsibilities to support open banking and provide better experiences to consumers. The research institute commenter urged the CFPB to clarify when data aggregators can become authorized third parties.

For the reasons discussed herein, the CFPB is adopting § 1033.431(a) as proposed. Section 1033.431(a) allows, but does not require, a data aggregator to perform the third party authorization procedures described in § 1033.401 on behalf of the third party seeking authorization under § 1033.401 to access covered data. Under § 1033.431(a), the third party seeking authorization remains responsible for compliance with the third party authorization procedures described in § 1033.401. Data aggregators must comply with the data aggregator certification requirements in § 1033.431(c).

As indicated in § 1033.431(a), the authorized third party remains responsible for complying with the authorization procedures, including certifying to the consumer that it will comply with the obligations in § 1033.421. However, the data aggregator may perform the certification procedures on behalf of the authorized third party. If the data aggregator performs the authorization procedures on behalf of the authorized third party, the data aggregator must complete the authorization procedures for the authorized third party and provide the authorization disclosure with the content required in § 1033.411(b). The data aggregator must also obtain the consumer's express informed consent for the authorized third party to access covered data on behalf of the consumer as required in § 1033.401(c). As discussed below in connection with § 1033.431(c), the data aggregator must also certify that it will comply with the certification requirements specified in § 1033.431(c).

The CFPB recognizes that third parties may play different roles in different transactions. A third party may be a data aggregator in one transaction and an authorized third party in a different transaction. However, a third party cannot perform both roles in the same transaction. If a third party is serving as a data aggregator, it cannot collect, use, and retain the consumer's covered data for its own purposes. It is limited to accessing the information only as reasonably necessary for providing the product or service requested by the consumer from the authorized third party. When a data aggregator performs the authorization procedures on behalf of an authorized third party, those authorization procedures apply only to that authorized third party. If the data aggregator is assisting a second authorized third party in accessing covered data from the same consumer, the second authorized third party or the data aggregator acting on behalf of that second authorized third party must perform the authorization procedures separately for that second authorized third party.

The CFPB concludes that it is appropriate to identify and adopt specific provisions applicable for data aggregators separately from authorized third parties. Data aggregators perform a different role than authorized third parties, and the CFPB has determined that the rule should highlight that the authorized third party is responsible for obtaining the consumer's authorization to access the consumer's data.

Disclosure of the Name of the Aggregator (§ 1033.431(b))

The CFPB proposed in § 1033.431(b) to require that the authorization disclosure include the name of any data aggregator that will assist the third party seeking authorization under proposed § 1033.401 with accessing covered data and a brief description of the services the data aggregator will provide. The proposed rule stated that, unlike other downstream parties that may access a consumer's covered data after a third party has completed the authorization procedures, a data aggregator is typically known to the third party at the time of authorization and a consumer may directly interact with a data aggregator when the data aggregator performs the authorization procedures on behalf of the third party. Therefore, the CFPB preliminarily determined that identifying and describing the services of a data aggregator would reduce consumer confusion and better equip consumers to provide informed consent when authorizing data access. The proposed rule requested comment on any obstacles to including a data aggregator's name in the authorization disclosure.

A consumer advocate commenter and a credit union commenter supported including information about the data aggregator in the authorization disclosure to provide sufficient transparency. The credit union commenter requested that both the legal and trade names of the data aggregator be included in the authorization disclosure.

For the reasons discussed herein, the CFPB is finalizing § 1033.431(b) as proposed. Including the data aggregator name and a description of the data aggregator's services in the authorization disclosure provides consumers with a key term of access that may reduce consumer confusion and better equip consumers to provide informed consent. Commenters did not raise concerns with this approach.

The CFPB is not modifying § 1033.431(b) to require the inclusion of a data aggregator's legal and trade names, as suggested by one commenter. The final rule does not require authorized third parties to include their own legal and trade names, and it would be inconsistent to require authorized third parties to provide the legal and trade names of data aggregators. Additionally, including multiple names for a single data aggregator would make the authorization disclosure longer, and it is not clear that this added information would make a significant impact on a consumer's ability to identify the data aggregator. Finally, as discussed above, the CFPB is finalizing a requirement that the name of the data aggregator must be ''readily understandable'' to consumers, which will help ensure that consumers are able to identify the data aggregator.

Aggregator Certification (§ 1033.431(c))

The CFPB proposed in § 1033.431(c) that when a third party seeking authorization under § 1033.401 will use a data aggregator to assist with accessing covered data on behalf of a consumer, the data aggregator must certify to the consumer that it agrees to the conditions on accessing the consumer's data in proposed § 1033.421(a) through (f) and the condition in proposed § 1033.421(h)(3) upon receipt of the notice described in proposed § 1033.421(h)(2) before accessing the consumer's data. However, the data aggregator would not have been required to certify that it would provide a revocation method or certify to the requirements related to ensuring consumers informed.

The CFPB explained it was proposing to require data aggregators to certify that they agree to these conditions because, when a third party uses a data aggregator, the aggregator may play a significant role in accessing the consumer's data. Data aggregators may, among other things, process the consumer's login credentials, obtain the consumer's data from the data provider, and transmit the consumer's data to the third party. The CFPB stated that, if data aggregators were not required to agree to these conditions, there could be a significant gap in the protections afforded to consumers.

In addition, as with the third party's certification statement, the CFPB wanted the consumer to receive a clear statement of the conditions that the data aggregator must follow. The certification statement to the consumer would help consumers, the CFPB, and other regulators to enforce the obligations to which data aggregators would be required to certify. The CFPB stated that these considerations are equally applicable to data aggregators that are retained by the authorized third party after the consumer has completed the authorization procedures, so proposed § 1033.431(c) would require those data aggregators to also provide a certification to the consumer.

The CFPB also proposed in § 1033.431(c) that any data aggregator that is retained by the authorized third party after the consumer has completed the authorization procedures must also satisfy this aggregator certification

requirement. For this requirement to be satisfied, either (1) the third party seeking authorization under proposed § 1033.401 must include this aggregator certification in the authorization disclosure described in proposed § 1033.411 it provides the consumer, or (2) the data aggregator must provide to the consumer a separate certification. The CFPB stated that, for example, the aggregator certification requirement in proposed § 1033.431(c) would be satisfied where the authorization disclosure includes a statement that both the third party and the data aggregator agree to the applicable third party obligations described in proposed § 1033.421. The CFPB further stated that this requirement would also be satisfied where the data aggregator provides the certification to the consumer in a separate communication. When a data aggregator is retained by the authorized third party after the consumer has completed the authorization procedures, proposed § 1033.431(c) would not require the consumer to receive a new authorization disclosure or provide consent. The CFPB sought comment on whether to include formatting or language access requirements for an aggregator certification that is provided in a separate communication from the authorization disclosure.

Regarding the format of the separate data aggregator certification, a consumer advocate commenter requested that the CFPB include the following formatting and language access requirements in the final rule: require model forms, including mobile-friendly versions; require provision in any language that the authorization was required to be provided in; set a maximum reading level; and specify timing.

Regarding content of the data aggregator certification, several bank commenters and a consumer advocate commenter requested that data aggregators provide a revocation mechanism to ensure that consumers have the ability to revoke authorization with any entity involved in the data sharing transaction. Several bank commenters and a consumer advocate commenter also requested that data aggregators comply with the requirements related to ensuring consumers are informed in § 1033.421(g) given data aggregators' significant involvement in the handling of consumer data. These commenters stated that, because of data aggregators' significant role, consumers may want to contact data aggregators with questions about the services the data aggregator provides.

For the reasons discussed herein, the CFPB is finalizing § 1033.431(c) with certain modifications. The CFPB is finalizing the required content of the aggregator certification in the introductory text of § 1033.431(c) with non-substantive changes. Consistent with the proposal, the CFPB is not requiring data aggregators to certify to comply with § 1033.421(g) (the certification related to ensuring consumers are informed) because this would require the data aggregator to significantly increase coordination with the third party, such as by finding out with which downstream parties the third party has shared the consumer's covered data. This would result in little benefit to consumers because consumers would already receive this information from third parties. Requiring data aggregators to certify to comply with the § 1033.421(g) requirements could also result in consumers receiving unwanted duplicative information, such as two copies of the authorization disclosure (one from the third party and one from the data aggregator). The CFPB is also not requiring a data aggregator to certify that it will provide consumers with a revocation mechanism because a data aggregator would potentially have to create a consumer-facing interface to create a revocation mechanism which is not otherwise required by final rule. However, data aggregators are permitted to provide a revocation mechanism if they choose to do so.

The final rule includes non-substantive changes to the introductory text to § 1033.431(c), including, in the list of provisions that must be included in the certification, changing the reference from § 1033.421(h)(3) to § 1033.421(i) because, as described above, the final rule includes a new § 1033.421(i) that includes provisions from proposed § 1033.421(b)(4) and (h)(3). The introductory text of proposed § 1033.431(c) stated that any data aggregator that is retained by the authorized third party after the consumer has completed the authorization procedures must also satisfy this requirement. This substantive requirement is moved to final § 1033.431(c)(2) to clarify that the certification for a data aggregator retained by an authorized third party after the consumer has completed the authorization procedures would have to be provided pursuant to § 1033.431(c)(2).

The CFPB is finalizing as proposed § 1033.431(c)(1), requiring that if the data aggregator does not provide its certification to the consumer as set forth in § 1033.431(c)(2), the third party seeking authorization under § 1033.401 must include the data aggregator's certification in the authorization disclosure described in § 1033.411.

Final § 1033.431(c)(2) provides that, consistent with the general requirements for the authorization disclosure, the data aggregator must provide its certification to the consumer, electronically or in writing, separate from the authorization disclosure. As is also consistent with the requirements for the authorization disclosure and for the reasons explained above in part IV.D.3 in connection with the requirements for the authorization disclosure, the certification must be in the same language as the authorization disclosure and must be clear, conspicuous, and segregated from other material. The final rule does not require model forms, reading level, or timing requirements for the aggregator certification, consistent with the final rule's approach to the authorization disclosure in § 1033.411(a), described above.

Final § 1033.431(c)(2) also provides that the name of any data aggregator in the certification must be readily understandable to the consumer. As explained above in the discussion of § 1033.411(a), this requirement will help ensure that consumers are able to easily identify the entities in the certification. As noted above, final § 1033.431(c)(2) also provides that if, after the consumer has completed the authorization procedures, the authorized third party retains a data aggregator to assist with accessing covered data on behalf of the consumer, this data aggregator must provide its certification in accordance with § 1033.431(c)(2).

6. Policies and Procedures for Third Party Record Retention (§ 1033.441)

Proposed § 1033.441(a) would have required a third party that is a covered person or service provider, as defined in 12 U.S.C. 5481(6) and (26), to establish and maintain written policies and procedures that are reasonably designed to ensure retention of records that are evidence of compliance with the requirements of proposed subpart D. Under proposed § 1033.441(b), records required under proposed § 1033.441(a) would have to be retained for a reasonable period of time, not less than three years after a third party obtains the consumer's most recent authorization under proposed § 1033.401(a).

Proposed § 1033.441(b) based the retention period on the date of the consumer's most recent authorization because that event would determine when compliance with proposed subpart D would begin to be required. The CFPB explained that the minimum three-year period should be sufficient

for the CFPB and others to evaluate compliance with respect to any given authorization because proposed § 1033.421(b)(3) would require third parties to obtain a new authorization each year. The CFPB clarified that proposed § 1033.421(b)(4) and (h)(3) were not designed to impact the requirement for a third party to maintain policies and procedures to retain records for a reasonable period proposed in § 1033.441, noting that proposed § 1033.441 covered records that evidence compliance with proposed subpart D. In contrast, proposed § 1033.421(b)(4) and (h)(3) covered data collected from data providers to provide a requested product or service.

Under proposed § 1033.441(c), a third party covered under proposed § 1033.441(a) would have flexibility to determine its policies and procedures in light of the size, nature, and complexity of its activities. The CFPB explained that this flexibility would help third parties avoid conflicts with other legal obligations (including other record retention and data security obligations), manage data security risks, and minimize unnecessary impacts.

To mitigate the risk that the flexibility of proposed § 1033.441(c) might result in the absence of critical evidence, proposed § 1033.441(e)(1) and (2) would have identified examples of records that would need to be retained. Specifically, proposed § 1033.441(e) would have provided that records retained pursuant to policies and procedures required under proposed § 1033.441 must include, without limitation (1) a copy of the authorization disclosure that is signed or otherwise agreed to by the consumer and reflects the date of the consumer's signature or other written or electronic consent and a record of actions taken by the consumer, including actions taken through a data provider, to revoke the third party's authorization; and (2) with respect to a data aggregator covered under proposed § 1033.441(a), a copy of any data aggregator certification statement provided to the consumer separate from the authorization disclosure pursuant to proposed § 1033.431(c)(2).

Proposed § 1033.441(d) would have required a third party covered under proposed § 1033.441(a) to periodically review its policies and procedures and update them as appropriate to ensure their continued effectiveness to evidence compliance with the requirements of proposed subpart D.

The CFPB explained that the flexible policies and procedures approach of proposed § 1033.441 would be consistent with the SBREFA Panel's recommendation that the CFPB evaluate record retention requirements for consistency with other requirements and the avoidance of unnecessary data security risks, while still ensuring all evidence of compliance by a third party is retained.

The CFPB requested comment on the proposed length of the retention period and whether it should be based on another event, such as the termination of a third party's authorization or a third party's request for information from a data provider. The CFPB also requested comment on whether the final rule should identify other examples of records to be retained. Additionally, the CFPB requested comment on whether additional guidance was needed on the potential intersections of the record retention requirements in proposed § 1033.441 and limitations on retention in proposed § 1033.421(b)(4) and (h)(3).

Commenters generally supported the proposed requirement for third parties to establish and maintain policies and procedures reasonably designed to ensure retention of records that evidence compliance with proposed subpart D. One bank industry group supported measuring the retention period beginning at the time the third party obtains the consumer's most recent authorization. Another such group supported the three-year record retention requirement. On the other hand, some bank industry commenters suggested that the retention period should be two years. These commenters stated that this would make the retention requirement consistent with similar requirements to which data providers are already subject under Regulation E and Regulation Z. Further, they stated that the additional year does not pose any benefit to consumers and that the additional length to retain presents unnecessary security risks.

For the reasons discussed herein, the CFPB is finalizing § 1033.441(a) through (d) as proposed. The CFPB is finalizing § 1033.441(e) generally as proposed, with minor non-substantive edits for consistency with other revisions elsewhere in the final rule. Specifically, records retained pursuant to policies and procedures required under § 1033.441 must include, without limitation: (1) a copy of the authorization disclosure that is signed by the consumer electronically or in writing and reflects the date of the consumer's signature and a record of actions taken by the consumer, including actions taken through a data provider or another third party, to revoke the third party's authorization; and (2) with respect to a data aggregator covered under § 1033.441(a), a copy of any data aggregator certification statement that was provided to the consumer pursuant to § 1033.431(c)(2). The CFPB expects that in order to ensure accuracy, record integrity, and to preserve the ability to access the signed authorization disclosure, the authorization disclosure and the electronic signature establishing consumer consent cannot as a matter of regular course be provided orally and still satisfy all of the final rule's requirements.

Section 1033.441 is authorized under CFPA section 1022(b)(1) because it will enable the CFPB and others to evaluate a third party's compliance with subpart D and would prevent evasion. To the extent that § 1033.441 applies to CFPB-supervised nondepository covered persons, it is additionally authorized by CFPA section 1024(b)(7) because it will facilitate supervision of such persons and enable the CFPB to assess and detect risks to consumers.

The CFPB determines that the three-year length of the retention requirement in § 1033.441(b) is appropriate and the CFPB declines to align it with the retention requirements in Regulation E and Regulation Z, as requested by some commenters. The retention requirements under Regulation E and Regulation Z are substantively different from those in § 1033.441. Records required under Regulation E and Regulation Z relate to regulated entities' disclosures to consumers pertaining to electronic fund transfers and consumer credit, respectively. Such disclosures to individual consumers are likely to be stale after a period of two years. Three years of records contemplated by § 1033.441 will allow for analysis of a third party's compliance with part 1033, including patterns in third party actions in requesting access to a data provider's interface and the authorizing consumer's data over time. Moreover, based on the CFPB's supervisory and enforcement experience, a three-year retention period is an appropriate amount of time to enable the CFPB and other enforcement agencies to examine or conduct enforcement investigations.

12 CFR Part 1001

Providing Financial Data Processing Products or Services (§ 1001.2(b))

Proposed § 1001.2(b) would have defined providing financial data processing products or services by any technological means, including processing, storing, aggregating, or transmitting financial or banking data, alone or in connection with another product or service, as a financial

product or service under the CFPA. The proposed provision included certain limited exclusions. After considering public comments, the CFPB is finalizing the provision as proposed.

Statutory Framework

Under CFPA section 1002(15)(A)(xi)(II), the CFPB may issue a regulation to define as a financial product or service ''such other financial product or service'' that the CFPB finds is ''permissible for a bank or for a financial holding company to offer or to provide under any provision of a Federal law or regulation applicable to a bank or a financial holding company, and has, or likely will have, a material impact on consumers.'' The CFPB is issuing § 1001.2(b) pursuant to this authority. In turn, under the CFPA, a financial product or service under § 1001.2(b) would qualify as a ''consumer financial product or service'' under CFPA section 1002(5)(A) if it ''is offered or provided for use by consumers primarily for personal, family, or household purposes.''

As the CFPB explained in the proposal, the activities in § 1001.2(b) would have already been within scope of the CFPA's definition of financial product or service. Specifically, CFPA section 1002(15)(A)(vii) defines as a financial product or service ''providing payments and other financial data processing to a consumer by any technological means.'' The language of this provision extends beyond payment processing to broadly include other forms of financial data processing. Accordingly, consumers already receive the protections of the CFPA when entities process their potentially sensitive data, whether payments or any other category of financial or banking data.[122] On this issue, a trade association of the nonbank money services industry submitted a comment agreeing that the activities in § 1001.2(b) are already within the scope of the CFPA. Consistent with the proposed rule, the CFPB is using its rulemaking authority under CFPA section 1002(15)(A)(xi)(II) to provide even greater certainty regarding CFPA coverage.[123]

Overview of § 1001.2(b)

By conferring authority on the CFPB to define additional financial products or services, the CFPA accounts for the possibility that the enumerated list of financial products and services in CFPA section 1002(15)(A)(i) through (x) may not completely capture the markets for financial products or services that are significant for consumers, especially as market developments lead to emerging concerns for consumers. As already noted, the final rule has the potential to expand access to personal financial data and subject such data to a wider variety of data processing activities. The CFPB is adding to the definition of financial product or service the category of ''providing financial data processing products or services'' to ensure that activities involving consumers' potentially sensitive personal financial information are subject to the CFPA and its prohibition on unfair, deceptive, or abusive acts or practices to the full extent authorized by Congress.[124] The definition includes examples to illustrate the activities that fall within the term financial data processing. Section 1001.2(b) clarifies that the financial data processing products or services that are covered by the definition could be offered either alone or in connection with another financial or nonfinancial product or service, and so it does not cease to be covered simply because it is offered in connection with the latter.[125]

Statutory Factors

Consistent with the proposal, the CFPB has determined that § 1001.2(b) meets the two factors set forth in CFPA section 1002(15)(A)(xi)(II). First, these activities are permissible for financial holding companies under the Federal Reserve Board's Regulation Y and for national banks under OCC regulations.[126] Both financial holding companies and national banks are permitted to engage, among other things, in data processing, data storage, and data transmission services by any technological means, so long as the data to be processed are financial, banking, or economic.[127]

No commenter disputed that the defined activities satisfy the first CFPA factor of being permissible for financial holding companies or banks. A research institute commenter did express concern that the definition could encompass activities that, in the commenter's view, are not financial. This commenter advocated that the CFPB borrow a test for financial activities from certain FTC regulations implementing the GLBA. However, this commenter did not argue that the financial data processing products or services covered by § 1001.2(b) are not permissible for financial holding companies or banks, which is the standard selected by Congress in the context of the CFPA. The commenter did not explain why the CFPB should use a test from a different regulatory framework instead of the CFPA standard, and accordingly the CFPB is relying on the CFPA standard.

With respect to the second CFPA factor, the processing of personal financial information has, or is likely to have, a material impact on consumers. As already discussed in the proposal and above in part I, use of personal financial data has become an even more important part of consumer finance than it was at the time that the CFPA was enacted in 2010. The processing of personal financial data, including storing, aggregating, and transmitting such data, has the potential to provide benefits to consumers but also expose them to a number of substantial risks. Financial data processing activities that are provided to consumers, assuming they are not already included within the definition of a financial product or service under CFPA section 1002(15)(A)(vii), raise the same type of consumer protection concerns as activities that do fall within this definition.

No commenter disputed the material impact of the activities covered by § 1001.2(b) on consumers. A bank expressed support for § 1001.2(b) as regulating nonbanks in a like manner as banks. A bank trade association argued that the provision should do more to cover data aggregators. However, the CFPB notes that § 1001.2(b) includes aggregating financial or banking data as an example of a financial data processing product or service.

Exclusions

Section 1001.2(b) states that it does not apply where the financial data processing is offered or provided by a

[122] Many of these activities could also fall within other categories of financial product or service. *E.g.,* CFPA section 1002(15)(A)(ix), 12 U.S.C. 5481(15)(A)(ix) (''collecting, analyzing, maintaining, or providing consumer report information or other account information'' under specified circumstances).

[123] Accordingly, the scope of § 1001.2(b) is independent of how CFPA section 1002(15)(A)(xi)(II) is construed.

[124] 12 U.S.C. 5531, 5536.

[125] The CFPB notes that the scope of a ''covered consumer financial product or service,'' as defined under § 1033.111(b) for purposes of part 1033, is not dependent on adopting § 1001.2(b). The products and services listed in § 1033.111(b) are already covered by existing statutory provisions such as CFPA sections 1002(15)(A)(i), (iv), (v), and (vii).

[126] 12 CFR 225.28(b)(14), 7.5006(a); *see also* 68 FR 68493, 68495–96 (Dec. 9, 2003) (explaining that 12 CFR 225.28(b)(14) permits bank holding companies to engage in a ''wide range'' of data processing activities, including bill pay services, financial data processing for marketing purposes, and delivering financial products or services over the internet, among other activities).

[127] *Id.*

person who, by operation of CFPA section 1002(15)(A)(vii)(I) or (II), is not a covered person. As background, CFPA section 1002(15)(A)(vii) provides that a person shall not be deemed to be a covered person with respect to financial data processing solely because the person engages in certain narrowly prescribed processing activities. CFPA section 1002(15)(A)(vii)(I) excludes from coverage certain merchants, retailers or sellers of non-financial products or services that are solely engaged in certain activities related to initiating payment instructions, whereas CFPA section 1002(15)(A)(vii)(II) excludes persons that solely provide access to a host server for websites. The CFPB is paralleling these exclusions in § 1001.2(b).

A research institute commenter argued that § 1001.2(b) should be amended to reflect CFPA section 1002(15)(C)(ii), which excludes ''electronic conduit services'' (as further defined in CFPA section 1002(11)) from the statutory definition of ''financial product or service.'' However, it is unnecessary to specifically amend § 1001.2(b) along these lines, because, like other categories of financial product or service, § 1001.2(b) remains subject to the exclusion for electronic conduit services in CFPA section 1002(15)(C)(ii).[128] A trade association generally supported clarifying that financial data processing is a financial product or service under the CFPA. But it argued that ''transmitting'' financial data should be excluded from § 1001.2(b), because the trade association viewed it as distinct from financial data processing. However, financial data transmission is expressly covered by the applicable longstanding provisions of Regulation Y and OCC regulations, and it is within the scope of the CFPB's statutory authority if it is not an electronic conduit service as defined in CFPA section 1002(11).

Another trade association supported covering certain ''retail'' financial data services that are ''consumer facing,'' but it advocated excluding what it described as ''non-retail'' services. The trade association argued that covering ''non-retail'' entities would reduce competition by limiting those entities' ability to efficiently use data. However, the CFPB cannot discern from the comment why the commenter believes this to be the case. The CFPB notes that Congress has already established a boundary for a ''consumer financial product or service'' based on whether the product or service is ''offered or provided for use by consumers primarily for personal, family, or household purposes'' under CFPA section 1002(5)(A). Within that boundary, assuming a given financial data processing product or service would not have already been covered by CFPA section 1002(15)(A)(vii), the principal consequence of § 1001.2(b) is to protect consumers from unfair, deceptive, or abusive acts or practices under the CFPA. The CFPB does not agree that Congress's prohibition on subjecting consumers to unfair, deceptive, or abusive acts or practices interferes with fair competition.[129]

Finally, a consumer advocate commenter requested that the CFPB clarify that when an entity is covered by the CFPA through § 1001.2(b), that does not imply the entity is not covered by the Fair Credit Reporting Act. However, CFPA coverage does not foreclose an entity from being covered by other laws the CFPB administers, so the CFPB does not see a need to amend § 1001.2(b) to address the stated concern.

V. Effective and Compliance Dates

The effective date of the final rule is 60 days after the rule is published in the **Federal Register**. The CFPB proposed this effective date and did not receive any comments. As set forth in 12 CFR 1033.121, data providers must comply with the requirements in subparts B and C beginning April 1, 2026; April 1, 2027; April 1, 2028; April 1, 2029; or April 1, 2030, depending on the criteria set forth in § 1033.121(c). See part IV.A.5 for a discussion of the comments received with respect to compliance dates. In the case of the amendment to part 1001, the proposal explained that the activities covered by the amendment are already within the scope of the CFPA's definition of financial product or service, and it stated that no compliance date is necessary.[130] The CFPB received no comments on the implementation period for the amendment to part 1001, and accordingly it is finalizing the 60-day effective date as proposed.

VI. CFPA Section 1022(b) Analysis

A. Statement of Need

In section 1033 of the CFPA, Congress authorized and directed the CFPB to adopt regulations governing consumers' data access rights. The CFPB is issuing this final rule to implement CFPA section 1033 with respect to certain covered persons under the CFPA. The CFPB is also relying on other CFPA authorities for specific aspects of the rule.

Because the primary purpose of this rule is to implement section 1033 of the CFPA, the role of this CFPA section 1022(b) analysis is to evaluate the benefits, costs, and impacts of the specific policies within the rule and potential alternatives to those policies. This *Statement of Need* summarizes the CFPB's understanding of the gaps between Congress's intended outcome for consumers' financial data access rights and current practices, and describes the overall goals of the rule in closing those gaps. The remainder of the CFPA section 1022(b) analysis discusses the benefits, costs, and impacts of the specific provisions, and potential alternatives.

CFPA section 1033 requires data providers to make financial data available in electronic form upon request to consumers and third parties authorized to act on their behalf. Today, consumer financial data may be accessed by third parties through methods that raise data security and privacy risks, and consumers may have little to no knowledge of or control over how the data are used by third parties that have access to it. In addition, the market has been slow to implement secure and efficient methods for sharing data with third parties, and data providers may not be motivated to provide in a timely and readily usable manner all the data fields that consumers may want to access. The result is that access to consumer financial data can be unreliable, or that financial data held by some providers may be unavailable to some consumers or their authorized third parties.

When data are made available, there is a general lack of consistency across data providers in the terms and conditions for access and the technical specifications used. This creates

[128] *See* 12 CFR 1001.2 (introductory language stating that definitions apply except ''as otherwise provided in [the CFPA]''). This commenter also argued that § 1001.2(b) should be amended to exclude certain persons who are excluded from the definition of ''service provider'' under CFPA section 1002(26)(a)(ii). That exclusion from the definition of ''service provider'' has similarities to the exclusion of electronic conduit services from the definition of ''financial product or service.'' However, the commenter did not explain why the exclusion from the distinct statutory definition of ''service provider'' should be imported into the definition of ''financial product or service,'' and the CFPB is not aware of a reason to do so. If the ''service provider'' exclusion applies to an entity, it would not be a service provider under the terms of the statute.

[129] *E.g.,* CFPA section 1031(c)(1)(B) (citing countervailing benefits to consumers and to competition as a factor when identifying unfair acts or practices).

[130] Even assuming the activities covered by the amendment to part 1001 were not already within the scope of the CFPA's definition of financial product or service, the CFPB notes that it has no reason to believe a 60-day implementation period would be insufficient.

inefficiencies for market participants, and often entails substantial levels of cost.

This rule aims to (1) expand consumers' access to their financial data across a wide range of financial institutions, (2) ensure privacy and data security for consumers by limiting the collection, use, and retention of data that are not needed to provide the consumer's requested service, and (3) push for greater efficiency and reliability of data access across the industry to reduce industry costs, facilitate competition, and support the development of new products and services beneficial to consumers.

B. Data and Evidence

The CFPB's analysis of costs, benefits, and impacts is informed by data from a range of sources. These include data collected in the Provider Collection and Aggregator Collection,[131] as well as data obtained from other regulatory agencies [132] and publicly available sources.[133]

In 2016, the CFPB released and received comments on an RFI on consumer rights to access financial data. In 2020, the CFPB held a symposium titled ''Consumer Access to Financial Records'' and released a summary of the proceedings. Later in 2020, the CFPB released and received comments on an ANPR. In 2023, the CFPB convened a SBREFA Panel to gather input from small businesses and the Panel issued the SBREFA Panel Report.[134] The CFPB also solicited and received comments from other industry participants on the SBREFA Outline.[135] Later in 2023, the CFPB issued its proposed rule, and received comments from the public in response.[136] In addition to these sources of information, these impact analyses are informed by consultations with other regulatory agencies, industry, consumer advocates, and researchers. Part II.A further describes the CFPB's outreach.

For the types of financial data and access generally covered by this rule, the information obtained through the Provider Collection and Aggregator Collection allow the CFPB to estimate: the number of data providers consumer-authorized data are accessed from; the number of third parties accessing or using consumer-authorized data; the number of consumers granting third parties permission to access data on their behalf; the total number of permissioned access attempts; and information about the technologies used and the purposes of the permissioned data access. The Provider Collection and Aggregator Collection also allow the CFPB to estimate the operational costs of providing direct and third party data access, and the costs of establishing data access agreements. To maintain the confidentiality of the respondents to these data collections, the CFPB provides approximate or bounded estimates derived from these data, rather than precise totals or figures specific to any one respondent.[137]

In the proposal, the CFPB requested additional information or data that could refine these estimates. Where commenters provided such information, it is discussed in the relevant part and incorporated into the analysis and estimates.

For data on the number and characteristics of covered depository institutions, the CFPB relies on data from FFIEC and NCUA Call Reports.[138] These sources provide quarterly information on the number of institutions, dollar amount of institution-level assets, number of deposit accounts, dollar volume of credit card lending, and other characteristics. Notably, these data provide information on the number of deposit accounts insured by the FDIC or NCUA, which are imperfect, but nonetheless the best available proxy for the number of covered financial accounts held by depositories. While this measure includes covered depository accounts, it also includes business accounts and other accounts that are not covered by the rule. It also does not include certain covered financial accounts, such as credit card accounts and non-bank products. The FFIEC data also provide information on the websites and digital banking capabilities for banks. The CFPB supplemented this information with comparable information in NCUA Profile (Form 4501A) data for credit unions.[139]

To estimate costs to small entities of the provisions, the CFPB relies on information gathered from the SBREFA process and from comments on the proposal. This includes written feedback on the SBREFA Outline submitted by small entity representatives, the discussions at the SBREFA Panel summarized in the SBREFA Panel Report, and comments on the proposal.

C. Coverage of the Rule

Part VII.B.4 provides a discussion of the number and types of entities affected by the rule. Relative to the proposal, the most substantial change in coverage is that depositories with assets below specified size standards defined by the SBA are not covered as data providers under the rule.

D. Baseline for Consideration of Costs and Benefits

In evaluating the rule's benefits, costs, and impacts, the CFPB considers the impacts against a baseline in which the CFPB takes no regulatory action. This baseline includes existing regulations, State laws, and the current state of the market. In addition, because the market is still developing rapidly, the analysis assumes that the market trends toward greater data access and increased adoption of developer interfaces would continue under the baseline, but assumes no change in the State laws and regulations currently in effect that are related to consumers' data access rights for either direct access or access through third parties.

A large and growing number of consumers currently access their financial data through consumer-

[131] For information about the data collected in the Provider Collection and Aggregator Collection, respectively, *see* Consumer Fin. Prot. Bureau, *Generic Order for Data Providers, https://files.consumerfinance.gov/f/documents/cfpb_generic-1022-order-data-provider_2023-01.pdf;* and Consumer Fin. Prot. Bureau, *Generic Order for Data Aggregators, https://files.consumerfinance.gov/f/documents/cfpb_generic-1022-order-data-aggregator_2023-01.pdf* (both last visited Oct. 16, 2024). Because data providers and data aggregators vary substantially in size and business practices, the data from these collections are likely not representative of the market as a whole. The data are informative about the practices of some large data providers and a selection of data aggregators and third parties.

[132] In particular, these include entity-level FFIEC and NCUA data on characteristics of depository institutions.

[133] The analysis is informed by academic research papers, reports on research by industry and trade groups, practitioner studies, and comment letters received by the CFPB. Where used, these specific sources are cited in this analysis.

[134] Consumer Fin. Prot. Bureau, *Final Report of the Small Business Review Panel on the CFPB's Proposals and Alternatives Under Consideration for the Required Rulemaking on Personal Financial Data Rights* (Mar. 30, 2023), *https://files.consumerfinance.gov/f/documents/cfpb_1033-data-rights-rule-sbrefa-panel-report_2023-03.pdf.*

[135] Consumer Fin. Prot. Bureau, *CFPB Kicks Off Personal Financial Data Rights Rulemaking* (Oct. 27, 2022), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-kicks-off-personal-financial-data-rights-rulemaking/.*

[136] *See* 88 FR 74796 (Oct. 31, 2023).

[137] The CFPB treats the information received in the Provider Collection and the Aggregator Collection in accordance with its confidentiality regulations at 12 CFR 1070.40 *et seq.*

[138] *See* Fed. Fin. Insts. Examination Council, *Central Data Repository's Public Data Distribution, https://cdr.ffiec.gov/* (last visited Oct. 16, 2024); and Nat'l Credit Union Admin., *Credit Union and Corporate Call Report Data, https://ncua.gov/analysis/credit-union-corporate-call-report-data* (last updated Sept. 5, 2024).

[139] *See* Nat'l Credit Union Admin., *CUOnline, https://ncua.gov/regulation-supervision/regulatory-reporting/cuonline* (last updated Sept. 18, 2024).

authorized third parties. This access is provided by a range of technologies, including credential-free APIs, APIs that require third parties to retain consumer credentials (credential-based APIs), and credential-based access through consumer-facing digital banking interfaces such as online banking websites or mobile applications (screen scraping). As discussed in part I.B, with respect to the state of the open banking system, the CFPB estimates that more than 100 million consumers have used consumer-authorized data access, authorizing thousands of third parties to access their financial data at thousands of data providers, often through intermediaries such as data aggregators.[140]

In total, the CFPB estimates that there were between 50 billion and 100 billion total consumer-authorized access attempts in 2022.[141] Usage has grown substantially in recent years, as the annual number of consumer-authorized access attempts approximately doubled from 2019 to 2022, and usage has continued to grow since 2022.[142]

This third party financial data access enables numerous use cases for consumers. In 2022, data available to the CFPB show that there were more than two billion access attempts to facilitate payment services, more than one billion access attempts for the purpose of identity verification (typically for opening new accounts), tens of billions of access attempts for account monitoring and personal financial management use cases, and over one billion access attempts facilitating other use cases, including fraud risk assessments, loan underwriting, and asset and income verification.

While the share of consumer-authorized data accessed through dedicated credential-free APIs has grown sharply, many access attempts still rely on either credential-based APIs or screen scraping. As a share of all access attempts made by firms in the Aggregator Collection, the use of credential-free APIs grew from less than 1 percent in 2019 and 2020 to 9 percent in 2021 and 24 percent in 2022. At the same time, the share of access attempts using screen scraping declined from 80 percent in 2019 to 50 percent in 2022. Credential-based APIs saw a slight increase from 20 percent in 2019 to 27 percent in 2022.

The recent growth in traffic through credential-free APIs reflects the adoption of this technology by some of the largest data providers, covering tens of millions of covered accounts. All depository data providers with more than $500 billion in assets have established, or in the near future will establish, a credential-free API. However, despite recent growth, the total share of data providers offering credential-free access methods remains limited. At the end of 2022, an estimated 5 to 10 percent of all data providers offered credential-free APIs, up from less than 1 percent in 2021. The adoption of credential-free APIs by core banking service providers and other vendors that serve hundreds of smaller depository institutions contributed to this growth.[143] While adoption is relatively high for the largest depository data providers, the CFPB estimates that only 10 to 20 percent of depositories with more than $10 billion in assets had credential-free APIs at the end of 2022.

The future evolution of the marketplace enabled by the exchange of consumer financial data is uncertain. Based on the data and market trends available, the CFPB makes the following assumptions for the baseline in this impact analysis. The analysis assumes that most of the largest data providers have adopted or likely would in the near future adopt credential-free APIs, which would meet many—but likely not all—requirements contained in the rule. Awareness of CFPA section 1033 may have contributed to this, though adoption is also influenced by data providers' desire to shift third party access away from screen scraping and towards more secure and efficient technologies, as well as the demand for third party access from data providers' customers. The analysis also assumes that some share of smaller institutions would adopt credential-free APIs, depending on their technology and business models, over a longer-term horizon. Based on past trends, larger institutions would be more likely to adopt such interfaces sooner. However, adoption may be easier for (1) depositories whose systems are already well integrated in-house or with large core banking or online banking service providers and (2) nondepositories and newer depositories that do not have complex legacy systems, irrespective of the sizes of these types of institutions. In addition, in the current market some data providers block screen scraping access under certain circumstances, including for third party risk management, and the CFPB expects this would continue under the baseline.

The CFPB understands that all or most third parties seeking to access consumer-authorized information and data providers are subject to the GLBA, specifically either the FTC's Safeguards Rule or the prudential regulators' Safeguards Guidelines. Additionally, third parties that operate in one of the at least 11 States with consumer data privacy legislation may be subject to other data security requirements and data usage restrictions. These State laws have all been passed since 2018. Depository data providers also have third party risk management obligations required by their prudential regulators, which will impose data security requirements on third parties seeking to access consumer-authorized data. As a result, at baseline, the CFPB expects that many third parties are already subject to statutory and regulatory data privacy and security obligations, and third parties have adopted or would adopt some basic standards related to risk management, data security, and data use. These standards likely have some degree of overlap with the requirements in the rule, though individual company systems or policies will depend on the size, location, practices, and other circumstances of each third party.

Several commenters expressed concerns about how the rule may interact with other existing or future regulations. A credit union and a bank trade association asserted that the CFPB estimated costs in isolation of other regulations, including those from prudential regulators. Two data aggregators commented that data providers will invoke third party risk management obligations to deny access in anticompetitive ways. SBA Advocacy and a trade association commented that the CFPB should consider current or

[140] Unless described otherwise, the estimates in this part VI.D are derived from the total numbers of consumers, connections, and access attempts reported by data providers in the Provider Collection and third parties in the Aggregator Collection. These estimates are necessarily approximate, as the CFPB aims to protect the confidentiality of the respondents, account for the substantial share of consumer-authorized data sharing that is not captured by the respondents, and account for the likely potential overlap in counts for consumers, connections, and access attempts that involve respondents to both the Provider Collection and the Aggregator Collection.

[141] An access attempt is defined here as an individual instance in which a single consumer-authorized third party requests or attempts to pull data about a single consumer's accounts from a single data provider's systems. Not all attempts will lead to a successful data transfer, but the number of access attempts is used as an indicator for the overall size and growth of the open banking system.

[142] *See* Fin. Data Exch., *Financial Data Exchange (FDX) Reports 76 Million Consumer Accounts Use FDX API* (Mar. 13, 2024), *https://www.financialdataexchange.org/FDX/News/Press-Releases/Financial_Data_Exchange__FDX__Reports_76_Million_Consumers_Use_FDX_API.aspx.*

[143] For example, *see* Press Release, Jack Henry & Assocs., Inc., *Jack Henry Partners with Open Banking Providers to Enhance Digital Platform* (Oct. 12, 2021), *https://ir.jackhenry.com/news-releases/news-release-details/jack-henry-partners-open-banking-providers-enhance-digital.*

future State laws that may have similar requirements.

The CFPB has considered existing regulations and laws that interact with the rule, as these are part of the baseline for this impact analysis. Any costs of complying with existing regulations and laws are thus included in the baseline, and this analysis is of changes in costs relative to that baseline. The impact analysis does not consider the effects of potential future laws or regulations that may interact with the rule, as this would be overly speculative given the uncertainty around them.

The impact analysis generally includes the major elements of costs to firms of complying with the rule. It also includes a discussion of how some of these costs likely would have been borne under the baseline as data providers either would have adopted or already have adopted systems or policies similar to those required by the rule. For example, where data providers have adopted some form of credential-free third party access under the baseline, the analysis discusses how the rule will impact the terms, costs, and features of such functionality.

Finally, in the context of direct access, the proposal assumed for its baseline that all covered data providers offer consumers some digital banking interface and that these interfaces typically provide all or nearly all data fields required to be made available by the proposal. The CFPB maintains this assumption in the final rule, as the CFPB understands that all or nearly all data providers within the rule's revised coverage offer consumer interfaces. Comments related to the costs of building and maintaining such interfaces for direct access from data providers are discussed in part VI.E.1. The analysis considers how the rule will impact the costs and features of data providers' consumer interfaces.

E. Potential Benefits and Costs to Consumers and Covered Persons

The analysis below describes the potential benefits and costs to consumers and covered persons in the following order: costs to data providers, costs to third parties, costs to consumers, benefits to data providers, benefits to third parties, benefits to consumers, and alternatives considered.

A service provider for credit unions asserted that the CFPB should engage in a more thorough cost-benefit analysis and that the CFPB did not gather enough input or data from core providers. Trade associations for credit unions and businesses claimed that the proposal's analysis was incomplete, some elements had not been justified, and that the CFPB had failed to engage in a thorough and accurate analysis. The CFPB considered all of the data and evidence described in part VI.B, including all comments on the proposal, in analyzing the potential benefits and costs of the rule. The CFPB does not have the data to precisely determine every potential benefit and cost of the rule, but requested comment on the proposal for additional data or evidence that could refine the estimates of benefits and costs. The CFPB has reasonably evaluated all such evidence provided, and updated its estimates where appropriate.

Where commenters stated that the CFPB had failed to justify or address the benefits and costs of particular provisions of the proposal, those comments are discussed in this part.

1. Costs to Covered Persons

Costs to Data Providers

As a result of the rule, covered data providers may face increased costs related to maintaining consumer interfaces and establishing and maintaining developer interfaces, including modifying their existing systems to comply with the rule. The CFPB expects the largest costs to data providers to come from establishing and maintaining data access for authorized third parties in accordance with rule requirements. Covered data providers will also incur costs related to developing and implementing policies and procedures governing those systems. The rule may have additional costs to covered data providers related to changes in the frequency, scope, or method of consumer-authorized data access relative to the baseline. These changes may have secondary effects on the profitability of certain business models or practices, including by facilitating competition and enabling new products and services. The estimation of data providers' costs described in this section broadly uses the same methodology that the CFPB used in the proposal unless otherwise noted. The primary differences are adjustments to the costs of developing policies and procedures that are informed by comments.

Maintaining Direct Consumer Access

The rule requires covered data providers to make covered data available through consumer interfaces and to allow consumers to export certain information in machine-readable formats. As discussed in part IV.A.2, small depository institutions are not required to comply with the final rule's requirements applicable to data providers. During the SBREFA Panel meetings, the CFPB received feedback that certain categories of information under consideration in the SBREFA Outline are not typically made available directly to consumers, and thus would be costly to provide.[144] Based on this feedback, the rule covers a more limited set of information, which the CFPB understands is currently provided through existing consumer interfaces by all or nearly all data providers. Therefore, for most data providers, the CFPB expects limited additional costs due to the rule's direct consumer access requirements. For those data providers that do not provide all required information under the baseline, the CFPB expects that such information could be added at relatively low cost because the required information is generally already necessary for compliance with other regulatory requirements, like providing account opening disclosures. The CFPB does not have sufficient data to quantify the levels of these costs.

In the proposed rule, the CFPB sought comment or information on the costs of adding data fields to the consumer interfaces but did not receive any. A trade association for nondepository service providers commented that the costs would be high to create a consumer interface for nondepository institutions that do not have one already but did not provide additional information on the magnitude of the cost. A few other commenters asserted that the rule will raise costs and barriers to entry for retailers to develop and use pass-through digital wallets, if those products are covered as data providers. The CFPB expects that few nondepository data providers that are covered by the rule do not already have a consumer interface. The CFPB acknowledges that those few nondepository data providers could incur additional costs associated with creating a consumer interface but does not have sufficient data to determine the magnitude of these costs.

Maintaining Third Party Access

The rule requires data providers to maintain data access through a compliant developer interface. Although many data providers already maintain similar functionality, others would need to establish new interfaces, likely integrated with existing infrastructure that supports their consumer interfaces. However, unlike the proposal, the rule does not require small depositories to maintain data access for authorized third parties, meaning many fewer

[144] SBREFA Panel Report at 24.

institutions than estimated in the proposal will need to provide data access functionality under the rule. The CFPB expects that the costs of modifying existing infrastructure to ensure compliance with the rule will depend on the scope and nature of the necessary modifications but would generally be lower than the cost of establishing a new interface.[145]

In general, data providers must either contract with a vendor for the required functionality or develop and maintain it in-house. The analysis below estimates compliance costs under these two approaches. Some data providers may comply with the rule through a combination of contracted services and in-house development. Because data providers will generally choose the lowest-cost approach, their costs will generally be at or below the lower of the costs of the two feasible alternatives analyzed here.

The CFPB understands that data providers' costs depend on many factors and the extent to which they vary is impossible to fully capture. To produce cost estimates that are practical, meaningful, and transparent, where feasible, the CFPB estimates initial upfront costs and annual costs that generally scale with the size of the data provider for each of the contracted services and in-house approaches. All else equal, a data provider's annual cost per account or per customer is likely to decrease with a greater number of accounts or customers due to economies of scale. During the SBREFA process and in the Provider Collection, some data providers provided cost estimates per account while others estimated costs per customer. Therefore, the analysis below discusses estimates of the annual cost per account or per customer of operating a compliant developer interface that are likely to be appropriate for data providers of different sizes.

Under the contracted services approach, data providers would primarily contract with a vendor for the necessary functionality. At baseline, many covered data providers contract with core banking providers or other vendors for transaction processing, online banking systems, or other key banking functions. Some core banking providers currently offer services to enable developer interfaces for data providers. The CFPB understands that some large core banking providers provide their clients with a basic developer interface at no additional cost.[146] Based on comments received during the SBREFA process and market research, the CFPB understands that other core banking providers charge flat monthly fees or per-account fees.[147] The CFPB understands that these fees vary but generally estimates that fees can be up to $24 per account per year.[148]

Data providers taking this approach will generally have minimal upfront costs to enable the required third party access. However, some data providers use service providers that do not currently offer this kind of functionality. Although other options exist and the CFPB expects service providers would face strong competitive pressure to offer compliant developer interfaces to their clients, the lowest cost option for some data providers may involve changing their core banking provider. The fixed costs of changing core banking providers can be high. Several small entity representatives stated that the upfront costs at a new core banking provider can range from $50,000 to $350,000 depending on the scale and complexity of the system, with up to $200,000 in additional decommissioning costs to retrieve information from the old core banking provider. While small depository institutions are not required to comply with this final rule, many medium-sized depository institutions also rely on core providers. The CFPB expects that the medium-sized depository institutions may pay closer to $350,000 due to scale and complexity if they need to switch to a new core provider that offers a compliant developer interface. Based on its market research, the CFPB understands that core banking providers that offer a developer interface have a combined market share exceeding 67 percent.[149] Therefore, at most, 33 percent of depository data providers would need to change core banking providers to obtain a compliant interface that is bundled with their other core banking services. However, the CFPB expects that the true share of covered depository data providers that pay these costs will be much lower than 33 percent. Data aggregators and other software vendors offer developer interfaces and the CFPB expects that some data providers will obtain the necessary functionality through these channels and will not need to change their core banking provider. Furthermore, core banking providers will face strong competitive pressure to offer compliant developer interfaces to retain their clients and potentially capture additional market share. The CFPB expects that these forces are likely to cause the cost of obtaining compliant interfaces to decline over time, which may reduce compliance costs most substantially for smaller covered depository data providers, given that they have the latest compliance date.

The CFPB requested information related to the developer interfaces offered by core banking providers and other vendors and how such interfaces are priced. The CFPB received several comments on the costs associated with the contracted services approach. Several banks and credit unions confirmed that depository institutions will depend on core banking providers to obtain the necessary functionality. A credit union trade association and two banks asserted that these core providers are likely to charge additional fees to provide these services. A credit union suggested that an API could cost between $50,000 and $125,000 from a core provider. A bank commented that they may also incur associated personnel costs but did not provide additional information on the magnitude of the costs. A credit union asserted that, if a depository institution is required to switch to a new core provider to obtain a developer interface, the waiting period to switch is about two years and thus the depository would not be able to comply by the mandatory compliance dates. Another credit union, however, commented that core providers would be implementing solutions for all depositories and, thus, expects costs per data provider to be manageable. Similarly, a consumer advocate commented that they expect industry utilities and cloud providers could keep costs manageable. Finally, a service provider for credit unions commented that the CFPB did not gather enough input from core providers in estimating these costs.

The CFPB acknowledges that core providers may charge data providers to provide the required functionality. The CFPB developed its cost estimates in the proposal based in part on feedback from small entity representatives received through the SBREFA process, and considers the information provided by commenters about core providers to be broadly consistent with the CFPB's estimated costs. Furthermore, the

[145] For example, some data providers with existing interfaces may need to provide additional data fields, change the way their data are formatted, or make additional investments to ensure their interfaces meet the performance specifications required by the proposed rule.

[146] For example, *see* Jack Henry & Assocs., Inc., *Secure Data Connection: take back control of account connection, https://banno.com/data-aggregators/* (last visited Oct. 16, 2024).

[147] SBREFA Panel Report at 37.

[148] *Id.* at 38.

[149] *See* Press Release, Fiserv, *Finicity and Fiserv Offer More Consumer Choice Through Secure Data Access* (Mar. 30, 2022), *https://newsroom.fiserv.com/news-releases/news-release-details/finicity-and-fiserv-offer-more-consumer-choice-through-secure.*

commenters most concerned about the costs of contracting with core providers to enable the required third party access were small depository institutions that will not be required to comply with the data provider requirements of this final rule.

Under the in-house approach, data providers would primarily employ software developers or similar staff to build and operate the necessary functionality. The estimates below are based on a fully in-house approach for developing of a compliant developer interface. Some data providers may instead contract with software providers for the initial development of their in-house developer interface. The CFPB anticipates that data providers would purchase their systems only if they could do so at a lower cost than the estimate of building a compliant interface provided here.

The CFPB expects that most data providers that have already developed and have been maintaining consumer interfaces in-house would also develop and maintain the required developer functionality in-house.[150] In the proposal, the CFPB estimated that for smaller data providers, developing a compliant interface for third party access would likely require between 2,600 and 5,200 hours of work by software developers or similar staff, equivalent to five full-time employees over a period of three to six months, resulting in an estimated total upfront staffing cost of $237,000 to $475,000, which the CFPB has updated to $247,000 to $494,000 for the final rule based on more recent labor cost data.[151] However, these estimates strongly depend on the needs and capabilities of specific entities. For example, based on feedback from nondepository small entity representatives, the CFPB estimated in the proposal that nondepository data providers may require only 480 hours of work by software developers at a total cost of $44,000, which the CFPB has updated to $46,000 based on more recent labor cost data.[152]

In addition to these upfront costs, the CFPB estimated that data providers taking the in-house approach would incur ongoing costs. In the proposal, the CFPB estimated that small data providers (both depository and nondepository) would incur ongoing annual technology costs of $20,000 as well as ongoing staffing costs of $45,000 to $91,000, which the CFPB has updated to $48,000 to $95,000 based on more recent labor cost data.[153] Under the final rule, small depositories will not have costs for complying with the data provider requirements of the rule. For medium-sized data providers with more accounts, the CFPB estimated ongoing costs of $5 per account per year to maintain the required functionality in-house, based on evidence from the Provider Collection described below.

The Provider Collection contains information on costs for a sample of large depository data providers. This complements the information on costs for small data providers gathered through the SBREFA process. For context, data provider small entity representatives generally may have up to a few tens of thousands of accounts, while data providers in the Provider Collection have millions of accounts.

In the Provider Collection, several data providers stated that it was difficult to disaggregate the costs of developer interfaces from their consumer interfaces and other information technology systems. These data providers also generally provided estimates of ongoing annual costs or total costs since the deployment of their developer interfaces, rather than upfront costs to build an interface. Reported estimates of the cost of establishing and maintaining a developer interface varied widely, from $2 million to $47 million per year, with a median of $21 million per year. Of the data providers providing disaggregated estimates, the median cost of developer interfaces as a share of the cost of their consumer interfaces was 2.3 percent. An additional data provider did not provide a disaggregated estimate but reported their developer interface constituted a ''small portion of the total consumer-portal costs.''

These data providers are larger and more complex than most data providers. Therefore, the CFPB adopts the cost of a compliant developer interface per account as the relevant metric for estimating the costs for data providers generally. The reported cost of an in-house developer interface per customer or account ranges from $0.25 to $8 per year, with a median of $3.37 per year, substantially lower than the $24 per year reported by small entity representatives as the potential cost for the contracted services approach. Within the sample, the per account cost generally declined as the number of accounts increased.[154] Based on this evidence, the CFPB estimates that annual costs per account to maintain an in-house developer interface are likely to be approximately $3 for large depository data providers and $5 for medium-sized depository data providers. Although the Provider Collection sample is relatively limited, the pattern of per-account costs declining with the number of accounts suggests that—relative to the alternative of contracting for a developer interface—data providers developing and maintaining interfaces in-house likely have larger upfront fixed costs but smaller ongoing per account costs. These estimated costs are generally for depository institutions rather than nondepositories. Given feedback from small entity representatives of nondepository institutions that would qualify as data providers under the rule, the CFPB expects that nondepository data providers would generally have less need to integrate across multiple systems and would be less likely to have legacy software that is difficult to update, resulting in lower costs on average.

The estimates above relate to the costs of developing and maintaining a developer interface for data providers without such existing interfaces. Covered data providers with existing developer interfaces that are not fully compliant with the proposed rule would incur smaller costs to modify their interfaces and existing third party access agreements to align with the

[150] As discussed below, large depository data providers have generally indicated that the resources required to maintain the required third party access in-house are a small fraction of the resources required to maintain consumer interfaces in-house. Therefore, the CFPB expects that data providers that have already invested in the capacity to operate a consumer interface in-house will take a similar approach to providing the required third party access. However, it is likely that some data providers will find it less costly to contract with service providers. As the industry develops, it is possible that it will become more common for data providers to enable third party access through service providers.

[151] This estimate was derived from BLS data showing a mean hourly wage for software developers of $66.40. BLS data also show that wages account for 70 percent of total compensation for private industry workers, leading to a $94.86 estimate for total hourly compensation, which was multiplied by the expected total number of hours of work required.

[152] Costs for depository and nondepository data providers are likely to differ for several reasons, including that depository data providers are generally more likely to have multiple legacy information technology systems that are more technically difficult to integrate with a developer interface.

[153] The CFPB estimates that small data providers choosing the in-house approach would require 500 to 1,000 hours per year of staff time by software developers. BLS data from May 2023 shows a mean hourly wage for software developers of $66.40. BLS data also show that wages account for 70 percent of total compensation for private industry workers, leading to a $94.86 estimate for total hourly compensation, which was multiplied by the expected total number of hours of work required.

[154] For the data providers in the Provider Collection that provided both cost estimates and numbers of accounts, there was a negative correlation coefficient of approximately –0.6 between per account costs and number of accounts.

requirements of the rule. The cost for such covered data providers would depend on the extent to which their developer interfaces do not comply with the requirements of the proposed rule. Without granular data on the nature of partially compliant interfaces, the CFPB cannot provide a precise estimate of the cost of bringing such systems into compliance with the rule. However, that cost will generally be a fraction of the cost of developing and maintaining a new interface.

In the proposal, the CFPB sought comment or additional data on the costs associated with modifying an existing developer interface or establishing a new compliant developer interface, including how those costs compare to contracting with a service provider. Many community banks, credit unions, and related trade associations commented that they expect the costs of the required functionality to be much higher for small depository institutions than those estimated by the CFPB. These commenters did not provide additional data or information that would allow the CFPB to precisely update the costs for small depositories estimated in the proposal. The CFPB acknowledges that small depository institutions may have faced additional challenges to implement the rule at this time and is not requiring small depository institutions to comply with the final rule's requirements on data providers. Accordingly, the CFPB has not updated the estimates for small depository institution data providers.

Several banks, credit unions, and their respective trade associations asserted that the CFPB underestimated compliance costs for data providers, failed to consider all costs, and underestimated the technical challenges associated with the proposal. A bank and a credit union asserted that the incremental costs associated with the increased number of data requests will not be minimal on a per-account basis. A credit union and several credit union trade associations asserted that the CFPB's per-account cost estimates were not appropriate for smaller depository institutions because those estimates were primarily derived from information provided by large data providers. These commenters generally did not provide additional data or information that the CFPB could use to modify the cost estimates and instead requested additional study before finalizing the rule. One bank requested that the CFPB estimate expected transaction volumes, customer service staffing, IT systems and security protocols, and how these may depend on the size of the data provider.

The CFPB acknowledges that some data providers may incur larger costs than those discussed in this section. The costs associated with implementing the rule will be data provider-specific and the estimated costs discussed here should be considered the average expected costs for a data provider. Had small depositories been required to comply with the final rule's requirements on data providers, the CFPB acknowledges that they may have faced higher or more uncertain costs than discussed here to comply with the final rule. The CFPB has considered the information from the comments, together with the Provider Collection and SBREFA panel, and has determined that the estimates discussed in this section are appropriate for the data providers that are covered by the rule.

Commenters representing bank trade associations stated that some data providers would incur significant costs to comply with the rule, even if they already have an existing interface for third party access. Several bank trade associations noted that banks have already spent hundreds of hours assessing compliance and designing potential solutions and modifications that may be needed to comply with the rule. One trade association asserted that the rule could cost as much as $100 million in the first year and an additional $15 million each year to update and maintain a compliant developer interface, although the trade association did not specify how they obtained these estimates. The CFPB acknowledges that data providers that already have a third party interface may incur costs to update and maintain that interface to comply with the rule and notes that $15 million in annual ongoing costs is consistent with the CFPB's estimates for large data providers with millions of accounts. However, given the information contained in the comment, the CFPB considers the magnitude of the provided estimate of costs for the first year to be overstated, particularly given the rule's extended compliance timelines for large data providers relative to the proposal.

A bank commented that the CFPB failed to account for compliance costs of reviewing requests and monitoring consumer authorizations. In this analysis, these costs are accounted for in the ongoing costs associated with maintaining a developer interface, but the CFPB acknowledges that some data providers may incur higher levels of cost than others.

Two credit unions commented that the CFPB underestimated costs of the revocation mechanism. Data providers are permitted but not required to offer a developer interface that lets consumers revoke third party access. The CFPB does not include costs associated with an optional feature.

Many data providers and SBA Advocacy commented that the lack of clarity on what the proposal had referred to as a ''qualified industry standard'' would create confusion and increase compliance costs, particularly for smaller data providers, and requested additional guidelines for the consensus standards and standard-setting bodies. As discussed in part II.C, the Industry Standard-Setting Final Rule finalized in June 2024 specifies the attributes standard-setting bodies must satisfy to receive CFPB recognition as a recognized standard setter capable of adopting consensus standards (referred to under the proposal as a qualified industry standard). Under the final rule, conformance with consensus standards serve as indicia of compliance for various provisions of the final rule. The CFPB has determined that the Industry Standard-Setting Final Rule and the references to consensus standards in this rule will mitigate the cost concerns of these commenters (assuming the consensus standards comply with the final rule), particularly given the extended compliance timelines in the final rule.

Developing and Implementing Policies and Procedures

The rule includes disclosure and recordkeeping requirements for all covered data providers related to consumer-authorized data access. The rule requires data providers to calculate and disclose the response rate for third party data access on a monthly basis. The CFPB understands that a variety of performance metrics, including the response rate, may be calculated in the normal course of operating an API or other digital interface for diagnostic purposes. Therefore, the cost of this provision is included in the cost of developing and maintaining a compliant developer interface estimated above. Data providers may incur an additional upfront cost of developing and testing a system to regularly disclose required performance metrics on their website. The CFPB estimates that this process would take less than 80 hours of staff time at an estimated cost of $7,600 per data provider.[155] The CFPB expects that

[155] This estimate was derived from BLS data showing a mean hourly wage for software developers of $66.40. BLS data also show that wages account for 70 percent of total compensation for private industry workers, leading to a $94.86 estimate for total hourly compensation, which was multiplied by the expected total number of hours of work required.

once the disclosure system is implemented it would be maintained at minimal incremental cost as part of the overall cost of operating data providers' websites.

The rule requires data providers to have policies and procedures such that the developer interface is reasonably designed to ensure that data are accurately transferred to third parties. The CFPB expects that data providers would comply with this requirement as part of establishing and maintaining a compliant developer interface. Therefore, the costs of ensuring that the developer interface is reasonably designed to transfer data accurately are included in the analysis above.

The rule also requires data providers to have policies and procedures reasonably designed to ensure that the reason for the decision to decline a third party's request to access its interface is communicated to the third party. The requirements to inform third parties when and why access was not permitted would generally be satisfied as part of the onboarding process in cases of reasonable denials related to risk management or built into a data provider's developer interface, as automated responses to third party data access requests. Similarly, the requirements to retain records to demonstrate compliance with certain requirements of the proposal would generally be built into a data provider's developer interface. As a result, the CFPB considers the costs of complying with these requirements as part of the overall costs of the onboarding process or implementing a compliant developer interface, as described elsewhere. The CFPB has previously estimated that, to comply with a rule of similar complexity, a data provider will require several categories of one-time costs.[156] The CFPB has added several categories of one-time costs relative to the proposal in response to the comments discussed below. The CFPB has also adjusted the estimates to account for inflation. Each covered data provider is expected to incur the following costs: $9,000 to $25,000 for preparation and planning; $3,100 to $5,200 for developing policies and procedures; $3,700 to $8,900 for legal and compliance review; $3,900 to $5,600 for developing forms and disclosures; and $3,800 to $6,500 for training staff and vendors on the new policies and procedures.[157] The CFPB estimates a total one-time cost of developing and implementing policies and procedures as required by the proposed rule of $23,500 to $51,200 per data provider.

A nondepository entity trade association commented that the proposal's cost estimates for updating policies and procedures were too low. A bank requested that the CFPB determine the costs associated with developing disclosures and account agreement changes. The CFPB has adjusted the costs associated with developing policies, procedures, disclosures, and agreements in the final rule. A bank commented that it was not practical to provide some information, such as terms and conditions, in a machine-readable format. As discussed in part IV.C.2., the rule does not apply the machine-readability requirements to terms and conditions and some other consumer information provided through the consumer interface. However, the CFPB has determined that it is necessary to make that information available in a machine-readable form through the developer interface.

Two trade associations for depositories asserted that the proposed record retention requirements for data providers would require providers to keep track of, and report on, all data collected about consumers, which would create large costs. The rule does not require that data providers keep records about all data collected about consumers. Instead, the rule requires that data providers retain records related to third party requests for access to its interface, requests for information, third party authorizations, revocation requests made through the data provider, and performance specifications, as discussed in part IV.C.7. Additionally, some bank commenters suggested a shorter retention period than three years for information related to data accessed through the developer interface, though at least one bank trade association commenter supported the three-year retention period. The CFPB has determined that the record retention requirements will provide the data necessary to facilitate effective supervision and enforcement of compliance with the rule.

Indirect Costs

In addition to the direct costs described above, data providers are likely to incur indirect costs as a result of the rule. The CFPB expects costs related to onboarding additional third parties relative to baseline as well as changes in the frequency, scope, or method of consumer-authorized data access relative to the baseline. These changes may have secondary effects on the profitability of certain business models or practices, including by facilitating competition and enabling new products and services.

Costs From Onboarding Additional Third Parties

The rule generally requires data providers to grant access to their developer interface, except for reasonable denials related to risk management or the absence of certain information about themselves. Although the rule does not require formal data access agreements, the CFPB expects the rule to lead to more third parties requesting and being granted access to data providers' developer interfaces relative to the baseline. The CFPB expects that this is likely to require data providers to enter into more onboarding arrangements with third parties. In the Aggregator Collection responses, which reflect costs applicable under the baseline, aggregators reported that negotiating a data access agreement with a data provider could take between 50 and 4,950 staff hours for business relationship managers, software developers, lawyers, compliance professionals, and senior management, depending on the complexity of the negotiation. The median estimated time was 385 staff hours per agreement. The CFPB expects that data providers currently spend roughly equivalent time and resources negotiating and signing data access agreements at baseline.

These costs are likely to decrease under the rule relative to the baseline because many features of interface onboarding arrangements are now regulated by the rule and not subject to negotiation, including requirements for interface reliability, fees, the scope of data accessible via the interface, authorization procedures, and the duration of access to consumers' covered data. One firm in the Aggregator Collection stated that in cases where data providers agree to use existing industry-defined standards there is essentially no need for negotiation. The CFPB expects that under the rule nearly all data providers will use standardized onboarding arrangements and the costs of establishing data access will generally be limited to ensuring third party risk management standards are satisfied and performing any administrative tasks to provide third parties with access to the developer interface. In the proposal, the CFPB estimated that this process would require 80 staff hours on average, representing approximately $6,800. These costs may be further reduced if industry accreditations or consensus standards develop to streamline data providers' required efforts on third party risk management, or to the extent that

[156] 88 FR 35150, 35497 (May 31, 2023).

[157] *Id.* at 35150.

prudential regulators provide further guidance applicable to sound risk management in the specific context of consumer-authorized data access. While some data providers and third parties may choose to use a customized arrangement that respects the terms of the rule, they will generally only do so when both parties perceive that the benefits exceed the costs. Because the choice to negotiate a costly but more customized arrangement is a business decision not required by the rule, the additional costs of doing so are voluntarily acceded to and are generally outside the scope of this analysis.[158]

The total cost of entering into onboarding arrangements will depend on the difference between the number of agreements that would be negotiated under the baseline and the number of onboarding arrangements that would be entered into under the rule. Because the consumer-authorized data access system is developing rapidly, it is not possible to precisely estimate the number of additional connections that would be established by the rule. However, in the near term, the CFPB anticipates that most data providers will continue to provide third parties access to consumer-authorized data through specialized intermediaries like data aggregators, as they would have under the baseline. As a result, the CFPB estimated in the proposal that, on average, large data providers would need to enter into 10 or fewer additional onboarding arrangements in the years immediately following implementation of the rule, at a maximum cost of $68,000 per large data provider.[159] In contrast, medium sized entities are likely to rely on core banking providers or other vendors to facilitate onboarding on their behalf at minimal incremental cost. Over time, data providers are likely to enter into additional onboarding arrangements due to entry by new third parties and other changes in the market.[160]

The CFPB requested comment on how the proposed rule would change both the cost of onboarding third parties and the number of data access arrangements between data providers and third parties. A bank, a credit union, and two research institutes commented that the costs to vet third parties will be substantial, with the bank and credit union further asserting the CFPB has underestimated those costs. A nondepository entity trade association commented that there will be an increase in costs stemming from the increase in the number of data agreements caused by the rule. Another credit union asserted that small credit unions do not have the necessary legal resources to vet third parties. Two banks asserted that the CFPB underestimated the costs of negotiating connection agreements. In contrast, a data aggregator estimated that the rule will reduce the cost of these agreements by at least 30 percent.

The CFPB acknowledges that data providers may incur costs associated with vetting third parties but expects that consensus standards will eventually develop around the rule's requirements and the ways that third parties can demonstrate compliance, which will mitigate costs for data providers by putting the onus on third parties to show they are credible and secure. Furthermore, the CFPB expects that data aggregators will continue to act as intermediaries between data providers and third parties over the short to medium term, which will reduce the costs to data providers of onboarding additional third parties to compliant developer interfaces. However, based on the information provided by commenters, the CFPB is increasing its estimate of the number of hours required to finalize an onboarding arrangement from 80 hours to 120 hours on average, representing an average cost per agreement of $10,800.[161] Given the CFPB's expectation that large data providers would need to enter into 10 or fewer additional onboarding arrangements in the years immediately following implementation of the rule, the CFPB estimates a maximum cost of $108,000 per large data provider.[162]

Prohibition on Fees for Access

The rule does not permit data providers to charge fees for access to covered data through their interfaces. To the limited extent that data providers are currently charging such fees, the rule would eliminate these revenues. Based on the Aggregator Collection, the Provider Collection, and its market research, the CFPB understands that fees for consumer and third party access are currently rare.

The CFPB understands that third parties have in some cases made payments to data providers to incentivize data providers that are reluctant or unable to provide a developer interface of sufficient quality sufficiently quickly. While rare in the current market, the rule eliminates such fees that might have been charged in the future under the baseline.

The CFPB does not have representative data on the prevalence or size of payments to data providers and therefore cannot precisely estimate the cost of eliminating them. However, as described above, the information available to the CFPB indicates that few data providers currently charge third parties for access and that the total cost to data providers of eliminating such charges would be minimal.

The CFPB received many comments on the costs associated with the prohibition of fees. Many banks, credit unions, and bank or credit union trade associations commented that the prohibition of fees means that data providers will not be able to recoup the costs of complying with the rule. One trade association and a bank asserted that the CFPB has failed to fully consider the costs associated with a prohibition of fees but did not provide additional information upon which to base updated estimates. SBA Advocacy suggested that the CFPB could allow small entities to charge fees to recoup costs.

The CFPB acknowledges that covered data providers that would charge fees for receiving requests or making available consumer-authorized covered data to third parties under the baseline will not be able to do so under the rule, including to establish or maintain interfaces required under the rule. The prohibition on fees for data access would be costly for such covered data providers. The information available to the CFPB indicates that few, if any, covered data providers currently charge these fees or would charge these fees in the future under the baseline.

[158] To the extent that data providers choose to voluntarily enter into additional customized arrangements in response to the rule, the CFPB expects the benefits to data providers of such arrangements to exceed any additional upfront costs from establishing the arrangements.

[159] This estimate was derived from the $6,800 estimate from the proposal for the cost of establishing a data access agreement multiplied by the up to 10 additional agreements that may need to be established due to the rule.

[160] For example, this final rule and the Industry Standard-Setting Final Rule aim to accelerate the development and adoption of consensus standards covering myriad aspects of open banking. This would likely reduce the frictions and costs associated with establishing and maintaining connections between data providers and third parties, potentially increasing the number of access agreements negotiated by data providers but reducing the costs of each agreement.

[161] This estimate was derived from BLS data showing a mean hourly wage for compliance officers ($38.55), general and operations managers ($62.18), lawyers ($84.84), and software developers ($66.40), for an average hourly wage of $62.99. BLS data also show that wages account for 70 percent of total compensation for private industry workers, leading to an $89.99 estimate for total hourly compensation, which was multiplied by the expected total number of hours of work required.

[162] This estimate was derived from the $10,800 estimate for the cost of establishing a data access agreement multiplied by the up to 10 additional agreements that may need to be established due to the rule.

The CFPB acknowledges that covered data providers will incur costs associated with the rule and may seek new sources of revenue to offset those costs. The prohibition on fees for data access forecloses one possible new source of revenue. However, to the extent that covered data providers would charge these fees in order to pass some compliance costs through to other market participants, these costs are appropriately accounted for in the discussion of these costs. Under an alternative where there is no fee prohibition, some covered data providers would likely require third parties or consumers to pay fees in order to access consumer-authorized covered data. As few, if any, covered data providers currently charge these fees, the CFPB cannot anticipate with certainty how common fees would be if permitted, which data providers would be most likely to charge fees, or how these fees would be set in equilibrium. In general, covered data providers would benefit from the option to charge fees. If fees were charged directly to consumers, consumers would incur the cost of paying the fees or the cost of forgoing the benefits of products and services enabled by consumer-authorized covered data. To the extent that consumers would not exercise their right to access their covered data due to fees, third parties would also incur costs related to a smaller potential market for their products and services. If fees were instead charged to third parties, third parties would incur the direct cost of paying the fees. Third parties would likely pass through some of those fees on to consumers. Depending on how they were structured, fees would change third parties' incentives in ways that might limit consumers ability to access third party products and services or degrade the quality of products and services. For example, if data providers charged fees based on the number of consumer accounts accessed, third parties would have an incentive to deter or deny less profitable consumers from using their product or service. As another example, if data providers charged fees for each access attempt, third parties would have an incentive to reduce the frequency with which they update consumer-authorized covered data, which would diminish the benefits to consumers of products and services that rely on real-time consumer data.

As discussed in part IV.C.2, the CFPB considered allowing fees for data access, but determined that the potential for data providers to set fees that are not reasonable and that inhibit consumers' access posed too great of a risk to the benefits of the rule as a whole. Further, small depositories, the institutions currently least able to absorb these costs and therefore potentially most likely to seek to offset them with new fees, are not required to comply with the rule's requirements on data providers.

More Frequent Access by Third Parties

Based on responses to the Provider Collection, the CFPB is aware that covered data providers sometimes impose access caps, such as limiting the number of allowable data requests or the frequency with which authorized third parties can access consumer data. For example, the CFPB is aware that some data providers cap the number of data requests per day per connection. The CFPB understands that in some cases access caps prevent third parties from accessing consumer data as often as is reasonably necessary to provide the requested service. For example, one firm in the Aggregator Collection reported spending ''significant resources'' to manage its traffic in order to avoid access cap limits. Another firm in the Aggregator Collection reported spending resources to persuade large financial institutions to raise or eliminate access caps. Therefore, the prohibition on unreasonably limiting the frequency of third party requests for covered data or delaying responses to those requests is likely to increase total data requests for some covered data providers and may therefore increase digital infrastructure costs for those data providers relative to the baseline.[163] This increase is likely to be larger for data providers with more restrictive access caps at baseline, if such access caps are not reasonable under the rule. The CFPB expects that for most data providers, any increase in traffic due to such increases in the number of data requests will generally be more than offset by declines in screen scraping, which the CFPB understands to typically involve heavier traffic loads per request than requests through a developer interface. A small number of large data providers have already restricted screen scraping under the baseline and may experience net increases in developer interface traffic.

A bank trade association commented that a lack of access caps for developer interfaces would increase compliance costs and potentially degrade interface performance. As discussed in part IV.C.3., the CFPB has determined that data providers are permitted to impose reasonable access caps, to ensure that requests from one authorized third party do not unduly burden the data provider's developer interface. Given this determination, the CFPB expects that incremental costs from any increased data requests are likely to be minimal on a per-account basis.

Reduced Information Advantages

Through their role in providing financial products and services, data providers possess ''first party'' data on the accounts held by their customers. These data are a valuable source of information for data providers in developing, pricing, and marketing products and services, but authorized data access may reduce this information advantage. The CFPB expects that the rule will generally increase third party access relative to the baseline and thus diminish data providers' informational advantages from first party data. This may enable third parties to more effectively compete with products or services offered by data providers, potentially limiting the prices data providers can charge for their own products and services or reducing data providers' market shares or data providers' profits. For example, the CFPB understands that an important use case for consumer-authorized financial data is transaction-based underwriting. At baseline, many data providers sell credit products to their depositors. To the extent that the rule facilitates entry into the lending market or improves the quality of the products and services offered by nondepository lenders or other depository lenders that use consumer-authorized data, data providers that enjoyed informational advantages relative to their peers may lose market share and therefore profits. As another example, consumer-authorized data sharing is likely to facilitate faster new account openings. As it becomes easier for consumers to compare account terms, transfer recurring payments, move funds, and have their identity verified, depository data providers may face pressure to pay higher deposit rates or make costly investments in service quality in order to retain deposits, as discussed in the section on *Benefits to consumers* in part VI.E.4.

In general, accurately predicting how changes in the availability of consumer-authorized financial data will change the structure of the market for consumer financial services or how changes in market structure will impact the profitability of individual firms or industries is very difficult, in large part because firms that are data providers in some cases also operate as third parties accessing data from other data

[163] As discussed in the section on *Benefits to data providers* in part VI.E.3, other features of the proposed rule are likely to decrease the frequency and scope of data requests and therefore digital infrastructure costs for covered data providers.

providers, and the CFPB expects more data providers to act as third parties over time. As a result, the CFPB is not able to quantify the impacts of reduced informational advantages that stem from the proposal.

The rule is likely to increase the quality of services that use consumer-authorized financial data to facilitate competition, including by comparing or recommending products or services to consumers. This may impact data providers. For example, a consumer might use a comparison shopping service that would recommend credit cards likely to minimize their costs from interest and fees or maximize their benefits from rewards programs given their historical spending patterns. The CFPB is not able to accurately predict how many firms would develop services that facilitate competition in this way, how many consumers would use such services, or how the availability of such services would impact individual firms or industries.

Many data providers and bank or credit union trade associations expressed concern that the rule would advantage third parties at the expense of data providers. A credit union trade association asserted that the CFPB did not properly assess the risks from the growth of non-bank lenders.

The CFPB notes that data providers may also act as third parties. Furthermore, the rule places substantial restrictions on how third parties can use and retain these data, relative to the baseline of screen scraping and no restrictions on the use or retention of the data. The CFPB acknowledges that there may be growth in nondepository lending but has determined that the rule's restrictions and existing regulations that apply to nondepository lenders under the baseline will mitigate the risks associated with this growth.

Potential Costs Related to Liability or Fraud

Several data providers and bank or credit union trade associations commented on the high costs of resolving disputes, dealing with third parties lacking appropriate security, and the costs of liability falling disproportionately on data providers. Two credit union trade associations expressed concern that, even when a third party is responsible for a data breach, data providers will face reputational risk, losses due to fraud, and costs to resolve the breach. The SBA Office of Advocacy commented that the lack of clarity in the rule regarding liability could lead to confusion and expensive litigation. A few data providers and a bank trade association asserted that the CFPB did not fully account for the costs associated with security breaches and liability. A few bank trade associations and data providers asserted that the absence of a ban on screen scraping will create costs for data providers to block screen scraping. The CFPB notes that these risks exist under the baseline and are likely worse in the current marketplace, as discussed in the *Benefits to data providers* part, because of the widespread storage of credentials, the lack of rules on data retention, and downstream data sharing or sales by third parties. A credit union commented that they have already spent resources on increasing security and blocking screen scraping under the baseline. The CFPB expects that the allowance for reasonable denials in the rule and the role of consensus standards related to third party data security will also mitigate these risks by allowing data providers to deny access for third parties that have not established sufficient security protocols. The CFPB acknowledges that some institutions, especially those without developer interfaces, may face higher costs to develop and maintain data security systems, but the CFPB expects that the majority of data providers will see a net decrease in fraud risks and reputational risks relative to the baseline with widespread screen scraping and no restrictions on data collection, retention, and use.

Potential Costs From Increased Account Switching

In general, consumers prefer financial institutions that provide better prices or customer experiences. As discussed in the section on *Effects of increased data sharing on innovation and competition* in part VI.E.4, the CFPB expects that the rule will improve consumers' ability to switch financial institutions. As a result, financial institutions that offer covered products with less competitive prices and customer experiences may lose market share due to the rule. In addition, if greater competition on price leads to lower margins on covered accounts, profits for data providers that lower their margins in response to the rule will be decreased.

Costs to Third Parties

Third parties accessing data under the rule will be required to modify existing procedures, so they are consistent with the proposal's authorization procedures for accessing covered data on behalf of a consumer, such as providing the authorization disclosure; implementing the limitations on data collection, use, and retention; developing mechanisms for revocation of authorization; providing the annual reauthorization of access; and executing record retention requirements. In addition to these upfront and ongoing compliance costs, the rule may impose further costs on third parties through the transition away from screen scraping access, increased data interface onboarding costs with data aggregators and data providers, restrictions on data use and retention. Potential effects of the new financial data processing products or services definition are also discussed.

Implementing Mechanisms for Data Deletion and Record Retention

The rule requires third parties to establish and maintain systems that receive data access revocation requests, track duration-limited authorizations, and delete data when required due to revoked authorizations, durational periods ending, or because retaining the data is no longer reasonably necessary. Third parties will also need to retain records as required by the rule. Many of these requirements overlap with the requirements of other State or international data privacy laws. For example, third parties that operate in the State of California and have gross annual revenues greater than $25 million may already have similar systems if they are subject to the California Consumer Privacy Act (CCPA),[164] which requires that businesses delete consumer personal data upon consumer request. Though many State privacy laws exclude businesses or data covered by the GLBA, third parties that are regulated by State privacy laws may need to modify their systems, incorporate authorization duration limits, and process more revocation requests, but they will likely have lower costs than third parties that must establish such a system from scratch. The CFPB estimated in the SBREFA Panel Report, and described in the proposal, that establishing and maintaining an appropriate data system would cost up to $75,000 based on analysis of the Standardized Regulatory Impact Assessment for the CCPA.[165]

[164] Cal. Civ. Code section 1798.198(a) (2018).

[165] The Standardized Regulatory Impact Assessment for the CCPA estimated that the average technology cost would be $75,000. However, the CFPB estimates that the cost for many third parties would be lower, as the CCPA figure was based on a survey of the top one percent of California businesses by size (those with more than 500 employees), and the CCPA has more requirements than the proposed rule. *See* Off. of the Att'y Gen., Cal. Dep't of Just., *Standardized Regulatory Impact Assessment: California Consumer Privacy Act of 2018 Regulations* (Aug. 2019), *https://dof.ca.gov/wp-content/uploads/sites/352/Forecasting/Economics/Documents/CCPA_Regulations-SRIA-DOF.pdf.*

The CFPB understands that some third parties already retain records related to consumer data access requests. The rule will require third parties to retain records that demonstrate compliance with the rule, including a copy of the authorization disclosure and, if a data aggregator accessed consumer-authorized data, a copy of the certification statement. The CFPB expects that the costs of implementing record retention requirements would be small relative to the costs of implementing deletion requirements.

As described in the SBREFA Panel Report, several small entity representatives provided cost estimates of implementing data retention limits. At the low end, one third party small entity representative that had implemented de-identification and deletion systems stated that it took between 240 and 480 hours of staff time,[166] and another third party small entity representative stated that it developed a system to comply with the CCPA in about 480 hours. At the high end, one third party small entity representative estimated that building a system to comply with retention limits would take 1,000 hours. If a third party chose not to establish a system to implement the retention limits of the rule and instead chose to manually delete data to comply with the retention limits, the CFPB understands that the time cost would be substantially higher: one third party small entity representative explained that, as an organization of fewer than 50 people, complying with a single deletion request could require 480 hours. Based on this feedback, the CFPB estimates that the one-time cost of implementing data retention limits and retaining relevant records will be between $22,800 and $94,900.[167] The three-year record retention requirement of the rule will impose limited additional electronic storage costs annually.

One nondepository entity trade association commented that record retention requirements on third parties will impose far higher annual costs than estimated in the proposed rule, especially for smaller entities. The CFPB requested additional data or other information to further refine its estimates but did not receive cost estimates specific to revocation of authorization systems, implementing data retention limits, or record retention. The CFPB expects that the cost will be lower for third parties that already comply with existing data privacy laws. Third parties that do not retain any consumer-authorized data will be unaffected by data retention limits but will still need to follow record retention policies under the rule. The CFPB has determined that these record retention requirements are necessary to ensure compliance with the other components of the rule.

Annual Reauthorization Process

The rule limits the duration of third party collection of covered data to no more than one year after a consumer's most recent authorization. Third parties will be required to obtain a new authorization from the consumer before the first anniversary of the consumer's most recent authorization to continue to collect the consumer's covered data without disruption. Because this new authorization will have the same legal requirements as the first authorization, most of its implementation costs would be captured by the costs described for the initial authorization and data retention systems. The CFPB expects that reauthorization reminders will typically be delivered electronically—such as a within-app notification or an email—at minimal additional direct cost.

The reauthorization and retention limits may limit the quantity of data available for product improvement or other permissible uses of data. Some third parties may experience indirect costs due to service disruptions if they do not obtain a new authorization from the consumer before the anniversary of the consumer's most recent authorization, as they would not be able to request the consumer's data from data providers until the new authorization was obtained if more than one year has passed since the most recent authorization. If the consumer provides a new authorization after one year, any gaps in the scope of data collected would likely be filled, as the third party could then access two years of retrospective data.

The costs associated with the reauthorization requirement will depend on the third party's business model. Two small entity representatives suggested in the SBREFA process that periodic reauthorization requirements on third parties could lead to reduced customer retention. One small entity representative stated that this would ''frustrate'' consumers, and another stated that only 0.32 percent of its users prompted to reconnect to their bank account ever did so. A nondepository entity trade association commented that annual reauthorization would limit the value of pay-by-bank use cases, especially for recurring payments, and noted that card payments are not subject to reauthorization requirements. However, the CFPB understands that consumers are often required to reenter their card information for reoccurring payments after a card is lost, stolen, or expired, so consumers are not unfamiliar with reauthorizing payment methods.

Studies indicate that onerous reauthorization requirements have impacted open banking usage and attrition in other countries. Reauthorization requirements created friction for third parties in the United Kingdom's open banking regime after the implementation of a 90-day reauthorization requirement. One United Kingdom trade association estimated an attrition rate between 20 percent and 40 percent, while another trade association found an attrition rate between 35 percent and 87 percent.[168] These attrition rates are likely to be different than those expected under the rule both because a 90-day reauthorization requirement is more burdensome than an annual reauthorization requirement and because more consumers may still be actively using a product or service after 90 days than after one year. The CFPB expects that, while some third parties would incur costs from consumer attrition, third parties will be more likely to obtain a new authorization from a consumer when that relationship is more valuable, and the reauthorization process will be relatively easy for consumers who wish to continue the relationship. These factors will generally limit the cost of disruptions due to the reauthorization requirements, particularly for third parties providing the most valuable services. The CFPB does not have data to estimate the costs to third parties of lost customers due to the annual reauthorization requirements.

Providing Authorization Disclosure and Certification Statement

The rule requires third parties to provide the authorization disclosure and certification statement when seeking to access covered data. When a

[166] The small entity representative reported that the task took its team two to four weeks. Based on other small entity representative team sizes, the CFPB assumes that the team included three people.

[167] The CFPB assumes that implementing deletion requirements would require between 240 and 1,000 hours of work by a software developer. The cost estimate was derived from BLS data showing a mean hourly wage for software developers of $66.40. BLS data also show that wages account for 70 percent of total compensation for private industry workers, leading to a $94.86 estimate for total hourly compensation.

[168] *See* Fin. Conduct Auth., *Changes to the SCA–RTS and to the guidance in 'Payment Services and Electronic Money—Our Approach' and the Perimeter Guidance Manual* (Nov. 2021), *https://www.fca.org.uk/publication/policy/ps21-19.pdf.*

third party seeking authorization uses a data aggregator to assist with accessing covered data on behalf of a consumer, the rule requires the data aggregator to make its own certification statement to the consumer, though both the aggregator and third party certifications will be permitted to be made in the same disclosure. The CFPB expects that some data aggregators will provide the required authorization disclosure and certification statement on behalf of third parties seeking authorization. However, some third parties seeking authorization, including those that do not partner with data aggregators, may instead provide the authorization disclosure and certification statement through their own systems.

For data aggregators and other third parties that choose to provide the authorization disclosure and certification statement through their own systems, and have not previously provided any disclosure statements to consumers, the CFPB estimates that building such a system would require approximately 1,000 hours of work by software developers or similar staff. This estimate is based on cost estimates in other consumer financial markets related to requirements for tailored disclosures provided at service initiation.[169] The CFPB estimates that this will result in a one-time cost for a third party of $94,900.[170] However, if third parties already provide disclosures at authorization under the baseline, the costs of modifying these disclosures to satisfy the proposal's requirements may be reduced. One data aggregator stakeholder stated that modifying the content of its existing disclosures would involve 30 to 40 hours of employee time, representing an equivalent cost for a third party of between $2,900 and $3,800.[171]

Data aggregators may pass through these costs to third parties that contract with them. One data aggregator stated in its response to the Aggregator Collection that disclosures for third parties that contract with data aggregators would be largely uniform and easily adapted, and the CFPB anticipates that this will be the case under the rule. The CFPB does not have data to estimate these disclosure costs. However, because data aggregators' disclosure costs would be spread across many third parties, the CFPB expects the burden of these requirements on any single third party that contracts with data aggregators to be small.

Policies and Procedures

To implement the requirements of the rule, third parties will need to develop and maintain policies and procedures in several distinct areas to ensure compliance with the rule. These include: applying existing information security programs to their systems for the collection, use, and retention of covered data; ensuring the accuracy of the information that they collect; governing the limits on collection, use, and retention of consumer-authorized information; and record retention requirements. The CFPB understands that most authorized third parties and data aggregators are currently subject to the GLBA Safeguards Framework and so they already have policies and procedures regarding information security programs and will have lower costs for developing and maintaining similar requirements of the rule. However, a small portion of third parties may need to develop new GLBA-compliant systems and would face greater costs. In other consumer financial markets, the CFPB has estimated that nondepository institutions would face a one-time cost of $5,300 to develop new policies and procedures and a one-time cost of $4,800 for a legal/compliance review.[172] Assuming comparable costs for the requirements of the rule yields a total cost of roughly $10,100 for developing and implementing policies and procedures. Maintaining these policies and procedures once they are implemented is likely to involve limited ongoing costs for third parties.[173]

Transition Away From Screen Scraping

The CFPB expects that third parties may face costs from the transition away from screen scraping. At baseline, screen scraping is a frequently used method of accessing consumer data: in 2022, roughly half of data access attempts by third parties in the Aggregator Collection were made through screen scraping. However, the share of access attempts made through screen scraping declined by approximately one-third between 2019 and 2022. The CFPB expects that screen scraping will continue to decline for non-covered financial products as data providers and third parties generally transition to data access under the terms of the rule. The CFPB expects that third parties will have strong incentives to avoid using screen scraping to access covered data from data providers that have compliant interfaces for third parties. In the SBREFA process, multiple small entity representatives expressed that the transition away from screen scraping would limit data accessibility. Relative to the baseline, the CFPB does not expect the transition away from screen scraping to negatively impact data availability for most data fields. The CFPB expects that data providers that provide third party access in compliance with rule requirements will block screen scraping for covered accounts, so third parties may not be able to access non-covered data fields from covered accounts. The CFPB requested comment on any specific data fields that may be less available due to the transition away from screen scraping, and the specific impacts of those changes, but did not receive relevant comments. The CFPB expects that the rule will not directly impact how third parties access non-covered data.

At baseline, some third parties use screen scraping as a back-up access method when other data access systems are inoperable. The need for a back-up access method may be reduced under the rule because the rule imposes performance requirements for third party access. However, nondepository entity and researcher commenters expressed concern that these requirements could still reduce the quality of information provided and drive a market-wide race to the bottom, contending that data providers would have little incentive to drive performance higher. These commenters asserted that the proposal's performance requirements might permit lower performance than in their extant data access agreements with data providers. However, the rule would impose a general reasonableness requirement in addition to minimum performance requirements. Because data providers cannot only meet the minimum performance requirements, and instead must additionally demonstrate reasonable performance, indicia of which include performance comparable to other data providers, the CFPB expects there would be upward pressure on performance levels over time. Additionally, a third party small entity

[169] 82 FR 54472, 54823 (Nov. 17, 2017).

[170] This estimate was derived from BLS data showing a mean hourly wage for software developers of $66.40. BLS data also show that wages account for 70 percent of total compensation for private industry workers, leading to a $94.86 estimate for total hourly compensation, which was multiplied by the expected total number of hours of work required.

[171] This estimate was derived from BLS data showing a mean hourly wage for software developers of $66.40. BLS data also show that wages account for 70 percent of total compensation for private industry workers, leading to a $94.86 estimate for total hourly compensation, which was multiplied by the expected total number of hours of work required.

[172] Inflation-adjusted estimates from 88 FR 35150 (May 31, 2023).

[173] SBREFA Panel Report at 12.

representative stated in the SBREFA process that its customers lose access to services when data providers' interfaces are unavailable. The CFPB expects that consensus standards regarding performance, which also can serve as indicia of commercially reasonable performance, will also help improve the reliability of access over time. Furthermore, the value of screen scraping as an alternative option may be limited by its relatively low success rates: in the Aggregator Collection, 40 percent of initial account connection attempts made through screen scraping were successful in 2022, compared to 51 percent of initial account connection attempts made through interfaces for third parties. The CFPB does not have data to quantify any net change in data access reliability stemming from the combination of reduced screen scraping and increased availability of interfaces for third parties. However, with respect to nondepository entity comments that the proposed 3,500 millisecond response time was too slow and vague, the final rule instead requires a proper response within a commercially reasonable time. The CFPB did not change other performance standards outlined in the proposed rule after considering nondepository entity comments in conjunction with those from data provider commenters, detailed in the section on *Costs to data providers* in part VI.E.1.

Cost of Onboarding Arrangements With Authorized Third Parties and Data Providers

Third parties that previously accessed covered data through screen scraping without negotiating the terms of their access with data providers will now need to arrange for onboarding to the newly required developer interfaces. The CFPB expects that many of these arrangements will be established between data aggregators and data providers, though some would occur between authorized third parties that do not contract with data aggregators and data providers. As described in the section on *Costs to data providers* in part VI.E.1, the CFPB has updated its estimate of the average cost of this process between data aggregators and data providers to $10,800.

Third parties may be denied data access based on risk management concerns or other permissible grounds, such as, for example, if the requested information is not covered data or falls into an exception. The CFPB expects that third parties may incur costs from responding to data providers' risk management information requests. Two research institutes stated that third parties would incur costs from responding to data providers' due diligence requests. Because prudential regulators require banks to follow certain risk management practices in contracting with third parties, the CFPB understands that authorized third parties that contract with either a data aggregator or a data provider at baseline provide due diligence information and will not face increased costs under the proposed rule. Third parties that comply with the GLBA Safeguards Framework are also unlikely to face increased costs. Though third parties that access consumer data solely through screen scraping at baseline will need to begin providing this information to the entities with which they contract, the CFPB expects that future consensus standards may limit the costs for third parties. The CFPB expects that third parties that comply with data providers' due diligence requirements will not be denied access to data providers' interfaces and so very few third parties would incur costs related to the loss of access entirely.

Use of TANs

Under the rule, data providers will be permitted to make available a TAN instead of, or in addition to, a non-tokenized account number. Several nondepository entity and data aggregator commenters provided examples of TANs enabling consumer payment revocation and stated that the use of TANs could increase costs for merchants and processers, which could be at least in part passed through to consumers. One nondepository entity estimated that the payments industry could face cumulative annual losses in the hundreds of millions of dollars if TANs were permitted under the rule. However, other data provider commenters described how TANs can mitigate fraud risk, including the ability for data providers to identify the point of compromise in case of a breach, the ability to revoke compromised payment credentials without disrupting other payment account activity, and limited risk of bank fraud because TANs are restricted to a particular third party.

Restrictions on Use and Retention

The rule limits certain existing uses of both identifiable and de-identified consumer data by third parties, including for the sale of covered data, cross-selling of other products or services, and targeted advertising, by specifying that these activities are not part of, or reasonably necessary to provide, any other product or service. Therefore, consumers must separately authorize third parties to collect, use, and retain covered data for these activities. This limitation may eliminate or lessen the profitability of certain business models. Third parties that generate revenue from sharing covered data with fourth parties—such as firms with no authorization to access data from the consumer—may lose much of that source of revenue. The CFPB does not have data on the number of third parties that share covered data, or the amount of revenue generated by sharing covered data. However, the CFPB notes that a survey of German app developers after the European General Data Protection Regulation (GDPR) was implemented found that while the share of app developers selling data was small, nearly all the developers that sold data experienced a decline in revenue post-GDPR.[174] This finding may imply reductions in revenue for third parties that sell covered data under the rule. Several nondepository entity trade association commenters stated that small and mid-size businesses rely on targeted advertising and will lose revenue due to the proposed rule. Third parties that use covered data for the marketing of other products and services may also lose a source of revenue. Commenters did not provide quantitative data on the expected scope of potential revenue losses. The CFPB acknowledges that third parties may incur costs from altering business practices, or may lose revenue, as a result of these limitations. The CFPB does not have the necessary information to quantify this impact, but expects the overall impact on third parties will be small, as most third parties' revenue streams are not dependent on using covered data for these activities. Furthermore, third parties can still seek consumer authorization for covered data to be used for these activities as standalone products or services, or first party data could be used.

In addition to these specific requirements, third parties will be required to collect, use, and retain covered data only as reasonably necessary to provide the consumer's requested product or service under the rule. The limits on retention of consumer data when consumers submit a revocation request or do not provide a new authorization within 12 months may reduce the data available for product improvement. Several third party small entity representatives highlighted through the SBREFA process how consumer data can enable

[174] Rebecca Janßen *et al., GDPR and the Lost Generation of Innovative Apps,* Nat'l Bureau of Econ. Rsch. Working Paper No. 30028 (May 2022), *https://www.nber.org/papers/w30028.*

the development of new products and services and can inform research and public policy, even when only de-identified data are used for these secondary purposes. A nondepository entity trade association stated that there would be substantial costs to rework algorithms and product operations, which could not be used in their current form without de-identified consumer data. Firms in the Aggregator Collection also reported using consumer data for functions other than transmitting data to data recipients, including the improvement of existing products, the development of new products, and risk management assessments. One nondepository entity commented that using properly de-identified or aggregated data for modeling or developing new products leads to no harm to consumers. Several commenters, including nondepository entities, nondepository entity trade associations, research institutes, data aggregators, and data providers commented that secondary use restrictions would reduce competition and innovation under the proposed rule. One research institute commented that current models and algorithms would become stagnant and could not be further improved without the use of covered data. Multiple research institutes and a consumer advocate commented that disallowing the use of de-identified data for product development would result in more expensive and less innovative products. Additionally, multiple data aggregators commented that the inability to use de-identified data would limit the ability to detect fraud.

Though the rule may limit third parties' use of consumers' covered data for some extant purposes, the CFPB does not have data that would allow it to estimate the size of any costs due to the limitations on use, but notes that the rule permits uses that have separate product authorizations, and permits uses that are reasonably necessary to protect against or prevent fraud. The rule also allows the use of covered data for servicing or processing the product or service authorized by the consumer, or uses that are reasonably necessary for the improvement of the consumer's requested product or service, without a separate product authorization.

Costs may be mitigated because third parties can continue to use data that they generate in providing their products and services. One bank trade association commented that there would be costs to tracking which data are subject to secondary use restrictions and which data are not. The CFPB acknowledges there could be such costs, but expects that these tracking costs would be small given that all consumer-authorized covered data would be subject to secondary use restrictions, and all first party data would not be subject to secondary use restrictions under the final rule. The cost estimates in the section on *Implementing mechanisms for data deletion and record retention* in part VI.E.1 would include such costs.

New Financial Data Processing Products or Services Definition

The CFPB expects that the activities covered by the new financial data processing products or services definition in 12 CFR part 1001 are already within the scope of the CFPA's definition of financial product or service. As a result, the CFPB does not expect the new definition to impose costs on covered persons. However, to the extent that there are firms offering products or services that are within the new definition but outside of the existing financial product or service definition, the new definition could impose some potential costs. Such firms would be subject to the CFPA and its prohibition on unfair, deceptive, or abusive acts or practices, including potential enforcement by the CFPB. Under the baseline, the CFPB expects that such firms would already be subject to a prohibition on unfair or deceptive acts or practices under section 5 the Federal Trade Commission Act.[175] Relative to the baseline, the new definition would add potential enforcement against unfair and deceptive acts or practices by the CFPB and require firms to be compliant with the prohibition on abusive acts or practices. Given the overlap with existing prohibitions, the CFPB expects the potential costs would be limited, and would include developing and maintaining policies and procedures to ensure compliance with the prohibition on abusive practices for firms that are not compliant with the CFPA at baseline. The CFPB does not have data to quantify these potential costs. The CFPB requested comment on whether any firms offer products or services that would be covered by the new definition but fall outside the definition of financial product or service, and if so, what potential costs those firms may face, but the CFPB did not receive any comments with this information.

2. Costs to Consumers

The rule may increase costs for data providers and third parties, potentially leading to higher prices for consumers or reduced access to certain products or services. The rule is likely to increase the availability of consumer-authorized data overall. While this may benefit many consumers, it could lead to higher credit costs for some consumers with data indicative of higher risk if the use of this data becomes standard for underwriting purposes. The rule would also require consumers to reauthorize access to their financial data annually, which involves relatively minor costs. In addition, consumers may incur small costs because of unintentional lapses in authorization. Finally, restrictions on secondary use of data may reduce revenues for some third parties, leading to changes in product offerings or pricing, and limiting not-for-profit research analyses that may benefit consumers.

Changes in Industry Structure

Data providers will face additional compliance costs as a result of the rule. Some of these costs may be passed on to consumers in the form of higher prices for credit, lower deposit rates, or higher account fees. The CFPB does not have the data necessary to determine the extent to which additional compliance costs may be passed through to consumers, which depends on a number of factors including market competition.

The rule does not require depository data providers that have assets below size standards specified by the Small Business Administration, which are currently set at $850 million, to comply with subparts B and C. Several data provider commenters and trade associations representing them, along with a nondepository entity trade association and a consumer advocate commented that the rule may lead to consolidation among depository institutions, which may lead to higher prices and less choice for consumers. One credit union commented that costs relative to net income would force about half of credit unions to cease operations. The CFPB expects that the noncoverage of depository entities with assets below $850 million addresses the concern that small depository institutions would be unable to operate profitably and in compliance with the rule. For example, the median credit union in 2024 had $57 million in assets and would thus not be covered by the data provider provisions of the rule, and overall, 89 percent of credit unions are below the coverage threshold. While it is possible that the rule could influence decisions about consolidation for some institutions above the coverage threshold, the CFPB expects any effect to be small given the relatively large size of covered institutions. The CFPB did

[175] 15 U.S.C. 45.

not receive any other data in comments that allows for a more precise estimation of whether institutions would choose to consolidate as a result of the rule.

Many of the largest depository data providers either already offer third party data access that meets many of the requirements of the rule or are developing such functionality, and thus their additional costs of complying with the rule will be more limited. While the CFPB does not have information to precisely estimate the number of consumers with accounts at such data providers, the available data suggest that the number is large. The Provider Collection indicates that, as of 2022, at least 51 million consumers had connected accounts to third parties through credential-free interfaces. This count of 51 million consumers likely understates the true number of consumers who have such access for two reasons. First, it does not include the consumers at institutions in the Provider Collection who have access to, but have not yet connected to, this type of access functionality. Second, it does not include consumers at other institutions—not included in the Provider Collection—that have established interfaces for third party access that meet many of the requirements of the proposal. It could, however, count consumers more than once if they have an account at more than one institution included in the Provider Collection. Overall, the CFPB expects that substantially more than 51 million consumers already have accounts at institutions that will face more limited costs of complying with the provisions. Consumers who only have accounts at these institutions are likely to incur minimal costs passed on by data providers due to the rule because the institutions where they have accounts will face smaller costs. One credit union trade association commenter stated that the rule will accelerate a transition to digital services and reduce the number of branches, which some populations, such as older consumers, rely on. The CFPB does not have data to precisely analyze this claim but finds it unlikely that the rule will result in many branch closures. In 2023, only 9 percent of Americans said that they most often managed their bank account by visiting a branch.[176] Thus, the industry has already experienced a dramatic shift toward online services, and the margin for consumers to transition toward digital banking and cease visiting bank branches, leading to branch closures that affect older consumers, is small. Since the CFPB expects that all or nearly all covered data providers already have a consumer interface, it is likely that consumers interested in online services already conduct much of their banking online. Despite few consumers preferring to manage an account by visiting a branch, the number of bank branches nationwide has declined only 16 percent from its peak in 2012 and actually grew slightly between 2022 and 2023.[177] Further, branches serve small businesses in addition to consumers, so are not supported by consumers alone.[178] A credit union trade association commented that financial institutions could be discouraged from adopting a consumer interface if they do not already have one because of the costs associated with the proposed rule. As discussed in part IV.A.3., the CFPB has determined that all or nearly all depositories that do not currently have a consumer interface are small depository institutions and therefore will not be required to comply with the final rule's requirements for data providers. In addition, coverage in the final rule is no longer determined by the presence of a consumer interface, and thus there is no disincentive to adopt a consumer interface created by the final rule.

Effects of Greater Information Sharing

The rule will enhance third party access to consumers' financial data, which may be used in third parties' credit underwriting decisions. The ability for firms to screen customers using information generally increases total value in the market but may transfer value from some consumers to firms. Some consumers will likely benefit, but other consumers may be worse off. While the CFPB understands that, currently, lenders do not commonly use cash-flow data in underwriting to identify consumers who are a higher risk than the information on traditional credit reports would predict, it is possible that the market will evolve to use cash-flow data in this way as it becomes more accessible. As a benefit, increased information about consumers could lead lenders to offer some consumers cheaper credit, if, for example, the information accessed from data providers is viewed by third party lenders as indicating that the consumer is a lower credit risk than a traditional credit report would reveal. More information, however, could result in some consumers being charged higher prices or not being offered credit if the cash-flow information reveals what a lender views as a signal that a consumer is a higher credit risk than the lender would have assessed without the consumer-authorized information.[179] Even though it will be the consumer's choice whether to authorize access to their covered data, it is possible that a lender may view a consumer's decision not to authorize the sharing of their data as a negative signal of credit risk and raise the price of credit or refuse to offer a loan.[180]

[176] Press Release, Am. Bankers Ass'n, *National Survey: Bank Customers Use Mobile Apps More Than Any Other Channel to Manage Their Accounts* (Oct. 26, 2023), *https://www.aba.com/about-us/press-room/press-releases/consumer-survey-banking-methods-2023.*

[177] *See* Fed. Deposit Ins. Corp., *BankFind Suite: Find Annual Historical Bank Data, https://banks.data.fdic.gov/explore/historical/?displayFields=STNAME%2CTOTAL%2CBRANCHES%2CNew_Char&selectedEndDate=2023&selectedReport=CBS&selectedStartDate=1934&selectedStates=0&sortField=YEAR&sortOrder=desc* (last visited Oct. 16, 2024).

[178] For example, Community Reinvestment Act data suggests that branches are important in small business lending. Elliot Anenberg *et al., The Branch Puzzle: Why Are there Still Bank Branches?,* FEDS Notes (Aug. 20, 2018), *https://www.federalreserve.gov/econres/notes/feds-notes/why-are-there-still-bank-branches-20180820.html.*

[179] For example, Jansen *et al.* (2022) study an opposite shock—the removal of information, instead of the addition—and find that removing bankruptcy information from credit reports redistributes consumer surplus from consumers who have never experienced bankruptcy to consumers with a previous bankruptcy. Mark Jansen *et al., Data and Welfare in Credit Markets* (Jan. 28, 2022), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4015958.* Nelson (2023) finds that limiting the information that credit card issuers were able to use decreased prices for some high-risk borrowers and increased prices for some low-risk borrowers, but on aggregate raised consumer surplus. These are two examples of how the removal of information that can be used in crediting decisions may shift surplus towards consumers who appear to have lower repayment risk after the information removal. Scott T. Nelson, *Private Information and Price Regulation in the US Credit Card Market,* Univ. of Chic. Booth Sch. of Bus. (Aug. 4, 2023), *https://faculty.chicagobooth.edu/-/media/faculty/scott-nelson/research/private-information-and-price-regulation-in-the-us.pdf.* The CFPB expects that the following effects would occur under the rule: third parties will have access to more information which will increase total surplus and will likely increase surplus for those who appear to have lower repayment risk with the additional information relative to those who appear to have higher repayment risk with the additional information.

[180] He, Huang and Zhou (2023) develop a model in which consumers who choose not to share data are worse off under an open banking system due to lenders taking opting out of data sharing as a sign that a consumer is a high credit risk. Zhiguo He *et al., Open banking: Credit market competition when borrowers own the data,* 147 J. Fin. Econ. 449 (2023), *https://doi.org/10.1016/j.jfineco.2022.12.003.* Similarly, Babina *et al.* (2023) develop a model showing that when open banking policies enable the addition of banking data to screening or pricing decisions, higher-cost consumers can be worse off even if they opt out of sharing information because opting out sends a negative signal to lenders. Tania Babina *et al., Customer Data Access and Fintech Entry: Early*

Continued

Overall, the increased availability of consumer-authorized data will allow lenders to underwrite and price more efficiently. This will likely lead to greater credit access overall, with relatively greater access or lower prices for lower risk borrowers who share data, but relatively less credit access or higher prices for borrowers who are higher risk or choose not to share data. The CFPB does not have the data necessary to quantify these effects.

Time Cost of Reauthorizing Third Party Access Annually

Under the rule, a third party will need to limit the duration of collection of covered data to a maximum period of one year after the consumer's most recent authorization. To collect covered data beyond the one-year period, the third party will need to obtain a new authorization from the consumer no later than the anniversary of the consumer's most recent authorization. The reauthorization process should not be more burdensome than the initial authorization certification, but consumers will incur a small time cost to reauthorize the collection of their data. As discussed in the section on *Costs to third parties* in part VI.E.1 above, existing evidence suggests that many consumers may choose not to reauthorize a third party's access to their covered data. The CFPB interprets this evidence as suggesting that many consumers do not value the continued use of the third party product or service enough to continue authorizing the access of their covered data by the third party or that, given the quickly evolving market of third party products and services, consumers decide to access products or services through a different third party. One nondepository entity trade association commenter stated that the annual reauthorization limits the utility of pay-by-bank use cases for consumers. Instead, the CFPB interprets a consumer's decision to not provide a new authorization as evidence that they do not value the service more than the relatively small time cost incurred to reauthorize access. Further, consumers who currently pay by credit or debit card may face a similar reauthorization cost when a card expires or is replaced due to fraud, so these types of costs are not unique to the pay-by-bank model.

Potential Changes in Pricing Models Due To Use and Retention Limitations

Changes that third parties make to their business models as a result of the rule may be passed on to consumers through higher prices for services provided by third parties. For example, the CFPB understands that some third parties obtain revenue by selling data that consumers provide to them with other third parties or, more commonly, by selling marketing information derived from such data. This may allow third parties to provide services to consumers free of charge. As discussed in the *Costs to third parties* part, there is evidence that firms in Europe that were sharing customers' data experienced a decline in revenue after data protection laws were enacted, suggesting that they may need to seek alternative sources of revenue.[181]

The CFPB expects that the rule will reduce the amount of targeted advertising using covered data. Several nondepository entity trade association commenters stated that consumers benefit from targeted advertising and prefer ad-supported services to fee-based services, and so the prohibition of the use of covered data for targeted advertising under the rule will harm consumers. But this overlooks that the rule does not prohibit targeted advertising. Providers can still use other forms of data for this purpose. And they can use covered data for this purpose, so long as they do so in the form of a standalone product or service, consistent with the terms of the rule. To the extent consumers benefit from targeted advertising, the rule provides means to realize such benefits.

To the extent that the rule leads to third parties changing their business models, it is possible that some third parties will charge consumers directly for services that used to be free. The CFPB does not have data to estimate the share of consumers impacted or the magnitude of any corresponding price increases.

Reduction in Not-for-Profit Research Analyses

Multiple research institutes and researchers commented that restrictions on secondary uses of consumer data would eliminate the use of open banking data in not-for-profit research analyses, which may harm consumers. Research institutes and researchers considered the possibility of an ''opt-in'' option for consumers to choose to share their covered data for the purpose of not-for-profit research, but expressed that research limited to this population would not generally be representative and therefore would be of limited value. These commenters requested an exception that would permit non-commercial secondary uses for de-identified data. The CFPB acknowledges that the rule will likely reduce the availability of consumer-permissioned data for nonprofit research purposes, and that this could have some indirect costs for consumers. The CFPB does not have data or evidence that would allow it to quantify these potential indirect costs.

3. Benefits to Covered Persons

Benefits to Data Providers

At baseline, many third parties use screen scraping to access consumer data. The CFPB expects that screen scraping will decline under the rule. This is likely to benefit data providers because screen scraping involves security risks and heavy web traffic. By standardizing the terms of access and reducing the scope of negotiation, the rule is also likely to decrease the per-arrangement cost of enabling access to the developer interface. Finally, data providers that provide competitive service offerings, including potentially community banks and credit unions, could benefit from increased account switching by consumers.

Reduced Screen Scraping

The CFPB understands that credential-based screen scraping creates data security, fraud, and liability risks for data providers, particularly because the credentials shared to facilitate data access also typically can be used to move funds. Furthermore, screen scraping can be used to gather data without data providers establishing a relationship with third parties or assessing data security risks. The CFPB cannot disaggregate fraud costs resulting from credential-based screen scraping from general costs of fraud, including measures to prevent fraud or insure against fraud-related damages. However, depository data providers have reported extensive costs related to preventing fraud and unauthorized transactions generally, and reimbursing consumers when such fraud occurs. During the SBREFA process, one small depository institution reported debit card fraud losses of 28 percent of their total revenue. Small entity representatives also noted that data providers typically pay premiums for insurance against catastrophic fraud losses, with plans typically covering losses in excess of $25,000, subject to certain restrictions. Through conversations with industry participants, the CFPB understands that account takeover fraud is the most likely

Evidence from Open Banking, Stanford Univ. Graduate Sch. of Bus. Rsch. Paper (Sept. 7, 2023), *https://dx.doi.org/10.2139/ssrn.4071214.*

[181] Rebecca Janßen *et al., GDPR and the Lost Generation of Innovative Apps,* Nat'l Bureau of Econ. Rsch. Working Paper No. 30028 (May 2022), *https://www.nber.org/papers/w30028.*

fraud risk that could be exacerbated by credential-based data access methods such as screen scraping.[182] In this form of fraud, the bad actor gains access to the consumer's account and transfers funds, makes purchases, or opens accounts without authorization. The CFPB expects that the reduction in credential-based access due to the rule would lower the risk of account takeover fraud, providing a benefit to data providers through reductions in direct liability and decreased fraud insurance premiums, although it is unclear how much account takeover fraud is attributed to credential-based screen scraping. The CFPB does not have sufficient data to estimate how much the rule will lower account takeover fraud risk. However, even a small reduction would have large benefits for data providers.[183]

Along with the requirements to access only the data fields necessary to provide the specific product or service, the shift away from credential-based screen scraping will also tend to reduce overall traffic loads on the consumer-facing system and may reduce traffic loads overall. The CFPB does not have systematic data with which to estimate the net change in web traffic and the resulting decrease in necessary expenditures on digital infrastructure. The CFPB understands that the incremental cost of additional web traffic is small, and that reasonably anticipated reductions in traffic are likely to provide minimal benefits to data providers. In a comment, a data aggregator concurred with the CFPB that transitioning to developer interfaces should generally reduce the number of data requests and traffic relative to screen scraping, thus reducing costs for data providers.

Reduced Onboarding Costs and More Standardized Terms of Access

The CFPB understands that onboarding third parties is often resource intensive for data providers. In the Aggregator Collection responses, aggregators reported that negotiating an access agreement with a data provider could take between 50 and 4,950 staff hours of business relationship managers, software developers, lawyers, compliance professionals, and senior management, depending on the complexity of the negotiation. The median estimated time was 385 staff hours per agreement. Based on these responses, under the baseline the CFPB estimated a total cost of between $4,260 and $422,000, which varies depending on the complexity of the negotiation, with a median cost of around $32,825. Although these estimates were provided by data aggregators, the CFPB expects that these costs are also representative for data providers at baseline.

For contract negotiations that would have occurred under the baseline, the CFPB expects that onboarding costs will decrease under the rule because many features of access agreements would be regulated by the rule and not subject to commercial negotiation, including requirements for interface reliability, interface queries, and the scope of data accessible via the interface. One market participant stated that in cases where data providers agree to use existing industry-defined standards there is essentially no need for negotiation and data providers can immediately begin updating their developer interfaces in line with the standard specifications. The CFPB expects that consensus standards will reduce onboarding costs in this way. The CFPB expects that under the rule nearly all data providers will use standardized onboarding arrangements that meet rule terms and the costs of establishing data access will be limited to ensuring third party risk management standards are satisfied and reviewing the arrangements. A non-small entity representative third party commenter stated that concluding this type of onboarding arrangement represents approximately 20 percent of total negotiation time under the baseline.[184] Based on this, the CFPB estimated in the proposal that negotiations under the rule would require roughly 80 staff hours on average. The required time to onboard third parties to developer interfaces may decline substantially over time as consensus standards are developed for certifying compliance with third party risk management standards. While some data providers and third parties may choose to enter into customized access arrangements that respect the terms of the rule, they will generally only do so when the perceived benefits exceed the costs described here. As discussed in the section on *Costs to data providers* in part VI.E.1 above, commenters stated that the CFPB had underestimated the costs of establishing data access arrangements. In response to the information in these comments, the CFPB is updating its estimate to 120 staff hours on average to onboard a third party to a developer interface. Therefore, the CFPB estimates that the rule is likely to reduce the cost of onboarding arrangements by $24,000 on average.[185] Under the baseline, data providers would have continued to negotiate commercial access agreements with third parties and these benefits would not have applied to those agreements. As discussed in the section on *Costs to data providers* in part VI.E.1 above, the CFPB expects that the rule will cause data providers to onboard additional third parties relative to baseline. The cost of additional onboarding arrangements is analyzed in that part.

Restrictions on Third Parties' Use and Retention of Data

The rule will also have some indirect effects on the value of first party data held by data providers. Under the baseline, third and first party data are both used for marketing and new product development.[186] The rule will limit third party collection of consumer-authorized data to what is reasonably necessary to provide the consumer's requested product or service. Third party use and retention of covered data will also be subject to that limitation, which will limit the availability of covered data for marketing and for the development of new products outside the scope of the original authorization, to the extent that third parties cannot obtain or use data for these purposes through other means. While the CFPB does not have data to quantify the benefits to data providers, all else equal, this is likely to increase the value of first party covered data held by data providers, which generally does not have these restrictions.

Required Data Security Representations by Third Parties

The rule will require authorized third parties to represent that they have reasonable security practices, in particular by representing that they implement the GLBA Safeguards

[182] For example, consumers' account credentials may not be securely stored by third parties or fraudsters may induce consumers to share their credentials by impersonating a legitimate third party.

[183] For example, a 3 percent reduction in ATO fraud risks would generate an expected annual benefit of $330 million for data providers, based on industry research finding ATO fraud risks of approximately $11 billion annually. *See* PaymentsJournal, *Javelin's Identity Fraud Study Highlights the Changing Nature of Fraud* (May 24, 2023), *https://www.paymentsjournal.com/javelins-identity-fraud-study-highlights-the-changing-nature-of-fraud/*.

[184] *See https://www.regulations.gov/comment/CFPB-2023-0011-0042.*

[185] This estimate is based on estimated total hourly compensation of $89.99 multiplied by the difference between the median expected hours required at baseline, 385 hours, and the expected hours required under the rule, 120 hours.

[186] For example, a firm might target advertising towards consumers who qualify for a particular credit product or who are likely to be particularly profitable customers or develop new products based on insights from a dataset of consumer transaction histories.

Framework. These practices are likely to benefit data providers by increasing certainty regarding their potential third party risks, and generally will require minimum data security standards among third parties. The CFPB expects this to generally reduce the likelihood of data security breaches or other incidents, but the CFPB does not have data to quantify the size of this benefit.

Potential Benefits From Increased Account Switching

In general, consumers prefer financial institutions that provide better prices or customer experiences. As discussed in the section on *Effects of increased data sharing on innovation and competition* in part VI.E.4, the CFPB expects that the rule will improve consumers' ability to switch financial institutions. As a result, financial institutions that offer covered products with competitive prices and customer experiences may increase their market share due to the rule. This could particularly benefit community banks or credit unions that operate at a smaller scale and thus would have had comparatively smaller informational advantages relative to larger data providers under the baseline, as discussed in the section on *Reduced informational advantages* in part VI.E.1.

Benefits to Third Parties

Right to Access Data on Behalf of Consumers

Under the rule, covered data providers are required to provide data to authorized third parties. Third parties will be able to access data from data providers that had not made data available under the baseline. Further, the rule's data reliability requirements will ensure that data access is consistently available across all data providers. The CFPB understands that, at baseline, connectivity failure rates between third parties and data providers are high, in part because many data providers do not facilitate data sharing with many third parties, so these requirements may lead to large increases in the proportion of consumers who are successfully able to share their data under the rule. Firms in the Aggregator Collection reported initial connectivity failure rates ranging from 28 percent up to 60 percent. The CFPB understands that some of these initial connectivity failure rates occur because the data provider denies the third party's request for data access, rather than because of low interface reliability, and so third parties will be able to reach more consumers under the rule's requirement that authorized third parties have access to covered data.

Prohibition on Data Access Fees

The rule prohibits data providers from imposing fees on third parties for costs associated with covered data provision. Firms in the Aggregator Collection generally did not report paying fees to data providers for access to covered data per customer or per interface call, though a small number of annual or one-time payments were reported. Though these costs are currently limited, the provisions will ensure that the absence of fees under the baseline continues in the future, providing more certainty to third parties about their costs of accessing covered data. The CFPB does not have data to estimate the benefit to third parties of this prohibition on fees because of the uncertainty in how fees might have evolved under the baseline.

Reduced Negotiation Costs

As described in the *Benefits to data providers* part, based on data and comments provided by third parties, the CFPB estimates that negotiation costs will fall by 70 percent under the rule, or an average savings of $24,000 per negotiated connection agreement. This will bring about substantial savings for third parties, particularly data aggregators. The reduction in negotiation costs may also allow additional third parties to enter into access agreements with data providers directly, potentially saving on expenses paid to aggregators under the baseline.

More Frequent Access to Data

The rule prohibits covered data providers from unreasonably limiting the frequency of third party requests for covered data and from delaying responses to those requests. Based on responses to the Provider Collection and conversations with industry participants, the CFPB is aware that some large covered data providers that offer developer interfaces currently impose access caps. Third parties would benefit from the ability to access consumer data as often as is reasonably necessary to provide the requested service. One firm in the Aggregator Collection reported spending ''significant resources'' to manage its traffic in order to avoid access cap limits. Additionally, an aggregator in the Aggregator Collection reported spending resources to persuade large financial institutions to raise or eliminate access caps.

In addition to reducing costs associated with managing and limiting traffic, third party services may become more valuable to consumers when third parties can access consumer data more often.[187] As a result, the CFPB expects that third party revenue will increase from the removal of unreasonable access caps under the rule. The CFPB does not have data to quantify these benefits for third parties.

Improved Accuracy of Data

The rule will require that data providers have policies and procedures reasonably designed to ensure the accuracy of data transmitted through their interfaces. In addition, the rule provides a consensus standards framework for several factors that third party small entity representatives reported as reducing accuracy, including data access reliability, inconsistencies in data field availability and formatting, and inaccuracies in screen scraped data.

The CFPB understands from the Aggregator Collection that access caps can prevent consumers from obtaining their most up-to-date data when a third party has surpassed its data limit. The removal of unreasonable access caps under the rule will reduce such issues. The rule will also require that a data provider make available the most recently updated covered data that it has in its control or possession at the time of a request, further ensuring that third parties will be more likely to have up-to-date data than under the baseline.

The transition away from screen scraping will lead to more consistency in the data fields that are available across all data providers and in data field formatting, and may reduce costs associated with ensuring that consumer data are accurate, particularly once consensus standards are established. One data aggregator reported more frequent inaccuracies for data accessed through screen scraping, as well as the need to allocate more resources to meet accuracy standards for screen scraped data. The CFPB understands that once compliant developer interfaces are established, third parties will need to transition away from screen scraping, which will reduce the costs associated with maintaining accuracy in screen scraped data.

Costs associated with maintaining accuracy in consumer data will not be eliminated altogether, as the rule will require that third parties ensure that covered data are accurately received from data providers, and accurately provided to other third parties, if applicable. The CFPB expects that the increased accuracy of data received

[187] For example, an app that warns consumers when the funds in their checking account fall below a predetermined threshold is generally more valuable to consumers when it can access data about their checking accounts more often.

from data providers will simplify third party procedures for meeting data accuracy standards. Third party products and services are likely to become more valuable to consumers when data received from data providers is more accurate and reliable. The CFPB expects that this will increase third party revenue.

Improved Service Quality Due To Improved Data Access

As discussed in the *Benefits to third parties: Prohibition on data access fees* part, the rule will prevent data providers from charging fees to consumers or third parties for access to covered data, provide third party access to data from all covered data providers through compliant developer interfaces that meet reliability standards, eliminate unreasonable access caps, and improve the accuracy of received data. Furthermore, the rule clarifies that third parties are required to obtain authorization from consumers to access covered data, while data providers are permitted to confirm the scope of the third party's authorization. This will allow third parties to request the information that is reasonably necessary to deliver their product or service. These effects reduce third party costs of providing services to consumers and improve the quality of the services that they can provide. The CFPB expects that the ability to provide more valuable services to consumers at a lower cost would, over the short- to medium-term increase profits for existing third parties and lead to increased entry into the market for third parties' services.[188]

The rule is likely to enhance third party access to consumers' financial data, which could be used in third parties' credit underwriting decisions. Access to this data is likely to allow lenders to better differentiate between borrowers with different likelihoods of repayment and charge prices that are more aligned with potential borrowers' repayment risk, increasing underwriting profitability. As an example, the CFPB understands that access to consumer financial data enables some third party lenders to incorporate information about consumers' cash flow (*i.e.,* depository account inflows and outflows) into their underwriting models. Industry research has shown that cash flow is predictive of serious delinquency, and that models including cash flow can distinguish between the repayment risks of consumers with similar traditional credit profiles.[189] The CFPB expects that some third party lenders will be able to identify and reach more consumers with low repayment risk under the rule, and may therefore experience an increase in profits. The CFPB does not have data to quantify these benefits for third parties.

Reduced Costs of Establishing and Maintaining Screen Scraping Systems

The CFPB expects that third parties will cease screen scraping for covered data from covered data providers under the final rule. Based on the Aggregator Collection, the CFPB understands that maintaining screen scraping systems is more costly than maintaining developer interface connections. The reported ratio of staff hours spent on maintaining screen scraping data access to staff hours spent on maintaining interface data access ranged between 2.5 and 12. For aggregators that separately reported costs of maintaining data provider connections through both screen scraping and developer interfaces, the dollar cost of screen scraping ranged between $1.6 million and $7 million, or between $0.0005 and $0.0216 per access attempt; for developer interfaces, the reported dollar cost was between $1.5 million and $1.6 million, or between $0.0001 and $0.0194 per access attempt. Each request made through a developer interface rather than through screen scraping leads to expected savings between $0.0004 and $0.0022. Cumulatively, the firms in the Aggregator Collection reported nearly 16 billion screen scraping attempts in 2022. Under the rule, these screen scraping attempts would instead be made through requests to developer interfaces, leading to at least $6.4 million to $35.9 million worth of annual savings for data aggregators, based only on information supplied by firms in the Aggregator Collection. Aggregators' savings may be passed on to data recipient third parties through lower prices for aggregator services. The CFPB expects that third parties' cost per access attempt will fall under the rule because screen scraping is more costly for third parties than accessing data through developer interfaces, and third parties will transition to only accessing covered financial data through interfaces.

Increased Standardization

The CFPB expects that the cost of accessing consumer data will decrease not only through reductions in onboarding arrangement costs and screen scraping costs, but also because the rule incentivizes the industry to adopt consensus standards and requires standardized formats, including formats of data and communication protocol formats. The rule also clarifies which party is responsible for obtaining authorization from the consumer. The CFPB expects that increased standardization will be facilitated by one or more standard-setting bodies recognized by the CFPB, as outlined in the Industry Standard-Setting Final Rule.[190] One nondepository entity commenter expressed an expectation that this standardization will lead to increased market consolidation for data aggregator services. However, in order to deny covered data access to a third party, data providers will need to meet the rule's requirements for reasonable denials. Data providers will also need to apply their covered data access denial standards in a consistent and non-discriminatory manner under the rule. This will limit the scope for data providers to partner with only a small number of dominant data aggregators if other data aggregators seek to access covered data and meet the requirements for covered data access. Additionally, the data provider will need to provide covered data in a standardized and machine-readable format and use standardized communication protocols to confirm with consumers the scope of a third party's authorization to the consumer's covered data. This increased standardization of data access will reduce the cost of providing data aggregator services under the rule, further reducing barriers to entry and increasing competition for data aggregator services. The CFPB further expects that increased standardization of data access may reduce the costs for third parties integrating with data providers and allow some third parties that provide services to consumers to bypass data aggregators. An increase in

[188] Third parties may experience an increase in investment under the proposed rule, in addition to a reduction in costs and improvement in service quality. Babina *et al.* (2023) study open banking polices adopted across 49 countries and find that fintechs, which include third party recipients of data, raised significantly more funding from venture capital following the implementation of open banking policies that require banks to share data with third parties. *See* Tania Babina *et al., Customer Data Access and Fintech Entry: Early Evidence from Open Banking,* Stanford Univ. Graduate Sch. of Bus. Rsch. Paper (rev. Sept. 2023), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4071214.*

[189] One credit scoring company found that adding cash flow data to its traditional model improved predictiveness by 5 percent for consumers with thin or new credit profiles. Supporting this finding, FinRegLab studied six non-bank lenders in the current system and found the cash flow variables in their underwriting models were predictive of serious delinquency. *See* Can Arkali, *Icing on the Cake: How the FICO Score and alternative data work best together,* FICO Blog (June 2023), *https://www.fico.com/blogs/icing-cake-how-fico-score-and-alternative-data-work-best-together;* FinRegLab, *The Use of Cash-Flow Data in Underwriting Credit: Empirical Research Findings* (July 2019), *https://finreglab.org/wp-content/uploads/2019/07/FRL_Research-Report_Final.pdf.*

[190] 89 FR 49084 (June 11, 2024).

the share of third parties accessing data under access agreements with data providers would tend to reduce any degree of market power that data aggregators would enjoy under the baseline and will tend to reduce access prices for third parties. One small entity representative shared in the SBREFA process that aggregator costs represent its single largest budgetary line item, at approximately 10 percent of monthly expenditures. Data aggregators in the Aggregator Collection reported a wide range in fees charged to data recipient third parties depending on the recipient's size, minimum commitments, and access volume. Reported median annualized fees ranged between $2,000 and $6,000. Average annualized fees ranged between $40,000 and $70,000, demonstrating that a small number of data recipients pay substantially more fees than average.[191]

The rule may make it comparatively less expensive for third parties to connect directly with data providers, rather than contracting with one or more data aggregators. Because a direct connection with a data provider is a substitute for aggregator services, a decrease in the cost of direct connections would likely decrease the price of aggregator services. However, because aggregators spread the costs of establishing data access agreements with each data provider across many authorized third parties, aggregators are likely to retain an advantage from scale in providing access. This advantage may decline over time with consensus standard development, which may reduce friction and cost associated with establishing and maintaining bespoke connections to each data provider. The CFPB does not have data to estimate the net benefits to data aggregators or data recipients due to increased standardization of data access.

4. Benefits to Consumers

The rule will likely increase consumers' ability to access their covered data through third parties as desired. This increase may result in more third party products and services that consumers find useful in the marketplace. The use of credential-free data access will make this sharing possible without consumers revealing their credentials to third parties, reducing the potential harms that consumers may experience due to data breaches or similar incidents. Consumers will also have increased control over how third parties use their data, since third parties will no longer have indefinite authorization to use a consumer's covered data or to use it for reasons other than what is reasonably necessary to provide the product or service. The rule will likely have important secondary benefits for consumers as well, for example through the development of new underwriting methods or increasing competition among data providers or third parties. Finally, the potential effects of the new financial data processing product or service definition are discussed below.

Right to Third Party Data Access

The rule will require data providers to facilitate consumer instructions to provide authorized third parties with covered data. As discussed in the section on *Benefits to third parties* in part VI.E.3, consumers' initial account connection attempts through authorized third parties experience high failure rates, and the rule benefits both consumers and third parties by guaranteeing authorized third parties the right to access covered data. Under the rule, data providers will be required to offer a developer interface with commercially reasonable performance, including a proper response rate in excess of 99.5 percent. This will benefit consumers by increasing the quality of third party products and services as well as the likelihood that consumers are able to use them at all. As discussed in the section on *Benefits to third parties* in part VI.E.3, the CFPB expects that third parties' costs of establishing connections with data providers will decline as a result of the rule, and this may benefit consumers to the extent that lower costs are passed through to them.

Further, guaranteed access to consumer authorized covered data will likely increase investment in third parties that request that data, providing consumers with more options in the marketplace and increasing competition.[192] As evidenced by the estimated 100 million consumers who have authorized third party data access discussed in the section on *Baseline* in part VI.D above, consumers have substantial demand for financial products and services offered by third parties, which may feature more convenient and automated means of gathering and using consumers' financial data relative to legacy financial service providers.[193] The CFPB expects that an expanded range of third party products and services will increase competition and innovation, offering important secondary benefits to consumers, including improved credit access and lower prices, discussed below.

Several bank commenters argued that the costs of the rule exceed the consumer benefits, and a bank and bank trade association argued that the costs of the developer interface exceed consumer benefits, especially for small data providers. The CFPB acknowledges, as discussed in the section on *Costs to data providers* in part VI.E.1 above, that data providers will incur costs associated with meeting developer interface requirements. The CFPB expects consumers to enjoy substantial benefits as a result of the ability to share consumer-authorized data with third parties as provided by the rule, such as the benefits described in the *effects of increased data sharing on innovation and competition* part. These benefits could reach over $1 billion annually even with relatively small increases in competition and account switching, as discussed in a more detailed analysis in this part. In addition, the non-coverage of depository institutions with assets below $850 million described in the rule alleviates the compliance costs for small depository institutions and substantially reduces the costs of the rule as a whole.

Commenters questioned the coverage of many data elements, but the CFPB expects that all data elements required by the rule provide consumer benefit. One bank argued that the costs of providing certain data elements, such as whether a borrower entered into an arbitration agreement as contained in account terms and conditions, is not outweighed by the benefits. Additionally, bank trade association, research institute, and credit union commenters stated that the consumer benefits of the requirement to provide terms and conditions do not outweigh the costs. The CFPB expects that as a general matter the provision of terms and conditions will benefit consumers

[191] For example, responses in the Aggregator Collection suggested that a smaller number of data recipients may pay annualized fees totaling several million dollars.

[192] For example, Babina *et al.* (2023) find that after other countries implemented open banking policies, venture capital investment in fintech companies increased significantly on average and the number of new entrants in the financial advice and mortgage markets increased. Tania Babina *et al., Customer Data Access and Fintech Entry: Early Evidence from Open Banking,* Stanford Univ. Graduate Sch. of Bus. Rsch. Paper (rev. Jan. 22, 2024), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4071214.*

[193] As an example of how this can potentially increase access to credit for underserved populations, Howell *et al.* (2022) find that automation of underwriting processes for small business lending are associated with a higher share of loans being made to Black borrowers. Sabrina T. Howell *et al., Lender Automation and Racial Disparities in Credit Access,* Nat'l Bureau of Econ. Rsch. Working Paper No. 29364 (Nov. 2022), *https://www.nber.org/papers/w29364.*

by, for example, facilitating comparison shopping. Consumer knowledge of whether or not they are subject to an arbitration agreement will aid consumers in understanding their legal rights, which is a benefit in itself. The same commenters also argued against the inclusion of pending transactions stating that, for example, pending transactions may change in amount once settled. The CFPB expects that providing information about pending transactions can benefit consumers by, for example, alerting them about potential fraudulent charges, alerting them if they might be close to overdrafting, or allowing them to view their remaining credit limit on credit cards. These features have clear use cases in, for example, account monitoring and personal financial management. Based on the Aggregator Collection, tens of millions of inquiries were submitted for personal financial management and account monitoring in 2022. A bank trade association commented that providing data on rewards credit per transaction would be costly and that no evidence of benefits was provided. The CFPB expects that rewards programs information will help consumers comparison shop, and use any awards they accrue optimally. The CFPB does not have the data to perform a quantitative analysis, but the benefits from providing this information accrue to consumers over the long run, whereas the marginal cost of providing this information is limited and mostly incurred as a one-off, or fixed, expense. Accordingly, the CFPB has determined that the potential consumer benefits can be significant in relation to costs, warranting the inclusion of this information. Some nondepository entity trade association, bank, and research institute commenters stated that the risks of requiring information to initiate payments outweighs the benefits to consumers. While the CFPB does not have data to perform a quantitative analysis, the CFPB has determined that requiring information to initiate payments supports highly beneficial consumer use cases such as account switching and making payments.

A credit union trade association commented that the CFPB should analyze whether data on non-covered products like mortgages is less beneficial to consumers than included data like credit card rewards, scheduled bill payments, and terms and conditions. The CFPB expects access to these types of covered data will benefit consumers. For example, information on scheduled bill payments has a clear personal financial planning benefit. The CFPB may pursue another rule in the future to cover other products, and has determined that the products and data covered by the current rule benefit consumers, as described in this part and in part IV.A.2.

One bank trade association argued that there is no consumer benefit to the requirement that data providers provide public quantitative performance metrics. The CFPB expects that this requirement will enable consumers and others to verify that data access is being provided consistently with the rule's requirements, and that consumers will benefit indirectly as the metrics will facilitate supervision and improve compliance with the rule. A commenter also stated that there is no consumer benefit to requiring three years of record retention instead of two. The CFPB has determined that a three-year record retention period provides sufficient information to conduct its exams and investigations, which, by enhancing compliance, benefit consumers.

One nondepository entity and two nondepository trade organizations argued that there is no benefit to covering digital wallets because transaction information is available more directly from bank account or credit card providers. As described in part IV.A.2, the CFPB expects that consumers will benefit from the rule's coverage of digital wallets because digital wallets may possess data from several depository institutions and account types, and because a digital wallet may offer a more convenient method for some consumers to provide third parties with consumer-authorized data. Further, a digital wallet may include information not available to the account-holding data provider, such as the time and location of the payment.

One community bank trade association commented that there is no evidence of significant demand among community bank customers for sharing data with third parties. The rule does not cover small depository institutions, and given the substantial demand for data sharing demonstrated in the Aggregator Collection and Provider Collection and the increasing availability of third party services, the CFPB finds it unlikely that there are institutions covered under the rule with little or no demand for data sharing among its customers.

Credential-Free Access—Increased Privacy, Reduced Data Breach Risks

Under the rule, data providers will be required to create an interface that can be used to share covered data with third parties without consumers' credentials being held by the third party. Many third parties currently use screen scraping techniques or credential-based APIs to access consumer information, which requires the consumer to provide the third party with their username and password for the data provider's website. This current practice may expose consumers to greater risk if a third party experiences a data breach. Such data breaches can be very costly for consumers. While the CFPB does not have data to estimate the resulting consumer benefits of credential-free access, the academic and practitioner literature indicates that the associated benefits can be substantial.[194] Courts have approved large settlements in cases where data breaches affected financial service providers.[195] It is common for consumers to have their personal information compromised. For example, a 2019 Pew Research Center survey found that in the past 12 months, 28 percent of respondents reported having someone make fraudulent charges on their debit or credit card, take over a social media or email account without permission, or attempt to open a credit account in their name.[196] Under the rule, consumers would benefit from a reduced likelihood that third party data breaches would expose their account login information, since they would no

[194] Albon *et al.* (2016) surveyed more than 6,000 consumers and found that in the previous year, 26 percent reported receiving a data breach notification. When asked about the costs that the data breach imposed on them, 68 percent of consumers whose data was breached estimated a nonzero financial loss, with a median value of $500. Lillian Ablon *et al., Consumer Attitudes Toward Data Breach Notifications and Loss of Personal Information,* RAND Corp. (2016), *https://www.rand.org/content/dam/rand/pubs/research_reports/RR1100/RR1187/RAND_RR1187.pdf.* A study of identity fraud by Javelin Strategy found that the average consumer who identified as a victim of identity fraud lost $1,551 and spent nine hours resolving the issue. Javelin Strategy, *Identity Fraud Losses Total $52 Billion in 2021, Impacting 42 Million U.S. Adults* (Mar. 29, 2022), *https://javelinstrategy.com/press-release/identity-fraud-losses-total-52-billion-2021-impacting-42-million-us-adults.* Consumers' liability for ATO fraud may be limited under Regulation E, but it is possible that not all consumers can or do successfully exercise their rights to limited liability.

[195] In 2019, a settlement for $190 million was approved in a data breach at Capital One that affected approximately 100 million consumers. Capital One, *Information on the Capital One cyber incident* (Apr. 22, 2022), *https://www.capitalone.com/digital/facts2019/.* A settlement of $425 million for consumers was reached in the 2017 Equifax data breach, which affected approximately 147 million consumers. Fed. Trade Comm'n, *Equifax Data Breach Settlement* (Dec. 2022), *https://www.ftc.gov/enforcement/refunds/equifax-data-breach-settlement.*

[196] Brooke Auxier *et al., Americans and Privacy: Concerned, Confused and Feeling Lack of Control Over Their Personal Information,* Pew Rsch. Ctr. (Nov. 15, 2019), *https://www.pewresearch.org/internet/2019/11/15/how-americans-think-about-privacy-and-the-vulnerability-of-their-personal-data/.*

longer have to give third parties their account credentials in order for the third party to access covered data. If the third party experienced a data breach it would be less likely to compromise the consumer's account since the breach would no longer potentially include the consumer's account access credentials. This in turn may reduce the risks of unauthorized transfers or other fraudulent account activity.

One nondepository entity commenter argued that since the market is already shifting towards APIs, the added benefit of the rule does not outweigh the costs. As discussed in this part, the CFPB has determined that there are large potential benefits to consumers as a result of providers transitioning to credential-free access, and to the extent that data providers have already implemented interfaces meeting the requirements of the rule, the CFPB expects that these data providers will have lower costs of compliance. Further, the popularity of third party services and APIs highlights the need for safeguards to ensure consumer privacy. Another nondepository entity commenter stated that because some developer interfaces provide worse performance than legacy connection methods, shifting away from those legacy connection methods harms consumers. The CFPB has determined that the privacy and data security benefits of shifting to credential-free access outweigh any potential performance advantages of legacy methods under the baseline. Further, the CFPB expects the rule's performance standards for developer interfaces to improve the reliability of data access relative to screen scraping under the baseline. One third party and one consumer advocate commentator expressed concern that disallowing PII-based authentication methods could harm consumers without online accounts or credentials. The CFPB expects that all or nearly all consumers who wish to share consumer-authorized covered data with third parties either have an online account or the ability to create one. One data aggregator commentator expressed a concern that the transition away from screen scraping would harm consumers' ability to access accounts not covered by the rule, like mortgage and student loan accounts. However, the final rule does not affect screen scraping for accounts not covered by the final rule. Whether or not such screen scraping is permissible depends on other laws, such as the prohibition on unfair, deceptive, or abusive acts or practices, that form part of the baseline.

In addition, for a range of reasons, as this final rule takes operational effect, the CFPB expects some data providers and third parties to have compelling incentives to transition voluntarily to credential-free interfaces for non-covered products that would have been accessed using credentials under the baseline. This would yield additional data security benefits to consumers.

Several commenters expressed concern about potential fraud risks that may occur even under credential-free authorization of third parties. One consumer advocate commenter and one credit union commenter said that if data are more readily available as a result of the rule, it could increase the risk of financial abuse and fraud, particularly for older consumers. Two consumer advocate commenters also expressed concern that the rule could increase availability of joint account information to domestic abusers. Two research entity commenters and a bank commenter stated that consumers might particularly be vulnerable to fraudulent pay-by-bank transactions. The CFPB acknowledges that a bad actor could potentially gain fraudulent access to consumer-permissioned data, but this risk exists under the baseline. The rule mitigates these risks through its authentication requirements and requirements for credential-free third party access. Practically, the CFPB expects that in order to connect a bank account to a new third party service, a bad actor would need access to the consumer's credentials for their covered account and potentially access to additional information or devices required for authorization, such as codes issued as part of two-factor authentication. These risks exist under the baseline, and the CFPB expects that any increased risks from greater use of consumer-permissioned data access are outweighed by the data security and privacy benefits of the rule.

Third Party Limitations on Collection, Use, and Retention—Ability To Be Forgotten, Increased Privacy, More Control Over Use of Own Data

The rule will increase consumers' control over how their covered data are used by third parties. There is strong evidence that consumers value meaningful control over how their personal information is used and thus consumers will benefit from the rule. In a 2015 survey, the Pew Research Center found that 93 percent of Americans said that it was very or somewhat important to be ''in control of who can get information about you.'' [197] One consumer advocacy stakeholder stated that under the baseline, consumers may not understand how third parties share their data due to difficult-to-understand disclosures and may also not understand the rights they may have to limit how their data are shared. The Pew Research Center found in another study that 70 percent of Americans feel that their personal information is less secure than it was five years ago, 79 percent are very or somewhat concerned about how their personal information is being used by companies, and only 18 percent feel that they have a great deal of or some control over the data that companies collect about them.[198] Eighty-one percent feel that the potential risks of personal data collection by companies outweigh the benefits. This evidence suggests consumers have a strong desire for meaningful control over how their personal information is used and thus consumers will benefit substantially from the rule. The CFPB does not have sufficient data to provide a quantitative estimate of these benefits to consumers.

Effects of Increased Data Sharing on Innovation and Competition

Increased availability of consumer-authorized data to third parties could have a number of other indirect—but potentially large—benefits for consumers. For example, as discussed in the section on *Costs to consumers* in part VI.E.2 above, while increased availability of data could result in lenders assessing some consumers as higher credit risk than they would be otherwise and charging them higher prices, it is also likely to result in lenders assessing some consumers as lower credit risk and charging them lower prices. It is possible that a consumer could be denied a loan that they would have been granted in the absence of the use of consumer-authorized data in underwriting. If the loan was not affordable for the consumer, then this denial could benefit the consumer in the long term.

Consumer-authorized data may be particularly useful for consumers who have a limited credit history or do not have a credit file with a nationwide consumer reporting company. Among consumers who do have credit scores, a study by FinRegLab found that cash-flow underwriting can help identify consumers who have low traditional credit scores but are actually a low

[197] Pew Rsch. Ctr., *Americans Hold Strong Views About Privacy in Everyday Life* (May 19, 2015), *https://www.pewresearch.org/internet/2015/05/20/americans-attitudes-about-privacy-security-and-surveillance/pi_15-05-20_privacysecurityattd00/.*

[198] Brooke Auxier *et al., Americans and Privacy: Concerned, Confused and Feeling Lack of Control Over Their Personal Information,* Pew Rsch. Ctr. (Nov. 2019), *https://www.pewresearch.org/internet/2019/11/15/how-americans-think-about-privacy-and-the-vulnerability-of-their-personal-data/.*

credit risk for lenders.[199] It is possible that many consumers will experience increased access to credit or lower prices under the rule, to the extent that they are less able to share covered data with third parties under the baseline.[200] Even without the rule, the Aggregator Collection shows that in 2022, tens of millions of data requests were made through those data aggregators for consumer data to be used for underwriting purposes.[201]

The use of consumer-authorized covered data by third parties may also benefit consumers through increased availability and quality of payment services. The availability of consumer-authorized covered data may improve payment services by, for example, making it easier to sign up for such services and allowing the service to verify a consumer's balance before initiating a payment to ensure that they are not overdrafting the consumer's account. In 2022, the Aggregator Collection shows nearly two billion requests for consumer data for facilitating payment services. Increased use of payment services is likely to benefit consumers.[202] Easier person-to-person payments may help consumers send or receive money from friends and family to avoid overdrafting their bank accounts or incurring fees through other forms of borrowing. In addition to providing benefits for person-to-person payments, consumer-authorized data are increasingly used to facilitate consumer-to-business ''pay-by-bank'' purchases, with lower fees relative to some alternatives, some of which may be passed through as benefits to consumers. One consumer advocate commenter expressed a concern that consumer-authorized covered data could be used to determine eligibility for government benefits, and that inaccuracy in the data could harm consumers. The CFPB expects that if widespread inaccuracies were a problem with an application using consumer-permissioned data to determine an eligibility for a program, it is unlikely that such an application would be used. A bank commenter raised a concern that covered data could be used to offer less competitive products by third parties. The CFPB acknowledges that third parties learn more about consumers though covered data, but notes that third parties' use of this data is limited by the rule to what is reasonably necessary to provide the consumer's requested service or product.

Increased availability of consumer-authorized covered data may also lower the costs for a consumer switching financial institutions in search of higher deposit rates, lower fees, better service, or lower rates on credit products. Recent research has found that digital banking technology affects the movement of deposits into and out of banks in response to market pressures.[203] The provisions may make it easier for a consumer to move to a new institution by easing the transfer of funds and account information from the old institution to the new institution.

Even marginal improvements in consumers' ability to shop for and transfer deposits could have large potential benefits for consumers, given the substantial size of the deposit market and the dispersion in prices across institutions. Consumers with sizeable savings may benefit most from accounts offering higher interest rates, while consumers with limited funds may benefit most from accounts with low or no fees. Recent studies suggest there is potential for substantial gains on both measures. On interest rates, researchers have documented high average savings interest rates available from large online banks, substantially above average savings interest rates.[204] On fees, the CFPB has found that although deposit account fees are trending lower since 2019, banks with over $1 billion in assets collectively earned $7.7 billion in revenue from overdraft and insufficient funds (NSF) fees in 2022.[205] This is despite the availability of at least 397 deposit account products with zero overdraft and NSF fees, with options available in every state.[206]

The rule will likely improve consumers' ability to switch providers. As a result, the rule will have two benefits. First, those consumers who switch may earn higher interest rates or pay lower fees. To estimate the potential size of this benefit, the CFPB assumes for this analysis that of the approximately $19 trillion [207] in domestic deposits at FDIC- and NCUA-insured institutions, a little under a third ($6 trillion) are interest-bearing deposits held by consumers, as opposed to accounts held by businesses or noninterest-bearing accounts.[208] If, due

[199] FinRegLab, *The Use of Cash-Flow Data in Underwriting Credit* (July 2019), *https://finreglab.org/wp-content/uploads/2019/07/FRL_Research-Report_Final.pdf.*

[200] For example, using data from a German fintech lender, Nam (2024) finds that borrowers across the credit score distribution benefit on average when they choose to share data with the lender, with lower credit score borrowers experiencing a larger increase in acceptance rates and higher credit score borrowers experiencing a larger decrease in interest rates. *See* Rachel J. Nam, *Open Banking and Customer Data Sharing: Implications for Fintech Borrowers,* SAFE Working Paper No. 364 (Mar. 20, 2024), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4278803.* One credit union trade association commenter stated that the CFPB did not consider data the effects of open banking in Europe. While the CFPB does not have primary data to analyze the effects of open banking on firms and consumers in other countries, it considered studies such as this one in its analysis.

[201] These requests include requests for information relating to existing accounts, like credit card limit increases, as well as the underwriting of new loans.

[202] For example, Balyuk and Williams (2023) find that low-income consumers with increased exposure to a person-to-person payment platform are less likely to overdraft their bank accounts and more likely to borrow from family and friends using the platform if they have a low balance relative to their needs. *See* Tetyana Balyuk & Emily Williams, *Friends and Family Money: P2P Transfers and Financially Fragile Consumers* (Dec. 12, 2023), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3974749.*

[203] Koont, Santos and Zingales (2023) find that in response to Federal Funds rate changes, deposits flow out of banks with an online platform more quickly. Naz Koont *et al., Destabilizing Digital Bank Walls* (Oct. 2023), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4443273.* Erel, Liebersohn, Yannelis, and Earnest (2024) found that primarily online banks saw larger inflows of interest-bearing deposits when Federal Funds rates increased. Isil Erel *et al., Monetary Policy Transmission Through Online Banks,* Fisher Coll. of Bus. Working Paper No. 2023–03–015 & Charles A. Dice Ctr. Working Paper No. 2023–15 (June 3, 2024), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4459621.*

[204] Erel, Liebersohn, Yannelis, and Earnest (2023) found that in April 2023, there were at least 15 large online banks offering an average savings interest rate of 2.17 percent, compared to 0.28 percent at other banks. Similarly, FDIC data from April 2023 show that, weighted by share of deposits, average savings interest rates were 0.39 percent. The authors also find that the online banks offer substantially higher rates for other products like certificates of deposit, individual retirement accounts, and money market deposit accounts. Isil Erel *et al., Monetary Policy Transmission Through Online Banks,* Fisher Coll. of Bus. Working Paper No. 2023–03–015 & Charles A. Dice Ctr. Working Paper No. 2023–15 (May 26, 2023), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4459621;* Fed. Deposit Ins. Corp., *FDIC National Rates and Rate Caps* (Apr. 17, 2023), *https://www.fdic.gov/resources/bankers/national-rates/2023-04-17.html.*

[205] Off. of Consumer Populations & Mkts., Consumer Fin. Prot. Bureau, *Overdraft/NSF revenue down nearly 50% versus pre-pandemic levels* (May 24, 2023), *https://www.consumerfinance.gov/data-research/research-reports/data-spotlight-overdraft-nsf-revenue-in-q4-2022-down-nearly-50-versus-pre-pandemic-levels/full-report/.*

[206] These accounts are certified as meeting the Bank On National Account Standards established by the Cities for Financial Empowerment Fund. See list of certified accounts at *https://joinbankon.org/accounts/* (last visited Oct. 16, 2024), and current account standards, *https://bankon.wpengine powered.com/wp-content/uploads/2022/08/Bank-On-National-Account-Standards-2023-2024.pdf* (last visited Oct. 16, 2024).

[207] Fed. Deposit Ins. Corp., *Insured Institution Performance,* 17(2) FDIC Quarterly (2023) *https://www.fdic.gov/analysis/quarterly-banking-profile/qbp/2023mar/qbp.pdf,* and Nat'l Credit Union Admin., *Quarterly Credit Union Data Summary* (2022 Q4), *https://ncua.gov/files/publications/analysis/quarterly-data-summary-2022-Q4.pdf.*

[208] Derived from several data sources, the assumption that slightly under one third of total

Continued

to the rule, even one percent of consumer deposits were shifted from lower earning deposit accounts to those with interest rates one percentage point (100 basis points) higher, consumers would earn an additional $600 million annually in interest. Similarly, if due to the rule, consumers were able to switch accounts and thereby avoid even one percent of the overdraft and NSF fees they currently pay, they would pay at least $77 million less in fees per year.[209]

The second potential way consumers could benefit is through improved prices and service even for consumers who do not switch providers, due to the rule's effects on competition. Increased competition from improved online banking services and open banking services under the baseline may have already contributed to consumers receiving higher interest rates on deposits and paying lower fees in recent years.[210] To estimate the scale of potential benefits from the provisions, if the rule further increases these competitive pressures such that average offered interest rates on deposits increase by even one basis point (0.01 percentage points), consumers would accrue an additional $600 million in annual benefits from interest even without moving their deposits. Similarly, if increased competitive pressures due to the rule caused banks to lower overdraft and NSF fees by one percent on average, consumers would benefit from at least $77 million in reduced fees annually.

In addition to the effects in the deposit market, under the rule, a consumer's depository institution will no longer have a potential advantage in underwriting a loan based on the consumer's transaction data, which may increase competition and potentially lower interest rates on loan products for consumers. While these potential impacts are difficult to quantify, even marginal improvements in the interest rates or fees paid by consumers could have substantial benefits, given the size of consumer lending markets.

The provisions will also make it easier for consumers to access their data through personal financial management platforms. This increased ability to access and monitor information about their personal finances could benefit consumers.[211] The CFPB does not have data to quantify the resulting consumer benefit.

New Financial Data Processing Products or Services Definition

The CFPB expects that activities covered by the new financial data processing products or services definition are already within the scope of the CFPA's definition of financial product or service. As a result, the CFPB does not expect the new definition to have benefits to consumers. However, to the extent that there are firms offering products or services that are within the new definition but outside of the financial product or service definition, the new definition would benefit consumers by increasing protections against unfair, deceptive, or abusive acts or practices. The CFPB does not have data to quantify these potential benefits. The CFPB requested comment on whether any firms offer products or services that would be covered by the new definition but fall outside the definition of financial product or service, and if so, what potential benefits to consumers could result from the new definition but did not receive any such comments.

5. Alternatives Considered

The CFPB considered the impacts of several alternatives to the rule. These include alternatives that would allow secondary use of data by third parties in certain circumstances (*i.e.,* through an opt-in mechanism allowing the consumer to consent to specific uses, while retaining a prohibition on certain high-risk secondary uses) or allow retention and use of de-identified data as an exception to the general limitation standard that otherwise limits retention.[212] The CFPB considered covering Electronic Benefit Transfer accounts in the rule. The CFPB also considered alternatives specific to small entities, such as exemptions or longer compliance timelines, which are discussed in part VII.B.

Rather than prohibiting secondary uses, the CFPB considered allowing some secondary uses through an opt-in mechanism while prohibiting certain high-risk secondary uses. Relative to the proposal, this alternative would generally benefit third parties by allowing additional uses of data and potentially impose costs on consumers by reducing their privacy and their control of how their data are used. If these secondary uses lead to new beneficial products and services offered by third parties, this alternative could benefit consumers relative to the proposal. If, however, the additional secondary uses are detrimental to consumers despite the consumer's opt-in consent, allowing such uses could harm consumers relative to the baseline.

deposits are interest-bearing deposits held by consumers is based on assuming slightly under half of all deposits are held by consumers, and about 70 percent of consumers' deposits are interest bearing. First, in the most recent available 2019 data from the Survey of Consumer Finances, households' mean savings in transaction accounts and certificates of deposit was $48,803; *see* Bd. of Governors of the Fed. Rsrv. Sys., *Survey of Consumer Finances (SCF), https://www.federalreserve.gov/econres/scfindex.htm* (last updated Apr. 5, 2024). The 2020 Census estimates that there were 127 million U.S. households, and the product of these two numbers yields an estimate of $6.2 trillion in deposits held by consumers; *see* Thomas Gryn *et al., Married Couple Households Made Up Most of Family Households,* America Counts: Stories, *https://www.census.gov/library/stories/2023/05/family-households-still-the-majority.html.* This is slightly under half of the $14 trillion in deposits based on Call Report data for 2019; Fed. Deposit Ins. Corp., *2019 Summary of Deposits Highlights,* 14(1) FDIC Quarterly (2020), *https://www.fdic.gov/analysis/quarterly-banking-profile/fdic-quarterly/2020-vol14-1/fdic-v14n1-4q2019-article.pdf,* Nat'l Credit Union Admin., *Quarterly Credit Union Data Summary* (2019 Q4), *https://ncua.gov/files/publications/analysis/quarterly-data-summary-2019-Q4.pdf.* The estimate for share of deposits that are interest bearing is derived from Figure A.3 in Erel, Liebersohn, Yannelis, and Earnest (2023). Isil Erel *et al., Monetary Policy Transmission Through Online Banks,* Fisher Coll. of Bus. Working Paper No. 2023–03–015 & Charles A. Dice Ctr. Working Paper No. 2023–15 (May 26, 2023), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4459621.*

[209] Survey evidence suggests that a small share of consumers value overdraft as a form of borrowing while a majority would prefer that the transactions were declined; *see* The Pew Ctr. on the States, *Overdraft America: Confusion an Concerns about Bank Practices* (May 2012), *https://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2012/sciboverdraft20america1pdf.* In addition, the CFPB has found that some overdraft practices can be unfair, if they could not be reasonably anticipated; Consumer Fin. Prot. Bureau, *Unanticipated overdraft fee assessment practices,* Consumer Financial Protection Circular (Oct. 26, 2022), *https://www.consumerfinance.gov/compliance/circulars/consumer-financial-protection-circular-2022-06-unanticipated-overdraft-fee-assessment-practices/.* This analysis assumes that those consumers who prefer overdraft would stay with institutions offering these services, while those switching would prefer accounts without overdraft fees.

[210] Kang-Landsberg, Luck and Plosser (2023) find that the pass-through of the Federal Funds rate to deposit rates is increasing and nearing the levels seen in the early 2000s. Alena Kang-Landsberg *et al., Deposit Betas: Up, Up, and Away?,* Liberty St. Econ. (Apr. 11, 2023), *https://libertystreeteconomics.newyorkfed.org/2023/04/deposit-betas-up-up-and-away.*

[211] Carlin, Olafsson, and Pagel (2023) find that increased access to a personal financial management platform substantially lowers overdraft fees. Bruce Carlin *et al., Mobile Apps and Financial Decision-Making,* 27 Rev. Fin. 977 (2023), *https://academic.oup.com/rof/article/27/3/977/6619575.* The evidence on this subject is mixed, however, as Medina (2021) finds that reminders to consumers to make credit card payments in a personal financial management platform increased the probability that consumers incurred overdraft fees and slightly increased overall net fees paid by consumers, since consumers were more likely to overdraft their bank account to pay their credit card bill. Paolina C Medina, *Side Effects of Nudging: Evidence from a Randomized Intervention in the Credit Card Market,* 34 Rev. Fin. Stud. 2580 (2021), *https://academic.oup.com/rfs/article/34/5/2580/5903746.*

[212] Some additional alternatives are considered and discussed in part IV. For example, alternatives to the prohibition on fees for establishing and maintaining interfaces and for accessing data through interfaces are discussed in part IV.C.2.

The CFPB requested comment on whether any secondary uses should be allowed through an opt-in mechanism. The CFPB also requested comment on how potentially harmful secondary uses could be defined and prohibited under this alternative.

Comments on whether any secondary uses should be allowed through an opt-in mechanism and on how potentially harmful secondary uses could be defined and prohibited are discussed in parts IV.D.4, VI.E.1, and VI.E.2. In general, commenters' arguments about the benefits, costs, and impacts of allowing some secondary uses were in line with the CFPB's analysis of the benefits, costs, and impacts of this alternative, with data provider commenters generally opposed to allowing secondary uses, third party commenters generally in favor of allowing some secondary uses, and with varied support for this alternative from consumer advocate and research organization commenters. For the reasons discussed in parts IV.D.4, VI.E.1, VI.E.2, VI.E.3, and VI.E.4, the CFPB has determined that the rule as finalized better achieves the intended outcome of section 1033 of the CFPA than this alternative.

The CFPB also considered an exception to the general limitation standard for retention and use of de-identified data. Relative to the proposal, this alternative would generally benefit third parties by allowing the continued retention and use of de-identified consumer data after the general limitation standard would normally require the deletion of identified data. For example, de-identified data could potentially be used for product development, which would benefit third parties. These uses could also potentially benefit consumers through improved or new products. However, if the risk of reidentification remains for the consumers in de-identified data, the retention of such data creates a potential cost to consumers in privacy and fraud risks in the case of a data breach or misuse of data. In the proposal, the CFPB requested comment on whether there should be an exception to the general limitation standard for de-identified data, and if so, how de-identification should be defined to limit risks to consumers.

Comments on whether there should be an exception to the general limitation standard for de-identified data, and if so, how de-identification should be defined are discussed in parts IV.D.4, VI.E.1, and VI.E.2. In general, commenters' arguments about the benefits, costs, and impacts of an exception for de-identified data were in line with the CFPB's analysis of the benefits, costs, and impacts of this alternative, with data provider commenters generally opposed to an exception, third party commenters and research organization commenters generally in favor of an exception, and with varied support for this alternative from consumer advocate commenters. For the reasons discussed in parts IV.D.4, VI.E.1, VI.E.2, VI.E.3, and VI.E.4, the CFPB has determined that the rule as finalized better achieves the intended outcome of section 1033 of the CFPA than this alternative.

Finally, the CFPB considered including EBT accounts as covered accounts under the rule. Commenters stated that the impact analyses in the proposal did not consider the impact on EBT accountholders of not including EBT accounts in the rule. The CFPB considered the impacts of covering EBT accounts in the proposal, but found that several factors weighed against covering EBT accounts at this time. The CFPB acknowledges that many consumers use EBT accounts, and may not have reliable, convenient access to their account data provided by data providers. One nondepository entity commenter that provides third party data access to EBT accounts provided data on the prevalence and reliability of data sharing under their existing account connections. These data show that, under the baseline, rates of successfully accessing EBT data via existing third party connection methods range from 92 to 99 percent across EBT technology providers. Under the alternative in which such accounts were covered, consumers with EBT accounts would likely benefit from improved access through consumer interfaces, and improved third party access through developer interfaces. This improved access would benefit consumers by making it easier to monitor their account balances and transactions. However, improved data access for EBT accounts would generally not provide the type of account switching and competition benefits quantified in the rule for deposit and credit card accounts, as EBT accounts are generally provided by government agencies, rather than through competing private firms. Based on these considerations and those described in part IV.A.3, the CFPB declines to expand coverage to EBT accounts at this time.

F. Potential Impacts on Insured Depository Institutions and Insured Credit Unions With $10 Billion or Less in Total Assets, as Described in Section 1026

Under the final rule, depository institutions (including credit unions, and including both federally insured and non-federally insured institutions) that satisfy the SBA definition of a small entity will not be required to maintain a consumer interface or developer interface. This is a change from the proposal. The final rule will require depository institutions with $10 billion or less in total assets (community banks and credit unions) but that do not satisfy the SBA definition of a small entity to maintain a consumer interface and a developer interface through which they receive requests for covered data and make that data available in an electronic form usable by consumers and authorized third parties. Compared to larger data providers, these institutions likely are more reliant on core banking providers and other service providers to comply, have fewer consumers and thus reduced efficiencies of scale, and may be less likely to act as data recipients in addition to being data providers. Compared to nondepository data providers of all sizes, these institutions may have more legacy systems that may be costly to modify to come into compliance with the proposal.

As discussed in part VI.E.1, the CFPB expects that most depositories of this size will contract with a vendor for their interfaces for consumers and third parties. To examine the types of vendors used by covered institutions with $10 billion or less in total assets, the CFPB uses a data field in the NCUA Profile data which asks credit unions to indicate ''the name of the primary share and loan information processing vendor.'' [213] While the vendor that provides core banking services to a credit union is not always the same vendor that provides digital banking services to the credit union, the CFPB expects that in many cases the same vendor provides both services. Based on the reported information for credit unions with between $850 million and $10 billion in assets, the CFPB estimates that at least 83 percent of such covered credit unions already use a vendor that offers interfaces for third parties. To measure the size of vendors used, the CFPB estimates that 97 percent of credit unions with between $850 million and $10 billion in assets use a vendor with

[213] A ''share'' denotes a deposit account held by a credit union, and thus will include the Regulation E covered accounts under the proposal.

at least 100 credit union clients, and 99 percent of such credit unions use a vendor with at least 50 credit union clients. The CFPB expects that many of these vendors would likely offer interfaces for third parties by the compliance date applicable for community banks and credit unions. However, the 1 percent of credit unions using smaller vendors are more likely to need to either switch vendors or build a developer interface in house. This could lead to higher costs, as the costs of switching to a new vendor may be larger as a proportion of total assets or revenues for smaller depositories relative to larger depositories.

The CFPB does not have data on the vendors used by community banks, but expects that they may have a similar distribution of vendors as the comparably sized credit unions, and thus will face comparable costs to establish a developer interface.

The CFPB requested comment on its analysis in the proposal of the potential impact on depository institutions and credit unions with $10 billion or less in total assets. The CFPB did not receive comments specifically on its analysis of potential impacts on insured depositories and insured credit unions with less than $10 billion in assets, but comments that addressed impacts on small depositories, credit unions, and community banks are discussed in parts VI.E.1, VI.E.3, and VII.B.

G. Potential Impacts on Consumers in Rural Areas, as Described in Section 1026

Relative to the proposal, the CFPB expects that the change in coverage for depositories that satisfy the SBA definition of small entities and the extended compliance timelines will substantially reduce the impacts of the rule on consumers in rural areas.

Under the baseline, smaller banks hold a larger share of deposits in rural areas. For example, analysis by the Federal Reserve Board in 2017 found that the market share of community banks (defined as assets of less than $10 billion) in rural areas is nearly 80 percent on average, compared with nearly 40 percent in urban areas.[214]

Rural consumers are substantially less likely to use online banking than those who live in urban areas, defined to include all MSAs. For example, Benson *et al.* (2020) find that 56 percent of consumers in rural areas use online banking compared to 75 percent in large MSAs.[215] This may generally mean that rural consumers could experience less of both the costs and the benefits of the rule. Some of the difference in online banking use may be explained by differences in access to high-speed internet, since as of 2018 consumers in rural areas were 20.8 percentage points less likely to have the option of subscribing to high-speed internet.[216] Given that rural consumers are less likely to use online banking, they may also be less likely to use third party online services. The CFPB does not have comprehensive data on the geographic distribution of the use of third party products and services, though since rural consumers are less likely to have high-speed internet access, they may be less likely to use third party products and services. The 2021 FDIC National Survey of Unbanked and Underbanked Households found that 68.7 percent of consumers with bank accounts outside of MSAs had linked their bank account to a third party online payment service, compared with 72.3 percent in MSAs, showing that rural consumers are slightly less likely to use at least one type of third party product.[217]

The CFPB requested comment on its analysis in the proposal of potential impacts on consumers in rural areas. One consumer advocate commenter noted that consumers in rural areas may be more likely to live in banking deserts and thus more reliant on online financial services like those offered by third parties. The CFPB expects that the final rule will increase the availability of such online services for consumers in rural areas who bank at covered data providers. The rule also implements additional protections for consumers using third party services. For consumers who bank at data providers not covered by the rule, the CFPB expects that data access will generally continue to improve as it has under the baseline, through voluntary adoption of new methods of third party data access.

More general comments on impacts on consumers, including consumers who bank at community banks or credit unions, are discussed in parts VI.E.2 and VI.E.4.

VII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA)[218] generally requires an agency to conduct an IRFA and a FRFA of any rule subject to notice-and-comment requirements. These analyses must ''describe the impact of the proposed rule on small entities.''[219] An IRFA or FRFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[220] The CFPB also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[221] The CFPB did not certify that the proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. Accordingly, the CFPB convened and chaired a Small Business Review Panel under SBREFA to consider the impact of the proposed rule on small entities that would be subject to that rule and to obtain feedback from representatives of such small entities. The Small Business Review Panel for the proposal is discussed in part VII.A. The CFPB is also publishing a FRFA. Among other things, the FRFA estimates the number of small entities that will be subject to the rule and describes the impact of that rule on those entities. The FRFA for this rule is set forth in part VII.B.

A. Small Business Review Panel

Under section 609(b) of the RFA, as amended by SBREFA and the CFPA, the CFPB must seek, prior to conducting the IRFA, information from representatives of small entities that may potentially be affected by its proposed rules to assess the potential impacts of that rule on such small entities.

The CFPB complied with this requirement. Details on the SBREFA Panel and SBREFA Panel Report for the proposal are described in part II.A.

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[214] Bd. of Governors of the Fed. Rsrv. Sys., *Trends in Urban and Rural Community Banks* (Oct. 4, 2018), *https://www.federalreserve.gov/newsevents/speech/quarles20181004a.htm.*

[215] David Benson *et al., How do Rural and Urban Retail Banking Customers Differ?,* FEDS Notes (June 12, 2020), *https://www.federalreserve.gov/econres/notes/feds-notes/how-do-rural-and-urban-retail-banking-customers-differ-20200612.html.*

[216] Fed. Commc'ns Comm'n, *2020 Broadband Deployment Report* (released Apr. 24, 2020), *https://docs.fcc.gov/public/attachments/FCC-20-50A1.pdf.*

[217] Fed. Deposit Ins. Corp., *2021 National Survey of Unbanked and Underbanked Households, https://www.fdic.gov/analysis/household-survey/index.html* (last updated July 24, 2023).

[218] 5 U.S.C. 601 *et seq.*

[219] 5 U.S.C. 603(a). For purposes of assessing the impacts of the proposed rule on small entities, the term ''small entities'' is defined in the RFA to include small businesses, small not-for-profit organizations, and small government jurisdictions. 5 U.S.C. 601(6). A ''small business'' is determined by application of SBA regulations and reference to the NAICS classifications and size standards. 5 U.S.C. 601(3). A ''small organization'' is any ''not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' 5 U.S.C. 601(4). A ''small governmental jurisdiction'' is the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000. 5 U.S.C. 601(5).

[220] 5 U.S.C. 605(b).

[221] 5 U.S.C. 609.

B. Final Regulatory Flexibility Analysis

1. Statement of the Need for, and Objectives of, the Rule

In section 1033 of the CFPA, Congress authorized and directed the CFPB to adopt regulations governing consumers' data access rights. The CFPB is issuing this rule primarily to implement CFPA section 1033 with respect to certain covered persons under the CFPA, although the CFPB is also relying on other CFPA authorities for specific aspects of the rule. This rule aims to (1) expand consumers' access to their financial data across a wide range of financial institutions, (2) ensure privacy and data security for consumers by limiting the collection, use, and retention of data that is not needed to provide the consumer's requested service, and (3) push for greater efficiency and reliability of data access across the industry to reduce industry costs, facilitate competition, and support the development of beneficial products and services. The CFPB is issuing this rule pursuant to its authority under the CFPA. The specific CFPA provisions relied upon are discussed in part III. See part VI.A for additional discussion of the objectives of the rule.

2. Significant Issues Raised by Public Comments in Response to the IRFA, a Statement of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

Trade associations representing small depository institutions requested that the CFPB provide flexibilities or less costly alternatives for small entities. Comments from such organizations and from small depository data providers themselves stated that the CFPB conducted an incomplete analysis of the disproportionate costs of the proposal on smaller entities. Data provider commenters also stated that the costs from the rule would work against small and mid-sized banks, since larger banks already have the functionality and are able to take advantage of scale. A data provider industry association commenter stated that the CFPB did not take into account the feedback received through the SBREFA process, and that the CFPB should consider how increased competition from fintechs will impact credit unions. A credit union industry association commented that the RFA analysis in the proposal was flawed in how it approached credit union's costs as data providers because it did not take into account the cumulative regulatory impact of different rulemakings on credit unions.

The CFPB has determined that it is appropriate to not finalize the proposed coverage of the rule, such that small entity depositories are not covered as data providers. As a result, under the final rule, small entity depositories will not face any costs to maintain a consumer or developer interface due to the rule.

The CFPB expects that this change will address the concerns of small entity commenters, but notes that the impact analyses in the proposal did account for feedback received through the SBREFA process and did provide a complete analysis of the differential costs to small entities. Based on its analysis and the feedback received during that process, the proposal reduced the number and complexity of required data fields in the proposal relative to the SBREFA Outline, and established longer compliance timelines for small entities. These provisions of the proposal were an acknowledgement of the reliance of small depository data providers on service providers to comply with the rule and the scale advantages of large data providers. Regarding increased competition from fintechs, the proposal acknowledged that there would likely be increased competition for covered accounts, due to easier account switching and enhanced services offered by third parties under the rule. The trend of greater competition from third parties is likely heightened under the rule, although it is present under the baseline as well; this trend also stands to benefit small data providers with competitive account offerings. The CFPB expects that many small entity data providers will adopt developer interfaces voluntarily due to competitive pressures, as they have done prior to the rule, but the change in coverage will allow small data providers to forgo or delay the deployment of a developer interface if it is especially costly for them based on the characteristics of their institution. Regarding the comment asserting there is a cumulative impact of different rulemakings on credit unions, small entities that are credit unions are not data providers under the final rule.

3. Response of the Agency to Any Comments Filed by the Chief Counsel for Advocacy of the Small Business Administration in Response to the Proposed Rule, and a Detailed Statement of Any Change Made to the Proposed Rule in the Final Rule as a Result of the Comments

The Chief Counsel for Advocacy of the Small Business Association (Advocacy) provided comments on several aspects of the proposal. Advocacy stated that the exemptions in the proposal were too narrow, and that the CFPB should consider exemptions for small third parties in addition to any exemptions for data providers. Advocacy commented that implementation timelines should be longer. Advocacy also commented that the CFPB did not discuss the possibility that firms may reduce their offerings to customers rather than comply, and that the CFPB should analyze the impact if small entities decide to exit rather than comply with the rule. Advocacy stated that the CFPB should consider State laws that have similar requirements, and evaluate if the rule is necessary or creates additional burden. Advocacy commented that the CFPB should clarify the role of industry standards and the responsibility or liability for data security issues or misuse of data. Advocacy commented that small entities should be permitted to charge fees for making covered data available, and that the CFPB should reduce the definition of covered data for transaction information to 12 months, rather than the ''safe harbor'' of 24 months in the proposal.

In the final rule, the CFPB has revised the proposed coverage such that small entity depositories are not covered as data providers. With regards to small depository data providers, this change also addresses Advocacy's comments about the possibility that firms may reduce their service offerings or decide to exit the market in response to the rule.

The CFPB considered exemptions for small nondepository data providers, but generally understands that these firms do not have the technological complexities that make complying with the data provider requirements as burdensome as for depositories. Rather than exempt some small nondepository data providers, the CFPB has instead extended the compliance deadlines for such entities from one year in the proposal to approximately 2.5 years in the final rule. The CFPB expects this change to substantially mitigate the burden of compliance for small nondepository data providers.

The CFPB considered exemptions for small third parties in the proposal, but remains concerned that allowing third parties to access covered data via the rule without requiring the data security, data privacy, and secondary use restrictions in the rule would significantly reduce the benefits to consumers and would create risks for data providers—including small entity data providers. In addition, unlike covered data providers, small entities that are potential third parties have a

choice over whether to access covered data, and can choose not to access such data if they find that complying with the rule's authorization requirements and secondary use restrictions are too costly. As described in part VI.E, the CFPB expects that compliance costs for third parties will be less burdensome than costs for data providers and that benefits to third parties will outweigh the costs. As a result, the CFPB does not expect the rule's requirements on third parties to deter the development of beneficial third party products and services.

Regarding the consideration of State laws that have similar requirements, the CFPB considered such laws, as described in part VI.D. These primarily include State-level data privacy and data security laws, which are closest in effect to some of the rule's requirements on third parties. The CFPB expects the rule's requirements on third parties to be complementary to these State laws, and necessary to impose on all third parties, regardless of where they operate or where their consumers are located, to limit data privacy and security risks to consumers. In addition, State laws generally do not require data providers to provide consumers with access to their financial data, which is the core objective of CFPA section 1033 and this rule.

Regarding the clarity of industry standards, as discussed in part II.C, the CFPB published the Industry Standard-Setting Final Rule in June 2024 to try to provide clarity on industry standards sooner and to ease compliance burden for industry participants, including small entities.

The potential costs related to liability or fraud for data providers are discussed in part VI.E.1. As discussed in that part, the CFPB expects that the majority of data providers will see a net decrease in fraud risks and reputational risks relative to the baseline of current market practices, in which screen scraping is widespread and there are no restrictions on data collection, retention, and use by third parties. Small depository entities are not covered as data providers under the final rule, and the CFPB generally expects that liability and fraud risks will be reduced for the majority of small nondepository data providers, based on the evidence discussed in part VI.E.1.

Regarding permitting small data providers to charge fees for access, the CFPB has declined to permit such fees for the reasons discussed in parts IV.C.2 and VI.E.1. The CFPB has also declined to change the definition of covered data for transaction information held by small entity data providers, for the reasons discussed in part IV.B.3. The CFPB has instead addressed burden on small entities through revisions to coverage, compliance timelines, and other revisions relative to the proposal as discussed in this part.

4. Description of and an Estimate of the Number of Small Entities to Which the Rule Will Apply or an Explanation of Why No Such Estimate Is Available

The small entities affected by the rule will be those that meet the definitions of data provider, third party, or data aggregator. Data providers include depository institutions and nondepository institutions, although, as discussed above, small depository institutions are not covered. The new financial data processing product or service definition will apply to third parties, data aggregators, or others that provide financial data processing products or services for consumer purposes.

Nondepository financial institutions and entities outside of the financial industry may also be affected, though it is important to note that entities within these industries will only be subject to the rule if they meet the definitions of data provider, third party, or data aggregator. Examples of potentially affected small third parties include entities using consumer-authorized data to underwrite loans, offer budgeting or personal financial management services, or facilitate payments.

For the purposes of assessing the impacts of the rule on small entities, ''small entities'' are defined in the RFA to include small businesses, small nonprofit organizations, and small government jurisdictions. A ''small business'' is defined by the SBA's Office of Size Standards for all industries in the NAICS. The CFPB has identified several categories of small entities that may be subject to the proposals under consideration. These include depository institutions (such as commercial banks, savings associations, and credit unions), credit card issuing nondepositories, sales financing companies, consumer lending companies, real estate credit companies, firms that engage in financial transactions processing, reserve, and clearinghouse activities, firms that engage in other activities related to credit intermediation, investment banking and securities dealing companies, securities brokerage companies, and commodities contracts brokerage companies. Other potentially affected small entities include software publishers, firms that provide data processing and hosting services, firms that provide payroll services, firms that provide custom computer programming services, and credit bureaus. According to the SBA's Office of Size Standards, depository institutions are small if they have less than $850 million in assets. Nondepository firms that may be subject to the rule have a maximum size of $47 million in receipts, but the threshold is lower for some NAICS categories.[222] Table 1 shows the number of small businesses within NAICS categories that may be subject to the rule based on December 2023 NCUA and FFIEC Call Report data and 2017 Economic Census data from the U.S. Census Bureau. Entity counts are not provided for the specific revenue amounts that the SBA uses to define small entities and are instead usually provided at multiples of five or ten million dollars. Table 1 includes the closest upper and lower estimates for each revenue limit (*e.g.,* a NAICS category with a maximum size of $47 million in receipts has both the count of entities with less than $50 million in revenue and the count of entities with less than $40 million in revenue). Not all small entities within each included NAICS category will be subject to the rule.

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[222] SBA regularly updates its size thresholds to account for inflation and other factors. The SBA Size Standards described here reflect the thresholds in effect at the publication date of this final rule. The 2017 Economic Census data are the most recently available data with entity counts by annual revenue. *See* Small Bus. Admin., *SBA Size Standards* (effective Mar. 17, 2023), *https://www.sba.gov/sites/sbagov/files/2023-06/Table%20of%20Size%20Standards_Effective%20March%2017%2C%202023%20%282%29.pdf.*

Table 1: Number of small businesses within NAICS industry codes that may be subject to the rule

	Number of Entities	Percent of Entities
A. Small Depository Firms		
Commercial Banking (522110), Savings Institutions (522120), and Credit Card Issuing (522210)	4,587	
< $850M (Assets)	3,422	74.6%
Credit Unions (522130)	4,702	
< $850M (Assets)	4,202	89.4%
B. Small Nondepository Firms		
Software Publishers (511210)	10,014	
< $40M (Revenue)	9,395	93.8%
< $50M (Revenue)	9,461	94.5%
Data Processing, Hosting, and Related Services (518210)	10,860	
< $40M (Revenue)	9,930	91.4%
Sales Financing (522220)	2,367	
< $40M (Revenue)	2,112	89.2%
< $50M (Revenue)	2,124	89.7%
Consumer Lending (522291)	3,037	
< $40M (Revenue)	2,905	95.7%
< $50M (Revenue)	2,915	96.0%
Real Estate Credit (522292)	3,289	
< $40M (Revenue)	2,872	87.3%
< $50M (Revenue)	2,904	88.3%
Financial Transactions Processing, Reserve, and Clearinghouse Activities (522320)	3,068	
< $40M (Revenue)	2,916	95.0%
< $50M (Revenue)	2,928	95.4%
Other Activities Related to Credit Intermediation (522390)	3,772	
< $25M (Revenue)	3,610	95.7%
< $30M (Revenue)	3,621	96.0%
Investment Banking and Securities Dealing (523110)	2,394	
< $40M (Revenue)	2,214	92.5%
< $50M (Revenue)	2,227	93.0%
Securities Brokerage (523120)	6,919	
< $40M (Revenue)	6,703	96.9%
< $50M (Revenue)	6,717	97.1%
Commodities Contracts Brokerage (523140)	856	
< $40M (Revenue)	825	96.4%
< $50M (Revenue)	829	96.8%
Payroll Services (541214)	4,328	
< $35M (Revenue)	4,111	95.0%

Table 2 provides the CFPB's estimate of the actual number of affected entities within the categories of depositories, nondepository data providers, and third parties, and the NAICS codes these entities may fall within. As described in

part VII.B.6, with regard to the requirements of the rule applicable to data providers, the final rule does not cover depositories that are small entities based on SBA's definition. As a result, there will be no small entity depositories covered by the rule, in their capacity as data providers. If any of these entities operate as third parties, they will be covered and counted as third parties. The CFPB is not able to estimate with precision the number of small nondepository entities that will be subject to the rule, but expects that approximately 100 small nondepository institutions will be data providers under the rule. In addition, based on data from the Provider Collection and Aggregator Collection, the CFPB estimates that between 6,800 and 9,500 small entities are third parties that access consumer-authorized data.

	Number of Entities	Percent of Entities
< $40M (Revenue)	4,116	95.1%
Custom Computer Programming Services (541511)	62,205	
< $30M (Revenue)	60,959	98.0%
< $35M (Revenue)	61,088	98.2%
Credit Bureaus (561450)	307	
< $35M (Revenue)	279	90.9%
< $75M (Revenue)	283	92.2%

Table 2: Estimated number of affected entities and small entities by category

Category	NAICS	Small Entity Threshold	Est. Total Affected Entities	Est. Number of Small Entities
Depository institution data providers	522110, 522120, 522130, 522210	$850 million in assets	1,665	0
Nondepository financial institution data providers	511210, 522291, 522320	Varies, less than $47 million in annual receipts	120	100
Third parties	511210, 518210, 522110, 522120, 522130, 522210, 522220, 522291, 522292, 522320, 522390, 523110, 523120, 523140, 541214, 541511, 561450	Varies, less than $47 million in annual receipts, or less than $850 million in assets for depository third parties	7,000–10,000	6,800–9,500

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5. Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for the Preparation of the Report or Record

The rule will impose new reporting, recordkeeping, and other compliance requirements on small entities subject to the rule, which excludes small depository data providers. These requirements generally differ for small entities in two classes: nondepository data providers and third parties. Part VI.E provides a detailed description of the requirements and estimated compliance costs that will be faced by affected small entities under the rule. These requirements will be imposed on an estimated 100 small nondepository data providers and between 6,800 and 9,500 small third parties, as shown in table 2. The requirements and their costs are summarized in this section.

Requirements for Nondepository Data Providers

The rule will require nondepository data providers to calculate and disclose the response rate for third party data access on a monthly basis. The CFPB estimates that data providers may face a $7,600 cost of developing and testing a system to regularly disclose this information on their websites. The CFPB expects these reports will generally be automated and will have minimal ongoing costs after the system is implemented.

The rule will require nondepository data providers to have policies and procedures to retain records to demonstrate compliance with certain other requirements of the rule. Data providers will also be required to have policies and procedures designed to ensure that the reason for the decision to decline a third party's request to access its developer interface is communicated to the third party. The CFPB expects that these recordkeeping requirements will likely be built into a data provider's developer interface and the cost methodology described in part IV.E.1 includes these in the overall cost of establishing and maintaining a compliant developer interface. Incremental costs of these requirements are limited to developing and implementing reasonable policies and procedures, which the CFPB estimates will cost $23,500 to $51,200 per data provider.

The rule requires nondepository data providers to maintain a consumer interface that allows consumers to directly access their data. As discussed in part VI.E.1, the CFPB expects that data providers subject to this requirement generally already provide the required information under the baseline and estimates that the incremental costs of this requirement will be minimal.

The rule requires nondepository data providers to maintain a developer interface. As described in part VI.E.1, the CFPB expects that most nondepository data providers will develop and maintain their developer interfaces in-house. For small nondepository data providers that choose to build their developer interface in-house, the estimated upfront cost is $46,000. Estimated annual costs for in-house developer interfaces include technology costs of $20,000 as well as ongoing staffing costs of $48,000 to $95,000.

The rule requires data providers to have policies and procedures to ensure that data are accurately transferred to third parties. In the cost methodology described in part IV.E.1, the CFPB includes these costs in the estimate for establishing and maintaining a compliant developer interface.

Satisfying these requirements for data providers would generally involve professional skills related to software development, general and operational management, legal expertise, compliance, and customer support.

Requirements for Third Parties

Third parties are not subject to reporting requirements but will be required to retain records of consumer data access requests and actions taken in response to these requests, reasons for not making the data available, and data access denials under the rule. The CFPB understands that most third parties maintain similar records and costs will be limited to a one-time change to existing systems and small storage costs. The CFPB estimates a one-time cost of $10,100 for third parties to develop and implement appropriate policies and procedures, with minimal ongoing costs.

The rule requires third parties to establish and maintain systems that receive data access revocation requests, track duration-limited authorizations, delete data when required due to revoked or lapsed authorizations, and retain the relevant records. The CFPB estimates that the one-time cost to establish these systems will be between $22,800 and $94,900, with minimal ongoing costs.

The rule requires third parties to provide authorization disclosure and certification statements. The CFPB estimates that the one-time cost to third parties of establishing an automated system to provide these disclosures would be $94,000. However, the CFPB expects that small third parties will generally use another third party to provide these disclosures and this cost will not be incurred. If third parties currently provide disclosures, modifying the content to comply with the proposed rule is estimated to cost between $2,900 and $3,800.

Satisfying these requirements for data providers will generally involve professional skills related to software development, general and operational management, legal expertise, compliance, and customer support.

As discussed in part VI.E.1, the CFPB does not expect the new financial data processing products or services definition to impose costs on small entities.

6. Description of Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected

In the proposal, the CFPB considered several alternatives to the proposal that would minimize economic impacts on small entities. These alternatives generally fell into four categories: (1) limiting coverage of small data providers, (2) permitting small data providers to charge fees for making covered data available, (3) exemptions from the proposed rule for small third parties, or (4) alternative compliance dates for small depository data providers.

In the final rule, small depositories are not covered data providers. While the CFPB considered more limited alternatives for excluding depository data providers from coverage in the proposal, comments from the SBA Office of Advocacy and data provider commenters nearly universally favored coverage definitions that would reduce burden for a larger number of small depository data providers. The CFPB has revised the coverage of depository data providers in the final rule to reduce the burden on small depository data providers, thereby addressing these comments.

The CFPB considered not covering small nondepository data providers.

However, as discussed in part VII.B.3, the CFPB has determined that compliance burdens are likely to be lower for these small entities as compared to small depositories, and that extended compliance timelines would better address burden on small nondepositories while still accomplishing the goals of the rulemaking.

The CFPB also considered the alternative of permitting small data providers to charge fees for making covered data available through developer interfaces. Given the change in coverage in the final rule, this alternative would only affect small nondepository data providers. The CFPB has determined that a data provider charging such fees would be inconsistent with the data provider's statutory obligation under CFPA section 1033 to make covered data available to consumers and to their authorized third party representatives. Further, consumers at covered small data providers could be harmed through reduced access to third parties' products and services if the CFPB were to permit only small data providers to charge fees.

The CFPB also considered exemptions as a means to reduce burden for small entity third parties. Based on data from the Aggregator Collection, the CFPB estimates that there are approximately 6,800 to 9,500 third parties with fewer than 100,000 connected accounts, many of which may be small entities. However, exempting third parties from certain conditions of access under the rule, such as the requirements on collection, use, and retention, would likely create risks of harm for consumers on data security and privacy grounds, provide unfair competitive advantages for exempt versus non-exempt third parties, and increase the risks of losses from data security incidents for consumers and data providers.

Finally, the CFPB considered alternative compliance dates for small entities to reduce burden. The proposed rule had a compliance date of approximately four years after the final rule is published in the **Federal Register** for depository data providers with less than $850 million in assets. In the final rule, small depositories are not covered as data providers. For small nondepository data providers, the CFPB has extended the compliance date from approximately one year after the final rule is published in the **Federal Register** to approximately 2.5 years after publication. The CFPB expects this will substantially reduce compliance burden on small nondepository data providers. Regarding potential burden for small third parties, the CFPB has also extended the earliest compliance dates that apply to the largest data providers from six months to approximately 1.5 years and published the Industry Standard-Setting Final Rule in June 2024 to encourage the establishment of consensus standards in the near future. The CFPB expects these changes to effectively increase the amount of time small third parties have to come into compliance with the rule, reducing their compliance burden.

7. Description of the Steps the Agency Has Taken To Minimize Any Additional Cost of Credit for Small Entities

The CFPB expects that the rule may have some limited impact on the cost or availability of credit for small entities but does not expect that the impact will be substantial. The CFPB expects there are several ways the rule could potentially impact the cost or availability of credit to small entities. First, the provisions of the rule could impact the availability of credit to small entities if small businesses are using loans from lenders (either data providers or third parties) affected by the provisions and the provisions lead to a contraction of the offered services. Second, the rule could potentially increase the cost of credit for small businesses if the costs of implementing the rule are passed through in the form of higher prices on loans from lenders. Third, for small business owners that use consumer-authorized data to qualify for or access credit, the provisions could potentially increase credit availability or lower costs for small entities by facilitating increased data access.[223] Small entity representatives did not provide feedback on this topic during the SBREFA process.[224] The CFPB did not have data to quantify these potential impacts in the proposal.

The CFPB requested comment on its analysis of the proposal's impact on the cost of credit for small entities, and requested data or evidence on these potential impacts. One consumer advocate commenter stated that open banking and access to online providers give small businesses access to new services, but cited a study finding that surveyed small businesses had lower satisfaction with online lenders than with small banks.[225] The CFPB expects that the rule will generally improve small businesses' ability to use online financial services, increasing their options for credit. The CFPB also expects that the final rule's coverage and extended implementation periods will reduce compliance burden on small depositories relative to the proposal, mitigating negative effects on credit access.

VIII. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),[226] Federal agencies are generally required to seek, prior to implementation, approval from OMB for information collection requirements. Under the PRA, the CFPB may not conduct or sponsor, and, notwithstanding any other provision of law, a person is not required to respond to, an information collection unless the information collection displays a valid control number assigned by OMB.

As part of its continuing effort to reduce paperwork and respondent burden, the CFPB conducted a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on the information collection requirements in accordance with the PRA. This helps ensure that the public understands the CFPB's requirements or instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, information collection instruments are clearly understood, and the CFPB can properly assess the impact of information collection requirements on respondents.

The rule amends and adds to 12 CFR part 1033 and amends 12 CFR part 1001. The rule contains seven new information collection requirements.

1. Obligation to make covered data available (§ 1033.201), including general requirements (§ 1033.301) and requirements applicable to developer interface (§ 1033.311).
2. Information about the data provider (§ 1033.341).
3. Policies and procedures for data providers (§ 1033.351).
4. Third party authorization; general (§ 1033.401), including the authorization disclosure (§ 1033.411).
5. Third party obligations (§ 1033.421).
6. Use of data aggregator (§ 1033.431).
7. Policies and procedures for third party record retention (§ 1033.441).

The information collection requirements in this final rule are mandatory.

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[223] As an example, Howell *et al.* found that more automated fintech lenders facilitated a higher share of Paycheck Protection Program loans to small, Black-owned firms relative to traditional lenders. Sabrina T. Howell *et al., Lender Automation and Racial Disparities in Credit Access,* 79 J. Fin. 1457–1512 (202), *https://doi.org/10.1111/jofi.13303.*

[224] SBREFA Panel Report at 40.

[225] Fed. Rsrv. Banks, *2023 Report on Employer Firms: Findings from the 2022 Small Business Credit Survey* (Mar. 2023), *https://doi.org/10.55350/sbcs-20230308.*

[226] 44 U.S.C. 3501 *et seq.*

The collections of information contained in this rule, and identified as such, have been submitted to OMB for review under section 3507(d) of the PRA. A complete description of the information collection requirements (including the burden estimate methods) is provided in the information collection request (ICR) that the CFPB has submitted to OMB under the requirements of the PRA. The ICR submitted to OMB requesting approval under the PRA for the information collection requirements contained herein is available at *www.regulations.gov* as well as on OMB's public-facing docket at *www.reginfo.gov.*

Title of Collection: 12 CFR part 1033.

OMB Control Number: 3170–XXXX.

Type of Review: New collection.

Affected Public: Private sector.

Estimated Number of Respondents: 10,285.

Estimated Total Annual Burden Hours: 1,435,650 annually and 5,664,085 one-time.

The CFPB will publish a separate **Federal Register** notice once OMB concludes its review announcing OMB approval of the information collections contained in this final rule.

In the proposal, the CFPB invited comments on: (1) Whether the collection of information is necessary for the proper performance of the functions of the CFPB, including whether the information will have practical utility; (2) the accuracy of the CFPB's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

An industry association representing nondepositories commented that the PRA analysis in the proposal underestimated the burden of the information collection, particularly the costs estimated for policies and procedures for data providers and third party record retention, and the costs for data providers' obligations to make data available to third parties. The commenter stated that the cost and burden of the information collection would exceed the CFPB's estimate of 120 hours annually per entity and would be prohibitively expensive for smaller entities, and encouraged the CFPB to reconsider its estimate of the burden from the information collection.

As discussed in part VI.E.1, the CFPB has increased its estimates for the costs of developing policies and procedures for data providers; these costs are estimated to be between $23,500 and $51,200 per data provider. Regarding the estimated annual burden per entity of the information collection, the CFPB expects that most burdens related to record retention and making data available will be one-time costs to develop and implement compliant systems. This is reflected in the CFPB's estimate of larger one-time costs from the information collection as compared to annual costs. Comments related to the one-time and annual costs of record retention, making data available, and policies and procedures are discussed in part VI.E.1. The CFPB did not receive data or evidence that would allow it to further refine its estimates of per entity annual costs, but notes that the overall costs of the information collection have been reduced due to changes in the coverage of the final rule.

The other comments on the rule generally are summarized above.

IX. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the CFPB will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States at least 60 days prior to the rule's published effective date. The Office of Information and Regulatory Affairs has designated this rule as a ''major rule'' as defined by 5 U.S.C. 804(2).

X. Severability

The CFPB intends that, if any provision of the final rule, or any application of a provision, is stayed or determined to be invalid, the remaining provisions or applications are severable and shall continue in effect.[227]

However, this is subject to the following significant exception. The CFPB considers data providers' obligations to provide data under 12 CFR part 1033 to authorized third parties to be inseparable from the protections the CFPB is establishing in subpart D to ensure that authorized third parties are acting on behalf of consumers. Accordingly, if any of the provisions in subpart D were stayed or determined to be invalid, the CFPB intends that subpart D, together with references to third parties and authorized third parties elsewhere in part 1033, shall not continue in effect. This would not affect direct access by consumers to covered data under the remainder of part 1033, and it would also not affect the definition of financial product or service under § 1001.2(b).

The CFPB did not receive any comments opposing its approach to severability.[228]

List of Subjects

12 CFR Part 1001

Consumer protection, Credit.

12 CFR Part 1033

Banks, banking, Consumer protection, Credit, Credit Unions, Electronic funds transfers, National banks, Privacy, Reporting and recordkeeping requirements, Savings associations, Voluntary standards.

Authority and Issuance

For the reasons set forth in the preamble, the CFPB amends 12 CFR parts 1001 and 1033 as set forth below:

PART 1001—FINANCIAL PRODUCTS OR SERVICES

■ 1. The authority citation for Part 1001 continues to read as follows:

Authority: 12 U.S.C. 5481(15)(A)(XI); AND 12 U.S.C. 5512(B)(1).

■ 2. Amend § 1001.2 by adding paragraphs (b) and (c) to read as follows:

§ 1001.2 Definitions.

* * * * *

(b) Providing financial data processing products or services by any technological means, including processing, storing, aggregating, or transmitting financial or banking data, alone or in connection with another product or service, where the financial data processing is not offered or provided by a person who, by operation of 12 U.S.C. 5481(15)(A)(vii)(I) or (II), is not a covered person.

(c) [Reserved]

■ 3. Revise part 1033 to read as follows:

PART 1033—PERSONAL FINANCIAL DATA RIGHTS

Subpart A—General

Sec.

[227] As non-exhaustive examples to illustrate the above, the following are severable from the remainder of the rule: the applicability of the rule to any type of data provider; the applicability of the rule to any type of covered consumer financial product or service; the applicability of the rule to any type of covered data; the reference in any provision of the rule to consensus standards; the fee prohibition in § 1033.301(c); any of the requirements for a developer interface under § 1033.311; and the applicability of § 1001.2(b) to any activity. Moreover, part 1033 and § 1001.2(b) are each severable from the other.

[228] The CFPB notes that this severability clause is not codified but forms an operative part of the rule.

1033.101 Authority, purpose, and organization.
1033.111 Coverage of data providers.
1033.121 Compliance dates.
1033.131 Definitions.
1033.141 Standard-setting bodies.

Subpart B—Making Covered Data Available

1033.201 Availability and prohibition against evasion.
1033.211 Covered data.
1033.221 Exceptions.

Subpart C—Data Provider Interfaces; Responding to Requests

1033.301 General requirements.
1033.311 Requirements applicable to developer interface.
1033.321 Interface access.
1033.331 Responding to requests for information.
1033.341 Information about the data provider.
1033.351 Policies and procedures.

Subpart D—Authorized Third Parties

1033.401 Third party authorization; General.
1033.411 Authorization disclosure.
1033.421 Third party obligations.
1033.431 Use of data aggregator.
1033.441 Policies and procedures for third party record retention.

Appendix A to Part 1033—Personal Financial Data Rights Rule: How To Apply for Recognition as a Standard Setter

Authority: 12 U.S.C. 5512; 12 U.S.C. 5514; 12 U.S.C. 5533.

Subpart A—General

§ 1033.101 Authority, purpose, and organization.

(a) *Authority.* The regulation in this part is issued by the Consumer Financial Protection Bureau (CFPB) pursuant to the Consumer Financial Protection Act of 2010 (CFPA), Pub. L. 111–203, tit. X, 124 Stat. 1955.

(b) *Purpose.* This part implements the provisions of section 1033 of the CFPA by requiring data providers to make available to consumers and authorized third parties, upon request, covered data in the data provider's control or possession concerning a covered consumer financial product or service, in an electronic form usable by consumers and authorized third parties; and by prescribing standards to promote the development and use of standardized formats for covered data, including through industry standards developed by standard-setting bodies recognized by the CFPB. This part also sets forth obligations of third parties that would access covered data on a consumer's behalf, including limitations on their collection, use, and retention of covered data.

(c) *Organization.* This part is divided into subparts as follows:

(1) Subpart A establishes the authority, purpose, organization, coverage of data providers, compliance dates, and definitions applicable to this part.

(2) Subpart B provides the general obligation of data providers to make covered data available upon the request of a consumer or authorized third party, including what types of information must be made available.

(3) Subpart C provides the requirements for data providers to establish and maintain interfaces to receive and respond to requests for covered data.

(4) Subpart D provides the obligations of third parties that would access covered data on behalf of a consumer.

(5) Appendix A to this part provides instructions for how a standard-setting body would apply for CFPB recognition.

§ 1033.111 Coverage of data providers.

(a) *Coverage of data providers.* A data provider has obligations under this part if it controls or possesses covered data concerning a covered consumer financial product or service that the consumer obtained from the data provider, subject to the exclusion in paragraph (d) of this section.

(b) *Definition of covered consumer financial product or service. Covered consumer financial product or service* means a consumer financial product or service, as defined in 12 U.S.C. 5481(5), that is:

(1) A *Regulation E account,* which means an account, as defined in Regulation E, 12 CFR 1005.2(b);

(2) A *Regulation Z credit card,* which means a credit card, as defined in Regulation Z, 12 CFR 1026.2(a)(15)(i); or

(3) Facilitation of payments from a Regulation E account or Regulation Z credit card, excluding products or services that merely facilitate first party payments. For purposes of this part, a first party payment is a transfer initiated by the payee or an agent acting on behalf of the underlying payee. First party payments include payments initiated by loan servicers.

(c) *Definition of data provider. Data provider* means a covered person, as defined in 12 U.S.C. 5481(6), that is:

(1) A *financial institution,* as defined in Regulation E, 12 CFR 1005.2(i);

(2) A *card issuer,* as defined in Regulation Z, 12 CFR 1026.2(a)(7); or

(3) Any other person that controls or possesses information concerning a covered consumer financial product or service that the consumer obtained from that person.

Example 1 to paragraph (c): A digital wallet provider is a data provider.

(d) *Coverage threshold—Certain depository institutions.* The requirements of subparts B and C of this part do not apply to data providers defined under paragraphs (c)(1) through (3) of this section that are depository institutions that hold total assets equal to or less than the Small Business Administration (SBA) size standard, as determined in accordance with this paragraph (d). If at any point a depository institution that held total assets greater than that SBA size standard as of or at any point after January 17, 2025 subsequently holds total assets below that amount, the requirements of subparts B and C of this part continue to apply.

(1) *Determining SBA size standard.* For purposes of paragraph (d) of this section, the SBA size standard is the SBA size standard for the data provider's appropriate North American Industry Classification System (NAICS) code for commercial banking, credit unions, savings institutions and other depository credit intermediation, or credit card issuing, as codified in 13 CFR 121.201.

(2) *Calculating total assets.* For purposes of paragraph (d) of this section, total assets held by a depository institution are determined by averaging the assets reported on its own four preceding quarterly call report submissions to the Federal Financial Institutions Examination Council or National Credit Union Association, as applicable, or its submissions to the appropriate oversight body to the extent it does not submit such reports to the Federal Financial Examination Council or National Credit Union Administration.

(3) *Merger or acquisition—coverage of surviving depository institution when there are not four quarterly call report submissions.* After a merger or acquisition the surviving depository institution shall determine quarterly assets prior to the merger or acquisition by using the combined assets reported on the quarterly call report submissions by all predecessor depository institutions. The surviving depository institution shall determine quarterly assets after the merger or acquisition by using the assets reported on the quarterly call report submissions by the surviving depository institution. The surviving depository institution shall determine total assets by using the average of the quarterly assets for the four preceding quarters, whether the quarterly assets are the combined assets of the predecessor depository institutions or from the surviving depository institution.

§ 1033.121 Compliance dates.

(a) *Determining assets and revenue for purposes of initial compliance dates.* A data provider's compliance date in paragraph (b) of this section is based on the calculation of total assets or total receipts, as appropriate, described in paragraphs (a)(1) and (2) of this section.

(1) With respect to a depository institution data provider, total assets are determined by averaging the assets reported on its 2023 third quarter, 2023 fourth quarter, 2024 first quarter, and 2024 second quarter call report submissions to the Federal Financial Institutions Examination Council or National Credit Union Administration, as applicable, or its submissions to the appropriate oversight body to the extent it does not submit such reports to the Federal Financial Examination Council or National Credit Union Administration. If, as a result of a merger or acquisition, a depository institution data provider does not have the named four quarterly call report submissions, the depository institution data provider shall use the process set out in § 1033.111(d)(3) to determine total assets for the time period named in this paragraph (a)(1).

(2) With respect to a nondepository institution data provider, total receipts are calculated based on the SBA definition of receipts, as codified in 13 CFR 121.104(a).

(b) *Initial compliance dates.* A data provider defined under § 1033.111(c)(1) through (3) must comply with the requirements in subparts B and C of this part beginning on:

(1) April 1, 2026, for depository institution data providers that hold at least $250 billion in total assets and nondepository institution data providers that generated at least $10 billion in total receipts in either calendar year 2023 or calendar year 2024.

(2) April 1, 2027, for data providers that are:

(i) Depository institutions that hold at least $10 billion in total assets but less than $250 billion in total assets; or

(ii) Nondepository institutions that did not generate $10 billion or more in total receipts in both calendar year 2023 and calendar year 2024.

(3) April 1, 2028, for depository institution data providers that hold at least $3 billion in total assets but less than $10 billion in total assets.

(4) April 1, 2029, for depository institution data providers that hold at least $1.5 billion in total assets but less than $3 billion in total assets.

(5) April 1, 2030, for depository institution data providers that hold less than $1.5 billion in total assets but more than $850 million in total assets.

(c) *Compliance dates for depository institution data providers that subsequently cross coverage threshold.* A depository institution data provider under § 1033.111(c)(1) through (3) that has total assets as calculated in § 1033.111(d)(2) equal to or less than the SBA size standard as determined in accordance with § 1033.111(d)(1), but that subsequently holds total assets that exceed that SBA size standard, as measured in § 1033.111(d)(2), must comply with the requirements in subparts B and C of this part within a reasonable amount of time after exceeding the size standard, not to exceed five years.

§ 1033.131 Definitions.

For purposes of this part, the following definitions apply:

Authorized third party means a third party that has complied with the authorization procedures described in § 1033.401.

Card issuer is defined at § 1033.111(c)(2).

Consensus standard means a standard that is adopted by a recognized standard setter and that continues to be maintained by that recognized standard setter.

Consumer means a natural person. Trusts established for tax or estate planning purposes are considered natural persons for purposes of this definition. *Consumer* also includes guardians, trustees, custodians, or other similar natural persons acting on behalf of a consumer pursuant to State law.

Consumer interface means an interface through which a data provider receives requests for covered data and makes available covered data in an electronic form usable by consumers in response to the requests.

Covered consumer financial product or service is defined at § 1033.111(b).

Covered data is defined at § 1033.211.

Data aggregator means a person that is retained by and provides services to the authorized third party to enable access to covered data.

Data provider is defined at § 1033.111(c).

Depository institution means any depository institution as defined by the Federal Deposit Insurance Act, 12 U.S.C. 1813(c)(1), or any credit union as defined by 12 CFR 700.2.

Developer interface means an interface through which a data provider receives requests for covered data and makes available covered data in an electronic form usable by authorized third parties in response to the requests.

Financial institution is defined at § 1033.111(c)(1).

Recognized standard setter means a standard-setting body that has been recognized by the CFPB under § 1033.141.

Regulation E account is defined at § 1033.111(b)(1).

Regulation Z credit card is defined at § 1033.111(b)(2).

Third party means any person that is not the consumer about whom the covered data pertains or the data provider that controls or possesses the consumer's covered data.

§ 1033.141 Standard-setting bodies.

(a) *Recognition of a standard-setting body.* A standard-setting body may request CFPB recognition. Recognition will last up to five years, absent revocation. The CFPB will not recognize a standard-setting body unless it demonstrates that it satisfies the following attributes:

(1) *Openness.* The sources, procedures, and processes used are open to all interested parties, including: consumer and other public interest groups with expertise in consumer protection, financial services, community development, fair lending, and civil rights; authorized third parties; data providers; data recipients; data aggregators and other providers of services to authorized third parties; and relevant trade associations. Parties can meaningfully participate in standards development on a non-discriminatory basis.

(2) *Balance.* The decision-making power is balanced across all interested parties, including consumer and other public interest groups, and is reflected at all levels of the standard-setting body. There is meaningful representation for large and small commercial entities within these categories. No single interest or set of interests dominates decision-making. Achieving balance requires recognition that, even when a participant may play multiple roles, such as data provider and authorized third party, the weight of that participant's commercial concerns may align primarily with one set of interests. The ownership of participants is considered in achieving balance.

(3) *Due process and appeals.* The standard-setting body uses documented and publicly available policies and procedures, and it provides adequate notice of meetings and standards development, sufficient time to review drafts and prepare views and objections, access to views and objections of other participants, and a fair and impartial process for resolving conflicting views. An appeals process is available for the impartial handling of procedural appeals.

(4) *Consensus.* Standards development proceeds by consensus,

which is defined as general agreement, though not necessarily unanimity. During the development of consensus, comments and objections are considered using fair, impartial, open, and transparent processes.

(5) *Transparency.* Procedures or processes for participating in standards development and for developing standards are transparent to participants and publicly available.

Subpart B—Making Covered Data Available

§ 1033.201 Availability and prohibition against evasion.

(a) *Obligation to make covered data available*—(1) *General.* A data provider must make available to a consumer and an authorized third party, upon request, covered data in the data provider's control or possession concerning a covered consumer financial product or service that the consumer obtained from the data provider, in an electronic form usable by consumers and authorized third parties.

(2) *Prohibition against evasion.* A data provider must not take any action:

(i) With the intent of evading the requirements of subparts B and C of this part;

(ii) That the data provider knows or should know is likely to render unusable the covered data that the data provider makes available; or

(iii) That the data provider knows or should know is likely to prevent, interfere with, or materially discourage a consumer or authorized third party from accessing covered data consistent with this part.

(b) *Current data.* In complying with paragraph (a) of this section, a data provider must make available the most recently updated covered data that it has in its control or possession at the time of a request. A data provider must make available information concerning authorized but not yet settled transactions.

§ 1033.211 Covered data.

Covered data in this part means, as applicable:

(a) Transaction information, including historical transaction information in the control or possession of the data provider. A data provider is deemed to make available sufficient historical transaction information for purposes of § 1033.201(a)(1) if it makes available at least 24 months of such information.

Example 1 to paragraph (a): This category includes amount, transaction date, payment type, pending or authorized status, payee or merchant name, rewards credits, and fees or finance charges.

(b) Account balance information.

(c) Information to initiate payment to or from a Regulation E account directly or indirectly held by the data provider. This category includes an account and routing number that can be used to initiate an Automated Clearing House transaction.

(1) In complying with its obligation under § 1033.201(a)(1), a data provider is permitted to make available a tokenized account number instead of, or in addition to, a non-tokenized account number, as long as the tokenization is not used as a pretext to restrict competitive use of payment initiation information.

(2) This paragraph (c) does not apply to data providers who do not directly or indirectly hold the underlying Regulation E account. For example, a data provider that merely facilitates pass-through payments would not be required to make available account and routing number for the underlying Regulation E account.

(d) Terms and conditions. For purposes of this section, terms and conditions are limited to data in agreements evidencing the terms of the legal obligation between a data provider and a consumer for a covered consumer financial product or service, such data in the account opening agreement and any amendments or additions to that agreement, including pricing information.

Example 2 to paragraph (d): This category includes the applicable fee schedule, any annual percentage rate or annual percentage yield, credit limit, rewards program terms, whether a consumer has opted into overdraft coverage, and whether a consumer has entered into an arbitration agreement.

(e) Upcoming bill information.

Example 3 to paragraph (e): This category includes information about third party bill payments scheduled through the data provider and any upcoming payments due from the consumer to the data provider.

(f) Basic account verification information, which is limited to the name, address, email address, and phone number associated with the covered consumer financial product or service. If a data provider directly or indirectly holds a Regulation E or Regulation Z account belonging to the consumer, the data provider must also make available a truncated account number or other identifier for that account.

§ 1033.221 Exceptions.

A data provider is not required to make available the following covered data to a consumer or authorized third party:

(a) Any confidential commercial information, including an algorithm used to derive credit scores or other risk scores or predictors. Information does not qualify for this exception merely because it is an input to, or an output of, an algorithm, risk score, or predictor. For example, annual percentage rate and other pricing terms are sometimes determined by an internal algorithm or predictor but do not fall within this exception.

(b) Any information collected by the data provider for the sole purpose of preventing fraud or money laundering, or detecting, or making any report regarding other unlawful or potentially unlawful conduct. Information collected for other purposes does not fall within this exception. For example, name and other basic account verification information do not fall within this exception.

(c) Any information required to be kept confidential by any other provision of law. Information does not qualify for this exception merely because the data provider must protect it for the consumer. For example, the data provider cannot restrict access to the consumer's own information merely because that information is subject to privacy protections.

(d) Any information that the data provider cannot retrieve in the ordinary course of its business with respect to that information.

Subpart C—Data Provider Interfaces; Responding to Requests

§ 1033.301 General requirements.

(a) *Requirement to maintain interfaces.* A data provider subject to the requirements of this part must maintain a consumer interface and a developer interface. The consumer interface and the developer interface must satisfy the requirements set forth in this section. The developer interface must satisfy the additional requirements set forth in § 1033.311.

(b) *Machine-readable files upon request.* Upon request for covered data in a machine-readable file, and subject to paragraphs (b)(1) and (2) of this section, a data provider must make available to a consumer or an authorized third party covered data in a file that is machine-readable and that the consumer or authorized third party can retain and transfer for processing into a separate information system that is reasonably available to and in the control of the consumer or authorized third party.

(1) *Consumer interface.* With respect to covered data provided through its consumer interface, a data provider is not required to comply with:

(i) The requirements of this paragraph (b) for the covered data described in § 1033.211(c) (payment initiation information) and (f) (account verification information); and

(ii) The requirement of this paragraph (b) to provide in a file that is machine-readable the covered data described in § 1033.211(d) (terms and conditions).

(2) *Developer interface.* With respect to covered data provided through its developer interface, a data provider satisfies the requirements of this paragraph (b) if it makes available covered data in a form that satisfies the requirements of § 1033.311(b).

(c) *Fees prohibited.* A data provider must not impose any fees or charges on a consumer or an authorized third party in connection with:

(1) *Interfaces.* Establishing or maintaining the interfaces required by paragraph (a) of this section; or

(2) *Requests.* Receiving requests or making available covered data in response to requests as required by this part.

§ 1033.311 Requirements applicable to developer interface.

(a) *General.* A developer interface required by § 1033.301(a) must satisfy the requirements set forth in this section.

(b) *Standardized format.* The developer interface must make available covered data in a standardized and machine-readable format. Indicia that the format satisfies this requirement include that it conforms to a consensus standard.

(1) *Meaning of format.* For purposes of this section, *format* includes structures and definitions of covered data and requirements and protocols for communicating requests and responses for covered data.

(2) *Meaning of standardized.* For purposes of this section, *standardized* means conforms to a format widely used by other data providers and designed to be readily usable by authorized third parties.

(c) *Commercially reasonable performance.* A developer interface's performance must be commercially reasonable.

(1) *Response rate; quantitative minimum performance specification.* The performance of the interface cannot be commercially reasonable if it does not meet the following quantitative minimum performance specification regarding its response rate: The number of proper responses by the interface divided by the total number of requests for covered data to the interface must be equal to or greater than 99.5 percent in each calendar month. For purposes of this paragraph (c)(1), all of the following requirements apply:

(i) Any responses by and requests to the interface during scheduled downtime for the interface must be excluded respectively from the numerator and the denominator of the calculation.

(ii) In order for any downtime of the interface to qualify as scheduled downtime, the data provider must have provided reasonable notice of the downtime to all third parties to which the data provider has granted access to the interface. Indicia that the data provider's notice of the downtime may be reasonable include that the notice conforms to a consensus standard.

(iii) The total amount of scheduled downtime for the interface in a calendar month must be reasonable. Indicia that the total amount of scheduled downtime may be reasonable include that the amount conforms to a consensus standard.

(iv) A proper response is a response, other than any message provided during unscheduled downtime of the interface, that meets all of the following criteria:

(A) The response either fulfills the request or explains why the request was not fulfilled;

(B) The response is consistent with the reasonable written policies and procedures that the data provider establishes and maintains pursuant to § 1033.351(a); and

(C) The response is provided by the interface within a commercially reasonable amount of time. Indicia that a response is provided in a commercially reasonable amount of time include conformance to an applicable consensus standard.

(2) *Indicia of compliance*—(i) *Indicia.* Indicia that a developer interface's performance is commercially reasonable as required by paragraph (c) of this section include:

(A) Whether the interface's performance conforms to a consensus standard that is applicable to the data provider;

(B) How the interface's performance compares to the performance levels achieved by the developer interfaces of similarly situated data providers; and

(C) How the interface's performance compares to the performance levels achieved by the data provider's consumer interface.

(ii) *Performance specifications.* For each of the three indicia set forth in paragraph (c)(2)(i) of this section, relevant performance specifications include:

(A) The interface's response rate as defined in paragraphs (c)(1) through (iv) of this section;

(B) The interface's total amount of scheduled downtime;

(C) The amount of time in advance of any scheduled downtime by which notice of the downtime is provided;

(D) The interface's total amount of unscheduled downtime; and

(E) The interface's response time.

(d) *Access caps.* Except as otherwise permitted by §§ 1033.221, 1033.321, and 1033.331(b) and (c), a data provider must not unreasonably restrict the frequency with which it receives or responds to requests for covered data from an authorized third party through its developer interface. Any frequency restrictions must be applied in a manner that is non-discriminatory and consistent with the reasonable written policies and procedures that the data provider establishes and maintains pursuant to § 1033.351(a). Indicia that any frequency restrictions applied are reasonable include that they conform to a consensus standard.

(e) *Security specifications*—(1) *Access credentials.* A data provider must not allow a third party to access the data provider's developer interface by using any credentials that a consumer uses to access the consumer interface. A contract between a data provider and the data provider's service provider, pursuant to which the service provider establishes or maintains the data provider's developer interface, does not violate this paragraph (e)(1) if the contract provides that the service provider will make covered data available, in a form and manner that satisfies the requirements of this part, to authorized third parties through the developer interface by means of the service provider using a consumer's credentials to access the data from the data provider's consumer interface.

(2) *Security program.* (i) A data provider must apply to the developer interface an information security program that satisfies the applicable rules issued pursuant to section 501 of the Gramm-Leach-Bliley Act, 15 U.S.C. 6801; or

(ii) If the data provider is not subject to section 501 of the Gramm-Leach-Bliley Act, the data provider must apply to its developer interface the information security program required by the Federal Trade Commission's Standards for Safeguarding Customer Information, 16 CFR part 314.

§ 1033.321 Interface access.

(a) *Denials related to risk management.* A data provider does not violate the general obligation in § 1033.201(a)(1) by denying a consumer or third party access to all elements of the interface described in § 1033.301(a) if:

(1) Granting access would be inconsistent with policies and procedures reasonably designed to comply with:

(i) Safety and soundness standards of a prudential regulator, as defined at 12 U.S.C. 5481(24), of the data provider;

(ii) Information security standards required by section 501 of the Gramm-Leach-Bliley Act, 15 U.S.C. 6801; or

(iii) Other applicable laws and regulations regarding risk management; and

(2) The denial is reasonable pursuant to paragraph (b) of this section.

(b) *Requirements for reasonable denials.* A denial is reasonable pursuant to paragraph (a)(2) of this section if it is:

(1) Directly related to a specific risk of which the data provider is aware, such as a failure of a third party to maintain adequate data security; and

(2) Applied in a consistent and non-discriminatory manner.

(c) *Indicia bearing on reasonable denials.* Indicia bearing on the reasonableness of a denial pursuant to paragraph (b) of this section include:

(1) Whether the denial adheres to a consensus standard related to risk management;

(2) Whether the denial proceeds from standardized risk management criteria that are available to the third party upon request; and

(3) Whether the third party has a certification or other identification of fitness to access covered data that is issued or recognized by a recognized standard setter or the CFPB.

(d) *Conditions sufficient to justify a denial.* Each of the following is a sufficient basis for denying access to a third party:

(1) The third party does not present any evidence that its information security practices are adequate to safeguard the covered data; or

(2) The third party does not make the following information available in both human-readable and machine-readable formats, and readily identifiable to members of the public, meaning the information must be at least as available as it would be on a public website:

(i) Its legal name and, if applicable, any assumed name it is using while doing business with the consumer;

(ii) A link to its website;

(iii) Its Legal Entity Identifier (LEI) that is issued by:

(A) A utility endorsed by the LEI Regulatory Oversight Committee, or

(B) A utility endorsed or otherwise governed by the Global LEI Foundation (or any successor thereof) after the Global LEI Foundation assumes operational governance of the global LEI system; and

(iv) Contact information a data provider can use to inquire about the third party's information security and compliance practices.

§ 1033.331 Responding to requests for information.

(a) *Responding to requests—access by consumers.* To comply with the requirements in § 1033.201(a)(1), upon request from a consumer, a data provider must make available covered data when it receives information sufficient to:

(1) Authenticate the consumer's identity; and

(2) Identify the scope of the data requested.

(b) *Responding to requests—access by third parties.* (1) To comply with the requirements in § 1033.201(a)(1), upon request from an authorized third party, a data provider must make available covered data when it receives information sufficient to:

(i) Authenticate the consumer's identity;

(ii) Authenticate the third party's identity;

(iii) Document the third party has followed the authorization procedures in § 1033.401; and

(iv) Identify the scope of the data requested.

(2) The data provider is permitted to confirm the scope of a third party's authorization to access the consumer's data by asking the consumer to confirm:

(i) The account(s) to which the third party is seeking access; and

(ii) The categories of covered data the third party is requesting to access, as disclosed by the third party pursuant to § 1033.411(b)(4).

Example 1 to paragraph (b): An authorized third party that a data provider has authenticated requests covered data on behalf of an authenticated consumer through the data provider's developer interface. The data provider asks the consumer to confirm the scope of the third party's authorization using a means of communication that the consumer is not accustomed to using with the data provider and that the data provider knows or should know will take a long period of time to reach the consumer and allow the consumer to respond with the confirmation. As a result of the long wait time, the consumer cannot provide a timely confirmation, delaying the third party's access to the covered data. This data provider has violated the § 1033.201(a)(2) prohibition against evasion by taking an action that the data provider knows or should know is likely to interfere with an authorized third party's access to covered data.

(c) *Covered data not required to be made available.* A data provider is not required to make covered data available in response to a request when:

(1) The data are withheld because an exception described in § 1033.221 applies;

(2) The data are not in the data provider's control or possession, consistent with the requirement in § 1033.201(a)(1).

(3) The data provider's interface is not available when the data provider receives a request requiring a response under this section. However, the data provider is subject to the performance specifications in § 1033.311(c);

(4) The request is for access by a third party; and

(i) The consumer has revoked the third party's authorization pursuant to paragraph (e) of this section;

(ii) The data provider has received notice that the consumer has revoked the third party's authorization pursuant to § 1033.421(h)(2); or

(iii) The consumer has not provided a new authorization to the third party after the maximum duration period, as described in § 1033.421(b)(2).

(5) The data provider has not received information sufficient to satisfy the conditions in paragraph(a) or (b) of this section.

(d) *Jointly held accounts.* A data provider that receives a request for covered data from a consumer that jointly holds an account or from an authorized third party acting on behalf of such a consumer must make available covered data to that consumer or authorized third party, subject to the other provisions of this section.

(e) *Method to revoke third party authorization to access covered data.* A data provider does not violate the general obligation in § 1033.201(a)(1) by making available to the consumer a reasonable method to revoke any third party's authorization to access all of the consumer's covered data, provided that such method does not violate § 1033.201(a)(2). Indicia that the data provider's revocation method is reasonable include its conformance to a consensus standard. A data provider that receives a revocation request from a consumer through a revocation method it makes available must revoke the authorized third party's access and

notify the authorized third party of the request in a timely manner.

§ 1033.341 Information about the data provider.

(a) *Requirement to make information about the data provider readily identifiable.* A data provider must make the information described in paragraphs (b) through (d) of this section:

(1) Readily identifiable to members of the public, meaning the information must be at least as available as it would be on a public website; and

(2) Available in both human-readable and machine-readable formats.

(b) *Identifying information.* A data provider must disclose in the manner required by paragraph (a) of this section:

(1) Its legal name and, if applicable, any assumed name it is using while doing business with the consumer;

(2) A link to its website;

(3) Its LEI that is issued by:

(i) A utility endorsed by the LEI Regulatory Oversight Committee, or

(ii) A utility endorsed or otherwise governed by the Global LEI Foundation (or any successor thereof) after the Global LEI Foundation assumes operational governance of the global LEI system; and

(4) Contact information that enables a consumer or third party to receive answers to questions about accessing covered data under this part.

(c) *Developer interface documentation.* For its developer interface, a data provider must disclose in the manner required by paragraph (a) of this section documentation, including metadata describing all covered data and their corresponding data fields, and other documentation sufficient for a third party to access and use the interface. A data provider is not required to make publicly available information that would impede its ability to deny a third party access to its developer interface, consistent with § 1033.321. Indicia that documentation is sufficient for a third party to access and use a developer interface include conformance to a consensus standard. The documentation must:

(1) Be maintained and updated as reasonably necessary for third parties to access and use the interface in accordance with the terms to which data providers are subject under this part;

(2) Include how third parties can get technical support and report issues with the interface; and

(3) Be easy to understand and use, similar to data providers' documentation for other commercially available products.

(d) *Performance disclosure.* On or before the final day of each calendar month, a data provider must disclose in the manner required by paragraph (a) of this section the quantitative minimum performance specification for the response rate described in § 1033.311(c)(1)(i) through (iv) that the data provider's developer interface achieved in the previous calendar month. The data provider's disclosure must include at least a rolling 13 months of the required monthly figure, except that the disclosure need not include the monthly figure for months prior to the compliance date applicable to the data provider. The data provider must disclose the metric as a percentage rounded to four decimal places, such as ''99.9999 percent.''

§ 1033.351 Policies and procedures.

(a) *Reasonable written policies and procedures.* A data provider must establish and maintain written policies and procedures that are reasonably designed to achieve the objectives set forth in subparts B and C of this part, including paragraphs (b) through (d) of this section. Policies and procedures must be appropriate to the size, nature, and complexity of the data provider's activities. A data provider has flexibility to design policies and procedures to avoid acting inconsistently with its other legal obligations, or in a way that could reasonably hinder enforcement against unlawful or potentially unlawful conduct. A data provider must periodically review the policies and procedures required by this section and update them as appropriate to ensure their continued effectiveness.

(b) *Policies and procedures for making covered data available.* The policies and procedures required by paragraph (a) of this section must be reasonably designed to ensure that:

(1) *Making available covered data.* A data provider creates a record of the data fields of covered data in the data provider's control or possession, what covered data are not made available through a consumer or developer interface pursuant to an exception in § 1033.221, and the reasons the exception applies. Indicia that a data provider's record of such data fields complies with the requirements of this paragraph (b)(1) include listing data fields that conform to those published by a consensus standard.

(2) *Denials of developer interface access.* When a data provider denies a third party access to a developer interface pursuant to § 1033.321, the data provider:

(i) Creates a record substantiating the basis for denial; and

(ii) Communicates in a timely manner to the third party, electronically or in writing, the reason(s) for the denial.

(3) *Denials of information requests.* When a data provider denies a request for information for a reason described in § 1033.331(c), to the extent the communication of the denial is not required to be standardized by § 1033.311(b), the data provider:

(i) Creates a record substantiating the basis for the denial; and

(ii) Communicates in a timely manner to the consumer or third party, electronically or in writing, the type(s) of information denied, if applicable, and the reason(s) for the denial.

(c) *Policies and procedures for ensuring accuracy*—(1) *In general.* The policies and procedures required by paragraph (a) of this section must be reasonably designed to ensure that covered data are accurately made available through the data provider's developer interface.

(2) *Elements.* In developing its policies and procedures regarding accuracy, a data provider must consider, for example:

(i) Implementing the format requirements of § 1033.311(b); and

(ii) Addressing information provided by a consumer or a third party regarding inaccuracies in the covered data made available through its developer interface.

(3) *Indicia of compliance.* Indicia that a data provider's policies and procedures regarding accuracy are reasonable include whether the policies and procedures conform to a consensus standard regarding accuracy.

(d) *Policies and procedures for record retention.* The policies and procedures required by paragraph (a) of this section must be reasonably designed to ensure retention of records that are evidence of compliance with subparts B and C of this part.

(1) *Retention period.* Records that are evidence of a data provider's actions in response to a consumer's or third party's request for information or a third party's request to access a developer interface must be retained for at least three years after a data provider has responded to the request. All other records that are evidence of compliance with subparts B and C of this part must be retained for a reasonable period of time of at least three years from the date of the action required under subparts B and C of this part.

(2) *Certain records retained pursuant to policies and procedures.* Records retained pursuant to policies and procedures required under paragraph (a) of this section must include, without limitation:

(i) Records documenting requests for a third party's access to an interface, actions taken in response to such requests, and reasons for denying access, if applicable, for at least three years after the data provider has responded to the request;

(ii) Records providing evidence of fulfillment of requests for information, actions taken in response to such requests, and reasons for not making the information available, if applicable, for at least three years after the data provider has responded to the request;

(iii) Records documenting that the third party has followed the authorization procedures in § 1033.401 to access data on behalf of a consumer, for at least three years after such records are generated;

(iv) Records providing evidence of actions taken by a consumer and a data provider to revoke a third party's access pursuant to any revocation method made available by a data provider, for at least three years after the revocation;

(v) Records providing evidence of commercially reasonable performance described in § 1033.311(c)(2)(ii), for at least three years after the period recorded;

(vi) Written policies and procedures required under this section for three years from the time such material was last applicable; and

(vii) Disclosures required under § 1033.341, for three years from the time such material was disclosed to the public.

Subpart D—Authorized Third Parties

§ 1033.401 Third party authorization; general.

To become an authorized third party, the third party must seek access to covered data from a data provider on behalf of a consumer to provide a product or service the consumer requested and:

(a) Provide the consumer with an authorization disclosure as described in § 1033.411;

(b) Provide a statement to the consumer in the authorization disclosure, as provided in § 1033.411(b)(5), certifying that the third party agrees to the obligations described in § 1033.421; and

(c) Obtain the consumer's express informed consent to access covered data on behalf of the consumer by obtaining an authorization disclosure that is signed by the consumer electronically or in writing.

§ 1033.411 Authorization disclosure.

(a) *In general.* To comply with § 1033.401(a), a third party must provide the consumer with an authorization disclosure electronically or in writing. The authorization disclosure must be clear, conspicuous, and segregated from other material. The names included in the authorization disclosure as required by paragraphs (b)(1) and (2) of this section and by § 1033.431(b) must be readily understandable to the consumer.

(b) *Content.* The authorization disclosure must include:

(1) The name of the third party that will be authorized to access covered data pursuant to the third party authorization procedures in § 1033.401.

(2) The name of the data provider that controls or possesses the covered data that the third party identified in paragraph (b)(1) of this section seeks to access on the consumer's behalf.

(3) A brief description of the product or service the consumer has requested from the third party identified in paragraph (b)(1) of this section and a statement that the third party will collect, use, and retain the consumer's data only as reasonably necessary to provide that product or service to the consumer.

(4) The categories of data that will be accessed. Categories must have a substantially similar level of specificity as the categories in § 1033.211.

(5) The certification statement described in § 1033.401(b).

(6) A brief description of the expected duration of data collection and a statement that collection will not last longer than one year after the consumer's most recent reauthorization.

(7) A description of the revocation method described in § 1033.421(h)(1).

(c) *Language access*—(1) *In general.* The authorization disclosure must be in the same language as the communication in which the authorization disclosure is conveyed to the consumer. Any translation of the authorization disclosure provided to the consumer must be complete and accurate.

(2) *Additional languages.* If the authorization disclosure is in a language other than English, it must include a link to an English-language translation, and it is permitted to include links to translations in other languages. If the authorization disclosure is in English, it is permitted to include links to translations in other languages.

§ 1033.421 Third party obligations.

(a) *General limitation on collection, use, and retention of consumer data*—(1) *In general.* The third party will limit its collection, use, and retention of covered data to what is reasonably necessary to provide the consumer's requested product or service.

(2) *Specific purposes.* For purposes of paragraph (a)(1) of this section, the following are not part of, or reasonably necessary to provide, any other product or service:

(i) Targeted advertising;

(ii) Cross-selling of other products or services; or

(iii) The sale of covered data.

(b) *Collection of covered data*—(1) *In general.* Collection of covered data for purposes of paragraph (a) of this section includes the scope of covered data requested and the duration and frequency of collection of covered data.

(2) *Maximum duration.* In addition to the limitation described in paragraph (a) of this section, the third party will limit the duration of collection of covered data to a maximum period of one year after the consumer's most recent authorization.

(3) *Reauthorization after maximum duration.* To collect covered data beyond the one-year maximum period described in paragraph (b)(2) of this section, the third party will obtain a new authorization from the consumer pursuant to § 1033.401 no later than the anniversary of the most recent authorization from the consumer. The third party is permitted to ask the consumer for a new authorization pursuant to § 1033.401 in a reasonable manner. Indicia that a new authorization request is reasonable include its conformance to a consensus standard.

(c) *Use of covered data.* Use of covered data for purposes of paragraph (a) of this section includes both the third party's own use of covered data and provision of covered data by that third party to other third parties. Examples of uses of covered data that are permitted under paragraph (a) of this section include:

(1) Uses that are specifically required under other provisions of law, including to comply with a properly authorized subpoena or summons or to respond to a judicial process or government regulatory authority;

(2) Uses that are reasonably necessary to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability;

(3) Servicing or processing the product or service the consumer requested; and

(4) Uses that are reasonably necessary to improve the product or service the consumer requested.

(d) *Accuracy.* A third party will establish and maintain written policies and procedures that are reasonably designed to ensure that covered data are

accurately received from a data provider and accurately provided to another third party, if applicable.

(1) *Flexibility.* A third party has flexibility to determine its policies and procedures in light of the size, nature, and complexity of its activities.

(2) *Periodic review.* A third party will periodically review its policies and procedures and update them as appropriate to ensure their continued effectiveness.

(3) *Elements.* In developing its policies and procedures regarding accuracy, a third party must consider, for example:

(i) Accepting covered data in a format required by § 1033.311(b); and

(ii) Addressing information provided by a consumer, data provider, or another third party regarding inaccuracies in the covered data.

(4) *Indicia of compliance.* Indicia that a third party's policies and procedures are reasonable include whether the policies and procedures conform to a consensus standard regarding accuracy.

(e) *Data security.* (1) A third party will apply to its systems for the collection, use, and retention of covered data an information security program that satisfies the applicable rules issued pursuant to section 501 of the Gramm-Leach-Bliley Act (15 U.S.C. 6801); or

(2) If the third party is not subject to section 501 of the Gramm-Leach-Bliley Act, the third party will apply to its systems for the collection, use, and retention of covered data the information security program required by the Federal Trade Commission's Standards for Safeguarding Customer Information, 16 CFR part 314.

(f) *Provision of covered data to other third parties.* Before providing covered data to another third party, subject to the limitation described in paragraphs (a) and (c) of this section, the third party will require the other third party by contract to comply with the third party obligations in paragraphs (a) through (f) of this section and the condition in paragraph (i) of this section upon receipt of the notice described in paragraph (h)(2) of this section.

(g) *Ensuring consumers are informed.* (1) Upon obtaining authorization to access covered data on the consumer's behalf, the third party will provide the consumer with a copy of the authorization disclosure that the consumer has signed electronically or in writing and that reflects the date of the consumer's electronic or written signature. The third party will deliver that copy of the authorization disclosure to the consumer or make it available in a location that is readily accessible to the consumer, such as the third party's interface. If the third party makes the authorization disclosure available in such a location, the third party will ensure it is accessible to the consumer until the third party's access to the consumer's covered data terminates.

(2) The third party will provide contact information that enables a consumer to receive answers to questions about the third party's access to the consumer's covered data. The contact information must be readily identifiable to the consumer.

(3) The third party will establish and maintain reasonable written policies and procedures designed to ensure that the third party provides to the consumer, upon request, the information listed in this paragraph (g)(3) about the third party's access to the consumer's covered data. The third party has flexibility to determine its policies and procedures in light of the size, nature, and complexity of its activities, and the third party will periodically review its policies and procedures and update them as appropriate to ensure their continued effectiveness. The policies and procedures must be designed to ensure that the third party provides the following to the consumer, upon request:

(i) Categories of covered data collected;

(ii) Reasons for collecting the covered data;

(iii) Names of parties with which the covered data was shared. The names must be readily understandable to the consumer;

(iv) Reasons for sharing the covered data;

(v) Status of the third party's authorization;

(vi) How the consumer can revoke the third party's authorization to access the consumer's covered data and verification the third party has adhered to requests for revocation; and

(vii) A copy of any data aggregator certification statement that was provided to the consumer pursuant to § 1033.431(c)(2).

(h) *Revocation of third party authorization*—(1) *Provision of revocation method.* The third party will provide the consumer with a method to revoke the third party's authorization to access the consumer's covered data that is as easy to access and operate as the initial authorization. The third party will also ensure the consumer is not subject to costs or penalties for revoking the third party's authorization.

(2) *Notice of revocation.* The third party will notify the data provider, any data aggregator, and other third parties to whom it has provided the consumer's covered data when the third party receives a revocation request from the consumer.

(i) *Effect of maximum duration and revocation on collection, use, and retention.* If a consumer does not provide a new authorization as described in paragraph (b)(3) of this section, or if a third party receives a revocation request as described in paragraph (h)(1) of this section or notice of a consumer's revocation request as described in § 1033.331(e), a third party will:

(1) No longer collect covered data pursuant to the most recent authorization; and

(2) No longer use or retain covered data that was previously collected pursuant to the most recent authorization unless use or retention of that covered data remains reasonably necessary to provide the consumer's requested product or service under paragraph (a) of this section.

§ 1033.431 Use of data aggregator.

(a) *Responsibility for authorization procedures when the third party will use a data aggregator.* A data aggregator is permitted to perform the authorization procedures described in § 1033.401 on behalf of the third party seeking authorization under § 1033.401 to access covered data. However, the third party seeking authorization remains responsible for compliance with the authorization procedures described in § 1033.401, and the data aggregator must comply with paragraph (c) of this section.

(b) *Disclosure of the name of the data aggregator.* The authorization disclosure must include the name of any data aggregator that will assist the third party seeking authorization under § 1033.401 with accessing covered data and a brief description of the services the data aggregator will provide.

(c) *Data aggregator certification.* When the third party seeking authorization under § 1033.401 will use a data aggregator to assist with accessing covered data on behalf of a consumer, the data aggregator must certify to the consumer that it agrees to the conditions on accessing the consumer's data in § 1033.421(a) through (f) and the condition in § 1033.421(i) upon receipt of the notice described in § 1033.421(h)(2) before accessing the consumer's data. For this requirement to be satisfied:

(1) The third party seeking authorization under § 1033.401 must include the data aggregator's certification in the authorization disclosure described in § 1033.411; or

(2) The data aggregator must provide its certification to the consumer, electronically or in writing, separate from the authorization disclosure. The certification must be in the same language as the authorization disclosure and must be clear, conspicuous, and segregated from other material. The name of any data aggregator in the certification must be readily understandable to the consumer. If, after the consumer has completed the authorization procedures, the authorized third party retains a data aggregator to assist with accessing covered data on behalf of the consumer, this data aggregator must provide its certification in accordance with this paragraph (c)(2).

§ 1033.441 Policies and procedures for third party record retention.

(a) *General requirement.* A third party that is a covered person or service provider, as defined in 12 U.S.C. 5481(6) and (26), must establish and maintain written policies and procedures that are reasonably designed to ensure retention of records that are evidence of compliance with the requirements of subpart D of this part.

(b) *Retention period.* Records required under paragraph (a) of this section must be retained for a reasonable period of time, not less than three years after a third party obtains the consumer's most recent authorization under § 1033.401(a).

(c) *Flexibility.* A third party covered under paragraph (a) of this section has flexibility to determine its policies and procedures in light of the size, nature, and complexity of its activities.

(d) *Periodic review.* A third party covered under paragraph (a) of this section must periodically review its policies and procedures and update them as appropriate to ensure their continued effectiveness to evidence compliance with the requirements of subpart D of this part.

(e) *Certain records retained pursuant to policies and procedures.* Records retained pursuant to policies and procedures required under this section must include, without limitation:

(1) A copy of the authorization disclosure that is signed by the consumer electronically or in writing and reflects the date of the consumer's signature and a record of actions taken by the consumer, including actions taken through a data provider or another third party, to revoke the third party's authorization; and

(2) With respect to a data aggregator covered under paragraph (a) of this section, a copy of any data aggregator certification statement that was provided to the consumer pursuant to § 1033.431(c)(2).

Appendix A to Part 1033—Personal Financial Data Rights Rule: How to Apply for Recognition as a Standard Setter

If you want the CFPB to designate your organization as a recognized standard setter, you should follow the steps described below.

We may amend this process from time to time.

Step One: Requesting Recognition

Submit a written request for recognition.[1]

This should include key contact information, evidence of your organization's policies and practices,[2] and an explanation of how your organization satisfies each of the requirements in the Personal Financial Data Rights rule to be a recognized standard setter.[3] Your request should also describe how current and/or anticipated standards issued by your organization relate to open banking.

In advance of filing your request, you can seek a pre-filing meeting with us. We can walk you through the application process and help you make a complete submission.

Send formal submissions, as well as requests for pre-filing meetings, to: *openbankingstandards@cfpb.gov.*

Step Two: Additional Information and Public Comment

After reviewing your submission, we may request additional information to ensure that your application is complete.

We may publish your application.

We may also seek public input on your application and invite your responses to any information we receive on that basis.

Step Three: Our Review

When reviewing your application, we consider whether your policies and practices meet all the requirements for recognition. We also evaluate whether your application is accurate and complete.

We prioritize and review applications based on the extent to which recognizing your organization helps us to implement open banking.[4]

Step Four: Application Decision

CFPB recognition will be publicly disclosed on our website, along with the applicable terms and conditions of such recognition, such as its duration.

If the CFPB declines to recognize your organization, we will notify you.

You may withdraw your application at any time or for any reason.

If we determine that your organization is close to meeting, but does not yet meet, the requirements for CFPB recognition, we may ask you to provide a written plan specifying how and when you will take the steps required for full recognition. If that plan is satisfactory, we may state on our website that your organization has received contingent recognition. Once you provide us with evidence that you have successfully executed on that plan (or otherwise addressed the relevant contingences), the CFPB may extend full recognition.

Step Five: Recognition

There are several points to keep in mind about recognition.

As a recognized standard setter, you agree that the CFPB may monitor your organization and that you will provide information that we request.

You must also provide us, within 10 days, written explanation of any material change to information that was submitted with your application or during recognition, as well as any reason your organization may no longer meet underlying requirements for recognition.

In addition, you must meet any other specified terms and conditions of your recognition, which may include our reserving the right to observe or participate in standard setting.

If your recognition is set to expire, you can apply for re-recognition by re-starting at Step One at least 180 days before expiration. We may temporarily extend your recognition while we consider your request for re-recognition.

We may modify or revoke your recognition. The CFPB expects to notify you of the reasons it intends to revoke or modify recognition, and to provide your organization with an opportunity to address the CFPB's concerns.

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

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[1] Sensitive personal information should not be provided.

[2] Evidence may include (but is not limited to) charters, bylaws, policies, procedures, fee schedules, meeting minutes, membership lists, financial statements/disclosures, publicly available materials, and issued standards.

[3] Relevant legal requirements are described at 12 CFR 1033.141. When explaining how your organization meets these requirements, you should reference relevant elements of the evidence you submit in support of your application.

[4] Section 1033 of the Consumer Financial Protection Act, 12 U.S.C. 5533, describes the CFPB's role in implementing open banking.



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Part III

Securities and Exchange Commission

17 CFR Part 240
Covered Clearing Agency Resilience and Recovery and Orderly Wind-Down Plan; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–101446; File No. S7–10–23]

RIN 3235–AN19

Covered Clearing Agency Resilience and Recovery and Orderly Wind-Down Plans

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is adopting amendments to certain rules in the Covered Clearing Agency Standards (''CCA Standards'') under the Securities Exchange Act of 1934 (''Exchange Act'') and the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''). The amendments strengthen existing rules by adding new requirements related to the collection of intraday margin by a covered clearing agency (''CCA'') and the use of substantive inputs in its risk-based margin system. The Commission is also adopting a new rule to establish required elements of a CCA's recovery and orderly wind-down plan (''RWP'').

DATES:

Effective date: January 17, 2025.

Compliance date: The applicable compliance dates are discussed in Part III.

FOR FURTHER INFORMATION CONTACT: Elizabeth Fitzgerald, Assistant Director, Matthew Lee, Assistant Director, Jesse Capelle, Special Counsel, Adam Allogramento, Special Counsel, Haley Holliday, Attorney-Adviser, and David Li, Senior Financial Analyst, at (202) 551–5710, Office of Clearance and Settlement, Division of Trading and Markets; Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION: Pursuant to section 17A of the Exchange Act,[1] as well as the Payment, Clearing, and Settlement Supervision Act (''Clearing Supervision Act'') in Title VIII of the Dodd-Frank Act,[2] the Commission is adopting amendments to 17 CFR 240.17ad–22(e)(6) and adding new § 240.17ad–26. Below is a table of citations to the rules referenced in this release, including all rules being amended or adopted:

Commission reference	CFR citation (17 CFR)
Exchange Act:	
Rule 17Ad–22	§ 240.17ad–22.
Rule 17Ad–22(e)(3)(ii)	§ 240.17ad–22(e)(3)(ii).
Rule 17Ad–22(e)(4)	§ 240.17ad–22(e)(4).
Rule 17Ad–22(e)(6)	§ 240.17ad–22(e)(6).
Rule 17Ad–22(e)(6)(ii)	§ 240.17ad–22(e)(6)(ii).
Rule 17Ad–22(e)(6)(iv)	§ 240.17ad–22(e)(6)(iv).
Rule 17Ad–22(e)(15)	§ 240.17ad–22(e)(15).
Rule 17Ad–22(e)(15)(ii)	§ 240.17ad–22(e)(15)(ii).
Rule 17Ad–22(e)(23)	§ 240.17ad–22(e)(23).
Rule 17Ad–22(e)(23)(i)	§ 240.17ad–22(e)(23)(i).
Rule 17Ad–22(e)(23)(ii)	§ 240.17ad–22(e)(23)(ii).
Rule 17Ad–22(e)(23)(iv)	§ 240.17ad–22(e)(23)(iv).
Rule 17Ad–25	§ 240.17ad–25.
Rule 17Ad–25(c)	§ 240.17ad–25(c).
Rule 17Ad–25(i)	§ 240.17ad–25(i).
Rule 17Ad–25(j)	§ 240.17ad–25(j).
Rule 17Ad–26	§ 240.17ad–26.
Rule 17Ad–26(a)	§ 240.17ad–26(a).
Rule 17Ad–26(a)(1)	§ 240.17ad–26(a)(1).
Rule 17Ad–26(a)(2)	§ 240.17ad–26(a)(2).
Rule 17Ad–26(a)(3)	§ 240.17ad–26(a)(3).
Rule 17Ad–26(a)(4)	§ 240.17ad–26(a)(4).
Rule 17Ad–26(a)(5)	§ 240.17ad–26(a)(5).
Rule 17Ad–26(a)(6)	§ 240.17ad–26(a)(6).
Rule 17Ad–26(a)(7)	§ 240.17ad–26(a)(7).
Rule 17Ad–26(a)(8)	§ 240.17ad–26(a)(8).
Rule 17Ad–26(a)(9)	§ 240.17ad–26(a)(9).
Rule 17Ad–26(b)	§ 240.17ad–26(b).

The amendments to Rule 17Ad–22(e)(6)(ii) establish new requirements with respect to a CCA's policies and procedures regarding the collection of intraday margin, specifically, to (i) include a new requirement to monitor intraday exposures on an ongoing basis, (ii) modify the preexisting reference to making intraday calls ''in defined circumstances'' to making intraday calls ''as frequently as circumstances warrant'' and identifying examples of such circumstances, and (iii) require that a CCA document when it determines not to make an intraday margin call pursuant to its written policies and procedures required under paragraph (e)(6)(ii). The amendments to Rule 17Ad–22(e)(6)(iv) establish new requirements for a CCA relying upon substantive inputs to its risk-based margin model, including when such substantive inputs are not readily available or reliable.

New Rule 17Ad–26 prescribes requirements for the contents of a CCA's RWP. While Rule 17Ad–22(e)(3)(ii) currently requires a CCA's written policies and procedures to include the CCA's RWP, Rule 17Ad–22(e)(3)(ii) did not include requirements for the content of RWPs.[3] New Rule 17Ad–26 identifies elements that a CCA's RWP must contain, including: (i) elements related to planning, including the identification and use of scenarios, triggers, tools, staffing, and service providers, as discussed in Parts II.C.1 through 5; (ii) timing and implementation of the plans,

[1] 15 U.S.C. 78q–1.

[2] 12 U.S.C. 5461 *et seq.*

[3] 17 CFR 240.17ad–22(e)(3)(ii).

as discussed in Parts II.C.6 and 7; and (iii) testing and board approval of the plans, as discussed in Parts II.C.8 and 9. Definitions included in new Rule 17Ad–26 are discussed in Part II.D.

In developing these final rules, Commission staff has consulted with the Financial Stability Oversight Council (''FSOC''), the Commodity Futures Trading Commission (''CFTC''), the Federal Deposit Insurance Corporation (''FDIC''), and the Board of Governors of the Federal Reserve System (''FRB'').[4]

The compliance dates for the amendments to Rule 17Ad–22(e)(6) and new Rule 17Ad–26 are discussed in Part III.

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I. Introduction

CCAs are an essential part of the infrastructure of the U.S. securities markets.[5] While central clearing and other important functions provided by clearing agencies benefit the markets they serve,[6] clearing agencies can pose systemic risk to the financial system,[7] due in part to the fact that such clearing functions concentrate risk in the clearing agency.[8] Disruption to a clearing agency's operations, or failure on the part of a clearing agency to meet its obligations, could therefore serve as a potential source of contagion, resulting in significant costs not only to the clearing agency itself or its members but also to other market participants and the broader U.S. financial system.[9] As a result, proper management of the risks associated with CCAs is necessary to help ensure the stability of the U.S. securities markets and the broader U.S. financial system.[10]

Whether in normal or stressed market conditions, the effective functioning of the securities markets requires a regulatory framework for CCAs that can promote effective risk management, help preserve financial stability, and help ensure the continuity of critical CCP and CSD functions for the markets they serve, participants in those markets, and investors more generally. Since the enactment of the Dodd-Frank Act,[11] the Commission has adopted a series of rules designed to support its ongoing supervision and oversight of clearing agencies and to help ensure that CCAs are robust and resilient under normal market conditions and in periods of market stress.[12] The potential for CCAs to spread contagion through the financial system, particularly in periods of market stress, has necessitated that the Commission continue to consider and adopt new rules over time to improve the regulatory framework for CCAs. These series of rules help ensure an effective regulatory response to evolving risks that could threaten the U.S. financial system.[13]

Since the Commission first adopted the CCA Standards, supervisory authorities, CCAs, and market participants have continued to pursue further consideration of several topics,

[4] *See, e.g.,* 12 U.S.C. 5464(a)(2); 5472.

[5] *See* Release No. 34–78961 (Sept. 28, 2016), 81 FR 70786, 70789 (Oct. 13, 2016) (''CCA Standards Adopting Release''), *https://www.govinfo.gov/content/pkg/FR-2016-10-13/pdf/2016-23891.pdf; see also* 15 U.S.C. 78q–1(a)(1)(A) (finding that the prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and the safeguarding of securities and funds related thereto, are necessary for the protection of investors and persons facilitating transactions by and acting on behalf of investors). CCAs are a subset of clearing agencies registered with the Commission. *See* 17 CFR 240.17ad–22(a) (defining ''covered clearing agency''); *see also infra* note 6 (explaining further the definition of ''covered clearing agency'' and two functions of a CCA).

[6] Two functions are that of the central counterparty (''CCP'') and the central securities depository (''CSD''), each of which constitutes a financial market infrastructure (''FMI''). A CCP is a clearing agency that interposes itself between the counterparties to securities transactions, acting functionally as the buyer to every seller and the seller to every buyer. 17 CFR 240.17ad–22(a). A CSD is a clearing agency that is a securities depository as described in section 3(a)(23)(A) of the Exchange Act. *Id.* CCAs are clearing agencies registered with the Commission that provide CCP or CSD services. *See* 17 CFR 240.17ad–22(a).

[7] CCA Standards Adopting Release, *supra* note 5, at 70792; *see also* 12 U.S.C. 5461–72 (setting forth provisions under the Clearing Supervision Act for designating a clearing agency as systemically important and imposing risk management standards consistent with international standards).

[8] CCA Standards Adopting Release, *supra* note 5, at 70793.

[9] *Id.; see also* Committee on Payment and Settlement Systems, International Organization of Securities Commissions (''CPMI–IOSCO''), *Principles for financial market infrastructures* (Apr. 16, 2012), *http://www.bis.org/publ/cpss101a.pdf* (''PFMI'') (identifying the risks posed by FMIs, including CCPs and CSDs, across 23 discrete principles). The Committee on Payment and Settlement Systems renamed itself the Committee on Payments and Market Infrastructures (''CPMI'') in 2014.

[10] CCA Standards Adopting Release, *supra* note 5, at 70788 n.18.

[11] Public Law 111–203, 124 Stat. 1376 (2010).

[12] *E.g.,* 17 CFR 240.17ad–22; 17 CFR 240.17ad–25; *see also* Release No. 34–9895 (Nov. 16, 2023), 88 FR 84454 (Dec. 5, 2023) (''CA Governance Adopting Release''), *https://www.govinfo.gov/content/pkg/FR-2023-12-05/pdf/2023-25807.pdf;* Release No. 34–88616 (Apr. 9, 2020), 85 FR 28853 (May 14, 2020) (''CCA Definition Adopting Release''), *https://www.govinfo.gov/content/pkg/FR-2020-05-14/pdf/2020-07905.pdf;* CCA Standards Adopting Release, *supra* note 5; Release No. 34–68080 (Oct. 22, 2012), 77 FR 66219 (Nov. 2, 2012), *https://www.govinfo.gov/content/pkg/FR-2012-11-02/pdf/2012-26407.pdf.*

[13] *See infra* Part II (discussing the rule amendments and new rules in greater detail). In addition, when designated as systemically important by the FSOC, CCAs are also subject to requirements set forth in Title VIII of the Dodd-Frank Act and rules thereunder. *See, e.g.,* 12 U.S.C. 5461–72.

including the collection of margin generally, the collection of intraday margin specifically, the potential effects of such margin collection on market liquidity, and the need for some transparency into the margin collection process so that market participants that use or rely on CCAs for risk management functions can monitor and manage their own financial and other risks.[14]

Although the CCA Standards adopted in 2016 included several provisions directed to a CCA's margin system generally,[15] and specifically the modeling of financial risk and the collection of margin within it,[16] the Commission has identified two areas of focus that support strengthening these pre-existing rules: (i) ensuring effective monitoring of intraday exposures and specifying particular circumstances for collection of margin intraday, and (ii) ensuring that CCAs have effective tools for margin modelling even when inputs to the margin system become unreliable or unavailable. Ongoing monitoring by the CCA is necessary to help ensure that a CCA collects sufficient margin to cover its exposures throughout the day, as portfolios and positions may change after margin is collected at the start of the day. This requirement should help ensure that the CCAs have the appropriate policies and procedures to address market events featuring large intraday price and position changes, such as the events in the equity and options markets in early 2021.[17] In addition, establishing backup procedures if a substantive input to a margin model is unavailable or unreliable is especially relevant to ensuring that a CCA can continue to meet its regulatory obligations and calculate margin appropriately.

Accordingly, in the RWP Proposing Release,[18] the Commission proposed new requirements to ensure that CCAs monitor intraday margin on an ongoing basis and to facilitate intraday margin collection not only in ''defined'' circumstances but as frequently as circumstances warrant.[19] The Commission also defined two circumstances in which a CCA should have policies and procedures for applying intraday margin: (i) when specific risk thresholds have been breached, and (ii) when the products cleared or markets served display elevated volatility.[20] As the Commission explained in the RWP Proposing Release, these requirements would help ensure that the CCA has an effective process for monitoring margin and avoiding circumstances in which a participant becomes under-margined, which undermines the ability of a CCA to mitigate risk.[21] In addition, with respect to the inputs into a CCA's margin system, the Commission proposed to expand existing requirements requiring timely and reliable price data beyond that limited topic to also encompass other substantive inputs to a CCA's risk-based margin system, to help ensure that mechanisms are in place to calculate margin during periods where inputs become unavailable, such as if a data feed becomes interrupted or corrupted.[22] In Parts II.A and B, the Commission discusses these new requirements in greater detail, in addition to addressing the comments received on the proposed rules.

Importantly, to be resilient in times of market stress, a CCA will need to monitor intraday risk on an ongoing basis and use timely and accurate data inputs to its margin system. Each helps ensure that a CCA can, in turn, calculate and collect margin in a timely manner, managing its exposures to its participants throughout the day. In times of rapidly evolving or stressed market conditions, a CCA must be able to monitor risk and collect margin while also effectively analyzing the potential impact of any intraday collections on market liquidity and financial stability.

Even a robust and resilient CCA may face stressed market conditions or other events so extreme that the resources it has reserved for potential loss scenarios will prove insufficient. For example, depending on the markets they serve, CCAs may hold financial resources sufficient to withstand the default of the one or two largest participant families from among their clearing participants.[23] Such CCAs may not have sufficient prefunded resources to withstand defaults beyond these,[24] and would, in such a circumstance, be charged with allocating losses among their non-defaulting participants to close out the portfolios of its defaulting participants.[25] CCAs may also find that stressed market conditions lead to liquidity shortfalls or that certain events drain other capital sources that impair the functioning of the CCA. Accordingly, to help preserve financial stability and ensure the continuity of critical CCP and CSD functions in periods of extreme stress, a resilient CCA still needs to plan effectively to replenish financial resources when depleted, address and allocate losses when they accrue, and, if the CCA is unable to allocate losses and replenish depleted resources, implement an orderly wind-down and cessation or transfer of its business. If a CCA is unable to take these steps in a transparent, orderly, and effective way, it will serve as a source of contagion, resulting in the potential for significant costs not only to the CCA itself or its clearing members but also to other market participants and the broader U.S. financial system.[26]

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[14] *E.g.,* CPMI–IOSCO, *Streamlining Variation Margin in Centrally Cleared Markets—Examples of Effective Practices* (Feb. 14, 2024), *https://www.bis.org/cpmi/publ/d221.pdf;* CPMI–IOSCO, *Transparency and Responsiveness of Initial Margin in Centrally Cleared Markets—Review and Policy Proposals* (Jan. 16, 2024), *https://www.bis.org/bcbs/publ/d568.pdf;* CPMI–IOSCO, *Resilience of Central Counterparties (CCPs): Further Guidance on the PFMIs* (July 2017), *https://www.bis.org/cpmi/publ/d163.pdf* (''CPMI–IOSCO Resilience Guidance'').

[15] *See, e.g.,* 17 CFR 240.17ad–22(e)(6).

[16] *See* 17 CFR 240.17ad–22(e)(6)(i) (regarding the setting of margin levels commensurate with the risks and particular attributes of each relevant product, portfolio, and market); (e)(6)(iii) (regarding the calculating of margin sufficient to cover the CCA's potential future exposure to its participants); (e)(6)(vi) (regarding the monitoring and regular review, testing, and verification of margin models using backtesting and sensitivity analysis).

[17] For example, a CCA may require more margin to guard against an increased risk of defaults, which may occur if, for example, buyers do not carry-through on paying for a stock that has plummeted or sellers do not carry-through on delivering a stock that has skyrocketed. *See, e.g.,* Staff Report on Equity and Options Market Structure Conditions in Early 2021, at 31 (Oct. 14, 2021), *https://www.sec.gov/files/staff-report-equity-options-market-struction-conditions-early-2021.pdf* (describing how the National Securities Clearing Corporation (''NSCC'') observed unusual volatility in certain securities in January 2021 and imposed intraday margin calls in response to trading patterns in Gamestop Corp. (''GME'') and other equity securities).

[18] *See* Release No. 34–97516 (May 17, 2023), 88 FR 34708, 34708 (May 30, 2023) (''RWP Proposing Release''), *https://www.govinfo.gov/content/pkg/FR-2023-05-30/pdf/2023-10889.pdf.*

[19] *See infra* Parts II.A and B (further discussing these amended requirements).

[20] *See infra* Part II.A (further discussing these amended requirements).

[21] RWP Proposing Release, *supra* note 18, at 34714.

[22] *Id.* at 34715.

[23] *See, e.g.,* 17 CFR 240.17ad–22(e)(4)(i), (ii) (establishing requirements related to maintaining financial resources at the minimum to enable a CCA to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the one or two participant families that would potentially cause the largest aggregate credit exposure for the CCA in extreme but plausible market conditions).

[24] Financial Stability Board (''FSB''), *Central Counterparty Financial Resources for Recovery and Resolution* (Mar. 10, 2022), *https://www.fsb.org/wp-content/uploads/P090322.pdf* (''FSB Analysis'').

[25] *See, e.g.,* CPMI–IOSCO, *Recovery of financial market infrastructures* (rev. July 2017), at 2.4, *https://www.bis.org/cpmi/publ/d162.pdf* (explaining considerations related to CCP recovery in circumstances where the CCP's prefunded financial resources have been depleted) (''CPMI–IOSCO Recovery Guidance'').

[26] The RWP Proposing Release discusses in greater detail the relationship between RWPs implemented by CCAs and the considerations related to orderly resolution of financial companies

Although the CCA Standards adopted in 2016 included a requirement for CCAs to have policies and procedures that provide for plans for recovery and orderly wind-down, the Commission did not include in the rule the specific elements to be required as part of such plans.[27] The Commission stated that, given the nature of recovery and resolution planning, the RWP would likely reflect the specific characteristics of the CCA (*e.g.,* its ownership, organizational, and operational structures, as well as its size, systemic importance, global reach, and/or the risks inherent in the products it clears).[28] Since that time, each CCA has developed an RWP pursuant to the requirement for such plans in Rule 17Ad–22. In addition, the Commission has, through its supervisory process and through its participation in the ongoing consideration of issues regarding CCP recovery and resolution,[29] identified several elements that should be included in any RWP regardless of the market served or the products cleared, to help ensure that planning is effective, thoughtful, and thorough.

Accordingly, in the RWP Proposing Release,[30] the Commission proposed new requirements directed to establishing specific elements of all RWPs across CCAs, including: requirements to identify critical systems and service providers and related staffing that would support these functions, to be maintained in a recovery or wind-down scenario; [31] the identification and analysis of scenarios and triggers that could necessitate implementation of a recovery or wind-down; [32] the identification and analysis of which tools would be appropriate in certain scenarios in order to facilitate recovery or an orderly wind-down; [33] requirements for effecting implementation of the plan; [34] notification to the Commission; [35] robust annual testing with participants and key stakeholders, as appropriate; [36] and provisions for board review and approval of the plan and any material changes thereto.[37] As discussed in the RWP Proposing Release, these new requirements draw from existing practices at CCAs.[38] In Parts II.C and D, the Commission discusses in greater detail these new requirements, codified in new Rule 17Ad–26, in addition to addressing the comments received on the proposed rules. New Rule 17Ad–26 promotes three important objectives: (i) bolstering the existing RWPs at CCAs; (ii) codifying some existing RWP elements to ensure that these elements remain in the plans over time; and (iii) establishing that the RWP of any new CCA would contain each of the elements specified in the rule.[39] By advancing these objectives, new Rule 17Ad–26 helps ensure that, in times of extreme market stress, the recovery or wind-down of a CCA can preserve financial stability and ensure the continuity of critical CCP or CSD functions.[40]

The Commission received comments on the RWP Proposing Release from CCAs, industry groups (representing both clearing agencies and their participants), other market participants, academics, individual investors, and other interested parties.[41] Commenters were generally supportive of the proposal, though some commenters also expressed concerns regarding specific elements of the proposed rules. In Part II, the Commission discusses these comments in detail and the modifications made to the final rules to address comments received. As discussed further in Part II, the Commission is adopting each of the proposed rules, some substantially as proposed and others with certain modifications.

In addition, and separate from the Commission's proposed rules for CCAs, the CFTC also has proposed rules directed to the RWPs of systemically important derivatives clearing organizations (''SIDCOs'') under the Commodity Exchange Act.[42] Like the Commission's final rules for CCAs adopted in this release, the CFTC's proposed rules are intended to codify certain common elements of RWPs across SIDCOs. With respect to some elements of final Rule 17Ad–26, the Commission has taken a different approach from the CFTC's proposed rule. For example, given the range of products cleared and markets served across CCAs, the Commission has not included in Rule 17Ad–26 requirements for scenarios at the same level of granularity as the CFTC. Nonetheless, the final Rule 17Ad–26 and the CFTC's proposal are aligned in their objectives and promote substantially similar outcomes. The differing approaches are discussed further in Part II.C.10.[43]

II. Discussion of Comments Received and Final Rules

A. Collection of Intraday Margin

1. Proposed Amendment to Rule 17Ad–22(e)(6)(ii)

The RWP Proposing Release proposed to strengthen the preexisting requirements in Rule 17Ad–22(e)(6)(ii) for a CCA to have policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, among other things, includes the operational capacity to make intraday margin calls in defined circumstances.[44] Specifically, the proposed amendments to Rule 17Ad–22(e)(6)(ii) required a CCA that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to establish a risk-based margin system that, among other things, includes the authority and operational capacity to (i) monitor intraday exposure on an ongoing basis, and (ii) to make intraday margin calls as

by the FDIC pursuant to Title II of the Dodd-Frank Act. RWP Proposing Release, *supra* note 18, at 34712.

[27] *See* 17 CFR 240.17ad–22(e)(3)(ii) (requiring ''plans for the recovery and orderly wind-down of the CCA necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses'').

[28] RWP Proposing Release, *supra* note 18, at 34709 (citing CCA Standards Adopting Release, *supra* note 5, at 70808–09).

[29] *E.g.,* CPMI–IOSCO Recovery Guidance, *supra* note 25; FSB Analysis, *supra* note 24; FSB, *Financial Resources and Tools for Central Counterparty Resolution* (Apr. 25, 2024), *https://www.fsb.org/wp-content/uploads/P250424-1.pdf* (''FSB Guidance'').

[30] *See* RWP Proposing Release, *supra* note 18, at 34715–16.

[31] *See infra* Parts II.C.1 and 2 (discussing critical services and service providers, respectively).

[32] *See infra* Parts II.C.3 and 4 (discussing scenarios and triggers, respectively).

[33] *See infra* Part II.C.5 (discussing tools).

[34] *See infra* Part II.C.6 (discussing requirements related to implementation).

[35] *See infra* Part II.C.7 (discussing notification to the Commission).

[36] *See infra* Part II.C.8 (discussing the testing requirement).

[37] *See infra* Part II.C.9 (discussing board review and approval of the RWP and material changes thereto, including material changes to the covered clearing agency's operations that would significantly affect the viability or execution of the RWP).

[38] RWP Proposing Release, *supra* note 18, at 34709.

[39] *See id.* at 34711.

[40] *Id.* at 34712. In April, the FSB published guidance describing the existing set of financial resources and tools available for use by resolution authorities (such as the FDIC), in a CCP resolution. FSB Guidance, *supra* note 29. The FSB Guidance is relevant to some of the comments received on proposed Rule 17Ad–26, as discussed further in Part II.

[41] Comments received are available on the Commission's website at *https://www.sec.gov/comments/s7-10-23/s71023.htm.*

[42] *Derivatives Clearing Organizations Recovery and Order Wind-Down Plans, Information for Resolution Sharing* (July 3, 2023), 88 FR 48968, 48972–73 (July 28, 2023), *https://www.govinfo.gov/content/pkg/FR-2023-07-28/pdf/2023-14457.pdf.*

[43] Commission staff communicates with the CFTC staff regularly on topics of mutual interest for their respective registrants, including RWPs, and has consulted with CFTC staff regarding RWPs.

[44] RWP Proposing Release, *supra* note 18, at 34713.

frequently as circumstances warrant, including when risk thresholds specified by the CCA are breached or when the products cleared or markets served display elevated volatility.[45]

2. Discussion of Comments

a. Monitoring Intraday Exposure on an Ongoing Basis: Rule 17Ad–22(e)(6)(ii)(B)

When adopted in 2016, preexisting Rule 17Ad–22(e)(6)(ii) included the requirement that CCAs have the authority and operational capacity to make intraday margin calls.[46] In the RWP Proposing Release, the Commission stated that the ''operational capacity'' to make intraday margin calls ''includes the ability to monitor intraday exposure; otherwise, it would be impossible for a CCA to make appropriate intraday margin calls if it were not monitoring its intraday exposure.'' [47] Therefore, as originally adopted, Rule 17Ad–22(e)(6)(ii) required a CCA to have some ability to monitor for intraday exposure and make intraday margin calls but did not include a specific requirement to monitor for intraday exposure or regarding the frequency at which to monitor intraday exposures.[48]

In the RWP Proposing Release, the Commission stated its continued belief, consistent with its statements when adopting the CCA Standards, that it is essential that a CCA monitor its intraday exposures because the CCA faces a risk that a CCA's exposure to its participants can change rapidly because of intraday changes in prices, positions, or both.[49] The Commission further stated that a requirement that such monitoring occur on an ongoing basis would contribute to ensuring that the CCA is sufficiently informed and situated to take appropriate actions to manage any intraday exposure that arises.[50] The Commission also stated that being able to monitor, on an ongoing basis, any decrease in the margin coverage (as compared to the changes in intraday credit exposures in its participants' portfolios) should help a CCA ensure that it is able to collect margin sufficient to cover its participants' exposures.[51] The Commission further stated that this requirement to monitor intraday exposure on an ongoing basis should provide each CCA with some flexibility to determine what monitoring frequency is appropriate in the market served by the CCA. Therefore, the Commission did not specify a particular time period or frequency for monitoring on an ongoing basis because a CCA ''should be able to tailor its monitoring to the particular products cleared and markets served.'' [52]

Commenters generally recognized the importance of monitoring intraday exposure.[53] Several commenters agreed with the approach in the proposal not to prescribe a particular monitoring frequency that would constitute an ''ongoing basis,'' because of the need for a CCA to be able to tailor its monitoring to the particular products cleared and markets served.[54] For example, one such commenter stated that, rather than the Commission prescribing a monitoring frequency, a CCA's monitoring ''should align with each [CCA's] scheduled settlement, initial margin, and variation margin practices to support financial stability in both normal and volatile market conditions.'' [55]

By contrast, one commenter stated that the Commission should prescribe some particular universal, minimum monitoring frequency (*i.e.,* establishing a maximum time between instances of a CCA's intraday monitoring of its credit exposures).[56] This commenter acknowledged the benefit that would arise from deferring ongoing monitoring assessments to a CCA, but supported that the Commission include a universal, minimum monitoring frequency in this requirement.[57] Specifically, this commenter stated that ''every 15 minutes should be the absolute minimum'' for frequency of monitoring intraday exposures related to any possible intraday margin collection.[58]

The Commission is adopting the requirement to monitor intraday exposures on an ongoing basis as proposed.[59] As stated in the RWP Proposing Release, a CCA should be able to tailor its risk monitoring to the particular products cleared and the markets served.[60] Accordingly, the proposed requirement to monitor intraday exposures on an ongoing basis is designed to allow a CCA to determine what monitoring frequency is appropriate for its particular market.[61] A CCA needs this flexibility because ''more frequent monitoring may be necessary for a CCA that operates in markets where intraday trading may be more prevalent'' (such as, for example, in the U.S. Treasury market),[62] or

[45] *Id.* at 34712–14. The preexisting requirement in Rule 17Ad–22(e)(6)(ii) to establish written policies and procedures that provide for marking participant positions to market and collecting margin, including variation margin or equivalent charges if relevant, at least daily, would be unchanged under the amendments being adopted in this release.

[46] *Id.* at 34713.

[47] *Id.*

[48] *Id.*

[49] *Id.*

[50] *Id.; see also* CPMI–IOSCO Resilience Guidance, *supra* note 14, at 5.2.2 (discussing how a CCP addresses intraday exposure in its margin system and stating that ''a CCP faces the risk that its exposure to its participants can change rapidly as a result of intraday changes in prices, positions, or both; ie [sic], adverse price movements, as well as participants building larger positions through new trading (and settlement of maturing trades). For the purposes of addressing these and other forms of risk that may arise intraday, a CCP should address and monitor on an ongoing basis how such risks affect all components of its margin system, including initial margin, variation margin and add-on charges.'').

[51] RWP Proposing Release, *supra* note 18, at 34713. The Commission also explained that a CCA ''generally should consider whether its intraday monitoring considers how participants' exposures would affect all risks faced by the CCA, including those that may already by contemplated by variation margin, initial margin, or add-on charges.'' *Id.*

[52] *Id.*

[53] Letter from Megan Malone Cohen, Corporate Secretary, General Counsel, The Options Clearing Corporation (July 17, 2023) at 3 (''OCC''); Letter from Timothy Cuddihy, Managing Director, Group Chief Risk Officer, Depository Trust & Clearing Corporation (July 17, 2023) at 3 (''DTCC''); Letter from Ullrich Karl, Head of Clearing Services, International Swaps and Derivatives Association, and Jacqueline Mesa, Senior Vice President, Futures Industry Association (July 17, 2023) at 6 (''The Associations''); Letter from Stephen W. Hall, Legal Director and Securities Specialist, Better Markets, Inc. (July 17, 2023) at 7 (''Better Markets''); Letter from Chris Edmonds, Chief Development Officer, Intercontinental Exchange (July 19, 2023) at 2 (''ICE''); *see also* Letter from Sarah Bessin, Deputy General Counsel, Investment Company Institute (Sept. 26, 2023) at 10 (''ICI'') (generally supporting the Commission's proposed amendments).

[54] OCC at 3; Letter from Global Association of Central Counterparties (July 17, 2023) at 2 (''CCP12''); DTCC at 3; *see also* ICE at 2 (stating that clearing agencies should continue to have the flexibility to determine the appropriate timeframe for intraday monitoring).

[55] CCP12 at 2.

[56] *See* The Associations at 6.

[57] *Id.* at 6.

[58] *Id.*

[59] The Commission is adding paragraph divisions to Rule 17Ad–22(e)(6)(ii) to better delineate the sections of the rule, for clarity. The portion of the rule text regarding monitoring intraday exposure would be Rule 17Ad–22(e)(6)(ii)(B). The Commission is also adding ''(A)'' before the portion of the rule that relates to marking participant positions to market and collecting margin at least daily and changing the punctuation at the end of that section to a semi-colon, as opposed to a comma. The Commission is also revising the punctuation at the end of Rule 17Ad–22(e)(6)(ii)(B) to a semicolon, as opposed to a comma.

[60] RWP Proposing Release, *supra* note 18, at 34713.

[61] *Id.*

[62] *See, e.g.,* Release No. 34–99149 (Dec. 13, 2023), 89 FR 2714, 2782 (Jan. 16, 2024) (''Treasury Clearing Adopting Release''), *govinfo.gov/content/pkg/FR-2024-01-16/pdf/2023-27860.pdf* (''Today, [proprietary trading firms] actively buy and sell large volumes of U.S. Treasury securities on an intraday basis using high-speed and other algorithmic trading strategies.''); *James C. Harkrader & Daniel J. Weitz, FEDS Notes: How Do Principal Trading Firms and Dealers Trade around FOMC Statement Releases?* (Dec. 31, 2020), *https://www.federalreserve.gov/econres/notes/feds-notes/how-do-principal-trading-firms-and-dealers-trade-around-fomc-statement-releases-20201231.html.*

alternatively where a CCA's ''intraday exposures may tend to be larger because of specific features, such as the settlement process.'' [63]

In response to the commenter seeking a required mandatory minimum frequency for intraday monitoring, the Commission does not agree that such a requirement is necessary. Previously, the Commission stated that a CCA generally should consider whether its policies and procedures for intraday monitoring address how participants' exposures would affect financial risks faced by the CCA.[64] For example, some CCA margin methodologies may be designed to account for some intraday price and position changes, which could have an impact on the appropriate intraday monitoring frequency. Therefore, the Commission is not adopting a minimum monitoring frequency. The Commission, however, would be able to consider whether a particular CCA's intraday monitoring frequency is reasonably designed to meet this requirement within the proposed rule change process when changes thereto are filed as a proposed rule change, including what the CCA has identified as the appropriate ongoing basis for the products cleared and the markets served and in light of the entirety of the CCA's margin methodology (that is, whether it has other components which account for some intraday price and position changes).[65] More generally, whether a CCA has established, implemented, maintained and enforced written policies and procedures reasonably designed to comply with Rule 17Ad–22(e) is subject to examination.

When designing its intraday margin monitoring, a CCA generally should consider whether its monitoring encompasses all aspects of intraday exposures, including how such exposures affect all components of a CCA's margin model, including initial margin, variation margin, and add-on charges.[66] A CCA also generally should consider whether its basis to recalculate margin intraday accounts for both position changes and price volatility.

b. Circumstances for Intraday Margin Calls

Preexisting Rule 17Ad–22(e)(6)(ii) also required that a CCA's written policies and procedures be reasonably designed to include the authority and operational capacity to make intraday margin calls ''in defined circumstances.'' [67] However, preexisting Rule 17Ad–22(e)(6)(ii) did not define what constitutes ''defined circumstances.'' [68] In proposing the requirement regarding collecting intraday margin as frequently as ''circumstances warrant,'' the Commission stated that the proposed requirement would build upon and expand this preexisting requirement (*i.e.,* to have the authority and operational capacity to make intraday margin calls in ''defined circumstances''). Specifically, the proposed requirement would identify two particular circumstances: (1) when risk thresholds specified by the CCA are breached or (2) when the products cleared or markets served display elevated volatility. The proposed requirement would also continue to provide flexibility to CCAs to make intraday margin calls as frequently as circumstances warrant.[69]

Commenters generally agreed with the need for thresholds regarding when a CCA would make intraday margin calls. However, commenters raised several concerns which are addressed below.[70]

i. Scheduled vs. Unscheduled Intraday Calls

Several commenters suggested that intraday margin calls generally should be scheduled, with unscheduled intraday margin calls limited to extreme circumstances.[71] One such commenter specified that scheduled intraday margin calls should be at the same time every day, in the early afternoon.[72] This commenter explained that the unpredictability of unscheduled intraday margin calls may require a fund (which is a participant in a CCA) to keep a portion of its assets in lower-yielding, highly liquid assets.[73]

In response to these comments seeking additional requirements for scheduled intraday margin calls and to limit unscheduled intraday margin calls, the Commission recognizes that scheduled intraday margin calls provide certainty for market participants about when resources will be needed. However, there may be circumstances that arise intraday, such as in times of elevated volatility or significant position changes, where a CCA needs to manage its exposure to a participant through an unscheduled margin call.[74] In such circumstances, scheduled intraday margin calls may not be sufficient to ensure that a CCA collects margin to cover its exposure to its participants. To ensure strong risk management in such circumstances, CCAs need to have the ability to make unscheduled intraday margin calls. It would not be appropriate to mandate that CCAs only make scheduled intraday margin calls, and, therefore, the Commission is not adopting such a requirement to require scheduled intraday margin calls.

However, the Commission understands the need for market participants to plan for the potential resources needed to meet intraday margin calls. To that end, the amended Rule 17Ad–22(e)(6)(ii)(C) states that a CCA must establish policies and procedures regarding at least two particular circumstances in which a CCA would make intraday margin calls, that is, when risk thresholds specified by the CCA are breached and when products cleared or markets served display elevated volatility, as discussed in Part II.A.2.b *infra.* For example, a CCA could specify that its risk threshold is breached when the difference between a member's start of day margin and a calculation of its intraday margin based on its new positions exceeds a predetermined percentage or dollar amount. Thus, market participants should be able to plan for their potential resource needs to meet intraday margin calls because, as discussed in Part II.A.2.b.ii *infra,* a CCA is required to have certain transparency around its margin model. This transparency will allow a market participant to understand those specified circumstances in which a CCA would make intraday margin calls and would therefore allow the market participant to make arrangements for additional liquidity in such circumstances, such

[63] RWP Proposing Release, *supra* note 18, at 34713.

[64] These risks could include those that ''may already be contemplated by variation margin, initial margin, or add-on charges.'' *Id.*

[65] *See infra* note 84 and accompanying text.

[66] *See, e.g.,* CPMI–IOSCO Resilience Guidance, *supra* note 14, at 5.2.22.

[67] 17 CFR 240.17ad–22(e)(6)(ii).

[68] *Id.; see also* RWP Proposing Release, *supra* note 18, at 34713.

[69] RWP Proposing Release, *supra* note 18, at 34713–14.

[70] *See* The Associations; Better Markets; ICI; Letter from Thomas F. Price, Managing Director, Technology, Operations, and Business Continuity, SIFMA, and William C. Thum, Managing Director and Associate General Counsel, SIFMA Asset Management Group (Sept. 26, 2023) (''SIFMA'').

[71] ICI at 10–11; Letter from John P. Davidson (June 5, 2023) at 2, 9 (''Davidson'') (stating that intraday financial flows should be mandatory at a fixed scheduled time and at the same time across all linked CCPs, but also acknowledging ''the occasional need for an additional set of intraday cash and collateral movements in cases of truly extreme market moves'').

[72] SIFMA at 8.

[73] *Id.*

[74] For example, if a CCA schedules intraday margin collection at noon every day, there may be instances when thresholds are triggered after that scheduled time, and the CCA would then make an unscheduled margin call to avoid significant exposure being carried overnight.

as, for example, securing additional financing to cover such margin calls.

ii. Need for Clear Thresholds and Transparency

Commenters also requested that the Commission revise the proposal to mandate that a CCA define its criteria for any unscheduled intraday margin call in advance of any unscheduled intraday margin call and to require additional disclosures regarding intraday margin calls.[75] These commenters stated that requiring clear and transparent policies regarding the conditions under which a CCA might make an intraday margin call, both on a scheduled and unscheduled basis, would enhance participants' ability to prepare for these margin calls and understand any potential demands on their liquidity arising from such a call.[76]

The Commission agrees with the commenters that it is essential that a CCA determine and clearly communicate *ex ante* in what circumstances it would make both scheduled and *ad hoc* intraday margin calls. However, as discussed further below, CCAs already are subject to such requirements in preexisting Rule 17Ad–22(e)(6)(ii) and (e)(23) and 17 CFR 240.19b–4 (''Rule 19b–4''). Further, by specifying two instances in which CCAs must establish, implement, maintain and enforce policies and procedures to collect intraday margin, the amendments being adopted in this release will identify for clearing participants conditions under which a CCA would make an intraday margin call.[77]

First, with respect to the commenters' request to require that CCAs determine the circumstances for intraday margin calls, a CCA already is required, under preexisting Rule 17Ad–22(e)(6)(ii), to have certain policies and procedures regarding intraday margin. These policies and procedures are the framework that a CCA uses when determining whether to make intraday margin calls, and these policies and procedures must identify the circumstances in which a CCA would make intraday margin calls.[78] This requirement will be strengthened by the amendments adopted in this release, which provide more specificity that the CCA must have policies and procedures to be able to make intraday margin calls as frequently as circumstances warrant and in two particular circumstances identified in the rule. Specifically, the amendments to preexisting Rule 17Ad–22(e)(6)(ii) require that a CCA have written policies and procedures to cover its credit exposures to its participants by establishing a risk-based margin system, which, among other things, includes the authority and operational capacity to make intraday margin calls ''as frequently as circumstances warrant'' including in two particular situations: when risk thresholds specified by the CCA are breached and in times of elevated volatility. This requirement should ensure that the CCA develops *ex ante* policies and procedures to determine risk thresholds for intraday margin and when it considers volatility to be elevated above typical levels in a manner specific to the products cleared and the markets served. Because these amendments would identify specific circumstances in which a CCA must have the authority and operational capacity to make intraday margin calls which would be part of a CCA's overall disclosure requirements regarding its margin methodology, as discussed further below,[79] these amendments should improve participants' ability to understand when they may be subject to additional margin calls. This improved understanding should further allow participants to be better able to prepare to provide additional financial resources in anticipation of additional margin calls.[80]

Second, with regard to the commenters' request to clearly communicate *ex ante* the circumstances in which a CCA would make intraday margin calls, the Commission agrees that such *ex ante* transparency is essential for a CCA's participants, but disagrees that any additional requirements are necessary to achieve such transparency. A CCA's participants already have such transparency for several reasons. As a registered clearing agency, a CCA is a self-regulatory organization (''SRO'') under the Exchange Act,[81] subject to the provisions of section 19(b) of the Exchange Act which requires public notice and an opportunity for public comment on any rule changes that an SRO seeks to adopt.[82] In addition, a CCA potentially is a ''designated financial market utility'' (alternatively, a ''systemically important financial market utility'' or ''SIFMU'') subject to section 806(e) of the Dodd-Frank Act regarding advance notice of material changes to its rules, procedures, or operations that could materially affect the nature or level of risks presented. Further, the CCA Standards impose requirements related to transparency and disclosure to its participants.

A CCA's margin methodology, which would include, among other things, the criteria used to determine whether to make intraday margin calls, constitutes a material aspect of its operations, meaning that it is part of a CCA's stated policies, practices, or interpretations under Exchange Act Rule 19b–4.[83] As such, a CCA's margin methodology is subject to the filing obligations applicable to SROs under section 19(b) of the Exchange Act regarding any proposed rule or proposed change to its rules.[84] The proposed rule filing process provides transparency into an SRO's proposed changes, through notice and comment. An SRO is obligated to file its proposed rule changes in a manner consistent with the requirements in Form 19b–4, which is intended to elicit information necessary for the public to

[75] The Associations at 2; Better Markets at 8; ICI at 10–11; SIFMA at 9.

[76] The Associations at 2–3 (requesting ''clear and transparent policies with regards to the conditions under which a [CCA] might call intraday margin''); Better Markets at 8 (requesting ''full transparency for triggers of intraday margin calls''); SIFMA at 9 (requesting ''published triggers and thresholds to calculate both start of day and intraday margin requirements''); ICI at 11 (requesting a CCA ''communicate to market participants the thresholds that would trigger both scheduled and ad hoc [sic] intraday margin calls'').

[77] The Commission is adding paragraph divisions to Rule 17Ad–22(e)(6)(ii) to better delineate the sections of the rule, for clarity. The portion of the rule text regarding the authority and operational capacity to make intraday margin calls is in Rule 17Ad–22(e)(6)(ii)(C).

[78] This framework is not required to foreclose or prohibit the use of any discretion in such determinations, as discussed further in Part II.A.2.b.iii, *infra.*

[79] *See infra* notes 81–100 and accompanying text (discussing several Commission requirements that promote disclosure and transparency).

[80] RWP Proposing Release, *supra* note 18, at 34714.

[81] 15 U.S.C. 78c(a)(26) (''The term 'self-regulatory organization' means any [. . .] registered clearing agency'').

[82] *See, e.g., infra* note 87 (discussing such changes that previously have been considered by the Commission); *infra* note 119 (describing Commission rules that promote transparency regarding margin practices at registered clearing agencies).

[83] 17 CFR 240.19b–4(a)(6)(i) (defining ''stated policy, practice, or interpretation'' to include, *inter alia,* ''[a]ny material aspect of the operation of the facilities of the self-regulatory organization''). Additionally, Rule 19b–4 would also apply to certain statements that a CCA issues concerning its margin methodology. Specifically, this rule would cover any CCA statement ''made generally available to the membership of [. . . the CCA] that establishes or changes any standard, limit, or guideline, with respect to: (a) the rights, obligations, and privileges of its membership; or (b) the meaning, administration, or enforcement of an existing rule.'' 17 CFR 240.19b–4(a)(6)(ii).

[84] 15 U.S.C. 78s(b)(1) (requiring each SRO to ''file with the Commission, in accordance with such rules as the Commission may prescribe, copies of any proposed rule or any proposed change in, addition to, or deletion from the rules of such self-regulatory organization''); *see also* 17 CFR 240.19b–4. In addition, a stated policy, practice, or interpretation of an SRO (*e.g.,* written policies and procedures) would generally be deemed to be a proposed rule change. *See* 17 CFR 240.19b–4(c).

provide meaningful comment on the proposed rule change and for the Commission to determine whether the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder.[85] The Commission then publishes all proposed rule changes for comment. In this way, the rule filing process promotes transparency to market participants and the public by ensuring notice is provided regarding a CCA's new initiatives or changes to governance, operations, and risk management.[86] With respect to a CCA's margin methodology, the rule filing process should provide transparency about how and when a CCA would calculate margin, including on an intraday basis, which is consistent with the requirements sought by commenters.

The Commission has considered numerous proposed rule changes regarding CCAs' margin methodologies. Notably, these proposed rule changes have addressed CCAs' intraday margin policies and procedures, and these proposed rule changes have identified thresholds and criteria that a CCA would use in determining whether to make an intraday margin call, similar to what the commenters have requested.[87] The notice and comment process provided by section 19(b) of the Exchange Act therefore provides for transparency into a CCA's margin methodology, including input from participants.

In addition, when a CCA is a SIFMU,[88] it is also subject to the regulatory framework of the Clearing Supervision Act.[89] Once designated by FSOC, CCAs that are SIFMUs are required to publicly file 60-days advance notice with the Commission of changes to rules, procedures, and operations that could materially affect the nature or level of risk presented by the designated clearing agency (''advance notice''), and, pursuant to the Commission's rules, the Commission shall provide for prompt publication of such an advance notice, and then the public has the opportunity to comment on such an advance notice.[90] Rule 19b–4(n) defines the term ''materially affect the nature or level of risk presented'' to mean matters as to which there is a reasonable possibility that the change could affect the performance of essential clearing and settlement functions or the overall nature or level of risk presented by the designated clearing agency, and it further provides examples of such potential changes as including, among other things, changes that could materially affect risk management or financial resources of the designated clearing agency.[91] When adopting this requirement, the Commission identified changes to the ''methods for making margin calculations'' as among the additional examples of such matters.[92] Therefore, any changes to the intraday margin policies and procedures of a CCA that has been designated as a SIFMU could also be subject to the advance notice process if the changes constitute a material change to the nature or level of risk presented by the CCA, and the advance notice process would bring additional transparency into such changes.

Moreover, under the CCA Standards, a CCA is obligated to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for publicly disclosing all relevant rules and material procedures, including key aspects of its default rules and procedures.[93] Such public disclosures generally should include a discussion of a CCA's margin methodology, which could include how the CCA determines intraday margin, and they should, in turn, allow a market participant to understand how a CCA calculates margin, including any margin add-ons

[85] *See* General Instructions for Form 19b–4, at Instruction B, *https://www.sec.gov/files/form-19b4-general-instructions.pdf.* The Form 19b–4 specifies the contents that must be included in a proposed rule change filing includes, among other items, a statement of purpose for the proposed rule change, which describes the reasons for adopting the proposed rule change, any problems the proposed rule change is intended to address, the manner in which the proposed rule change will operate to resolve those problems, the manner in which the proposed rule change will affect various persons (*e.g.,* brokers, dealers, issuers, and investors), and any significant problems known to the SRO that persons affected are likely to have in complying with the proposed rule change. *Id.* at Information to Be Included in the Completed Form, Item 3(a). The SRO must also include in its proposed rule change the complete text of the proposed rule. *Id.* at Information to Be Included in the Completed Form, Item 1(a). The SRO may request confidential treatment of any portion of its filing, *see* 17 CFR 240.24b–2, but it would still have to comply with the requirements of Form 19b–4 with respect to describing the contents of the proposed rule change for public comment.

[86] *See* RWP Proposing Release, *supra* note 18, at 34711.

[87] *See, e.g.,* Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Implement Changes to the Required Fund Deposit Calculation in the GSD Rulebook, Release No. 34–83362 (June 1, 2018), 83 FR 26514 (June 7, 2018) (File No. SR–FICC–2018–001) (approving proposed rule change to provide transparency with respect to GSD's existing authority under GSD Rule 4 to calculate and assess intraday margin amounts, by identifying the three criteria that GSD uses to calculate the intraday amount due ((i) the dollar threshold, which evaluates whether a member's intraday VaR Charge equals or exceeds a set dollar amount when compared to the VaR Charge that was included in the most recent margin collection: (ii) the percentage threshold, which evaluates whether the intraday VaR Charge equals or exceeds a percentage increase of the VaR Charge that was included in the most recent collection; and (iii) the coverage target, which evaluates whether a member is experiencing backtesting results below a 99% confidence level), and stating that FICC assesses intraday margin when all three criteria are breached and, under certain market conditions when the thresholds in (i) and (ii) are breached); FICC Important Notice GOV1244–22 (Apr. 11, 2022) (stating that, consistent with its Rule 4 authority, GSD will assess an Intraday Supplement Fund Deposit on a Netting Member if (i) a change in the Netting Member's Intraday VaR Charge equals or exceeds $1 million when compared to its most recent VaR Charge calculation, (ii) the Netting Member's Intraday VaR Charge equals or exceeds 100% of its most recent VaR Charge calculation, and (iii) the Netting Member's backtesting coverage is below 100%. Additionally, Netting Members who breached the thresholds for (i) and (ii) and have fewer than 100 trading days in a rolling 12-month period will be assessed an Intraday Supplemental Fund Deposit regardless of their backtesting coverage); Order Approving Proposed Rule Change to Adopt Intraday Volatility Charge and Eliminate Intraday Backtesting Charge, Release No. 34–97129 (Mar. 13, 2023), 88 FR 16681 (Mar. 20, 2023) (File No. SR–NSCC–2022–009) (adopting an intraday volatility charge as part of NSCC's margin methodology that would increase the margin collected from members whose trading portfolios experience large and unexpected intraday volatility).

[88] Specifically, the Clearing Supervision Act provides for the enhanced regulation of a CCA that qualifies as a ''financial market utility'' that the FSOC designates as ''systemically important'' (a ''designated financial market utility''). *See* 12 U.S.C. 5462(6)(A) (defining a ''financial market utility'' to include ''any person that manages or operates a multilateral system or the purpose of transferring, clearing, or settling payments, securities or other financial transactions among financial institutions or between financial institutions and the person'') and 12 U.S.C. 5462(4)(defining a ''designated financial market utility'' to mean ''a financial market utility'' that FSOC has designated as ''systemically important''); *see also* 12 U.S.C. 5463 (discussing FSOC's ability to designate entities as ''systemically important''). On July 18, 2012, FSOC designated four CCAs as systemically important financial market utilities: The Depository Trust Company (''DTC''); Fixed Income Clearing Corporation (''FICC''); National Securities Clearing Corporation (''NSCC''); and The Options Clearing Corporation (''OCC''). FSOC, *2012 Annual Report: Appendix A: Designation of Systemically Important Financial Market Utilities* (July 18, 2012), *https://home.treasury.gov/system/files/261/2012-Annual-Report.pdf.*

[89] *See* 12 U.S.C. 5461 *et seq.*

[90] The Clearing Supervision Act defines a ''designated clearing entity'' to include a ''designated financial market utility'' that is a clearing agency registered with the Commission (of which a CCA is a subset). *See* 12 U.S.C. 5462(3). The Clearing Supervision Act defines the Commission as the ''Supervisory Agency'' for the four designated clearing agencies that are CCAs (*i.e.,* DTC, NSCC, FICC, and OCC). *See* 12 U.S.C. 5462(8)(A)(i). The Commission published a final rule concerning the filing and publication of advance notices for designated clearing agencies in 2012. *See* 17 CFR 240.19b–4(n); Release No. 34–67286 (June 28, 2012), 77 FR 41602 (July 13, 2012) (File No. S7–44–10) (''Filing of Advance Notices''), *https://www.govinfo.gov/content/pkg/FR-2012-07-13/pdf/2012-16233.pdf.*

[91] 17 CFR 240.19b–4(n)(2)(i), (ii).

[92] *See* Filing of Advance Notices, *supra* note 90, at 41620.

[93] 17 CFR 240.17ad–22(e)(23)(i).

and cross-margin arrangements with other clearing agencies. In addition, under Rule 17Ad–22(e)(23)(ii), these policies and procedures must provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the CCA.[94]

Rule 17Ad–22(e)(23)(iv) also requires that a CCA produce a comprehensive public disclosure that describes its material rules, policies, and procedures regarding its legal, governance, risk management, and operating framework (a ''Disclosure Framework''), accurate in all material respects at the time of publication, that includes, among other things, a standard-by-standard summary narrative for each applicable standard set forth in paragraphs (e)(1) through (23) of the CCA Standards with sufficient detail and context to enable a reader to understand the CCA's approach to controlling the risks and addressing the requirement in each standard.[95] Therefore, a CCA must issue a public document addressing each of the CCA Standards, including those with respect to margin under Rule 17Ad–22(e)(6).[96] A CCA generally should consider whether its disclosures regarding its margin methodology, through its Disclosure Framework and/or other publicly available documents, allows participants to understand how the model reacts to market conditions and to assess with some reasonable degree of certainty whether it will be subject to a margin call and in what amount. In addition, a CCA generally should consider whether it could provide a public-facing margin calculator to allow its participants, and market participants more generally, to understand the potential amount of any intraday margin calls on their portfolios, including with respect to add-on charges and any applicable cross-margin arrangements.

In light of the existing requirements with respect to transparency in the SRO rule filing process, the advance notice process, and Rule 17Ad–22(e)(23), the Commission does not believe additional mandatory disclosures are necessary at this time. For example, every CCAs' Disclosure Framework discusses the CCAs' margin methodologies.[97] Several CCAs have published documents further outlining their margin methodologies, including the formulas used in calculating margin.[98] A CCA generally should consider whether it provides such information, *i.e.,* the formulas used in calculating margin, to market participants, such that a market participant could make such calculations on its own. Finally, at least one CCA has developed a public calculator to provide market participants with the ability to calculate potential margin obligations on a simulated portfolio, for given positions and market value, using its Value at Risk methodology.[99] Although not a substitute for a market participant's ability to understand a CCA's margin methodology on its own, such a public calculator is a helpful tool for determining how a CCA's margin methodology operates, particularly if the calculator is able to provide information related to add-on charges and any applicable cross-margin arrangements. A CCA generally should consider whether it sufficiently identifies in its Disclosure Frameworks and any other documentation that it makes available the circumstances required under the amendments adopted to Rule 17Ad–22(e)(6)(ii) regarding when a CCA must collect intraday margin. Commenters requested that the Commission require a CCA's intraday margin model to be transparent such that a CCA's participants could anticipate a CCA's future intraday margin calls.[100] As discussed above, a CCA should generally consider whether it sufficiently identifies when Rule 17Ad–22(e)(6)(ii) would require an intraday margin call. Such transparency could improve the ability of a CCA's participants to understand when participants may be subject to additional margin calls. However, participants cannot expect to be able to predict every intraday margin call with complete certainty, and being able to do so may create moral hazard that would undermine the CCA's ability to manage risk effectively.

Finally, one commenter stated that CCAs should proactively engage with clearing members ahead of applying intraday margin calls to alleviate the potential liquidity risk for clearing members.[101] The Commission acknowledges that it could be helpful for a CCA to engage with its clearing members regarding potential upcoming intraday margin calls. Given the potentially fluid nature of circumstances necessitating the need for an intraday margin call and the possibility that such engagement would not be possible in a time of market stress, imposing such engagement as an obligation would not be appropriate. However, a CCA generally should consider whether its written policies and procedures provide for engagement with a CCA ahead of applying an intraday margin call, as circumstances permit.

iii. Determinations by CCAs To Collect Intraday Margin

Several commenters addressed the role of discretion in the proposed requirement for a CCA to have the authority and operational capacity to make intraday margin calls as frequently as circumstances warrant, including when risk thresholds specified by the CCA are breached or when the products cleared or markets served display elevated volatility.[102] Specifically, while generally supportive of the proposal, several commenters sought confirmation that a CCA could use discretion when deciding to issue intraday margin calls.[103] These

[94] 17 CFR 240.17ad–22(e)(23)(ii).

[95] 17 CFR 240.17ad–22(e)(23)(iv).

[96] *See* DTC, Disclosure Framework for Covered Clearing Agencies and Financial Market Infrastructure (Mar. 2024), *https://www.dtcc.com/-/media/Files/Downloads/legal/policy-and-compliance/DTC-Disclosure-Framework-2024-Q1.pdf;* FICC, Disclosure Framework for Covered Clearing Agencies and Financial Market Infrastructure (Mar. 2024), *https://www.dtcc.com/-/media/Files/Downloads/legal/policy-and-compliance/FICC-Disclosure-Framework-Q1-2024.pdf;* ICE, Disclosure Framework (July 31, 2023), *https://www.ice.com/publicdocs/clear_credit/ICEClearCredit_DisclosureFramework.pdf;* LCH, Comprehensive Disclosure (July 31, 2024), *https://www.lch.com/system/files/media_root/LCH%20SA%20-%20Comprehensive%20Disclosure%20as%20required%20by%20SEC%20Rule%2017Ad-22%28e%29%2823%29_2022%20Q2_2024.pdf;* NSCC, Disclosure Framework for Covered Clearing Agencies and Financial Market Infrastructure (Mar. 2024), *https://www.dtcc.com/-/media/Files/Downloads/legal/policy-and-compliance/NSCC-Disclosure-Framework-Q1-2024.pdf;* OCC, Disclosure Framework for Financial Market Infrastructures (July 25, 2024), *https://www.theocc.com/getmedia/4664dece-7172-42a5-8f55-5982f358b696/pfmi-disclosures.pdf.*

[97] *See id.*

[98] *See, e.g., https://www.theocc.com/risk-management/margin-methodology*; *https://www.dtcc.com/-/media/Files/Downloads/legal/policy-and-compliance/GSD-Clearing-Fund-Methodology-Overview.pdf.*

[99] *https://www.dtcc.com/managing-risk/stress-testing-and-liquidity-risk-management/ccfl-public-calculator.*

[100] *See supra* note 80 and accompanying text.

[101] SIFMA at 9. This commenter also suggested that the Commission should require that a CCA provide the Commission (and to the extent possible, its clearing participants) with an explanation for any discretionary intraday margin calls. *Id.* at 10.

[102] *See* DTCC; ICE; OCC; CCP12.

[103] DTCC at 4 (requesting additional clarity regarding a CCA's discretion and flexibility and stating that a CCA must maintain the discretion and flexibility to determine if intraday margin calls are required based on the totality of all circumstances the CCA may consider relevant and appropriate); ICE at 2 (stating that a CCA should be allowed the discretion on when and how to use its authority to make intraday margin calls under the particular circumstances); OCC at 4 (seeking explicit confirmation that a CCA may ''exercise judgment when determining whether and when to actually make intraday margin calls, based on all relevant circumstances and using predefined criteria);

commenters stated that such discretion was necessary to allow the CCA to consider the potential procyclical impacts of an intraday margin call and/or any financial stability impacts.[104] In this context, procyclicality refers to ''changes in risk-management practices that are positively correlated with market, business, or credit cycle fluctuations and cause or exacerbate financial instability.'' [105] For example, margin calls during periods of declining asset prices may cause participants to sell assets, putting further negative pressure on asset prices and the market.[106] Such events could negatively affect other CCA participants, as well as other CCAs and their markets.[107]

As discussed above, a CCA's margin methodology includes the criteria that a CCA uses to determine whether to make intraday margin calls.[108] Because a CCA's margin methodology constitutes aspects of the CCA's stated policies, practices, or interpretations under Rule 19b–4, a CCA is required to file a proposed rule change when the CCA revises its margin methodology (including, for example, revisions related to how its risk management concerns may affect a CCA's determination to issue an intraday margin call).[109] In such a filing, the CCA would describe how any such revisions are consistent with the requirements of Exchange Act and the rules thereunder, including Rule 17Ad–22(e)(6).

The Commission agrees with these commenters that a CCA's policies and procedures regarding intraday margin generally should be, under Rule 17Ad–22(e)(6)(ii), reasonably designed to address such risk management concerns, such as procyclicality. The Commission confirms that a CCA's consideration of such concerns (and more generally, of a CCA's understanding of its participants' activity and overall market conditions) in its policies and procedures regarding intraday margin (including a CCA's decision to collect or not collect margin in response to such consideration) is permissible and consistent with the requirements of both preexisting Rule 17Ad–22(e)(6)(ii) and the amendments being adopted in this release. The requirement to adopt policies and procedures that include the authority and operational capacity to make intraday margin calls as frequently as circumstances warrant, including when risk thresholds specified by the CCA are breached or when the products cleared or markets served display elevated volatility,[110] should ensure that a CCA establishes the criteria and thresholds that it would consider when determining whether to make an intraday margin call. Such criteria are subject to the transparency and disclosure requirements discussed above in Part II.A.2.b.ii, and as an SRO, a CCA is obligated to follow its own rules. But the CCA's criteria and thresholds are not required to be inflexible or self-executing. A CCA generally should consider how its policies and procedures specify what factors the CCA would consider when determining when to make an intraday margin call when thresholds are breached or there is elevated volatility.[111]

The Commission is adopting this requirement as proposed.[112] A CCA's determination to issue intraday margin calls, consistent with its *ex ante* policies and procedures, should improve risk management outcomes by enabling a CCA to apply its risk management expertise to changing intraday circumstances, such as the extreme price volatility or significant position changes recently experienced in January 2021.[113] A CCA should be better positioned to respond to a market event more effectively by developing policies and procedures that provide a clear framework for the timing and collection of intraday margin, but that also allows for the CCA to use its expertise (in specific products and markets) to analyze the particular facts and circumstances related to the market event and the affected market participants.

Commenters observed the importance of avoiding procyclicality in margin calls generally and the importance of considering the impact an intraday margin call may have on a CCA's participant.[114] The Commission agrees that a CCA generally should consider these issues when determining whether to issue an intraday margin call, consistent with the applicable regulatory requirement to consider, and produce margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market, and to calculate margin sufficient to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default.[115]

Therefore, in this analysis, a CCA generally should consider, consistent with its policies and procedures, how its approach to intraday margin aligns with broader systemic objectives, such as minimizing potential procyclical effects and avoiding liquidity drains on

CCP12 at 2 (supporting the proposed approach to intraday margin, but also stating that a CCA needs the ability to exercise discretion when issuing intraday margin calls, including the ability to tailor [its] intraday margin call processes to the characteristics of the market it clears (*e.g.,* market structure)); *see also* Davidson at 11. *But see id.* at 9 (explaining that a CCA would only have an ''occasional need'' for an unscheduled intraday margin call'' for only ''truly extreme market moves''); and 10 (warning that unfettered issuances of intraday margin calls could become ''liquidity sinks'' and ''absorb[ ] liquidity like a giant sponge'').

[104] DTCC at 4 (stating discretion is necessary when considering issuing an intraday market call to consider various factors, such as persistent exposure to a participant during normal market conditions, general market conditions, and any possible procyclical effects a margin collection may trigger); ICE at 2 (stating that discretion is needed for a CCA to consider the procyclical effects of any possible intraday margin call, such as ''exacerbating credit and liquidity concerns with clearing members,'' or ''in extreme cases[,] causing market participant defaults); OCC at 4 (stating that, among other things, a CCA's discretion should include considerations related to anti-procyclicality (by maximizing predictability of liquidity demands) and financial market stability); CCP12 at 2 (stating that this discretion would allow a CCA to consider any potential intraday margin call's ''negative procyclical effects'' and/or ''impacts to the stability of the financial system'').

[105] PFMI, *supra* note 9, at 47; *see also* Committee on the Global Financial System, *The role of margin requirements and haircuts in procyclicality* (Mar. 23, 2010) at 8 (defining procyclicality as ''the mutually reinforcing interactions between the financial and real sectors of the economy that tend to amplify business cycle fluctuations and cause or exacerbate financial instability''), *https://www.bis.org/publ/cgfs36.pdf*.

[106] *See infra* Part IV.C.2.a (discussing the relationship between procyclicality and intraday margin calls).

[107] *Id.*

[108] *See supra* note 83 and accompanying text.

[109] *Id.*

[110] *See supra* Part II.A.2.ii (discussing elevated volatility under Rule 17Ad–22(e)(6)(ii) as when a CCA considers volatility to be elevated above typical levels in a manner specific to the products cleared and the markets served); *contra* CCA Standards Adopting Release, *supra* note 5, at 70815 (stating that what would constitute ''high volatility [. . .] may vary across asset classes'').

[111] As discussed above, *supra* note 101, one commenter sought for the Commission to require disclosure to the Commission and, if practicable, a CCA's participants, of the explanation for any ''discretionary'' intraday margin calls. SIFMA at 10. However, such disclosure is not necessary because these policies and procedures should clearly indicate when the CCA would make an intraday margin call. By contrast, the Commission is requiring that a CCA document when it determines *not* to make an intraday margin call when its policies and procedures would otherwise indicate as such. *See infra* note 118 and accompanying text.

[112] The Commission is making several clarifying changes to Rule 17Ad–22(e)(6)(ii)(C): (1) capitalizing the first word of the rule text to read ''Monitors''; (2) adding after the word ''including'' the language ''in the following circumstances'', followed by a semi-colon; (3) adding (1) and (2) to separate the two circumstances described in the rule text; and (4) adding the word ''and'' following the text of the rule.

[113] *See supra* note 17 and accompanying text (further discussing the response to heightened volatility in GME and other equity securities).

[114] SIFMA at 8–9.

[115] 17 CFR 240.17ad–22(e)(6)(i), (iii).

its participants. For example, a CCA may choose not to issue an intraday margin call triggered by the thresholds set forth in its policies and procedures (*i.e.,* when risk thresholds specified by the CCA are breached or when the products cleared or markets served display elevated volatility) if, in the CCA's judgment, the intraday call is not required to effectively manage the risks posed to the CCA. A CCA's decision not to issue an intraday margin call could, therefore, avoid unnecessarily worsening market conditions by fostering procyclicality, and drawing on its members' capital more than needed (*i.e.,* avoiding ''liquidity sinks'').[116]

A commenter also stated that the Commission should require that a CCA provide to the Commission, and to the extent possible, its clearing members, an explanation of the reasons for discretionary intraday margin calls because such explanation would allow for an evaluation of whether the need to make such a call might have been averted by improved procedures.[117] The Commission does not agree that, as the commenter suggests, an obligation to provide an explanation and disclosure is necessary when a CCA makes an intraday margin call, because its policies and procedures already must identify and document the circumstances in which such a call would be made. However, a CCA should be subject to an obligation to document when it, consistent with its policies and procedures, determines not to make an intraday margin call in circumstances identified in such policies and procedures. A requirement to document when a CCA determines not to make such an intraday margin call, pursuant to its written policies and procedures, is broadly consistent with the goal identified by the commenter: that the CCA should be able to evaluate the implementation of its policies and procedures with respect to intraday margin. By keeping a record of such instances in which a CCA determines not to make an intraday margin call, pursuant to its written policies and procedures, it should be easier for a CCA to review its determination not to make an intraday margin call and to determine whether a breach of the thresholds that triggered an intraday call could have been averted by changed procedures. It also should better allow the CCA to holistically consider the procyclical impacts of intraday margin calls, which, as commenters stated, should be considered as part of a CCA's analysis about such calls.

Therefore, the Commission is further amending Rule 17Ad–22(e)(6)(ii) to add paragraph (e)(6)(ii)(D) to require that a CCA's risk-based margin system ''[d]ocuments when the covered clearing agency determines not to make an intraday margin call pursuant to its written policies and procedures required under paragraph (e)(6)(ii)(C)''.[118]

A CCA generally should review, on a regular basis, any documentation created pursuant to this requirement of Rule 17Ad–22(e)(6)(ii)(D). Such documentation can be used to identify the CCA's rationale for not making an intraday margin call. In addition, a CCA generally should consider whether (and how) to disclose the information required under this documentation requirement to its participants, to provide additional transparency to its participants about when a CCA chooses not to make intraday margin calls, including whether such disclosure is necessary pursuant to Rule 17Ad–25(j), which requires that the CCA establish, implement, maintain, and enforce written policies and procedures reasonably designed to require the board of directors to solicit, consider, and document its consideration of the views of participants and other relevant stakeholders of the registered clearing agency regarding material developments in its risk management and operations on a recurring basis.[119] Consistent with this obligation under Rule 17Ad–25(j), a CCA generally should consider how best to solicit the views of participants and other relevant stakeholders regarding intraday margin calls, which could include how they were applied in the past by the CCA.

c. Other Comments

The Commission proposed requirements related to monitoring for intraday exposure and providing further specificity as to the circumstances when an intraday margin call could be made. However, one commenter addressed three additional issues related to more granular details within the calculation of an intraday margin call. First, this commenter addressed the nature of an intraday margin call, stating that any margin determination, including any intraday determination, should be made with respect to a clearing member's current positions and the current value of those positions, to the extent practicable.[120] A CCA generally should determine margin based on its participants' positions, including a participant's total portfolio (that is, not just positions at end of day or intraday).[121]

Second, this commenter also requested that a CCA net against each other any amounts owing to a clearing member from, on the one hand, initial margin and, on the other hand, variation margin.[122] Third, this commenter also requested that intraday margin calls be bidirectional to return margin cash or collateral to a CCA's participants.[123]

In response to these points, the Commission reiterates that the circumstances that could give rise to intraday margin calls at a CCA may vary significantly (*e.g.,* intraday volatility, large changes in participant positions), and may present varied challenges. Accordingly, although there may be circumstances where it would be appropriate for a CCA to take the approach suggested by the commenter, the Commission's approach to Rule 17Ad–22(e) is to provide flexibility to CCAs, subject to their obligations and responsibilities as SROs under the Exchange Act, to design and structure their policies and procedures to take into account the differences among clearing agencies and the markets and products it clears. Accordingly, the Commission is not adopting any requirements in response to this commenter.

This commenter also stated that the establishment of intraday margin

[116] *See infra* notes 559–563 and accompanying text (further discussing the economic impact of procyclical margin calls and considerations that a CCA may undertake in evaluating when to make or not make a call).

[117] SIFMA at 9, 10.

[118] *See supra* note 111.

[119] 17 CFR 240.17ad–25(j).

[120] SIFMA at 9. The Commission understands this commenter to be referring to the difference between initial margin, which is typically collected to cover potential changes in the value of each participant's position (that is, potential future exposure) over the appropriate close-out period in the event that the participant defaults, as compared to variation margin, which is collected and paid out to reflect current exposures resulting from actual changes in market prices and is typically calculated by marking open positions to current market prices. *See, e.g.,* PFMI, *supra* note 9, at 51. The commenter stated that an intraday call should clearly separate the initial margin and variation margin components of such a call. SIFMA at 9.

[121] *See, e.g.,* CPMI–IOSCO Resilience Guidance, *supra* note 14, sec. 5.2.22 (''A CCP faces the risk that its exposure to its participants can change rapidly as a result of intraday changes in prices, positions, or both; ie adverse price movements, as well as participants building larger positions through new trading (and settlement of maturing trades). For the purposes of addressing these and other forms of risk that may arise intraday, a CCP should address and monitor on an ongoing basis how such risks affect all components of its margin system . . .'').

[122] SIFMA at 9.

[123] *Id.* at 7–8, 10; Davidson at 2, 11 (stating that such a bidirectional flow would allow the participants to avoid ''unnecessary liquidity timing gaps''); *see also* The Associations at 2 (requesting prompt return of margin to clearing members and clients to alleviate liquidity constraints).

procedures cannot be viewed separately from the establishment of margin procedures as a whole, and that the reduction of ''surprises'' with respect to intraday margin depends on having transparent margin procedures generally and on having the start of day margin be as near correct as possible (meaning that the margin collected at the established start of day time period, as opposed to an intraday margin call, should be as accurate as possible).[124] The commenter provided several suggestions regarding the calculation of margin more generally.[125] The Commission proposed requirements related to monitoring for intraday exposure and providing further specificity as to when the CCA must consider an intraday margin call. The suggestions provided by the commenter relate to granular details within the calculation of margin. Rule 17Ad–22(e)(6) already contains requirements related to these issues raised by the commenter, most notably, that the CCA's risk-based margin system must consider, and produce margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market, and calculate margin sufficient to cover its potential future exposure to participants between the last margin collection and the close out of positions following a participant default, and use an appropriate method for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across products.[126] Although there may be circumstances where it would be appropriate for a CCA to incorporate policies and procedures such as those suggested by the commenter, the Commission's approach to Rule 17Ad–22(e) is to provide flexibility to CCAs, subject to their obligations and responsibilities as SROs under the Exchange Act, to design and structure their policies and procedures to take into account each clearing agency's unique characteristics. In addition, the transparency requirements discussed in Part II.A.2.b.ii apply to all components of a CCA's margin model, including those discussed by the commenter.

One commenter recommended that the Commission require a CCA to disclose particular aspects of its risk models used in the calculation of initial margin.[127] As discussed *supra* in Part II.A.2.b.ii, CCAs are already required to provide disclosure of key aspects of their margin models under Exchange Act Rule 17Ad–22(e)(23)(iv) and to file their rules as part of the SRO and/or SIFMU rule filing processes, which further provides transparency.[128] Therefore, additional disclosure requirements are not required because of the current requirements that a CCA must disclose key aspects of its margin model.

Another commenter stated that a CCA should be required to publish regular statistics in a consistent format as to the performance of margin requirements, including how many clearing members were subject to margin calls of what size, did clearing members go into a margin deficit, and how frequently.[129] However, CCAs already include, as part of their public disclosures under Rule 17Ad–22(e)(23)(iv)(C), a description of basic data and performance statistics on their services and operations, such as basic volume and value statistics by product type, average aggregate intraday exposures to its participants, and statistics on the CCA's operational reliability.[130] As such, the Commission is not adopting any additional disclosure requirements. However, CCAs generally provide such public information regarding their margin models' performance as part of their periodic disclosures.[131] For example, these disclosures include, with respect to margin, identification of the number of times over the past 12 months that margin coverage held against any account fell below the actual mark-to-market exposure of that member account based on daily backtesting results and, in the event of a breach of initial margin coverage, a report on the size of the uncovered exposure, both of which are data points consistent with the commenter's request to identify whether clearing members went into a margin deficit and how frequently.[132] Accordingly, the Commission is not adopting additional requirements. However, a CCA generally should consider what disclosures regarding its policies and procedures for margin collection can be useful to market participants to facilitate their understanding of the performance of its margin model.

B. Inputs to Margin System

1. Proposed Amendment to Rule 17Ad–22(e)(6)(iv)

In the RWP Proposing Release, the Commission proposed to amend Rule 17Ad–22(e)(6)(iv) to strengthen its requirements that a CCA have policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, among other things, uses reliable sources for its price data and uses procedures for addressing circumstances in which price data are not readily available or reliable.[133] Specifically, the Commission proposed expanding the rule's scope beyond price data to also include other substantive inputs to a CCA's risk-based margin system,[134] meaning that the CCA's procedures would also have to address when such a substantive input is not readily available or reliable.[135] The unavailability or unreliability of any substantive input to a CCA's margin system could potentially affect the CCA's ability to calculate margin.[136] Citing as justification the current requirement of ''reliable sources'' of price data,[137] the Commission stated that there is a need to use reliable sources for substantive inputs other than price data.[138] In response, the Commission proposed to expand this requirement to substantive inputs other than price data.[139] The Commission stated that this proposal ''should help ensure that the CCA can continue to calculate and collect margin'' pursuant to its obligations under Rule 17Ad–22(e)(6).[140]

The Commission also proposed two new requirements on a CCA's backup procedures when price data and other

[124] SIFMA at 7.

[125] *Id.* at 7–8 (discussing the development and maintenance of margin models; accurate, robust pricing; margin period of risk; calibration scenarios/lookback periods; margin add-ons, such as concentration and liquidity risks; offsets; anti-procyclicality measures; margin returns; and interoperability).

[126] 17 CFR 240.17ad–22(e)(6)(i), (iii), (v).

[127] The Associations at 3.

[128] 17 CFR 240.17ad–22(e)(23)(iv).

[129] SIFMA at 10.

[130] *See supra* note 96 and accompanying text.

[131] *Id.*

[132] *See, e.g.,* DTCC, ''Fixed Income Clearing Corporation and National Securities Clearing Corporation Public Quantitative Disclosures for Central Counterparties: Q2 2024'' (Aug. 29, 2024) at 13, *https://www.dtcc.com/-/media/Files/Downloads/legal/policy-and-compliance/CPMI-IOSCO-Public-Quantitative-Disclosures-Q2-2024.pdf.*

[133] RWP Proposing Release, *supra* note 18, at 34713.

[134] *See id.* at 34715 (stating that ''substantive'' refers to ''any inputs used by the covered clearing agency that are necessary for the risk-based margin system to calculate margin'').

[135] *Id.* at 34714.

[136] *Id.*

[137] *Id.* (explaining that a reliable source of timely price data was necessary because a CCA's ''margin system needs such data to operate with a high degree of accuracy and reliability, given the risks that the CCA's size, operation, and importance pose to U.S. securities markets'').

[138] *Id.*

[139] *Id.* at 34714–15 (''The Commission is therefore proposing to amend Rule 17Ad–22(e)(6)(iv) to expand its scope beyond price data to encompass other substantive inputs to its risk-based margin system and to impose requirements on a [CCA] to have procedures when such substantive inputs are not readily available or reliable'').

[140] *Id.* at 34714.

substantive inputs are not readily available or reliable. First, the Commission proposed these procedures to help ensure that the CCA can meet its obligations under Rule 17Ad–22(e)(6).[141] Second, the Commission proposed that these procedures must include either: (i) the use of price data or other substantive input from an alternate source; or (ii) the use of an alternate risk-based margin system that does not similarly rely on the same unavailable or unreliable substantive input.[142]

In proposing this amendment, the Commission included the following guidance: an alternate source ''generally should meet the same level of reliability of the primary source;'' and an ''alternate risk-based system needs to be an alternate margin model that does not rely on the same data source that is unavailable or unreliable'' to ensure to compliance with Rule 17Ad–22(e)(6).[143] The Commission also stated that an alternate risk-based margin system would be subject to the requirements of 17 CFR 240.17ad–22(e)(6)(vi) and (vii), with respect to monitoring, review, testing, verification, and model validation.[144] Additionally, the Commission stated that a CCA should ''consider its reliance on any third party sources for purposes of its risk-based margin system and consider whether an alternate system or source of data or other inputs that is internal to the CCA, and does not rely upon any third party provider, would be appropriate.'' [145]

The Commission is adopting the requirement as proposed, with minor modifications discussed in Part II.B.2 below. The Commission is also making clarifying technical changes.[146]

[141] *Id.* at 34715.

[142] *Id.*

[143] *Id.*

[144] *Id.*

[145] *Id.*

[146] Specifically, the Commission is: (1) adding paragraph markers (in the form of capital letters) to separate the clauses of the rule text into (A), (B), and (C); (2) changing the punctuation from a comma to a semi-colon and deleting the word ''and'' at the end of paragraph (e)(6)(iv)(A); (2) adding parenthesis around the text ''and, with respect to price data, sound valuation models'', deleting the comma at the end of that language, and changing the period to a semi-colon at the end of paragraph (e)(6)(iv)(B); (3) adding additional paragraph markers (*1*) and (*2*) to paragraph (e)(6)(iv)(C) before each of the two alternatives listed in this paragraph (*i.e.,* ''the use of price data or substantive inputs from an alternate source; or'' and ''if it does not use an alternate source, the use of a risk-based margin system that does not rely on the unavailable or unreliable substantive input;'') and capitalizing the first word in each new paragraphs (e)(6)(iv)(C)(*1*) and (*2*) (''The'' and ''If'', respectively); (4) adding a clarifying, internal cross-reference (''such procedures under paragraph (e)(6)(iv)(B)'') in paragraph (e)(6)(iv)(C); and (5) replacing the word ''shall'' in new Rule 17Ad–22(e)(6)(iv)(C) (*i.e.,* ''Such procedure under paragraph (e)(6)(iv)(B) of this section *shall*'') with ''must'' to use more plain language.

2. Discussion of Comments

a. Inclusion and Definition of Substantive Inputs

As discussed above, the Commission proposed expanding the scope of Rule 17Ad–22(e)(6)(iv) beyond price data to also include substantive inputs to a CCA's margin methodology.[147] Based on its supervisory experience, the Commission understands that such substantive inputs could include: (i) portfolio size; (ii) volatility, (iii) sensitivity to various risk factors that are likely to influence security prices; (iv) duration; (v) convexity; and/or (vi) the results of models run by third parties.[148]

Several commenters addressed this proposed modification to Rule 17Ad–22(e)(6)(iv).[149] One commenter agreed generally with the proposed extension of the rule's scope to include ''substantive inputs.'' [150] The commenter supported extending the requirement for ''reliable sources'' to include substantive inputs because a CCA's margin systems need ''to operate with a high degree of accuracy and reliability, given the risk that [its] size, operation, and importance posed to the securities market.'' [151]

Several commenters requested that the Commission provide more guidance regarding its statement about what inputs may be ''substantive.'' [152] One commenter requested that ''the term 'substantive' as used in this context be further refined to avoid confusion over the inputs that are 'necessary' and those that are 'non-consequential.' '' [153] In addition, several commenters stated that the CCA should determine what constitutes a substantive input.[154] One such commenter also stated that, if the Commission prescribed a definition of ''substantive input,'' a CCA may be forced to ''obtain, often at great expense, alternate data sources for inputs with limited utility and minimal or no impact on margin calculations.'' [155]

However, another commenter stated that the Commission's rules around substantive inputs should be principles based, identifying one such principle that ''every input that affects margin requirements by [x]% is deemed substantive.'' [156]

The Commission is not making any amendments to define what constitutes a substantive input. A CCA is responsible for developing its own policies and procedures, including its margin methodology, and it is best positioned to determine what constitutes a substantive input into its margin methodology. As stated in the RWP Proposing Release, ''substantive'' for the purposes of Rule 17Ad–22(e)(6)(iv), ''refers to any inputs used by the CCA that are necessary for the risk-based margin system to calculate margin'' and ''is meant to distinguish from other potential inputs that may not be consequential to the calculation of margin.'' [157] Accordingly, as requested by some commenters, the Commission confirms that a CCA has the discretion to determine what is a ''substantive'' input, based on its knowledge of its risk-based margin system, as compared to those that it determines to be non-consequential.[158] When establishing and maintaining its risk-based margin system, each CCA must have the ability to consider its own unique characteristics and circumstances, as well as those of the market it serves.[159] Rather than have the Commission define the term ''substantive'' prescriptively for each CCA, this discretion corresponds with the Commission's principles-based approach in Rule 17Ad–22(e), which helps each CCA effectively meet the evolving risks and challenges in the markets that each CCA serves.[160] Therefore, no further clarifications or guidance are necessary to distinguish a substantive input from those inputs that are non-consequential.

Further, the Commission is not adopting any amendments to Rule 17Ad–22(e)(6)(iv) to incorporate the principle that ''every input that affects margin requirements by [x]% is deemed substantive.'' [161] This type of requirement would not be principles-

[147] In addition, to improve clarity and consistency of terms, the Commission proposed technical edits standardizing references to ''price data'' in Rule 17Ad–22(e)(6)(iv), which currently refers to both ''price data'' and ''pricing data,'' to refer only to price data. The Commission previously used the two words interchangeably in preexisting Rule 17Ad–22(e)(6)(ii). RWP Proposing Release, *supra* note 18, at 34714 n.59. The Commission received no comments on this proposed technical change of ''pricing data'' to ''price data'' in this provision and is adopting as proposed.

[148] RWP Proposing Release, *supra* note 18, at 34714.

[149] *See* Better Markets at 8–9; CCP12 at 2; DTCC at 5; The Associations at 8.

[150] *See* Better Markets at 8–9.

[151] *Id.* at 8.

[152] *See* DTCC at 5; CCP12 at 2; The Associations at 8.

[153] DTCC at 5.

[154] *Id.;* CCP12 at 2.

[155] CCP12 at 2.

[156] The Associations at 8.

[157] RWP Proposing Release, *supra* note 18, at 34715.

[158] *See* DTCC at 5; CCP12 at 2; The Associations at 8.

[159] *See* CCA Standards Adopting Release, *supra* note 5, at 70800–01.

[160] *See id.* at 70800.

[161] The Associations at 8.

based and instead would prescribe a particular scope of what constitutes ''substantive,'' which the Commission does not seek to do. Based on its supervisory experience, the Commission understands that a wide range of margin models exists among the CCAs. This wide range of margin models exists due to each CCA's different participants, different products cleared, and different markets served. Given these distinctions among the CCAs, and consistent with the principles-based approach in Rule 17Ad–22(e) more generally, the Commission believes it would be inappropriate to include in Rule 17Ad–22(e)(6)(iv) a quantitative threshold defining those inputs that would be ''substantive.'' Such a specific percentage threshold likely would fail to identify all the inputs for all CCAs' margin models that are necessary to ensure every CCA's margin model can meet the requirements of Rule 17Ad–22(e)(6) (*i.e.,* covering its credit exposures to its participants). Therefore, the Commission is not adopting modifications responsive to the commenter requesting ''substantive'' to correspond to a percentage impact on margin requirements.

b. Use of an Alternate Source or an Alternate Risk-Based Margin System

As proposed, the changes to Rule 17Ad–22(e)(6)(iv) required that the procedures for when price data or substantive inputs are not readily available or reliable must include the use of price data or substantive inputs from an alternate source or, if it does not use an alternate source, the use of an alternate risk-based margin system (that does not similarly rely on the unavailable or unreliable substantive input).[162]

One commenter expressed support for this proposed requirement,[163] and other commenters acknowledged the importance of ensuring that a CCA's risk-based margin system be able to perform even when certain sources of pricing data or other inputs become unavailable.[164]

However, several commenters disagreed with the requirement of a sole means of contingency (that is, the use of alternate sources) and stated that CCAs should have the flexibility to develop their own backup procedures and/or appropriate substitutions for unavailable inputs in their margin models, depending on the products cleared and the markets served.[165] These commenters stated that it may not always be possible to have a ''like-for-like'' substitution of an alternate source.[166] One commenter stated that the Commission should not restrict choices in an emergency situation by requiring that an alternate source be independent of the third-party provider, and that CCAs should simply have a ''credible fallback'' in the event of unavailable price data or substantive inputs.[167] Another such commenter recommended that the proposal be modified to allow for ''substantive inputs from an alternate source, and/or of appropriate alternate inputs.'' [168]

In response to the commenters who sought revisions to the proposed requirement's obligation to use an alternate source, the requirement of an alternate source does not mean that such an alternate source must be external to a CCA or that the alternate source must be of the same nature as the original substantive input (that is, the alternate source need not be a ''like-for-like'' substitute). As stated in the RWP Proposing Release, ''alternate source[s] generally should meet the same level of reliability of the primary source, *whether that alternate is sourced from an external provider or created internally*.'' [169] By acknowledging that an alternate source may be created internally, the Commission recognized that an alternate source means, simply, an alternate to the primary input and does not require an entirely independent, third-party source to provide the same input. Similarly, the recognition that the alternate source may be created internally means that the Commission also recognized that the alternate source may, in fact, be the result of internal policies and procedures that the CCA designs to develop an internal alternate source and meet the needs of its margin methodology.

Further, in response to the commenters seeking flexibility to develop their own backup procedures, this requirement does not prevent a CCA from using its discretion to determine the most appropriate substitution for any price data or substantive input to its risk-based margin system.[170] This requirement also does not preclude the use of policies and procedures that establish a methodology or approach to determine the appropriate price,[171] so long as, as discussed in Part II.B.2.c *infra,* the CCA can still meet the obligations of Rule 17Ad–22(e)(6), including meeting its credit obligations to its participants.[172] Therefore, revisions to or deletion of the rule text regarding alternate sources, including those suggested by one commenter to allow for ''substantive inputs from an alternate source, and/or of appropriate alternate inputs,[173] are not necessary, as the rule text does not require an externally provided alternate source.

One commenter stated that the Commission should ''refocus[ ]'' the final rule on policies and procedures, as opposed to requiring policies and procedures that include an alternate source or risk-based margin system.[174] The Commission agrees that the

[162] RWP Proposing Release, *supra* note 18, at 34715.

[163] Better Markets at 9 (stating that this proposed requirement would ensure that the backup procedures available to a CCA ''are sufficiently distinct from the impaired data source that they will serves as reliable alternatives'').

[164] *See* OCC at 4; ICE at 2; CCP12 at 2.

[165] DTCC at 4 (stating that a CCA should have ''the flexibility to develop reasonable backup procedures and contingency plans for these types of circumstances, which will depend on the cleared products and market structure at issue, and may not in all cases include the use of third-party secondary vendors or data sources''); OCC at 5 (stating that a CCA should be permitted to use its informed judgment to determine the appropriate substitutions for unavailable inputs in its margin system, which would ensure that CCAs have sufficient flexibility to address the need for alternative data sources in a manner that addresses the Commission's policy objectives, is tailored to the markets served and products cleared by the [CCA], and is not unnecessarily burdensome).

[166] DTCC at 4–5 (stating that requiring an alternate source would not always be the most practical or effective means to ensure a CCA meets its participants' credit obligations under Exchange Act Rule 17Ad–22(e)(4), due to the possible absence of an alternate source of pricing data or other substantive inputs (*e.g.,* because of industry consolidation among vendors), and the inability to use discretion to develop a solution to unavailable price data or other substantive input); OCC at 4 (stating that alternate sources may not exist, or may be prohibitively expensive or technically difficult to implement when compared to the impact of the input on the margin model). One such commenter suggested that a CCA may find it appropriate if its policies and procedures incorporated the use of an alternative pricing vendor, where applicable, or in the absence of such an alternative provider, pursuant to the CCA's policies and procedures to ensure that timely pricing data is applied, with such procedures including, for example, recording ''the last available price'' in the CCA's pricing database with such price consumable to applicable participants (citing to its recent update to its Clearing Agencies' Securities Valuation Framework). *Id.* at 5.

[167] The Associations at 9.

[168] OCC at 5.

[169] RWP Proposing Release, *supra* note 18, at 34715 (emphasis added).

[170] *Id.*

[171] For example, one CCA commenter stated that its existing policy provided that backup pricing may more accurately be sourced from an alternative pricing vendor or may also be determined, in the absence of an alternative pricing vendor, pursuant to the CCA's applicable policies and procedures to ensure that timely pricing data is applied, with such procedures including, for example, using the last available price which is consumable to applicable participants. DTCC at 5.

[172] RWP Proposing Release, *supra* note 18, at 34715.

[173] *See* OCC at 5.

[174] CCP12 at 2.

requirement should allow for flexibility in how CCAs address the unavailability or unreliability of an input to their margin model. The requirement being adopted does not mandate that a specific alternate source be used, but rather that the CCAs have policies and procedures to ensure that some alternate source is available, even if that source is determined internally by the CCA.

With respect to the requirement of a potential alternate risk-based margin system, one commenter stated that requiring CCAs to develop and maintain an entire alternate risk-based margin system would be prohibitively expensive and operationally burdensome.[175] However, the Commission disagrees with the commenter's characterization that such costs are necessary because the proposed rule does not require the development and maintenance of a second risk-based margin system separate from its current risk-based margin system, as discussed below.[176] Another commenter suggested that the Commission should remove the requirement of a potential alternate risk-based margin system from the rule text.[177] The Commission disagrees that the proposed rule requires a second risk-based margin system separate from a CCA's current risk-based margin system, and the Commission is modifying the term ''alternate risk-based margin system'' to make this point clear.[178] Specifically, the proposed requirement for backup procedures when substantive inputs ''are not readily available or reliable'' should help a CCA ensure it ''can continue to calculate and collect margin commensurate with, the risks and particular attributes of each relevant product, portfolio, and market, as required under Rule 17Ad–22(e)(6)(i).'' [179]

Similarly, another commenter disagreed with the proposed additional requirement that a CCA have advance plans ''to use an alternate risk-based margin system because of the unavailability or unreliability of a particular input,'' which ''would impose a significant burden on a [CCA] solely for the purpose of addressing a problem with an input that may be transitory.'' [180] The commenter stated that it ''is not aware of circumstances where a [CCA] has been unable to address a problem with an input price through its normal business practices and procedures.'' [181] The commenter also stated that it ''does not believe that the Commission has articulated a problem (other than a theoretical one)'' that the proposal is designed to address and ''has not recognized the considerable costs to'' CCAs, clearing firms, and other market participants ''that would be required to develop and implement alternate margin models to address a remote and theoretical problem with price or other data inputs.'' [182] The commenter suggested that this clause be removed from the rule text.[183] In addition, one commenter requested that the Commission confirm that any final rule does not create an expectation that CCAs should develop an alternate risk-based margin system.[184]

The Commission disagrees with the commenter that the failure of a CCA's margin model (*i.e.,* its risk-based margin system) due to an unavailable or unreliable input is a ''theoretical'' problem. Rather, the unavailability or unreliability of a substantive input could impact a CCA's ability to establish, implement, maintain, and enforce a risk-based margin system that Rule 17Ad–22(e)(6) requires. Moreover, contrary to the commenter's assertion, the Commission is not requiring that CCAs develop and implement alternate margin models, but rather, is requiring that the CCA establish, implement, maintain and enforce written policies and procedures to address particular issues that could affect the functioning of its margin model. The requirement also allows for the use of an alternate source in the existing risk-based margin system, and a CCA may determine the alternate source using its own policies and procedures.[185] An alternate source from a third-party provider is not required. More generally, this requirement is designed to expand the scope of the preexisting rule and ensure that a CCA establishes, implements, maintains and enforces written policies and procedures to address the unavailability of a substantive input to its margin model and meet its obligations under Rule 17Ad–22(e)(6). As stated in the RWP Proposing Release, when substantive inputs are unavailable or unreliable, CCAs must be able to continue to calculate and collect margin commensurate with, the risks and particular attributes of each relevant product, portfolio, and market.[186] Additionally, the Commission analyzed the costs of the requirement in Part IV, *infra,* and in the RWP Proposing Release. Given the analysis, the Commission disagrees with the commenter's suggestion to remove the clause from the proposal.

The Commission is making several technical changes to the rule text to clarify that an alternate risk-based margin system is not required in all instances. Specifically, the Commission deletes the word ''alternate'' from ''an alternate risk-based margin system'' in Rule 17Ad–22(e)(6)(iv)(C)(*2*) (and changes ''an'' to ''a'' before ''risk-based margin system'' for grammatical reasons). This revision responds to commenters' concerns that the rule requires that a CCA develop an alternate risk-based margin system separate from a CCA's current risk-based margin system.[187] The rule does not include such a requirement. The Commission is also adding the term ''either'' after ''must include'' to clarify that satisfying either paragraph (e)(6)(iv)(C)(*1*) or (*2*) fulfills paragraph (e)(6)(iv)(C)'s requirement.[188]

c. Obligation To Meet a CCA's Obligations Under Rule 17Ad–22(e)(6)

The proposed amendment to Rule 17Ad–22(e)(6)(iv) also provided that the procedures discussed in Part II.B.2.b must ensure that the CCA is able to meet its obligation to cover credit exposures to its participants under Rule 17Ad–22(e)(6).[189] In the RWP Proposing Release, the Commission explained that, by specifying how these procedures must perform (*i.e.,* to allow a CCA to continue to cover its credit exposures), this proposed amendment helps ensure that a CCA adopts sufficiently robust procedures.[190] As such, this proposed amendment would, with respect to both

[175] OCC at 5.

[176] *See infra* notes 178 and 186 and accompanying text.

[177] ICE at 2–3.

[178] *See infra* note 187 and accompanying text.

[179] *Id.*

[180] ICE at 2.

[181] *Id.* at 3.

[182] *Id.*

[183] *Id.*

[184] CCP12 at 3 (stating that the development of such an alternate system would require a CCA to effectively maintain two very distinct margin systems, which is likely very resource intensive and time consuming).

[185] RWP Proposing Release, *supra* note 18, at 34715.

[186] *Id.* at 34714.

[187] *See supra* notes 175, 184 and 177 and accompanying text.

[188] The Commission also removes from Rule 17Ad–22(e)(6)(iv)(C) the word ''similarly'' from between the words ''not'' and ''rely'' (*i.e.,* ''the use of a risk-based margin system that does *not rely* on the unavailable or unreliable substantive input'') to remove redundancy (as the word ''similarly'' was unnecessary to convey the meaning that the prohibited reliance was on the unavailable or unreliable substantive input in question). The Commission also revises the reference to ''the unavailable or unreliable substantive input'' to ''substantive inputs that are unavailable or reliable'' for the same reasons.

[189] RWP Proposing Release, *supra* note 18, at 34715.

[190] *Id.*

price data and other substantive inputs, require that such procedures should address circumstances in which price data or substantive inputs are not readily available or reliable, in order to ensure that the CCA be able to meet its requirements under Rule 17Ad–22(e)(6) and cover its credit exposures to its participants.[191]

The Commission received no comments on this requirement and is adopting as proposed.

C. Contents of Recovery and Orderly Wind-Down Plans

The Commission received several overarching comments on proposed Rule 17Ad–26 that were generally supportive of the approach, particularly the addition of new and more specific requirements applicable to a CCA's RWP. One commenter stated that a detailed RWP is essential, as the inability of a CCA to recover from severe losses, or the disorderly wind-down of a CCA, could have significant repercussions not only for the sector in which the CCA operates but for the markets and the economy as a whole.[192] The commenter also stated that CCAs must have comprehensive RWPs because even sound risk management may not prevent a CCA's default in extreme circumstances.[193] The commenter continued by stating the obvious strength of recovery and orderly wind-down planning is the *ex ante* development of a strategy to maintain as a going concern the critical operations of the CCA, even in the face of losses that would otherwise have caused its insolvency, or to ensure the orderly transfer of functions.[194] The commenter stated that not aligning RWPs to uniform requirements introduces risk, and that the proposed rule mitigates that risk by requiring all RWPs to incorporate at least nine specific elements.[195] Another commenter explained that CCAs face no meaningful competitive pressure when they are the sole clearing agency for the products they clear and can be a source of systemic risk.[196] The commenter stated that, in such cases, to improve CCAs, regulatory mandates must effectively codify existing best practices to enhance resiliency and create a level playing field for resiliency, and that such improvements will only occur if the Commission imposes specific regulatory requirements.[197]

One commenter cautioned that the proposed upgrades and focus on RWP design and testing may create unrealistic expectations and over-reliance on RWPs. The commenter also stated that care is needed to ensure that confidence in such plans is well grounded and that the efficient implementation of RWPs is properly stressed, accounting for rapidly evolving market risk and for the ever-increasing speed of market-moving data.[198] In the Commission's view, effective planning can help preserve financial stability and ensure the continuity of critical CCP and CSD functions for the markets served by CCAs, and the availability of tools and resources in the RWP generally reserved for recovery and wind-down scenarios would not lead to an ''over-reliance'' on such tools in practice. In practical terms, default management, recovery, and wind-down exist as distinct points across a spectrum from normal market conditions to highly stressed market conditions. As such, a CCA would deploy its RWP either (i) in a default scenario, only after its business-as-usual default management tools had failed to close out any defaulting portfolios and, likely, after the CCA had fully exhausted its prefunded resources, or (ii) in a non-default scenario, after resources set aside for business risk (*e.g.,* six months of operating expenses) or for other purposes had been exhausted. Commission rules impose a high standard for resilience in normal and stressed market conditions across both default and non-default loss scenarios, consistent with the international standards set forth in the PFMI, of which planning for recovery and orderly wind-down is but one part of a multi-part and comprehensive regulatory framework. Given this dynamic, CCAs would not have incentives to ''activate'' their RWPs early.

More generally, the Commission agrees with commenters expressing the view that thoughtful recovery and wind-down planning is necessary, even when effective risk-management measures are in place, because of the potential systemic risk implications of the failure of a CCA. Given the evolving nature of recovery and orderly wind-down planning, as well as the annual review and testing requirements included in Rule 17Ad–26, the concern that adding more robust requirements for development and testing of RWPs will lead to ''over-reliance'' on RWPs is misplaced. Effective RWPs, with robust consideration of scenarios, triggers, and processes for testing and board approval, help promote recovery. Such planning for recovery is essential because, as other commenters have stated, the wind-down of systemic functions often would not leave alternative providers of clearance and settlement services to support continued market function.[199] To reach the stage where a CCA would consider implementing its RWP, in the context of a default loss, the CCA would have to incur default losses greater than the financial resources maintained pursuant to policies and procedures required by Rule 17Ad–22(e)(4),[200] or in a non-default loss context, incur losses greater than the liquid net assets funded by equity held pursuant to the policies and procedures required by Rule 17Ad–22(e)(15)(ii) to cover potential business losses.[201] As such, neither CCAs nor market participants are in danger of ''over-reliance'' on the policies and procedures that undergird RWPs. In addition, although many systemic functions are not currently offered by alternative providers, RWPs can, in establishing robust policies and procedures for orderly wind-down, help facilitate the orderly transfer of systemic functions to a new entity to maintain clearance and settlement services for the market served.

[191] *Id.*

[192] Better Markets at 10.

[193] *Id.*

[194] *Id.*

[195] *Id.*

[196] SIFMA at 10–11.

[197] *Id.*

[198] Letter from Erkki Liikanen, Co-Chair, and Simon Johnson, Co-Chair, CFA Institute Systemic Risk Council (Aug. 30, 2023) (''CFA'') at 5.

[199] *See, e.g.,* Davidson at 1. This concern regarding the feasibility or advisability of wind-down in the context of CCAs is discussed further in Part II.D.1.c.

[200] *See* 17 CFR 240.17ad–22(e)(4)(i) (requiring a CCA to maintain sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence); *see also* 17 CFR 240.17ad–22(e)(4)(ii) (requiring a CCA that provides CCP services and is either systemically important in multiple jurisdictions or a clearing agency involved in activities with a more complex risk profile to maintain additional financial resources at the minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the two participant families that would potentially cause the largest aggregate credit exposure for the CCA in extreme but plausible market conditions); 17 CFR 240.17ad–22(e)(4)(iii) (requiring a CCA that is not subject to Rule 17Ad–22(e)(4)(ii) to maintain additional financial resources at the minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the participant family that would potentially cause the largest aggregate credit exposure for the CCA in extreme but plausible market conditions).

[201] *See* 17 CFR 240.17ad–22(e)(15)(ii) (requiring a CCA, at a minimum, to hold liquid net assets funded by equity equal to the greater of either six months of the CCA's current operating expenses, or the amount determined by the board of directors to be sufficient to ensure a recovery or orderly wind-down of the CCA).

Another commenter stated that the RWP Proposing Release has not met the burden of proof required by the Administrative Procedure Act. More specifically, the commenter stated that the Commission has not demonstrated that the rule amendments are necessary or in the public interest because the proposed amendments are to existing rules that already more than adequately cover the areas in question, and there have been no examples of CCAs or clearing agency participants that failed or of CCAs that executed recovery plans or parts thereof. [202] The commenter further explains that the existing SRO rules of the CCAs relating to RWPs have been approved by the Commission, and that the Commission has conducted multiple examinations of CCAs under those rules, where any deficiencies found have been subject to, or are in the process of, review and remediation.

Although rare, CCPs both in the U.S. and abroad have experienced highly stressed market conditions that led to participant defaults, and CCP failures have occurred outside the U.S. Examples of such participant defaults include three CCP failures in other jurisdictions in recent history, as well as the market stress that CCPs faced in response to the 1987 market break and in response to the beginning of the COVID–19 pandemic in 2020.[203] These defaults and failures could happen again and underscore the importance of the Commission's ongoing efforts to ensure effective supervision and regulation of CCAs following the enactment of the Dodd-Frank Act, as discussed in Part I.[204] These examples also reinforce the possibility that even a robust and resilient CCA holding a sizeable pool of prefunded resources and other liquid resources may experience stressed market conditions or other events so extreme that the resources it has reserved for potential loss scenarios will prove insufficient, potentially necessitating actions beyond ''business-as-usual'' default management. By establishing requirements related to core services and service providers, the identification of scenarios, triggers, and tools for recovery and orderly wind-down, and robust processes for implementation, notification, testing and board review and approval, new Rule 17Ad–26 helps ensure that CCAs can successfully plan for, and navigate highly stressed or extreme market conditions, where events may occur or conditions deteriorate rapidly.[205]

Pursuant to the Exchange Act, the Commission is directed to facilitate the ongoing development of the national system for clearance and settlement, which includes ensuring effective risk management at CCAs. As discussed throughout the RWP Proposing Release, and in this release, the Commission has proposed and is now adopting new Rule 17Ad–26 to codify certain elements that have emerged across some RWPs that must be included in all RWPs to help ensure a CCA can effectively allocate uncovered losses, manage liquidity shortfalls, and address capital shortfalls arising from other causes. As such, new Rule 17Ad–26 sets forth these elements. While existing RWPs at CCAs may contain several of these elements, new Rule 17Ad–26 requires each CCA to have every element in its RWP. As previously discussed,[206] new Rule 17Ad–26 also promotes three important objectives consistent with its statutory mandates: (i) bolstering the existing RWPs at CCAs; (ii) codifying some existing RWP elements to ensure that these elements remain in the plans over time; and (iii) establishing that the RWP of any new CCA would contain each of the elements specified in the rule. In so doing, the Commission is establishing a higher minimum standard for the quality and effectiveness of RWPs, designed to help ensure that planning for recovery and orderly wind-down is effective and can promote financial stability in periods of market stress. The Commission will continue to review rule filings and advance notices submitted by CCAs under the rules adopted in this release to help ensure the regulatory framework is an effective tool that can advance the evolving process of recovery and resolution planning for CCPs and other CCAs.

Below the Commission addresses comments regarding specific elements of proposed Rule 17Ad–26.[207]

1. Core Services: Rule 17Ad–26(a)(1)

Proposed Rule 17Ad–26(a)(1) required a CCA to identify and describe in its RWP the CCA's critical payment, clearing, and settlement services and address how the CCA would continue to provide such critical services in the event of a recovery and during an orderly wind-down, including the identification of the staffing necessary to support such critical services and analysis of how such staffing would continue in the event of a recovery and during an orderly wind-down.

In the RWP Proposing Release, the Commission explained that the first step in effective recovery and orderly wind-down planning must be identification of the critical services provided to market participants because market participants rely on these services to facilitate payment, clearing, and settlement in the U.S. securities markets. The Commission also stated that such planning helps ensure that RWPs focus on a CCA's ability to provide these services on an ongoing basis, even under stress.[208] Furthermore, the Commission stated its belief that the CCA generally should consider the impact that any interruption to particular services would have on the CCA's participants and the smooth functioning of the market it serves, as well as whether the service is available from any substitute provider. In the proposed rule, ''critical'' referred to the importance of the service to participants and to the proper functioning of the markets, where an inability to provide the service would implicate financial stability concerns. As such, the Commission also proposed definitions of ''recovery'' and ''orderly wind-down'' focused on the need to continue to provide the critical payment, clearance, and settlement services provided by a CCA through the recovery or wind-down event.[209]

Several commenters generally supported the requirement to identify the critical payment, clearance, and settlement services provided by a CCA and address how the CCA would continue to provide such critical services.[210]

[202] Davidson at 1–3.

[203] *See, e.g.,* Staff Report on the Regulation of Clearing Agencies (Oct. 1, 2020) at 18, n.93, *https://www.sec.gov/files/regulation-clearing-agencies-100120.pdf* (describing recent examples of participant defaults); Bank for International Settlements (''BIS''), *CCP Failure: A Rare but Present Danger* (Dec. 16, 2018), *https://www.bis.org/publ/qtrpdf/r_qt1812z.htm* (describing three CCP failures over the last 50 years); ''The October 1987 Market Break, A Report by the Division of Market Regulation'' (Feb. 1988), *https://www.sechistorical.org/collection/papers/1980/1988_0201_MarketBreak_01.pdf* (describing the market stress associated with the 1987 market crash and the stress it placed on CCPs at the time).

[204] *See supra* Part I and notes 5–13, 23–40, and accompanying text (discussing the rationale for the proposed rules and the statutory authority for the regulation of clearing agencies).

[205] *See* RWP Proposing Release, *supra* note 18, at 34709.

[206] *See supra* note 39 and accompanying text.

[207] The Commission is making one technical edit to the preamble language for Rule 17Ad–26, replacing ''shall'' with ''must'' to use more plain language, as well as align with the approaches in other recently adopted rules for clearing agencies at 17 CFR 240.17ad–25 and 240.17ad–27.

[208] RWP Proposing Release, *supra* note 18, at 34718.

[209] *See* proposed Rule 17Ad–26(b).

[210] *See* SIFMA at 14 (''strongly supports the requirement that Clearing Agencies ensure that they are able to maintain access to services''); ICE at 3 (''supports the requirement to identify critical payment, clearing, and settlement services and to address continued use of such services during a

a. Replacing ''Critical'' With ''Core''

The Commission is modifying the final rule to refer to ''core payment, clearance, and settlement services'' rather than ''critical payment, clearance, and settlement services'' (hereinafter, referred to as ''core services'') to improve clarity and consistency with terminology in other rules, such as Rule 17Ad–25(i),[211] which concerns the governance of ''service providers for core services.'' Furthermore, the use of ''core'' as opposed to ''critical'' helps distinguish a CCA's obligations under Rule 17Ad–26 from those under 17 CFR 242.1000 through 242.1007 (''Regulation SCI''), which addresses, in the context of clearing agencies subject to the rule, ''critical systems'' that support clearance and settlement.[212]

Use of the descriptive term ''core'' rather than ''critical'' does not affect the Commission's guidance stated in the RWP Proposing Release on identifying those services.[213] Accordingly, when identifying a core service, the CCA generally should consider the impact that any interruption to a particular service would have on the CCA's participants and the smooth functioning of the markets that it serves, as well as whether the service is available from any substitute provider.[214]

b. Modification to ''Staffing'' Element

Several commenters stated that identifying staffing or staffing resources is a necessary part of addressing how a CCA may continue providing its core services.[215] One of those commenters stated that it is not necessary to identify specific personnel or positions required to be maintained, and a CCA should have flexibility to determine the staff needed in a particular situation, including taking into consideration the availability and willingness of personnel to perform services at the time of a recovery or wind-down.[216] The commenter suggested the proposed rule be amended to clarify that the CCA is not required to identify specific personnel or positions required to be maintained.[217] Similarly, another commenter stated that lists of specific employees may become dated quickly due to a shift in responsibility or normal attrition.[218] Another commenter stated, given the volume of employee turnover and new initiatives, personnel designations likely change with regularity, making specific identification of personnel in the RWP superfluous.[219]

The Commission agrees with the commenters that identifying specific personnel or employees is not necessary in planning and recognizes that changes may occur in the staffing at a CCA. However, it is important for planning purposes to identify those positions, roles, or personnel functions that are necessary for the continuation of core services, regardless of who or how many staff fills the role in ordinary circumstances, to avoid unnecessary disruptions. As such, the Commission is modifying the final rule from the proposal to refer to the identification of ''staffing roles'' instead of ''staffing,'' the latter of which could have been interpreted as requiring the identification of specific individuals.

Several commenters responded to the clause requiring ''analysis of how such staffing would continue in the event of a recovery and during an orderly wind-down.'' One commenter stated that the process for preparing to retain and incentivize critical employees under adverse circumstances is the critical piece of information necessary for the CCA and its supervisory and resolution authorities.[220] The commenter stated that what is most important in this aspect of planning are the retention tools the CCA uses, how it considers retention when setting and negotiating employment terms with essential personnel, and how it tracks the terms of each such employee's employment.[221] The commenter suggested a minor wording change to proposed Rule 17Ad–26(a)(1) to state ''analysis of how the CCA prepares for such staffing to continue in the event of a recovery and during an orderly wind-down.'' [222] Another commenter stated that it is important to have sufficient going concern resources to allow a CCA to retain its key personnel, claiming that the inability to keep personnel from leaving after a prior high profile insolvency event in the 2008 financial crisis contributed to large losses.[223] Another commenter stated that not even the most lucrative employment agreements can be sufficient to retain highly in-demand skilled employees on a ''sinking ship,'' and furthermore stated that certain CCAs have organized labor agreements in place with many employees that would require time consuming renegotiation to satisfy this clause in the proposed rule.[224]

To address the above concerns regarding the potentially unpredictable or evolving circumstances of employment during a recovery or wind-down event, the Commission is modifying the clause related to analyzing the continuation of staffing roles in a recovery and during an orderly wind-down. The clause has been modified in the final rule to state ''analyzing how such staffing roles necessary to support such core services would continue in the event of a recovery and during an orderly wind-down.'' [225] In response to commenters generally focused on concerns that a CCA could not guarantee the circumstances of employment during a recovery or wind-down event, the rule only requires that a CCA conduct an analysis, through which it would be able to identify potential challenges and potential ways to address those challenges. The final rule does not require the CCA to guarantee or compel specific staff or personnel to remain in place. Rather, the requirement promotes preparation for recovery and wind-down events, helping to ensure that from a staffing perspective the necessary roles or functions have been identified and established so that core services can continue uninterrupted. As one commenter stated, there may be organized labor agreements in place with employees. Pursuant to the final rule, to address such circumstances, a CCA is required in its RWP to analyze any such arrangements to see whether and how they might impact staffing during a recovery or an orderly wind-

recovery or wind-down''); OCC at 6 (''agrees that identification of critical services and planning for their continuation in a recovery or orderly wind-down should be the core content of a CCA's RWP'').

[211] 17 CFR 240.17ad–25(i).

[212] *See* 17 CFR 242.1000 (defining ''Critical SCI systems''); *see also* RWP Proposing Release, *supra* note 18, at 34719 (acknowledging there would likely be some connection between what a CCA identifies as its critical services for purposes of inclusion in its RWP and what it identifies as ''critical SCI systems'' for purposes of Regulation SCI, but inclusion of a critical service in a CCA's RWP would have no impact on the CCA's obligations under Regulation SCI).

[213] RWP Proposing Release, *supra* note 18, at 34718.

[214] *Id.*

[215] OCC at 6 (agreeing that any consideration of how a CCA will continue its core services necessarily requires consideration of how to plan to retain the necessary staff for such efforts); ICE at 3 (recognizing that it is necessary to identify staffing resources to implement RWPs); The Associations at 13 (agreeing that emphasis should be placed on determining staffing requirements); SIFMA at 14 (strongly supporting the requirement that CCAs ensure that they are able to maintain access to services, including personnel services, in a default scenario).

[216] ICE at 3.

[217] *Id.*

[218] OCC at 6.

[219] Davidson at 6.

[220] OCC at 6.

[221] *Id.*

[222] *Id.*

[223] SIFMA at 14.

[224] Davidson at 6.

[225] To eliminate extraneous words and align the text grammatically, the Commission has replaced the phrase ''analysis of'' with ''analyze.'' *See infra* note 228 and accompanying text (describing other grammatical changes to the rule text).

down, consistent with the terms of the rule requirement. The rule does not require a CCA to renegotiate such arrangements.

In addition, and separate from the requirements in Rule 17Ad–26(a)(1), a CCA is required by Rule 17Ad–22(e)(15)(ii) to have written policies and procedures to cover potential general business losses by holding liquid net assets funded by equity equal to the greater of either six months of the covered clearing agency's current operating expenses, or the amount determined by the board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and services of the covered clearing agency.[226] As such, a CCA generally should estimate the potential costs associated with ensuring its core services, which could include the staffing necessary to support those services, to ensure that it can meet the requirements in Rule 17Ad–22(e)(15) related to implementing the recovery or orderly wind-down of critical operations and core services.

One commenter suggested a ''process'' approach to retain employees with an associated wording change in the rule.[227] By focusing on ''roles'' in the final rule, the modified rule text achieves the same result. In addition to the substantive change from ''staffing'' to ''staffing roles necessary to support such core services'' discussed above, the Commission has made technical edits to the rule text to add paragraph markers (i) and (ii), aligning the text grammatically.[228]

2. Service Providers: Rule 17Ad–26(a)(2)

Proposed Rule 17Ad–26(a)(2) required the RWP of a CCA to identify and describe any service providers upon which the CCA relies to provide the services identified in paragraph (a)(1) of proposed Rule 17Ad–26, specify to what services such service providers are relevant and address how the CCA would ensure that such service providers would continue to perform in the event of a recovery and during an orderly wind-down, including consideration of contractual obligations with such service providers and whether those obligations are subject to alteration or termination as a result of initiation of the recovery and orderly wind-down plan.

The Commission, based on its supervisory experience, has observed that CCAs rely upon some service providers to deliver core services.[229] For those service providers that are necessary for the provision of core services, the failure of those service providers to perform could pose significant operational risks and have substantial effects on a CCA's ability to provide core services. In a recovery or wind-down event, the continued performance of such a service provider would be essential for the continuity of core services. Thus, the Commission proposed to require a CCA to identify and describe the subset of its service providers necessary to ensure the continued delivery of core services throughout a recovery or wind-down event.

Final Rule 17Ad–26(a)(2) refers to ''its written agreements'' instead of ''contractual obligations'' for the reasons discussed in the modifications to the definition of ''service provider for core services'' in final Rule 17Ad–26(b) in Part II.D.2, *infra.*[230] The Commission is also making technical changes to Rule 17Ad–26(a)(2) by adding paragraph markers to separate the clauses of the rule text into paragraphs (a)(2)(i) and (ii).

The Commission received comments on proposed Rule 17Ad–26(a)(2) and is making the modifications to the rule discussed below.

a. Identify and Describe Service Providers for Core Services

One commenter, agreeing with the Commission that continued performance of a service provider as part of the RWP would be essential, stated that the requirements of proposed Rule 17Ad–26(a)(2) and the related proposed definition of ''service provider'' in proposed Rule 17Ad–26(b) are circular in nature and overly broad, resulting in too many service providers being captured and the requirement being overly burdensome.[231] Specifically, the commenter stated that the phrases ''. . . upon which the covered clearing agency relies to provide the services identified in paragraph (a)(1) of this section . . .'' in proposed Rule 17Ad–26(a)(2) and ''. . . in any way related to the provision of critical services, as identified by the covered clearing agency in paragraph (a)(1) of this section . . .'' in the definition of ''service provider'' in proposed Rule 17Ad–26(b) are superfluous and unnecessary, and thus, both are not needed.[232] The commenter further stated that by including the term ''in any way'' as well as ''relies'' in these two sections of the proposed rules, the Commission broadened the scope of ''service provider'' to a point that renders the term functionally useless for identifying those service providers that are critical to the business operations of a CCA.[233] By contrast, another commenter stated that the term as used in proposed Rule 17Ad–26(a)(2) appears to limit the subset of providers to be addressed in the RWP.[234]

Commenters differed in their interpretation of these phrases in proposed Rule 17Ad–26(a)(2) and the definition of ''service provider'' in proposed Rule 17Ad–26(b). The phrase ''upon which the covered clearing agency relies to provide the services identified in paragraph (a)(1) of this section'' has been deleted in final Rule 17Ad–26(a)(2) to avoid any duplication of, or inconsistency with, the definition of ''service providers for core services'' in final Rule 17Ad–26(b).[235] Along with the modifications to the definition of ''service provider for core services'' in final Rule 17Ad–26(b) discussed in Part II.D.2 *infra,* the scope of service providers captured is appropriate for recovery and orderly wind-down planning purposes.

b. Ensure Continued Performance of Service Providers for Core Services

One commenter disagrees that CCAs can reasonably ''ensure'' that there will be continuation of services by service providers.[236] The commenter stated that it interprets Rule 17Ad–22(e)(15)(ii) to require a CCA to have sufficient resources to continue to pay service providers through the entirety of an execution of a CCA's RWP, and therefore states that this existing requirement should adequately address

[226] Pursuant to Rule 17Ad–22(e)(15)(iii), these liquid assets are in addition to resources held by the CCA to cover participant defaults or other risks covered by Rules 17Ad–22(e)(4)(i) through (iii), as applicable, and to cover the liquidity risks identified in Rules 17Ad–22(e)(7)(i) and (ii).

[227] OCC at 6.

[228] Specifically, the phrase ''the identification of'' has become ''by: identifying'' and ''analysis of'' has become ''analyzing.'' *See supra* note 225 (describing other grammatical changes to the rule text).

[229] RWP Proposing Release, *supra* note 18, at 34719.

[230] The Commission is also modifying in final Rule 17Ad–26(a)(2) the clause ''and whether those obligations'' to ''and whether the obligations under those written agreements'' for consistency with the written agreements modification.

[231] DTCC at 5–6.

[232] *Id.* at 5.

[233] *Id.* at 6.

[234] OCC at 6.

[235] To improve grammar and clarity, the Commission has also modified the phrase ''specify to what services such service providers are relevant'' to ''specifying which core services each service provider supports'' in final Rule 17Ad–26(a)(2).

[236] DTCC at 8–9 (The commenter stated that the proposed requirement ''overestimates the negotiating leverage that CCAs have when entering contracts with service providers or assumes that CCAs would be able to unilaterally require service providers to continue performance during a recovery or orderly wind-down.'').

the Commission's goals for this aspect of the proposal and recommends that the Commission revise proposed Rule 17Ad–26(a)(2) by removing any requirement that a CCA ''ensure'' continuation of services.[237] Alternatively, the commenter requested that the Commission adopt a standard that acknowledges these limitations of a CCA to ensure continued performance of service providers and that requires a CCA to establish, implement, maintain, and enforce written policies and procedures reasonably designed to facilitate considerations of contractual provisions with service providers that, subject to continued payment by the CCA (or successor) obligates them to continue to perform in the event of a recovery or during an orderly wind-down.[238]

Another commenter stated it ''does not believe it is possible for a CCA to 'ensure' that a service provider would perform.'' The commenter also stated that a CCA can and should analyze whether a service provider has any termination rights or other contractual basis for not performing in a recovery or wind-down situation. The commenter also stated that a CCA should assess and document how it would handle the situation where a service provider has a right to terminate or otherwise not perform in a recovery or wind-down situation.[239] Accordingly, the commenter suggested that proposed Rule 17Ad–26(a)(2) be modified to require a CCA evaluate whether the service provider would continue to perform in the event of a recovery or orderly wind-down and address how the CCA would handle any termination or alternation of performance by the service provider.

The Commission acknowledges that, while a CCA can, and generally should, include provisions in its written agreements so that it can contractually require that a service provider for core services continues to perform during a recovery or wind-down, a CCA may not be able to compel a service provider to continue to perform in all circumstances. However, as proposed, Rule 17Ad–26(a)(2) addresses planning for a recovery or wind-down scenario by requiring written policies and procedures reasonably designed to address how a CCA *would* ensure that service providers for core services would continue to perform in the event of a recovery and during an orderly wind-down.[240] Thus, even though a CCA may not be able to compel a service provider to continue performing in all circumstances, such planning and any related contractual provisions designed to continue performance under the contract help limit the potential for abrupt or unanticipated disruptions in services during a recovery or wind-down event.[241] Achieving this requirement would likely involve an evaluation of whether the service provider would continue to perform in the event of a recovery or orderly wind-down and address how the CCA would handle any termination or alteration of performance by the service provider. As previously discussed above, a CCA generally should consider when and how to include provisions in its written agreements with service providers that acknowledge and help ensure that service providers can continue to perform their services during a recovery or wind-down event to avoid potential disruptions in core services. In so doing, a CCA generally should consider the terms to which its service providers may be willing or unwilling to agree, so that the CCA can evaluate its options effectively and develop its written agreement accordingly. As this requirement concerns actions taken at the planning stage and does not require a CCA to compel another entity to act, the Commission is not making further modifications to Rule 17Ad–26(a)(2).

One commenter, while agreeing that proposed Rule 17Ad–26(a)(2) identifies a key component of planning for recovery and orderly wind-down, stated that the Commission would best accomplish its objective of ensuring continued performance by service providers for core services by amending the proposed rule to focus on the CCA's relevant processes for third-party engagement and management rather than on conditions at a snapshot point in time, as the nature of a CCA's relationship with a service provider, the services provided, and the roster of relevant service providers necessarily evolves over time.[242] The commenter recommended slightly altering the language of the relevant portion of proposed Rule 17Ad–26(a)(2) to state the following:

> . . . address *the process by which* ~~how~~ the CCA *seeks to* ~~would~~ ensure that service providers would continue to provide such critical services in the event of a recovery and during an orderly wind-down, including consideration *and tracking* of contractual obligations with such service providers and whether those obligations are subject to alteration or termination as a result of initiation of the recovery and orderly winddown plan.'' [243]

As stated by the commenter, a CCA's roster of service providers for core services evolves over time as does the relationship with each such service provider and the services provided by it. However, a CCA is not required to outline any process or other means it uses to track relationships with service providers for core services in its RWP. Accordingly, final Rule 17Ad–26(a)(2) requires only the identification and description of such service providers, and a CCA has discretion on how to address any changes or updates to the service providers, which could be addressed in the reviews of a CCA's RWP required by final Rule 17Ad–26(a)(9).[244]

One commenter raised the possible interaction with the U.S. Bankruptcy Code in connection with the transfer of critical services to another legal entity as part of an orderly wind-down strategy.[245] The commenter stated that the Bankruptcy Code would stay any vendors from terminating their agreements subject to getting paid, which could allow for an assignment to the other legal entity.[246] According to the commenter, this effectively would address the concern without an unnecessary and overly prescriptive rule.[247]

The Commission agrees that, in a scenario involving the transfer of services from a CCA to another legal entity, bankruptcy proceedings may facilitate continuity of services by, for example, staying any vendors from terminating their agreements. The Commission also acknowledges that, during a recovery or wind-down, service providers, affected participants, or other stakeholders in the CCA may attempt to initiate bankruptcy proceedings themselves for any number of reasons. Ultimately, the requirements in Rule 17Ad–26 are designed to promote effective planning for a recovery or

[237] DTCC at 9.

[238] *Id.*

[239] ICE at 4.

[240] The requirements of Rule 17Ad–26 lay out necessary elements of a RWP, while the requirement for the RWP itself resides in Rule 17Ad–22(e)(3)(ii), which requires reasonably designed written policies and procedures.

[241] A CCA designated systemically important generally should consider also whether and how such agreements may be impacted by the resolution or transfer of services conducted by the resolution authority pursuant to Title II.

[242] OCC at 6.

[243] *Id.* at 7.

[244] In addition, board oversight of service provider relationships is subject to the requirements of Rule 17Ad–25(i), 17 CFR 240.17ad–25(i), which can also help ensure that relationships continue without sudden disruption in the event of a recovery or wind-down scenario.

[245] DTCC at 9.

[246] *Id.*

[247] *Id.*

orderly wind-down, and the possibility of bankruptcy proceedings do not reduce a CCA's obligations to plan effectively.

3. Scenarios: Rule 17Ad–26(a)(3)

Proposed Rule 17Ad–26(a)(3) required a CCA's RWP to identify and describe scenarios that may potentially prevent the CCA from being able to provide its critical payment, clearing, and settlement services identified in proposed Rule 17Ad–26(a)(1) as a going concern, including uncovered credit losses (as described in paragraph (e)(4)(viii) of 17 CFR 240.17ad–22), uncovered liquidity shortfalls (as described in paragraph (e)(7)(viii) of 17 CFR 240.17ad–22), and general business losses (as described in paragraph (e)(15) of 17 CFR 240.17ad–22).

Commenters differed on the level of granularity that was appropriate in the rule. One commenter stated that it supported the proposed rule, agreed that appropriate scenarios will vary across different CCAs serving different markets, and stated that the Commission has provided appropriate discretion to a CCA to identify the scenarios most appropriate to its unique circumstances.[248] The commenter also stated that the Commission should not identify particular scenarios for a CCA to address in its RWP.[249] The Commission agrees with this commenter, and reiterates that the risks that may potentially prevent a CCA from being able to provide its core services vary across different types of CCAs and even across CCAs of the same type, resulting in identified scenarios that differ from CCA to CCA.[250]

Another commenter stated that the enumerated list of scenarios in Request for Comment No. 22 in the RWP Proposing Release [251] is comprehensive and in line with international standard setting guidance and further stated that the list should be considered a minimum, and supported a more granular list of scenarios that a CCA should consider.[252] The Commission is not including such a further list of specific scenarios in final Rule 17Ad–26(a)(3). The rule requires a CCA to identify and describe scenarios for uncovered credit losses, uncovered liquidity shortfalls, and general business losses.[253] Under these broad categories, each CCA must identify scenarios considering the unique circumstances of CCA, including the market served and products cleared. Furthermore, a more granular list of scenarios may not be appropriately applied to all CCAs, considering the variance in the circumstances each individual CCA faces, and such a prescriptive approach with a granular list of scenarios would be contrary to the principles-based approach to Rule 17Ad–22(e), which contains the requirement for a CCA to have a RWP.[254] The commenter also stated that it could be a worthwhile analysis to see if plans would still be viable under a combination of scenarios, as there is potential for simultaneous shocks to occur.[255] A CCA, considering the unique circumstances faced by it, may identify combinations of scenarios in its analysis to achieve the requirements of final Rule 17Ad–26(a)(3). The discretion to consider combinations of scenarios arising from the potential of simultaneous shocks best remains with a CCA in its planning for a recovery or orderly wind-down. In addition, the commenter recommended that the Commission consider greater transparency around the distinction between default and non-default losses and the tools used under these scenarios.[256] However, information available in current rulebooks of the CCAs and through the SRO rule filing and advance notice processes provides transparency on the RWPs of CCAs, including how a CCA would address a default or non-default loss and the tools available in such scenarios.[257] As a result, additional mechanisms to promote transparency are not necessary, as a clearing member or market participant may obtain from these publicly available documents a general understanding of the scenarios a CCA has identified for default and non-default losses and the tools that could be used under such scenarios.

One commenter stated that the requirement of explicit consideration in the recovery plan of what might lead to each scenario coming into being and how the scenario might take shape (including prerequisite contemplated market conditions) imposes a small burden on compliance and risk functions in the entity while creating greatly-enhanced transparency to investors and regulators around how, how quickly, and under what conditions the entity may fail to meet obligations.[258] The Commission agrees that explicit consideration of what might lead to a scenario coming into being and how the scenario might take shape are important elements of identifying *and describing* scenarios, and accordingly, Rule 17Ad–26(a)(3) requires a CCA to both identify and describe such scenarios.[259] In identifying and formulating the description of such scenarios, the CCA can share information and analysis with its participants and other key stakeholders to develop its own

[248] OCC at 8.

[249] *Id.*

[250] RWP Proposing Release, *supra* note 18, at 34721.

[251] *Id.* at 34725.

[252] The Associations at 15 (citing CPMI–IOSCO Recovery Guidance, *supra* note 25, at 2.4.5).

[253] *See generally,* PFMI, *supra* note 9, at 3.15.1 (describing. as a general matter, the commonly understood meaning of ''general business risk'' in the context of FMIs, as follows: ''General business risk refers to the risks and potential losses arising from an FMI's administration and operation as a business enterprise that are neither related to participant default nor separately covered by financial resources under the credit or liquidity risk principles. General business risk includes any potential impairment of the FMI's financial position (as a business concern) as a consequence of a decline in its revenues or an increase in its expenses, such that expenses exceed revenues and result in a loss that must be charged against capital. Such impairment can be caused by a variety of business factors, including poor execution of business strategy, negative cash flows, or unexpected and excessively large operating expenses. Business-related losses also may arise from risks covered by other principles, for example, legal risk (in the case of legal actions challenging the FMI's custody arrangements), investment risk affecting the FMI's resources, and operational risk (in the case of fraud, theft, or loss).'').

[254] *See* CCA Standards Adopting Release, *supra* note 5, at 70800.

[255] The Associations at 15.

[256] *Id.; see also* ICI at 6, 8 (similarly requesting clear delineation between default and non-default loss scenarios).

[257] *See, e.g.,* RWP Proposing Release, *supra* note 18, at 34712 n.41; *see also supra* notes 81–100 (discussing the provisions of the SRO rule filing and advance notice processes, as well as other Commission rules that facilitate disclosure to clearing participants).

[258] Letter from Muth, dated June 10, 2023 (''Muth'') at 3.

[259] RWP Proposing Release, *supra* note 18, at 34721 (explaining that the set of scenarios would include scenarios arising from a participant default and from events not related to a participant default, and that potential scenarios not related to a participant default could include the realization of investment or custody losses, the failure of a third party, such as a settlement bank, to perform a critical function for the covered clearing agency, or scenarios caused by a systems compliance and integrity (SCI) event or other significant operational disruption, such as a significant cybersecurity incident); *id.* (explaining that each scenario generally should be analyzed individually in the recovery plan, with the analysis including: a description of the scenario; the events that are likely to trigger the scenario; the covered clearing agency's process for monitoring such events; the market conditions, operational and financial issues, and other relevant circumstances that are likely to result from the scenario; the potential financial and operational impact of the scenario on the covered clearing agency and its participants, internal and external service providers, and relevant affiliated companies, both in an orderly and stressed market (*e.g.,* where markets are unavailable or there are limited solvent counterparties); and the specific steps that the covered clearing agency would expect to take if the scenario occurs or appears likely to occur, including, without limitation, any governance or other procedures that may be necessary to implement the relevant tools or use the relevant resources and to ensure that such implementation occurs in sufficient time to achieve the intended effect).

understanding, as well as the understanding of its participants and other key stakeholders, regarding the potential causes of recovery and wind-down scenarios. Various mechanisms under other Commission rules may facilitate this process, such as those requiring testing of its RWP,[260] consideration by its risk management committee of matters related to the RWP,[261] and general solicitation of stakeholder viewpoints regarding risk management topics.[262] As discussed further in Part IV.C.1 and V.B, the burden associated with such planning is appropriate considering the risks associated with the potential failure of a CCA.

Consistent with the above discussion, the Commission is adopting Rule 17Ad–26(a)(3) as proposed, except that it has replaced the term ''critical payment, clearing, and settlement services'' with ''core services'' consistent with the modifications to uses of ''critical'' services as discussed in Part II.C.1.

4. Triggers: Rule 17Ad–26(a)(4)

Proposed Rule 17Ad–26(a)(4) required a CCA's RWP to identify and describe criteria that would trigger the implementation of the recovery and orderly wind-down plans and the process that the CCA uses to monitor and determine whether the criteria have been met, including the governance arrangements applicable to such process.

One commenter proposed that the Commission provide a list of triggers that are required to be covered in the RWP and another list of triggers that a CCA should consider for inclusion in the RWP.[263] In contrast, another commenter stated that prescribing bright line, quantitative triggers that would apply to all CCAs, irrespective of their unique structures and the features of the markets they serve and products they clear, would run the risk of creating market instability by potentially forcing a CCA to initiate its RWP even when the CCA has not yet made the determination that it is necessary.[264] For that reason, the commenter stated that it supports the Commission's determination to allow CCAs to identify appropriate triggers for their individual circumstances.[265] The Commission is not specifying a list of triggers in the rule for inclusion in an RWP. As stated in the RWP Proposing Release, for some circumstances, the trigger is obvious (*e.g.,* uncovered default losses),[266] and the Commission is not explicitly including such triggers in the final rule because it has already required in Rule 17Ad–26(a)(3) that CCAs identify and describe scenarios based on the most obvious types of triggers (*e.g.,* uncovered default losses, as well as uncovered liquidity shortfalls and general business losses) and also included each of these triggers in the definitions of ''recovery'' and ''orderly wind-down'' to ensure that CCAs consider these types of circumstances throughout the development of their RWPs.[267] For other circumstances, as the Commission stated in the RWP Proposing Release, a CCA may have to employ more judgment to develop appropriate triggers,[268] and discretion should be afforded to a CCA in the planning process to develop these triggers instead of having the Commission delineate a list of triggers that a CCA should consider. This view generally aligns with the latter commenter, in that the final rule provides for a CCA to identify appropriate triggers for its individual circumstances.[269] The Commission further agrees with the latter commenter that the risk of having bright-line triggers could result in forcing a CCA to initiate its RWP even when the CCA has not yet made the determination that it was necessary, which could lead to market instability.

Regarding CCA discretion to trigger the RWP, one commenter proposed that the general assumption should be that triggers are automatic, unless the CCA makes the determination that discretion is appropriate for a certain trigger.[270] The Commission disagrees and is not requiring in the rule that triggers execute automatically. As suggested by the commenter,[271] automatically triggering a RWP without discretion could adversely affect market stability. In the RWP Proposing Release, the Commission stated that the identification of triggers does not mean that such triggers should be self-executing; instead, the importance of identifying triggers lies in ensuring that a CCA considers and identifies *ex ante* when it would initiate its RWP.[272] The Commission also stated that it believes that the RWP must identify and describe the process that the CCA uses to monitor and determine whether the criteria have been met, including the governance arrangements applicable to such process.[273] The final rule provides a CCA with discretion to consider this guidance and to identify and describe triggers appropriate to its RWP and whether any such triggers are automatic or discretionary.

The Commission is replacing the word ''would'' with ''could'' in final Rule 17Ad–26(a)(4) to avoid any presumption that triggers are self-executing and to reiterate the Commission's statement in the RWP Proposing Release that the identification of triggers ''does not mean that such triggers should be self-executing.'' [274]

5. Tools: Rule 17Ad–26(a)(5)

Proposed Rule 17Ad–26(a)(5) required the RWP of a CCA to identify and describe the rules, policies, procedures, and any other tools or resources the CCA would rely upon in a recovery or orderly wind-down. The Commission is adopting Rule 17Ad–26(a)(5) as proposed.[275]

In the RWP Proposing Release, the Commission stated that the proposed requirement to describe rules, policies, procedures, and any other tools or resources that may be used in advance for certain situations would provide some level of predictability in such a situation and avoid unexpected actions because it would allow participants to understand the potential of tools or resources that could be used, including whether any of the tools would require participant involvement or resources (such as a cash call).[276] While stating that rules, policies, procedures, and any other tools or resources should address shortfalls arising from the stress scenarios identified by the CCA, the Commission declined to prescribe particular tools, such as tear-up or margin haircutting, that a CCA would be

[260] *See infra* Part II.C.8 (further discussing the requirements for RWP testing in new Rule 17Ad–26(a)(8)).

[261] *See infra* note 366 (further discussing requirements related to the risk management committee in Rule 17Ad–25(d)(2)).

[262] *See infra* note 367 (further discussing requirements for soliciting stakeholder viewpoints in Rule 17Ad–25(j)).

[263] The Associations at 17.

[264] OCC at 8.

[265] *Id.*

[266] RWP Proposing Release, *supra* note 18, at 34721.

[267] *See infra* Part II.D (further explaining the definitions of ''recovery'' and ''orderly wind-down'').

[268] *Id.*

[269] *See supra* note 264.

[270] The Associations at 18.

[271] *See supra* note 264.

[272] RWP Proposing Release, *supra* note 18, at 34721.

[273] *Id.*

[274] *Id.*

[275] To improve grammar and clarity, the Commission is adopting a technical amendment to the final rule text. Specifically, the Commission is removing use of the word ''upon,'' and adding the phrase ''on which,'' such that final Rule 17Ad–26(a)(5) states: ''Identify and describe the rules, policies, procedures, and any other tools or resources on which the covered clearing agency would rely in a recovery or orderly wind-down.''

[276] *Id.* at 34722.

required to include in its RWP.[277] The Commission stated its belief that this proposed requirement preserved discretion for each CCA to consider the full range of available recovery tools and select those most appropriate for the circumstances of the CCA, including the products cleared and the markets served.[278]

a. Discretion for CCAs in Selection of Tools

One commenter stated that the rule should preserve discretion for each CCA to consider the full range of available recovery tools and select those most appropriate for the circumstances of the CCA.[279] Another commenter agreed with the Commission's decision not to mandate or prescribe the use of tools in certain situations and ''believes that [CCAs] should have the discretion to determine the appropriate mix of tools to be used.'' [280] Another commenter ''believe[s] that the clearing agency should be free to select the right or most appropriate tools for the markets and products it clears without any regulation constraints.'' [281] The Commission generally agrees with these commenters and is adopting the rule as proposed, which allows for discretion by a CCA in the selection of tools that are most appropriate for the circumstances of the CCA.

One commenter stated that the proposal would continue to provide CCAs with ''unbridled authority to inappropriately allocate default losses to non-defaulting customers through tools such as partial tear-ups (PTUs) or variation margin gains haircutting (VGMH).'' [282] The commenter further stated that the Commission should prescribe the tools that a CCA must use during recovery or wind-down, claiming that specifying the tools a CCA must deploy in those scenarios would be most effective at protecting non-defaulting customers' assets, a critical priority of an RWP in the commenter's view.[283] The commenter added that ''[u]nfortunately, the proposals continue to provide broad discretion to a clearing entity to determine its recovery and orderly wind-down tools, which effectively sanctions the use of tools that may result in the inappropriate allocation of non-defaulting customers' assets.'' [284]

A CCA does not have ''unbridled authority'' to select the tools in its RWP. The selection of tools in each RWP has been and is subject to the SRO rule filing process, which provides for public comment and Commission review and approval before inclusion of a tool in the RWP.[285] Under section 19(b)(2)(C) of the Exchange Act,[286] the Commission will approve, and has approved,[287] proposed rule changes concerning the availability of a tool where the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the applicable rules and regulations thereunder.

The Commission also disagrees that prescribing the tools a CCA must deploy in recovery and wind-down scenarios would be most effective at protecting non-defaulting customers' assets. As the Commission has previously explained, a ''one-size-fits-all'' approach specifying recovery and orderly wind-down tools is not productive, and it is not possible to assess the utility of a particular tool in isolation without considering the context of RWP as a whole and the particular circumstances of a CCA.[288] Furthermore, the discretion afforded a CCA in developing the tools available for use in its RWP would not enable the CCA to engage in the ''inappropriate'' allocation of non-defaulting customers' assets. Instead, tools included in its RWP to allocate losses to non-defaulting customers may be necessary to prevent the potential transmission of systemic risk, and the planning facilitated by the RWP helps the CCA weigh the strengths and weaknesses of respective tools. In this way, the CCA has considered *ex ante* the set of tools that will be the most appropriate to address different scenarios.[289] Accordingly, when a CCA has determined to allocate losses to non-defaulting customers, it has likely passed the point where other resources or tools are available to address the loss. Although a certain tool may appear drastic in the way that it allocates losses, such allocation may be appropriate to prevent the systemic transmission of risk in extreme circumstances.

b. Safeguards, Prescriptions, and Limitations on Tools and Resources

One commenter stated that ''recovery tools and provisions should be designed in a way that allows clearing participants to limit their liability to the CCA and to ensure that recovery tools can only be used in a limited manner (in time and dollar value) to ensure that the impact of such tools is predictable and reliable during stress, and do not further destabilize the market.'' [290] The commenter further stated that ''limited use of recovery tools under regulatory oversight, in the interest of the whole market'' warrants codification.[291] Another commenter stated that certain recovery tools and procedures involve allocating losses to its clearing members or market participants, and therefore the tools must be transparent, predictable, and implemented with appropriate limitations and oversight so that the tools do not inappropriately assign losses to clearing members and market participants in a way that is destabilizing.[292] The commenter continued that it is important to ensure that loss allocation procedures appropriately balance the incentives of a CCA's owners and market participants to manage risk effectively and prevent a crisis from occurring.[293] The commenter stated loss allocation procedures should be well defined and that a CCA should not have autonomy to allocate losses away from its shareholders.[294]

As discussed in the prior section, certain tools may appear drastic in the way that they allocate losses. Because of this, the Commission agrees with commenters that transparency and predictability regarding the use of tools for recovery and wind-down is important. However, the Commission disagrees that additional rule text changes are necessary because transparency regarding the tools that may be used in a recovery or wind-down scenario, and a level of predictability regarding the use of such tools, are already provided through existing rules.[295] When a CCA proposes

[277] *Id.*

[278] *Id.*

[279] OCC at 8. The commenter added that ''a robust dialogue between CCAs, industry participants, and international standard-setting bodies concerning resolution tools is ongoing, and the Commission should avoid preempting with prescriptive rulemaking the development of consensus and common understanding that can emerge from such a dialogue.'' OCC at 9.

[280] ICC at 4.

[281] The Associations at 16.

[282] ICI at 7.

[283] *Id.* at 3, 6–7.

[284] *Id.* at 6.

[285] *See* RWP Proposing Release, *supra* note 18, at 34712, n. 41.

[286] 15 U.S.C. 78s(b)(2)(C).

[287] *See, e.g.,* Release 34–83916 (Aug. 23, 2018), 83 FR 44076 (Aug. 29, 2018) (SR–OCC–2017–020) (finding that the proposed rule change concerning OCC's recovery tools was consistent with section 17A(b)(3)(F) of the Exchange Act and Rules 17Ad–22(e)(2)(i), (iii), and (v), (e)(4)(viii) and (ix), (e)(13), and (e)(23)(i) and (ii) thereunder).

[288] CCA Standards Adopting Release, *supra* note 5, at 70809.

[289] *Id.*

[290] The Associations at 5. The commenter added that RWPs need to ensure that clearing participants' liability is limited and that certain tools can be used within monetary and time limits. *Id.* at 10.

[291] *Id.* at 12.

[292] SIFMA at 12.

[293] *Id.*

[294] *Id.*

[295] *See supra* notes 81–100 and accompanying text (discussing in further detail these Commission rules and processes facilitating input from and

to add or modify the tools available in its RWP, such modifications are subject to Commission review and approval, pursuant to the SRO rule filing and advance notice processes, which includes public notice and an opportunity for public comment and, if approved, an approval order describing how the modifications are consistent with the Exchange Act.[296] Furthermore, to achieve compliance with existing Rule 17Ad–22(e)(23), a CCA is obligated to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for publicly disclosing all relevant rules and material procedures, including key aspects of its default rules and procedures, and provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the CCA.[297] Such policies and procedures should provide participants with relevant rules and procedures to evaluate the risks, fees, and other material costs that participants could incur in a recovery or wind-down scenario. In addition, new requirements in Rule 17Ad–26 related to scenarios, triggers, tools, testing, and implementation of the RWP also help ensure that the CCA is providing transparency to its participants and others as to whether and when certain tools may be used, based on the scenarios developed by the CCA and in a way that is informed by periodic testing of the RWP, which includes participation by a subset of clearing participants and other relevant stakeholders.

Regarding the limitations sought by certain commenters, any appropriate limitations on tools proposed for inclusion in a CCA's RWP would be addressed through the SRO rule filing process, where specific tools would be subject to Commission review and approval, as well as public comment. Furthermore, to approve the addition of such tools, the proposed rule change must be consistent with the requirements of the Exchange Act and any advance notice must also be consistent with the standard for advance notices set forth in the Dodd-Frank Act.[298] Among the rules and regulations applicable to a CCA is Rule 17Ad–22(e)(2)(vi), which requires a CCA to establish, implement, maintain, and enforce written policies and procedures reasonably designed to consider the interests of participants' customers, securities issuers and holders, and other relevant stakeholders of the CCA.[299] To the extent that participants oppose the use of a tool either as a general matter or under certain conditions, a CCA would be obligated under Rule 17Ad–22(e)(2)(vi) to consider those concerns when modifying its RWP to include such a tool. Such required considerations, which would include input from clients of clearing participants, securities issuers, transfer agents, and other market infrastructure to which the CCA is linked, generally should help ensure that a CCA considers and includes limitations on certain tools included in the RWP where appropriate and consistent with its obligations under the Exchange Act. Ultimately, whether limitations on specific tools will be appropriate depends on the circumstances in which the tools would be deployed, and so the Commission is not adopting limitations as to specific tools in this release.

Regarding the comment related to a CCA having the ''autonomy'' to allocate losses away from its shareholders, as explained above, whenever a CCA seeks to add or modify a tool available in its RWP, the CCA must obtain prior Commission approval for any tools that it may deploy in a recovery or wind-down scenario through the previously described SRO rule filing and advance notice processes, which provide for public notice and comment. In those processes, a CCA is attempting to gain approval of tools to have in place in advance of a recovery or wind-down scenario to prevent the losses incurred by the CCA from becoming a transmission mechanism for systemic risk. This necessarily requires the CCA to seek an appropriate balance between affording participants predictability and certainty, on one hand, and ensuring that the CCA can effectively manage risk to continue its risk mitigating function within the broader financial system, on the other.[300] While a CCA will retain discretion consistent with its rules, policies, and procedures regarding the ways to implement its RWP if a recovery or wind-down scenario arises, the CCA's discretion to allocate losses to its participants will always be limited by the requirements of the Exchange Act and Commission rules and regulations thereunder. Accordingly, a CCA would not have complete autonomy to allocate losses away from its shareholders.

c. Specific Limitations or Bans on Certain Tools

Several commenters requested the Commission place limitation on or ban certain recovery tools. Two commenters generally stated that partial tear-ups should be subject to appropriate limitations and restrictions.[301] One commenter stated that forced allocation should be completely barred.[302] For variation margin gains haircutting, commenters generally stated that the Commission should place restrictions on the time and amount, and that this tool should only be deployed with regulatory approval.[303] Commenters generally requested that the Commission ban initial margin haircutting.[304] For assessments on clearing members to replenish resources, commenters generally stated that there needs to be a maximum amount for assessments set at a reasonable level that is defined *ex ante.*[305]

The CCAs under the Commission's supervision vary in markets served, products cleared, and ownership structures. These differences, among others, make it imprudent for the Commission to *ex ante* ban or explicitly limit certain tools, for the same reasons discussed in Part II.C.5.b, *supra,* regarding whether safeguards, prescriptions, and other limits on tools and resources generally are appropriate. Rather, by establishing new requirements related to scenarios, triggers, tools, testing, and implementation of the RWP, Rule 17Ad–26 helps ensure that the CCA is providing transparency to its participants and others as to whether and when certain tools may be used, based on the scenarios developed by the CCA and in a way that is informed by periodic testing of the RWP, which includes participation by a subset of clearing participants and other relevant stakeholders.

d. Level of Specificity of Description in RWP

In the RWP Proposing Release, the Commission stated that the requirement to describe rules, policies, procedures,

transparency to clearing participants and other key stakeholders).

[296] *See id.* (discussing these processes in further detail); *see also* RWP Proposing Release, *supra* note 18, at 34712 n.41 (providing citations to existing RWPs approved by the Commission, which includes the current set of tools in each).

[297] 17 CFR 240.17ad–22(e)(23)(i), (ii).

[298] *See supra* notes 81–100 and accompanying text (discussing in further detail these Commission rules and processes facilitating input from and transparency to clearing participants and other key stakeholders).

[299] 17 CFR 240.17ad–22(e)(2)(vi).

[300] *See* CCA Standards Adopting Release, *supra* note 5, at 70829.

[301] SIFMA at 13; The Associations at 16–17.

[302] SIFMA at 13.

[303] *Id.;* The Associations at 10, 16–17.

[304] SIFMA at 12; The Associations at 11, 12, 16–17.

[305] SIFMA at 5, 12, 19, 20–21; The Associations at 12.

and any other tools or resources that may be used in advance for certain situations would provide some level of predictability in such a situation and avoid unexpected actions because it would allow participants to understand the potential of tools or resources that could be used, including whether any of the tools would require participant involvement or resources (such as a cash call).[306] The Commission also provided guidance for a CCA to generally consider when it is identifying and evaluating the appropriateness of tools and other resources for a particular recovery scenario or an orderly wind-down that may be included in its RWP.[307] Furthermore, the Commission laid out nine items that a CCA generally should consider when analyzing the tools to be included in its RWP.[308]

One commenter strongly supported the proposed requirement to describe tools a CCA would use in a recovery or wind-down scenario. [309] Another commenter stated that the Commission should require CCAs to provide further specificity on the use of recovery tools in the RWP to provide transparency and predictability for their clearing members, market participants, and the broader market and to ensure that these tools are not procyclical.[310] Several commenters stated that the Commission should make the guidance provided in the RWP Proposing Release mandatory.[311]

Requiring further specificity on the use of recovery tools in the RWP is not necessary as information on the recovery tools of a CCA is publicly available. As previously explained above, when a CCA proposes to add or modify the tools available in its RWP, such modifications are subject to Commission review and approval, pursuant to the SRO rule filing and advance notice processes, which includes public notice and an opportunity for public comment and, if approved, an approval order describing how the modifications are consistent with the Exchange Act.[312] Furthermore, to achieve compliance with existing Rule 17Ad–22(e)(23), a CCA is obligated to establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for publicly disclosing all relevant rules and material procedures, including key aspects of its default rules and procedures (which includes the tools that would be deployed pursuant to the RWP), and provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the CCA. With this information, clearing members, market participants, and the broader market can consider whether such tools are procyclical.

With respect to the comment stating that tools should not be procyclical, whether a tool is procyclical will necessarily depend on the way it is designed and applied, the products to which it is applied, and the market in which it would be used. In Part II.A.2.b.iii, the Commission discussed how a CCA might need to consider procyclical effects when collecting intraday margin, and commenters expressed support for ensuring that CCAs had appropriate discretion to apply margin to avoid procyclical effects. Similarly to that context, the Commission believes that discretion to select tools is a better approach than prescribing limits or imposing bans on certain tools in Rule 17Ad–26. Providing such discretion helps enable CCAs to apply their expertise and consider the range of tools they have developed in their RWPs for addressing a recovery or wind-down scenario that may minimize procyclical effects.

In the case of a recovery or wind-down scenario, procyclical effects may facilitate the unnecessary onward transmission of systemic risk. As such, when a CCA seeks to add or modify the tools available in a recovery or wind-down scenario, those modifications would be subject to the proposed rule change and advance notice processes, where the specific facts and circumstances of a particular CCA (such as its organizational structure, markets served, or products cleared) and public comments on the proposed modification can help the Commission and the CCA identify whether any tools would be inappropriate, or appropriate only with certain limitations, consistent with the CCA's obligations under the Exchange Act and the Dodd-Frank Act.[313]

The guidance in the RWP Proposing Release to identify and analyze tools for inclusion in the RWP is not being incorporated into the text of final Rule 17Ad–26(a)(5). This rule is part of the framework of rules applicable to CCAs that takes a principles-based approach, which does not prescribe specific arrangements to meet the required principles.[314] Given that each CCA, serves different markets, clears different products, and deploys different ownership structures, the Commission is not incorporating the guidance into the rule text.

e. Allocation of Non-Default Losses

One commenter stated that procedures should clearly distinguish between treatment of default losses resulting from the failure of a clearing member and non-default losses (''NDLs'') caused by a CCA's internal business decisions.[315] The commenter further stated that financial responsibility for NDLs should be borne by the CCA and not by clearing members and market participants, that CCAs should be required to specify tools that would be used in an NDL scenario, and that a rule is needed to require CCAs to reserve appropriate amounts for NDL.[316] Another commenter stated that a CCA's rulebooks and RWPs should make clear that the CCA is responsible for NDLs, for it is not generally appropriate for clearing members or participants to bear NDLs because they are not responsible for choices that lead to those losses.[317] The commenter also stated that regulators require CCAs to manage, monitor, and hold sufficient capital against NDLs to ensure that such losses do not disrupt a CCA's ability to perform obligations, and that RWPs should be required to demonstrate a CCA's ability to cover such NDLs.[318] Another commenter strongly recommended that the Commission ensure that the RWPs distinguish between the CCA's approach to default and non-default scenarios.[319] The commenter also strongly recommended that the Commission require that the recovery tools a CCA uses in a NDL scenario ensure that the CCA and its shareholders are fully responsible for non-default losses, reflecting the principle that CCA and its shareholders are responsible for NDLs because such losses result directly from business decisions of CCA's management.[320]

While the Commission's regulatory framework for CCAs does not use ''non-

[306] RWP Proposing Release, supra note 18, at 34722.

[307] *Id.*

[308] *Id.*

[309] ICI at 4, 5, n.15.

[310] SIFMA at 12.

[311] *Id.;* The Associations at 19; ICI at 5, n.15.

[312] *See supra* notes 81–100 and accompanying text (discussing in further detail these Commission rules and processes facilitating input from and transparency to clearing participants and other key stakeholders).

[313] *See supra* notes 81–100 and accompanying text (discussing in further detail these Commission rules and processes facilitating input from and transparency to clearing participants and other key stakeholders).

[314] *See* CCA Standards Adopting Release, *supra* note 5, at 70800.

[315] SIFMA at 5.

[316] *Id.* at 5, 12, 16, 18–19.

[317] The Associations at 4, 6, 7–8.

[318] *Id.* at 4.

[319] ICI at 3.

[320] *Id.* at 6, 7–8.

default losses'' to describe losses other than default losses, existing Rule 17Ad–22(e)(15) requires a CCA to implement risk management measures to address ''general business losses,'' [321] which generally includes what the commenters refer to as ''NDL.'' Having a requirement specific to address general business loss does distinguish those losses from other losses such as default losses.

Rule 17Ad–22(e)(15) requires a CCA to have policies and procedures reasonably designed to mitigate the risk that business losses result in the disruption of clearing services. Under these policies and procedures, CCAs are required to hold liquid net assets funded by equity sufficient to cover potential general business losses, including by holding the greater of either six months of the covered clearing agency's current operating expenses, or the amount determined by the board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and services of the covered clearing agency.[322] Accordingly, Rule 17Ad–22(e)(15) already requires a CCA to reserve appropriate resources to address general business losses and help ensure that the CCA internalizes financial responsibility for such losses by applying its own resources to general business losses. The particular mechanisms at each CCA for identifying the amount and holding appropriate resources under the rule have been set by the CCAs through the SRO rule filing and advance notice processes and are subject to examination.

Consistent with existing Commission rules, however, the CCA itself is not required to be ''fully responsible'' for general business losses.[323] Rather, such losses could trigger implementation of a CCA's RWP, as Rule 17Ad–22(e)(3)(ii) includes requirements directed to planning for recovery and orderly wind-down for ''losses from general business risk.'' [324] As previously discussed, Rule 17Ad–22(e)(15) requires a CCA to have policies and procedures for holding liquid net assets funded by equity sufficient to cover potential general business losses, including by holding the greater of either six months of the covered clearing agency's current operating expenses, or the amount determined by the board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and services of the covered clearing agency, as set forth in its RWP. Where such losses from general business risk prevent the CCA from continuing as a going concern and liquid net assets funded by equity held pursuant to Rule 17Ad–22(e)(15) have failed to cover potential business losses, a CCA may need to implement its RWP to fully address such losses. In such a case, the CCA would deploy resources held pursuant to Rule 17Ad–22(e)(15) to implement its RWP but may also,[325] pursuant to its RWP and any rules for loss allocation approved pursuant to the Rule 19b–4 process deploy tools that draw upon other resources of the CCA, including mutualized resources, to avoid it from becoming a transmission mechanism for systemic risk. Participation in a clearing agency where resources, and the loss allocation mechanisms that draw upon them, have been mutualized among the CCA and its participants, necessarily means that the CCA and its participants have agreed to mutualize losses, and such loss allocation mechanisms are explained in publicly available sources, including the CCA's rules, notices and approval orders published as part of the SRO rule filing process, and public disclosures made by the CCAs as required by Rule 17Ad–22(e)(23).[326]

f. Skin-in-the-Game Requirement

One commenter stated that Commission rules are needed to ensure that each CCA contributes equity to its default waterfall, even if the amount is not a meaningful loss absorbing resource, to serve as an additional risk management tool, and the commenter provided several accompanying recommendations to determine the appropriate amount that should be required.[327] Another commenter stated that it is important for a CCA to maintain a second tranche of equity to apply to losses before the CCA allocates losses beyond its allocation of losses above the funded default reserve to better align the interests of the CCA and its clearing members.[328] Another commenter stated that tools should ensure that a CCA designates a material amount of its own capital to cover default losses.[329]

The Commission is not adopting a ''skin-in-the-game'' (''SITG'') requirement.[330] In the context of a participant default, SITG may assist a CCA in addressing the resulting losses because a CCA will apply a designated amount of its own equity capital to address certain losses prior to allocating any prefunded resources of non-defaulting participants to the loss, or prior to applying an assessment to non-defaulting participants directing them to contribute additional resources because all other prefunded resources of the CCA have been exhausted.[331] The Commission has considered comments regarding SITG previously, stating that such new SITG requirements can help successfully manage the divergent incentives of a CCA's owners and participants and could be appropriate in the future.[332] While SITG generally can play a role in helping to ensure the proper alignment of incentives between the owners of a clearing agency and its participants,[333] in the context of this rulemaking regarding the planning for recovery and wind-down by CCAs, SITG would be a specific tool that a CCA may choose to incorporate into its RWP. As such, the Commission is not adopting a requirement for SITG to be a specific tool because the appropriateness of the tool in the context of planning for recovery and wind-down by CCAs will vary depending on the particular design and implementation of the RWP. Even though Commission rules for clearing agencies do not include an explicit requirement for SITG, CCAs generally have incorporated SITG into their respective default waterfalls.[334]

g. Compensation for Contributing Clearing Members

One commenter stated that the externalization of losses to non-defaulting clearing members and market participants should be treated as ''financing resources'' recoverable by those that contributed, which would make a distinction between loss

[321] 17 CFR 240.17ad–22(e)(15).

[322] 17 CFR 240.17ad–22(e)(15)(ii).

[323] As explained above, CCAs are required to have policies and procedures for holding sufficient liquid resources funded by equity to cover, at a minimum, six months of operating expenses or the amount determined by the board of directors to be sufficient to ensure a recovery or orderly wind-down. 17 CFR 240.17ad–22(e)(15)(ii); *see also* PFMI, *supra* note 9, at 3.15.

[324] 17 CFR 240.17ad–22(e)(3)(ii).

[325] *See* 17 CFR 240.17ad–22(e)(15).

[326] *See supra* notes 81–100 (discussing in further detail these Commission rules and processes facilitating input from and transparency to clearing participants and other key stakeholders).

[327] SIFMA at 5, 12–13, 16, 17–18.

[328] The Associations at 5, 11–12.

[329] ICI at 7.

[330] *See* CA Governance Adopting Release, *supra* note 12, at 84504; CCA Standards Adopting Release, *supra* note 5, at 70806.

[331] *See* CCA Standards Adopting Release, *supra* note 5, at 70806.

[332] CA Governance Adopting Release, *supra* note 12, at 84504.

[333] *See* CCA Standards Adopting Release, *supra* note 5, at 70806.

[334] *See* DTC Rule 4, Section 5 (''Corporate Contribution''); FICC Rule 4, Section 7a (''Corporate Contribution''); ICC Rule 801(b) (''ICE Clear Credit contributions''); LCH SA Article 4.3.3 (''LCH SA Contribution''); NSCC Rule 4 (''Corporate Contribution''); OCC Rule 101 (''Minimum Corporate Contribution'').

absorbing and financing resources.[335] Another commenter stated that the Commission should include a requirement for compensation of clearing members that cover losses during a recovery or a wind-down.[336]

Treatment of resources obtained from clearing members in a recovery or wind-down scenario would be subject to the CCA's rules, policies, and procedures, which would have been approved on an *ex ante* basis in the applicable SRO rule filing and advance notice processes. A CCA should be afforded discretion to structure its loss allocation rules, policies, and procedures in light of the needs of its unique ownership or governance structures, provided that those rules, policies, and procedures are consistent with the requirements of the Exchange Act and rules and regulations thereunder.

As previously discussed, disclosures that already must be publicly provided by CCAs under Rule 17Ad–22(e)(23)(ii) require a CCA to provide participants with sufficient information to enable the participants to evaluate the risks, fees, and other material costs they may incur by participating in the CCA. With that information, a participant may determine whether the CCA would compensate non-defaulting participants for contributions made during a recovery or an orderly wind-down.

h. Governance

One commenter stated that a CCA's RWP should include governance practices that obtain and address input from market participants on relevant risk issues and entail oversight by the systemic regulator in relation to tools like partial tear-up that may have broader market impact.[337]

Existing Commission requirements already address this concern for input and oversight.[338] First, the SRO rule filing and advance notice processes provide for public notice and comment allowing for market participants to provide input on changes to rules, policies and procedures regarding recovery tools, and such processes require review and approval by the Commission. Second, Rule 17Ad–22(e)(2) includes requirements designed to provide for governance arrangements that clearly prioritize the safety and efficiency of the CCA, support the public interest requirements in section 17A of the Exchange Act applicable to clearing agencies, and support the objectives of owners and participants. Third, the requirement in section 17A(b)(3)(F) of the Exchange Act to have rules designed, in general, to protect investors helps ensure that a CCA's risk management functions are appropriately aligned with the goal of risk mitigation and responsive to the legitimate concerns of the relevant constituents.

i. Other Comments on Resources

Several comments concerned resources in general that should be available in a recovery or a wind-down scenario. One commenter stated that rules are needed to require a CCAs to arrange *ex ante* resources for use in RWPs, that the Commission should require application of equity-funded assets to implement RWPs, that CCA capital should be available in full before entry into resolution, that rules should be explicit that equity is fully loss absorbing in resolution and shareholders claims are fully subordinate to other creditors, and that it is critical that resolution authorities require CCAs to set aside *ex ante* resources for recapitalization to be bailed-in by the resolution authority to continue to operate the resolved CCA.[339] Another commenter recommends including disclosures of external sources of liquidity (lenders, creditors, liquidity providers) and when applicable, where they sit in the waterfall.[340]

A CCA already is required to hold equity-funded assets to implement its RWP under Rule 17Ad–22(e)(15)(ii), which requires a CCA to hold liquid net assets funded by equity equal to the greater of either six months of the CCA's current operating expenses or the amount sufficient to ensure a recovery or orderly wind-down.[341] Other resources of the CCA available to cover certain losses before entry into resolution are those included in the current rules of the CCAs, which include SITG contributions [342] and liquid net assets funded by equity of the CCA to cover potential business losses under Rule 17Ad–22(e)(15).[343]

Comments were received regarding the resolution of a CCA, and as described in the RWP Proposing Release, the FDIC would be appointed as the resolution authority of a CCA in the event the CCA was placed into resolution under Title II.[344] Ultimate decisions regarding resolution would be determined pursuant to the requirements of Title II,[345] and it is likely that a CCA's RWP would guide the resolution authority in evaluating any decisions to be made in support of an orderly resolution.

Regarding the disclosures of external sources of liquidity and where they sit in the waterfall, a CCA's rules, SRO rule filing notices and approval orders, and disclosures under Rule 17Ad–22(e)(15) provide transparency regarding the structure and composition of the default waterfalls across the CCAs.

6. Implementation: Rule 17Ad–26(a)(6)

Proposed Rule 17Ad–26(a)(6) required a CCA's RWP to address how the rules, policies, procedures, and any other tools or resources identified in Rule 17Ad–26(a)(5) would ensure timely implementation of the recovery and orderly wind-down plan.

Commenters expressed support for the rule as proposed.[346] One commenter encourages the Commission to be internally prepared and in a proactive position to receive, consider, and approve any necessary regulatory requests from CCAs in a timely manner when RWPs have been implemented.[347] As previously discussed, the Commission engages in ongoing supervision and oversight of CCAs to ensure that it is prepared to receive, consider, and act upon any requests related to RWPs. As discussed further in response to comments regarding Rule 17Ad–26(a)(7) below,[348] policies and procedures that ensure the timely implementation of the RWP pursuant to Rule 17Ad–26(a)(6) would necessarily include provisions that ensure timely notification to affected parties that the CCA will implement its RWP. Such affected parties generally should include clearing participants, service providers for core services, other key stakeholders, the Commission, and other regulatory authorities, as appropriate.

Another commenter recommended ''the implementation of rigorous governance around the use of tools or emergency powers.'' [349] The

[335] SIFMA at 13, 20–21.

[336] The Associations at 4–5, 10–12.

[337] SIFMA at 11.

[338] *See* 17 CFR 240.17ad–22(e)(2); 17 CFR 240.17ad–25; *see also infra* Part IV.B.1 (discussing the various ownership models across CCAs and relevant governance arrangements).

[339] SIFMA at 5, 20–21.

[340] The Associations at 13.

[341] 17 CFR 240.17ad–22(e)(15)(ii).

[342] *See supra* note 334.

[343] 17 CFR 240.17ad–22(e)(15).

[344] RWP Proposing Release, *supra* note 18, at 34712.

[345] *See supra* note 26 and accompanying text.

[346] OCC at 9; The Associations at 19–20.

[347] DTCC at 13. This concern is also relevant to the requirement in Rule 17Ad–26(a)(7) to provide notification to the Commission when a CCA is ''considering'' implementation of its RWP. *See infra* Part II.C.7.

[348] *See infra* Part II.C.7 (further explaining and distinguishing the requirement for ''timely implementation'' in Rule 17Ad–26(a)(6) from the requirement for notification specifically to the Commission when a CCA is ''considering implementing'' its RWP).

[349] The Associations at 19–20.

Commission has recently adopted rules intended to bolster the governance of CCAs through requirements regarding board composition and director independence, the nominating and risk management committees of the board, conflicts of interest, oversight of service providers, and the solicitation of stakeholder viewpoints.[350] Through these existing requirements, as well as the rule filing and advance notice requirements applicable to CCAs, the appropriate governance processes exist to help ensure that further development of the RWPs is consistent with the rules adopted in this release. The Commission is adopting Rule 17Ad–26(a)(6) as proposed.

7. Notification to Commission: Rule 17Ad–26(a)(7)

Proposed Rule 17Ad–26(a)(7) required a CCA's RWP to include procedures for informing the Commission as soon as practicable when the CCA is considering initiating a recovery or orderly wind-down. In the RWP Proposing Release, the Commission stated it is critical that notice of potential recovery and wind-down be provided to the Commission as soon as practicable.[351] The Commission explained that the systemic risk concerns raised by a recovery or orderly wind-down of a CCA are significant. With notice being provided to the Commission when a CCA is considering implementing its RWP, the Commission has the opportunity to consider whether the CCA engages the potential recovery or wind-down event consistent with its established RWP and the requirements of Commission rules to help mitigate the potential onward transmission of systemic risk and help ensure that a wind-down, if necessary, is orderly. Furthermore, such early notice would help the Commission ensure that it has information that it can share with other relevant authorities, such as the resolution authority, regarding the potential need for resolution.[352] As discussed in the RWP Proposing Release, the Commission already maintains regular contact with each of the CCAs through its supervisory program, and this is a communication channel through which the CCA could provide notice to the Commission.[353]

One comment in support of Rule 17Ad–26(a)(6) as proposed stated that it was important for the Commission to be in a proactive position to receive, consider, and approve any necessary regulatory requests from CCAs in a timely manner when RWPs have been implemented.[354] Several commenters asked for clarification or further guidance on the ''considering initiating'' phrase in the proposed rule text. One commenter, agreeing that open communication is critical, stated that the ''considering initiating'' phrase introduces subjectivity and uncertainty into the requirement, which could expose a CCA and its responsible personnel to potential enforcement action if their interpretation differs from the Commission.[355] The commenter recommends changing the phrase to make the obligation to notify the Commission when the CCA has ''determined to initiate'' its RWP.[356] Similarly, other commenters stated that the proposed standard is vague and could lead to uncertainty about when the notification is required, and suggested, for clarity and consistent application, that the trigger to notify the Commission should be the formal decision to implement the plan.[357]

In requesting that the Commission remove ''considering'' from the rule text, these commenters misconstrue the purpose of the requirement in Rule 17Ad–26(a)(6) regarding timely implementation of the RWP with the requirement in Rule 17Ad–26(a)(7) regarding notice to the Commission. To ensure timely implementation of the RWP under Rule 17Ad–26(a)(6), a CCA generally should have policies and procedures that can ensure affected parties, including clearing participants, service providers, other relevant stakeholders, and other market infrastructure to which it is linked, as well as the Commission and other relevant authorities, receive notification that the CCA has begun to implement elements of its RWP. However, requiring a CCA to notify the Commission *only* when it has decided to implement its RWP would limit the Commission's ability to evaluate market conditions and the decision-making process of the CCA in the time between when it begins to consider implementing and before it has decided to implement. Once a CCA decides to implement its RWP, it will likely have numerous contractual obligations to share information regarding the implementation of its RWP with its participants, service providers, other key stakeholders, and other market infrastructure to which it is linked. Given these obligations, requiring notification only upon implementation would primarily serve the purpose of documenting and announcing the fact of implementation, rather than the separate but equally important purpose of informing the Commission, as market conditions are deteriorating or other events are occurring at the CCA that may trigger implementation of the RWP so that the Commission can consider whether it too should take action in response to the event.

In contrast to Rule 17Ad–26(a)(6)'s requirement that CCAs provide timely notice of the RWP's implementation, Rule 17Ad–26(a)(7) helps ensure that the Commission receives *advance* notice that stressed market conditions or other events have raised the potential for implementation of the RWP. This requirement for timely notification when the CCA is considering implementation of its RWP will significantly enhance the Commission's ability to conduct effective supervision and market oversight and to share information on a timely basis, as appropriate, with other authorities. While the Commission regularly engages with CCAs as part of its supervisory process to anticipate the need for potential regulatory requests, Rule 17Ad–26(a)(7) further helps the Commission should it need to act by promoting timely *advance* notification that a CCA may implement its RWP.

In addition, in contrast to the phase of a stressed market or other event where a CCA is considering implementation of its RWP, once a CCA has begun to implement its RWP the ability of the Commission to take steps of its own, consistent with its supervisory authority, and to coordinate with other authorities, may be more limited because the CCA will already be taking action in response to the event. For example, if a CCA is considering implementation of its RWP to deploy a certain recovery tool, to allocate losses, or to replenish resources, the Commission or other authorities may evaluate other available actions or tools that could also address or mitigate financial stability concerns in response to market events than the action planned by the CCA. In this regard, the Commission can best ensure that actions appropriate to maintaining financial stability can be made if it is notified when a CCA is ''considering'' action, rather than when a CCA has already begun to implement its RWP.

As explained above, commenters also sought clarification regarding ''consider

[350] *See* CA Governance Adopting Release, *supra* note 12.

[351] RWP Proposing Release, *supra* note 18, at 34723.

[352] *Id.*

[353] *Id.*

[354] DTCC at 13; *see also supra* note 347.

[355] OCC at 9 (explaining that this potential liability is particularly true if the triggers require an application of judgment while monitoring operations and risk on a continuous basis).

[356] *Id.* at 9–10.

[357] ICE at 4; CCP12 at 5.

initiating.'' [358] In response to concerns that the Commission and the CCA may differ regarding the exact moment when a CCA begins to ''consider'' implementing its RWP, CCAs generally should seek to provide notification to the Commission that establishes an open line of communication, enabling the Commission, and other relevant authorities with which the Commission may be coordinating, time to evaluate market conditions and the potential financial stability implications of any decision under the RWP. The ability for the Commission or other relevant authorities to act potentially could help mitigate the need for a recovery or wind-down. When market conditions are deteriorating rapidly, the CCA may be the first party in a position to identify a potential scenario that could trigger implementation of the RWP, and so providing advance notice to the Commission can help the CCA, the Commission, and other potentially relevant authorities, navigate market events. Accordingly, a CCA generally would be ''considering'' implementing a recovery when the clearing agency determines that a market event may result in uncovered losses, liquidity shortfalls, or general business losses at the CCA following end-of-day settlement, or if the CCA anticipates that it will need to deploy prefunded financial resources or liquidity arrangements following end-of-day settlement in order to continue meeting its regulatory obligations.[359] Similarly, if a clearing agency is faced with circumstances in which its status as a ''going concern'' may be in doubt following end-of-day settlement, resulting in the potential for a permanent cessation, sale, or transfer of one of more of its core services, a CCA would be ''considering'' implementation of its orderly wind-down plan.[360] Whether a CCA is ''considering'' implementing its RWP also depends on governance and decision-making processes within the CCA, and so CCAs generally should consider at what levels decisions regarding RWP can be made within their organization. For example, a CCA generally should consider whether decisions regarding RWP implementation and Commission notification are made by senior management, a specific senior officer, or the board of directors. The appropriate governance level may vary depending on the specific type of event or element of the RWP. For example, in considering implementing a recovery, questions regarding the potential for liquidity shortfalls may fall primarily to management or specific senior officers, whereas decisions regarding cessation or transfer of the business are likely to require board input before considering implementation. Accordingly, the Commission is retaining the ''considering'' language as proposed.

Some commenters also expressed views on the means of notification. One commenter stated that the notification should be made in a way that leaves an audit trail and can be better directed, avoiding a potential for the notification to not reach the right destination or receive the appropriate level of attention.[361] One commenter recommended that a CCA be permitted to select the particular means of communication that would be used to notify the Commission, including dedicated phone numbers, email addresses, or other forms of electronic communication.[362] Because Commission staff already remains in regular contact with each of the CCAs as part of its supervisory program,[363] the purpose of the requirement in Rule 17Ad–26(a)(7), in part, is to facilitate a line of communication between the Commission and the CCA regarding the event, so that the Commission can evaluate the circumstances of a potential recovery or wind-down and its potential transmission of systemic risk. In this sense, the timeliness of notification is paramount, while the form of notification or the process of notification may vary under the circumstances so long as the CCA establishes a line of communication. Accordingly, the Commission is modifying the rule in response to these comments to replace the rule text stating ''Include procedures for informing'' with ''Require the covered clearing agency to inform.'' This modification removes the need to codify specific notification forms or procedures, providing the CCA with discretion to assess the best method for communication and the level of formality in the communication that is most appropriate under the circumstances, while ensuring that the timeliness of notification is the primary focus of the CCA. To ensure an appropriate audit or record of its decision, a CCA generally should consider memorializing the steps that it took to notify the Commission. In some circumstances, it may be appropriate to complete this documentation after the fact of notification, while in others, as described by the commenter, it may be appropriate to document notifications internally to ensure a proper audit trail. Any such correspondence with the Commission constitutes a record of a clearing agency and would be subject to the requirements of 17 CFR 240.17a–1.[364]

Two commenters stated that the Commission should require CCAs to notify clearing participants when the CCA is considering implementation of its RWP and when it has done so, in addition to providing notification to the Commission.[365] Commission rules already provide for notification to participants regarding a range of issues, which generally would include the implementation of the RWP. As previously discussed, requirements for timely implementation of the RWP under Rule 17Ad–26(a)(6) generally should include notification to participants and other stakeholders. In addition, other rules also promote the timely sharing of information between CCAs and clearing participants regarding their participation in the clearing agency. For example, Rule 17Ad–22(e)(23)(ii) requires that a CCA establish, implement, maintain and enforce written policies and procedures reasonably designed to provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the CCA. Because implementing a recovery or orderly wind-down may involve the use or replenishment of prefunded resources, as well as the potential allocation of losses from default or non-default loss scenarios to participants, a CCA generally would need to inform its participants regarding those aspects of a recovery or wind-down event at the time of implementation pursuant to Rule 17Ad–26(a)(6). In addition, a CCA

[358] The Commission is making a technical modification to the rule to replace ''initiating'' with ''implementing.'' ''Implementing'' is consistent with language used in other requirements in Rule 17Ad–26, as well as in the RWP Proposing Release and in the comments received more generally when referring to the implementation of the RWP. For example, Rules 17Ad–26(a)(4), (6), and (8) all use ''implementing'' rather than ''initiating.''

[359] *See, e.g.,* FSB Analysis, *supra* note 24, at 1–2 (analyzing CCP services across seven entities and, in so doing, identifying hypothetical default and non-default loss scenarios that would have required the use of, or exhausted the use of, recovery tools in some scenarios for some of entities' service lines).

[360] *See id.*

[361] The Associations at 20–21.

[362] DTCC at 12–13; *see also* Muth at 2 (''In part because of the complex Venn-diagram-esque relationship between financial regulators in terms of both activities and jurisdiction, management may be misinformed or uninformed as to when, how, and why to contact regulators who are the 'relevant authorities' under the CCA Standards or what to communicate that would be illustrative as to the entity's predicament.'').

[363] RWP Proposing Release, *supra* note 18, at 34723.

[364] Rule 17a–1.

[365] The Associations at 5; ICI at 5, n.15.

generally should discuss with its participants and other key stakeholders planning and development with respect to the RWP, as well as the results of testing. Two such venues for discussion of the RWP are already required by existing rules, as follows: Rule 17Ad–25(d), requiring the establishment of a risk management committee,[366] and Rule 17Ad–25(j), regarding the solicitation of stakeholder viewpoints.[367] These venues already require the CCA to share information regarding risk management topics, which necessarily would include the risk management implications of its RWP, with the risk management committee and with relevant stakeholders, respectively. In both cases, clearing participants would receive information regarding the RWP and have an opportunity to provide input (either as members of the risk management committee when reviewing matters regarding the RWP before the committee, or in providing viewpoints when solicited by the CCA).

In contrast, the purpose of the notification requirement in Rule 17Ad–26(a)(7) is to ensure that the Commission specifically has timely information regarding the potential for a CCA to implement recovery or wind-down. As previously discussed above, this helps ensure that the Commission can use the information in a timely manner to consider appropriate regulatory responses to market events, as well as to share information, as appropriate, with other authorities, such as the resolution authority, that also may be monitoring stressed market events alongside the Commission and may need to consider the potential for resolution. In addition, pursuant to clearing agency rules, clearing participants generally will be notified of circumstances related to a participant default, the potential for a portfolio auction, and the use of default management tools that may precede a recovery or wind-down event. While existing Commission rules,[368] as well as participant agreements or other arrangements between CCAs and their participants are likely to facilitate timely notification regarding the planning, development, and implementation of key aspects of the RWP, as discussed above, it may not be appropriate in all circumstances for a CCA to provide *advance* notice to participants that it is considering implementing its RWP because such notification could increase market stress or accelerate deteriorating conditions, precipitating the very recovery or wind-down event that, in the absence of such increase or acceleration, the CCA, the Commission, or another authority could take appropriate steps to mitigate and avoid. Accordingly, the Commission is not adding a provision specifically requiring notification that the CCA is considering implementing its RWP to clearing participants as part of Rule 17Ad–26(a)(7).

8. Testing: Rule 17Ad–26(a)(8)

Proposed Rule 17Ad–26(a)(8) required a CCA's RWP to include procedures for testing the CCA's ability to implement the recovery and wind-down plans at least every 12 months, including by requiring the CCA's participants and, when practicable, other stakeholders to participate in the testing of its plans, providing for reporting the results of the testing to the CCA's board of directors and senior management, and specifying the procedures for, as appropriate, amending the plans to address the results of the testing.

In the RWP Proposing Release, the Commission explained that a testing requirement is important since it should help ensure that a CCA's RWP will be effective in the event of an actual recovery or orderly wind-down.[369] The testing would likely be similar to that required under Rule 17Ad–22(e)(13), in that it would test how the RWP would perform in crisis situations, including the participation of senior management and the board of directors. The Commission stated that testing must involve the CCA's participants and, where applicable, other stakeholders. This inclusion should help to make sure that procedures will be practical and effective in the face of a recovery or orderly wind-down, noting that coordination will be required in such a situation.

The Commission also explained that testing every 12 months was an appropriate frequency because annual testing is already required for many other aspects of a CCA's risk management. Accordingly, a requirement for testing every 12 months for RWPs strikes an appropriate balance between the need to test an RWP and the desire to avoid duplicative requirements. The Commission further stated that a CCA may choose to conduct this RWP testing in conjunction with default testing for Rule 17Ad–22(e)(13) or business continuity testing. Due to the possibility of leveraging existing default management testing, the Commission believed that costs associated with RWP testing may not be too high for CCAs and likely would be moderate for participants, as they are already involved in the default management testing.[370]

a. Support for Testing Requirement

Several commenters expressed their agreement with or support of the proposed requirement to annually test the ability to implement a CCA's RWP.[371] One commenter agreed with the importance of ensuring that a CCA's RWP is workable for a potential crisis situation, stating that it is essential for the CCA, its members and customers, and regulators all have confidence that the RWP will operate as designed.[372] The commenter also stated that the value of periodic testing is to reduce the burden on a CCA when the need for implementing the RWP arises, a time when resources may be stretched thin, ensuring that there is a workable roadmap to address the situation at hand.[373] Similarly, a different commenter emphasized that it is critical for a CCA to be confident that the RWP would be effective in an actual recovery or orderly wind-down event.[374] Another commenter agrees that RWP testing is generally appropriate, provided that annual RWP testing can be combined with existing default management testing.[375] One other commenter echoed this point and agrees that plans need to be tested on a regular basis, and a test every 12 months would be in line with requirements for default testing.[376]

b. Scope of Testing and Interaction With Other Testing Requirements

Some commenters sought more clarity regarding the scope of the ''testing'' requirement in proposed Rule 17Ad–

[366] Specifically, Rule 17Ad–25(d)(2) requires that the risk management committee, in the performance of its duties, be able to provide a risk-based, independent, and informed opinion on all matters presented to the committee for consideration in a manner that supports the overall risk management, safety and efficiency of the registered clearing agency. 17 CFR 240.17ad–25(d)(2).

[367] Specifically, Rule 17Ad–25(j) requires that each registered clearing agency must establish, implement, maintain, and enforce written policies and procedures reasonably designed to require the board of directors to solicit, consider, and document its consideration of the views of participants and other relevant stakeholders of the registered clearing agency regarding material developments in its risk management and operations on a recurring basis.

[368] *See, e.g., supra* notes 366–367 and accompanying text.

[369] RWP Proposing Release, *supra* note 18, at 34723.

[370] *Id.* at 34735.

[371] OCC at 10; The Associations at 21; ICE at 4; ICI at 5; CCP12 at 4.

[372] OCC at 10.

[373] *Id.*

[374] CCP12 at 4.

[375] ICE at 4.

[376] The Associations at 21.

26(a)(8), recommending baseline standards and discretion to test different scenarios or aspects of the plan each year.[377]

Several commenters specifically stated that CCAs should have discretion and flexibility to determine an appropriate approach to testing so that testing would not become duplicative, unnecessary, or burdensome.[378] One commenter stated that a new testing requirement would require significant investment of time and resources from a CCA's most critical personnel, both to plan and execute the testing, which is a highly manual process.[379] Similarly, another commenter explained that RWP testing at CCAs typically includes various types of exercises, and suggested that any final rule make clear that a CCA has discretion to rely on such practices to satisfy Rule 17Ad–27(a)(8).[380]

The definitions in Rule 17Ad–26(b) regarding ''recovery'' and ''orderly wind-down'' provide much of the direction that commenters seek regarding the scope of testing contemplated under Rule 17Ad–26(a)(8). Specifically, RWP testing would involve testing a CCA's plans for recovery (*e.g.,* actions the CCA would take to address an uncovered loss, liquidity shortfall, or capital inadequacy, whether arising from a participant default or other causes, including actions to replenish any depleted prefunded financial resources and liquidity arrangements), and for wind-down (*e.g.,* actions the CCA would take in scenarios that exhaust the CCA's ability to replenish resources and necessitate that it effect the permanent cessation, sale, or transfer of one or more of its core services).[381] As such, testing of RWPs generally should include scenarios that consider both default and non-default scenarios. When testing the RWP against a default scenario, the clearing agency generally should consider the effects of exhausting prefunded resources, to ensure that the clearing agency also tests its ability replenish those resources (*i.e.,* complete recovery). In the context of a default scenario, such a test may have similar elements to a default management testing exercise, though it would necessarily consider steps related to replenishing prefunded resources deployed in response to the scenario. In contrast, testing that considers non-default losses generally could not leverage existing testing related to default management, and so testing exercises developed for RWPs under Rule 17Ad–26(a)(8) would also need to include testing of non-default loss scenarios to demonstrate that RWP testing was reasonably designed, consistent with the rule requirements. Because of the range of scenarios that may implicate RWPs, including scenarios in both default and non-default scenarios, or a combination thereof, a CCA retains discretion under the annual testing requirement to organize and design its testing scenarios to ensure that testing exercises produce effective tests of the elements of the RWP, in such a way that the CCA can review its testing results and consider improvements over time.

With respect to the investment of time and resources necessary to plan and execute testing, and the charge that RWP testing is ''unnecessary'' or ''burdensome,'' the commitment of such time and resources is critical to ensuring an effective RWP.[382] The circumstances in which a CCA may need to implement its RWP are of such systemic consequence that CCAs should test their rules, policies, and procedures so that, should real world conditions arise, the CCA is prepared to implement its RWP in an effective manner, thereby helping to ensure the CCA does not become a mechanism for spreading contagion through the financial system or otherwise endangering financial stability. Similar to the way that default management testing under Rule 17Ad–22(e)(13) helps a CCA test its close-out procedures for a defaulted portfolio so that policies and procedures are sufficiently developed to promote a smooth and successful process,[383] RWP testing can help a CCA ensure that its policies and procedures for recovery and orderly wind-down are sufficiently developed and can be effective in completing loss allocation and replenishment tasks, in the case of a recovery, or a cessation of services, in the case of a wind-down. A CCA that does not engage in regular testing of its RWP may find, in a moment where stressed market conditions are likely to be extreme and the viability of the CCA is itself in question, that it is under-prepared to implement its plan, potentially negating the benefits of the planning process. The Commission agrees that effective planning for RWP testing is likely to be a manual process that draws upon critical personnel because RWP planning requires careful consideration of the procedures and tools upon which a CCA would draw in extreme market circumstances to maintain the ongoing viability of the CCA itself. As such, critical personnel, who may be directed in the RWP to make loss allocation or other critical decisions during a recovery or wind-down scenario, generally should participate in RWP testing conducted by the CCA to help ensure the design and execution of testing scenarios resemble, as well as can be estimated during the planning and testing process, anticipated real-world conditions necessitating a recovery or wind-down.

[377] Davidson at 5 (explaining that ''testing'' needs to be clearly defined, pragmatic, and cost effective, and that it comes in many varieties, listing among the different types of testing conducted by CCAs business continuity tests, margin model and clearing fund testing and validations, default management testing, compliance testing, and internal audit testing); SIFMA at 11 (urging the Commission to set baseline standards for testing that would require CCAs to adhere to standards based on common best practices rather than establishing voluntary disparate practices); The Associations at 21 (stating that not every recovery scenario needs to be tested annually but that a CCA should pick material and significant scenarios and endeavor to test different scenarios or different parts of the plan each year).

[378] ICE at 4–5; OCC at 10–11 (identifying its existing regular and periodic testing efforts (*e.g.,* default simulations, table-top exercises, monthly analysis and monitoring for assessment capability) used to assess and enhance the operational capacity and effectiveness of risk management processes and tools, and stating that they are appropriately designed to ''help ensure that the RWP will be effective in the event of an actual recovery or orderly wind-down''); DTCC at 10–11; CCP12 at 4–5.

[379] OCC at 10.

[380] CCP12 at 4.

[381] More specifically, Rule 17Ad–26(b) defines ''recovery'' to mean the actions of a covered clearing agency, consistent with its rules, procedures, and other *ex ante* contractual arrangements, to address any uncovered loss, liquidity shortfall, or capital inadequacy, whether arising from participant default or other causes (such as business, operational, or other structural weaknesses), including actions to replenish any depleted prefunded financial resources and liquidity arrangements, as necessary to maintain the covered clearing agency's viability as a going concern and to continue its provision of core services, as identified by the covered clearing agency pursuant to Rule 17Ad–26(a)(1). It defines ''orderly wind-down'' to mean the actions of a CCA to effect the permanent cessation, sale, or transfer of one or more of its core services, as identified by the CCA pursuant to Rule 17Ad–26(a)(1), in a manner that would not increase the risk of significant liquidity, credit, or operational problems spreading among financial institutions or markets and thereby threaten the stability of the U.S. financial system.

[382] *See infra* Part IV.C.1.h (further discussing the benefits and costs associated with the testing requirement) and V.B (further discussing the paperwork burdens associated with Rule 17Ad–26).

[383] Separate from any obligations under Rule 17Ad–22(e)(13) with respect to default management testing, 31 CCPs voluntarily participated in a default management exercise led by CCP Global in 2023 to share best practices, identify areas for follow-on work, and highlight insights from the testing process. Another exercise is planned for 2025. Such efforts suggest that, even where testing efforts require a commitment of time, personnel and resources, CCPs are eager to engage in testing as an effective mechanism to improve their rules, policies and procedures. CCP Global, Default Simulation Exercises by CCPs, *https://ccp-global.org/defaultsimulation/* (describing an exercise completed in 2023).

Including these critical personnel in RWP testing may increase the overall cost of testing but is necessary because these critical personnel are best positioned to identify the planning and procedures that can help ensure timely and effective implementation under real-world conditions.

With respect to whether such testing may be duplicative, commenters also requested clarification as to the extent testing under Rule 17Ad–26(a)(8) could be conducted as part of existing default management testing required under Rule 17Ad–22(e)(13) or business continuity testing required by Commission rules.[384] One commenter stated that it would not object to the proposed frequency of annual RWP testing if it could be combined with existing default testing.[385] Another similarly stated that the RWP and default management testing requirements could be combined into one, noting that both contemplate annual testing.[386] One commenter, citing an operational concern in the potential overlap of the testing requirements, stated that it is unclear RWP testing would differ noticeably from default management testing, and encouraged combining both to reduce the potential for duplicative efforts that would be costly and perfunctory.[387] Citing the potential cost-effectiveness of leveraging existing practices pursuant to default management testing under Rule 17Ad–22(e)(13), another commenter stated that the Commission should more closely harmonize the proposed RWP testing requirement with the requirement in Rule 17Ad–22(e)(13), which would give CCAs flexibility to design testing procedures to properly fit the particular markets, cleared products, and participants that they serve.[388]

As discussed above, regular, annual testing is necessary to facilitate the timely implementation of the RWP when a recovery or wind-down scenario arises, as such scenario is likely to include stressed market conditions where clearing agency participants have defaulted or a non-default loss event that may contribute to market stress, strained organizational resources at the CCA, and market events that progress rapidly. The purpose of such testing is not to be duplicative; rather, it may well be complementary to, for example, the default management testing required by Rule 17Ad–22(e)(13). Accordingly, as explained further below, the Commission is modifying Rule 17Ad–26(a)(8) to explicitly distinguish default management testing from RWP testing because the CCA's role in default management would be distinct from its role implementing a recovery or wind-down.

Nonetheless, as one commenter explained, CCAs may engage in one set of testing exercises designed to address multiple testing procedures or scenarios.[389] Such an approach to harmonizing default management testing with RWP testing is consistent with the requirements of the rule; namely, a CCA can conduct one exercise with multiple tests, such as one that tests both default management and implementation of RWPs. Under Rule 17Ad–26(a)(8), a CCA retains discretion to conduct a single testing exercise intended to address multiple testing requirements under Commission rules, so long as the testing exercise addresses the distinct elements of separate testing requirements, including the possibility that some RWP testing scenarios would include non-default losses, as opposed to losses arising during a CCA's default management process.

For example, rather than conducting a narrow test of ''business as usual'' default management, a CCA may instead choose to conduct a more comprehensive testing exercise intended to cover not only its rules, policies and procedures for default management but scenarios and triggers for loss allocation that would activate the need for a recovery or orderly wind-down. Such an approach may be more efficient than conducting RWP testing that is wholly distinct from default management testing, given that participant defaults can be one of the scenarios or triggers that lead to a recovery or wind-down scenario. A more comprehensive testing exercise may also make it less costly to assemble a representative set of participants and other key stakeholders, as well as the board, producing a more effective testing exercise. As previously discussed above, and in contrast to default management testing, RWP testing may require consideration of scenarios and testing of procedures that go beyond default management because, for example, recovery includes the actions taken to address uncovered losses and replenishment of prefunded resources,[390] and wind-down includes actions taken when resources have been exhausted, necessitating the permanent cessation, sale, or transfer of one or more of the CCA's core services.

Accordingly, as discussed above, and because RWP testing is necessarily distinct from, if in ways complementary to, default management testing under Rule 17Ad–22(e)(13), the Commission is modifying Rule 17Ad–26(a)(8) at adoption to add new language stating, as follows: ''[r]equiring that such testing be in addition to testing pursuant to § 240.17ad–22(e)(13).'' As previously explained, this language clarifies that, although a CCA may choose for efficiency purposes to combine default management and RWP testing into a single exercise, RWP testing should include testing of the procedures specific to its RWP.[391] In addition, the existing requirement regarding default management testing in Rule 17Ad–22(e)(13) is unchanged; it is not replaced or superseded by the separate and distinct requirement for RWP testing.

c. Participation by Clearing Agency Participants and Other Stakeholders

In the RWP Proposing Release, the Commission proposed to require that RWP testing include participation by clearing agency participants and, when practicable, other stakeholders.[392] One commenter stated that involvement of clearing members is not necessarily appropriate for certain scenarios or tools related to general business losses or other non-default losses, and CCAs should have flexibility to determine the appropriate approach to testing and clearing member involvement in such

[384] RWP Proposing Release, *supra* note 18, at 34723–24.

[385] ICE at 4.

[386] The Associations at 21.

[387] CFA at 4.

[388] DTCC at 11.

[389] OCC at 10.

[390] For example, in contrast to a default management exercise, where the CCA likely assumes it has sufficient resources to close out a defaulting participant's portfolio, a recovery plan generally should be formulated on the presumption that any uncovered loss or liquidity shortfall will be borne by the CCA, its owners' and its participants' own resources and provide an effective means of achieving a matched book, where applicable, and a means of replenishing financial resources. *See* CPMI–IOSCO Recovery Guidance, *supra* note 25, at 2.3.1.

[391] To improve readability, the Commission is also adding paragraph headings to the rule and modifying the first reference to ''recovery and wind-down plans'' to the defined terms, so that it instead reads ''recovery and orderly wind-down plans.'' As such, final Rule 17Ad–22(a)(8) reads in full as follows: Include procedures for testing the CCA's ability to implement the recovery and orderly wind-down plans at least every 12 months, including by (a) requiring the CCA's participants and, when practicable, other stakeholders to participate in the testing of its plans, (b) requiring that such testing would be in addition to the testing required in paragraph (e)(13) of 17 CFR 240.17ad–22, (c) providing for reporting the results of the testing to the CCA's board of directors and senior management, and (d) specifying the procedures for, as appropriate, amending the plans to address the results of the testing.

[392] RWP Proposing Release, *supra* note 18, at 34716.

cases.[393] The commenter suggested that the Commission remove or qualify the reference to requiring participant participation in testing.[394] Another commenter stated that direct participation in testing of participants or other stakeholders is not necessarily the most effective way to test and requiring such participation may distract the CCA from optimizing its RWP testing.[395] The commenter explained their inclusion may not be appropriate or beneficial for aspects of an RWP that do not impact them and also stated that testing aspects of an RWP can involve confidential or highly sensitive information that could make the inclusion of clearing members and other stakeholders inappropriate.[396] The commenter stated that there are various other ways in which participants or other stakeholders can be educated in default management and recovery and orderly wind-down processes.[397] In conclusion, the commenter requested that the Commission clarify, for the avoidance of doubt, that testing should not require any participation of clearing member or other stakeholders, as CCAs must retain flexibility to determine how their testing should be conducted, including whether and how to include participants and third-party stakeholders.[398] Another commenter agreed that participants and other stakeholders should be included in tests if any action is required from them as part of the plan; however, such testing should not become unduly onerous for market participants and knowing the significant overlap in member bases at CCAs, consideration should be given that testing be done simultaneously with other CCAs.[399] One commenter stated that it was sensible to require that key external third parties participate.[400] Another commenter recommended that the participation of risk management committees and risk advisory working groups be required, as the market participants on those bodies would possess relevant perspectives and input to ensure that the tests are properly calibrated and administered.[401]

One commenter stated it does not believe that it is appropriate to prescribe a specified approach for the inclusion of CCA participants and, where applicable, other stakeholders in the testing of its RWP.[402] The commenter explained that it is important to recognize the differences in closing out a defaulting member at a CCA that clears cash-settled U.S. securities transactions versus a derivatives clearing agency.[403] Additionally, for a CCA with multiple participant types, the commenter stated it is unclear how each different type of participant would participate in annual testing.[404] The commenter recommends that CCAs be allowed to consider and implement approaches such as training and other educational outreach efforts to members and participants to satisfy any final requirement the Commission adopts for RWP testing.[405] Instead of mandating participation, the commenter recommends that the Commission apply the same guidance to RWP testing as it did for default management testing under Rule 17Ad–22(e)(13)—not specify that participants be included in the testing process, but that some or all participants could be included in some or all of the testing.[406]

Mindful of the requirements under Rule 17Ad–22(e)(13) for testing in the default management context, and consistent with the approach taken by the Commission there, Rule 17Ad–26(a)(8) has the same requirement for participant and other stakeholder involvement in RWP testing. Accordingly, the rule does not specify that all clearing agency participants participate in every test because, particularly for CCAs with large numbers of participants or multiple participant types, it may be impractical or counterproductive from a testing perspective and, as explained by commenters, given the wider range of topics covered as part of RWP planning, it may not always be appropriate to include participants in all aspects of testing.[407] Nonetheless, participation in testing by clearing members helps ensure that clearing members are familiar with the CCA procedures that will be followed in a recovery or wind-down scenario, creating positive feedback where both clearing members and the CCA can plan, share experiences, and consider whether existing plans would, in fact, be viable. While other efforts by a CCA, such as trainings and educational outreach to participants and other stakeholders, may assist in the preparation for recovery and wind-down scenarios, and may also help ensure that participants participate meaningfully in testing exercises, training and other education activities are no substitute for having participants and other categories of stakeholders participate in testing.

In designing its testing plan consistent with Rule 17Ad–26(a)(8), a CCA may choose to designate in its policies and procedures certain participants, or categories of participants, for participation in certain tests. For example, in testing of loss allocation tools, where losses could be assigned to a participant, it may be useful to include participants in the testing to allow them to understand when they can be expected to bear losses and how those losses would be absorbed. In testing that involves business losses or certain types of non-default losses, it may be less appropriate to have participants participate in the testing, though a recovery or wind-down scenario involving a cybersecurity event may benefit from participant testing even if the loss is categorized as a non-default loss. In developing testing scenarios, a CCA may at times also need to use confidential or highly sensitive information that could limit its ability to include clearing participants. In addition, for testing that implicates the risk management framework, such as RWP testing for default loss scenarios, it may be appropriate to facilitate participation by the risk management committee of the board of directors, or other risk committees or advisory working groups organized by the CCA. Over time, a CCA generally should consider how to help ensure that a wide range of participants and other categories of stakeholder have participated in at least those aspects of testing that would affect those participants and other categories of stakeholder so that the participants and

[393] ICE at 5.

[394] *Id.*

[395] CCP12 at 4.

[396] *Id.*

[397] *Id.*

[398] *Id.*

[399] The Associations at 21; *see also* ICE at 4–5 (expressing concern that additional testing requirements could be unnecessarily burdensome, particularly for clearing members who are likely to have testing obligations at multiple clearing organizations).

[400] Davidson at 6 (key external third parties, according to the commenter, may include settlement banks, liquidity providers, clearing members, technology vendors, market-makers, exchanges, and trading venues).

[401] ICI at 9.

[402] DTCC at 9.

[403] *Id.* at 10. In the commenter's view, participant action and awareness of the defaulter's portfolio is not needed in such a case and would be counterproductive to the CCA's need for confidentiality around its market-facing close-out activity. The commenter also stated that cash-market clearing agencies have a relatively large number of participants, meaning that a prescriptive mandate for engagement by all participants in testing would be impractical, cost and resource intensive, and potentially antithetical to the underlying goals of testing. *Id.*

[404] *Id.*

[405] *Id.*

[406] *Id.* at 11.

[407] For example, as discussed in Part II.C.8.d immediately below, testing of orderly wind-down plans may involve a tabletop exercise with the board and senior management focused on the considerations related to, *e.g.,* a bankruptcy filing.

other stakeholders are well informed as to the CCA's policies and procedures regarding recovery and wind-down. The requirements of the rule give discretion to CCAs to identify the appropriate scenarios, participants, and audiences for tests, and for the inclusion of participants and other stakeholders as appropriate so that the testing requirement is not unduly onerous, either on CCAs or their participants and other key stakeholders.

As with Rule 17Ad–22(e)(13), the Commission recognizes that under Rule 17Ad–26(a)(8), a CCA may have limited ability to require participation by all stakeholders in all circumstances, but a CCA generally should make efforts to secure participation of relevant stakeholders, such as liquidity providers or settlement banks. It may also consider including supervisory and resolution authorities as observers. Accordingly, the Commission is not modifying proposed Rule 17Ad–26(a)(8) to remove requirements related to participation by clearing members and other key stakeholders.

d. Testing of Orderly Wind-Down Processes

One commenter requested that the Commission provide additional guidance on how CCAs would implement the wind-down portion of their RWPs.[408] The commenter asked for clarification that end-to-end testing obligations in the proposal do not require testing of steps related to effectuating legal processes and related decision-making, as those steps are operational in nature and do not lend themselves to standardized testing scripts or protocols.[409] Other commenters echoed this statement that legal processes do not lend themselves to standardized testing processes, requesting that CCAs have discretion to determine whether it is necessary or feasible to test.[410]

For the portion of annual testing pertaining to orderly wind-down, a CCA generally should consider that elements of the legal processes associated with a wind-down may vary depending on the circumstances of the scenario and so the CCA may need to decide the order in which services wind down to help ensure an orderly process. In deciding in what order to wind down services, a CCA generally should consider the steps it would need to take to help ensure the wind-down is orderly. Additionally, as part of its orderly wind-down plan, a CCA generally should explore the steps that could achieve recovery and thereby avoid wind-down, to ensure all available tools and resources intended to prevent a wind-down have been exhausted before implementing the orderly wind-down of the CCA. Even though they are operational in nature, this aspect of testing may differ from other testing in that it could involve considering which legal documents to prepare or file, rather than engaging in an exercise that progresses through the CCA's default waterfall and related tools. Wind-down testing may also include, for example, tabletop exercises with senior management that consider when and how to execute bankruptcy proceedings or transfer of core functions to another entity.[411] In addition, a CCA generally should consider whether different wind-down scenarios necessitate that a CCA consider winding down services in different sequences, so that the overall wind-down effort remains orderly across different scenarios.

e. Board Review and Sharing of Testing Results

One commenter agreed that testing results should be provided to the board and senior management of the CCA to enable them to effectively oversee the RWP and its implementation.[412] Another commenter stated that testing results should also be shared with risk advisory committees to ensure that participants are educated and can provide feedback to enhance procedures, as well as with regulatory authorities who can review and challenge the quality of testing scenarios, outputs, and the adequacy of resources.[413]

While the Commission agrees that CCAs generally should consider ways to share information effectively throughout their organizations, as well as with their participants and regulatory authorities, other existing requirements already address the concerns raised by these commenters. For example, Rule 17Ad–25(j) establishes an obligation of the board to solicit and consider viewpoints of participants and other relevant stakeholders, such as through risk advisory committees. Under Rule 17Ad–25(j), each registered clearing agency must establish, implement, maintain, and enforce written policies and procedures reasonably designed to require the board of directors to solicit, consider, and document its consideration of the views of participants and other relevant stakeholders of the registered clearing agency regarding material developments in its risk management and operations on a recurring basis. A CCA generally should consider material changes to, and annual testing of, its RWP as material developments in the CCA's risk management and operations under Rule 17Ad–25(j). In addition, Rule 17Ad–22(e)(23)(ii) also requires a CCA to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the CCA. Under this requirement, a CCA generally should consider the ways in which information regarding its RWP, changes thereto, and testing thereof, should be provided to participants to satisfy the requirements of Rule 17Ad–22(e)(23)(ii). Furthermore, records related to RWP testing would be available to the Commission as records of the CCA pursuant to 17 CFR 240.17a–1, including the results of testing provided to the board pursuant to Rule 17Ad–26(a)(8). In addition, as part of its supervisory program for CCAs, Commission staff generally do participate in existing default management exercises, which also address matters related to RWPs.

9. Board Approval: Rule 17Ad–26(a)(9)

Proposed Rule 17Ad–26(a)(9) required a CCA's RWP to include procedures requiring review and approval by the board of the plans at least every 12 months or following material changes to the CCA's operations that would significantly affect the viability or execution of the plans, with such review informed, as appropriate by the CCA's testing of the plans.

Three commenters supported the proposed approach.[414] In addition, one

[408] DTCC at 9.

[409] DTCC at 11 (explaining that, as a practical matter for a CCA, other than internal governance requirements necessary to determine whether to trigger the implementation of the orderly wind-down plan, implementation would include preparation of Bankruptcy Court filings, the provisioning of legal advice as a result of entering into the bankruptcy process, and then entering into various agreements and other processes that are operational in nature).

[410] CCP12 at 4–5; OCC at 11, n.27 (stating that some aspects of an RWP do not lend themselves to full simulation testing in any event, such as the contemplation of a potential transaction with an as-yet-identified third-party for a merger or acquisition).

[411] A CCA designated systemically important also generally should consider the extent to which recovery and wind-down scenarios may result in resolution by the resolution authority pursuant to Title II.

[412] OCC at 10.

[413] The Associations at 21.

[414] OCC at 11 (also supporting the fact that the cadence of testing matches that of board review); The Associations at 22 (citing the importance of RWPs to the overall business of the CCA); Davidson at 12.

commenter stated that the board should consult with the risk management committee when developing or amending its RWP.[415] Commission rules already require the board of a registered clearing agency to establish a risk management committee to assist the board in overseeing the risk management of the registered clearing agency.[416] Given that many elements of the RWP would closely implicate the risk management of a CCA, and that the risk management committee is a committee of the board, a CCA generally should consider whether and how the risk management committee should assist in the review and approval of material changes to RWPs and review of RWP testing results. Accordingly, because Rule 17Ad–26(a)(9) already requires the board to review and approve the RWP, it is unnecessary to separately also require the board to consult the risk management committee as part of its review and approval.

Consistent with the above, the Commission is adopting the rule as proposed, with two technical modifications to improve clarity.[417]

10. Other Comments

a. Harmonization With CFTC Proposal

Several commenters recommended that the Commission and CFTC coordinate to ensure that any final rules are aligned or structured so that dually registered entities (*i.e.,* CCAs registered with the Commission and SIDCOs registered with the CFTC) can efficiently comply with both Commission and recently proposed CFTC rules,[418] which two of these commenters stated include more prescriptive elements than the Commission's proposed rules.[419]

In developing Rule 17Ad–26, and consistent with its obligations under Title VIII of the Dodd-Frank Act, the Commission has consulted with the CFTC to ensure that regulatory requirements are effective and consistent.[420] The Commission's final Rule 17Ad–26 is highly aligned with the CFTC's proposal. While commenters have identified some aspects of the CFTC's approach that differ in terms of the level of granularity, prescriptiveness, or in the use of particular language, these differences generally result from differences in historical approach or regulatory scope between the Commission and CFTC. For example, requirements proposed by the CFTC identify specific scenarios beyond those described in Rule 17Ad–26(a)(3), which focuses on scenarios involving uncovered credit losses, uncovered liquidity shortfalls, and general business losses, consistent with other requirements in Rule 17Ad–22. Such differences reflect non-substantive differences in approach between SIDCO regulations and the Commission's rules for CCAs, and it is important for the Commission's regulatory framework to align the new requirements in Rule 17Ad–26 with existing requirements in Rule 17Ad–22. In addition, the Commission's approach reflects the range of markets served and products cleared by CCAs and the principles-based approach generally taken in both Rule 17Ad–22 and new Rule 17Ad–26. As with the other requirements set forth in rules for CCAs, which are also consistent with comparable CFTC rules,[421] the requirements in Rule 17Ad–26 related to the scenarios that might be implicated, and the tools that would be applied, in a recovery or wind-down scenario necessarily depend, in part, on the risk profile of the products cleared and the structure of the markets served. Accordingly, such differences in approach as to the granularity of certain requirements are, as one commenter stated, non-substantive,[422] and as such could not result in conflicting or confusing regulatory requirements for dually registered clearinghouses.

b. International Standards

One commenter, addressing the discussion in the RWP Proposing Release stating that CCAs consider new policy statements from standard-setting bodies, asked the Commission to reaffirm that international policy statements are non-binding guidance and considering when and how to implement such non-binding guidance remains within the discretion of the CCA.[423]

As a general matter, international standing-setting bodies provide guidance that is helpful for regulatory authorities to consider when establishing and implementing changes to their regulatory frameworks in their respective jurisdictions. While not required by the rule, as discussed in the RWP Proposing Release, CCAs generally should consider policy statements and other guidance issued by standard-setting bodies when reviewing and considering updates to their rules, policies, and procedures related to RWPs.[424]

c. Other Topics

One commenter reiterated its recommendation that the Commission impose very restrictive investment and credit policies for CCA margin and default funds.[425] Preexisting Commission rules already establish requirements designed to minimize custody and investment risk consistent with international standards.[426] Specifically, Rule 17Ad–22(e)(16) requires a CCA to establish, implement, maintain and enforce written policies and procedures reasonably designed to safeguard the CCA's own and its participants' assets, minimize the risk of loss and delay in access to these assets, and invest such assets in instruments with minimal credit, market, and liquidity risks.[427] This requirement applies to margin and guaranty fund contributions held by the CCA on behalf of its participants.

Another commenter stated that RWPs should allow for positions to be ported to other CCAs.[428] Preexisting Commission rules already establish requirements for segregation and portability consistent with international standards.[429] Specifically, Rule 17Ad–22(e)(14) requires a CCA to establish, implement, maintain and enforce

[415] ICI at 8.

[416] 17 CFR 240.17ad–25(d)(1).

[417] The Commission is making two technical modifications to the rule: for clarity and grammatical correctness, the final rule text modifies the phrase ''review and approval by the board of directors of the plans'' to ''review and approval of the plans by the board of directors of the covered clearing agency'' and includes an additional comma after the phrase ''as appropriate'' and before ''by the CCA's testing of the plans.''

[418] ICE at 5; ICI at 5 (also stating that, although the Commission and CFTC proposals differ regarding non-substantive matters, such differences may cause confusion and redundancy regarding the standards for RWPs and result in inefficiencies and harmonization would better facilitate compliance and consistency, certainty, and efficiency); OCC at 5, n.14; The Associations at 12; SIFMA at 5. The Options Clearing Corporation (''OCC'') and ICE Clear Credit (''ICC'') are each a CCA that is also registered as a SIDCO with the CFTC. *See infra* Part IV.B.1 (further describing each of the CCAs registered with the Commission).

[419] OCC at 5, n.14; ICI at 5.

[420] *See supra* note 43 (explaining that Commission staff communicate with the CFTC staff regularly and has consulted on the respective proposed rules regarding RWPs specifically).

[421] CCA Standards Adopting Release, *supra* note 5, at 70795 (explaining that ''the Commission has consulted with the CFTC, FRB, and FSOC in the development of [Rule 17Ad–22(e)] to, in part, avoid unnecessarily duplicative or inconsistent regulation with respect to clearing agencies that are dually registered'' and that ''because Rule 17Ad–22(e) and other comparable regulations—including those of the CFTC—are based on the same international standards, the potential for inconsistent regulation is low'') (citation omitted).

[422] ICI at 5.

[423] DTCC at 12.

[424] RWP Proposing Release, *supra* note 18, at 34724.

[425] SRC at 6.

[426] *See supra* note 421 (discussing the same).

[427] 17 CFR 240.17ad–22(e)(16).

[428] The Associations at 5.

[429] *See supra* note 421 (discussing the same).

written policies and procedures reasonably designed to enable the segregation and portability of positions of a participant's customers and the collateral provided to the CCA with respect to those positions and effectively protect such positions and related collateral from the default or insolvency of that participant.[430]

One commenter requested that the Commission and CFTC continue to move forward with important regulatory reforms to address several other areas related to clearinghouses, including CCP margin methodologies, CCP transparency and disclosures, CCP liquidity risk and stress testing, and CCP capital and SITG.[431] Each such topic is the subject of or closely related to existing workstreams underway at the Basel Committee on Banking Supervision,[432] CPMI–IOSCO,[433] and the FSB,[434] and Commission staff currently participate in each.

Another commenter remains concerned with challenges resulting from the concentration of exposures at CCAs, stating that such concentration could potentially jeopardize the priorities for efficient clearing, settlement, and payment functions that CCAs must ensure pursuant to Title VIII of the Dodd-Frank Act.[435] As discussed in Part I,[436] the Commission has long acknowledged that, while central clearing and other important functions provided by CCAs generally benefit the markets they serve, CCAs can also pose systemic risk due in part to the fact that the clearing function concentrates risk. To mitigate this potential risk, the Commission has adopted a series of rules since the enactment of the Dodd-Frank Act designed to promote the resilience of CCAs. These rules include Rule 17Ad–22(e), which sets forth standards for CCAs that address all aspects of a CCA's operations, including financial risk management, operational risk, default management, governance, and participation requirements.[437] These features of the regulatory framework, made more robust by the requirements adopted in this release, help ensure that CCAs benefit the markets they serve and do not create contagion events that could pose a systemic danger to the U.S. financial system.

D. Defined Terms in Rule 17Ad–26

1. Definition of ''Orderly Wind-Down''

Proposed Rule 17Ad–26(b) defined ''orderly wind-down'' to mean the actions of a CCA to effect the permanent cessation, sale, or transfer of one or more of its critical services in a manner that would not increase the risk of significant liquidity, credit, or operational problems spreading among financial institutions or markets and thereby threaten the stability of the U.S. financial system.

In the RWP Proposing Release, the Commission explained that the proposed definition would help identify the specific goals of an orderly wind-down: that the actions of a CCA should not increase the risk of significant liquidity, credit, or operational problems spreading among financial institutions or markets and thereby threaten the stability of the U.S. financial system, and that these actions would serve as a final and binding solution to whatever circumstance necessitated the wind-down (*i.e.,* not a temporary stopgap measure).[438] These considerations help distinguish the difference between an *orderly* wind-down, as opposed to a wind-down where the goal is to cease operations as quickly as possible. As discussed in the RWP Proposing Release, to be orderly, a wind-down generally should include providing notice to participants sufficient to allow them to transition to alternative arrangements in an orderly manner, as well as maintaining the operation of the CCA's critical services.[439] Moreover, for a wind-down involving the sale or transfer of all or a portion of the CCA to be orderly, the CCA generally should consider the separability of the parts of the CCA and whether there are certain portions of the CCA's business that could be sold or transferred as separate businesses.[440]

a. Meaning of ''Orderly''

Two commenters expressed the view that, despite the best efforts of all involved, a distressed CCA may be unable to wind-down in an ''orderly'' manner without increasing the risk of significant liquidity, credit, or operational problems spreading among financial institutions or markets, thereby threatening the stability of the U.S. financial system.[441] As the Commission acknowledged in the CCA Standards Adopting Release, wind-down may not always be advisable, and strategies based on recovery (rather than wind-down) may prove more feasible or workable in certain circumstances.[442] Nonetheless, one purpose of Rule 17Ad–22(e)(3)(ii)—and now also of Rule 17Ad–26—is to ensure that CCAs have developed sufficient *plans* for both recovery and orderly wind-down to facilitate effective engagement and decision-making with its supervisory and resolution authorities as they consider implementing their RWPs. Key to such engagement is ensuring that planning by the CCA has considered a range of scenarios, across circumstances that include both recovery and wind-down. Such planning, therefore, generally should focus on identifying strategies that can facilitate wind-down while mitigating to the greatest extent possible the risk of significant liquidity, credit, or operational problems spreading to other entities. Accordingly, in the CCA Standards Adopting Release, the Commission reiterated the importance of having plans for both recovery and orderly wind-down, explaining that a CCA generally should consider many factors across a range of potential considerations related to recovery and wind-down, including consideration of which options may be the most workable.[443] Importantly, final Rule 17Ad–26 requires *planning* for an orderly wind-down, having considered significant liquidity, credit, or operational problems spreading among financial institutions or markets should a wind-down become necessary. It also requires timely implementation of the RWP so that the CCA, participants in the clearing agency, and other stakeholders, including its supervisory and resolution authorities, can assess the impact of different scenarios. Such planning will be most effective when the CCA considers ways to effect the permanent cessation, sale, or transfer of one or more of its services in a manner that would not increase the risk of significant liquidity, credit, or operational problems spreading among financial institutions or markets and thereby threaten the stability of the U.S.

[430] 17 CFR 240.17ad–22(e)(14).

[431] ICI at 11.

[432] *See supra* note 14 and accompanying text (citing papers prepared by CPMI–IOSCO in coordination with the BCBS on topics related to CCP margin).

[433] *See supra* notes 14, 25, 29 and accompanying text (citing guidance prepared by CPMI–IOSCO on CCP resilience and recovery).

[434] *See supra* notes 24 and 29 and accompanying text (citing analysis and guidance prepared by the FSB on CCP resolution).

[435] SRC at 4.

[436] *See supra* note 8 and accompanying text.

[437] *See supra* note 12 and accompanying text.

[438] RWP Proposing Release, *supra* note 18, at 34718.

[439] *Id.*

[440] *Id.* at 34718.

[441] ICE at 3, n.6 (explaining that while the goal of any wind-down should be to minimize such problems, the commenter did not believe the possibility of increased risk should disqualify a wind-down from being ''orderly''); *see also* DTCC at 11–12 (stating that it is impossible for either a CCA or its RWP to *ex ante* guarantee that contagion will not occur or that the U.S. financial system will not be impacted).

[442] CCA Standards Adopting Release, *supra* note 5, at 70808.

[443] *Id.*

financial system. Accordingly, it is appropriate for the final rule to require planning designed to effect an orderly wind-down that mitigates the risk of significant liquidity, credit, or operational problems arising from the wind-down scenario.

b. Applying a ''Reasonably Designed'' Standard

One of the commenters recommended that the Commission modify the definition to incorporate a ''reasonably designed'' standard, suggesting that the definition be revised to state ''in a manner that is *reasonably designed* to not increase the risk of significant liquidity, credit, or operational problems spreading among financial institutions or markets and thereby threaten the stability of the U.S. financial system, while seeking the continuity of critical services provided by the CCA and limiting any related disruptions'' (emphasis added) (hereinafter the ''in a manner'' clause).[444]

With respect to requiring that an orderly wind-down be ''reasonably designed,'' Rule 17Ad–22(e)(3)(ii) already applies a ''reasonably designed'' standard for the development of RWPs.[445] Accordingly, a CCA must establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, include plans for the recovery and orderly wind-down of the CCA necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.[446] This ''reasonably designed'' standard effects the outcome desired by the commenter, and adding a second ''reasonably designed'' standard into the definition of ''orderly wind-down'' would make the definition less clear, since the definition itself only defines what constitutes an ''orderly'' wind-down. Accordingly, the Commission is retaining the ''in a manner'' clause as proposed.

c. Feasibility of Wind-Down

One commenter stated that wind-down of a CCA is infeasible because suitable alternatives do not exist and the time it would take to establish or transfer critical functions to a ''bridge'' or new entity would cause permanent damage to the markets served by the CCA.[447] When the Commission adopted preexisting Rule 17Ad–22(e), which includes in paragraph (e)(3)(ii) the requirement for CCAs to have RWPs, it addressed comments expressing concern with the feasibility of winding down a CCA. As explained above, the Commission reiterated in the CCA Standards Adopting Release the importance of having plans for both recovery and orderly wind-down, explaining that a CCA generally should consider many factors in a range of potential considerations related to recovery and orderly wind-down, including consideration of which options may be the most feasible or workable.[448] One commenter to the CCA Standards Adopting Release, representing three CCAs, stated its view that, while CCAs should analyze the feasibility of an orderly wind-down in their plans and include it when appropriate, in the commenter's view, recovery strategies (rather than wind-down) most effectively promote financial stability, ensure the continuation of services, and distribute losses in a fair and economically efficient manner.[449] The Commission continues to agree that the steps to be taken in a recovery or wind-down scenario must promote financial stability, the continuity of systemically important services, and the fair and efficient allocation of losses.[450] Consistent with this view, the requirements related to orderly wind-down in Rule 17Ad–26 include elements focused on planning and timely implementation, to help ensure that, if a CCA were to enter recovery or become unable to continue as a going concern, the relevant supervisory authorities, and, in the case of a resolution, the relevant resolution authorities, could rely on the planning set forth in the CCA's RWPs. Such elements can help those authorities evaluate the most effective course of action under the circumstances while ensuring that systemically important functions continue to serve the affected markets.[451] Accordingly, the definition of ''orderly wind-down'' seeks to identify those circumstances where a permanent cessation, sale, or transfer of one or more of its critical services could occur in a manner that would not increase the risk of significant liquidity, credit, or operational problems spreading among financial institutions or markets. In this way, although it may be unworkable to fully wind down systemically important functions provided by a CCA such that markets lose continuity of access to these functions, planning for the orderly wind-down of a CCA can help ensure that the CCA itself, as well as the markets it serves, have planned for and developed the mechanisms that can facilitate the continuity of such systemically important functions even if the CCA itself is unable to continue as a going concern. The Commission is therefore adopting the definition of ''orderly wind-down'' in final Rule 17Ad–26 as proposed, with certain technical modifications to ensure consistency across the elements of Rule 17Ad–26, as discussed immediately below.

d. Other Modifications for Consistency

The Commission is modifying the definition of ''orderly wind-down'' to ensure consistency with other modifications made in Rule 17Ad–26 with respect to the defined term ''service providers for core services,'' as discussed above. Accordingly, the Commission is replacing the reference to ''critical services'' in the proposed definition with ''core services, as identified by the covered clearing agency pursuant to paragraph (a)(1) of this section.'' As such, final Rule 17Ad–26(b) defines ''orderly wind-down'' to mean the actions of a CCA to effect the permanent cessation, sale, or transfer of one or more of its core services, as identified by the CCA pursuant to Rule 17Ad–26(a)(1), in a manner that would not increase the risk of significant liquidity, credit, or operational problems spreading among financial institutions or markets and thereby threaten the stability of the U.S. financial system.

2. Other Defined Terms and Introductory Clause

In addition to the definition of ''orderly wind-down,'' the Commission proposed definitions for the terms ''affiliate,'' ''recovery,'' and ''service provider.''

The definition of ''affiliate'' as proposed meant a person that directly or indirectly controls, is controlled by, or is under common control with the CCA. The Commission received no comments on this definition and is adopting the definition of ''affiliate'' as proposed.

The definition of ''recovery'' as proposed meant the actions of a CCA, consistent with its rules, procedures, and other *ex ante* contractual arrangements, to address any uncovered loss, liquidity shortfall, or capital

[444] DTCC at 11–12.

[445] 17 CFR 240.17ad–22(e)(3)(ii).

[446] *Id.*

[447] Davidson at 1 (''It is simply not possible, as a practical matter, to 'resolve' a systemically important financial market utility. They must be 'recovered.' '').

[448] CCA Standards Adopting Release, *supra* note 5, at 70808.

[449] *Id.*

[450] *See supra* note 442 (stating the same).

[451] For example, the RWP would include information that can assist the resolution authority in the context of resolution planning.

inadequacy, whether arising from participant default or other causes (such as business, operational, or other structural weaknesses), including actions to replenish any depleted prefunded financial resources and liquidity arrangements, as necessary to maintain the CCA's viability as a going concern and to continue its provision of critical services. The Commission received no comments on this definition. To align this definition with modifications to paragraph (a)(1) of Rule 17Ad–26, as well as corresponding modifications to the definitions of ''service provider for core services'' and ''orderly wind-down,'' the Commission is modifying the definition of ''recovery'' at adoption by replacing the language regarding ''critical services'' with ''core services, as identified by the covered clearing agency pursuant to paragraph (a)(1) of this section.'' Accordingly, as adopted, the definition of ''recovery'' means the actions of a CCA, consistent with its rules, procedures, and other *ex ante* contractual arrangements, to address any uncovered loss, liquidity shortfall, or capital inadequacy, whether arising from participant default or other causes (such as business, operational, or other structural weaknesses), including actions to replenish any depleted prefunded financial resources and liquidity arrangements, as necessary to maintain the CCA's viability as a going concern and to continue its provision of core services, as identified by the CCA pursuant to Rule 17Ad–26(a)(1).

The definition of ''service provider'' as proposed meant any person, including an affiliate or a third party, that is contractually obligated to the CCA in any way related to the provision of critical services, as identified by the CCA in 17 CFR 240.17ad–26(a)(1). Several commenters stated that the proposed definition was overly broad, capturing service providers that would not directly support critical services, and that it would be burdensome to map to such a wide scope of service providers to critical services.[452] Commenters made suggestions to narrow the scope of the definition, several of which the Commission is adopting,[453] as discussed in Parts II.C.1 and 2.

To narrow the scope of the definition and consistent with the changes previously discussed in Parts II.C.1 and 2 regarding Rule 17Ad–26(a)(1) and (2), the Commission is modifying the defined term ''service provider'' to be ''service provider for core services.'' The Commission is also modifying the definition to narrow the scope to include only those services providers that have a written agreement to provide, on an ongoing basis, services that directly support the core services of the CCA. Specifically, the Commission is replacing the clause ''any person . . . that is contractually obligated to the CCA in any way related to the provision of critical services'' with ''any person . . . that, through a written agreement for services provided to or on behalf of the CCA, on an ongoing basis, directly supports the delivery of core services[.]'' [454] These changes closely link the scope of ''service providers'' with the requirement in Rule 17Ad–26(a)(1) to identify core services. The modifications to the definition also align the approach in Rule 17Ad–26 with the approach in existing Rule 17Ad–25, which establishes requirements, in part, for the board of directors of a registered clearing agency to oversee service providers for core services.

Finally, the Commission is also modifying the introductory clause of paragraph (b) of Rule 17Ad–26 to state: ''All terms used in this section have the same meaning as in the Securities Exchange Act of 1934, and, unless the context otherwise requires, the following definitions apply for purposes of this section[.]'' This modification clarifies that the terms defined in Rule 17Ad–26(b) are for the purpose of Rule 17Ad–26 and intended to be consistent with terms used in the Exchange Act.

III. Compliance Date

The Commission did not receive any comments regarding compliance dates for the proposed rule amendments and new rules being adopted in this release.[455] The Commission is adopting two compliance dates regarding these final rule amendments and new rules, as follows: (1) each covered clearing agency will be required to file with the Commission any proposed rule changes required under Rule 19b–4 and any Advance Notices required under Title VIII of the Dodd-Frank Act and Rule 19b–4(n) no later than April 17, 2025, and (2) the proposed rule changes and the Advance Notices must be effective by December 15, 2025. These compliance dates provide sufficient time for CCAs to consider changes to their rules, policies, and procedures necessary to ensure consistency with the rules amended and adopted in this release because, as discussed above and further in the Economic Analysis and Paperwork Reduction Act analysis below, CCAs generally have policies and procedures consistent with many of the elements of the final amendments to 17Ad–22(e)(6) and new Rule 17Ad–26. As such, while these new requirements likely require a CCA to review and update existing policies and procedures, it does not require a CCA to develop new systems, technologies, or processes. Because these rules promote iterative and incremental updates to existing policies and procedures, generally based on existing practices at some or all of the current set of CCAs, these compliance dates provide a sufficient time period to facilitate the filing, publication, and Commission review and approval, as appropriate, of any incremental changes to policies and procedures consistent with the processes for proposed rule changes under Rule 19b–4 and Advance Notices under Title VIII and Rule 19b–4(n).

IV. Economic Analysis

A. Introduction

The Commission is sensitive to the economic consequences and effects of the final rule and amendments, including their benefits and costs.[456] Since the final rule and amendments could require a CCA to adopt new policies and procedures, the Commission acknowledges that the development and implementation of those new policies and procedures will have economic effects.

This section addresses the economic effects of the final rule and amendments, including their anticipated and estimated benefits and costs and their effects on efficiency, competition, and capital formation. It is not feasible to quantify many of the

[452] DTCC at 6; ICC at 3–4; OCC at 6–7; CCP12 at 3.

[453] DTCC at 7; ICC at 4.

[454] The Commission is also making a technical edit to the definition of ''service provider for core services'' in final Rule 17Ad–26(b): replacing ''in 17 CFR 240.17ad–26(a)(1)'' with ''pursuant to paragraph (a)(1) of this section.''

[455] In determining compliance dates, the Commission considers the benefits of the rules as well as the costs of delayed compliance dates, and potential overlapping compliance dates. For the reasons discussed throughout the release, to the extent that there are costs from overlapping compliance dates, the benefits of the rule justify the costs. *See infra* sections IV.B. and IV.C.3 in the Economic Analysis for a discussion of the interaction of the final rule with certain other Commission rules.

[456] Under section 3(f) of the Exchange Act, whenever the Commission engages in rulemaking under the Exchange Act and is required to consider or determine whether an action is necessary or appropriate in the public interest, it must consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f). In addition, section 23(a)(2) of the Exchange Act prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. *See* 15 U.S.C. 78w(a)(2).

benefits and costs. For example, risk management is an area of key concern for all clearing agency stakeholders. Perceptions of risk affect how clearing agencies are operated, and those operations, in turn, affect perceptions of risk. Any change to the policies and procedures about how clearing agencies act in times of crisis affects the behavior of clearing agencies and participants in complex ways not only during a crisis but also before the crisis, and those behavioral changes may affect the likelihood and severity of a crisis. While the Commission has attempted to quantify economic effects where possible, much of the discussion of economic effects is qualitative in nature. The Commission also discusses the potential economic effects of certain alternatives to the final rule and amendments.

B. Economic Baseline

To consider the effect of the final rule and amendments, the Commission first explains the current situation in the market (*i.e.,* the economic baseline). All the benefits and costs of the final rule and amendments are calculated relative to the economic baseline. The economic baseline in this analysis considers: (1) the current market for CCA activities, including the number of CCAs, the distribution of participants across these clearing agencies, and the level of activity these clearing agencies process; (2) the current regulatory framework for CCAs; (3) the current recovery and orderly wind-down plans of CCAs; and (4) the current risk-based margin systems of CCAs. The Commission did not receive any comments on the economic baseline.

We have considered the potential effects on entities that are implementing other recently adopted rules during the compliance period for these amendments. Recently adopted rules that may place compliance obligations on some of the same entities with obligations under these amendments include the 17 CFR 240.10c–1a (''Rule 10c–1a'') Adopting Release,[457] the CA Governance Adopting Release,[458] and the Treasury Clearing Adopting Release.[459]

1. Description of Market

Of the eight registered clearing agencies, six are currently in operation.[460] Five provide central counterparty (''CCP'') services,[461] and one provides central securities depository (''CSD'') services.[462] National Securities Clearing Corporation (''NSCC''), Fixed Income Clearing Corporation (''FICC''), and Depository Trust Company (''DTC'') are all CCAs that are subsidiaries of Depository Trust & Clearing Corporation (''DTCC''). NSCC offers clearance and settlement services for equities, corporate and municipal debt, American depositary receipts, exchange traded funds, and unit investment trusts (''UITs''). FICC's Mortgage-Backed Securities Division (''MBSD'') provides clearing, netting, and risk management services for trades in the mortgage-backed securities market. FICC's Government Securities Division (''GSD'') provides clearing,

[457] *Reporting of Securities Loans,* Release No. 34–98737 (Oct. 13, 2023) [88 FR 75644 (Nov. 3, 2023)] (''Rule 10c–1a Adopting Release''). This rule requires any covered person who agrees to a covered securities loan on behalf of itself or another person to report specified information about the covered securities loan to a registered national securities association (currently FINRA is the only registered national securities association)—or rely on a reporting agent to do so—and requires the registered national securities association to make certain information it receives available to the public. Covered persons will include market intermediaries, securities lenders, and broker-dealers, while reporting agents include certain brokers, dealers, or registered clearing agencies. The rule's compliance dates required that the registered national securities association propose rules pursuant to Rule 10c–1a(f) by May 2, 2024, and the proposed rules shall be effective no later than Jan. 2, 2025; that covered persons report Rule 10c–1a information to a registered national securities association on or by Jan. 2, 2026 (which requires that the registered national securities association have implemented data retention and availability requirements for reporting); and that the registered national securities association publicly report Rule 10c–1a information by Apr. 2, 2026. *See* Rule 10c–1a Adopting Release, section VIII.

[458] CA Governance Adopting Release, *supra* note 12. The CA Governance Adopting Release establishes Rule 17Ad–25 for new governance requirements for registered clearing agencies. These include requirements for independent directors and for the composition of a registered clearing agency's board of directors, nominating committee, and risk management committee; requirements to identify and document existing or potential conflicts of interest involving directors or senior managers, and mitigate or eliminate and document the mitigation or elimination of such conflicts; and requirements for policies and procedures obligating directors to report conflicts of interest, managing risks from relationships with service providers, and requiring boards to solicit, consider, and document their consideration of the views of participants and other relevant stakeholders. The compliance date for Rule 17Ad-25 is Dec. 5, 2024, except that the compliance date for the independence requirements of the board and board committees in Rules 17Ad–25(b)(1), (c)(2), and (e) is Dec. 5, 2025. *See* CA Governance Adopting Release, section III.

[459] Treasury Clearing Adopting Release, *supra* note 62. Among other things, the amendments require CCAs for U.S. Treasury securities to have written policies and procedures reasonably designed to require that every direct participant of the CCA submit for clearance and settlement all eligible secondary market transactions in U.S. Treasury securities to which it is a counterparty. The compliance date was Mar. 18, 2024, for CCAs to file any proposed rule changes pursuant to Rule 17Ad–22(e)(6)(i) and (e)(18)(iv)(C) and 17 CFR 240.15c3–3 (''Rule 15c3–3''), which must be effective by Mar. 31, 2025. With respect to the changes to Rule 17Ad–22(e)(18)(iv)(A) and (B), (i) CCAs were required to file any proposed rule changes regarding those amendments no later than June 14, 2024, and (ii) those changes must be effective by Dec. 31, 2025, for cash market transactions encompassed by section (ii) of the definition of an eligible secondary market transaction, and by June 30, 2026, for repo transactions encompassed by section (i) of the definition of eligible secondary market transactions. Finally, the Commission amended the broker-dealer customer protection rule to permit margin required and on deposit with CCAs for U.S. Treasury securities to be included as a debit in the reserve formulas for accounts of customers and proprietary accounts of broker-dealers, subject to certain conditions. Compliance by the direct participants of a U.S. Treasury securities CCA with the requirement to clear eligible secondary market transactions is not required until Dec. 31, 2025, and June 30, 2026, respectively, for cash and repo transactions. *See* Treasury Clearing Adopting Release, section III.

[460] There are two registered but inactive clearing agencies: Boston Stock Exchange Clearing Corporation (''BSECC'') and Stock Clearing Corporation of Philadelphia (''SCCP''). Neither has provided clearing services in well over a decade. *See* Self-Regulatory Organizations; The Boston Stock Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Articles of Organization and By-Laws, Exchange Act Release No. 63629 (Jan. 3, 2011), 76 FR 1473, 1474 (Jan. 3, 2011) (BSECC ''returned all clearing funds to its members by September 30, 2010, and [ ] no longer maintains clearing members or has any other clearing operations as of that date. [ ] BSECC [ ] maintain[s] its registration as a clearing agency with the Commission for possible active operations in the future.''); Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Suspension of Certain Provisions Due to Inactivity, Exchange Act Release No. 63268 (Nov. 8, 2010), 75 FR 69730, 69731 (Nov. 15, 2010) (SCCP ''returned all clearing fund deposits by September 30, 2009; [and] as of that date SCCP no longer maintains clearing members or has any other clearing operations. [ ] SCCP [ ] maintain[s] its registration as a clearing agency for possible active operations in the future.''). Because they do not provide clearing services, BSECC and SCCP are not included in the economic baseline or the consideration of benefits and costs. ICE Clear Europe Limited withdrew its registration in Nov. 2023. *See* Exchange Act Release No. 98902 (Nov. 9, 2023), 88 FR 78428 (Nov. 15, 2023).

[461] A CCP is a type of registered clearing agency that acts as the buyer to every seller and the seller to every buyer, providing a trade guaranty with respect to transactions submitted for clearing by the CCP's participants. *See supra* note 6. A CCP may perform a variety of risk management functions to manage the market, credit, and liquidity risks associated with transactions submitted for clearing. For example, CCPs help manage the effects of a participant default by closing out the defaulting participant's open positions and using financial resources available to the CCP to absorb any losses. In this way, the CCP can prevent the onward transmission of financial risk. *See, e.g.,* Shortening the Securities Transaction Settlement Cycle, Exchange Act Release No. 94196 (Feb. 9, 2022), 87 FR 10436, 10448 (Feb. 24, 2022).

[462] A CSD is a type of registered clearing agency that acts as a depository for handling securities, whereby all securities of a particular class or series of any issuer deposited within the system are treated as fungible. Through use of a CSD, securities may be transferred, loaned, or pledged by bookkeeping entry without the physical delivery of certificates. A CSD also may permit or facilitate the settlement of securities transactions more generally. *See supra* note 6.

netting, and risk management services for trades in U.S. Government debt, including buy-sell transactions and repurchase agreement transactions. DTC provides end-of-day net settlement for clients, processes corporate actions, provides securities movements for NSCC's net settlements, and it provides settlement for institutional trades.

ICE Clear Credit LLC (''ICC'') is a CCA for credit default swaps (''CDS''), and it is a subsidiary of Intercontinental Exchange, Inc. (''ICE''). LCH SA is another CCA that offers clearing for CDS, and it is a France-based subsidiary of LCH Group Holdings Ltd, which, in turn, is majority owned by the London Stock Exchange Group plc. The sixth CCA, Options Clearing Corporation (''OCC''), offers clearing services for exchange-traded U.S. equity options.

CCAs operate under one of two broad ownership models. In one model, the CCA is member-owned,[463] while in the other model, the CCA is publicly traded.[464]

CCAs currently operate specialized clearing services and face limited competition in their markets.[465] For each of the following asset classes, for example, there is only one CCA serving as a central counterparty: exchange-traded equity options (OCC), government securities (FICC), mortgage-backed securities (FICC), and equity securities (NSCC). There is also only one CCA providing central securities depository services (DTC). CCA activities exhibit high barriers to entry and economies of scale.[466] These features of the existing markets, and the resulting concentration of clearing and settlement services within a handful of entities, inform the Commission's examination of the effects of the final rule and amendments on competition, efficiency, and capital formation (see Part IV.C.3). Table 1 summarizes the most recent data on the number of participants at each CCA.[467]

TABLE 1[a]—NUMBER OF PARTICIPANTS AT CCAS IN AUGUST 2024

CCA	Number of participants
Subsidiaries of The Depository Trust & Clearing Corporation:	.....
National Securities Clearing Corporation[b]	4,502
The Depository Trust Company[c]	877
Fixed Income Clearing Corporation (Government Securities Division)[d]	220
Fixed Income Clearing Corporation (Mortgage Backed Securities Division)[e]	139
Subsidiaries of Intercontinental Exchange:	
ICE Clear Credit[f]	31
Subsidiaries of LCH:	
LCH SA (CDSClear Participants Only)[g]	26
The Options Clearing Corporation[h]	181

[a] Participant statistics were taken from the websites of each of the listed clearing agencies in Aug. 2024.
[b] DTCC, *NSCC Member Directories, available at http://www.dtcc.com/client-center/nscc-directories.*
[c] DTCC, *DTC Member Directories, available at http://www.dtcc.com/client-center/dtc-directories.*
[d] DTCC, *FICC–GOV Member Directories, available at http://www.dtcc.com/client-center/ficc-gov-directories.*
[e] DTCC, *FICC–MBS Member Directories, available at http://www.dtcc.com/client-center/ficc-mbs-directories.*
[f] ICE, *ICE Clear Credit Participants, available at https://www.theice.com/clear-credit/participants.*
[g] LCH, *LCH SA Membership, available at https://www.lch.com/membership/member-search.*
[h] OCC, *Member Directory, available at http://www.theocc.com/Company-Information/Member-Directory.*

CCAs have become an essential part of the infrastructure of the U.S. securities markets due to their role as intermediaries. Over the last several years, CCAs have become increasingly important in financial markets as they clear an increasing fraction of market transactions.[468] For example, in the 12-month period from October 2021 to September 2022, approximately 65 percent, or $1.3 trillion notionally, of all single-name CDS transactions in the United States were centrally cleared,[469] and the Commission adopted in December 2023 rule changes which, among other things, require CCAs for U.S. Treasury securities to have written policies and procedures reasonably designed to require that every direct participant of the CCA submit for clearance and settlement all eligible secondary market transactions in U.S. Treasury securities to which it is a counterparty.[470] The average daily value of equities trades cleared by NSCC in 2023 was $1.9 trillion; at FICC, the total net value of government securities transactions in 2023 was $2,019 trillion and the total net par value for mortgage backed securities in 2023 was $58 trillion; and the total value of transactions settled by DTC in 2023 was $446 trillion.[471] In addition, in 2023,

[463] *See, e.g.,* Release No. 34–52922 (Dec. 7, 2005), 70 FR 74070 (Dec. 14, 2005) (explaining that participants of DTC, FICC, and NSCC that make full use of the services of one or more of these clearing agency subsidiaries of DTCC are required to purchase DTCC common shares).

[464] OCC is owned by certain options exchanges, which are all publicly traded. ICC is a subsidiary of ICE (a publicly traded company). LCH SA is a subsidiary of LCH Group Holdings, Ltd., which is majority-owned by London Stock Exchange Group plc (a publicly traded company).

[465] *See* SIFMA at 10.

[466] *See* Alistair Milne, *Central Securities Depositories and Securities Clearing and Settlement: Business Practice and Public Policy Concerns, in* Analyzing the Economics of Financial Market Infrastructures 334, 335 (Martin Diehl, et al. eds., 2016), *available at https://doi.org/10.4018/978-1-4666-8745-5.ch017* (''Clearing and settlement operations have evolved over time to become remarkably complex. This complexity creates business challenges, especially for management of liquidity, which could potentially have systemic consequences for the wider financial system. This complexity may also increase the barriers to entry that can discourage competition in trade settlement and securities services.'').

[467] Membership requirements vary across the CCAs. For example, the self-clearing minimum net-capital requirement is $500 thousand for NSCC, while OCC's net capital requirement is $2.5 million. Multiple memberships by the same firm are much more common at NSCC than at the other CCAs.

[468] *See* Better Markets at 10 (''Since [the 2008 financial crisis], more and more connections in the global financial system run through CCPs. This growing interconnectedness has benefits but also poses risks.''). *See* SIFMA at 2 (''In this regard, the SEC's Proposal is increasingly relevant in light of the SEC's recent proposal to require increased clearing of the Treasury market, which would occur through a single SEC-regulated Clearing Agency.'').

[469] Data from DTCC's Trade Information Warehouse, compiled by Commission staff. At the time of adoption, 2023 data were not available.

[470] *See supra* note 459.

[471] *See* DTCC, *Annual Report* (2023), *available at https://www.dtcc.com/-/media/Files/Downloads/Annual%20Report/2023/DTCC-2023-AR-Print.pdf.* The total value of transactions settled in 2021 was $432 trillion. The proposing release reported the related statistic of the total value of *securities* transactions settled in 2021, which was $152 trillion.

OCC cleared 11.1 billion options contracts.[472]

Central clearing benefits the markets by significantly reducing participants' counterparty risk and through more efficient netting of margin requirements. Consequently, central clearing also benefits the financial system by increasing financial resilience and the ability to monitor and manage risk.[473] The role of a clearing agency in promoting resilience highlights its central importance in the functioning of markets.[474] If a CCP is unable to perform its risk management functions effectively, it can transmit risk throughout the financial system. Similarly, if a CSD is unable to perform its functions, market participants may be unable to settle their transactions, which may transmit risk throughout the financial system.

Disruption to a clearing agency's operations, or failure on the part of a clearing agency to meet its obligations, could serve as a source of contagion, resulting in significant costs not only to the clearing agency itself and its participants but also to other market participants and the broader U.S. financial system.[475] Absent proper risk management, a clearing agency failure could destabilize the financial system.[476] As a result, proper management of the risks associated with central clearing helps ensure the stability of the U.S. securities markets and the broader U.S. financial system.[477]

2. Overview of the Existing Regulatory Framework

The existing regulatory framework for clearing agencies registered with the Commission includes section 17A of the Exchange Act, the Dodd-Frank Act, and the related rules adopted by the Commission.[478]

Clearing agencies registered with the Commission may also be subject to other domestic or foreign regulation.[479] Specifically, clearing agencies operating in the U.S. may also be subject to regulation by the CFTC (as designated clearing organizations, or DCOs, for futures or swaps that are dually registered with the CFTC and SEC) and the Board of Governors (as SIFMUs or State member banks).[480] Additionally, LCH SA is regulated by l'Autorité des marchés financiers, l'Autorité de Contrôle Prudentiel et de Résolution, and the Banque de France, and it is subject to European Market Infrastructure Regulation (EMIR).[481]

3. Current Recovery and Orderly Wind-Down Plans

Each CCA, as part of a sound risk-management framework, is currently required to establish and maintain plans for the recovery and orderly wind-down of the CCA necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses (such plans are referred to as recovery and wind-down plans, or RWPs).[482] The CCA may have one RWP document, or it may maintain two separate documents, referring to one as the recovery plan and the other as the orderly wind-down plan. Although the Commission did not include specific requirements for RWPs in the CCA Standards Adopting Release, the Commission did offer guidance about what CCAs should consider when

[472] *See* OCC, *Press Release OCC Reports December 2023 and Total 2023 Volume Data* (Jan. 4, 2024), *available at https://www.theocc.com/newsroom/press-releases/2024/1-03-occ-reports-december-2023-and-total-2023-volume-data.*

[473] *See* Darrell Duffie, *Still the World's Safe Haven? Redesigning the U.S. Treasury Market After the COVID–19 Crisis* 15 (Hutchins Center Working Paper, Paper No. 62, 2020), *available at https://www.brookings.edu/wp-content/uploads/2020/05/wp62_duffie_v2.pdf* (''Central clearing increases the transparency of settlement risk to regulators and market participants, and in particular allows the CCP to identify concentrated positions and crowded trades, adjusting margin requirements accordingly. Central clearing also improves market safety by lowering exposure to settlement failures. . . . As depicted, settlement failures rose less in March [2020] for [U.S. Treasury] trades that were centrally cleared by FICC than for all trades involving primary dealers. A possible explanation is that central clearing reduces 'daisy-chain' failures, which occur when firm A fails to deliver a security to firm B, causing firm B to fail to firm C, and so on.'').

[474] *See generally* Albert J. Menkveld & Guillaume Vuillemey, *The Economics of Central Clearing,* 13 Ann. Rev. Fin. Econ. 153 (2021).

[475] *See generally* Dietrich Domanski, Leonardo Gambacorta, & Cristina Picillo, *Central Clearing: Trends and Current Issues,* BIS Q. Rev. (Dec. 2015), *available at https://www.bis.org/publ/qtrpdf/r_qt1512g.pdf* (describing links between CCP financial risk management and systemic risk); Darrell Duffie, Ada Li, & Theo Lubke, *Policy Perspectives on OTC Derivatives Market Infrastructure* 9 (Fed. Res. Bank N.Y. Staff Rep., Paper No. 424, 2010), *available at http://www.newyorkfed.org/research/staff_reports/sr424.pdf* (''If a CCP is successful in clearing a large quantity of derivatives trades, the CCP is itself a systemically important financial institution. The failure of a CCP could suddenly expose many major market participants to losses. Any such failure, moreover, is likely to have been triggered by the failure of one or more large clearing agency participants, and therefore to occur during a period of extreme market fragility.''); Craig Pirrong, *The Inefficiency of Clearing Mandates* 11–14, 16–17, 24–26 (Policy Analysis Working Paper, Paper No. 655, 2010), *available at http://www.cato.org/pubs/pas/PA665.pdf* (stating, among other things, that ''CCPs are concentrated points of potential failure that can create their own systemic risks,'' that ''[a]t most, creation of CCPs changes the topology of the network of connections among firms, but it does not eliminate these connections,'' that clearing may lead speculators and hedgers to take larger positions, that a CCP's failure to effectively price counterparty risks may lead to moral hazard and adverse selection problems, that the main effect of clearing would be to ''redistribute losses consequent to a bankruptcy or run,'' and that clearing entities have failed or come under stress in the past, including in connection with the 1987 market break); *see* Glenn Hubbard et al., *Report of the Task Force on Financial Stability,* Brookings Inst., 96 (June 2021), *available at https://www.brookings.edu/wp-content/uploads/2021/06/financial-stability_report.pdf* (''In short, the systemic consequences from a failure of a major CCP, or worse, multiple CCPs, would be severe. Pervasive reforms of derivatives markets following 2008 are, in effect, unfinished business; the systemic risk of CCPs has been exacerbated and left unaddressed.''); Froukelien Wendt, *Central Counterparties: Addressing their Too Important to Fail Nature* (working paper Jan. 2015), *available at https://ssrn.com/abstract=2568596* (retrieved from SSRN Elsevier database) (assessing the potential channels for contagion arising from CCP interconnectedness); Manmohan Singh, *Making OTC Derivatives Safe—A Fresh Look* 5–11 (IMF Working Paper, Paper No. 11/66, 2011), *available at http://www.imf.org/external/pubs/ft/wp/2011/wp1166.pdf* (addressing factors that could lead central counterparties to be ''risk nodes'' that may threaten systemic disruption).

[476] *See* Better Markets at 10 (''The inability of a CCP to recover from severe losses, or the disorderly wind-down of a CCP, could have significant repercussions not only for the sector in which the CCP operates but for the markets and the economy as a whole.''); SIFMA at 2 (''In this regard, the SEC's Proposal is increasingly relevant in light of the SEC's recent proposal to require increased clearing of the Treasury market, which would occur through a single SEC-regulated Clearing Agency.'').

[477] *See* Paolo Saguato, *Financial Regulation, Corporate Governance, and the Hidden Costs of Clearinghouses,* 82 Ohio St. L.J. 1071, 1074–75 (2021), *available at https://moritzlaw.osu.edu/sites/default/files/2022-03/18.%20Saguato_v82-6_1071-1140.pdf* (''[T]he decision to centralize risk in clearinghouses made them critical for the stability of the financial system, to the point that they are considered not only too-big-to-fail, but also too-important-to-fail institutions.'').

[478] *See* RWP Proposing Release, *supra* note 18 at Part II.

[479] *See supra* Part III.D.2.

[480] *See* 12 U.S.C. 5472, 5469. Currently, ICC, LCH SA, and OCC are regulated by the Commission and the CFTC. The CFTC is the primary supervisory regulator for ICC and LCH SA, while the Commission is the primary supervisory regulator for OCC. DTC, FICC, NSCC, ICC, and OCC have been designated systemically important financial market utilities by the FSOC (*see infra* note 517 and the accompanying text). DTC is also a state member bank of the Federal Reserve System and a New York State registered trust company and is therefore also regulated by the New York Department of Banking and Finance. LCH SA is not regulated by the Board of Governors. The Board of Governors addresses certain recovery and orderly wind-down plans in Regulation HH (*see* RWP Proposing Release, *supra* note 18, at 34710 n.68 and accompanying text), and the CFTC requires certain derivatives clearing organizations to maintain recovery and orderly wind-down plans through Regulation § 39.39(b) and subsequent guidance (*see* RWP Proposing Release, *supra* note 18, at 34716 n.69 and accompanying text).

[481] *See* LCH, *Company Structure, available at https://www.lch.com/about-us/structure-and-governance/company-structure.*

[482] *See* RWP Proposing Release, *supra* note 18, at 34710 n.16 and accompanying text.

creating their RWPs.[483] The RWPs are subject to the rule filing requirement of Rule 19b–4, and all six active CCAs have submitted their plans and subsequent modifications to the Commission for review, public comment, and approval.[484] Additionally, all of the CCAs have submitted confidential treatment requests with their RWPs pursuant to 17 CFR 240.24b–2. The Commission has also reviewed these confidential treatment requests and concluded that the redacted material could be withheld from the public under the Freedom of Information Act.[485] Due to the confidential treatment of the RWPs, the current release includes aggregated, anonymized analyses of the RWPs submitted to the Commission by the clearing agencies. Additionally, Form 19b–4, which is public, requires a description of the proposed rule change for public comment.[486] To the extent that information in the baseline has been drawn from public sources, such as the CCAs' SRO rule filings, we have included attribution accordingly. All six active CCAs have approved RWPs in place, and the plans differ in, for example, length, style, emphasis, and specificity. In the remainder of Part IV.B. 3, we summarize CCAs' current RWPs in terms of nine elements that are part of final Rule 17Ad–26.

a. Core Services

Each RWP currently includes what the CCA has identified and described as its core payment, clearing, and settlement services,[487] as well as the criteria that the CCA employs to make such a determination as to what constitutes core services.[488] Depending on their operations and the structure of their RWPs, CCAs currently identify between one and a dozen or more core services in those RWPs. Currently, no CCA has analyses in its RWP regarding the staffing roles necessary to support the core services that they list or how such staffing roles necessary to support such core services would be available to continue operating the CCA in the event of a recovery and during an orderly wind-down.

b. Service Providers

Each RWP identifies and describes, to varying degrees, certain service providers, including both affiliates and third parties, upon which the associated CCA relies to provide its core payment, clearing, and settlement services. Most plans do not explicitly link the identified service providers to the CCAs' core payment, clearing, and settlement services. Some of the RWPs state that they assume core service providers will continue to perform in the event of a wind-down; at least one RWP states that it analyzes its contractual arrangements with respect to continuing to provide services during a recovery; [489] and at least one RWP states that it is reducing dependencies on third parties.

c. Scenarios

Each RWP generally identifies and describes certain scenarios that may potentially prevent the CCA from being able to provide its core payment, clearing, and settlement services as a going concern.[490] The RWPs differ in the number of scenarios identified and described as well as the extent of the specificity with which each scenario is discussed. For example, some RWPs present short qualitative analyses of member defaults, while others present long, detailed quantitative analyses of member defaults.

d. Criteria That Could Trigger Implementation

Each RWP identifies and describes criteria that could trigger the CCA's implementation of the recovery and orderly wind-down plans.[491] The RWPs differ in the number of identified triggering criteria and in the detail in which they discuss each triggering

[483] CCA Standards Adopting Release, *supra* note 5, at 70810; *see also* RWP Proposing Release, *supra* note 18 at Part II.A (discussing the guidance).

[484] *See* RWP Proposing Release *supra* note 18, at 34711 n.32 (regarding Form 19b–4); *id.* at 34712 n.41 (regarding proposed rule changes).

[485] *See, e.g., https://www.sec.gov/rules/sro/nscc/2018/34-82430-ex5a.pdf* (as an example of the redacted filing materials posted for SR–NSCC–2017–017); *see also id.* A commenter stated that CCA members will manage key risks better if they have transparency into the RWPs of their CCAs. *See* ICI Letter at 8 (''It is critical for clearing members and end-user customers, such as funds, to have greater transparency into the content of RWPs. Such transparency could allow participants to determine the extent of their potential liabilities and predictably manage exposures to a clearing entity.'').

[486] *See* RWP Proposing Release, *supra* note 18, at 34711 n.32.

[487] In a change from Proposed Rule 17Ad–26(a)(1), instead of referring to ''critical payment, clearing and settlement services,'' the final rule refers to ''core payment, clearing, and settlement services.'' Use of the descriptive term ''core'' rather than ''critical'' does not affect the Commission's prior guidance on identifying those services. *See supra* Part II.C.1.

[488] *See, e.g.,* Exchange Act Release Nos. 82462 (Jan. 2, 2018), 83 FR 884, 885 (Jan. 8, 2018) (SR–DTC–2017–021) (stating that the RWP provided a description of its services and the criteria to determine which services are considered critical) (''DTC 2017 Notice''); 82431 (Jan. 2, 2018), 83 FR 871, 872 (Jan. 8, 2018) (SR–FICC–2017–021) (stating that the RWP provided a description of its services and the criteria to determine which services are considered critical) (''FICC 2017 Notice''); 34–91806 (May 10, 2021), 86 FR 26561 (May 14, 2021) (SR–ICC–2021–005) (''ICC 2021 Order'') (stating that the ICC recovery plan explains that ICC's sole critical operation is provides credit default swap clearing services); 82316 (Dec. 13, 2017), 82 FR 60246, 60247 (Dec. 19, 2017) (SR–LCH SA–2017–012) (stating that LCH SA performed an assessment on identification of critical functions and shared services in accordance with Financial Stability Board guidance) (''LCH 2017 Notice''); 82430 (Jan. 2, 2018), 83 FR 841, 842 (Jan. 8, 2018) (SR–NSCC–2017–017) (stating that the RWP provided a description of its services and the criteria to determine which services are considered critical) (''NSCC 2017 Notice''); 82352 (Dec. 19, 2017), 82 FR 61072, 61074–75 (Dec. 26, 2017) (SR–OCC–2017–021) (stating that OCC's RWP identifies critical services and critical support functions) (''OCC 2017 Notice'').

[489] For example, OCC's plan discusses the critical vendors for each of the identified critical services, the critical support functions, and the critical external interconnections that OCC maintains with other FMUs, exchanges (including designated contract markets), clearing and settlement banks, custodian banks, letter of credit banks, clearing members and credit facility lenders, and the appendices to the plan identifies key vendors and service providers, as well as key agreements to be maintained. OCC 2017 Notice, *supra* note 488, at 61075. ICC's plan categorizes its critical services by those that are provided to ICC by its parent company versus those that are provided by external third parties, and it also details the IT systems and applications critical to ICC's clearing operations, including those provided by ICE, those provided by external third parties, and those that ICC itself provides. Further, the plan analyzes ICC's contractual arrangements in the context of continuing services under those contracts during recovery. 34–79750 (Jan. 6, 2017), 82 FR 3831 (Jan. 12, 2017) (SR–ICC–2016–013). In addition, NSCC's, FICC's, and DTC's plans identify external service providers for which the relationships are managed by a particular office within DTCC. *See, e.g.,* Securities Exchange Act Release Nos. 91428 (Mar. 29, 2021), 86 FR 17440, 17442 (Mar. 29, 2021) (SR–NSCC–2021–004) (''NSCC 2021 Notice''); 91430 (Mar. 29, 2021), 86 FR 17432, 17433–34 (Apr. 2, 2021) (SR–FICC–2021–002) (''FICC 2021 Notice''); 91429 (Mar. 29, 2021), 86 FR 17421, 17422 (Mar. 29, 2021) (SR–DTC–2021–004) (''DTC 2021 Notice'').

[490] For example, OCC's plan identifies and considers scenarios that may potentially prevent it from being able to provide its critical services as a going concern. *See* OCC 2017 Notice, *supra* note 488, at 61073. ICC's plan describes potential stress scenarios that may prevent it from being able to meet obligations and provide services and the recovery tools available to it to address these stress scenarios. *See* Securities Exchange Act Release No. 91439 (Mar. 30, 2021), 86 FR 17649, 17650 (Apr. 5, 2021) (SR–ICC–2021–005) (''ICC 2021 Notice''). LCH SA's plans categorizes potential stress scenarios in two ways as a result of either: (i) Clearing member defaults and (ii) non-clearing member events. *See* LCH 2017 Notice, *supra* note 488, at 60248. In addition, each of the plans for NSCC, FICC, and DTC discuss, at a general level, scenarios in terms of uncovered losses or liquidity shortfalls that could result from the default of one or more of its members as well as losses that could arise from non-default events. *See, e.g.,* NSCC 2021 Notice, *supra* note 489, at 17441; FICC 2021 Notice, *supra* note 489, at 17433; DTC 2021 Notice, *supra* note 489, at 17421.

[491] *See* OCC 2017 Notice, *supra* note 488, at 61079–80 (discussing OCC's identification of qualitative trigger events for both recovery and wind-down); 83 FR 34183, 34221, and 44970 (stating the DTC, NSCC, and FICC have identified wind-down triggers and that a CCA would have entered ''recovery phase'' when it issues its first loss allocation round); ICC 2021 Order, *supra* note 488, at 26562.

criterion. There are also differences in the descriptions of the processes that CCAs use to monitor and determine whether the triggering criteria have been met, thus causing their RWPs to be implemented.

e. Rules, Policies, Procedures, and Other Tools or Resources

Each RWP describes, to varying degrees, the rules, policies, procedures, and other tools or resources the CCA could rely upon in a recovery or orderly wind-down to address the scenarios identified in the RWP.[492]

f. Procedures To Ensure Timely Implementation

Each RWP mentions, to varying degrees, mechanisms that would ensure timely implementation of the RWP.[493] Some of the RWPs include specific procedures to ensure timely implementation of the recovery and orderly wind-down plan after specific criteria have been triggered. One of the RWPs has taken steps to ensure timely completion of its recovery and orderly wind-down plan.

g. Informing the Commission

Each RWP generally refers to informing the Commission about recovery or orderly wind-down activities. Some of the RWPs state that they will inform the Commission *after* a recovery or wind-down has been initiated.

h. Testing

Three RWPs provide for annual plan testing but with varying degrees of specificity about the participants' involvement as well as the frequency of such testing. One such RWP specifically refers to sharing the results of the testing with its board of directors, and another states that the RWP would be updated as appropriate as a result of the testing.[494] The remaining CCAs do not mention testing in their RWPs.

i. Board Review and Approval

Each RWP provides for periodic plan reviews, typically annually or biennially.[495] Two RWPs provide for non-scheduled reviews. In the existing plans, the boards of directors of the CCA are responsible for the review and approval of the RWPs, but the plans vary in whether they specify that such review will also occur after material changes to the CCA's operations or in response to the results of periodic testing of the RWPs.

4. Current Risk-Based Margin

As discussed in Part II.A *supra* and Part II.B *supra,* Rule 17Ad–22(e)(6) requires CCAs that provide central counterparty services to establish written policies and procedures reasonably designed to cover their credit exposure to their participants by establishing risk-based margin systems with certain characteristics. Intraday margining is an important tool used by CCAs to manage risk exposures on a real-time basis because it permits the CCAs to make quick changes in required collateral from their participants to cover actual and potential losses in response to volatility spikes.

a. Monitoring Exposure and Intraday Margin Calls

Each CCA currently has some ability to monitor for intraday exposure and to make certain intraday margin calls. The frequency of intraday monitoring and margin calls varies across markets, and it is responsive to the risk characteristics of the underlying markets and participants. Participants are generally required to post margin within an hour of notification or at specified times pursuant to the CCA's rules and procedures. The current practice of CCAs is to release excess margin to participants only once a day at a pre-scheduled time. CCAs have existing policies and procedures around the collection of intraday margin,[496] and some CCAs document when they determine not to make an intraday call pursuant to their written policies and procedures required under Rule 17Ad–22(e)(6)(ii).

For example, OCC revalues its participants' portfolios throughout the day to calculate updated account net asset value, and its rules provide it the authority to issue intraday margin calls.[497] Its intraday calls are generally issued between 11 a.m. and 1:30 p.m. when unrealized losses of an account, based on its start-of-day positions, exceed 50 percent of the account's total margin. NSCC's rules provide the authority to impose intraday mark-to-market charges, and NSCC tracks intraday market price and position changes in 15-minute intervals. NSCC generally collects additional margin if the difference between the most recent mark-to-market price of a participant's net positions and the most recent observed market price exceeds a predetermined threshold, which is currently 80 percent of the participant's volatility charge and may be reduced if NSCC determines that a reduction of the threshold is appropriate to mitigate risk during volatile market conditions.[498]

FICC's GSD and FICC's MBSD have the authority to make intraday margin calls.[499] FICC monitors changes in

[492] *See, e.g.,* 83 FR 34220–21 (identifying NSCC's recovery tool characteristics); FICC 2017 Notice, *supra* note 488, at 878 (identifying FICC's recovery tool characteristics); 83 FR 44970 (identifying DTC's recovery tool characteristics); OCC 2017 Notice, *supra* note 488, at 61075–80 (identifying OCC's enhanced risk management and recovery tools); ICC 2021 Order, *supra* note 488, at 26562 (identifying ICC's recovery tools); 83 FR 28886–87 (describing LCH SA's tools).

[493] Each of the plans for NSCC, FICC, and DTC provides a description of the governance and process around management of a stress event along a ''Crisis Continuum'' timeline. *See, e.g.,* NSCC 2017 Notice, *supra* note 488, at 842; FICC 2017 Notice, *supra* note 488, at 872; DTC 2017 Notice, *supra* note 488, at 886. OCC's recovery plan outlines an escalation process for the occurrence of a ''Recovery Trigger Event'' as well as provides general descriptions of how it would anticipate deploying its recovery tools in response to the six stress scenarios it identified. OCC 2017 Notice, *supra* note 488, at 61079–80. The ICC recovery plan describes the governance arrangements that provide oversight and direction of the plan. *See* ICC 2021 Notice, *supra* note 490, at 17649. The LCH SA recovery plan identifies the groups and individuals within LCH SA that are responsible for the various aspects of plan. *See* LCH 2017 Notice, *supra* note 488, at 60250.

[494] *See* ICC 2021 Order, *supra* note 488, at 26562 (referencing testing its Recovery Plan at least annually, as part of its annual default management drills and providing the results of such testing, as well as any changes it recommends due to such testing, to the ICC Board and Risk Committee); ICCEU, 83 FR 2857 (referencing testing elements of the Recovery Plan as part of normal operations and risk management procedures); LCH 2017 Notice, *supra* note 488, at 60250 (referencing fire drills intended to simulate all aspects of a member default, including the auctioning of the defaulting members portfolio to non-defaulting members (where appropriate) and involving the participation of members and relevant functions within the LCH SA organization, with revisions to the recovery plan as appropriate in light of the testing).

[495] NSCC, FICC, and DTC review their respective RWPs biennially. *See* NSCC 2021 Notice, *supra* note 489, at 17441; FICC 2021 Notice, *supra* note 489, at 17433; DTC 2021 Notice, *supra* note 489, at 17421. OCC conducts an annual review of its RWP. *See* Securities Exchange Act Release No. 90315 (Nov. 3, 2020), 85 FR 71384, 71385 (Nov. 9, 2020) (SR–OCC–2020–013); *see also* OCC 2017 Notice, *supra* note 488, at 61080. ICC's RWP describes governance arrangements that provide for oversight and direction in respect to review and testing of the plans. *See* ICC 2021 Notice, *supra* note 490, at 17651–52. LCH SA decided to review its wind-down plan on an annual basis or more frequently, if required. *See* Securities Exchange Act Release No. 88297 (Feb. 27, 2020), 85 FR 12814 (Mar. 4, 2020) (SR–LCH SA–2020–001).

[496] Rule 17Ad–22(e)(6)(ii).

[497] *See* OCC, Disclosure Framework *supra* note 96 at 50; OCC Rule 609 (regarding intra-day margin calls).

[498] *See* NSCC Disclosure Framework *supra* note 96 at 58; NSCC Rules, Procedure XV (defining intraday mark-to-market charge). *See* DTCC at 3.

[499] *See* FICC's GSD Rule 4, section 2a (regarding the intraday supplemental fund deposit); FICC's MBSD Rule 1 (defining intraday VaR and intraday mark-to-market charges) and Rule 4, section 2(b) (regarding the daily margin requirement) and section 3a (regarding the intraday requirements). In addition, FICC's GSD collects margin twice a day under its current rules, notwithstanding any additional intraday margin calls. *See* FICC's GSD Rules, schedule of timeframes.

pricing and positions frequently throughout the day, and it may collect intraday margin to cover the price movement from those participants with a significant exposure in an identified security or net portfolio and the market value of those positions.[500]

ICC also monitors each participant's intraday profit and loss to determine if its intraday exposure is covered by the margin on deposit, and it may issue margin calls to participants that are not sufficiently collateralized.[501] LCH SA also has the ability and authority to make intraday margin calls that are based on intraday positions and valuations.[502]

b. Reliable Sources of Timely Price Data and Other Substantive Inputs

CCAs use price data as well as other data sources and other substantive inputs in their risk-based margin systems, which is expected given the substantive differences in the markets and participants they serve. Based on its supervisory experience, the Commission understands that all CCAs generally have policies and procedures in place to use a risk-based margin system that uses reliable sources of timely price data and includes procedures and sound valuation models for addressing circumstances in which price data are not readily available or reliable. The Commission also understands that if a CCA uses other substantive inputs, such as portfolio size, asset price volatility, duration, convexity, and outputs from external model vendors, which are not required by the Commission's rules, not all CCAs have policies and procedures for addressing circumstances in which those substantive inputs are not readily available or reliable so that the CCA can continue to meet its requirements under Rule 17Ad–22(e)(6).The policies and procedures used when price data or other substantive inputs are not available vary from one RWP to another. For example, the largest component of margin at FICC's GSD is typically its ''VaR Charge.'' The VaR Charge is based on the potential price volatility of unsettled positions using a sensitivity-based Value-at-Risk (''VaR'') methodology over a ten-year historical look-back period. In addition, FICC's GSD also uses an alternative ''Margin Proxy'' calculation as a backup VaR Charge calculation to the sensitivity approach in the event that FICC experiences a data disruption with the third-party vendor upon which FICC relies to produce the sensitivity-based VaR Charge.[503] In a similar fashion, FICC's MBSD uses both a VaR Charge and, as a backup in the event of a data disruption from its third-party vendor, a Margin Proxy [504] NSCC relies upon a parametric VaR model to determine the potential future exposure of a given portfolio based on historical price movements, using 153 days as the minimum sample period for the historical data. For certain securities, including fixed income securities, UITs, illiquid securities, securities that are amendable to statistical analysis only in a complex manner, and securities that are less amenable to statistical analysis, a haircut-based volatility charge is applied in lieu of the VaR Charge.[505]

C. Consideration of Benefits and Costs as Well as the Effects on Efficiency, Competition, and Capital Formation

The following discussion sets forth the potential economic effects stemming from the final rule and amendments, including the anticipated effects on efficiency, competition, and capital formation. The benefits and costs discussed in this section are relative to the economic baseline discussed previously, which includes the CCAs' current RWPs and their current risk-based margin practices. A commenter agrees that there is a large benefit flowing from requiring the CCAs to better define their risk management procedures.[506]

The level of change a CCA makes to its RWP and risk management practices to bring itself into alignment with the final rule and amendments will impact the size of the benefits and costs, both direct and indirect, for the CCAs, their members, and the broader market. As stated in the baseline, each CCAs' plans differ in, for example, length, style, emphasis, and specificity, and each CCA has a current risk-based margin system that it has designed to manage certain idiosyncratic risks that it faces. Additionally, the final rules and amendments are designed to provide a CCA with discretion and flexibility, which means that the CCAs will be able to tailor their RWPs and risk-based margin systems to their particular situations.

To the extent that a CCA determines that it does not have to make changes to its RWP or risk-based margin system in response to a particular part of the final rule and amendments, the CCA, its participants, and the broader market will have already absorbed the benefits and costs of those parts of the final rule and amendments and, therefore, they may not experience any direct benefits or costs from those parts of the final rule and amendments.[507]

Sufficiently large disruptions in the operations at any of the CCAs would cause significant negative externalities in the markets they serve, which would likely spill over into other markets. These ripple effects would negatively affect numerous market participants, including investors. Because CCAs may not internalize the full cost of these externalities due in part to the structure of the clearing markets, their investments in their RWPs and risk-based margin systems might be suboptimal from a public welfare perspective.[508] An important benefit of the final rule and amendments is that they require CCAs to maintain a higher investment in risk management than they might otherwise choose if they

[500] *See generally supra* note 499; FICC Disclosure Framework at 65, *available at https://www.dtcc.com/-/media/Files/Downloads/legal/policy-and-compliance/FICC_Disclosure_Framework.pdf.*

[501] ICC Disclosure Framework at 22–23, *available at https://www.theice.com/publicdocs/clear_credit/ICEClearCredit_DisclosureFramework.pdf;* ICC Rule 401.

[502] *See generally* LCH SA Disclosure Framework at 31, *available at https://www.lch.com/system/files/media_root/LCH%20SA%20-%20Comprehensive%20Disclosure%20as%20required%20by%20SEC%20Rule%2017Ad-22%28e%29%2823%29_2022%20Q32022.pdf,* and LCH CDS Clearing Procedures section 2.21 (describing ''extraordinary margin'' that LCH SA may require to cover the risk of price/spread fluctuations occurring on an intraday basis).

[503] *See generally* FICC Disclosure Framework at 62; Release No. 34–82779 (Feb. 26, 2018), 83 FR 9055 (Mar. 2, 2018) (File No. SR–FICC–2018–801) (describing both the sensitivity-based VaR model that would use a third party vendor to supply security-level risk sensitivity data and relevant historical risk factor time series data and the use of the ''Margin Proxy'' in the event of a disruption at FICC's third-party vendor, as well as the procedures that would govern in the event that the vendor fails to deliver such data).

[504] *See, e.g.,* FICC Disclosure Framework at 64; Release No. 34–079643 (Dec. 21, 2016), 81 FR 95669 (Dec. 28, 2016) (File No. SR–FICC–2016–801) (describing both the sensitivity-based VaR model that would use a third party vendor to supply security-level risk sensitivity data and relevant historical risk factor time series data and the use of the ''Margin Proxy'' in the event of a disruption at FICC's third-party vendor, as well as the procedures that would govern in the event that the vendor fails to deliver such data); Release No. 34–92145 (June 10, 2021), 86 FR 32079 (June 16, 2021) (File No. SR–FICC–2020–804) (describing the calculation of the Minimum Margin Amount).

[505] *See* NSCC Disclosure Framework, *supra* note 498, at 58–61.

[506] *See* SIFMA at 3 (''Our members are in agreement with the Commissions' determination that there is a very significant benefit to requiring the Clearing Agencies to better define their risk management procedures'').

[507] They may experience indirect benefits to the extent other CCAs make risk-reducing changes that reduce the risk of negative spillovers.

[508] *See* SIFMA at 14 and 22 (''With the combination of clearing mandates and single product provider status, there is very limited business pressure on Clearing Agencies to invest in the optimum level of risk management. Rather, the impetus must come from regulatory oversight.'').

have not already adopted the requirements of the rule and amendments.

The Commission has sought to strike a balance between requirements that enhance risk management practices and recovery and winddown procedures and maintaining some flexibility in the design and implementation of these requirements. For example, while CCAs will be required to test their ability to implement the RWPs at least every 12 months, each CCA may structure the planning, execution, and analysis of each test in a way that reduces its aggregate testing costs for itself, its participants, and its other stakeholders, so long as the testing exercise addresses the distinct elements of the separate testing requirements.

The costs discussed in Part IV.C will be borne by CCAs and their participants. For CCAs owned by participants, all the costs will ultimately be passed on to participants because they are residual beneficiaries of the CCA. For CCAs not owned by participants, the level of pass-through will depend upon several factors, including the level of competition among clearing agencies and the existence of mandates that force market participants to clear. In both cases, the participants will likely pass through some of these costs to their customers, the level of which will depend on factors such as the customers' sensitivities to costs and the amount of competition between participants for customers. Generally, if a CCA does not face significant competition, it will have an incentive to absorb part of the cost increase. In the extreme case of a perfectly competitive market, on the other hand, an increase in costs will be fully passed through to the customer because there are no economic profits and price equals marginal costs.[509]

To the extent that a CCA's current practices are misaligned with the final rule and amendments, the CCA, as discussed in the remainder of this subsection, will need to modify its RWP or risk-based margin system to comply with the new standards. The resulting benefits and costs will increase with the number of modifications. Because the Commission has previously stated that RWPs are rules for purposes of a CCA's SRO obligations, and because the CCAs already have filed such RWPs with the Commission for approval, any such modifications will be subject to Commission review and public comment pursuant to Rule 19b–4.[510] Similarly, the Commission considers changes to a CCA's risk-based margin system as part of the SRO rule filing process, making any such modifications also subject to Commission review and public comment pursuant to Rule 19b–4.[511] The final rule and amendments could also cause a clearing agency to make different business decisions, such as capital expenditure decisions, that may not be subject to the same Commission review process.

One commenter stated that participants and end-user customers need ''greater transparency into the content of RWPs'' for several reasons, including allowing participants to better manage their exposure to the CCA and positively affecting the CCA's risk management functions.[512] The new rule and the final amendments will increase transparency because they impose a public minimum standard that all CCAs must follow and also because, as described in the baseline, CCAs are subject to a public notice and comment process before making certain changes, including changes to their rule books.[513]

1. Final Rule 17Ad–26

Final Rule 17Ad–26 sets forth nine elements that must be included in a CCA's RWP. The remainder of this subsection discusses each of these elements in turn, explaining how some will make RWPs more effective in guiding the CCAs during times of recovery or wind-down while others will help participants and regulators better understand how the CCAs will prepare for and respond to stress. The final rule will reduce systemic risk to the extent that it reduces the risk of unsuccessful recoveries, disorderly wind-downs, and negative spillovers to other clearing agencies and to other markets.[514] These benefits likely will increase with the amount of change each CCA makes to align itself with the final rule because, as stated in the baseline analysis, some RWPs are more aligned with the nine elements that are part of final Rule 17Ad–26 than are other RWPs. Final Rule 17Ad–26 will require CCAs to modify their RWPs to the extent their RWPs do not already align with the final rule. One commenter stated that the benefits are purely hypothetical because they would only accrue in the event of the implementation of a recovery plan.[515] The Commission disagrees with this assessment and anticipates that these changes may result in the CCAs being more aware of potential risks and the associated costs of certain factors under their control, which could, in turn, lead to the CCA making risk-reducing changes to certain business practices. A few commenters stated that CCAs' current risk-management efforts may be suboptimal from a public welfare perspective.[516] The final new rule includes a set of risk-focused requirements that RWPs must meet in the future, which will ensure that CCAs maintain a higher investment in risk management than they might otherwise choose.

[509] More specifically, the market clearing quantity of the good or service supplied will adjust and the extent of industry-wide cost pass-through in a perfectly competitive market depends on the elasticity of demand relative to supply. The more elastic is demand, and the less elastic is supply, the smaller the extent of pass-through, all else being equal. *See* RBB Economics, *Cost Pass-Through: Theory, Measurement and Potential Policy Implications,* 4 (Feb. 2014), *available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/320912/Cost_Pass-Through_Report.pdf.*

[510] *Supra* note 484. *See infra* section IV.C.1.j for cost estimates of written policies and procedures associated with final Rule 17Ad–26 and the rule 19b–4 approval process.

[511] *See infra* section IV.C.2.c for cost estimates of written policies and procedures associated with final Rule 17Ad–22(e)(6) and the Rule 19b–4 approval process.

[512] *See* ICI at 8 (''It is critical for clearing members and end-user customers, such as funds, to have greater transparency into the content of RWPs. Such transparency could allow participants to determine the extent of their potential liabilities and predictably manage exposures to a clearing entity. Importantly, increased transparency could facilitate input from participants that may serve to enhance a clearing entity's risk management functions. While requiring clearing entities to maintain and submit RWPs for regulatory purposes provides the agencies with needed visibility and can increase confidence in cleared markets, such requirements alone fail to provide these important benefits to market participants.''). *Id.* at 9 (''At a minimum, clearing members and customers should be aware of (1) the criteria that may trigger implementation, (2) the tools and strategies that a clearing entity plans to use, and (3) the source of capital or funds to be applied in a recovery or wind-down scenario. Providing access to these material portions of RWPs would help market participants have a more complete understanding of the risks presented by clearing with a particular clearing entity and allow them to better manage their exposures'').

[513] *See supra* note 484. Additionally, Rule 19b–4 would also apply to certain statements that a CCA issues concerning its margin methodology. *See supra* note 83.

[514] *See supra* note 475 and accompanying text. *See* Better Markets at 9 (''Requiring that the recovery and wind-down plans of covered clearing agencies include certain specific elements is likely to reduce the risk of unsuccessful recoveries, disorderly wind downs, and negative spillovers to other clearing agencies and other markets.'').

[515] Davidson at 2.

[516] *See supra* note 508 and accompanying text; *see also* Muth at 2 (''A complex cocktail of incentives familiar to the Commission but too labyrinthine to elucidate here causes management to (1) underestimate the risk of entity failure, (2) underestimate the range of scenarios that might threaten entity survival, and (3) underestimate the amount of information that needs to be communicated effectively to 'relevant authorities' to illuminate threats to the entity's solvency, especially when those threats are high-magnitude, low-frequency risks.'').

The Commission did not receive any comments on the costs each CCA will incur to bring its RWP into alignment with proposed Rule 17Ad–26(a)(4), (5), and (6).

a. Core Clearing and Settlement Services

Final Rule 17Ad–26(a)(1) requires RWPs to identify and describe their core payment, clearing, and settlement services and to address how the CCA would continue to provide such core services in the event of a recovery and during an orderly wind-down, including the (a) identification of the staffing roles necessary to support such core services, and (b) analysis of how such staffing roles necessary to support such core services would continue in the event of a recovery and during an orderly wind-down.

CCAs play an important role as financial market utilities. By virtue of the unique services that they offer, the network effects under which they operate, and their specialization by asset class, any failure of the CCAs to provide their core services might affect the stability of U.S. financial markets.[517] Accordingly, policies and procedures that increase the resiliency of CCAs are expected to improve the stability of these markets.

Each of the CCAs' RWPs currently identifies its core services, as stated in the baseline analysis, but they differ in the degree to which they address continuation in the event of a recovery and during an orderly wind-down.

Markets in which the dominant CCAs are currently less comprehensive in addressing continuation in their RWPs likely will benefit from this requirement because these CCAs will be required to work through and memorialize in their RWPs how the CCA will continue to provide its core services in the event of a recovery and during an orderly wind-down.

As mentioned in the economic baseline section, none of the CCAs currently identifies the staffing roles necessary to support core services or provides in their RWPs analyses of how such staffing roles necessary to support such core services would continue in the event of a recovery and during an orderly wind-down. Because CCAs do not currently identify the staffing roles that are necessary to support core services and how such staffing roles would continue during times of crisis, this new requirement likely will provide benefits to the market. Forward-looking analyses around issues related to potential staffing shortfalls should provide each CCA with additional certainty and clarity around who would deploy the RWP and supervise its implementation. The RWP might contemplate tools that help with the retention of certain personnel, the development of other internal personnel who could stand in for those personnel, the recruitment of replacement personnel, possibly from its own participants or from other domestic or international CCAs. In all cases, the tools should be robust regardless of the financial situation of the CCA. A CCA that retains its personnel and its ability to service external relationships in the event of a recovery or orderly wind-down may be able to reduce not only potential losses for its participants but also further market disruptions by ensuring its critical clearance and settlement services continue.[518]

The current lack of staffing role analyses in RWPs means that CCAs will incur costs, related to drafting the analyses and implementing the resulting conclusions from the analyses. For example, were the CCA to undertake a recovery or wind-down that significantly affects its operations or structure, a CCA may determine that certain personnel would be likely to leave the CCA. The CCA may determine that it is appropriate to strengthen its employee agreements so that those employees have more incentives to remain at the CCA during a recovery or wind-down even if this includes a sale or transfer of one or more of its core services to another entity or a receiver. Alternatively, or additionally, a CCA may choose to invest in internal development programs and processes so other employees acquire skills that are necessary during recovery and wind-down events, making the loss of any employee less costly via internal redundancy. Commenters stated that attracting and retaining skilled employees is costly; one commenter stated that some employees might chose to leave in certain circumstances despite having very lucrative employment contracts; another commenter stated CCAs with sufficient resources will be able to retain their key personnel.[519] The Commission recognizes that it may be costly to ensure that employees in essential staffing roles are available to support core services in the event of a recovery and during an orderly wind-down. The final rules do not require retention of any employee, but they do require the identification of staffing roles and an analysis of how those roles would continue. The final rules allow CCAs to use a variety of human resource management tools, which will better enable CCAs to find cost-effective tools that enable them to maintain their core services in the event of a recovery and during an orderly wind-down.

b. Service Providers

Final Rule 17Ad–26(a)(2) requires RWPs (i) to identify and describe any service providers for core services, specifying which core services each service provider support, and (ii) to address how the CCA would ensure that service providers for core services would continue to perform in the event of a recovery and during an orderly wind-down, including consideration of its written agreements with such service providers and whether the obligations under those written agreements are subject to alteration or termination as a result of initiation of the recovery and orderly wind-down plan.

One commenter stated that it is critical that CCAs have service contracts that cannot be terminated in the aftermath of an insolvency event,[520] whereas other commenters stated that CCAs cannot ''ensure'' that service providers would continue to perform in the event of a recovery and during an

[517] Five of the six CCAs have been designated by the FSOC as SIFMUs because the failure or disruption to the functioning of the financial market utility could create or increase the risk of significant liquidity or credit problems spreading among financial institutions or markets. *See Designations,* U.S. Dep't Treasury, *https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/fsoc/designations; see also supra* note 88.

[518] *See* SIFMA at 14 (''In fact, one of the lessons that can be drawn from the Lehman Brothers failure that precipitated the 2008 financial crisis is that the largest losses may not be the ones that lead up to the insolvency event, but rather those that follow the insolvency event. In the case of Lehman Brothers, its inability following the insolvency event to keep its personnel from leaving and the difficulty it had in continuing servicing relationships were in large part the cause of the financial losses to its customers and market disruptions.'').

[519] *See* Donaldson at 5 (''Likewise, the required skills, the demands on retention, and the time to identify, attract and train new staff to the necessary level of expertise in virtually all the relevant departments is very substantial.''). *See* SIFMA at 14 (''It is important that a Clearing Agency have service contracts that cannot be terminated in the aftermath of an insolvency event and that it has sufficient going concern resources that will allow it to retain its key personnel.''). *See* Donaldson at 6 (''The recent experience at a large household name social media company should make clear that even the most lucrative employment agreements are rarely sufficient to get highly in demand skilled employees to stay on board a 'sinking ship.' Furthermore, certain CCAs have organized labor agreements in place with many of their employees which would likely require time consuming renegotiation in order to satisfy this provision.'').

[520] *See* SIFMA at 14 (''It is important that a Clearing Agency have service contracts that cannot be terminated in the aftermath of an insolvency event and that it has sufficient going concern resources that will allow it to retain its key personnel.'').

orderly wind-down.[521] The Commission acknowledges that a CCA cannot ensure that a service provider for core services will continue to perform throughout a recovery and an orderly wind-down; nevertheless, if its analysis indicates that the service provider might not continue to perform in those events, it could address how it would handle any termination or non-performance by the service provider, which could satisfy the new requirements.[522]

Some commenters stated that the proposed definition of ''service provider'' was too broad and would unnecessarily increase CCA costs by capturing too many non-essential service providers.[523] The Commission generally agrees with the comments on this point and therefore made corresponding changes to the proposed rule text. The reduced scope of service providers captured by the revised rule is appropriate for recovery and orderly wind-down planning purposes and helps ensure that the CCA focuses its RWPs on the key risks and its responses to those risks.[524]

One commenter stated that due to differences across CCAs, markets, and members, CCAs must be afforded flexibility to interpret and implement the final Rule 17Ad–26(a)(2).[525] The Commission acknowledges that there are important differences across CCAs in terms of products cleared and markets served. The principles-based Rule 17Ad–26(a)(2) allows CCAs to take approaches in their RWPs that differ from those taken by other CCAs in their RWPs.

As stated in the baseline analysis, the RWPs differ in their degree of alignment with the final rule and the level of descriptiveness of service providers. The markets that likely will benefit the most from this new requirement are the ones in which the dominant CCAs' RWPs are currently the least comprehensive in identifying and describing the required service providers and identifying how those service providers will perform in the event of a recovery and during an orderly wind-down because those CCAs would have to negotiate with service providers to ensure their continued performance or find other alternatives. CCAs that make more changes in identifying the service providers and the core payment, clearing, and settlement services provided by each service provider likely will bring more benefits to the markets they serve by putting themselves in a better position to manage their service providers in the event of a recovery or during an orderly wind-down. One commenter stated that in the event that one of the service providers fails, it may not be possible to switch to another service provider because the remaining service providers might not be able to quickly scale up their operations.[526] The Commission recognizes that switching vendors may be difficult in certain circumstances such as during times of crisis and when other CCAs are switching in or out of the same service providers en masse. A key benefit of final Rule 17Ad–26(a)(2) is that CCAs will consider these sorts of costs and incorporate appropriate prophylactic responses to them into their RWPs. This will make the CCAs more resilient, by having more robust RWPs, which will, in turn, reduce the risk and/or size of systemic events.

Each CCA will incur costs to bring its RWP into alignment with the new rule, and these costs are estimated in Part IV.C.1.j, *infra.* These alignment costs will depend on the extent of the enhancements the CCA makes to its RWP, including any contractual changes with its service providers. The underlying costs of the contractual changes may be affected by the relative market power of the CCA versus the service provider in light of the regulatory requirement to meet these new standards. For example, the amendments require the consideration of the CCA's written agreements with its service providers and whether the obligations under those written agreements are subject to alteration or termination as a result of initiation of the recovery and orderly wind-down plan. Consequently, a service provider that has market power or offers a service for which there are high switching costs could potentially earn economic profits by increasing its fees to sign a written agreement with a CCA that ensures the continuation of a core service in the event of a recovery and orderly wind-down.

c. Scenarios

Final Rule 17Ad–26(a)(3) requires RWPs to identify and describe scenarios that may potentially prevent the CCA from being able to provide its core services identified in Rule 17Ad–26(a)(1) as a going concern, including (a) uncovered credit losses, (b) uncovered liquidity shortfalls, and (c) general business losses. As stated in the baseline analysis, each of the CCAs' RWPs currently identifies and describes, to varying degrees, certain relevant scenarios.

The more significant benefits of being required to identify these scenarios will accrue to those markets in which the dominant CCAs lack breadth and specificity in identifying and describing their scenarios. By better understanding the circumstances that could threaten their ability to provide their core services, these CCAs can take steps to reduce the likelihood of these scenarios and, should they materialize, be better prepared to achieve a recovery or orderly wind-down.[527]

Each CCA will incur costs to bring its RWP into alignment with the new rule. The alignment costs will depend on the extent of the enhancements the CCA makes to its RWP. The costs to modify plans that require changes, including those that need to be expanded to

[521] *See* CCP12 at 4 (''CCAs cannot 'ensure' that such service providers would continue to perform in the event of a recovery and during an orderly winddown.''). *See* DTCC at 8 (''This proposed requirement overestimates the negotiating leverage that CCAs have when entering contracts with service providers or assumes that CCAs would be able to unilaterally require service providers to continue performance during a recovery or orderly winddown.''). *See* ICE at 4 (''ICE does not believe it is possible for a [clearing agency] to 'ensure' that a service provider would perform.'').

[522] *See supra* Part II.C.2.

[523] *See* DTCC at 6 (''[The proposed rule] would capture large numbers of service providers to DTCC that are not immediately necessary to the ongoing operations of the critical services of DTCC's CCAs. We believe that this would result in a significant burden upon our CCAs (and likely other CCAs) with minimal benefit to the development of effective RWP.''). *See* ICE at 4 (''ICE believes that the proposed definition of 'critical services' would include third parties that are [not] 'in any way related to the provision of a critical service' and believes this definition is overly broad. In particular, the definition would cover service providers that are only tangentially related to clearing services and have no practical impact on recovery or wind-down planning which would be burdensome for CAs and provide minimal, if any, benefit.'').

[524] *See supra* Parts II.C.2.a and II.D.2.

[525] *See* DTCC at 2 (''DTCC continues to stress, as it has in prior comment letters to the Commission, that CCAs must be afforded the discretion and flexibility to interpret and implement rules based on the risk profiles, markets, and products that respective CCAs serve. Aspects from the Proposal that would benefit from this discretion include . . . the proposed requirement to include contractual terms and conditions that would prevent automatic termination by service providers in the event of a recovery or orderly wind-down.'').

[526] *See* Davidson at 7 (''[a]t present, while it is possible to operate separate genre of application software on different 'Cloud' providers, it is extremely challenging, requiring significant time for deployment and rigorous testing, to move a set of tightly woven operational software applications from one 'Cloud' provider to another. While the existence of several major competitors in the 'Cloud' computing space would appear to support the ability to move among providers in the highly improbable event of a catastrophic failure of one of them, the above constraints make that a time-consuming process for all users. . . . Notwithstanding their tremendous scale and ability to support existing customers with 'capacity on demand,' such vendors do not make a habit of operating with sufficient spare capacity to accommodate a significant piece of their competitors' business quickly and easily.'').

[527] *See supra* note 514.

include additional scenarios, will be modest, but they will vary across CCAs because of differences in the markets and participants they serve.

A commenter stated that CCAs underestimate the range of scenarios that might threaten their survival [528] and that scenario analyses impose small costs while yielding greatly enhanced transparency benefits.[529] A key benefit of final Rule 17Ad–26(a)(3) is that each CCA will revisit the question of what might threaten its ability to carry out its core services. As certain CCAs update their RWPs in response to this new rule, they may conclude that they need to add new scenarios and that they need to discuss their scenarios in more detail. That notwithstanding, it will not be costly for CCAs to comply with the new rule, which is shown by the cost estimates that are presented in Part IV.C.1.j *infra*. The Commission is not mandating that all CCAs include a common list of specific scenarios in their RWPs because of differences across CCAs and the products cleared and markets served—scenarios that are essential at one CCA might be irrelevant at another CCA—and because the list of scenarios is likely to change through time and is thus not suited for a static list.[530]

d. Criteria That Could Trigger Implementation

Final Rule 17Ad–26(a)(4) requires RWPs to identify and describe (a) criteria that could trigger the CCA's implementation of the recovery and orderly wind-down plans and (b) the process that the CCA uses to monitor and determine whether the criteria have been met, including the governance arrangements applicable to such process.

As stated in the baseline analysis, each CCA's RWP identifies and describes, to varying degrees, criteria that could trigger the implementation of a recovery or orderly wind-down. The largest benefits of this rule likely will accrue to the markets in which the dominant CCAs currently have the least comprehensive RWPs in identifying and describing appropriate triggers. The *ex ante* identification and description of triggers likely will have the benefit of being a disciplining mechanism that signals when and how the CCA may act during periods of market stress. The Commission further believes that the ex-ante identification and description of triggers likely will lead CCAs to anticipate and prepare for market stress or other events that could lead to a recovery or wind-down. Each CCA will incur costs to bring its RWP into alignment with the final rule. The alignment costs will depend on the extent of the enhancements the CCA makes to its RWP.

e. Rules, Policies, Procedures, and Other Tools or Resources

Final Rule 17Ad–26(a)(5) requires RWPs to identify and describe the rules, policies, procedures, and any other tools or resources on which the CCA could rely in a recovery or orderly wind-down. The markets that likely will benefit the most from this requirement are the ones in which the dominant CCAs have the least comprehensive RWPs in describing how the rules, policies, procedures, tools, and other resources could be used during a recovery or wind-down. Making these changes to their RWPs likely will enable the CCAs to anticipate more fully how future crises might affect their operations, which should enhance their ability to respond and, accordingly, decrease the expected costs borne by CCAs, the participants, and other stakeholders in future crises. For example, if a CCA determines that it needs a new rule to respond to a specific scenario, the CCA may be better positioned to respond appropriately to that scenario if it arises.

Each CCA will incur costs to bring its RWP into alignment with the final rule. The alignment costs will depend on the extent of the enhancements the CCA makes to its RWP. CCAs that determine that they need to include more responses, different resources, or better descriptions will incur more costs as they make appropriate modifications to their RWPs. The costs to modify plans that require changes, including those that need to be expanded, will increase with the number of required changes such as the number of new rules the CCA adopts.

f. Procedures To Ensure Timely Implementation

Final Rule 17Ad–26(a)(6) requires RWPs to address how the rules, policies, procedures, and any other tools or resources identified in Rule 17Ad–26(a)(5) would ensure timely implementation of the RWP. As stated in the baseline analysis, each RWP mentions the concept of timeliness in either recovery or wind-down, but most RWPs do not list specific procedures to ensure the timely implementation of the RWP. A key benefit of this rule is that CCAs will address in their RWPs how the RWP will be implemented in a timely manner when the need arises. A timely start will increase the chance that the CCA is able to address the underlying problem quickly and with low costs to the various stakeholders. The benefits of this rule likely will accrue primarily to the markets in which the dominant CCAs add more or better rules, policies, procedures, tools, or other resources to ensure timely implementation of their RWPs.

Each CCA will incur costs to bring its RWP into alignment with the final rule. The alignment costs will depend on the extent of the enhancements the CCA makes to its RWP. The costs to modify plans that require changes, including those that need to be expanded to include additional rules, policies, procedures, or any other tool or resource will be modest because current RWPs already place some focus on timeliness as a desired feature.

g. Informing the Commission

Final Rule 17Ad–26(a)(7) requires the CCA to inform the Commission as soon as practicable when the CCA is considering implementing a recovery or orderly wind-down. As stated in the baseline analysis, each RWP generally refers to informing the Commission, but some plans inform the Commission *after* initiating a recovery or orderly wind-down. Providing notice to the Commission when the CCA is considering implementing a recovery or orderly wind-down may help ensure that the Commission can, from the start, dynamically monitor how a CCA engages the recovery or wind-down event consistent with its established RWPs and the requirements of Commission rules, to help mitigate the potential onward transmission of system risk and help ensure that a wind-down, if necessary, is orderly. These benefits likely will accrue primarily to the markets in which the dominant CCAs currently do not have a plan in place for informing the Commission as soon as practicable when the CCA is considering implementing a recovery or orderly wind-down.

One cost of the new rule is that CCAs will need to decide whether they have begun considering an implementation of either a recovery or an orderly wind-down. The marginal cost of such a determination is small, and it would

[528] *See* Muth at 2 (''A complex cocktail of incentives familiar to the Commission but too labyrinthine to elucidate here causes management to . . . underestimate the range of scenarios that might threaten entity survival'').

[529] *See id.* at 3 (''The requirement of explicit consideration in the recovery plan of what might lead to each scenario's coming into being and how the scenario might take shape (including prerequisite contemplated market conditions) imposes a small burden on compliance and risk functions in the entity while creating greatly-enhanced transparency to investors and regulators around how, how quickly, and under what conditions the entity may fail to meet obligations.'').

[530] *See infra* Part IV.D.1.

occur in the normal course of business, separate from the new requirement. For example, a CCA generally would be ''considering'' implementing a recovery when the clearing agency determines that a market event may result in uncovered losses, liquidity shortfalls, or capital inadequacies at the CCA following end-of-day settlement, or when the CCA anticipates that it will need to deploy prefunded financial resources or liquidity arrangements following end-of-day settlement in order continue meeting its regulatory obligations.[531] Those determinations would be made in absence of the final notification rule, and they do not therefore affect the rule's costs. Additionally, the primary focus for the CCA is on the timeliness of the notification to the Commission and not on its method or form.[532] The Commission can best ensure that actions appropriate to maintaining financial stability can be made if it is notified when a CCA is ''considering'' action, rather than when a CCA has already begun to implement its RWP. For example, the Commission or other authorities may evaluate the available actions or tools to address or mitigate financial stability concerns in response to market events.

A commenter stated that CCA management may face disincentives to candid communication with the Commission about considering implementing a recovery or orderly wind-down because of concerns about other implications of such reporting, including the potential for harm in future shareholder litigation.[533] We acknowledge that there may be conflicting incentives for individual managers regarding any regulatory reporting, but we do not believe that these conflicting incentives would undermine the intended benefits nor do they alter the reporting and disclosure obligations of CCAs or their publicly-traded affiliates. These conflicting incentives are already present in the regulatory structure. All CCAs currently maintain frequent communication with Commission staff about potentially sensitive information. And CCAs are already required to disclose key information about their operations to various third parties that may be considerably more extensive than that which is mandated by new Rule 17Ad–26(a)(7). Pursuant to Commission rules, for example, clearing participants generally will be notified of circumstances related to a participant default, the potential for a portfolio auction, and the use of default management tools that may precede a recovery or wind-down event.[534] Finally, while CCAs' publicly-traded affiliates will need to consider whether public disclosure to investors is appropriate when considering implementing a recovery or orderly wind-down, those considerations exist regardless of any required notification to the Commission.

Each CCA will incur costs to bring its RWP into alignment with the final rule. The alignment costs will depend on the extent of the enhancements the CCA makes to its RWP. The costs to modify plans that require changes, including those that need to change their RWPs to notify the Commission before the RWP implementation, likely will be modest because current RWPs already place some focus on informing the Commission. If the CCA ever experiences an event that causes it to consider implementing a recovery or orderly wind-down, it will have to devote nominal resources to inform the Commission as soon as practicable.

h. Testing

Final Rule 17Ad–26(a)(8) requires RWPs to include procedures for testing the CCA's ability to implement the RWPs at least every 12 months, including by (a) requiring the CCA's participants and, when practicable, other stakeholders to participate in the testing of its plans; (b) requiring that such testing would be in addition to testing pursuit to paragraph (e)(13) of 17 CFR 240.17ab–22; (c) providing for reporting the results of the testing to the CCA's board of directors and senior management; and (d) specifying the procedures for, as appropriate, amending the plans to address the results of such testing.

A few commenters stated that CCAs need considerable latitude in designing and executing their testing obligations because including participants and certain other stakeholders in plan testing may be inefficient and perhaps inappropriate due to costs, sharing of private and confidential information, and other reasons.[535] The Commission recognizes that there are certain efficiencies from allowing each CCA to customize its testing due to differences between markets, cleared products, participant types, and testing obligations from other regulators and final Rule 17Ad–26(a)(8) allows a CCA to designate in its policies and procedures that certain participants, or categories of participants, be designated for participation in certain tests. It may not always be appropriate to include certain participants in all aspects of testing.[536] The different types of products that each CCA clears helps determine the type, resources, and expertise of stakeholders that participate in these testing exercises. For example, in testing of loss allocation tools, where losses could be assigned to a participant, it may be useful to include participants in the testing to allow them to understand when they can be expected to bear losses and how those losses would be absorbed. In testing that involves business losses or certain types of non-default losses, it may be less appropriate to have participants participate in the testing.

One commenter stated that new testing requirements would require significant investment of time and resources by a CCA's most critical personnel, both in the planning of the test and in the likely manual execution of the test for many CCAs.[537] The Commission acknowledges that CCAs will incur costs every 12 months to plan and execute their tests. The CCAs' most critical personnel will likely need to be actively engaged in the execution of the tests, including monitoring both market conditions and the CCAs' resources as the situation develops. As stated above, including critical personnel in testing may increase the overall cost of testing, but it is necessary because these critical personnel are best positioned to identify the planning and procedures that can help ensure timely and effective implementation of the RWP in the event of a future recovery or orderly wind-down.[538] Plan testing benefits CCAs because it helps them identify weakness during the testing that can be used to update their RWPs and it helps them gain practical skills that may be used during an actual recovery or wind-down event. These effects, in turn, improve the stability of the CCAs, which benefits not only their participants but also the broader financial markets. A key cost to the CCA during plan testing is the

[531] *See supra* Part II.C.7.

[532] *See supra* Part II.C.7.

[533] *See* Muth at 2 (''In the case of publicly-traded entities in particular, management may be understandably hesitant to make forward-looking pessimistic statements that may be unearthed in future shareholder litigation or insolvency proceedings.''); *id.* (''A complex cocktail of incentives familiar to the Commission but too labyrinthine to elucidate here causes management to . . . underestimate the amount of information that needs to be communicated effectively to 'relevant authorities' to illuminate threats to the entity's solvency, especially when those threats are high-magnitude, low-frequency risks.'').

[534] *See supra* Part II.C.7.

[535] *See* CCP12 at 4; DTCC at 9; ICE at 4.

[536] *See supra* Part II.C.8.c.

[537] *See* OCC at 10.

[538] *See supra* Part II.C.8.b.

opportunity cost of the critical personnel being less available to attend to other matters, and participants will incur related costs from their participation.

In the RWP Proposing Release, the Commission requested comment on how costly it will be for CCAs to test their plans as required in Rule 17Ad–26(a)(8).[539] No commenter, including the CCAs, provided estimated plan-testing costs or other information that would aid the Commission in quantifying the costs for CCAs to test their RWPs every 12 months.[540] Because under the final rule the nature and scope of the required testing is dependent on the needs of each CCA, it would be impracticable to estimate the cost of testing without particularized information about the elements and testing scenarios of each CCA's RWP after the RWPs have been brought into alignment with the final rule. Final Rule 17Ad–26(a)(8) allows a CCA to retain discretion to organize and design its testing scenarios to ensure that testing exercises produce effective tests of the elements of the RWP. This discretion means that each CCA may test different default and non-default scenarios from one another. Additionally, final Rule 17Ad–26(a)(8) does not create parameters around the number of scenarios a CCA is required to test. Final Rule 17Ad–26(a)(8) also allows a CCA to designate in its policies and procedures certain participants, or categories of participants, for participation in certain tests. Each CCA will rely on different resources and expertise of stakeholders depending on its market and the type of products that the CCA clears, and the number and identity of those participants will also vary.[541] The Commission would need more information about the type and number of scenarios each CCA is testing or the type and number of participants each CCA will be designating in order to quantify the cost of testing.

A few commenters also stated that testing requirements in Rules 17Ad–22 and 17Ad–26 should be harmonized to the extent possible due to high testing costs that outweigh benefits of independent testing.[542] The testing requirements in new Rule 17Ad–26(a)(8) are in addition to those in Rule 17Ad–22(e)(13), and each test must be performed because RWP testing may require consideration of scenarios and testing of procedures that go beyond default management. For example, recovery includes the actions taken to address uncovered losses and replenishment of prefunded resources, and wind-down includes actions taken when resources have been exhausted, necessitating the permanent cessation, sale, or transfer of one or more of the CCA's core services. Nevertheless, each CCA is allowed to structure the planning, execution, and analysis of each test in a way that improves efficiency and reduces its aggregate testing costs for itself, its participants, and its other stakeholders so long as the testing exercise addresses the distinct elements of the separate testing requirements.[543] A more comprehensive testing exercise may make it less costly to assemble a representative set of participants and other key stakeholders, as well as the board, producing a more effective testing exercise.

The new test required by final Rule 17Ad–26(a)(8) cannot be subsumed by the default management tests under Rule 17Ad–22(e)(13) because it goes beyond default management by including, for example, recovery, which includes the actions taken to address uncovered losses and replenishment of prefunded resources, and wind-down, which includes actions taken when resources have been exhausted, necessitating the permanent cessation, sale, or transfer of one or more of the CCA's core services.

As stated in the baseline analysis, only a few RWPs refer to plan testing. The markets that likely will benefit the most from this requirement are those in which the dominant CCAs have the least comprehensive policies around testing in their RWPs because those CCAs likely will create procedures for more frequent testing and the inclusion of more stakeholders, and those changes likely will help ensure that those RWPs remain current and take into account changing system and market conditions. Additionally, the testing will help the test participants and other stakeholders better understand the recovery and orderly wind-down processes, and it may make them more efficient in the event of an actual recovery or wind-down event because of their practice going through a dry-run recovery and orderly wind-down. Contrary to the suggestion of a commenter, the participation in a real test yields benefits for the various stakeholders that they cannot learn through other methods, including reading the CCAs' RWPs.[544]

The upfront costs to begin testing as required by the new rule may not be large for the four CCAs that do not mention plan testing in their RWPs because they might be able to leverage existing requirements around default management testing under Rule 17Ad–22(e)(13) as they develop their new plans that are distinct from those existing requirements.[545] The corresponding testing costs for the CCAs' participants and, when practicable, other stakeholders likely will be moderate, in part because the CCAs are already required to include such entities in their default procedures testing under Rule 17Ad–22(e)(13). The costs for any subsequent RWP amendments in response to the annual testing likely will be small.

i. Board Review and Approval

Final Rule 17Ad–26(a)(9) requires RWPs to include procedures requiring review and approval of the plans by the board of directors of the CCA at least every 12 months or following material changes to the CCA's operations that would significantly affect the viability or execution of the plans, with such review informed, as appropriate, by the CCA's testing of the plans. As stated in the baseline analysis, each RWP refers to periodic plan reviews, typically annually or biennially.

The markets that likely will benefit the most from this requirement are those in which the dominant CCAs currently have the least comprehensive RWPs in addressing plan review because they would create more frequent procedures for review, and more frequent reviews, in turn, should help ensure that RWPs remain current and consider any changes to the CCAs' operations.

There are costs associated to this new requirement. The board of directors of some CCAs will need to devote additional time and resources as they move to a review cycle of at least every 12 months, and they will need to review material changes to the CCA's operations that would significantly affect the viability or execution of the plans. For those CCAs that review every two years, moving to a review at least every 12 months will increase their

[539] RWP Proposing Release, *supra* note 18, at 34740 (''44. How costly will it be for covered clearing agencies to test their plans as required in proposed Rule 17ad–26(a)(8)? What costs will be incurred by the participants and, when practicable, other stakeholders? Will any of these costs substantively vary based on whether or not the current RWP includes testing?'').

[540] *See infra* note 542.

[541] *See supra* Table 1 for the number of participants at CCAs as of Aug. 2024.

[542] *See* DTCC at 10–11; ICE at 4–5; OCC at 10–11 (concluding that imposing additional testing requirements or mandating a separate, RWP-designed test would be duplicative of ongoing testing and would introduce unnecessary and potentially significant burdens without a proportionate benefit); CCP12 at 4–5; CFA at 4.

[543] *See supra* Part II.C.8.b.

[544] CCP12 at 4.

[545] *See* 17 CFR 240.17ad–22(e)(13); *supra* Part II.C.8.b.

costs by as much as a factor of two. We estimate that the cost of the additional time and resources for each additional review will be minor because we do not anticipate that this type of review will take many hours or many board resources.

Material changes to the CCA's operations may result in changes to the RWP. Those RWP changes that are material will be reviewed by the board. We estimate that the cost of the additional time and resources by the CCA to determine which RWP changes are material will be minor because we do not anticipate that this determination will take many hours or many resources.

Each CCA will incur costs to bring its RWP into alignment with the final rule. The alignment costs will depend on the extent of the enhancements the CCA makes to its RWP. The costs to modify plans that have biennial reviews to replace them with annual reviews will be modest. The costs to review RWPs after material changes to the CCAs' operations will depend on the nature and number of material changes that result in new reviews.

j. Quantified Costs of Written Policies and Procedures Associated With Final Rule 17Ad–26

The Commission has estimated the implementation and ongoing cost of final Rule 17Ad–26. The estimated average implementation cost for one CCA to review and update existing policies and procedures is about $49,000.[546] These approximate costs are the same as those estimated at the proposal stage for final Rule 17Ad–26 adjusted for inflation, and we did not receive any specific comments on this estimate.

One commenter provided feedback on the additional cost of obtaining Commission approval for any updated policies and procedures pursuant to Rule 19b–4.[547] The commenter stated that a two order of magnitude multiplier should be applied to the Commission's cost estimate because the rule-change process requires a broad cross-section of a CCA management and staff, as well as interactions with SEC staff.[548] The Commission acknowledges that once a CCA has reviewed and updated its policies and procedures the CCA will have to submit its plan modifications to the Commission for review, public comment, and approval as required by Rule 19b–4, which requires time and effort from both CCA management and staff. As the number of consultations between CCA management and SEC staff increases during the process of submitting the CCA's plan modifications, there will be corresponding increases in costs, as the commenter suggested. But the magnitude of these costs will be far less than the commenter suggested (*i.e.,* 100 times more than the costs associated with reviewing and updating policies and procedures). Instead, the Commission estimates this process will conservatively cost about $74,000 per CCA.[549] In addition, to the extent that a CCA must submit an advance notice, the Commission estimates a cost of about $73,000 per CCA.[550]

Final Rule 17Ad–26 will also impose ongoing costs on a CCA. The rule will require ongoing monitoring and compliance activities with respect to the written policies and procedures created in response to the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance costs with respect to existing 17 CFR 240.17ad–22(e)(2) (''Rule 17Ad–22(e)(2)''),[551] the Commission estimates that the ongoing monitoring and compliance activities required by final Rule 17Ad–26 will impose an annual cost on CCAs of $19,000 per CCA.[552] These approximate costs are the same as those estimated at the proposal stage for final Rule 17Ad–26 adjusted for inflation, and we did not receive any specific comments on this estimate.

2. Amendments to Rule 17Ad–22(e)(6)

Rule 17Ad–22(e)(6) requires CCAs that provide central counterparty services to establish a risk-based margin system to manage their credit exposures to their participants. The final amendment to Rule 17Ad–22(e)(6)(ii) will strengthen the requirements: (a) by requiring that CCAs monitor intraday risk exposures to their participants on an ongoing basis, and (b) by providing additional specificity to the circumstances in which CCAs should have policies and procedures in place to make intraday margin calls. The final amendment to Rule 17Ad–22(e)(6)(iv) will strengthen the requirements by ensuring that CCAs can meet their Rule 17Ad–22(e)(6) obligations when their price data or other substantive inputs are not available by including procedures to use price data or other

[546] The $49,000 estimate is based on the following calculations: $11,460 (blended hourly rate for assistant general counsel at $573 for 20 hours) + $22,450 (blended hourly rate for compliance attorney at $449 for 50 hours) + $8,575 (blended hourly rate for business risk analyst at $245 for 35 hours) + $6,600 (blended hourly rate for senior risk management specialist at $440 for 15 hours) ≈ $49,000. Salaries for estimates presented in this section are derived from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified to account for an 1,800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. *See infra* note 610. As stated in the baseline analysis, some RWPs are more aligned with the nine elements that are part of final Rule 17Ad–26 than are other RWPs, so the estimated cost may vary.

[547] Davidson at 12 (''As a general matter the cost estimates in the document for the CCAs to conform to the proposed rules are ridiculously low. Rule change processes require the participation by a much broader cross-section of CCA management and staff . . . . A two order of magnitude multiplier on the current document's estimates would not overcount the cost to comply.'').

[548] *Id.* (''Furthermore, the 'informal' interaction with [Trading & Markets] staff frequently continues for multiple months, always involving Legal Department staff and frequently requiring the engagement of domain experts as well. All this happens before a formal submission is permitted, and the post formal submission process also requires a significant amount of interaction, although that process draws more on Legal than domain expert resources.'').

[549] Assuming that the distribution of responsibility among CCA staff for completing the Rule 19b–4 submission process is similar to the distribution for reviewing and updating policies and procedures, *see supra* note 546 (estimating 120 hours of total CCA staff time), the commenter's estimate would imply that CCA staff would spend an average of approximately 12,000 hours per submission, inclusive of the 120 hours to review and update policies and procedures. The Commission disagrees that this is a reasonable estimate of the number of hours for the process. Rather, the Commission has previously estimated—after receiving no comments on a similar estimate in the proposing release—that submitting a proposed rule change through the Rule 19b–4 process takes a CCA 34 hours for an average rule change filing and 129 hours for a novel or complex rule change filing. *See* Process for Submissions for Review of Security-Based Swaps for Mandatory Clearing and Notice Filing Requirements for Clearing Agencies; Technical Amendments to Rule 19b–4 and Form 19b–4 Applicable to All Self-Regulatory Organizations, Release No. 34–67286 (June 28, 2012) 77 FR 41602, 41631 & n.211 (July 13, 2012). Using the time for a novel or complex rule change filing as a conservative estimate, the Commission assumes that the CCA staff with the highest hourly cost involved in reviewing and updating CCA policies and procedures (*i.e.,* an assistant general counsel) performs all 129 hours of tasks associated with the Rule 19b–4 submission process, resulting in an estimated cost of $74,000. Specifically, the $74,000 estimate is based on the following calculations: $73,917 (blended hourly rate for assistant general counsel at $573 for 129 hours) ≈ $74,000. If instead the estimated time for an average rule change filing were used, the estimated cost would be $19,000 based on the following calculations: $19,482 (blended hourly rate for assistant general counsel at $573 for 34 hours) ≈ $19,000.

[550] The Commission estimates an additional cost of $73,000 based on the following calculations: $52,716 (blended hourly rate for assistant general counsel at $573 for 92 hours) + $20,440 (blended hourly rate for attorney at $511 for 40 hours) ≈ $73,000. *See id.* at 41632 & nn.213–14 (estimating time for Advance Notice).

[551] *See* CCA Standards Adopting Release, *supra* note 5, at 70892 (discussing Rule 17Ad–22(e)(2)).

[552] The $19,000 estimate is based on the following calculations: $5,730 (blended hourly rate for assistant general counsel at $573 for 10 hours) + $13,470 (blended hourly rate for compliance attorney at $449 for 30 hours) ≈ $19,000. *See infra* note 611. As stated in the baseline analysis, some RWPs are more aligned with the nine elements that are part of final Rule 17Ad–26 than are other RWPs, so the estimated cost may vary.

substantive inputs from an alternate source or to use a risk-based margin system that does not similarly rely on the unavailable or unreliable substantive inputs.

a. Monitoring Exposure and Intraday Margin Calls

CCAs use intraday margin calls as one of their tools to manage their credit exposures to their participants. The final amendment to Rule 17Ad–22(e)(6)(ii) requires CCAs to monitor exposure on an ongoing basis and to make intraday margin calls as frequently as circumstances warrant, possibly including when risk thresholds specified by the CCA are breached or when the products cleared or markets served display elevated volatility, which would help reduce, but not eliminate, their credit exposure to their participants. When facing special circumstances such as these, the CCA is required to document when it determines not to make an intraday call pursuant to its written policies and procedures required under amended Rule 17Ad–22(e)(6)(ii)(C).

Two commenters stated that members' intraday actions can create large negative externalities with respect to other participants and the CCA itself that the CCA could mitigate through its margin policies.[553] One commenter stated that margin calls benefit participants and the CCA, which, in turn, serves the interests of broader market stability.[554] The Commission recognizes that the structure of these clearing markets may permit certain negative externalities, and it has crafted the amendment to Rule 17Ad–22(e)(6)(ii) to reduce those externalities, which will, in turn, improve market stability. The final amendment affords CCAs latitude in crafting their updated margin procedures that will better reduce these negative externalities given their products cleared and markets served.

Each CCA will have to determine how to operationalize ''on an ongoing basis'' and ''as frequently as circumstances warrant'' given its own market and participants. Each CCA will also need to ensure that its systems can monitor exposure and make margin calls at those frequencies. As discussed in the baseline analysis, each CCA is already capable of monitoring exposure and collecting margin on an intraday basis; nevertheless, some CCAs might need to make changes to align with the final amendment, such as increasing the frequency of exposure monitoring and improving their information technology, so they can process more frequent scheduled and *ad hoc* intraday margin calls. As facts and circumstances change through time, CCAs might need to change how they operationalize these new requirements, including changing the frequency of potential scheduled and *ad hoc* intra-day margin calls.

To the extent a CCA currently aligns with the final amendment, it will not experience new benefits from the final amendment. Nevertheless, the amendment will have incremental benefits for the market because it will ensure that the CCAs continue to meet the standard of the final amendment with which they are currently aligned and that any new CCA that provides central counterparty services meets the same standard.

In addition to updating policies and procedures surrounding the risk-based margin systems that require changes, some CCAs might need to update IT and other systems in order to assess, impose, and collect intraday margin on a more frequent basis. The costs to modify the risk-based margin systems that require changes will be modest because CCAs have already incurred the initial costs of building their risk management infrastructure, including the ability to make intraday margin calls based on some sort of intraday monitoring. Once those costs have been incurred and amortized, the variable costs of modifying the *frequency* of the monitoring, and of additional margin calls, are likely low.

To the extent that the final amendment results in CCAs being positioned to make more unscheduled margin calls, participants may face increased liquidity-management costs whether or not the CCAs actually make more unscheduled margin calls. Several commenters highlighted the potential for increased margin calls to impose increased liquidity costs on the CCAs' participants and their clients,[555] and several commenters explicitly stated that CCAs, in order to reduce participants' liquidity costs, must make the triggers for intraday margin calls known to their participants.[556] A CCA's margin methodology constitutes a material aspect of its operations, meaning that it should be considered part of a CCA's stated policies, practices, or interpretations under Exchange Act Rule 19b–4. As such, a CCA's margin methodology is subject to the filing obligations applicable to SROs under section 19(b) of the Exchange Act regarding any proposed rule or proposed change to its rules. Through the notice and comment process, market participants and the general public will have transparency into a CCA's margin call methodology. This information will enable the participants to reduce their liquidity costs to the extent they incorporate it into their liquidity models. That notwithstanding, a CCA's policies and procedures regarding intraday margin generally should consider concerns such as procyclicality, so not every margin call can be perfectly predicted by the participants.

One commenter stated that it is more costly for participants to respond to margin calls late in the trading day than early in the trading day because, in part, the United States is the last major market to close each day due to the geographic position of the International Date Line.[557] The Commission recognizes that margin calls are costly for participants, that those costs may potentially rise near the end of the trading day, and that those costs may potentially be higher during times of market stress; nevertheless, these time-varying costs are not unique to the clearing market. Some participants might adjust their liquidity models to control for the costs of late-in-day *ad hoc* margin calls that CCAs might make.

A few commenters stated that CCAs should be quick to return margin if markets revert during the trading day, and no commenter recommended against it.[558] The Commission is unaware of any CCA that routinely returns margin on an intraday basis today even though no SEC rule would

[553] *See* Better Markets at 2 (''The requirement that covered clearing agencies monitor intraday exposure responds to the risks that may arise intraday. A CCP faces the risk that its exposure to its participants can change rapidly as a result of intraday changes in price, positions, or both, including adverse price movements, as well as participants building larger positions through new trading (and settlement of maturing trades). For these reasons, a CCP must monitor and address such risks on an ongoing basis.''); *see also* SIFMA at 4 (''Failure to collect and maintain adequate margin from one clearing member transfers the risk of that deficiency to the other clearing members and market participants.'').

[554] *See* SIFMA at 6 (''SIFMA believes that the making of such calls is essential to prudent risk management by a Clearing Agency and thus provides meaningful benefits not only to the Clearing Agency, but also to market participants and serves the interests of financial stability by protecting the Clearing Agency from default risk.'').

[555] *See* Davidson at 9; Better Markets at 7; ICI at 10 (stating ''the unpredictability of such margin calls means that funds must keep a portion of their assets in highly liquid assets in anticipation of potential ad hoc intraday margin calls, which may lower returns for fund investors''), 11; SIFMA at 9; The Associations at 2; ICE at 2.

[556] *See* Better Markets at 7; ICI at 11; SIFMA at 5, 9.

[557] *See* Davidson at 9.

[558] *See* The Associations at 2; Davidson at 2; SIFMA at 8.

prohibit it. The Commission is not requiring CCAs to return some or all the newly collected intraday margin in the event of a same-day reversion, and it is instead leaving that decision to each CCA. The CCA will need to balance the benefits of potentially reduced liquidity costs to the participant from returning intraday margin against the benefits of potentially decreased risk to the CCA and its members from retaining intraday margin during periods of heightened asset volatility. The Commission's approach to Rule 17Ad–22(e) is to provide flexibility to CCAs, subject to their obligations and responsibilities as SROs under the Exchange Act, to design and structure their policies and procedures to take into account the differences among clearing agencies and their participants and differences through time.

Increased intraday margin calls may potentially result in procyclicality problems that exacerbate market stress: margin calls during periods of declining asset prices may cause participants to sell assets, putting further negative pressure on asset prices and the market that may negatively affect not just other participants but also may spill over into other CCAs and their markets.[559] This stress may be transmitted by participants that are members of more than one CCA when, for example, a margin call in one market makes a participant sell assets in a different market. The stress may also be transmitted by assets that are linked between markets, such as the link between option prices (OCC) and equity prices (NSCC). Various industry participants have expressed concerns that excessive intraday margin calls, especially unanticipated ones, have the potential to exacerbate liquidity issues for clearing members who would have to post new liquid collateral to the CCA with little notice,[560] and one commenter stated that the unanticipated margin call itself might cause the member firm to default.[561] On the other hand, such intraday margin calls reduce immediate credit risk for the CCAs during periods of market stress, which, in turn, reduces risk for the other participants of those CCAs.

CCAs, when deciding whether to make an intraday margin call exception, generally should consider these concerns about procyclicality and potential participant default.[562] Notwithstanding their written policies and procedures that would require a CCA to issue a margin call in a particular situation, the CCA may choose to make an exception to its policies and procedures and not make a call, including in a situation where the CCA believes that procyclicality is a substantive risk or that the risk of the default of a particular participant is transient, perhaps due to the CCA's knowledge of the participant's portfolio. CCAs' ability to make exceptions based on their particular facts and circumstances allows them to balance these competing risks during future crises.[563]

b. Reliable Sources of Timely Price Data and Other Substantive Inputs

CCAs have risk-based margin systems that, to different degrees, align with the final amendment to Rule 17Ad–22(e)(6)(iv), with the exception of at least one CCA that likely would need to implement additional changes to its risk-based margin system to ensure that it could continue to meet its obligations under Rule 17Ad–22(e)(6) in the event of the unavailability of a substantive input from a third party. If that one CCA were to lose access to its price data or other inputs, it may be unable to perform its core payment, clearing, and settlement services, and that, in turn, may force it into an orderly wind-down, which would have negative implications for its participants and the broader financial system.

The incremental benefits of the final amendment beyond the baseline lie primarily in expanding the scope of this rule beyond price data and further specifying the nature of the procedures that a CCA uses if such data or inputs are not readily available or reliable and in ensuring that any new CCA has that same standard of the final amendment. These benefits are substantial because the final amendment reduces the risk that the CCA fails to provide its core payment, clearing, and settlement services in future periods of high market stress.[564] For example, the Options Clearing Corporation cleared a year-to-date average daily volume of 47.4 million contracts through April 2024, and DTCC reported that the average daily cleared broker-to-broker transactions was $1.9 trillion in 2023.[565] Because there is increased activity in the financial markets at the end of the trading day,[566] even a one-hour price data feed malfunction near the end of the trading day could affect the normal processing of millions of options contracts and hundreds of billions of dollars of equity transactions. Moreover, the unavailability of price data at one CCA that is closely interconnected to another CCA [567] could result in negative spillover effects that spread to that other CCA.

In the RWP Proposing Release, the Commission requested comment on how costly it will be for CCAs to secure the use of price data or substantive inputs from an alternate source.[568]

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[559] One commenter agrees with the Commission's analysis of procyclicality. *See* The Associations at 2 (''Intraday margin calls can cause procyclical impacts to markets, especially if these calls are unpredictable for clearing participants.'').

[560] *Revisiting Procyclicality: The Impact of the COVID Crisis on CCP Margin Requirements,* Futures Indus. Ass'n (Oct. 2020), *available at https://www.fia.org/sites/default/files/2020-10/FIA_WP_Procyclicality_CCP%20Margin%20Requirements.pdf.*

[561] *See* ICE at 2 (''ICE does not believe the Commission has considered the costs associated with the procyclical effects that intraday margin calls can have, potentially exacerbating credit and liquidity concerns with clearing members and in extreme cases causing market participant defaults.'').

[562] *See* Part II.A.2.b.iii.

[563] *See* OCC at 4 (''However, while OCC agrees with goal of ensuring that this capability can be exercised when and as needed, we are concerned that imposing a requirement to establish strict quantitative thresholds that will trigger an otherwise unscheduled margin call would prevent the CCA from applying its judgment and expertise to determining whether the benefit of collecting that margin for its own purposes at that moment outweighs these possible procyclical impacts.'').

[564] One commenter stated that the proposed amendment to Rule 17Ad–22(e)(6)(iv) should be scaled back because, in part, no CCA has ever had an input-price failure that it was unable to resolve through its normal business operations (*see* ICE at 3); nevertheless, evolving market conditions, including high levels of growth in some cleared markets, justify regulatory changes to reduce the risk of future failures.

[565] *See* OCC, *Press Release OCC April 2024 Monthly Volume Data* (May 2, 2024), *available at https://www.theocc.com/newsroom/views/2024/05-02-occ-april-2024-monthly-volume-data* and *DTCC 2023 Annual Report, supra* note 471.

[566] The two busiest trading periods for both equities and equity options are usually immediately after the opening bell and immediately before the closing bell.

[567] For instance, OCC and NSCC have an information-sharing agreement to facilitate the settlement and delivery of physically-settled stock options cleared by OCC via NSCC. *See* Securities Exchange Act Release No. 37731 (Sept. 26, 1996), 61 FR 51731 (Oct. 3, 1996) (SR–OCC–96–04 and SR–NSCC–96–11) (Order Approving Proposed Rule Change Related to an Amended and Restated Options Exercise Settlement Agreement Between the Options Clearing Corporation and the National Securities Clearing Corporation); Securities Exchange Act Release No. 43837 (Jan. 12, 2001), 66 FR 6726 (Jan. 22, 2001) (SR–OCC–00–12) (Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Creation of a Program to Relieve Strains on Clearing Members' Liquidity in Connection With Exercise Settlements); and Securities Exchange Act Release No. 58988 (Nov. 20, 2008), 73 FR 72098 (Nov. 26, 2008) (SR–OCC–2008–18 and SR–NSCC–2008–09) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changes Relating to Amendment No. 2 to the Third Amended and Restated Options Exercise Settlement Agreement).

[568] RWP Proposing Release, *supra* note 18, at 34739 (''40. How costly is it for covered clearing agencies to secure the use of price data or substantive inputs from an alternate source? Must the data or substantive inputs subscription be purchased outright, or can the covered clearing agency, for a lower fee, purchase an option to use

Several commenters addressed the costs of the proposed amendments to Rule 17Ad–22(e)(6)(iv). Some commenters stated that (a) alternate data sources are too costly and unlikely to substantively affect margin calculations,[569] (b) the alternate data may not be available in the market for the desired circumstances,[570] and (c) it may not be feasible to switch to a new source at the desired time due to capacity, timing, and other constraints.[571] No commenter presented estimated data costs, and no commenter presented any data, methodology, or basis for estimating such costs.

In the RWP Proposing Release, the Commission requested comment on how costly it will be for CCAs to secure the use of alternate risk-based margin systems.[572] Several commenters stated that developing an alternate risk-based margin system is too costly.[573] The amendments being adopted in this release do not mandate the use or development of an alternate risk-based margin system. Rather, the amendments require that a CCA must use procedures for addressing scenarios when price data or other substantial inputs become unavailable or unreliable to ensure that the CCA can meet its credit obligations to its participants, and that such procedures must include either: (i) price data or substantive inputs from an alternate source; or (ii) if the CCA does not use an alternate source, a risk-based margin system that does not rely on the unavailable or unreliable substantive input. As discussed in the baseline analysis, several CCAs already use one or both of these alternatives in their current margin systems. Even for a CCA that does not have policies and procedures developed to address this issue, the costs to develop such policies and procedures will not be very large because their experience dealing with periodic input failures means that they are already familiar with the risks of failures and the processes for dealing with those failures.

c. Quantified Costs of Written Policies and Procedures Associated With Final Amendments to Rule 17Ad–22(e)(6)

The estimated costs for the final amendment to Rule 17Ad–22(e)(6) may require a CCA to make fairly substantial changes to its policies and procedures. Based on the similar policies and procedures requirements and the corresponding estimates previously made by the Commission for several rules in the CCA Standards where the Commission anticipated similar costs,[574] the Commission estimates that each CCA will incur a one-time cost of about $59,000.[575] Additionally, the Commission estimates that the cost of obtaining Commission approval for any updated policies and procedures pursuant to Rule 19b–4 will conservatively cost about $23,000 per CCA.[576]

The final amendments to Rule 17Ad–22(e)(6) will also impose annual costs on the CCAs. The final rule will require ongoing monitoring and compliance activities with respect to the written policies and procedures created in response to the final rule. Based on the similar reporting requirements and the corresponding estimates previously made by the Commission for several rules in the CCA Standards where the Commission anticipated similar costs,[577] the Commission estimates that the ongoing activities required by the amendments to Rule 17Ad–22(e)(6) will impose an annual cost of about $31,000.[578]

3. Other Compliance Costs

We have considered the potential effects on entities that are implementing other recently adopted rules during the compliance period for these amendments.

Consistent with its long-standing practice, the Commission's economic analysis in each adopting release considers the incremental benefits and costs for the specific rule—that is, the benefits and costs stemming from that rule compared to the baseline. The Commission acknowledges that complying with more than one rule in the same time period may entail compliance costs that will be higher than if the rules were to be complied with separately. The Commission identified several rules for which the compliance periods overlap, in part, with the compliance periods for the amendments, but the compliance dates adopted by the Commission in recent rules are generally spread out over a period extending to January 2026.[579]

Entities subject to the amendments may be subject to one or more other recently adopted rules depending on whether those entities' activities fall within the scope of the other rules. Specifically, the Treasury Clearing Adopting Release applies to certain clearing agencies for U.S. Treasury securities and certain participants of the CCAs.[580] The Rule 10c–1a Adopting Release also applies to certain CCAs [581]—although due to differing requirements, these rules may not all apply to any given CCA. Where overlap in compliance periods exists, the Commission acknowledges that there may be additional costs on those entities that are subject to one or more other rules.

the data and substantive inputs only when its primary sources prove inadequate?'').

[569] *See* CCP12 at 2 (stating that if the Commission prescribed a definition of ''substantive input,'' a CCA may be forced to ''obtain, often at great expense, alternate data sources for inputs with limited utility and minimal or no impact on margin calculations.''); OCC at 5 (stating that requiring CCAs to develop and maintain an entire alternate risk-based margin system would be prohibitively expensive and operationally burdensome); *id.* at 2 and 4.

[570] *See* DTCC at 4.

[571] *See* Davidson at 7.

[572] RWP Proposing Release, *supra* note 18, at 34740 (''41. How costly is it for covered clearing agencies to secure the use of alternate risk-based margin systems? Would covered clearing agencies create their own alternate risk-based margin systems, or would they secure access to one from a third party, and, if so, at what cost?'').

[573] *See* ICE at 2–3 (stating that the Commission has not ''recognized the considerable costs to [CCAs], clearing firms and other market participants that would be required to develop and implement alternative margin models to address a remote and theoretical problem with price or other data inputs''); OCC at 2, 4–5; CCP12 at 3.

[574] *See* CCA Standards Adopting Release, *supra* note 5, at 70892, 70895–97 (discussing Rules 17Ad–22(e)(2) and (13)). Although the rule amendment is with respect to Rule 17Ad–22(e)(6), these Rules present the best overall comparison to the current rule amendment, in light of the nature of the changes needed to implement the proposal here and what was proposed in the CCA Standards.

[575] The $59,000 estimate is based on the following calculations: $11,460 (blended hourly rate for assistant general counsel at $573 for 20 hours) + $17,960 (blended hourly rate for compliance attorney at $449 for 40 hours) + $6,504 (blended hourly rate for computer operations manager at $542 for 12 hours) + $8,160 (blended hourly rate for senior programmer at $408 for 20 hours) + $11,000 (blended hourly rate for senior risk management specialist at $440 for 25 hours) + $4,056 (blended hourly rate for senior business analyst at $338 for 12 hours) ≈ $59,000. Salaries for estimates presented in this section are derived from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified to account for an 1,800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. *See infra* note 603.

[576] See supra note 549.

[577] *See* CCA Standards Adopting Release, *supra* note 5, at 70893, 70895–96 (discussing Rules 17Ad–22(e)(6) and (13)).

[578] The $31,000 estimate is based on the following calculations: $11,674 (blended hourly rate for compliance attorney at $449 for 26 hours) + $10,045 (blended hourly rate for business risk analyst at $245 for 41 hours) + $9,240 (blended hourly rate for senior risk management specialist at $440 for 21 hours) ≈ $31,000. *See infra* note 604.

[579] *See supra* Part IV.B (listing recent rule adoptions and their respective compliance dates) and Part III (listing compliance dates).

[580] *See* Treasury Clearing Adopting Release, *supra* note 62, at 2717, 2791.

[581] *See* Rule 10c–1a Adopting Release, *supra* note 457, at 75647, 75717–18. The final rule adds ''registered clearing agencies'' to the proposed rule's scope of entities that are permitted to act as reporting agents, which was limited to brokers or dealers. *Id.* at 75656. However, a registered clearing agency may elect not to be a reporting agent. *Id.* at 75733.

4. Efficiency, Competition, and Capital Formation

a. Efficiency

CCAs current policies and procedures, at a high level, largely align with final Rule 17Ad–26. As stated in the baseline, all CCAs make at least some reference in their current RWPs to each of the nine required elements of this new rule with the exception of plan testing.[582] Therefore, the Commission does not expect substantive efficiency changes due to the final rule.

The final amendment to Rule 17Ad–22(e)(6)(ii) will benefit participants by providing increased specificity around the methods used by CCAs to assess intraday margin calls, thus enabling more efficient planning in the use of scarce margin funds. This will reduce any negative effects on participants' liquidity costs, as previously described.[583]

The final amendment to Rule 17Ad–22(e)(6)(iv) will increase informational efficiency by promoting the quick and reliable dissemination of information that allows for price discovery during periods when price data or other substantive inputs are not available to the CCA. Calculating margin and managing and disseminating risk information are core competencies of all CCAs, and various stakeholders rely on those data outputs. By requiring secondary sources, the final amendment may mitigate the reduction in efficiency that would otherwise happen when primary sources fail at a CCA that does not have secondary sources. Having the ability to continue calculating margin and disseminating that information to participants even when primary data are not available will prevent a reduction in informational efficiency when price data or other substantive inputs are not available.

b. Competition

As described in the baseline, CCAs are currently not subject to strong competitive pressures given high start-up costs, the network effects that are inherent in the clearing business, their subsequent historical consolidation by market segments (options clearing for OCC, equities clearing for NSCC, fixed income clearing for FICC, etc.), and clearing mandates that require the use of clearing services.[584] In terms of potential new entrants in the market for clearing and settlement services, the incremental costs of the final Rule 17Ad–26 and the final amendment to Rule 17Ad–22(e)(6)(ii) are small and, therefore, unlikely to be noteworthy barriers to entry. The final amendment to Rule 17Ad–22(e)(6)(iv) may have a modest effect on competition because it imposes additional start-up costs that a new competitor would have to assume to enter the CCA market.

As discussed above, the Commission acknowledges that overlapping compliance periods may in some cases increase costs. We acknowledge that to the extent overlap occurs between the compliance periods of this rule and the compliance periods of other rules, there could be costs that could affect competition. However, the compliance dates are spread over a period extending to January 2026. We therefore do not expect the risk of negative competitive effects from increased compliance costs from overlapping compliance periods to be significant.

c. Capital Formation

The Commission expects the effects of the final rule and amendments on capital formation to be ancillary because the final rule and amendments focus on issues related to secondary market trading and not on issues related to primary market issuances. To the degree that market participants view equity and fixed-income CCAs as more reliable venues for risk transfer, they may increase their activity and therefore signal a demand for more capital-creating securities.

D. Reasonable Alternatives to the Final Rule and Amendments

1. Establish Precise Triggers for Implementation of RWPs Across All CCAs

Instead of requiring CCAs to identify and implement their own triggers to recovery and orderly wind-down procedures, the Commission could adopt a more prescriptive approach and determine specific triggers that all CCAs would be required to follow. For example, the Commission could specify that exhausting prefunded financial resources in the waterfall structure of a CCA would immediately trigger a recovery or wind-down procedure.[585] Alternatively, the Commission could require a trigger when unfunded commitments to the CCP are called upon and reach a specific dollar number.

In the RWP Proposing Release, the Commission asked, ''[s]hould the Commission prescribe any particular triggers, whether qualitative or quantitative? For example, should the Commission require that a CCA should consider using the exhaustion of its prefunded resources as a trigger?'' [586] One commenter proposed both a list of required triggers and a list of triggers that each CCA should consider.[587] This alternative would harmonize triggers across all CCAs, and it would create a single standard that market participants could rely on, eliminating any confusion or ambiguity attendant to different triggers. Nevertheless, CCAs are active in different markets (equities, bonds, options, CDS, etc.), have different organizational structures, and focus on different risks. As an example, one of the OCC's focus areas is monitoring option sensitivities, and, as a result, its margin models and waterfall structure are responsive to that consideration while FICC, on the other hand, focuses on duration and convexity so its waterfall structure is more responsive to those risks. Having this more prescriptive approach would be unresponsive to the characteristics of each market and could expose CCAs to recovery or wind-down triggers that are not aligned with its actual risks. One

[582] Three CCAs do not mention plan testing in their RWPs. *See supra* Part IV.B.3.h.

[583] SIFMA at 4 (''Failure to collect and maintain adequate margin from one clearing member transfers the risk of that deficiency to the other clearing members and market participants.'').

[584] *See* SIFMA at 10–11.

[585] *See* John W. McPartland and Rebecca Lewis, *The Goldilocks Problem: How to Get Incentives and Default Waterfalls ''Just Right'',* 41 Econ. Persps. 1, 2 (Mar. 2017), *available at https://www.chicagofed.org/publications/economic-perspectives/2017/1-mcpartland-lewis* (''All CCPs have a default waterfall that provides financial resources for managing a clearing member default. The waterfall consists of both prefunded resources and unfunded obligations. When a clearing member defaults, the CCP must continue to meet defaulter's financial obligations, whose performance it guarantees, to the non-defaulting clearing members, attempt to find clearing members willing accept the defaulter's clients, and return to a matched book status by liquidating or auctioning off the defaulter's positions. If the CCP cannot find other clearing members willing to onboard the defaulter's clients, then the clients' positions must be liquidated to restore the CCP to a matched book status. The default waterfall provides funding to cover the cost of meeting the defaulter's obligations and liquidating the defaulter's positions, as well as, if necessary, those of its clients.'').

[586] RWP Proposing Release, *supra* note 18, at 34725 (''25. Proposed Rule 17ad–26 would also require that the RWP identify triggers but does not prescribe a list of specific triggers. Should the Commission prescribe any particular triggers, whether qualitative or quantitative? For example, should the Commission require that a covered clearing agency should consider using the exhaustion of its prefunded resources as a trigger?'').

[587] The Associations at 17 (''We propose for the Commission to provide a list of triggers that are required to be covered in the RWP, and ideally another list of triggers that a clearing agency should consider. For this second list, a clearing agency could determine (yet explain) that a trigger is not relevant for the products cleared and/or markets served by the clearing agency.'').

commenter agreed with the Commission's conclusion.[588]

2. Establish Specific Scenarios and Analyses

Instead of requiring CCAs to identify scenarios that may prevent them from being able to provide their core payment, clearing, and settlement services, the Commission could adopt a more prescriptive approach and identify specific scenarios in new Rule 17Ad–26 that each CCA must include in its RWP. For example, the Commission could identify the scenario of the default of the CCA's one or two largest participants and scenarios of specific business risks such as the default of a custodian bank or a significant cyber-attack.[589] The Commission could also require more detail regarding how each of the CCAs analyzes these scenarios.[590]

This alternative approach may reduce compliance costs by establishing the precise scope of the rule, which could allow CCAs to tailor their RWPs to the enumerated requirements for identifying scenarios and analyses. In addition, the inclusion of elements similar to those prescribed by other agencies that also regulate several CCAs could result in certain efficiencies and reduced costs for those CCAs.[591]

However, the adopted rule's approach retains flexibility compared with this alternative by permitting the scenarios to vary across CCAs because the underlying risks vary across markets and participants. Because participants vary in size and economic significance across CCAs, scenarios invoking a pre-determined number of failures or fixed dollar amounts may have significantly different effects in one CCA than in another.

3. Establish Specific Rules, Policies, Procedures, Tools, and Resources

Instead of requiring CCAs to describes the rules, policies, procedures, and any other tools or resources the CCA would rely upon in the event of a recovery or during an orderly wind-down to address the scenarios identified in their RWPs, the Commission could adopt a more prescriptive approach and identify in new Rule 17Ad–26 the rules, policies, procedures, and any other tools or resources for all CCAs. The Commission could also require in new Rule 17Ad–26 more detail regarding how a CCA analyzes its rules, policies, procedures, tools, and resources.[592]

This alternative approach may reduce compliance costs by establishing the precise scope of the rule, which could allow CCAs to tailor their RWPs to the enumerated requirements for describing rules, policies, procedures, and other tools or resources. In addition, the inclusion of elements similar to those prescribed by other agencies that also regulate several CCAs could result in certain efficiencies and reduced costs for those CCAs.[593]

However, it is better to permit the rules, policies, procedures, and any other tools or resources to vary across CCAs because the underlying risks and resources vary across CCAs. For example, a CCA that clears products of longer duration may have a greater need for a tear-up tool that extinguishes a participant's positions in certain circumstances than a CCA that clears contracts with a relatively short duration. In addition, the overall volume of transactions settled by a CCA may affect the choice of its liquidity tools or resources, as the CCA would have to ensure that it had sufficient liquidity resources to complete settlement.

4. Require the Identification of Interconnections and Interdependencies

In addition to the requirements with respect to service providers set forth in final Rule 17Ad–26(a)(2), the Commission could require that the CCA's RWP identify any financial or operational interconnections and interdependencies that the CCA has with other market participants. This would allow for consideration of the effect of the multiple roles and relationships that a single financial entity may have with respect to the CCA including affiliated entities and third parties (*e.g.,* a single entity that acts as both a clearing member and a settlement bank and a liquidity provider).[594]

A CCA is already required to establish, implement, maintain, and

[588] OCC at 8 (''Prescribing bright line, quantitative triggers that would apply to all CCAs, irrespective of their unique structures and the features of the markets they serve and products they clear, would run the risk of creating market instability by potentially forcing a CCA to initiate its RWP even when the CCA has not yet made the determination that it was necessary. For this reason, we support the Commission's determination to allow CCAs to identify appropriate triggers for their individual circumstances.'') (citation omitted).

[589] Additional such scenarios that could be enumerated in new Rule 17Ad–26 could include any or all of the following scenarios: (A) credit losses or liquidity shortfalls created by single and multiple clearing member defaults; (B) liquidity shortfall created by a combination of clearing member default and a failure of a liquidity provider to perform; (C) settlement bank failure; (D) custodian or depository bank failure; (E) losses resulting from investment risk; (F) losses from poor business results; (G) financial effects from cybersecurity events; (H) fraud (internal, external, and/or actions of criminals or of public enemies); (I) legal liabilities, including those not specific to the CCA's business as a CCA; (J) losses resulting from interconnections and interdependencies among the CCA and its parent, affiliates, and/or internal or external service providers; (K) losses resulting from interconnections and interdependencies with other CCAs; and (L) losses resulting from issues relating to services that are ancillary to the CCA's critical services. It could also include scenarios involving multiple failures (*e.g.,* a member default occurring simultaneously, or nearly so, with a failure of a service provider) that, in the judgment of the CCA, are particularly relevant to its business.

[590] That is, the Commission could require in new Rule 17Ad–26 that the RWP include an analysis that includes: (A) a description of the scenario; (B) the events that are likely to trigger the scenario; (C) the CCA's process for monitoring for such events; (D) the market conditions, operational and financial difficulties and other relevant circumstances that are likely to result from the scenario; (E) the potential financial and operational impact of the scenario on the CCA and on its clearing members, internal and external service providers and relevant affiliated companies, both in an orderly market and in a disorderly market; and (F) the specific steps the CCA would expect to take when the scenario occurs, or appears likely to occur, including, without limitation, any governance or other procedures that may be necessary to implement the relevant recovery tools and to ensure that such implementation occurs in sufficient time for the recovery tools to achieve their intended effect.

[591] *See supra* Part IV.B.2; RWP Proposing Release *supra* note 18, at 34716–7 nn.68–69; *id.* at 34724–25 (discussing Request for Comment 15, and 21–23); *see also supra* notes 418 and 419 for commenters who recommended that the Commission and CFTC coordinate to ensure that any final rules are aligned or structured so that dually registered clearinghouses (*i.e.,* CCAs registered with the Commission and SIDCOs registered with the CFTC) can efficiently comply with both Commission and CFTC rules.

[592] For example, the Commission could require in new Rule 17Ad–26 that the RWP include an analysis that includes: (A) a description of the tools that the CCA would expect to use in each scenario; (B) the order in which each tool would be expected to be used; (C) the time frame within which the tool would be used; (D) the governance and approval processes and arrangements within the CCA for the use of each of the tools available, including the exercise of any available discretion; (E) the processes to obtain any approvals external to the CCA (including any regulatory approvals) that would be necessary to use each of the tools available, and the steps that might be taken if such approval is not obtained; (F) the steps necessary to implement the tools; (G) the roles and responsibilities of all parties, including non-defaulting participants; (H) whether the tool is mandatory or voluntary; (I) an assessment of the associated risks from the use of each tool to non-defaulting clearing members and their customers, linked financial market infrastructures, and the financial system more broadly; and (J), for wind-down, an assessment of the likelihood that the tool would result in orderly wind-down.

[593] *See supra* Part IV.B.2; RWP Proposing Release *supra* note 18, at 34716–7 nn.68–69; *id.* at 34724–25 (discussing Request for Comment 15, 20–22, and 27; *see also supra* notes 418 and 419 for commenters who recommended that the Commission and CFTC coordinate to ensure that any final rules are aligned or structured so that dually registered clearinghouses (*i.e.,* CCAs registered with the Commission and SIDCOs registered with the CFTC) can efficiently comply with both Commission and CFTC rules.

[594] More specifically, a bank holding company structure may operate through a set of legal entities (*e.g.,* a broker-dealer/futures commission merchant separate from a bank, which is in turn distinct from an information technology service provider), each of which has different relationships with the CCA.

enforce written policies and procedures reasonably designed to identify, monitor, and manage risks related to any link the CCA establishes with one or more other clearing agencies, financial market utilities, or trading markets.[595] This requirement, in conjunction with the requirement to identify and describe service providers for core services and to specify to which core service they relate, should accomplish the same general objective, making this reasonable alternative redundant to the final policy choice.

5. Establish a Specific Monitoring Frequency for Intraday Margin Calls

The final amendment to Rule 17Ad–22(e)(6)(ii) expressly incorporates the requirement of intraday monitoring to ensure that such monitoring is done on an ongoing basis. One reasonable alternative is to prescribe the necessary frequency of monitoring as opposed to ''on an ongoing basis.'' For example, CCAs could be required to monitor exposure every 5 or 15 minutes.

However, monitoring on an ongoing basis is preferable because a fixed, pre-specified monitoring frequency may not be responsive enough to risk differences that exist across the markets served by the CCAs or to volatility changes that may happen through time.

6. Adopt Only Certain Elements of Rule 17Ad–26

Instead of adopting all nine elements of Rule 17Ad–26, the Commission could adopt a subset of the elements. For example, the Commission could drop the element to identify service providers or the element to address how the CCA would ensure that the service providers would continue to perform in the event of a recovery and during an orderly wind-down. Alternatively, the Commission could drop the element for plan review or the element for plan testing.

It is better to adopt all nine elements of Rule 17Ad–26 because each element helps ensure that the plan is fit for purpose and the combination of all components provides sufficient and comprehensive identification of how a CCA would perform in the event of a recovery and during an orderly wind-down. As described above, compliance with each of the nine elements by CCAs will contribute to reducing systemic risk and benefit other CCAs, other market participants, and investors in the event of a recovery or wind-down.[596]

7. Focus Intraday Margin Requirements on a Subset of CCAs

As an alternative to implementing the intraday margin amendments on a blanket basis, the Commission could adopt a more tailored approach that imposes the requirements only on a subset of CCAs that operate in certain markets such as those markets with the highest levels of activity [597] or those markets that have only one CCA.[598] A more tailored market-level risk-based approach would adjust to the size and systemic importance of each market, which would reduce, under this alternative, the compliance costs for the CCAs in the markets with less activity or with more than one available clearing agency.

However, the amendments already include an appropriate adjustment for market-level risk insofar as they would require the CCAs to consider their own particular facts and circumstances when aligning with the final rules. For example, the final amendment to Rule 17Ad–22(e)(6)(ii) would require CCAs to have the operational capacity to make intraday margin calls ''as frequently as circumstances warrant,'' and that frequency is expected to vary across markets and through time.

V. Paperwork Reduction Act

As discussed in the RWP Proposing Release, the amendments to Rule 17Ad–22(e)(6) and new Rule 17Ad–26 contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[599] The Commission submitted the proposed collections of information to the Office of Management and Budget (''OMB'') for review in accordance with the PRA. With respect to Rule 17Ad–22(e)(6), the title of the information collection is ''Clearing Agency Standards for Operation and Governance'' (OMB Control No. 3235–0695). With respect to Rule 17Ad–26, the title of the information collection is ''Rule 17Ad–26: CCA Recovery and Orderly Wind-Down Plans'' (OMB Control No. OMB 3235–0811). 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.

A. Amendments to Rule 17Ad–22(e)(6)

As discussed in the RWP Proposing Release, respondents under Rule 17Ad–22(e)(6) are CCAs that provide CCP services, of which there are currently five.[600] The Commission continues to anticipate that one additional entity may seek to register as a clearing agency to provide CCP services in the next three years, and so for purposes of this adoption the Commission has assumed six respondents.

As discussed in the RWP Proposing Release,[601] the purpose of this collection of information is to enable a CCA to have the authority and operational capacity to monitor intraday exposures on an ongoing basis and to collect intraday margin in certain specified circumstances. The collection is mandatory. To the extent that the Commission receives confidential information pursuant to this collection of information, such information would be kept confidential subject to the provisions of applicable law.[602]

As discussed further in Part II, the amendments to Rule 17Ad–22(e)(6) require a CCA to establish, implement, maintain, and enforce written policies and procedures. The rule amendment contains similar provisions to preexisting rules for CCAs (*i.e.,* Rule 17Ad–22(e)(6)(ii) and (iv)), but also imposes additional requirements that did not appear in preexisting Rule 17Ad–22(e)(6). As a result, a respondent CCA will incur burdens of reviewing and updating existing policies and procedures to consider whether it complies with the amendments to Rule 17Ad–22(e)(6) and, in some cases, may need to create new policies and procedures to comply with the amendments to Rule 17Ad–22(e)(6). For example, a CCA likely will need to review its existing margin methodology

[595] 17 CFR 240.17ad–22(e)(20).

[596] *See supra* Part IV.C.1.

[597] Activity could be measured in different ways, including the number or value of cleared transactions. Average daily settlement value is much higher in the equity market (NSCC) than it is in the fixed income market (FICC). DTCC Annual Report, *supra* note 471.

[598] The following securities markets have only one central counterparty: exchange-traded equity options (OCC), government securities (FICC), mortgage-backed securities (FICC), and equity securities (NSCC). The market for central securities depository services has only one provider (DTC). The credit default swaps market is served by LCH SA and ICC.

[599] *See* 44 U.S.C. 3501 *et seq.*

[600] Since the Commission issued the RWP Proposing Release, one CCA that provides CCP services has withdrawn its registration. *See* Release No. 34–98902 (Nov. 9, 2023), 88 FR 78428 (Nov. 15, 2023).

[601] RWP Proposing Release, *supra* note 18, at 34740.

[602] *See, e.g.,* 5 U.S.C. 552. Exemption 4 of the Freedom of Information Act provides an exemption for trade secrets and commercial or financial information obtained from a person and privileged or confidential. *See* 5 U.S.C. 552(b)(4). Exemption 8 of the Freedom of Information Act provides an exemption for matters that are contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions. *See* 5 U.S.C. 552(b)(8).

and consider whether any additional changes are necessary to ensure that it can meet the additional requirements of the rule.

The estimated PRA burdens for the amendment to Rule 17Ad–22(e)(6) will require a respondent CCA to make fairly substantial changes to its policies and procedures. The amendments to Rule 17Ad–22(e)(6) also would impose ongoing burdens on a respondent CCA by requiring ongoing monitoring and compliance activities with respect to the written policies and procedures created or modified in response to the rule.

The Commission received no comments regarding the PRA estimates in the RWP Proposing Release; however, in addressing other comments on the proposed rule, the Commission has modified the rule text to add a requirement to document when the CCA determines not to make an intraday margin call, pursuant to its written policies and procedures for intraday margin collection, and this affects the burdens with respect to ongoing activities under the rule. Accordingly, the Commission continues to estimate that respondent CCAs would incur an aggregate one-time burden of approximately 774 hours to review existing policies and procedures and create new or modified policies and procedures.[603] With respect to ongoing activities required by the amendments to Rule 17Ad–22(e)(6), the Commission now estimates that the final rule amendments will impose an aggregate annual burden on respondent CCAs of 528 hours.[604]

B. New Rule 17Ad–26

As discussed in the RWP Proposing Release,[605] respondents under Rule 17Ad–26 are CCAs, of which there are currently six. The Commission anticipates that one additional entity may seek to register as a CCA in the next three years, and so for purposes of this adoption the Commission has assumed seven respondents.

As discussed in the RWP Proposing Release,[606] the purpose of the collections under Rule 17Ad–26 is to ensure that CCAs include a set of particular items in the RWPs currently required under Rule 17Ad–22(e)(3)(ii). The collections are mandatory. To the extent that the Commission receives confidential information pursuant to this collection of information, such information would be kept confidential subject to the provisions of applicable law.[607]

Because Rule 17Ad–22(e)(3)(ii) already required CCAs to maintain RWPs, Rule 17Ad–26 will impose on a CCA similar burdens as when, for example, Rule 17Ad–22(e)(2) was proposed and CCAs generally had governance arrangements in place at that time.[608] Based on the Commission's review and understanding of the CCAs' existing RWPs,[609] respondent CCAs generally have written rules, policies, and procedures similar to the requirements that will be imposed under Rule 17Ad–26. The PRA burden imposed by the rule will therefore be minimal and will likely be limited to the review of current policies and procedures and updating existing policies and procedures where appropriate to ensure compliance with the rule.

Rule 17Ad–26 will also impose ongoing burdens on a respondent CCA by requiring ongoing monitoring and compliance activities with respect to the written policies and procedures created or modified in response to the rule.

The Commission received no comments regarding the PRA estimates in the RWP Proposing Release and estimates that respondent CCAs will incur an aggregate one-time burden of approximately 840 hours to review and update existing policies and procedures.[610] The Commission also continues to estimate that the ongoing activities required by Rule 17Ad–26 will impose an aggregate annual burden on respondent CCAs of 280 hours.[611]

C. Chart of Total PRA Burdens

Name of information collection	Type of burden	Number of respondents	Initial burden per entity	Aggregate initial burden	Ongoing burden per entity	Aggregate ongoing burden
17Ad–22(e)(6)	Recordkeeping	[a] 6	129	774	88	528
17Ad–26	Recordkeeping	7	120	840	40	280

[a] *See supra* notes 600, 605, and accompanying text (explaining that Rule 17Ad–22(e)(6) applies only to CCAs that provide CCP services, whereas Rule 17Ad–26 applies to all CCAs, which includes those that provide both CCP and CSD services).

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires the Commission, in promulgating rules, to consider the impact of those rules on small entities.[612] Section 603(a) of the Administrative Procedure Act,[613] as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules to determine the impact of such rulemaking on ''small

[603] This figure was calculated as follows: (Assistant General Counsel for 20 hours) + (Compliance Attorney for 40 hours) + (Computer Operations Manager for 12 hours) + (Senior Programmer for 20 hours) + (Senior Risk Management Specialist for 25 hours) + (Senior Business Analyst for 12 hours) = 129 hours × 6 respondent clearing agencies = 774 hours. When compared to the estimates in the RWP Proposing Release, this reflects a reduction in the number of respondents from seven to six.

[604] This figure was calculated as follows: (Compliance Attorney for 26 hours + Business Risk Analyst for 41 hours + Senior Risk Management Specialist for 21 hours) = 88 hours × 6 respondent clearing agencies = 528 hours. When compared to the estimates in the RWP Proposing Release, this reflects an increase of one burden hour for each of the Compliance Attorney, Business Risk Analyst, and Senior Risk Management Specialist, as well as a reduction in the number of respondents from seven to six.

[605] RWP Proposing Release, *supra* note 18, at 34741.

[606] *Id.*

[607] *See, e.g.,* 5 U.S.C. 552 *et seq.* Exemption 4 of the Freedom of Information Act provides an exemption for trade secrets and commercial or financial information obtained from a person and privileged or confidential. *See* 5 U.S.C. 552(b)(4). Exemption 8 of the Freedom of Information Act provides an exemption for matters that are contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions. See 5 U.S.C. 552(b)(8).

[608] *See* CCA Standards Adopting Release, *supra* note 5, at 70892 (discussing Rule 17Ad–22(e)(2)).

[609] *See, e.g., supra* Part IV.B.3 (providing an overview of current RWPs).

[610] This figure was calculated as follows: ((Assistant General Counsel for 20 hours) + (Compliance Attorney for 50 hours) + (Business Risk Analyst for 35 hours) + (Senior Risk Management Specialist for 15) = 120 hours × 7 respondent clearing agencies = 840 hours. When compared to the estimates in the RWP Proposing Release, this reflects a reduction in the number of respondents from eight to seven.

[611] This figure was calculated as follows: ((Assistant General Counsel for 10 hours) + Compliance Attorney for 30 hours)) × 7 respondent clearing agencies = 280 hours. When compared to the estimates in the RWP Proposing Release, this reflects a reduction in the number of respondents from eight to seven.

[612] *See* 5 U.S.C. 601 *et seq.*

[613] 5 U.S.C. 603(a).

entities.'' [614] Section 605(b) of the RFA states that this requirement shall not apply to any proposed rule which, if adopted, would not have a significant economic impact on a substantial number of small entities.[615] The Commission certified in the RWP Proposing Release, pursuant to section 605(b) of the RFA, that the proposed rules would not, if adopted, have a significant impact on a substantial number of small entities. The Commission received no comments on this certification.

A. Clearing Agencies

The amendments to Rule 17Ad–22(e)(6) and new Rule 17Ad–26 apply to CCAs, which are registered clearing agencies that provide the services of a CCP or CSD. For the purposes of Commission rulemaking and as applicable to these rule amendments and new rule, a small entity includes, when used with reference to a clearing agency, a clearing agency that (i) compared, cleared, and settled less than $500 million in securities transactions during the preceding fiscal year, (ii) had less than $200 million of funds and securities in its custody or control at all times during the preceding fiscal year (or at any time that it has been in business, if shorter), and (iii) is not affiliated with any person (other than a natural person) that is not a small business or small organization.[616]

Based on the Commission's existing information about the clearing agencies currently registered with the Commission,[617] all such registered clearing agencies exceed the thresholds defining ''small entities'' set out above. While other clearing agencies may emerge and seek to register as clearing agencies with the Commission, no such entities would be ''small entities'' as defined in 17 CFR 240.0–10 (''Exchange Act Rule 0–10'').[618] In any case, registered clearing agencies can only become subject to the rule amendments and new rule adopted in this release when they meet the definition of a CCA, as described above. Accordingly, the Commission preliminarily believes that any such registered clearing agencies will exceed the thresholds for ''small entities'' set forth in Exchange Act Rule 0–10.

B. Certification

For the reasons described above, the Commission certifies that the amendments to rule 17Ad–22(e)(6) and new Rule 17Ad–26 do not have a significant economic impact on a substantial number of small entities for purposes of the RFA.

VII. Other Matters

The Commission considers the provisions of the final amendments to be severable to the fullest extent permitted by law. ''If parts of a regulation are invalid and other parts are not,'' courts ''set aside only the invalid parts unless the remaining ones cannot operate by themselves or unless the agency manifests an intent for the entire package to rise or fall together.'' *Bd. of Cnty. Commissioners of Weld Cnty.* v. *EPA,* 72 F.4th 284, 296 (D.C. Cir. 2023); see *K Mart Corp.* v. *Cartier, Inc.,* 486 U.S. 281, 294 (1988). ''In such an inquiry, the presumption is always in favor of severability.'' *Cmty. for Creative Non-Violence* v. *Turner,* 893 F.2d 1387, 1394 (D.C. Cir. 1990). Consistent with these principles, while the Commission believes that all provisions of the final amendments are fully consistent with governing law, if any of the provisions of these amendments, or the application thereof to any person or circumstance, is held to be invalid, the Commission intends that such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application. In particular, the amendments to Rule 17Ad–22(e)(6) pertaining to a CCA's written policies and procedures for its risk-based margin system operate independently from new Rule 17Ad–26 pertaining to a CCA's written policies and procedures for its RWPs.

Pursuant to the Congressional Review Act,[619] the Office of Information and Regulatory Affairs has designated these rules as a not a ''major rule,'' as defined by 5 U.S.C. 804(2).

Statutory Authority

The Commission is adopting amendments to Rule 17Ad–22(e)(6) and new Rule 17Ad–26 under the Commission's rulemaking authority in the Exchange Act, particularly section 17(a), 15 U.S.C. 78q(a), section 17A, 15 U.S.C. 78q–1, and section 23(a), 15 U.S.C. 78w(a), and the Dodd-Frank Act, particularly section 805 of the Clearing Supervision Act, 15 U.S.C. 5464.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78j–4, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78*o,* 78*o*–4, 78*o*–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 1681w(a)(1), 6801–6809, 6825, 7201 *et seq.,* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; Pub. L. 111–203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112–106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

Section 240.17ad–22 is also issued under 12 U.S.C. 5461 *et seq.*

* * * * *

■ 2. Amend § 240.17ad–22 by revising paragraphs (e)(6)(ii) and (iv) to read as follows:

§ 240.17ad–22 Standards for clearing agencies.

* * * * *

(e) * * *

(6) * * *

(ii)(A) Marks participant positions to market and collects margin (including variation margin or equivalent charges if relevant) at least daily;

(B) Monitors intraday exposures on an ongoing basis;

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[614] Section 601(b) of the RFA permits agencies to formulate their own definitions of ''small entities.'' *See* 5 U.S.C. 601(b). The Commission has adopted definitions for the term ''small entity'' for the purposes of rulemaking in accordance with the RFA. These definitions, as relevant to this rulemaking, are set forth in 17 CFR 240.0–10.

[615] *See* 5 U.S.C. 605(b).

[616] *See* 17 CFR 240.0–10(d).

[617] The average daily value of equities trades cleared by NSCC in 2023 was $1.932 trillion; at FICC, the total net value of government securities transactions in 2022 was $2.019 trillion and the total net par value for mortgage-backed securities in 2023 was $58 trillion; and DTC settled a total of $446 trillion of securities in 2023. *See* DTCC, *2023 Annual Report,* at 39–40, *https://www.dtcc.com/-/media/Files/Downloads/Annual%20Report/2023/DTCC-2023-AR-Print.pdf.* In 2023, OCC cleared 11.052 billion options contracts. *See* OCC, *2023 Annual Report: 2023 Year in Review, https://annualreport.theocc.com/2023/year-in-review.* In addition, the notional value of CDS cleared by ICE was $18.8 trillion and $23.8 trillion in 2023 and 2022, respectively. *See* ICE, *2023 Annual Report,* at 60, *https://s2.q4cdn.com/154085107/files/doc_financials/2023/ar/597756_002_bmk.pdf.* The notional value of CDS cleared by LCH SA was €4,975 billion and €3,367 billion in 2023 and 2022, respectively. *See* LCH Group Holdings Ltd., *2023 Annual Report,* at 3, *https://www.lch.com/system/files/media_root/lch-group-holdings-limited-financial-statements.pdf.* In each case, these volumes exceed the $500 million threshold for small entities.

[618] *See* 17 CFR 240.0–10(d). The Commission based this determination on its review of public sources of financial information about registered clearing agencies.

[619] 5 U.S.C. 801 *et seq.*

(C) Includes the authority and operational capacity to make intraday margin calls, as frequently as circumstances warrant, including the following circumstances:

(*1*) When risk thresholds specified by the covered clearing agency are breached; or

(*2*) When the products cleared or markets served display elevated volatility; and

(D) Documents when the covered clearing agency determines not to make an intraday call pursuant to its written policies and procedures required under paragraph (e)(6)(ii)(C) of this section;

* * * * *

(iv)(A) Uses reliable sources of timely price data and other substantive inputs;

(B) Uses procedures (and, with respect to price data, sound valuation models) for addressing circumstances in which price data or other substantive inputs are not readily available or reliable, to ensure that the covered clearing agency can continue to meet its obligations under this section; and

(C) Such procedures under paragraph (e)(6)(iv)(B) of this section must include either:

(*1*) The use of price data or substantive inputs from an alternate source; or

(*2*) If it does not use an alternate source, the use of a risk-based margin system that does not rely on substantive inputs that are unavailable or unreliable;

* * * * *

■ 3. Section 240.17ad–26 is added to read as follows:

§ 240.17ad–26 Recovery and orderly wind-down plans of covered clearing agencies.

(a) The plans for the recovery and orderly wind-down of the covered clearing agency referenced in § 240.17ad–22(e)(3)(ii) must:

(1) Identify and describe the covered clearing agency's core payment, clearing, and settlement services and address how the covered clearing agency would continue to provide such core services in the event of a recovery and during an orderly wind-down, including by:

(i) Identifying the staffing roles necessary to support such core services; and

(ii) Analyzing how such staffing roles necessary to support such core services would continue in the event of a recovery and during an orderly wind-down;

(2)(i) Identify and describe any service providers for core services, specifying which core services each service provider supports; and

(ii) Address how the covered clearing agency would ensure that service providers for core services would continue to perform in the event of a recovery and during an orderly wind-down, including consideration of its written agreements with such service providers and whether the obligations under those written agreements are subject to alteration or termination as a result of initiation of the recovery and orderly wind-down plan;

(3) Identify and describe scenarios that may potentially prevent the covered clearing agency from being able to provide its core services identified in paragraph (a)(1) of this section as a going concern, including uncovered credit losses (as described in § 240.17ad–22(e)(4)(viii)), uncovered liquidity shortfalls (as described in § 240.17ad–22(e)(7)(viii)), and general business losses (as described in § 240.17ad–22(e)(15));

(4) Identify and describe criteria that could trigger the covered clearing agency's implementation of the recovery and orderly wind-down plans and the process that the covered clearing agency uses to monitor and determine whether the criteria have been met, including the governance arrangements applicable to such process;

(5) Identify and describe the rules, policies, procedures, and any other tools or resources on which the covered clearing agency would rely in a recovery or orderly wind-down;

(6) Address how the rules, policies, procedures, and any other tools or resources identified in paragraph (a)(5) of this section would ensure timely implementation of the recovery and orderly wind-down plan;

(7) Require the covered clearing agency to inform the Commission as soon as practicable when the covered clearing agency is considering implementing a recovery or orderly wind-down;

(8) Include procedures for testing the covered clearing agency's ability to implement the recovery and orderly wind-down plans at least every 12 months, including by:

(i) Requiring the covered clearing agency's participants and, when practicable, other stakeholders to participate in the testing of its plans;

(ii) Requiring that such testing be in addition to testing pursuant to § 240.17ad–22(e)(13);

(iii) Providing for reporting the results of such testing to the covered clearing agency's board of directors and senior management; and

(iv) Specifying the procedures for, as appropriate, amending the plans to address the results of such testing; and

(9) Include procedures requiring review and approval of the plans by the board of directors of the covered clearing agency at least every 12 months or following material changes to the covered clearing agency's operations that would significantly affect the viability or execution of the plans, with such review informed, as appropriate, by the covered clearing agency's testing of the plans.

(b) All terms used in this section have the same meaning as in the Securities Exchange Act of 1934, and unless the context otherwise requires, the following definitions apply for purposes of this section:

Affiliate means a person that directly or indirectly controls, is controlled by, or is under common control with the covered clearing agency.

Orderly wind-down means the actions of a covered clearing agency to effect the permanent cessation, sale, or transfer of one or more of its core services, as identified by the covered clearing agency pursuant to paragraph (a)(1) of this section, in a manner that would not increase the risk of significant liquidity, credit, or operational problems spreading among financial institutions or markets and thereby threaten the stability of the U.S. financial system.

Recovery means the actions of a covered clearing agency, consistent with its rules, procedures, and other *ex ante* contractual arrangements, to address any uncovered loss, liquidity shortfall, or capital inadequacy, whether arising from participant default or other causes (such as business, operational, or other structural weaknesses), including actions to replenish any depleted prefunded financial resources and liquidity arrangements, as necessary to maintain the covered clearing agency's viability as a going concern and to continue its provision of core services, as identified by the covered clearing agency pursuant to paragraph (a)(1) of this section.

Service provider for core services means any person, including an affiliate or a third party, that, through a written agreement for services provided to or on behalf of the covered clearing agency, on an ongoing basis, directly supports the delivery of core services, as identified by the covered clearing agency pursuant to paragraph (a)(1) of this section.

By the Commission.

Dated: October 25, 2024.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024–25570 Filed 11–15–24; 8:45 am]

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Part IV

Department of Commerce

Patent and Trademark Office

37 CFR Parts 2 and 7

Setting and Adjusting Trademark Fees During Fiscal Year 2025; Final Rule

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 2 and 7

[Docket No. PTO–T–2022–0034]

RIN 0651–AD65

Setting and Adjusting Trademark Fees During Fiscal Year 2025

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (USPTO) sets or adjusts trademark fees, as authorized by the Leahy-Smith America Invents Act (AIA), as amended by the Study of Underrepresented Classes Chasing Engineering and Science Success Act of 2018 (SUCCESS Act). The fee adjustments will provide the USPTO sufficient aggregate revenue to recover the aggregate costs of trademark operations in future years (based on assumptions and estimates found in the agency's Fiscal Year 2025 Congressional Justification (FY 2025 Budget)), including implementing the USPTO 2022–2026 Strategic Plan (Strategic Plan).

DATES: This rule is effective on January 18, 2025.

FOR FURTHER INFORMATION CONTACT: Brendan Hourigan, Director, Office of Planning and Budget, at 571–272–8966 or *Brendan.Hourigan@uspto.gov;* or C. Brett Lockard, Director, Forecasting and Analysis Division, at 571–272–0928 or *Christopher.Lockard@uspto.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Introduction

The USPTO publishes this final rule under section 10 of the AIA (section 10), Public Law 112–29, 125 Stat. 284, available at *https://www.congress.gov/112/plaws/publ29/PLAW-112publ29.pdf,* as amended by the SUCCESS Act, Public Law 115–273, 132 Stat. 4158, available at *https://www.congress.gov/115/plaws/publ273/PLAW-115publ273.pdf,* which authorizes the Under Secretary of Commerce for Intellectual Property and Director of the USPTO (Director) to set or adjust by rule any trademark fee established, authorized, or charged under the Trademark Act of 1946 (the Trademark Act), 15 U.S.C. 1051 *et seq.,* as amended, for any services performed or materials furnished by the agency. 35 U.S.C. 41 note. Section 10 prescribes that trademark fees may be set or adjusted only to recover the aggregate estimated costs to the USPTO for processing, activities, services, and materials relating to trademarks, including administrative costs of the agency with respect to such trademark fees. Section 10 authority includes flexibility to set individual fees in a way that furthers key policy factors, while considering the cost of the respective services. Section 10 also establishes certain procedural requirements for setting or adjusting fee regulations, such as public hearings and input from the Trademark Public Advisory Committee (TPAC), a public comment period, and congressional oversight.

B. Purpose of This Action

Based on a biennial review of fees, costs, and revenues that began in fiscal year (FY) 2021, the USPTO concluded that fee adjustments are necessary to provide the agency with sufficient financial resources to facilitate the effective administration of the U.S. trademark system, including implementing the Strategic Plan, available on the agency website at *https://www.uspto.gov/StrategicPlan.*

The individual fees set or adjusted in this rule align with the USPTO's fee structure philosophy, including the agency's four key fee setting policy factors: (1) promote innovation strategies, (2) align fees with the full cost of trademark services, (3) set fees to facilitate the effective administration of the trademark system, and (4) offer application processing options. The fee adjustments will enable the USPTO to accomplish its mission to drive U.S. innovation, inclusive capitalism, and global competitiveness by delivering high-quality and timely trademark examination and review proceedings that produce accurate and reliable trademark rights for domestic and international stakeholders.

C. Summary of Provisions Impacted by This Action

The USPTO sets or adjusts 28 trademark fees, including the introduction of seven new fees in this rule. The agency is also discontinuing four fees.

Under the fee schedule in this rule, the routine fees to obtain and maintain a trademark registration (*e.g.,* application filings, intent-to-use/use (ITU) filings, and post-registration maintenance fees) will increase relative to the current fee schedule, in order to ensure financial sustainability and provide for improvements needed relative to trademark filings and registration. Additional information describing the fee adjustments is included in Part V: Individual Fee Rationale in this rulemaking and in the ''Table of Trademark Fees: Current, Final Trademark Fee Schedule, and Unit Cost'' (Table of Trademark Fees), available on the fee setting section of the USPTO website at *https://www.uspto.gov/FeeSettingAndAdjusting.*

II. Background

Section 10(a) of the AIA, available at *https://www.congress.gov/112/plaws/publ29/PLAW-112publ29.pdf,* authorizes the Director to set or adjust by rule any fee established, authorized, or charged under the Trademark Act for any services performed or materials furnished by the agency. Section 10 provides that trademark fees may be set or adjusted only to recover the aggregate estimated costs to the USPTO for processing, activities, services, and materials relating to trademarks, including administrative costs of the agency with respect to such trademark fees. Provided that the fees in the aggregate achieve overall aggregate cost recovery, the Director may set individual fees under section 10 at, below, or above their respective cost. Section 10(e) requires the Director to publish the final fee rule in the **Federal Register** and the USPTO's *Official Gazette* at least 45 days before the final fees become effective.

Section 4 of the SUCCESS Act, available at *https://www.congress.gov/115/plaws/publ273/PLAW-115publ273.pdf,* amended section 10(i)(2) to provide that the Director's authority to set or adjust any fee under section 10 will end on September 16, 2026. While the fees established by this rule will remain in effect in perpetuity or until adjusted by a future rulemaking, the Director's authority to initiate new rulemakings to set or adjust fees will expire on that date.

When adopting fees under section 10 of the AIA, the Director must provide the proposed fees to TPAC, which advises the Director on the management, policies, goals, performance, budget, and user fees of trademark operations, at least 45 days prior to publishing the proposed fees in the **Federal Register**. TPAC then has 30 days within which to deliberate, consider, and comment on the proposal, as well as hold a public hearing on the proposed fees. Then, TPAC must publish a written report setting forth in detail the comments, advice, and recommendations of the committee regarding the proposed fees. The USPTO must consider and analyze any comments, advice, or

recommendations received from TPAC before setting or adjusting fees.

Accordingly, on May 8, 2023, the Director notified TPAC of the USPTO's intent to set and adjust trademark fees and submitted a preliminary trademark fee proposal with supporting materials. The preliminary trademark fee proposal and associated materials are available on the fee setting section of the USPTO website at *https://www.uspto.gov/FeeSettingAndAdjusting.*

TPAC held a public hearing at the USPTO's headquarters in Alexandria, Virginia, on June 5, 2023, and members of the public were given an opportunity to provide oral testimony. Transcripts of the hearing are available for review on the USPTO website at *https://www.uspto.gov/sites/default/files/documents/TPAC-Fee-Setting-Hearing-Transcript-20230605.pdf.* Members of the public were also given an opportunity to submit written comments for TPAC to consider, and these comments are available on *Regulations.gov* at *https://www.regulations.gov/docket/PTO-T-2023-0016.* On August 14, 2023, TPAC issued a written report setting forth their comments, advice, and recommendations regarding the preliminary proposed fees. The report is available on the USPTO website at *https://www.uspto.gov/sites/default/files/documents/TPAC-Report-on-2023-Fee-Proposal.docx.*

The USPTO considered and analyzed all comments, advice, and recommendations received from the TPAC before publishing the notice of proposed rulemaking (NPRM), ''Setting and Adjusting Trademark Fees during Fiscal Year 2025,'' in the **Federal Register** on March 26, 2024, at 89 FR 20897. The NPRM and associated materials are available on the fee setting section of the USPTO website at *https://www.uspto.gov/FeeSettingAndAdjusting.* Likewise, before issuing this final rule, the agency considered and analyzed all comments, advice, and recommendations received from the public during the 60-day comment period on the NPRM that closed on May 28, 2024. The agency's response to comments received is available in Part VI: Discussion of Comments.

III. Estimating Aggregate Costs and Revenue

Section 10 of the AIA provides that trademark fees may be set or adjusted only to recover the aggregate estimated costs to the USPTO for processing, activities, services, and materials relating to trademarks, including administrative costs with respect to such trademark fees. The following is a description of how the agency estimates aggregate costs and revenue.

Step 1: Estimating Aggregate Costs

Estimating prospective aggregate costs is accomplished primarily through the annual budget formulation process. The annual budget is a five-year plan for carrying out base programs and new initiatives to deliver on the USPTO's statutory mission and implement the agency's strategic goals and objectives.

First, the USPTO projects the level of demand for trademark services, which depends on many factors that are subject to change, including domestic and global economic activity. The agency also considers non-US trademark-related activities, policies, and legislation, and known process efficiencies. The number of trademark application filings (*i.e.,* incoming work to the USPTO) drives examination costs, which make up the largest share of trademark operating costs. The USPTO looks at indicators including the expected growth in real gross domestic product (RGDP), a leading indicator of incoming trademark applications, to estimate prospective workloads. The RGDP is reported quarterly by the Bureau of Economic Analysis and forecasted each February by the Office of Management and Budget (OMB) in the Economic and Budget Analyses section of the Analytical Perspectives, and twice annually by the Congressional Budget Office in the Budget and Economic Outlook.

The expected workload is then compared to the current examination capacity to determine any required staffing and operating costs (*e.g.,* salaries, workload processing contracts, and publication) adjustments. The agency uses a trademark pendency model that estimates trademark production output based on actual historical data and input assumptions, such as incoming trademark applications, number of examining attorneys on board, and overtime hours. Key statistics regarding pendency, application filings, and current inventory used to inform the model can be viewed on the data visualization center section of the USPTO website at *https://www.uspto.gov/dashboard/trademarks.*

Next, the USPTO calculates budgetary spending requirements based on the prospective aggregate costs of trademark operations. First, the agency estimates the costs of status quo operations (base requirements), then adjusts that figure for anticipated pay increases and inflationary increases for the budget year and four out years. The USPTO then estimates the prospective costs for expected changes in production workload and new initiatives over the same period. The agency then reduces cost estimates for completed initiatives and known cost savings expected over the same five-year horizon. A detailed description of budgetary requirements, aggregate costs, and related assumptions for the Trademarks program is available in the FY 2025 Budget.

The USPTO estimates that trademark operations will cost $594 million in FY 2025, including $293 million for trademark examining; $24 million for trademark trials and appeals; $50 million for trademark information resources; $22 million for activities related to intellectual property (IP) protection, policy, and enforcement; and $204 million for general support costs necessary for trademark operations (*e.g.,* the trademark share of rent, utilities, legal, financial, human resources, other administrative services, and agency-wide information technology (IT) infrastructure and support costs). See Appendix II of the FY 2025 Budget. In addition, the agency will transfer $280 thousand to the Department of Commerce, Inspector General, for audit support for the Trademarks program.

Table 1 below provides key underlying production workload projections and assumptions from the FY 2025 Budget used to calculate aggregate costs. Table 2 (see Step 2) presents the total budgetary requirements (prospective aggregate costs) for FY 2025 through FY 2029 and the estimated collections and operating reserve balances that would result from the adjustments contained in this final rule. These projections are based on point-in-time estimates and assumptions that are subject to change. There is considerable uncertainty in outyear budgetary requirements. There are risks that could materialize over the next several years (*e.g.,* adjustments to examination capacity, time allotted to examining attorneys and other personnel to perform their work, higher contracting costs, changes in workload, and other inflationary increases, etc.) that could increase the USPTO's budgetary requirements. These estimates are refreshed annually during the formulation of USPTO's budget.

TABLE 1—TRADEMARK PRODUCTION WORKLOAD PROJECTIONS, FY 2025–2029

Production measures	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Applications	774,000	817,000	863,000	912,000	964,000
Application growth rate	4.6%	5.5%	5.6%	5.7%	5.7%
Balanced disposals	1,552,600	1,680,000	1,740,000	1,850,000	1,930,000
Unexamined trademark application inventory	463,756	442,627	418,438	402,622	401,645
Examination capacity*	806	841	876	913	948
Performance measures:					
Avg. first action pendency (months)	7.5	6.3	5.9	5.5	4.9
Avg. total pendency (months)	13.5	11.3	10.9	9.5	8.9

* In this table, examination capacity is the number of examining attorneys on board at end of year, as described in the FY 2025 Budget.

Step 2: Estimating Prospective Aggregate Revenue

As described above in Step 1, the USPTO's prospective aggregate costs (as presented in the FY 2025 Budget) include budgetary requirements related to planned production, anticipated initiatives, and a contribution to the trademark operating reserve required for the agency to maintain trademark operations and realize its strategic goals and objectives for the next five years. Prospective aggregate costs become the target aggregate revenue level that the new fee schedule must generate in a given year and over the five-year planning horizon. To estimate aggregate revenue, the USPTO uses the same production models used to estimate aggregate costs and also analyzes relevant factors and indicators to calculate prospective fee workloads (*i.e.,* number of times each fee for a service or product will be paid).

The same economic indicators used to forecast incoming workloads also provide insight into market conditions and the management of IP portfolios, which influence application processing requests and post-registration decisions to maintain trademark protection. When developing fee workload forecasts, the USPTO also considers other factors including fraud and scams impacting trademark filings, overseas activity, policies and legislation, court decisions, process efficiencies, and anticipated applicant behavior.

As required by law, the USPTO collects fees for trademark-related services and products at different points in time within the application examination process and over the life of the pending trademark application and resulting registration to finance the associated work for providing those services. Trademark application filings are a key driver of trademark fee collections, as initial filing fees account for more than half of total trademark fee collections. Changes in application filing levels immediately impact current year fee collections. Fewer application filings mean the USPTO collects fewer fees to devote to production-related costs in the current pipeline. The resulting reductions also create an outyear revenue impact because less output in one year leads to fewer ITUs and maintenance fee payments in future years. Historically, fee collections from ITUs and maintenance fees account for about one third of total trademark fee collections, which the agency uses to subsidize costs for filing and examination activities not fully covered by initial filing fees.

The USPTO's five-year estimated aggregate trademark fee revenue (see table 2) is based on, for each fiscal year, the number of trademark applications it expects to receive, work it expects to process (an indicator of the ITU fee workloads), expected examination and process requests, and the expected number of post-registration filings to maintain trademark registrations. The USPTO forecasts the same number of future year applications filed under the final fee schedule compared to the current fee schedule because outside research suggests that demand for trademark applications is inelastic. See Gaétan De Rassenfosse, ''On the Price Elasticity of Demand for Trademarks,'' Social Science Research Network, Jan. 28, 2018, *https://doi.org/10.2139/ssrn.2628646;* Benedikt Herz and Malwina Mejer, ''On the Fee Elasticity of the Demand for Trademarks in Europe,'' Oxford Economic Papers, Jul. 3, 2016, *https://doi.org/10.1093/oep/gpw035.* The USPTO does anticipate a larger share of filers will take measures to avoid the surcharges compared to the share of filers that take advantage of the Trademark Electronic Application System (TEAS) Plus option under the current fee schedule. The USPTO's Office of the Chief Economist periodically conducts economic studies and may, in the future, develop trademark fee price elasticity estimates for use in rulemakings.

Within the iterative process for estimating aggregate revenue, the USPTO adjusts individual fee rates up or down based on cost and policy decisions, estimates the effective dates of new fee rates, and then multiplies the resulting fee rates by appropriate workload volumes to calculate a revenue estimate for each fee. Using these figures, the USPTO sums the individual fee revenue estimates, and the result is a total aggregate revenue estimate for a given year (see table 2). The aggregate revenue estimate also includes collecting $10 million annually in other income associated with recoveries and reimbursements from other Federal agencies (offsets to spending). The aggregate revenue estimates presented below are based on assumptions and data found in the FY 2025 Budget including assuming that all final rule fee rates would take effect on November 15, 2024. The effective date of the final rule fee rates has since been changed from that original assumption to January 18, 2025, except the increased fee for Madrid applications will be owed on applications with a receipt date on or after February 18, 2025, and the increased fee for renewing an international registration at the World Intellectual Property Organization (WIPO) will be owed on requests made on or after February 18, 2025, as well.

TABLE 2—TRADEMARK FINANCIAL OUTLOOK, FY 2025–2029

	Dollars in millions				
	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Projected fee collections	583	642	668	697	725

TABLE 2—TRADEMARK FINANCIAL OUTLOOK, FY 2025–2029—Continued

	Dollars in millions				
	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Other income	10	10	10	10	10
Total projected fee collections and other income	593	652	678	707	735
Budgetary requirements	594	611	635	664	690
Funding to (+) and from (−) operating reserve	(1)	41	43	43	45
End-of-year operating reserve balance	85	126	169	213	258
Over/(under) minimum level	(51)	(14)	23	60	99
Over/(under) optimal level	(212)	(179)	(148)	(119)	(87)

IV. Rulemaking Goals and Strategies

A. Fee Setting Strategy

The strategy of this final rule is to establish a fee schedule that generates sufficient multiyear revenue to recover the aggregate costs of maintaining USPTO trademark operations as required by law. The overriding principles behind this strategy are to operate within a sustainable funding model that supports the USPTO's strategic goals and objectives, such as optimizing trademark application pendency through the promotion of efficient operations and filing behaviors, issuing accurate and reliable trademark registrations, and encouraging access to the trademark system for all stakeholders.

The USPTO assessed this final rule's alignment with four key fee setting policy factors that promote important aspects of the U.S. trademark system: (1) promoting innovation strategies seeks to ensure barriers to entry into the U.S. trademark system remain low, encourage high-growth and innovation-based entrepreneurship, and incentivize innovation and entrepreneurship by issuing registrations to stimulate additional entrepreneurial activity; (2) aligning fees with the full costs of products and services recognizes that some applicants may use particular services in a more costly manner than other applicants (*e.g.,* trademark applications cost more and take longer to examine when identifications of goods and services include thousands of characters) and charges those applicants appropriately rather than sharing the costs among all applicants; (3) facilitating the effective administration of the trademark system seeks to encourage efficient prosecution of trademark applications, reducing the time it takes to obtain a registration; and (4) offering application processing options provides multiple paths, where feasible, in recognition that trademark applications and their prosecution are not a one-size-fits-all process. The reasoning for setting and adjusting individual fees is described in Part V: Individual Fee Rationale.

In the event any provision is invalidated or held to be impermissible as a result of a legal challenge, the ''remainder of the regulation could function sensibly without the stricken provision.'' *Belmont Mun. Light Dep't* v. *FERC,* 38 F.4th 173, 187 (D.C. Cir. 2022) (quoting *MD/DC/DE Broad. Ass'n* v. *FCC,* 236 F.3d 13, 22 (D.C. Cir. 2001)). The USPTO views each fee in this final rule as able to stand on its own and to ''function sensibly'' without the others. This means that in the event that a reviewing court were to find that any one fee setting or fee adjustment was invalid, that finding would not affect the fees or adjustments enacted elsewhere in the rule. Therefore, in the event that any portion of this final rule is held to be invalid or impermissible, the USPTO intends that the remaining aspects of the regulatory provisions, and fees set and adjusted therein, remain valid.

B. Fee Setting Considerations

The balance of this subsection presents the specific fee setting considerations the USPTO reviewed in developing the final trademark fee schedule: (1) historical cost of providing individual services; (2) the balance between projected costs and revenue to meet the USPTO's operational needs and strategic goals; (3) ensuring sustainable funding; and (4) the comments, advice, and recommendations offered by TPAC on the agency's initial fee setting proposal and the public comments received in response to the March 2024 NPRM. The USPTO carefully considered the comments, advice, and recommendations offered by TPAC and the public. Collectively, these considerations informed the agency's chosen rulemaking strategy.

1. Historical Cost of Providing Individual Services

The USPTO sets individual fee rates to ensure recovery of aggregate costs and to further key policy considerations while considering the cost of a particular service. For instance, the USPTO has a longstanding practice of setting application filing fees below the actual cost of processing and examining applications to encourage brand owners to take advantage of the protections and rights offered by trademark registration; these costs are subsidized by aggregate trademark revenues elsewhere.

The USPTO considers unit cost accounting data provided by its Activity Based Information (ABI) program to evaluate the cost to provide specific services and then decide how to best align fees for particular services to recover the aggregate costs of all products and services. Using historical cost data, the USPTO can align fees to the costs of specific trademark products and services. When the USPTO implements a new process or service, historical activity-based information data is typically not available. However, the USPTO will use the historical cost of a similar process or procedure as a starting point to estimate the full cost of a new activity or service.

The document titled ''Setting and Adjusting Trademark Fees During Fiscal Year 2025: Activity Based Information and Trademark Fee Unit Expense Methodology,'' available on the fee setting section of the USPTO website at *https://www.uspto.gov/FeeSettingAndAdjusting,* provides additional information on the agency's costing methodology in addition to the last three years of historical cost data. Part V: Individual Fee Rationale of this final rule describes the reasoning and anticipated benefits for setting some individual fees at cost, below cost, or above cost such that the USPTO recovers the aggregate cost of providing services through fees.

2. Balancing Projected Costs and Revenue

In developing the final trademark fee schedule, the USPTO considered its current estimates of future year workload demands, fee collections, and costs to maintain core USPTO operations and meet its strategic goals,

as found in the FY 2025 Budget and the Strategic Plan. The USPTO's strategic goals include driving inclusive U.S. innovation and global competitiveness, promoting the efficient delivery of reliable IP rights, promoting the protection of IP against new and persistent threats, bringing innovation to impact, and generating impactful employee and customer experiences by maximizing agency operations. The following subsections provide details regarding updated revenue and cost estimates, cost saving efforts taken by the USPTO, and planned strategic improvements.

a. Updated Revenue and Cost Estimates

Projected revenue from the current fee schedule is expected to fall below future budgetary requirements (costs) due largely to lower-than-expected demand for trademark services compared to prior forecasts and higher-than-expected inflation in the broader U.S. economy in recent years that has increased the USPTO's operating costs. Consequently, aggregate operating costs will exceed aggregate revenue for the Trademarks program under the current fee schedule. The USPTO is required by law to finance operations by recovering fees for the services offered by the agency. Not implementing the final rule would result in insufficient fee collections to process the anticipated work volumes, impacting stakeholders and failing to deliver on the USPTO mission.

Forecasts for aggregate revenue using current demand estimates are lower than prior forecasts. This lower-than-expected demand has coincided with changes to trademark owners' filing and renewal patterns, resulting in imbalances in the overall fee structure. The USPTO sets application filing fees below its examination costs to maintain a low barrier to entry into the trademark registration system and relies on fees collected for post-registration maintenance and ITU extensions to subsidize the agency's losses on each application examined. However, changes in the mix of filers and their preferences have upset the traditional balance of the trademark fee structure. The share of applicants filing ITU applications is declining. Also, the percentage of registrants that choose to maintain their trademark registration is declining as a larger share of filers are groups that are historically less likely to renew their registrations at a rate that would be sufficient to recover examination costs. The USPTO believes these changes in the mix of filers are systemic and will continue.

Following an unprecedented application surge in FY 2021, trademark application filings declined and began returning to historic filing levels in FY 2022, in line with the USPTO's expectations. Application filings were largely unchanged in FY 2023. Given the current economic outlook for the broader economy and filing activity over the past two years, the USPTO projects trademark application filings to decline slightly in FY 2024 and increase in line with historic growth rates in FY 2025.

Higher-than-expected inflation in the broader U.S. economy starting in 2021 increased the USPTO's operating costs above previous estimates for labor and nonlabor activities such as benefits, service contracts, and equipment. Salaries and benefits comprise about two-thirds of all trademark-related costs, and employee pay raises enacted across all U.S. government agencies in FY 2023–24—including the USPTO—were much larger than previously budgeted. Federal General Schedule (GS) pay was raised by 4.6% in 2023 and 5.2% in 2024; before 2023 the last time GS pay was raised by at least 4.0% was in 2004. The FY 2025 Budget includes an estimated 2.0% civilian pay raise planned in calendar year (CY) 2025 and assumed 3.0% civilian pay raises in CY 2026–29, as well as inflationary increases for other labor and nonlabor activities.

b. Cost-Saving Measures

The USPTO recognizes that fees cannot simply increase for every improvement deemed desirable. The agency has a responsibility to stakeholders to pursue strategic opportunities for improvement in an efficient, cost-conscious manner. Likewise, the USPTO recognizes its obligation to reduce spending when appropriate.

The USPTO's FY 2025 Budget submission includes cost reducing measures such as giving up leased space in Northern Virginia. In FY 2025, the USPTO estimates $4,569 million in total spending for patent and trademark operations. This is a $122 million net increase from the agency's FY 2024 estimated spending level of $4,447 million. The net increase includes a $224 million upward adjustment for prescribed inflation and other adjustments and a $102 million downward adjustment in program spending and other realized efficiencies. This estimate builds on the $40 million in annual real estate savings assumed in the FY 2024 Budget submission to include additional annual cost savings of $12 million through releasing more leased space in Northern Virginia. The combined reduction in real estate space amounts to almost 1 million square feet and an estimated annual cost savings of approximately $52 million. Also, the USPTO is actively pursuing IT cost containment. The FY 2025 budget includes a relatively flat IT spending profile despite upward pressure from inflation, supply chain disruptions, and government-wide pay raises; ongoing IT improvements that offer business value to fee-paying customers; and data storage costs increasing proportionally with the USPTO's forecasted growth in patent and trademark applications.

c. Efficient Delivery of Reliable IP Rights: Quality, Unexamined Inventory, and Pendency

The USPTO's strategic goal to ''promote the efficient delivery of reliable IP rights'' recognizes the importance of innovation as the foundation of American economic growth and global competitiveness. Toward this end, the USPTO is committed to continuously improving trademark quality, as well as the accuracy and reliability of the trademark register. The agency will continue equipping trademark examining attorneys with updated tools, procedures, and clarifying guidance to effectively examine all applications. The USPTO will also retire legacy systems and integrate the use of emerging technologies to streamline work processes for greater efficiencies, adjust staffing levels, and refine core duties to ensure its ability to meet significant changes in filing volumes and a variety of improper filing behaviors.

Also, the USPTO is committed to improving trademark application pendency. The agency recognizes that applying for trademark registration is a key step for creators, entrepreneurs, and established brand owners as they move from generating ideas for new products and services to commercializing the resulting innovations in the marketplace. The USPTO is focused on incentivizing creativity and product innovation by removing unnecessary impediments or delays in securing IP rights, thereby bringing goods and services to impact for the public good more quickly.

The agency's recent trademark pendency challenge is the result of several years of sustained increases in trademark application filings punctuated by an unprecedented, year-long influx during FY 2021 that created a significant increase in unexamined inventory. In addressing these challenges, the USPTO will continue to reevaluate its operating posture to maximize efficiency, set data-driven pendency goals, realign the trademark workforce to maintain stability during

workload fluctuations and optimize pendency goals, and use available technology solutions to streamline and automate trademark work processes.

The agency is working diligently to balance timely examination with trademark quality. Improvements include the deployment of a new browser-based, end-to-end examination system (TM Exam) designed to improve examination quality and efficiency and establishment of a dedicated Trademark Academy to improve the training experience for new examiners.

Also, the USPTO is developing and implementing several strategies to combat trademark scams, address fraudulent filings, and protect the trademark register. For example, the agency is implementing robotic process automation to validate trademark application addresses against the U.S. Postal Service's database, mitigating a key fraud risk. In addition, the USPTO recently formed the Register Protection Office (RPO), a new organization within the Office of the Deputy Commissioner for Trademark Examination Policy dedicated to register protection and fraud risk management through efforts like scam education and prevention.

The USPTO is also leveraging the Trademark Modernization Act (TMA) cancellation provisions to help clear the trademark register of registrations not in use. See Public Law 116–260, available at *https://www.congress.gov/116/plaws/publ260/PLAW-116publ260.pdf.* The agency implemented the TMA nonuse cancellation provisions in December 2021 and in December 2022 implemented additional provisions that shortened the applicant response period for Office actions from six to three months. See ''Changes To Implement Provisions of the Trademark Modernization Act of 2020,'' 86 FR 64300 (Nov. 17, 2021).

3. Sustainable Funding

The USPTO's five-year forecasts of aggregate trademark costs, aggregate trademark revenue, and the trademark operating reserve are inherently uncertain. The Government Accountability Office (GAO) recommends operating reserves as a best practice for fee-funded agencies like the USPTO, and the trademark operating reserve allows the agency to align long-term fees and costs and manage fluctuations in actual fee collections and spending.

The USPTO manages the trademark operating reserve within a range of acceptable balances and assesses options when projected balances fall either below or above the range. The agency develops minimum planning targets to address immediate, unplanned changes in the economic or operating environment as the reserve builds toward the optimal level. The USPTO reviews both its minimum and optimal planning targets every three years to ensure the reserve's operating range mitigates an array of financial risks. Based on the current risk environment, including various factors such as economic and funding uncertainty and the Trademarks program's high percentage of fixed costs, the agency recently established a minimum operating reserve planning level at 23% of total spending—about three months' operating expenses (estimated at $137 million and $159 million from FY 2025 through FY 2029)—and an optimal long-range target of 50% of total spending—about six months' operating expenses (estimated at $297 million and $345 million from FY 2025 through FY 2029).

Based on cost and revenue assumptions in the FY 2025 Budget, the USPTO forecasts that aggregate trademark costs will exceed aggregate trademark revenue during FY 2024. The agency will finance the shortfall in trademark operations via the trademark operating reserve. The USPTO projects that the fee adjustments contained in this final rule will increase trademark fee collections to sufficiently recover budgeted spending requirements; modest fee collections above budgeted spending requirements will replenish and grow the operating reserve each year from FY 2025 to FY 2029.

These projections are point-in-time estimates and subject to change. For example, the FY 2025 Budget includes assumptions regarding filing levels, renewal rates, federally mandated employee pay raises, workforce productivity, and many other factors. A change in any one of these variables could have a significant cumulative impact on the trademark operating reserve balance. As shown in table 2, presented in Part III: Estimating Aggregate Costs and Revenue, the operating reserve balance can change significantly over a five-year planning horizon. This variation highlights the agency's financial vulnerability to various risk factors and the importance of its fee setting authority.

The USPTO will continue assessing the trademark operating reserve balance against its target balance annually, and at least every three years, the agency will evaluate whether the minimum and optimal target balances remain sufficient to provide stable funding. Per USPTO policy, the agency will consider fee reductions if projections show the operating reserve balance will exceed its optimal level by 25% for two consecutive years. In addition, the USPTO will continue to regularly review its operating budgets and long-range plans to ensure the prudent use of trademark fees.

4. Comments, Advice, and Recommendations From TPAC and the Public

As detailed in the NPRM, in the report prepared in accordance with AIA fee setting authority, TPAC conveyed overall support for the USPTO's efforts to secure adequate revenue to recover the aggregate estimated costs of trademark operations, stating ''[w]e have no doubt that overall increases are needed to ensure that the USPTO complies with its statutory mandate to set fees at a level commensurate with anticipated aggregate costs.'' TPAC Report at 3. The agency considered and analyzed the comments, advice, and recommendations received from TPAC before publishing this final rule.

Likewise, the USPTO considered and analyzed the comments, advice, and recommendations received from the public during the 60-day comment period before publishing this final rule. The agency's response to comments received is available in Part VI: Discussion of Comments.

C. Summary of Rulemaking Goals and Strategies

The USPTO estimates that the final trademark fee schedule will produce sufficient aggregate revenue to recover the aggregate costs of trademark operations and ensure financial sustainability for effective administration of the trademark system. This final rule aligns with the USPTO's four key fee setting policy factors and supports the agency's mission-focused strategic goals.

V. Individual Fee Rationale

Where data is available, the USPTO sets some fees at, above, or below unit cost to balance the agency's four key fee setting policy factors as described in Part IV: Rulemaking Goals and Strategies. The USPTO does not maintain individual historical cost data for all fees; therefore, it sets some fees based solely on policy factors. For example, the USPTO sets initial filing fees below unit cost to promote innovation strategies by reducing barriers to entry for applicants. To balance the aggregate revenue loss of fees set below cost, the USPTO must set other fees above unit cost in areas less likely to impact entrepreneurship (*e.g.,* renewal fees). By setting fees at particular levels to facilitate effective administration of the trademark system,

the USPTO aims to foster an environment where examining attorneys can provide, and applicants can receive, prompt, high-quality examination decisions while the agency recovers costs for workload-intensive activities.

This final rule maintains existing cost differentials for all paper filings; their processing is generally more costly than electronic submissions, and current fees do not recover these costs.

1. Trademark Application Filing Fees

TABLE 3—TRADEMARK APPLICATION FILING FEES

Description	Current fee	Final rule fee	Dollar change	Percent change	FY 2023 unit cost
Application (paper), per class	$750	$850	$100	13	$1,457
Base application (electronic), per class	n/a	350	n/a	n/a	n/a
Application (TEAS Plus), per class	250	Discontinue	n/a	n/a	402
Application (TEAS Standard), per class	350	Discontinue	n/a	n/a	532
Fee for failing to meet TEAS Plus requirements, per class	100	Discontinue	n/a	n/a	4
Application fee filed with WIPO (section 66(a)), per class	500	600	100	20	890
Subsequent designation fee filed with WIPO (section 66(a)), per class	500	600	100	20	863

The USPTO is changing application filing fees to incentivize more complete and timely filings and improve prosecution. Trademark applicants currently have two filing options via the Trademark Electronic Application System (TEAS): TEAS Plus and TEAS Standard. TEAS Plus is the lowest-cost filing option currently provided by the USPTO but comes with more stringent initial filing requirements. These applications reduce manual processing and potential for data entry errors, making them more efficient and complete for both the filer and the agency. The USPTO incurs fewer costs and impediments during their examination, thereby expediting processing and reducing pendency. About half of all trademark applications are filed using TEAS Plus. Fees for TEAS Standard are higher than those for TEAS Plus and offer applicants more options during filing; the higher fees relate to the USPTO's higher processing and examination costs.

The USPTO is implementing a single electronic application filing option that will discontinue both TEAS Plus and TEAS Standard filing options, as well as the processing fee for failing to meet the requirements of a TEAS Plus application. This final rule will replace TEAS Plus and TEAS Standard fees with a single electronic filing option and corresponding base application fee plus new surcharges based on application attributes. Similar to TEAS, applicants choosing to comply with the requirements detailed in this final rule in their initial filing (comparable to TEAS Plus) will pay the lowest fees under the final fee schedule, compared to applicants who choose not to comply with all requirements (comparable to TEAS Standard). The USPTO does not anticipate the total number of applications filed each year to change under the final schedule compared to the current schedule. The agency does anticipate that a larger share of applicants will take measures to avoid the surcharges in this rule as compared to the share of applicants who use the TEAS Plus option under the current fee schedule. Applications that do not meet all requirements for the lowest cost electronic filing option are discussed below.

The final fee schedule sets the fee for a base application filed electronically at $350, $100 more than a TEAS Plus application, to help the agency recover its costs. The USPTO anticipates a base application will have a unit cost similar to a TEAS Plus application for the agency. The USPTO is increasing the paper application fee by $100 to maintain the existing cost differential between a paper filing and the lowest cost electronic application.

As part of the final fee schedule, the USPTO is discontinuing the processing fee for failing to meet the requirements of a TEAS Plus application on the effective date of the final rule. Therefore, on or after that date, any pending TEAS Plus applications that would have been subject to the TEAS Plus processing fee will be subject to the insufficient information surcharge fee if the application fails to satisfy any of the requirements for a base application in paragraphs (a)(1) through (19) of § 2.22. These requirements are the same as the requirements for a valid TEAS Plus application under the current TEAS system, and the fee rate for the insufficient information surcharge is identical to the processing fee for failing to meet the requirements of a TEAS Plus application, *i.e.,* $100 per class.

The USPTO is making revisions to the regulatory text in 37 CFR to incorporate the base application fee and discontinuation of TEAS application fees. These revisions include replacing references to ''TEAS'' and ''ESTTA'' with ''electronically'' in sections 2.6 and 7.6 to reflect the discontinuation of TEAS fees under this final rule. These generalized references for electronic filings are more dynamic and will more easily accommodate any future changes to the USPTO's electronic filing system.

In the NPRM, the USPTO also proposed using this system for filing an application under section 66(a) (Madrid Protocol) of the Trademark Act. However, this final rule alters that proposal. Article 8(2) of the Madrid Protocol and rule 10 of the Madrid regulations require the payment of all application fees before the International Bureau may record an international registration or subsequent designation. Due to technological and administrative limitations, WIPO is currently unable to collect surcharges prior to recordation and has requested delayed implementation of any surcharges for Madrid filers.

In this final rule, the USPTO is dropping the proposed structure for 66(a) filings and instead adjusting the existing flat application fee for Madrid applications to $600 per class, as paid in Swiss francs to WIPO. Article 8(7) of the Madrid Protocol permits individual countries to establish their own fee for Madrid applications, subject to the Protocol's requirement that the fee for Madrid filers does not exceed that for domestic filers. The $600 fee is commensurate with what Madrid applicants would expect to pay, on average, if filing directly under the base application and surcharge system.

The approach enacted in this final rule conforms with feedback received from WIPO and other commenters. The USPTO will reconsider a base filing and surcharge system for Madrid applications in the future after WIPO develops the capacity to implement surcharges.

The increased fee will be owed on Madrid applications with a receipt date on or after February 18, 2025, because the Madrid Agreement Concerning the

International Registration of Marks requires three months' advance notice to WIPO before an increase in the amount of the international application or subsequent designation fee may enter into force.

2. Trademark Application Filing Surcharge Fees

TABLE 4—TRADEMARK APPLICATION FILING SURCHARGE FEES

Description	Current fee	Final rule fee	Dollar change	Percent change	FY 2023 unit cost
Fee for insufficient information (sections 1 and 44), per class	n/a	$100	n/a	n/a	n/a
Fee for using the free-form text box to enter the identification of goods/services (sections 1 and 44), per class	n/a	200	n/a	n/a	n/a
For each additional group of 1,000 characters beyond the first 1,000 (sections 1 and 44), per class	n/a	200	n/a	n/a	n/a

The USPTO is implementing surcharges to the base application filing fee in this final rule to enhance the quality of incoming applications, encourage efficient application processing, ensure additional examination costs are paid by those submitting more time-consuming applications, and reduce pendency. Only those applicants submitting applications that do not comply with the base filing requirements would pay the surcharges. The system set by this final rule would impose individual surcharges for unmet application requirements, as compared to the current TEAS Standard fee and TEAS Plus processing fee for applications with one or more unmet TEAS Plus requirements. As discussed above, applications filed under section 66(a) (Madrid Protocol) will not be subject to these surcharges and will instead be assessed a higher flat fee commensurate with what Madrid applicants would expect to pay, on average, if filing directly under the base application and surcharge system.

(i) Insufficient Information Fee

Trademark applications that include the information listed below allow for more efficient prosecution. Accordingly, applicants who submit more complete applications benefit from the final fee schedule by avoiding this surcharge, as the USPTO and its stakeholders benefit from efficient delivery of reliable IP rights. This final rule sets a $100 fee per class, in addition to the base fee, on applications under sections 1 and 44 that do not include required information at the time of filing. As discussed above, applications filed under section 66(a) (Madrid Protocol) will not be subjected to this surcharge.

The information required for a base application is the same as current TEAS Plus requirements; therefore, applicants are not expected to expend more than a de minimis amount of additional resources compared to the current system. The USPTO is reordering and retitling these requirements as ''Requirements for a base application,'' as provided in § 2.22(1) through (20):

- The applicant's name and domicile address;
- The applicant's legal entity;
- The citizenship of each individual applicant, or the state or country of incorporation or organization of each juristic applicant;
- If the applicant is a domestic partnership, the names and citizenship of the general partners, or if the applicant is a domestic joint venture, the names and citizenship of the active members of the joint venture;
- If the applicant is a sole proprietorship, the state of organization of the sole proprietorship and the name and citizenship of the sole proprietor;
- One or more bases for filing that satisfy all the requirements of § 2.34. If more than one basis is set forth, the applicant must comply with the requirements of § 2.34 for each asserted basis;
- If the application contains goods and/or services in more than one class, compliance with § 2.86;
- A filing fee for each class of goods and/or services, as required by § 2.6(a)(1)(ii) or (iii);
- A verified statement that meets the requirements of § 2.33, dated and signed by a person properly authorized to sign on behalf of the owner pursuant to § 2.193(e)(1);
- If the applicant does not claim standard characters, the applicant must attach a digitized image of the mark. If the mark includes color, the drawing must show the mark in color;
- If the mark is in standard characters, a mark comprised only of characters in the Office's standard character set, typed in the appropriate field of the application;
- If the mark includes color, a statement naming the color(s) and describing where the color(s) appears on the mark, and a claim that the color(s) is a feature of the mark;
- If the mark is not in standard characters, a description of the mark;
- If the mark includes non-English wording, an English translation of that wording;
- If the mark includes non-Latin characters, a transliteration of those characters;
- If the mark includes an individual's name or likeness, either (1) a statement that identifies the living individual whose name or likeness the mark comprises and written consent of the individual, or (2) a statement that the name or likeness does not identify a living individual (see section 2(c) of the Act);
- If the applicant owns one or more registrations for the same mark, and the owner(s) last listed in Office records of the prior registration(s) for the same mark differs from the owner(s) listed in the application, a claim of ownership of the registration(s) identified by the registration number(s), pursuant to § 2.36;
- If the application is a concurrent use application, compliance with § 2.42;
- An applicant whose domicile is not located within the United States or its territories must designate an attorney as the applicant's representative, pursuant to § 2.11(a), and include the attorney's name, postal address, email address, and bar information; and
- Correctly classified goods and/or services, with an identification of goods and/or services from the Office's Acceptable Identification of Goods and Services Manual within the electronic form.

The insufficient information surcharge will apply if an application fails to satisfy any of the first 19 requirements in this list. See Part VII: Discussion of Specific Rules for more information.

The agency will not impose this fee on applications denied a filing date for failure to satisfy the requirements under § 2.21.

As discussed above, any previously filed TEAS Plus applications that remain pending on or after the effective date of this final rule will be subject to the insufficient information surcharge

fee if the application fails to satisfy any of the above requirements because the requirements for a base application under the final rule are the same as the requirements for a TEAS Plus application. Under either system, TEAS or base plus surcharges, affected applications would be subject to a fee of $100 per class for failing to meet the requirements.

(ii) Entering Identifications of Goods and/or Services in the Free-Form Text Box Fee

Section 2.22(a)(20) requires applicants to identify goods and/or services using identifications from the agency's Acceptable Identification of Goods and Services Manual (ID Manual) within the electronic form. Applicants may choose goods and/or services identifications by selecting directly from the ID Manual in the electronic application or entering manually in a free-form text box. The USPTO is setting a new $200 fee per class for applicants who choose to enter descriptions of goods and services in the free-form text box. To avoid the surcharge, applicants may use the ID Manual within the electronic application, which includes thousands of identifications. As discussed above, applications filed under section 66(a) (Madrid Protocol) will not be subject to this surcharge.

Generally, examining attorneys do not need to review identifications of goods and/or services selected directly from the ID Manual within the electronic application form. Conversely, examining attorneys must carefully consider identifications entered in a free-form text box to determine whether the descriptions are acceptable as written or require amendment to sufficiently specify the nature of the goods and/or services. Examining attorneys must review each entry to determine its acceptability, even in situations where an applicant types or pastes the ID Manual identification, because they do not know if wording in the free-form text box came from the ID Manual.

Identifying an applicant's goods and/or services with sufficient specificity is necessary to provide adequate notice to third parties regarding the goods and/or services in connection with which the applicant intends to use, or is using, the mark. It also ensures the applicant pays the corresponding fee for each class of goods and/or services. Examining attorneys often spend substantial time reviewing identifications provided in the free-form text box and may initiate multiple communications with the applicant before determining an acceptable identification and collecting appropriate fees. This surcharge will help recover the additional costs associated with these more extensive reviews.

(iii) Each Additional 1,000 Characters Beyond the First 1,000 Fee

When entering identifications in the free-form text box, some applicants submit extensive lists of goods and/or services. In more egregious cases, a list may comprise multiple pages and include goods and/or services in multiple classes. To ensure that applicants who submit lengthy identifications pay the costs of their review, the USPTO is setting a new fee of $200 for each additional group of 1,000 characters beyond the first 1,000 characters in the free-form text box, including punctuation and spaces. Currently, less than 5% of directly filed applications contain custom identifications of goods and/or services that exceed 1,000 characters per class. Applicants who enter identifications directly from the ID Manual within the electronic application will not incur this fee, even if the identification exceeds 1,000 characters. As discussed above, applications filed under section 66(a) (Madrid Protocol) will not be subject to this surcharge for now.

The USPTO selected a character-based limit for operational efficiency, as the electronic application system can perform character counts in real time and alert the applicant when they exceed the limit. A limit based on other criteria, such as a count of separate goods and/or services, would require examiner review, as automating such counts is not technologically feasible. Such reviews by an examining attorney would increase the cost of examination and counteract the purpose of the fee, which is to ensure that applicants who submit lengthy identifications pay the costs of reviewing them.

After review and consideration of the comments, the USPTO will not apply this fee to amended identifications that exceed the character limit in a response to an Office action.

3. Amendment to Allege Use (AAU) and Statement of Use (SOU) Fees

TABLE 5—AAU AND SOU FEES

Description	Current fee	Final rule fee	Dollar change	Percent change	FY 2023 unit cost
Amendment to allege use (AAU), per class (paper)	$200	$250	$50	25	n/a
Statement of use (SOU), per class (paper)	200	250	50	25	n/a
Amendment to allege use (AAU), per class (electronic)	100	150	50	50	$152
Statement of use (SOU), per class (electronic)	100	150	50	50	129

The USPTO is increasing fees for the AAUs and SOUs to $150 per class for electronic filings and $250 per class for paper filings. The agency has not adjusted the AAU and SOU fees since 2002, even as processing costs increased during the subsequent two decades. The examination time for the AAUs and SOUs has grown due to the increased submission of questionable specimens, resulting in the issuance of more Office actions. These final fees will improve cost recovery and help rebalance the fee structure.

4. Post-Registration Maintenance Fees

TABLE 6—POST-REGISTRATION MAINTENANCE FEES

Description	Current fee	Final rule fee	Dollar change	Percent change	FY 2023 unit cost
Section 9 registration renewal application, per class (paper)	$500	$525	$25	5	n/a
Section 8 declaration, per class (paper)	325	425	100	31	$95
Section 15 declaration, per class (paper)	300	350	50	17	n/a
Section 71 declaration, per class (paper)	325	425	100	31	n/a
Section 9 registration renewal application, per class (electronic)	300	325	25	8	$24

TABLE 6—POST-REGISTRATION MAINTENANCE FEES—Continued

Description	Current fee	Final rule fee	Dollar change	Percent change	FY 2023 unit cost
Section 8 declaration, per class (electronic)	225	325	100	44	48
Section 15 declaration, per class (electronic)	200	250	50	25	11
Section 71 declaration, per class (electronic)	225	325	100	44	48
Renewal fee filed at WIPO	300	325	25	8	n/a

In the NPRM, the USPTO proposed increasing the section 9 registration renewal fee to $350 per class and the section 8 and 71 declaration fees to $300 per class. After further consideration in light of public comments and the USPTO's financial outlook, the agency is reallocating some of the section 9 renewal fee increase to section 8 and 71 declaration fees. This final rule aligns these fees at $325 per class for electronic filings.

The percentage of trademark registrants choosing to maintain their registrations has declined, as the share of applications from groups that have been historically less likely to maintain their registrations has increased. The USPTO expects these trends to continue. Additionally, costs to process maintenance filings have increased due to higher inflationary costs, post-registration audits, and elevated legal review to address potential fraud or improper filing behaviors.

The USPTO has an obligation to recover the aggregate costs of trademark operations through user fees. The above-cost post-registration maintenance fees recover costs incurred by the USPTO during examination. Given changes in demand and filing behaviors, the agency is rebalancing aggregate revenue derived from renewals and post-registration maintenance fees to keep barriers to entry low for new applicants.

The increased fee for renewing an international registration at WIPO will be owed on requests made on or after February 18, 2025, because the Madrid Agreement Concerning the International Registration of Marks requires three months' advance notice to WIPO before an increase in the amount of the international renewal fee may enter into force.

5. Letter of Protest Fee

TABLE 7—LETTER OF PROTEST FEE

Description	Current fee	Final rule fee	Dollar change	Percent change	FY 2023 unit cost
Letter of protest	$50	$150	$100	200	$893

The USPTO is increasing the fee for filing a letter of protest from $50 to $150. The cost to process a letter of protest exceeds the adjusted fee, and the agency will continue subsidizing this service from aggregate trademark fee collections, setting the fee rate to encourage the filing of relevant, well-supported letters of protest and discourage frivolous filings. Letters of protest allow a third party to bring evidence to the USPTO on the registrability of a mark in a pending application without filing an opposition with the Trademark Trial and Appeal Board (TTAB). The letter of protest procedure is not a substitute for the statutory opposition and cancellation procedures available to third parties who believe they would be damaged by registration of the involved mark. Instead, it is intended to assist examination without causing undue delay or compromising the integrity and objectivity of the ex parte examination process, which involves only the applicant and the USPTO.

The USPTO's estimated FY 2023 costs for reviewing and processing each letter of protest were $893, $843 more than the current $50 fee. The agency's costs are high because of the specialized staff who review letters of protest and the time required to determine whether: (1) the letters comply with submission requirements and (2) should be forwarded to an examining attorney. In addition, under the TMA, the USPTO is required to review and act on letters of protest within 60 days of receipt. The total subsidy for performing this service has grown due to a substantial increase in letters of protest forwarded to the USPTO each year. Letters of protest have risen from about 2,300 in FY 2016 to nearly 4,000 in FY 2023. The agency estimates this volume will grow to more than 5,000 letters annually by FY 2029, resulting in more cost to the USPTO.

When viewed in the context of USPTO actions due to letters of protest, the agency's costs are considerable, while the letters have a minor impact on examination outcomes. During FY 2022, the USPTO decided 4,557 letters of protest, of which 1,433 (31%) were not in compliance with § 2.149 and therefore not included in the record of examination. Of the letters entered into the record, examining attorneys issued a refusal based on the asserted ground(s) in 1,213 cases (27% of letters decided). Examining attorneys likely would have issued a refusal in these cases even without a letter of protest. The USPTO identified only 27 (0.59%) letters in FY 2022 that corresponded to an error in publishing a mark for opposition, similar to historical shares of letters decided each year.

TABLE 8—LETTERS OF PROTEST FILED AND LETTERS CORRESPONDING TO SITUATIONS WHERE THE USPTO PUBLISHED A MARK FOR OPPOSITION IN ERROR, BY FISCAL YEAR

Fiscal year	Letters of protest decided	Letters corresponding to a mark published in error	Share of total letters decided (%)
2016	2,258	17	0.75
2017	2,726	13	0.48

TABLE 8—LETTERS OF PROTEST FILED AND LETTERS CORRESPONDING TO SITUATIONS WHERE THE USPTO PUBLISHED A MARK FOR OPPOSITION IN ERROR, BY FISCAL YEAR—Continued

Fiscal year	Letters of protest decided	Letters corresponding to a mark published in error	Share of total letters decided (%)
2018	3,386	28	0.83
2019	4,106	43	1.05
2020	3,534	22	0.62
2021	3,756	39	1.04
2022	4,557	27	0.59

In accordance with the USPTO's fee setting policy factors, this adjustment recovers more of the costs associated with letters of protest, although the agency's full costs for this service will continue to be subsidized by aggregate trademark revenues.

6. Other Petition Fees

TABLE 9—OTHER PETITION FEES

Description	Current fee	Final rule fee	Dollar change	Percent change	FY 2023 unit cost
Petition to the Director (paper)	$350	$500	$150	43	n/a
Petition to revive an application (paper)	250	350	100	40	n/a
Petition to the Director (electronic)	250	400	150	60	$3,300
Petition to revive an application (electronic)	150	250	100	67	61

Optional petitions are a valuable, though costly, part of the trademark registration process, and other trademark fees subsidize the optional petition processing costs. The new fee amounts would recover more costs associated with the extensive and lengthy review these services require.

VI. Discussion of Comments

In response to the March 26, 2024, NPRM, the USPTO received comments from 27 associations and individuals including intellectual property organizations, law firms, attorneys, and others. These comments are available on *Regulations.gov* at *https://www.regulations.gov/docket/PTO-T-2022-0034.*

The summaries of comments and the agency's responses to the written comments follow.

General Fee Setting Approach

Comment 1: Commenters recognized the need for the USPTO to set fees at a level necessary to recover aggregate costs and ensure financial sustainability.

Response: The USPTO appreciates the commenters' feedback.

Comment 2: In principle, commenters supported fee increases needed to maintain effective and efficient operations, including efforts to lower pendency, combat fraud, and ensure the accuracy and reliability of the trademark register.

Response: The USPTO appreciates the commenters' feedback and is committed to pursuing the goals and objectives in the Strategic Plan in a fiscally responsible manner.

Comment 3: Commenters expressed appreciation for the USPTO's receptivity to feedback given during the public hearing and making adjustments to the fee proposals in response to that feedback.

Response: The USPTO appreciates the commenters' feedback and remains committed to analyzing, considering, and incorporating feedback from our stakeholder community.

Comment 4: One commenter noted that it was important for the USPTO to strike a balance between financial sustainability and accessibility to the trademark system in setting fees.

Response: The USPTO agrees that financial sustainability and stakeholder accessibility are crucial fee setting considerations. The overriding principle behind this rulemaking is to provide the agency with a sustainable funding model that supports the USPTO's strategic goals and objectives, including providing affordable access to the trademark system for all stakeholders.

Comment 5: Commenters emphasized that the fee schedule should be clear and transparent.

Response: The USPTO strives to ensure that the costs associated with obtaining a federal trademark registration are clear and that examination is consistent for all applicants. Similar to a TEAS Plus application, the base application established by this final rule will indicate what information is required for a complete application, as well as the addition of indicators meant to alert applicants of additional surcharges based on information provided on the application at the time of filing. The USPTO expects that, in most cases, any incurred surcharges will be assessed and known to the applicant upon submission of the initial application.

Comment 6: Commenters noted there should be greater agency transparency surrounding the budget, particularly around increased IT costs. Commenters asserted that the public is entitled to know more details about scheduled and upcoming IT improvements and why costs and delays have escalated over previous projections.

Response: The USPTO is committed to providing stakeholders with financial and performance data that are complete, reliable, accurate, and consistent. The USPTO posts congressional budget justifications, agency financial reports, and annual performance plan and annual performance reports on the financial and performance section of the USTPO website at *https://www.uspto.gov/about-us/financial-and-performance.* Also, the General Services Administration's *ITDashboard.gov* enables stakeholders to understand the health of IT investments, the impact of IT portfolios, and other key IT indicators. Finally, the TPAC holds quarterly public meetings to review USPTO policies, goals, performance, budget, and user fees. During these meetings the USPTO presents the latest plans and updates regarding IT

improvements and other administrative matters.

Although the USPTO strives to provide the most accurate cost and revenue estimates in the five-year forecast summary of each congressional budget submission, these forecasts reflect point-in-time planning assumptions and budget priorities. The agency routinely updates forecasts, tracks operational and financial performance, and monitors changes in the economy to mitigate uncertainty. The USPTO has earned 31 consecutive years of unmodified (clean) audit opinions on its annual financial statements.

Comment 7: Commenters asserted that it was too soon to raise trademark fees because fees were raised in 2021, and new fees were also introduced as part of the Trademark Modernization Act. One commenter suggested these actions raise concerns about the ability of the USPTO to establish effective budgetary frameworks, project future operational outcomes, and maintain efficient operations.

Response: The USPTO decided to adjust trademark fees at this time after conducting a deliberate and thorough review of fees, costs, and revenues. Based on this review, the agency concluded that fee adjustments are necessary to generate sufficient financial resources to facilitate the effective administration of the U.S. trademark system.

The USPTO's budget projections reflect point-in-time estimates and assumptions that are subject to change, with considerable uncertainty in outyear forecasts and risks that could materialize. Fee collections and operational costs are affected by internal factors, including changes in examination processes and procedures, and also by external factors outside the USPTO's control, such as legislation, court decisions, and changes to the broader economy. As detailed in the Updated Revenue and Cost Estimates section of this rule, the USPTO has experienced a number of unanticipated circumstances since the current fee schedule took effect in January 2021. These factors include higher-than-expected inflation in the broader U.S. economy leading to higher costs for supplies and contract services and employee pay raises enacted across all U.S. government agencies in FY 2023–24—including the USPTO—that were larger than previously planned for during the January 2021 fee change.

Comment 8: One commenter asserted that previous fee increases have not improved operations, as processing times for applications have risen sharply since the last time fees were increased in 2021; therefore, the USPTO should not increase fees, as a fee increase is unlikely to improve agency efficiency.

Response: The USPTO acknowledges that processing times and pendency have increased for trademark applications. These delays are the result of several years of sustained increases in trademark application filings, punctuated by an unprecedented year-long influx during FY 2021 that created a significant unexamined application inventory. The cost of processing and examining applications is subsidized by other fees, so this surge has further stressed the USPTO's finances. Addressing this unexamined inventory has required and will continue to require significant investments in time and agency resources, making fee increases necessary to effectively administer the trademark system.

Comment 9: One commenter stated that trademark registration costs have historically disproportionately affected minority-owned small businesses and the proposed increases will make matters worse. The commenter urged the USPTO to petition Congress to appropriate taxpayer funding rather than raising fees paid by small businesses and innovators.

Response: The USPTO acknowledges that a growing body of research has revealed unequal innovation participation rates for women, people of color, veterans, and other underserved individuals. Working to address these concerns, the agency is developing its own equity initiatives and programs and is also partnering with organizations in both the public and private sectors to collectively advance inclusion in innovation. For more information on the USPTO's inclusive innovation initiatives, visit *https://www.uspto.gov/Equity.*

Comment 10: One commenter asserted that the Initial Regulatory Flexibility Act (IRFA) analysis did not sufficiently describe or estimate the number of small entities the rule would affect and every small business in the United States is impacted by the proposed fee changes.

Response: The USPTO disagrees that this rulemaking would impact every small business in the United States. Many small businesses do not hold any trademarks or may choose not to register their trademarks with the USPTO for reasons unrelated to the agency's fees.

The USPTO does not collect or maintain statistics in trademark cases on small- versus large-entity applicants, and this information would be required to determine the number of small entities affected by this rule. However, the agency does not anticipate that the final rule will have a disproportionate impact on any particular class of small or large entities. The USPTO chose the fee schedule in the final rule because it will enable the agency to achieve its goals effectively and efficiently without unduly burdening small entities, erecting barriers to entry, or stifling incentives to innovate.

Comment 11: Commenters recommended that the USPTO include an exception or reduce fees for small and micro businesses, similar to the small and micro entity discounts offered for patent applicants and holders.

Response: Section 10(a) of the AIA authorizes the Director to set or adjust any fee established, authorized, or charged under the Trademark Act, but it does not include the authority to provide entity discounts for trademark fees.

Comment 12: The Office of Advocacy for the Small Business Administration (SBA) recommended that the USPTO create more clear and accessible guidance for small businesses seeking to apply for or renew a trademark.

Response: The USPTO is committed to improving the resources offered to small businesses and entrepreneurs, including expanding our partner pro bono services and IP law school clinic programs. Resources for inventors and entrepreneurs are available on the USPTO website at *https://www.uspto.gov/Inventors.* The USPTO's Trademark Assistance Center (TAC), *https://www.uspto.gov/TrademarkAssistance* can answer questions on a variety of trademark topics for first-time filers.

Comment 13: The SBA commented that the unit cost recovery or across-the-board adjustment alternatives analyzed in the IRFA were better options than the proposed fee structure.

Response: The USPTO is adopting the fee schedule detailed in this rulemaking because it will enable the agency to achieve its goals effectively and efficiently without unduly burdening small entities, erecting barriers to entry, or stifling incentives to innovate.

The unit cost recovery alternative would produce a structure in which application and processing fees would increase significantly for all applicants, and post-registration maintenance filing fees would decrease dramatically when compared with current fees. The USPTO rejected this alternative because it does not reflect improvements in fee design to accomplish the agency's stated objectives of encouraging broader use of IP rights-protection mechanisms and participation by more trademark

owners, as well as practices that improve process efficiency. In contrast, the fee schedule in the final rule sets application filing fees below the unit cost of those services to encourage broader use of IP rights-protection mechanisms and participation by more trademark owners, including small businesses and individual filers.

The USPTO also considered a 27% across-the-board increase for all fees. This fee schedule would have continued to promote innovation strategies and allow applicants to gain access to the trademark system through fees set below cost, while registrants pay maintenance fees above cost to subsidize the below-cost front-end fees. However, the agency ultimately rejected this proposal because, unlike the fee schedule outlined in the final rule, it would not enhance the efficiency of trademark processing and offers no new incentives for users to file more efficient and complete applications.

Comment 14: One commenter suggested that before raising fees, the USPTO should assess the impact of recent agency measures like the U.S. counsel rule, the requirement for filers to log in with *myUSPTO.gov*, the TTAB's expedited cancellation program, the Trademark Modernization Act, and the three-month response deadline for Office actions.

Response: The agency implemented the measures identified in the comment to improve the quality of both trademark applications and the trademark register and to reduce trademark pendency. In developing the most judicious fee adjustments possible, the USPTO followed its fee setting process that includes a comprehensive review that identifies, assesses, and integrates fraud risk controls, recent initiatives and measures (including those identified in the comment), and trends. Thus, the USPTO incorporated the impact of these initiatives into the new fee structure by considering filing patterns, capacity, and financial implications.

Comment 15: Commenters expressed opposition to the fee proposals and claimed any problems the USPTO faces are the result of ''bad trademark applications being filed by the incompetent automated trademark service 'mills' and the unethical trademark attorneys.'' In lieu of the proposed fee changes, commenters stated the USPTO should require comprehensive legal research before filing.

Response: The USPTO enforces compliance with the Trademark Act's requirements for applications through a number of methods. Both the Trademark Act and the rules of practice require a verified statement alleging that ''to the best of the signatory's knowledge and belief, the facts recited in the application are accurate.'' 15 U.S.C. 1051(a)(3), (b)(3), and 1126; 37 CFR 2.33 and 2.34. If the filing basis is section 1(b), section 44(d), or section 44(e), the statement must also assert that the verifier believes the applicant is entitled to, and has a bona fide intent to, use the mark in commerce on or in connection with the goods or services specified in the application, and that to the best of the signatory's knowledge and belief, no other person has the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, used on or in connection with the goods or services of such other person, to cause confusion or mistake, or to deceive. If the filing basis is section 1(a), the verification must also state that the applicant believes it is the owner of the mark and that it is in use in commerce.

In addition, the USPTO is currently working to combat fraudulent applications through the recently created Register Protection Office (RPO). For example, in FY 2024, the RPO increased its capacity and improved its workflow to monitor and shutter *USPTO.gov* accounts for user agreement violations.

Comment 16: One commenter stated the best course of action the USPTO can take to promote efficiency and reduce pendency is to better train examining attorneys. The commenter suggested that the USPTO instruct their examining attorneys that the ID Manual is not binding, and there is no need for conformity if an identification is acceptable as written. The commenter also stated that the USPTO should teach its examining attorneys not to issue unnecessary refusals.

Response: The USPTO agrees that custom identifications may be acceptable as written, and that the agency should not issue unnecessary refusals. The new surcharge for entering identifications manually in a free-form text box is not an indication that custom identifications are unacceptable but reflects the extra work required by examining attorneys (and costs to the USPTO) to review each entry to determine its acceptability.

As part of objective 2.2 in the 2022–2026 Strategic Plan, issuing and maintaining accurate and reliable trademark registrations, the agency is continuously enhancing training programs to keep pace with changing filing demands and with emerging issues and challenges.

Comment 17: Commenters requested clarification on whether the proposed application and filing surcharge fees would apply to existing applications or only to applications filed after the effective date of the final rule.

Response: In general, the proposed fees would apply only to applications filed after the effective date of the final rule. However, as discussed in Part IV: Individual Fee Rationale of this rule, any previously filed TEAS Plus applications that remain pending on or after the effective date of this final rule will be subject to the insufficient information surcharge fee if the application fails to satisfy any of the above requirements because the requirements for a base application are the same as the requirements for a TEAS Plus application. Under either system (TEAS or base plus surcharges), affected applications would be subject to a fee of $100 per class for failing to meet the requirements.

Comment 18: One commenter noted the fee proposal would require a significant learning curve for legal and non-legal parties involved in the trademark registration process and will likely lead to more applicants seeking out legal assistance at law clinics. The commenter suggested that the USPTO establish clinical relationships with more Historically Black Colleges and Universities (HBCUs).

Response: As part of objective 1.2 in the 2022–2026 Strategic Plan, the agency is continuing to expand its partner pro bono services and IP law school clinic programs to ensure greater access to counsel and to assist in procuring IP protection. Currently, about one third of law schools accredited by the American Bar Association (ABA), including three of six of HBCU law schools, participate in the USPTO's Law School Clinic Certification Program. All three HBCU law schools participating have both patent and trademark clinics. Participating clinics provide legal services pro bono to the public, including to inventors, entrepreneurs, and small businesses. More information on the program is available on the USPTO's website at *https://www.uspto.gov/LawSchoolClinic*.

Regarding the learning curve, the required information for a base application is the same as required for TEAS Plus applications. The new base filing plus surcharge filing solution will flag all information required for filing, much like the TEAS Plus application today.

Comment 19: Commenters expressed concern that the fee increases will disproportionately affect lower-income filers such as small businesses, startups, and pro se filers, many of whom may be

sensitive to cost changes and lack the means to secure legal counsel. One commenter suggested that the proposed free-form text box surcharge, in particular, will negatively impact small businesses.

Response: The agency strives to keep front-end initial filing fees below cost to encourage broader participation and open access to the trademark system. The new fees reflect higher inflationary costs but will remain below the net cost of examination and further minimize undue burdens by shifting higher fee requirements to applicants who trigger higher examination costs due to lengthy or less clear identifications of goods and services or missing information. The USPTO expects that a majority of filers will avoid the surcharges and pay only the base application fee because they will provide all required information, select their identifications from the ID Manual, and not exceed the 1,000-character limit for each class.

Comment 20: One commenter expressed concern that higher fees may push more applicants to file pro se and cause applicants to unknowingly give up their rights or to file in a manner that does not reflect their actual use, thereby damaging the accuracy of the trademark register.

Response: As noted in response to comment 12, the USPTO provides resources for applicants and registrants that explain trademark rights on the agency's website at *https://www.uspto.gov/Inventors.* Applicants and registrants may find these resources helpful in understanding their rights and how to file in a manner that best reflects their actual use. In addition, although the USPTO cannot provide legal advice, the TAC, *https://www.uspto.gov/TrademarkAssistance,* can answer questions on a variety of trademark topics.

The USPTO's Law School Clinic Certification Program, *https://www.uspto.gov/LawSchoolClinic,* includes over 60 participating law school clinics that provide patent or trademark legal services pro bono to qualified members of the public who are accepted as a client of a clinic. Each participating law school has requirements for accepting new clients and accepts new clients at their discretion. The agency is continuing to expand its partner pro bono services and IP law school clinic programs to ensure greater access to counsel and to assist in procuring IP protection.

Comment 21: The SBA suggested that the introduction of surcharges will make it harder for applicants and legal counsel to accurately predict the overall cost associated with trademark applications. The SBA asserted that surcharges will negatively impact small businesses, which may lack resources for legal counsel or the ability to absorb unexpected costs.

Response: The agency expects that the majority of filers will avoid surcharges and pay only the base application fee because they will provide all required information, select their identifications from the ID Manual, and not exceed the 1,000-character limit for each class. The USPTO further believes that applicants and legal counsel should be able to anticipate which applications will require custom identifications or excess characters based on their knowledge of the complexity of the application and the covered classes. Prior to submitting their application, applicants will be presented with the entire application cost—including surcharges—and have the opportunity to provide complete information and identifications from the ID manual or custom identifications that are 1,000 characters or fewer in length, thus avoiding the surcharges.

As discussed above, the USPTO endeavors to keep front-end initial filing fees below cost to encourage broader participation and open access to the trademark system. The new fees reflect higher costs but will remain below the net cost of examination and further minimize undue burdens by shifting higher fee requirements to applicants who trigger higher examination costs due to lengthy or less clear identifications of goods and services or missing information.

The USPTO's Law School Clinic Certification Program, *https://www.uspto.gov/LawSchoolClinic,* includes over 60 participating law school clinics that provide patent or trademark legal services pro bono to qualified members of the public who are accepted as a client of a clinic. Each participating law school has requirements for accepting new clients and accepts new clients at their discretion. The agency is continuing to expand its partner pro bono services and IP law school clinic programs to ensure greater access to counsel and to assist in procuring IP protection.

Targeted Fee Adjustments

Trademark Application Filing Fees

Comment 22: One commenter suggested that any increase to basic filing fees should be limited to budgetary changes for inflation and cost of living.

Response: Projected revenue from the current fee schedule is insufficient to meet future budgetary requirements (costs), due largely to higher-than-expected inflation in the broader U.S. economy that has increased the agency operating costs. Consequently, the USPTO's aggregate operating costs will exceed aggregate revenue for the Trademarks program under the current schedule.

The USPTO chose the adjustments established in this final rule, including application filing fees, because they will enable the agency to achieve its goals effectively and efficiently without unduly burdening small entities, erecting barriers to entry, or stifling incentives to innovate. If the USPTO were to set the fee rate for a base application lower than prescribed in the final rule, the lower application filing fee would need to be offset by raising other fees, reducing spending on core mission and strategic priorities, or depleting the operating reserves, thereby significantly increasing agency financial risk.

Comment 23: Commenters expressed concern that higher application fees may deter many potential applicants from filing for trademarks, reducing the overall number of applications and registrations.

Response: The USPTO raised trademark fees in 2017 and 2021, with effective dates of January 14, 2017, and January 2, 2021, respectively. From FY 2016 to FY 2017, filings increased by about 60,000. During the fourth quarter of FY 2020 and the first quarter of FY 2021, the agency experienced a surge in filings in advance of the fee increase. Outside of that surge, the USPTO notes that filings in each of the last three quarters of FY 2021 (after the new fees took effect) were higher than filings in the third quarter of FY 2020 or any prior quarter. Therefore, the data indicate that fee increases have not impacted the long-term trend of growth in trademark filings.

As noted in the NPRM, outside research also suggests that demand for trademark applications is inelastic. See Gaétan De Rassenfosse, ''On the Price Elasticity of Demand for Trademarks,'' Social Science Research Network, Jan. 28, 2018, *https://doi.org/10.2139/ssrn.2628646;* Benedikt Herz and Malwina Mejer, ''On the Fee Elasticity of the Demand for Trademarks in Europe,'' Oxford Economic Papers, Jul. 3, 2016, *https://doi.org/10.1093/oep/gpw035.*

Comment 24: One commenter expressed concern that increases to the base application fee, as compared to TEAS Plus and TEAS Standard fees, were too high and would be a significant burden for stakeholders, especially small businesses. The commenter noted that the effective fee

increases range from 40% (base application fee compared to TEAS Plus application fee) to 114% (base application fee plus all three surcharge fees compared to TEAS Standard application fee), depending on whether the applicant incurs any additional surcharges.

Response: The new fees reflect higher costs that have accumulated over the years and will remain below the net cost of examination, further minimizing undue burdens by shifting higher fee requirements to applicants who trigger higher examination costs.

Individuals and small businesses comprise the majority of trademark filers, and many are one-time filers. The USPTO expects that the majority of these filers will avoid the surcharges and pay only the base application fee because they will provide all required information, select their identifications from the ID Manual, and not exceed the 1,000-character limit for each class.

Comment 25: Commenters disagreed with the USPTO's decision to move away from the two-tiered TEAS system. These commenters suggested that the TEAS system allows customers to explore various options with different prices based on their needs and financial capacity. In contrast, commenters suggested that the proposed fees act as a barrier to entry by increasing application costs, removing other cost options from the process, and losing the advantage of an earlier filing date strategy because of the time required to comply.

Response: The new system will allow customers to explore various options with different prices based on their needs and financial capacity. In addition, it is designed to make application fees more equitable by aligning filing costs with the work required for examination. It is similar to the existing system in that applicants who comply with the base requirements in their initial filing (comparable to TEAS Plus) will pay the lowest fees, as compared to applicants who fail to meet all requirements (comparable to TEAS Standard). The USPTO does not anticipate the total number of applications filed each year will change under the schedule enacted herein. The agency does anticipate that a larger share of applicants will seek to avoid the proposed surcharges, as compared to the share of applicants who used the TEAS Plus option under the existing fee schedule.

Comment 26: Commenters expressed concern about the potential complexity and unpredictability of the new system, as it appears to create new procedures and requirements to apply for and obtain registration.

Response: Although the new system introduces changes, as noted above it is similar to the prior system in that applicants complying with the base requirements in their initial filing (comparable to TEAS Plus) will pay the lowest fees under the new fee schedule, as compared to applicants who fail to meet all requirements (comparable to TEAS Standard). Prior to submitting their application, applicants will be presented with the entire cost, including surcharges. Applicants can avoid some or all of these surcharges by providing complete information and identifications from the ID Manual or custom identifications of 1,000 characters or less per class. The information required to avoid the insufficient information surcharge fee is the same as that required for the TEAS Plus application.

Comment 27: One commenter believed the fee for a base application is too high and should be set at the current rate for a TEAS Plus application ($250) because it has essentially the same requirements.

Response: Maintaining the initial filing fee at $250 would not accommodate cost increases and would likely undermine the timeliness and the quality of the examination and registration processes. When the agency introduced the TEAS Plus option in 2005, the fee was $275, and that costs for examination have risen significantly since that time.

In addition, the USPTO is setting the fee for the base application at a rate greater than the current TEAS Plus fee to recover some additional examination costs earlier in the trademark life cycle. The new base application fee remains below the net cost of examination, and the new surcharges will further minimize undue burdens by shifting higher fee requirements to applicants who trigger higher examination costs.

Comment 28: Commenters questioned why the USPTO did not include a greater increase to fees for paper applications, given the larger costs associated with these types of filings.

Response: Under § 2.23, the USPTO requires electronic filing of all trademark correspondence, including applications. Filers may petition for special circumstances, but paper applications make up fewer than 1% of current filings. In addition to a higher filing fee, paper filers also incur an additional petition fee for requesting acceptance of a paper submission. Because the vast majority of filings are electronic, the higher cost of processing paper applications has little marginal impact on the USPTO's overall costs.

Comment 29: One commenter suggested that if the USPTO's intent is to generate publication-ready applications to improve pendency, it should evaluate why pendency has increased rather than raise fees.

Response: The USPTO is working diligently to balance timely examination with trademark quality.

As discussed in the NPRM and in Part IV: Rulemaking Goals and Strategies of this rule, the agency's recent trademark pendency challenge is the result of several years of sustained increases in trademark application filings punctuated by an unprecedented, year-long influx during FY 2021 that created a significant unexamined application inventory. In addressing these challenges, the USPTO will continue to reevaluate its operating posture to maximize efficiency, set data-driven pendency goals, realign the trademark workforce to maintain stability during workload fluctuations and optimize pendency goals, and use available technology solutions to streamline and automate trademark work processes. Although new trademark application filings have since softened and inventory is stabilizing, unexamined inventory remains high and will take several years to address.

Promoting efficient delivery of reliable IP rights is just one of the USPTO's goals; another is to recover the aggregate costs of trademark operations through user fees. Without raising fees, the agency projects that the trademark operating reserve will fall below minimum levels in the next few years with a consequent impact on timeliness, application quality, and the integrity of the trademark register. The USPTO designed the new fee structure to enhance application quality and streamline the examination process, resulting in lower pendency and greater cost recovery.

Trademark Application Filing Surcharge Fees

Comment 30: Commenters expressed concern that the new surcharges could make it difficult for attorneys to provide clients with an accurate estimate of costs.

Response: The USPTO expects that the majority of filers will avoid surcharges and pay only the base application fee because they will provide all required information, select their identifications from the ID Manual, and not exceed the 1,000-character limit per class. The USPTO further believes that applicants and legal counsel should be able to anticipate which applications

will require custom identifications or excess characters based on their knowledge of the complexity of the application and the covered classes. Prior to submitting their application, applicants will be presented with the entire cost, including surcharges, and have the opportunity to update before filing to potentially avoid the surcharges. The electronic application system will clearly indicate the fields required to avoid the incomplete information surcharge, and there will be no surcharge for IDs selected from the ID Manual within the application. Attorneys should be aware that IDs entered within the free-form text box will generate a surcharge, as will those that exceed the 1,000-character limit if entered in that box, and advise their clients accordingly.

Comment 31: Commenters sought clarification on whether use of the free-form text box will subject applicants to both the insufficient information surcharge and the free-form text surcharge.

Response: Use of the free-form text box will not trigger the insufficient information surcharge. As detailed in Part VII: Discussion of Specific Rules, the insufficient information surcharge will apply if an application fails to satisfy any of the requirements in paragraphs (a)(1) through (19) in the list of requirements for a base application under § 2.22. Applicants will incur the free-form text surcharge when they enter identifications of goods and/or services in the free-form text box (paragraph (a)(20) under § 2.22), and there will be no surcharge for IDs selected from the ID Manual within the application.

Comment 32: Commenters sought clarification on when the insufficient information surcharge would be assessed: at filing, when applications are acted upon by the USPTO, or when amended.

Response: The USPTO expects that if the insufficient information surcharge is assessed, the vast majority of applicants will be assessed the surcharge at filing, and the electronic filing system will display total filing cost prior to submission. Some filers could be assessed the surcharge after filing if the examining attorney determines that required information was missing on the original application.

Comment 33: One commenter requested clarification on whether the insufficient information surcharge will be assessed per class or on each piece of missing information per class.

Response: The insufficient information surcharge is a per-class fee that applies to applications that do not include required information at the time of filing. The surcharge is not per requirement; it is $100 per class, regardless of the number of requirements an applicant fails to satisfy.

Comment 34: One commenter requested clarification regarding whether an applicant who uses the ID Manual that requires a fill-in (*e.g.,* software) will be charged the insufficient information fee if the examining attorney does not approve the language used to describe the nature and function of the goods and/or services.

Response: As with TEAS Plus, the agency will not require an additional fee if the identification of goods or services has a fill-in-the-blank element and the applicant inserts information that reasonably attempts to satisfy requirements in accordance with the instructions but requires amendment because the inserted information: (1) sets forth goods and/or services in another class (*e.g.,* headwear, namely, football helmets); (2) is indefinite (*e.g.,* maternity clothing, namely, sportswear); (3) includes indefinite wording from the parenthetical guidance provided for instructional purposes (*e.g.,* ''specify,'' ''indicate,'' ''etc.''); or (4) is inaccurate.

Applicants will incur the free-form text surcharge if they leave the fill-in-the-blank element empty, insert information that is clearly inappropriate for the selected identification, or insert additional goods and/or services unrelated to the selected identification. For example, applicants also will incur the additional fee if they identify the goods and/or services in the original application as ''processed meat, namely, laptop computers''; ''bicycle parts, namely, bicycle parts''; or ''sound recordings featuring music, and sunglasses.'' In these situations, the applicant has, in effect, failed to submit an identification from the ID Manual, and the additional fee will apply even if the applicant deletes the unacceptable terminology.

Comment 35: One commenter requested clarification regarding whether applicants will be assessed the insufficient information surcharge for not satisfying ''all of the requirements of § 2.34'' in an application filing basis if the specimen of use is deemed unacceptable in a use-based application.

Response: Similar to the guidance for TEAS Plus applications, as long as the specimen depicts the mark, the applicant will not incur an additional fee for registrations refused because the specimen is unacceptable. The insufficient information surcharge will apply if the mark on the specimen is materially different from the mark on the drawing. If the mark on the specimen and the drawing are materially different, the applicant has, in effect, failed to submit a specimen showing use of the mark sought to be registered. The surcharge will not apply if the difference between the mark on the specimen and the mark on the drawing is not material.

Comment 36: Commenters, including the SBA, expressed concern regarding the difficulty of anticipating whether the insufficient information fee will apply for an applicant, given that many of the requirements are subjective to the examining attorney's opinions and discretion, rather than objective factual standards. Commenters included color claim, description of a mark, identification of form of applicant, and translation of a mark as examples of subjective determinations where a fee could be imposed later in examination. Commenters suggested these questions will lead to accounting disputes, thus inhibiting the quality and timeliness of prosecution progress.

Response: The USPTO acknowledges the commenters' concerns and offers assurance that the agency strives to ensure consistent examination. An applicant may request that the USPTO review situations where, in their opinion, the agency has acted inconsistently in its treatment of their pending application(s) or recent registration(s). Applicants also may submit a request for review when a substantive or procedural issue has been addressed in a significantly different manner in different cases, subject to requirements on the Consistency Initiative page on the USPTO website at *https://www.uspto.gov/trademarks/trademark-updates-and-announcements/consistency-initiative.* If the applicant believes that the agency incorrectly imposed an insufficient information fee and has discussed the issue with the examining attorney, they may also contact the managing or senior attorney in the examining attorney's law office.

Comment 37: One commenter expressed concern that the list of criteria that would impose an insufficient information surcharge fee is not in line with the Trademark Manual of Examining Procedure.

Response: The current Trademark Manual of Examining Procedure (May 2024) provides guidance regarding TEAS Plus and TEAS Standard applications, including guidance regarding the processing fee for applications that do not meet the requirements for a TEAS Plus application under § 2.22(a). The information required to avoid the

insufficient information surcharge fee is the same as that required for the TEAS Plus application. After implementation of this final rule, the agency will update the manual in accordance with the requirements enacted herein.

Comment 38: Commenters questioned why the insufficient information fee will be imposed on a per class basis when most basic information requirements are not class-based.

Response: The USPTO has a longstanding practice of charging trademark fees on a per-class basis. The insufficient information surcharge mirrors the per-class processing fee for TEAS Plus applications that do not meet filing requirements. Any unmet requirements in a submitted application complicate the examination of every class claimed in the application.

Comment 39: One commenter expressed concern regarding the insufficient information surcharge, given what they assert are the current application system's limitations.

Response: The new TM Center electronic filing system is capable of meeting the demands of the new fee structure and will clearly indicate the fields required to avoid the incomplete information surcharge. The agency also notes that prior to submitting their application, applicants will be presented with the entire cost, including surcharges, and have the opportunity to update their application before filing to potentially avoid the surcharges.

Comment 40: One commenter suggested that the USPTO consider whether the insufficient information fee is appropriate in instances where an applicant makes a good-faith effort to supply required information, such as when they have no knowledge of a term's non-English meaning.

Response: Requiring the fee is appropriate in the situation described in the comment because § 2.32(a)(9) requires an applicant to research a mark that is comprised of or includes non-English wording to determine whether there is a transliteration or translation of the wording. If there is, and the applicant omits the translation or transliteration, the examining attorney will issue an Office action requiring the insufficient information surcharge and submission of the translation and/or transliteration, as appropriate. If the initial application includes a translation or transliteration, the surcharge will not apply for later amendment of the translation or transliteration. The surcharge will apply if the translation or transliteration comprises or contains inappropriate material.

Comment 41: Commenters noted that it is often in an applicant's best interests to submit an application without signing the supporting verified statements or providing every piece of information in order to get the earliest possible filing date. They suggested that if the information is provided after filing but before examination, there has been no inconvenience to the USPTO, and therefore the insufficient information fee will be strategically restrictive and needlessly burdensome to applicants.

Response: To qualify for the reduced base application fee, applicants must include all required information at filing, as with TEAS Plus and TEAS Standard. Applicants also must individually assess when to file their applications and what information they wish to provide at filing beyond the requirements for receipt of a filing date in § 2.21.

Comment 42: One commenter expressed concern that there is no avenue to appeal or refund the insufficient information surcharge fee in cases where an applicant could prove their provided information was, in fact, sufficient.

Response: If an examining attorney issues an Office action requiring payment of the surcharge for insufficient information, the applicant may respond with arguments and proof that the information was sufficient or that no information was required in that particular field. In such cases, the agency would not have collected the surcharge at filing. Therefore, no refund would be necessary for applicants who successfully overcome the surcharge requirement.

Comment 43: Commenters requested clarification regarding when applicants will be assessed the free-form text surcharge: at filing, when the USPTO acts upon an application, or when amended.

Response: The agency will assess the free-form text surcharge at any of the following points: at filing, when the application is amended to add a class(es) that was included in the free-from text box and not paid for, or when it is determined upon examination that the applicant has, in effect, failed to submit an identification from the ID Manual. See the response to comment 34 and Part V: Individual Fee Rationale for more information.

Comment 44: One commenter requested clarification regarding how the USPTO will address amendments to descriptions selected from the ID Manual that are later modified to incorporate exclusionary language to differentiate from the goods or services of third parties, including prior registrants, whether in the context of agency refusals for an alleged likelihood of confusion under section 2(d), or opposition, cancellation, litigation, or other inter partes proceedings.

Response: If the applicant originally selected the identification from the ID Manual within the electronic application, the addition of exclusionary language will not trigger the insufficient information or character count surcharges.

Comment 45: One commenter requested clarification on whether use of the ID Manual drop-downs will result in the character limit surcharge.

Response: Items selected from the ID Manual will not be subject to the character limit surcharge.

Comment 46: One commenter requested clarification on the difference in substance between the agency's Acceptable Identification of Goods and Services Manual and the Trademark Next Generation ID Manual.

Response: There is no difference in substance between the two versions of the ID Manual.

Comment 47: One commenter acknowledged that additional work is involved in examining free-form text identifications but questioned whether the fee is proportionate to the work performed by the USPTO.

Response: The USPTO appreciates the commenter's acknowledgement that examining free-form text identifications requires additional work. Examining attorneys often spend substantial time reviewing identifications provided in the free-form text box and may initiate multiple communications with the applicant before determining an acceptable identification. The USPTO believes this surcharge is proportionate to the additional costs associated with these more extensive reviews.

Comment 48: Commenters, including the SBA, expressed concern that the free-form text surcharge may result in lower quality applications, as the ID Manual options for many industries are insufficient or too inaccurate to define their goods or services. Commenters asserted that this issue may cause some applicants to mistakenly narrow their goods and/or services identifications, choose the wrong goods and/or services identifications, or abandon their applications and rely on common law protections. They suggest that a review and cleanup of the ID Manual would make it more useful.

Response: The USPTO currently has no plans for a comprehensive review of the ID Manual, but if it does not contain options relevant to applicants, they may submit new entries as described on the USPTO website at *https://www.uspto.gov/trademarks/guides-and-manuals/trademark-identification-*

goods-and-services-manual-suggestions. As noted on the website, after the agency receives a proposed identification or recitation, it is reviewed by the Administrator for Trademark Classification Policy and Practice. The Administrator will determine whether to include the proposed identification or recitation, or a modified version, in the ID Manual. In addition, the Administrator will inform the submitting party whether the suggestion is accepted, rejected, or accepted in a modified form, typically within one to two business days. If accepted, the ID generally will appear in the next available weekly update.

Comment 49: Commenters expressed concern regarding the process for updating the ID Manual. Specifically, they note that the free-form text box surcharge will likely cause an influx of requests and expressed concern that the USPTO may not have the capacity to address the requests in a timely manner. Additionally, these commenters believed the process to update the ID manual is slow and lacks transparency. The commenters expressed concern that the surcharge will negatively impact innovation and originality, while imposing a burden on applicants whose goods and services cannot accurately be described through standardized descriptions.

Response: The USPTO is committed to timely and transparent updates to the ID manual. The Administrator for Trademark Classification Policy and Practice will, typically within one to two business days, inform the submitting party whether the suggestion is accepted, rejected, or accepted in a modified form. If accepted, the ID generally will appear in the next available weekly update. Should an influx of requests occur, the USPTO will monitor the requests to ensure that responses remain timely.

Comment 50: One commenter suggested that it is more efficient for an applicant to copy and paste an ID Manual entry into the free-form text box than to individually search each entry from the drop-down menu. The commenter believed the surcharge will increase the time and legal costs charged to clients.

Response: As discussed in the NPRM and in Part V: Individual Fee Rationale of this rule, examining attorneys generally do not need to review identifications of goods and/or services selected directly from the ID Manual within the electronic application form. Conversely, examining attorneys must carefully consider identifications entered in the free-form text box to determine whether the descriptions are acceptable as written or require amendment to sufficiently specify the nature of the goods and/or services. Applicants will still have the option to copy and paste into the free-form text box rather than select from the ID Manual, but those who do so will pay the surcharge to help offset the increased costs of examination, similar to applicants who chose not to file via TEAS Plus in the legacy system. Applicants may conduct an advanced search of the ID Manual to narrow results by following instructions provided on the USPTO website at *https://www.uspto.gov/trademarks/guides-and-manuals/searching-trademark-id-manual.*

Comment 51: One commenter questioned the rationale for the free-form text box surcharge since examining attorneys use a feature that color codes free-text identifications that are identical to the ID Manual.

Response: As discussed in the NPRM and in Part V: Individual Fee Rationale of this rule, examining attorneys must carefully consider identifications entered in the free-form text box to determine whether the descriptions are acceptable as written or require amendment to sufficiently specify the nature of the goods and/or services. This applies even in situations where an applicant types or pastes the ID Manual identification. The USPTO believes this surcharge is proportionate to the additional costs associated with these more extensive reviews.

Comment 52: One commenter disagreed with the free-form text box surcharge on the basis that applicants have historically had the ability to identify goods and/or services in the TEAS Standard application.

Response: The USPTO acknowledges that applicants may identify goods and services in the TEAS Standard application. In order to do so, these applicants have paid a higher filing fee than for a TEAS Plus application, in which the goods and/or services must be chosen from the ID Manual within the form. Therefore, the additional surcharge for listing goods and/or services in the free-form text box of the base application versus selecting from the ID Manual is consistent with the higher TEAS Standard filing fee.

Comment 53: Commenters requested clarification regarding when the character count surcharge will apply: at filing, when applications are acted upon by the agency, or when amended. Other commenters asked specifically about a USPTO-imposed requirement to further specify goods and/or services and the addition of exclusionary language to differentiate from the goods and/or services of third parties whose registrations or applications are cited during examination or asserted in an inter partes proceeding.

Response: As discussed in Part V: Individual Fee Rationale of this rule, the character count surcharge will apply only at filing. A requirement to amend the identification to ensure it is sufficiently specific to provide adequate notice to third parties regarding the goods and/or services in connection with which the applicant intends to use or is using the mark will not trigger the surcharge, even if the amended identification exceeds 1,000 characters. The amendment of an identification to add exclusionary language also will not trigger the character count surcharge.

Comment 54: Commenters requested clarification whether the character count surcharge will apply only to free-form descriptions or also to pre-approved descriptions from the ID Manual.

Response: The character count surcharge will apply to free-form descriptions only. It will not apply to items selected from the ID Manual within the electronic application, including fill-ins.

Comment 55: One commenter suggested that the surcharge for exceeding the 1,000-character limit, per class, would shift the burden of application examination from the examining attorney to the applicant at the preliminary filing stage.

Response: As discussed in the NPRM, some identifications comprise many pages and include goods and/or services in multiple classes. In some cases, the applicant has paid the fee for only one class, although the listed goods and/or services are classified in multiple classes. Even when the goods and/or services are separated into classes, the examining attorney must carefully review the entire identification to ensure each item is sufficiently definite and properly classified. The surcharge does not shift any burden of proper examination from the examining attorney; rather, it ensures that applicants who submit lengthy identifications pay the costs of their review.

Comment 56: Commenters, including the SBA, expressed concern that the character count surcharge may create inequities between applicants in different industries, with certain industries having easy-to-describe goods or services that will not trigger the character count surcharge, while applicants in newer, more innovative industries may claim only two to three goods or services before incurring the surcharge.

Response: As discussed above, applications with descriptions of goods and/or services comprising thousands of characters generate additional work for examining attorneys to determine whether the descriptions are acceptable as written or require amendment for sufficient specification. The increased costs of this additional work have historically been borne by all trademark owners, and the tiered system is designed to make application fees more equitable by aligning them with the required work.

To avoid incurring the character count surcharge, applicants may submit new entries for inclusion in the ID Manual as described on the USPTO website at *https://www.uspto.gov/trademarks/guides-and-manuals/trademark-identification-goods-and-services-manual-suggestions.* As noted in responses to comments 48 and 49, the Administrator for Trademark Classification Policy and Practice will, typically within one to two business days, inform the submitting party whether the suggestion is accepted, rejected, or accepted in a modified form. If accepted, the ID generally will appear in the next available weekly update. If the entry is included in the ID Manual, the applicant may then choose it directly without incurring the character count surcharge, even it if exceeds 1,000 characters.

Comment 57: The SBA noted that since goods and/or services cannot be added after submission of an application, it is common practice to file with a broader list and then refine it later. Therefore, the character count surcharge could be strategically restrictive to applicants.

Response: Under this final rule, applicants may still submit broad lists by selecting items from the ID Manual. Identifications chosen from the ID Manual within the electronic application are not subject to the character count surcharge even if they exceed 1,000 characters. Applicants may also submit broad lists in the free-form text box but must pay the associated surcharge plus the character count surcharge for lists exceeding 1,000 characters to compensate for the additional time spent on those applications. To avoid these surcharges, applicants should make every effort to use the ID Manual within the electronic application, which includes thousands of identifications, or submit their custom identification for inclusion in the manual.

Comment 58: One commenter suggested that the character limit surcharge may lead to more applications with less thorough descriptions, which could then result in more challenges related to the searching and clearing of marks.

Response: The USPTO agrees that submitting indefinite or broad identifications could result in more Office actions that require sufficiently definite identifications and, in some cases, more likelihood-of-confusion refusals. Therefore, the agency encourages applicants to use identifications in clear, concise terms that the general public will easily understand and that accurately and completely describe the goods or services. Further, the USPTO notes that applicants may use the ID Manual within the electronic application, which includes thousands of identifications, to avoid the surcharge or submit their custom identification for inclusion in the manual.

Comment 59: Commenters offered several alternatives for the USPTO to consider in place of the 1,000-character limit. The alternatives offered include a 2,000-character limit, a 3,000-character limit, and a limit on the number of goods and/or services separated by semicolons.

Response: Based on an internal analysis, the USPTO determined that the 1,000-character limit strikes the balance of assessing a surcharge on applications that require more resources to examine without impacting a majority of applicants. As noted in Part V: Individual Fee Rationale, less than 5% of trademark applications contain custom identifications of goods and/or services that exceed 1,000 characters per class.

Comment 60: One commenter suggested that if the USPTO institutes the free-form text box surcharge, then the character count surcharge is unnecessary.

Response: Each surcharge serves a different purpose. As discussed in the NPRM and Part V: Individual Fee Rationale of this rule, examining attorneys generally do not need to review identifications of goods and/or services selected directly from the ID Manual within the electronic application. Conversely, examining attorneys must carefully consider identifications entered in the free-form text box to determine whether the descriptions are acceptable as written or require amendment to sufficiently specify the nature of the goods and/or services. In several cases, the identification comprised multiple pages and included goods and/or services in multiple classes. The character count surcharge ensures that applicants who submit lengthy identifications pay the costs of their review.

Comment 61: One commenter expressed concern with spacing and punctuation being included in the character limit, suggesting that a word count would be a more equitable metric.

Response: The USPTO considered both options and found that character counts are straightforward and predictable, and clearly reflect the customer's actions. Word counts are more complex and variable.

Madrid Application Filing Fees

Comment 62: One commenter argued that it is not possible to implement the necessary operational, financial, and IT changes in a timely manner that would allow WIPO to determine if an international applicant should be charged the custom ID/free-form text surcharge.

Response: Of the comments on various aspects of the Madrid Application Filing Fee system proposed in the NPRM, perhaps the most notable was regarding the inability of WIPO to institute a system to collect surcharges prior to recordation of the international registration or subsequent designation in the proposed timeframe. As a result, as discussed in Part V: Individual Fee Rationale, the USPTO will continue charging a flat application fee for Madrid applications. To align Madrid fees with domestic fees, per treaty obligations, the USPTO is adjusting the flat application fee to $600, which is commensurate with what applicants would expect to pay, on average, if filing directly under the base application and surcharge system. The USPTO will reconsider a base filing and surcharge system for Madrid applications when WIPO develops the capacity to implement surcharges.

Comment 63: One commenter suggested an alternative way to implement the proposed application fee structure for Madrid applications, with applicants charged a flat application filing fee (that does not exceed the amount applicants would have paid to the USPTO) until WIPO is able to implement the necessary operational, financial, and IT changes required for the proposed fee structure. At that time, Madrid applicants would be charged a base application fee and the relevant surcharges, but the commenter suggested that the insufficient information surcharge is incompatible with the Madrid Protocol, and therefore applicants would not be charged this fee at any point.

Response: The USPTO is implementing these suggestions in this final rule as discussed in the response to comment 62 and in Part V: Individual Fee Rationale. The USPTO will

reconsider a base filing and surcharge system for Madrid applications in the future when WIPO develops the capacity to implement surcharges. If so, the agency will ensure it complies with all treaty obligations when developing such a system.

Comment 64: Commenters disagreed with charging Madrid applicants the insufficient information surcharge, claiming there is no legal basis for demanding any information beyond what is foreseen under Article 2 of the Madrid Protocol or for requiring additional payments for missing information.

Response: As discussed in response to comment 62 and in Part V: Individual Fee Rationale, the agency is maintaining a flat application fee for Madrid applications at this time. The USPTO may reconsider a base filing and surcharge system for Madrid applications in the future if WIPO develops the capacity to implement surcharges. If so, the USPTO will ensure it complies with all treaty obligations when developing such a system.

Comment 65: Commenters disagreed with the surcharge system on the basis that there are no provisions in the Madrid System legal framework that would allow either WIPO or the USPTO to require additional fees after the international registration or subsequent designation has been recorded.

Response: As discussed in response to comment 62 and in Part V: Individual Fee Rationale, the agency is maintaining a flat application fee for Madrid applications at this time. The USPTO may reconsider a base filing and surcharge system for Madrid applications in the future if WIPO develops the capacity to implement surcharges. If so, the USPTO will ensure it complies with all treaty obligations when developing such a system.

Comment 66: Commenters expressed concern about the burden application surcharges will place on foreign filers, asserting that the proposal could lead to unexpected charges for Madrid applicants who are unaware of USPTO guidelines. Commenters also suggested the surcharges could lead to unreasonable delays due to Office actions required to collect surcharge fees.

Response: As discussed in response to comment 62 and in Part V: Individual Fee Rationale, the agency is maintaining a flat application fee for Madrid applications at this time. Thus, there will be no delay in prosecuting Madrid applications because an Office action will not be needed to collect any surcharges after application submission. The USPTO may reconsider a base filing and surcharge system for Madrid applications in the future if WIPO develops the capacity to implement surcharges.

Comment 67: One commenter asserted that the character count surcharge is prejudiced against foreign applicants and will price them out of registering marks in the United States.

Response: As discussed in response to comment 62 and in Part V: Individual Fee Rationale, the agency is maintaining a flat application fee for Madrid applications at this time. The USPTO may reconsider a base filing and surcharge system for Madrid applications in the future if WIPO develops the capacity to implement surcharges. Further, for applicants who file directly with the agency rather than using the Madrid Protocol, the character count surcharge will be applied to both foreign and domestic applicants.

Comment 68: One commenter suggested that Madrid applicants should be given a clear and satisfactory method to satisfy the requirements of the proposed application system to avoid incurring any surcharges.

Response: As discussed in response to comment 62 and in Part V: Individual Fee Rationale, the USPTO is maintaining a flat application fee for Madrid applications at this time. The USPTO may reconsider a base filing and surcharge system for Madrid applications in the future if WIPO develops the capacity to implement surcharges.

Comment 69: Some commenters expressed concern that Madrid filers may be given an advantage over domestic filers with the proposed application system because it is unclear how and when the proposed fees will be collected from Madrid applicants.

Response: As discussed in response to comment 62 and in Part V: Individual Fee Rationale, the agency is maintaining a flat application fee for Madrid applications at this time. In accordance with the Madrid Protocol's requirement that the fee for Madrid filers does not exceed that for domestic filers, the USPTO set this flat application fee commensurate with what applicants would expect to pay, on average, if filing directly with the USPTO under the base application and surcharge system. The agency may reconsider a base filing and surcharge system for Madrid applications in the future if WIPO develops the capacity to implement surcharges.

Comment 70: Commenters expressed support for higher fees for Madrid applications. One commenter suggested that a flat fee priced at or above the estimated unit cost is the best option in the interests of American innovators and that strong arguments exist for pricing fees higher across the board for foreign filers, regardless of filing basis. Another commenter based their support on their belief that Madrid applications are more complex and have historically had higher processing costs than domestic applications.

Response: As discussed in response to comment 62 and in Part V: Individual Fee Rationale, the USPTO is maintaining a flat application fee for Madrid applications at this time. The agency may reconsider a base filing and surcharge system for Madrid applications in the future if WIPO develops the capacity to implement surcharges.

The agency notes that the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) requires that, with very limited exceptions, World Trade Organization (WTO) members provide national and most-favored-nation treatment to the nationals of other WTO members with regard to the protection and enforcement of IP rights. Higher fees for international filers from WTO member countries may conflict with this obligation.

Finally, while the adjusted fee for Madrid applications remains below the estimated unit cost, the USPTO believes the new fees will be a step toward addressing the higher costs for such applications. The agency expects that ongoing collaboration with WIPO and other stakeholders will help harmonize applications and better align fees with costs.

Comment 71: One commenter offered suggestions to improve implementation of the proposed application fee structure, assuming the proposed fees are in compliance with the Madrid Protocol. They suggested amending the WIPO designation forms to include explicit notices that failure to provide the required information will incur additional fees. They also suggested allowing Madrid applicants an additional three months from time of filing to find and appoint a U.S. attorney to amend, supplement, or otherwise provide any additional information to avoid incurring the surcharges.

Response: As discussed in response to comment 62 and in Part V: Individual Fee Rationale, the USPTO is maintaining a flat application fee for Madrid applications at this time. The agency may reconsider a base filing and surcharge system for Madrid applications in the future if WIPO develops the capacity to implement surcharges. The USPTO cannot make changes to forms submitted to WIPO but looks forward to ongoing collaboration

with WIPO and other stakeholders to help harmonize applications.

Comment 72: One commenter argued that, regarding the free-form text and character count surcharges, brand owners who hold marks in multiple countries should continue to have freedom to choose how to draft a description of goods and services, including the degree of comprehensiveness.

Response: As discussed in response to comment 62 and in Part V: Individual Fee Rationale, the agency is maintaining a flat application fee for Madrid applications at this time. The USPTO may reconsider a base filing and surcharge system for Madrid applications in the future if WIPO develops the capacity to implement surcharges.

Applicants filing directly with the USPTO will continue to have freedom to choose how to draft a description of goods and/or services, but the free-form text box and character count surcharges will help recover the additional costs associated with more extensive reviews.

Comment 73: One commenter noted that the ID Manual is not integrated with either the Madrid Goods and Services Database (MGS) administered by WIPO or the Harmonized Database available via the European Union Intellectual Property Office's (EUIPO) TMClass tool. The commenter asserted that it would be beneficial if these issues were addressed in the framework of global collaborative initiatives on classification.

Response: This suggestion is outside the scope of this rulemaking.

Amendment To Allege Use and Statement of Use Fees

Comment 74: Commenters supported charging identical fees for filing an amendment to allege use (AAU) or a statement of use (SOU).

Response: The USPTO appreciates the commenters' support for this change.

Comment 75: One commenter disagreed with the USPTO's decision to charge identical fee rates for filing an AAU or SOU, arguing that these fees should be set closer to their individual processing costs. The commenter also asserted that the agency should charge less for an AAU to incentivize applicants, because the AAUs create a stronger application since they are filed before initial examination.

Response: Fees for the AAUs and SOUs remain aligned under this rulemaking to continue longstanding practice and because the ABI data suggest the agency's costs of examining the AAUs and SOUs are similar. The agency disagrees with the commenter's statement that the AAUs create a stronger application prior to examination. Although, in some cases, an AAU may be filed prior to initial examination, it is generally filed during the examination process or in response to an Office action. An SOU is filed during a defined statutory period after publication. Further, it is not clear that a lower fee for the AAUs will incentivize their filing versus the SOUs. In many cases, applicants are not prepared to show use of their mark in commerce prior to publication and will not benefit from lower fees for filing an allegation of use during that time.

Comment 76: Commenters supported the USPTO's decision to not move forward with a proposal to increase the fees for a fourth or fifth request for an extension of time to file an SOU.

Response: The USPTO appreciates the commenters' support for this decision.

Comment 77: Commenters asserted that the increase to fees for filing an AAU or SOU are too high, with one commenter suggesting any increases should be limited to an inflationary adjustment because the work involved in processing them has not changed.

Response: The USPTO appreciates the commenters' feedback. Examination time for the AAUs and SOUs has grown due to the increased submission of questionable specimens, resulting in the issuance of more Office actions. Further, the USPTO has not adjusted the AAU and SOU fees since 2002, and unit costs for these items continue to increase; the unit costs for FY 2023 are already close to or exceeding the adjusted rates.

Comment 78: One commenter expressed concern that increasing the AAU and SOU fees may cause applicants to prematurely abandon their applications prior to registration, which would further decrease maintenance filings in the future.

Response: The $50 increase in AAU and SOU fees is relatively small compared to both the overall costs of pursing trademark registration and the value of a registered trademark. Therefore, this fee increase should have little impact on the number of applicants who abandon their applications prior to registration.

Comment 79: One commenter stated that fee increases for applications filed under section 1(b) of the Trademark Act were inappropriate and asserted that such applications save time during the initial examination compared to applications filed under section 1(a).

Response: Applications filed under section 1(b) do not save time during the initial examination, as an AAU filed during the prosecution of a section 1(b) application (*i.e.,* prior to publication) requires the examining attorney to, in essence, perform a second initial examination to ensure that the specimen of use submitted with the AAU shows use in commerce for the mark and goods and/or services identified in the application and that the dates of use and other required elements are acceptable. Similarly, an SOU filed after an issued notice of allowance requires the examining attorney to perform a similar review for acceptability.

Post-Registration Maintenance Fees

Comment 80: Commenters stated that the increases to maintenance fees are too high, and any increases should be more aligned with the cost of providing these services.

Response: The agency has an obligation to recover the aggregate costs of trademark operations through user fees, and above-cost post-registration maintenance fees recover costs incurred by the USPTO during examination. If the agency were to set fee rates for maintenance fees lower than prescribed in this final rule, the change would need to be offset by raising other fees such as base application fees, reducing spending on core mission and strategic priorities, or depleting the operating reserves, significantly increasing financial risk to the agency.

The share of applications from groups that have been historically less likely to maintain their registrations has increased. This shift in registration patterns generates less revenue. Therefore, the USPTO must adjust the balance between aggregate revenue derived from application fees and post-registration maintenance fees to sustain low barriers to filing new applications. Also, costs to process maintenance filings have increased due to higher inflationary costs, post-registration audits, and elevated legal review to address potential fraud or improper filing behaviors.

Comment 81: Commenters suggested that the increases to application fees, including the new surcharges, should be sufficient to address the higher costs of processing applications without increasing maintenance fees.

Response: The USPTO has purposefully maintained initial fees below cost to reduce barriers to entry, resulting in a shortfall. Fees for post-registration activities help recover that shortfall. The agency reviews fees on a biennial basis, allowing the agency to balance costs associated with the services it provides stakeholders.

The USPTO is increasing the fees for section 8 and section 71 declarations of use because of the elevated level of effort and expertise involved in their

examination, which includes determining acceptability of their proof of use and whether the registration should be subject to audit. However, in light of comments raised by the public, the agency has reallocated some of the proposed fee increase from section 9 renewal applications to section 8 and section 71 declarations by lowering the proposed section 9 renewal fee and aligning it with section 8 and section 71 declarations, setting all of these fees at $325 per class when filed electronically.

Comment 82: One commenter suggested that lowering maintenance fees could increase the number of maintained registrations, potentially lowering the number of incoming applications and reducing overall costs to the USPTO.

Response: While the agency has not conducted a full elasticity study, experience indicates that long-term maintenance trends are not due to fee rate changes. Maintenance trends vary from year to year, but when the USPTO lowered section 9 renewal fees in FY 2015, renewal rates decreased rather than increased. When the agency increased section 8 declaration of use fees in FY 2017 and FY 2021, there was not a noticeable impact on maintenance rates.

Comment 83: Commenters expressed concern that increases to maintenance fees will result in fewer trademark owners maintaining their registrations, making the register less reliable and leading to more owners relying on their common law rights, which could be problematic.

Response: As noted in response to comment 82, registration renewal rates did not appreciably change in response to previous changes to post-registration maintenance fees.

Comment 84: One commenter suggested that the increases to section 8 and section 9 fees could lead to registrants filing new applications, rather than maintaining their existing registrations.

Response: Although this result could happen, the registrant would bear the risks of losing their registration and the legal presumptions that accompany registration. Further, as noted in response to comment 82, registration renewal rates did not appreciably change in response to the agency's previous changes to post-registration maintenance fees.

Comment 85: One commenter asserted that the USPTO provided no data in the NPRM to support the assertion that setting renewal fees above unit cost is ''less likely to impact entrepreneurship.''

Response: As noted in response to comment 82, registration renewal rates did not appreciably change in response to previous changes to post-registration maintenance fees. These fees are due at a time when the registrant has experienced several years of the benefits of registration. Further, fee collections from post-registration maintenance fees help the USPTO set initial filing fees below cost to encourage broader participation and open access to the trademark system. If the agency were to set fee rates for maintenance fees lower than prescribed in this final rule, the change would need to be offset by raising other fees such as base application fees, reducing spending on core mission and strategic priorities, or depleting the operating reserves, significantly increasing financial risk to the agency. The USPTO expects no negative impact on entrepreneurship from this rule.

Letter of Protest Fee

Comment 86: One commenter expressed support for the $150 fee for letters of protest proposed in the NPRM, and the USPTO's responsiveness to the feedback from the public hearing after initially submitting to TPAC a fee of $250. The commenter suggested that the proposed smaller fee increase reflects the USPTO welcoming the public's support of and enthusiasm for the agency and its work.

Response: The USPTO appreciates the commenter's support of its adjustment to the proposed fee.

Comment 87: One commenter supported the proposed fee increase for letters of protest because they rarely alter an application's outcome.

Response: The USPTO appreciates the commenter's support for the increased fee for letters of protest.

Comment 88: Commenters suggested that the letters of protest fee should be either partially or fully refunded if the USPTO forwards the letter to an examining attorney.

Response: The fee structure is designed to encourage the filing of relevant, well-supported letters of protest instead of frivolous filings. A relevant, well-supported letter of protest provides objective evidence bearing on the registrability of a mark. The unit costs for letters of protest are high because they are reviewed by specialized staff who must determine whether they comply with the requirements for submission and should be forwarded to the examining attorney. In addition, under the TMA, the USPTO must review and act on letters of protest within 60 days of receipt. The agency bears the costs of processing these letters regardless of whether they are forwarded to an examining attorney. In addition, the USPTO's refund authority is generally limited to fees paid by mistake or in excess of requirements.

Comment 89: Commenters, including the SBA, asserted that the proposed increase to the letter of protest fee is too high and will discourage valuable submissions. They noted that letters of protest are valuable for filers and the USPTO because they provide industry expertise to examining attorneys and preserve the integrity of the trademark register. Some commenters suggested that well-founded letters of protest are a useful tool to avoid additional costs to the USPTO and can result in fewer challenges to registrability decisions.

Response: As noted in the response to comment 88, the fee increase reflects the resources required to consider letters of protest. Specialized staff must determine if a letter of protest complies with submission requirements and whether to forward the letter to an examining attorney. In addition, under the TMA, the agency must review and act on letters of protest within 60 days of receipt.

On the other hand, the commenters' statements regarding the value of letters of protest are not easily quantified. Many issues identified in letters of protest such as likelihood of confusion, descriptiveness, and non-use may have been identified independently without submission of the letter. Moreover, although examining attorneys may take into account evidence submitted in a letter of protest, they must still perform a complete examination of the relevant application. Finally, although the USPTO has not performed an elasticity analysis related to letters of protest, it notes that the number of letters decided has increased since it first introduced a letter of protest fee in 2021.

Comment 90: One commenter stated the USPTO should create more detail positions for current USPTO employees to assist with the review of letters of protest and further automate the procedure for acceptance of these letters. The commenter asserted that this approach would reduce the overall processing costs for letters of protest.

Response: Specialized staff must review and determine whether a letter of protest complies with submission requirements and whether to forward the letter of protest to the examining attorney, limiting opportunities for details or automation.

Other Petition Fees

Comment 91: One commenter expressed concern that the increase to the fee for petitions to the Director is

unduly burdensome, because some petitions may be unavoidable due to actions outside of an applicant's control or needed to correct an error made by the USPTO. The commenter noted that some filers use petitions to protect themselves from scams, such as keeping a home address off the public record or requesting the withdrawal of an unauthorized filing. The commenter suggested that the USPTO provide separate forms at no or reduced cost for correcting errors made by third parties that are outside of the applicant's control.

Response: If the need to file a petition is caused by the actions of a third party, such as a petition to withdraw an unauthorized filing, the agency does not require a petition fee, as long as the petitioner selects the appropriate option on the electronic form. If the petitioner pays the fee up front by mistake, the agency will refund it when the petition is granted.

The fee is required for petitions to waive the domicile address requirement based on an extraordinary situation. However, if entered in the proper field, the domicile address is not part of the public record, and no petition would be required. Applicants and registrants may then designate a separate correspondence email address to receive information from the USPTO relating to their trademark. Applicants and registrants must always be cautious of communications regarding their application or registration. Scammers and private companies often use publicly viewable trademark information to call, mail, or email applicants and registrants with solicitations and scams, including posing as the USPTO.

Comment 92: One commenter stated the increase to the fee for petitions to revive is too high because it is not proportional to the work being done, asserting that these petitions are automatically processed (*i.e.* processed without review) by the USPTO. The commenter further suggested that the USPTO should provide a refund in situations where the petition was required to correct an error made by the USPTO.

Response: Only some petitions to revive an abandoned application under § 2.66 are automatically processed. Also, in the case of agency error resulting in an abandoned application or a canceled or expired registration, the applicant or registrant may file a request to reinstate the application or registration under § 2.64. There is no fee for a request for reinstatement. In addition, the USPTO's refund authority is generally limited to fees paid by mistake or in excess of what is required.

VII. Discussion of Specific Rules

The following section describes the changes to the CFR for all fees set or adjusted in this final rule, including all fee amendments, fee discontinuations, and changes to the regulatory text.

Section 2.6

Section 2.6 is amended by revising paragraph (a) to set forth trademark process fees as authorized under section 10 of the AIA. The changes to the fee amounts indicated in § 2.6 are shown in table 10.

To clarify fees paid for filling applications under section 66(a) (Madrid Protocol) and renewing international registrations at WIPO, the USPTO adds paragraphs (a)(1)(ii)(A) and (B) and (a)(5)(iii).

The USPTO amends paragraph (a)(1)(iii) to provide for filing ''an application electronically'' rather than filing ''a TEAS Standard application.''

The USPTO amends paragraph (a)(1)(iv) to add the surcharge for insufficient information.

The USPTO amends paragraph (a)(1)(v) to add the surcharge for adding goods and/or services in the free-form text box.

The USPTO adds paragraph (a)(1)(vi) to add the surcharge for each additional 1,000 characters.

The USPTO amends paragraphs (a)(2)(ii), (a)(3)(ii), (a)(4)(ii), (a)(5)(ii), (a)(6)(ii), (a)(7)(ii), (a)(8)(ii), (a)(9)(ii), (a)(10)(ii), (a)(11)(ii), (a)(12)(ii) and (iv), (a)(13)(ii), (a)(14)(ii), (a)(15)(ii) and (iv), (a)(16)(ii), (a)(17)(ii), (a)(18)(ii), (v), and (vii), (a)(19)(ii), (a)(20)(ii), (a)(21)(ii), (a)(22)(ii), (a)(23)(ii), (a)(27), and (a)(28)(ii) by replacing references to ''TEAS'' or ''ESTTA'' with ''electronically.''

To clarify fees paid for services provided by the TTAB, the USPTO amends paragraphs (a)(18)(i) and (ii) by removing references to the TTAB and adding references to the TTAB to paragraphs (a)(16) through (18).

TABLE 10—§ 2.6 FEE CHANGES

CFR section	Fee code	Description	Paper or electronic	Current fee	Final rule fee
2.6(a)(1)(i)	6001	Application (paper), per class	Paper	$750	$850
2.6(a)(1)(ii)(A)	7931	Application fee filed with WIPO (section 66(a)), per class.	Electronic	500	600
2.6(a)(1)(ii)(A)	7933	Subsequent designation fee filed with WIPO (section 66(a)), per class.	Electronic	500	600
2.6(a)(1)(iii)	7009	Application (TEAS Standard), per class	Electronic	350	Discontinue
2.6(a)(1)(iii)	New	Base application, per class	Electronic	n/a	350
2.6(a)(1)(iv)	7007	Application (TEAS Plus), per class	Electronic	250	Discontinue
2.6(a)(1)(iv)	New	Fee for insufficient information (sections 1 and 44), per class.	Paper	n/a	100
2.6(a)(1)(iv)	New	Fee for insufficient information (sections 1 and 44), per class.	Electronic	n/a	100
2.6(a)(1)(v)	6008	Fee for failing to meet TEAS Plus requirements, per class.	Paper	100	Discontinue
2.6(a)(1)(v)	7008	Fee for failing to meet TEAS Plus requirements, per class.	Electronic	100	Discontinue
2.6(a)(1)(v)	New	Fee for using the free-form text box to enter the identification of goods/services (sections 1 and 44), per class.	Paper	n/a	200
2.6(a)(1)(v)	New	Fee for using the free-form text box to enter the identification of goods/services (sections 1 and 44), per class.	Electronic	n/a	200

TABLE 10—§ 2.6 FEE CHANGES—Continued

CFR section	Fee code	Description	Paper or electronic	Current fee	Final rule fee
2.6(a)(1)(vi)	New	For each additional group of 1,000 characters beyond the first 1,000 (sections 1 and 44), per class (paper).	Paper	n/a	200
2.6(a)(1)(vi)	New	For each additional group of 1,000 characters beyond the first 1,000 (sections 1 and 44), per class.	Electronic	n/a	200
2.6(a)(2)(i)	6002	Amendment to allege use (AAU), per class.	Paper	200	250
2.6(a)(2)(ii)	7002	Amendment to allege use (AAU), per class.	Electronic	100	150
2.6(a)(3)(i)	6003	Statement of use (SOU), per class	Paper	200	250
2.6(a)(3)(ii)	7003	Statement of use (SOU), per class	Electronic	100	150
2.6(a)(5)(i)	6201	Section 9 registration renewal application, per class.	Paper	500	525
2.6(a)(5)(ii)	7201	Section 9 registration renewal application, per class.	Electronic	300	325
2.6(a)(5)(iii)(A)	7932	Renewal fee filed at WIPO	Electronic	300	325
2.6(a)(12)(i)	6205	Section 8 declaration, per class	Paper	325	425
2.6(a)(12)(ii)	7205	Section 8 declaration, per class	Electronic	225	325
2.6(a)(13)(i)	6208	Section 15 declaration, per class	Paper	300	350
2.6(a)(13)(ii)	7208	Section 15 declaration, per class	Electronic	200	250
2.6(a)(15)(i)	6005	Petition to the Director	Paper	350	500
2.6(a)(15)(ii)	7005	Petition to the Director	Electronic	250	400
2.6(a)(15)(iii)	6010	Petition to revive an application	Paper	250	350
2.6(a)(15)(iv)	7010	Petition to revive an application	Electronic	150	250
2.6(a)(25)	7011	Letter of protest	Electronic	50	150

Section 2.22

Section 2.22 is amended by revising the section heading and paragraph (a) to set forth the requirements for a base application fee.

The USPTO is amending the section heading to read ''Requirements for a base application.''

The USPTO is amending the introductory text to paragraph (a) to reflect the requirements for an application for registration under section 1 or section 44 of the Act that meet the requirements for a filing date under § 2.21 to pay the base application fee.

The USPTO removes paragraph (a)(7) and redesignates paragraphs (a)(8) through (20) as paragraphs (a)(7) through (19).

The USPTO amends redesignated paragraph (a)(11) by replacing the reference to ''TEAS Plus form'' with ''application.''

The USPTO amends paragraph (a)(17) by replacing references to ''portrait'' with ''likeness'' to maintain consistency within the paragraph.

The USPTO adds paragraph (a)(20) which establishes the requirement of using correctly classified goods and/or services from the ID Manual.

The USPTO amends paragraph (b) to provide that an applicant must pay the fee for insufficient information, per class, if the application fails to satisfy any of the requirements in paragraphs (a)(1) through (19).

The USPTO amends paragraph (c) to provide that an applicant must pay the fee for using the free-form text box to enter the identification of goods/services, per class, if the application fails to satisfy the requirements of paragraph (a)(20).

The USPTO amends paragraph (d) to provide that an applicant must pay the fee for each additional group of 1,000 characters beyond the first 1,000, per class, if the application fails to satisfy the requirements of paragraph (a)(20) and the identification of goods and/or services in any class exceeds 1,000 characters.

Section 7.6

Section 7.6 is amended by revising paragraph (a) to set forth the schedule of U.S. process fees as authorized under section 10 of the AIA. The changes to the fee amounts in § 7.6 are shown in table 11.

The USPTO amends paragraph (a)(1)(ii), (a)(2)(ii), (a)(3)(ii), (a)(4)(ii), (a)(5)(ii), and (a)(6)(ii) and (iv) by replacing references to ''TEAS'' or ''ESTTA'' with ''electronically.''

TABLE 11—§ 7.6 FEE CHANGES

CFR section	Fee code	Description	Paper or electronic	Current fee	Final rule fee
7.6(a)(6)(i)	6905	Section 71 declaration, per class	Paper	$325	$425
7.6(a)(6)(ii)	7905	Section 71 declaration, per class	Electronic	225	325

VIII. Rulemaking Considerations

A. America Invents Act

This final rule seeks to set and adjust fees under section 10(a) of the AIA as amended by the SUCCESS Act. Section 10(a) authorizes the Director to set or adjust by rule any trademark fee established, authorized, or charged under the Trademark Act for any services performed by, or materials furnished by, the USPTO (see section 10 of the AIA, Pub. L. 112–29, 125 Stat. 284, 316–17, as amended by Pub. L. 115–273, 132 Stat. 4158). Section 10 authority includes flexibility to set

individual fees in a way that furthers key policy factors, while taking into account the cost of the respective services.

Section 10(e) sets forth the general requirements for rulemakings that set or adjust fees under this authority. In particular, section 10(e)(1) requires the Director to publish in the **Federal Register** any proposed fee change under section 10 and include in such publication the specific rationale and purpose for the proposal, including the possible expectations or benefits resulting from the proposed change. For such rulemakings, the AIA requires that the USPTO provide a public comment period of not less than 45 days.

TPAC advises the Under Secretary of Commerce for Intellectual Property and Director of the USPTO on the management, policies, goals, performance, budget, and user fees of trademark operations. When adopting fees under section 10, the AIA requires the Director to provide TPAC with the proposed fees at least 45 days prior to publishing them in the **Federal Register**. TPAC then has at least 30 days within which to deliberate, consider, and comment on the proposal, as well as hold a public hearing(s) on the proposed fees. TPAC must make a written report available to the public of the comments, advice, and recommendations of the committee regarding the proposed fees before the USPTO issues any final fees. The USPTO is required to consider and analyze any comments, advice, or recommendations received from TPAC before finally setting or adjusting fees.

Consistent with this framework, on May 8, 2023, the Director notified TPAC of the USPTO's intent to set and adjust trademark fees and submitted a preliminary trademark fee proposal with supporting materials. The preliminary trademark fee proposal and associated materials are available on the fee setting section of the USPTO website at *https://www.uspto.gov/FeeSettingAndAdjusting.* TPAC held a public hearing at the USPTO's headquarters in Alexandria, Virginia, on June 5, 2023, and members of the public were given the opportunity to provide oral testimony. A transcript of the hearing is available on the USPTO website at *https://www.uspto.gov/sites/default/files/documents/TPAC-Fee-Setting-Hearing-Transcript-20230605.pdf.* Members of the public were also given the opportunity to submit written comments for TPAC to consider, and these comments are available on *Regulations.gov* at *https://www.regulations.gov/docket/PTO-T-2023-0016.* On August 14, 2023, TPAC issued a written report setting forth in detail its comments, advice, and recommendations regarding the preliminary proposed fees. The TPAC Report is available on the USPTO website at *https://www.uspto.gov/sites/default/files/documents/TPAC-Report-on-2023-Fee-Proposal.docx.* The USPTO considered and analyzed all comments, advice, and recommendations received from TPAC before publishing the NPRM on March 26, 2024 (89 FR 20897). The NPRM comment period closed on May 28, 2024. Section 10(e) of the Act requires the Director to publish the final fee rule in the **Federal Register** and the *Official Gazette* of the USPTO at least 45 days before the final fees become effective. Pursuant to this requirement, this rule is effective on January 18, 2025.

B. Regulatory Flexibility Act (RFA)

The USPTO publishes this Final Regulatory Flexibility Analysis (FRFA) as required by the RFA (5 U.S.C. 601 *et seq.*) to examine the impact of the USPTO's changes to trademark fees on small entities. Under the RFA, whenever an agency is required by 5 U.S.C. 553 (or any other law) to publish an NPRM, the agency must prepare and make available for public comment an initial regulatory flexibility analysis (IRFA), unless the agency certifies under 5 U.S.C. 605(b) that the proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities (see 5 U.S.C. 603, 605).

The agency published an IRFA, along with the NPRM, on March 26, 2024 (89 FR 20897). Given that the final trademark fee schedule, based on the assumptions found in the FY 2025 Budget, is projected to result in $696.8 million in additional aggregate revenue over the current fee schedule (baseline) for the period including FY 2025 to FY 2029, the USPTO acknowledges that the fee adjustments will impact all entities seeking or maintaining a trademark registration. The $696.8 million in additional aggregate revenue results from an additional $102.5 million in FY 2025, $146.0 million in FY 2026, $143.2 million in FY 2027, $149.5 million in FY 2028, and $155.7 million in FY 2029. This implies annualized effects of $138.9 million using a 3% discount rate and $138.0 million using a 7% discount rate.

Items 1–6 below discuss the six items specified in 5 U.S.C. 604(a)(1)–(6) to be addressed in an FRFA. Item 6 below discusses alternatives to this final rule that the agency considered.

1. A Statement of the Need for, and Objectives of, the Rule

Section 10 of the AIA authorizes the Director of the USPTO to set or adjust by rule any trademark fee established, authorized, or charged under title 35 U.S.C., for any services performed, or materials furnished, by the USPTO. Section 10 prescribes that trademark fees may be set or adjusted only to recover the aggregate estimated costs for processing, activities, services, and materials relating to trademarks, including USPTO administrative costs with respect to such trademark fees. The final rule will recover the aggregate costs of trademark operations while enabling the USPTO to predictably finance the agency's daily operations and mitigate financial risks.

2. A Statement of the Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis, a Statement of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments

The USPTO received two public comments in response to the IRFA. Details of those comments and the USPTO's responses are discussed and analyzed above in Part VI: Discussion of Comments, specifically comments 10 and 13. No changes were made in the final rule as a result of these comments.

3. The Response of the Agency to Any Comments Filed by the Chief Counsel for Advocacy of the Small Business Administration in Response to the Proposed Rule, and a Detailed Statement of Any Change Made to the Proposed Rule in the Final Rule as a Result of the Comments

The Office of Advocacy for the Small Business Administration submitted a comment on the proposed rule on May 28, 2024, and it is available on *Regulations.gov* at *https://www.regulations.gov/comment/PTO-T-2022-0034-0025.* Summaries of the SBA's comments and the USPTO's responses are detailed above in Part VI: Discussion of Comments, specifically comments 12, 13, 21, 36, 48, 56, 57, and 89. No changes were made in the final rule as a result of these comments.

4. A Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Rule Will Apply or an Explanation of Why No Such Estimate Is Available

The USPTO does not collect or maintain statistics in trademark cases on small- versus large-entity applicants, and this information would be required

to determine the number of small entities affected by this final rule.

This final rule applies to any entity filing trademark documents with the USPTO. The USPTO estimates, based on the assumptions in the FY 2025 Budget, that during the first full fiscal year under the fees as proposed (FY 2026), the USPTO would collect approximately $146 million more in trademark processing and TTAB fees compared to projected fee collections under the current fee schedule. The USPTO would receive an additional $100 million in application filing fees, including applications filed through the Madrid Protocol and application surcharges; $4 million more from petitions, letters of protest, and requests for reconsideration; $7 million more from SOU and AAU fees; and $35 million more for post-registration maintenance fees, including sections 9 and 66 renewals and sections 8, 71, and 15 declarations.

The USPTO collects fees for trademark-related services at different points in the trademark application examination process and over the registration life cycle. In FY 2023, application filing fees made up about 54% of all trademark fee collections. Fees for proceedings and appeals before the TTAB comprised 3% of revenues. Fees from other trademark activities, petitions, assignments and certifications, and Madrid processing totaled approximately 5% of revenues. Fees for post-registration and intent-to-use filings, which subsidize the costs of filing, search, examination, and the TTAB, comprised 38%.

The USPTO bases its five-year estimated aggregate trademark fee revenue on the number of trademark applications and other fee-related filings it expects for a given fiscal year, work it expects to process in a given fiscal year (an indicator of fees paid after the agency performs work, such as SOU fees), expected examination and process requests in a given fiscal year, and the expected number of post-grant decisions to maintain trademark protection in a given fiscal year. Within its iterative process for estimating aggregate revenue, the USPTO adjusts individual fee rates up or down based on policy and cost considerations and then multiplies the resulting fee rates by appropriate workload volumes to calculate a revenue estimate for each fee, which is then used to calculate aggregate revenue. Additional details about the USPTO's aggregate revenue, including projected workloads by fee, are available on the fee setting section of the USPTO website at *https://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting.*

5. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

This final rule imposes no new reporting or recordkeeping requirements. The main purpose of this final rule is to set and adjust trademark fees.

6. A Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected

The USPTO considered several alternative approaches to this final rule based on the assumptions found in the FY 2025 Budget. These alternatives are: (1) a description of the fee schedule adopted in this final rule; (2) fees set at the unit cost of providing individual services based on FY 2022 costs; (3) an across-the-board fee adjustment of 27%; and (4) no change to the baseline of current fees. The four alternatives are explained here with additional information regarding the development of each proposal and aggregate revenue estimate. A description of the Aggregate Revenue Estimating Methodology is available on the fee setting section of the USPTO website at *http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting.*

a. Alternative 1: Final Trademark Fee Schedule—Setting and Adjusting Trademark Fees During Fiscal Year 2025

The USPTO is setting or adjusting trademark fees codified in 37 CFR parts 2 and 7. Fees are adjusted for all application filing types (*i.e.,* paper applications, electronic applications, and requests for extension of protection under section 66(a) of the Trademark Act (15 U.S.C. 1141f)), including new surcharge fees. The USPTO also is increasing other trademark fees to promote effective administration of the trademark system, including fees for post-registration maintenance under sections 8, 9, and 71, certain petitions to the Director, and filing a letter of protest.

The USPTO chose the adjustments established in this final rule because they will enable the agency to achieve its goals effectively and efficiently without unduly burdening small entities, erecting barriers to entry, or stifling incentives to innovate. The alternative established here finances the USPTO's objectives for meeting its goals outlined in the Strategic Plan. These goals include optimizing trademark application pendency through the promotion of efficient operations and filing behaviors, issuing accurate and reliable trademark registrations, and encouraging access to the trademark system for all stakeholders. All applicants and registrants will benefit under this final rule because it will allow the agency to grant registrations sooner and more efficiently. All trademark applicants should benefit from the efficiencies realized under the final rule.

The USPTO anticipates that the impact of an increased fee on letter of protest filers would be small. The fee of $150 is set at a level low enough to enable the filing of relevant, well-supported letters, but high enough to recover some additional processing costs. The USPTO enacted the current fee for letters of protest on November 17, 2020, (85 FR 73197) and implemented it on January 2, 2021. Despite this fee, the USPTO received almost 4,000 letters in each of the last two fiscal years and expects the volume will grow to more than 5,000 letters per year by FY 2029.

The fee schedule under this final rule is available on the fee setting section of the USPTO website at *https://www.uspto.gov/FeeSettingAndAdjusting,* in the document titled ''Setting and Adjusting Trademark Fees During Fiscal Year 2025: Final Regulatory Flexibility Act Tables.''

b. Other Alternatives Considered

In addition to the final fee schedule set forth in Alternative 1, the USPTO considered three other alternative approaches. The agency calculated proposed fees and the resulting revenue derived from each alternative scenario. The proposed fees and their corresponding revenue tables are available on the fee setting section of the USPTO website at *https://www.uspto.gov/FeeSettingAndAdjusting.* Please note, only the fees outlined in Alternative 1 are set or adjusted in this final rule; other alternative scenarios are shown only to demonstrate the analysis of other options.

Alternative 2: Unit Cost Recovery

The USPTO considered an alternative that would set all trademark fees to recover 100% of unit costs associated with each service, based on historical unit costs. The USPTO uses the ABI to determine the unit costs of activities that contribute to the services and processes associated with individual fees. It is common practice in the Federal Government to set a particular fee at a level that recovers the cost of a given good or service. OMB Circular A–25, User Charges, states that user charges (fees) should be sufficient to recover the full cost to the Federal Government of providing the particular service, resource, or good when the Government is acting in its capacity as sovereign. Under the USPTO's unit cost recovery alternative, fees are generally set in line with the FY 2022 costs of providing the service. The agency recognizes that this approach does not account for changes in the fee structure or inflationary factors that could likely increase the costs of certain trademark services and necessitate higher fees in the outyears. However, the USPTO contends that FY 2022 data is the best available to inform this analysis.

This alternative does not align well with the strategic and policy goals of this final rule. It would produce a structure in which application and processing fees would increase significantly for all applicants, and post-registration maintenance filing fees would decrease dramatically when compared with current fees. The USPTO rejected this alternative because it does not address improvements in fee design to accomplish the agency's stated objectives of encouraging broader usage of IP rights-protection mechanisms and participation by more trademark owners, as well as practices that improve process efficiency.

The fee schedule for this alternative is available on the fee setting section of the USPTO website at *https://www.uspto.gov/FeeSettingAndAdjusting,* in the document titled ''Setting and Adjusting Trademark Fees During Fiscal Year 2025: Final Regulatory Flexibility Act Tables.''

Alternative 3: Across-the-Board Adjustment

The USPTO considered a 27% across-the-board increase for all fees. This alternative would maintain the status quo structure of cost recovery, where processing and examination costs are subsidized by fees for ITU extensions and post-registration maintenance filings (which exceed the cost of performing these services), given that all fees would be adjusted by the same escalation factor. This fee schedule would continue to promote innovation strategies and allow applicants to gain access to the trademark system through fees set below cost, while registrants pay maintenance fees above cost to subsidize the below-cost front-end fees. This alternative would also generate sufficient aggregate revenue to recover aggregate operating costs.

The USPTO ultimately rejected this proposal. Unlike the final fee schedule, it would not enhance the efficiency of trademark processing and offer no new incentives for users to file more efficient and complete applications.

The proposed fee schedule for this alternative is available in the document titled ''Setting and Adjusting Trademark Fees During Fiscal Year 2025: Final Regulatory Flexibility Act Tables'' at *http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting.*

Alternative 4: Baseline (Current Fee Schedule)

The final alternative the USPTO considered would leave all trademark fees as currently set. The USPTO rejected this alternative because, due to changes in demand for certain services and rising costs, a fee increase is necessary to meet future budgetary requirements as described in the FY 2025 Budget. Under this alternative, the USPTO would expect to collect sufficient revenue to continue executing only some, but not all, trademark priorities. This approach would not provide sufficient aggregate revenue to accomplish the USPTO's rulemaking goals as stated in Part IV: Rulemaking Goals and Strategies. Improvement activities, including better protecting the trademark register, enhanced IT, and tactical management programs would continue, but at a significantly slower rate as increases in core trademark examination costs crowd out funding for other improvements. Likewise, without a fee increase, the USPTO would deplete its trademark operating reserve, leaving the agency vulnerable to fiscal and economic events. This alternative would expose core operations to unacceptable levels of financial risk and position the USPTO to return to making inefficient, short-term funding decisions.

The fee schedule for this alternative is available on the fee setting section of the USPTO website at *https://www.uspto.gov/FeeSettingAndAdjusting,* in the document titled ''Setting and Adjusting Trademark Fees During Fiscal Year 2025: Final Regulatory Flexibility Act Tables.''

C. Executive Order 12866 (Regulatory Planning and Review)

This rulemaking has been determined to be significant for purposes of Executive Order (E.O.) 12866 (Sept. 30, 1993), as amended by E.O. 14094 (April 6, 2023), Modernizing Regulatory Review.

D. Executive Order 13563 (Improving Regulation and Regulatory Review)

The USPTO has complied with E.O. 13563 (Jan. 18, 2011). Specifically, the USPTO has, to the extent feasible and applicable: (1) made a reasoned determination that the benefits justify the costs of this final rule; (2) tailored this final rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, and provided online access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. Executive Order 13132 (Federalism)

This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under E.O. 13132 (Aug. 4, 1999).

F. Executive Order 13175 (Tribal Consultation)

This rulemaking will not: (1) have substantial direct effects on one or more Indian Tribes; (2) impose substantial direct compliance costs on Indian Tribal governments; or (3) preempt Tribal law. Therefore, a Tribal summary impact statement is not required under E.O. 13175 (Nov. 6, 2000).

G. Executive Order 13211 (Energy Effects)

This rulemaking is not a significant energy action under E.O. 13211 because this final rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Therefore, a Statement of Energy Effects is not required under E.O. 13211 (May 18, 2001).

H. Executive Order 12988 (Civil Justice Reform)

This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of E.O. 12988 (Feb. 5, 1996).

I. Executive Order 13045 (Protection of Children)

This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under E.O. 13045 (Apr. 21, 1997).

J. Executive Order 12630 (Taking of Private Property)

This rulemaking will not affect a taking of private property or otherwise have taking implications under E.O. 12630 (Mar. 15, 1988).

K. Congressional Review Act

Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), the USPTO will submit a report containing the rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the GAO. The changes in this final rule are expected to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this final rule meets the criteria in 5 U.S.C. 804(2).

L. Unfunded Mandates Reform Act of 1995

The changes set forth in this rulemaking do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, of $100 million (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of $100 million (as adjusted) or more in any one year and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. See 2 U.S.C. 1501 *et seq.*

M. National Environmental Policy Act

This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. See 42 U.S.C. 4321 *et seq.*

N. National Technology Transfer and Advancement Act

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions that involve the use of technical standards.

O. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) requires that the USPTO consider the impact of paperwork and other information collection burdens imposed on the public. The collection of information involved in this final rule has been reviewed and previously approved by OMB under control numbers 0651–0009, 0651–0050, 0651–0051, 0651–0054, 0651–0055, and 0651–0061. In addition, updates to the aforementioned information collections as a result of this final rule will be submitted to the OMB as non-substantive change requests.

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 unless that collection of information displays a currently valid OMB control number.

P. E-Government Act Compliance

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

List of Subjects

37 CFR Part 2

Administrative practice and procedure, Courts, Lawyers, Trademarks.

37 CFR Part 7

Administrative practice and procedure, Trademarks.

For the reasons set forth in the preamble, and under the authority contained in section 10(a) of the AIA, 15 U.S.C. 1113, 1123, and 35 U.S.C. 2, as amended, 37 CFR parts 2 and 7 are amended as follows:

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 15 U.S.C. 1113, 1123; 35 U.S.C. 2; sec. 10, Pub. L. 112–29, 125 Stat. 284; Pub. L. 116–260, 134 Stat. 1182, unless otherwise noted. Sec. 2.99 also issued under secs. 16, 17, 60 Stat. 434; 15 U.S.C. 1066, 1067.

■ 2. Section 2.6 is amended by revising paragraphs (a)(1), (2), and (3), (a)(4)(ii), (a)(5), (a)(6)(ii), (a)(7)(ii), (a)(8)(ii), (a)(9)(ii), (a)(10)(ii), (a)(11)(ii), (a)(12)(i), (ii), and (iv), (a)(13), (a)(14)(ii), (a)(15), (a)(16) heading, (a)(16)(ii), (a)(17) heading, (a)(17)(ii), (a)(18) heading, (a)(18)(i), (ii), (v), and (vii), (a)(19)(ii), (a)(20)(ii), (a)(21)(ii), (a)(22)(ii), (a)(23)(ii), (a)(25) and (27), and (a)(28)(ii) to read as follows:

§ 2.6 Trademark fees.

(a) * * *

(1) *Application filing fees.* (i) For filing an application on paper, per class—$850.00

(ii) For filing an application under section 66(a) of the Act, per class:

(A) For an international application having a receipt date that is on or after February 18, 2025—$600

(B) For an international application having a receipt date that is before February 18, 2025—$500.00

(iii) For filing an application electronically, per class—$350.00

(iv) Additional fee under § 2.22(b), per class—$100.00

(v) Additional fee under § 2.22(c), per class—$200.00

(vi) Additional fee under § 2.22(d) for each additional 1,000 characters in identifications of goods/services beyond the first 1,000 characters, per class—$200.00

(2) *Amendment to allege use.* (i) For filing an amendment to allege use under section 1(c) of the Act on paper, per class—$250.00

(ii) For filing an amendment to allege use under section 1(c) of the Act electronically, per class—$150.00

(3) *Statement of use.* (i) For filing a statement of use under section 1(d)(1) of the Act on paper, per class—$250.00

(ii) For filing a statement of use under section 1(d)(1) of the Act electronically, per class—$150.00

(4) * * *

(ii) For filing a request under section 1(d)(2) of the Act for a six-month extension of time for filing a statement of use under section 1(d)(1) of the Act electronically, per class—$125.00

(5) *Application for renewal of a registration fees.* (i) For filing an

application for renewal of a registration on paper, per class—$525.00

(ii) For filing an application for renewal of a registration electronically, per class—$325.00

(iii) For filing an application for renewal of a registration electronically, pursuant to § 7.41 of this chapter:

(A) On or after February 18, 2025, per class—$325.00

(B) Before February 18, 2025, per class—$300.00

(6) * * *

(ii) Additional fee for filing a renewal application during the grace period electronically, per class—$100.00

(7) * * *

(ii) For filing to publish a mark under section 12(c), per class electronically—$100.00

(8) * * *

(ii) For issuing a new certificate of registration upon request of registrant, request filed electronically—$100.00

(9) * * *

(ii) For a certificate of correction of registrant's error, request filed electronically—$100.00

(10) * * *

(ii) For filing a disclaimer to a registration electronically—$100.00

(11) * * *

(ii) For filing an amendment to a registration electronically—$100.00

* * * * *

(12) * * *

(i) For filing an affidavit under section 8 of the Act on paper, per class—$425.00

(ii) For filing an affidavit under section 8 of the Act electronically, per class—$325.00

* * * * *

(iv) For deleting goods, services, and/or classes after submission and prior to acceptance of an affidavit under section 8 of the Act electronically, per class—$250.00

(13) *Affidavit under section 15.* (i) For filing an affidavit under section 15 of the Act on paper, per class—$350.00

(ii) For filing an affidavit under section 15 of the Act electronically, per class—$250.00

(14) * * *

(ii) Additional fee for filing a section 8 affidavit during the grace period electronically, per class—$100.00

(15) *Petitions to the Director.* (i) For filing a petition under § 2.146 or § 2.147 on paper—$500.00

(ii) For filing a petition under § 2.146 or § 2.147 electronically—$400.00

(iii) For filing a petition under § 2.66 on paper—$350.00

(iv) For filing a petition under § 2.66 electronically—$250.00

(16) *Petition to cancel to the Trademark Trial and Appeal Board.*

* * *

(ii) For filing a petition to cancel electronically, per class—$600.00

(17) *Notice of opposition to the Trademark Trial and Appeal Board.*

* * *

(ii) For filing a notice of opposition electronically, per class—$600.00

(18) *Ex parte appeal to the Trademark Trial and Appeal Board.* (i) For filing an ex parte appeal on paper, per class—$325.00

(ii) For filing an ex parte appeal electronically, per class—$225.00

* * * * *

(v) For filing a second or subsequent request for an extension of time to file an appeal brief electronically, per application—$100.00

* * * * *

(vii) For filing an appeal brief electronically, per class—$200.00

(19) * * *

(ii) Request to divide an application filed electronically, per new application created—$100.00

(20) * * *

(ii) For correcting a deficiency in a section 8 affidavit via electronic filing—$100.00

(21) * * *

(ii) For correcting a deficiency in a renewal application via electronic filing—$100.00

(22) * * *

(ii) For filing a request for an extension of time to file a notice of opposition under § 2.102(c)(1)(ii) or (c)(2) electronically—$200.00

(23) * * *

(ii) For filing a request for an extension of time to file a notice of opposition under § 2.102(c)(3) electronically—$400.00

* * * * *

(25) *Letter of protest.* For filing a letter of protest, per subject application—$150.00

* * * * *

(27) *Extension of time for filing a response to a non-final Office action under § 2.93(b)(1).* For filing a request for extension of time for filing a response to a non-final Office action under § 2.93(b)(1) electronically—$125.00

(28) * * *

(ii) For filing a request for an extension of time for filing a response to an Office action under § 2.62(a)(2) electronically—$125.00

* * * * *

■ 3. Section 2.22 is revised and republished to read as follows:

§ 2.22 Requirements for a base application.

(a) An application for registration under section 1 and/or section 44 of the Act that meets the requirements for a filing date under § 2.21 will be subject only to the filing fee under § 2.6(a)(1)(iii) if it includes:

(1) The applicant's name and domicile address;

(2) The applicant's legal entity;

(3) The citizenship of each individual applicant, or the state or country of incorporation or organization of each juristic applicant;

(4) If the applicant is a domestic partnership, the names and citizenship of the general partners, or if the applicant is a domestic joint venture, the names and citizenship of the active members of the joint venture;

(5) If the applicant is a sole proprietorship, the state of organization of the sole proprietorship and the name and citizenship of the sole proprietor;

(6) One or more bases for filing that satisfy all the requirements of § 2.34. If more than one basis is set forth, the applicant must comply with the requirements of § 2.34 for each asserted basis;

(7) If the application contains goods and/or services in more than one class, compliance with § 2.86;

(8) A filing fee for each class of goods and/or services, as required by § 2.6(a)(1)(ii) or (iii);

(9) A verified statement that meets the requirements of § 2.33, dated and signed by a person properly authorized to sign on behalf of the owner pursuant to § 2.193(e)(1);

(10) If the applicant does not claim standard characters, the applicant must attach a digitized image of the mark. If the mark includes color, the drawing must show the mark in color;

(11) If the mark is in standard characters, a mark comprised only of characters in the Office's standard character set, typed in the appropriate field of the application;

(12) If the mark includes color, a statement naming the color(s) and describing where the color(s) appears on the mark, and a claim that the color(s) is a feature of the mark;

(13) If the mark is not in standard characters, a description of the mark;

(14) If the mark includes non-English wording, an English translation of that wording;

(15) If the mark includes non-Latin characters, a transliteration of those characters;

(16) If the mark includes an individual's name or likeness, either:

(i) A statement that identifies the living individual whose name or likeness the mark comprises and written consent of the individual; or

(ii) A statement that the name or likeness does not identify a living individual (see section 2(c) of the Act);

(17) If the applicant owns one or more registrations for the same mark, and the owner(s) last listed in Office records of the prior registration(s) for the same mark differs from the owner(s) listed in the application, a claim of ownership of the registration(s) identified by the registration number(s), pursuant to § 2.36;

(18) If the application is a concurrent use application, compliance with § 2.42;

(19) An applicant whose domicile is not located within the United States or its territories must designate an attorney as the applicant's representative, pursuant to § 2.11(a), and include the attorney's name, postal address, email address, and bar information; and

(20) Correctly classified goods and/or services, with an identification of goods and/or services from the Office's Acceptable Identification of Goods and Services Manual within the electronic form.

(b) If an application fails to satisfy any of the requirements of paragraphs (a)(1) through (19) of this section, the applicant must pay the fee required by § 2.6(a)(1)(iv).

(c) If an application fails to satisfy the requirements of paragraph (a)(20) of this section, the applicant must pay the fee required by § 2.6(a)(1)(v).

(d) If an application fails to satisfy the requirements of paragraph (a)(20) of this section, and the identification of goods and/or services in any class exceeds 1,000 characters, the applicant must pay the fee required by § 2.6(a)(1)(vi) for each affected class.

PART 7—RULES OF PRACTICE IN FILINGS PURSUANT TO THE PROTOCOL RELATING TO THE MADRID AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS

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

Authority: 15 U.S.C. 1123, 35 U.S.C. 2, Pub. L. 116–260, 134 Stat. 1182, unless otherwise noted.

■ 5. Section 7.6 is amended by revising paragraphs (a)(1)(ii), (a)(2)(ii), (a)(3)(ii), (a)(4)(ii), (a)(5)(ii), (a)(6)(i), (ii), and (iv), (a)(7)(ii), and (a)(8)(ii) to read as follows:

§ 7.6 Schedule of U.S. process fees.

(a) * * *

(1) * * *

(ii) For certifying an international application based on a single basic application or registration filed electronically, per class—$100.00

(2) * * *

(ii) For certifying an international application based on more than one basic application or registration filed electronically, per class—$150.00

(3) * * *

(ii) For transmitting a subsequent designation under § 7.21, filed electronically—$100.00

(4) * * *

(ii) For transmitting a request to record an assignment or restriction, or release of a restriction, under § 7.23 or § 7.24 filed electronically—$100.00

(5) * * *

(ii) For filing a notice of replacement under § 7.28 electronically, per class—$100.00

(6) * * *

(i) For filing an affidavit under section 71 of the Act on paper, per class—$425.00

(ii) For filing an affidavit under section 71 of the Act electronically, per class—$325.00

* * * * *

(iv) For deleting goods, services, and/or classes after submission and prior to acceptance of an affidavit under section 71 of the Act electronically, per class—$250.00

(7) * * *

(ii) Surcharge for filing an affidavit under section 71 of the Act during the grace period electronically, per class—$100.00

(8) * * *

(ii) For correcting a deficiency in a section 71 affidavit filed electronically—$100.00

* * * * *

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2024–26644 Filed 11–15–24; 8:45 am]

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Part V

Environmental Protection Agency

40 CFR Parts 2, 98, and 99
Waste Emissions Charge for Petroleum and Natural Gas Systems: Procedures for Facilitating Compliance, Including Netting and Exemptions; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 2, 98, and 99

[EPA–HQ–OAR–2023–0434; FRL–10246.1–03–OAR]

RIN 2060–AW02

Waste Emissions Charge for Petroleum and Natural Gas Systems: Procedures for Facilitating Compliance, Including Netting and Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is promulgating a regulation to facilitate compliance with the requirements of the Waste Emissions Charge in the Clean Air Act's (CAA) Methane Emissions Reduction Program (MERP). Enacted as part of the Inflation Reduction Act (IRA), this program requires the EPA to impose and collect an annual charge on methane emissions that exceed waste emissions thresholds specified by Congress.

DATES: This final rule is effective January 17, 2025.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2023–0434. All documents in the docket are listed in the *https://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (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. Publicly available docket materials are available either electronically in *https://www.regulations.gov* or in hard copy at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. This Docket Facility 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 Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Jennifer Bohman, Climate Change Division, Office of Atmospheric Protection (MC–6207A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 343–9548; email address: *merp@epa.gov.*

World wide web (WWW). In addition to being available in the docket, an electronic copy of this final rule will also be available through the WWW. Following the Administrator's signature, a copy of this final rule will be posted on the EPA's Inflation Reduction Act Methane Emissions Reduction Program website at *https://www.epa.gov/inflation-reduction-act/methane-emissions-reduction-program.*

SUPPLEMENTARY INFORMATION:

Regulated entities. This final regulation affects certain owners or operators of facilities in certain segments of the petroleum and natural gas systems industry that report more than 25,000 metric tons (mt) of carbon dioxide equivalent (CO_2e) pursuant to the requirements codified at 40 Code of Federal Regulations (CFR) part 98, subpart W (Petroleum and Natural Gas Systems) (hereafter referred to as ''part 98, subpart W''). Per the requirements of CAA section 136(d), the industry segments to which the waste emissions charge may apply are offshore petroleum and natural gas production, onshore petroleum and natural gas production, onshore natural gas processing, onshore gas transmission compression, underground natural gas storage, liquefied natural gas storage, liquefied natural gas import and export equipment, onshore petroleum and natural gas gathering and boosting, and onshore natural gas transmission pipeline. Regulated categories and entities include, but are not limited to, those listed in Table 1 of this preamble:

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY

Category	North American Industry Classification System (NAICS)	Examples of affected facilities
Petroleum and Natural Gas Systems	486210	Pipeline transportation of natural gas.
	221210	Natural gas processing and transmission compression.
	211120	Crude petroleum extraction.
	211130	Natural gas extraction.

Table 1 of this preamble is not intended to be exhaustive, but rather provides a guide for readers regarding facilities likely to be affected by this final rule. This table lists the types of facilities that the EPA is now aware could potentially be affected by this action. Other types of facilities than those listed in the table could also be subject to requirements. To determine whether you would be affected by this action, you should carefully examine the applicability criteria found in 40 CFR part 99, subpart A (General Provisions) and the applicability criteria found in 40 CFR part 98, subpart A (General Provisions) and subpart W (Petroleum and Natural Gas Systems). If you have questions regarding the applicability of this action to a particular facility, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

The EPA must collect charges from owners or operators of applicable facilities that both: (1) Report more than 25,000 metric tons (mt) of carbon dioxide equivalent (CO_2e) of greenhouse gases (GHGs) per year pursuant to the petroleum and natural gas systems source category requirements of the Greenhouse Gas Reporting Rule, and (2) exceed methane emissions intensity thresholds set forth in CAA section 136 for different types of applicable facilities. This final rule facilitates compliance with provisions of the CAA, including those related to netting of emissions for purposes of determining the charge and various exemptions to the charge; establishes confidentiality determinations for data elements included in waste emissions charge filings; and establishes filing and auditing procedures to facilitate compliance with the statutory requirements.

Acronyms and abbreviations. The following acronyms and abbreviations are used in this document.

BOEM Bureau of Ocean Energy Management
CAA Clean Air Act
CBI confidential business information
CEMS continuous emission monitoring system
CFR Code of Federal Regulations
CH_4 methane
CO_2 carbon dioxide
CO_2e carbon dioxide equivalent

e-GGRT electronic Greenhouse Gas Reporting Tool
EG emission guidelines
EIA Energy Information Administration
EPA U.S. Environmental Protection Agency
ET Eastern time
FR Federal Register
GHG greenhouse gas
GHGRP Greenhouse Gas Reporting Program
GWP Global Warming Potential
IRA Inflation Reduction Act of 2022
ICR Information Collection Request
LDC local distribution company
LNG liquified natural gas
mmBtu million British thermal units
MMscf million standard cubic feet
mt metric tons
N_2O nitrous oxide
NAICS North American Industry Classification System
NGLs natural gas liquids
NSPS new source performance standards
OMB Office of Management and Budget
PRA Paperwork Reduction Act
RFA Regulatory Flexibility Act
RY reporting year
scfh standard cubic feet per hour
U.S. United States
UMRA Unfunded Mandates Reform Act of 1995
UNFCCC United Nations Framework Convention on Climate Change
VOC volatile organic compound
WEC waste emissions charge
WWW World Wide Web

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I. Background

A. How is this preamble organized?

This first section (section I) of this preamble contains background information regarding the final rule. This section also discusses the EPA's legal authority under the Clean Air Act (CAA) to promulgate implementing regulations for aspects of the waste emissions charge, codified at 40 CFR part 99 (hereafter referred to as ''part 99''). Section I of the preamble also discusses the EPA's legal authority to make confidentiality determinations for new data elements included in waste emissions charge filings (WEC filings) required by the final rule. Section II. of this preamble contains detailed information on the provisions in this final rule to facilitate implementation of CAA section 136(c) through (g), in particular the netting and exemption provisions. Section II. of this preamble also contains information on the revisions to 40 CFR part 98, subpart A to harmonize part 99 and part 98 reporting obligations. Section III. of this preamble describes the general requirements for the final rule, including procedures to facilitate filing and compliance. Section IV. of this preamble discusses the final confidentiality determinations for new data reporting elements for the proposed part 99 and also discusses confidentiality determinations for two data elements reported under part 98, subpart W. Section V. of this preamble discusses the impacts of this action. Section VI. of this preamble describes the statutory and Executive order requirements applicable to this final action.

B. Executive Summary

In August 2022, Congress passed, and President Biden signed, the Inflation Reduction Act of 2022 (IRA) into law. Section 60113 of the IRA created the Methane Emission Reduction Program (MERP) and amended the Clean Air Act (CAA) by adding section 136, ''Methane Emissions and Waste Reduction Incentive Program for Petroleum and Natural Gas Systems''. CAA section 136, as designed by Congress, establishes a three-part framework to help States, industry, and communities reduce methane (CH_4) emissions from the oil and gas sector. It further complemented a recently finalized rule under section 111 of the CAA (that was proposed at the time the Inflation Reduction Act was passed) to reduce methane emissions from new and existing oil and gas facilities. Oil and natural gas facilities are the nation's largest industrial source of methane, a greenhouse gas (GHG) that is 28 times more potent than carbon dioxide (CO_2) and is responsible for approximately one third of all warming resulting from anthropogenic emissions of greenhouse gases.[1] The three-part framework established by Congress in CAA section 136 addresses these emissions by: (1) directing the EPA to impose and collect a ''Waste Emissions Charge'' (WEC) on methane emissions from high-emitting and inefficient oil and gas operations; (2) directing the EPA to update subpart W of the Greenhouse Gas Reporting Program to ensure accurate reporting of methane emissions by oil and natural gas facilities that is based on empirical data; and (3) providing over $1 billion in financial and technical assistance to assist the industry, States, and communities in deploying methane mitigation and monitoring solutions. By implementing provisions of the WEC, this final rule helps to fulfill one of the pillars of this three-part framework. As Congress intended, the WEC, including the provisions finalized in this final rule, will incentivize a variety of near-term actions to reduce methane emissions from oil and natural gas operations while the EPA and States

[1] 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.

work to implement the EPA's recently finalized CAA section 111 methane standards.

This action is also intended to work hand-in-hand with the other two elements of the CAA section 136 framework. Earlier this year, the EPA finalized a rule (89 FR 42062, May 14, 2024) (hereafter referred to as the ''2024 Subpart W Final Rule'') that fulfills Congress's directive in CAA section 136 to improve the reporting of GHG emissions under subpart W of the Greenhouse Gas Reporting Program and ensure that oil and gas facilities' reporting requirements are based on empirical data and more accurately reflect emissions. Because CAA section 136 requires that the EPA utilize subpart W emissions reports as the basis for determining the applicability of the WEC and calculating WEC obligations for owners and operators of applicable facilities, the EPA's recent revisions to subpart W are an important adjunct to this final rule that will ensure WEC obligations are based on the most accurate and comprehensive emissions data available. In addition, to implement the third part of the CAA section 136 framework, the EPA is partnering with the U.S. Department of Energy (DOE) to provide up to $1.36 billion in financial and technical assistance to a broad range of stakeholders to identify, measure, and mitigate emissions from the oil and gas sector. As described in section I.C.2. of this preamble, the EPA and its partners are acting expeditiously to award this funding through a combination of formula and competitive grant processes. These funds will accelerate the deployment of methane monitoring and mitigation technologies that will reduce methane emissions from oil and natural gas facilities and, potentially, help reduce or eliminate WEC obligations for certain applicable facilities by lowering their emissions intensity.

The WEC final rule requirements in this action are designed to meet Congress's directive to provide an incentive for the early adoption of methane emission reduction practices and technologies, including those that are required under the Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review (NSPS/EG), which Congress expected to be promulgated pursuant to CAA section 111 at the time it created the WEC. CAA section 136 makes this connection to the oil and gas methane emission standards clear by including an exemption from the charge for operations that are subject to and in compliance with final methane emissions requirements promulgated pursuant to CAA sections 111(b) and (d). The WEC is thus an important piece of a comprehensive national strategy established by Congress via the IRA to reduce methane emissions. The WEC advances the reduction of methane emissions from the oil and gas sector by providing for sources covered under the CAA section 111 rules a set of emissions reduction incentives that are in effect until full implementation of oil and gas methane emissions standards promulgated by the EPA on March 8, 2024. Those standards were, as Congress specifically acknowledged via explicit reference in the IRA, under development at the time the WEC was enacted. For methane emissions sources not covered by the CAA section 111 rules, the emission reduction incentives created by the WEC remain in place after full implementation of the CAA section 111 methane standards.

On January 26, 2024, the EPA proposed a regulation to facilitate implementation of the provisions of the WEC, following the requirements of CAA section 136(c)–(g) (89 FR 5318). The WEC program applies to applicable facilities that report more than 25,000 mt CO_2e of greenhouse gases emitted per year pursuant to the Greenhouse Gas Reporting Rule's requirements for the petroleum and natural gas systems source category (codified as 40 CFR part 98, subpart W).[2] An applicable facility, as defined in CAA section 136(d), is a facility within the following industry segments (as the following industry segments are defined in part 98, subpart W): onshore petroleum and natural gas production, offshore petroleum and natural gas production, onshore petroleum and natural gas gathering and boosting, onshore natural gas processing, onshore gas transmission compression, onshore natural gas transmission pipeline, underground natural gas storage, liquefied natural gas import and export equipment, and liquefied natural gas storage.[3]

CAA section 136 defines three important elements of the WEC program: (1) waste emissions thresholds; (2) netting of emissions across different facilities; and (3) exemptions for certain emissions and facilities. Facilities may owe a WEC obligation if their subpart W reported emissions exceed the waste emissions thresholds specified in CAA section 136(f) and they are not eligible for an exemption.[4] The waste emissions threshold is a facility-specific amount of metric tons of methane emissions calculated using the methane intensity thresholds specified by Congress in CAA section 136(f)(1) through (3) and a facility's natural gas throughput (or oil throughput in certain circumstances).

Congress specifically laid out certain requirements in the text of the statute. The waste emissions charge is specified in CAA section 136(e) to begin for emissions occurring in 2024 at $900 per metric ton of methane exceeding the threshold, increasing to $1,200 per metric ton of methane in 2025, and to $1,500 per metric ton of methane in 2026 and subsequent years. The WEC only applies to the subset of a facility's emissions that are above the waste emissions threshold.

Congress structured the WEC so that it focuses on high-emitting and inefficient oil and gas facilities (*i.e.,* those with emissions greater than 25,000 mt CO_2e of greenhouse gases emitted per year and that have a methane emissions intensity in excess of the statutory waste emissions threshold). Facility efficiency, reflected in the amount of methane emissions per unit of production or throughput, can directly affect a facility's WEC obligations since more efficient facilities have emissions below the thresholds at which facilities are required to pay a charge. The WEC therefore incentivizes more efficient operations because the charge applies only to the least efficient and most wasteful of oil and gas facilities (and only to the subset of their emissions that exceed thresholds and are not exempt). CAA section 136(f)(4) allows facilities subject to the WEC that are under common ownership or control to net emissions across those facilities, which could result in a reduced total charge, or avoidance of the charge.[5]

In addition, Congress created three exemptions that may lower a facility's WEC obligation or exempt the facility entirely from the charge. The first exemption, found in CAA section 136(f)(5), exempts from the charge

[2] 42 U.S.C. 7436(c) (''The Administrator shall impose and collect a charge on methane emissions that exceed an applicable waste emissions threshold under subsection (f) from an owner or operator of an applicable facility that reports more than 25,000 metric tons of carbon dioxide equivalent of greenhouse gases emitted per year pursuant to of part 98 of title 40, Code of Federal Regulations, regardless of the reporting threshold under that subpart.'').

[3] 42 U.S.C. 7436(d).

[4] 42 U.S.C. 7436(f)(1)–(3).

[5] 42 U.S.C. 7436(f)(4) (''In calculating the total emissions charge obligation for facilities under common ownership or control, the Administrator shall allow for the netting of emissions by reducing the total obligation to account for facility emissions levels that are below the applicable thresholds within and across all applicable segments identified in subsection (d).'').

emissions occurring at facilities in the onshore or offshore petroleum and natural gas production industry segments that are caused by eligible delays in environmental permitting of gathering or transmission infrastructure.[6] The second exemption, found in CAA section 136(f)(6), exempts from the charge, if certain conditions are met, those facilities that are subject to and in compliance with final methane emissions requirements promulgated pursuant to CAA sections 111(b) and (d).[7] This exemption becomes available only if a determination is made by the Administrator that such final requirements are approved and in effect in all States with respect to the applicable facilities, and that the emissions reductions resulting from those final requirements will achieve equivalent or greater emission reductions as would have resulted from the EPA's methane emissions requirements proposed in 2021.[8] The third exemption, found in CAA section 136(f)(7), exempts from the charge reporting year emissions from wells that are permanently shut in and plugged.[9]

As a result of these key design features of the WEC, the EPA anticipates that many facilities in the oil and natural gas sector will not be subject to WEC obligations. Many oil and natural gas facilities already fall below the annual emissions threshold and waste emissions thresholds that would cause them to be subject to the WEC, or are likely to avail themselves of the netting provisions in this final rule to reduce or eliminate WEC obligations. Further, as the EPA and States implement the CAA section 111 2024 Final NSPS/EG for new and existing sources, many oil and natural gas facilities are likely to qualify for the regulatory compliance exemption. The CAA section 111 2024 Final NSPS/EG as well as the financial and technical assistance the EPA is administering under section 136 of the CAA, are also expected to drive methane emission reductions that will help applicable facilities reduce or eliminate their WEC obligations. The charge, then, will primarily serve as an incentive, particularly to high-emitting and inefficient facilities, to reduce their emissions of methane.

The EPA received over 50,000 comments in response to the proposal. After consideration of the public comments, the EPA has made several changes in this final rule that are described in section I.B. and in sections II. and III. of this preamble. While some of these changes represent a meaningful shift from the proposed approach, all changes were within the scope of notice provided through the EPA's request for comment, and discussion, at proposal. Moreover, these changes result in a final rule that better aligns with the statutory purpose and structure of the WEC. Specifically, the final rule is designed to achieve several goals: (1) Provide a strong incentive for early action to reduce methane by States, companies, and facilities, as Congress directed; (2) appropriately implement the exemptions specified by Congress; (3) give additional clarity to regulated entities; and (4) streamline implementation. By harmonizing the WEC regulations with implementation of the CAA section 111 requirements, this final rule encourages early emissions reductions and reduces the WEC burden on facilities that are in compliance with applicable CAA section 111 requirements. Furthermore, this final rule aims to increase flexibility so that accessing the exemptions created by Congress is not unduly restrictive, while still maintaining the integrity of the program. Finally, this rulemaking allows for expanded netting compared to the proposal while providing more specificity on the conditions under which netting may occur to minimize the potential for fraud.

The EPA is revising the regulatory compliance exemption in response to the many commenters that suggested changes to better align with Congress' purpose to incentivize States to move promptly toward full implementation of the CAA section 111 program, and to motivate regulated facilities to achieve emissions reductions as quickly as possible. This Congressional intent is illustrated in the language of the law and in the suite of incentives for expeditious methane emissions reductions it creates. The principal change to the regulatory compliance exemption in this final rule addresses when the exemption becomes available. The EPA concludes that allowing the exemption to be available for each State once it has fully implemented the methane emissions requirements promulgated pursuant to CAA sections 111(b) and (d), rather than all at once after the last State's plans are approved, is both a better reading of the law and has greater fidelity to the Congressional purpose. Industry commenters emphasized that a State-by-State approach would incentivize States to move quickly to develop and submit approvable State plans implementing the section 111 emissions guidelines, furthering Congress's intent in enacting the compliance exemption. Making the compliance exemption available to facilities in a State as soon as all CAA section 111(b) and (d) facilities within that State are subject to all of their applicable methane emissions requirements will provide an incentive for every State to move expeditiously, and avoid delays in effectuating the compliance exemption that might occur if the slowest State sets the pace. At the same time, to fully implement Congress' intention that the WEC serve as a mechanism for incentivizing emissions reductions until sources begin to comply with all of their emissions control obligations, the final rule provides that the regulatory compliance exemption becomes available in each State only after sources are required to comply with all of their State plan requirements. As described in more detail in section II.D.2. of this preamble, these changes ensure the regulatory compliance exemption reflects the facts on the ground for facilities operating in each State, while tying the exemption to the date actual emissions reductions are achieved as Congress intended.

In response to the information provided in comments, the EPA is also finalizing other changes to the regulatory compliance exemption that help ensure the WEC and the CAA section 111 rules work together as intended. As noted by commenters, it is important that the WEC incentivize early action before compliance deadlines and then relieve from the charge those facilities operating in compliance with the CAA section 111 rules. In this final rule, as many

[6] 42 U.S.C. 7436(f)(5) (''Charges shall not be imposed pursuant to paragraph (1) on emissions that exceed the waste emissions threshold specified in such paragraph if such emissions are caused by unreasonable delay, as determined by the Administrator, in environmental permitting of gathering or transmission infrastructure necessary for offtake of increased volume as a result of methane emissions mitigation implementation.'').

[7] 42 U.S.C. 7436(f)(6) (''Charges shall not be imposed pursuant to subsection (c) on an applicable facility that is subject to and in compliance with methane emissions requirements pursuant to subsections (b) and (d) of section 7411 of this title upon a determination by the Administrator that—(i) methane emissions standards and plans pursuant to subsections (b) and (d) of section 7411 of this title have been approved and are in effect in all States with respect to the applicable facilities; and (ii) compliance with the requirements described in clause (i) will result in equivalent or greater emissions reductions as would be achieved by the proposed rule of the Administrator entitled ''Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review'' (86 FR 63110 (November 15, 2021)), if such rule had been finalized and implemented.'').

[8] *Id.*

[9] 42 U.S.C. 7436(f)(7) (''Charges shall not be imposed with respect to the emissions rate from any well that has been permanently shut-in and plugged in the previous year in accordance with all applicable closure requirements, as determined by the Administrator.'').

commenters suggested, the EPA is limiting the types of noncompliance that would cause a facility to lose the regulatory compliance exemption, reducing the timeframe for which the exemption would be lost in the event of noncompliance, and narrowing the scope of emissions that would lose the exemption in the event of noncompliance for facilities in segments with unique, basin-wide facility definitions. The final rule will thereby create a stronger incentive for facilities to meet the requirements of the CAA section 111 rules while making the regulatory compliance exemption more accessible.

To reflect comments persuasively suggesting that a more expansive approach to netting would reflect a better reading of the legislative text, the final rule changes the approach from the proposal to apply netting to encompass facilities under common ownership or control at the parent company level. One of the key provisions of the WEC created in CAA section 136(f) relates to the ability of facilities under common ownership or control to net emissions, such that facilities with emissions below the waste emissions threshold can offset emissions from facilities above the threshold to reduce the overall WEC burden. The EPA proposed that a facility's owner or operator would be the regulated entity under WEC as well as the entity used for netting of emissions across facilities under common ownership or control. As commenters highlighted, the text of section 136(f) suggests Congress supported broad application of netting, and commenters also noted that broader application of netting may help incentivize emission reductions by allowing companies to take advantage of cost-effective reduction opportunities across their entire operations rather than being limited by reductions that can be achieved across a smaller number of facilities. The EPA received significant comments that restricting the netting provisions to the owner or operator was inconsistent with the intent of the provision, since parent companies both own and control subsidiaries. As described in more detail in section II.B.1., the final regulations continue to define a facility's owner or operator as the regulated entity under WEC (*i.e.,* responsible for the payment of the WEC), consistent with CAA section 136(c). However, these final regulations reflect that the best reading of the statute entails a broader interpretation of the term ''common ownership or control,'' and so the final rule expands the use of netting to the parent company level by allowing owners and operators with a common parent to transfer negative emissions amongst each other. This approach of maintaining the WEC regulatory obligations at the owner and operator level, while allowing the transfer of negative emissions or ''netting'' across owners and operators with a common parent, reconciles the difference in statutory language in CAA sections 136(c) and 136(f).

The EPA is also making a number of changes to improve the implementation of the WEC in response to logistical and feasibility concerns raised in response to the proposal. For example, the EPA is specifying WEC filing and resubmittal deadlines of August 31 and December 15, respectively. These dates are later than the proposed deadlines, thereby allowing for more accurate reporting prior to WEC submission, reducing the number of resubmissions and corrections, and reducing overall burden.

In this final rule, the EPA is also making modifications to the implementation of the unreasonable delay and plugged well exemptions, as well as revisions to definitions and calculations to support the finalized rule. We are also finalizing revisions to 40 CFR part 98, subpart A (general provisions) for all facilities that report under subpart W to harmonize reporting responsibilities in part 98 with the reporting responsibilities and WEC obligation in part 99 such that responsibility to report and resubmit reports under part 98 if errors are identified in the part 98 report align with the obligated party under part 99. The final provisions of part 99 and part 98 under this rulemaking are described in further detail in sections II. and III. of this preamble.

C. Background and Related Actions

Congress designed the WEC to work in tandem with several related EPA programs. Together, these actions are expected to greatly reduce methane emissions. This section discusses the impacts of methane on public health and welfare and provides more details on the EPA programs relevant to methane emissions from oil and gas systems.

1. How does methane affect public health and welfare?

Elevated concentrations of greenhouse gases (GHGs) including methane have been warming the planet, leading to harmful changes in the Earth's climate that are occurring at a pace and in a way that threatens human health, our economy and infrastructure, and the natural environment, both in the United States (U.S.) and at a global level. While the EPA is not statutorily required to make any particular scientific or factual findings regarding the impact of GHG emissions on public health and welfare in support of the WEC, the EPA is providing in this section a brief scientific background on methane and climate change to offer additional context for this rulemaking and to help the public understand the environmental impacts of GHGs such as methane.[10]

As a GHG, methane in the atmosphere absorbs terrestrial infrared radiation, which in turn contributes to increased global warming and continuing climate change, including increases in air and ocean temperatures, changes in precipitation patterns, retreating snow and ice, increasingly severe weather events, such as hurricanes of greater intensity, and sea level rise, among other impacts. Methane also contributes to climate change through chemical reactions in the atmosphere that produce tropospheric ozone and stratospheric water vapor. In 2023, atmospheric concentrations of methane increased by nearly 11 parts per billion (ppb) over 2022 levels to reach 1922 ppb.[11] Concentrations are now more than two and a half times larger than the preindustrial level of 729 ppb.[12] Methane is responsible for about one third of all warming resulting from human emissions of well-mixed GHGs,[13] and due to its high radiative efficiency compared to carbon dioxide, methane mitigation is one of the best opportunities for reducing near-term warming. In the U.S., the oil and gas sector is the largest source of industrial methane emissions.[14]

[10] The EPA did not and is not reopening previous determinations regarding endangerments to public health and welfare in providing this background in this rulemaking.

[11] NOAA, *https://gml.noaa.gov/webdata/ccgg/trends/ch4/ch4_annmean_gl.txt.* Accessed 8/22/24.

[12] Blunden, J. and T. Boyer, Eds., 2022: ''State of the Climate in 2021.'' *Bull. Amer. Meteor. Soc.,* 103 (8), Si–S465, *https://doi.org/10.1175/2022BAMSStateoftheClimate.1,* 103 (8), Si–S465, *https://doi.org/10.1175/2022BAMSStateoftheClimate.1.*

[13] 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.

[14] EPA (2024). Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2022 U.S. Environmental Protection Agency, EPA 430R–24004. *https://www.epa.gov/ghgemissions/*

Major scientific assessments continue to be released that further advance our understanding of the climate system and the impacts that methane and other GHGs have on public health and welfare both for current and future generations. According to the Intergovernmental Panel on Climate Change (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.'' [15] Recent EPA modeling efforts [16] have also shown that impacts from these changes are projected to vary regionally within the U.S. For example, large damages are projected from sea level rise in the Southeast, wildfire smoke in the Western U.S., and impacts to agricultural crops and rail and road infrastructure in the Midwest and Northern Plains. Scientific assessments, the EPA analyses, and updated observations and projections document the rapid rate of current and future climate change and the potential range impacts both globally and in the United States,[17] presenting clear support regarding the current and future dangers of climate change and the importance of GHG emissions mitigation. The Methane Emissions Reduction Program is intended to respond to and mitigate these impacts by improving availability of and access to monitoring and emission reduction technologies and incentivizing methane emissions reductions from oil and gas systems.

2. Related Actions

Congress designed the WEC to work in tandem with several related EPA programs, in particular the Greenhouse Gas Reporting Program and the CAA section 111 requirements. As mandated by CAA section 136(c) and (d), the scope and effect of the WEC is closely related to the EPA's long-standing Greenhouse Gas Reporting Program requirements for oil and natural gas facilities, which are codified in subpart W of the EPA's GHGRP regulations. Specifically, the applicability of the WEC is based upon the quantity of metric tons of CO_2e emitted per year pursuant to the requirements of subpart W. Further, CAA section 136(e) requires that the WEC amount be calculated based upon methane emissions reported pursuant to subpart W. In order to ensure that WEC charges are based on methane emissions data that is as accurate and comprehensive as possible, section 136(h) further required the EPA to undertake a rulemaking to review and revise subpart W as necessary to ensure that reporting is ''based on empirical data,'' ''accurately reflect[s] the total methane emissions and waste emissions from applicable facilities,'' and ''allow[s] owners and operators of applicable facilities to submit empirical emissions data.'' As a result, this final action builds upon previous subpart W rulemakings.

In the 2024 Subpart W Final Rule, the EPA finalized revisions to subpart W consistent with the authority and directives set forth in CAA section 136(h) as well as the EPA's authority under CAA section 114. In that rulemaking, the EPA finalized revisions to require reporting of additional emissions or emissions sources to address potential gaps in the total methane emissions reported by facilities to subpart W. For example, these revisions added a new emissions source, referred to as ''other large release events,'' to capture large emission events that are not accurately accounted for using the existing methods in subpart W.[18] See section II.B. of the preamble to the 2024 Subpart W Final Rule (89 FR 42062) for more information on this source category. The emissions from these events and other newly added sources are required to be included in the total emissions reported under subpart W starting with reporting year 2025. The EPA also finalized revisions to add or revise existing calculation methodologies to improve the accuracy of reported emissions, incorporate additional empirical data, and allow owners and operators of applicable facilities to submit empirical emissions data that could appropriately demonstrate the extent to which a charge is owed in implementation of CAA section 136, as directed by CAA section 136(h). The EPA also finalized revisions to existing reporting requirements to collect data that will improve verification of reported data, ensure accurate reporting of emissions, and improve the transparency of reported data. For clarity of discussion within this preamble, unless otherwise stated, references to provisions of subpart W (*i.e.,* 40 CFR 98.230 through 98.238) reflect the language of that subpart as effective January 1, 2025.

Under the Greenhouse Gas Reporting Program, the EPA also finalized a separate rule (89 FR 31802, April 25, 2024), which included updates to the General Provisions of the Greenhouse Gas Reporting Rule to reflect revised global warming potentials (GWPs), reporting of GHG data from additional sectors (*i.e.,* non-subpart W sectors), and revisions to source categories other than subpart W that improve implementation of the Greenhouse Gas Reporting Rule. The revision to the GWP of methane (from 25 to 28) is expected to lead to a small increase in the number of facilities (<188 facilities) [19] that exceed the subpart W 25,000 mt CO_2e threshold and thus become subject to the part 99 requirements. This final Greenhouse Gas Reporting Program rule is not expected to otherwise impact subpart W reporting requirements as they pertain to the applicability or implementation of the part 99 requirements.

Separately, on November 15, 2021 (86 FR 63110), the EPA proposed under CAA section 111(b) standards of performance regulating GHGs (in the

inventory-us-greenhouse-gas-emissions-and-sinks-1990-2022.

[15] *Id.*

[16] (1) EPA. 2024. *Technical Documentation on the Framework for Evaluating Damages and Impacts (FrEDI).* U.S. Environmental Protection Agency, EPA 430–R–24–001.

(2) Hartin C., E.E. McDuffie, K. Novia, M. Sarofim, B. Parthum, J. Martinich, S. Barr, J. Neumann, J. Willwerth, & A. Fawcett. Advancing the estimation of future climate impacts within the United States. EGUsphere doi: 10.5194/egusphere-2023–114, 2023.

[17] (1) USGCRP, 2023: Fifth National Climate Assessment. Crimmins, A.R., C.W. Avery, D.R. Easterling, K.E. Kunkel, B.C. Stewart, and T.K. Maycock, Eds. U.S. Global Change Research Program, Washington, DC, USA. *https://doi.org/10.7930/NCA5.2023.*

(2) 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. Pe´an, 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.

[18] As defined at 40 CFR 98.238, effective January 1, 2025, an other large release event means any planned or unplanned uncontrolled release to the atmosphere of gas, liquids, or mixture thereof, from wells and/or other equipment that result in emissions for which there are no methodologies in 40 CFR 98.233 other than under 40 CFR 98.233(y) to appropriately estimate these emissions. Other large release events include, but are not limited to, well blowouts, well releases, pressure relief valve releases from process equipment other than hydrocarbon liquids storage tanks, storage tank cleaning and other maintenance activities, and releases that occur as a result of an accident, equipment rupture, fire, or explosion. Other large release events also include failure of equipment or equipment components such that a single equipment leak or release has emissions that exceed the emissions calculated for that source using applicable methods in 40 CFR 98.233(a) through (h), (j) through (s), (w), (x), (dd), or (ee) by the threshold in 40 CFR 98.233(y)(1)(ii). Other large release events do not include blowdowns for which emissions are calculated according to the provisions in 40 CFR 98.233(i).

[19] In the 2024 Final GHGRP Rule, the EPA estimated that 188 additional facilities would be subject to subpart W due to the increase in GWP. However, many of these facilities would also report under other subparts, such as subpart C, and for some of these facilities, reported emissions to subpart W will be below the WEC applicable threshold of 25,000 metric tons CO_2e.

form of limitations on emissions of methane) and volatile organic compounds (VOCs) for certain new, reconstructed, and modified sources in the oil and natural gas source category (proposed as 40 CFR part 60, subpart OOOOb) (hereafter referred to as ''NSPS OOOOb''), as well as emissions guidelines regulating emissions of methane under CAA section 111(d) for certain existing oil and natural gas sources (proposed as 40 CFR part 60, subpart OOOOc) (hereafter referred to as ''EG OOOOc''). The November 15, 2021 proposal (covering both NSPS OOOOb and EG OOOOc)—which Congress explicitly referred to in section 136(f)(6)—will be referred to hereafter as the ''2021 NSPS/EG Proposal.'' The 2021 NSPS/EG Proposal sought to strengthen standards of performance previously in effect under section 111(b) of the CAA for new, modified and reconstructed oil and natural gas sources, and to establish emissions guidelines under section 111(d) of the CAA for States to follow in developing plans to establish standards of performance for existing oil and natural gas sources.

On December 6, 2022, the EPA issued a supplemental proposal to update, strengthen, and expand upon the 2021 NSPS/EG Proposal (87 FR 74702). This supplemental proposal modified certain standards proposed in the 2021 NSPS/EG Proposal and added proposed requirements for sources not previously covered.[20] Among other things, the supplemental proposal sought to encourage the deployment of innovative and advanced monitoring technologies by establishing more flexible performance requirements than the 2021 NSPS/EG Proposal, and also included provisions to establish a process for certified expert monitoring to identify ''super-emitters'' for prompt mitigation.

On March 8, 2024, the final NSPS OOOOb and EG OOOOc rules (hereafter referred to as the ''2024 Final NSPS/EG'') were published in the **Federal Register** (89 FR 16820). First, the EPA finalized NSPS OOOOb regulating methane and VOCs emissions from new, modified, and reconstructed sources in the Crude Oil and Natural Gas source category pursuant to CAA section 111(b)(1)(B). Second, the EPA finalized emission guidelines, including presumptive standards in EG OOOOc that would limit methane emissions from existing sources in the Crude Oil and Natural Gas source category, as well as requirements under the CAA section 111(d) for States to follow in developing, submitting, and implementing State plans to establish performance standards.[21] Among other things, the final rule strengthens standards, phases out routine flaring of natural gas from new oil wells, requires all well sites and compressor stations to be routinely monitored for leaks, requires storage vessels to reduce emissions by 95 percent, sets standards for certain facilities that have not been previously regulated, and provides companies greater flexibility to use innovative and cost-effective methane detection technologies. It will also utilize data collected by certified third parties to identify and address ''super emitting'' sources and eliminate or minimize emissions from common pieces of equipment used in oil and gas operations such as process controllers, pumps, and storage tanks.

Congress envisioned a strong connection between EPA programs for methane emissions from oil and gas systems. The 2024 Final NSPS/EG is relevant to this WEC final rule in two ways: first, implementation of the CAA section 111(b) and (d) standards will help drive methane emissions reductions that can help many facilities achieve methane emission levels that are below the thresholds specified by Congress (described in section II.B. of this preamble), thereby enabling applicable facilities to reduce or avoid charges under the WEC program; and second, compliance with the CAA section 111(b) and (d) standards may (if certain criteria are met) exempt facilities from the WEC under the regulatory compliance exemption outlined at CAA section 136(f)(6) (discussed in section II.D.2. of this preamble). The WEC thus serves as an important bridge and backstop to the full implementation of the 2024 Final NSPS/EG, and an additional incentive thereafter to continue to comply with the CAA section 111 rules.

In addition to creating the WEC and directing the EPA to revise subpart W, Congress also established the MERP under section 136 of the CAA to provide financial and technical assistance to reduce methane emissions from the oil and gas sector. To implement this program, the EPA is partnering with the U.S. Department of Energy (DOE) to provide up to $1.36 billion in financial and technical assistance. On December 15, 2023, the EPA and the DOE announced the award of $350 million in formula grant funding to 14 States help measure and reduce methane emissions, supporting industry efforts to cut methane emissions from low-producing, marginal conventional wells on non-Federal lands and support environmental restoration of well sites. On June 21, 2024, the EPA and the DOE announced the availability of $850 million in federal funding to help measure and reduce methane emissions from the oil and gas sectors. This competitive solicitation will enable a broad range of eligible U.S. entities to apply, including industry, academia, non-governmental organizations, Tribes, State and local government, and others. As designed by Congress, these resources and incentives were intended to complement the regulatory programs and to help facilitate the transition to a more efficient petroleum and natural gas industry.

D. Legal Authority

In August 2022, the IRA was signed into law. Section 60113 of the IRA amended the CAA by adding section 136, and the EPA is finalizing this rulemaking under the authority provided by that section. As noted in section I.B. of this preamble, the IRA added CAA section 136, ''Methane Emissions and Waste Reduction Incentive Program for Petroleum and Natural Gas Systems,'' which requires that the EPA impose and collect an annual specified charge on methane emissions that exceed an applicable waste emissions threshold from an owner or operator of an applicable facility that reports more than 25,000 mt CO_2e of greenhouse gases emitted per year pursuant to subpart W of the GHGRP. Under CAA section 136, an ''applicable facility'' is a facility within nine of the ten industry segments subject to subpart W, as currently defined in 40 CFR 98.230 (excluding natural gas distribution).

The EPA is also finalizing elements of this rulemaking under its authority provided in CAA section 114. CAA section 114(a)(1) authorizes the Administrator to require emissions sources, persons subject to the CAA, or persons whom the Administrator believes may have necessary information to monitor and report emissions and provide other information the Administrator requests for the purposes of carrying out any provision of the CAA (except for a provision of title II with respect to

[20] Examples of some of the changes the 2022 Supplemental proposed included proposed requirements that all well sites are monitored for leaks, requirements to ensure the proper operation of flares, zero-emission requirement for process controllers and pumps, standards for dry seal centrifugal compressors, and a super-emitter response program, among other things.

[21] In this action, the EPA also finalized several related actions stemming from the joint resolution of Congress, adopted on June 30, 2021, under the CRA, disapproving the 2020 Policy Rule, and also finalized a protocol under the general provisions for use of Optical Gas Imaging.

manufacturers of new motor vehicles or new motor vehicle engines). Thus, CAA section 114(a)(1) additionally provides the EPA authority to require the information in this final rule because the information is relevant for carrying out CAA section 136.

The Administrator has determined that this action is subject to the provisions of section 307(d) of the CAA. Section 307(d) contains a set of procedures relating to the issuance and review of certain CAA rules.

In addition, pursuant to sections 114, 301, and 307 of the CAA, the EPA is publishing final confidentiality determinations for the new data elements required by this final regulation.

II. Procedures for Facilitating Compliance, Including Netting and Exemptions

A. Final Definitions To Support WEC Implementation and Associated Revisions to Part 98, Subpart A

In accordance with CAA section 136(d), applicable facilities under part 99 are those facilities within certain industry segments as defined under part 98, subpart W. To support implementation of the WEC, we are finalizing several definitions within the general provisions of 40 CFR 99.2 which follow from the statutory text.

1. Applicable Facility and WEC Applicable Facility Definitions

The EPA received comments expressing support for the proposed definitions for ''applicable facility'' and ''WEC applicable facility.'' Certain commenters disagreed that the statutory text requires alignment of the definition of an ''applicable facility'' in the proposed WEC rule with the subpart W facility definitions, and stated that CAA section 136(d) leaves room for interpretation as to the definition of an ''applicable facility.'' After consideration of comments received, the EPA is finalizing as proposed a definition of ''applicable facility'' as specified by the statute to mean a facility within one or more of the following industry segments: onshore petroleum and natural gas production, offshore petroleum and natural gas production, onshore petroleum and natural gas gathering and boosting, onshore natural gas processing, onshore natural gas transmission compression, onshore natural gas transmission pipeline, underground natural gas storage, Liquified Natural Gas (LNG) import and export equipment, or LNG storage, as those industry segments are defined in 40 CFR 98.230 of subpart W.[22] The EPA does not agree with the commenters that the statute leaves open for interpretation the meaning of ''applicable facility;'' rather, the agency concludes that the statute expressly defines ''applicable facility'' in the same manner as the term ''facility'' has long been defined under 40 CFR part 98 and applied to the nine industry segments listed in CAA section 136(d). In addition to reflecting the plain language of the statutory text, aligning the definition of an applicable facility with the definitions of a facility within the industry segments in subpart W, for each corresponding industry segment, simplifies implementation and reduces burden on industry and the EPA. The approach supported by some commenters would have established different definitions of ''facility'' for subpart W and WEC, requiring the EPA to establish new reporting requirements for certain industry segments and requiring industry to calculate and report emissions for the same equipment twice. The EPA also received comments requesting that we clearly state that oil and gas producers generating less than 25,000 tons of CO_2 equivalent are not required to submit documentation to the regulatory body proving that the emissions threshold was not exceeded. After consideration of comments, the EPA is finalizing with clarifying revisions a definition of ''WEC applicable facility'' in 40 CFR 99.2, which means an applicable facility, as defined in this section, for which the owner(s) or operator(s) of a part 98 reporting facility was required to report GHG emissions under part 98, subpart W of this chapter of more than 25,000 metric tons CO_2e for the reporting year. This final definition clarifies that the obligation for reporting under part 98 may apply to multiple owners or operators for a facility, that the status as a WEC applicable facility is based upon reporting in compliance with part 98, and that whether or not a part 98 reporting facility is a WEC applicable facility is based upon a specific reporting year. This definition is taken from the threshold set in the statute. Only WEC applicable facilities are required to report under part 99.

A single reporting facility under part 98, subpart W, typically consists of operations within a single petroleum and natural gas industry segment. However, a single reporting facility may represent operations in two or more industry segments. Facilities that may potentially have operations representing multiple industry segments and would report as the same facility if co-located include facilities that have co-located operations in the onshore natural gas processing, onshore natural gas transmission compression, underground natural gas storage, LNG import and export equipment, and LNG storage industry segments. We are finalizing as proposed that such operations would be considered a single WEC applicable facility under part 99.

In cases where a subpart W facility reports under two or more of the industry segments listed in the previous paragraph, the EPA is finalizing as proposed that the 25,000 mt CO_2e threshold is evaluated based on the total facility GHG emissions reported to subpart W across all the relevant industry segments (*i.e.,* the facility's total subpart W GHGs). As discussed in section II.C.1. of this preamble, the waste emissions threshold is the facility-specific quantity of annual emissions, based upon the relevant intensity thresholds specified by Congress, above which the EPA must impose and collect the WEC. For the purposes of determining the waste emissions threshold for a WEC applicable facility that operates within multiple industry segments, the EPA is finalizing as proposed that each industry segment is assessed separately (*i.e.,* using industry segment-specific throughput and methane intensity threshold) and then summed together to determine the waste emissions threshold for the facility. The EPA is finalizing as proposed that this approach is used in all cases where a WEC applicable facility contains equipment in multiple subpart W industry segments.

The EPA considered an alternative definition of WEC applicable facility as it applies to subpart W facilities that report under two or more industry segments. This alternative approach would have assessed these facilities against the 25,000 mt CO_2e applicability threshold using the CO_2e reported under subpart W for each individual segment at the facility rather than the total facility subpart W CO_2e reported across all segments. CAA section 136(d) defines an applicable facility as ''a facility within the [nine] industry segments'' subject to the WEC and does not specify that an applicable facility is in one and only one industry segment. The EPA understands this to mean that an applicable facility constitutes an entire subpart W facility, including those that report under more than one segment. Thus, based on the statutory text, the EPA is finalizing as proposed to assess WEC applicability based on the entire subpart W facility's emissions that are reported under subpart W.

[22] *See* 42 U.S.C. 7436(d).

Based on subpart W data for the 2022 reporting year, no more than two dozen facilities report data for multiple segments, and when total subpart W CO_2e is summed across all segments at these facilities, almost all of these facilities remain below the 25,000 mt CO_2e threshold. Historic data also show that the industry segments (onshore natural gas processing, onshore natural gas transmission compression, and underground natural gas storage) located at these facilities that report data for multiple segments generally have methane emissions below the waste emissions thresholds. The final approach of using total subpart W facility CO_2e for determining WEC applicability therefore should not result in a significant number of facilities being subject to the WEC compared to an approach that assessed applicability using subpart W CO_2e for each individual industry segment at a facility. Based on historic data, the EPA does not expect the very small number of facilities with operations in multiple subpart W segments that could be subject to the WEC under the final approach to experience a substantially different financial impact than they would have under this alternative approach.

2. Facility Applicable Emissions, WEC Applicable Emissions, Net WEC Emissions, and Net WEC Emissions After Transfers Definitions

We are finalizing as proposed a definition for ''facility applicable emissions'' in 40 CFR 99.2 which means the annual methane emissions from a WEC applicable facility that are either equal to, below, or exceeding the waste emissions threshold for the facility prior to consideration of any applicable exemptions. We are also finalizing as proposed a definition for ''WEC applicable emissions'' in 40 CFR 99.2, which means the annual methane emissions from a WEC applicable facility after consideration of any applicable exemptions. The calculation methodology for WEC applicable emissions is addressed in section II.C.3. of this preamble.

The EPA is also finalizing definitions of ''net WEC emissions'' and ''net WEC emissions after transfers'' to clarify the total amount of methane that is subject to charge and to account for revisions from the proposal to netting requirements. The EPA is finalizing a definition of ''net WEC emissions'' in 40 CFR 99.2 to mean the sum of WEC applicable emissions from facilities with the same WEC obligated party, as calculated pursuant to 40 CFR 99.22 using equation B–8. If a WEC obligated party only has one WEC applicable facility, net WEC emissions are equal to that facility's WEC applicable emissions. The EPA is finalizing a definition of ''net WEC emissions after transfers'' to mean the total quantity of methane emissions subject to charge for a WEC obligated party. If the WEC obligated party is not eligible to, or elects not to, transfer or receive negative net WEC emissions pursuant to 40 CFR 99.23, the net WEC emissions after transfers are determined pursuant to 40 CFR 99.22 and are equal to net WEC emissions. If the WEC obligated party transfers or receives negative net WEC emissions pursuant to 40 CFR 99.23, the net WEC emissions after transfers reflect such transfers subject to the requirements of 40 CFR 99.23. If a WEC obligated party does not participate in any transfer of net WEC emissions with other WEC obligated parties with a common parent company, that WEC obligated party's net WEC emissions after transfers are equal to its net WEC emissions.

3. WEC Obligated Party Definition

We are finalizing the definitions of ''WEC obligated party'' and ''WEC applicable facility''. The EPA received comment requesting that we recognize the differences between ownership and operatorship as well as the complexity of ownership and operator agreements, including acknowledging the dynamics of these across basins, facilities, and individual wells. After consideration of the comments received, and in addition to finalizing the definition for WEC applicable facility discussed earlier in this section, we are finalizing with revision a definition for the term ''WEC obligated party'' in 40 CFR 99.2. As finalized, the term WEC obligated party refers to the owner or operator of one or more WEC applicable facilities. The WEC obligated party of a WEC applicable facility must be one of the owners or operators of that facility under subpart W, as reported under 40 CFR 98.3(c)(14). We note that although there are differences in the common definitions of ownership and operatorship and there may be complex agreements between owners and operators, for the purposes of subpart W, there are specific definitions for owner(s) and operators(s) in subpart A and subpart W of part 98, with some segments, such as onshore natural gas production, having unique definitions.[23] We are finalizing the term ''WEC obligated Party'' to be consistent with these definitions. For WEC applicable facilities that have more than one owner or operator, we are finalizing that the WEC obligated party is an owner or operator selected by a binding agreement among the owners and operators of the WEC applicable facility. The EPA anticipates that such an agreement would be similar to those used in carrying out 40 CFR 98.4(b) under the GHGRP. We are finalizing as proposed that the WEC obligated party must be one of the owners or operators of the WEC applicable facility as of December 31 of the reporting year, with one exception. This exception is related to the circumstances in which a WEC applicable facility is involved in a transaction(s) subsequent to the end of the reporting year (*i.e.,* between January 1 and December 31 of the year following the reporting year) that results in all of the owners or operators (of the facility as of December 31 of the reporting year) ceasing to exist prior to the WEC filing date. In this case, the WEC obligated party would be one of the owner(s) or operator(s) that acquired the facility as a result of the transaction(s) to be selected by mutual agreement among all of the acquiring owner(s) or operator(s). This revision is necessary to avoid cases in which there is no eligible owner or operator to serve as the WEC obligated party. We note that in case of transactions where only one owner or operator ceases to exist and that entity was the WEC obligated party, the remaining owners or operators of the WEC applicable facility that were the owners or operators as of December 31 of the reporting year would need to select a new WEC obligated party. Additionally, we have finalized clarifying language in the definition of WEC obligated party to make clear that each WEC applicable facility must have only one WEC obligated party for a reporting year. This requirement was included in the proposed rule under proposed 40 CFR 99.4, but we are further clarifying by making it explicit in the definition of WEC obligated party. The EPA notes that WEC obligated parties may only net for the applicable

[23] For example, 40 CFR 98.238 defines *Facility with respect to onshore petroleum and natural gas production for purposes of reporting under this subpart and for the corresponding subpart A requirements* as all petroleum or natural gas equipment on a single well-pad or associated with a single well-pad and CO_2 EOR operations that are under common ownership or common control including leased, rented, or contracted activities by an onshore petroleum and natural gas production owner or operator and that are located in a single hydrocarbon basin as defined in 40 CFR 98.238. Where a person or entity owns or operates more than one well in a basin, then all onshore petroleum and natural gas production equipment associated with all wells that the person or entity owns or operates in the basin would be considered one facility.

reporting year for which they are reporting; in other words, emissions occurring before December 31 should not be netted with emissions occurring after December 31.

In addition to establishing the entity regulated under the WEC, the EPA is finalizing the temporal bounds for which a WEC obligated party is responsible for its facilities and their associated emissions, as well as establishing obligations for transacted assets. For the purposes of submitting the WEC filing, we are finalizing that the WEC obligated party's (including through binding agreement) WEC applicable facilities are the WEC applicable facilities for which it is the owner or operator, as of December 31 of each reporting year. Under the final rule, the WEC obligated party is responsible for any WEC applicable emissions from facilities for which it was the facility owner or operator as of December 31 of the corresponding reporting year. The EPA recognizes that facilities may be acquired or divested at any time in a given reporting year, and that under the final rule the year-end WEC obligated party, or the WEC obligated party selected by mutual agreement among all of the acquiring owner(s) or operator(s) if the existing WEC obligated party ceases to exist, would be responsible for data and any corresponding WEC obligation for the entire reporting year. The EPA believes that this approach is both reasonable and necessary for implementation of the WEC program. Subpart W data reporting uses the same approach for circumstances where facilities are acquired or divested during a given reporting year; the facility owner or operator as of December 31 is responsible for reporting emissions for the entire year. Because the subpart W data is inextricably linked to the WEC filing, the EPA assessed that it would complicate and potentially be inappropriate to have different parties be liable for the legal obligations of the same facility under each regulation. Specifically, different entities being legally liable for the same facility under subpart W and the WEC program could lead to challenges for WEC filings and associated data verification, increase industry burden by requiring significant coordination between different companies, and lead to situations where separate entities are responsible for reporting subpart W data and paying any charge calculated from that data. The EPA therefore believes it would be neither practical nor accurate for the reporting responsibility and potential WEC obligation for a single facility to be split among multiple WEC obligated parties in such circumstances.

The EPA also recognizes that a facility's owner or operator may change between December 31 of a given reporting year and August 31 of the following year, when WEC filings are due, or later in the year and prior to when corrections may occur. In such situations, under the final rule the WEC obligated party associated with a facility as of December 31 of a given reporting year is responsible for accounting for that facility in its WEC filing and is responsible for any WEC obligation associated with that facility for that reporting year. The new owner or operator after the transaction would only become the new WEC obligated party starting with the year of purchase, assuming they are still the owner or operator as of December 31 of the year of the transaction. The EPA received several comments related to the acquiring of a WEC obligated party by another WEC obligated party prior to the WEC filing such that the WEC obligated party as of December 31 for the applicable reporting year ceases to exist. One commenter stated that the proposal was ambiguous as to whether companies that purchase WEC applicable facilities (and thus would become WEC obligated parties, as of December 31 of the reporting year) would be responsible for retaining records, and all associated obligations, that were generated by the previous owners or operators of those facilities. Another commenter suggested that the responsibility for reporting emissions under the WEC should remain with the party responsible for recordkeeping for a facility at the time the emissions occur at the facility, rather than the time reporting would be required. After consideration of the comments received, we are further clarifying from proposal that under this final rule, in cases where a facility has a single owner or operator and that WEC obligated party is acquired by single WEC obligated party such that the WEC obligated party as of December 31 for the applicable reporting year ceases to exist, the acquiring WEC obligated party assumes responsibility for the acquired WEC obligated party's WEC applicable facilities for that reporting year. In cases where a facility has a single owner or operator and that WEC obligated party is acquired by multiple owners or operators following a transaction that results in the WEC obligated party as of December 31 for the applicable reporting year to no longer exist, the post-transaction owners or operators must select among themselves by binding agreement which owner or operator will be the facility's WEC obligated party for that reporting year.

4. Gathering and Boosting Related Definitions

The EPA is revising the definitions for ''gathering and boosting system'' and ''gathering and boosting system owner or operator'' under 40 CFR part 99. The EPA received comments indicated that proposed definitions of ''gathering and boosting system'' and ''gathering and boosting system owner or operator'' under part 99 do not match the revisions under subpart W. The EPA agrees these definitions should align with subpart W. Therefore, the EPA is revising from proposal the definition for ''gathering and boosting system'' to mean a single network of pipelines, compressors and process equipment, including equipment to perform natural gas compression, dehydration, and acid gas removal, that has one or more connection points to gas and oil production or one or more other gathering and boosting systems and a downstream endpoint, typically a gas processing plant, transmission pipeline, LDC pipeline, or other gathering and boosting system. Additionally, the EPA is revising from proposal the definition of ''gathering and boosting system owner or operator'' to mean any person that holds a contract in which they agree to transport petroleum or natural gas from one or more onshore petroleum and natural gas production wells or one or more other gathering and boosting systems to a downstream endpoint, typically a natural gas processing facility, another gathering and boosting system, a natural gas transmission pipeline, or a distribution pipeline, or any person responsible for custody of the petroleum or natural gas transported.

5. Revisions to 40 CFR Part 98, Subpart A Related to WEC Obligated Party Definition

As part of these final amendments, the EPA is also finalizing revisions to 40 CFR part 98, subpart A, for all facilities that are subject to the GHGRP and report under subpart W. On August 1, 2023 (88 FR 50282), the EPA proposed revisions to 40 CFR 98.4 to address changes in the owner or operator of a facility in the four industry segments in subpart W (Petroleum and Natural Gas Systems) that have unique definitions of facility. The proposed provisions would define which owner or operator is responsible for current and future reporting years' reports and clarify how to determine responsibility for revisions to annual reports for reporting years prior to

owner or operator changes for specific industry segments in subpart W, beginning with RY2025 reports. In the 2024 Subpart W Final Rule, the EPA finalized the provisions regarding current and future reporting years' reports in 40 CFR 98.4(n). However, the EPA did not take action on proposed amendments related to responsibility for revisions to annual reports for reporting years prior to owner or operator changes for specific industry segments in subpart W and indicated the intent to consider those proposed revisions in coordination with the 2024 WEC rulemaking and take action, if finalized, on these requirements at the same time.

The current regulations at 40 CFR 98.4(h), which cover changes in owners and operators, absent the changes being finalized in this rulemaking, state that in the event an owner or operator of the facility or supplier is not included in the list of owners and operators in the certificate of representation under this section for the facility or supplier, such owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the designated representative and any alternate designated representative of the facility or supplier, as if the owner or operator were included in such list. 40 CFR 98.4(h) goes on to additionally state that within 90 days after any change in owners or operators of the facility or supplier (including the addition of a new owner or operator), the designated representative or any alternate designated representative shall submit a certificate of representation that is complete under this section except that such list shall be amended to reflect the change. Thus the owners and operators of facilities are bound to the actions, inactions and submissions of the designated representative of the facility when they become an owner or operator of the facility, as defined in 40 CFR part 98. The current regulations at 40 CFR 98.4(g), absent the changes being finalized in this rulemaking, state that if there is a change in the designated representative or alternate designated representative, then all representations, actions, inactions, and submissions by the previous designated representative or the previous alternate designated representative of the facility are binding on the new designated representative and the owners and operators of the facility or supplier. Thus, any new owners and operators are bound to the actions and submissions of the previous designated representatives, including historical submissions for the facility prior to becoming an owner or operator. However, the responsibility for reporting under part 98 could potentially be inconsistent with the WEC obligated party responsible for reporting under 40 CFR part 99, as described earlier in this section.

Many commenters recommended that no new owner should be responsible for the WEC generated by the prior owner and that emissions reporting should remain the responsibility of the owner or operator who generated the reportable emissions. The EPA believes that preparation and submission of multiple reports by different entities related to the same emission sources would lead to duplicative burden and raise the potential for inconsistencies in reported data. After consideration of comments received, and in alignment with 40 CFR part 99, in this final rule, the EPA is making changes to the regulations for facilities that report under subpart W to specify that, with two exceptions, the owner(s) and operator(s) as of December 31 of the reporting year, will remain responsible for that reporting year, even after sale of the facility. These changes are intended to ensure that the entity responsible for subpart W data for specific reporting years under various transaction scenarios is aligned with the WEC obligated party responsible for WEC filing and any WEC obligation in those years. The EPA is also clarifying that for the first transaction after January 1, 2025, the sellers will also remain responsible for historic reporting, (*i.e.,* reporting years prior to 2024). Specifically, in this final rule, the EPA is adding 40 CFR 98.4(o), which applies in lieu of the last sentence of 40 CFR 98.4(g) for facilities that report under subpart W, starting with transactions that occur on or after January 1, 2025, to address responsibility for reporting years prior to a year in which there is a change in the owners and operators. According to the new paragraph, when there is a change in the owner(s) or operator(s) of a subpart W facility on or after the effective date of this final rule that involve the owner(s) or operator(s) as of December 31 of the year prior to the year of the transaction, the owners and operators as of December 31 of the year prior to the year of the transaction, *i.e.,* the sellers, must select a historic reporting representative who will be responsible after the transaction(s) for that reporting year and if it is the first transaction after January 1, 2025, for all prior years. In these cases, the owner(s) and operator(s) of the facility as of December 31 of the year prior to the year in which the facility is sold are bound to the actions of the historic reporting representative and any previous designated representative or historic reporting representative for the relevant years. The historic reporting representative is selected by an agreement binding on the selling owner(s) and operator(s), unless the owner(s) or operator(s) selling the facility ceases to exist and/or is acquired as a result of a transaction(s), in which case all of the owners or operators involved in that transaction shall select at the time of sale a historic reporting representative by an agreement binding on each of the owners and operators involved in the transaction. The second exception is that for changes in owners or operators that occur after December 31, 2024 and before the effective date of this final rule that involve the owner(s) and operator(s) as of December 31, 2024, the buying and selling owners and operators must jointly select a historic reporting representative. In these cases, the owners and operators of the facility as of December 31 of the year prior to the year in which the facility is sold and the acquiring owners and operators are bound to the actions of the historic representative. In any of these scenarios, it is the EPA's intent for this person to be the WEC obligated party designated representative or represent the WEC obligated party corresponding to the applicable part 98 reporting year, for a facility that is a WEC applicable facility as defined in 40 CFR 99.2, so that there is alignment between WEC obligated parties and the owner(s) and operator(s) responsible for reporting for facilities that report under subpart W while also clarifying historical reporting requirements. The final provisions of 40 CFR 98.4(o) also specify that for cases where an entire facility is merged or acquired by a new owner(s) or operator(s), the seller must notify the EPA of the date of the last transaction resulting in the change to the owner(s) or operator(s) and that the acquiring owner or operator must notify the EPA of the e-GGRT ID number of the facility acquired in transaction. This additional information is necessary to determine when a historical reporting representative is required and maintain the ability to verify year-to-year changes in annual emissions for facilities post-transaction.

The final provisions of 40 CFR 98.4(o)(6) specify the reporting years for which a historic reporting representative is responsible. Based on the effective date of these amendments, these provisions will first apply to transactions that occur in calendar year 2025. For the first transaction that occur after January 1, 2025, the historic

reporting representative is responsible for submissions (if they have not occurred prior to the transaction) and revisions to annual GHG reports under 40 CFR 98.3(h) for all reporting years prior to the reporting year in which the transaction occurred. For subsequent transactions, the owners or operators of a facility that reports under subpart W as of December 31 of each reporting year are responsible for reporting and revisions to annual GHG reports corresponding to that reporting year. We note that these revisions do not impact how reporting responsibility for years prior to reporting year 2024 transfer upon a change in ownership prior to the effective date of this final rule. The existing provisions of subpart A (specifically 40 CFR 98.4(g)) continue to apply, so that the designated representative or alternate designated representative or historic reporting representative, as applicable, of the facility for reporting year 2024 maintain responsibility for the submissions of the previous designated representative and any necessary revisions to reports for reporting year 2024 and earlier. The final provisions of 40 CFR 98.4(o)(6) also specify that if the responsible owner(s) or operators(s) are acquired such that the owner(s) or operator(s) cease to exist as a result of a transaction, the acquiring owners would become responsible for submission (if not already submitted before the transaction) and any revisions to annual reports for the reporting year prior to the transaction and, if applicable, annual GHG reports under 40 CFR 98.3(h) for additional reporting years prior to the transaction as specified in paragraphs 40 CFR 98.4(o)(6)(i) and (ii).

6. Additional Definitions To Support WEC Implementation

The EPA is adding definitions in 40 CFR 99.2 for ''parent company,'' ''United States parent company,'' ''qualified professional engineer,'' and ''well identification (ID) number,'' which were not included as proposed part 99 regulatory definitions in the proposed rule. Commenters stated that definitions are necessary to implement CAA section 136 and create regulatory harmony. After consideration of comments, the EPA believes it will provide clarity to add definitions for these terms to implement the WEC. In alignment with part 98 subpart A, we are finalizing the definition of ''United States parent company'' to mean the highest-level United States company, as reported under 40 CFR 98.3 for a WEC applicable facility, with an ownership interest in the facility as of December 31 of the year for which data are being reported. Additionally, for ease of understanding, the EPA is finalizing the definition of ''parent company'' to be the United States parent company.

We are also finalizing a definition for the term ''Administrator'' to mean the Administrator of the United States Environmental Protection Agency or the Administrator's authorized representative. This definition is aligned with the definition of the same term in part 98 subpart A. We proposed to define the term ''e-GGRT ID number'' as the identification number assigned to a facility by the EPA's electronic Greenhouse Gas Reporting Tool for submission of the facility's part 98 report. We are instead finalizing the defined term as ''Facility ID number'' for consistency of terminology in the final rule and with revised definition referring to the Greenhouse Gas Reporting Program where the proposal referred to the associated reporting tool and omitting the reference to submission of reports as these identifiers are not used solely for report submission.

The EPA also received comments stating that the proposed rule did not include sufficient detail regarding the certification criteria for third-party auditors. After consideration of comments and as discussed in section III.B.2., the EPA is requiring that auditors be qualified professional engineers, and is finalizing the definition for ''qualified professional engineer,'' in alignment with the definition of ''qualified professional engineer'' in NSPS OOOOb, to mean an individual who is licensed by a State as a Professional Engineer to practice in one or more disciplines of engineering and who is qualified by education, technical knowledge, and experience to review and interpret the records required under 40 CFR 99. Additionally, to align with the definition under part 98 subpart W, we are also finalizing the definition for ''well ID number,'' to mean the unique and permanent identification number assigned to a petroleum or natural gas well. Under the final definition, if the well has been assigned a U.S. Well Number, the well ID number required in this subpart is the US Well Number. Under the final definition, if a U.S. Well Number has not been assigned to the well, the well ID number is the identifier established by the well's permitting authority.

B. Common Ownership or Control for Netting of Emissions

One of the important flexibilities created by Congress in section 136(f)(4) allows for facilities to reduce their overall WEC payments by transferring emissions from facilities that are below the waste emissions threshold to facilities that have emissions that are above the waste emissions threshold (otherwise known as ''netting''). The EPA proposed that the owner or operator of the facility should be both the WEC obligated party (*i.e.,* the entity responsible for paying the WEC obligation) and the highest-level organization across which this netting should be allowed. The EPA received numerous comments arguing that netting should be allowed at the parent company level to maximize flexibility in implementation. After careful consideration of the comments and further review of the statutory language, the EPA is finalizing provisions that increase access to the netting provisions by allowing for the netting of emissions across facilities that are under common ownership or control of a parent company, rather than an owner or operator as proposed. However, the EPA is finalizing as proposed that the owner or operator is the WEC obligated party, thereby making a distinction in this final rule that the WEC obligated party and the corporate level at which netting may occur do not have to be one and the same. Although the EPA is allowing for additional access to netting in this final rule by allowing netting to occur at the parent company level, the EPA is also providing more specificity on the parameters and conditions under which this netting may occur. Additionally, the EPA is finalizing requirements for the treatment of net WEC emissions used in netting that are subsequently revised or invalidated.

1. EPA Interpretation To Implement ''Common Ownership or Control'' for the Purposes of Part 99

CAA section 136(c), which establishes the methane charge, states that ''the Administrator shall impose and collect a charge on methane emissions that exceed an applicable waste emissions threshold under subsection (f) from an owner or operator of an applicable facility. . .'' Congress directly requires that a facility owner or operator, which has a distinct and established legal meaning, be the entity on which the WEC is imposed and from which a charge is collected. Therefore, the EPA is finalizing its determination that the WEC obligated party for a particular applicable facility shall be the owner or operator of that applicable facility; or if more than one owner or operator exists, the owners or operators of that facility must designate an entity to be the WEC obligated party. The netting provision at CAA section 136(f)(4), meanwhile, allows WEC applicable facilities under

''common ownership or control'' to net ''emissions by reducing the total obligation to account for facility emissions levels that are below the applicable thresholds within and across all applicable segments'' listed in section 136(d) and as defined in subpart W. In this final rulemaking, the EPA is interpreting this language to allow netting at the parent company level. Notably, sections 136(c) and 136(f)(4) employ different language—while 136(c), which establishes the WEC obligated party, refers specifically to an ''owner or operator'' of an applicable facility, section 136(f)(4) refers to facilities ''under common ownership or control.'' The statute therefore requires that the facility owner or operator must be the WEC obligated party but provides for netting at the parent company level. The final requirements for netting are designed to align with both of these statutory directives. In this section, the EPA details the overall approach for application of common ownership or control and the justification for use of a facility's owner or operator as the WEC obligated party with netting based on common parent company.

The EPA proposed that netting would be limited to the WEC obligated party level. That is, the owner or operator would be both the WEC obligated party and the highest-level entity across which emissions could be netted. We received comments on the proposed use of the owner or operator as the highest-level entity across which facilities could net their emissions. Certain commenters disagreed with the proposed interpretation to define ''common ownership or control'' at the owner or operator level and stated that a parent company approach would not only reflect Congressional intent but would also align with legal precedent and the EPA's application of ''common ownership or control'' under other programs. These commenters also stated that a parent company approach would better incentivize methane emissions reductions, as parent companies could more effectively allocate resources across their operations for methane mitigation—and would have an incentive to do so if netting were allowed at the parent company level. Other commenters were supportive of the proposed approach and believed it was aligned with the statutory text. After consideration of comments received, the EPA is finalizing revisions from the proposed approach such that the facility owner or operator remains the WEC obligated party, but netting is allowed across owners or operators with the same parent company.

The EPA interprets the netting provision at CAA section 136(f)(4) to mean that amongst WEC obligated parties with a common parent company, WEC obligated parties with metric tons of methane below the waste emissions thresholds (*i.e.,* the difference between emissions equal to the waste emissions threshold and reported emissions) may transfer ''negative net WEC emissions'' to one or more WEC obligated parties with facilities with metric tons of methane emissions that exceed the waste emissions thresholds (*i.e.,* positive net WEC emissions).[24] For the purposes of establishing common ownership or control under CAA section 136(f)(4), the EPA is finalizing a definition of ''WEC obligated party'' in 40 CFR 99.2. The EPA is finalizing that each WEC applicable facility be associated with a single WEC obligated party (though each WEC obligated party may be associated with multiple WEC applicable facilities), which is reported under the requirements at 40 CFR 99.7.

As discussed in section II.A. of this preamble, the EPA is finalizing the definition of ''WEC obligated party'' to mean the WEC applicable facility's ''owner or operator'' as defined in 40 CFR 99.2 for the applicable industry segment as of December 31 of the reporting year or that became an owner or operator of the WEC applicable facility in a transaction occurring subsequent to the end of the reporting year (*i.e.,* between January 1 and December 31 of the year following the reporting year) that resulted in the owner or operator of the facility as of December 31 of the reporting year ceasing to exist. For WEC applicable facilities with more than one owner and/or operator, the WEC obligated party must be selected by binding agreement following the provisions of 40 CFR 99.4. Each WEC applicable facility must have only one WEC obligated party for any given reporting year. WEC obligated parties may only net for the applicable reporting year for which they are reporting. The EPA is finalizing definitions for owner or operator that are applicable to the onshore petroleum and natural gas production, offshore petroleum and natural gas production, onshore petroleum and natural gas gathering and boosting, onshore natural gas processing, onshore natural gas transmission compression, onshore natural gas transmission, underground natural gas storage, LNG import and export equipment, and LNG storage industry segments at 40 CFR 99.2. These definitions are identical to the corresponding definitions in 40 CFR part 98; that is, the owner or operator (or one of the owners or operators, selected by binding agreement between all existing owners or operators) associated with a subpart W facility as reported under 40 CFR 98.3(c)(14) and included in the relevant COR as directed in 40 CFR 98.4(i)(3) would also be the WEC obligated party for that facility.

In some cases, a WEC applicable facility may have multiple owners and/or operators. In these situations, the EPA is finalizing as proposed a system by which the facility owner or operators must designate one of the owners and/or operators as the WEC obligated party for that facility, as detailed in 40 CFR 99.4. The process for selection of the WEC obligated party at facilities with multiple owners or operators is similar to the approach for selecting a designated representative under 40 CFR part 98. This process requires selection of a single WEC obligated party for the WEC applicable facility by an agreement binding on each of the owners or operators associated with the facility. The final requirements for facilities with multiple owners or operators allocate all facility-level methane emissions below or exceeding the waste emissions thresholds to a single WEC obligated party for each facility.

The EPA proposed that a facility owner or operator would be both the WEC obligated party, and the entity used to define common ownership or control. Comments received by the EPA on the proposed approach focused on the entity used for netting, and did not distinguish between the concepts of the WEC obligated party and the netting entity. Many of these comments focused on the proposed interpretation of common ownership or control rather than the WEC obligated party; though it is likely that commenters assumed that they would be the same entity. In other words, the EPA did not receive comments critical of defining the WEC obligated party as a facility's owner or operator outside the broader discussion of common ownership or control. Instead, commenters supported defining the WEC obligated party as the parent company because they supported the

[24] As further explained in section II.C.3., to calculate the amount by which a WEC applicable facility is below or exceeding the waste emissions threshold, the EPA is finalizing as proposed to use equation B–6 of 40 CFR 99.21(a), in which the facility waste emissions threshold, as determined in 40 CFR 99.20, is subtracted from total methane emissions from the WEC applicable facility. This calculation results in a value of metric tons of methane, the total facility applicable emissions, that is positive for facilities exceeding the waste emissions threshold (''positive net emissions'') and negative for facilities below the waste emissions threshold (''negative net emissions'').

use of netting at the parent company level.

In this final rule, the EPA recognizes that the appropriate corporate level at which netting is allowed need not be the same as the WEC obligated party. The EPA is finalizing the use of facility owner or operator as the WEC obligated party for three reasons. First, the plain text of the statute specifies that an ''owner or operator of an applicable facility'' is the entity on which a charge is imposed and from which a charge is collected. Second, as noted in the proposed rule, designating the owner or operator as the WEC obligated party aligns with the approach used in subpart W of the Greenhouse Gas Reporting Program, under which the facility owner or operator is responsible for reporting the annual emissions which, pursuant to requirements under CAA section 136(c), will be used to calculate the charge under this program. Third, the agency appreciates that a parent company is often a separate legal entity from a facility's owner or operator, which could be a wholly owned subsidiary or company of which a parent company has partial ownership.[25] Depending on the structure of the corporate family and the applicable corporate laws, the liabilities of an owner or operator may not transfer to the parent corporate company, even if that parent company fully owns the owner or operator. Furthermore, while a parent company may have ownership or control over certain aspects of a subsidiary's operations or corporate decisions, it does not necessarily have control over the subsidiary's assets (such as a facility). In light of Congress's specific reference to the ''owner or operator of an applicable facility'' as the entity from which the WEC be imposed and collected, and the limitations on the extent to which parent companies can assume liabilities held by their corporate subsidiaries, the EPA does not believe it is consistent with the statute to define the WEC obligated party as a parent company.

Although the statute expressly requires the EPA to treat the owner or operator of an applicable facility as the WEC obligated party, it does not limit netting solely to facilities belonging to the same owner or operator. Further, based upon our consideration of the public comments, the EPA has concluded that netting amongst WEC obligated parties with the same parent company, rather than at the level of an owner or operator, is best supported by the statutory text. There is no language in CAA section 136(f)(4), or any other part of CAA section 136, that limits the definition of ''common ownership or control'' for the purposes of netting. The proposed approach of limiting netting solely to facilities belonging to the same owner or operator would have represented a narrower interpretation of ''common ownership or control'' than the statute requires, and in many instances reduced the number of ''common'' facilities available for netting relative to a parent company approach. In this case, the complete text 136(f)(4) states that ''in calculating the total emissions charge obligation for facilities under common ownership or control, the Administrator shall allow for the netting of emissions by reducing the total obligation to account for facility emissions levels that are below the applicable thresholds within and across all applicable segments identified in subsection (d).'' The EPA believes that the best reading of this provision would allow for netting at the parent company level, because the statutory text does not put any limitations on the definition of ''common ownership or control.'' Instead, the full text of the provision suggests that the term ''common ownership or control'' should be read broadly in this context because 136(f)(4) directs the EPA to allow for netting ''with and across all applicable segments . . .'' The number of ''common'' facilities will usually be higher when the parent company approach is used, and lower when the owner or operator approach is used—and owners or operators under common ownership or control of a parent company will tend to have operations across more applicable segments; the owner or operator of a facility is less likely to also own or operate facilities in different industry segments. Congress's reference to netting ''within and across'' all applicable segments indicates an intent that netting be available across a broader geographic area, which supports the parent company approach.

Therefore, the EPA is finalizing that netting may occur via transfer of negative net WEC emissions from a WEC obligated party to one or more WEC obligated parties with the same parent company that have positive net emissions, since these WEC obligated parties (*i.e.,* owners or operators) are under common ownership or control. The requirements finalized in this rulemaking define the WEC obligated party at the owner or operator level while allowing for netting to occur across owners or operators with a common parent company. This approach reconciles the statutory language in CAA section 136(c) and 136(f)(4) in a manner that is implementable and provides the EPA with a means to verify netting activities to ensure the integrity of the final WEC rule. The use of parent company for determining ''common ownership or control'' in this final rule is specific to part 99 and the WEC program and does not affect how ''common ownership or control'' is defined under other existing EPA or Federal regulations, or in any way limit how ''common ownership or control'' may be defined in future regulations.

While the EPA is finalizing a regulatory structure that allows for netting to occur across owners or operators with a common parent company, the EPA understands that the control a parent company has over its subsidiaries (*i.e.,* owners or operators) to take action and to participate in netting may vary. Parent/subsidiary relationships are heterogeneous and governed by various corporate law structures and/or other legal constraints that this rulemaking is not intended to impact or alter. Although commenters stated that parent companies have control over subsidiaries and make resource allocations across the subsidiaries, the EPA cannot confirm whether that is true in all cases. This rulemaking allows owners and operators with a common parent company to net emissions, provided such netting is not constrained or prohibited by other rules or laws.

2. Facilities Eligible for the Netting of Emissions

The EPA is finalizing which facilities are eligible to participate in netting, as allowed by CAA section 136(f)(4). We are finalizing netting eligibility criteria based on a facility's total reported subpart W GHG emissions, status in relation to the regulatory compliance exemption, and overall regulated status under the GHGRP. In our final approach to netting, we chose interpretations which are the most consistent with a plain reading of the CAA, were reasonable from a policy perspective, and were the most transparent and straightforward to implement. As described in more detail in the following sections, the final approach establishes that if a facility's emissions are not subject to the WEC, either because the facility is not a WEC applicable facility, or because a WEC applicable facility has zero WEC applicable emissions, as a result of application of one or more eligible exemptions, that facility's emissions

[25] The EPA notes that in some cases, the owner or operator of a facility may be a parent company. In these instances, the WEC obligated party would by default be a parent company.

would not factor into the netting of emissions for a WEC obligated party. In other words, only WEC applicable facilities may net, and only WEC applicable emissions may be netted. As explained further in this section of the preamble, we believe this interpretation is consistent with CAA section 136(f)(4), ''the Administrator shall allow for the netting of emissions by reducing the total obligation to account for facility emissions levels that are below the applicable thresholds within and across all applicable segments identified in subsection (d),'' since the reference to ''applicable thresholds'' and ''applicable segments'', which reflect other subsections under CAA section 136, implies that only WEC applicable emissions should be considered in the netting calculation. We note that for applicable facilities eligible for any exemptions, emissions associated with these exemptions are removed from any emissions exceeding the waste emissions threshold prior to netting calculations.

The WEC proposal explained that certain categories of subpart W facilities are not eligible for netting because they are out of the scope of the WEC program. There are two categories of subpart W facilities that report annually under the GHGRP but may have subpart W emissions less than or equal to 25,000 mt CO_2e. These include subpart W-only facilities that are on the GHGRP offramp due to an emissions level below 25,000 mt CO_2e, and subpart W facilities with total emissions from all GHGRP subparts equal to or exceeding 25,000 mt CO_2e but subpart W emissions less than or equal to 25,000 mt CO_2e. The EPA proposed that these facilities would not be subject to the WEC, would not be WEC applicable facilities, and would not be eligible for netting. The EPA received comments supporting an approach that would allow these facilities to net with facilities under common ownership or control whose subpart W emissions are above 25,000 mt CO_2e (*i.e.,* WEC applicable facilities). Commenters also supported allowing facilities not required to report under subpart W to voluntarily report emissions and include those facilities in netting. In all of these suggested approaches, only those emissions below the waste emissions thresholds would be brought into the netting pool; any additional facilities with subpart W emissions equal to or less than 25,000 mt CO_2e would not increase potential exposure to charge because charges for such facilities are specifically prohibited by the statute. A facility with subpart W emissions equal to or less than 25,000 mt CO_2e would, by statute, not be subject to charge. Other commenters were supportive of the proposed approach to only allow facilities with subpart W emissions greater than 25,000 mt CO_2e to participate in netting. After consideration of comments received, the EPA is finalizing the proposed requirements delineating the types of facilities that are eligible for netting. Sections II.B.2.a–d of this preamble provide detailed information on the final requirements for netting eligibility and the EPA's justification for not expanding netting eligibility.

a. Facilities Required To Report to GHGRP and That Have Subpart W Emissions Greater Than 25,000 Metric Tons of CO_2e

In accordance with CAA section 136(c) and the definition of ''WEC applicable facility'' in 40 CFR 99.2, we are finalizing as proposed that subpart W facilities that have subpart W emissions greater than 25,000 mt CO_2e are eligible for netting, with the exception of those that are receiving the regulatory compliance exemption for the entire year (as discussed in section II.D.2. of this preamble). Facilities that report 25,000 mt CO_2e or less under subpart W are not subject to the WEC, and the EPA is finalizing as proposed that such facilities are not eligible for netting. These types of facilities are discussed in greater detail in section II.B.2.c. of this preamble. The final approach follows what the Agency considers to be the best reading of the plain text of, and the relationship between, CAA sections 136(d), 136(c), and 136(f) (which includes subsections 136(f)(4) and 136(f)(1)–(3)). The final approach also represents a reasonable policy choice in line with the EPA's understanding of Congress's intent that the WEC program constitute a meaningful incentive to reduce methane emissions. Accordingly, the following sections provides an overview of the relevant statutory text, and the corresponding legal basis for the final approach under which only WEC applicable facilities may net, and only WEC applicable emissions may be netted, under CAA section 136(f)(4). This section also explains the policy rationale behind the EPA's final approach.

CAA section 136(d) introduces the nine industry segments within which all subpart W facilities must fall in order to be evaluated for WEC applicability. Importantly, facilities within these segments are ''applicable facilities'', per CAA section 136(d), but they are not necessarily ''WEC applicable facilities'', subject to possible WEC obligation, unless they report over 25,000 mt CO_2e per year under subpart W. CAA section 136(c) clarifies this point. Specifically, CAA section 136(c) requires the Administrator to impose and collect a charge on the owner or operator ''of an applicable facility that reports more than 25,000 metric tons of carbon dioxide equivalent of greenhouse gases emitted per year pursuant to subpart W''. Thus, building upon the CAA section 136(d) definition, CAA section 136(c) establishes that only facilities which both fall within one or more of the nine CAA section 136(d) industry segments *and* report more than 25,000 mt CO_2e under subpart W are subject to the WEC program. For clarity, in this rulemaking the EPA refers to these facilities as ''WEC applicable facilities''.

CAA section 136(f), which is entitled ''Waste Emissions Threshold'', includes a series of subsections under this heading. Subsections 136(f)(1)–(3) illustrate the meaning of ''waste emissions threshold'' in this context and explain that these are actually a series of thresholds which determine when and how to impose a charge on methane emissions from WEC applicable facilities, depending on which industry segment or segments they fall under. Specifically, the nine CAA section 136(d) industry segments are categorized into four groups, and a waste emissions threshold is applied to each of the four. CAA section 136(f)(1) covers offshore and onshore petroleum and natural gas production (industry segments (1) and (2) under CAA section 136(d)), and further divides this category depending on whether or not natural gas is sent to sale: ''With respect to imposing and collecting the charge under subsection (c) for an applicable facility in an industry segment listed in paragraph (1) or (2) of subsection (d), the Administrator shall impose and collect the charge on the reported metric tons of methane emissions from such facility that exceed (A) 0.20 percent of the natural gas sent to sale from such facility; or (B) 10 metric tons of methane per million barrels of oil sent to sale from such facility, if such facility sent no natural gas to sale.'' [26]

CAA sections 136(f)(2) and (3) follow the same model: section 136(f)(2) establishes thresholds for nonproduction petroleum and natural gas systems (industry segments (3), (6), (7), and (8) under section 136(d),[27]) and

[26] 42 U.S.C. at 7436(f)(1).

[27] Specifically: (3) onshore natural gas processing; (6) liquefied natural gas storage; (7) liquefied natural gas import and export equipment; and (8) onshore petroleum and natural gas gathering and boosting.

imposes a charge on ''the reported metric tons of methane emissions that exceed 0.05 percent of the natural gas sent to sale from or through such facility''; [28] and section 136(f)(3) establishes thresholds for natural gas transmission (industry segments (4), (5), and (9)) [29] and imposes a charge on ''the reported metric tons of methane emissions that exceed 0.11 percent of the natural gas sent to sale from or through such facility.'' [30] But each industry-specific threshold is introduced in the same way: ''With respect to *imposing and collecting the charge under subsection (c) for an applicable facility in an industry segment listed* in paragraph (x) of subsection (d), [charges shall be imposed as follows].'' Following this plain text, it is clear that the CAA section 136(f) waste emission thresholds apply *only to WEC applicable facilities*—that is, facilities within one or more of the nine WEC industry segments listed in CAA section 136(d) which emit more than 25,000 mt per year CO_2e under subpart W, and thus may be subject to charge under CAA section 136(c).

Finally, the netting provision itself, CAA section 136(f)(4), states that ''in calculating the total emissions charge obligation for facilities under common ownership or control, the Administrator shall allow for the netting of emissions by reducing the total obligation to account for facility emissions levels that are below the applicable thresholds within and across all applicable segments identified in subsection (d).'' The EPA is finalizing as proposed that this netting provision applies to WEC applicable facilities and WEC applicable emissions only, for three reasons.

First, the EPA believes that under the best reading of the statute, the term ''applicable thresholds'' refers to the waste emission thresholds outlined in CAA section 136(f)(1)–(3). This is important because, the waste emissions thresholds apply *only* to WEC applicable facilities—they determine whether, and how, a charge shall be imposed on methane emissions from a facility which has already been triggered into the WEC program by virtue of its emissions being greater than 25,000 mt per year CO_2e in subpart W. The thresholds do not apply to facilities which emit 25,000 or fewer metric tons per year of CO_2e under subpart W, because under CAA section 136(c), no charge may be imposed or collected on such facilities. Because methane emissions from facilities that emit 25,000 or less metric tons per year of CO_2e under subpart W are not WEC applicable emissions, they cannot be compared to the waste emissions thresholds, and they cannot be considered to fall either above or below these thresholds.

As previously stated, the EPA's conclusion that the term ''applicable thresholds'' in CAA section 136(f)(4) refers to the waste emissions thresholds outlined in CAA section 136(f)(1)–(3) is supported by both the text and structure of the statute. The structure of the statute strongly supports the presumption that CAA section 136(f)(4) refers to netting based on a facility's relationship to the waste emissions thresholds because CAA section 136(f)(4) appears as part of CAA section 136(f), under the ''waste emissions threshold'' heading, and immediately following CAA section 136(f)(1)–(3)'s establishment of the specific waste emissions thresholds for each industry segment. It follows that CAA section 136(f)(4)'s reference to ''applicable thresholds'' refers to these industry segment-specific requirements, and accordingly ''applicable segments'' refers to the industry segments identified in CAA section 136(f)(1)–(3).

The text also strongly supports this interpretation because CAA section 136(f)(4) refers to facility emissions levels that are ''below the *applicable thresholds,*'' plural. The use of the plural, and the use of the term ''applicable,'' both indicate that Congress was referring here to the multiple waste emissions thresholds introduced in CAA sections 136(f)(1) through (3), which specifically and separately apply to WEC applicable facilities within various subsets of industry segments, defined in CAA section 136(d). Again, these separate thresholds *only* apply to WEC applicable facilities, which emit over 25,000 metric tons per year of CO_2e.

In addition to the ''applicable thresholds'' question, the EPA believes that Congress's use of the term ''applicable segments'' in stating that the EPA may ''redu[ce] the total obligation to account for facility emissions levels that are below the applicable thresholds *within and across all applicable segments identified in subsection (d),*'' is significant here. While CAA section 136(d) introduces the nine relevant ''industry segments'' within which all WEC applicable facilities must fall, CAA section 136(f)(4) classifies these segments into four groups, and is the only provision to use the term ''applicable segments.'' CAA section 136(f) establishes a set of requirements determining when and how to impose a charge on those facilities triggered into the program, depending on their industry segment and the amount of methane they emit. It follows that CAA section 136(f)(4)'s reference to ''applicable thresholds'' refers to these four group-specific thresholds, and ''applicable segments'' refers to the nine segments within the four segment groups. In other words, each group of segments constitutes the ''applicable'' segments to their corresponding applicable threshold. This is important, again because the four groups laid out under CAA section 136(f) include only WEC applicable facilities.

Finally, Congress's statement that netting shall be employed ''in calculating the total emissions charge obligation for facilities under common ownership or control'', further indicates that only WEC applicable facilities may be netted. Logic indicates that only WEC applicable facilities, with WEC applicable emissions, would be relevant to a determination of total emissions charge obligation. As regards the WEC program, WEC obligated parties are concerned with methane emissions for the WEC applicable facilities for which they are responsible—not various other subpart W facilities for which a WEC charge can never be imposed.

In addition to this stated legal rationale, the final approach also represents a reasonable policy choice in line with the EPA's understanding of Congress's intent that the WEC program constitute a meaningful incentive to reduce methane emissions. Specifically, should the WEC program allow netting from subpart W facilities emitting 25,000 mt CO_2e per year or less under subpart W, WEC obligated parties would lose an incentive to reduce emissions at WEC applicable facilities that exceed their waste emissions thresholds. Negative emissions from facilities with subpart W emissions of 25,000 mt CO_2e or less could be used to net out positive emissions from WEC applicable facilities, allowing WEC obligated parties to zero out WEC obligations without actually reducing emissions overall. Given that many subpart W facilities that report 25,000 mt CO_2e or less under subpart W would also be well below their waste emissions threshold, allowing these facilities to net could add significant negative tons to the WEC program such that actual methane emissions from WEC applicable facilities could increase without increasing WEC obligations.

[28] *Id.* at section 7436(f)(2).

[29] Specifically, (4) onshore natural gas transmission compression; (5) underground natural gas storage; and (9) onshore natural gas transmission.

[30] *Id.* at section 7436(f)(3).

b. Facilities With Subpart W Emissions Greater Than 25,000 Metric Tons of CO_2e That Are Receiving the Regulatory Compliance Exemption

The EPA is finalizing as proposed that during such time that a facility receives the regulatory compliance exemption, that facility would have zero WEC applicable emissions and thus would not be able to participate in the netting of methane emissions across facilities under common ownership or control of a WEC obligated party. The final approach is based on a plain reading of the statutory text, and follows the same reasoning outlined in section II.B.2.a. of this preamble, which explains that under the best reading of the text, only WEC applicable facilities may net. This section will further expand upon the EPA reasoning that only WEC applicable emissions may be netted, and clarify this point for purposes of the regulatory compliance exemption.

CAA section 136(f)(6)(A) states that ''[c]harges shall not be imposed pursuant to subsection (c) on an applicable facility that is subject to and in compliance with methane emissions requirements pursuant to subsections (b) and (d) of section 111'' if specific criteria are met (these criteria are discussed in section II.D.2. of this preamble). The EPA's interpretation of the regulatory compliance exemption is that, for a WEC applicable facility meeting the exemption criteria, the entire facility is exempted, and therefore the facility does not generate WEC-applicable emissions. In order to net, facilities must be WEC applicable facilities (they must emit over 25,000 mt CO_2e per year under subpart W) and they must also generate WEC applicable emissions (methane emissions, as reported under subpart W, below or above the WEC emissions thresholds *that are subject to charge*.) Again, this follows from the text. Section 136(f)(4) applies ''in calculating the total emissions charge obligation'' only. Emissions which are subject to an exemption are by definition not subject to charge. WEC applicable emissions are only those subpart W methane emissions subject to charge under section 136(c). Because WEC applicable facilities that receive the regulatory compliance exemption for the entire year would have zero WEC applicable emissions, these facilities would by default not be able to participate in netting (*i.e.,* they would have no emissions to net). The approach of facilities with the regulatory compliance exemption for the entire year having zero WEC applicable emissions allows for the practical implementation of the exemption within the broader framework of the WEC calculations. Clarifying that, pursuant to the statutory directive, exempted facilities generate zero WEC applicable emissions ensures that charges shall not be imposed on these facilities without interfering with netting calculations or removing facility-specific reporting elements necessary for WEC implementation. Such facilities continue to be included in WEC filings reported under part 99 as long as they remain WEC applicable facilities. Further, if such facilities fall out of compliance such that the regulatory compliance exemption no longer applies and they again generate WEC applicable emissions, such facilities can again be included in netting. Similarly, for WEC applicable facilities that have partial eligibility for the regulatory compliance exemption, as described in section II.D.2.f. of this preamble, such that they have positive WEC applicable emissions, those facilities would also be included in netting.

The EPA notes that facilities with emissions below the waste emissions threshold would not have positive WEC applicable emissions and therefore would not benefit from the exemption. In this final rule, facilities with emissions below the waste emissions threshold would not receive the regulatory compliance exemption, and thus these facilities would always have WEC applicable emissions and be able to participate in netting across facilities under common ownership or control. Section II.D.2.f. of this preamble discusses the regulatory compliance exemption in relation to facilities that are below the waste emissions threshold.

c. Exclusion of Facilities Reporting 25,000 or Fewer Metric Tons of CO_2e to Subpart W of Part 98

Per CAA section 136(c), the WEC shall only be imposed on owners or operators of applicable facilities that report more than 25,000 mt CO_2e under subpart W. A large number of facilities that report under the GHGRP have subpart W emissions below 25,000 mt CO_2e because they report emissions under multiple subparts (*e.g.,* subpart W and subpart C) and have total emissions greater than 25,000 mt CO_2e across multiple subparts. In addition, some part 98 subpart W facilities have reduced their emissions over time and are allowed to cease reporting or ''offramp'' due to meeting either the 15,000 mt CO_2e level or the 25,000 mt CO_2e level for the number of years specified in 40 CFR 98.2(i) based on the CO_2e reported, as calculated in accordance with 40 CFR 98.3(c)(4)(i) (*i.e.,* the annual emissions report value as specified in that provision).

We are finalizing as proposed that subpart W facilities with subpart W emissions equal to or below 25,000 mt CO_2e are not WEC applicable facilities and are therefore excluded from netting. This approach aligns with a plain reading of the requirement in CAA section 136(c) that only applicable facilities with subpart W emissions exceeding 25,000 mt CO_2e are subject to the WEC—facilities below this threshold are not subject to the WEC and therefore do not generate WEC applicable emissions and are not eligible to net emissions.

d. Exclusion of Facilities Not Required To Report to the GHGRP

Per CAA section 136(c) and (d), CAA section 136(f)(4), and the definition of ''WEC Applicable Facility'' in 40 CFR 99.2, which reflects the statutory text at CAA section 136(d), we are finalizing as proposed that facilities that are not required to report to the GHGRP, and thus are not WEC applicable facilities, are not eligible for netting. Again following the reasoning outlined in section II.B.2.a. of this preamble, this approach is based on a plain reading of CAA section 136(f)(4), which states that netting is allowed within and across the nine subpart W industry segments identified in CAA section 136(d); section 136(d), which states that ''applicable facility(ies)'' are facilities within industry segments ''as defined in subpart W''; and section 136(c), which states that the WEC is only applicable to subpart W facilities that report more than 25,000 mt CO_2e per year under subpart W. Following the plain text, only facilities subject to subpart W may be evaluated as possible WEC applicable facilities, and only WEC applicable facilities (subpart W facilities emitting over 25,000 mt CO_2e under subpart W) can have WEC applicable emissions that may be subject to charge. As explained in section II.B.2.a. of this preamble, only WEC applicable facilities are eligible to net, and only WEC applicable emissions may be netted. Further, CAA section 136(c) states that the WEC is only applicable to certain facilities that report under subpart W of the GHGRP.

C. Waste Emissions Thresholds

Congress established waste emissions thresholds for certain oil and gas operations to incentivize emissions reductions and efficient production, processing, and transport of hydrocarbons. These waste emissions thresholds are applied to individual oil and gas facilities; facilities that exceed

the thresholds may be subject to charge, while facilities that are below the threshold are not subject to charge. Building upon the definitions described in section II.A. of this preamble, this section explains the mechanics of the WEC calculations.

The waste emissions thresholds are defined in terms of industry segment-specific methane intensity thresholds applicable to certain facilities that report GHG emissions under subpart W of the GHGRP. The industry segment-specific methane intensity thresholds specified in CAA 136(f) and listed in Table 2 of this preamble are based on a rate of methane emissions per amount of natural gas or oil sent to sale from or through a facility. The industry segment-specific methane intensity thresholds are generally defined in terms of a percentage of throughput (*e.g.,* 0.002 percent of natural gas sent to sale). However, since the WEC is based on metric tons of methane (*e.g.,* $900/metric ton) that exceed the threshold, for the purposes of calculating the number of metric tons that are subject to charge, we are finalizing as proposed an approach that calculates the facility waste emissions thresholds in metric tons of methane.

The EPA proposed specific calculation methodologies and data input elements for the WEC calculations. The EPA received comments supportive of the proposed approaches for the WEC calculations. We also received comments suggesting revisions to the proposed approaches for the waste emissions threshold calculation, the methane emissions metric used to determine facility tons above or below the waste emissions threshold, and the treatment of facilities with zero throughput. However, the proposed changes suggested by commenters would not be consistent with the plain reading of the CAA and would make the calculations much more complicated to implement without necessarily improving accuracy. Therefore, the EPA is finalizing the approaches discussed in this section of the preamble as proposed, with the exception of the treatment of certain facilities with zero throughput.

For the onshore and offshore petroleum and natural gas production industry segments, CAA section 136(f) differentiates based on whether the facility is sending natural gas to sale or only sending oil to sale, and if the facility does not send natural gas to sale, the threshold is based on methane emissions per amount of oil sent to sale. For facilities that are not in the onshore or offshore production industry segments, the industry segment-specific methane intensity thresholds are based on the amount of natural gas sent to sale from or through the facility. The industry segment-specific methane intensity thresholds are applied to the natural gas or petroleum throughput attributable to that industry segment to calculate facility-specific waste emissions thresholds. See Table 2 for an overview of how the waste emissions thresholds are calculated. When determining whether a facility has WEC applicable emissions, the owner or operator of an applicable facility must compare the facility's reported methane emissions, as reported under subpart W, to the facility's waste emissions threshold. Facilities with methane emissions that exceed the waste emissions threshold may be subject to charge. For WEC applicable facilities with the same WEC obligated party, the WEC applicable emissions for each facility are summed to calculate the net WEC emissions for that WEC obligated party. For WEC obligated parties with the same parent company, WEC obligated parties with negative net emissions may transfer those negative emissions to WEC obligated parties with positive net emissions. A WEC obligated party's total WEC obligation is based on its total emissions at the end of this transfer of any negative emissions.

Subpart W requires reporting of natural gas throughput by thousand standard cubic feet, oil by barrels, and methane by metric ton. As a practical matter, since the WEC is based on a dollar per metric ton of methane, the waste emissions thresholds must generally be converted into metric tons of methane for comparison against reported methane, generally by multiplying the thresholds by the density of methane.

TABLE 2—INDUSTRY SEGMENT THROUGHPUT METRICS AND METHANE INTENSITIES

Industry segment	Throughput metric [a]	Industry segment-specific methane intensity
Onshore petroleum and natural gas production.	The quantity of natural gas produced from producing wells that is sent to sale in the calendar year, in thousand standard cubic feet 40 CFR 98.236(aa)(1)(i)(B); or the quantity of crude oil produced from producing wells that is sent to sale in the calendar year, in barrels, if facility sends no natural gas to sale under 40 CFR 98.236(aa)(1)(i)(C) [b].	0.20 percent of natural gas sent to sale from facility; or 10 metric tons of methane per million barrels of oil sent to sale from facility, if facility sends no natural gas to sale.
Offshore petroleum and natural gas production.	The quantity of natural gas produced from producing wells that is sent to sale in the calendar year, in thousand standard cubic feet 40 CFR 98.236(aa)(2)(i); or the quantity of crude oil produced from producing wells that is sent to sale in the calendar year, in barrels, if facility sends no natural gas to sale under 40 CFR 98.236(aa)(2)(ii).	
Onshore petroleum and natural gas gathering and boosting.	The quantity of natural gas transported through the facility to a downstream endpoint such as a natural gas processing facility, a natural gas transmission pipeline, a natural gas distribution pipeline, a storage facility, or another gathering and boosting facility in the calendar year, in thousand standard cubic feet under 40 CFR 98.236(aa)(10)(ii).	0.05 percent of natural gas sent to sale from or through facility.
Onshore natural gas processing	The quantity of residue gas leaving that has been processed by the facility and any gas that passes through the facility to sale without being processed by the facility in the calendar year, in thousand standard cubic feet under 40 CFR 98.236(aa)(3)(ix) [b].	
Onshore natural gas transmission compression.	The quantity of natural gas transported through the compressor station in the calendar year, in thousand standard cubic feet under 40 CFR 98.236(aa)(4)(i).	0.11 percent of natural gas sent to sale from or through facility.
Onshore natural gas transmission pipeline.	The quantity of natural gas transported through the facility and transferred to third parties such as LDCs or other transmission pipelines in the calendar year, in thousand standard cubic feet under 40 CFR 98.236(aa)(11)(iv).	
Underground natural gas storage	The quantity of natural gas withdrawn from storage and sent to sale in the calendar year, in thousand standard cubic feet under 40 CFR 98.236(aa)(5)(ii).	

TABLE 2—INDUSTRY SEGMENT THROUGHPUT METRICS AND METHANE INTENSITIES—Continued

Industry segment	Throughput metric [a]	Industry segment-specific methane intensity
LNG import and export equipment ..	For LNG import equipment, the quantity of LNG imported that is sent to sale in the calendar year, in thousand standard cubic feet; for LNG export equipment, the quantity of LNG exported that is sent to sale in the calendar year, in thousand standard cubic feet under 40 CFR 98.236(aa)(6) and (7).	0.05 percent of natural gas sent to sale from or through facility.
LNG storage	The quantity of LNG withdrawn from storage and sent to sale in the calendar year, in thousand standard cubic feet under 40 CFR 98.236(aa)(8)(ii).	

[a] Throughput metrics in this table are based on the subpart W reporting elements as effective January 1, 2025 and would apply for assessment of WEC beginning with reporting year 2025. Instances where the citation for the throughput metric for reporting year 2024 differs are noted in additional footnote. Note that in instances where there is no change to the citation for the segment-specific throughput metric, the EPA has amended the verbiage of subpart W, effective January 1, 2025, for consistency with CAA section 136. Refer to section III.U. of the preamble to the 2024 Subpart W Final Rule for full discussion of these amendments.

[b] For reporting year 2024, the applicable subpart W throughput reporting element for the onshore natural gas processing industry segment is 40 CFR 98.236(aa)(3)(ii).

1. Facility Waste Emissions Thresholds

CAA section 136(f)(1) through (3) establishes facility-specific waste emissions thresholds above which the EPA must impose and collect the WEC. The CAA defines waste emissions threshold requirements, and establishes the method for calculation of the charge, for nine segments of the oil and gas industry.

CAA section 136(f)(1) requires the EPA to impose and collect the WEC on facilities in the onshore petroleum and natural gas production and offshore petroleum and natural gas production industry segments with methane emissions, in metric tons, that exceed either 0.20 percent of the natural gas sent to sale from the facility or, if no natural gas is sent to sale, 10 metric tons of methane per million barrels of oil sent to sale from the facility. To determine the waste emissions threshold from a WEC applicable facility in the onshore petroleum and natural gas production and the offshore petroleum and natural gas production industry segments, the EPA is finalizing as proposed two equations based on whether the facility sends natural gas to sale, which reflect the statutory text at 136(f)(1)(A) and (B). For onshore and offshore petroleum and natural gas production WEC applicable facilities that send natural gas to sale, we are finalizing as proposed equation B–1 of 40 CFR 99.20(a). This equation multiplies the annual quantity of natural gas sent to sale from a WEC applicable facility by 0.002 (*i.e.,* 0.20 percent) and the density of methane (0.0192 metric tons per thousand standard cubic feet).[31] For onshore and offshore petroleum and natural gas production facilities that have no natural gas sent to sale, we are finalizing as proposed equation B–2 of 40 CFR 99.20(b). In equation B–2, the annual quantity of oil sent to sale from a WEC applicable facility is multiplied by 10 metric tons of methane per million barrels of oil.[32]

For WEC applicable facilities in the onshore petroleum and natural gas gathering and boosting, onshore natural gas processing, LNG import and export equipment, and LNG storage industry segments, CAA section 136(f)(2) requires the EPA to impose and collect a WEC on facilities with reported methane emissions, in metric tons, that exceed 0.05 percent of the natural gas sent to sale from or through such facility. To determine the waste emissions threshold from a WEC applicable facility in these industry segments, we are finalizing as proposed equation B–3 under 40 CFR 99.20(c). This equation multiplies the annual quantity of natural gas sent to sale from or through a WEC applicable facility by 0.0005 (*i.e.,* 0.05 percent) and the density of methane (0.0192 metric tons per thousand standard cubic feet) to determine the facility-level waste emissions threshold.[33] The EPA notes that certain facilities in the gathering and boosting and natural gas processing industry segments may have zero throughput values using this approach, because these facilities either receive no natural gas, or process or dispose of natural gas received in a manner that results in sending zero quantities of natural gas to sale. Treatment of these facilities is discussed in section II.C.6. of this preamble.

CAA section 136(f)(3) requires the EPA to impose and collect a waste emissions charge on WEC applicable facilities in the onshore natural gas transmission compression, onshore natural gas transmission pipeline, and underground natural gas storage industry segments with methane emissions, in metric tons, that exceed 0.11 percent of the natural gas sent to sale from or through such facility. We are finalizing as proposed equation B–4 under 40 CFR 99.20(d) to calculate the waste emissions threshold from a WEC applicable facility in these industry segments. Equation B–4 multiplies the annual quantity of natural gas sent to sale from or through a WEC applicable facility by 0.0011 (*i.e.,* 0.11 percent) and the density of methane (0.0192 metric tons per thousand standard cubic feet) to determine the facility-level waste emissions threshold.[34]

The annual quantity of natural gas sent to sale from or through a facility reported under subpart W is reported in units of thousand standard cubic feet of

[31] Equation B–1 reflects the statutory text at 136(f)(1)(A), which states: ''With respect to imposing and collecting the charge under subsection (c) for an applicable facility [in the onshore petroleum and natural gas production and offshore petroleum and natural gas production industry segments], the Administrator shall impose and collect the charge on the reported metric tons of methane emissions from such facility that exceed (A) 0.20 percent of the natural gas sent to sale from such facility. . .'' 42 U.S.C. 7436(f)(1)(A).

[32] Equation B–2 reflects the statutory text at 136(f)(1)(B), which states: ''With respect to imposing and collecting the charge under subsection (c) for an applicable facility [in the onshore petroleum and natural gas production and offshore petroleum and natural gas production industry segments], the Administrator shall impose and collect the charge on the reported metric tons of methane emissions from such facility that exceed. . . (B) 10 metric tons of methane per million barrels of oil sent to sale from such facility, if such facility sent no natural gas to sale.'' 42 U.S.C. 7436(f)(1)(B).

[33] Equation B–3 reflects the statutory text at 136(f)(2), which states: ''With respect to imposing and collecting the charge under subsection (c) for an applicable facility in [the onshore petroleum and natural gas gathering and boosting, onshore natural gas processing, LNG import and export equipment, and LNG storage industry segments], the Administrator shall impose and collect the charge on the reported metric tons of methane emissions that exceed 0.05 percent of the natural gas sent to sale from or through such facility.'' 42 U.S.C. 7436(f)(2).

[34] Equation B–4 reflects the statutory text at 136(f)(3), which states: ''With respect to imposing and collecting the charge under subsection (c) for an applicable facility in [the onshore natural gas transmission compression, onshore natural gas transmission pipeline, and underground natural gas storage industry segments], the Administrator shall impose and collect the charge on the reported metric tons of methane emissions that exceed 0.11 percent of the natural gas sent to sale from or through such facility.'' 42 U.S.C. 7436(f)(3).

natural gas per year, while facility methane emissions are reported in metric tons. The EPA interprets the industry segment-specific methane intensity thresholds (*i.e.,* 0.20 percent, 0.05 percent, and 0.11 percent) indicated in CAA section 136(f)(1) through (3) to be in units of thousand standard cubic feet of methane emissions per thousand standard cubic feet of natural gas. This requires reconciliation of methane emissions reported on mass basis and throughput reported on a volumetric basis. Because the waste emission charge is assessed using dollars per metric ton, the amount by which a facility is below or exceeding the waste emissions threshold must ultimately be converted to metric tons. The approach in equations B–1, B–3, and B–4 calculates facility waste emissions thresholds in metric tons by calculating the volume of gas at the given industry segment-specific methane intensity and then calculating what the mass of that volume would be if it were methane by multiplying by the density of methane (0.0192 metric tons per thousand standard cubic feet at standard temperature and pressure of 60 °F and 14.7 psia). This allows the waste emissions threshold to be directly compared to reported metric tons of methane. This approach is mathematically equivalent to, but simpler than, an approach that would convert reported methane emissions to volume, subtract a volumetric waste emissions threshold from that reported volume, and then convert the resulting value back to metric tons methane. The EPA notes that the approach used in this final rule does not require information on the constituents or density of natural gas throughput.

As described in this section of the preamble, the waste emissions thresholds are calculated at the facility level, using the industry segment-specific methane intensity threshold given in CAA sections 136(f)(1) through (3), and specific industry segment throughput metrics reported under part 98, subpart W. The vast majority of facilities report as a single subpart W facility to a single subpart W industry segment. However, as discussed in section II.A. of this preamble, there are a small number of reporters that report as a single subpart W facility to multiple subpart W industry segments. Specifically, for facilities that report to multiple industry segments under a single subpart W facility, we are finalizing in 40 CFR 99.20(e) that the facility-level waste emissions threshold is determined as the sum of the waste emissions thresholds for each industry segment within which the facility operates.

The EPA is finalizing as proposed its interpretation of ''natural gas sent to sale'' to mean the amount of natural gas sent to sale from a facility in the onshore or offshore petroleum and natural gas industry segments, as reported under subpart W. The EPA is finalizing as proposed its interpretation of ''natural gas sent to sale from or through'' to mean the natural gas throughput volume for a facility not in the onshore or offshore petroleum and natural gas industry segments that aligns with the movement of gas through a facility (*e.g.,* gas transported rather than gas received), as reported under subpart W. For facilities in the onshore and offshore petroleum and natural gas production industry segments that do not send natural gas to sale, the EPA is finalizing as proposed its interpretation of ''barrels of oil sent to sale'' to mean the quantity of crude oil sent to sale, as reported under subpart W.

The EPA is aware of and received comment on other approaches for calculating ''methane intensity'' currently in use. These include methodologies that allocate total methane emissions between the petroleum and natural gas value chains and/or use methane rather than natural gas as the throughput value. CAA section 136(f)(1) through (3) refers to reported facility emissions and does not discuss allocation of emissions between petroleum and natural gas. In the case of the methane charge program established in CAA section 136, the statutory text is clear that facilities that produce only oil are to calculate the waste emissions threshold based on only on the quantity of oil sent to sale. The statutory text is clear that in all other cases, the quantity of natural gas sent to sale is the appropriate throughput value.[35] Further, the final approach can be implemented with data currently reported under subpart W, while alternative methane intensity methodologies would require reporting of additional data and increase the burden on the oil and gas industry. For example, an approach that calculates intensity as methane emissions divided by the methane in natural gas throughput would require facilities to collect and report additional information of the methane content of natural gas. Again, this approach would not be aligned with the statute, which defines the intensity as methane emissions as a percentage of natural gas, not methane emissions as a percentage of methane. An approach that calculates methane intensity as the mass of methane emissions divided by the mass of natural gas would also not align with a plain reading of the statutory text or standard conventions. The natural gas sent to sale from or through a facility is reported under subpart W in thousand standard cubic feet, a volumetric unit of measure. Congress was aware of this metric when it established the waste emissions thresholds. Further, all percentage-based methane intensity metrics that the EPA is aware of are volume-based rather than mass-based, and while natural gas throughput is commonly reported both in terms of volume and energy content, it is not common practice to report throughput in terms of mass. Such an approach would also require facilities to collect and report detailed information on all of the constituents of natural gas throughput. Finally, an approach that allocates methane emissions between the petroleum and natural gas value chains based on energy content would not be aligned with the statute, which does not make any mention of allocating total facility methane emissions to the petroleum and natural gas value chains and assessing the WEC using a subset of total facility emissions. This approach would also require facilities to collect and report detailed data on the constituents and energy content of all hydrocarbon throughput. The EPA therefore believes that the approaches finalized in this rulemaking not only follow a plain reading of CAA section 136(f) but are also the best and most reasonable approaches.

2. Facility Methane Emissions

To determine the total methane emissions from a WEC applicable facility, the EPA is finalizing as proposed to use facility-level methane data as reported under subpart W. Facility methane emissions must be calculated using methods or data required by subpart W and by this final rule for the emissions year covered by the annual WEC filing. For example, for the first year of the WEC (2024 emissions), WEC calculations are based on the subpart W requirements effective for the 2024 reporting year, and emissions year 2025 emissions and beyond are based on subpart W requirements effective in reporting year 2025 or any future revisions. The final approaches for calculating waste emissions thresholds and facility methane emissions align with the text of CAA section 136(f). CAA section 136(f)(1) through (3) states that the WEC is to be calculated based ''on the

[35] See 42 U.S.C. 7436(f)(1)–(3).

reported metric tons of methane emissions from such facility that exceed'' specified percentages of the ''natural gas sent to sale from such facility'' or ''natural gas sent to sale from or through such facility'' (or for onshore and offshore petroleum facilities that do not send gas to sale, ''ten metric tons of methane per million barrels of oil sent to sale from such facility''). The EPA is finalizing its interpretation of ''reported metric tons of methane emissions'' to mean all reported methane emissions from a facility, as reported under subpart W, except in cases when emissions for stationary combustion emissions reported under 40 CFR 98.236(z) double-count emissions reported for an other large release event under 40 CFR 98.236(y), in which case the ''reported metric tons of methane emissions'' are adjusted according to the provisions finalized at 40 CFR 99.7(b)(2)(ix). This value, only adjusted to prevent double-counting as specified, is an input to equation B–6 of 40 CFR 99.21.

We are finalizing these provisions to adjust the subpart W methane emissions to prevent double-counting in the unlikely event that a stationary combustion source emits at the level requiring reporting as an other large release event in the subpart W report for a WEC applicable facility. In general, we did not expect that any stationary combustion source would have emissions above the threshold required to be reported under the provisions at 40 CFR 98.236(y) for other large release events. To qualify for reporting as an other large release event, the stationary combustion source must have methane emissions of 100 kg/hr or greater. We note that this emission rate would be evaluated on a per individual stationary combustion source basis unless they have a single root cause and we do not believe any single stationary combustion source would emit methane at this level unless it was significantly malfunctioning. Therefore, we expect that stationary combustion sources would be reported under the provisions of other large release events only under rare circumstances. For sources other than stationary combustion sources that have calculation methods in subpart W, the 100 kg/hr threshold is evaluated incremental to the emissions estimated using the methods in subpart W and subpart W contains provisions in 40 CFR 98.233(y)(1)(ii) to prevent double-counting of emissions reported under other large release events and these other subpart W calculation methods. However, stationary combustion emissions are subject to direct assessment of the 100 kg/hr threshold as specified in 40 CFR 98.233(y)(1)(i) with no provisions to revise emissions calculated under 98.233(z) for the period of time the stationary source was malfunctioning and emitting methane at rates exceeding 100 kg/hr. Therefore, it is possible, however unlikely, that there may be some double-counting of emissions being reported under 40 CFR 98.236(y) and (z) and we are finalizing part 99 provisions to ensure that the total methane emissions (and the total CO_2e emissions) for the facility are corrected for part 99 purposes to prevent this potential for double-counting of emissions under the WEC program. In the exceedingly unlikely event that the total CO_2e for a facility drops below the 25,000 mt CO_2e WEC reporting threshold as a result of this adjustment for double-counting of emissions, we are finalizing 40 CFR 99.7(b)(2)(ix) related to the reporting requirements and assessment of WEC for such facilities. In this circumstance, the total facility applicable emissions and WEC applicable emissions for the facility would be defined as zero, and the facility would not be subject to reporting requirements beyond those necessary to link the facility to subpart W reporting and substantiate the existence of double-counting of emissions due to the reporting of stationary combustion source emissions as an other large release event.

3. Facility WEC Calculation

To calculate the amount by which a WEC applicable facility is below or exceeding the waste emissions threshold, the EPA is finalizing as proposed to use equation B–6 of 40 CFR 99.21(a), in which the facility waste emissions threshold, as determined in 40 CFR 99.20, is subtracted from facility total methane emissions. This calculation results in a value of metric tons of methane, the total facility applicable emissions, that is negative for facilities below the waste emissions threshold and positive for facilities exceeding the waste emissions threshold. The remainder of 40 CFR 99.21 describes how to determine the WEC applicable emissions below or exceeding the waste emissions threshold considering any exemptions that may apply for WEC applicable facilities with total facility applicable emissions greater than 0 mt CH_4 (see section II.D. of this preamble for more information on the exemptions). As discussed in section II.D.2. of this preamble, the EPA is finalizing as proposed that WEC applicable facilities receiving the regulatory compliance exemption for the entire year are exempted from the WEC, and therefore have zero WEC applicable emissions. Section II.D.2.g. of this preamble also explains the facility-level WEC applicable emissions calculation for facilities with partial eligibility for the regulatory compliance exemption. For facilities with total facility applicable emissions greater than 0 mt CH_4 that are eligible for the unreasonable delay or plugged well exemptions, any methane emissions associated with those exemptions are subtracted to calculate WEC applicable emissions. See sections II.D.1.b and II.D.3.b of this preamble for explanation of how the quantity of methane emissions that qualify for exemption due to the unreasonable delay and plugged well exemptions, respectively, are calculated. These calculations rely upon methane emissions data reported to subpart W and calculation methodologies specified in this final rule. For all other facilities, facility applicable emissions are equal to WEC applicable emissions (unless the facility is receiving the regulatory compliance exemption).

4. Calculation Procedures for Netting

As described in section II.B., the EPA is finalizing that the owner or operator is the WEC obligated party while allowing for netting among WEC obligated parties with the same parent company. This structure creates a potential mismatch in liability should one owner or operator incorrectly calculate their subpart W emissions and/or their WEC obligation, and then magnifies this error by netting emissions with another owner or operator with the same parent company. Therefore, in this section, the EPA is providing additional details and restrictions on how the netting calculations must be done when netting is used, and how the netting transactions must be tracked and reported.

As described in section II.A.3. of this preamble, if a WEC applicable facility has multiple owners or operators, those entities must elect among themselves by binding agreement a single owner or operator as the WEC applicable facility's WEC obligated party for a given year. Similarly, if a WEC applicable facility has multiple parent companies, that facility's WEC obligated party must indicate in its certificate of representation for the reporting year and its annual WEC filing which parent company is selected for the purposes of designating the WEC obligated party's (*i.e.,* owner's or operator's) netting pool. If a WEC applicable facility has multiple owners or operators and multiple parent companies, the owner or operator selected as the WEC obligated party and

the parent company selected for netting must be related (*e.g.,* the WEC obligated party must be a subsidiary or at least partially owned by the parent company selected for netting). These requirements are included as part of the contents of the certificate of representation submitted by the WEC obligated party for the reporting year pursuant to the finalized requirements of 40 CFR 99.4(i) as well as the annual WEC filing pursuant to the finalized requirements of 40 CFR 99.7(b). Within the certificate of representation, the WEC obligated party must identify the WEC applicable facilities for which they are responsible for the reporting year as well as the parent company for which these facilities would be included in netting. Within the annual WEC filing, the WEC obligated party must indicate whether any of the WEC applicable facilities were acquired in transactions that resulted in the owners or operators for the facility as of December 31 of the reporting year ceasing to exist, and whether such facilities were associated with a parent company that is different from the WEC obligated party's parent company pursuant to the finalized requirements of 40 CFR 99.7(b)(1)(iv). This reporting is required because as a result of the finalized requirement of 40 CFR 99.4, a WEC obligated party may become responsible for the reporting of a WEC applicable facility for which they were not an owner or operator of as of December 31 of the reporting year, and which may not have been under the common ownership or control of the WEC obligated party's parent company as of December 31 of the reporting year.

The EPA is finalizing rules and requirements at 40 CFR 99.23 to govern the transfer of net WEC emissions across WEC obligated parties with a common parent company. The first step in the finalized netting process is the calculation of metric tons of methane emissions equal to, below, or exceeding the waste emissions threshold, or WEC applicable emissions, for each WEC applicable facility as specified in 40 CFR 99.21. The next step is summing WEC applicable emissions across all of a WEC obligated party's WEC applicable facilities. This calculation, finalized at 40 CFR 99.22(a) using equation B–8, yields net WEC emissions for each WEC obligated party. In circumstances where a WEC obligated party became responsible for facilities for which they were not an owner or operator of as of December 31 of the reporting year, the requirements at 40 CFR 99.2(b) and (c) would instead apply and the WEC obligated party would determine separate net WEC emission totals for their WEC applicable facilities that shared the same parent company as identified in the certificate of representation and those WEC applicable facilities that did not share the same parent company. The final step involves optional netting of emissions across WEC obligated parties with the same parent company. In this process, WEC obligated parties with negative net WEC emissions (as calculated using Equation B–8) may transfer those negative net WEC emissions to WEC obligated parties (with positive net WEC emissions) with the same parent company. After the negative net WEC emissions have been transferred as determined by each of the WEC obligated parties with a common parent company, each WEC obligated party's net WEC emissions after transfers, or total methane emissions above or below the waste emissions threshold is finalized. This final amount of metric tons methane is used to determine if a WEC obligated party owes a WEC obligation for the given year.

Since the owner or operator is the WEC obligated party, they are ultimately responsible for the entire WEC payment associated with their total emissions above the waste emissions threshold. Although an individual owner or operator's WEC obligation may be reduced based on netting with another owner or operator that has WEC applicable emissions below the waste emissions threshold within the parameters specified, if those negative quantities of net WEC emissions are later invalidated, the WEC obligated party who received the negative WEC emissions to reduce their WEC obligation would be required to resubmit their WEC filing to remove the negative WEC emissions from their calculations and would have to adjust their payment accordingly. Provisions applicable to this scenario are finalized at 40 CFR 99.23(f)(2).

A key element of WEC obligated party netting is that WEC obligated parties with zero or negative net WEC emissions cannot be subject to charge. A WEC obligated party with negative net WEC emissions may transfer negative quantities of net WEC emissions to WEC obligated parties with whom it shares the same parent company as finalized at 40 CFR 99.23(a), but it can never receive positive emissions. Similarly, the WEC obligation of a WEC obligated party can never exceed the charge that would be calculated using their net WEC emissions. The WEC obligated party's positive net WEC emissions after transfers can decrease but can never increase as a result of netting. In other words, only negative quantities of net WEC emissions can be transferred, and positive quantities of net WEC emissions cannot be transferred as finalized at 40 CFR 99.23(b). Further, negative net WEC emissions and negative net WEC emissions after transfers cannot be banked or otherwise saved for a future WEC filing year; all negative net WEC emissions and negative net WEC emissions after transfers are valid only for the WEC filing year in which they were created.

The EPA is also finalizing requirements to address impacts to netting that result from WEC filing resubmissions. While the EPA expects that most questions related to unverified subpart W data will be resolved by the time of the WEC filing, continued revisions to subpart W reports or WEC filing resubmissions that impact emissions (*e.g.,* revisions to exemption data) could impact a WEC obligated party's net WEC emissions and thus netting. These include situations in which revisions invalidate negative net WEC emissions that have been transferred and situations in which revisions result in additional negative net WEC emissions that become available for transfer. As discussed in section III.B. of this preamble, resubmissions of WEC filings, including the applicable subpart W data, will not be accepted after December 15 unless the resubmission is related to eligibility for the regulatory compliance exemption, resolution of the verification process (including third-party auditing), or otherwise permitted by the Administrator.

The EPA is finalizing that any WEC obligated party that receives negative net WEC emissions loses the benefit of those negative net WEC emissions if they are later invalidated. For example, if WEC obligated party A transferred negative 10 metric tons of methane to WEC obligated party B with the same parent company, but a revision to the WEC filing for the WEC obligated party A results in the 10 metric tons of negative emissions being eliminated, the final WEC emissions of the WEC obligated party B that received the emissions will revert to the number it was before the 10 metric tons were subtracted from the total. This means that in this circumstance, the final WEC emissions of receiving WEC obligated party B would increase by 10 metric tons.

To determine how previously transferred negative net WEC emissions that are later invalidated are removed from netting when multiple WEC obligated parties receive negative tons, the order in which transfers were approved by the designated

representative of the WEC obligated party receiving the transfer in accordance with the finalized requirement of 40 CFR 99.23(c) will be used on a ''last in first out'' basis. This indicates the order and amount of negative net WEC emissions that are removed from the net WEC emissions after transfers of a WEC obligated party that receives any negative net WEC emissions, should any of the negative net WEC emissions be invalidated. Affected WEC obligated parties would be required to submit a revised WEC filing and pay any new charge or increase in charge pursuant to the finalized requirements of 40 CFR 99.7(e) and 99.8(d). In situations where revisions to WEC filings result in *additional* negative net WEC emissions becoming available for netting, the applicable WEC obligated party with newly available negative net WEC emissions for transfer may transfer those negative net WEC emissions to another eligible WEC obligated party. The receiving WEC obligated party may then refile. The EPA will then provide any applicable refunds post verification of the amended report. Provisions applicable to the change in availability of transferred WEC emissions as a result of revisions to the WEC filing for the WEC obligated party that provided the transfers are finalized at 40 CFR 99.23(f). All of these requirements are designed to allow for netting at the parent company level while addressing the potential mismatch in WEC obligations should one owner or operator incorrectly calculate their WEC obligation and then magnify this error by netting with another owner or operator with the same parent company.

The EPA is finalizing reporting and recordkeeping requirements at 40 CFR 99.23 for WEC obligated party emissions netting. As finalized at 40 CFR 99.23(c), each transfer of negative quantities of net WEC emissions must be completed in an electronic format specified by the Administrator. The EPA anticipates that these transfers will occur in an electronic system similar to the existing e-GGRT system used by the GHGRP. Each transfer must be initiated by the designated representative of the WEC obligated party that is transferring the negative quantities of net WEC emissions. The transfer will be considered to have occurred at such time that the designated representative of the WEC obligated party that is receiving the transfer approves receipt of the transfer. The electronic system will record the metric tons of negative WEC emissions that are transferred, the WEC obligated parties involved in each transfer, and the time that the designated representative of the WEC obligated party receiving the transfer approved receipt. These records will establish the order of precedence for these metric tons under the finalized requirement of 40 CFR 99.23(f)(2) related to transfers that are later invalidated. These electronic records are essential to establish the requirements for facilities to participate in netting, as allowed by CAA section 136(f)(4). Finally, WEC obligated parties that transfer and receive negative net WEC emissions must maintain all records associated with the transactions, including but not limited to any value exchanged, if applicable, for emissions transferred to each WEC obligated party under the finalized requirement of 40 CFR 99.23(g).

5. Waste Emissions Charge Calculation

CAA section 136(e) establishes annual $/metric ton charges for all methane emissions for which a charge is owed. The EPA is finalizing as proposed that a WEC obligated party's total annual WEC obligation is calculated by multiplying its net WEC emissions after transfers, as determined by Equation B–8 and after any transfer of emissions pursuant to 40 CFR 99.23, by the annual $/metric ton charge. WEC obligated parties with net WEC emissions after transfers less than or equal to zero do not have a WEC obligation. WEC obligated parties with net WEC emissions after transfers greater than zero have a WEC obligation and are required to pay a waste emissions charge. WEC obligation calculations are to be made for calendar years 2024, 2025, 2026, and each year thereafter as per 40 CFR 99.24.

6. Gathering and Boosting and Processing Facilities With Zero Reported Throughput

The EPA is aware of a small number of gathering and boosting and natural gas processing facilities that emit methane and report under subpart W, but do not send gas to sale. As a result, these facilities would report zero natural gas volumes for the throughput metrics used in the waste emissions threshold calculations. For the gathering and boosting industry segment, these may be facilities that receive natural gas but then reinject it underground or otherwise do not transport any natural gas. For the processing industry segment, these may be fractionation plants that only receive and process natural gas liquids (NGLs) and do not handle natural gas. We proposed that all reported methane emissions from facilities with no reported throughput would be considered to be exceeding the waste emissions threshold. We received comments disagreeing with the EPA's proposed approach and interpretation of the statutory text, indicating that WEC applicable facilities that do not send gas to sale are not contemplated by the statute and that it is inappropriate for the EPA to impose a charge in the absence of an applicable threshold. After continued review of the statutory text and consideration of comments received on the treatment of these facilities, we are finalizing a determination that these facilities do not generate WEC applicable emissions, and therefore will not be subject to charge. Using Equation B–3 under 40 CFR 99.20(c), gathering and boosting and processing facilities with zero natural gas throughput would have a waste emissions threshold of 0 mt; all reported methane emissions from these facilities would therefore be exceeding the threshold. However, CAA section 136(f)(2), the statutory text from which Equation B–3 is derived, states that the waste emissions threshold is calculated using the ''natural gas sent to sale from or though'' a facility. These specific types of gathering and boosting and processing facilities do not send any natural gas to sale. Therefore, based on the language in CAA section 136(f)(2), it would not be appropriate to subject these facilities to charge. Although the EPA is not aware of facilities in industry segments other than gathering and boosting and processing that would report emissions to subpart W of more than 25,000 mt CO_2e while having zero throughput of natural gas or oil sent sales, the EPA believes the same interpretation should apply that they would not be subject to charge. The EPA is finalizing language at 40 CFR 99.21 that for a WEC applicable facility for which the waste emissions threshold is zero, the total facility applicable emissions (*i.e.,* the methane emissions equal to, below, or exceeding the waste emissions threshold for a WEC applicable facility prior to consideration of any applicable exemptions) and the WEC applicable emissions (*i.e.,* the methane emissions equal to, below, or exceeding the waste emissions threshold for a WEC applicable facility after consideration of any applicable exemptions) are both zero.

D. Exemptions to the Waste Emissions Charge

Congress created three exemptions to the WEC to reduce or eliminate the charge under certain circumstances. The first exempts emissions that result from eligible delays in environmental permitting. The second exempts from

charge those facilities that are in compliance with applicable CAA section 111 regulations, once certain criteria are met. The third exempts emissions from wells that are permanently plugged. The EPA received numerous comments indicating that the proposal made accessing the exemptions designed by Congress infeasible and impractical. In this final rule, the EPA has made a number of changes to the exemptions, in particular the regulatory compliance exemption, to ensure that access to, and implementation of, these exemptions is appropriate and consistent with the best reading of the statute. In addition, the EPA is clarifying in this final rule that a WEC obligated party may elect whether or not to submit a claim for exemption for a WEC applicable facility that meets the applicability requirements for each exemption.

1. Exemption for Emissions From Eligible Delays in Environmental Permitting (CAA Section 136(f)(5))

The permitting delay exemption created by CAA section 136(f)(5) allows for production facilities to reduce their WEC obligation if the permitting of natural gas offtake infrastructure is delayed unreasonably. Congress identified unreasonable delays in approval of permits for offtake infrastructure as a possible barrier to methane mitigation for WEC obligated parties, particularly because these delays could prevent increased volumes of natural gas from being routed to a sales line, and therefore directed the EPA to determine what constitutes an unreasonable delay. In this action, the EPA is finalizing provisions that clarify the definition of an unreasonable delay for the purposes of this exemption, under what circumstances the permitting delay exemption will be available to WEC obligated parties, and what emissions (*i.e.,* from what sources) are eligible for the exemption.

CAA section 136(f)(5) establishes an exemption for emissions resulting from delay in environmental permitting by stating, ''Charges shall not be imposed pursuant to paragraph (1) on emissions that exceed the waste emissions threshold specified in such paragraph if such emissions are caused by unreasonable delay, as determined by the Administrator, in environmental permitting of gathering or transmission infrastructure necessary for offtake of increased volume as a result of methane emissions mitigation implementation.''

This provision exempts from the charge certain emissions occurring at facilities in the onshore and offshore production segments where permitting has been unreasonably delayed. Paragraph (1) referenced in the exemption refers to CAA section 136(f)(1), which establishes the waste emissions threshold for applicable facilities in the production sector, as discussed in section II.B. of this preamble. The exemption is limited to emissions occurring as a result of certain delays in environmental permitting of gathering or transmission infrastructure necessary for offtake of increased volume as a result of methane emissions mitigation implementation. The EPA interprets ''gathering or transmission infrastructure necessary for offtake'' to include gathering and transmission pipelines and compressor stations, and ''increased volume as a result of methane emissions mitigation implementation'' to include increased amounts of natural gas at on- or offshore production facilities available for transport that would have otherwise been emitted if not for an unreasonable delay in the environmental permitting of offtake infrastructure.

a. Emissions Eligible for the Permitting Delay Exemption

To assist in defining and determining ''unreasonable delay'' related to environmental permitting, the EPA is finalizing a set of four criteria for applying the unreasonable delay exemption established by CAA section 136(f)(5). These criteria only apply in the context of determining eligible emission exemptions for the implementation of CAA 136(f)(5) and this final rulemaking; they are not intended to speak to the reasonableness of a permitting delay in any other context. The EPA understands that the issue of what constitutes an unreasonable delay is multi-faceted and may be quite different under different regulatory and factual circumstances. At the same time, the EPA believes it is important in the context of this program to provide a definition that is consistent with the statutory charge, practical for the EPA to administer, and straightforward for applicable facilities to follow. With those caveats in mind, the EPA is finalizing the following four criteria for implementing this exemption, largely as proposed: (1) the facility must have emissions that exceed the waste emissions threshold; (2) the entity seeking the exemption must have not contributed to the delay in permitting; (3) the exempted emissions must be those resulting from gas used as an onsite fuel source, gas used for another useful purpose that an otherwise purchased fuel or raw material would have served, gas reinjected into a well, or gas flared, if that gas would have been routed to a gas gathering flow line or collection system to a sales line without the permit delay; and (4) a period of 36 months must have passed from the time a submitted permit application was determined to be technically complete by the applicable permitting authority.

The EPA believes this approach aligns with the statutory text and meets the Congressional intent of this exemption, while also providing reporting facilities with a clear and predictable set of criteria that the EPA can apply in a timely manner. The EPA requested and received comment on numerous aspects of this exemption. Comments on the four proposed criteria for determining exemption eligibility are discussed in the following paragraphs. Several commenters recommended that the EPA retain strong and clear criteria in the final rule for operators seeking an exemption based on unreasonable environmental permitting delays. Separate from the four criteria, several commenters were opposed to the proposed approach of using defined criteria for assessing exemption eligibility and recommended that the EPA evaluate each eligibility claim on a case-by-case basis. These commenters stated that the circumstances of each individual permitting delay are unique such that they can only be assessed on a case-by-case basis. The EPA decided against such an approach in this final rule for several reasons. Reviews of the individual circumstances of each situation would run counter to Congressional intent because facilities would be unable to predict what they owe, take action to limit any applicable charge, or settle their WEC obligation in a timely manner, potentially leading to payments that were later found subject to this exemption. The approach the EPA is adopting means that payments are more likely to align with amounts owed, including applicable exemptions, and thus more closely track the purpose for which Congress included this exemption. A case-by-case approach would also create a significant time and resource burden for both regulated entities and for the EPA. We expect that many types of permitting situations can arise, with many permutations. If industry were required to demonstrate unreasonable delay on a case-by-case basis, the review process would have resulted in uncertainty for industry and could have led to a significant backlog, thus making the annual calculation of the WEC obligation unduly burdensome. In addition, case-by-case decision making would require repeated exercise of judgment, which could lead

to inconsistent results and protracted disputes, interfering with the Congressional purpose in including this exemption. In order to ensure that the unreasonable delay exemption can be administered in an efficient manner, and to provide industry with clear and predictable requirements that must be met to receive this exemption, the EPA is finalizing the proposed approach of utilizing four set criteria to evaluate eligibility for the unreasonable delay exemption. As described in this section, the EPA has finalized certain changes to the individual criteria, after consideration of comments, to increase the accessibility and practicality of implementing this exemption.

The EPA notes that the four criteria used to evaluate eligibility for the WEC unreasonable delay exemption, including the timeframe, are for the purpose of defining the emissions eligible for an exemption for the purposes of the implementation of CAA 136(f)(5) and this rulemaking only and are not applicable for defining an unreasonable delay outside of this context. The criteria in this section do not apply to the determination of unreasonable delay for purposes of the National Environmental Policy Act (NEPA), the Administrative Procedure Act (APA), or any other law involved in permitting processes or any other agency actions. In particular, the timeline criterion should not be considered applicable or informative to the determination of unreasonable delay in any context other than determining emission exemptions for the implementation of CAA 136(f)(5) and this rulemaking.

The first criterion, that the facility must have emissions that exceed the waste emissions threshold, is based on CAA 136(f)(5), which states that ''charges shall not be imposed pursuant to paragraph (1) on emissions that exceed the waste emissions threshold specified in such paragraph if such emissions are caused by unreasonable delay.'' A straightforward reading of this language limits the exemption to emissions exceeding the waste emissions threshold. Since charges will not be imposed if emissions are below the waste emissions thresholds, an exemption is unnecessary in such cases and, as per the statutory text, not applicable. For facilities that exceed the waste emissions threshold, emissions eligible for the permitting delay exemption will be subtracted from the facility emissions that exceed the waste emissions threshold. The exempted emissions will not be used to reduce emissions totals below the threshold (*i.e.,* the lowest possible WEC applicable emissions for a facility with the exemption are zero).

The second criterion relates to responsiveness on the part of the production sector WEC applicable facility that is reporting emissions caused by a delay in gathering or transmission infrastructure: the entity potentially eligible for the exemption (*i.e.,* a WEC obligated party's WEC applicable facility in the onshore or offshore production sector) cannot have contributed to the unreasonable delay in permitting. We proposed that neither the WEC obligated party seeking the exemption, nor the entity responsible for seeking the permit, may have contributed to the delay. Several commenters explained that the production facilities seeking the exemption are often separate from the midstream entities seeking the permit, and that the production companies may have no control or influence over the midstream company's interaction with permitting authorities. After consideration of comments received on this criterion, we recognize that there may be limited or no control by the WEC obligated party seeking the exemption over the responsiveness of a separate permittee. Therefore, to increase the accessibility of this WEC exemption, the EPA is finalizing that only the WEC obligated party seeking the exemption is relevant for the criteria of contribution to delay in the environmental permitting process.

Contributions to the delay by the WEC obligated party seeking to exempt a portion of their emissions from one or more WEC applicable facilities due to an unreasonable delay will be determined based upon the timeliness of response to requests for additional information or modification of the permit application, as applicable. A WEC obligated party seeking this exemption may or may not be the entity seeking the permit, but still may be required to provide permit relevant information. Delays in response by the WEC obligated party seeking the exemption exceeding the response time requested or agreed to by the permitting agency regarding requests for additional information or a permit application revision, or responses that exceed 30 days from the request if no specific response time is requested, are considered to contribute to the delay in processing the permit application. Upon review and consideration of comments regarding clarification on whether lawsuits contributing to delays in the permitting process would be included in this exemption, the EPA is finalizing that delays from litigation in the environmental permitting process of gathering or transmission infrastructure are generally eligible for this exemption, except in those cases when the entity requesting the exemption is a plaintiff in said lawsuit. Therefore, the EPA is finalizing that delays contributed by the entity seeking the exemption either through delayed response or unresponsiveness during the permitting process or through initiation of a lawsuit regarding the permitting process in question are ineligible for the exemption. Note that this determination of what constitutes a delay eligible for the exemption in environmental permitting is specific solely to implementation of CAA section 136(f)(5) and this rulemaking for part 99 and is not applicable to any other section of the CAA, or any permitting program administered by the EPA or other Federal permitting authorities, or by a State, Tribal or local permitting authority.

The third criterion is that the exempted emissions must be those resulting from specific emissions sources and activities. The EPA proposed that only flared emissions would be eligible for the exemption. The EPA received comment recommending that emissions from other sources also be eligible for the exemption. Specifically, commenters requested adding emissions resulting from activities that are compliance options for associated gas under NSPS OOOOb and EG OOOOc. The EPA agrees that emissions from the implementation of these additional methane emissions mitigation activities should be eligible for exemption, and notes that beneficial use and reinjection are often preferable to flaring, as demonstrated by the NSPS OOOOb and EG OOOOc associated gas compliance options' infeasibility determination requirement prior to routing gas to a control device. After consideration of these comments, the EPA is finalizing a revised list of emissions sources that are eligible for the exemption to more closely align the WEC with the 2024 NSPS/EG rule: the use of gas as an onsite fuel source, gas used for another useful purpose that an otherwise purchased fuel or raw material would have served, gas reinjected into a well, and flaring of gas. The EPA is finalizing that emissions from these sources must meet two criteria to be eligible for exemption: (1) all activities associated with these emissions must be in compliance with all applicable environmental local, State, and Federal regulations, and (2) the emissions must have only occurred as the result of an unreasonable delay in permitting, as

defined in this section of the preamble and 40 CFR 99.30. The EPA believes that this approach reasonably follows from the text of section 136(f)(5), which exempts emissions caused by unreasonable delay in the permitting of ''gathering or transmission infrastructure *necessary for offtake of increased volume as a result of methane emissions mitigation implementation.*'' [36] Other emissions occurring at the wellsite are not exempt because they are not associated with the delay or because they do not occur in compliance with applicable regulations. Any emissions from activities that are not in compliance with applicable regulations are ineligible for the exemption. This approach accords with the text of section 136(f)(5), which states that the exemption is for emissions occurring as a result of unreasonable delay in permitting required for the build out of infrastructure ''necessary for offtake of increased volume *as a result of* methane emissions mitigation'' [37] The EPA understands that this provision is designed to exempt emissions from activities done in compliance with regulations, where sources are prepared to capture gas but cannot yet do so due to lack of offtake infrastructure.

The fourth criterion is that an eligible ''unreasonable delay'' would be a delay that exceeds 36 months from the date that a submitted environmental permit application was determined to be technically complete by the relevant permitting authority. This time period is not tied to the timing of the WEC; a facility that meets all four criteria would be eligible for the exemption in the first year of the WEC if the time period requirement has been met. The relevant permitting authority could be the United States Federal Energy Regulatory Commission (FERC), or other Federal, State or local agencies that issue environmental permits. The environmental permitting process can require multiple steps, and target dates for permit actions can vary by regulatory agency and depend, for example, on whether the relevant permit is for a new or existing source, or whether the action is a major or minor modification. This 36-month timeframe for unreasonable delay is intended to provide a predictable process for determination of this exemption, given that there are so many different contexts in which it might apply, and the unreasonableness of each could vary widely, and is not specific to particular permitting actions or agency timelines.

The EPA proposed a timeline somewhere in the range of 30 to 42 months, with the default to be specified in this final rule after consideration of comments received. This preliminary range was based on the EPA's understanding of timelines for oil and gas permitting across Federal agencies. In particular, the preliminary range was informed by the EPA's review of data made available through the Federal Permitting Improvement Steering Council (FPISC) through Title 41 of the Fixing America's Surface Transportation Act (FAST–41). The ''Recommended Performance Schedules for 2020'' released by FPISC contains data for the Federal review and permitting of 18 pipeline projects under the FAST–41 program.[38] For these projects, the mean time from receipt by FERC of a complete application to the issuance of a certificate of public convenience and necessity for interstate natural gas pipelines was 23 months, with three of the 18 projects (17 percent) exceeding 30 months. Criteria for inclusion in the FAST–41 program include projects that are considered likely to require investment exceeding $200,000,000 and that do not qualify for abbreviated review under applicable law; or projects of a size and complexity that the FPISC determines are likely to benefit from inclusion.[39] On this basis, the EPA believes the FAST–41 dataset may be a conservative population (*i.e.,* require more complex environmental review and permitting) when compared to the total of all gathering or transmission infrastructure projects.

The proposed range of 30 to 42 months also took into account the 2023 Fiscal Responsibility Act, which set a limit under the National Environmental Policy Act of 1 year for completion of an Environmental Assessment and 2 years for completion of an Environmental Impact Statement unless extended by the lead agency in consultation with the applicant or project sponsor. However, the amount of time necessary to complete an Environmental Assessment or Environmental Impact Statement will vary depending on the specific agency action at issue, and the proposed timeline was not intended to reflect a determination of the reasonable length of a time necessary to complete such analysis in any specific instance. For projects requiring approval or permitting from a Federal agency, completion of an Environmental Assessment or Environmental Impact Statement must occur prior to the agency taking a final agency action. Additional steps in the process that must be completed following completion of review under NEPA may add several months to the overall timeframe (*e.g.,* convening of FERC to approve or deny a certificate of public convenience and necessity).

The EPA did not receive substantive comments supporting a specific number of months from the proposed range of 30 to 42 months. Considering our analyses, and in an effort to simplify and streamline requests for this exemption, we determined that an approach of 36 months is appropriate and in alignment with the Congressional intent of specifying delays that are *unreasonable,* only for the purposes of this unreasonable environmental permitting delay exemption under the WEC.

All four criteria must be met and verified by the EPA for emissions to be eligible for this exemption. No single factor, including timing, is determinative as to whether a delay is unreasonable in the context of this exemption. We are not assessing whether a delay of a period of 36 months alone (*i.e.,* in the absence of the other three criteria) should be considered unreasonable in the context of this exemption, and we are not assessing the reasonableness of a particular timeframe or collection of conditions outside of the context of this exemption specific to CAA section 136. An assessment of reasonableness in any other context depends on the circumstances specific to that context, which can vary considerably and there is no straightforward way to determine whether a delay is reasonable or unreasonable that applies to all contexts.

b. Calculation of Emissions Resulting From an Unreasonable Delay

Through the provisions at 40 CFR 99.32, the EPA is finalizing that exempted emissions are those resulting from gas used as an onsite fuel source, used for another useful purpose that an otherwise purchased fuel or raw material would have served, reinjected into a well, or flared, and these emissions were caused by the delay. Exempted emissions are the methane emissions (or a subset of the methane emissions from these activities) reported

[36] 42 U.S.C. 7436(f)(5) (emphasis added).

[37] *Id.*

[38] Federal Permitting Improvement Steering Council, ''2020 Recommended Performance Schedules.'' Federal Infrastructure Permitting Dashboard. April 6, 2020. *https://www.permits.performance.gov/fpisc-content/recommended-performance-schedules.* Accessed August 28, 2023.

[39] Federal Permitting Improvement Steering Council, ''FAST–41 Fact Sheet.'' Federal Infrastructure Permitting Dashboard. September 13, 2022. *https://www.permits.performance.gov/documentation/fast-41-fact-sheet.* Accessed August 28, 2023.

under subpart W. To calculate the exempted emissions quantity, the entity must determine the time period within the reporting year associated with the emissions that occurred as a result of the delay. The delay begins when emissions would have been avoided through the operation of the gathering or transmission infrastructure, not when construction would have begun, as in many cases the infrastructure would not be immediately in place and operational at the time of permitting approval. For example, a permit to construct might be needed before construction begins, and construction could take months or more before the infrastructure would be in place. Where the exempted emissions cover the entire reporting year, the exempted emissions are the total reported to part 98 for the exempted sources. The exempted flaring emissions would be the total reported to part 98 for flare stacks, associated gas flaring, and the portion of offshore methane emissions attributable to flaring. Note that for reporting year 2024, where a continuous emissions monitoring system (CEMS) was used to measure emissions from a flare stack, the volume of gas sent to that flare stack and associated methane emissions would not be quantified under the final requirements of this part at 40 CFR 99.32(b)(4) and 99.32(c)(8), respectively. This is because pursuant to 40 CFR 98.236(n)(12), methane emissions are not reported for these flare stacks in reporting year 2024 and thus there is no associated quantity of emissions to exempt from charge. Regarding emissions from gas used as an onsite fuel source, the exempted emissions would be the total methane emissions reported to part 98 for onsite combustion and crankcase venting. For emissions from gas used for another useful purpose that an otherwise purchased fuel or raw material would have served, the exempted emissions would be the total methane emissions reported to part 98 for combustion, crankcase venting, and associated equipment leaks. For those emissions from the reinjection of excess gas into the well or injection into another well, the exempted emissions would be those methane emissions reported to part 98 associated with combustion from compressor drivers, crankcase venting, reciprocating or centrifugal compressor venting (associated with reinjection), and equipment leaks (for those components associated with well injection).

Where exempted emissions occur in only a fraction of a reporting year, the facility is to use data on applicable emissions over that timeframe if available, and if unavailable, the facility is to adjust applicable part 98 reported emissions using the fraction of the year that the exemption is available. Where applicable emissions impacted by permitting delay only account for a portion of the total emissions from exempted sources (*i.e.,* associated gas flaring, combustion, compressor emissions), the facility is to adjust their part 98 reported emissions for these sources using company records and/or engineering calculations. We sought comment but received none specifically on the provisions regarding the use of reported flaring emissions to determine exempted emissions, the use of part 98 data, and the approaches for quantifying emissions for fractions of the reporting year.

c. Reporting and Recordkeeping Requirements for the Exemption for Emissions Resulting From a Permit Delay

Through the provisions at 40 CFR 99.31, the WEC obligated party seeking to exempt a portion of their emissions from one or more WEC applicable facilities must provide information on each well pad or offshore platform impacted by the delay. This includes the type of permit, permitting authority, the company name and name of the facility that submitted the permit application, and the date that the permit application was complete. The WEC obligated party must report the planned timing of the commencement of the offtake of gas had the permit not been delayed. This includes a listing of the methane emissions mitigation activities that are impacted by the delay and the volumes of gas associated with and emissions from the use of gas as an onsite fuel source, the use of gas for another useful purpose that an otherwise purchased fuel or raw material would have served, reinjection of the gas into a well, and the flaring of gas, if that gas would have been routed to gathering or transmission infrastructure. This reporting also includes information used in the calculation of emissions from the use of gas as an onsite fuel source, the use of gas for another useful purpose that an otherwise purchased fuel or raw material would have served, reinjection of the gas into a well, and the flaring of gas that is necessary for verification of emissions calculations and is not reported to subpart W of the GHGRP. This also includes a certification of compliance with all applicable local, State, and Federal regulations regarding said emissions. While a listing of each of these applicable regulations is not required to be reported, retention of a record listing of all applicable local, State, and Federal regulations is required. The WEC obligated party must report the time period associated with the emissions that occurred as a result of the delay within the filing year. The WEC obligated party must also certify that the production segment entity impacted by the delay did not contribute to the unreasonable delay. The EPA requires this information for the verification of exemption eligibility and of exempted emission quantity. Reported information will be used to conduct verification as discussed in section III.A.4., and reported information, records and other information as applicable will be used to conduct any auditing that occurs under section III.E.1.

2. Regulatory Compliance Exemption Under CAA Section 136(f)(6)

The regulatory compliance exemption created in CAA section 136(f)(6) allows for WEC applicable facilities subject to methane emissions requirements pursuant to CAA section 111(b) and (d) to claim an exemption from paying the charge if certain criteria are met. As such, Congress explicitly exempts WEC applicable facilities that are in compliance with NSPS OOOOb and EG OOOOc-implementing plans from having to pay the charge. The criteria for exemption from the WEC established by Congress provide a strong incentive for States to develop timely and effective State plans under EG OOOOc and for facilities to comply with the regulations for new and existing sources. In this action, the EPA is finalizing provisions that clarify when the regulatory exemption will become available, under what conditions it can be claimed by a WEC applicable facility, and under what conditions it may be lost.

As described in further detail in this section, upon careful consideration of the public comments received on the numerous facets of the regulatory compliance exemption, the EPA is finalizing changes from proposal to some elements of the exemption in order to better align with Congressional objectives and the text of the statute. The final approach strengthens the incentives for early State action to implement EG OOOOc by taking a State-by-State approach to the required Administrator determinations and requiring that these emission standards be in place before the regulatory compliance exemption is available. At the same time, these changes provide reasonable access to the exemption for applicable facilities working to achieve and maintain compliance with methane

emissions requirements pursuant to CAA sections 111(b) and (d) by limiting the types of compliance deviations that would trigger a loss of the regulatory compliance exemption, by reducing the time period during which a facility that is not in compliance loses the exemption, and, for certain facilities, limiting the emissions that lose the exemption to those from the portion of the facility with noncompliance. In this section II.D.2., we summarize the final approach for all facets of the regulatory compliance exemption. Individual elements of the final exemption requirements are discussed in more detail in the following subsections.

The framework established by Congress in the regulatory compliance exemption statutory text encourages methane reductions in the period before State programs are in effect, and then exempts from charge WEC applicable facilities once they are in compliance with the methane emissions requirements of the final NSPS OOOOb/EG–OOOOc-implementing State and Federal plans.[40] The statutory framework also encourages timely submission of approvable EG OOOOc-implementing State plans and timely compliance with the emissions limitations therein (as well as compliance with the standards of performance in NSPS OOOOb) in order to ensure that those requirements achieve meaningful emissions reductions.

The WEC does not require, but rather incentivizes, methane emissions reductions and sustained emissions mitigation activity across the oil and gas industry. In particular, for WEC applicable facilities in industry segments that are covered by EG OOOOc, the WEC incentivizes emissions reductions earlier than may otherwise be required pursuant to EG OOOOc-implementing State and Federal plans. The EPA expects that, as CAA section 111(b) and (d) facilities implement and comply with the methane emissions requirements of NSPS OOOOb and EG OOOOc-implementing State and Federal plans, many of the WEC applicable facilities that contain those emissions sources subject to those regulations and plans would fall below the waste emissions thresholds, and thus will not be subject to the charge. However, the regulatory compliance exemption recognizes that certain WEC applicable facilities may remain above the waste emissions thresholds even after implementation of the requirements in the final NSPS OOOOb and approved State and Federal plans under EG OOOOc; the regulatory compliance exemption provides an opportunity for relief from charge to these WEC applicable facilities whose constituent CAA section 111(b) and (d) facilities are in compliance with their respective requirements.

Congress provided that the regulatory compliance exemption would only come into effect after a determination by the Administrator that ''(i) methane emissions standards and plans pursuant to subsections (b) and (d) of section 111 have been approved and are in effect in all States with respect to the applicable facilities'' and ''(ii) compliance with the requirements described in clause (i) will result in equivalent or greater emissions reductions as would be achieved by [the 2021 NSPS/EG Proposal], if such rule had been finalized and implemented'' (the ''equivalency determination'').[41] The EPA concludes that the best reading of the statute is that Congress intended to provide an incentive for the EPA to set standards for new methane emissions sources at least as strong as those it proposed, and for States to move promptly in adopting and implementing the standards of performance for existing sources in their EG OOOOc-implementing plans that likewise achieve reductions equal to or greater than those initially proposed. This intention is evident through the Administrator determinations that must be made before the regulatory compliance exemption becomes available. Additionally, the exemption is only available to WEC applicable facilities that are ''subject to and in compliance with methane emissions requirements pursuant to subsections (b) and (d) of section 111.'' [42] Collectively, the criteria in section 136(f)(6)(A) for invoking the exemption mean that if the final NSPS OOOOb and/or EG OOOOc-implementing State or Federal plans are not finalized, the methane emissions requirements therein are not implemented, or the standards are less stringent than those in the 2021 NSPS/EG Proposal, the exemption would not be available. In other words, WEC applicable facilities would not be eligible for the regulatory compliance exemption until all of the requisite conditions are met, and until that time, the WEC provides an incentive to reduce methane emissions.

In this final rule, the EPA is finalizing a determination that the prerequisite Administrator determinations for the regulatory compliance exemption in CAA section 136(f)(6)(A)(i) and (ii) will be made on a State-by-State basis after each State or Federal plan pursuant to CAA section 111(d) is approved and in effect. Also in the final rule, WEC applicable facilities located in a given State (or States, where the facility spans multiple States) will become eligible for the regulatory compliance exemption after the Administrator determination has been made for the State(s) in which the facility is located and at the point in time when the WEC applicable facility is subject to and in compliance with the requirements in the final NSPS OOOOb and applicable EG OOOOc-implementing State and Federal plan(s)—that is, when WEC applicable facilities must begin complying with all of the methane emissions requirements therein. These final requirements for the timing of regulatory compliance exemption availability include two key changes from the proposed rule. First, the final rule includes a shift from the proposed approach of making the exemption available to all WEC applicable facilities at the same time after *all* State plans are approved, to the final approach of making the exemption available on a State-by-State basis. Second, the final rule includes a shift from the proposed approach of making the exemption available upon the effective date of the State or Federal plans, to the final approach of making the exemption available when a WEC applicable facility is ''in compliance with methane emission requirements'' of both the NSPS OOOOb standards and EG OOOOc-implementing State or Federal plans—that is, the point in time when all of the CAA section 111(b) and (d) facilities are legally required to comply with the methane emissions standards therein. Together, these changes help achieve one of the overarching goals of encouraging early emission reductions.

[40] Under the Tribal Authority Rule (TAR), eligible Tribes may seek approval to implement a plan under CAA section 111(d) in a manner similar to a state. See 40 CFR part 49, subpart A. Tribes may, but are not required to, seek approval for treatment in a manner similar to a state for purposes of developing a Tribal implementation plan (TIP) implementing the EG codified in 40 CFR part 60, subpart OOOOc. The TAR authorizes Tribes to develop and implement their own air quality programs, or portions thereof, under the CAA. However, it does not require Tribes to develop a CAA program. Tribes may implement programs that are most relevant to their air quality needs. If a Tribe does not seek and obtain the authority from the EPA to establish a TIP, the EPA has the authority to establish a Federal CAA section 111(d) plan for designated facilities that are located in areas of Indian country. A Federal plan would apply to all designated facilities located in the areas of Indian country covered by the Federal plan unless and until the EPA approves a TIP applicable to those facilities. In this notice, all uses of the phrase ''state and Federal plans'' are intended to include any Tribal plans, to the extent that any Tribal plans are developed to implement EG OOOOc.

[41] CAA section 136(f)(6)(A).

[42] CAA section 136(f)(6)(A).

The EPA is also finalizing other elements of the Administrator determinations under CAA section 136(f)(6)(A)(i) and (ii), including establishing the relative points of comparison for the equivalency determination, in order to ensure that those elements align with the statutory requirements. Because NSPS OOOOb is already finalized and in effect in all States, the EPA is finalizing an approach wherein the Administrator will make these determinations for each individual State once each EG OOOOc-implementing State plan, or applicable Federal plan, is approved.

In this final rule, eligible WEC applicable facilities can seek exemption from the WEC through the regulatory compliance exemption when facilities subject to methane emissions requirements pursuant to NSPS OOOOb and EG OOOOc-implementing State and Federal plans are ''in compliance'' with those requirements. The EPA is finalizing that a WEC applicable facility's eligibility for the regulatory compliance exemption will be based on the compliance status of the CAA section 111(b) and (d) facilities contained within that WEC applicable facility, as indicated in annual reports required to be submitted under NSPS OOOOb and EG OOOOc-implementing State and Federal plans. The EPA proposed that the compliance status of these CAA section 111(b) and (d) facilities would be assessed to determine exemption eligibility, but the specific criteria used to evaluate eligibility are different in this final rule than in the WEC proposal. The EPA is also finalizing other changes to the applicability provisions for this exemption after consideration of comments received. First, the EPA is limiting the scope of noncompliance with NSPS OOOOb and plans pursuant to EG OOOOc that would cause a WEC applicable facility to no longer qualify for the regulatory compliance exemption. For self-reported noncompliance, noncompliance with monitoring requirements, emission limits and any surrogate limits, operating limits (including operating parameter limits), and work practice standards—the categories of noncompliance most likely to result in emissions increases—will disqualify a WEC applicable facility from the regulatory compliance exemption. Also, any violations of NSPS OOOOb or an NSPS OOOOc plan that are adjudicated in an administrative or judicial action will disqualify the WEC appliable facility from the regulatory compliance exemption. Second, the EPA is finalizing that for all WEC applicable facilities, exemption eligibility is assessed on a calendar quarterly basis (*i.e.,* January 1–March 31), compared to the proposal's approach, which would have assessed eligibility on an annual basis. Third, for all WEC applicable facilities defined at the basin-level (*i.e.,* facilities in the onshore production and gathering and boosting industry segments), the EPA is finalizing that loss of exemption availability would be applied at the ''site'' level rather than the facility level;[43] for facilities in all other industry segments, the EPA is finalizing as proposed that the exemption would be lost at the facility level.

In the following sections, the EPA describes in more detail the final determinations regarding the availability of the exemption, and specifically: (1) the point in time at which the Administrator will make the determination(s) pursuant to CAA section 136(f)(6)(A)(i)–(ii) and the process for how the determinations will be made; (2) the point in time at which the regulatory compliance exemption will become available to eligible applicable facilities; and (3) the process for resumption of the WEC pursuant to CAA section 136(f)(6)(B) if the criteria for the regulatory compliance exemption are no longer met. The EPA is also finalizing elements related to the administration of the regulatory compliance exemption, including: (1) how to interpret CAA section 136(f)(6)(A) to govern the interaction between WEC applicable facilities and both CAA section 111(b) affected facilities and CAA section 111(d) designated facilities (collectively referred to in this preamble as ''CAA section 111(b) and (d) facilities'') for the purposes of the regulatory compliance exemption; (2) how compliance with the methane emissions requirements promulgated under CAA sections 111(b) and (d) will be defined for the purposes of the regulatory compliance exemption; and (3) reporting requirements for applicable facilities claiming the regulatory compliance exemption.

[43] Each subpart W facility in the onshore production segment or the gathering and boosting segments is typically comprised of multiple well-pad sites or gathering and boosting sites. A well-pad site is defined in the 2024 Final Subpart W Rule as ''all equipment on or associated with a single well-pad'' and a gathering and boosting site is defined as ''a single gathering compressor station [. . .], centralized oil production site [. . .], gathering pipeline site [. . .], or other fence-line site within the onshore petroleum and natural gas gathering and boosting industry segment''.

a. Timing for the Administrator's Regulatory Compliance Exemption Determinations

Before an applicable facility may claim the regulatory compliance exemption, the Administrator must determine that: (1) ''methane emissions standards and plans pursuant to subsections (b) and (d) of section 111 have been approved and are in effect in all States with respect to the applicable facilities,'' and (2) ''compliance with the requirements described in clause (i) will result in equivalent or greater emissions reductions as would be achieved by the [2021 NSPS/EG Proposal], if such rule had been finalized and implemented.''[44] This framework indicates that Congress intended these prerequisites to exemption availability to encourage timely implementation of the emission reduction requirements in the 2024 Final NSPS/EG and to ensure that those requirements achieve meaningful emissions reductions.

The EPA proposed that both Administrator determinations would be made for the entire nation at one point in time when EG OOOOc-implementing plans were approved and in effect in each and every State that contained WEC applicable facilities. Because the Administrator determinations must be made before the exemption becomes available, under the proposed approach, the exemption would have become available to all States at the same time at a point after the approval of the last State or Federal plan. In other words, the regulatory compliance exemption would have become available to all eligible WEC applicable facilities in the country at the same time, and an applicable facility located in a State or States with an approved plan(s) would be required to wait until all plans in the country were approved and the EPA had then made the necessary Administrator determinations before it could become eligible for the regulatory compliance exemption. The EPA also sought comment on an alternative approach wherein the regulatory compliance exemption would become available on a State-by-State basis based on the finalization of plans for individual States. The EPA received a significant number of public comments on the proposed approach, with many commenters disagreeing with the EPA's proposed interpretation of the statutory text. Such commenters argued that the proposed approach disincentivized States from taking early action in the development of State plans, undercutting Congress' principal goal of

[44] CAA section 136(f)(6)(A).

limiting methane emissions as quickly as possible. They contended that ''proactive States'' would not realize any benefits for their regulated communities by acting early, discouraging quick action. In addition, many commenters stated that the availability of the exemption could be held back by ''lagging States,'' which would unreasonably and unfairly limit the availability of the exemption by making it subject to the action or inaction of the least responsive State. Commenters also argued that the EPA's proposal misinterpreted the phrase ''in all States with respect to the applicable facilities'' in CAA section 136(f)(6)(A)(1), and that this phrase commanded a reading of the statute that supported the alternative ''State-by-State'' approach to the Administrator determinations.

After consideration of public comments, the EPA is finalizing an alternative approach, on which the Agency solicited comment, regarding the timing of the Administrator determinations required in CAA section 136(f)(6)(A)(i)–(ii). As described in the proposed rule, such determinations will occur on a State-by-State basis as State plans are approved and, where appropriate, Federal plans issued pursuant to CAA section 111(d). This approach means that the Administrator will proceed in a State-by-State manner to make determinations that: (i) ''methane emissions standards and plans pursuant to subsections (b) and (d) of section 111 have been approved and are in effect in all States with respect to the applicable facilities,'' and (ii) ''compliance with the requirements described in clause (i) will result in equivalent or greater emissions reductions as would be achieved by the [2021 NSPS/EG Proposal], if such rule had been finalized and implemented.'' CAA section 136(f)(6)(A)(i)–(ii). Upon those determinations as to each State, the exemption will become available to the WEC applicable facilities located in that State when the final compliance dates have passed with respect to both (1) the NSPS OOOOb standards for new sources and (2) the standards established under that State's plan (or Federal plan, if applicable) pursuant to EG OOOOc. See section II.D.2.b. of this preamble for further discussion of when an applicable facility may claim the exemption.

The first Administrator determination is related to the timing of the promulgation of final methane emissions standards under CAA section 111(b) and in State and Federal plans pursuant to an EG issued under CAA section 111(d). The EPA is finalizing a determination that this temporal requirement in CAA section 136(f)(6)(A)(i) is met for all WEC applicable facilities in a particular State at the point in time when *both* (1) emission standards for new sources under CAA section 111(b) have been promulgated and are in effect and (2) a State's plan for existing sources pursuant to an EG issued under CAA section 111(d) has been fully approved by the EPA and is in effect—or if either no State plan or only a partial plan has been approved, a Federal plan is in effect.

Regarding Federal plans, the EPA is finalizing, as proposed, a determination that ''plans pursuant to subsection . . . (d) of section 111,'' CAA section 136(f)(6)(A)(i), includes the promulgation of a Federal plan where the EPA determines that a State has failed to submit a fully approvable State plan, as that is the only way a complete plan pursuant to CAA section 111(d) would take effect in those States. Accordingly, because the emissions standards for new sources under CAA section 111(b) have already been finalized by the EPA in the 2024 Final NSPS/EG, approval of the State (or Federal) plan for States with existing sources subject to the EG under CAA section 111(d) will determine the timing for when the determinations pursuant to CAA section 136(f)(6)(A)(i) and (ii) can be made for each State.

The EPA is finalizing this State-by-State approach based on the Agency's interpretation of the best reading of CAA section 136(f)(6). Specifically, the EPA concludes that the best interpretation of the phrase ''all States with respect to the applicable facilities'' in CAA section 136(f)(6)(A)(i) means that the determination is to be made for each State individually, and that State plans must be approved and in effect for all States in which a WEC applicable facility claiming the exemption is located. The EPA solicited comment on this alternative interpretation at proposal. *See* 89 FR 5338. At proposal, the EPA proposed ''to interpret 'all States' in CAA section 136(f)(6)(A)(i) to mean that every State with an applicable facility (*i.e.,* all States with WEC applicable facilities) must have an approved plan (State or Federal) before the determination [in CAA section 136(f)(6)(A)(i)] can be made.'' *Id.* at 5337. In addition, the EPA proposed to interpret the statutory text to mean that the Administrator must make only *one* determination as to both prongs in CAA section 136(f)(6)(A)(i) and (ii). Upon consideration of public comments received on this proposed statutory interpretation, and upon reexamining the text of the statute, the EPA no longer finds that the proposed approach is the best reading of the statute, and, concludes that the ''State-by-State'' approach to the Administrator determinations that the EPA is finalizing in this rulemaking is the best reading of the statute.

First, commenters contend, and the EPA agrees, that the proposed approach misinterpreted, and thus failed to give appropriate effect to, the modifier ''with respect to the applicable facilities'' in CAA section 136(f)(6)(A)(i). As one commenter noted:

> The term ''the applicable facilities'' [in CAA section 136(f)(6)(A)(i)] refers not to *all facilities* nationwide, but to the *specific* facilities whose eligibility for the Regulatory Compliance Exemption is in question. Giving meaning to all terms of the statute results in the conclusion that a facility is not eligible for the Regulatory Compliance Exemption until all States in which the applicable facility is located have a State or Federal OOOOc plan in effect. As for the words ''in all States,'' they refer not to *all* States that have any existing sources (as the EPA proposes to read them), but rather to all States in which the WEC obligated party has equipment in a given facility. The EPA itself in the proposal repeatedly notes that there are facilities which extend across State lines. *See, e.g.,* 89 [FR] at 5399. All that these words provide is that no facility is eligible for the Regulatory Compliance Exemption for existing sources until all States in which that facility is located have a State or Federal existing-source plan in effect.[45]

Upon reconsideration of the text, the EPA agrees with this commenter that ''with respect to applicable facilities'' is best interpreted to account for the fact that some applicable facilities straddle State lines and that this phrase should not be read to mean, as proposed, that every State in the country with a WEC applicable facility must have a plan pursuant to CAA section 111(d) ''approved and in effect'' before the Administrator can make a determination under CAA section 136(f)(6)(A)(i). This reading is a better interpretation of the statute because it gives meaning to this modifying phrase in the context of the subject identified in CAA section 136(f)(6)(A)—''an applicable facility'' seeking the exemption from the WEC. In other words, when Congress wrote that the exemption's availability depended, in part, on plans being in effect ''in all States with respect to the applicable facilities,'' it meant all the States in which the applicable facilities seeking the exemption operate.

Second, at proposal, the EPA interpreted the use of the singular in CAA section 136(f)(6)(A) directing the

[45] Comment of the American Exploration and Production Council, Document ID No. EPA–HQ–OAR–2023–0434–0276 at p. 20.

EPA to make ''a determination'' on the requirements outlined in CAA section 136(f)(6)(A)(i) and (ii) as limiting the EPA to *one* determination. At proposal, because the EPA believed that the Administrator could only make one determination, which, by necessity, could only be done once all standards and plans were in place, the EPA concluded that we were bound to make the determination only once EG OOOOc-implementing plans were in place in all states. However, upon consideration of the public comments challenging that interpretation and after reexamining the statutory text, the EPA now concludes that the statute does not *require* a reading that limits the Administrator to making only one determination. Rather, the best reading of the phrase ''a determination'' in CAA section 136(f)(6)(A) is that it was intended to ensure that the determination required by both prongs (i) and (ii) had been made with respect to the WEC applicable facility seeking the exemption described in CAA section 136(f)(6)(A). In other words, because ''applicable facility'' is framed in the singular in paragraph (A), it is logical that the prerequisite ''determination'' would also be framed in the singular as to that facility. But that does not indicate the Administrator is *precluded* from making more than one determination as necessary to effectuate availability of the exemption nationwide. We therefore do not read the statute to limit the Administrator to making one determination, but rather believe that the statute indicates that the Administrator is permitted to make multiple determinations. As one commenter explained:

> [T]he singular use of ''a'' within the phrase ''upon a determination by the Administrator'' is countered by the singular word ''an'' within the phrase ''[c]harges shall not be imposed pursuant to subsection (c) on an applicable facility that is subject to and in compliance with methane emissions requirements.'' This phrase clearly contemplates that the Regulatory Compliance Exemption is being made for particular applicable facilities, and *that* is the correct frame through which the subsequent phrase ''a determination'' should be made.[46]

As just described, the EPA agrees with this statutory interpretation. And further, because the first of the two Administrator determinations in CAA section 136(f)(6)(A)(i) hinges on the approval of each State's plan (which will apply to all WEC affected facilities within the State), the best approach to implementing this statutory directive is for the Administrator to make the determinations in CAA section 136(f)(6)(A(i) and (ii) on a State-by-State basis.

The EPA notes that while the best approach to meaningfully implementing these statutory provisions is for the EPA to make a determination under CAA section 136(f)(6)(A) upon the approval of each State plan, that does not preclude the EPA from reviewing and revising an Administrator determination if a standard or plan is later revised, in order to ensure that the conditions of CAA section 136(f)(6)(A) are still met, consistent with the resumption of charge language in CAA section 136(f)(6)(B). Moreover, the language in CAA section 136(f)(6)(B), which anticipates that ''the conditions in clause (i) or (ii)'' of CAA section 136(f)(6)(A) may at some point ''cease to apply,'' supports the EPA's interpretation in this final rule that the Administrator is not bound to making only one determination. Congress clearly anticipated that the EPA might revisit its determinations if the methane emissions standards pursuant to CAA section 111(b) and (d) change in the future. Given that possibility, the statute cannot be read to mean that the Administrator must be limited to making only one determination as to the conditions in CAA 136(f)(6)(A)(i) and (ii) and never again revisit it.

Many facets of the proposed approach to the regulatory compliance exemption flowed from the interpretation that the Administrator must make only one determination as to all States. The EPA no longer finds that interpretation to be persuasive or consistent with the statutory text in light of the many persuasive comments offering a different view. Accordingly, in light of the fact that the statute permits the Administrator to make more than one determination, and in order to give meaning to the phrase ''with respect to the applicable facilities,'' the EPA has concluded that finalizing a ''State-by-State'' approach to the Administrator determinations aligns with the best reading of CAA section 136(f)(6)(A).

The second determination that must be made before the regulatory compliance exemption becomes available to an applicable facility is whether the final ''methane emissions standards and plans'' provide equivalent or greater emissions reductions than would have been achieved by the 2021 NSPS/EG Proposal, had it been finalized and implemented as proposed. As the EPA explains in section II.D.2.d. of this preamble, the EPA has concluded that this determination should take into account the content of the final State plans. Because plans pursuant to CAA section 111(d) will not be finalized for several years, the EPA cannot make a final equivalency determination in this final action. Instead, the EPA is finalizing an approach wherein the equivalency determination will be made for each individual State with CAA section 111(b) or (d) facilities after the CAA section 111(d) plan (*i.e.,* State or Federal plan) for that State is approved. This timing will allow for evaluation of the emissions reductions achieved by the final NSPS OOOOb and by the final State or Federal plan pursuant to EG OOOOc. More details about the nature and scope of the equivalency determination are discussed in section II.D.2.d. of this preamble.

b. Timing of Regulatory Compliance Exemption Availability to WEC Applicable Facilities

The WEC program must also establish at what point in time a WEC applicable facility may claim the regulatory compliance exemption once the Administrator determinations have been made. CAA section 136(f)(6) provides that the charges shall not be imposed ''on an applicable facility that is subject to and in compliance with methane emissions requirements pursuant to subsections (b) and (d) of section 111.'' The EPA proposed that the exemption would become available to applicable facilities in a State once all of the standards pursuant to NSPS OOOOb and the EG OOOOc-implementing plan were effective, because at that point the facilities would be technically ''subject to'' emissions standards, even if the compliance dates were in the future.[47] This proposed approach, combined with the proposed approach for the timing of

[46] *Id.* at p. 22.

[47] An ''effective date'' is the date upon which a final rule and the associated amendments to the Code of Federal Regulations become legally effective after publication of the final rule in the **Federal Register**. *See, e.g.,* 5 U.S.C. 553(d) (establishing presumption that a final rule's effective date be 30 days after publication in the **Federal Register**, unless good cause is found for an earlier date); 5 U.S.C. 801(a)(3) (establishing requirement that a ''major'' rule take effect no sooner than 60 days after publication in the **Federal Register**). A ''compliance date'' is the date(s) included within the effective final rule upon which a regulated entity must comply with specified requirements of the regulations. *See, e.g.,* 40 CFR subpart Ba, 60.21a(g) (''*Compliance schedule* means a legally enforceable schedule specifying a date or dates by which a source or category of sources must comply with specific standards of performance contained in a plan or with any increments of progress to achieve such compliance.''). In some cases, a regulation's effective date and compliance date may be the same date. In other cases, a regulation may be in effect, but not yet require compliance with some or all of its provisions until a future date. Some regulations have multiple different compliance dates for different regulatory provisions.

the exemption's prerequisite determinations, meant that all WEC applicable facilities in the country would have had gained access to the exemption at the same time—as soon as the determinations required by CAA section 136(f)(6)(A)(i)–(ii) had been made.

Based on continued consideration of the statutory text and Congress's intent in promulgating the regulatory compliance exemption, the EPA is making revisions in this final rule from the proposed approach for when WEC applicable facilities may begin to claim the exemption. The EPA is finalizing that WEC applicable facilities will be able to claim the regulatory compliance exemption once the final compliance date for applicable CAA section 111(b) and (d) facilities has passed in the State(s) and Tribal lands in which the WEC applicable facility is located. The final compliance date is the date at which all CAA section 111(b) and (d) facilities are required to comply with all of the final specified requirements pursuant to NSPS OOOOb or an EG OOOOc-implementing plan. For example, if an approved plan establishes compliance dates for some CAA section 111(d) designated facilities in 2029 and compliance dates for other designated facilities in 2030, all WEC applicable facilities in that State could begin to claim the exemption as of the 2030 compliance date. In cases where the final compliance date applies to a CAA section 111(b) or (d) facility subject to a methane emissions standard that has phased-in requirements, the final compliance date is the date of the final requirement to be phased in.

The EPA is finalizing that for WEC applicable facilities in industry segments for which a facility is defined at the basin level in subpart W that span multiple States (*e.g.,* onshore production and gathering and boosting facilities), the exemption is not available until the final compliance date has passed for all States in which the facility is located. In cases where such a WEC applicable facility could span multiple States because it is located in a basin that covers multiple States, but the WEC applicable facility itself is only located in a single State, exemption availability for that facility will be based only on the final compliance deadline for the single State in which the WEC applicable facility is located. For purposes of implementation of the regulatory compliance exemption in this final rule, a WEC applicable facility in the onshore production or gathering and boosting industry segment is considered to be located in each State or Tribal lands that a well-pad site or gathering and boosting site, as applicable, was reported to subpart W for the reporting year. These approaches for facilities in industry segments with facility definitions that span multiple States also apply to facilities that span both States and Tribal lands. For example, in such cases where a WEC applicable facility is located both in a State and on Tribal land, the final compliance date across all of the applicable State, Federal, and Tribal EG OOOOc-implementing plans must pass before the exemption is available to the WEC applicable facility. Once the exemption is available to a WEC applicable facility under this framework, all CAA section 111(b) and (d) facilities contained within a WEC applicable facility will be required to demonstrate compliance in order to claim the exemption pursuant to CAA section 136(f)(6)(A). The requirements governing this compliance demonstration are discussed in more detail in section II.D.2.f. of this preamble.

The EPA is finalizing an approach in which all WEC applicable facilities with CAA section 111(b) and (d) facilities in a single State will be eligible for the regulatory compliance date at the same time. Establishing a single date for exemption availability for each State ensures that the exemption can be properly implemented and that the EPA can accurately verify exemption eligibility, while simultaneously reducing industry burden. Based on the data collected under subpart W and data to be collected under NSPS OOOOb and EG OOOOc-implementing plans, it is not feasible for the EPA to verify all applicable CAA section 111(b) and (d) facilities contained within each WEC applicable facility in order to determine a facility-specific compliance date. The complexity required for industry reporting and the EPA's verification render making the compliance exemption available at this granular of a level unworkable for several reasons. First, based on data submitted under subpart W, the EPA is not able to determine whether a particular source of emissions is regulated under NSPS OOOOb or an EG OOOOc-implementing plan (or neither), and therefore the EPA cannot determine which compliance deadlines are applicable. Further, the applicable compliance date would also be subject to change for a specific WEC applicable facility as individual assets are sold and/or acquired. In any event, the EPA anticipates that compliance dates in most State plans will be close together in time. To the extent that there are compliance dates for CAA section 111(d) facilities spanning more than 1 year, the WEC will continue to serve as bridge until the final compliance date has passed, with those facilities already in compliance or which have taken further actions to reduce methane emissions having the opportunity to reduce or eliminate their WEC obligation. Importantly, irrespective of CAA section 111 compliance, only WEC applicable facilities with methane emissions over the waste thresholds will be subject to charge. Thus, WEC obligated parties may choose to act early to reduce applicable emissions sufficient to avoid the charge, even before any compliance dates have passed.

The EPA is finalizing this ''compliance date'' approach both because it aligns with the best reading of the statute, and because it aligns with one of Congress's primary goals for the WEC—to continuously incentivize methane emission reductions across the oil and gas industry during the period leading up to the date at which the requirements in EG OOOOc-implementing plans are fully implemented. Although the EPA proposed to make the exemption available once all CAA section 111(b) and (d) standards were effective, the EPA also considered and sought comment on this alternative approach of making the regulatory compliance exemption available upon the date which CAA section 111(b) and (d) facilities are required to comply with requirements in NSPS OOOOb and the EG OOOOc implementing plans. *See* 89 FR 5339–40 (second and third discussed alternative approaches, considering both ''all States'' and ''State-by-State'' approaches). Specifically, the EPA noted that it ''considered an approach that would make the regulatory compliance exemption available to WEC applicable facilities meeting the criteria at a State-by-State level as the final compliance deadline in a State or Federal plan for CAA section 111(d) facilities was reached,'' and sought comment on such an approach. *Id.* As noted at proposal, under this approach, ''the EPA would read 'in compliance with methane emissions requirements' to mean that *all* compliance dates in the NSPS and the State and Federal plans have passed.'' *Id.* While the EPA stated at proposal that it believed that this ''approach that would make the regulatory compliance exemption available to WEC applicable facilities meeting the criteria at a State-by-State level as the final compliance deadline in a State or Federal plan for CAA section 111(d) facilities was reached'' was not as well aligned with the statute as the

proposed approach, the EPA now concludes that interpreting this phrase as described in the proposed alternative is, in fact, the better reading of the statute, particularly given the EPA's determination in this final rule that the statute also anticipates a State-by-State approach for the Administrator determinations. As one commenter stated:

> [T]he proposed approach of exemption availability once the plans are approved instead of after the plans are fully implemented only delays the reduction of methane emissions . . .
>
> Therefore, granting any regulatory compliance exemption before the passing of the ''upper bound'' compliance dates of the CAA section 111 rules, as the EPA is proposing to do, is in contradiction with the Congressional intent of the Inflation Reduction Act, will result in greater methane emissions than the alternative, and should be avoided.[48]

The EPA agrees with this commenter and, for the following reasons, the EPA is finalizing the alternative approach.

First, upon re-examining the text and in light of comments received, the EPA has concluded that applying the regulatory compliance exemption once State plans are implemented, rather than upon approval, is the best reading of the statutory text. Section 136(f)(6)(A) provides that ''charges shall not be imposed pursuant to subsection (c) on an applicable facility that is *subject to and in compliance with* methane emissions requirements pursuant to subsections (b) and (d),'' subject to the Administrator determinations. Notably, the text states that applicable facilities must be both ''subject to *and* in compliance with'' (emphasis added) methane requirements. It is a longstanding principle of statutory construction that every word or phrase in a statutory provision is to be given effect, and none should be ignored or assumed to be duplicative. *See, e.g, Reiter* v. *Sonotone Corp.,* 442 U.S. 330, 339 (1979); *Bennett* v. *Donovan*, 4 F. Supp. 3d 5, 10 (D.C. Cir. 2013) (acknowledging that the court must ''give effect, if possible, to every clause and word of a statute, avoiding, if it may [], any construction which implies that the legislature was ignorant of the meaning of the language it employed. Put differently, a court must not interpret a statute so as to render any words within that statute as 'mere surplusage.'') (citations omitted). Accordingly, the phrase ''subject to'' and the phrase ''in compliance with'' must have different legal meanings. It follows that this provision requires a WEC applicable facility to be both ''subject to'' methane emissions standards and plans under CAA section 111(b) and (d), and actively ''in compliance with'' the specific requirements therein, meaning that these requirements must actually have been implemented. In addition, the phrase ''in compliance with methane emission requirements'' indicates that the text is concerned with the contemporaneous implementation of standards at the CAA section 111(b) and (d) level. Being ''in compliance'' with a requirement, by necessity, means that a requirement mandate a regulated entity take a particular action or meet a particular standard. ''Methane emission requirements pursuant to [section 111(d)]'' will so mandate only upon the compliance date(s) in the section 111(d)-implementing State or Federal plan. This means that it is not sufficient that a standard be *effective* because it has been approved as part of an EG OOOOc-implementing State or Federal plan, if compliance with that standard is not required until some future date. There are no monitoring or reporting obligations by which one would measure compliance, for example, until that compliance date arrives. Similarly, some ''methane emission requirements pursuant to [section 111(b)],'' have tiered compliance dates, meaning that the compliance dates vary between emissions sources. In such case, the WEC applicable facility is only eligible for the regulatory compliance exemption once the compliance dates for all CAA section 111(b) and (d) sources have occurred and the Administrator determinations have been made. In sum, the EPA concludes that the best reading of ''in compliance'' means that an entity is presently subject to actual, emissions limits or work practice standards that require contemporaneous actions on the part of the regulated CAA section 111(b) and (d) sources to comply with the standards.

Second, the EPA concludes that this final approach is best aligned with Congressional intent to incentivize methane emissions reductions on an ongoing and continuous basis, both through the WEC and through compliance with CAA section 111(b) and EG OOOOc-implementing plans. This statutory scheme provides relief from the WEC for facilities once they are reducing methane emissions in compliance with requirements under CAA section 111. As noted at proposal, implementation of the requirements included in OOOOc-implementing State or Federal plans may not be mandated immediately upon the date at which the plan goes into effect. In other words, the plans may include requirements with compliance dates that occur at a future date after plan approval, and such requirements could be implemented over multiple compliance dates in a phased manner or include deadlines for various increments of progress. Under the proposed approach, there would likely have been a gap during which WEC applicable facilities would have been able to claim the regulatory compliance exemption, but the CAA section 111(d) facilities within those WEC applicable facilities would not have actually been required to reduce emissions pursuant to the State plan's methane emission requirements. For example, if under the proposed approach the exemption had become available to all States in the country with WEC applicable facilities in 2028, based on the approval of all State plans, but those approved plans did not require implementation of methane requirements until the presumptive compliance deadline of 2029,[49] or even later, a multi-year gap would have existed in which there would be no incentive for CAA section 111(d) existing facilities within a WEC applicable facility to reduce emissions in advance of the compliance deadline. This scenario would be contrary to the Congressional intent of the regulatory compliance exemption, which is to provide relief from the WEC to applicable facilities that are ''subject to and in compliance with methane emissions requirements pursuant to subsections (b) and (d) of section 111''—that is, those actually achieving the requirements and achieving the attendant emissions reductions therein.

In addition, the concerns that the EPA expressed at proposal about a ''compliance date'' approach are no longer concerns given that we have now concluded that the best reading of the statute is a State-by-State approach to the Administrator determinations, as explained in section II.D.2.a. of this preamble. Notably, because compliance dates for the relevant methane emissions standards for a particular WEC applicable facility may occur at different points in time (because there are varying compliance dates for

[48] Comment of Catherine Wolfram, Ph.D., William F. Pounds Professor of Energy Economics; Professor, Applied Economics, Massachusetts Institute of Technology, Document ID No. EPA–HQ–OAR–2023–0434–0266.

[49] The 2024 Final NSPS/EG rule establishes a final compliance deadline in 2029 for CAA section 111(d) facilities. States may elect to require earlier compliance deadlines, and approved plans may also extend compliance deadlines beyond 2029 via the ''remaining useful life and other factors'' provision, or RULOF.

individual methane emissions sources within NSPS OOOOb and it is possible that the same will be true for EG OOOOc-implementing plans), we noted at proposal that such an approach may have the result of delaying the availability of the regulatory compliance exemption for many years and could make the exemption available to States at different times. *See* 89 FR 5339–40. This was particularly true when combined with the proposed approach to the Administrator determination required by CAA section 136(f)(6)(A)(i) that would only make the exemption available once plans were approved and in effect for all States. In that case, a WEC applicable facility in a State with a promptly submitted and approved EG OOOOc-implementing plan with ambitious compliance deadlines would not have been able to access the exemption until not only all States had approved plans, but all States' plans' compliance deadlines had passed—which could vary amongst States. However, under the final rule, the fact that WEC applicable facilities in some States will be eligible for the regulatory compliance exemption at different points in time is inherent in, and consistent with, the statutory scheme and is the best interpretation of the text and policy goals of the WEC.

The approach adopted in this final rule alleviates the concerns voiced in response to the proposed approach to the Administrator determinations, in which all States with WEC applicable facilities would need to wait for every other State, even potentially ''lagging'' or ''delayed'' States, to have NSPS OOOOb standards and OOOOc-implementing plans approved and in effect before WEC applicable facilities in that State would be eligible for the exemption. By proceeding in a State-by-State manner for the Administrator determinations and making the regulatory compliance exemption available upon the final compliance date in NSPS OOOOb and the relevant EG OOOOc-implementing plan, the EPA is providing States with more control over when the regulatory compliance exemption will become available for applicable facilities within their jurisdictions, while also encouraging methane emissions reductions to occur sooner. The final approach also ensures that WEC applicable facilities can secure the regulatory compliance exemption once their constituent CAA section 111(b) and (d) facilities are actually achieving reductions under NSPS OOOOb and the relevant EG OOOOc-implementing plan(s). Under the final approach adopted in this final rule, States will be incentivized to promptly submit approvable EG OOOOc-implementing plans with timely compliance deadlines so that WEC applicable facilities within their borders gain access to the exemption. Individual States will decide how best to structure plans in terms of compliance dates consistent with EG OOOOc, and how quickly to submit proposed plans to the EPA for approval. The final approach aligns with the intent of the WEC to incentivize early reductions of methane emissions while providing flexibility to States to determine when the regulatory compliance exemption becomes available.

c. Emissions Year in Which Regulatory Compliance Exemption Takes Effect

While the data collected under subpart W for the purposes of WEC calculation are reported on a calendar-year basis (*i.e.,* a reporting year is a calendar year), the date at which all of the criteria for the regulatory compliance exemption will be met is not yet known and could fall at any point in the course of a reporting year. The EPA is finalizing that for WEC applicable facilities that contain any CAA section 111(d) facilities, once the applicable determinations required by CAA section 136(f)(6)(A)(i)–(ii) have been made, the regulatory compliance exemption will take effect in the reporting year of the final compliance date in the EG OOOOc-implementing plan(s) applicable to the to the State(s) in which the WEC applicable facility is located. For example, if the final compliance deadline in an approved State plan is in June 2029 and the Administrator has made the necessary determinations by 2029, all eligible WEC applicable facilities in that State meeting the compliance requirements discussed in section II.D.2.f. of this preamble would be exempt from the WEC for the entire 2029 reporting year. Comments on the proposed rule were supportive of the proposed approach to make the exemption take effect the same reporting year that the prerequisite requirements for the exemption are met (as opposed to another year). The final approach is aligned with the purpose of CAA section 136(f)(6)(A) to provide the regulatory compliance exemption as a means for WEC applicable facilities to avoid being subject to the charge when their constituent CAA section 111(b) and (d) facilities are all subject to and in compliance with their applicable methane emissions standards.

d. Approach for Regulatory Compliance Determinations

As described in section II.D.2.a., the Administrator must make two determinations before the regulatory compliance exemption can be claimed by a WEC applicable facility: one related to whether standards and approved plans are in effect and a second related to whether those standards and plans achieve equivalent reductions to the EPA's 2021 proposed NSPS and EG. While those determinations will necessarily need to be made at a later point, the EPA is finalizing certain elements related to the approach for the determinations required by CAA section 136(f)(6)(A). In this rulemaking, the EPA is finalizing a decision that both determinations will be made simultaneously for each individual State once both the NSPS OOOOb standards and EG OOOOc-implementing plans for that State are approved and in effect, as required by section 136(f)(6)(A)(i). The EPA is also finalizing a decision regarding the points of comparison for making the equivalency determinations, which are required under section 136(f)(6)(A)(ii). The EPA did not propose and is not taking final action on any other elements of the equivalency determination at this time. These elements, along with both determinations themselves, will be addressed in a future administrative action(s).

The EPA is finalizing a decision that, when the criteria for both Administrator determinations are met in a given State, the determinations for that State will be made through a single administrative action. As discussed in section II.D.2.a. of this preamble, the equivalency determination for each State will be made taking into consideration the EG OOOOc-implementing State or Federal plan that is approved for each State. Because the timing for both determinations will be aligned, making both determinations for each State via a single, State-specific administrative action will simplify implementation of these elements of the regulatory compliance exemption.

Consistent with the proposed approach of making the regulatory compliance exemption available to WEC applicable facilities once all States had CAA section 111(b) and (d) standards and plans approved and in effect, the EPA proposed that the equivalency determination would be conducted at a national level after all such NSPS OOOOb standards and EG OOOOc-implementing State or Federal plans for all States had been approved and were in effect. The EPA requested and

received comment on its proposed approach. Some commenters supported the proposed approach and recommended additional criteria that the EPA consider in its equivalency analysis, including means of ensuring that State-by-State reductions are equivalent and that year-by-year reductions are equivalent. Other commenters alternatively recommended that the EPA conduct the analysis now, using the 2024 Final NSPS/EG as the point of comparison against the 2021 NSPS/EG Proposal. Yet other commenters supported making both determinations at the same time, but recommended that they be made at the State level rather than at the national level.

After consideration of comments and the language of the statute, the EPA has concluded that it is not appropriate to make a single equivalency determination at the national level because the EPA has determined that the regulatory compliance exemption should be made available on a State-by-State basis, and therefore the equivalency determination should also be made on a State-by-State basis. While the EPA is not making a single nationwide determination, the EPA is finalizing as proposed a decision that the relevant points of comparison for the equivalency determination are between (a) the 2021 NSPS/EG Proposal and (b) the 2024 Final NSPS OOOOb and approved State plans, or Federal plans if applicable. Specifically, the comparison will be made between (a) the emissions reductions that *would have been* achieved if the 2021 NSPS/EG Proposal was finalized and implemented in each State as proposed, and (b) the emissions reductions that *will be* achieved when the final NSPS standards and plans are actually implemented in each State.

Some commenters argued that the EPA could make the equivalency determination simply by comparing the 2021 NSPS/EG Proposal with the 2024 Final NSPS OOOOb standards and EG OOOOc presumptive standards. The EPA disagrees with these comments. The statute requires that the equivalency determination be based on an assessment of the emissions reductions achieved by ''compliance with the requirements described in clause (i).'' CAA section 136(f)(6)(A)(ii). In turn, clause (i) references ''methane emission standards *and plans*'' pursuant to CAA section 111(b) and (d). *Id.* section 136(f)(6)(A)(i) (emphasis added). That is, the statutory text specifically requires that the EPA evaluate the emission reductions resulting from compliance with both the NSPS OOOOb standards and the EG OOOOc-implementing *plans*—not the emissions guidelines established by the EPA—and determine that they ''will result in equivalent or greater emissions reductions'' as would be achieved by the 2021 NSPS/EG Proposal ''if such rule had been finalized and implemented.'' [50] In addition, principles of fairness and consistency also counsel in favor of applying the equivalency determination on a State-by-State basis. Inherent in the State-by-State approach is an incentive for States to take early action in developing plans and for those plans to require timely emissions reductions. Making the equivalency determination on a national basis would negate that incentive. It would also tie the fate of all States together, and thus could unfairly penalize States that, if evaluated individually, would be able to demonstrate equivalency. The EPA is also finalizing as proposed that, to conduct the equivalency determination, we will compare the methane emission reductions resulting from compliance with the NSPS OOOOb standards and the EG OOOOc-implementing plans in each State against a baseline in which the proposed standards were finalized as drafted in the 2021 NSPS/EG Proposal and implemented in each State. For a number of reasons, the EPA believes this is the best reading of the statutory text. The statute requires the EPA to determine that compliance with these standards and plans ''will result in equivalent or greater emissions reductions as would be achieved by'' the 2021 NSPS/EG Proposal ''if such rule had been finalized and implemented.'' *Id.* at 136(f)(6)(A)(ii). As the EPA explained in the proposed rule, the most straightforward reading of this statutory text is that Congress set the baseline as the emissions that the EPA projected would be achieved by the 2021 NSPS/EG Proposal. Notably, Congress did not repeat the same language in setting the baseline as it did in setting out the point of comparison for the baseline. In particular, while Congress specified that the comparator is the methane emissions reductions that ''will'' be achieved by the ''methane standards *and plans,*'' Congress specified that the baseline is the 2021 NSPS/EG Proposal ''if such rule were finalized and implemented,'' without any specific mention of plans.

Moreover, in enacting CAA section 136, Congress clearly indicated that the proposed rule was to serve as the benchmark for the methane emissions reductions it wanted achieved before the regulatory exemption would be available. No other reading makes sense. The statutory text uses for the baseline of the equivalency determination the emissions reductions that ''would be achieved'' by the 2021 NSPS/EG Proposal ''if such rule were finalized and implemented.'' The EPA concludes that the best reading of the statute is that Congress wanted to guarantee the level of emissions reductions (*i.e.,* ''equivalent or greater'' than expected from the 2021 NSPS/EG Proposal) projected in the 2021 NSPS/EG Proposal before WEC applicable facilities could claim the exemption. At the time CAA section 136 was enacted, Congress expected the EPA to finalize and implement the proposal. Had simply finalizing and implementing the Proposal in whichever manner the EPA chose been sufficient to satisfy the equivalence requirement, then there would not have been any need for an equivalence requirement at all. All Congress would have needed to say was that a pre-condition to the regulatory compliance exemption was finalizing the 2021 NSPS/EG Proposal. But instead, Congress created an equivalency determination requirement, and in order to give that statutory requirement meaning, the EPA must assume that Congress was specifying the quantity of emissions reductions it wanted achieved before the regulatory compliance exemption took effect. And Congress chose the benchmark that was available to it at the time it enacted the WEC program—the 2021 NSPS/EG Proposal.

At proposal, the EPA acknowledged that it is possible that had the EPA finalized and implemented the 2021 NSPS/EG Proposal without change, some States would have set different methane standards of performance in their plans than in the presumptive standards proposed in the 2021 EG OOOOc proposal based on a provision in CAA section 111(d)(1), which permits States to ''take into consideration, among other factors, the remaining useful life of the existing source to which such standard applies.'' (The EPA refers to this provision as the ''remaining useful life and other factors'' provision, or RULOF.) The EPA regulations at 40 CFR part 60 subpart Ba establish a framework through which states may, with an adequate demonstration, establish standards less stringent than the degree of emission limitation otherwise required by an EG. In such circumstances, the emissions

[50] The use of the word ''compliance'' is also instructive: in practice, sources are not required to comply with the EG; instead, sources must comply with standards later established in state or federal plans.

reductions achieved by those State plans would have been less than if the State plans had adopted and implemented the presumptive standards in the final emissions guidelines, had they been finalized.

But the EPA believes that the best reading of the statute is that Congress did not anticipate that States' use of this provision would have significantly affected the emissions reductions achieved by the 2021 NSPS/EG Proposal if it had been finalized and implemented. Historically, the RULOF provision has not been frequently invoked by States that have submitted CAA section 111(d)-implementing State plans.[51] In addition, States have the option of enacting *more* stringent standards for certain sources under their State plans than would result from direct implementation of the emissions guidelines.[52] The 2021 NSPS/EG Proposal, explicitly referenced by Congress in CAA section 136, recognized these historical facts and further explained why the EPA did not anticipate at that time that States would use the RULOF factors to a significant extent.[53] These historical facts and context, along with the Congress's clear objective to set a benchmark for the emissions reductions it wanted achieved, lead the EPA to conclude that the best reading of the statute is that Congress expected the EPA's baseline for the equivalency determination to be the 2021 NSPS methane standards and the presumptive standards the EPA set out in the 2021 EG proposal, and did not expect the EPA to forecast how States might have chosen to use the RULOF provision had the EPA finalized and implemented the 2021 NSPS/EG Proposal. The impracticality of conducting such a forecast further supports the EPA's interpretation. Because State plans were never developed pursuant to the 2021 NSPS/EG Proposal, there is no practical means of projecting when States might have chosen to apply less-stringent standards in their State plans pursuant to the RULOF provision and what methane emissions reductions those standards might have achieved relative to the presumptive standards.

While the EPA is required to evaluate both the final NSPS OOOOb and EG OOOOc-implementing plans for each States' equivalency determination, the Agency's preliminary analysis indicates that the final NSPS OOOOb standards and final EG OOOOc presumptive standards are likely more stringent than their respective standards and presumptive standards that were proposed in 2021. The EPA therefore expects that any States that adopt the EG OOOOc presumptive standards in their EG OOOOc-implementing State plans will likely achieve equivalent or greater emissions reductions than would have been achieved by the 2021 NSPS/EG Proposal, had that proposal been finalized and implemented. To provide additional certainty to States as they develop EG OOOOc-implementing plans, the EPA will conduct a technical analysis comparing the emissions reductions achieved by the 2021 NSPS/EG Proposal and the 2024 Final NSPS/EG. The EPA expects that the results of this analysis will demonstrate that the 2024 Final NSPS/EG achieves equivalent or greater emissions reductions compared to the reductions that would have been achieved by the 2021 NSPS/EG Proposal. The results of this analysis will inform the equivalency determination that must be conducted for each State based on each State's approved plan; the EPA expects that it will also simplify the determination process and provide a general reference point for States. For example, if the EPA's analysis confirms that the 2024 Final NSPS/EG would result in equivalent or greater emissions reductions compared to the 2021 NSPS/EG Proposal, the EPA anticipates that where an approved EG OOOOc-implementing State plan directly relies on the presumptive standards in the final EG OOOOc model rule or an equivalent alternative, those State plans, in combination with the final NSPS, will also achieve equivalent or greater emissions reductions compared to those that would have occurred had the 2021 NSPS/EG Proposal been finalized and implemented. Importantly, however, each finalized EG OOOOc-implementing plan must still be evaluated based on the reductions achieved by the plan itself.

e. Application of the Regulatory Compliance Exemption to WEC Applicable Facilities

A key consideration for the design of the regulatory compliance exemption is how to align the performance of CAA section 111(b) and (d) facilities, which are the sources subject to regulation under NSPS OOOOb regulations and EG OOOOc-implementing State plans, with the WEC applicable facilities to which the exemption applies. For purposes of the WEC, and as discussed in section II.A., Congress was very clear that the term ''applicable facility'' refers to a subpart W facility within one or more of the nine industry segments listed in section 136(d). Specifically, section 136(c) states that ''the Administrator shall impose and collect a charge on methane emissions that exceed an applicable waste emissions threshold under subsection (f) from an owner or operator of an *applicable facility that reports more than 25,000 metric tons of carbon dioxide equivalent of greenhouse gases emitted per year* pursuant to subpart W.'' ''Applicable facility'' is then defined for purposes of the entirety of section 136 at section 136(d), which states that ''for purposes of this section, the term ''applicable facility'' means a facility within the following industry segments, *as defined in subpart W;*'' the statute then lists nine industry segments. The term ''applicable facility'' also appears at section 136(f)(6), which states that ''charges shall not be imposed pursuant to subsection (c) *on an applicable facility* that is subject to and in compliance with methane emissions requirements pursuant to subsections (b) and (d) of section 7411 of this title . . .'' Pursuant to section 136(d), which defined ''applicable facility'' ''*for purposes of this section*'', meaning the entirety of section 136, it is clear that section 136(f)(6)(A) directs the EPA to analyze the compliance of subpart W facilities which are subject to WEC—that is, subpart W facilities within one of nine industry segments which emit over 25,000 tons of CO_2e per year—*as a whole* with standards promulgated under sections 111(b) and (d). Notably, as explained in section II.A., an ''applicable facility'' as defined at section 136(d) could include any subpart W facility within the nine industry segments listed in section 136(d), even one emitting 25,000 CO_2e or less per year. However, the waste emissions charge, and thus the

[51] In the Supplemental Oil & Gas Proposed Rule, issued shortly after CAA section 136 was enacted, the EPA noted that ''it is not aware of any CAA section 111(d) EGs under which an EPA-approved state plan has previously considered RULOF to apply a standard of performance that deviates from the presumptive level of stringency.'' 87 FR 74818 (December 6, 2022); *accord* 87 FR 79197, [Proposed Rule: Adoption and Submittal of State Plans for Designated Facilities: Implementing Regulations under Clean Air Act Section 111(d)] (Dec. 23, 2022). The Subpart Ba Final Rule also reiterated the EPA's ''long-held interpretation of the RULOF provision as a limited variance,'' but noted that commenters on the proposed Oil and Gas EG ''suggested that there may be more of a role for RULOF than in past EGs.'' *Id. See* 88 FR 80512 (Nov. 17, 2023).

[52] *See* 88 FR 80531 (Nov. 17, 2023).

[53] In the Proposed Rule for NSPS OOOOb and EG OOOOc, the EPA discussed the role that the RULOF provision might play in state plans implemented under the Final EG, including the observation at the time of proposal that ''the sheer number and variety of designated facilities in the oil and natural gas industry could make a source-specific (or even a class-specific) evaluation of [RULOF]'' less likely to occur. *See* 86 FR 63251 (November 15, 2021). The EPA also discussed the ways in which states may set more stringent standards of performance than those in the Final EG. *Id.* at 63251–52.

regulatory compliance exemption from charge under section 136(f)(6)(A), applies only to those subpart W facilities within the nine industry segments which emit more than 25,000 CO_2e. In this rulemaking we refer to these subpart W facilities as ''WEC applicable facilities''. Thus, for purposes of discussion regarding the regulatory compliance exemption, the EPA uses the term ''WEC applicable facilities'' when discussing the ''applicable facilities'' to which section 136(f)(6)(A) refers. As an example of how subpart W facilities are defined, and were defined at the time Congress promulgated section 136 in 2022, a facility in the onshore natural gas processing segment under the GHGRP subpart W program means ''any physical property, plant, building, structure, source, or stationary equipment located on one or more contiguous or adjacent properties in actual physical contact or separated solely by a public roadway or other public right-of-way and under common ownership or common control, that emits or may emit any greenhouse gas'' [54] and meets the definition of onshore natural gas processing under subpart W. For reporting year 2024, facilities in the onshore natural gas processing segment under subpart W are required to report emissions from all of the following sources at the facility: reciprocating compressor venting, centrifugal compressor venting, blowdown vent stacks, dehydrator vents, acid gas removal vents, flare stack emissions, equipment leaks from valves, connectors, open ended lines, pressure relief valves, and meters. As another example, a GHGRP subpart W facility in the onshore petroleum and natural gas production segment includes all of the wells and associated equipment within a geological production basin, which can cover a geographic area spanning hundreds of miles. Meanwhile, the terms ''affected facility'' [55] and ''designated facility'' [56] are used by the EPA in the CAA section 111 2024 Final NSPS/EG regulations to refer to an individual emissions source or a group of emissions sources at a site (*e.g.,* a storage tank battery or a collection of pneumatic controllers) to which a standard applies. Thus, a single WEC applicable facility may contain hundreds or thousands of CAA section 111(b) and (d) facilities.

Importantly, Congress was well aware of the different ways in which a ''facility'' was defined under subpart W and in the context of the CAA section 111 program when it created the WEC program and the regulatory compliance exemption under section 136(f)(6), which purposely refers to the compliance of WEC applicable facilities—that is, subpart W facilities which are subject to WEC. The regulations defining ''facilities'' for the purposes of all nine relevant industry segments under subpart W have not been revised since 2015. The regulations defining ''affected facility,'' for purposes of CAA section 111(b), have remain unchanged since first promulgated in the 1970s. 40 CFR 60.2; 44 FR 55173, Sept. 25, 1979. Similarly, the regulations defining ''designated facility,'' for purposes of section 111(d) regulation, by reference to the definition of affected facility as ''any existing facility . . . which would be subject to a standard of performance . . . if the existing facility were an affected facility'' have also remained unchanged for decades. 40 CFR 60.21, 60.21a; 40 FR 53346, Nov. 17, 1975. Congress made its intentions clear in the plain text of section 136(f)(6) that for purposes of the regulatory compliance exemption, the EPA should consider the compliance status of WEC applicable facilities *as a whole* with standards promulgated under CAA section 111(b) and (d). Thus, due to the fact that when analyzing compliance in the CAA section 111 context, the EPA analyzes the performance of CAA section 111 affected and designated facilities, the different meanings of the term ''facility'' under these two different EPA programs is an important consideration in the context of the regulatory compliance exemption.

The EPA is finalizing as proposed to implement the regulatory compliance exemption such that a WEC applicable facility that contains any CAA section 111(b) or (d) facilities would have access to the exemption once all other criteria are met (*i.e.,* the Administrator determinations and compliance elements in 40 CFR 99.41). This means that all methane emissions from emissions sources in a WEC applicable facility—even those that are not regulated by section 111(b) or (d)—are eligible for the exemption. This ''all in'' approach is aligned with, and is the best interpretation of, the statutory text, which clearly states that the exemption is applied at the ''applicable facility'' level, not at the individual emissions source or CAA section 111(b) or (d) facility levels. Table 3 shows the subpart W industry segments applicable to the WEC that may contain CAA section 111(b) or (d) facilities. WEC applicable facilities in the offshore production, LNG storage, LNG import and export, and transmission pipeline industry segments do not contain CAA section 111(b) or (d) facilities under the Crude Oil & Natural Gas source category and are not eligible for the regulatory compliance exemption. The EPA is finalizing as proposed that if any future NSPS/EG rules are finalized such that additional industry segments contain CAA section 111(b) or (d) facilities, the WEC applicable facilities in those segments would be eligible for the regulatory compliance exemption.

TABLE 3—SUBPART W INDUSTRY SEGMENT AND CAA SECTION 111(b) AND (d) FACILITY OVERLAP

Subpart W industry segment subject to WEC	May contain CAA Section 111(b) and/or (d) facilities?
Onshore petroleum and natural gas production	Yes.
Offshore petroleum and natural gas production	No.
Onshore petroleum and natural gas gathering and boosting	Yes.
Onshore natural gas processing	Yes.
Onshore natural gas transmission compression	Yes.
Onshore natural gas transmission pipeline	No.
Underground natural gas storage	Yes.
LNG import and export equipment	No.

[54] 40 CFR 98.6

[55] ''Affected facility'' is defined for purposes of an NSPS at 40 CFR 60.2 to mean ''with reference to a stationary source, any apparatus to which a standard is applicable.''

[56] ''Designated facility'' is defined for purposes of an EG at 40 CFR 60.21a to mean ''any existing facility . . . which emits a designated pollutant and which would be subject to a standard of performance for that pollutant if the existing facility were an affected facility.''

TABLE 3—SUBPART W INDUSTRY SEGMENT AND CAA SECTION 111(b) AND (d) FACILITY OVERLAP—Continued

Subpart W industry segment subject to WEC	May contain CAA Section 111(b) and/or (d) facilities?
LNG storage	No.

Some commenters were supportive of the proposed approach for the regulatory compliance exemption becoming available at the WEC applicable facility level. The EPA considered other potential interpretations of the statutory text of the regulatory compliance exemption while developing the proposed approach. In particular, the EPA considered an approach that would only exempt the emissions from individual CAA section 111(b) and (d) facilities, rather than the emissions of the entire WEC applicable facility. For example, if certain pneumatic devices are regulated under 2024 Final NSPS/EG pursuant to CAA sections 111(b) and (d), all reported pneumatic device methane emissions from a WEC applicable facility, as reported under subpart W, would be subtracted from that facility's reported emissions. Under this considered alternative approach, only emission sources at subpart W facilities that are not also CAA section 111(b) and (d) facilities (*e.g.,* methane slip from engines) would be considered when determining whether a WEC applicable facility was above or below the waste emissions threshold. While this approach would exempt emissions associated with individual CAA section 111(b) and (d) facilities that are in compliance with the standards, as anticipated by the language in CAA section 136(f)(6)(A), the EPA does not believe that this approach would be consistent with the other text in that statutory provision, which clearly states that the exemption applies to the ''applicable facility,'' which CAA section 136(d) defines as an entire subpart W facility. In contrast to the final ''all in'' approach, this considered alternative would have been a ''some in'' approach wherein only a subset of the emissions sources within a WEC applicable facility were exempted. Further, it would not be practical to implement the regulatory compliance exemption in this manner because the individual emissions source types in subpart W do not always align with the individual CAA section 111(b) and (d) facilities. Exempting methane emissions from specific equipment or processes subject to reporting under subpart W that are also regulated as a CAA section 111(b) or (d) affected or designated facility may exclude a broader or narrower scope of equipment or components and associated emissions than those subject to the 2024 Final NSPS/EG. For example, although storage vessels are subject to both NSPS OOOOb and subpart W, the NSPS OOOOb provisions apply to equipment that exceed specific potential to emit emissions thresholds while subpart W requires reporting and quantification of emissions from all storage vessels at a subpart W facility, regardless of equipment's potential emissions. Methane emissions from CAA section 111(b) or (d) facilities therefore cannot be directly subtracted from reported subpart W data.

f. Determining Applicable Facility Eligibility for the Regulatory Compliance Exemption

It is expected that for many WEC applicable facilities, compliance with NSPS OOOOb standards and EG OOOOc-implementing plans will reduce methane emissions and therefore reduce and potentially eliminate any charge, even in the absence of an exemption. The EPA concludes that the best reading of the statutory language of the regulatory compliance exemption is that it provides relief from the charge for WEC applicable facilities that remain above the waste emissions threshold when their constituent CAA section 111(b) and (d) facilities (*i.e.,* emissions sources) are in full compliance with their applicable methane emissions requirements. The exemption thus provides a further incentive for compliance with the applicable methane emission requirements under CAA section 111.

The EPA is finalizing as proposed that the regulatory compliance exemption would only be available to WEC applicable facilities that exceed the waste emissions threshold. CAA section 136(f)(6)(A) states that ''charges shall not be imposed pursuant to subsection (c) on an applicable facility'' that meets the requirements of the regulatory compliance exemption. Subsection (c) in turn states that a charge shall be collected ''on methane emissions that exceed an applicable waste emissions threshold.'' Based on a plain reading of the statutory text, the EPA is finalizing as proposed that the exemption would not apply to WEC applicable facilities below the waste emissions threshold. Further, providing the exemption to WEC applicable facilities below the waste emissions threshold serves no purpose as these facilities do not have WEC applicable emissions, are not subject to the charge, and therefore do not benefit from the exemption. Excluding facilities below the waste emissions threshold from the exemption also reduces the reporting burden for those facilities, which are not required to report information related to CAA section 111(b) and (d) compliance status.

Compliance with CAA section 111(b) and (d) methane emission requirements. As discussed in this section, CAA section 136(f)(6)(A) does not specify the definition of ''compliance'' for the purposes of the regulatory compliance exemption. In light of the comments on this topic highlighting the practical implications of the definition of compliance, the EPA is finalizing provisions revising the proposed approach regarding what actions would constitute ''compliance with methane emissions requirements pursuant to [CAA section 111(b) and (d)],'' within CAA section 136(f)(A), for the purposes of implementing the regulatory compliance exemption. The final approach reflects the best reading of the statutory text. It is intended to provide a clear threshold for establishing compliance status and eligibility for the exemption in accordance with practice for compliance tracking under CAA section 111, while minimizing the burden on industry and facilitating ease of implementation. The EPA is also finalizing related reporting requirements for WEC applicable facilities that are necessary to implement the regulatory compliance exemption (see section II.D.2.h. of this preamble).

For the purpose of determining WEC applicable facility eligibility for the regulatory compliance exemption, the EPA is finalizing that the compliance status of CAA section 111(b) and (d) facilities contained within a WEC applicable facility will be assessed based on compliance with the applicable methane emissions requirements for the Oil & Natural Gas Source Category in NSPS OOOOb and in EG OOOOc-implementing State and

Federal plans. The EPA proposed that NSPS OOOOa compliance status would also be assessed while determining eligibility for the exemption. Several commenters disagreed with the proposed inclusion of NSPS OOOOa and recommended that exemption eligibility should only be based on compliance with NSPS OOOOb and EG OOOOc-implementing plans. After consideration of comment, as well as the language and intent of the statutory text, the EPA concludes that the best interpretation of the regulatory compliance exemption statutory language is that Congress was focused on methane emissions reductions achieved through NSPS OOOOb and EG OOOOc-implementing plans for the purpose of determining eligibility for the exemption—not prior standards already in place. While the text at CAA section 136(f)(6)(A) and 136(f)(6)(A)(i) refers to ''methane emissions standards and plans pursuant to subsections (b) and (d) of section 111,'' and while NSPS OOOOa includes standards promulgated pursuant to CAA section 111(b), the text at CAA section 136(f)(6)(A)(ii) makes clear that the equivalency determination is to be based solely on the standards in NSPS OOOOb and EG OOOOc-implementing plans. The EPA notes that most facilities regulated under NSPS OOOOa are expected to ultimately be regulated under NSPS OOOOb or EG OOOOc-implementing plans (*e.g.,* as NSPS OOOOa sources are modified or reconstructed or when the sources are regulated as existing sources once EG OOOOc-implementing plans are approved and in effect).[57] The EPA is therefore finalizing that only compliance with these methane emissions requirements, and not those in NSPS OOOOa, will be assessed.

The EPA proposed that any WEC applicable facility that contains CAA section 111(b) or (d) facilities would be eligible for the regulatory compliance exemption if each of the CAA section 111(b) and (d) facilities that constitute the WEC applicable facility had no deviations or violations of the methane emissions requirements promulgated pursuant to the applicable NSPS or EG-implementing plans. The EPA proposed that any noncompliance at any CAA 111(b) or (d) facilities contained within a WEC applicable facility would result in that entire WEC applicable facility being ineligible for the regulatory compliance exemption for the entire reporting year. The EPA received numerous comments objecting on two grounds: (1) that the definition of noncompliance was unnecessarily strict by including deviations that were not necessarily related to excess emissions; and (2) that non-compliance at one CAA section 111 affected or designated facility should not prevent use of the exemption by the entire WEC applicable facility. Many commenters stated that the proposed approach was so stringent that the regulatory compliance exemption would be essentially unavailable. Commenters focused mainly on the types of noncompliance that could make the compliance exemption unavailable, especially a comparatively minor reporting or notification deviation that is not likely to cause excess emissions. Many commenters noted that despite industry best efforts, noncompliance events do occur, especially for these reporting and notification requirements, and given that WEC applicable facilities may contain hundreds or thousands of CAA section 111(b) or (d) facilities, particularly in the onshore production and gathering and boosting segments where facilities are defined at the basin-level, some form of noncompliance is likely to occur within a WEC applicable facility at some point. Commenters stated that, under the proposed approach, these facilities could not claim the regulatory compliance exemption for the entire year, even if the deviation is quickly corrected or is a ''minor'' form of noncompliance. Commenters also noted that noncompliance with NSPS OOOOb and EG OOOOc-implementing plans may be limited to individual emissions sources within a WEC applicable facility, and the duration of those noncompliance events may vary. Commenters recommended that the EPA narrow the definition of noncompliance for the purposes of exemption eligibility, narrow the scope of equipment and associated emissions that could not claim the exemption in the event of noncompliance, and limit the loss of the exemption to the time duration of the noncompliance.

The EPA agrees with commenters that the proposed approach may have unduly limited access to the regulatory compliance exemption, which would be counter to Congressional intent. Congress included the exemption to provide relief from the charge if certain criteria were met, and the final rule should meet the Congressional purpose to incentivize emissions reductions and compliance with the law without undercutting the intent to allow exemptions when compliance is achieved. Accordingly, after consideration of comments received, the EPA is finalizing changes to the meaning of ''compliance'' in section 136(f)(6)(A) in several respects, as further explained, so that it reflects the best interpretation within the context of the statute as a whole and is aligned with the goals and purpose of the WEC.

The EPA is finalizing revisions to the proposed definition of ''compliance'' for the purpose of determining eligibility for the regulatory compliance exemption. As discussed in the proposal, Congress requires that facilities must be ''in compliance with requirements'' pursuant to 111(b) and (d), but Congress did not provide any specific definition for what it means to comply. Given Congress didn't provide a definition of ''compliance'' in the statutory text, we have examined the context in which the term is used and the objectives of the regulatory compliance exemption in the context of CAA section 136. As discussed throughout this section, the clear intent of Congress in creating the regulatory compliance exemption provision was to ensure continuous incentives to reduce methane emissions, and to relieve from the WEC those facilities that are successfully making methane emission reductions pursuant to applicable CAA section 111 standards. In other words, Congress did not intend to require the charge to apply where a WEC applicable facility was already reducing its emissions as intended by the 2024 Final NSPS/EG. Thus, it is most consistent within this statutory context to focus assessments of compliance on those deviations that indicate that a CAA section 111 facility is not reducing emissions as required by NSPS OOOOb and the applicable EG OOOOc-implementing State or Federal plan. However, where there is noncompliance with provisions of these programs that are not tied in some way to methane emission reductions, but rather some other requirement of NSPS OOOOb or the applicable EG OOOOc-implementing State or Federal Plan, it would not be consistent with the statutory context to subject the WEC applicable facility that is already responding as intended to the CAA section 111 requirements to reduce emissions, to also be subject to the charge. Accordingly, in this final rule,

[57] *See* 89 FR 16869; 2024 Oil & Gas Final Rule; section IX.C. *How will the final EG OOOOc impact sources already subject to NSPS KKK, NSPS OOOO, or NSPS OOOOa?; see also* 40 CFR 60.5365a (''An affected facility must continue to comply with the requirements of this subpart until it begins complying with a more stringent requirement, that applies to the same affected facility, in an approved, and effective, state or Federal plan that implements subpart OOOOc of this part, or modifies or reconstructs after December 6, 2022, and thus becomes subject to subpart OOOOb of this part.'') (emphasis added).

the EPA's framework for assessing compliance conforms with the objectives of the regulatory compliance exemption and focuses on compliance activities that directly affect methane emissions, in accordance with the WEC's objective of incentivizing reduced methane emissions. It also makes the exemption realistically available to WEC applicable facilities and implementable for the EPA.

The EPA is finalizing two categories of NSPS OOOOb and EG OOOOc requirements that will determine eligibility for the regulatory compliance exemption. Noncompliance with respect to either category will result in ineligibility for the regulatory compliance exemption. First, any self-reported deviation [58] from monitoring requirements, emissions limits or standards (or surrogate standards), operational limits (including operating parameter limits), or work practice standards is considered noncompliance for the purposes of the regulatory compliance exemption. This category is straightforward to implement in that exemption eligibility is determined based on information that companies are already collecting and reporting. By focusing regulatory compliance exemption eligibility on compliance with emissions limits, operational limits, work practice standards, and the monitoring necessary to demonstrate compliance with those standards, exemption eligibility is based on compliance with requirements that are directly linked to a facility's emission reduction requirements. This approach also aligns with Congressional intent for the regulatory compliance exemption to apply only to WEC applicable facilities where methane emissions are otherwise being controlled under CAA section 111(b) and (d). In instances where methane emissions are not appropriately controlled consistent with these standards, it is clear that Congress meant that the facility could not claim the exemption.

Additionally, the EPA is finalizing that any determination of a violation in an administrative or judicial action of any applicable NSPS OOOOb or EG OOOOc requirement, including reporting or recordkeeping, results in a WEC applicable facility being ineligible for the regulatory compliance exemption. This approach is necessary to account for any instances of noncompliance that are not included in annual NSPS OOOOb or EG OOOOc-implementing plan reports but are adjudicated in an administrative or judicial proceeding. The EPA is finalizing that any adjudication of reporting and recordkeeping violations results in exemption ineligibility because failing to comply with these requirements can be directly linked to noncompliance with emissions-related requirements. For example, a company could improperly fail to report or keep records of certain required information because that information would indicate violations of, for example, emission limits or work practice standards. Similarly, records maintained by companies are often key to verifying compliance with emissions limits or work practice standards. Failure to maintain these records not only prevents the EPA or other authorities from verifying compliance, but can also mask noncompliance and limit the ability to prove that noncompliance occurred. To account for these and other NSPS OOOOb and EG OOOOc violations that are not reported or improperly unreported in annual NSPS OOOOb and EG OOOOc reports, the EPA is finalizing that any adjudicated violation of NSPS OOOOb and EG OOOOc is also considered noncompliance for the purposes of exemption eligibility.

The EPA is finalizing that self-reported deviations from notification requirements are not considered a form of noncompliance that causes an applicable facility to lose exemption eligibility. For example, NSPS OOOOb includes notification requirements associated with well completions, well closures, and alternative fugitive emissions monitoring programs. These notification requirements are not necessarily directly linked to emissions reduction requirements for CAA section 111(b) and (d) facilities. The EPA is therefore finalizing that self-reported noncompliance with notification requirements in NSPS OOOOb or EG OOOOc-implementing plans does not result in ineligibility for the regulatory compliance exemption. This treatment of self-reported notification requirements is specific to implementation of the regulatory compliance exemption under CAA section 136, and does not affect any treatment of noncompliance under NSPS OOOOb or EG OOOOc-implementing plans.

A WEC applicable facility's eligibility for the regulatory compliance exemption based on the absence of deviations from the specified requirements in its annual reports does not constitute a determination of compliance for NSPS OOOOb or EG OOOOc-implementation plan. A WEC applicable facility's eligibility for the regulatory compliance exemption in no way precludes the EPA from later finding and enforcing violations of NSPS OOOOb or EG OOOOc-State plans, whether reported or unreported. If a WEC applicable facility claims the regulatory compliance exemption based on the absence of noncompliance in its annual report, but NSPS OOOOb or EG OOOOc-implementation plan violations are later discovered or adjudicated, the WEC applicable facility's WEC obligated party must recalculate its WEC obligation accounting for the methane emissions that are disqualified from the regulatory compliance exemption due to the adjudicated violations, resubmit its WEC filing, and pay any resulting charge.

Portion of the WEC Applicable Facility Affected by Noncompliance

In this final rule, for WEC applicable facilities in the natural gas processing, transmission compression, and underground storage industry segments, the EPA is finalizing as proposed that any NSPS OOOOb or EG OOOOc noncompliance within the WEC applicable facility results in the entire WEC applicable facility losing the regulatory compliance exemption.[59] The EPA proposed that any noncompliance at CAA section 111(b) or (d) facilities contained within a WEC applicable facility would cause the entire WEC applicable facility to lose the exemption. Some commenters contended that the proposed approach would unfairly restrict availability of the exemption, and that loss of the exemption should only apply to the emissions from the noncompliant CAA 111(b) or (d) facility contained within the WEC applicable facility. The EPA does not agree with these comments. Congress was clear throughout CAA section 136 that the term ''applicable facility'' for purposes of that entire section, including CAA section 136(f)(6), refers to a WEC applicable facility—that is, a subpart W facility within one of the nine listed industry segments which emits over 25,000 tons of CO_2e per year. Accordingly, a plain reading of CAA 136(f)(6)(A) indicates that the exemption is to be applied to an entire WEC applicable facility, not just portions of it: ''Charges shall not be

[58] Deviations are defined for NSPS OOOOb and EG OOOOc at 40 CFR 60.5430b and 40 CFR 60.5430c, respectively.

[59] WEC applicable facilities in the onshore production and gathering and boosting industry segments will be treated differently, as discussed in this section of the preamble. Note that the other defined WEC applicable facilities in CAA section 136(d)—the offshore production, transmission pipeline, LNG import and export, and LNG storage industry segments—are not eligible for the regulatory compliance exemption because they do not contain CAA section 111(b) or (d) facilities.

imposed pursuant to subsection (c) *on an applicable facility* that is subject to and in compliance with methane emissions requirements pursuant to subsections (b) and (d) of section 111.'' (Emphasis added).

The EPA is finalizing as proposed that WEC applicable facilities are eligible for the exemption if they contain *any* CAA section 111(b) or (d) facilities. While the EPA expects that most WEC applicable facilities in industry segments regulated under NSPS OOOOb and EG OOOOc contain CAA section 111(b) and (d) facilities, such WEC applicable facilities generally also contain equipment and emission sources that are not regulated under NSPS OOOOb and EG OOOOc. Emissions from both types of emissions sources within a WEC applicable facility—those facilities regulated under NSPS OOOOb and EG OOOOc and those sources that are not regulated—will be eligible for the regulatory compliance exemption by virtue of the fact that the exemption is applied to the entire WEC applicable facility. Some commenters recommended that once the exemption is first applied to the WEC applicable facility, only the emissions from noncompliant CAA sections 111(b) and (d) facilities should lose the exemption. In other words, these commenters argued that once the exemption is applied to the entire WEC facility, it should be lost at the CAA section 111 facility level. The EPA disagrees with this comment. First, such an approach would be contrary to the plain text of the statute, which requires the EPA to apply the exemption to the entire WEC applicable facility at once, because CAA section 136(f)(6)(A) states that ''charges shall not be imposed *on an applicable facility that is subject to and in compliance with*'' the CAA section 111 standards. According to ordinary meaning, established principles of statutory construction, and the general requirements under CAA section 136(c) that the EPA ''shall impose and collect a charge on methane emissions that exceed an applicable waste emissions threshold . . . from an owner or operator of an applicable facility that reports more than 25,000 metric tons'' of CO_2e under subpart W, the inverse must also be true: charges *shall* be imposed on a WEC applicable facility that is *not* subject to and in compliance with CAA section 111 standards. That is, the regulatory compliance exemption must be applied to, and withdrawn from, a WEC applicable facility as a whole.

Second, if the EPA were to take the approach suggested by the commenters, once the facility as a whole is first granted the exemption, emissions from those sources that are not subject to NSPS OOOOb and EG OOOOc (and thus not otherwise required to reduce emissions) would continue to benefit from the exemption forever, even while the CAA section 111 facilities are out of compliance. For example, under this approach advanced by some commenters, every CAA section 111(b) and (d) facility in a WEC applicable facility could be out of compliance, but methane emissions from every subpart W emission source that is not regulated under NSPS OOOOb or EG OOOOc would continue to receive the exemption. In this scenario, the unregulated sources would be exempted from the WEC and therefore subject to *no* incentive to reduce methane emissions even while the CAA section 111(b) and (d) facilities that permitted the WEC affected facility to apply the exemption are *also* not reducing methane emissions. It would be inconsistent to make the exemption available to these unregulated emissions sources by virtue of the fact that they are located within a WEC applicable facility that also contains CAA section 111(b) and (d) facilities, and then continue to allow them to access the exemption when the CAA section 111(b) and (d) facilities within the WEC applicable facility are in noncompliance. In other words, this would result in an ''all in'' approach for exemption eligibility, but a ''some out'' approach for loss of the exemption in the event of noncompliance. Such an approach would: not be consistent with the statute; arbitrary from a practical implementation standpoint; and counter to the intent of the WEC to incentivize methane emission reductions across the industry. Further, this approach is not practically implementable because there is no specific alignment between the definitions and scope of CAA section 111(b) and (d) applicable and designated facilities and the subpart W emissions sources at a WEC applicable facility, and therefore methane emissions from CAA section 111(b) or (d) facilities cannot be directly subtracted from reported subpart W data in order to assess the WEC against only those noncompliant facilities. Requiring collection and reporting of such data would significantly increase program complexity, as well as the burden on both industry and the EPA. The EPA therefore concludes that its proposed ''all in, all out'' approach for the portion of the WEC applicable facility that loses access to the regulatory compliance exemption is the best interpretation of the statute and is the most consistent with the WEC's goals of incentivizing methane emissions reductions, subject to the following exceptional circumstances, as described.

Onshore Production and Gathering and Boosting WEC Applicable Facilities: Portion of Facility Affected by Noncompliance. Notwithstanding the foregoing discussion and the EPA's general approach for application of the regulatory compliance exemption, based on compelling comments from commenters and upon reconsideration of the Congressional intent of the WEC within the context of this exemption, the EPA is finalizing a unique approach for the portion of the WEC applicable facility affected by noncompliance specific to the onshore production and gathering and boosting industry segments. Some commenters noted that facilities in these industry segments would be uniquely affected by the proposed approach (and, the finalized approach for the natural gas processing, transmissions compression, and underground storage industry segments) of the entire WEC applicable facility losing the exemption as the result of any section 111(b) or (d) noncompliance. WEC applicable facilities in the onshore production and gathering and boosting industry segments are defined at the geologic basin level and may consist of hundreds of well pads or dozens of compressor stations spread across a wide geographic area (*e.g.,* the Permian Basin is over 80,000 square miles or about the size of the State of Utah). By comparison, WEC applicable facilities in other industry segments that are eligible for the regulatory compliance exemption, such as gas processing plants or transmission compressor stations, are typically no larger than several city blocks and consist of co-located emission sources. As one commenter noted, because of the basin-wide scale of the WEC applicable facilities in the onshore production and gathering and boosting industry segments, they may contain hundreds or thousands of CAA section 111(b) and (d) affected and designated facilities. This makes these industry segments unique in how the approach for this exemption would affect them; other WEC applicable facility industry segments such as the natural gas processing, transmissions compression, and underground storage industry segments typically have between ten and one hundred CAA 111(b) or (d) facilities. This is notable because, under the proposed and final approach that the EPA is taking for the natural gas processing, transmissions compression, and underground storage industry segments, a single noncompliant CAA

section 111(b) or (d) facility at a single well pad in the onshore production industry segments or at a single gathering compressor station in the gathering and boosting industry segment at these WEC applicable facilities (which might contain hundreds of well pads or dozens of gathering compressor stations) would result in the entire basin-wide WEC applicable facility becoming ineligible for the exemption. As stated by commenters, given the widespread geographic span and potentially very large number of CAA section 111(b) and (d) facilities associated with basin-level WEC applicable facilities, the regulatory compliance exemption could turn out to be largely unavailable for WEC applicable facilities of this type.

In promulgating the requirements under CAA section 136, Congress was aware of the existing definitions of ''facility'' under subpart W for the various applicable industry segments, including the basin-wide definitions that apply to onshore production and gathering and boosting facilities. And pursuant to the plain text of CAA section 136(f)(6)(A), the exemption is intended to be applied and revoked facility wide. Nevertheless, the EPA understands that Congress's general intention in establishing the regulatory compliance exemption was to provide an incentive for regulatory compliance—and in order for such an incentive to exist, it must be reasonably possible for owners and operators to achieve such compliance to ensure that the exemption is realistically available as intended. However, in the unique case of basin-wide facilities, should the EPA withdraw the exemption on a facility-wide basis in response to any one instance of noncompliance at a CAA section 111 facility, the EPA agrees with commenters that it the exemption would not be as accessible to basin-wide facilities as intended by Congress under this provision.

Some occasional instances of noncompliance are to be expected over the span of a WEC applicable facility. After considering comments, however, the EPA appreciates that in the case of basin-wide facilities, because these facilities are so vast—often containing thousands of CAA section 111 facilities—and because there are numerous ways in which any one of these CAA section 111 facilities can be in noncompliance at any one time, universal compliance for every single CAA section 111 facility would be very challenging for basin-wide facilities. The result could be that a violation at one location could result in loss of the exemption for hundreds, or potentially thousands of other locations that are fully compliant. The EPA has concluded that such result does not comport with the Congressional intent of the WEC or with the overall purpose of the regulatory compliance exemption. Indeed, the EPA believes that such scenario would constitute an absurd result, and one not foreseen by Congress, which did not have the benefit of industry comment regarding the difficulty of universal compliance across thousands of CAA section 111 facilities, when it drafted its provision applying the regulatory compliance exemption to the WEC applicable facility as a whole, for all WEC applicable facilities to which the exemption would apply.

Historically, in cases where ''unambiguous statutory commands'' would nevertheless lead to ''absurd results'', the Supreme Court has seen fit to ''adjust[ ]'' these commands [60]—a theory of judicial review recognized in legal scholarship as the ''absurdity doctrine.'' [61] Where a certain interpretation would be reasonable in most cases but compel absurd results in a particular case, the Court may read an implicit exemption into the text to allow support for the plain text reading as a general matter but to avoid the specific absurd results.[62] In particular, the Court may read an implicit exemption into the text where failing to do so would be inconsistent with Congressional intent for the purpose of the provision at issue.[63] Accordingly, for the reasons explained in further detail, after consideration of comments, and in the interest of avoiding absurd results, the EPA is finalizing a specific approach for WEC applicable facilities in the onshore petroleum and natural gas production and onshore petroleum and natural gas gathering and boosting industry segments such that for WEC applicable facilities in these industry segments only, the loss of the exemption occurs at the site-level rather than the facility-level. The EPA notes that this distinction for basin-level onshore production and gathering and boosting industry segments does not change the definition of ''applicable facility'' under part 99 or the definitions of ''facility'' for these or other industry segments under 40 CFR part 98, because, as we discussed, Congress was well aware of the part 98 definitions when it defined applicable facility for purposes of calculating the charge by reference to the long-existing subpart W definitions—and Congress was clear in defining ''applicable facility'' for purposes of CAA section 136. There is nothing absurd about, for example, applying the 25,000 CO_2e WEC applicability threshold at the basin-wide facility level for these industry segments; thus, we don't find these consequences to be universal across the CAA section 136 framework. Structuring this final rule such that onshore production and gathering and boosting facilities will lose the regulatory compliance exemption at the site level is exclusively for the purpose of making the regulatory compliance exemption accessible to all of the relevant WEC applicable facilities that

[60] Manning, John, ''The Absurdity Doctrine'', 116 Harv. L. Rev. 2388, 2389 (Jun. 2003) (citing *Clinton* v. *City of New York,* 524 U.S. 417, 429 (1998); *Pub. Citizen* v. *U.S. Dep't* of Justice, 491 U.S. 440, 454–55 (1989); *Jackson* v. *Lykes Bros. S.S. Co.,* 386 U.S. 731, 735 (1967); *United States* v. *Brown,* 333 U.S. 18, 27 (1948); *Armstrong Paint & Varnish Works* v. *Nu-Enamel Corp.,* 305 U.S. 315, 333 (1938); *Sorrells* v. *United States,* 287 U.S. 435, 447–49 (1932); *United States* v. *Katz,* 271 U.S. 354, 362 (1926); *Hawaii* v. *Mankichi,* 190 U.S. 197, 2 13–14 (1903); *Church of the Holy Trinity* v. *United States,* 143 U.S. 457, 465, 472).

[61] *See id.* at 2388.

[62] *See Utility Air Regulatory Group* v. *EPA,* 573 U.S. 302, 321–22 (2014) (holding that the term ''air pollutant'', which—pursuant to a plain text reading and the EPA's endangerment finding for greenhouse gases encompasses greenhouse gases in most sections of the Clean Air Act—nevertheless excludes greenhouse gases in the context of the PSD program and Title V permitting, because to read the phrase ''air pollutant'' to include greenhouse gases in those sections would produce absurd results; specifically, such a reading would trigger millions of new previously unregulated sources into the program, ballooning the number of Title V regulated sources alone from 15,000 to 6.1 million, and increasing costs by factors of a thousand).

[63] *See id.* (''[the] EPA itself has repeatedly acknowledged that applying the PSD and Title V permitting requirements to greenhouse gases would be inconsistent with—in fact, would overthrow—the Act's structure and design . . . [because] 'the great majority of additional sources brought into the PSD and title V programs would be small sources that Congress did not expect would need to undergo permitting' [and] the EPA stated that these results would be so 'contrary to congressional intent,' and would so 'severely undermine what Congress sought to accomplish,' that they necessitated as much as a 1,000-fold increase in the permitting thresholds set forth in the statute.''). *See also Church of the Holy Trinity* v. *United States,* 143 U.S. 457 (1982) (holding that notwithstanding a federal statute declaring it ''unlawful for any person, company, partnership, or corporation, in any manner whatsoever, to prepay the transportation, or in any way assist or encourage the importation or migration of any alien or aliens, any foreigner or foreigners, into the United States . . . under contract or agreement . . . to perform labor or service of any kind in the United States . . .'', an Episcopal Church in New York City had not violated the law in contracting the services of an English pastor. *Id.* at 458. The Court stated that although ''it must be conceded that the act of the [church was] within the letter of this section'', applying the law to the church in this case would lead to ''absurd results'' which Congress surely had not intended. *Id.* at 459. Ultimately, the Court read an implicit exemption into the law applying to religious labor. *Id.* at 465–66.

Congress intended to receive the exemption.

For onshore production facilities, the site is the ''well-pad site,'' as defined by 40 CFR 98.238.[64] For gathering and boosting facilities, the site is the ''gathering and boosting site'', as defined by 40 CFR 98.238.[65] In the final rule, the loss of the regulatory compliance exemption at the site level for the onshore production and gathering and boosting industry segments is applied in the same manner as at the facility-level for natural gas processing, transmission compression, and underground storage industry segments, meaning that all methane emissions at the site with NSPS OOOOb or State/Federal plan noncompliance are ineligible for the exemption. This aligns with the general ''all in, all out'' approach for the exemption loss for natural gas processing, transmission compression, and underground storage industry segments, whereby emissions from all emission sources (*i.e.,* emissions from sources regulated under NSPS OOOOb and EG OOOOc as well as sources not regulated under NSPS OOOOb and EG OOOOc) lose the exemption in the event of noncompliance. The EPA notes that this approach is straightforward to implement as site-level emissions reporting is required under the 2024 Subpart W Final Rule and can be directly used to calculate any emissions that lose the exemption. Section II.D.2.g. of this preamble describes the emissions calculations applicable to loss of the regulatory compliance exemption.

Period of time for assessing the exemption in the event of noncompliance. In the final rule, the EPA is finalizing revisions to the proposal approach with respect to the period of time for which the exemption is applied in the event of any section 111(b) or (d) noncompliance. The EPA proposed that any noncompliance would result in loss of the exemption for the entire year. Several commenters noted that the duration of a NSPS OOOOb or EG OOOOc-implementing plan noncompliance event can vary, and that some noncompliance events may be very brief. Commenters stated that the proposed approach of assessing the exemption for the entire year was unreasonable. We agree with these commenters that withholding the exemption for an entire year in the instance of noncompliance goes beyond the Congressional purpose of making the exemption reasonably available to WEC applicable facilities that are in compliance with 111(b) and (d). Some commenters noted that under the proposed approach, where noncompliance occurred for a single 111(b) or (d) facility within a WEC applicable facility for an hour, that entire WEC applicable facility would lose the exemption for the entire calendar year. The best reading of the statute requires that the exemption be realistically available to WEC applicable facilities that are achieving compliance in accordance with the requirements in 111(b) and (d)—losing the exemption for an entire year would, in many instances be out of proportion to the extent of noncompliance and unduly constrain use of the exemption.

The EPA also received comments recommending that the length of time for which the exemption be lost in the event of noncompliance correspond with the period of noncompliance. The EPA disagrees with these commenters. A key consideration in establishing a temporal element for the regulatory compliance exemption is the data used to establish the duration of noncompliance. The EPA is finalizing that data from NSPS OOOOb and state/Federal plan annual reports will be used to calculate the duration of noncompliance for the purpose of exemption eligibility. Use of existing data reduces the burden on industry and increases consistency in regulatory requirements. Although deviations for purposes of WEC are based on the NSPS OOOOb and State/Federal plan reports, the EPA notes that because NSPS OOOOb and EG OOOOc do not provide specific direction on the calculation of the deviation duration, the deviation start and stop times included in NSPS OOOOb and state/Federal plan annual reports may be inconsistent and may not be reflective of the actual length of noncompliance. Significantly, the reported start times may be based on when a deviation was detected, not when the deviation began. Reported durations therefore can significantly underestimate the actual length of noncompliance. Considering the exemption at a smaller time interval, such as hourly or daily, assumes too much certainty with respect to the information in the annual reports, and could end up providing the exemption to WEC applicable facilities during periods of noncompliance for their constituent CAA section 111(b) and (d) facilities. The EPA also concludes that such an approach is inconsistent with Congressional intent of incentivizing meaningful emission reductions and compliance with section 111(b) and (d) methane emissions standards and plans.

The EPA has concluded that, where a WEC applicable facility has instances of noncompliance with section 111(b) and (d) methane emissions standards and plans, losing the exemption for an entire year unduly constrains use of the exemption contrary to Congressional intent. The EPA has also concluded that under such scenario, losing the exemption for the same amount of time as the noncompliance event is infeasible, impractical, and counter to Congressional intent. Attempting to define that period would go well beyond existing reporting and impose a large additional burden on both the regulated industry and on the EPA. Accordingly, after consideration of comments received, the EPA is finalizing an approach in the final rule that eligibility for the regulatory compliance exemption will be evaluated on a quarterly basis. Any NSPS OOOOb or State/Federal plan noncompliance results in the entire WEC applicable facility (or site within the WEC applicable facility for the onshore production and gathering and boosting industry segments only) losing the exemption for the entire quarter(s) in which the noncompliance occurs. Quarters are delineated based on the calendar year (*e.g.,* January through March). Quarterly compliance status is based on the start and stop dates of applicable deviations as reported in annual NSPS OOOOb and State/Federal plan annual reports. Where a noncompliance event spans multiple quarters, the exemption will be lost for those multiple quarters in which noncompliance occurs.

The EPA believes that WEC applicable facilities losing the exemption on a quarterly basis in the event of noncompliance is an appropriate approach that is consistent with the language and goals of the WEC, enables use of existing reporting, and avoids significant additional reporting and administrative burden. While the statute addresses when the charge should begin (for emissions reported for calendar year 2024) and when it should resume if the conditions in CAA section 136(f)(6)(A)(i) and (ii) cease to apply (the first calendar year in which those conditions are no longer met), it does not specify what length of time an applicable facility should lose eligibility for the regulatory compliance

[64] ''Well-pad site means all equipment on or associated with a single well-pad. Specifically, the well-pad site includes all equipment on a single well-pad plus all equipment associated with that single well-pad.'' 40 CFR 98.238.

[65] ''Gathering and boosting site means a single gathering compressor station as defined in this section, centralized oil production site as defined in this section, gathering pipeline site as defined in this section, or other fenceline site within the onshore petroleum and natural gas gathering and boosting industry segment.'' *Id.*

exemption in the face of noncompliance (pursuant to CAA section 136(f)(6)(A)). Given that Congress did not specify how long a WEC applicable facility would lose the exemption for in the event of noncompliance, the EPA concludes that proceeding on a quarterly basis is a reasonable approach for the practical considerations. The final approach increases flexibility so that access to the regulatory compliance exemption is not overly restrictive (*i.e.,* one deviation would not lead to loss of the exemption for an entire year, as proposed), while maintaining the integrity of the exemption such that it is unavailable to WEC applicable facilities during times of NSPS OOOOb or State/Federal plan noncompliance (as some commenters urged). The final approach also aligns with the intent of the WEC—to provide reasonable access to an exemption from the charge for WEC applicable facilities that are in compliance with their methane emission requirements without allowing the exemption for periods of noncompliance, while also incentivizing methane emission reductions.

Exemption Applicability under new or revised oil and gas NSPS or EG. The EPA is finalizing as proposed that, should additional or revised NSPS/EG regulations for the oil and natural gas industry source category be finalized in the future, the EPA will reassess compliance with the methane emissions requirements in those regulations for determining continued availability of the regulatory compliance exemption. As discussed in section II.D.2.i. of this preamble, the regulatory compliance exemption could become unavailable if future NSPS/EG revisions would, upon implementation, result in fewer emissions reductions than would have been achieved by the 2021 NSPS/EG Proposal, had that proposal been finalized and implemented. Similarly, the exemption could be reinstated upon adoption and implementation of NSPS/EG revisions that restore emissions reduction equivalency with, or improvement upon, the 2021 NSPS/EG Proposal.

It is also possible that the EPA may revise the 2024 Final NSPS/EG in the future to add requirements for equipment in industry segments that are not currently regulated. This creates the potential that the regulatory compliance exemption may become available to additional WEC applicable facilities, upon the appropriate Administrator determination. In such cases where a new or expanded regulation issued pursuant to CAA section 111(b) or (d) would apply to a methane emission source at a WEC applicable facility that is in a segment of the oil and natural gas industry not currently covered by the 2024 Final NSPS/EG, the EPA is finalizing as proposed that such regulation will not have any effect on those WEC applicable facilities with existing access to the regulatory compliance exemption. However, in such case, the Administrator would still need to make appropriate determinations for the additional industry segments pursuant to CAA section 136(f)(6)(A)(i) consistent with the framework finalized in this rulemaking. Such WEC applicable facilities would then be eligible to claim the exemption so long as they are they are subject to and in compliance with the applicable methane emissions requirements.

g. Calculation of Emissions for Partial Eligibility for the Regulatory Compliance Exemption

The EPA is finalizing calculation methodologies for the regulatory compliance exemption at 40 CFR 99.43. These calculation methodologies are necessary to account for the revisions from the proposed rule that the EPA is finalizing, including the assessment of the emissions qualifying for exemption at the site level for WEC applicable facilities in the onshore production and gathering and boosting industry segments and assessment of compliance on a quarterly basis for purposes of the exemption for all WEC applicable facilities. Under the proposed rule, exemption eligibility was assessed for the entire year and for the entire WEC applicable facility, therefore calculation methodologies accounting for partial year exemption as well as site level assessment were not required.

Because the final approach for the regulatory compliance exemption allows for partial exemption eligibility, the EPA is by necessity revising the calculation methodology from proposal to match the approach in the final rule. In the final rule, for facilities in the onshore production and gathering and boosting industry segments, methane emissions as reported under subpart W that would not qualify for the exemption are those from the individual site(s) where NSPS OOOOb or State/Federal plan noncompliance occurs. These site-level emissions (*i.e.,* the sum of emissions from all quarters in the year in which the noncompliance occurs) are compared to the entire WEC applicable facility's facility applicable emissions (*i.e.,* methane emissions at the WEC applicable facility above the waste emissions threshold prior to consideration of any applicable exemptions). If the sum of total methane emissions from the site(s) with noncompliance is less than the facility applicable emissions, the sum of methane emissions from the site(s) with noncompliance is the total amount of emissions that would not qualify for the regulatory compliance exemption. If the sum of methane emissions from the site(s) with noncompliance are greater than the WEC applicable facility's facility applicable emissions, the entire WEC applicable facility would not qualify to exempt any emissions under the regulatory compliance exemption for the reporting year. In this way, facility applicable emissions serve as a ceiling for the total amount of emissions that would not qualify for the regulatory compliance exemption because in the absence of the regulatory compliance exemption, this is the highest possible amount of methane that would potentially be subject to charge. For WEC applicable facilities in all other industry segments, we are finalizing as proposed that the entire WEC applicable facility would not qualify for the regulatory compliance exemption and thus its facility applicable emissions are the highest number of metric tons of methane potentially subject to charge.

As described in section II.D.2.f of. this preamble, the EPA is finalizing that eligibility for the regulatory compliance exemption will be evaluated on a calendar quarter basis. Emissions from all emissions sources contained within a WEC applicable facility (or site, for onshore production and gathering and boosting facilities) are not eligible for the regulatory compliance exemption during any calendar quarter in which there is noncompliance among any CAA section 111(b) or (d) facilities contained within the WEC applicable facility (or site, for onshore production and gathering and boosting facilities), as described in section II.D.2.f. of this preamble and detailed at 40 CFR 99.41(d) and 99.42(d). Quarterly emissions will be calculated by taking annual facility or site subpart W methane emissions, subtracting any emissions from other large release events, and dividing by four. If emissions from other large release events occur in a quarter with noncompliance, these emissions are added to the quarter's emissions that are ineligible for the exemption. If emissions from other large release events, as reported under 40 CFR 98.236(y), span across multiple quarters, emissions from these events are allocated to individual quarters by multiplying total methane emissions from each event by the ratio of event duration, in days, to total days in the

quarter. The removal of emissions from other large release events prior to calculating average quarterly emissions ensures that these emissions are not allocated to quarters when they are known not to have occurred, and ensures they are accounted for in quarters in which there is NSPS OOOOb or State/Federal plan noncompliance. The calculation of quarterly methane emissions as annual emissions divided by four (after removing emissions from other large release events) simplifies implementation and reduces burden for both industry and the EPA. An approach that attempted to estimate methane emissions that are directly emitted in each quarter would have significantly increased the reporting requirements for industry, would not be anticipated to meaningly differ from the final approach for all emissions sources, and would have generated emissions data that would be close to impossible to verify without further increasing reporting requirements.

For WEC applicable facilities with partial-year eligibility for the regulatory compliance exemption, the quantity of emissions that qualify for the regulatory compliance exemption is calculated as the facility applicable emissions minus the sum of quarterly facility or site-level methane emissions, as appropriate, for all quarters with NSPS OOOOb or State/Federal plan noncompliance. If this calculation results in a value equal to or less than zero, the facility does not have emissions that qualify for a claim under the regulatory compliance exemption (*i.e.,* facility applicable emissions serve as a ceiling, and if there are no other eligible exempted emissions, WEC applicable emissions are equal to facility applicable emissions). If the calculation results in a positive value, then the facility applicable emissions are reduced by this amount when determining the WEC applicable emissions for the facility pursuant to the final requirements of 40 CFR 99.21(d). The positive value represents the amount of methane emissions eligible for the exemption. The calculation procedures for WEC applicable facilities with partial-year eligibility for the regulatory compliance exemption have been finalized at 40 CFR 99.43(b), including equations D–1A, for onshore production and onshore gathering and boosting facilities, and D–1B for facilities in all other industry segments. The quantity of emissions that would qualify for exemption under both the regulatory compliance exemption and any other exemption are then subtracted from this value, as described later in this section.

As a result of the finalized approach for assessment of partial regulatory compliance exemption under this final rule, it would be possible for a WEC applicable facility in the onshore production segment to have exempted emissions due to eligible permitting delays and plugged wells at a facility that also has qualified emissions eligible for the regulatory compliance exemption. In order to avoid double-counting emissions eligible for exemption (*i.e.,* subtracting the same methane emissions twice when calculating WEC applicable emissions), we are finalizing requirements at 40 CFR 99.43(c) to determine the quantity of emissions that would qualify for exemption under both the regulatory compliance exemption and any other exemption. Emissions under this scenario are quantified by multiplying the total quantity of emissions claimed for plugged wells by the ratio of the number of calendar quarters for which the facility qualified for regulatory compliance exemption divided by four added to the total quantity of emissions claimed for unreasonable permitting delay multiplied by the ratio of the number of days (considering calendar quarters) the facility qualified for the regulatory compliance exemption divided by the total number of days eligible for unreasonable permitting delay. For example, a facility qualified to claim for exemption 100 mt of CH_4 due to eligible unreasonable permitting delay for 365 days, qualified for exemption of 4 mt of CH_4 emissions from plugged wells, and qualified for regulatory compliance exemption for three calendar quarters (273 days) (January 1–March 31; April 1–June 30; and July 1–September 30), this calculation would result in a value of 77.79 mt of CH_4. This value is subtracted when determining the emissions attributed to qualifying for the regulatory compliance exemption. In this way, these emissions are appropriately attributed to the eligible permitting delay and/or plugged well exemptions rather than being double-counted as part of the regulatory compliance exempted emissions. For facilities in the onshore production industry segment, this assessment is computed on a site-by-site basis and then totaled. The calculations for determination of the emissions that would qualify for exemption under both the regulatory compliance exemption and another exemption are finalized at Equation D–2A, applicable for facilities in the onshore production industry segment, and Equation D–2B, applicable for facilities in all other industry segments.

h. Reporting and Recordkeeping Requirements for the Regulatory Compliance Exemption

We are finalizing reporting requirements at 40 CFR 99.7(b)(2)(iv) relevant to the regulatory compliance exemption. Those requirements provide that once the Administrator has made the requisite determinations in CAA section 136(f)(6)(A)(i)–(ii) for a given State (or group of States, for facilities that span multiple States) and the final compliance date for CAA section 111 facilities in that State(s) has passed, each WEC filing submitted by a WEC obligated party for each WEC applicable facility in the State(s) that exceeds the waste emissions threshold that contains any CAA section 111(b) and (d) facilities and which are claiming the exemption must include certain information relevant to the regulatory compliance exemption. This final approach is conceptually similar to the proposed approach of initiating reporting requirements for the exemption only when the exemption becomes available, but it is changed in that it is now aligned with the timing of regulatory compliance exemption availability as finalized in this rulemaking. CAA section 136(f)(6)(A) mandates that the EPA shall not impose a charge upon WEC applicable facilities that qualify for the regulatory compliance exemption. Under the final approach for implementing the regulatory compliance exemption, WEC applicable facilities that are below the waste emissions threshold are ineligible for the exemption. The EPA therefore is finalizing as proposed that WEC obligated parties are not required to report information related to the compliance status of CAA section 111(b) and (d) facilities contained within WEC applicable facilities for WEC applicable facilities that are below the waste emissions threshold. The EPA is also finalizing that WEC applicable facilities that are not eligible for the regulatory compliance exemption, or that otherwise choose not to use the regulatory compliance exemption, are not subject to the reporting requirement at 40 CFR 99.7(b)(2)(iv).

The EPA is also finalizing, as proposed, reporting requirements for facilities that qualify for and elect to claim the regulatory compliance exemption at 40 CFR 99.42. We are finalizing that the WEC filing submitted by the WEC obligated party for each WEC applicable facility must include a certification of the NSPS and State and Federal plan compliance status for each

CAA section 111(b) and (d) facility located within a WEC applicable facility during the reporting year. This certification of compliance status must indicate if any CAA section 111(b) or (d) facilities contained within the WEC applicable facility had any noncompliance, as defined in this final rule, from methane requirements for monitoring, emissions limits or standards (surrogate parameters), operating limits (including operational parameter limits), or work practice standards in the reporting year, and must indicate in which quarter of the year those deviations occurred. WEC applicable facilities that meet regulatory compliance exemption eligibility requirements for the entire year or a portion of the year are required to report the ICIS–AIR ID (or if unavailable, the facility registry service (FRS) ID and EPA Registry ID from CEDRI) reporting identifiers for each CAA section 111(b) and (d) facility located within the WEC applicable facility. These identifiers provide links to reports, emissions, and compliance data for each CAA section 111(b) and (d) facility located within the WEC applicable facility, which is information necessary for the EPA to confirm the accuracy of the reported compliance status.

The EPA proposed that WEC applicable facilities that are not eligible for the exemption would be required to submit one report associated with the CAA section 111(b) and (d) facilities located within the WEC applicable facility that documents any instance of noncompliance for the reporting year. The EPA received comments stating that exemption-related reporting requirements should not apply to WEC applicable facilities that are not eligible for the exemption. The EPA agrees, and the final rule does not include reporting requirements for the regulatory compliance exemption for WEC applicable facilities that are not eligible for the regulatory compliance exemption or otherwise choose not to use the exemption. As supporting documentation for the certification of compliance status of WEC applicable facilities that are fully or partially eligible for the exemption, we are finalizing, as proposed, to require the submittal of report(s) associated with the CAA section 111(b) and (d) facilities located within the WEC applicable facility. The EPA recognizes that the compliance certification period for CAA section 111(b) and (d) facilities may not align with the reporting year for which the filing is being completed and that at the time of the WEC filing due on August 31 of each year, report(s) covering the complete preceding reporting year for WEC filing may not be available. To accommodate these cases where the NSPS OOOOb and State/Federal plan compliance status for the complete reporting year is not known at the time of the WEC filing, the EPA is finalizing that the WEC obligated party must provide compliance reports for the portion of the year for which they are available (including the period of time covered); for the remainder of the year, the WEC obligated party must provide a certification of compliance status for each CAA section 111(b) and (d) facility at the WEC applicable facility that is not available at the time of the WEC filing. It also is possible that the complete calendar year of WEC filing is covered by two annual reports, each covering a portion of the calendar year. In this case, the WEC applicable facility must submit both annual reports. The EPA further recognizes that a WEC applicable facility may contain CAA section 111(b) and (d) facilities that first became subject to requirements under CAA sections 111(b) and (d) during the reporting year associated with the filing and for which the first year of compliance is not completed. For these CAA section 111(b) and (d) facilities, we are finalizing as proposed to require that the filing identify the type of facility, the date that it became subject, and a certification of the compliance status for the portion of the year in which it was subject to requirements under CAA sections 111(b) and (d). In cases where the initial filing does not include a report covering the entire reporting year, we are finalizing as proposed to require that the WEC obligated party provide a revised filing once such a report becomes available. The EPA is finalizing that this revised filing under the final WEC rule would be required to be made within 30 calendar days of the date that the compliance report covering the remainder of the year would be due under the applicable requirements of NSPS OOOOb or a State/Federal plan. The deadlines for filing revisions to WEC filings as discussed in section III.A.4. do not apply for the submittal of compliance reports.

We are finalizing language at 40 CFR 99.41(e) clarifying that for purposes of 40 CFR part 99, ''affected facility(ies)'' or ''designated facility(ies)'' that are located at the WEC applicable facility means the affected facility(ies) or designated facility(ies) that was (were) part of the WEC applicable facility as of December 31 of the reporting year, as well as any facility(ies) that was (were) decommissioned during the reporting year without being transferred to another WEC applicable facility. This language serves to clarify that the basis for determining the CAA section 111 facilities for which submission of compliance reports is required and qualification for exemption of emissions is determined under the regulatory compliance exemption is aligned with the basis for reporting emissions under subpart W of the GHGRP. We are also finalizing an additional reporting requirement at 40 CFR 99.42(b)(7) necessary for verification and implementation of this basis of compliance report submittal under the regulatory compliance exemption. The EPA recognizes that the requirement to submit compliance reports covering the full calendar year for all CAA section 111 facilities located at a WEC applicable facility may result in submission of reports that include equipment that was not located at that WEC applicable facility during the year. For example, in the circumstance of a CAA section 111 facility that is purchased from another owner or operator during the reporting year, the compliance report prepared for that particular section 111 facility (*i.e.,* piece of equipment) may also include equipment that was not transferred. The reporting requirement of 40 CFR 99.42(b)(6) requires an indication of whether any compliance reports submitted pursuant to 40 CFR 99.42(b) include one or more CAA section 111 facilities that are not located at the WEC applicable facility, and for any such CAA section 111 facilities, an indication of whether the CAA section 111 facility was part of the WEC applicable facility for part of the reporting year and transferred to another facility prior to December 31 of the reporting year or if the affected or designated facility was not part of the WEC applicable at any time during the reporting year.

We are finalizing additional reporting requirements related to the regulatory compliance exemption beyond those that were proposed at 40 CFR 99.42(d), 99.42(e), and 99.42(f). These requirements are necessary to support implementation of the final approaches for assessment of noncompliance at the site level for the onshore petroleum and natural gas production and onshore petroleum and natural gas gathering and boosting industry segments, as well as quarterly assessment of whether a facility (or site) meets the criteria for exemption of emissions under the regulatory compliance exemption as discussed in section II.D.2.f. of this preamble. The final requirements at 40 CFR 99.42(d) require that for each submitted compliance report that

indicates a deviation or violation, the compliance reporting identifiers associated with the affected or designated facilities for which there was a deviation or violation are reported. Additionally, an indication for each calendar quarter is required as to whether the compliance report indicates that the criteria for exemption of emissions were met during that calendar quarter. The final requirements at 40 CFR 99.42(e) establish additional reporting for other large release events that occurred within or overlapped with a quarter in which the facility (or site) did not qualify for regulatory compliance exemption. These additional elements consist of the unique release event identification number as reported to subpart W for the release event and the duration of the event, in days, that occurred during calendar quarters in which the facility (or site) did not qualify for regulatory compliance exemption. These reported data elements are necessary for implementation of the calculation of emissions exempted under the regulatory compliance exemption that are associated with other large release events, as discussed in section II.D.2.g. of this preamble. The final requirements at 40 CFR 99.42(h) consist of the reporting of the quantity of methane emissions at the WEC applicable facility qualifying for regulatory compliance exemption, the total quantity of methane emissions that qualified for exemption under both the regulatory compliance exemption and another exemption, whether the facility (or site) did not meet the criteria for exemption of all emissions under the regulatory compliance exemption, and if so an indication for each calendar quarter of whether the facility (or site) met the criteria for exemption of emissions during that calendar quarter. In cases where multiple compliance reports are submitted for a facility, individual well-pad site (for the onshore petroleum and natural gas production industry segment) or individual gathering and boosting site (for the onshore petroleum and natural gas gathering and boosting industry segment), the calendar quarters reported under this requirement must reflect the periods of time in which the conditions for the exemption of emissions were met for the facility, well-pad site, or gathering and boosting site, as applicable, in its entirety. For example, if two reports were submitted that together represent all of the affected and designated facilities at a well-pad site, and one report indicates deviation during only the first calendar quarter (*i.e.,* January to March) while the other report indicates deviation during only the second calendar quarter (*i.e.,* April to June), the information reported would be that for the first (*i.e.,* January to March) and second (*i.e.,* April to June) calendar quarters the conditions for the exemption of emissions were not met, and for the third (*i.e.,* July to September) and fourth (*i.e.,* October to December) calendar quarters the conditions were met.

The EPA requires this information for the verification of regulatory compliance exemption eligibility. Reported information will be used to conduct verification as discussed in section III.A.4. as well as any auditing that occurs as discussed in section III.E.1.

The EPA is aware that these reporting requirements may result in cases where a WEC obligated party makes a good-faith representation that each CAA section 111(b) and (d) facility at the WEC applicable facility is in compliance but later independently discovers an instance(s) of noncompliance. The EPA is finalizing as proposed that such independent discoveries would be considered to be substantive errors within the WEC filing. The EPA is finalizing at 40 CFR 99.7(e)(1) that a revised WEC filing must be submitted within 30 days of the discovery that a previously submitted WEC filing contains a substantive error. Provided that timely submittal of a revised filing is made, if a revised regulatory compliance exemption filing results in the imposition of WEC obligation on a WEC applicable facility that previously qualified for exemption, the EPA is finalizing that the WEC obligated party would not be subject to any penalties.

However, later discoveries of deviations or violations by the EPA or another regulatory authority, or discoveries as a result of investigation by the EPA or another regulatory authority (including information requests), are not treated the same way as filing errors. Where a WEC obligated party represents that each CAA section 111(b) and (d) facility at the WEC applicable facility is in compliance, but the EPA or another regulatory authority subsequently discovers the existence of noncompliance, or the CAA section 111(b) and (d) facility identifies the noncompliance as a result of an EPA investigation (including information requests), the WEC obligated party is required to submit a revised WEC filing with corrected information, but may be subject to enforcement and required to pay any outstanding WEC fees and penalties. False statements may be subject to criminal enforcement.

i. Resumption of WEC Under CAA Section 136(f)(6)(B)

CAA section 136(f)(6)(B) provides that if, at any point after the Administrator has made the determinations required by CAA section 136(f)(6)(A)(i) and (ii), the conditions for any such determination cease to apply, the WEC applicable facility will ''again be subject to'' charge. Because the EPA is finalizing that the determinations required by CAA section 136(f)(6)(A)(i) and (ii) will occur on a State-by-State basis, we are finalizing that all WEC applicable facilities in a State would lose access to the exemption if either of the conditions in CAA section 136(f)(6)(A)(i) and (ii) ceased to apply for that State. For example, if a State plan were challenged in litigation and vacated by a court after the initial Administrator determinations for that State, a plan would no longer be ''approved and [] in effect'' in that State, and the regulatory compliance exemption would no longer be available to WEC applicable facilities in that State. Similarly, if after the initial equivalency determination methane emissions requirements promulgated under CAA section 111(b) or (d) (either the NSPS or the State/Federal plans) were modified such that they no longer resulted in equivalent or greater aggregate emissions reductions than the 2021 NSPS/EG Proposal in a particular State, the exemption would no longer be available in that State. For WEC applicable facilities that span multiple States or Tribal lands, the exemption would no longer be available if either of the conditions required by CAA section 136(f)(6)(A)(i) and (ii) ceased to apply in any of the States or Tribal lands in which a WEC applicable facility has operations. If a WEC applicable facility is in an industry segment where facilities may span multiple States or Tribal lands and the criteria in either CAA section 136(f)(6)(A)(i) or (ii) cease to be met in one of those States or Tribal lands, but the facility can demonstrate it is not located in the State where the conditions cease to exist based upon the reporting requirement finalized at 40 CFR 99.7(b)(2)(iv)(A), the exemption remains available to the facility.

The EPA is finalizing as proposed that any determination that the criteria in CAA section 136(f)(6)(A) are no longer met after the initial determination will be made through a future administrative action. Consistent with the statutory text CAA section 136(f)(6)(B), the EPA is finalizing that the exemption will not be available for the full calendar year in which the required criteria were no longer met. The EPA is finalizing, as

proposed, that if access to the regulatory compliance exemption were lost after it was initially made available because one of the two required conditions in CAA section 136(f)(6)(A) were no longer met, it will become available again following a subsequent determination that both conditions are once again achieved. Under such circumstances, the exemption will be available again for the reporting year in which the conditions are found to be met. The EPA is finalizing, as proposed, that if the conditions ceased to apply and were then met again in the same reporting year, the exemption will be available for the entire reporting year. The EPA has finalized revised language at 40 CFR 99.40(d) and (e) to clarify the timing of availability of the exemption in this circumstance.

3. Plugged Well Exemption Under CAA Section 136(f)(7)

Congress created an incentive for plugging and permanently shutting wells by including an exemption from the WEC in CAA section 136(f)(7): ''[c]harges shall not be imposed with respect to the emissions rate from any well that has been permanently shut-in and plugged in the previous year in accordance with all applicable closure requirements, as determined by the Administrator.'' Separately, in CAA section 136(a)(3)(D) and 136(b), Congress provided funding that can assist owners and operators who elect to permanently shut-in and plug wells on non-Federal land.[66]

In this rulemaking, we are finalizing that this exemption is applicable to wells in the onshore petroleum and natural gas production, offshore petroleum and natural gas production, and underground natural gas storage industry segments. We proposed that this exemption would apply to the production industry segments only and not to wells in the underground storage industry segment. After continued assessment of the statutory text and consideration of comments received, the EPA is finalizing the inclusion of wells in the underground storage industry segment in the plugged well exemption. CAA section 136(f)(7) does not restrict eligibility to wells in the production industry segments. In fact, the statutory text states that the exemption is applicable to the emissions rate ''from any well'' that has been plugged. To best align with the statutory text, the EPA is finalizing that plugged wells in the underground storage industry segment are also eligible for the plugged well exemption. Exempted emissions sources for plugged wells in the underground storage segment includes equipment leaks attributed to the wellhead. For the onshore petroleum and natural gas production and the offshore petroleum and natural gas production sectors, we are expanding the plugged well exemption to include other emissions sources reported on the well level that were not included in the proposal. To be more consistent with CAA section 136(f)(7), the final plugged well exemption includes all subpart W emissions sources attributable to an individual well, so the exemption better accounts for emissions associated with an individual well. As discussed further in section II.D.3.b. of this preamble, for onshore petroleum and natural gas production we are expanding the exemption to include well testing, associated natural gas venting and flaring, and drilling mud degassing. These emissions sources are added in addition to the wellhead equipment leaks, liquids unloading, and workovers with or without hydraulic fracturing for the onshore petroleum and natural gas production sector that were included in the proposal. For offshore petroleum and natural gas production, drilling mud degassing is included in the exemption, in addition to the component-level equipment leaks that were proposed.

We are finalizing as proposed that exempted emissions would be those from wells permanently shut-in and plugged in the previous year (*i.e.,* if a well is permanently shut-in and plugged in 2026, the exempted emissions would be deducted from the reporting year 2026 emissions totals that are filed under WEC in 2027). Taken all together, the changes being finalized in this rulemaking will help improve access to the plugged well exemption while also more closely aligning this exemption with the 2024 NSPS/EG Final rule.

a. Determining if the Exemption for Permanently Shut-In and Plugged Wells Applies to a WEC Applicable Facility

The EPA is finalizing as proposed two criteria for determining if the exemption for permanently shut-in and plugged wells applies to a WEC applicable facility.

Consistent with the other exemptions, the first criterion is that the facility must have emissions that exceed the waste emissions threshold. CAA section 136(f)(7) notes that ''charges shall not be imposed'' on emissions from permanently shut-in and plugged wells. Charges would not be imposed on emissions below the threshold and therefore an exemption is unnecessary in cases where facility emissions are below the threshold. The EPA is finalizing as proposed that emissions from facilities that are below the waste emissions threshold would not be exempted. The EPA is finalizing as proposed that for facilities that exceed the waste emissions threshold, emissions eligible for the plugged well exemption could be subtracted up to the point where facility emissions equal the waste emissions threshold (*i.e.,* the lowest possible WEC applicable emissions for a facility with the plugged well exemption would be zero).

Second, wells must meet the following definition of permanently shut-in and plugged in accordance with all applicable closure requirements. The EPA is finalizing as proposed that for the purposes of this exemption, a permanently shut-in and plugged well is one that has been permanently sealed to prevent any potential future leakage of oil, gas, or formation water into shallow sources of potable water, onto the surface, or into the atmosphere. For the purposes of this exemption, the EPA is finalizing as proposed that a well would be considered permanently shut-in and plugged, in accordance with all applicable closure requirements, if the owner or operator has met all applicable Federal, State, and local requirements for closure in the jurisdiction where the well is located. Although Federal, State, and local requirements for well closure may vary (*e.g.,* only some States require post-plugging reports, some States require initial checks by State environmental agency at time of plugging), wells are permanently shut-in and plugged in a similar manner. For the purposes of this exemption, we are finalizing as proposed that the date on which a well would be considered permanently shut-in and plugged is the date on which a metal plate or cap has been welded or cemented onto the casing end.

In addition to requirements specifying how to plug a well, relevant Federal, State, and local requirements often also specify requirements such as for notifications, reporting, and site remediation. For purposes of 40 CFR part 99, we are finalizing as proposed that the applicable closure requirements would include only the requirements

[66] On December 15, 2023, the EPA and the DOE announced the award of $350 million in formula grant funding to 14 states to help measure and reduce methane emissions, supporting industry efforts to cut methane emissions from low-producing, marginal conventional wells on non-Federal lands and environmental restoration of well sites. Press release: *https://www.epa.gov/newsreleases/biden-harris-administration-announces-350-million-14-states-reduce-methane-emissions*.

Inflation Reduction Act (IRA)—Mitigating Emissions from Marginal Conventional Wells, Funding Opportunity Number DE–FOA–003109.

specific to well plugging. We are finalizing as proposed that requirements for notifications, reporting, and site remediation are not included as part of the exemption eligibility criteria for following ''all applicable closure requirements'' in CAA section 136(f)(7) because the closure of the well is the key activity impacting methane emissions, which is the focus of the WEC, and these other aspects of closure, while important, are less relevant to methane emissions levels. We also note that had we included these additional requirements in our interpretation of ''all applicable closure requirements,'' the reporting requirements would increase for permanently shut-in and plugged wells and this may lead to recalculations of WEC years after the exemption was initially applied.

b. Calculations of Exempted Emissions From Permanently Shut-In and Plugged Wells

Calculations of Exempted Emissions from Permanently Shut-in and Plugged Wells at Onshore Petroleum and Natural Gas Production Facilities. The EPA is finalizing as proposed that only wellhead emissions are eligible for the plugged well exemption with some modifications from the proposal regarding what is included as eligible emissions for the onshore petroleum and natural gas production industry segment. In the proposal, the EPA included wellhead equipment leaks, liquids unloading, and workovers both with and without hydraulic fracturing, in the reporting year in which the well was plugged as methane emissions eligible for the exemption in the onshore petroleum and natural gas production industry segment. We are expanding the plugged well exemption for the onshore petroleum and natural gas production industry segment to include other emissions sources reported on the wellhead level (*i.e.,* well testing, associated natural gas venting and flaring, and drilling mud degassing) in addition to the emissions sources proposed.

The EPA received comments supporting expansion of the exemption to include emissions from additional sources, such as emissions from non-wellhead equipment that are co-located on the well pad. The statutory text does not describe or reference emissions from other emissions sources that may be co-located with a plugged well, and the EPA determined that the statutory text is best read to exclude these emissions. Moreover, as we noted in the proposal, methane emissions from other equipment onsite (*e.g.,* separator, compressor, flare) may result from co-mingled natural gas throughput from multiple wells and not just the wells that are plugged.

For the purposes of quantifying the methane emissions from eligible emissions sources associated with each permanently shut-in and plugged well, we are finalizing as proposed to use the methane emissions and throughput data reported to subpart W of part 98. The final amendments in the 2024 Subpart W Final Rule impact the data available to best estimate the exempted emissions from the permanently shut-in and plugged well. Therefore, as described in more detail in this section, for applicable emission sources and industry segments, different approaches are finalized for certain time periods.

For reporting year 2024, the current subpart W rule requires that onshore petroleum and natural gas production facilities report methane emissions from liquids unloading and workovers by sub-basin for each WEC applicable facility, as well as methane emissions from well testing, associated natural gas venting and flaring, and equipment leaks at the facility-level. Drilling mud degassing is not an emission source category collected under the current subpart W rule for reporting year 2024. Subpart W of part 98 also currently requires offshore petroleum and natural gas production facilities and onshore petroleum and natural gas production facilities to report facility-level throughput of gas and oil handled or sent to sale, respectively. Revisions included in the 2024 Subpart W Final Rule require onshore petroleum and natural gas production facilities to report additional elements that facilitate quantification of methane emissions from individual shut-in and plugged wells. Specifically, effective January 1, 2025, and applicable beginning with reporting for 2024, the 2024 Subpart W Final Rule requires onshore petroleum and natural gas production facilities to report well-level throughput volumes for gas and oil sent to sale from wells that are permanently shut-in and plugged. Additionally, beginning in reporting year 2025, the 2024 Subpart W Final Rule increases the granularity of methane emissions reporting for eligible equipment categories, except equipment leaks, to the well-level and methane emissions reporting for equipment leaks to the well-pad site level. Due to the differences in available reporting data for 2024 and future years, the final approach for quantifying methane emissions in part 99 for individual wells located at onshore petroleum and natural gas production facilities that are permanently shut-in and plugged in 2024 is different than the approach for quantifying methane emissions from wells located at onshore petroleum and natural gas production facilities that are permanently shut-in and plugged in 2025 and future years.

For reporting year 2024, the EPA is finalizing as proposed through 40 CFR 99.52 that WEC applicable facilities in the onshore petroleum and natural gas industry segment would quantify methane emissions from permanently shut-in and plugged wells by allocating the subpart W of part 98 reported facility-level methane emissions from eligible emissions sources using subpart W of part 98 reported production volumes of gas and oil sent to sale. We are finalizing as proposed that WEC applicable facilities in the onshore petroleum and natural gas industry segment would sum the total subpart W of part 98 reported methane emissions from methane emissions from eligible emissions sources, and multiply the sum of the methane emissions by the ratio of subpart W of part 98 reported production at the permanently shut-in and plugged well to the subpart W of part 98 reported facility-level total production.

For facilities with only gas production with exempt plugged well emissions, we are finalizing as proposed that the reported gas produced from the plugged wells be divided by the total gas production at the facility to develop the ratio. For facilities with only oil production with exempt plugged well emissions, we are finalizing as proposed that the reported oil produced from the plugged wells be divided by the total oil production at the facility to develop the ratio. For facilities with both gas and oil production with exempt plugged well emissions, we proposed and are finalizing that gas production that is reported to subpart W of part 98 by the WEC applicable facility in the onshore petroleum and natural gas industry segment would be converted to barrels of oil equivalent, such that throughput volumes will be on the same basis for facilities that report production of gas and oil. The EPA is finalizing as proposed to use a default value of 6,000 scf/barrel.

For reporting year 2025 and future years, we are finalizing as proposed that WEC applicable facilities in the onshore petroleum and natural gas industry segment must estimate well-level emissions in accordance with part 98 methods for the permanently shut-in and plugged well. As described in this section, for 2025 and future years, subpart W of part 98 requires reporting of methane emissions from liquids unloading, workovers, well testing, associated natural gas venting and

flaring, and drilling mud degassing to be at the well-level for facilities in the onshore petroleum and natural gas industry segment; therefore, we are finalizing as proposed that facilities in the onshore petroleum and natural gas industry segment would utilize the methane emissions as reported to subpart W part 98 in their part 99 exemption calculation for these emissions sources. Also, as described in this section, for 2025 and future years, subpart W of part 98 requires reporting of methane emissions from wellhead equipment leaks at the well-pad site level for facilities in the onshore petroleum and natural gas industry segment. In order to obtain a well-level estimate for the part 99 exemption calculation, we are finalizing as proposed to require facilities in the onshore petroleum and natural gas industry segment to utilize the subpart W of part 98 input data and emission estimation methods for wellhead equipment leaks, including the use of direct measurement surveys as specified in the 2024 Subpart W Final Rule, to calculate the methane emissions at the well level for the permanently shut-in and plugged well. For example, if equipment leak methane emissions included emissions from a permanently shut-in and plugged well or wells were estimated using the leaker emission factor method in 40 CFR 98.233(q) at the well-pad site, the WEC applicable facility would use the count of leakers by component type (*e.g.,* valve, connector) recorded for the permanently shut-in and plugged well, the time the components were leaking and operational at the well during the year, and the appropriate emissions factors from subpart W of part 98 to estimate the methane emissions from the permanently shut-in and plugged well. Similarly, if the equipment leak methane emissions at the well-pad site that includes the permanently shut-in and plugged well were estimated using the population count method in 40 CFR 98.233(r), the WEC applicable facility would use the operating time of the well during the year and the appropriate emissions factors from subpart W of part 98 to estimate the emissions from the permanently shut-in and plugged well.

Calculations of Exempted Emissions from Permanently Shut-in and Plugged Wells at Offshore Petroleum and Natural Gas Production Facilities. For offshore petroleum and natural gas production facilities, the current subpart W of part 98 reporting requirements are based on the facility's submission to the Bureau of Ocean Energy Management (BOEM), which includes methane emissions for component-level equipment leaks and drilling mud degassing. The methane emissions required to be reported by offshore facilities are unchanged by the 2024 Subpart W Final Rule as it pertains to this exemption in that these facilities will continue to report the data from their BOEM report. Subpart W of part 98 also currently requires offshore petroleum and natural gas production facilities to report facility-level throughput of gas and oil handled in the reporting year. Final revisions included in the 2024 Subpart W Final Rule for offshore petroleum and natural gas production facilities add requirements for the reporting of well-level throughput volumes for gas and oil sent to sale from wells that are permanently shut-in and plugged beginning in reporting year 2024. The 2024 Subpart W Final Rule also revised the terms in the current reporting elements for facility-level throughputs to refer to gas sent to sale, rather than handled, for consistency with the CAA language and with the onshore production industry segment. As noted in the preamble for the 2024 Subpart W Final Rule, these verbiage changes for facility-level throughput are not expected to impact the quantity of production volumes reported and were made for consistency and clarity. For the purposes of estimating the exempted emissions for permanently shut-in and plugged wells at offshore petroleum and natural gas production facilities, we are finalizing that facilities allocate the component level equipment leaks (*i.e.,* those from valves, connectors) at the wellhead, as proposed, and drilling mud degassing by the ratio of production from the well that has been permanently shut-in and plugged to the total facility-level production. Analogous to the approach for onshore petroleum and natural gas production facilities for reporting year 2024, in cases where a facility produced both oil and gas, we are finalizing as proposed that gas sent to sale be converted to barrels of oil equivalent and have provided an option to use 6,000 scf/barrel for the conversion.

Calculations of Exempted Emissions from Permanently Shut-in and Plugged Wells at Underground Natural Gas Storage Facilities. For underground natural gas storage facilities, the EPA is finalizing that equipment leaks at the wellhead level are eligible for the plugged well exemption. The exemption only includes wellhead equipment leaks because other emissions sources, such as liquids unloading or workovers as seen in the exemption for onshore production wells, do not occur at non-production wells.

To quantify the methane emissions associated with each permanently shut-in and plugged well, we are finalizing the use of methane emissions reported to subpart W of part 98. Subpart W of part 98 requires underground natural gas storage facilities to report methane emissions from equipment leaks associated with all wells at the facility, but emissions are not attributable to a particular wellhead. In order to obtain a well-level estimate of equipment leaks, we are finalizing that facilities in the underground natural gas storage industry segment must utilize the subpart W of part 98 input data and emission estimation methods for wellhead equipment leaks, including the use of direct measurement surveys as specified in the 2024 Subpart W Final Rule, to calculate the methane emissions at the well level for the permanently shut-in and plugged well.

Calculations of Exempted Emissions for Multiple Permanently Shut-in and Plugged Wells. For all reporting years and applicable industry segments, if the WEC applicable facility has more than one permanently shut-in and plugged well, we are finalizing as proposed that the part 99 emissions calculations would be performed for each well and summed to determine the net annual quantity of methane emissions at the WEC applicable facility eligible for the exemption.

c. Reporting and Recordkeeping Requirements for the Exemption for Permanently Shut-In and Plugged Wells

Through the provisions proposed at 40 CFR 99.51, the EPA is finalizing as proposed that the WEC obligated party receiving the exemption would provide for each well at a WEC applicable facility, the well ID number; the date the well was permanently shut-in and plugged; the statutory citation for each State, local, and Federal regulation stipulating requirements that were applicable to the closure of the permanently shut-in and plugged well; the emissions attributable to the well, and for each WEC applicable facility, and the total emissions attributable to all permanently shut-in and plugged wells at the facility. In the final rule, we are adding a reporting requirement of a certification by the designated representative for the WEC obligated party that all identified wells were closed in accordance with State, local, and Federal requirements. We are also finalizing additional reporting requirements to provide information related to the emissions calculations including an indication of the method

used to calculate wellhead equipment leaks, inputs to the methods to calculate wellhead equipment leaks, and the quantity of methane emissions attributable to the well from wellhead equipment leaks. Specifically for onshore production and underground storage wells, data inputs for wellhead equipment leaks were added to provide sufficient data to facilitate verification of the exempted emissions quantity. The data associated with underground natural gas storage facilities is reported to subpart W at the facility level; therefore, well level data will need to be reported to 40 CFR part 99 to ensure verification of the emissions can be performed. We are also finalizing additional reporting requirements related to associated gas flaring and completions and workovers without hydraulic fracturing. These requirements consist of reporting the volume of gas sent to a flare from the plugged well for which exemption is being sought as well as the calculated quantity of methane emissions attributable to the well from associated gas flaring and from completions and workovers without hydraulic fracturing and with flaring. We are finalizing as proposed that the information included in the report would be subject to the general recordkeeping requirements for part 99, meaning these records must be retained for 5 years following the WEC filing year of the exemption such that they can be made available to the EPA for inspection and review.

The EPA requires this information for the verification of exemption eligibility and of exempted emission quantity. Reported information will be used to conduct verification as discussed in section III.A.4., and reported information, records, and other information as applicable will be used to conduct any auditing that occurs under section III.E.1.

III. General Requirements of the Final Rule

A. WEC Filing Requirements

1. Required WEC Filers

The WEC obligated party is required to submit a WEC filing annually by August 31 that will include data collected from each WEC applicable facility for which it (the WEC obligated party, as defined in 40 CFR 99.2) is responsible as of December 31 of each reporting year. The WEC filing must include payment of any WEC obligation. The WEC filing provides the data necessary for the EPA to assess and verify the WEC obligation including certain part 98 emissions information and information on netting, as applicable, as well as supporting documentation for any WEC applicable facility exemptions.

2. Filing Deadlines

As required under the CAA sections 136(c) and (e), the assessment of the first WEC will be based on data collected under subpart W of the GHGRP for year 2024, beginning on January 1, 2024. The EPA proposed that the WEC filing would be due by March 31 of each year following each reporting year, and that any final revisions to the filing would be due by November 1 of each year following each reporting year. The proposed approach aligned the WEC filing and subpart W reporting deadlines. Many commenters were opposed to these proposed deadlines and recommended that the WEC filing occur later in the year. After consideration of comments received, the EPA is revising the WEC filing deadlines from the proposal in this final rule. The EPA is finalizing in 40 CFR 99.5 that the first WEC filing, for year 2024 emissions, is due September 2, 2025,[67] and would be required to be submitted annually by August 31 thereafter, as applicable. The EPA is finalizing a requirement that revisions to the August 31 WEC filing, with the exception of resubmissions to provide CAA section 111(b) or (d) compliance reports or revisions to previously reported compliance reports for the purposes of the regulatory compliance exemption, will be allowed through December 15 of the filing year. It is expected that with the final WEC filing date of August 31, there will be fewer resubmissions of WEC filings due to revised subpart W data compared to the proposed WEC filing deadline of March 31. The EPA is finalizing later WEC filing deadlines than proposed to simplify WEC implementation. The majority of the data used for WEC calculations are the facility-level methane emissions and hydrocarbon throughput volumes reported under subpart W. This information must be reported by March 31 of each year for the previous reporting (*i.e.,* calendar) year. After submission, these data go through the EPA verification process to identify potential errors and engage with facilities to correct them. This process generally concludes at the end of July or early August. In mid-August of each year, the EPA ''freezes'' the subpart W data set for publication in October. Facilities may continue to resubmit subpart W data after this point, but it is not included in that year's October data release.[68] As a result of the verification process and a desire by companies to ensure any corrected data is included in that year's public release of data, most, but not all, potential errors identified during the verification process are typically resolved by mid-August. Many commenters noted that requiring the WEC filing at the same time as subpart W reporting would lead to a cycle of WEC payments and refunds as the WEC filing was adjusted based on corrections and resubmissions resulting from the subpart W verification process, and that this cycle would be burdensome for both the EPA and industry. The EPA agrees and is therefore finalizing a WEC filing date of August 31. This date is after the majority of the yearly subpart W verification cycle is substantially complete and gives facilities sufficient time to make any corrections to their March 31 subpart W report and ensure accurate WEC calculations.

The EPA is also finalizing a final WEC resubmission date that is later in the calendar year than proposed. The final deadline of December 15 will provide time for the EPA to verify the initial WEC filings and time for WEC obligated parties to respond to any identified potential errors and resubmit WEC filings. The later WEC filing deadlines will also simplify reporting associated with the regulatory compliance exemption when it becomes available. Annual reporting deadlines for CAA section 111(b) and (d) facilities may fall at different times in the year. Many more WEC applicable facilities will know the compliance status of their constituent CAA section 111(b) and (d) facilities for the respective reporting year by August 31 compared to March 31. The EPA expects only a small number of annual reports for CAA section 111(b) and (d) would not be available by December 15. The final WEC filing dates will therefore reduce the need for WEC resubmissions to account for changes in CAA 111(b) and (d) compliance status for the purposes of determining eligibility for the regulatory compliance exemption.

3. Submission of the WEC Filing

The EPA is finalizing as proposed that each WEC filing must be submitted electronically in accordance with the

[67] August 31, 2025, falls on a Sunday, and Labor Day is the following day on September 1, 2025. Therefore, pursuant to final 40 CFR 99.5, the deadline for the initial WEC filing is September 2, 2025.

[68] The EPA publishes GHGRP data every October, covering both the most recently completed reporting year as well as changes impacting the 5 prior years. Changes made post-August would be reflected in the annual publication cycle the following calendar year.

requirements of 40 CFR 99.6 and in a format specified by the Administrator.

As noted previously in this section of the preamble, the EPA is finalizing that each WEC obligated party will submit a WEC filing annually. The WEC filing content provides the data necessary to complete the WEC calculations as described in section II.C. of the preamble. The EPA is finalizing WEC filing requirements to cover general company information including physical address, email, telephone number, list of associated WEC applicable facilities and their identifying information (*e.g.,* part 98, subpart W facility ID), as well as the net WEC emissions calculated in accordance with 40 CFR 99.22, the net WEC emissions after transfers resulting from the netting procedures pursuant to 40 CFR 99.23, and the WEC obligation as calculated pursuant to 40 CFR 99.24. The EPA is also finalizing that each WEC obligated party's WEC filing include certain information at the WEC applicable facility level. Specifically, the EPA is finalizing that for each WEC applicable facility that comprises the WEC obligated party, the filing requirements cover facility-level information including the facility's ID, the facility's industry segment(s), the facility's total subpart W GHG emissions in CO_2e, the facility's total subpart W methane emissions, and applicable natural gas or oil throughput as reported under subpart W, the facility's waste emissions threshold calculated in accordance with 40 CFR 99.20, and the facility's WEC applicable emissions calculated in accordance with 40 CFR 99.21.

The EPA received comments on the proposed reporting and recordkeeping requirements, including the contents of the WEC filing. Commenters recommended that the EPA add elements to the WEC filing related to the inputs to the WEC equations. After consideration of comments received, the EPA is adding WEC applicable facility filing requirements for total facility subpart W CO_2e, total subpart W methane, and total subpart W natural gas or oil throughput for the metric applicable to the facility's industry segment. These elements have been added to the final rule at 40 CFR 99.7(b)(2)(viii) through (xi). These additional data elements will support data verification and improve transparency by providing all of the primary WEC calculation data inputs in the WEC filing. The EPA notes that including these data elements, which are already reported under subpart W, will not increase the burden for industry as they will be automatically pulled from a WEC applicable facility's subpart W report into the electronic WEC filing system.

The EPA is also finalizing filing requirements for each WEC obligated party related to the three WEC exemptions, which are discussed in sections II.D.1. through 3. of this preamble. The EPA is finalizing as proposed that the exemptions are only available to WEC applicable facilities that exceed the waste emissions threshold. The EPA is therefore finalizing as proposed, with one clarifying revision, that these filing requirements would only apply to WEC applicable facilities that exceed the waste emissions threshold and are otherwise eligible for the exemption(s). The EPA is finalizing clarifying language at 40 CFR 99.7(b)(2)(iii) through (v) to allow a WEC obligated party to elect whether or not to submit a claim for exemption for a WEC applicable facility that meets the applicability requirements for each exemption. Coordinating revisions are being finalized at 40 CFR 99.31(a), and 99.42(a), along with a new paragraph 40 CFR 99.51(a). Comments received on the proposed filing requirements for each exemption are discussed individually for each exemption in sections II.D.1. through 3. of this preamble.

We are finalizing filing requirements related to stationary combustion source other large release events at 40 CFR 99.7(b)(2)(xiii). These reporting requirements are additions to those proposed and are necessary to address for purposes of 40 CFR part 99 the specified double-counting of emissions related to stationary combustion source other large release events as discussed in section II.C.2. of this preamble. For any combustion-related other large release events that were reported pursuant to subpart W, the WEC obligated party must report the unique release event identification number, and determine and report the quantities of CO_2, CH_4, and CO_2e emissions, in metric tons, that were reported under 40 CFR 98.236(z) for the duration of the other large release event as it was reported under 40 CFR 98.236(y)(4). These values represent the double-count of emissions present in the subpart W report for the WEC applicable facility. The determination of these quantities must be made using the applicable methods in subpart W and using measurement data, if available, or a combination of process knowledge, engineering estimates, and best available data when measurement data are not available.

4. Verification and WEC Filing Revisions

The foundation of the WEC obligated party's WEC filing will be the methane emissions and throughput reported by the WEC obligated party's WEC applicable facilities in their subpart W reports. As specified in 40 CFR 98.3(f) and (h) of this chapter, part 98 currently includes a verification process and resubmission process for resolving substantive error(s)[69] in reporting. These errors are either found through self-discovery by the facility or are found by the EPA during the verification process. In part 98, errors must be resolved within 45 days from discovery or notification of the error by the EPA. The EPA may grant a 30-day extension request if the request is timely, such that a total of 75 days may be provided for complete issue resolution. Additional extensions may be approved by the Administrator in specified limited circumstances. Resolution is either made by report revision and resubmission or by providing an adequate demonstration that the previously submitted report does not contain the identified substantive error or that the identified error is not a substantive error. Upon satisfying these requirements, the EPA determines that the error is resolved. If the requirements in 40 CFR 98.3 of this chapter are not satisfied, the EPA considers the part 98 report unverified.

Several commenters suggested strong verification protocols for WEC so that the charge obligations accurately reflect reported emissions. After consideration of comments received, the EPA is making one revision to the verification protocols to help ensure the charge obligations accurately represent emissions. Specifically, the EPA is finalizing that WEC filings will not be verified if they incorporate netted negative emissions generated from an unverified subpart W report. On all other aspects of the WEC verification protocols, the EPA is finalizing as proposed that the verification status of the WEC applicable facility with respect to the reporting in subpart W part 98 would be considered by the EPA when determining the verification status of the part 99 filing because the subpart W data would be the cornerstone of the WEC. In effect, a WEC filing may not achieve verified status until all errors associated with subpart W reports that impact the total WEC are corrected. For example, if the subpart W part 98 report

[69] 40 CFR 98.3(h)(3): A substantive error is an error that impacts the quantity of GHG emissions reported or otherwise prevents the reported data from being validated or verified.

of one WEC applicable facility contains errors related to reported emissions or throughput that affect the total WEC, the EPA could, by extension consider the WEC filing of the WEC obligated party that includes that WEC applicable facility to be unverified.

Separately, there are elements of the part 99 filing that are not directly tied to the subpart W report, such as the calculation of the WEC including netting and any exemption information. The EPA is finalizing as proposed to use a similar verification procedure under part 99 to that which exists under part 98. In implementing the verification of information submitted under part 99, the EPA will use a two-step process. First, the EPA will conduct an initial centralized review of the data that would help assure the completeness and accuracy of data. Second, the EPA will notify WEC obligated parties of potential errors, discrepancies, or make inquiries as needed concerning the WEC filing. Specifically, regarding the WEC filing, the EPA anticipates that there could be errors or clarifications with respect to the supporting documentation and quantification of emissions associated with exemptions from the WEC, which may require the EPA to review, evaluate, and confirm their validity and accuracy. The part 99 verification review will identify issues resulting from the calculation of WEC based on verified subpart W GHGRP reports and verified WEC filings to the extent possible. A thorough discussion of the separate process for unverified reports and approach for reassessment of WEC obligation due to resubmissions is discussed in section III.B. of this preamble.

The EPA is finalizing provisions that would require a WEC obligated party to respond to the EPA within 30 days of either being contacted in writing by the EPA notifying them of the presence of a substantive error in their WEC filing or by self-discovering that a previously submitted WEC filing contains one or more substantive errors (except as described later in this section) as opposed to 45 days as proposed. Initial submission, resubmission, and correspondence between parties will happen through an electronic system similar to the existing e-GGRT system used by the GHGRP, which will allow for back and forth between operators and the EPA prior to resubmissions. For the purposes of part 99, the EPA is finalizing as proposed to consider a substantive error to be an error that impacts the Administrator's ability to accurately calculate the WEC obligated party's obligation, which may include, but would not be limited to, the list of WEC applicable facilities associated with a WEC obligated party and corresponding data reported in each listed WEC applicable facility part 98 report(s), emissions associated with exemptions, and supporting information for each exemption to demonstrate its validity. The EPA is finalizing that a revised WEC filing must correct all substantive errors. If the WEC obligated party does not agree with the EPA's finding that the WEC filing contains substantive errors, the WEC obligated party must provide information demonstrating that the previously submitted report does not contain the identified substantive error or that the identified error is not a substantive error.

If a WEC applicable facility revises and resubmits their part 98 report, which results in impacts on the WEC calculations, the WEC obligated party is also required to submit a revised WEC filing. In the event that a subpart W report revision results in a change in the applicability of part 99 to the facility, the WEC obligated party must submit a revised WEC filing adding or removing any facilities, as appropriate. With the exception of resubmissions to provide CAA section 111(b) or (d) compliance reports or revisions to previously reported compliance reports for the purposes of the regulatory compliance exemption, part 99 resubmissions must be filed by December 15 of the year following the reporting year. Resubmissions related to CAA section 111(b) or (d) compliance reports for the purposes of the regulatory compliance exemption must be made as discussed in section II.D.2.h. of this preamble. Any part 98 resubmissions after this date that impact WEC calculations will not be required to be resubmitted in a revised WEC filing; facilities may continue to resubmit data under subpart W, as permitted. Under subpart W, facilities may resubmit data for historic reporting years via e-GGRT for the most recent five reporting years (*e.g.,* facilities may submit updates electronically to 2018–2023 data during calendar year 2024). Data resubmission for historic reporting years in the context of the WEC program is very complicated due to the potential changes in facility ownership over time and the implications this has on netting of emissions from facilities under common ownership or control. For example, a company or a facility owned by a company in one year may be owned in whole or in part by one or multiple different companies the next year. With such changes occurring annually to multiple facilities across multiple owners and operators with more than one facility under common ownership or control, there is no practical means of incorporating resubmitted data for historic reporting years in the WEC program. This could result in a very large administrative burden of reviewing recalculations and associated invoicing or refunds. The EPA therefore is finalizing a deadline of December 15 for each year, after which time no WEC resubmission filings initiated by the facility can be resubmitted. For example, resubmissions of subpart W data initially reported by March 31, 2025, or data from the WEC filing submitted September 2, 2025, that are used to assess WEC for the 2024 reporting year, must be submitted by December 15, 2025. This approach does not allow resubmissions for historic reporting years for WEC filings, even if the corresponding subpart W data is resubmitted for historic reporting years for purposes of subpart W. Subpart W facilities continue to be subject to part 98 requirements for resubmitting data for previous reporting years, but any data resubmitted under part 98 after December 15 of the calendar year following the respective reporting year will not be considered for the purposes of WEC under part 99. These approaches for WEC filing requirements and data verification are intended to incentivize complete and accurate WEC filings under part 99 by August 31 of each year, as well as complete and accurate reporting under part 98. The EPA is finalizing that it retains the right to re-evaluate WEC obligations in WEC filings after December 15 (*e.g.,* as part of the EPA audit of facility data, an enforcement investigation, or other relevant information). Similarly, the December 15 deadline would not apply to adjustments to WEC obligations resulting from the process to resolve unverified data, finalized at 40 CFR 99.8, should that resolution occur after December 15. Finally, in the event that annual CAA 111(b) or (d) compliance reports covering the entire previous WEC filing year are not available by December 15 due to the reporting schedule for those CAA 111(b) or (d) facilities, WEC obligated parties must revise their WEC filings after December 15 for the sole purpose of updating eligibility status for the regulatory compliance exemption.

B. Remittance and Assessment of WEC

We are finalizing as proposed that each WEC obligation payment must be submitted electronically in accordance with the requirements of 40 CFR 99.6 and in a format specified by the Administrator as part of the submission

of the WEC filing (*i.e.,* by August 31 each year covering the preceding reporting year).

Several commenters opposed any daily penalty for WEC obligated parties who fail to submit their annual filing by the deadline. Nevertheless, the EPA disagrees with the commenters since the absence of penalties would provide the perverse incentive for facilities to delay payment of the WEC. Therefore, the EPA is finalizing as proposed financial sanctions under 40 CFR 99.10 of subpart A. For WEC obligated parties that fail to submit their annual WEC filing by the deadline discussed in section III.A.2. of this preamble, the EPA is finalizing as proposed a daily penalty no greater than the rate associated with 42 U.S.C. 7413(d)(1) specified in Table 1 of 40 CFR 19.4, as amended. We are finalizing as proposed that this penalty will be invoiced by the EPA after the late filing is made. The EPA Finance Centers will assess interest, handling, and penalty charges in 30-day increments on any invoiced penalties. We are finalizing as proposed that the assessment of this penalty begins on the date that the WEC filing is considered past due (*i.e.,* September 1st) [70] and continue until such time that the WEC filing is submitted and certified by the WEC obligated party.

Under 31 U.S.C. 3717, there are interest, penalties, and costs that may be imposed on outstanding or delinquent debts arising under a claim owed by a person to the U.S. Government. Specifically, under 31 U.S.C. 3717(a)(1), agencies shall charge a minimum annual rate of interest on an outstanding debt on a United States Government claim owed by a person.[71] Under the EPA's implementing Policy Number 2540–9–P2, accounts are considered delinquent when the EPA does not receive payment by the due date specified on a bill or invoice. The EPA is finalizing as proposed to cite this Federal claims interest charge authority on any invoiced amounts past due. In the proposed rule, we included an equation (Equation A–1) detailing how interest would be assessed. To be consistent with other EPA regulations where interest is assessed, we have decided Equation A–1 is unnecessary and have removed it from the final rule.

Under 31 U.S.C. 3717(e)(1), agencies must collect an additional penalty charge of not more than six percent per year for failure to pay any part of an invoiced debt more than 90 days past due, as well as additional charge to cover the cost of processing delinquent claims. The EPA will assess interest, handling, and penalty charges in 30-day increments for late payments and will assess the six percent penalty with the third demand letter, invoice, or notice. The EPA is finalizing as proposed to include this additional six percent non-payment penalty charge for invoiced WEC debts that are more than 90 days past due.

1. Process for Reassessing WEC for WEC Filings Resubmitted After the Initial Waste Emission Charge Has Been Assessed

As discussed in section III.A.4. of this preamble, WEC obligated parties may need to resubmit their WEC filings and WEC applicable facilities may need to resubmit their GHGRP reports. These resubmittals have the potential to result in recalculation of the WEC obligation for the WEC obligated party. As discussed in section III.A.4. of this preamble, the EPA is finalizing that data resubmissions (initiated by facilities) for the previous reporting year would be required to be submitted by December 15 in order to be considered for WEC recalculations, with the exception of resubmissions related to CAA section 111(b) or (d) compliance reports for the purposes of the regulatory compliance exemption. If the recalculated WEC obligation is less than the original WEC obligation owed by the WEC obligated party, the EPA will authorize a refund to the WEC obligated party equal to the difference in WEC obligation. If the recalculated WEC obligation is greater than the original WEC obligation owed by the WEC obligated party, the WEC obligated party must resubmit their WEC filing and pay the additional charge. Finally, as noted above, notwithstanding the generally applicable deadline, the EPA is finalizing that it retains the right to reevaluate WEC obligations in WEC filings after December 15 (*e.g.,* as part of the EPA audit of facility data, an enforcement investigation, or other relevant information), and authorize refunds if and when appropriate.[72]

2. Process for Assessing WEC for Unverified Part 99 Filings

As discussed in section III.A.4. of this preamble, the EPA's verification review process for WEC will ideally end with the resolution of identified potential errors through either correction and resubmission of facilities' reports or justification provided through correspondence with reporters that no substantive error exists. When WEC applicable facilities or WEC obligated parties do not provide appropriate information to resolve the errors in their part 99 data after 30 days of either being contacted in writing by the EPA notifying them of the presence of a substantive error or by self-discovering that a WEC filing contains one or more substantive errors, the EPA considers their WEC filing to be unverified.

If a WEC filing is unverified but the EPA is able to correct the error(s) based on reported data to part 98 and part 99, we are finalizing as proposed that the EPA may recalculate the WEC obligation using available information and provide an invoice or refund to the WEC obligated party within 60 days of notifying the WEC obligated party that its WEC filing is unverified. If the WEC obligated party resubmits a WEC filing within that timeframe, the EPA will either accept the resubmission, or take the resubmission into account when calculating the WEC. The EPA received comments indicating that the proposed rule did not include sufficient detail on the standard for requiring a third-party audit. The EPA is therefore clarifying that, in cases where the EPA is unable to calculate the WEC with available information due to unresolved errors in either an included part 98 report(s) or the part 99 report, the WEC obligated party may be required to undergo a third-party audit. The WEC obligated party must make the information detailed in 40 CFR 99.8(c)(1)(v) available to the auditor for review. Comments also recommended that the EPA target auditing based on various factors that may be indicative of problems with WEC filings. The EPA is clarifying that the third-party auditor will primarily focus their review on resolving identified errors associated with part 98 and/or part 99 data elements required for calculation of the WEC that remain unverified, but the review should also include resolution of any additional errors identified during the course of their review. As defined in

[70] For reporting year 2024, the due date falls on a Sunday, August 31, 2025. Monday, September 1, 2025, is a Federal holiday, therefore, Tuesday, September 2, 2025, is the filing date after which WEC filings are considered past due.

[71] This rate of interest is known as the Current Value of Funds Rate, or CVFR, and is published prior to November 30th of each year by Treasury. The CVFR is based on the weekly average of the Effective Federal Funds Rate, less 25 basis points, for the 12-month period ending September 30th of each year, rounded to the nearest whole percent. This rate may be revised on a quarterly basis if the annual average, on a moving basis, changes by 2 percentage points or more.

[72] Note that 31 U.S.C. 1322(b)(2) creates a permanent indefinite appropriation for the Treasury to make refunds out of miscellaneous receipts for ''collections erroneously deposited that are not properly chargeable to another appropriation.'' In the event a reassessment is made for any of the reasons outlined above, this appropriation would apply.

40 CFR 99.8(c), these data elements may include records of total GHG emissions reported, facility methane emissions, facility hydrocarbon throughput, applied exemptions, and netting. The WEC obligated party will direct the third-party auditor to submit this information to the EPA and the WEC obligated party within 90 days of the EPA notifying the WEC obligated party that an audit is required. The EPA is adding this 90-day requirement to ensure timely resolution of unverified WEC data and to provide additional clarity to WEC obligated parties. After verifying data received by the third-party auditor, the EPA will notify the WEC obligated party. The WEC obligated party will have 30 days from this date of notification to resubmit their WEC filing, if necessary. Third-party audits may be required to be arranged by and conducted at the expense of the WEC obligated party.

The EPA also received comments stating that the proposed rule did not include sufficient detail regarding the certification criteria for auditors. In response to these comments, the EPA is providing additional detail in this final rule on the criteria for auditors. To be considered a third-party auditor, the EPA is requiring that the auditor have professional work experience in the petroleum engineering field or related to oil and gas production, gathering, processing, transmission, or storage. Additionally, the auditor must be a qualified professional engineer. The third-party auditor must be independent of the WEC obligated party (*e.g.,* not operated or employed by the WEC obligated party). The requirements for third-party auditors are defined at 40 CFR 99.8(c).

A WEC obligated party is required to pay an invoice received from the EPA for any updated WEC obligation or CAA penalty by the specified due date, or within 30 days of the date of the invoice or bill if a due date is not provided.

C. Authorizing the Designated Representative

The EPA is finalizing as proposed provisions for each affected WEC obligated party to identify a designated representative. Each WEC obligated party must have one designated representative who is an individual selected by an agreement binding on the WEC obligated party. This designated representative acts as a legal representative between the WEC obligated party and the Agency. The EPA is finalizing as proposed that the designated representative must submit a complete certificate of representation at least 60 days prior to the submission of the first WEC filing made by the WEC obligated party. Additionally, each WEC filing must contain a signed certification by a designated representative of the WEC obligated party. On behalf of the owner or operator, the designated representative certifies under penalty of law that the WEC filing has been prepared in accordance with the requirements of 40 CFR part 99 and that the information contained in the WEC filing is true and accurate, based on a reasonable inquiry of individuals responsible for obtaining the information. The EPA received a comment indicating that an employee serving as a designated representative could leave their position at a company before the end of the 60-day time period. However, the EPA notes that in these circumstances, the certificate of representation may be changed as subsequently explained in this section.

The EPA also is finalizing as proposed that the designated representative could appoint an alternate to act on their behalf, but the designated representative maintains legal responsibility for the submission of complete, true, and accurate emissions data and supplemental data. A part 99 designated representative or alternate designated representative may delegate one or more ''agents.'' The part 99 agent (*e.g.,* a part 98 subpart W designated representative could be delegated as an agent to provide facility-specific information) can enter data for a part 99 WEC filing, but an agent is not allowed to submit, certify, or sign a WEC filing. Pursuant to 40 CFR 99.4(f), only one alternate designated representative, who shall be an individual selected by an agreement binding on the owner and operator, and may act on behalf of the WEC obligated party designated representative (*e.g.,* submit, certify or sign a WEC filing) may be selected; however, either the designated representative or the alternate may be changed at any time following the requirements in 40 CFR 99.4(g).

The EPA is finalizing that within 90 days after any change in the WEC obligated party, the designated representative or any alternate designated representative of the new WEC obligated party must submit a certificate of representation that is complete under this section to reflect the change. These requirements ensure that the certificate of representation is updated to reflect changes to WEC obligated parties, and ensure alignment between the WEC obligated party and the certificate of representation's listed designated representative. In addition, as proposed, the EPA is finalizing the binding nature of the certificate of representation. Pursuant to 40 CFR 99.4(k) once a complete certificate of representation for a WEC obligated party has been received, the Administrator will rely on the certificate of representation unless and until a later signed, complete certificate of representation for the WEC obligated party is received by the Administrator.

The EPA is finalizing requirements for the contents of the certificate of representation at 40 CFR 99.4(i). These elements of the certificate of representation include certification statements for the designated representative and any alternative designated representative as well as information needed to implement the WEC. The final certificate of representation contents include elements that were not included in the proposed rule. These additional requirements are necessary due to changes from the proposal to allow netting at the parent company level. Including this information in the certificate of representation, and requiring the certificate to be updated annually, will allow the EPA to review data related to the relationships between WEC applicable facilities, WEC obligated parties, and parent companies prior to the WEC filing deadline. This will allow the EPA to engage with WEC obligated parties to correct any potential errors or conflicts in these data (*e.g.,* netting relationships) prior to the WEC filing deadline and therefore ensure efficient implementation of the rule.

D. General Recordkeeping Requirements

We are finalizing as proposed that WEC applicable facilities and WEC obligated parties must retain all required records for at least 5 years from the date of submission of the WEC report for the reporting year in which the record was generated. We are finalizing as proposed that the records shall be kept in an electronic or hard-copy format (as appropriate) and recorded in a form that is suitable for expeditious inspection and auditing. Under the final provisions, upon request by the Administrator, the records required under this section must be made available to the EPA or a third-party auditor if one is required. We are finalizing as proposed that records may be retained off site if the records are readily available for expeditious inspection and review. For records that are electronically generated or maintained, we are finalizing as proposed that the equipment or software necessary to read the records shall be made available, or, if requested by the EPA, electronic records shall be converted to paper documents. The

records that must be retained include, records prescribed in each applicable subpart of part 99, information required to be retained under part 98, including subparts A and W, any other information needed to complete the WEC filing, and all information required to be submitted as part of the WEC filing, including any supporting documentation. The EPA received comment indicating that the five-year retention requirement in the proposed rule did not clarify that companies who purchase WEC applicable facilities are not responsible for filings and errors made by previous owners. The EPA has revised from proposal 40 CFR 99.7(d) to more explicitly state that the WEC obligated party is the entity to which the recordkeeping requirement applies. Similar language was present at proposal given the use of the term ''you'' (defined as a WEC obligated party subject to part 99) in 40 CFR 99.7(d) as proposed. We are finalizing additional clarifying language that the general recordkeeping provision at 40 CFR 99.7(d) applies to all records prescribed in each subpart of part 99.

E. General Provisions, Including Auditing and Compliance and Enforcement

1. Auditing Provisions

Several commenters stated that small producers who are below the WEC reporting threshold and do not pay WEC obligation should be exempt from audits and enforcement actions related to the WEC. Since the EPA may want to conduct an audit to verify that the facility is accurately quantifying emissions and appropriately claiming to be exempt from the WEC obligation, we are finalizing as proposed that the EPA, or a party acting on behalf of the EPA, may conduct on-site audits of facilities, as indicated in 40 CFR 99.7(c), including of those facilities under the 25,000 mt CO_2e threshold. Under the general recordkeeping provision at 40 CFR 99.7(d), the records generated under this part must be available to the EPA, a party acting on behalf of the EPA, or a third-party auditor during an on-site audit and the records must be recorded in a form that is suitable for expeditious inspection and review upon request. The on-site audits may be conducted by private auditors contracted by the EPA or by Federal, State, or local personnel, as appropriate. The EPA proposed that audits conducted under 40 CFR 99.7(c) may be required to be arranged by and conducted at the expense of the WEC obligated party. In this final rule, the EPA is clarifying that WEC obligated parties would not be responsible for arranging and paying for audits conducted under 40 CFR 99.7(c). As described in section III.B.2. of this preamble, WEC obligated parties may be required to arrange and pay for third-party audits conducted to resolve unverified data necessary for calculation of the WEC.

2. Compliance and Enforcement

The EPA received comments supporting robust enforcement and verification protocols for WEC implementation. We are finalizing as proposed that any violation of any requirement of this part shall be a violation of the Clean Air Act, including section 114 (42 U.S.C. 7414) and section 136 (*42 U.S.C. 7436*). A violation would include but is not limited to failure to submit, or resubmit as required, a WEC filing, failure to collect data needed to calculate the WEC obligation (including any data relevant to determining the applicability of any exemptions and how the netting was conducted), failure to select a WEC obligated party, failure to retain records needed to verify the amount of WEC obligation, providing false or incorrect information in a WEC filing, and failure to remit WEC payment. Per 40 CFR 99.4(b), it is a violation to fail to authorize a designated representative for a WEC obligated party. In the case of a WEC applicable facility with more than one owner and/or operator, failure to select a WEC obligated party would constitute a violation on the part of each owner and each operator, as per 40 CFR 99.4. Each day of a violation constitutes a separate violation.

F. Other Final Minor Revisions or Clarifications

See Table 4 of this preamble for the miscellaneous minor technical corrections not previously described in this preamble that we are finalizing throughout part 99. These revisions from the proposed rule primarily include revisions to better reflect the EPA's intent of the proposed rule or editorial changes. Additionally, conforming edits to cross-references and paragraph designations in the final rule were made reflective of additional paragraphs that were finalized but not proposed as well as paragraphs that were proposed but are not being finalized, as discussed in detail in sections II and III of this preamble.

TABLE 4—FINAL TECHNICAL CORRECTIONS TO PART 99

Section (40 CFR)	Description of amendment
Revisions from Proposed Language that are Finalized	
99.7(b)(2)(iii), 99.7(b)(2)(v), 99.30(a), 99.50(b)	Revised use of the phrase ''as defined in 40 CFR 99.50'' to ''as those industry segment terms are defined in 40 CFR 98.230 of this chapter'' to tie industry segments to the definitions provided in subpart W and simply language from proposal.
99.7(d), 99.7(e), 99.8(c)	Revised instances of ''EPA'' to ''the EPA'' for consistency.
99.7(e)(2)(ii), 99.7(f)(2)	Revised instances of ''report'' to ''filing'' for consistency in terminology when referencing required submittals pursuant to part 99.
99.8(b)	Revised instances of ''WEC'' to ''WEC obligation'' for consistency in terminology.
99.40(b)(1)	Added ''or Tribal lands'' for accuracy of applicability.
99.40(c)	Added ''the emissions from'' to clarify the waste emissions charge is relevant to emissions.
99.41(a)	Deleted ''or (d)''. This was a typographical error noted by commenters.
99.42	Added headings to clarify contents of each paragraph.
99.42(g)	Revised instances of ''waste emissions charge'' to ''WEC obligation'' for consistency.

IV. Final Confidentiality Determinations for Certain Data Reporting Elements

A. Overview and Background

In this action, the EPA is finalizing requirements for WEC obligated parties to report the general information described in section III.A.3. of this preamble and the information specific to any applicable exemptions as described in sections II.D.1. through 3. of this preamble. This information is necessary for the EPA to verify the contents of the WEC filing, including confirming that all of the required WEC applicable facilities were included, each WEC applicable facility (or each site for WEC applicable facilities in the onshore production and gathering and boosting industry segments) is eligible for any exemptions that were applied, and the WEC applicable emissions and the amount of the WEC obligation were calculated correctly. As explained in the remainder of this section, the EPA is finalizing as proposed that for the data elements that are not inputs to emission equations, nearly all of the data reported will be either emission data or otherwise ineligible for confidential treatment. As a result of these determinations, information in these categories is not subject to the case-by-case or class determination processes under 40 CFR part 2 that the EPA typically uses to evaluate whether such information qualifies for confidential treatment. Where we codify a determination that information is emission data or otherwise not entitled to confidential treatment, it will be subject to disclosure to the public without further notice. Any determination that applies for submitted information continues to apply even if that information is carried into other documents that the EPA prepares for internal review or publication. The EPA also notes that the Agency is not making confidentiality determinations in this rulemaking for information included in supporting documentation required for eligible exemptions or additional information provided in software comments fields, which will remain subject to the case-by-case or class determination process under 40 CFR part 2, as established in this rulemaking under 40 CFR 2.301(j)(4).

The EPA did not propose that any of the reported information would be designated as ''inputs to emission equations.'' However, some of the additional reporting requirements being finalized include information that the EPA is designating as ''inputs to emission equations'' falling within the definition of ''emission data.'' For each element that falls in this category, we further designate that the data element will be directly reported to the EPA (see section IV.D. of this preamble for a discussion of ''inputs to emission equations'').

B. Final Confidentiality Determinations for New Data Elements

Pursuant to CAA section 114(c), the EPA proposed to make categorical emission data and confidentiality determinations for the categories of information reported under part 99. The EPA described the proposed emission data categories and confidentiality determinations for the reported information, as well as the basis for such proposed determinations, in this section of the proposed and final preamble. This approach is similar to the approach the EPA has taken for the GHGRP under 40 CFR part 98 (see 75 FR 39094, July 7, 2010, and 75 FR 30782, May 26, 2011, for more information).

The determinations the EPA is finalizing in this rulemaking serve as notification of the Agency's decisions concerning: (1) The categories of information the Agency will not treat as confidential because it is emission data; (2) the information that is not emission data but is not entitled to confidential treatment; and (3) the information that the submitter may claim as confidential but will remain subject to the existing 40 CFR part 2 process. The EPA is not making in this final rule a determination in favor of confidential treatment for any data elements collected under 40 CFR part 99. Instead, in responding to requests for information not determined in this final rule to be emission data or otherwise not entitled to confidential treatment, the EPA finalized as proposed to apply the default case-by-case process found in 40 CFR part 2.

The emission data and confidentiality determinations finalized in this rulemaking are intended to provide consistency in the treatment of the information collected by the EPA as part of the WEC filings. The EPA anticipates that making these determinations in advance through this rulemaking will provide predictability and transparency for both the public and submitters. The regulatory provisions regarding confidentiality determinations for these products are being codified broadly in 40 CFR 99.13. To provide additional clarity on the final confidentiality determinations for data elements under this rulemaking, individual data elements and their confidentiality determinations are provided in the memorandum, *Confidentiality Determinations and Emissions Data Designations in the Final Waste Emissions Charge Rule,* available in the docket to this rulemaking.

The EPA requested comment on the proposed confidentiality determinations, including the categories of information considered emission data, the placement of specific data elements under different categories of emission data, and the treatment of data elements that the EPA did not propose to be considered emission data. Several commenters disagreed that the name of a part 99 designated representative and their contact information should be considered emission data and not entitled to confidential treatment and stated that this information should not be made publicly available. The EPA is finalizing as proposed that this information is emissions data but is clarifying that because it includes personal identification information, it will not be published by the agency and may be subject to personal privacy rules in certain scenarios. This final approach is aligned with the treatment of identical data elements under part 98. Changes from the proposal are discussed in more detail in this section of the preamble.

The EPA is finalizing as proposed that the categories of information determined to be emission data, and therefore not eligible to be treated as confidential business information and available to be disclosed to the public, in this action are codified in 40 CFR 99.13(a) and include:

(1) Methane emissions;

(2) Calculation methodology; and

(3) Facility and unit identifier information.

The EPA is finalizing as proposed to group types of information (data elements) that WEC obligated parties must submit under part 99 that are considered emission data into these three categories based on their shared characteristics. For the sake of organization, for any information that logically could be grouped into more than one category, the EPA has chosen to label information as being in just one category where the Agency thinks it fits best. This approach will reduce redundancy within the categories that could otherwise lead to confusion and will ensure consistency in the treatment of similar information in the future.

For reporting elements that the EPA does not designate as ''emission data'' (including ''inputs to emission equations''), the EPA proposed to assess each individual reporting element according to the *Argus Leader* criteria (*i.e.,* whether the information is customarily and actually treated as private by the submitter) and 40 CFR 2.208(a) through (d). Therefore, the EPA

did not propose and is not finalizing categories and categorical confidentiality determinations for information that is not ''emission data.'' However, the EPA is finalizing as proposed descriptions of the type of information that is not eligible for confidential treatment in 40 CFR 99.13(b), including certain information demonstrating compliance with standards and information that is publicly available. The EPA also finalized as proposed in 40 CFR 99.13(c) and (d) to specify certain data elements and types of information that will remain subject to the Agency's general process for conducting confidentiality determinations on a case-by-case basis in 40 CFR part 2. The final provisions in 40 CFR 99.13(b) establish the proposed confidentiality determinations of the final data elements in part 99 and also provide clarity and ensure consistent treatment of new or substantively revised data elements if the content of the WEC filing is amended in a future rulemaking. Sections IV.B.2. and 3. of this preamble describe these final provisions, and our assessment of each individual reporting element that is not ''emission data.''

1. Emission Data

The EPA is finalizing as proposed to establish in 40 CFR 99.13(a) that certain categories of information the EPA will collect in the WEC filings are information that meets the regulatory definition of emission data under 40 CFR 2.301(a)(2)(i). The following sections describe the categories of information we are determining to be emission data, based on application of the definition at 40 CFR 2.301(a)(2)(i) to the shared characteristics of the information in each category, and our rationale for each determination. Final determinations for the individual data elements included in each category of emission data can be found in a memorandum, *Confidentiality Determinations and Emissions Data Designations in the Final Waste Emissions Charge Rule,* available in the docket for this rulemaking. The EPA is providing this memorandum to provide clarity on the final data elements that fall into each category, including some data elements that were not directly included in the proposal that meet the definition emission data. These additional data elements were necessary to add in the final version of the rule as a result of revisions made from the proposal in response to comments. For example, revisions made from the proposal to allow netting at the parent company level requires additional reporting associated with the transfer of net WEC emissions between WEC obligated parties. The EPA notes that these added data elements in the final rule are derived from or outgrowths of data elements that were proposed with confidentiality determinations finding that they were emission data. While these data elements were revised in the final version of the rule in what would be specifically reported to the Agency, the revisions did not change the Agency's rationale for the proposed emission data determinations and are being finalized under the same rationale.

The EPA also notes that many of the final data elements for which confidentiality determinations are being finalized in this rulemaking are identical to or derived from data elements reported under part 98 that have been determined to be emissions data under that subpart.

a. Information Necessary To Determine the Identity, Amount, Frequency, Concentration, or Other Characteristics of Emissions Emitted by the Source

Under 40 CFR 2.301(a)(2)(i)(A), emission data includes ''[i]nformation necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any emission which has been emitted by the source (or of any pollutant resulting from any emission by the source), or any combination of the foregoing[.]'' The EPA is finalizing that the following categories of information are emission data under 40 CFR 2.301(a)(2)(i)(A):

(1) Methane emissions; and

(2) Calculation methodology.

Methane emissions. Data elements included in the Methane emissions data category are the net WEC emissions, net WEC emissions after transfers, facility waste emissions thresholds, industry segment waste emissions thresholds for each applicable industry segment within the facility (if more than one industry segment applies), and WEC applicable emissions, as well as the quantities of methane emissions that the WEC obligated party calculates should be exempted due to the unreasonable delay, regulatory compliance, and plugged well exemptions. The EPA has determined that the emissions at each reporting level constitute ''emission data.'' These data elements are information regarding the identity, amount, and frequency of any emission emitted by the WEC applicable facility, and, therefore, they are ''emission data'' and not eligible to be claimed as confidential.

Calculation methodology. The data element included in this category is the method used to determine the quantity of methane emissions that the WEC obligated party calculates should be exempt due to the unreasonable delay exemption, regulatory compliance exemption, and plugged well exemption. Most of the necessary calculations in part 99 do not include multiple equations or approaches that could be selected by a WEC obligated party, and in those cases, the calculation methodology used is readily apparent for any WEC obligated party. Calculations for the exemptions for unreasonable delay, regulatory compliance, and plugged wells do include multiple equations that facilities must use under different circumstances.

The EPA has concluded that the data elements in the calculation methodology category are ''emission data'' under 2.301(a)(2) because they are ''information necessary to determine . . . the amount'' of emissions emitted by the source. The method used to calculate emissions is emission data under 40 CFR 2.301(a)(2) because it is information necessary for the WEC obligated party to calculate the emissions and for the EPA and the public to verify that an appropriate method was used.

b. Information That is Emission Data Because It Provides 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

Under 40 CFR 2.301(a)(2)(i)(C), emission data includes ''a ''[g]eneral 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).'' The EPA is finalizing that the data elements in the facility and unit identifier information category of information are emission data under 40 CFR 2.301(a)(2)(i)(C).

The finalized part 99 regulations require WEC obligated parties to report in the WEC filing information needed to identify each facility as well as specific emission units (affected facilities) and/or well-pads associated with an exemption. Facility-identifying information must be reported for all facilities as specified in 40 CFR part 99, subpart A. Affected facility-specific identifying information is required for the regulatory compliance exemption. Well-pad-specific identifying information is reported if required by an applicable exemption for onshore

petroleum and natural gas production facilities.

Data elements in this category include the following data elements required under 40 CFR part 99, subpart A to be included in each annual WEC filing: WEC obligated party company name and address and a signed and dated certification statement of the accuracy and completeness of the report, which is provided by the designated representative of the owner or operator. The EPA proposed that the name and contact information for the designated representative of the WEC obligated party for each WEC applicable facility would be also included in the annual WEC filing. The EPA received comments disagreeing with the requirement to include the name and contact information for the designated representative of the WEC obligated party. After consideration of comments, the EPA is not finalizing that these data elements be included in the WEC filing, and therefore they will not be regularly published by the EPA. Because this information is not reported, it is not relevant to the confidentiality determinations discussed in this section of the preamble. The final part 99 regulations also require that the filing include specific information about each facility covered by the annual WEC filing, including the industry segment and facility ID. For each exemption, the facility and unit identifier information category include (as applicable) the facility identifier, the well-pad and/or well identifier reported under subpart W (if applicable), other facility or affected facility identifiers used to identify the facility/sources in other EPA systems (specifically, the ICIS–AIR ID or Facility Registry Service (FRS) ID and the EPA Registry ID from the Compliance and Emissions Data Reporting Interface (CEDRI)), emission source-specific methane mitigation activities impacted by an unreasonable permitting delay, and exemption-specific certification statements.

As discussed in section IV.A. of this preamble, emission data must be available to the public and is not entitled to confidential treatment under CAA section 114(c). ''Emission data'' is defined in 40 CFR 2.301(a)(2)(i)(C) to include ''[a] general description of the location and/or nature of the source to the extent necessary to identify the source and to distinguish it from other sources. . . .'' Consistent with this definition of emission data, the EPA considers facility and emission unit identifiers to be source information or ''information necessary to determine the identity . . . of any emission which has been emitted by the source,'' and therefore emission data under 40 CFR 2.301(a)(2)(i). Further, 40 CFR 2.301(a)(2)(i)(A) specifies that emission data includes, among other things, ''information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any emission which has been emitted by the source. . . .'' The EPA considers the term ''identity . . . of any emission'' as not simply referring only to the names of the pollutants being emitted, but to also include other identifying information, such as from what and where (*e.g.,* the identity of the emission unit) the pollutants are being emitted.

2. Reported Information That Cannot Be Claimed as Confidential

The EPA will assess the confidentiality of each individual part 99 reporting element that is not otherwise designated as emission data in this rulemaking according to the *Argus Leader* criteria (*i.e.,* whether the information is customarily and actually treated as private by the submitter) and 40 CFR 2.208(a) through (d). However, in this action, the EPA finalized as proposed descriptions of the type of information that would not be eligible for confidential treatment in 40 CFR 99.13(b), in part to establish the confidentiality determinations of the data elements in part 99 but also to provide clarity and consistency in the event that the content of the WEC filings are amended in a future rulemaking. The WEC obligation is calculated by multiplying the net WEC emissions by a set dollar amount, depending on the reporting year. As explained in section IV.B.1.a. of this preamble, the EPA determined that the net WEC emissions are emission data. Therefore, the EPA is finalizing that the WEC obligation, which is calculated as the net WEC emissions multiplied by a dollar per ton rate that is prescribed in CAA section 136, is not eligible for confidential treatment.

The EPA is also finalizing as proposed that certain information considered to be compliance information in part 99, regardless of whether it is or is not designated as emission data, is still not otherwise eligible for confidential treatment. Compliance information collected under part 99 includes information necessary to demonstrate compliance with the eligibility requirements for the exemptions for unreasonable permitting delay, regulatory compliance, and wells that have been permanently shut-in and plugged. Examples of the information collected include: for the unreasonable delay exemption, the date of the permit request, the estimated date to commence operation if the application had been approved within a set period of months, the first date that offtake to the gathering or transmission infrastructure from the implementation of methane emissions mitigation occurred once the application was approved, the beginning and ending date for which the eligible delay limited the offtake of natural gas associated with methane emissions mitigation activities, a listing of methane emissions mitigation activities that are impacted by the unreasonable permitting delay, and the quantity of methane emissions to be exempted due to the unreasonable delay for the reporting year. For the regulatory compliance exemption, copies of reports and other evidence of compliance with NSPS OOOOb or a State, Tribal, or Federal plan under 40 CFR part 62; and for the plugged well exemption, the date a well was permanently shut-in and plugged and the statutory citation for the requirements that were followed for that process. Operating and construction permits are available to the public through the State issuing the permits (as the delegated authority of the EPA), generally either through an online information system or website, or upon request to the State agency issuing the permits. These permits are expected to contain information about the type and size of process equipment operated at a facility, control devices or other measures undertaken to reduce emissions from each process, and the emission standards to which the facility is subject (including Federal standards as well as State or local standards). Reports submitted by owners and operators of facilities subject to NSPS OOOOb or a State, Tribal, or Federal plan under 40 CFR part 62 are available through the EPA's online repository ''WebFIRE.'' See *https://www.epa.gov/electronic-reporting-air-emissions/webfire.* Finally, well-specific information, including age, production rate, and operating status, is publicly available through State oil and gas commissions and/or State databases as well as sources such as Enverus. Because this information is already publicly available, it will not be eligible for confidential treatment.

The EPA is also finalizing in 40 CFR 99.13(b)(3) that any other information that has been published and made publicly available, including the publicly available reports submitted under the GHGRP and information on websites, are not eligible for confidential treatment. Information that is publicly available does not meet the criteria for information entitled to

confidential treatment specified in 40 CFR 2.208(c). Section IV.B.3. of this preamble specifies an additional type of information that is not eligible for confidential treatment when evaluating the confidentiality of supporting documentation submitted as described in 40 CFR 99.13(c) or (d).

3. Information for Which the EPA Is Not Finalizing a Confidentiality Determination

This section describes information for which the EPA is not finalizing a confidentiality determination. The EPA will initially treat this information as confidential upon receipt, if the submitter claimed it as such, until a case-by-case determination may be made by the Agency under the 40 CFR part 2 process.

The EPA does not expect emission data to be submitted in supporting documentation, but the Agency is finalizing as proposed that information in supporting documentation as described in 40 CFR 99.13(c) (*i.e.,* information not listed in 40 CFR 99.13(a) or (b) as not eligible for confidential treatment) will be treated as confidential if claimed as such until a case-by-case determination is made under the 40 CFR part 2 process. The EPA is also finalizing that information provided in software comments fields as described in 40 CFR 99.13(d) will not be eligible for confidential treatment if it is listed in 40 CFR 99.13(a) or (b) as not eligible for confidential treatment. Otherwise, the EPA will treat the information as confidential if claimed as such until a case-by-case determination is made under the 40 CFR part 2 process, as specified in 40 CFR 99.13(c). The EPA recognizes that supporting documentation and reporter comments may include information that is sensitive or proprietary, such as detailed process designs or site plans. Because the exact nature of this documentation cannot be predicted with certainty, the EPA will make case-by-case confidentiality determinations under CAA section 114(c) for any supporting documentation, or comments claimed confidential by applicants either upon receipt of such information or upon a request for such information after receipt.

C. Final Amendments to 40 CFR Part 2

Pursuant to CAA section 114(c), the EPA must make available to the public data submitted under part 99, except for data (other than emission data) that are considered confidential under CAA section 114(c). Accordingly, the EPA may publicly release part 99 data without further notice after submission to the EPA in accordance with the EPA's determinations of their confidentiality status in the final rule. Specifically, the EPA may publicly release part 99 data that are determined in this final rule to be emission data or not otherwise entitled to confidential treatment under CAA section 114(c) (*i.e.,* ''non-CBI''). For data elements that the EPA determined to be entitled to confidential treatment under CAA section 114(c), the EPA will release or publish such data only if the information can be aggregated in a manner that would protect the confidentiality of these data at the facility level. Existing regulations in 40 CFR part 2, subpart B set forth procedural steps that the EPA must follow before releasing any information, either on the Agency's own initiative or in response to requests made pursuant to the Freedom of Information Act (FOIA). In particular, the EPA is generally required to make case-by-case confidentiality determinations and to notify individual reporters before disclosing information that businesses have submitted with a confidentiality claim. As discussed in section IV.B of this preamble, in light of the voluminous data the EPA receives under subpart W of part 98 and the multiple procedural steps required under 40 CFR part 2, subpart B, the EPA would not be able to make part 99 data (determined to be emission data or non-CBI) publicly available in a timely fashion if it were required to make separate confidentiality determinations based on each submitter's individual claim of confidentiality.

To facilitate timely release of GHG data collected under part 99 that are emission data or non-CBI, the EPA is finalizing as proposed an amendment to 40 CFR 2.301, Special rules governing certain information obtained under the Clean Air Act. Specifically, the EPA is finalizing as proposed to revise 40 CFR 2.301(d) to specify that the special rules for data submitted under part 98 also apply to part 99. Under the final amendment, the EPA may release part 99 data that are determined to be emission data or information determined to be not entitled to confidential treatment upon finalizing the confidentiality status of these data. Consistent with the 40 CFR part 2 procedures, the approach finalized in this rulemaking provides the WEC obligated party an opportunity to justify and substantiate any confidentiality claim they may have for the data they are required to submit (except for emission data and other data not entitled to confidential treatment pursuant to CAA section 114(c)). In addition, WEC obligated parties have the benefit of seeing the EPA's rationales and analyses prior to submitting any justification, information that they would not otherwise have under the current 40 CFR part 2 procedures.

D. Final Reporting Determinations for Inputs to Emission Equations

In this section, we discuss data elements that the EPA is assigning to the ''Inputs to Emission Equations'' data category. This data category includes data elements that are the inputs to the emission equations used by WEC obligated parties to calculate their annual GHG emissions. See 75 FR 39094, July 7, 2010 for a full description of the ''Inputs to Emission Equations'' data category. As discussed in section VI.B.1. of the 2022 proposed *Revisions and Confidentiality Determinations for Data Elements Under the Greenhouse Gas Reporting Rule* (87 FR 36920, June 21, 2022), the EPA determined that the Argus Leader standard does not apply to our approach for handling data elements assigned to the ''Inputs to Emission Equations'' data category.

The EPA organizes data assigned to the ''Inputs to Emission Equations'' data category into two subcategories. The first subcategory includes ''inputs to emission equations'' that must be directly reported to the EPA. This is done in circumstances where the EPA has determined that the data elements do not meet the criteria necessary for them to be entered into verification software.[73] These ''inputs to emission equations,'' in the form received by the EPA, are not entitled to confidential treatment. The second subcategory includes ''inputs to emission equations'' that are entered into verification software. These ''inputs to emission equations'' are entered into verification software to satisfy the EPA's verification requirements. These data must be maintained as verification software records by the submitter, but the data are not included in the annual report that is submitted to the EPA. This is done in circumstances where the EPA has determined that the data elements meet the criteria necessary for them to be entered into the verification software. Refer to the memorandum, *Reporting Determinations for Data Elements Assigned to the Inputs to Emission Equations Data Category in the Final Waste Emissions Charge Rule,* available in the docket for this rulemaking, for a

[73] The term ''verification software'' refers to specific software and tools. For example, under part 98, the EPA provides an Inputs Verification Tool (IVT) in e-GGRT.

discussion of the criteria established in 2011 for evaluating whether data assigned to the ''Inputs to Emission Equations'' data category should be entered into the verification software.

After review of all the final data elements in this rulemaking, the EPA has determined that some of the final data elements are assigned to the ''Inputs to Emission Equations'' data category. The EPA evaluated each of the data elements assigned to the ''Inputs to Emission Equations'' data category and determined that none of these data elements meet the criteria necessary for them to be entered into verification software; therefore, these data elements will be directly reported to the EPA. The EPA has determined that some of these ''inputs to emission equations'' are identical to or derived from data elements reported under part 98 that have been determined to not be eligible for confidential treatment. The ''inputs to emission equations'' used to determine the quantities of methane emissions that the WEC obligated party calculates should be exempted due to the unreasonable delay, regulatory compliance, and plugged well exemptions must be directly reported to the EPA so that the EPA can fully verify the quantities. As ''inputs to emission equations'' are emissions data, these data elements will not be eligible for confidential treatment once directly reported to the EPA, and they may be published once received by the EPA. Refer to the memorandum, *Reporting Determinations for Data Elements Assigned to the Inputs to Emission Equations Data Category in the Final Waste Emissions Charge Rule,* available in the docket for this rulemaking, for a list of the data elements designated as ''inputs to emission equations'' that will be directly reported to the EPA and the EPA's rationale for the reporting determinations.

E. Changes to Confidentiality Determinations for Data Elements Reported Under Subpart W

The industry segment waste emissions thresholds are calculated pursuant to 40 CFR 99.20. Except for facilities in the Offshore Petroleum and Natural Gas Production industry segment or the Onshore Petroleum and Natural Gas Production industry segment that have no natural gas sent to sale, each threshold is calculated by multiplying the specified natural gas throughput for that industry segment by two constant values, the density of methane and the industry segment-specific methane intensity threshold (as summarized in Table 2 of this preamble). As noted in section IV.B.1.a. of this preamble, the EPA is finalizing as proposed that the facility waste emissions thresholds and industry segment waste emissions thresholds are emission data and will therefore be made publicly available. For two industry segments, Onshore Natural Gas Processing and Onshore Natural Gas Transmission Compression, throughput quantities similar to those specified in the industry segment waste emissions threshold calculations have historically not been made publicly available under subpart W. However, for WEC applicable facilities, once the industry segment-specific waste emissions thresholds are made publicly available, the throughputs can be calculated based on available information.

For the Onshore Natural Gas Processing industry segment, a new data element was finalized as part of the 2024 Subpart W Final Rule, the quantity of residue gas leaving that has been processed by the facility and any gas that passes through the facility to sale without being processed by the facility in the calendar year, in thousand standard cubic feet, reported under finalized 40 CFR 98.236(aa)(3)(ix). The EPA previously made a final determination in 79 FR 70352 (November 25, 2014) that the quantity of natural gas received at the gas processing plant in the calendar year (reported under 40 CFR 98.236(aa)(3)(i)) and the quantity of processed (residue) gas leaving the gas processing plant (reported under 40 CFR 98.236(aa)(3)(ii)), should be maintained as confidential. As explained in 79 FR 70352 (November 25, 2014), the reporting of this information to the Energy Information Administration is less frequent than required under subpart W, and the EPA had not identified any reliable public sources of the quantity of residue gas produced. In the June 2023 memorandum *Proposed Confidentiality Determinations and Emission Data Designations for Data Elements in Proposed Revisions to the Greenhouse Gas Reporting Rule for Petroleum and Natural Gas Systems* (Docket ID No. EPA–HQ–OAR–2023–0234–0167), the EPA stated that the proposed new data element under 40 CFR 98.236(aa)(3)(ix) would collect similar information to 40 CFR 98.236(aa)(3)(ii). As a result, the EPA determined that the information collected under 40 CFR 98.236(aa)(3)(ix) would be eligible for confidential treatment.

However, because the EPA is finalizing as proposed the determination that the industry segment-specific waste emissions thresholds are emission data, then those industry segment-specific waste emissions thresholds will be made publicly available as emission data. Therefore, the EPA is not finalizing a confidentiality determination for this throughput quantity data element (*i.e.,* the quantity of residue gas leaving that has been processed by the facility and any gas that passes through the facility to sale without being processed by the facility in the calendar year) under part 98. The confidentiality status of this data element will be evaluated on a case- by-case basis, in light of any publicly available information and in accordance with the existing regulations in 40 CFR part 2, subpart B, upon receipt of a public request for these data elements.

For Onshore Natural Gas Transmission Compression, the EPA previously decided in 2014 not to make a confidentiality determination that would apply for all facilities for 40 CFR 98.236(aa)(4)(i), the quantity of gas transported through a compressor station. In 79 FR 70352 (November 25, 2014), the EPA explained that the Agency proposed that this data element would not be eligible for confidential treatment because natural gas transmission sector is heavily regulated by FERC and State commissions, resulting in a lack of competition between companies. However, the EPA received comments on this November 2014 proposal noting that FERC Order 636 had introduced greater competition to this sector and that some companies charge customers less than the FERC approved rates because of competitive market pressures. The commenters indicated that quantity of gas transported through the compressor station would provide information on the quantity of gas transported by a specific pipeline, which may potentially cause competitive harm to some pipeline companies operating in more competitive market areas. Since the determination would depend on the particular market conditions for each company, the EPA did not make a determination for the data element from this industry segment.[74]

In this rulemaking, the EPA is not finalizing a change to that previous decision and is not finalizing a confidentiality determination for the quantity of natural gas transported through a compressor station. While the Supreme Court's 2019 decision in *Argus Leader* altered the review criteria for confidentiality determinations from the Agency's 2014 decision, the basis

[74] Prior to *Argus Leader,* the EPA considered whether the business had satisfactorily shown that disclosure of the information is likely to cause substantial harm to the business's competitive position when evaluating claims of confidentiality.

provided by commenters to justify the confidential nature of the information is still relevant to a finding that the information is eligible for confidential treatment. For information pertaining to the quantity of gas transported through a compressor station collected under part 99, the EPA will conduct reviews of any claims made under the existing regulations in 40 CFR part 2, subpart B, upon receipt of a public request for this information. Any such reviews will consider the public availability of the same or similar information, including WEC filings, as part of the determination process.

V. Impacts of the Final Rule

In accordance with the requirements of Executive Order 12866, the EPA projected the emissions reductions, costs, benefits, and transfer payments that may result from this action. These results are presented in detail in the *Regulatory Impact Analysis of the Waste Emission Charge* (RIA) accompanying this final rule developed in response to Executive Order 12866 and available in the docket to this rulemaking, Docket ID No. EPA–HQ–OAR–2023–0434. This section provides a summary of the RIA. The EPA notes that the EPA's duties and authority for this rulemaking are derived under CAA section 136 of the CAA, and its decisions in this rulemaking are made within the confines of that authority and justified under the EPA's record-based analysis and analysis of the statutory language of CAA section 136. The analysis in the final RIA prepared under Executive Order 12866 is entirely distinct from the statutory determinations, is not used to justify this action, and is presented solely for the purposes of complying with E.O. 12866. Congress did not authorize the EPA to consider a formal cost-benefits analysis in implementing CAA section 136, and the EPA's decisions were based on the best reading of the statutory directives that Congress did provide. Nevertheless, the EPA believes the results of the analysis in the final RIA prepared under Executive Order 12866 of the WEC final rule are reasonable.

The WEC does not directly require emissions reductions from applicable facilities or emissions sources. However, by imposing a charge on methane emissions that exceed waste emissions thresholds, oil, and natural gas facilities subject to the WEC are expected to perform methane mitigation actions and make operational changes where the costs of those changes are less than the WEC payments that could be avoided by reducing methane emissions. In addition, because volatile organic compound (VOC) and hazardous air pollutant (HAP) emissions are emitted along with methane from oil and natural gas industry activities, reductions in methane emissions as a result of the WEC also result in co-reductions of VOC and HAP emissions.

The RIA accompanying this proposal analyzes emissions changes and economic impacts of the WEC that arise through two pathways: (1) through the application of cost-effective methane mitigation technologies, and (2) through changes in oil and natural gas production and prices resulting from the WEC and associated mitigation responses. The analysis of methane mitigation is based on bottom-up engineering cost and mitigation potential information for a range of methane mitigation technologies. Application of methane mitigation technologies reduce WEC payments for WEC obligated parties by reducing methane emissions compared to a baseline without additional methane mitigation actions. The analysis assumes that methane mitigation is implemented where the engineering control costs are less than the avoided WEC payments for a particular mitigation technology.

Additionally, oil and natural gas firms may change their production and operational decisions in response to the WEC. This potential impact is modeled using a partial equilibrium model of the crude oil and natural gas markets. The total cost of methane mitigation and WEC payments is added as an increase to production costs, resulting in changes in equilibrium production of oil and natural gas and associated emissions. Projected WEC payments are estimated after methane emissions reductions from both methane mitigation and economic impacts are accounted for.

The number of facilities that will owe WEC obligations, and the amount of those WEC obligations, will ultimately depend on decisions that are within the control of owners and operators, among other factors. However, the EPA estimates that only a relatively small proportion of owner-operators of oil and gas facilities will owe WEC obligations. Using emissions reported to subpart W for RY2022 as an illustrative example, approximately 250 companies would owe WEC obligations related to less than 400 facilities, less than one-fifth of facilities that report to subpart W. Based on RY2022, Table 1–1 of the RIA shows that the WEC would be imposed on less than 15 percent of national methane emissions from petroleum and natural gas systems. Total methane emissions reported to subpart W are significantly less than national methane emissions from the U.S. Greenhouse Gas Inventory for petroleum and natural gas systems. WEC-applicable facilities are the subset of GHGRP facilities that report at least 25,000 mt CO_2e to subpart W industry segments subject to the WEC.

It is also important to note that the WEC would only apply to methane emissions that are above the emissions threshold, not for all emissions from WEC-applicable facilities. The WEC has exemptions related to regulatory compliance, emissions from plugged wells, and unreasonable delay in environmental permitting, although these provisions do not impact the illustrative results in Table 1–1 of the RIA. Finally, emissions subject to WEC accounts for netting of emissions between facilities and entities under common ownership and control. Under the final WEC, facilities with emissions below their emissions threshold may reduce emissions subject to the WEC at other facilities with emissions above the emissions threshold where those facilities are under common ownership or control.

The benefit-cost analysis contained in the RIA accompanying this rulemaking for the WEC considers the potential benefits and costs of the WEC arising from cost-effective mitigation actions under the WEC as well as the potential transfers from affected operators to the government in payments. Costs include engineering costs for methane mitigation actions and costs resulting from production changes in oil and gas energy markets under this final rule. While the EPA expects a range of health and environmental benefits from reductions in methane, VOC, and HAP emissions under the WEC, the monetized benefits of the final rule are limited to the estimated climate benefits from projected methane emissions reductions. These benefits are based on the social cost of methane ($SC–CH_4$). A screening-level analysis of ozone-related benefits from projected VOC reductions can be found in Appendix A of the RIA. However, these estimates are treated as illustrative and are not included in the quantified benefit-cost comparisons in the RIA.

The EPA estimates that this action will result in cumulative emissions reductions of 1.2 million metric tons of methane over the 2024 to 2035 period. These reductions represent about 40 percent of methane emissions that would be subject to the WEC before accounting for the adoption of cost-effective emission reduction technologies. Virtually all the reduced emissions result from mitigation activities undertaken by industry to reduce WEC payments. Less than one

percent of reductions are associated with decreased production activity in the oil and gas sector resulting from the final rule. In addition to methane emissions reductions, the WEC is estimated to result in reductions of 170 thousand metric tons of VOC and six thousand metric tons of HAP.

The WEC has important interactions and is designed to work hand-in-hand with the NSPS and EG for the Oil and Natural Gas Sector by accelerating the adoption of cost-effective methane mitigation technologies, including those that would eventually be required under the 2024 Final NSPS/EG. The annual projected emissions reductions, costs, and WEC obligations are significantly affected by these interactions.

The EPA finalized updates to the Oil and Gas NSPS/EG in March 2024. In addition to requirements already in place, these Oil and Gas NSPS/EG rules include standards for many of the major sources of methane emissions in the oil and natural gas industry. To avoid double counting of benefits and costs, the baseline for this analysis includes reductions resulting from the 2024 Final NSPS/EG based on information from the Final RIA for that rule (available in Docket No. EPA–HQ–OAR–2021–0317). Specifically, that analysis showed gradually increasing reductions in methane emissions resulting from the NSPS and deep reductions in methane emissions beginning to take effect in 2028 as a result of the EG. As facilities implement emission controls required by the 2024 Final NSPS/EG, emissions subject to the WEC decline.

The second interaction between the WEC and NSPS/EG is the regulatory compliance exemption provision of the WEC. Under this provision, when certain conditions are met with respect to the implementation of the Oil and Gas NSPS/EG, applicable facilities in compliance with their applicable requirements are exempted from the WEC. The analysis in the RIA assumes that the regulatory compliance exemption takes effect in 2029, such that in 2029 and later, facilities in the industry segments subject to requirements under the NSPS/EG do not owe WEC payments. This assumption is based on an assumed timeline under which the conditions of the regulatory compliance exemption could be met. The timing of the regulatory compliance exemption availability will vary by State. As timing for any individual State is unknown, this RIA analysis assumes that the regulatory compliance exemption becomes available for all relevant facilities in 2029.

Climate benefits associated with this final rule are the monetized value of methane reductions using the SC–CH_4, which calculates the avoided climate related damages from reducing methane emissions. Methane is the principal component of natural gas. As discussed in section I.C.1. of this preamble, methane is also a potent GHG that, once emitted into the atmosphere, absorbs terrestrial infrared radiation, which in turn contributes to increased global warming and continuing climate change.

This final rulemaking is projected to reduce VOC emissions, which are a precursor to ozone. Ozone is not generally emitted directly into the atmosphere but is created when its two primary precursors, VOC and oxides of nitrogen (NO_X), react in the atmosphere in the presence of sunlight. Emissions reductions under the WEC may decrease ozone formation, human exposure to ozone, and the incidence of ozone-related health effects. VOC emissions are also a precursor to fine particulate matter ($PM_{2.5}$), so VOC reductions may also decrease human exposure to $PM_{2.5}$ and the incidence of $PM_{2.5}$-related health effects.

Available emissions data show that several different HAP are emitted from oil and natural gas operations. Emissions of eight HAP make up a large percentage of the total HAP emissions by mass from the oil and natural gas sector: toluene, hexane, benzene, xylenes (mixed), ethylene glycol, methanol, ethyl benzene, and 2,2,4-trimethylpentane.[75] Reductions of HAP emissions under the WEC may reduce exposure to these and other HAP.

In section 9.3 of the RIA, the EPA identifies existing potential environmental justice issues for the communities in counties that have emissions sources that are expected to owe the WEC charge before accounting for mitigation actions and thus may be positively affected by emissions changes under the final rule. Compared to the national average, these communities include a higher percentage of individuals who identify as racial and ethnic minorities, have lower average incomes, and have slightly elevated health risks associated with various air emissions. Reductions in VOC and HAP emissions as a result of the WEC are expected to benefit communities in these counties. Because the WEC does not directly require emissions reductions, the EPA has not projected specific locations where emissions reductions might occur. In addition, detailed proximity analysis is infeasible because the emissions affected by the WEC occur at hundreds of thousands of locations.

The total cost of the final rule includes the engineering costs for methane mitigation actions implemented by the oil and natural gas industry in order to avoid or reduce WEC obligations. Costs for methane mitigation are calculated on an annualized basis, with total costs spread over the expected lifetime. This includes the initial capital costs required to implement and install the specific mitigation technology. In addition, for mitigation technologies with expected lifetimes greater than one-year, annual recurring operations and maintenance costs, which include labor, energy and materials, are also incorporated. Finally, the total mitigation costs also include the avoided cost of natural gas losses.

The social cost of energy market impacts is the loss in consumer and producer surplus value from changes in natural gas market production and prices. The economic impacts analysis uses a partial equilibrium model and estimates that the impact of the gas market is minimal, with the largest impact occurring in the first few years with a price increase of less than 0.1 percent and a quantity reduction of less than 0.1 percent.

Table 5 presents results of the benefit-cost analysis for the final WEC. It presents the present value (PV) and equivalent annual value (EAV), estimated using discount rates of 2, 3, and 7 percent, of the changes in quantified benefits, costs, and net benefits relative to the baseline.[76] These values reflect an analytical time horizon of 2024 to 2035, are discounted to 2023,

[75] U.S. EPA. The Benefits and Costs of the Clean Air Act from 1990 to 2020. Washington, DC. Retrieved from *https://www.epa.gov/sites/production/files/2015-07/documents/fullreport_rev_a.pdf.*

[76] Monetized climate effects are presented under a 2 percent near-term Ramsey discount rate, consistent with the EPA's updated estimates of the SC–GHG. The 2003 version of OMB's Circular A–4 had generally recommended 3 percent and 7 percent as default discount rates for costs and benefits, though as part of the Interagency Working Group on the Social Cost of Greenhouse Gases, OMB had also long recognized that climate effects should be discounted only at appropriate consumption-based discount rates. OMB finalized an update to Circular A–4 in 2023, in which it recommended the general application of a 2.0 percent discount rate to costs and benefits (subject to regular updates), as well as the consideration of the shadow price of capital when costs or benefits are likely to accrue to capital. Because the SC–GHG estimates reflect net climate change damages in terms of reduced consumption (or monetary consumption equivalents), the use of the discount rate estimated using the average return on capital (7 percent in 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–GHG. See section 6.1 of the RIA for more discussion.

and are presented in 2019 constant dollars. The table includes consideration of the non-monetized benefits associated with the emissions reductions projected under this proposal.

TABLE 5—PROJECTED EMISSIONS REDUCTIONS UNDER THE FINAL RULE, 2024–2035 TOTAL

Pollutant	Emissions reductions (2024–2035 Total)
Methane (thousand metric tons)[a]	1,200
VOC (thousand metric tons)	170
Hazardous Air Pollutant (thousand short tons)	6
Methane (million metric tons CO_2e)[b]	34

[a] To convert from metric tons to short tons, multiply the short tons by 1.102. Alternatively, to convert from short tons to metric tons, multiply the short tons by 0.907.
[b] Carbon dioxide equivalent (CO_2e). Calculated using a global warming potential of 28.

TABLE 6—BENEFITS, COSTS, AND NET BENEFITS OF THE FINAL RULE, 2024 THROUGH 2035

[Dollar estimates in millions of 2019 dollars][a]

Climate benefits[b]	2 Percent near-term Ramsey discount rate					
	Present value	Equivalent annual value	Present value	Equivalent annual value	Present value	Equivalent annual value
	$2,400	$230	$2,400	$230	$2,400	$230
	2 Percent discount rate		3 Percent discount rate		7 Percent discount rate	
	Present value	Equivalent annual value	Present value	Equivalent annual value	Present value	Equivalent annual value
Total Social Costs	$460	$43	$440	$44	$380	$48
Cost of Methane Mitigation	420	40	400	41	350	44
Cost of Energy Market Impacts	39	4	38	4	33	4
Net Benefits	1,900	190	2,000	190	2,000	180
Non-Monetized Benefits	Climate and ozone health benefits from reducing 1.2 million metric tons of methane from 2024 to 2035 $PM_{2.5}$ and ozone health benefits from reducing 170 thousand metric tons of VOC from 2024 to 2035[c] HAP benefits from reducing 6 thousand metric tons of HAP from 2024 to 2035 Visibility benefits Reduced vegetation effects					

[a] Values rounded to two significant figures. Totals may not appear to add correctly due to rounding.
[b] Climate benefits are based on reductions in methane emissions and are calculated using three different estimates of the social cost of methane ($SC–CH_4$) (under 1.5 percent, 2.0 percent, and 2.5 percent near-term Ramsey discount rates). For the presentational purposes of this table, we show the climate benefits associated with the $SC–CH_4$ at the 2 percent near-term Ramsey discount rate. Please see Table 6–5 of the RIA for the full range of monetized climate benefits estimates.
[c] A screening-level analysis of ozone benefits from VOC reductions can be found in Appendix A of the RIA.

WEC payments are transfers and do not affect total net benefits to society as a whole because payments by oil and natural gas operators are offset by receipts by the government. Therefore, from a net-benefit accounting perspective, transfers are considered separately from costs and benefits (and are therefore not included in Table 6). As explained further in section 2.7 of the RIA, the approach to transfers taken here is in line with OMB guidance and the approach taken for RIAs for other rules impacting payments to the government, such as the Bureau of Land Management (BLM)'s waste prevention rule.

One of the reasons that transfers are not considered costs is because they represent payments to the U.S. Treasury that do not affect total resources available to society. Payments to the U.S. Treasury can then be used to fund other programs, and the pairing of revenue collection (*e.g.,* the WEC payments) with commensurate expenditures (*e.g.,* financial assistance programs) by the Federal government can be designed to be revenue neutral. The Methane Emission Reduction Program created under CAA section 136 includes both collection and expenditure components. In addition to establishing the WEC, another key purpose of CAA section 136 is to encourage the development of innovative technologies in the detection and mitigation of methane emissions. See 168 Cong. Rec. E869 (August 23, 2022) (statement of Rep. Frank Pallone). CAA section 136(a) and (b) provides financial and technical assistance to reduce methane emissions from the oil and gas sector. To implement this program, the EPA is partnering with the U.S. Department of Energy (DOE) to provide up to $1.36 billion in financial and technical assistance to reduce methane emissions from the oil and gas sector. As designed by Congress, these resources and incentives were intended to complement the regulatory programs and to help facilitate the transition to a more efficient petroleum and natural gas industry. These incentives for methane mitigation and monitoring complement the WEC.

The WEC has the effect of better aligning the economic incentives of oil and natural gas companies with the

costs and benefits faced by society from oil and gas activities. In the baseline scenario the environmental damages resulting from methane emissions from the oil and gas sector are a negative externality spread across society as a whole. Under the WEC, this negative externality is internalized, oil and gas companies are required to make WEC payments in proportion to the climate damages of methane emissions subject to the WEC. Alternatively, firms can avoid making WEC payments by mitigating their emissions generating climate benefits associated with the amount of mitigation.

Table 7 provides details of the calculation steps used to estimate projected WEC obligations and climate damages based on projected emissions subject to WEC. In order to compare projected WEC payments to climate damages from emissions subject to the WEC, WEC payments are converted from nominal dollars to 2019 constant dollars using a chain-weighted GDP price index from the 2023 Annual Energy Outlook. Projected WEC payments after accounting for methane mitigation and energy market impacts are estimated to be about $540 million nominal dollars in 2024, and then drop significantly as reductions from the EG OOOOc are implemented in 2028 and the regulatory compliance exemption takes effect in 2029.

TABLE 7—DETAILS OF PROJECTED WEC OBLIGATIONS AND CLIMATE DAMAGES FROM EMISSIONS SUBJECT TO WEC, 2024 THROUGH 2035

[Dollar estimates in millions of 2019 dollars] [a]

Year	Methane emissions subject to WEC in policy scenario (thousand metric tons)	Charge specified by Congress (nominal $ per metric ton)	WEC payments in policy scenario (million nominal $)	WEC payments in policy scenario (million 2019$)	$SC–CH_4$ values at 2 percent discount rate (2019$ per metric ton)	Climate damages from emissions subject to WEC (million 2019$) [a]
2024	600	$900	$540	$450	$1,900	$1,200
2025	460	1,200	560	450	2,000	930
2026	340	1,500	510	400	2,100	700
2027	320	1,500	480	380	2,200	690
2028	35	1,500	52	40	2,200	77
2029	3	1,500	5	4	2,300	7
2030	3	1,500	4	3	2,400	7
2031	3	1,500	4	3	2,500	7
2032	2	1,500	4	3	2,500	6
2033	2	1,500	3	3	2,600	5
2034	2	1,500	3	2	2,700	5
2035	1	1,500	2	1	2,800	4
Total 2024–2035	1,800	.....	2,200	1,700	.....	3,600

[a] Climate damages are based on remaining methane emissions subject to WEC after accounting for emissions reductions and are calculated using three different estimates of the social cost of methane ($SC–CH_4$) (under 1.5 percent, 2.0 percent, and 2.5 percent near-term Ramsey discount rates). For the presentational purposes of this table, we show the climate benefits associated with the $SC–CH_4$ at the 2 percent near-term Ramsey discount rate.

Compared to the analysis presented in the RIA for the January 2024 WEC proposal, the RIA analysis reflects some updates to methodologies used to project impacts reflecting changes in the final regulations relative to the proposal and updated available data. The analysis incorporates broader allowance for netting among owner-operators that share a common parent company, updates to requirements of the regulatory compliance exemption, and updated base year data from GHGRP for 2022.

VI. 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, the EPA submitted this action to the Office of Management and Budget (OMB) for Executive Order 12866 review. Documentation of any changes made in response to the Executive Order 12866 review is available in the docket for this rulemaking, Docket ID No. EPA–HQ–OAR–2023–0434. The EPA prepared an analysis of the potential impacts associated with this action. This analysis, *Regulatory Impact Analysis of the Waste Emissions Charge,* is also available in the docket to this rulemaking and is briefly summarized in section V. of this preamble.

B. Paperwork Reduction Act (PRA)

The information collection activities in this rulemaking have been submitted for approval to the OMB under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2787.02 (OMB Control No. 2060–0752). You can find a copy of the ICR in the docket for this rulemaking, Docket ID No. EPA–HQ–OAR–2023–0434, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them. Two comments were received regarding the proposed ICR. The commenters stated that actual costs may be higher than estimated by the EPA due to unfamiliarity and glitches with new programs, that burden would be reduced by offering more incentives, and that the proposed ICR was in conflict with the policy standards under the PRA of minimizing paperwork burden and the cost to the Federal government. The commenters did not identify specific aspects of the proposed ICR that were overly burdensome nor did the commenters identify ways to minimize burden to the Agency nor to affected WEC respondents. The EPA acknowledges the commenters' concerns and consistent with the obligation established by CAA section 136 on the EPA to impose and collect a charge, subject to statutorily specified exemptions, the EPA has taken steps to minimize the added paperwork and recordkeeping burden and avoid duplicative reporting, while maintaining effectiveness of the final rule through the utilization of existing systems such as the electronic

Greenhouse Gas Reporting Tool (e-GGRT) system.

The EPA estimates that the final rule would result in an increase in burden. The burden associated with the final rule is due to reporting and recordkeeping requirements in the final rule.

This information collection under the final rule is necessary for the EPA to implement the charge requirements of CAA section 136. The filing required by the final rule contains information identifying the WEC obligated party, the list of identification numbers assigned by the EPA's electronic tool for submission of GHGRP reports for the WEC applicable facilities under the WEC obligated party, and for each WEC applicable facility, information related to the exemptions provided for under CAA section 136(f). Additionally, the filing includes calculations of the waste emissions threshold for each WEC applicable facility and emissions subject to charge at the level of the WEC obligated party (designated as ''net WEC emissions'') and at the individual WEC applicable facility level (designated as ''WEC applicable emissions''). Each of these final reporting requirements are necessary for the EPA to determine the quantity of methane emissions subject to charge. To reduce the burden of data reporting under the final rule, the EPA plans to utilize the identification numbers reported in the final rule to link to data reported under the GHGRP. Additionally, the final rule amended 40 CFR part 98, subpart A to harmonize reporting obligations under part 98 and part 99.

The respondent reporting burden for this collection of information is estimated to be an annual average of 12,876 hours and $1,756,935 over the 3 years covered by this information collection, which includes an annual average of $1,726,440 in labor costs, $0 in operation and maintenance costs, and $30,495 in capital costs. The annual average incremental burden to the EPA for this period is anticipated at 31,200 hours and $5,783,774 ($2024) over the 3 years covered by this information collection, which includes an annual average of $2,117,107 in labor costs and $3,666,667 in non-labor costs.

Respondents/affected entities: Owners and operators of petroleum and natural gas systems that must submit a WEC filing to the EPA to comply with 40 CFR part 99.

Respondent's obligation to respond: The respondent's obligation to respond is mandatory under the authority provided in CAA sections 114 and 136.

Estimated number of respondents: 3,105.

Frequency of response: Annually.

Total estimated burden: 12,876 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $1.8 million (per year), includes $30,495 annualized capital or operation and maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

C. Regulatory Flexibility Act (RFA)

I certify that this final action would not have a significant economic impact on a substantial number of small entities under the RFA. The small entities that would be subject to the requirements of this action are small businesses in the petroleum and natural gas industry. Small entities include small businesses, small organizations, and small governmental jurisdictions. The EPA has determined that some small entities are affected because their processes emit methane that must be reported under subpart W and thus may be subject to WEC.

To evaluate whether this final rule would have a significant economic impact on a substantial number of small entities, the EPA conducted a small entity analysis that evaluated the costs of the final rule on small entities identified in the reporting year (RY) 2022 subpart W dataset. The EPA used reported facility-to-parent company and facility-to-owner or operator data to link facilities to WEC obligated parties. The EPA then reviewed the available RY 2022 data for the WEC obligated parties of subpart W facilities to determine whether the reporters were part of a small entity and whether the annualized costs of the proposal would have a significant impact on a substantial number of small entities. The number of small entities potentially affected by the WEC regulation were estimated based on the information collected for 590 owners or operators associated with a facility within one or more of the industry segments identified in CAA section 136(d) reporting at least 25,000 metric tons CO_2e under part 98 subpart W in RY2022. Of these, 371 were identified as small entities. Although the screening analysis suggests that some small entities may have cost-to-revenue ratios that exceed 3 percent (approximately 19 percent), the EPA's evaluation of the impacts to small entities relied on several methodologies involving conservative assumptions. For example, the identification and classification of subpart W parent entities reporting under more than one NAICS code resulted in a designation of ''small'' based on whether the business information available met the SBA size classification threshold for a single NAICS code. In addition to the conservative assumptions, there were further mitigating factors not included in the screening analysis that would likely significantly reduce compliance costs, and, as a result, cost-to-revenue-ratios. For example, the compliance cost estimate used only the defined WEC cost and did not account for early adoption of mitigation measures that could lower an entity's emissions below the threshold and therefore result in no WEC. Details of this analysis are presented in the *Regulatory Impact Analysis of the Waste Emissions Charge,* available in the docket for this rulemaking. The cumulative effect of the mitigating factors and conservative assumptions used in the screening analysis indicates that, overall, the final rule would not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action contains a Federal mandate that may result in expenditures of $183 million in 2023$ ($100 million in 1995$ adjusted for inflation using the GDP implicit price deflator) or more as described in UMRA, 2 U.S.C. 1531–1538 for State, local and Tribal governments, in the aggregate, or the private sector in any one year. Accordingly, the EPA has prepared under section 202 of the UMRA a written statement of the benefit-cost analysis, which can be found in Section V. of this preamble and in the *Regulatory Impact Analysis of the Waste Emissions Charge* (RIA), available in the docket for this rulemaking. The final action in part implements mandate(s) specifically and explicitly set forth in CAA section 136.

The applicability, magnitude of charge, methane emissions subject to charge, and exemptions from charge for the WEC program are established by CAA section 136(c) through (g). Given that this framework is required by statute, it is not possible for the EPA to consider regulatory alternatives that are inconsistent with these elements. As such, to evaluate the benefits and costs of the final rule, in the RIA

accompanying this rulemaking two scenarios were evaluated: a baseline scenario (*i.e.,* not including the effects of the WEC program) and a policy scenario inclusive of the costs, benefits, and transfers projected under the final rule. This action is not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This final rule does not apply to governmental entities unless the government entity owns a facility in the applicable petroleum and gas industry segments and reports more 25,000 mt CO_2e to subpart W of the GHGRP. It would not impose any implementation responsibilities on State, local, or Tribal governments and it is not expected to increase the cost of existing regulatory programs managed by those governments. Thus, the impact on governments affected by the final rule is expected to be minimal.

E. Executive Order 13132: Federalism

This action does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This final rule will not apply to governmental entities unless the government entity owns a facility in the applicable petroleum and natural gas industry segments that and reports more 25,000 mt CO_2e to subpart W of the GHGRP. Therefore, the EPA anticipates relatively few State or local government facilities will be affected. However, consistent with the EPA's policy to promote communications between the EPA and State and local governments, the EPA solicited comment on this action from State and local officials.

Specifically, the EPA issued an RFI to seek public input through a non-regulatory docket on broad elements of the Methane Emissions Reduction Program, including waste emissions charge revisions, in the early stages of its design (see Docket ID. No. EPA–HQ–OAR–2022–0875). The EPA received five comments from government entities related to implementation of the WEC. The EPA also solicited comments on the proposal. The EPA received two comments from local government entities and thirteen comments from State or Tribal government entities in response to the proposed rulemaking. All comments received on the proposed rulemaking were considered during the development of the final rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action has Tribal implications. While this action does not preempt Tribal law, it will impose direct compliance costs on one or more Federally recognized Tribal governments, and the Federal government will not provide the funds necessary to pay those costs; however, the final rule and the associated compliance costs are required by statute. This final regulation will apply directly to petroleum and natural gas facilities that may be owned by Tribal governments. However, it will generally only have Tribal implications where the Tribal entity owns or operates a facility in an applicable industry segment that emits GHGs above threshold levels or potentially where privately owned facilities subject to the charge are located in Indian country. Based on currently available data, the EPA anticipates that only one Tribe will be directly affected. Of the subpart W facilities currently reporting to the GHGRP in RY2022, this Tribe is the owner or partial owner of three facilities currently reporting to part 98. Based on RY2022 data, all three facilities would be WEC applicable facilities, and the WEC applicable emissions (without consideration of exemptions) for the individual facilities would range from less than 0 mt CH_4 for one facility, up to about 2,700 mt CH_4 for the largest facility (which corresponds to a WEC obligation of around $2.4 million using charge of $900/MT). Note that one of the facilities is within the onshore natural gas processing sector, and thus, this calculation utilizes proxy data of CBI throughput, which may not reflect the actual facility throughput and resulting WEC applicable emissions. Each of the three facilities has a different owner or operator or combination of owners or operators, so the Tribe may not be the WEC obligated party for all three facilities. These estimates do not consider any exemptions that might apply for the three facilities with emissions greater than the facility waste emissions threshold.

In addition to the Tribe that may be directly impacted by the WEC due to owning a facility subject to the charge, the EPA anticipates that Tribes could be impacted in cases where privately-owned facilities subject to the charge are located in Indian country. For example, the EPA reviewed the location of the production wells reported by facilities under the Onshore Petroleum and Natural Gas Production industry segment and found production wells reported under subpart W on lands associated with approximately 20 Tribes. Therefore, although the EPA anticipates that at most only one Tribe may be designated as a WEC obligated party and has the potential to be subject to the WEC, the EPA has sought opportunities to provide information to Tribal governments and representatives during rule development. Further, consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, the EPA engaged in consultation with Tribal officials during the development of this action and specifically solicited comment on this action from Tribal officials.

Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, the EPA consulted with Tribal officials early in the process of developing this regulation to ensure meaningful and timely Tribal input into its development. On January 26, 2024, the EPA invited all 574 Federally-recognized Tribes to consult on the proposed regulation. Separately, consistent with EPA's Guiding Principles for Consulting with Alaska Native Claims Settlement Act (ANCSA) Corporations, EPA invited ANCSA corporations to consult on the proposed rulemaking. A copy of this letter is available in the docket to this rulemaking (see Docket ID No. EPA–HQ–OAR–2023–0434). Only two Tribes requested government-to-government consultation with the EPA. The EPA consulted with the Southern Ute Indian Tribe via video conference at 12:00 p.m. Eastern Time on March 21, 2024. A summary of the consultation with the Southern Ute Indian Tribe is provided at Docket ID No. EPA–HQ–OAR–2023–0434. The Southern Ute Tribe additionally submitted written comments to the docket. In response to the Ute Indian Tribe's consultation request, the EPA scheduled a video conference with the Ute Indian Tribe's Business Committee at 3:30 p.m. Eastern Time on April 2, 2024; however, the Business Committee informed the EPA during the meeting that the video conference did not meet the Tribe's requirements for a consultation and ended the meeting before providing any input on the proposed rulemaking to the EPA. The Business Committee informed the EPA that the meeting is only considered consultation if the meeting is in person and on Tribal land, but it submitted written comments to the docket.

The EPA encouraged Tribal representatives to submit written comments through the docket on the proposed rulemaking and has responded in detail to Tribal comments

in the response to comments document on the proposed regulation to address Tribal concerns. The EPA has considered the Tribal input from the coordination and consultation calls and public comments in the development of the final rule.

As required by section 7(a), the EPA's Tribal Consultation Official has certified that the requirements of the executive order have been met in a meaningful and timely manner. A copy of the certification is included in the docket for this action.

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

The EPA interprets Executive Order 13045 as applying only to regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action would not establish an environmental standard intended to mitigate health or safety risks and does not focus on information-gathering actions concerned with children's health. Therefore, this action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk. Since this action does not concern human health, the EPA's Policy on Children's Health also does not apply.

Although this final action does not establish an environmental standard applicable to methane emissions or mandate methane emissions reductions, it is expected that the WEC implemented under this final action would result in elective methane mitigation actions by applicable facilities in the oil and gas industry in order to reduce, or eliminate, the imposition of charges. As such, the EPA believes that the impacts of this final action would result in a reduction in an environmental health or safety risk that has a disproportionate effect on children. Accordingly, the Agency has elected to evaluate the environmental health and welfare effects of climate change on children outside of this action. Greenhouse gases, including methane, contribute to climate change and are emitted in significant quantities by the oil and gas industry. The EPA believes that the implementation of the WEC in this action would improve children's health as a result of methane mitigation actions and operational changes taken by oil and gas applicable facilities to avoid the imposition of WEC. The assessment literature cited in the EPA's 2009 Endangerment Findings concluded that certain populations and life stages, including children, the elderly, and the poor, are most vulnerable to climate-related health effects (74 FR 66524, December 15, 2009). The assessment literature since 2009 strengthens these conclusions by providing more detailed findings regarding these groups' vulnerabilities and the projected impacts they may experience (*e.g.,* the 2016 Climate and Health Assessment).[77] 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, and infectious and waterborne illnesses resulting in physical and mental health effects from extreme weather events. In addition, children are among those especially susceptible to most allergic diseases, as well as health effects associated with 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.

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

This final 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. To make this determination, we compare the projected change in crude oil and natural gas costs and production to guidance articulated in a January 13, 2021 OMB memorandum ''Furthering Compliance with Executive Order 13211, Titled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.'' [78] With respect to increases in the cost of energy production or distribution, the guidance indicates that a regulatory action produces a significant adverse effect if it is expected to increase costs in excess of one percent. With respect to crude oil production, the guidance indicates that a regulatory action produces a significant adverse effect if it is expected to produce reductions in crude oil supply, in excess of 20 million barrels per year. With respect to natural gas production, the guidance indicates that a regulatory action produces a significant adverse effect if it reduces natural gas production in excess of 40 million thousand cubic feet (mcf) per year.[79] The economic impacts analysis conducted as part of the RIA accompanying this rulemaking estimated a maximum impact on the gas market of a 0.044 percent price increase and a 0.026 percent decrease in production. The highest impact year is estimated to be in 2026, with a production decrease of 10.7 million mcf of natural gas. The analysis projected a maximum impact on the oil market of a 0.03 percent price increase and a 0.026 percent decrease in production. The highest impact year is estimated to be in 2026. These impacts are substantially below the thresholds available in OMB memoranda as measures of a significant adverse effect on the energy supply. Further discussion of this analysis is available in the *Regulatory Impact Analysis of the Waste Emissions Charge,* available in the docket for this rulemaking.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation's Commitment to Environmental Justice for All

The EPA concludes that the emissions reductions likely to result from this rule will improve health and environmental outcomes for communities facing disproportionate and adverse human health effects from the pollution subject to the waste emissions charge, including communities with environmental justice concerns. The EPA finalizes, however, to determine that the Executive Order charge to perform an environmental justice analysis does not apply to this rulemaking because it is a rulemaking that addresses information collection, reporting procedures, and imposition of the waste emissions charge directive of CAA section 136. Although the EPA

[77] USGCRP, 2016: *The Impacts of Climate Change on Human Health in the United States: A Scientific Assessment.* Crimmins, A., J. Balbus, J.L. Gamble, C.B. Beard, J.E. Bell, D. Dodgen, R.J. Eisen, N. Fann, M.D. Hawkins, S.C. Herring, L. Jantarasami, D.M. Mills, S. Saha, M.C. Sarofim, J. Trtanj, and L. Ziska, Eds. U.S. Global Change Research Program, Washington, DC, 312 pp. *https://dx.doi.org/10.7930/J0R49NQX.*

[78] See *https://www.whitehouse.gov/wp-content/uploads/2021/01/M-21-12.pdf.*

[79] The 2021 E.O. 13211 guidance memo states that the natural gas production decrease that indicates the regulatory action is a significant energy action is 40 mcf per year. Because this is a relatively small amount of natural gas and previous guidance from 2001 indicated a threshold of 25 million mcf, we assume the 2021 memo was intended to establish 40 million mcf as the indicator of an adverse energy effect. See *https://www.whitehouse.gov/wp-content/uploads/2017/11/2001-M-01-27-Guidance-for-Implementing-E.O.-13211.pdf.*

anticipates a reduction in methane and associated co-pollutant emissions from this action, these reductions are not the result of emissions standards or mandated reductions.

Although this regulation does not require action that will directly affect human health or environmental conditions, it is expected that the WEC implemented under this final action would result in elective methane mitigation actions by applicable facilities in the oil and gas industry in order to reduce, or eliminate, the imposition of charges. Accordingly, the EPA has identified and addressed environmental justice concerns by electing to conduct a qualitative assessment of the environmental justice outcomes from the action. The EPA believes the human health or environmental conditions that exist prior to this final action would result in or have the potential to result in disproportionate and adverse human health or environmental effects on communities with environmental justice concerns. The EPA identified counties where Onshore Petroleum and Natural Gas Production and/or Onshore Petroleum and Natural Gas Gathering and Boosting facilities with emissions that may be above the waste emissions threshold and therefore subject to the WEC operated in 2022. These are the counties where emissions might change due to the WEC. The EPA found that there are generally higher percentages of low income and members of minority groups in these communities who may experience higher than average health risks. The EPA believes that in aggregate the final action will result in reduction of methane, hazardous air pollutants, and volatile organic compounds, and, generally, this result will improve environmental justice outcomes.

The information supporting this Executive Order review is contained in the *Regulatory Impact Analysis of the Waste Emissions Charge,* available in the docket for this rulemaking.

The EPA has promoted meaningful engagement from communities in developing this action. The EPA has provided several opportunities for public engagement. The EPA opened the proposed rule for public comment from January 26 to March 26, 2024, and hosted a virtual public hearing for the proposed revisions on February 12, 2024. The EPA provided three informational webinars on the technical aspects of the proposed rule on January 25, February 20, and March 5, 2024. The EPA has taken into consideration the comments received from representatives and stakeholders in the development of this final rule.

K. Congressional Review Act

This action is subject to the Congressional Review Act, and the EPA will submit a report on the final rule to each House of the Congress and to the Comptroller General of the United States. This action meets the criteria set forth by 5 U.S.C. 804(2).

L. Judicial Review

Under CAA section 307(b)(1), any petition for review of this final rule must be filed in the U.S. Court of Appeals for the District of Columbia Circuit by January 17, 2025. This final rule establishes requirements applicable to owners and operators of facilities in the petroleum and natural gas systems source category located across the United States that are subject to 40 CFR part 99 and therefore is ''nationally applicable'' within the meaning of CAA section 307(b)(1). Under CAA section 307(d)(7)(B), only an objection to this final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. CAA section 307(d)(7)(B) also provides a mechanism for the EPA to convene a proceeding for reconsideration, ''[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, Environmental Protection Agency, Room 3000, William Jefferson Clinton Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460, with an electronic copy to the person listed in **FOR FURTHER INFORMATION CONTACT**, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20004. Note that under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements.

M. Determination Under CAA Section 307(d)

Pursuant to CAA section 307(d)(1)(V), the Administrator determines that this action is subject to the provisions of CAA section 307(d). Section 307(d)(1)(V) of the CAA provides that the provisions of CAA section 307(d) apply to ''such other actions as the Administrator may determine.''

N. Severability

This final rule is multifaceted and addresses many separate elements of the WEC program established by Congress for independent reasons, as detailed in each respective portion of this preamble. We intend each portion of this final rule to be severable from each other, though we took the approach of including all the parts in one rulemaking rather than promulgating multiple final rules in order to promote coordination of the adoption and implementation of the final rule, even though many elements are not interdependent. Should a reviewing court vacate certain elements of the final rule and not others, the remaining elements can and should function independently.

For example, the provisions for calculating the charge, which are largely dictated by the statute, are severable from the provisions concerning netting and exemptions. Notably, the regulatory compliance exemption is not available until ''methane emissions standards and plans pursuant to subsections (b) and (d) of section 111 have been approved and are in effect in all States with respect to the applicable facility.'' Because of the time it will take for States to promulgate State plans and the EPA to review and approve them or issue a Federal plan, the regulatory compliance exemption would not be available for a few years after this final rule. Thus, should a court conclude that the EPA erred in codifying the regulatory compliance exemption, EPA anticipates that it would be able to timely address any identified errors.

Likewise, the calculation methodologies and data input elements for the WEC calculations reflect the differences in thresholds established by Congress for certain oil and gas operations and the industry segment-specific methane intensity thresholds specified in CAA 136(f) and listed in Table 2 of this preamble. If a reviewing court were to invalidate any of the calculation methodologies for a particular segment, the remainder of the calculations for other segments subject to the WEC would be independent from and do not rely on the calculations that were to be invalidated. Accordingly, each calculation methodology and data input element for the WEC calculations is severable. This is reflected in the structure of the final rule, which describes each of the equations for calculation of the WEC separately.

Moreover, because the calculations as established in this rulemaking are direct translations of the statute into practical terms for ease of implementation, the calculations themselves could be done even without the specific methodologies finalized in this rulemaking.

The EPA is also finalizing certain requirements regarding implementation of the netting requirement established in CAA section 136(f)(4). To the extent a reviewing court were to find any legal issue with any element of the EPA's netting requirements as finalized, that would have no bearing on the implementation of any other elements of the netting requirement, or on any other aspect of the final rule, including the underlying charge obligation.

Each of the exemptions identified in this final rule (emissions from eligible delays in environmental permitting under CAA section 136(f)(5); the regulatory compliance exemption under CAA section 136(f)(6); and the plugged well exemption under CAA section 136(f)(7)) are also severable from each other and from the other provisions of the final rule. Each exemption was established independently under each separate authority under CAA section 136 and each regards a different (and unrelated) set of factual circumstances. Each exemption can function and be implemented in the absence of each other, and are severable. Additionally, certain provisions promulgated within each exemption are also severable. For instance, the EPA is finalizing a determination that plugged wells in the underground storage industry segment are eligible for the plugged well exemption. To the extent that a court were to find any legal issue with the eligibility of the underground storage industry segment for this exemption, it would have no bearing on the eligibility of wells in the production industry segments—nor would it have bearing on the application of any other exemption. As described in section III. of this preamble, the EPA is also finalizing certain general requirements and establishing confidentiality determinations for the reporting of certain data elements. Each of these requirements continues to be fully implementable even in the absence of any one or more of these elements, because each element is reported and evaluated independently pursuant to requirements finalized in this rulemaking.

Finally, as described in section II.A. of this preamble, the EPA is finalizing revisions to the general provisions (subpart A) of part 98. These reporting requirements are independent of the general requirements and other reporting requirements under part 99, and invalidation of the revisions to subpart A of part 98 would have no bearing on the EPA's ability to calculate the WEC. Moreover, the WEC rule can continue to function irrespective of the status of the latest subpart W revisions, because if any aspect of those revisions were invalidated, the previously existing version of the subpart W regulation would then apply.

Thus, the EPA has independently considered and adopted portions of the final rule (including but not limited to the definitions to support WEC implementation; provisions related to common ownership or control; calculation methodologies for each part of the WEC; each of the provisions regarding the exemptions to the WEC; the general requirements of this final rule, and establishing confidentiality determinations for the reporting of certain data elements), and each of these components is severable. If a court were to invalidate any one of these elements of the final rule, we intend the remainder of this action to remain effective. We have designed these different elements of the program to function independently; the supporting basis for each of these elements of the final rule reflects that they are independently justified and appropriate; and our analysis finding each separate portion to be appropriate remains valid even in the event that one or more other parts of the final rule has been set aside. Moreover, this list is not intended to be exhaustive, and should not be viewed as an intention by the EPA to consider other parts of the final rule not explicitly listed here as not severable from other parts of the final rule.

List of Subjects

40 CFR Part 2

Administrative practice and procedure, Confidential business information, Courts, Environmental protection, Freedom of information, Government employees.

40 CFR Part 98

Environmental protection, Greenhouse gases, Reporting and recordkeeping requirements.

40 CFR Part 99

Environmental protection, Greenhouse gases, Natural gas, Petroleum, Reporting and recordkeeping requirements, Penalties.

Michael S. Regan,

Administrator.

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

PART 2—PUBLIC INFORMATION

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 552, 552a, 553; 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717.

Subpart B—Confidentiality of Business Information

■ 2. Amend § 2.301 by revising paragraph (d) to read as follows:

§ 2.301 Special rules governing certain information obtained under the Clean Air Act.

* * * * *

(d) *Data submitted under parts 98 or 99 of this chapter.* (1) Sections 2.201 through 2.215 do not apply to data submitted under parts 98 or 99 of this chapter that EPA has determined, pursuant to sections 114(c) and 307(d) of the Clean Air Act, to be either of the following:

(i) Emission data.

(ii) Data not otherwise entitled to confidential treatment pursuant to section 114(c) of the Clean Air Act.

(2) Except as otherwise provided in this paragraph (d)(2) and (4) of this section, §§ 2.201 through 2.215 do not apply to data submitted under parts 98 or 99 of this chapter that EPA has determined, pursuant to sections 114(c) and 307(d) of the Clean Air Act, to be entitled to confidential treatment. EPA shall treat that information as confidential in accordance with the provisions of § 2.211, subject to paragraph (d)(4) of this section and § 2.209.

(3) Upon receiving a request under 5 U.S.C. 552 for data submitted under parts 98 or 99 of this chapter that EPA has determined, pursuant to sections 114(c) and 307(d) of the Clean Air Act, to be entitled to confidential treatment, the EPA office 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.

(4) Modification of prior confidentiality determination. A determination made pursuant to sections 114(c) and 307(d) of the Clean Air Act that information submitted under parts 98 or 99 of this chapter is entitled to confidential treatment shall continue in effect unless, subsequent to the confidentiality determination, EPA takes one of the following actions:

(i) EPA determines, pursuant to sections 114(c) and 307(d) of the Clean

Air Act, that the information is emission data or data not otherwise entitled to confidential treatment under section 114(c) of the Clean Air Act.

(ii) The Office of General Counsel issues a final determination, based on the criteria in § 2.208, 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 §§ 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 under section 114(c) of the Clean Air Act, EPA will notify the business in accordance with the procedures described in § 2.205(f)(2).

* * * * *

PART 98—MANDATORY GREENHOUSE GAS REPORTING

■ 3. The authority citation for part 98 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart A—General Provision

■ 4. Amend § 98.3 by adding paragraph (c)(14) to read as follows:

§ 98.3 What are the general monitoring, reporting, recordkeeping and verification requirements of this part?

* * * * *

(c) * * *

(14) Additional reporting for facilities subject to reporting under subpart W of this part. Legal name(s) and physical address(es) of each owner and each operator of the facility as of December 31 of the year for which data are being reported.

* * * * *

■ 5. Amend § 98.4 by revising paragraphs (g), (h), and (n)(2) and adding paragraph (o) to read as follows:

§ 98.4 Authorization and responsibilities of the designated representative.

* * * * *

(g) *Changing a designated representative or alternate designated representative.* The designated representative or alternate designated representative identified in a complete certificate of representation under this section for a facility or supplier received by the Administrator may be changed at any time upon receipt by the Administrator of another later signed, complete certificate of representation under this section for the facility or supplier. Except as provided in paragraph (o) of this section, notwithstanding any such change, all representations, actions, inactions, and submissions by the previous designated representative or the previous alternate designated representative of the facility or supplier before the time and date when the Administrator receives such later signed certificate of representation shall be binding on the new designated representative and the owners and operators of the facility or supplier.

(h) *Changes in owners and operators.* Except as provided in paragraphs (n) and (o) of this section, in the event an owner or operator of the facility or supplier is not included in the list of owners and operators in the certificate of representation under this section for the facility or supplier, such owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the designated representative and any alternate designated representative of the facility or supplier, as if the owner or operator were included in such list. Within 90 days after any change in the owners and operators of the facility or supplier (including the addition of a new owner or operator), the designated representative or any alternate designated representative shall submit a certificate of representation that is complete under this section except that such list shall be amended to reflect the change. If the designated representative or alternate designated representative determines at any time that an owner or operator of the facility or supplier is not included in such list and such exclusion is not the result of a change in the owners and operators, the designated representative or any alternate designated representative shall submit, within 90 days of making such determination, a certificate of representation that is complete under this section except that such list shall be amended to include such owner or operator.

* * * * *

(n) * * *

(2) If the entire facility is acquired by an owner or operator that already has a reporting facility in the same industry segment and basin (for onshore petroleum and natural gas production or onshore petroleum and natural gas gathering and boosting) or State (for natural gas distribution), the new owner or operator shall merge the acquired facility into their existing facility for purposes of the annual GHG report. The previous owner or operator shall also follow the provisions of § 98.2(i)(6) to notify EPA that the sold facility will discontinue reporting and shall provide the e-GGRT identification number of the merged, or reconstituted, facility. The owner or operator of the merged facility shall be responsible for submitting the annual report for the merged facility for the entire reporting year beginning with the reporting year in which the acquisition occurred. The owner or operator of the merged facility shall provide the e-GGRT identification number of the acquired facility.

* * * * *

(o) *Alternative provisions for responsibility for submissions and revisions to annual GHG reports for reporting years prior to changes in owners and operators for facilities that report under subpart W of this part.* If there is a change to the owner or operator of a facility that reports under subpart W of this part on January 17, 2025 or later and paragraph (o)(3) of this section does not apply, the entity (or entities) that was (were) the owner or operator as of December 31 of each reporting year remains responsible for submission and any revisions to annual reports for that reporting year and if applicable, annual GHG reports under § 98.3(h) for reporting years as specified in paragraph (o)(6) of this section. If paragraph (o)(1) or (o)(2) applies, the seller(s) shall select a historic reporting representative according to paragraph (o)(1) or (o)(2) of this section, as applicable, and according to paragraph (o)(5) of this section who will be responsible for submission (if not already submitted before the transaction) and revisions to annual GHG reports under § 98.3(h) for reporting years as specified in paragraph (o)(6) of this section. If there is a change to the owner or operator of a facility that reports under subpart W of this part that occurs during a transaction that results in the selling owner(s) and operator(s) ceasing to exist or if there is a change in owner or operator that occurs after December 31, 2024 and prior to January 17, 2025, the owner(s) and operators(s) as of December 31, 2024 and buyer(s) shall select a historic reporting representative according to paragraph (o)(3) or (o)(4) of this section, as applicable, and paragraph (o)(5) of this section who will be responsible for submission (if not already submitted before the transaction) and revisions to annual GHG reports under § 98.3(h) for reporting years as specified in paragraph (o)(6) of this section. If an entire facility is merged or acquired by a new owner(s) or operator(s), the owner(s) or

operator(s) prior to the transaction must notify EPA of the date of the last transaction that results in a change to the owner or operator of the facility and the acquiring owner(s) or operator(s) must provide the e-GGRT identification number of the facility acquired in the transaction. For facilities that meet the criteria in this paragraph (o), the terms *Owner* and *Operator* used in this subpart A and subpart W of this part refer to the owner(s) and operator(s) responsible for submission (if not already submitted before the transaction) and revisions to annual GHG reports under § 98.3(h) for reporting years as specified in paragraph (o)(6) of this section.

(1) If a facility reporting under subpart W had a single owner or operator as of December 31 of the year prior to the transaction(s), then within 90 days of a transaction(s) that results in a change to the owner or operator of the facility from the owner or operator as of December 31 of that reporting year, the owner or operator as of December 31 of that reporting year shall select a historic reporting representative who will be responsible for submission (if not already submitted before the transaction(s)) and revisions to annual GHG reports under § 98.3(h) for reporting years as specified in paragraph (o)(6) of this section. The historic reporting representative shall be an individual selected by an agreement binding on the owner or operator as of December 31 of that reporting year, following the provisions of paragraph (b) of this section.

(2) If a facility reporting under subpart W had more than one owner or operator as of December 31 of the year prior to the transaction(s), then within 90 days of a transaction(s) that results in a change to the owners or operators of the facility from the owners and operators of that reporting year, the owners and operators, as applicable, as of December 31 of that reporting year, shall select a historic reporting representative who will be responsible for submission (if not already submitted before the transaction(s)) and revisions to annual GHG reports under § 98.3(h) for reporting years as specified in paragraph (o)(6) of this section. The historic reporting representative shall be an individual selected by an agreement binding on each of the owners and operators as of December 31 of that reporting year, following the provisions of paragraph (b) of this section. If the transaction results in a change to the owner(s) or operator(s) for the entire facility, the new owner(s) or operator(s) must notify EPA of the date(s) of each transaction that results in a change to the owner or operator of the facility and must provide the e-GGRT identification number of the facility acquired in the transaction.

(3) If a facility is sold by the owner(s) or operator(s) as of December 31 of the year prior to the transaction and the owner(s) or operator(s) selling the facility is(are) acquired or all of the remaining assets of the owner(s) or operators(s) are acquired such that the selling owner(s) or operator(s) cease to exist as a result of a transaction that results in a change to the owner(s) or operator(s) of a facility, the owners or operators involved in that transaction shall select a historic reporting representative who will be responsible for submission (if not already submitted before the transaction) and revisions to annual GHG reports under § 98.3(h) for reporting years as specified in paragraph (o)(6) of this section. The historic reporting representative shall be an individual selected by an agreement binding on each of the owners and operators involved in the transaction, following the provisions of paragraph (b) of this section. If the transaction results in a change to the owner(s) or operator(s) for the entire facility, the new owner(s) or operator(s) must notify EPA of the date(s) of each transaction that results in a change to the owner or operator of the facility and must provide the e-GGRT identification number of the facility acquired in the transaction.

(4) If a facility is sold after December 31, 2024 and prior to January 17, 2025, all of the owners or operators involved in that transaction(s) must select a historic reporting representative who will be responsible for submission (if not already submitted before the transaction(s)) and revisions to annual GHG reports under § 98.3(h) for reporting years as specified in paragraph (o)(6) of this section. The historic reporting representative shall be an individual selected by an agreement binding on each of the owners and operators involved in the transaction(s), following the provisions of paragraph (b) of this section. If the transaction results in a change to the owner(s) or operator(s) for the entire facility, the new owner(s) or operator(s) must notify EPA of the date(s) of each transaction that results in a change to the owner or operator of the facility and must provide the e-GGRT identification number of the facility acquired in the transaction.

(5) The provisions of paragraphs (b), (c), (e), (f), (g), and (m) of this section apply to the historic reporting representative selected in paragraphs (o)(1) through (4) of this section by substituting the term ''historic reporting representative'' for ''designated representative.'' The provisions of paragraph (i) of this section apply to the historic reporting representative by adding the term ''historic reporting representative and any historic alternate designated representative to instances of ''the designated representative and any alternate designated representative.''

(6) Following a transaction as specified in this paragraph (o), the owner(s) or operator(s) relevant as specified in this paragraph (o) (and their selected historic reporting representative as specified in this paragraph (o)) remain responsible for submission (if not already submitted before the transaction) and any revisions to annual reports for the reporting year prior to the transaction and, if applicable, annual GHG reports under § 98.3(h) for additional reporting years prior to the transaction as specified in paragraphs (o)(6)(i) and (ii) of this section. If the responsible owner(s) or operators(s) are acquired such that the owner(s) or operator(s) as of cease to exist as a result of a transaction, the acquiring owners would become responsible for submission (if not already submitted before the transaction) and any revisions to annual reports for the reporting year prior to the transaction and, if applicable, annual GHG reports under § 98.3(h) for additional reporting years prior to the transaction as specified in paragraphs (o)(6)(i) and (ii) of this section.

(i) For the first transaction that occurs as specified in this paragraph (o), all reporting years prior to the reporting year prior to the transaction.

(ii) For each transaction after the first transaction that occurs as specified in this paragraph (o), all reporting years prior to the reporting year in which the transaction occurred and for which the owner(s) or operator(s) was (were) the owner(s) or operator(s) for the facility as of December 31st of the reporting year (and for which the historic reporting representative represents).

■ 6. Add part 99 to read as follows:

PART 99—WASTE EMISSIONS CHARGE

Sec.

Subpart A—General Provisions

99.1 Purpose and scope.
99.2 Definitions.
99.3 Who must file?
99.4 How do I authorize and what are the responsibilities of the designated representative?
99.5 When must I file and remit the applicable WEC obligation?
99.6 How do I file?
99.7 What are the general reporting, recordkeeping, and verification requirements of this part?

99.8 What are the general provisions for assessment of the WEC obligation?
99.9 How are payments required by this part made?
99.10 What fees apply to delinquent payments?
99.11 What are the compliance and enforcement provisions of this part?
99.12 What addresses apply for this part?
99.13 What are the confidentiality determinations and related procedures for this part?

Subpart B—Determining Waste Emissions Charge

99.20 How will the waste emissions threshold for each WEC applicable facility be determined?
99.21 How will the WEC applicable emissions for a WEC applicable facility be determined?
99.22 How will the net WEC emissions for a WEC obligated party be determined?
99.23 How will the transfer of negative net WEC emissions for facilities under the same parent company be determined?
99.24 How will the WEC Obligation for a WEC obligated party be determined?

Subpart C—Unreasonable Delay Exemption

99.30 Who qualifies for the exemption for emissions caused by an unreasonable delay in environmental permitting of gathering or transmission infrastructure?
99.31 What are the reporting requirements for the exemption for emissions caused by an unreasonable delay in environmental permitting of gathering or transmission infrastructure?
99.32 How are the methane emissions caused by an unreasonable delay in environmental permitting of gathering or transmission infrastructure quantified?
99.33 What are the recordkeeping requirements for methane emissions caused by an unreasonable delay in environmental permitting of gathering or transmission infrastructure?

Subpart D—Regulatory Compliance Exemption

99.40 When is the regulatory compliance exemption available, and under what conditions does the exemption cease to be available?
99.41 Which facilities qualify for the exemption for regulatory compliance?
99.42 What are the reporting requirements for the exemption for regulatory compliance?
99.43 How are the emissions qualifying for regulatory compliance exemption in the reporting year quantified?

Subpart E—Exemption for Permanently Shut-in and Plugged Wells

99.50 Who qualifies for the exemption of emissions from permanently shut-in and plugged wells?
99.51 What are the reporting requirements for the exemption for wells that were permanently shut-in and plugged?
99.52 How are the net emissions attributable to all wells at a WEC applicable facility that were permanently shut-in and plugged in the reporting year quantified?

Authority: 42 U.S.C. 7401–7671q; 31 U.S.C. 3717.

Subpart A—General Provisions

§ 99.1 Purpose and scope.

(a) This part establishes requirements for owners and operators of certain petroleum and natural gas systems facilities to make filings and be assessed waste emission charges as required by section 136 of the Clean Air Act (CAA).

(b) Owners and operators of facilities that are subject to this part must follow the requirements of this subpart and all applicable subparts of this part. If a conflict exists between a provision in subpart A and any other applicable subpart, the requirements of the applicable subpart of this chapter shall take precedence.

§ 99.2 Definitions.

All terms used in this part shall have the same meaning given in the Clean Air Act, unless as defined in this section. Terms defined here only apply to this part.

Act means the Clean Air Act, as amended, 42 U.S.C. 7401, *et seq.*

Administrator means the Administrator of the United States Environmental Protection Agency (EPA) or the Administrator's authorized representative.

Affected facility means, for the purposes of the regulatory compliance exemption of this part, affected facilities, as defined in part 60, subpart A of this chapter, that are subject to methane emissions requirements pursuant to part 60 of this chapter.

Applicable facility means a facility within one or more of the following industry segments, as those industry segment terms are defined in § 98.230 of this chapter. In the case where operations from two or more industry segments are co-located at the same part 98 reporting facility, operations for all co-located segments constitute a single *applicable facility* under this part:

(1) Offshore petroleum and natural gas production.

(2) Onshore petroleum and natural gas production.

(3) Onshore natural gas processing.

(4) Onshore natural gas transmission compression.

(5) Underground natural gas storage.

(6) Liquefied natural gas storage.

(7) Liquefied natural gas import and export equipment.

(8) Onshore petroleum and natural gas gathering and boosting.

(9) Onshore natural gas transmission pipeline.

Carbon dioxide equivalent or CO_2e means the number of metric tons of CO_2 emissions with the same global warming potential as one metric ton of another greenhouse gas and is calculated using equation A–1 in § 98.2(b) of this chapter.

Designated facility means, for purposes of the regulatory compliance exemption of this part, designated facilities, as defined in § 60.21a(b) of this chapter, subject to methane emissions requirements pursuant to a State, Tribal, or Federal plan implementing part 60 of this chapter.

Deviation means, for the purposes of the regulatory compliance exemption of this part, the same meaning as defined in part 60, subparts OOOOb and OOOOc of this chapter.

Facility applicable emissions means the annual methane emissions, as calculated in § 99.21, associated with a Waste Emissions Charge (WEC) applicable facility that are either equal to, below, or exceeding the waste emissions threshold for the WEC applicable facility prior to consideration of any applicable exemptions.

Facility ID number means the identification number assigned to a facility by the EPA's Greenhouse Gas Reporting Program (GHGRP).

Gas to oil ratio (GOR) means the ratio of the volume of gas at standard temperature and pressure that is produced from a volume of oil when depressurized to standard temperature and pressure.

Gathering and boosting site means a single gathering compressor station as defined in this section, centralized oil production site as defined in this section, gathering pipeline site as defined in this section, or other fence-line site within the onshore petroleum and natural gas gathering and boosting industry segment.

Gathering and boosting system means a single network of pipelines, compressors and process equipment, including equipment to perform natural gas compression, dehydration, and acid gas removal, that has one or more connection points to gas and oil production or one or more other gathering and boosting systems and a downstream endpoint, typically a gas processing plant, transmission pipeline, Local gas distribution company (LDC) pipeline, or other gathering and boosting system.

Gathering and boosting system owner or operator means any person that holds a contract in which they agree to transport petroleum or natural gas from one or more onshore petroleum and natural gas production wells or one or more other gathering and boosting systems to a downstream endpoint, typically a natural gas processing

facility, another gathering and boosting system, a natural gas transmission pipeline, or a distribution pipeline, or any person responsible for custody of the petroleum or natural gas transported.

Global warming potential or GWP means the ratio of the time-integrated radiative forcing from the instantaneous release of one kilogram of a trace substance relative to that of one kilogram of a reference gas (*i.e.,* CO_2). GWPs for each greenhouse gas are provided in Table A–1 of part 98, subpart A of this chapter.

Greenhouse gas or GHG means the air pollutants carbon dioxide (CO_2), hydrofluorocarbons (HFCs), methane (CH_4), nitrous oxide (N_2O), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6).

Natural gas means a naturally occurring mixture or process derivative of hydrocarbon and non-hydrocarbon gases found in geologic formations beneath the earth's surface, of which its constituents include, but are not limited to, methane, heavier hydrocarbons, and carbon dioxide. Natural gas may be field quality, pipeline quality, or process gas.

Net WEC emissions means the sum of WEC applicable emissions from facilities with the same WEC obligated party as calculated pursuant to § 99.22 using equation B–8 of this part. If the conditions specified in § 99.7(b)(1)(iv) apply for a reporting year, a single WEC obligated party may have multiple net WEC emissions totals for that reporting year.

Net WEC emissions after transfers means the total quantity of methane emissions subject to charge for a WEC obligated party. If the WEC obligated party is not eligible to, or elects not to, transfer or receive negative net WEC emissions pursuant to § 99.23, the net WEC emissions after transfers are determined pursuant to § 99.22. If the WEC obligated party transfers or receives negative net WEC emissions pursuant to § 99.23, the net WEC emissions after transfers reflect such transfers subject to the requirements of § 99.23.

Nonproduction sector means facilities in the onshore natural gas processing, the liquefied natural gas storage, the liquefied natural gas import and export equipment, and the onshore petroleum and natural gas gathering and boosting industry segments as those industry segments are defined in § 98.230 of this chapter.

Onshore natural gas transmission pipeline owner or operator means, for interstate pipelines, the person identified as the transmission pipeline owner or operator on the Certificate of Public Convenience and Necessity issued under 15 U.S.C. 717f, or, for intrastate pipelines, the person identified as the owner or operator on the transmission pipeline's Statement of Operating Conditions under section 311 of the Natural Gas Policy Act, or for pipelines that fall under the ''Hinshaw Exemption'' as referenced in section 1(c) of the Natural Gas Act, 15 U.S.C. 717–717 (w)(1994), the person identified as the owner or operator on blanket certificates issued under 18 CFR 284.224. If an intrastate pipeline is not subject to section 311 of the Natural Gas Policy Act (NGPA), the onshore natural gas transmission pipeline owner or operator is the person identified as the owner or operator on reports to the State regulatory body regulating rates and charges for the sale of natural gas to consumers.

Onshore petroleum and natural gas production owner or operator means the person or entity who holds the permit to operate petroleum and natural gas wells on the drilling permit or an operating permit where no drilling permit is issued, which operates a facility in the onshore petroleum and/or natural gas production industry segment (as that industry segment is defined in § 98.230(a)(2) of this chapter). Where petroleum and natural gas wells operate without a drilling or operating permit, the person or entity that pays the State or Federal business income taxes is considered the owner or operator.

Operator means, except as otherwise defined in this section, any person who operates or supervises a facility.

Owner means, except as otherwise defined in this section, any person who has legal or equitable title to, has a leasehold interest in, or control of an applicable facility, except a person whose legal or equitable title to or leasehold interest in the facility arises solely because the person is a limited partner in a partnership that has legal or equitable title to, has a leasehold interest in, or control of the facility shall not be considered an ''owner'' of the facility.

Parent company means the United States parent company.

Part 98 report means the annual report required under part 98 of this chapter for owners and operators of certain facilities under the Petroleum and Natural Gas Systems source category.

Petroleum means oil removed from the earth and the oil derived from tar sands and shale.

Production sector means facilities in the offshore petroleum and natural gas production and the onshore petroleum and natural gas production industry segments as those industry segments are defined in § 98.230 of this chapter.

Qualified Professional Engineer means an individual who is licensed by a State as a Professional Engineer to practice in one or more disciplines of engineering, is in good standing and who is qualified by education, technical knowledge, and experience to review and interpret the records required under this subpart.

Reporting year means the calendar year during which data are required to be collected for purposes of the annual WEC filing. For example, reporting year 2024 is January 1, 2024, through December 31, 2024, and the annual WEC filing for reporting year 2024 is submitted to the EPA by August 31, 2025.

Standard temperature and pressure means 60 °F and 14.7 psia.

Transmission sector means facilities in the onshore natural gas transmission compression, the underground natural gas storage, and the onshore transmission pipeline industry segments as those industry segments are defined in § 98.230 of this chapter.

United States parent company(s) means the highest-level United States company(s), as reported under § 98.3 of this chapter for a WEC applicable facility, with an ownership interest in the facility as of December 31 of the year for which data are being reported.

Waste emissions threshold means the metric tons of methane emissions calculated by multiplying WEC applicable facility throughput by the industry segment-specific methane intensity thresholds established in CAA section 136(f) and the density of methane (0.0192 metric ton per thousand standard cubic feet).

WEC means waste emissions charge, the charge established in CAA section 136(c) on methane emissions that exceed certain thresholds.

WEC applicable emissions means the annual methane emissions, as calculated in § 99.21, associated with a WEC applicable facility that are either equal to, below, or exceeding the waste emissions threshold for the WEC applicable facility after consideration of any applicable exemptions.

WEC applicable facility means an applicable facility, as defined in this section, for which the owner(s) or operator(s) of the part 98 of this chapter reporting facility was (were) required to report GHG emissions under part 98, subpart W of this chapter of more than 25,000 metric tons CO_2e for the reporting year.

WEC filing means the report and payment of applicable WEC obligation required to be submitted by a WEC

obligated party under the requirements of this chapter. The WEC filing contains information regarding the WEC obligated party and WEC applicable facilities for the previous reporting year. For example, the WEC filing due on August 31, 2025 contains information regarding reporting year 2024, which is January 1, 2024 through December 31, 2024.

WEC obligated party means the WEC applicable facility's owner or operator as defined in this section for the applicable industry segment as of December 31 of the reporting year or that became an owner or operator of the WEC applicable facility in a transaction occurring subsequent to the end of the reporting year (*i.e.,* between January 1 and December 31 of the year following the reporting year) that resulted in the owner(s) or operator(s) of the facility as of December 31 of the reporting year ceasing to exist prior to the WEC filing date pursuant to § 99.5. In cases where a WEC applicable facility has more than one owner or operator, the WEC obligated party must be one of the owners or operators of the facility selected by an agreement binding on each of the owners and operators of the facility, following the provisions of § 99.4(b). Each WEC applicable facility must have only one WEC obligated party for a reporting year.

WEC obligation means the WEC charge amount resulting from the calculations in § 99.24.

Well identification (ID) number means the unique and permanent identification number assigned to a petroleum or natural gas well. If the well has been assigned a US Well Number, the well ID number required in this subpart is the US Well Number. If a US Well Number has not been assigned to the well, the well ID number is the identifier established by the well's permitting authority.

Well-pad site means all equipment on or associated with a single well-pad. Specifically, the *well-pad site* includes all equipment on a single well-pad plus all equipment associated with that single well-pad.

You means a WEC obligated party subject to this part.

§ 99.3 Who must file?

WEC obligated parties, as defined in § 99.2, are required to submit a WEC filing and remit applicable WEC obligations and payments.

§ 99.4 How do I authorize and what are the responsibilities of the designated representative?

Each WEC obligated party must follow the procedures in paragraphs (a) through (l) of this section, as applicable, to identify a WEC obligated party designated representative. In cases where a WEC applicable facility has more than one owner or operator, the WEC obligated party shall be an owner or operator selected by an agreement binding on each of the owners and operators involved with the facility, following the provisions of paragraph (b) of this section. Failure to select a WEC obligated party for each WEC applicable facility with multiple owners or operators following the procedures of paragraph (b) of this section is considered a violation of this part for each owner and operator (as defined in § 99.2 of this part) for the applicable industry segment of the associated WEC applicable facility. If an owner or operator acquires a WEC applicable facility in a transaction occurring subsequent to the end of the reporting year (*i.e.,* between January 1 and December 31 of the year following the reporting year) that resulted in the owner(s) or operator(s) of the facility as of December 31 of the reporting year ceasing to exist prior to the WEC filing date pursuant to § 99.5, the acquiring owner or operator shall be considered the WEC obligated party for that facility.

(a) *General.* Except as provided under paragraph (f) of this section, each WEC obligated party that is subject to this part shall have one designated representative, who shall be responsible for certifying, signing, and submitting WEC filings or other submissions to the Administrator under this part.

(b) *Authorization of a designated representative.* The designated representative of each WEC obligated party shall be an individual selected by an agreement binding on the owner and operator of such entity and shall act in accordance with the certification statement in paragraph (i) of this section. Failure of a WEC obligated party to authorize a designated representative following the procedures of this section is considered a violation of this part.

(c) *Responsibility of the designated representative.* Upon receipt by the Administrator of a complete certificate of representation under this section for the WEC obligated party, the designated representative identified in such certificate of representation shall represent and, by their representations, actions, inactions, or submissions, legally bind the WEC obligated party in all matters pertaining to this part, notwithstanding any agreement between the designated representative and said WEC obligated party. The owner and operator shall be bound by any decision or order issued to the designated representative by the Administrator or a court.

(d) *Timing.* No WEC filing or other submissions under this part for a WEC obligated party will be accepted until the Administrator has received a complete certificate of representation for the reporting year under this section for a designated representative of the WEC obligated party. Such certificate of representation shall be submitted at least 60 days before the deadline for submission of the WEC obligated party's WEC filing under § 99.5 in each reporting year.

(e) *Certification of the WEC filing.* Each WEC filing and any other submission under this part for a WEC obligated party shall be certified, signed, and submitted by the designated representative or any alternate designated representative of the WEC obligated party in accordance with this section and § 3.10 of this chapter.

(1) Each such submission shall include the following certification statement signed by the designated representative or any alternate designated representative: ''I am authorized to make this submission on behalf of the WEC obligated party, for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.''

(2) The Administrator will accept a WEC filing or other submission for a WEC obligated party under this part only if the submission is certified, signed, and submitted in accordance with this section.

(f) *Alternate designated representative.* A certificate of representation under this section for the WEC obligated party may designate one alternate designated representative, who shall be an individual selected by an agreement binding on the owner and operator, and may act on behalf of the WEC obligated party designated representative. The agreement by which the alternate designated representative is selected shall include a procedure for authorizing the alternate designated representative to act in lieu of the designated representative.

(1) Upon receipt by the Administrator of a complete certificate of representation under this section for a WEC obligated party identifying an alternate designated representative, the following apply.

(i) The alternate WEC obligated party designated representative may act on behalf of the WEC obligated party designated representative.

(ii) Any representation, action, inaction, or submission by the alternate designated representative shall be deemed to be a representation, action, inaction, or submission by the WEC obligated party designated representative.

(2) Except in this section, whenever the term ''designated representative'' is used in this part, the term shall be construed to include the designated representative or any alternate designated representative.

(g) *Changing a designated representative or alternate designated representative.* The designated representative or alternate designated representative identified in a complete certificate of representation under this section for a WEC obligated party received by the Administrator may be changed at any time upon receipt by the Administrator of another later signed, complete certificate of representation under this section for the WEC obligated party. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous designated representative or the previous alternate designated representative of the WEC obligated party before the time and date when the Administrator receives such later signed certificate of representation shall be binding on the new designated representative and the owner and operator of the WEC obligated party.

(h) *Changes in the WEC obligated party.* Within 90 days after any change in the WEC obligated party, the designated representative or any alternate designated representative shall submit a certificate of representation that is complete under this section to reflect the change.

(i) *Certificate of representation.* The annual certificate of representation shall be complete if it includes the following elements in a format prescribed by the Administrator in accordance with this section:

(1) Identification of the WEC obligated party and the United States address of the WEC obligated party for which the certificate of representation is submitted.

(2) The name, organization name (company affiliation-employer), address, email address, telephone number, and facsimile transmission number (if any) of the designated representative and any alternate designated representative.

(3) The facility ID number for each WEC applicable facility comprising the WEC obligated party.

(4) The name and United States address of the parent company for purposes of netting under subpart B of this part for the WEC obligated party and the WEC applicable facilities. The indicated parent company must meet the requirements specified in paragraphs (i)(4)(i) and (ii) of this section. As an alternative to reporting a parent company, the WEC obligated party may be listed and paragraphs (i)(4)(i) and (ii) of this section do not apply.

(i) The indicated parent company must have been reported pursuant to § 98.3(c)(11) of this chapter for each WEC applicable facility listed in the certificate of representation for which the WEC obligated party was an owner or operator of the facility as of December 31 of the reporting year and was reported pursuant to § 98.3(c)(14) of this chapter.

(ii) The WEC obligated party must be a subsidiary of, or partially owned by, the indicated parent company.

(5) The following certification statements by the designated representative and any alternate designated representative:

(i) ''I certify that I was selected as the designated representative or alternate designated representative, as applicable, by an agreement binding on the WEC obligated party.''

(ii) ''I certify that I have all the necessary authority to carry out my duties and responsibilities under 40 CFR part 99 on behalf of the WEC obligated party and that such owner and operator shall be fully bound by my representations, actions, inactions, or submissions.''

(iii) ''I certify that the owner and operator of the WEC obligated party, as applicable, shall be bound by any order issued to me by the Administrator or a court therein.''

(iv) If there are multiple owners and/or operators reported pursuant to § 98.3(c)(14) of this chapter for any WEC applicable facility listed in the certificate of representation pursuant to paragraph (i)(5) of this section, for each facility, ''I certify that I have given a written notice of my selection as the 'designated representative' or 'alternate designated representative', as applicable, and of the agreement by which I was selected to each owner and operator of the WEC applicable facility for which there are multiple owners and/or operators.''

(6) The signature of the designated representative and any alternate designated representative and the dates signed.

(j) *Documents of agreement.* Unless otherwise required by the Administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the Administrator. The Administrator shall not be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(k) *Binding nature of the certificate of representation.* Once a complete certificate of representation under this section for a WEC obligated party has been received, the Administrator will rely on the certificate of representation unless and until a later signed, complete certificate of representation under this section for the facility is received by the Administrator.

(l) *Objections concerning a designated representative.* (1) Except as provided in paragraph (g) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission, of the designated representative or alternate designated representative shall affect any representation, action, inaction, or submission of the designated representative or alternate designated representative, or the finality of any decision or order by the Administrator under this part.

(2) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any designated representative or alternate designated representative.

§ 99.5 When must I file and remit the applicable WEC obligation?

Each WEC obligated party must submit their WEC filing including the information specified in § 99.7, which contains payment of the applicable WEC obligation no later than August 31 of the year following the reporting year. All filing revisions must be received according to the schedule in § 99.7(e) to be considered for revisions to WEC obligations. If the submission date falls on a weekend or a Federal holiday, the submission date shall be extended to the next business day.

§ 99.6 How do I file?

Each WEC filing, certificate of representation, and remittance of applicable WEC fees for the WEC obligated party must be submitted electronically in accordance with the

requirements of this part and in a format specified by the Administrator.

§ 99.7 What are the general reporting, recordkeeping, and verification requirements of this part?

The WEC obligated party that is subject to the requirements of this part must submit a WEC filing to the Administrator as specified in this section.

(a) *Schedule.* The WEC filing must be submitted in accordance with § 99.5.

(b) *Content of the WEC filing.* For each WEC obligated party, report the information in paragraphs (b)(1)(i) through (vii) of this section. For each WEC applicable facility comprising the WEC obligated party, report the information in paragraphs (b)(2)(i) through (xiii) of this section, as appropriate. The WEC filing must also include payment of applicable WEC obligation, as specified in paragraph (b)(3) of this section.

(1) Reporting requirements at the WEC obligated party level.

(i) The WEC obligated party company name.

(ii) The United States address for the WEC obligated party.

(iii) The list of facility ID number(s) under which the WEC applicable facilities comprising the WEC obligated party as of December 31 of the reporting year reported under part 98, subpart W of this chapter.

(iv) If the WEC obligated party acquired one or more WEC applicable facilities in a transaction occurring subsequent to the end of the reporting year (*i.e.,* between January 1 and December 31 of the year following the reporting year) that resulted in the owner(s) or operator(s) of the facility as of December 31 of the reporting year ceasing to exist prior to the WEC filing date pursuant to § 99.5, report the facility ID number for each WEC applicable facility. You must include these WEC applicable facilities in the reporting requirements under § 99.7(b)(2). For each such WEC applicable facility, also report an indication of whether the parent company identified in paragraph (b)(1)(vi) of this section was reported in the part 98 report for the reporting year pursuant to § 98.3(c)(11) of this chapter. For any such WEC applicable facilities that were not associated with the parent company identified in paragraph (b)(1)(vi) of this section, you may elect to report a parent company for that WEC applicable facility subject to the requirement that such parent company must have been reported in the part 98 report for the reporting year pursuant to § 98.3(c)(11) of this chapter for that facility.

(v) The net WEC emissions, as calculated pursuant to § 99.22, net WEC emissions after transfers, following the provisions of § 99.23, and WEC obligation, as calculated pursuant to § 99.24, for the WEC obligated party. If the condition specified in § 99.7(b)(1)(iv) applies for the reporting year, report separately the net WEC emissions, net WEC emissions after transfers, and WEC obligation associated with each WEC applicable facility that was acquired.

(vi) The parent company for purposes of netting under subpart B of this part for the WEC obligated party and the WEC applicable facilities. The indicated parent company must meet the requirements specified in paragraphs (b)(1)(vi)(A) and (B) of this section. As an alternative to reporting a parent company, the WEC obligated party may be listed and paragraphs (b)(1)(vi)(A) and (B) of this section do not apply.

(A) The indicated parent company must have been reported pursuant to § 98.3(c)(11) of this chapter for each WEC applicable facility listed pursuant to paragraph (b)(1)(iii) of this section.

(B) The WEC obligated party must be a subsidiary of, or partially owned by, the indicated parent company.

(vii) The United States address of the parent company, if electing to report a parent company for purposes of netting under subpart B of this part.

(2) Reporting requirements for each WEC applicable facility comprising the WEC obligated party.

(i) The facility ID number under which the WEC applicable facility emissions are reported under part 98, subpart W of this chapter.

(ii) The industry segment(s) for the WEC applicable facility.

(iii) For WEC applicable facilities in the offshore petroleum and natural gas production or onshore petroleum and natural gas production industry segment, as those industry segment terms are defined in § 98.230 of this chapter, if the conditions specified in § 99.30 regarding emissions from delays in permitting are met, indicate if you are electing to claim for exemption any emissions from delays in permitting. If so, you must provide information as specified in § 99.31.

(iv) If the WEC applicable facility meets the conditions specified in § 99.41(a) and (b) regarding the regulatory compliance exemption, indicate if you are electing to claim for exemption any emissions related to regulatory compliance. If so, you must report the following:

(A) A list of the State(s) and/or Tribal land(s) meeting the conditions specified in § 99.40 for the reporting year in which the WEC applicable facility is located. For WEC applicable facilities in the onshore petroleum and natural gas production or onshore petroleum and natural gas gathering and boosting industry segments, as those industry segment terms are defined in § 98.230 of this chapter, a WEC applicable facility is considered to be located in each State or Tribal lands within which a well-pad site or gathering and boosting site, as applicable, was reported pursuant to §§ 98.236(aa)(1)(iv)(C) or (aa)(10)(v)(E) of this chapter, as applicable, for the reporting year.

(B) An indication of whether the WEC applicable facility contained any affected facilities subject to methane emissions standards under part 60 of this chapter as of December 31st of the reporting year or any designated facilities subject to methane emissions standards under an applicable approved State, Tribal, or Federal plan in part 62 of this chapter as of December 31st of the reporting year. If so, provide the information specified in § 99.42, as applicable.

(v) For WEC applicable facilities in the onshore petroleum and natural gas production, offshore petroleum and natural gas production, or underground natural gas storage industry segments, as those industry segment terms are defined in § 98.230 of this chapter, if the conditions specified in § 99.50 regarding emissions from permanently shut-in and plugged wells are met, indicate if you are electing to claim for exemption any emissions from plugged wells. If so, you must report the information specified in § 99.51.

(vi) The facility waste emissions threshold as calculated pursuant to § 99.20, and, if there is more than one applicable industry segment within the WEC applicable facility, each industry segment waste emissions threshold for each applicable industry segment within the applicable facility, as calculated pursuant to § 99.20.

(vii) The facility applicable emissions, as calculated pursuant to § 99.21 and the WEC applicable emissions, as calculated pursuant to § 99.21.

(viii) The total emissions for the WEC applicable facility as reported under part 98, subpart W of this chapter for the reporting year, mt CO_2e. If the facility reported information related to one or more combustion-related other large release events pursuant to paragraph (b)(2)(xiii) of this section, reduce this amount by the total quantity of emissions reported pursuant to paragraph (b)(2)(xiii)(D) of this section.

If the adjusted total emissions for the WEC applicable facility following this reduction are less than or equal to 25,000 metric tons CO_2e for the reporting year, then the total facility applicable emissions and WEC applicable emissions for the WEC applicable facility are zero, paragraphs (a) through (d) of § 99.20 do not apply to the WEC applicable facility, and the reporting requirements of paragraphs (b)(2)(iii) through (vii) of this section do not apply.

(ix) The annual methane emissions for the WEC applicable facility, as reported under part 98, subpart W of this chapter for the corresponding reporting year, mt CH_4. If the facility reported information related to one or more combustion-related other large release events pursuant to paragraph (b)(2)(xiii) of this section, reduce this amount by the total quantity of emissions reported pursuant to paragraph (b)(2)(xiii)(C) of this section.

(x) The total quantity of natural gas that is sent to sale from the WEC applicable facility in the reporting year, as reported pursuant to part 98, subpart W of this chapter, in Mscf.

(xi) The total quantity of crude oil that is sent to sale from the WEC applicable facility in the reporting year, as reported pursuant to part 98, subpart W of this chapter, in barrels.

(xii) The percentage of ownership interest of the parent company reported pursuant to § 99.7(b)(1)(vi) of the WEC applicable facility as reported pursuant to § 98.3(c)(11) of this chapter for the reporting year. Report 0 for any WEC applicable facilities reported pursuant to § 99.7(b)(1)(iv) for which the parent company was not reported pursuant to § 98.3(c)(11) of this chapter for the reporting year.

(xiii) For reporting year 2025 and later, if one or more combustion-related other large release events were reported pursuant to § 98.236(y) of this chapter and reported emissions pursuant § 98.236(z) of this chapter for the same combustion unit for the timespan of the event for the WEC applicable facility in the part 98 report for that reporting year, then for each combustion-related other large release event report the information specified in paragraphs (b)(2)(xiii)(A) through (D) of this section. For purposes of this part, a combustion-related other large release event is one in which the equipment involved in the release identified pursuant to § 98.236(y)(5)(i) of this chapter is equipment that reports emissions pursuant § 98.236(z) of this chapter.

(A) The unique release event identification number for the other large release event as reported pursuant to § 98.236(y)(2) of this chapter.

(B) The annual CO_2 emissions, in metric tons CO_2, that were reported pursuant to § 98.236(z) of this chapter from the equipment associated with the release that occurred during the timespan of the release as reported pursuant to § 98.236(y)(4) of this chapter. Determine this quantity using the applicable method in paragraphs § 98.236(z)(1) through (3) of this chapter and using measurement data, if available, or a combination of process knowledge, engineering estimates, and best available data when measurement data are not available.

(C) The annual CH_4 emissions, in metric tons CH_4, that were reported pursuant to § 98.236(z) of this chapter from the equipment associated with the release that occurred during the timespan of the release as reported pursuant to § 98.236(y)(4) of this chapter. Determine this quantity using the applicable method in paragraphs § 98.236(z)(1) through (3) of this chapter and using measurement data, if available, or a combination of process knowledge, engineering estimates, and best available data when measurement data are not available.

(D) The CO_2e emissions, in metric tons CO_2e, that were reported pursuant to § 98.236(z) of this chapter from the equipment associated with the release that occurred during the timespan of the release as reported pursuant to § 98.236(y)(4) of this chapter. Calculate this value using equation A–1 of subpart A to part 98 of this chapter, using the values of CO_2 and CH_4 reported pursuant to paragraphs (b)(2)(xiii)(B) and (C), respectively, of this section.

(3) Payment of applicable WEC obligation, submitted in accordance with § 99.9.

(c) *Verification of the WEC filing.* To verify the completeness and accuracy of WEC filing, the EPA will consider the verification status of part 98 reports and may review the certification statements described in § 99.4 and any other credible evidence, in conjunction with a comprehensive review of the WEC filing, including attachments. The EPA intends to conduct audits of select WEC obligated parties and associated WEC applicable facilities. During such audits, the records generated under this part must be made available to the EPA. The on-site audits may be conducted by private auditors contracted by the EPA or by Federal, State or local personnel, as appropriate. Nothing in this section prohibits the EPA from requesting or using additional information, including reports, prepared and submitted in accordance with part 60 of this chapter, or an applicable approved State, Tribal, or Federal plan under part 62 of this chapter that implements the emission guidelines contained in part 60 of this chapter, to verify the completeness and accuracy of the filings.

(d) *Recordkeeping.* A WEC obligated party that is subject to the requirements of this part must keep records as specified in this paragraph (d). You must retain all required records for at least 5 years from the date of submission of the WEC filing for the reporting year in which the record was generated. The records shall be kept in an electronic or hard-copy format (as appropriate) and recorded in a form that is suitable for expeditious inspection and review. Upon request by the Administrator, the records required under this section must be made available to the EPA or a third-party auditor if one is required. Records may be retained off site if the records are readily available for expeditious inspection and review. For records that are electronically generated or maintained, the equipment or software necessary to read the records shall be made available, or, if requested by the EPA, electronic records shall be converted to paper documents. You must retain the following records, in addition to those records prescribed in each applicable subpart of this part:

(1) All information required to be retained by part 98, including subparts A and W of this chapter.

(2) Any other information not included in a part 98 report used to complete the WEC filing.

(3) All information required to be submitted as part of the WEC filing.

(e) *Annual WEC filing revisions.* Except as specified in paragraph (e)(2) of this section, the provisions of this paragraph (e) apply until December 15 of the year following the reporting year, or for a given reporting year after the December 15 deadline if the resubmission is related to the resolution of unverified filings specified at § 99.8. If the deadline falls on a weekend or a Federal holiday, the deadline date shall be extended to the next business day.

(1) The WEC obligated party shall submit a revised WEC filing within 30 days of discovering that a previously submitted WEC filing contains one or more substantive errors. The revised WEC filing must correct all substantive errors. If the resubmission is due to a correction in a part 98 report resubmitted by a WEC applicable facility, the WEC obligated party must report the number of corrections made in the part 98 report(s) and a description of how the changes impact the assessment of the WEC obligation.

(2) The revisions for substantive errors as described in paragraphs (e)(2)(i) through (iii) of this section are not subject to the December 15 deadline and must be submitted according to the schedule therein.

(i) Revised filings for purposes of the regulatory compliance exemption must be submitted as follows:

(A) Revised filings to submit a CAA section 111(b) or (d) compliance report which covers the remaining portion of a WEC filing year, which were not available at the time of the WEC filing, must be submitted within 30 calendar days of the date that the compliance report covering the remainder of the year is due under the applicable requirements of CAA section 111(b) or (d), as applicable.

(B) Revised filings to submit findings by the WEC obligated party that one or more deviations or violations discovered after the WEC filing must be submitted within 30 days of the discovery.

(ii) The Administrator may notify the WEC obligated party in writing that a WEC filing previously submitted by the WEC obligated party contains one or more substantive errors. Such notification will identify each such substantive error. The WEC obligated party shall, within 30 days of receipt of the notification, either resubmit the WEC filing that, for each identified substantive error, corrects the identified substantive error (in accordance with the applicable requirements of this part) or provide information demonstrating that the previously submitted filing does not contain the identified substantive error or that the identified error is not a substantive error. The EPA reserves the right to revise WEC obligations for a given reporting year after the December 15 final resubmission deadline if data errors are discovered by the EPA at a later date.

(iii) Revised filings submitted pursuant to Administrator approval or an Agreement between the WEC obligated party and the Administrator to correct substantive errors.

(3) A substantive error is an error that impacts the Administrator's ability to accurately calculate a WEC obligated party's WEC obligation, which may include, but is not limited to, the list of WEC applicable facilities associated with a WEC obligated party, the emissions or throughput reported in the WEC applicable facility part 98 report(s), emissions associated with exemptions, and supporting information for each exemption to demonstrate its validity.

(4) Notwithstanding paragraphs (e)(1) and (2) of this section, upon request the Administrator may provide an extension of the 30-day period for submission of a revised report or information under paragraphs (e)(1) and (2) of this section if adequate justification is provided by the WEC obligated party. The Administrator may provide an extension provided that the request is received by email to an address prescribed by the Administrator prior to the expiration of the 30-day period and that the request demonstrates that it is not practicable to submit a revised report or information under paragraphs (e)(1) and (2) of this section within 30 days. In no case shall an extension be granted beyond the December 15 final submission deadline.

(5) The WEC obligated party shall retain documentation for a minimum of 5 years from the date of creation to support any revision made to a WEC filing.

(6) If a WEC applicable facility changes ownership such that there is a change to the WEC obligated party, the entity that was the WEC obligated party as reported pursuant to § 99.7(b)(1)(i) in the WEC filing submitted for a reporting year remains responsible for any revisions to WEC filings for that reporting year.

(f) *Designation of unverified filings and reports.* Following the verification process discussed in § 98.3(h) of this chapter for part 98 reports and paragraph (c) of this section for WEC filings, the EPA shall designate:

(1) The annual part 98 report associated with each WEC applicable facility as either verified or unverified. An unverified report is one in which the EPA has provided notification under § 98.3(h)(2) of this chapter and the owner or operator of the WEC applicable facility has failed to revise and resubmit the report and resolve the error or provide justification to the satisfaction of the EPA that the identified error is not a substantive error (in accordance with the applicable requirements of § 98.3(h)(3) of this chapter).

(2) The annual WEC filing from each WEC obligated party submitted pursuant to § 99.7 as either verified or unverified. An unverified filing is one in which the EPA has provided notification under § 99.7(e)(2) and the WEC obligated party designated representative has failed to resubmit the filing and for each identified substantive error correct the identified substantive error (in accordance with the applicable requirements of paragraph (e)(3) of this section) or provide information demonstrating that the submitted filing does not contain the identified substantive error or that the identified error is not a substantive error. The determination of verification status of a part 98 report under paragraph (f)(1) of this section will be taken into consideration in the determination of the verification status of a WEC filing. A WEC filing may also be designated as unverified if it includes receipt of a transfer of negative net WEC emissions, pursuant to § 99.23, associated with an unverified part 98 report (*i.e.,* the WEC obligated party which transferred the negative net WEC emissions includes one or more WEC applicable facilities for which the associated part 98 report is unverified).

§ 99.8 What are the general provisions for assessment of the WEC obligation?

(a) *Assessment of the WEC obligation.* WEC obligation assessments shall be made pursuant to § 99.23 on the basis of information submitted by the date specified in § 99.5 and following the submittal requirements of § 99.6.

(b) *Assessment of the WEC obligation for unverified filings.* If a WEC filing is unverified but the EPA is able to correct the error(s) based on reported data, the EPA may recalculate the WEC obligation using available information and provide an invoice or refund to the WEC obligated party within 60 days of determining a WEC filing to be unverified. If the WEC obligated party resubmits a WEC filing within that timeframe, the EPA will either verify the resubmission, or take the resubmission into account when calculating the WEC obligation.

(c) *Third-party audits for unverified reports.* If the EPA is unable to calculate the WEC obligation with available information, the EPA may require the WEC obligated party to undergo a third-party audit. The EPA may require the WEC obligated party to fund and arrange the third-party audit. The WEC obligated party must make available for review to the third-party auditor all records related to the WEC filing pursuant to § 99.7. The WEC obligated party will have the audit completed and direct the third-party auditor to submit the audit results to the EPA and to the WEC obligated party pursuant to § 99.8(c)(1)(vi). The WEC obligated party will resubmit the WEC filing, if necessary, in accordance with § 99.8(c)(2)(i) and (ii). Nothing in this section regarding third-party audits shall be construed to limit the authority of the Administrator to exercise its authorities under § 114 of the CAA.

(1) *Third-party reviews.* An independent third-party audit of the information provided shall be based on a review of the relevant documents and shall identify each item required by the WEC filing, describe how the

independent third-party evaluated the accuracy of the information provided, state whether the independent third-party agrees with the information provided, and identify any exceptions between the independent third-party's findings and the information provided.

(i) Audits required under this section must be conducted by an independent third-party. The auditor must have professional work experience in the petroleum engineering field or related to oil and gas production, gathering, processing, transmission, or storage and must be a qualified professional engineer.

(ii) To be considered an independent third-party, the auditor must not be an employee of the WEC obligated party or its WEC applicable facilities at which the auditor is conducting the independent review.

(iii) The independent third-party shall submit all records pertaining to the audit required under this section, including information supporting all of the requirements of § 99.8(c)(1) to the WEC obligated party.

(iv) The independent third-party must provide to the WEC obligated party documentation of qualifications of professional work experience in the petroleum engineering field or related to oil and gas production, gathering, processing, transmission, or storage.

(v) The WEC obligated party must make the following information available to the auditor(s) for review which were used to develop the WEC filing including:

(A) All records described under § 99.7(d) of the general recordkeeping provisions for this chapter.

(B) All units, operations, processes, and activities for which GHG emissions were calculated.

(C) The GHG emissions calculations and methods used.

(D) The calculations for the development of site-specific emissions factors.

(E) The quantity of petroleum and natural gas received, produced, and consumed at the facility in the calendar year.

(F) The dates on which any measurements were conducted as well as the results of all emissions measured.

(G) The calibration reports for detection and measurement instruments used.

(H) The inventory of petroleum and natural gas for the current and/or prior calendar year.

(I) The annual part 98 reports.

(vi) The WEC obligated party will direct the independent third-party auditor to submit the audit results to the EPA and the WEC obligated party within 90 days of notification by the EPA of the requirement to conduct a third-party audit.

(2) *Reporting and recordkeeping requirements for WEC obligated parties following third party audits.* (i) The WEC obligated party shall direct the independent third-party auditor to provide the results of the audit to the EPA and the WEC obligated party. After receiving notification from the EPA that the audited information has been verified by the EPA, the WEC obligated party must resubmit the WEC filing, including the WEC obligation amount and all supporting documentation information that is included in reporting requirements under § 99.7, 99.31, 99.42, and 99.51, as applicable, within 30 days of receipt of the EPA notification.

(ii) The WEC obligated party shall provide to the EPA documentation of qualifications of the third-party auditor.

(iii) The WEC obligated party shall retain all records pertaining to the audit required under this section for a period of 5 years from the date of creation and shall deliver such records to the Administrator upon request.

(d) *Resubmittal of filings and reports for the current or prior reporting year.* If resubmittal of a previously submitted part 98 report and/or WEC filing, submitted as specified in § 99.7(e), results in a change to the WEC obligation determined for a WEC obligated party for the reporting year the following process shall apply:

(1) If the WEC obligation based upon the resubmitted report or filing for the reporting year is less than the WEC obligation previously remitted by the WEC obligated party, the Administrator shall authorize a refund to the WEC obligated party equal to the difference in WEC obligation.

(2) If the WEC obligation based upon the resubmitted report or filing for the reporting year is greater than the WEC obligation previously remitted by the WEC obligated party, the Administrator may issue an invoice or bill to the WEC obligated party payable in accordance with § 99.9(b). WEC obligations not paid in full by the specified due date, or within 30 days of the date of the invoice or bill if a due date is not provided, shall be subject to fees as described in § 99.10.

§ 99.9 How are payments required by this part made?

(a) The WEC obligation owed for each reporting year must be paid by the WEC obligated party as part of the annual WEC filing, as required by § 99.7(b), and is considered due at the date specified in § 99.5.

(b) Other than the WEC obligation specified in paragraph (a) of this section, all other charges required by this part, including adjusted WEC obligations, interest fees, and penalties, shall be paid by the WEC obligated party in response to an invoice or bill by the specified due date, or within 30 days of the date of the invoice or bill if a due date is not provided.

(c) All WEC obligations, interest fees, and penalties required by this subpart shall be paid to the Department of the Treasury by the WEC obligated party electronically in U.S. dollars, using an online electronic payment service specified by the Administrator.

§ 99.10 What fees apply to delinquent payments?

(a) *Delinquency.* WEC obligated party accounts are delinquent if the accounts remain unpaid after the due date specified in the invoice or other notice of the WEC amount owed.

(b) *Interest fee.* In accordance with 31 U.S.C. 3717(a), delinquent WEC obligated party accounts shall be charged a minimum annual rate of interest equal to the average investment rate for Treasury tax and loan accounts (Current Value of Funds Rate or CVFR) most recently published and in effect by the Secretary of the Treasury.

(c) *Non-payment penalty.* In accordance with 31 U.S.C. 3717(e), WEC obligated party invoiced debts that are more than 90 days past due shall be charged an additional penalty of 6 percent per year assessed on any part of the invoiced debt that is past due for more than 90 days.

(d) *Penalty for non-submittal.* In accordance with 42 U.S.C. 7413(d)(1), a WEC obligated party that fails to submit an annual WEC filing by the date specified in § 99.5 may be charged an administrative penalty. The penalty assessment shall be a daily assessment per day that the WEC filing is not submitted, assessed up to the value specified in Table 1 of 40 CFR 19.4, as amended. The assessment of penalty shall begin on the date that the WEC filing was considered past due per § 99.5 and continue until such time that the WEC filing is submitted by the WEC obligated party's designated representative. (For example: A WEC filing for reporting year 2025 submitted on September 4, 2026, may be subject to an assessment of four (4) days of administrative penalty for non-submittal.)

§ 99.11 What are the compliance and enforcement provisions of this part?

Any violation of any requirement of this part shall be a violation of the Clean

Air Act, including section 114 (42 U.S.C. 7414) and section 136 (42 U.S.C. 7436). A violation would include but is not limited to failure to submit, or resubmit as required, a WEC filing, failure to collect data needed to calculate the WEC obligation (including any data relevant to determining the applicability of any exemptions and how the netting was conducted), failure to select a WEC obligated party, failure to authorize a designated representative, failure to retain records needed to verify the amount of WEC obligation, providing false or incorrect information in a WEC filing, and failure to remit WEC payment. Each day of each violation constitutes a separate violation. Any penalty assessed shall be in addition to any WEC obligation due under this part and any fees applicable to delinquent payments due under § 99.10.

§ 99.12 What addresses apply for this part?

All requests, notifications, and communications to the Administrator pursuant to this part must be submitted electronically and in a format as specified by the Administrator.

§ 99.13 What are the confidentiality determinations and related procedures for this part?

This section characterizes various categories of information for purposes of making confidentiality determinations, as follows:

(a) This paragraph (a) applies the definition of ''Emission data'' in 40 CFR 2.301(a)(2)(i) for information reported under this part. ''Emission data'' cannot be treated as confidential business information and shall be available to be disclosed to the public. The following categories of information qualify as emission data:

(1) Methane emission information, including the net WEC emissions, waste emissions thresholds, WEC applicable emissions, and the quantity of methane emissions to be exempted due to unreasonable delay and wells that were permanently shut-in and abandoned.

(2) Calculation methodology, including the method used to determine the quantity of methane emissions to be exempted due to an unreasonable permitting delay and the method used to quantify emissions exempted from permanently shut-in and plugged wells.

(3) Facility and unit identifier information, including WEC obligated party company name and address, signed and dated certification statements of the accuracy and completeness of the report, facility identifiers, industry segment, well-pad and/or well identifiers, and emission source-specific methane mitigation activities impacted by an unreasonable permitting delay.

(b) The following types of information are not eligible for confidential treatment:

(1) The WEC obligation, as calculated pursuant to § 99.24.

(2) Compliance information, including information regarding applicable emissions standards or other relevant standards of performance or requirements, information in construction or operating permits, and information submitted to document compliance with an emissions standard or a standard of performance, such as a periodic report, prepared and submitted in accordance with part 60 of this chapter, or an applicable approved State, Tribal, or Federal plan under part 62 of this chapter that implements the emission guidelines contained in part 60 of this chapter, (excluding any information redacted from the report and claimed as confidential).

(3) Published information that is publicly available, including information that is made available through publication of annual reports submitted under part 98 of this chapter, on company or other websites, or otherwise made publicly available.

(c) If you submit information that is not described in paragraphs (a) and (b) of this section, you may claim the information as confidential and the information is subject to the process for confidentiality determinations in 40 CFR part 2 as described in §§ 2.201 through 2.208 of this chapter. You may be required to provide information to substantiate your claims. If claimed, the Administrator may consider this substantiating information to be confidential to the same degree as the information for which you are requesting confidential treatment. The determination will be based on your statements, the supporting information submitted, and any other available information. However, the Administrator may determine that your information is not subject to confidential treatment consistent with 40 CFR part 2 and 5 U.S.C. 552(b)(4).

(d) Submitted applications and reports typically rely on software or templates to identify specific categories of information. If you submit information in a comment field designated for users to add general information, the Administrator will respond to requests for disclosing that information consistent with paragraphs (a) through (c) of this section.

Subpart B—Determining Waste Emissions Charge

§ 99.20 How will the waste emissions threshold for each WEC applicable facility be determined?

The methane waste emissions threshold for each applicable industry segment within a WEC applicable facility for the reporting year will be calculated as described in paragraphs (a) through (d) of this section, as applicable. The methane waste emissions threshold for each WEC applicable facility will be determined as described in paragraph (e) of this section.

(a) For each offshore petroleum and natural gas production industry segment or onshore petroleum and natural gas production industry segment that sends natural gas to sale at a WEC applicable facility, the facility waste emissions threshold will be calculated using equation B–1 of this section.

$$TH_{is,Prod} = 0.002 \times \rho_{CH_4} \times Q_{ng,Prod} \qquad \text{(Eq. B-1)}$$

Where:

$TH_{is,Prod}$ = The methane waste emissions threshold for the industry segment at a WEC applicable facility for the reporting year in the production sector that has natural gas sent to sale, metric tons (mt) CH_4.

0.002 = Industry segment-specific methane intensity threshold, as specified in CAA section 136(f), for methane emissions for applicable facilities with natural gas sales in the production sector, thousand standard cubic feet (Mscf) CH_4 per Mscf of natural gas sent to sale.

ρ_{CH4} = Density of methane = 0.0192 kilograms per standard cubic foot (kg/scf) = 0.0192 metric tons per thousand standard cubic feet (mt/Mscf).

$Q_{ng,Prod}$ = The total quantity of natural gas that is sent to sale from the WEC applicable facility in the reporting year, as reported pursuant to part 98, subpart W of this chapter. For onshore petroleum and natural gas production, you must use the quantity reported pursuant to § 98.236(aa)(1)(i)(B) of this chapter, in Mscf. For offshore petroleum and natural gas production, you must use the quantity reported pursuant to § 98.236(aa)(2)(i) of this chapter, in Mscf.

(b) For each offshore petroleum and natural gas production industry segment or onshore petroleum and natural gas production industry segment that has no natural gas sent to sale at a WEC applicable facility, the facility waste emissions threshold will be calculated using equation B–2 of this section.

$$TH_{is,Prod} = 10 \times Q_{o,Prod} \times 10^{-6} \quad \text{(Eq. B-2)}$$

Where:

$TH_{is,Prod}$ = The annual methane waste emissions threshold for the industry segment at a WEC applicable facility in the production sector that has no natural gas sent to sale, mt CH_4.

10 = Industry segment-specific methane intensity threshold, as specified in CAA section 136(f), for applicable facilities with no natural gas sales in the production sector, mt CH_4 per million barrels oil sent to sale.

$Q_{o,Prod}$ = The total quantity of crude oil that is sent to sale from the WEC applicable facility in the reporting year, as reported pursuant to part 98, subpart W of this chapter. For onshore petroleum and natural gas production, you must use the quantity reported pursuant to § 98.236(aa)(1)(i)(C) of this chapter, in barrels. For offshore petroleum and natural gas production, you must use the quantity reported pursuant to § 98.236(aa)(2)(ii) of this chapter, in barrels.

10^{-6} = Conversion from barrels to million barrels.

(c) For each onshore natural gas processing industry segment, liquefied natural gas storage industry segment, the liquefied natural gas import and export equipment industry segment, or the onshore petroleum and natural gas gathering and boosting industry segment at a WEC applicable facility, the facility waste emissions threshold will be calculated using equation B–3 of this section.

$$TH_{is,NonProd} = 0.0005 \times \rho_{CH_4} \times Q_{ng,NonProd} \quad \text{(Eq. B-3)}$$

Where:

$TH_{is,NonProd}$ = The annual methane waste emissions threshold for the industry segment at a WEC applicable facility in the nonproduction sector, mt CH_4.

0.0005 = Industry segment-specific methane intensity threshold, as specified in CAA section 136(f), for applicable facilities in the nonproduction sector, Mscf CH_4 per Mscf of natural gas sent to sale from or through the facility.

ρ_{CH4} = Density of methane = 0.0192 kg/scf = 0.0192 mt/Mscf.

$Q_{ng,NonProd}$ = The total quantity of natural gas that is sent to sale from or through the industry segment at a WEC applicable facility in the reporting year as reported pursuant to part 98, subpart W of this chapter. For RY 2024 for onshore natural gas processing, you must use the quantity reported pursuant to § 98.236(aa)(3)(ii) of this chapter, in Mscf and for RY 2025 and later, you must use the quantity reported pursuant to § 98.236(aa)(3)(ix) of this chapter, in Mscf. For LNG import and export, you must use the sum of the quantities reported pursuant to § 98.236(aa)(6) and (7) of this chapter, in Mscf. For LNG storage, you must use the quantity reported pursuant to § 98.236(aa)(8)(ii) of this chapter, in Mscf. For onshore petroleum and natural gas gathering and boosting, you must use the quantity reported pursuant to § 98.236(aa)(10)(ii) of this chapter, in Mscf.

(d) For each onshore natural gas transmission compression industry segment, underground natural gas storage industry segment, or onshore natural gas transmission pipeline industry segment at a WEC applicable facility, the facility waste emissions threshold will be calculated using equation B–4 of this section.

$$TH_{is,Tran} = 0.0011 \times \rho_{CH_4} \times Q_{ng,Tran} \quad \text{(Eq. B-4)}$$

Where:

$TH_{is,Tran}$ = The annual methane waste emissions threshold for the industry segment at a WEC applicable facility in the transmission sector, mt CH_4.

0.0011 = Industry segment-specific methane intensity threshold, as specified in CAA section 136(f), for applicable facilities in the transmission sector, Mscf CH_4 per Mscf of natural gas sent to sale from or through the facility.

ρ_{CH4} = Density of methane = 0.0192 kg/scf = 0.0192 mt/Mscf.

$Q_{ng,Tran}$ = The total quantity of natural gas that is sent to sale from or through the industry segment at a WEC applicable facility in the reporting year as reported pursuant to part 98, subpart W of this chapter. For onshore natural gas transmission compression, you must use the quantity reported pursuant to § 98.236(aa)(4)(i) of this chapter, in Mscf. For underground natural gas storage, you must use the quantity reported pursuant to § 98.236(aa)(5)(ii) of this chapter, in Mscf. For onshore natural gas transmission pipeline, you must use the quantity reported pursuant to § 98.236(aa)(11)(iv) of this chapter, in Mscf.

(e) For each WEC applicable facility that operates in a single industry segment, the methane waste emissions threshold shall be equal to the value calculated in equation B–1, equation B–2, equation B–3, or equation B–4 of this section, as applicable. For each WEC applicable facility that operates in two or more industry segments, the facility waste emissions threshold will be calculated using equation B–5 of this section.

$$TH_{WAF} = \sum_{s=1}^{N} TH_{is,s} \quad \text{(Eq. B-5)}$$

Where:

TH_{WAF} = The WEC applicable facility waste emissions threshold, mt CH_4.

$TH_{is,s}$ = The industry segment waste emissions threshold, as calculated in

equation B–3 or equation B–4 of this section, for each industry segment ''s'' at the WEC applicable facility, mt CH_4.

N = Number of industry segments at the WEC applicable facility.

§ 99.21 How will the WEC applicable emissions for a WEC applicable facility be determined?

Except for WEC applicable facilities with a waste emissions threshold of zero as determined in § 99.20(e), the total facility applicable emissions and WEC applicable emissions for each WEC applicable facility for the reporting year will be calculated as described in paragraphs (a) through (d) of this section, as applicable. If the waste emissions threshold for a WEC applicable facility is zero as determined in § 99.20(e), then the total facility applicable emissions and WEC applicable emissions for the WEC applicable facility are zero and paragraphs (a) through (d) of this section do not apply to the WEC applicable facility.

(a) The total facility applicable emissions for each WEC applicable facility will be calculated using equation B–6 of this section.

$$E_{TFA,CH_4} = E_{SubpartW,CH_4} - TH_{WAF} \quad \text{(Eq. B-6)}$$

Where:

$E_{TFA,CH4}$ = The annual methane emissions equal to, below, or exceeding the waste emissions threshold for a WEC applicable facility prior to consideration of any applicable exemptions (*i.e.,* total facility applicable emissions), mt CH_4.

$E_{SubpartW,CH4}$ = The annual methane emissions for a WEC applicable facility, as reported to § 99.7(b)(2)(ix), mt CH_4.

TH_{WAF} = The waste emissions threshold for a WEC applicable facility, as determined in § 99.20(e), mt CH_4.

(b) If the total facility applicable emissions calculated using equation B–6 of this section are less than or equal to 0 mt, then the WEC applicable emissions are equal to the total facility applicable emissions.

(c) If the total facility applicable emissions calculated using equation B–6 of this section are greater than 0 mt and the regulatory compliance exemption as specified in § 99.41 applies for the entire reporting year and to all sites at the WEC applicable facility, the WEC applicable emissions for that facility are equal to 0 mt.

(d) If the total facility applicable emissions calculated using equation B–6 of this section are greater than 0 mt and the regulatory compliance exemption as specified in § 99.41 does not apply for the entire reporting year or does not apply to all sites at the WEC applicable facility, the WEC applicable emissions for each WEC applicable facility will be calculated using equation B–7 of this section. If the result of this calculation is less than 0 mt CH_4, the WEC applicable emissions for the facility are equal to 0 mt CH_4.

$$E_{WA,CH_4} = E_{TFA,CH_4} - E_{Delay,CH_4} - E_{RCE,CH_4} - E_{Plug,CH_4} \quad \text{(Eq. B-7)}$$

Where:

$E_{WA,CH4}$ = The annual methane emissions associated with a WEC applicable facility that are either equal to, below, or exceeding the waste emissions threshold for the WEC applicable facility (*i.e.,* the WEC applicable emissions), mt CH_4.

$E_{TFA,CH4}$ = The annual methane emissions equal to, below, or exceeding the waste emissions threshold for a WEC applicable facility prior to consideration of any applicable exemptions for the reporting year, mt CH_4.

$E_{Delay,CH4}$ = The quantity of methane emissions exempted, as determined in equation C–1 of § 99.32, at the WEC applicable facility due to an unreasonable delay in environmental permitting of gathering or transmission infrastructure meeting the applicability provisions of § 99.30, mt CH_4.

$E_{RCE,CH4}$ = The quantity of methane emissions, as determined pursuant to § 99.43, at the WEC applicable facility attributable to the regulatory compliance exemption subject to the applicability provisions of § 99.41, mt CH_4.

$E_{Plug,CH4}$ = The total quantity of annual methane emissions, as determined in equation E–7 of § 99.52, at the WEC applicable facility attributable to all wells that were permanently shut-in and plugged during the reporting year meeting the applicability provisions of § 99.50, mt CH_4.

§ 99.22 How will the net WEC emissions for a WEC obligated party be determined?

(a) If the condition specified in § 99.7(b)(1)(iv) does not apply for the reporting year, net WEC emissions for a WEC obligated party, equal to the sum of WEC applicable emissions from all facilities with the same WEC obligated party, as specified in § 99.2, will be calculated using equation B–8 of this section.

$$E_{NetWEC,CH_4} = \sum_{j=1}^{N} E_{WA,CH_4,j} \quad \text{(Eq. B-8)}$$

Where:

$E_{NetWEC,CH4}$ = The net WEC emissions for the WEC obligated party for the reporting year, rounded to the nearest 0.01 mt CH_4.

$E_{WA,CH4,j}$ = The annual methane emissions equal to, below, or exceeding the waste emissions thresholds (*i.e.,* the WEC applicable emissions) for a WEC applicable facility, *j,* as calculated in § 99.21(b) or (d) of a WEC obligated party, mt CH_4.

N = Total number of WEC applicable facilities of a WEC obligated party, excluding any WEC applicable facilities for which the regulatory compliance exemption as specified in § 99.41 applied for the entire reporting year.

(b) If the condition specified in § 99.7(b)(1)(iv) applies for the reporting year, net WEC emissions for a WEC obligated party must be calculated according to this paragraph (b). The net WEC emissions for any acquired WEC applicable facilities that were not associated with the parent company reported pursuant to § 99.7(b)(1)(vi) will be calculated using equation B–8 of this section. The net WEC emissions for the WEC applicable facilities that were associated with the WEC obligated party as of December 31 of the reporting year and any acquired WEC applicable facilities that were associated with the parent company reported pursuant to § 99.7(b)(1)(vi) will be calculated using equation B–8 of this section.

(c) If net WEC emissions are calculated pursuant to paragraph (b) of this section, each calculated net WEC emission value will each be treated as a distinct net WEC emission for purposes of netting under § 99.23 and for which the WEC obligation for the WEC obligated party will be determined under § 99.24.

§ 99.23 How will the transfer of negative net WEC emissions for facilities under the same parent company be determined?

(a) Subject to the requirements of this section, a WEC obligated party with a negative quantity of net WEC emissions, as calculated pursuant to § 99.22, may elect to transfer negative quantities of net WEC emissions to another WEC obligated party sharing the same parent company, as indicated in the annual WEC filing for the reporting year submitted pursuant to § 99.7 by each WEC obligated party involved in the transfer.

(b) Following each transfer, the net WEC emissions of the WEC obligated party transferring the negative quantities of net WEC emissions will increase by the quantity of metric tons of CH_4 transferred and the net WEC emissions of the WEC obligated party receiving the transfer will decrease by this amount. In no case can the net WEC emissions of the WEC obligated party transferring the negative quantities of net WEC emissions become a positive value as a result of transfers.

(c) Each transfer of negative quantities of net WEC emissions must be submitted electronically in a format specified by the Administrator and must be approved by the designated representative of each WEC obligated party. Each transfer will designate the WEC obligated party making the transfer, the quantity of metric tons of negative emissions to transfer, and the WEC obligated party that is receiving the transfer. Each transfer must be initiated by the designated representative of the WEC obligated party that is transferring the negative quantities of net WEC emissions. The transfer shall be considered to have occurred at such time that the designated representative of the WEC obligated party that is receiving the transfer approves receipt of the transfer.

(d) Transfers may occur prior to the deadline for submission of the WEC filing under § 99.5, provided that all necessary information to determine net WEC emissions has been completed by both WEC obligated parties involved in the transfer. Transfers for a reporting year must be completed by the date specified in § 99.7(e).

(e) For transfers occurring after the deadline for submission of the WEC filing under § 99.5, the WEC obligated party receiving the transfer must follow the provisions of § 99.7(e) regarding WEC filing revisions and § 99.8(d) regarding resubmittals that result in a change in WEC obligation.

(f) If a WEC obligated party that previously transferred negative quantities of net WEC emissions to another WEC obligated party submits a revised WEC filing pursuant to § 99.7(e) that results in a change to that WEC obligated party's net WEC emissions, the validity of any previously transferred negative quantities of net WEC emissions will be assessed as follows:

(1) If the revised WEC filing results in a greater magnitude of negative quantities of net WEC emissions than in the prior WEC filing, those negative quantities of net WEC emissions are eligible for transfer subject to the requirements of this section.

(2) If the revised WEC filing results in a decrease or elimination of negative quantities of net WEC emissions compared to the prior WEC filing (*i.e.,* the WEC obligated party's net WEC emissions are closer to zero or a positive number), and the WEC obligated party had previously transferred negative quantities of net WEC emissions greater than the revised net WEC emissions, any previously transferred negative quantities of net WEC emissions will be invalidated such that the total quantity of remaining valid negative quantities of net WEC emissions does not exceed the revised net WEC emissions. Previously transferred negative quantities of net WEC emissions will be invalidated in the order that the transfers were approved by the designated representative of the WEC obligated party that received the transfer, beginning with the last transfer approved. Each WEC obligated party that received invalidated negative quantities of net WEC emissions must follow the provisions of § 99.7(e) regarding WEC filing revisions and § 99.8(d) regarding resubmittals that result in a change in WEC obligation.

(g) For each transfer of negative quantities of net WEC emissions between WEC obligated parties, the WEC obligated party that transferred negative quantities of net WEC emissions and the WEC obligated party that received negative quantities of net WEC emissions must maintain all records of the transaction, including any value exchanged, if applicable.

(h) Each transfer of net WEC emissions will be denominated in hundredths of a metric ton of methane (*i.e.,* 0.01 mt CH_4) or larger order of magnitude.

§ 99.24 How will the WEC Obligation for a WEC obligated party be determined?

(a) If the net WEC emissions for a WEC obligated party as determined in § 99.22 and following any transfers pursuant to § 99.23 (*i.e.,* the net WEC emissions after transfers) are less than or equal to zero, the WEC obligated party's WEC obligation is zero and the WEC obligated party is not subject to a waste emissions charge in the reporting year for the WEC applicable facilities included in the calculation of the net WEC emissions as determined in § 99.22.

(b) If the net WEC emissions for a WEC obligated party as determined in § 99.22 and following any transfers pursuant to § 99.23 (*i.e.,* the net WEC emissions after transfers) are greater than zero, the WEC obligation will be calculated according to the applicable provisions in paragraphs (b)(1) through (3) of this section.

(1) For reporting year 2024, multiply the net WEC emissions after transfers by $900 per mt CH_4 to determine the WEC obligation.

(2) For reporting year 2025, multiply the net WEC emissions after transfers by $1,200 per mt CH_4 to determine the WEC obligation.

(3) For reporting year 2026 and each year thereafter, multiply the net WEC emissions after transfers by $1,500 per mt CH_4 to determine the WEC obligation.

Subpart C—Unreasonable Delay Exemption

§ 99.30 Which facilities qualify for the exemption for emissions caused by an unreasonable delay in environmental permitting of gathering or transmission infrastructure?

(a) The WEC applicable facility must be in the offshore petroleum and natural gas production or onshore petroleum and natural gas production industry segment, as those industry segment terms are defined in § 98.230 of this chapter.

(b) The total facility applicable emissions for the WEC applicable facility as calculated in accordance with § 99.21(a) must exceed 0 mt.

(c) The WEC obligated party seeking to exempt a portion of its facility applicable emissions from a WEC applicable facility must not have contributed to the delay. All requests for information regarding the environmental permit application received by the WEC obligated party must not have exceeded the response time requested by, or agreed to by, the

permitting agency or exceeded 30 days if no specific response time is requested. The WEC obligated party seeking eligibility for the exemption must not be a plaintiff in a lawsuit regarding the environmental permit application.

(d) The WEC applicable facility must have reported eligible methane emissions pursuant to § 98.236 of this chapter in the reporting year that occurred as a result of a delay in environmental permitting of gathering or transmission infrastructure necessary for offtake of increased volume as a result of methane emissions mitigation implementation. These eligible methane emissions must have been in compliance with all applicable local, State, and Federal regulations. For purposes of this section, eligible methane emissions for exemption consist of the emissions from the increased volume of gas used as an onsite fuel source, used for another useful purpose that an otherwise purchased fuel or raw material would have served, reinjection into a well, or flared, if that gas would have been routed to a gas gathering flow line or collection system to a sales line if not for the delay in environmental permitting.

(e) Thirty-six (36) months must have passed since submission of the technically complete environmental permit application, as documented by the appropriate permitting authority, to construct gathering or transmission infrastructure without approval or denial of the environmental permit application.

§ 99.31 What are the reporting requirements for the exemption for emissions caused by an unreasonable delay in environmental permitting of gathering or transmission infrastructure?

(a) For a WEC applicable facility meeting all criteria in § 99.30(a) through (e), you may elect to report information regarding an exemption for unreasonable delay in permitting of gathering or transmission infrastructure for a given reporting year. The unreasonable delay exemption information to be reported is described in paragraph (b) of this section. The unreasonable delay exemption information shall be submitted as described in § 99.7.

(b) For each unreasonable delay exemption, the WEC obligated party must report the information specified in paragraphs (b)(1) through (13) of this section.

(1) The company name and name of the facility that submitted the environmental permit application to construct and/or operate gathering or transmission infrastructure.

(2) For reporting year 2025 and later, for a WEC applicable facility in the onshore petroleum and natural gas production industry segment, as that industry segment term is defined in § 98.230 of this chapter, the well-pad ID, as reported pursuant to § 98.236(aa)(1)(iii)(B) of this chapter, of each well-pad impacted by the unreasonable delay in environmental permitting of gathering or transmission infrastructure.

(3) The date the environmental permit application request experiencing an unreasonable delay to build gathering or transmission infrastructure was submitted to the permitting authority and the date the permitting authority determined the application to be technically complete.

(4) A certification that the WEC obligated party seeking to exempt a portion of its facility applicable emissions from a WEC applicable facility has not contributed to the unreasonable delay, has been responsive to the relevant permitting authority regarding the environmental permit application and is not a plaintiff in litigation related to the environmental permit application. For purposes of this paragraph, responsive shall be interpreted to mean that the entity has responded to all requests from the permitting authority within the time frame requested or agreed to by the relevant authority or within thirty (30) days if no timeframe is specified.

(5) A listing of methane emissions mitigation activities that are impacted by the unreasonable permitting delay.

(6) The estimated date to commence operation of the gathering or transmission infrastructure if the application had been approved within thirty-six (36) months.

(7) If the application has been approved and operations commenced during the reporting year, the first date that offtake to the gathering or transmission infrastructure from the implementation of methane emissions mitigation occurred.

(8) The beginning and ending date for which the eligible delay limited the offtake of increased volume associated with methane emissions mitigation activities for the reporting year as determined according to § 99.32(a).

(9) The increased volumes of gas resulting from methane emissions mitigation implementation as determined according to § 99.32(b), in thousand standard cubic feet. For reporting year 2024, report these values for the WEC applicable facility. For reporting year 2025 and later, if the WEC applicable facility is in the onshore petroleum and natural gas production industry segment, report these values for each well-pad site reported in paragraph (b)(2) of this section. Report the increased volumes associated with each of the following:

(i) Onsite fuel source.

(ii) Another useful purpose that an otherwise purchased fuel or raw material would have served, excluding use as an onsite fuel source.

(iii) Reinjection into a well.

(iv) Flaring.

(10) The quantity of methane emissions to be exempted due to the unreasonable delay for the reporting year calculated as specified in § 99.32.

(i) For a WEC applicable facility in the offshore petroleum and natural gas production industry segment, report the following for the WEC applicable facility:

(A) The result of equation C–1 of § 99.32(c)(1), in metric tons CH_4.

(B) The quantity of methane emissions from another useful purpose that an otherwise purchased fuel or raw material would have served, excluding use as an onsite fuel source, ($E_{Use,CH4}$), in metric tons CH_4.

(C) The quantity of methane emissions from reinjection of recovered gas ($E_{Reinject,CH4}$), in metric tons CH_4.

(D) The quantity of methane emissions from flaring ($E_{Flare,CH4}$), in metric tons CH_4.

(E) The total quantity of natural gas that was flared at the WEC applicable facility in the reporting year, in thousand scf.

(ii) For a WEC applicable facility in the onshore petroleum and natural gas production industry segment, for reporting year 2024 report the following for the WEC applicable facility:

(A) The result of equation C–2 of § 99.32(c)(2), in metric tons CH_4.

(B) The quantity of methane emissions from use as an onsite fuel source of increased volume of natural gas resulting from methane emissions mitigation implementation ($E_{Fuel,CH4}$), as calculated in equation C–5 to § 99.32(c)(5), in metric tons CH_4.

(C) The quantity of methane emissions from another useful purpose that an otherwise purchased fuel or raw material would have served, excluding use as an onsite fuel source, ($E_{Use,CH4}$), as calculated in equation C–6 to § 99.32(c)(6), in metric tons CH_4.

(D) The quantity of methane emissions from reinjection of increased volume of natural gas resulting from methane emissions mitigation implementation ($E_{Reinject,CH4}$), as calculated in equation C–7 to § 99.32(c)(7), in metric tons CH_4.

(E) The quantity of methane emissions from flaring of increased volume of natural gas resulting from methane emissions mitigation implementation ($E_{Flare,CH4}$), as calculated in equation C–8B to § 99.32(c)(8), in metric tons CH_4.

(iii) For a WEC applicable facility in the onshore petroleum and natural gas production industry segment, for reporting year 2025 and later, report the following for each well-pad site reported in paragraph (b)(2) of this section:

(A) The result of equation C–4 of § 99.32(c)(4), in metric tons CH_4.

(B) The quantity of methane emissions from use as an onsite fuel source of increased volume of natural gas resulting from methane emissions mitigation implementation ($E_{Fuel,CH4}$), as calculated in equation C–5 to § 99.32(c)(5), in metric tons CH_4.

(C) The quantity of methane emissions from another useful purpose that an otherwise purchased fuel or raw material would have served, excluding use as an onsite fuel source, ($E_{Use,CH4}$), as calculated in equation C–6 to § 99.32(c)(6), in metric tons CH_4.

(D) The quantity of methane emissions from reinjection of increased volume of natural gas resulting from methane emissions mitigation implementation ($E_{Reinject,CH4}$), as calculated in equation C–7 to § 99.32(c)(7), in metric tons CH_4.

(E) The quantity of methane emissions from flaring of increased volume of natural gas resulting from methane emissions mitigation implementation ($E_{Flare,CH4}$), as calculated in equation C–8B to § 99.32(c)(8), in metric tons CH_4.

(iv) For a WEC applicable facility in the onshore petroleum and natural gas production industry segment that reported emissions from use as an onsite fuel source of increased volume of natural gas resulting from methane emissions mitigation implementation ($E_{Fuel,CH4}$), report the information specified in paragraphs (b)(10)(iv)(A) and (B) of this section, as applicable. For reporting year 2024, report each value for the WEC applicable facility. For reporting year 2025 and later, report the value for each well-pad site.

(A) The quantity of methane emissions from combustion of increased volume of natural gas resulting from methane emissions mitigation implementation in stationary or portable fuel combustion equipment as calculated using the methods in § 98.233(z) of this chapter ($E_{CombEq,CH4}$), in metric tons CH_4.

(B) The total volume of natural gas combusted in reciprocating internal combustion engines with crankcase vents during the reporting year (V_{RICE}), in thousand scf.

(v) For a WEC applicable facility in the onshore petroleum and natural gas production industry segment that reported emissions from reinjection into a well ($E_{Reinject,CH4}$), report the information specified in paragraphs (b)(10)(v)(A) and (B) of this section, as applicable. For reporting year 2024, report each value for the WEC applicable facility. For reporting year 2025 and later, report the value for each well-pad site.

(A) A list including each centrifugal compressor unique name or ID as submitted in the part 98 report for the WEC applicable facility that was used in the reinjection into wells of natural gas resulting from methane emissions mitigation implementation (*i.e.,* that was included in $Count_{Cent,Reinject}$ of equation C–7 of this part). For reporting year 2024, use the values reported to § 98.236(o)(1)(i) of this chapter. For reporting year 2025 and later, use the values reported to § 98.236(o)(1)(ii) of this chapter.

(B) A list of each reciprocating compressor unique name or ID as submitted to in the part 98 report for the WEC applicable facility that was used in the reinjection into wells of natural gas resulting from methane emissions mitigation implementation (*i.e.,* that was included in $Count_{Recip,Reinject}$ of equation C–7 of this part). For reporting year 2024, use the values reported to § 98.236(p)(1)(i) of this chapter. For reporting year 2025 and later, use the values reported to § 98.236(p)(1)(ii) of this chapter.

(vi) For a WEC applicable facility in the onshore petroleum and natural gas production industry segment that reported emissions from flaring ($E_{Flare,CH4}$), report the information specified in paragraphs (b)(10)(vi)(A) and (B) of this section for all reporting years. For reporting year 2025 and later, report the information specified in paragraph (b)(10)(vi)(C) of this section. For reporting year 2024, report the information specified in paragraph (b)(10)(vi)(A) for the WEC applicable facility. For reporting year 2025 and later, report the information specified in paragraph (b)(10)(vi)(A) for each well-pad site.

(A) The unique name or ID as reported pursuant to § 98.236(n)(1) of this chapter for each flare stack that flared gas resulting from methane emissions mitigation implementation.

(B) For each flare stack reported to paragraph (b)(10)(vi)(A) of this section, report the volume of natural gas resulting from methane emissions mitigation implementation that was flared at that flare as determined according to § 99.32(b)(4), in thousand scf.

(C) For each flare stack reported to paragraph (b)(10)(vi)(A) of this section, indicate if flow for each stream to the flare was measured or determined in accordance with § 98.233(n)(3)(ii) of this chapter and that stream or combination of streams contained only flow resulting from the environmental permit delay. If so, report the unique ID as reported pursuant to § 98.236(n)(3) of this chapter for each stream that contained only flow resulting from the environmental permit delay.

(vii) For a WEC applicable facility in the onshore petroleum and natural gas production industry segment that reported emissions from another useful purpose that an otherwise purchased fuel or raw material would have served, excluding use as an onsite fuel source, ($E_{Use,CH4}$) and/or emissions from reinjection into a well ($E_{Reinject,CH4}$) and quantified the equipment leaks associated with either/both use(s), report the information specified in paragraphs (b)(10)(vii)(A) through (F) of this section, as applicable. For reporting year 2024, report this information for the WEC applicable facility. For reporting year 2025 and later, report this information for each well-pad site. Report separately the information specified in paragraphs (b)(10)(vii)(A) through (F) of this section, as applicable, related to another useful purpose that an otherwise purchased fuel or raw material would have served, excluding use as an onsite fuel source, and related to reinjection into a well.

(A) Indicate the method used to calculate equipment leak emissions (*i.e.,* § 99.32(c)(9)(i), (ii), or (iii)).

(B) If the method in § 99.32(c)(9)(i) is used to calculate equipment leak emissions, you must report the following information for each leak: the leak detection survey method used, component type as reported in § 98.236(q) of this chapter, the volumetric flow rate of the natural gas leak in standard cubic feet per hour and the duration of the measured leak as determined in accordance with § 99.32(c)(9)(i), in hours. The measured leak rate, the component type and duration of measured leaks must only include those components associated with another useful purpose that an otherwise purchased fuel or raw material would have served, excluding use as an onsite fuel source, or associated with reinjection into a well.

(C) If the method in § 99.32(c)(9)(ii) is used to calculate equipment leak emissions, you must report the following information for each

component identified as leaking: the leak detection survey method used, the component type as specified in § 98.233(q)(2)(iii) of this chapter and the time the surveyed component is assumed to be leaking and operational, in hours. The component type and time the surveyed components are assumed to be leaking and operational must only include those components associated with another useful purpose that an otherwise purchased fuel or raw material would have served, excluding use as an onsite fuel source, or associated with reinjection into a well.

(D) If the method in § 99.32(c)(9)(iii) is used to calculate equipment leak emissions, you must report the counts of each component type listed in § 98.233(r)(2) of this chapter that are associated with a useful purpose that an otherwise purchased fuel or raw material would have served, excluding use as an onsite fuel source, or associated with reinjection into a well.

(E) The mole fraction of CH_4 in produced gas for the sub-basin in which the useful purpose or reinjection occurred, as reported pursuant to § 98.236(aa)(1)(ii)(I) of this chapter, unitless. For RY2024, if multiple sub-basins were impacted by the unreasonable delay, report the value of the flow-weighted average mole fraction for the sub-basins in which the useful purpose or reinjection occurred.

(F) The equipment leak emissions qualifying for exemption from another useful purpose that an otherwise purchased fuel or raw material would have served, excluding use as an onsite fuel source, or reinjection into a well as calculated in accordance with paragraphs § 99.32(c)(9)(i), (ii), or (iii), metric tons CH_4.

(11) A certification of the facility's compliance with all applicable local, State, and Federal regulations regarding emissions from the activities listed in § 99.30(d) that occurred as a result of a delay in environmental permitting of gathering or transmission infrastructure.

(12) For each environmental permit relevant to the exemption, the name/type of permit, permitting agency, contact information at the permitting agency, and a link to information on the permit (*e.g.,* available through the permitting agency), if available.

(13) Upon request, any other documentation deemed necessary by the Administrator to verify eligibility under this section.

§ 99.32 How are the methane emissions caused by an unreasonable delay in environmental permitting of gathering or transmission infrastructure quantified?

(a) Determine the time period, in days, associated with the emissions that occurred as a result of the eligible delay within the reporting year as specified in paragraphs (a)(1) and (2) of this section.

(1) The start date of the emissions caused by the delay in the reporting year is the latter of January 1 of the reporting year, or the date on which emissions would have been avoided through commencement of the operation of the gathering or transmission infrastructure if the environmental permit application to construct and/or operate the gathering or transmission infrastructure had been approved within 36 months as specified in § 99.31(b)(6).

(2) The end time of the emissions caused by the delay in the reporting year is the earlier of December 31 of the reporting year or the date the emissions caused by the unreasonable delay ended because the infrastructure commenced operation.

(b) Determine by engineering estimates based upon best available information the increased volume of gas, in thousand standard cubic feet, resulting from methane emissions mitigation implementation during the time period determined in paragraph (a) of this section associated with each of the activities listed in paragraphs (b)(1) through (4) of this section. If the WEC applicable facility is in the offshore petroleum and natural gas production industry segment, determine these values for the WEC applicable facility in every reporting year. If the WEC applicable facility is in the onshore petroleum and natural gas production industry segment, for reporting year 2024 determine these values for the WEC applicable facility, and for reporting year 2025 and later determine these values for each well-pad site impacted by the unreasonable delay.

(1) Onsite fuel source.

(2) Another useful purpose that an otherwise purchased fuel or raw material would have served, excluding use as an onsite fuel source.

(3) Reinjection into a well.

(4) Flaring. Determine this value in accordance with this paragraph (4)(i), (ii), or (iii), as applicable. For the onshore petroleum and natural gas production industry segment flaring volumes must be determined for each flare that received an increased volume of gas resulting from the environmental permit delay and then totaled for the WEC applicable facility or well-pad site, as applicable.

(i) If the WEC applicable facility is in the offshore petroleum and natural gas production industry segment determine by engineering estimate based upon best available information.

(ii) If the WEC applicable facility is in the onshore petroleum and natural gas production industry segment for reporting year 2024, determine by engineering estimate based upon best available information the portion of the flow reported pursuant to § 98.236(n)(4) of this chapter attributable to the environmental permit delay for each flare that received an increased volume of gas. If a continuous emissions monitoring system (CEMS) was used to measure emissions from the flare as reported pursuant to § 98.236(n)(12) of this chapter, do not determine a volume of gas for that flare.

(iii) If the WEC applicable facility is in the onshore petroleum and natural gas production industry segment for reporting year 2025 and later, for each flare that received an increased volume of gas attributable to the environmental permit delay, if flow for each stream to the flare is measured or determined in accordance with § 98.233(n)(3)(ii) of this chapter and that stream or combination of streams contain only flow resulting from the environmental permit delay, use the flow for those streams as reported to § 98.236(n)(11) of this chapter. If flow is measured at the inlet to the flare in accordance with § 98.233(n)(3)(i) of this chapter or the stream flow measured or determined in accordance with § 98.233(n)(3)(ii) of this chapter includes flow unrelated to the environmental permit delay, use an engineering estimate based upon best available information of the portion of flow resulting from the environmental permit delay.

(c) For each well-pad site or offshore platform at a WEC applicable facility impacted by an unreasonable delay in environmental permitting of gathering or transmission infrastructure, you must calculate the emissions that occurred at the well-pad site or offshore platform that were caused by the unreasonable delay according to paragraphs (c)(1) through (9) of this section, as applicable.

(1) For a WEC applicable facility in the offshore petroleum and natural gas production industry segment, as that industry segment term is defined in § 98.230 of this chapter, equation C–1 of this section must be used to calculate the WEC applicable facility unreasonable delay emissions.

$$E_{Delay,CH_4} = \left[\left(E_{Use,CH_4} + E_{Reinject,CH_4}\right) \times \frac{T_d}{T}\right] + \left(E_{Flare,CH_4} \times \frac{V_{MM,Flare}}{V_{WAF,Flare}}\right) \qquad \text{(Eq. C-1)}$$

Where:

$E_{Delay,CH4}$ = The quantity of methane emissions attributable to an unreasonable delay in environmental permitting of gathering or transmission infrastructure during the reporting year at a WEC applicable facility meeting the applicability provisions of § 99.30, mt CH_4.

$E_{Use,CH4}$ = The WEC applicable facility quantity of methane emissions from another useful purpose that an otherwise purchased fuel or raw material would have served, excluding use as an onsite fuel source, mt CH_4. For reporting year 2024, use best available data to determine the portion of fugitive emissions reported pursuant to § 98.236(s)(2) of this chapter for the reporting year that were associated with another useful purpose that an otherwise purchased fuel or raw material would have served, excluding use as an onsite fuel source. For reporting year 2025 and later, use the applicable portion of the value reported to § 98.236(s)(3)(ii) of this chapter for the reporting year.

$E_{Reinject,CH4}$ = The WEC applicable facility quantity of methane emissions from reinjection of recovered gas, mt CH_4. For reporting year 2024, use best available data to determine the portion fugitive emissions reported pursuant to § 98.236(s)(2) of this chapter for the reporting year that were associated with reinjection of recovered gas. For reporting year 2025 and later, use the applicable portion of the value reported to § 98.236(s)(3)(ii) of this chapter for the reporting year.

T_d = The time period associated with the eligible delay within the reporting year, as determined pursuant to § 99.32(a), in days.

T = The number of days in the reporting year. Use 365, or for leap years, 366.

$E_{Flare,CH4}$ = The WEC applicable facility quantity of methane emissions from flaring, mt CH_4. For reporting year 2024, use the value reported pursuant to § 98.236(s)(2) of this chapter for the reporting year. For reporting year 2025 and later, use the value reported to § 98.236(s)(3)(ii) of this chapter for the reporting year.

$V_{MM,Flare}$ = The volume of natural gas resulting from methane emissions mitigation implementation that was flared as determined pursuant to § 99.32(b)(4)(i), in thousand scf.

$V_{WAF,Flare}$ = The total quantity of natural gas that was flared at the WEC applicable facility in the reporting year, in thousand scf.

(2) For reporting year 2024, for a WEC applicable facility in the onshore petroleum and natural gas production industry segment, as that industry segment term is defined in § 98.230 of this chapter, equation C–2 of this section must be used to calculate the WEC applicable facility unreasonable delay emissions.

$$E_{Delay,CH_4} = E_{Fuel,CH_4} + E_{Use,CH_4} + E_{Reinject,CH_4} + E_{Flare,CH_4} \qquad \text{(Eq. C-2)}$$

Where:

$E_{Delay,CH4}$ = The quantity of methane emissions attributable to an unreasonable delay in environmental permitting of gathering or transmission infrastructure during the reporting year at a WEC applicable facility meeting the applicability provisions of § 99.30, mt CH_4.

$E_{Fuel,CH4}$ = The WEC applicable facility quantity of methane emissions from combustion of the increased volume of natural gas resulting from methane emissions mitigation implementation as calculated in accordance with paragraph (c)(5) of this section.

$E_{Use,CH4}$ = The WEC applicable facility quantity of methane emissions from the increased volume of natural gas resulting from methane emissions mitigation implementation used for another useful purpose that an otherwise purchased fuel or raw material would have served, excluding use as an onsite fuel source, as calculated in accordance with paragraph (c)(6) of this section.

$E_{Reinject,CH4}$ = The WEC applicable facility quantity of methane emissions from reinjection of the increased volume of natural gas resulting from methane emissions mitigation implementation as calculated in accordance with paragraph (c)(7) of this section.

$E_{Flare,CH4}$ = The WEC applicable facility quantity of methane emissions from flaring of the increased volume of natural gas resulting from methane emissions mitigation implementation as calculated in accordance with paragraph (c)(8) of this section, mt CH_4.

(3) For reporting year 2025 and later, for a WEC applicable facility in the onshore petroleum and natural gas production industry segment, as that industry segment term is defined in § 98.230 of this chapter, equation C–3 of this section must be used to calculate the WEC applicable facility unreasonable delay emissions.

$$E_{Delay,CH_4} = \sum_{i=1}^{N} E_{WP\text{-}Delay,CH_4} \qquad \text{(Eq. C-3)}$$

Where:

$E_{Delay,CH4}$ = The quantity of methane emissions at the WEC applicable facility attributable to unreasonable delay during the reporting year meeting the applicability provisions of § 99.30, mt CH_4.

$E_{WP\text{-}Delay,CH4}$ = The quantity of methane emissions attributable to a well-pad site ''i'' that met the applicability provisions of § 99.30 during the reporting year calculated using equation C–4 of this section.

N = Total number of well-pad sites that met the applicability provisions of § 99.30 during the reporting year at a WEC applicable facility.

(4) For reporting year 2025, for a WEC applicable facility in the onshore petroleum and natural gas production industry segment, as that industry segment term is defined in § 98.230 of this chapter, equation C–4 of this section must be used to calculate the unreasonable delay emissions for each affected well-pad site.

$$E_{WP\text{-}Delay,CH_4} = E_{Fuel,CH_4} + E_{Use,CH_4} + E_{Reinject,CH_4} + E_{Flare,CH_4} \quad \text{(Eq. C-4)}$$

Where:

$E_{WP\text{-}Delay,CH4}$ = The annual quantity of methane emissions attributable to a well-pad site impacted by an unreasonable delay in environmental permitting of gathering or transmission infrastructure during the reporting year at a WEC applicable facility meeting the applicability provisions of § 99.30, mt CH_4.

$E_{Fuel,CH4}$ = The well-pad site quantity of methane emissions from use as an onsite fuel source of the increased volume of natural gas resulting from methane emissions mitigation implementation as calculated in accordance with paragraph (c)(5) of this section.

$E_{Use,CH4}$ = The well-pad site quantity of methane emissions from the increased volume of natural gas resulting from methane emissions mitigation implementation used for another useful purpose that an otherwise purchased fuel or raw material would have served, excluding use as an onsite fuel source, as calculated in accordance with paragraph (c)(6) of this section.

$E_{Reinject,CH4}$ = The well-pad site quantity of methane emissions from reinjection of the increased volume of natural gas resulting from methane emissions mitigation implementation as calculated in accordance with paragraph (c)(7) of this section.

$E_{Flare,CH4}$ = The well-pad site quantity of methane emissions from flaring of the increased volume of natural gas resulting from methane emissions mitigation implementation as calculated in accordance with paragraph (c)(8) of this section, mt CH_4.

(5) If a portion, or all, of the increased volume of natural gas resulting from methane emissions mitigation was used as an onsite fuel source, equation C–5 of this section must be used to calculate the quantity of methane emissions from use as an onsite fuel source of increased volume of natural gas resulting from methane emissions mitigation implementation.

$$E_{Fuel,CH_4} = E_{CombEq,CH_4} + \left(E_{CCV,CH_4} \times \frac{V_{Combusted}}{V_{RICE}}\right) \quad \text{(Eq. C-5)}$$

Where:

$E_{Fuel,CH4}$ = The quantity of methane emissions from use as an onsite fuel source of the increased volume of natural gas resulting from methane emissions mitigation implementation, mt CH_4.

$E_{CombEq,CH4}$ = The quantity of methane emissions from use as an onsite fuel source of the increased volume of natural gas resulting from methane emissions mitigation implementation in stationary or portable fuel combustion equipment, mt CH_4. Use the methods in § 98.233(z) of this chapter to calculate the methane emissions from the use as an onsite fuel source in stationary or portable equipment of natural gas resulting from methane emissions mitigation implementation.

$E_{CCV,CH4}$ = The WEC applicable facility sum quantity of methane emissions from crankcase venting, mt CH_4. For reporting year 2024, use a value of 0. For reporting year 2025 and later, use the sum total of the values reported to § 98.236(ee)(2)(ii) and (ee)(3)(iv) of this chapter for the reporting year.

$V_{Combusted}$ = The volume of natural gas resulting from methane emissions mitigation implementation that was used as an onsite fuel source as determined pursuant to § 99.32(b)(1), in thousand scf.

V_{RICE} = The total volume of natural gas combusted in reciprocating internal combustion engines with crankcase vents during the reporting year, in thousand scf.

(6) If a portion, or all, of the increased volume of natural gas resulting from methane emissions mitigation was used for another useful purpose that an otherwise purchased fuel or raw material would have served, excluding use as an onsite fuel source, equation C–6 of this section must be used to calculate the quantity of methane emissions from the use of the increased volume of natural gas resulting from methane emissions mitigation implementation.

$$E_{Use,CH_4} = E_{Leaks\text{-}Use,CH_4} \quad \text{(Eq. C-6)}$$

Where:

$E_{Use,CH4}$ = The quantity of methane emissions from the increased volume of natural gas resulting from methane emissions mitigation implementation used for another useful purpose that an otherwise purchased fuel or raw material would have served, excluding use as an onsite fuel source as calculated in accordance with paragraph (c)(5) of this section, mt CH_4.

$E_{Leaks\text{-}Use,CH4}$ = The quantity of methane emissions from equipment leaks from components involved in the useful purpose as calculated in accordance with paragraphs (c)(9)(i) through (iii) of this section, as applicable, for the reporting year, mt CH_4. When determining the equipment leak emissions, use only the equipment components that were involved in the useful purpose that an otherwise purchased fuel or raw material would have served during the eligible delay.

(7) If a portion, or all, of the increased volume of natural gas resulting from methane emissions mitigation was reinjected into a well, equation C–7 of this section must be used to calculate the quantity of methane emissions from reinjection of the increased volume of natural gas resulting from methane emissions mitigation implementation.

$$E_{Reinject,CH_4} = \left[\left(E_{Cent,CH_4} \times \frac{Count_{Cent,Reinject}}{C_{Cent,Total}}\right) + \left(E_{Recip,CH_4} \times \frac{Count_{Recip,Reinject}}{C_{Recip,Total}}\right)\right] \times \frac{T_d}{T} + E_{Leaks\text{-}Reinject,CH_4} \quad \text{(Eq. C-7)}$$

Where:

$E_{Reinject,CH4}$ = The total quantity of methane emissions from reinjection into a well of increased volume of natural gas resulting from methane emissions mitigation implementation, mt CH_4.

$E_{Cent,CH4}$ = The total quantity of methane emissions from centrifugal compressors, mt CH_4. For reporting year 2024, use the sum total of the values reported to § 98.236(o)(2)(ii)(D)(2) and (o)(5)(iii) of this chapter for the WEC applicable

facility. For reporting year 2025 and later, use the sum total of the values reported to § 98.236(o)(2)(ii)(D)(2) and (o)(5)(iv) of this chapter for the well-pad site.

$Count_{Cent,Reinject}$ = The count of centrifugal compressors used in the reinjection into wells of natural gas resulting from methane emissions mitigation implementation. For reporting year 2024, use the count associated with the WEC applicable facility for the reporting year. For reporting year 2025 and later, use the count associated with the well-pad site for the reporting year.

$Count_{Cent,Total}$ = The total count of centrifugal compressors reported pursuant to § 98.236(o)(1) of this chapter. For reporting year 2024, use the quantity reported at the WEC applicable facility for the reporting year. For reporting year 2025 and later, use the quantity reported for the well-pad site.

$E_{Recip,CH4}$ = The total quantity of methane emissions from reciprocating compressors, mt CH_4. For reporting year 2024, use the sum total of the values reported to § 98.236(p)(2)(ii)(D)(2) and (p)(5)(iii) of this chapter for the WEC applicable facility. For reporting year 2025 and later, use the sum total of the values reported to § 98.236(p)(2)(ii)(D)(2) and (p)(5)(iv) of this chapter for the well-pad site.

$Count_{Recip,Reinject}$ = The count of reciprocating compressors used in the reinjection into wells of natural gas resulting from methane emissions mitigation implementation. For reporting year 2024, use the count associated with the WEC applicable facility for the reporting year. For reporting year 2025 and later, use the count associated with the well-pad site.

$Count_{Recip,Total}$ = The total count of reciprocating compressors reported pursuant to § 98.236(o)(1) of this chapter. For reporting year 2024, use the quantity reported at the WEC applicable facility for the reporting year. For reporting year 2025 and later, use the quantity reported for the well-pad site.

T_d = The time period associated with the eligible delay within the reporting year, as determined pursuant to § 99.32(a), in days.

T = The number of days in the reporting year. Use 365, or for leap years, 366.

$E_{Leaks\text{-}Reinject,CH4}$ = The quantity of methane emissions from equipment leaks from components involved in reinjection as calculated in accordance with paragraph (c)(9)(i) through (iii) of this section, as applicable, for the reporting year, mt CH_4. When determining the equipment leaks use only the equipment components that were involved in reinjection during the eligible delay.

(8) If a portion, or all, of the increased volume of natural gas resulting from methane emissions mitigation was flared, equation C–8A of this section must be used to calculate the quantity of methane emissions from flaring of increased volume of natural gas resulting from methane emissions mitigation implementation for each associated flare. For reporting year 2024, if a CEMS was used to measure emissions from an associated flare as reported to § 98.236(n)(12) of this part, do not determine methane emissions for that flare. Equation C–8B of this section must be used to calculate the quantity of methane emissions from flaring of increased volume of natural gas resulting from methane emissions mitigation implementation for the WEC applicable facility or well-pad site, as applicable.

$$E_{Flare_i,CH_4} = V_{Flared} \times X_{CH_4} \times [(1 - \eta_D) \times Z_L + Z_U] \times \rho_{CH_4} \times 10^{-3} \qquad \text{(Eq. C-8A)}$$

Where:

$E_{Flare,i,CH4}$ = The quantity of methane emissions from flaring of increased volume of natural gas resulting from methane emissions mitigation implementation for an individual flare, mt CH_4.

V_{Flared} = The volume of natural gas resulting from methane emissions mitigation implementation that was flared at the flare as determined pursuant to § 98.32(b)(4)(ii) or (iii) of this chapter, as applicable, scf.

X_{CH4} = Mole fraction of CH_4 in the gas sent to the flare. For reporting year 2024, use the value reported to § 98.236(n)(7) of this chapter. For reporting year 2025 and later, if you determine composition of each stream routed to the flare as specified in § 98.233(n)(4)(iii) of this chapter and the stream or combination of streams contain only the flow resulting from methane emissions mitigation implementation, use the mole fraction as reported to § 98.236(n)(14) of this chapter (if using multiple streams, use the flow-weighted average mole fraction). Otherwise, for reporting year 2025 and later, use the average mole fraction of CH_4 in produced gas for the sub-basin in which the well-pad site at which methane emissions mitigation implementation occurred as reported to § 98.236(aa)(1)(ii)(I) of this chapter.

O = Flare destruction efficiency for the flare. For reporting year 2024, use the flare combustion efficiency reported to § 98.236(n)(6) of this chapter. For reporting year 2025 and later, use the flare destruction efficiency reported to § 98.236(n)(13) of this chapter.

Z_L = Fraction of the feed gas sent to the burning flare, equal to 1—Z_U of this section.

Z_U = Fraction of the feed gas sent to the flare when it was un-lit. For reporting year 2024, use the value reported to § 98.236(n)(5) of this chapter. For reporting year 2025 and later, use the value reported to § 98.236(n)(12) of this chapter.

ρ_{CH4} = Density of methane at 60 °F and 14.7 psia. Use 0.0192 kg/ft^3.

10^{-3} = Conversion from kilograms to metric tons.

$$E_{Flare,CH_4} = \sum_{i=1}^{M} E_{Flare_i,CH_4} \qquad \text{(Eq. C-8B)}$$

Where:

$E_{Flare,CH4}$ = The quantity of methane emissions from flaring of increased volume of natural gas resulting from methane emissions mitigation implementation, mt CH_4.

$E_{Flare,i,CH4}$ = The quantity of methane emissions from flaring of increased volume of natural gas resulting from methane emissions mitigation implementation for each associated flare, *i*, as determined using equation C–8A of this section, mt CH_4.

M = Total number of flares that received an increased volume of gas resulting from methane emissions mitigation implementation.

(9) You must quantify equipment leak methane emissions from components involved in the useful purpose or reinjection of the increased volume of natural gas resulting from methane emissions mitigation implementation at the WEC applicable facility in accordance with the methods in paragraphs (c)(9)(i) through (iii) of this section. You must use the same calculation method for equipment leaks reported pursuant to § 98.236(q) or (r) of this chapter in the part 98 report associated with the components involved in the useful purpose or reinjection of the increased volume of natural gas resulting from methane emissions mitigation implementation at the WEC applicable facility.

(i) If equipment leak surveys and measurement were used to quantify methane emissions from components involved in the useful purpose or reinjection of the increased volume of natural gas resulting from methane emissions mitigation implementation and reported pursuant to § 98.236(q) of this chapter in the part 98 report for a WEC applicable facility, you must calculate the methane emissions (*i.e.,* $E_{Measured\ Leak,\ CH4}$) for each leak in accordance with equation C–9A of this section. The sum of the quantified methane emissions from components involved in the useful purpose or reinjection of the increased volume of natural gas resulting from methane emissions mitigation implementation calculated in accordance with equation C–9A of this section shall be considered ''$E_{Leaks\text{-}Use,\ CH4}$'' and ''$E_{Leaks\text{-}Reinject,\ CH4}$'' in Equations C–6 and C–7 of this section, as applicable.

$$E_{Measured\ Leak,CH_4} = Q_{p,z} \times T_{p,z} \times M_{CH_4} \times k \times \rho_{CH_4} \times 10^{-3} \qquad \text{(Eq. C-9A)}$$

Where:

$E_{Measured\ Leak,CH4}$ = The quantity of methane emissions attributable to a measured leak emissions from components involved in the useful purpose or reinjection of the increased volume of natural gas resulting from methane emissions mitigation implementation, mt CH_4.

p = Component type as reported in accordance with § 98.236(q) of this chapter, as applicable.

z = An individual component involved in the useful purpose or reinjection of type ''p'' detected as leaking and measured any leak survey during the year.

$Q_{p,z}$ = Volumetric flow rate of the natural gas leak for component ''z'' of component type ''p'' converted to standard conditions according to § 98.233(q)(3)(iii) of this chapter, scf whole gas/hour/component, as applicable.

M_{CH4} = The mole fraction of CH_4 in produced gas for the well. For onshore petroleum and natural gas production wells, use the mole fraction of CH_4 in produced gas for the sub-basin associated with the well, as reported pursuant to § 98.236(aa)(1)(ii)(I) of this chapter, unitless. For RY2024, if multiple sub-basins were impacted by the unreasonable delay, use the flow-weighted average mole fraction.

$T_{p,z}$ = The total time the surveyed component ''z'' of component type ''p'' was assumed to be leaking. If one leak detection survey is conducted in the calendar year, assume the component was leaking from the beginning of the delay period as determined in accordance with § 99.32(a)(1) until the date the delay ended as determined in accordance with § 99.32(a)(2), days. If multiple leak detection surveys are conducted in the calendar year, assume a component found leaking in the first survey was leaking since the beginning of the year until the date of the survey; assume a component found leaking in the last survey of the year was leaking from the preceding survey through the date the delay ended as determined in accordance with § 99.32(a)(2), days; assume a component found leaking in a survey between the first and last surveys of the year was leaking since the preceding survey until the date of the survey, days; and sum times for all leaking periods. For each leaking component, account for time the component was not operational (*i.e.,* not operating under pressure) using an engineering estimate based on best available data.

k = The factor to adjust for undetected leaks by respective leak detection method. For reporting year 2024, k equals 1. For reporting year 2025 and later, k equals 1.25 for the methods in § 98.234(a)(1), (3) and (5) of this chapter; k equals 1.55 for the method in § 98.234(a)(2)(i) of this chapter; and k equals 1.27 for the method in § 98.234(a)(2)(ii) of this chapter. Select the factor for the leak detection method used for the permanently shut-in and plugged well, unitless.

ρ_{CH4} = Density of methane, 0.0192 mt/Mscf.

10^{-3} = Conversion factor from scf to Mscf.

(ii) If equipment leak surveys were used to quantify methane emissions from components involved in the useful purpose or reinjection of the increased volume of natural gas resulting from methane emissions mitigation implementation and reported pursuant to § 98.236(q) of this chapter in the part 98 report for a WEC applicable facility, equation C–9B of this section must be used to calculate $E_{Leaks,CH4}$.

$$E_{Leaks,CH_4} = \sum_{p=1}^{N_p} \left(EF_p \times \sum_{z=1}^{x_p} \left(T_{p,z} \times 24 \right) \right) \times M_{CH_4} \times k \times \rho_{CH_4} \times 10^{-3} \qquad \text{(Eq. C-9B)}$$

Where:

$E_{Leaks,CH4}$ = The annual quantity of methane emissions attributable to components involved in the useful purpose or reinjection of the increased volume of natural gas resulting from methane emissions mitigation implementation as reported pursuant to § 98.236(q) of this chapter for the reporting year, mt CH_4.

p = Component type as specified in § 98.233(q)(2)(iii) of this chapter.

N_p = The number of component types with detected leaks involved in the useful purpose or reinjection.

EF_p = The leaker emission factor for component ''p'' as specified in § 98.233(q)(2)(iii) of this chapter, scf whole gas/hour/component.

24 = Conversion from days to hours.

M_{CH4} = The mole fraction of CH_4 in produced gas for the sub-basin in which the useful purpose or reinjection occurred, as reported pursuant to § 98.236(aa)(1)(ii)(I) of this chapter, unitless. For RY2024, if multiple sub-basins were impacted by the unreasonable delay, use the flow-weighted average mole fraction.

x_p = The total number of specific components involved in the useful purpose or reinjection of type ''p'' detected as leaking during the year. A component found leaking in two or more surveys during the year is counted as one leaking component.

$T_{p,z}$ = The total time the surveyed component ''z'' of component type ''p'' was assumed to be leaking. If one leak detection survey is conducted in the calendar year, assume the component was leaking from the beginning of the delay period as determined in accordance with § 99.32(a)(1) until the date the delay ended as determined in accordance with § 99.32(a)(2), days. If multiple leak detection surveys are conducted in the calendar year, assume a component found leaking in the first survey was leaking since the beginning of the year until the date of the survey; assume a component found leaking in the last survey of the year was leaking from the preceding survey through the date the delay ended as determined in accordance with § 99.32(a)(2), days; assume a component found leaking in a survey between the first and last surveys

of the year was leaking since the preceding survey until the date of the survey, days; and sum times for all leaking periods. For each leaking component, account for time the component was not operational (*i.e.,* not operating under pressure) using an engineering estimate based on best available data.

k = The factor to adjust for undetected leaks by respective leak detection method. For reporting year 2024, k equals 1. For reporting year 2025 and later, k equals 1.25 for the methods in § 98.234(a)(1), (3) and (5) of this chapter; k equals 1.55 for the method in § 98.234(a)(2)(i) of this chapter; and k equals 1.27 for the method in § 98.234(a)(2)(ii) of this chapter. Select the factor for the leak detection method used for the permanently shut-in and plugged well, unitless.

ρ_{CH4} = Density of methane, 0.0192 mt/Mscf.

10^{-3} = Conversion factor from scf to Mscf.

(iii) If equipment leaks by population count were used to quantify methane emission from components involved in the useful purpose or reinjection of the increased volume of natural gas resulting from methane emissions mitigation implementation and reported pursuant to § 98.236(r) of this chapter in the part 98 report for a WEC applicable facility, equation C–9C of this section must be used to calculate $E_{Leaks,CH4}$.

$$E_{Leaks,CH_4} = \sum_{p=1}^{N_p} \left(Count_p \times EF_p\right) \times M_{CH_4} \times T \times 24 \times \rho_{CH_4} \times 10^{-3} \qquad \text{(Eq. C-9C)}$$

Where:

$E_{Leaks,CH4}$ = The annual quantity of methane emissions attributable to components involved in the useful purpose or reinjection of the increased volume of natural gas resulting from methane emissions mitigation implementation as reported pursuant to § 98.236(r) of this chapter for the reporting year, mt CH_4.

$Count_p$ = For each component type, ''p'', listed in § 98.233(r)(2) of this chapter that was involved in the useful purpose or reinjection, count the number of components of that type.

EF_p = The population emission factor for the component type, ''p'', as listed in § 98.233(r)(2) of this chapter.

M_{CH4} = The mole fraction of CH_4 in produced gas for the sub-basin in which the useful purpose or reinjection occurred, as reported pursuant to § 98.236(aa)(1)(ii)(I) of this chapter, unitless. For RY2024, if multiple sub-basins were impacted by the unreasonable delay, use the flow-weighted average mole fraction.

T = The time period of the eligible delay within the reporting year, as determined in accordance with § 99.32(a), days.

24 = Conversion from days to hours.

P_{CH4} = Density of methane, 0.0192 mt/Mscf.

10^{-3} = Conversion factor from scf to Mscf.

§ 99.33 What are the recordkeeping requirements for methane emissions caused by an unreasonable delay in environmental permitting of gathering or transmission infrastructure?

(a) If the WEC obligated party, or its subsidiaries, is the entity seeking the environmental permit, for each communication the entity seeking the environmental permit has had with the permitting authority regarding the permit application:

(1) The date and type of communication.

(2) The date of the facility's response to the communication.

(3) Information on whether the facility's response included modification to the permit application.

(b) Records of values used and any information relied upon in the calculation of the emissions attributable to the unreasonable delay in § 99.32(c).

(c) For any volumes of gas determined under § 99.32(b) that were not directly measured, an explanation of how company records, engineering estimation, and/or best available information were used to determine the gas volume.

(d) A list of all applicable local, State, and Federal regulations the WEC obligated party certified compliance with, as required in § 99.31(b)(11), regarding emissions from the activities listed in § 99.30(d) that occurred as a result of a delay in environmental permitting of gathering or transmission infrastructure.

Subpart D—Regulatory Compliance Exemption

§ 99.40 When is the regulatory compliance exemption available, and under what conditions does the exemption cease to be available?

(a) The requirements of this subpart only apply to a WEC applicable facility when the total facility applicable emissions for that WEC applicable facility as calculated in accordance with § 99.21(a) exceed 0 mt CH_4.

(b) The requirements of § 99.41 shall only be available when the conditions of paragraphs (b)(1) through (3) of this section are met. The Administrator shall make the determinations referenced in conditions (b)(1) and (2) of this section simultaneously for each individual State or Tribal lands in a single administrative action.

(1) A determination has been made by the Administrator that methane emissions standards and plans pursuant to subsections (b) and (d) of section 111 of the CAA have been approved and are in effect in all the State(s) or Tribal lands in which the WEC applicable facility is located; and

(2) A determination has been made by the Administrator that the emissions reductions achieved by compliance with the requirements described in paragraph (b)(1) of this section will result in equivalent or greater emissions reductions as would be achieved by the proposed rule of the Administrator entitled 'Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review' (86 FR 63110; November 15, 2021), if such rule had been finalized and implemented. For purposes of this equivalency determination, the comparison will be made between the emissions reductions that would have been achieved if the proposed rule was finalized and implemented in each State or Tribal lands as proposed, and the emissions reductions that will be achieved when the final standards and plans are actually implemented in each State.

(3) The final compliance date, which is the date at which all affected facilities and all designated facilities become subject to all of the final methane emissions standards established pursuant to CAA section 111(b) or (d), as applicable, has passed in the State(s) or Tribal lands in which the WEC applicable facility is located.

(c) At such time that the conditions specified in paragraphs (b)(1) through (3) of this section are met, the reporting requirements of § 99.42 shall come into effect beginning with the WEC filing due on the date specified in § 99.5 for the calendar year following the calendar year in which all of the conditions were met. Imposition of the waste emission charge shall not be made on the emissions from an applicable facility meeting the requirements for regulatory compliance exemption and electing to claim such exemption for methane emissions that occurred during the

calendar year during which the conditions of paragraphs (b)(1) through (3) of this section are met.

(d) If any of the conditions in paragraph (b)(1) or (2) of this section cease to apply after the Administrator has made the determinations in paragraphs (b)(1) and (2) of this section for the State(s) or Tribal lands in which the WEC applicable facility is located, the reporting requirements of § 99.42 shall cease to be in effect for the WEC applicable facility beginning with the WEC filing due on the date specified in § 99.5 for the calendar year during which either of the conditions were no longer met. The reporting requirements of § 99.42 shall cease to be in effect until the conditions of paragraph (e) of this section are met.

(e) The reporting requirements of § 99.42 will again come into effect at such time that a subsequent determination is made by the Administrator that the conditions in paragraphs (b)(1) and (2) of this section apply for the State(s) or Tribal lands in which the WEC applicable facility is located, and after the final compliance date specified in paragraph (b)(3) of this section. The reporting requirements of § 99.42 will again come into effect in accordance with the timing specified in paragraph (c) of this section until such time the conditions of paragraph (d) of this section apply.

§ 99.41 Which facilities qualify for the exemption for regulatory compliance?

(a) The total facility applicable emissions for the WEC applicable facility as calculated in accordance with § 99.21(a) must exceed 0 mt.

(b) The WEC applicable facility must be located in a State(s) or Tribal lands for which the conditions specified in § 99.40 were met for the reporting year. For WEC applicable facilities in the onshore petroleum and natural gas production or onshore petroleum and natural gas gathering and boosting industry segments, as those industry segment terms are defined in § 98.230 of this chapter, a WEC applicable facility is considered to be located in each State or Tribal lands within which a well-pad site or gathering and boosting site, as applicable, was reported pursuant to §§ 98.236(aa)(1)(iv)(C) or (aa)(10)(v)(E) of this chapter, as applicable, for the reporting year. For WEC applicable facilities that are located in more than one State or Tribal lands, the conditions specified in § 99.40 must be met for each State or Tribal lands.

(c) The WEC applicable facility must contain one or more affected facilities or one or more designated facilities.

(d) For WEC applicable facilities meeting the eligibility criteria of paragraphs (a) through (c) of this section for which the WEC obligated party elects to claim for exemption any emissions related to regulatory compliance, the quantity of methane emissions attributable to regulatory compliance must be determined pursuant to § 99.43. To qualify for exemption of all emissions under the regulatory compliance exemption all affected facilities and all designated facilities that are located at the WEC applicable facility (or the well-pad site or gathering and boosting site, if applicable) must meet the conditions specified in paragraphs (d)(1) and (2) of this section during each calendar quarter (*i.e.,* January 1–March 31) of the reporting year for which the exemption is being claimed.

(1) For all affected facilities and all designated facilities located at the WEC applicable facility (or the well-pad site or gathering and boosting site, if applicable) no deviations or violations of the monitoring requirements, emission limits or standards (or surrogate parameters), operating limits (including operating parameter limits), or work practice standards were identified in compliance reports of the methane emissions requirements of part 60 of this chapter and the methane emissions requirements of an applicable approved State, Tribal, or Federal plan in part 62 of this chapter during the reporting year.

(2) For all affected facilities and all designated facilities located at the WEC applicable facility (or the well-pad site or gathering and boosting site, if applicable) no violations, as determined either through an administrative action taken by the Administrator or delegated agency or through a judicial action, of any requirements of part 60 of this chapter and the methane emissions requirements of an applicable approved State, Tribal, or Federal plan in part 62 of this chapter during the reporting year.

(e) For purposes of this part, the phrase ''affected facility(ies) or designated facility(ies) that are located at the WEC applicable facility'' means the affected facility(ies) or designated facility(ies) that was (were) part of the WEC applicable facility as of December 31 of the reporting year as well as any facility(ies) that was (were) decommissioned during the reporting year without being transferred to another facility.

§ 99.42 What are the reporting requirements for the exemption for regulatory compliance?

(a) *Facilities that qualify to report.* For a WEC applicable facility that meets each of the criteria described in § 99.41(a) through (d) and elects to claim for exemption any emissions related to regulatory compliance, report the information as described in paragraphs (b) through (h) of this section, as applicable. The regulatory compliance exemption information shall be submitted as described in § 99.7.

(b) *Submission of reports.* For each WEC applicable facility report all of the information specified in paragraphs (b)(1) through (6) of this section, as applicable.

(1) For each WEC applicable facility, the final compliance date as determined in accordance with § 99.40(b)(3) and a certification that the facility meets all of the eligibility criteria in § 99.41.

(2) The ICIS–AIR ID (or Facility Registry Service (FRS) ID if the ICIS–AIR ID is not available) and the EPA Registry ID from CEDRI associated with each affected facility and designated facility that are located at the WEC applicable facility. For WEC applicable facilities in the onshore petroleum and natural gas production or onshore petroleum and natural gas gathering and boosting industry segments, as those industry segment terms are defined in § 98.230 of this chapter, indicate the well-pad site ID(s) or gathering and boosting site ID(s), as reported to § 98.236 of this chapter, that is/are part of each affected facility and/or designated facility.

(3) If a report, or reports, prepared and submitted in accordance with part 60 of this chapter, or an applicable approved State, Tribal, or Federal plan under part 62 of this chapter that implements the emission guidelines contained in part 60 of this chapter, cover the complete reporting year *(i.e.,* January 1 through December 31, inclusive), then submit as attachment(s) the applicable report(s). This report, or reports, must include all affected facilities or designated facilities that are located at the WEC applicable facility.

(4) If a report, or reports, prepared and submitted in accordance with part 60 of this chapter, or an applicable approved State, Tribal, or Federal plan under part 62 of this chapter that implements the emission guidelines contained in part 60 of this chapter, does not cover the complete reporting year (*i.e.,* January 1 through December 31, inclusive), then submit as attachment(s) the applicable report(s). This report, or reports, must include all affected facilities or

designated facilities that are located at the WEC applicable facility.

(5) For each report submitted under this section, provide an indication of whether the report indicates that at least one of the affected facilities subject to the requirements of part 60 of this chapter or designated facilities subject to the requirements of an applicable approved State, Tribal, or Federal plan in part 62 of this chapter that is contained within the WEC applicable facility does not meet the conditions of § 99.41(d)(1) or (2).

(6) For each report submitted under this section, indicate if the report includes one or more affected facilities or designated facilities that are not located at the WEC applicable facility. If so, indicate each such affected facility or designated facility. For each affected facility or designated facility, indicate if the affected or designated facility was part of the WEC applicable facility for part of the reporting year and transferred to another facility prior to December 31 of the reporting year or if the affected or designated facility was not part of the WEC applicable at any time during the reporting year.

(c) *Submission of incomplete or partial year reports.* If, pursuant to paragraph (b)(4) of this section, you are unable to provide an annual report covering the entire reporting year at the time of the initial submittal specified in § 99.5 for each affected facility or designated facility at the WEC applicable facility, you must provide a certification of the compliance status for each such affected facility or designated facility for the duration of time not covered by a report submitted pursuant to paragraph (b)(4) of this section. Additionally, you must provide a revised WEC filing within 30 calendar days of the date that an annual report covering the entire reporting year is required to be submitted under the applicable requirements of part 60 of this chapter or an applicable approved State, Tribal, or Federal plan in part 62 of this chapter. This requirement also applies in the case where the initial WEC filing contains an annual report covering only a portion of the reporting year. Within 30 calendar days of the date that an annual report is due under the applicable requirements of part 60 of this chapter or an applicable approved State, Tribal, or Federal plan in part 62 of this chapter for the portion of the reporting year for which a previously submitted report does not cover, you must provide a revised WEC filing including the subsequent annual report. The resubmission of the revised WEC filing shall be considered timely under this paragraph (c) if it is made within 30 calendar days of the date that the annual report is due under the applicable requirements of part 60 of this chapter or an applicable approved State, Tribal, or Federal plan in part 62 of this chapter. In such cases where a newly available report indicates that an affected facility or designated facility does not meet the conditions of § 99.41(d)(1) or (2) that were not previously indicated in the WEC filing for the reporting year (*i.e.,* the WEC applicable facility would no longer qualify for the regulatory compliance exemption for the given calendar quarter(s)), a WEC applicable facility would be required to complete the reporting requirements in § 99.42(d) and (e), as applicable, in the revised WEC filing and the emissions attributable to regulatory compliance exemption must be recalculated pursuant to § 99.43. The WEC obligated party must determine the WEC applicable emissions for the WEC applicable facility pursuant to subpart B of this part and follow the provisions of § 99.7(e) regarding WEC filing revisions and § 99.8(d) regarding resubmittals that result in a change in WEC obligation.

(d) *For reports that indicate a deviation or violation.* For each report submitted pursuant to paragraphs (b) and (c) of this section that indicates that at least one of the affected facilities subject to the requirements of part 60 of this chapter or designated facilities subject to the requirements of an applicable approved State, Tribal, or Federal plan in part 62 of this chapter that is contained within the WEC applicable facility does not meet the conditions for the exemption of all emissions in § 99.41(d)(1) and (2), report the following:

(1) The ICIS–AIR ID (or FRS ID if the ICIS–AIR ID is not available) and the EPA Registry ID from CEDRI associated with each affected facility and designated facility in the report that indicated a deviation or violation. For WEC applicable facilities in the onshore petroleum and natural gas production or onshore petroleum and natural gas gathering and boosting industry segments, as those industry segment terms are defined in § 98.230 of this chapter, indicate the well-pad site ID(s) or gathering and boosting site ID(s), as reported to § 98.236 of this chapter, that is/are part of each affected facility and/or designated facility in the report that indicated a deviation or violation.

(2) For each calendar quarter during the reporting year report whether the conditions in § 99.41(d)(1) or (2) were met. For example, a report in which the only deviation indicated lasted from March 1 to April 30 in the reporting year would be reported as the first (*i.e.,* January to March) and second (*i.e.,* April to June) that the conditions in § 99.41(d)(1) or (2) were not met, and report for the third (*i.e.,* July to September) and fourth (*i.e.,* October to December) calendar quarters that the conditions were met.

(e) *Reporting for other large release events.* For a WEC applicable facility that reported one or more other large release events pursuant to § 98.236(y) of this chapter in the reporting year that occurred within or overlapped with a calendar quarter in which a deviation or violation was reported pursuant to paragraph (d) of this section, for each other large release event that occurred within or overlapped a quarter in which the conditions in § 99.41(d)(1) or (2) were not met report the information specified in paragraphs (e)(1) and (2) of this section.

(1) The unique release event identification number associated with the release event as reported pursuant to § 98.236(y)(2) of this chapter.

(2) The duration of the release event, based upon the start date and duration reported to § 98.236(y)(4) of this chapter, that occurred during calendar quarters in which the conditions in § 99.41(d)(1) or (2) were not met for any affected or designated facilities located at the WEC applicable facility, in days. For example, for a release event that lasted from March 1 to April 14 (*i.e.,* a total event duration of 45 days) at a WEC applicable facility in which there were reported deviations or violations in only the first calendar quarter (January through March, inclusive), the value reported under this paragraph would be 31 days.

(f) *Determination of compliance.* A WEC applicable facility's eligibility for the regulatory compliance exemption pursuant to this subpart does not constitute a determination of compliance for part 60 of this chapter, or an applicable approved State, Tribal, or Federal plan under part 62 of this chapter that implements the emission guidelines contained in part 60 of this chapter, for any affected facility or designated facility present at the applicable facility.

(g) *Administrator or delegated authority determination of non-compliance.* A WEC applicable facility's eligibility for the regulatory compliance exemption during a given reporting year does not preclude reassessment of applicable WEC obligation for that applicable facility upon any determination by the Administrator or a delegated authority of any noncompliance with respect to any applicable methane requirements pursuant to part 60 of this chapter, or

an applicable approved State, Tribal, or Federal plan under part 62 of this chapter that implements the emission guidelines contained in part 60 of this chapter, for the affected facilities or designated facilities present at the applicable facility.

(h) *Reporting of quantification parameters.* Report the following information used to quantify methane emissions to be exempted due to the regulatory compliance exemption as specified in § 99.43.

(1) For a WEC applicable facility in the onshore petroleum and natural gas production or onshore petroleum and natural gas gathering and boosting industry segment, as those industry segment terms are defined in § 98.230 of this chapter, report:

(i) The quantity of methane emissions at the WEC applicable facility qualifying for regulatory compliance exemption, in mt CH_4, as determined using equation D–1A of § 99.43(b)(1) ($E_{RCE,CH4}$)

(ii) The total quantity of methane emissions that qualified for exemption under both the regulatory compliance exemption and another exemption, in mt CH_4, as determined using equation D–2A of § 99.43(c)(1) ($E_{OtherExempt}$)

(iii) For each well-pad site or gathering and boosting site, as applicable, that was reported pursuant to § 98.236(aa)(1)(iv) or (aa)(10)(v) of this chapter, as applicable, for the reporting year, report:

(A) The well-pad site ID(s) or gathering and boosting site ID(s), as reported to § 98.236(aa)(1)(iv)(A) or (aa)(10)(v)(A) of this chapter, as applicable.

(B) An indication of whether any affected facilities or designated facilities at the site did not meet the conditions for the exemption of all emissions in § 99.41(d)(1) and (2) during the reporting year.

(C) If you report to paragraph (h)(1)(iii)(B) of this section that there were periods of time during which any affected facilities or designated facilities at the site did not meet the conditions for the exemption of all emissions in § 99.41(d)(1) and (2), for each calendar quarter in the reporting year report whether the conditions for the exemption of all emissions in § 99.41(d)(1) and (2) were met. For example, if the only deviation for any affected facilities or designated facilities at the site lasted from March 1 to April 30 report for the first (*i.e.,* January to March) and second (*i.e.,* April to June) that the conditions in § 99.41(d)(1) or (2) were not met, and report for the third (*i.e.,* July to September) and fourth (*i.e.,* October to December) calendar quarters that the conditions were met.

(D) If there were multiple reports submitted pursuant to paragraphs (b)(3) and (4) of this section for an individual well-pad site (for the onshore petroleum and natural gas production industry segment) or individual gathering and boosting site (for the onshore petroleum and natural gas gathering and boosting industry segment), the calendar quarters reported pursuant to paragraph (h)(1)(iii)(C) of this section must reflect the periods of time in which the conditions in § 99.41(d)(1) or (2) were met for the well-pad site or gathering and boosting site, as applicable, in its entirety. For example, if two reports were submitted that together represent all of the affected and designated facilities at a well-pad site, and one report indicates deviation during only the first calendar quarter (*i.e.,* January to March) while the other report indicates deviation during only the second calendar quarter (*i.e.,* April to June), the information reported would be that for the first (*i.e.,* January to March) and second (*i.e.,* April to June) calendar quarters the conditions in § 99.41(d)(1) or (2) were not met, and for the third (*i.e.,* July to September) and fourth (*i.e.,* October to December) calendar quarters that the conditions were met.

(2) For a WEC applicable facility in an industry segment other than the onshore petroleum and natural gas production or onshore petroleum and natural gas gathering and boosting industry segment, as those industry segment terms are defined in § 98.230 of this chapter, report:

(i) The quantity of methane emissions at the WEC applicable facility qualifying for regulatory compliance exemption, in mt CH_4, as determined using equation D–1B of § 99.43(b)(2) ($E_{RCE,CH4}$)

(ii) The total quantity of methane emissions that qualified for exemption under both the regulatory compliance exemption and another exemption, in mt CH_4, as determined using equation D–2B of § 99.43(c)(2) ($E_{OtherExempt}$).

(iii) An indication of whether any affected facilities or designated facilities at the facility did not meet the conditions for the exemption of all emissions in § 99.41(d)(1) and (2) during the reporting year.

(iv) If you report to paragraph (h)(2)(iii) of this section that there were periods of time during which any affected facilities or designated facilities at the site did not meet the conditions for the exemption of all emissions in § 99.41(d)(1) and (2), for each calendar quarter in the reporting year report whether the conditions for the exemption of all emissions in § 99.41(d)(1) and (2) were met. For example, if the only deviation for any affected facilities or designated facilities at the facility lasted from March 1 to April 30 report for the first (*i.e.,* January to March) and second (*i.e.,* April to June) that the conditions in § 99.41(d)(1) or (2) were not met, and report for the third (*i.e.,* July to September) and fourth (*i.e.,* October to December) calendar quarters that the conditions were met.

(v) If there were multiple reports submitted pursuant to paragraphs (b)(3) and (4) of this section for the WEC applicable facility, the calendar quarters reported pursuant to paragraph (h)(2)(iv)(C) must reflect the periods of time in which the conditions in § 99.41(d)(1) or (2) were met for the WEC applicable facility in its entirety. For example, if two reports were submitted that together represent all of the affected and designated facilities at a well-pad site, and one report indicates deviation during only the first calendar quarter (*i.e.,* January to March) while the other report indicates deviation during only the second calendar quarter (*i.e.,* April to June), the information reported would be that for the first (*i.e.,* January to March) and second (*i.e.,* April to June) calendar quarters the conditions in § 99.41(d)(1) or (2) were not met, and for the third (*i.e.,* July to September) and fourth (*i.e.,* October to December) calendar quarters that the conditions were met.

§ 99.43 How are the emissions qualifying for regulatory compliance exemption in the reporting year quantified?

(a) If the WEC applicable facility qualified for regulatory compliance exemption pursuant to § 99.41(d) for the entire reporting year, the quantity of methane emissions attributable to the regulatory compliance ($E_{RCE,CH4}$) is equal to the total facility applicable emissions calculated using equation B–6 of this part. For WEC applicable facilities in the onshore petroleum and natural gas production or onshore petroleum and natural gas gathering and boosting industry segments, as those industry segment terms are defined in § 98.230 of this chapter, the WEC applicable facility shall be considered to have qualified for the regulatory compliance exemption pursuant to § 99.41(d) for the entire reporting year if each well-pad site or gathering and boosting site, as applicable, located at the WEC applicable facility qualified for regulatory compliance exemption pursuant to § 99.41(d) for the entire reporting year.

(b) If the WEC applicable facility qualified for regulatory compliance exemption pursuant to § 99.41(d) for only part of the reporting year or for only a portion of sites for WEC

applicable facilities in the onshore petroleum and natural gas production or onshore petroleum and natural gas gathering and boosting industry segments, as those industry segment terms are defined in § 98.230 of this chapter, calculate the qualifying emissions according to the method in paragraph (b)(1) or (2) of this section, as applicable.

(1) If the WEC applicable facility is in the onshore petroleum and natural gas production or onshore petroleum and natural gas gathering and boosting industry segment, as those industry segment terms are defined in § 98.230 of this chapter, calculate the emissions qualifying for regulatory compliance exemption using equation D–1A of this section. If the result of equation D–1A of this section is less than 0 mt CH_4, the emissions qualifying for regulatory compliance exemption are equal to 0 mt CH_4.

$$E_{RCE,CH_4} = E_{TFA,CH_4} - \sum_{i=1}^{M}\left[\left(E_{NCS,i} \times \frac{(4 - T_j)}{4}\right) + \sum_{j=1}^{N}\left(E_{NCS\text{-}OLRE,j} \times \frac{T_{OLRE\text{-}RCE,j}}{T_{OLRE,j}}\right)\right] - E_{OtherExempt} \qquad \text{(Eq. D-1A)}$$

Where:

$E_{RCE,CH4}$ = The quantity of methane emissions, as determined in subpart D of this part, at the WEC applicable facility qualifying for regulatory compliance exemption subject to the applicability provisions of § 99.41, mt CH_4.

$E_{TFA,CH4}$ = The annual methane emissions equal to, below, or exceeding the waste emissions threshold for a WEC applicable facility prior to consideration of any applicable exemptions (*i.e.,* total facility applicable emissions) as determined in equation B–6 of § 99.21, mt CH_4.

M = Total number of sites that did not qualify for regulatory compliance exemption for the entire calendar year.

$E_{NCS,i}$ = The total methane emissions reported pursuant to § 99.7(b)(2)(ix) for the reporting year, excluding methane emissions from other large release events reported pursuant to § 98.236(y)(10) of this chapter, for each well-pad or gathering and boosting site that did not qualify for regulatory compliance exemption for the entire year, *i,* mt CH_4.

T_j = Time that the site, *i,* qualified for regulatory compliance exemption as reported pursuant to § 99.42(h), in calendar quarters.

4 = Number of calendar quarters per year.

N = Total number of other large release events reported pursuant to § 99.42(e) for the reporting year for the well-pad or gathering and boosting site that did not qualify for regulatory compliance exemption for the entire year, *i.*

$E_{NCS–OLRE,j}$ = The methane emissions from each other large release event that occurred during or overlapped with a calendar quarter in which the well-pad or gathering and boosting site that did not qualify for regulatory compliance exemption, *j,* for each well-pad or gathering and boosting site that did not qualify for regulatory compliance exemption for the entire year, *i,* mt CH_4

$T_{OLRE–RCE,j}$ = Duration of the other large release event, *j,* that occurred during periods of time in which the WEC applicable facility did not qualify for regulatory compliance exemption as reported pursuant to § 99.42(e), in days.

$T_{OLRE,j}$ = Duration of the other large release event, *j,* based upon the value pursuant to § 98.236(y)(4) of this chapter, in days. For purposes of this part, the duration of the other large release event includes each calendar day during which the release occurred, inclusive.

$E_{OtherExempt}$ = The total quantity of methane emissions that qualified for exemption under both the regulatory compliance exemption and another exemption, as determined using equation D–2A of this section, for the reporting year, mt CH_4.

(2) If the WEC applicable facility is in an industry segment other than the onshore petroleum and natural gas production or onshore petroleum and natural gas gathering and boosting industry segment, as those industry segment terms are defined in § 98.230 of this chapter, calculate the emissions qualifying for regulatory compliance exemption using equation D–1B of this section. If the result of equation D–1B of this section is less than 0 mt CH_4, the emissions qualifying for regulatory compliance exemption are equal to 0 mt CH_4.

$$E_{RCE,CH_4} = E_{TFA,CH_4} - \left(E_{WAF} \times \frac{(4 - T)}{4}\right) - \sum_{j=1}^{N}\left(E_{WAF\text{-}OLRE,j} \times \frac{T_{OLRE\text{-}RCE,j}}{T_{OLRE,j}}\right) - E_{OtherExempt} \qquad \text{(Eq. D-1B)}$$

Where:

$E_{RCE,CH4}$ = The quantity of methane emissions, as determined in subpart D of this part, at the WEC applicable facility qualifying for regulatory compliance exemption subject to the applicability provisions of § 99.41, mt CH_4.

$E_{TFA,CH4}$ = The annual methane emissions equal to, below, or exceeding the waste emissions threshold for a WEC applicable facility prior to consideration of any applicable exemptions (*i.e.,* total facility applicable emissions) as determined in equation B–6 of § 99.21, mt CH_4.

E_{WAF} = The total methane emissions reported pursuant to § 99.7(b)(2)(ix) for the reporting year, excluding methane emissions from other large release events reported pursuant to § 98.236(y)(10) of this chapter, for the WEC applicable facility, mt CH_4.

T = Time that the WEC applicable facility qualified for regulatory compliance exemption as reported pursuant to § 99.42(h), in calendar quarters.

N = Total number of other large release events reported pursuant to § 99.42(e) for the reporting year for the WEC applicable facility.

$E_{WAF–OLRE,j}$ = The methane emissions from each other large release event that occurred during or overlapped with a calendar quarter in which the WEC applicable facility did not qualify for regulatory compliance exemption, *j,* for the reporting year for the WEC applicable facility, mt CH_4.

$T_{OLRE–RCE,j}$ = Duration of the other large release event, *j,* that occurred during periods of time in which the WEC applicable facility did not qualify for regulatory compliance exemption as reported pursuant to § 99.42(e), in days.

$T_{OLRE,j}$ = Duration of the other large release event, *j,* based upon the value pursuant to § 98.236(y)(4) of this chapter, in days. For purposes of this part, the duration of the other large release event includes each calendar day during which the release occurred, inclusive.

$E_{OtherExempt}$ = The total quantity of methane emissions that qualified for exemption under both the regulatory compliance exemption and another exemption, as determined using equation D–2B of this section, for the reporting year, mt CH_4.

(c) If the WEC applicable facility qualified for regulatory compliance

exemption pursuant to § 99.41(d) for only part of the reporting year and qualified to claim for exemption emissions under § 99.30 and/or § 99.50, the total quantity of methane emissions that qualified for exemption under both the regulatory compliance exemption and another exemption must be calculated according to the applicable method in paragraph (c)(1) or (2).

(1) If the WEC applicable facility is in the onshore petroleum and natural gas production, as that industry segment term is defined in § 98.230 of this chapter, equation D–2A must be used to calculate the quantity of methane emissions that qualified for exemption under both the regulatory compliance exemption and another exemption.

$$E_{OtherExempt} = \sum_{i=1}^{M}\left(E_{Delay,CS,i} + E_{Plug,CS,i}\right) + \sum_{j=1}^{N}\left[\left(E_{Plug,NCS,j} \times \frac{T_j}{4}\right) + \left(E_{Delay,NCS_j} \times \frac{T_{Delay\text{-}RCE,j}}{T_{Delay}}\right)\right] \quad \text{(Eq. D-2A)}$$

Where:

$E_{OtherExempt}$ = The total quantity of methane emissions that qualified for exemption under both the regulatory compliance exemption and another exemption for the reporting year, mt CH_4.

M = Total number of well-pad sites that qualified for regulatory compliance exemption for the entire calendar year.

$E_{Delay,CS,i}$ = The quantity of methane emissions exempted due to an unreasonable delay in environmental permitting of gathering or transmission infrastructure, as determined in equation C–4 of § 99.32(c), at the WEC applicable facility from a well-pad site, *i,* that qualified for regulatory compliance exemption for the entire year, mt CH_4.

$E_{Plug,CS,i}$ = The quantity of methane emissions exempted due to wells that were permanently shut-in and plugged, as determined in equation E–7 of § 99.52(c), at the WEC applicable facility from a well-pad site, *i,* that qualified for regulatory compliance exemption for the entire year, mt CH_4.

N = Total number of well-pad sites that did not qualify for regulatory compliance exemption for the entire calendar year.

$E_{Plug,NCS,j}$ = The quantity of methane emissions exempted due to wells that were permanently shut-in and plugged, as determined in equation E–7 of § 99.52(c), at the WEC applicable facility from a well-pad site, *j,* that did not qualify for regulatory compliance exemption for the entire year, mt CH_4.

T_j = Time that the site, *j,* at the WEC applicable facility qualified for regulatory compliance exemption as reported pursuant to § 99.42(h), in calendar quarters.

$E_{Delay,NCS,j}$ = The quantity of methane emissions exempted due to an unreasonable delay in environmental permitting of gathering or transmission infrastructure, as determined in equation C–4 of § 99.32(c), at the WEC applicable facility from a well-pad site, *j,* that did not qualify for regulatory compliance exemption for the entire year, mt CH_4.

$T_{Delay\text{-}RCE,j}$ = Duration of time during the reporting year that an eligible delay limited the offtake of increased volume associated with methane emissions mitigation activities that occurred during periods of time in which the well-pad site, *j,* at the WEC applicable facility qualified for regulatory compliance exemption, in days. Determine this value using the beginning and ending dates for the eligible delay as reported pursuant to § 99.31(b)(8) and the calendar quarters that the well-pad site, *j,* at the WEC applicable facility qualified for regulatory compliance exemption as reported pursuant to § 99.42(d).

T_{Delay} = Duration of time during the reporting year that an eligible delay limited the offtake of increased volume associated with methane emissions mitigation activities, in days. Determine this value using the beginning and ending dates for the eligible delay as reported pursuant to § 99.31(b)(8), inclusive.

(2) If the WEC applicable facility is in an industry segment other than the onshore petroleum and natural gas production industry segment, as that industry segment term is defined in § 98.230 of this chapter, equation D–2B must be used to calculate the quantity of methane emissions that qualified for exemption under both the regulatory compliance exemption and another exemption.

$$E_{OtherExempt} = \left(E_{Plug,CH_4} \times \frac{T}{4}\right) + \left(E_{Delay,CH_4} \times \frac{T_{Delay\text{-}RCE}}{T_{Delay}}\right) \quad \text{(Eq. D-2B)}$$

Where:

$E_{OtherExempt}$ = The total quantity of methane emissions that qualified for exemption under both the regulatory compliance exemption and another exemption for the reporting year, mt CH_4.

$E_{Plug,CH4}$ = The total quantity of methane emissions, as determined in equation E–7 of § 99.52(c), at the WEC applicable facility attributable to all wells that were permanently shut-in and plugged during the reporting year meeting the applicability provisions of § 99.50, mt CH_4.

T = Time that the WEC applicable facility qualified for regulatory compliance exemption as reported pursuant to § 99.42(d), in calendar quarters

$E_{Delay,CH4}$ = The quantity of methane emissions exempted, as determined in equation C–1 of § 99.32(c), at the WEC applicable facility due to an unreasonable delay in environmental permitting of gathering or transmission infrastructure meeting the applicability provisions of § 99.30, mt CH_4.

$T_{Delay\text{-}RCE}$ = Duration of time during the reporting year that an eligible delay limited the offtake of increased volume associated with methane emissions mitigation activities that occurred during periods of time in which the WEC applicable facility qualified for regulatory compliance exemption, in days. Determine this value using the beginning and ending dates for the eligible delay as reported pursuant to § 99.31(b)(8) and the calendar quarters that the WEC applicable facility qualified for regulatory compliance exemption as reported pursuant to § 99.42(d).

$T_{Delay,j}$ = Duration of time during the reporting year that an eligible delay limited the offtake of increased volume associated with methane emissions mitigation activities, in days. Determine this value using the beginning and ending dates for the eligible delay as reported pursuant to § 99.31(b)(8), inclusive.

(d) If the WEC applicable facility did not qualify for regulatory compliance exemption pursuant to § 99.41(d) for any portion of the reporting year, the quantity of methane emissions attributable to the regulatory compliance exemption ($E_{RCE,CH4}$) is equal to 0.

Subpart E—Exemption for Permanently Shut-in and Plugged Wells

§ 99.50 What facilities qualify for the exemption of emissions from permanently shut-in and plugged wells?

(a) The total facility applicable emissions for the WEC applicable facility containing permanently shut-in and plugged wells must exceed 0 mt as calculated in accordance with § 99.21(a).

(b) This exemption is applicable to WEC applicable facilities in the onshore petroleum and natural gas production, offshore petroleum and natural gas production, or underground natural gas storage industry segments, as those industry segment terms are defined in § 98.230 of this chapter, that permanently shut-in and plug one or more wells during the reporting year.

(c) For the purposes of applying this exemption, a permanently shut-in and plugged well is one that has been permanently sealed, following all applicable local, State, or Federal regulations in the jurisdiction where the well is located, to prevent any potential future leakage of oil, gas, or formation water into shallow sources of potable water, onto the surface, or into the atmosphere. Site reclamation following placement of a metal plate or cap is not required to be completed for the well to be considered permanently shut-in and plugged for the purposes of this part.

§ 99.51 What are the reporting requirements for the exemption for wells that were permanently shut-in and plugged?

(a) For a WEC applicable facility meeting the applicability provisions of § 99.50, you may elect to report information regarding an exemption for wells that were permanently shut-in and plugged. The exemption information to be reported is described in paragraph (b) of this section. The exemption information shall be submitted as described § 99.7.

(b) Report the following information for each well meeting the applicability provisions of § 99.50 that was permanently shut-in and plugged in the reporting year.

(1) Well ID number as reported in part 98, subpart W of this chapter. If no well ID number is reported for the well to part 98, subpart W, report the well ID number as defined in this part.

(2) Date the well was permanently shut-in and plugged, which for the purposes of this exemption, is the date when welding or cementing of a metal plate or cap onto the casing end was completed.

(3) The statutory citation for each applicable State, local, and Federal regulation stipulating requirements that were applicable to the closure of the permanently shut-in and plugged well.

(4) A certification that the requirements in each of the applicable State, local, and Federal regulations identified in paragraph (b)(3) of this section were followed.

(5) If the WEC applicable facility is in the onshore petroleum and natural gas production or underground natural gas storage industry segment and the WEC obligated party calculated methane emissions attributable to the well from wellhead equipment leaks using the methods in § 99.52(b)(5) of this section, you must indicate the method used to calculate equipment leak emissions attributable to the well (*i.e.,* § 99.52(b)(5)(i), (ii), or (iii)). For a WEC applicable facility in the underground natural gas storage industry segment, you must also report the information specified in paragraphs (b)(5)(i) through (iv) of this section, as applicable. For a WEC applicable facility in the onshore petroleum and natural gas production industry segment, you must also report the information specified in paragraphs (b)(5)(i) through (iii) of this section, as applicable. All WEC applicable facilities must report the information specified in paragraph (b)(5)(v).

(i) If the method in § 99.52(b)(5)(i) is used to calculate equipment leak emissions attributable to the well, you must report the following information for each leak: the leak detection survey method used, the component type as reported in § 98.236(q) of this chapter, the volumetric flow rate of the natural gas leak in standard cubic feet per hour and the duration of the measured leak as determined in accordance § 99.52(b)(5)(i), in hours.

(ii) If the method in § 99.52(b)(5)(ii) is used to calculate equipment leak emissions attributable to the well, you must report the following information for each component identified as leaking: the leak detection survey method used, the component type as specified in § 98.233(q)(2)(iii) or (vii) of this chapter, as applicable, and the time the surveyed component is assumed to be leaking and operational as determined in accordance § 99.52(b)(5)(ii), in hours.

(iii) If the method in § 99.52(b)(5)(iii) is used to calculate equipment leak emissions attributable to the well, you must report the counts of each component type listed in § 98.233(r)(3) of this chapter that are associated with the well, as applicable.

(iv) Indicate whether you used the default concentration of CH_4 (0.975) or a facility-specific CH_4 concentration in the total hydrocarbon of the feed natural gas. If you used the facility-specific CH_4 concentration in the total hydrocarbon of the feed natural gas, report the value.

(v) The quantity of methane emissions attributable to the well from wellhead equipment leaks as calculated in accordance with § 99.52(b)(5)(i), (b)(5)(ii), or (b)(5)(iii), as applicable, for the reporting year, in metric tons CH_4.

(6) If the WEC applicable facility is in the onshore petroleum and natural gas production and calculated methane emissions attributable to the well from associated gas flaring and completions and workovers without hydraulic fracturing and with flaring using equation E–6 of this section, you must report the information specified in paragraphs (b)(6)(i) and (ii) of this section.

(i) The volume of gas sent to the flare from the plugged well, in thousand scf.

(ii) The quantity of methane emissions attributable to the well from associated gas flaring and from completions and workovers without hydraulic fracturing and with flaring as calculated in accordance with § 99.52(b)(6), as applicable, in metric tons CH_4.

(7) The emissions attributable to the well calculated using equation E–1, E–2, E–3, or E–4 in § 99.52(b), as applicable, in metric tons CH_4.

(c) The total quantity of methane emissions attributable to all wells that were permanently shut-in and plugged at a WEC applicable facility meeting the applicability provisions of § 99.50 during the reporting year, calculated using equation E–7 in § 99.52(c), in metric tons CH_4.

§ 99.52 How are the net emissions attributable to all wells at a WEC applicable facility that were permanently shut-in and plugged in the reporting year quantified?

(a) For the purposes of this section, the following source types (as specified in part 98, subpart W of this chapter) constitute emissions directly attributable to an onshore petroleum and natural gas production, offshore petroleum and natural gas production, or underground natural gas storage well, as applicable:

(1) Wellhead equipment leaks.

(2) Liquids unloading.

(3) Completions and workovers with hydraulic fracturing.

(4) Completions and workovers without hydraulic fracturing.

(5) Associated natural gas venting and flaring.

(6) Well testing.

(7) Drilling mud degassing.

(b) Calculate the annual emissions attributable to each well that was

permanently shut-in and plugged during the reporting year and included in the submittal pursuant to § 99.51 using equations E–1, E–2, E–3, or E–4 of this section, as applicable.

(1) For onshore petroleum and natural gas production wells that are part of a WEC applicable facility that are permanently shut-in and plugged in reporting years 2025 and later, equation E–1 of this section must be used to quantify the methane emissions directly attributable to each permanently shut-in and plugged well.

$$E_{PW,CH_4} = E_{Leaks,CH_4} + E_{LU,CH_4} + E_{CWwHF,CH_4} + E_{CWwoHF,CH_4} + E_{AGV,CH_4} + E_{F,CH_4} + E_{WT,CH_4} + E_{DMD,CH_4} \quad \text{(Eq. E-1)}$$

Where:

$E_{PW,CH4}$ = The quantity of methane emissions directly attributable to an individual well that was permanently shut-in and plugged during the reporting year at a WEC applicable facility meeting the applicability provisions of § 99.50, mt CH_4.

$E_{Leaks,CH4}$ = The quantity of methane emissions attributable to the well from wellhead equipment leaks as calculated in accordance with paragraphs (b)(5)(i), (b)(5)(ii), or (b)(5)(iii) of this section, as applicable, for the reporting year, mt CH_4.

$E_{LU,CH4}$ = The quantity of methane emissions attributable to the well from liquids unloading as reported pursuant to § 98.236(f)(1)(x) or (f)(2)(viii) of this chapter, as applicable, for the reporting year, mt CH_4.

$E_{CWwHF,CH4}$ = The total quantity of methane emissions attributable to the well from completions and workovers with hydraulic fracturing as reported pursuant to § 98.236(g)(9) of this chapter for the reporting year, mt CH_4.

$E_{CWwoHF,CH4}$ = The total quantity of methane emissions attributable to the well from completions and workovers without hydraulic fracturing and without flaring as reported pursuant to § 98.236(h)(1)(vi) and (h)(3)(iv) of this chapter for the reporting year, mt CH_4.

$E_{AGV,CH4}$ = The quantity of methane emissions attributable to the well from associated gas venting as reported pursuant to § 98.236(m)(7)(viii) of this chapter for the reporting year, mt CH_4.

$E_{F,CH4}$ = The quantity of methane emissions attributable to the well from associated gas flaring and from completions and workovers without hydraulic fracturing and with flaring as calculated in accordance with paragraph (b)(6) of this section, as applicable, mt CH_4.

$E_{WT,CH4}$ = The total quantity of methane emissions attributable to the well from well testing as reported pursuant to § 98.236(l)(1)(vii), (l)(2)(vii), (l)(3)(vi), and (l)(4)(vi) of this chapter, as applicable, for the reporting year, mt CH_4.

$E_{DMD,CH4}$ = The quantity of methane emissions attributable to the well from drilling mud degassing as reported pursuant to § 98.236(dd)(1)(viii), (dd)(2)(iv), or (dd)(3)(iv) of this chapter, as applicable, for the reporting year, mt CH_4.

(2) For onshore petroleum and natural gas production wells that are part of a WEC applicable facility that are permanently shut-in and plugged in reporting year 2024, equation E–2 of this section must be used to quantify the methane emissions attributable to the well:

$$E_{PW,CH_4} = \left(E_{LkQ,CH_4} + E_{LkR,CH_4} + E_{LU,CH_4} + E_{CWw,HF,CH_4} + E_{CWwoHF,CH_4} + E_{AGV,CH_4} + E_{AGF,CH_4} + E_{WT,CH_4}\right) \times \frac{\left(\frac{Q_{ng,PW}}{6}\right) + Q_{oil,PW}}{\left(\frac{Q_{ng,WAF}}{6}\right) + Q_{oil,WAF}} \quad \text{(Eq. E-2)}$$

Where:

$E_{PW,CH4}$ = The quantity of methane emissions attributable to an individual well that was permanently shut-in and plugged during the reporting at a WEC applicable facility meeting the applicability provisions of § 99.50, mt CH_4.

$E_{LkQ,CH4}$ = The WEC applicable facility total quantity of methane emissions from equipment leaks reported pursuant to § 98.236(q)(2)(ix) of this chapter for the reporting year, mt CH_4.

$E_{LkR,CH4}$ = The WEC applicable facility total quantity of methane emissions from equipment leaks reported pursuant to § 98.236(r)(1)(v) of this chapter for the reporting year, mt CH_4.

$E_{LU,CH4}$ = The WEC applicable facility total quantity of methane emissions from liquids unloading as reported pursuant to § 98.236(f)(1)(x) and (f)(2)(viii) of this chapter for the reporting year, mt CH_4.

$E_{CWwHF,CH4}$ = The WEC applicable facility total quantity of methane emissions from completions and workovers with hydraulic fracturing as reported pursuant to § 98.236(g)(9) of this chapter for the reporting year, mt CH_4.

$E_{CWwoHF,CH4}$ = The WEC applicable facility total quantity of methane emissions from completions and workovers without hydraulic fracturing as reported pursuant to § 98.236(h)(1)(vi), (h)(2)(vi), (h)(3)(iv) and (h)(4)(iv) of this chapter for the reporting year, mt CH_4.

$E_{AGV,CH4}$ = The WEC applicable facility quantity of methane emissions from associated gas venting as reported pursuant to § 98.236(m)(7)(iv) of this chapter for the reporting year, mt CH_4.

$E_{AGF,CH4}$ = The WEC applicable facility quantity of methane emissions from associated gas flaring as reported pursuant to § 98.236(m)(8)(iii) of this chapter for the reporting year, mt CH_4.

$E_{WT,CH4}$ = The WEC applicable facility total quantity of methane emissions from well testing as reported pursuant to § 98.236(l)(1)(vii), (l)(2)(vii), (l)(3)(vi), and (l)(4)(vi) of this chapter, as applicable, for the reporting year, mt CH_4.

$Q_{ng,PW}$ = The total annual quantity of natural gas that is produced and sent to sale from the well in the reporting year, as reported pursuant to § 98.236(aa)(1)(iii)(C) of this chapter, in thousand standard cubic feet.

6 = Conversion factor from thousand standard cubic feet of natural gas to barrel of oil equivalent.

$Q_{oil,PW}$ = The total quantity of crude oil and condensate that is produced and sent to sale from the well in the reporting year, as reported pursuant to § 98.236(aa)(1)(iii)(D)of this chapter, in barrels.

$Q_{ng,WAF}$ = The total quantity of natural gas that is produced and sent to sale from the WEC applicable facility in the reporting year, as reported pursuant to § 98.236(aa)(1)(i)(B) of this chapter, in thousand standard cubic feet.

$Q_{oil,WAF}$ = The total quantity of crude oil and condensate that is produced and sent to sale from the WEC applicable facility in the reporting year, as reported pursuant to § 98.236(aa)(1)(i)(C) of this chapter, in barrels.

(3) For offshore petroleum and natural gas production wells that are part of a WEC applicable facility that are permanently shut-in and plugged in any reporting year, equation E–3 of this section must be used to quantify the methane emissions attributable to the well.

$$E_{PW,CH_4} = \left(E_{Leaks,CH_4} + E_{DMD,CH_4}\right) \times \frac{\left(\frac{Q_{ng,PW}}{6}\right) + Q_{oil,PW}}{\left(\frac{Q_{ng,WAF}}{6}\right) + Q_{oil,WAF}} \quad \text{(Eq. E-3)}$$

Where:

$E_{PW,CH4}$ = The quantity of methane emissions attributable to an individual well that was permanently shut-in and plugged during the reporting year at a WEC applicable facility meeting the applicability provisions of § 99.50, mt CH_4.

$E_{Leaks,CH4}$ = The WEC applicable facility total quantity of methane emissions from non-compressor component level fugitives (*i.e.,* equipment leaks), mt CH_4. For reporting year 2024, use the value reported pursuant to § 98.236(s)(2) of this chapter for the reporting year. For reporting year 2025 and later, use the value reported to § 98.236(s)(3)(ii) of this chapter for the reporting year.

$E_{DMD,CH4}$ = The WEC applicable facility total annual quantity of methane emissions from drilling mud degassing, mt CH_4. For reporting year 2024, use the value reported pursuant to § 98.236(s)(2) of this chapter for the reporting year. For reporting year 2025 and later, use the value reported to § 98.236(s)(3)(ii) of this chapter for the reporting year.

$Q_{ng,PW}$ = The total quantity of natural gas that is produced and sent to sale from the well in the reporting year as reported pursuant to § 98.236(aa)(2)(iii) of this chapter, in thousand scf.

6 = Conversion factor from thousand standard cubic feet of natural gas to barrel of oil equivalent.

$Q_{oil,PW}$ = The total quantity of crude oil and condensate that is produced and sent to sale from the well in the reporting year, as reported pursuant to § 98.236(aa)(2)(iv) of this chapter, in barrels.

$Q_{ng,WAF}$ = The total quantity of natural gas that is produced and sent to sale from the WEC applicable facility in the reporting year, as reported pursuant to § 98.236(aa)(2)(i) of this chapter, in thousand scf.

$Q_{oil,WAF}$ = The total quantity of crude oil and condensate that is produced and sent to sale from the WEC applicable facility in the reporting year, as reported pursuant to § 98.236(aa)(2)(ii) of this chapter, in barrels.

(4) For underground natural gas storage wells that are part of a WEC applicable facility that are permanently shut-in and plugged in any reporting year, equation E–4 of this section must be used to quantify the methane emissions attributable to the well.

$$E_{PW,CH_4} = E_{Leaks,CH_4} \quad \text{(Eq. E-4)}$$

Where:

$E_{PW,CH4}$ = The quantity of methane emissions directly attributable to an individual well that was permanently shut-in and plugged during the reporting year at a WEC applicable facility meeting the applicability provisions of § 99.50, mt CH_4.

$E_{Leaks,CH4}$ = The quantity of methane emissions attributable to the well from storage wellhead equipment leaks in accordance with paragraphs (b)(5)(i), (b)(5)(ii) or (b)(5)(iii) of this section, as applicable, for the reporting year, mt CH_4.

(5) You must quantify equipment leak methane emissions from the permanently shut-in and plugged well at the WEC applicable facility in accordance with the methods in (b)(5)(i) through (iii) of this section. You must use the same calculation method for equipment leaks reported pursuant to § 98.236(q) or (r) of this chapter in the part 98 report for the well-pad site or facility, as applicable, which is associated with the permanently shut-in and plugged well.

(i) If equipment leak surveys and measurement were used to quantify methane emissions from the permanently shut-in and plugged well and reported pursuant to § 98.236(q) of this chapter in the part 98 report for a WEC applicable facility, you must calculate the methane emissions (*i.e.,* $E_{Measured\ Leak,\ CH4}$) for each measured wellhead leak in accordance with equation E–5A. The sum of the quantified methane emissions from each measured wellhead leak at the permanently shut-in and plugged well calculated in accordance with equation E–5A shall be considered ''$E_{Leaks,\ CH_4}$'' in Equations E–1 and E–4 of this section, as applicable.

$$E_{Measured\ Leak,CH_4} = Q_{p,z} \times T_{p,z} \times M_{CH_4} \times k \times \rho_{CH_4} \times 10^{-3} \quad \text{(Eq. E-5A)}$$

Where:

$E_{Measured\ Leak,CH4}$ = The quantity of methane emissions attributable to a measured leak from a wellhead leak component at the permanently shut-in and plugged well, mt CH_4.

p = Component type as reported in accordance with § 98.236(q) of this chapter, as applicable.

z = An individual component of type ''p'' detected as leaking and measured at the permanently shut-in and plugged well in any leak survey during the year.

$Q_{p,z}$ = Volumetric flow rate of the natural gas leak for component ''z'' of component type ''p'' converted to standard conditions according to § 98.233(q)(3)(iii) of this chapter, scf whole gas/hour/component, as applicable.

M_{CH4} = The mole fraction of CH_4 in produced gas for the well. For onshore petroleum and natural gas production wells, use the mole fraction of CH_4 in produced gas for the sub-basin associated with the well, as reported pursuant to § 98.236(aa)(1)(ii)(I) of this chapter, unitless. For underground natural gas wellheads, use 0.975 or the concentration of CH_4 in the total hydrocarbon of the feed natural gas, unitless.

$T_{p,z}$ = The total time the surveyed and measured component ''z'' of component type ''p'' was assumed to be leaking and operational, in hours. If one leak detection survey is conducted in the calendar year, assume the component was leaking for the entire calendar year, hours. If multiple leak detection surveys are conducted in the calendar year, assume a component found leaking in the first survey was leaking since the beginning of the year until the date of the survey, hours; assume a component found leaking in the last survey of the year was leaking from the preceding survey through the end of the year, hours; assume a component found leaking in a survey between the first and last surveys of the year was leaking since the preceding survey until the date of the survey, hours; and sum times for all leaking periods. For each leaking component, account for time the

component was not operational (*i.e.,* not operating under pressure) using the same estimates and available data used for calculating the total time the surveyed and measured components were leaking and operational in accordance with § 98.233(q)(3)(ii) of this chapter.

k = The factor to adjust for undetected leaks by respective leak detection method. For reporting year 2024, k equals 1. For reporting year 2025 and later, k equals 1.25 for the methods in § 98.234 (a)(1), (3) and (5) of this chapter; k equals 1.55 for the method in § 98.234(a)(2)(i) of this chapter; and k equals 1.27 for the method in § 98.234(a)(2)(ii) of this chapter. Select the factor for the leak detection method used for the permanently shut-in and plugged well, unitless.

ρ_{CH4} = Density of methane, 0.0192 mt/Mscf.

10^{-3} = Conversion factor from scf to Mscf.

(ii) If equipment leak surveys and leaker emission factors were used to quantify methane emissions from the permanently shut-in and plugged well and reported pursuant to § 98.236(q) of this chapter in the part 98 report for a WEC applicable facility, equation E–5B of this section must be used to calculate $E_{Leaks,CH4}$.

$$E_{Leaks,CH_4} = \sum_{p=1}^{N_p} \left(EF_p \times \sum_{z=1}^{x_p} T_{p,z} \right) \times M_{CH_4} \times k \times \rho_{CH_4} \times 10^{-3} \qquad \text{(Eq. E-5B)}$$

Where:

$E_{Leaks,CH4}$ = The quantity of methane emissions attributable to the well from wellhead equipment leaks as reported pursuant to § 98.236(q) of this chapter for the reporting year, mt CH_4.

p = Component type as specified in § 98.233(q)(2)(iii) and (vii) of this chapter, as applicable.

N_p = The number of component types reported pursuant to § 98.233(q)(2)(ii) of this chapter for which there were detected leaks at the well reported pursuant to § 98.233(q)(2)(iii) or (vii) of this chapter, as applicable.

EF_p = The leaker emission factor for component ''p'' as specified in § 98.233(q)(2)(iii) or (vii) of this chapter, scf whole gas/hour/component, as applicable.

M_{CH4} = For onshore petroleum and natural gas production wells, the mole fraction of CH_4 in produced gas for the sub-basin associated with the well, as reported pursuant to § 98.236(aa)(1)(ii)(I) of this chapter, unitless. For underground natural gas wellheads, the mole fraction of CH_4 equals 0.975 for CH_4 or concentration of CH_4, in the total hydrocarbon of the feed natural gas.

x_p = The total number of specific components of type ''p'' detected as leaking at the permanently shut-in and plugged well in any leak survey during the year. A component found leaking in two or more surveys during the year is counted as one leaking component.

$T_{p,z}$ = The total time the surveyed component ''z'' of component type ''p'' was assumed to be leaking and operational, in hours. If one leak detection survey is conducted in the calendar year, assume the component was leaking for the entire calendar year, hours. If multiple leak detection surveys are conducted in the calendar year, assume a component found leaking in the first survey was leaking since the beginning of the year until the date of the survey, hours; assume a component found leaking in the last survey of the year was leaking from the preceding survey through the end of the year, hours; assume a component found leaking in a survey between the first and last surveys of the year was leaking since the preceding survey until the date of the survey, hours; and sum times for all leaking periods. For each leaking component, account for time the component was not operational (*i.e.,* not operating under pressure) using the same estimates and available data used for calculating the total time the surveyed components were leaking and operational in accordance with § 98.233(q)(2) of this chapter.

k = The factor to adjust for undetected leaks by respective leak detection method. For reporting year 2024, k equals 1. For reporting year 2025 and later, k equals 1.25 for the methods in § 98.234 (a)(1), (3) and (5) of this chapter; k equals 1.55 for the method in § 98.234(a)(2)(i) of this chapter; and k equals 1.27 for the method in § 98.234(a)(2)(ii) of this chapter. Select the factor for the leak detection method used for the permanently shut-in and plugged well, unitless.

ρ_{CH4} = Density of methane, 0.0192 mt/Mscf.

10^{-3} = Conversion factor from scf to Mscf.

(iii) If equipment leaks by population count were used to quantify methane emission from the permanently shut-in and plugged well and reported pursuant to § 98.236(r) of this chapter in the part 98 report for a WEC applicable facility, equation E–5C of this section must be used to calculate $E_{Leaks,CH4}$.

$$E_{Leaks,CH_4} = Count_{wh} \times EF_{wh} \times M_{CH_4} \times T \times \rho_{CH_4} \times 10^{-3} \qquad \text{(Eq. E-5C)}$$

Where:

$E_{Leaks,CH4}$ = The annual quantity of methane emissions attributable to the well from wellhead equipment leaks as reported pursuant to § 98.236(r) of this chapter for the reporting year, mt CH_4.

$Count_{wh}$ = Underground natural gas storage facilities must count each component at the storage wellhead listed in § 98.233(r)(3) of this chapter. Onshore petroleum and natural gas production must use a value of 1 wellhead.

EF_{wh} = The population emission factor for wellheads, as listed in § 98.233(r)(2) and (3) of this chapter, as applicable.

M_{CH4} = For onshore petroleum and natural gas production wells, the mole fraction of CH_4 in produced gas for the sub-basin associated with the well as reported pursuant to § 98.236(aa)(1)(ii)(I) of this chapter, unitless. For underground natural gas wellheads, the mole fraction of CH_4 equals 0.975 for CH_4 or concentration of CH_4, in the total hydrocarbon of the feed natural gas.

T = The total time that has elapsed from the beginning of the reporting year until the date the well was plugged in accordance with § 99.51(b)(2), hours.

P_{CH4} = Density of methane, 0.0192 mt/Mscf.

10^{-3} = Conversion factor from scf to Mscf.

(6) For onshore petroleum and natural gas production wells that are part of a WEC applicable facility that are permanently shut-in and plugged in reporting years 2025 and later, equation E–6 of this section must be used to quantify the methane emissions attributable to the well from associated gas flaring and completions and workovers without hydraulic fracturing and with flaring:

$$E_{F,CH_4} = V_{PW} \times X_{CH_4} \times \left[\left(1 - \eta_D\right) \times Z_L + Z_U\right] \times \rho_{CH_4} \times 10^{-3} \qquad \text{(Eq. E-6)}$$

Where:

$E_{F,CH4}$ = The quantity of methane emissions from associated gas flaring and from completions and workovers without hydraulic fracturing and with flaring attributable to the plugged well for the reporting year, mt CH_4.

V_{PW} = The volume of gas sent to the flare from the plugged well, scf. If flow for each stream to the flare is measured or determined in accordance with § 98.233(n)(3)(ii) of this chapter and that stream contains only the flow from the plugged well, use the flow for that individual stream as reported to § 98.236(n)(11) of this chapter. If flow is measured at the inlet to the flare in accordance with § 98.233(n)(3)(i) of this chapter or the stream flow measured or determined in accordance with § 98.233(n)(3)(ii) of this chapter includes flow from other sources, use an engineering estimate based upon best available information of the portion of flow from the plugged well.

X_{CH4} = Annual average mole fraction of CH_4 in the gas sent to the flare from the plugged well. If you determine composition of each stream routed to the flare as specified in § 98.233(n)(4)(iii) of this chapter and that stream contains only the flow from the plugged well, use the mole fraction for the individual stream as reported to § 98.236(n)(14) of this chapter. Otherwise, use the average mole fraction of CH_4 in produced gas for the sub-basin in which the plugged well is located as reported to § 98.236(aa)(1)(ii)(I) of this chapter.

η_D = Flare destruction efficiency, as reported to § 98.236(n)(13) of this chapter.

Z_L = Fraction of the feed gas sent to the burning flare, equal to $1 - Z_U$.

Z_U = Fraction of the feed gas sent to the flare when it is un-lit, as reported to § 98.236(n)(12) of this chapter.

ρ_{CH4} = Density of methane at 60 °F and 14.7 psia. Use 0.0192 kg/ft^3.

10^{-3} = Conversion from kilograms to metric tons.

(c) Calculate the total emissions attributable to all wells included in the submittal received pursuant to § 99.51 using equation E–7 of this section:

$$E_{Plug,CH_4} = \sum_{j=1}^{N} E_{PW_j,CH_4} \qquad \text{(Eq. E-7)}$$

Where:

$E_{Plug,CH4}$ = The total quantity of methane emissions, as determined in subpart E of this part, at the WEC applicable facility attributable to all wells that were permanently shut-in and plugged during the reporting year meeting the applicability provisions of § 99.50, mt CH_4.

$E_{PW,j,CH4}$ = The annual quantity of methane emissions attributable to a well ''j'' that was permanently shut-in and plugged during the reporting year at a WEC applicable facility meeting the applicability provisions of § 99.50 calculated using equation E–1, E–2, E–3, or E–4 of this section, as applicable.

N = Total number of wells that were permanently shut-in and plugged during the reporting year in accordance with all applicable closure requirements at a WEC applicable facility.

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Part VI

Department of Agriculture

Food and Nutrition Service

7 CFR Part 273

Supplemental Nutrition Assistance Program: Standardization of State Heating and Cooling Standard Utility Allowances; Final Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 273

[FNS–2019–0009]

RIN 0584–AE69

Supplemental Nutrition Assistance Program: Standardization of State Heating and Cooling Standard Utility Allowances

AGENCY: Food and Nutrition Service (FNS), Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This rule finalizes changes proposed October 3, 2019, by the Department to revise Supplemental Nutrition Assistance Program (SNAP) regulations for calculating standard utility allowances (SUAs) and expand allowable shelter expenses to include basic internet costs. It requires State agencies to submit for FNS approval their SUA methodologies at least every five years, and methodology submissions must incorporate any revisions necessary to demonstrate that the baseline expenditure data and underlying methodology reflect recent trends and changes. This rule also provides State agencies with the flexibility necessary to ensure that they meet households' needs while also aligning SUAs with data on low-income household utility costs in a more consistent manner. This rule also finalizes updates proposed April 20, 2016, regarding the treatment of Low Income Home Energy Assistance Program or other similar energy assistance program payments, in accordance with amendments made to the Food and Nutrition Act of 2008 by the Agricultural Act of 2014. The intent of this final rule is to ensure consistency and integrity of SUAs across the country, which the Department believes is good governance.

DATES:

Effective date: This final rule is effective January 17, 2025.

Compliance date: The compliance date for SUA changes is October 1, 2025.

ADDRESSES: SNAP Program Development Division, Food and Nutrition Service, USDA, 1320 Braddock Place, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Catrina Kamau, Certification Policy Branch, Program Development Division, Food and Nutrition Service, 1320 Braddock Place, Alexandria, Virginia 22314. Email: *SNAPCPBRules@usda.gov.* Phone: (703) 305–2022.

SUPPLEMENTARY INFORMATION:

Acronyms or Abbreviations

American Community Survey, ACS
Code of Federal Regulations, CFR
Consumer Expenditure Survey, CEX
Consumer Price Index, CPI
Fiscal Year, FY
Food and Nutrition Act of 2008, the Act
Food and Nutrition Service, FNS
Heating and Cooling Standard Utility Allowance, HCSUA
Limited Utility Allowance, LUA
Low-Income Home Energy Assistance Act of 1981, LIHEAA
Low-Income Home Energy Assistance Program, LIHEAP
Residential Energy Consumption Survey, RECS
Short Term Energy Outlook, STEO
Standard Utility Allowance, SUA
State SNAP Agencies, State agencies or States
Supplemental Nutrition Assistance Program, SNAP
U.S. Department of Agriculture, the Department or USDA

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Combined Final Rule

This final rule incorporates provisions originally proposed in two separate notices of proposed rulemaking (NPRM): The October 3, 2019, NPRM titled ''Supplemental Nutrition Assistance Program: Standardization of State Heating and Cooling Standard Utility Allowances'' (84 FR 52809), and the April 20, 2016, NPRM titled ''Supplemental Nutrition Assistance Program: Standard Utility Allowances Based on the Receipt of Energy Assistance Payments Under the Agricultural Act of 2014'' (81 FR 23189). While originally published as separate NPRMs, the provisions contained in these rules both relate to determining household shelter expenses, and therefore, the Department is addressing the NPRMs in this single final rule. In this final rule, the Department will refer to the October 3, 2019, NPRM as the SUA NPRM. The Department will refer to the April 20, 2016, NPRM as the LIHEAP NPRM.

The Department intends for the LIHEAP NPRM provisions of this final rule and the SUA NPRM provisions to be separate and severable from one another. If any provision related to the SUA NPRM is stayed or determined to be invalid, it is the Department's intention that the remaining provisions

related to the LIHEAP NPRM shall continue in effect. For example, if a court were to invalidate the final rule's HCSUA standardization provision, the provisions related to the LIHEAP NPRM would remain in effect, as those provisions ''could function sensibly without the stricken provision.'' [1]

This rule redesignates several regulatory citations to reflect amendments to the regulatory text resulting from this final rule. Where applicable, each redesignation is reflected explicitly in the discussion of the corresponding provision.

Background on SUAs and the SUA NPRM

The Food and Nutrition Act of 2008 (the Act) establishes national eligibility standards for SNAP, including net income standards, and provides allowable deductions from gross income to determine the net income of a household. Apart from a standard deduction for all households, deductions are available to households based on their circumstances. Some of these deductions include: earned income; dependent care costs when needed for work, searching for work, training, or education; medical expenses over $35 for elderly or disabled households; and excess shelter costs.

The excess shelter deduction allows households to deduct shelter expenses that exceed 50 percent of their income after all other deductions are taken. For households without an elderly or disabled member, the deduction must not exceed a maximum limit. Households with elderly or disabled members are not subject to a limit. Shelter expenses include the basic cost of housing as well as certain utilities and other allowable expenses listed in 7 CFR 273.9(d)(6)(ii). To help streamline the application and certification process, section 5(e)(6) of the Act permits State agencies to develop SUAs to use in lieu of actual utility expenses in determining a household's shelter costs for the purposes of the excess shelter deduction. The Act requires that State SUAs must be developed ''in accordance with regulations promulgated by the [USDA].'' [2]

Per USDA's regulations, at 7 CFR 273.9(d)(6)(iii), State agencies may create three types of SUAs: a heating and cooling SUA (HCSUA); a limited utility allowance (LUA); and single utility allowances (also referred to as ''individual standards''). The HCSUA is the largest of the SUAs and is available to households that incur heating or cooling expenses separate from their rent or mortgage. The HCSUA is comprehensive and includes costs for heating or cooling and all other allowable utilities. The LUA includes expenses for at least two utilities; single utility allowances may be used for stand-alone utility costs. Neither the LUA nor single utility allowances include costs for heating and/or cooling. Utility expenses captured in SUAs may include: electricity or fuel for purposes other than heating or cooling, water, sewerage, well and septic tank installation and maintenance, telephone, and garbage or trash collection.[3]

A State agency may mandate use of SUAs for all households with qualifying expenses if the State agency has developed one or more SUAs that include the costs of heating and cooling and one or more SUAs that do not include the costs of heating and cooling.[4] Under this option, households entitled to the SUA may not claim actual expenses, even if the expenses are higher than the SUA. Households not entitled to the SUA may claim actual allowable expenses.

SNAP regulations require State agencies to review SUAs annually and adjust to reflect changes in costs.[5] State agencies must submit the figures to FNS for approval at the annual update and whenever a State agency changes methodologies (Office of Management and Budget (OMB) Control Number 0584–0496; Expiration Date 7/31/2026). In developing SUAs, program requirements do not prescribe a particular methodology or data sources for State agencies to use. State agencies have a certain amount of flexibility to tailor the program's administration to meet the needs of their residents. SUAs embody this flexibility, as they vary from State to State and reflect not only the different costs, but the different utility needs in each State. For example, the heating and cooling needs of Maine residents are not the same as those in Mississippi as these States have differing climates, energy usage, and commonly used energy sources. While this flexibility is critical and each State's circumstances are unique, without consistent parameters for SUA methodologies, the Department is concerned that the information State agencies use to determine SUAs is outdated and may not reflect low-income households' current utility costs.

Monthly shelter costs, such as rent, mortgage, and utilities, comprise a significant share of most Americans' household budgets. Similarly, in the SNAP benefit calculation, SUAs comprise a significant share of household shelter costs. The use of SUAs allows for a streamlined approach over an itemized, case-by-case approach to determine household utility costs and is a substantial factor in evaluating whether the household is eligible for the excess shelter deduction. As such, SUAs can affect a household's eligibility for the excess shelter deduction and, ultimately, the household's eligibility for SNAP and their benefit amount. Aligning SUAs with current household conditions, including in households with unusually high utility expenses, is important to ensure that the application of the excess shelter deduction adequately reflects household circumstances and ultimately, the appropriateness of the benefit levels.

The Department explored options for standardizing State SUAs in a 2017 study, ''Methods to Standardize State Standard Utility Allowances'' (Holleyman, et al., 2017) (2017 SUA Study).[6] The 2017 SUA Study evaluated State agency methodologies and reviewed available utility cost data sources. The study found that most of the methodologies State agencies employ fall into one of two categories: (1) those that rely on recent State-specific utility data; and (2) those that adjust a base number using an inflation measure such as the CPI of utility costs. Of the 19 State agencies that update a base number, the study found that less than half (seven States) knew the source of their base number, and many did not know when it was established.

Further, the 2017 SUA Study noted that State HCSUAs differed considerably from the average utility expenditures among low-income households in their State. The authors speculated that State agencies may set their SUAs higher than the average costs to minimize benefit loss for households with very high utility expenses. In evaluating this possibility, the authors compared State HCSUA values to values derived from Federal survey data and found variation in the degree to which State agencies set their HCSUAs compared to HCSUAs set at the 85th percentile of utility costs for low-income households. The study used the

[1] *MD/DC/DE Broadcasters Ass'n* v. *F.C.C.*, 253 F.3d 732, 734 (D.C. Cir. 2001) (internal quotations omitted).

[2] 7 U.S.C. 2014(e)(6)(C)(i).

[3] 7 CFR 273.9(d)(6)(ii)(C).

[4] 7 U.S.C. 2014(e)(6)(C)(iii); 7 CFR 273.9(d)(6)(iii)(E).

[5] 7 CFR 273.9(d)(6)(iii)(B).

[6] Holleyman, Chris, Timothy Beggs, and Alan Fox. *Methods to Standardize State Standard Utility Allowances.* Prepared by Econometrica for the U.S. Department of Agriculture, Food and Nutrition Service, August 2017.

85th percentile for illustrative purposes and not as a recommended threshold, as the Department has not previously set a designated threshold for SUAs and has allowed State agencies flexibility in this area.

The authors found that most State agencies used HCSUAs below the 85th percentile of utility costs for low-income households in their State based on the Federal survey data, meaning that their HCSUAs may be under-representing the costs for households with high utility expenses.

To ensure consistent and transparent application of the HCSUA across the country, the Department proposed a methodology to standardize the way State agencies calculate HCSUAs in the SUA NPRM published October 3, 2019. The Department notes that it also used the term ''benefit equity'' in the NPRM to describe the purpose of standardizing SUA methodologies. Multiple commenters, described in more detail below, raised concerns about the use of this term given that benefit levels depend on household circumstances, including differences in utility costs. This term, in addition to ''consistency'' and ''integrity,'' were used to describe the Department's goal of ensuring each State's SUAs represent utility costs for low-income households in the State by proposing clear data requirements to calculate them. However, after considering this terminology, the Department agrees with commenters that ''benefit equity'' is imprecise compared with the other terms used. Therefore, the Department will use the terms ''consistency'' and ''integrity'' throughout to describe the purpose of the SUA NPRM and the final rule.

The methodology in the proposed rule would establish each State agency's HCSUA at the 80th percentile of low-income households' utility costs in the State. The proposed rule would cap most LUAs and individual standards for other utility costs at a percentage of the State agency's HCSUA. The proposed rule would add the cost of basic internet as an allowable utility expense and establish a national maximum amount for a new telecommunications SUA that would include internet and telephone costs. FNS would calculate the initial figures and update them annually.

Summary of General Comments on the October 3, 2019, (SUA) NPRM

The Department received over 125,000 public comment submissions on the SUA NPRM.[7] Of these, approximately 6,500 were unique and nearly 118,800 were associated with form letter campaigns. The Department reviewed and considered all comments received.

Approximately 35 individual commenters expressed general support for the proposed changes, citing concerns about increasing government spending and the need to prevent fraudulent activity. A non-profit organization argued that SUAs have led to significant distortions in eligibility determinations and benefit levels between States and significantly weaken program integrity. This commenter claimed that State agencies frequently set SUA thresholds above what applicants are paying for utilities, creating a greater risk for abuse and violating the statutory intent of SUA policies. While the Department appreciates these comments, the Department notes that setting SUAs above what some applicants are paying for utilities is not fraudulent, as SUAs are not meant to represent average household utility expenses.

In past guidance,[8] the Department encouraged State agencies to set SUAs high enough to ensure most households use the SUA rather than claim actual utility costs, while also reflecting actual costs. Most State agencies mandate the use of SUAs, as described above. The flexibility State agencies have to set SUAs above the average household's costs protects vulnerable households with higher-than-average utility costs in mandatory SUA States. The Department proposed changes to SUA methodologies out of concern that SUAs are outdated and do not reflect recent trends and data on household utility costs, leading to inconsistencies between State SUA values and the utility costs SNAP households incur.

Additionally, approximately 15 commenters supported the proposed update to the telephone standard to include basic internet services. Multiple commenters, including advocacy groups, a policy advocacy organization, multiple State government agencies, a religious organization, and a trade association, agreed with the Department's argument that internet is an essential service. Additional commenters, including an advocacy group, a legal services organization, a policy advocacy organization, and State government agencies generally supported updating the telephone standard to include internet services.

Approximately 107,980 commenters, the majority of which were from form letter campaigns, generally opposed the proposed changes in the SUA NPRM. Many of these commenters expressed concerns that standardizing HCSUAs at the 80th percentile would decrease benefits and negatively impact the general health and well-being of certain demographics, including women, elderly individuals, individuals with higher-than-average shelter costs, individuals with disabilities, and children. Some commenters also expressed concern over how the changes might affect the stability of the economy.

One food bank, ten non-profit and advocacy organizations, six form letter campaigns, one professional association, one religious organization, one food service industry organization, and two local governments expressed opposition to the proposed rule because it was projected to cut SNAP benefits for a significant number of households. The same religious organization and two other form letter campaigns opposed the changes because they were projected to cause 8,000 people to lose SNAP benefits. An advocacy group wrote that the proposed rule would eliminate 18 percent of the average SNAP family's food budget. The Department notes that most SNAP households (81 percent) would have experienced no change to their benefits or a benefit increase under the proposed rule, as noted in the Regulatory Impact Analysis (RIA). The Department also notes that these projections are no longer accurate, given the changes in the final rule, which are described in more detail below.

Further, a form letter campaign, a State-elected official, three advocacy organizations, one policy advocacy organization, and an individual commented that the proposed rule would force struggling families to choose between heating and cooling their homes and putting food on the table. Two food banks, a form letter campaign, a religious organization, a State government, a trade association, and four advocacy groups cited evidence that suggests SNAP supports housing stability and alleviates the trade-offs families often face between purchasing food or other basic necessities, such as healthcare and utilities. A form letter campaign wrote that the proposed rule discriminates against families with high shelter costs.

Multiple commenters raised concerns about the proposed rule's cut to SNAP benefits and the associated food security and health implications. A food bank, a

[7] Posted public comments may be found at *regulations.gov https://www.regulations.gov/document/FNS-2019-0009-0001/comment*

[8] U.S. Department of Agriculture, Food and Nutrition Service, *Food Stamp Program Standard Utility Allowances Requirements and Methodologies,* FNS Notice 79–47, May 1979. Retrieved from: *https://www.fns.usda.gov/snap/sua-requirements-and-methodologies* in December 2023.

healthcare association, and an individual expressed concerns regarding the negative impacts of food insecurity on a person's health. A legal services organization, four religious organizations, a healthcare association, an educational institution, two advocacy groups, and a policy advocacy organization commented that the proposed rule would exacerbate food insecurity and significantly increase healthcare costs. A form letter campaign stated that Congress authorized SNAP to encourage participant households to consume nutritious foods and found that limiting the purchasing power of low-income households contributed to food insecurity and malnutrition.

Commenters also raised concerns regarding the overall impact of the SUA NPRM in conjunction with the final rule published on December 5, 2019, entitled ''Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents'' (84 FR 66782), and the proposed rule published on July 24, 2019, entitled ''Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP)'' (84 FR 35570). Commenters expressed concern that these regulatory changes proposed by the Department would adversely impact households and their benefits, compounding the impact of the SUA NRPM for some households. These comments are no longer relevant as the Department rescinded (86 FR 34605) and withdrew (86 FR 30795) these proposed and final changes to program rules.

Approximately 17,340 commenters discussed the proposed rule as it relates to SNAP's statutory purpose and Congressional intent. Two food banks, two religious organizations, three local/municipal governments, a policy advocacy organization, a trade association, two legal services groups, two form letter campaigns, a health care association, a community organization, and seven advocacy groups claimed that the proposed rule was an attempt to sidestep Congress and reduce SNAP benefits. Many of these commenters, as well as two form letter campaigns, two federally-elected officials, 11 advocacy groups, three legal services groups, a religious organization, three food banks, an academic, a trade association, and a community organization, argued that the proposed rule subverts the 2018 Farm Bill, which made no changes to SUAs.

Twelve commenters, including a policy advocacy organization, two advocacy groups, a lawyer, four legal services groups, two individual commenters, a local/municipal government, and a federally-elected official, claimed the proposed rule was in violation of the Administrative Procedure Act (APA). Two of the legal services commenters alleged the proposed rule was arbitrary and capricious because it did not provide adequate reasoned rationale to inform meaningful comment, as required by the APA. A federally-elected official and an advocacy group claimed the proposed rule violates the APA because it failed to consider all relevant factors. A policy advocacy organization said that the proposed rule does not provide enough information for the public to meaningfully comment on the proposed methodology. The commenter wrote that the proposed rule violates the APA because it does not provide a justification for the 80th percentile HCSUA cap.

The Department appreciates the commenters' concerns about the proposed rule's potential adverse impact on SNAP households and has made changes in the final rule that may address these concerns. These changes include the Department not finalizing the proposed HCSUA methodology standardization provision and the proposed caps on LUAs and individual standards. The Department still believes it is necessary to ensure a clear justification for the any SUA that a State sets, and therefore the Department is providing State agencies with the flexibility to continue setting their own SUAs while standardizing the data and methodology criteria that FNS will use to approve SUAs. As noted above, commenters broadly supported accounting for basic internet costs in SUAs. The final rule makes changes to treat basic internet costs like any other allowable utility cost that can be included in the HCSUA, LUA, and as an individual standard. The Department further explains these changes and the accompanying rationale later in this preamble.

The Department disagrees with commenters' claims that the Department lacks the authority to standardize SUAs. While the Department agrees that Congress did not make changes to SUAs during the passage of the 2018 Farm Bill, the Department notes that Congress did not change sec. 5(e)(6)(C)(i) of the Food and Nutrition Act of 2008 either, which gives the Secretary the authority to promulgate regulations concerning how SUAs are set by State agencies.[9] As such, the Department maintains the authority to regulate SUAs within the statutory framework.

In the sections that follow, the Department presents each provision of the proposed rule: the relevant, substantive comments related to the provision; and any changes made to the final rule in a section-by-section format. Throughout this comment analysis, the Department views a comment as substantive if it provides an opinion or recommendation on a specific policy and includes detailed reasoning.

Standardizing HCSUA Methodology

In the SUA NPRM, the Department proposed to amend SNAP regulations at 7 CFR 273.9(d)(6)(iii) to create a new, standardized methodology for calculating State HCSUAs. The proposed standardization set HCSUAs at the 80th percentile of utility costs for low-income households in each State, calculated annually by FNS.

The NPRM methodology would use best-available utility cost information from nationally representative Federal sources that reflect State-specific household expenses, such as the American Community Survey (ACS), drawing on the recommendations of the 2017 SUA Study. The methodology would also allow the Department to use other data sources if such Federal sources are not available or if better data becomes available. Under the SUA NPRM, FNS would calculate and provide States with standardized HCSUAs using the following sources and set SUAs at the 80th percentile of utility costs for low-income households:

- ACS with adjustments based on the Residential Energy Consumption Surveys (RECS) to derive the energy component of the HCSUA.
- ACS and Consumer Expenditure Surveys (CEX) data to derive the water, sewer, and trash component of the HCSUA.
- Current pricing information on telecommunications services from service providers.

As needed, FNS would adjust the estimates from the sources listed above using utility expenditure growth rates and population growth estimates in order to reflect the current fiscal year.

Since the proposed data sources do not collect information for territories, such as Guam and the Virgin Islands, the Department proposed to continue to allow these territories to use their own methodologies, and conduct their own calculations, subject to FNS approval.

Using the utility cost information from these sources, FNS would set the standardized HCSUAs at the 80th percentile of utility costs for low-income households in each state. In the

[9] 7 U.S.C. 2014(e)(6)(C)(i) (''[A] State agency may use a standard utility allowance in accordance with regulations promulgated by the Secretary. . . .'').

SUA NPRM, the Department explained that it chose the 80th percentile because standardizing at this level would reduce the amount of variation between utility costs and HCSUA amounts across States. Additionally, the Department argued that setting HCSUA values at the 80th percentile would balance the need to create more accurate standards while still capturing households that have higher than average utility costs, as most States mandate SUAs in lieu of actual costs.

Commenters expressed opposition to the proposed standardized HCSUA methodology due to concerns about the following, which are discussed in more detail in the paragraphs below:

- Negatively impacting SNAP participants, especially among certain demographics.
- Setting HCSUAs at the 80th percentile of low-income households' utility costs without clear rationale;
- Limiting State agencies' flexibility to address their unique needs; and
- Using the data sources the Department proposed, in lieu of other State-specific data sources.

Approximately 240 commenters expressed general opposition to the proposal to set HCSUAs at the 80th percentile of low-income households' utility costs in the State. Many of these commenters requested further explanation for the Department's rationale for capping the HCSUA at the 80th percentile. These comments included those from form letter campaigns, multiple members of the U.S. Congress, a legal center, a legal services organization, a health care association, multiple local/municipal commenters, a State agency, and advocacy groups.

Approximately 107,980 commenters expressed general opposition to standardizing the HCSUA methodology process due to the potential adverse effects on certain demographics. Three form letter campaigns, a food bank, five advocacy groups, and an individual, discussed the negative impacts of the proposed changes on people with disabilities. Two of these form letter campaigns, the same individual, an additional food bank, and an additional advocacy group stated that 11 percent of SNAP households include a person with a disability, and those households will be disproportionately impacted by the proposed rule. Many of these same commenters, and an additional food bank and advocacy group, argued that the proposed rule would similarly harm elderly SNAP recipients. Another form letter campaign stated that households with a family member with disabilities are two to three times more likely to experience food insecurity than households without a family member with disabilities. This form letter further claimed that the proposed rule would force people with disabilities and their families to choose between spending their limited resources on food or other necessities such as housing, utilities, and medical expenses.

A policy advocacy organization and an advocacy group argued that the rule would have a disproportionate negative impact on women because women make up the majority of SNAP recipients. Comments from one advocacy group and a policy advocacy organization argued the proposed changes would increase food insecurity for children, and two food banks, four advocacy groups, and a policy advocacy organization cited the proposed rule's RIA, which estimated a 19 percent net reduction in SNAP benefits for households with children, with an average annual loss of $336 in food assistance. The Department notes that the proposed rule's RIA did not estimate a 19 percent net reduction in SNAP benefits for households with children. Rather, it noted that 19 percent of SNAP households with children were expected to see a reduction in their SNAP benefits under the proposed rule.

In addition to the impact on certain demographics, commenters expressed concern that standardizing the HCSUA at the 80th percentile would not adequately cover the lowest-income household's high utility costs and would result in decreases to SNAP benefits. Two form letter campaigns noted that the proposed rule would cut $4.5 billion over five years in SNAP benefits. A community organization, multiple advocacy groups, multiple State government agencies, a food bank, a professional association, and a legal services organization criticized the proposed methodology, writing that 19 percent, or approximately one in five, of SNAP households would see a reduction in benefits under the proposed rule. Three legal services organizations, one attorney, four advocacy groups, four policy advocacy organizations, and one religious organization stated that using the 80th percentile would result in lower HCSUAs than the Department has allowed under long-standing policy. Some commenters raised the potential for the Department to set default HCSUAs at a different percentile and provided suggestions. Advocacy groups and an attorney stated that, while interstate inequities exist, it would be preferable for States with lower-than-average utility allowances to raise them rather than standardizing all States' HCSUAs.

The Department appreciates commenters' concerns about the proposed rule's potential adverse impact on certain demographics. The Department is aware of the potential negative impact on elderly and disabled households since they do not have a cap on their excess shelter deduction in the Act. Therefore, without the cap on shelter expenses that all other households have, households with elderly or disabled members are more likely to see a greater change in their benefit amounts (both increases and decreases) due to any change in HCSUA methodologies than households without elderly or disabled members. The Department is committed to serving all households, including those with elderly or disabled members who are most affected by changes to SUAs, and will support State agencies' implementation of the final rule as they help households understand any changes to their benefits and are available for questions, as necessary.

Numerous commenters also expressed broader concerns about potential SNAP benefit decreases under this rule. The Department understands the importance of benefit stability for households, but also recognizes that SUAs must reflect low-income household utility costs in order to serve their purpose. SUAs may change as utility costs increase or decrease, and those changes are reflected in the SNAP benefit level. The impact that SUAs have on benefits is important, which is why the SUA NPRM sought to bring more consistency to the SUA process and ensure greater integrity in the data used to calculate them. The Department has made changes in the final rule to allow State agencies more flexibility in developing their SUA methodologies to ensure that they meet households' needs in a more consistent manner. These changes also address commenter concerns regarding the SUA NPRM's impact on SNAP benefit levels. The Department will provide targeted technical assistance to State agencies highlighting the flexibilities provided in this final rule and considerations for minimizing potential negative impacts on households, including the Department's waiver authority.

In addition to concerns regarding SNAP benefit impacts, many commenters expressed concerns that standardizing HCSUA methodologies would remove important, existing flexibility for State agencies to address their residents' unique needs. An advocacy group argued that the existing regulations provide State agencies the

flexibility to accurately address the needs of their residents as energy prices vary by location and reflect differing climates. The commenter added that the new process would remove State specificity in relation to the State's unique circumstances and decrease the overall precision of the HCSUAs. Similarly, a policy advocacy organization argued that States are best positioned to develop and administer their own methodologies and determine appropriate SUA amounts based on their region and climate. A non-profit organization criticized the Department's approach in trying to find data sets that fit all States, and instead suggested allowing individual States to use data sets that would best fit their needs.

In addition to State flexibility concerns, multiple commenters, including two advocacy groups, three legal services organizations, a religious organization, two policy advocacy groups, a trade association, two State government agencies, and local government raised concerns about the data sources the Department proposed using as part of its methodology. Specifically, the commenters questioned: (1) the multi-year lags in the availability of RECS data; (2) the effects of possible recall bias on ACS-based cost estimates; (3) the rationale for using RECS data which, at the time of the proposed rule, used regional averages for some States when there was not enough information to develop a State-level estimate; [10] and (4) why the Department did not consider using utility cost data sourced from State public service commissions. Additionally, commenters requested that the Department codify the proposed methodology in the rule and regulations, rather than providing FNS with the flexibility to change it in the future.

Commenters also expressed concern that State agencies with more accurate data than the sources used in the Department's proposed methodology would not have the opportunity to appeal or submit their methodologies. Multiple commenters wrote that individual State agencies will be able to develop much more accurate utility usage figures from utility provider data in comparison to the proposed standardization methodology. A State government agency commented that the Department should allow State agencies to resubmit their HCSUA base methodology with justification and data to support it. A legal services organization and an advocacy group that opposed using RECS suggested that the Department develop a process for State agencies and the public to appeal or present alternative data in calculating HCSUA values. Similarly, an advocacy group and a State agency criticized the omittance in the proposed rule of any opportunity to provide more accurate State data in lieu of the data sources used by the Department. Finally, a non-profit organization suggested that the Department provide technical assistance to State agencies to determine whether their current HCSUA approach best reflects the needs of their individual State, or if the proposed Department methodology would be a better fit.

Lastly, the Department solicited comments specifically related to the standardization exception made for territories for which ACS and RECS do not collect data. The Department received one comment from an advocacy group that supported this treatment of Guam and the Virgin Islands. Another commenter stated that Puerto Rico is similar to Guam and the Virgin Islands and should therefore also be allowed to use its own SUA methodologies. The Department notes that currently, Puerto Rico does not operate SNAP, so SUA policy does not impact this territory; however, the Department agrees that it would treat all territories subject to SUA policy similarly.

After careful consideration of the comments related to the importance of State flexibility and concerns about the limitations of the Department's proposed standardization methodology, the Department is not finalizing the proposed HCSUA standardization as proposed. The Department agrees that State agencies need flexibility to reflect their households' unique utility needs and that, in some cases, State utility data provides more specific, accurate information to inform HCSUA methodologies. Rather than finalizing the proposed HCSUA standardization, the Department will continue to allow State agencies to set their own HCSUA methodology, subject to FNS approval.

Additionally, the Department understands commenters' concerns regarding the rationale for setting HCSUAs at the 80th percentile and the need for State flexibility in setting HCSUAs. As such, the Department will not require State agencies to set HCSUAs at a specific percentile of low-income households' utility costs in the State.

While the Department will no longer set HCSUA values based on a standardized methodology or specific percentile across all States, the Department maintains the purpose of the SUA NPRM is to improve consistency and data integrity in State SUA calculations, albeit through a different method. The Department maintains that there should be clearer guidelines and requirements for State agencies to follow when developing their HCSUAs to ensure these standards accurately reflect low-income households' utility costs. Therefore, in lieu of the proposed HCSUA methodology standardization, the Department is revising 7 CFR 273.9(d)(6)(iii) to allow States to continue to set their own HCSUAs, while standardizing the data and methodology criteria that FNS will use to approve SUAs. This standardization method includes two requirements.

First, State agencies must submit for FNS approval their HCSUA methodology at least every five years. Methodology submissions must incorporate any revisions necessary to demonstrate that the baseline expenditure data and underlying methodology reflect recent trends and changes. The methodology update must include changes to the baseline expenditure data and an explanation of the State agency's methodology for deriving HCSUAs from such data.

The Department notes that this is in addition to the existing requirement in regulations that State agencies must review their SUAs annually and adjust to reflect changes in costs, such as by using sources like CPI. This annual update to reflect changes in costs refers to interim years between the State agency's full methodology update, when new utility data may not be available yet. The Department is also maintaining the existing regulatory requirement that State agencies must submit their methodologies for FNS approval when the State agency develops or changes its methodology.

This five-year period strikes an appropriate balance between capturing changes to general trends in energy markets and utility prices while minimizing the burden on State agencies or utility providers. The Department considered requiring State agencies to revise and submit their methodologies more often than every five years but deemed the existing annual update requirement sufficient to capture changes in interim years; however, State agencies may update their HCSUA methodology more frequently if they wish.

Similarly, the Department considered a longer period between methodology revisions. A longer period raised concerns about how well State agencies could capture shifts in utility costs and account for trends like changing climate

[10] The Department notes that RECS data is available for all States now.

conditions' impact on energy sources. State agencies unable to source data directly from utility providers are likely to rely on survey data, which can lag behind current conditions by several years. As such, allowing State agencies to update their methodologies every seven to eight years could result in baseline methodologies reflecting conditions that are a decade or more out-of-date. This five-year period requirement ensures that State agencies electing to use survey sources will use more recent ones.

Second, State agencies' methodologies must:

- Reflect the entire State or geographic area the SUA covers;
- Use data sourced from utility providers or similarly reliable source;
- Reflect expenses incurred by low-income households,
- Distinguish if the utility is for heating or cooling, if applicable; and
- Reflect residential utility expenses.

The Department chose these criteria to ensure HCSUAs accurately represent the utility costs of low-income households, including households with higher than average utility costs, in the designated area while providing State agencies additional flexibility in creating their standards. These criteria align with the goals of the data and methodology the Department proposed to use in the SUA NPRM. The Department notes that, for the purposes of these criteria, ''utility providers'' includes any company or organization that supplies or sells a utility allowed under 7 CFR 273.9(d)(6)(ii)(C).

The standardized criteria outlined above will ensure State agencies are developing HCSUAs based in appropriate data to support the values; however, it is important that HCSUAs reflect more than just the average household's costs. SUAs need to also represent households with higher-than-average utility costs since most State agencies mandate the use of SUAs. The final rule is forgoing setting a specific percentile for HCSUAs to provide State agencies with additional flexibility and to avoid mandating significantly lower SUAs. While the NPRM proposed requiring that HCSUAs be set at the 80th percentile, this final rule modifies this approach. Under this final rule, State agencies may set HCSUAs at levels higher than the 80th percentile. State agencies have good reasons to take into account the need to capture utility expenses for the vast majority of households, which requires including those that have higher than average utility costs. This final rule allows states this flexibility. Since most State agencies mandate the use of SUAs, it is important that their values reflect more than just the average household's costs and account for households with significant utility expenses. The Department will provide State agencies with technical assistance and support to assess appropriate distributions of utility costs as part of its methodology review.

In developing or revising their HCSUA methodologies, State agencies may select to use Federal sources to meet these requirements. While the Department is no longer finalizing the use of ACS data, in conjunction with RECS and CEX data, to standardize HCSUAs, the Department maintains that this methodology is acceptable and based on the best currently available, annually-updated national Federal surveys for determining utility expenses for low-income households at the State level. For example, RECS is the only source that validates households' reported energy expenditures with data from their utility providers. It also provides end-use information, which allows for estimation of energy expenses by low-income households with heating and cooling expenses. The Department also notes that ACS is updated annually and based on a very large sample, which makes it valuable for producing representative, recent estimates for every State.

The 2017 SUA Study, as well as a subsequent 2023 study [11] conducted by the Department, found that combining this data with ACS data offsets some of the limitations of each data source with the advantages of the other. While not mandating their use, the Department encourages State agencies without more recent and accurate State-specific data to review and consider using Federal survey data, such as ACS and RECS, to develop their HCSUAs. These sources would be considered ''similarly reliable'' to utility provider data. The Department will publish guidance and provide State agencies with technical assistance in developing their HCSUA methodologies as needed. As part of this technical assistance, FNS will provide factors for State agencies to consider when identifying data sources and establishing methodologies. FNS will also provide examples of approved State agency methodologies for reference. FNS will work with State agencies on a state-by-state basis to address their unique circumstances and review flexibilities that may minimize potential negative impacts on households.

While these criteria allow State agencies more flexibility than the proposed standardization, the Department understands that some commenters were wary of any changes to the current process. A State government agency asked for the Department to simply maintain the current system. A legal services organization wrote that the proposed rule provides insufficient reasons for departure from prior policy in removing States' ability to set their own SUAs. Multiple members of the U.S. Congress, a State government agency, and a professional association commented that the Department did not provide any evidence as to why the proposed rule's standardization approach is preferable to current State agency methodologies. Similarly, an advocacy group stated that by nature of the SUA approval process and methodologies not being public, the Department did not provide any insight into the SUA process and what specific issues the Department has with State agencies' methodologies as a rationale for the proposed rule. A legal services organization asked why the Department has not altered or rejected State agency SUAs, when it has the option to review them, if current methodologies used by State agencies are objectionable.

The Department recognizes the impact of HCSUAs in determining eligibility and benefit amounts and has provided additional information to reiterate the purpose and rationale of the SUA NPRM below. Rather than only adjusting certain State HCSUAs, the Department is making changes through regulations because the Department's concerns with HCSUAs are not specific to any one State agency, and the changes would affect consistency and integrity throughout the program nationwide.

In response to comments asking for additional rationale and clarity on issues with the current SUA methodologies, the Department reexamined State agencies' HCSUA base methodologies. In line with the 2017 SUA Study's findings, discussed above, the Department found several State agencies adjusting a base number annually using an inflation measure such as the CPI Fuels and Utilities index but could not locate the underlying source or methodology behind their base number. Other State agencies submitted methodologies based on old data (ranging from 10–47 years old), did not consider low-income households' utility costs, and/or did not consider end-use for the utility. Only a few State agencies' methodologies used more

[11] Holleyman, Chris, Pratima Damani, and Erick Torres. Updating Standardized State Heating and Cooling Utility Allowance Values. Prepared by SP Group, LLC for the U.S. Department of Agriculture, Food and Nutrition Service, March 2023.

recent data sourced from utility providers, but these often did not account for low-income households' utility costs.

Prior to this rulemaking, the Department has provided State agencies limited information on specific parameters or requirements for calculating data-driven SUA methodologies. As a result, the Department has approved changes to SUA methodologies and annual updates to SUA values based on a variety of methodologies and data sources.

Since some State agencies continue to adjust historic base numbers without an underlying, clear methodology, the Department has growing concerns that some State agencies' data is outdated and may not reflect low-income households' utility costs today. Since the mid-1970s, when the Department first introduced SUAs, household utility usage and composition has changed significantly. For example, the U.S. Energy Information Administration found that energy use per household has declined steadily between 1980–2015, due to improvements in building insulation and materials and improved efficiencies of heating and cooling equipment and other appliances.[12] While there have been improvements to building materials across all homes in the past few decades, households that struggle to pay their energy costs are ''more likely to report their homes are drafty or poorly or not insulated [. . .] than households that did not experience energy insecurity.'' [13] These same energy insecure households, some of which may also receive SNAP benefits given their low-incomes, were billed more for energy than other households in 2020.[14]

Further, residential energy sources have shifted from primarily natural gas in 1970 to electricity in 2020.[15] In this same period, air conditioning has become ''one of the fastest growing energy uses in homes.'' [16] The U.S. Energy Information Administration found that while in 1980, 57 percent of homes used air conditioning, 87 percent of homes used air conditioning in 2015.[17] Factors such as changing climate conditions may continue to shift energy use, the mix of energy sources used by households, and the prices of those energy sources over time. The U.S. Global Change Research Program's Fourth National Climate Assessment notes that ''by 2040, nationwide, residential, and commercial electricity expenditures are projected to increase by six percent to 18 percent under a higher [temperature increase] scenario (RCP8.5), four percent to 15 percent under a lower scenario (RCP4.5), and four percent to 12 percent under an even lower scenario (RCP2.6).'' [18]

These factors and changes confirm that State agencies must review and revise their SUA methodologies as needed to accurately reflect low-income households' utility costs and reflect current trends. Beyond outdated source values, when HCSUA methodologies do not incorporate changes in energy sources, the methodology can under (or over) count the share of different utility expenses in a household's budget. The Department recognizes that providing State agencies broad discretion and allowing HCSUA updates based on outdated methodologies may have embedded inconsistency into the process. Further, the Department understands that while some State agencies have an HCSUA methodology that is outdated, unknown, or unclear, other State agencies have State-specific data sourced from utility providers that is more recent or accurate than the proposed data sources used by FNS.

In acknowledgement of these issues, the Department is finalizing revisions to the HCSUA methodology process, albeit with changes and more State agency flexibility, to recalibrate the process. While the Department is not finalizing the proposed HCSUA standardization provision, the standardized criteria outlined above will ensure more consistency between HCSUA methodologies across the nation.

Since the Department is no longer finalizing HCSUA standardization, this final rule treats territories the same as all other States and does not contain any special rules related to territories.

While the proposed rule included standardized HCSUA language at 7 CFR 273.9(d)(6)(iii)(B)(*1*), the final rule amends the proposed language to remove HCSUA standardization and add methodology requirements and redesignates this section at 7 CFR 273.9(d)(6)(iii)(C) for clarity.

Changes to Current SUA Options

The SUA NPRM proposed to eliminate State agency options to vary SUAs by season, household size, or geographic area as part of the Department's efforts to bring greater consistency across States and in recognition of the low number of State agencies taking these options. Currently, six State agencies vary their SUAs by household size, only Alaska and New York vary by geographical area, and no State agencies adjust their SUAs by season.

Approximately 75 commenters, including individuals, a legal services association, a policy advocacy organization, community organization, and State agencies, expressed opposition to eliminating these options. Commenters shared concerns that removing these flexibilities may cause harm to SNAP recipients by treating all States and localities in the same manner when energy needs, heat sources, climates, and housing types are varied. An individual commenter stated that citizens burdened with paying very high heating and cooling bills in certain regions are more likely to suffer because of a SUA calculation that does not account for regional differences in poverty and climate. Further, a legal services commenter stated that the flexibility allowing State agencies to calculate utility costs and rates is essential for States where heating costs, sources, and housing types vary. A federally-elected official expressed concern that the proposed rule would negatively impact the residents of the official's State, who rely on SNAP benefits calculated using factors specific to their community and costs associated with the disparate regions of their State. Commenters also expressed that removing these options would unduly restrict State agency flexibilities.

Two form letter campaigns noted that the proposal would force a ''one-size-fits-all'' policy for both shelter and utility costs across the country. Several commenters, including multiple advocacy groups, a federally-elected official, and an attorney highlighted specific impacts the proposed rule would have on certain geographic areas. An advocacy group and an attorney said that the proposed rule would harm SNAP participants living in northern

[12] U.S. Energy Information Administration, *Residential Energy Consumption Survey* for indicated years (1980–2015). Retrieved from *https://www.eia.gov/energyexplained/use-of-energy/homes.php* in June 2022.

[13] U.S. Energy Information Administration, *U.S. Energy Insecure Households were Billed More for Energy than Other Households, May 23, 2023. Retrieved from https://www.eia.gov/todayinenergy/detail.php?id=56640 in November 2023.*

[14] Ibid.

[15] U.S. Energy Information Administration, *Monthly Energy Review,* Table 2.2, April 2022, preliminary data for 2021. Retrieved from *https://www.eia.gov/energyexplained/use-of-energy/homes.php* in June 2022.

[16] U.S. Energy Information Administration, *2015 Residential Energy Consumption Survey* in section, ''Electricity Use in Homes.'' Retrieved from *https://www.eia.gov/energyexplained/use-of-energy/electricity-use-in-homes.php* in September 2022.

[17] Ibid.

[18] 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.

and colder states, with specific mentions of Vermont and California. An individual commenter stated that the proposed rule would harm SNAP participants living in southern cities, such as Memphis, Tennessee, where low-income households spend an average of 13.2 percent of their income on energy. The commenter also cited the large energy burdens of other southern cities, including Birmingham, Alabama; Atlanta, Georgia; and New Orleans, Louisiana.

An advocacy group expressed disagreement with the concept in the proposed rule that eliminating State agency options to vary SUAs by season, household size, or geographic areas would bring greater benefit equity across States. Similarly, a policy advocacy organization stated that the Department failed to explain how eliminating an option available to all State agencies (even if only adopted by a few States) improves benefit equity and ignores the potential harm to low-income households in rural areas that need the benefits. Further, an advocacy group stated that incorrectly treating all States' and localities' needs the same causes inequity. After considering the terminology and these comments, the Department maintains the purpose of the SUA NPRM, to improve the integrity and consistency of SUAs, but has decided to use the term ''consistency'' rather than ''benefit equity'' throughout the final rule to be more precise.

As noted above, one of the two State agencies that currently varies its SUAs by geographical areas is Alaska. Program rules grant Alaska and Hawaii additional considerations [19] to account for cost-of-living differences and provide further program flexibilities to Alaska because of its extremely remote geography. The SUA NPRM did not include any exceptions for Alaska and Hawaii. The Department solicited comments on whether additional flexibilities for Alaska and Hawaii should be included in the final rule.

The Department received comments in support of allowing exceptions for Alaska and Hawaii. Alaska State government officials commented explaining how their current SUA calculations use data from utility companies to create region-specific values and that their methodology allows for more accurate SUAs. An advocacy group also expressed surprise that the SUA NPRM did not include special considerations for Alaska and Hawaii. This advocacy group asked if the 2017 SUA Study considered using ACS five-year data to develop SUAs at the sub-State regional level. A policy advocacy organization also stated that it is possible that States like Alaska, Minnesota, Nebraska, South Dakota, Washington, and other States with sizable Tribal populations may want the option to create a separate SUA for households that live on Tribal lands. The commenter suggested Tribes could collect data on the utility costs of their Tribal members living in remote areas, and such an approach might allow State agencies to more adequately reflect the utility costs of Tribal members who participate in SNAP in those areas.

The Department agrees with commenters that some States and localities have unique needs related to energy use, climates, remoteness, and heat sources and may have data to support an HCSUA based on these factors. As described above, the final rule permits State agencies to develop their own SUA methodologies subject to FNS approval, while incorporating data and methodology requirements. To align with that action, the Department will also maintain the option for State agencies to vary SUAs by season, household size, or geographic area, which will address concerns for Alaska and Hawaii in particular. The Department will amend the proposed language at 7 CFR 273.9(d)(6)(iii)(A) to maintain the option for States to vary SUAs based on these factors.

The SUA NPRM proposed changes to additional existing SUA options, one of which was to eliminate the option for State agencies to include the excess heating and cooling costs of public housing residents in the LUA if they wish to offer the lower standard to such households. The SUA NPRM also withdrew the option for State agencies to include the cooling expense in the electricity utility allowance for States where cooling expenses are minimal. Due to the changes proposed for calculating HCSUAs and LUAs, the Department proposed to discontinue these options to ensure all households that incurred heating and cooling costs would be eligible to receive the HCSUA, and not a lower LUA.

A State government supported the clarification that public housing residents who incur heating or cooling costs in States that mandate SUAs would receive the HCSUA. A legal services organization argued that the Department provided insufficient rationale for this change, and an individual commenter alleged that the proposal would harm public housing residents and would enhance institutional discrimination against people with disabilities, low-income seniors, African Americans, Hispanics, Asian-Pacific Islanders, and Native Americans. However, these households would actually receive a higher standard by eliminating this option because HCSUAs encompass full heating and cooling costs, and the Department's position is that all households that incur heating or cooling costs in a State that mandates use of SUAs should be entitled to the HCSUA to ensure consistency across households and States. Therefore, the Department will finalize as proposed, aside from a small technical correction to replace the word ''to'' with ''for'' in the sentence ''[. . .] it must use a standard utility allowance that includes heating and cooling costs to residents of public housing units [. . .].'' While the proposed rule included this provision at 7 CFR 273.9(d)(6)(iii)(E)(*2*), the Department will redesignate this section as 7 CFR 273.9(d)(6)(iii)(G)(*2*).

LUAs and Individual Standards

The Department proposed in the SUA NPRM that State agencies would continue to use their own methodologies to determine LUA and individual standard amounts, if amounts do not exceed maximum limits established by the Department. State agencies would submit their annual LUA and individual standard values to FNS for approval. The proposal would cap LUAs at 70 percent of a State's HCSUA and individual standards at 35 percent of a State's HCSUA. When analyzing the SUA values developed as part of the 2017 SUA Study, the researchers found that most States' individual standards were near 35 percent of their HCSUA. Similarly, most States' LUAs did not exceed 70 percent of their HCSUA. FNS would issue the capped amounts via memo to the State agencies and provide the values publicly on the FNS website.

In FY 2022, only 9.0 percent of households used a LUA or individual standard when determining SNAP eligibility and benefit levels.[20] Although they impact a small portion of SNAP participants, the Department proposed to cap these standards at a percentage of the HCSUA to extend standardization efforts and mitigate future inconsistencies.

Five commenters opposed the proposed cap of LUAs and individual standards. An advocacy group

[19] For example, there are specific gross and net income eligibility limits for Alaska and Hawaii. *See* 7 CFR 273.9(a)(1) and (2).

[20] U.S. Department of Agriculture, Food and Nutrition Service, Office of Policy Support, *Characteristics of Supplemental Nutrition Assistance Program Households: Fiscal Year 2022,* by Mia Monkovic. Project Officer, Aja Weston. Alexandria, VA, 2024.

expressed concern that the cap on LUAs would harm low-income families and disproportionately impact the elderly and persons with disabilities. One advocacy group and a public policy advocacy organization stated that the Department's proposed caps were arbitrary and that the SUA NPRM did not adequately explain the need to cap LUAs. The same public policy advocacy organization and a legal service organization questioned why the Department would standardize the HCSUA methodology but allow State agencies to develop their own LUAs and individual standards. Further, a State government official commented that the 70 percent maximum is too low for their State's LUA and that the cap does not relieve the administrative burden on State agencies.

One commenter, a State agency, proposed an alternative to the proposed cap on LUAs and individual standards. The commenter expressed support for the proposed methodology outlined in the rule since it would result in a higher HCSUA and increase SNAP benefits for 35 percent of recipients in their State. However, the commenter recommended that the Department either change the percentage cap amount, calculate the cap on LUAs based on the total utility costs from the ACS and RECS, or allow State agencies to use their own methodology with Department approval.

Given the revisions to the proposed HCSUA standardization provision, the Department also reevaluated the proposed caps to LUAs and individual standards and whether they align with the purpose of the SUA NPRM to increase SUA consistency and integrity through data-based methodologies. The Department agrees with commenters that State agencies should retain the flexibility to base LUA and individual standard values in data reflective of the utility costs these standards represent rather than uniformly cap them as a percentage of the HCSUA. Retaining this flexibility also maintains consideration of the unique aspects of each State, such as utility composition and trends.

As such, the Department will not finalize the proposed cap for LUAs and individual standards. Instead, State agencies will continue to set their own LUAs and individual standards and submit these figures to the Department annually. Consistent with the revised requirements for HCSUA methodologies, State agencies' must submit for FNS approval their LUA and individual standard methodologies at least every five years. Methodology submissions must incorporate any revisions necessary to demonstrate that the baseline expenditure data and underlying methodology reflect recent trends and changes. Additionally, State agencies' methodologies must:

- Reflect the entire State or geographic area the SUA covers;
- Use data sourced from utility providers or similarly reliable source;
- Reflect expenses incurred by low-income households,
- Distinguish if the utility is for heating or cooling, if applicable; and
- Reflect residential utility expenses.

Like with HCSUA methodologies, the Department chose these criteria to ensure LUAs and individual standards accurately represent the utility costs of low-income households, including households with higher than average utility costs, in the designated area while providing State agencies additional flexibility in creating their standards. The Department will publish guidance and provide State agencies with technical assistance in developing their LUA and individual standard methodologies as needed. As part of this technical assistance, FNS will provide factors for State agencies to consider when identifying data sources and establishing methodologies. FNS will also provide examples of approved methodologies for reference.

The Department amended, combined, and redesignated this provision from the proposed 7 CFR 273.9(d)(6)(iii)(B)(*2*) and (*3*) and finalizes at 7 CFR 273.9(d)(6)(iii)(B) and (C).

Including Basic Internet as an Allowable Shelter Cost and Updating SUAs To Include Basic Internet Costs

In recognition of internet access as a necessity for school, work, and job search, the Department proposed to amend 7 CFR 273.9(d)(6)(ii)(C) to add the cost of basic internet service. The proposed changes would replace the telephone standard (*i.e.,* the individual standard for telephone costs) with a broader telecommunications standard that includes costs for one telephone, basic internet service, or both. The proposed rule would not allow an individual standard for only basic internet service costs, as internet costs could only be part of the new telecommunications standard. The Department proposed to calculate the maximum telecommunications standard amount annually by reviewing nationally available low-cost plans for one telephone line and basic internet access for essential services. Similar to LUAs and individual standards, State agencies would still calculate their own telecommunications figures annually. The Department would review and approve the methodology and final figures, subject to the national cap. The Department estimated that the telecommunications standard cap would be approximately $55 in FY 2020 based on a search of available resources for low-cost carriers.

As proposed, the new telecommunications standard would be available to households with utility costs for one telephone, basic internet service, or both. Households with basic internet and/or telephone costs would either receive the telecommunications standard or use their actual costs, subject to the national cap. For example, households with more than basic internet packages, such as those combined with cable television service, would not be able to count the cost of their entire package. These households would instead either receive the telecommunications standard or have their actual costs of phone and/or basic internet counted, up to the amount of the standard, depending on the option the State agency selects. Additionally, State agencies would be allowed to include the telecommunications costs as part of their LUA so long as the telecommunications share of the LUA would not exceed the amount set for the telecommunications standard.

Approximately 15 commenters supported the proposed update to the telephone standard. Multiple commenters, including advocacy groups, a policy advocacy organization, multiple State government agencies, a religious organization, and a trade association, agreed with the Department's argument that internet is an essential service. Additional commenters, including an advocacy group, a legal services organization, a policy advocacy organization, and State government agencies generally supported updating the telephone standard to include internet services.

Two advocacy groups and a legal services organization also commented that the estimated $55 telecommunications standard cap is too low. One recommended creating a separate internet standard from the telephone standard rather than a combined telecommunications standard, and others argued the cap should be set at the 80th or 95th percentile. A food bank and a legal services organization argued that the explanation for how the Department developed the $55 cap was insufficient. A State agency recommended that State agencies should have the option to either accept the maximum limit established for the telecommunications standard or to use their own methodology, as approved by the Department.

An advocacy group shared alternatives to the Department's proposed telecommunications standard methodology, including comments on which expenses should be allowable as a deduction. The commenter argued that FNS should allow modem rentals, costs of hardware, and subscription costs as allowable expenses and that State agencies should be able to choose whether to offer a standalone internet individual standard, a combined telecommunications standard, or both, depending on their States' needs.

The Department appreciates commenters who supported and confirmed the importance of including basic internet costs as an allowable shelter cost. The Department agrees that this change is critical, as the internet plays a pivotal role in Americans' daily lives, regardless of income level, and is a necessary expense in a household's budget. High-speed internet is a necessary utility for school, work, and job searches. As such, the final rule allows the costs for basic internet service as an allowable shelter cost.

The Department also appreciates the suggestions for alternative ways of allowing basic internet costs. The Department agrees with commenters that allowing State agencies to set a basic internet individual standard, instead of a combined telecommunications standard, is better aligned with how the Department treats other individual standards. For instance, under current rules, State agencies may offer all other utilities (including telephone) as individual standards but may only combine them when using HCSUAs and LUAs. Therefore, the final rule allows State agencies to develop a basic internet individual standard, independent from the telephone standard, rather than as part of a telecommunications standard. Under the final rule, State agencies have the option to develop their own methodology for the basic internet individual standard, similar to other individual standards, rather than abiding by a national maximum amount proposed by the Department in the SUA NPRM. State agencies that choose this option will calculate their basic internet individual standards each fiscal year and submit them to FNS for approval, similar to other LUAs and individual standards.

State agencies may also include basic internet costs in their LUAs and HCSUAs. Rather than FNS incorporating a capped telecommunications standard into a standardized HCSUA as proposed, the final rule allows State agencies to incorporate basic internet costs in their HCSUA methodologies in line with how other utility expenses are reflected in the HCSUA.

Consistent with the revised requirements for other SUA methodologies, including individual standards like telephone, State agencies must submit for FNS approval their basic internet individual standard methodology at least every five years. Methodology submissions must incorporate any revisions necessary to demonstrate that the baseline expenditure data and underlying methodology reflect recent trends and changes. Additionally, State agencies' methodologies must:

- Reflect the entire State or geographic area the SUA covers;
- Use data sourced from utility providers or similarly reliable source;
- Reflect expenses incurred by low-income households,
- Distinguish if the utility is for heating or cooling, if applicable; and
- Reflect residential utility expenses.

Like with HCSUA methodologies, the Department chose these criteria to ensure basic internet individual standards accurately represent the utility costs of low-income households, including households with higher than average utility costs, in the designated area while providing State agencies additional flexibility in creating their standards. the Department will publish guidance and provide State agencies with technical assistance in developing their basic internet methodology as needed. As part of this technical assistance, FNS will provide factors for State agencies to consider when identifying data sources and establishing methodologies. FNS will also provide examples of approvable methodologies for reference.

In determining which costs to include in the basic internet individual standard, the Department agrees with commenters on the need to create consistency across similar utilities, such as telephone. Program rules at 7 CFR 273.9(d)(6)(ii)(C) include the following allowable costs for telephone: all service fees required to provide service for one telephone, including, but not limited to, basic service fees, wire maintenance fees, subscriber line charges, relay center surcharges, 911 fees, and taxes; and fees charged by the utility provider for initial installation of the utility. One-time deposits cannot be included.

Therefore, the Department is finalizing the following costs as part of the basic internet individual standard: all service fees required to provide households with basic internet service, including but not limited to, monthly subscriber fees for a basic internet connection (*i.e.* the base rate paid by the household each month in order to receive service, which may include high-speed internet); taxes and fees charged to the household by the provider that recur on monthly bills; and the cost of one modem rental.

The Department believes the abovementioned allowable costs are consistent with the costs allowed for the telephone individual standard. The Department also notes that if a household does not pay any of its internet costs, including because those costs are paid in full by a program similar to, for example, the Lifeline program or the former Affordable Connectivity Program, then the household would not qualify for the basic internet individual standard.

These changes, including the change to the basic internet individual standard calculation and allowable costs are finalized by amending the proposed 7 CFR 273.9(d)(6)(ii)(C); amending the proposed 7 CFR 273.9(d)(6)(iii)(A)(*3*); amending and redesignating the proposed 7 CFR 273.9(d)(6)(iii)(B)(*3*) as 7 CFR 273.9(d)(6)(iii)(B); and adding methodology requirements at 7 CFR 273.9(d)(6)(iii)(C).

Compliance Dates for Implementing SUA NPRM Changes

The Department expects State agencies to need time to review their current SUA methodologies and make updates to align with the new requirements. Similarly, the Department will need time to review State agencies' methodologies and work with each State agency to ensure they meet the new requirements. As such, the compliance date for SUA changes is October 1, 2025. The Department encourages State agencies to implement changes at the beginning of the Federal fiscal year to minimize disruption to SNAP households since State agencies typically make changes to SUAs and Cost of Living Adjustments at this time. The Department will provide State agencies with technical assistance to revise and receive approval for SUA methodologies in advance of the compliance date, including information on State flexibilities to ensure that SUAs meet households' needs while also aligning with the data available on low-income household utility costs in a more consistent manner.

Background and Summary of Comments on the April 20, 2016, (LIHEAP) NPRM

In addition to the changes to HCSUA methodologies and SUA options, the final rule will also update 7 CFR 273.9(d)(6)(iii)(C). These changes

finalize revisions for how Low-Income Home Energy Assistance Program (LIHEAP) payments are considered to confer eligibility for the HCSUA. This update is consistent with requirements included in the Agricultural Act of 2014 (Pub. L. 113–79).

Section 4006 of the Agricultural Act of 2014 amended requirements for how payments issued under the Low-Income Home Energy Assistance Act (LIHEAA), as amended, confer HCSUAs to households. These changes require that State agencies confer the HCSUA to households receiving a payment, or on behalf of which payments were made, under LIHEAA or other similar energy assistance program, only when the payment is greater than $20 annually and received in either the current month or in the immediately preceding 12 months. The changes were effective with the enactment of the Agricultural Act of 2014, and State agencies were required to begin implementation on March 10, 2014. The Department published an implementation memo,[21] ''Supplemental Nutrition Assistance Program—Section 4006 Agricultural Act of 2014—Implementing Memorandum,'' on March 5, 2014, instructing State agencies to implement the change.

To make the corresponding update to SNAP regulations, the LIHEAP NPRM titled ''Supplemental Nutrition Assistance Program: Standard Utility Allowances Based on the Receipt of Energy Assistance Payments Under the Agricultural Act of 2014,'' was published on April 20, 2016, and proposed updates to 7 CFR 273.9(d)(6)(iii)(C). The Department received a total of nine comments on the LIHEAP NPRM from five advocate groups, two legal services organizations, and two nonprofit organizations. The comments were generally favorable of the proposed provisions, while also providing helpful feedback for consideration in developing the final provisions in this rule. Six commenters in particular were supportive of the rule overall. Several of these commenters noted the real and helpful impact of conferring the HCSUA to eligible LIHEAP receiving households. A more detailed discussion of the comments regarding the NPRM and the changes made in the final rule follows below.

[21] U.S. Department of Agriculture, Food and Nutrition Service, *Supplemental Nutrition Assistance Program—Section 4006 Agricultural Act of 2014—Implementing Memorandum,* 5 March 2014. Retrieved from: *https://www.fns.usda.gov/snap/eligibility/deduction/liheap-implementation-memo* in September 2022.

Agricultural Act of 2014 Changes

For the purposes of the HCSUA, receipt of a LIHEAP payment serves as a proxy for State agencies to determine if a household incurs heating or cooling utility costs. Before the enactment of the Agricultural Act of 2014, section 5(e)(6)(C)(iv) of the Act provided that all households receiving a LIHEAP payment or all households on behalf of which a LIHEAP payment was made automatically qualified for the HCSUA, regardless of the amount of the LIHEAP payment. Some State agencies used this policy to maximize use of the HCSUA by issuing a nominal LIHEAP payment (generally around $1) to all SNAP households. Receipt of the nominal payment allowed the household to receive the HCSUA, even when the household would not have otherwise qualified for the HCSUA because they did not pay for heating or cooling.

The Agricultural Act of 2014 amended section 5(e)(6)(C)(iv)(I) of the Act to adjust how the HCSUA is applied to households receiving LIHEAP payments. The amendment altered this process by requiring State agencies to make the HCSUA available to households that received a payment (or households on behalf of which a payment was made), in the current month or in the immediately preceding 12 months, that was greater than $20 annually under the LIHEAA, or other similar energy assistance program. These requirements were effective March 10, 2014. As a result, the current regulations at 7 CFR 273.9(d)(6)(iii)(C) must be updated to reflect the Agricultural Act of 2014 changes.

As in the LIHEAP NPRM, in this discussion, the phrase ''qualifying LIHEAP or other payment'' refers to those LIHEAP or other similar energy assistance program payments that are in excess of $20 annually and have been received by or made on behalf of the household in the current or immediately preceding 12 months.

Other Similar Energy Assistance Programs

In the LIHEAP NPRM, the Department proposed that the statutory term ''other similar energy assistance program'' be defined as a separate home energy assistance program designed to provide heating or cooling assistance through a payment directly to or on behalf of low-income households. Three commenters supported the proposed standard for what constitutes an ''other similar energy assistance program.'' The proposed definition is adopted as final in this rule.

One of those three commenters suggested adding this definition in the general definitions section at 7 CFR 271.2. Although the Department appreciates the suggestion, 7 CFR 271.2 contains more general definitions relevant to the program overall, instead of issue-specific areas such as this one. For example, Low Income Home Energy Assistance Act of 1981 (LIHEAA) is referenced at the standard utility allowance section of the regulations at 7 CFR 273.9 but not 7 CFR 271.2. As a result, the Department did not add the definition to the general definitions section at 7 CFR 271.2 in this final rule.

The above commenter also asked that the Department provide examples of other similar energy assistance programs and include payments from housing authorities to individually billed tenants, State fuel funds, and State analogues to LIHEAP. The Department believes other similar energy assistance programs could include (but are not limited to) certain State-only funded programs designed to assist households with heating or cooling expenses (separate from a household's rent or mortgage), home energy bills, weatherization (see below for additional discussion on weatherization payments) or energy-related minor home repairs. The Department did not add examples of specific energy assistance programs to the regulatory language because those programs may change in the future and may no longer meet the definition of an ''other similar energy assistance program.'' The Department notes that, in general, State agencies should evaluate a potentially eligible program on a case-by-case basis. To ensure consistency and fairness across the caseload, State agencies must establish clear and reasonable standards for evaluating whether a program constitutes a similar energy assistance program.

Finally, this commenter agreed with the Department's proposal to allow people living in public housing, not just private housing, and billed individually for heating and cooling costs to qualify for the HCSUA. However, the commenter argued that the utility allowances that individuals in public housing receive either as a rent reduction or a cancellation of their cash rental obligation and a partial rebate are energy assistance similar to LIHEAP. This commenter also suggested that the entire amount of the allowance is energy assistance, not just the smaller (or zero) amount that the household receives as a rebate after the housing authority nets out the household's rental obligation.

Although the Department appreciates this comment, the Department notes that section 5(e)(6)(C)(ii)(II) of the Act

prohibits the use of an HCSUA for households that incur a heating or cooling expense but live in public housing that has central utility meters and charges households only for excess utility costs. The prohibition does not apply in States that have mandated the use of SUAs, per section 5(e)(6)(C)(iii)(III) of the Act. Therefore, the Department proposed at 7 CFR 273.9(d)(6)(iii)(C)(*1*)(*ii*) that households in public housing units with central utility meters and who are charged only for excess heating or cooling costs are not entitled to a standard that includes heating or cooling costs, unless the State agency mandates the use of SUAs in accordance with the proposed paragraph 7 CFR 273.9(d)(6)(iii)(E). This provision is adopted as proposed but redesignated at 7 CFR 273.9(d)(6)(iii)(D)(*2*).

The definition of an ''other similar energy assistance program'' is designed to provide parameters but also give State agencies flexibility to determine what constitutes a potentially eligible program within the confines of this definition. The Department maintains that the definition provided in the final rule sufficiently addresses the concerns noted by the commenter.

Current Month

The Agricultural Act of 2014 included a requirement at sec. 5(e)(6)(C)(iv)(I) of the Act that households receive an energy assistance payment in the ''current month'' or the immediately preceding 12 months in order to qualify for the HCSUA. The Department proposed to define ''current month'' to refer strictly to the calendar month, meaning from the first to the final day of a given month.

One commenter encouraged the Department to use a broader interpretation of ''current month'' to mean the first full calendar month of the certification period. Another commenter believed the proposed definition of ''current month'' is too restrictive and suggested the Department allow payments made within SNAP's 30-day processing period to confer eligibility.

The Department appreciates the commenters' concerns; however, the Agricultural Act of 2014 revised the Act to prohibit State agencies from anticipating receipt of a LIHEAP or other qualifying payment to confer a household's eligibility for the HCSUA. The changes allow a household to be eligible for the HCSUA if it receives the qualifying payment in the current month or immediately preceding 12 months. In the LIHEAP NPRM, the Department proposed that the HCSUA may be applied only if the household is scheduled to receive a payment in the current calendar month to allow for some flexibility within the timeline set in the Act. The proposed definition of ''current month'' balances flexibility with the need to adhere to the timeline in the statutory text. For these reasons, the Department adopts this provision as proposed in the final rule.

Moving Households

In the LIHEAP NPRM, the Department indicated that State agencies using HCSUAs would provide the standard to households who receive a qualifying LIHEAP or other payment, regardless of any change in the household's residence or address. One commenter suggested that the Department incorporate this clarification into final regulatory text. The Department agrees this change promotes consistency across States and is making this revision to the regulations at 7 CFR 273.9(d)(6)(iii)(D)(*3*).

One commenter supported the proposal that if a State agency has an indication that a household received a qualifying LIHEAP payment in another State, the State agency should act on this information. The Department reiterates that if, at the time of certification, the State agency has an indication that a household received a qualifying LIHEAP or other payment in another State, the new State agency should pursue clarification. Procedures regarding acting on changes after certification are already contained in 7 CFR 273.12 of the regulations, and the Department did not make any changes to these existing requirements in the final rule.

Overissuance

Section 4006 of the Agricultural Act of 2014 no longer allows a State agency to use an HCSUA in determining eligibility and benefit amount for a household that does not otherwise incur heating or cooling costs based on the State agency's expectation that the household would receive a qualifying LIHEAP or other payment in future months. The Department proposed to only allow the HCSUA to be applied to a household's case based on anticipated receipt if the payment is scheduled to be received within the current calendar month. This allows State agencies the option to consider a qualifying LIHEAP or other payment received by the household for the purposes of conferring HCSUA eligibility, so long as the payment is scheduled in the current month. If the anticipated payment is not received within that month, benefits received by the household would be considered an overissuance and the State agency may be required to pursue a claim against the household.

The Department received adverse comments on this provision. One commenter stated the language regarding claims is confusing and inappropriate. Another commenter suggested removing claims language for overissuance from the regulatory text since State agencies are already responsible for determining overissuances. Another commenter believed that the overpayments language suggests a lapse or delay in a payment itself triggers an overpayment and suggested deleting this language and indicating that State agencies must follow overpayment regulations at 7 CFR 273.18.

The Department agrees that 7 CFR 273.18 already requires State agencies to collect overissuances and the proposed language is unnecessary and potentially confusing. Therefore, the Department revised 7 CFR 273.9(d)(6)(iii)(C)(*1*)(*iii*) in the final rule to remove the reference to claims to avoid such confusion. State agencies will be expected to pursue claims in these circumstances under existing regulations at 7 CFR 273.18. State agencies are already aware of the procedures and requirements regarding the establishment of a claim against a household for any benefits issued in error under 7 CFR 273.18. Additionally, the Department has redesignated the proposed 7 CFR 273.9(d)(6)(iii)(C)(*1*)(*iii*) as 7 CFR 273.9(d)(6)(D)(*3*).

Proration

The Department proposed to revise language at 7 CFR 273.10(d)(6) to reflect the requirement in section 5(e)(6)(C)(iv)(IV) of the Act that assistance under LIHEAA be considered prorated over the heating or cooling season for which the assistance was provided. One commenter believed that the rule should reflect that a payment need not actually be paid during the preceding 12 months, so long as one of those months was in the heating season for which a LIHEAP payment was made and the prorated amount of the grant exceeded $20.

The Act requires the receipt of a qualifying LIHEAP or other program payment in the current month or immediately preceding 12 months that was greater than $20 annually. State agencies are also expected to prorate LIHEAP payments over an entire heating or cooling season. As the commenter suggested, because State agencies must prorate LIHEAP payments over a season, each month covered by the proration could be used to confer eligibility for the HCSUA based on the receipt of a LIHEAP

payment. For example, if a household receives a $150 LIHEAP payment in October 2021, intended for the heating season in that State (from October through February), the State agency would consider the payment prorated to $30 per month from October 2021 through February 2022. If the household applies for SNAP in January 2023, the household would be eligible for the HCSUA based on the receipt of LIHEAP payment in the immediately preceding 12 months.

Furthermore, the Act does not restrict proration to only one heating or cooling season as the amount could qualify the household for the HCSUA for multiple seasons. For example, if an existing SNAP household received a $200 LIHEAP payment in October 2021, the household could use the LIHEAP payment to qualify for the HCSUA from October 2021 through February 2022, as well as from October 2022 through February 2023 since the household received the payment within the immediately preceding 12 months. In summary, the household's receipt of a $200 LIHEAP payment in October 2021 could effectively make the household eligible for the HCSUA from October 2021 through February 2023.

As such, it is reasonable that a household could be eligible for the HCSUA in more than one heating or cooling season, based on the receipt of one LIHEAP payment. In order to clarify this, the final rule revises the regulatory text at 7 CFR 273.10(d)(6) to specify that a prorated qualifying LIHEAP may qualify an individual or household for the HCSUA in more than one heating or cooling season, so long as the payment was received within the last 12 months or the proration period covered at least one month in the preceding 12 months.

The Department would also like to note that while the LIHEAP NPRM preamble correctly stated that the statutory requirement to prorate over the entire heating or cooling season only applied to assistance provided under LIHEAA, this was not clearly reflected in the proposed amendatory language. The final amended 7 CFR 273.10(d)(6) will reflect this specification.

Quantifiable

As the Act requires LIHEAP or other payments to exceed $20 in order to confer HCSUA eligibility, these payments must be quantifiable in order to exceed this established threshold. The Department proposed that State agencies must be able to quantify, in dollars, the amount of the payment for purposes of granting the HCSUA.

Two commenters supported the Department's proposed definition of ''quantifiable.'' One commenter said the rule should be amended to make clear that the provider of the energy assistance may provide the assistance in the form of an in-kind benefit which may not have a precise value and the State agency may rely on estimates to determine if the $20 threshold has been exceeded (for example, if a household receives firewood or coal).

The Department appreciates the concern that some households may receive assistance in the form of in-kind items as opposed to receiving a payment from LIHEAP or similar assistance programs. Organizations may provide households with home heating oil, firewood, or coal, and other goods which vary based on geographic area. The Act does not specify that the payment be cash, and the Department agrees that State agencies may include in-kind assistance as a qualifying LIHEAP or other payment for purposes of conferring the HCSUA. The State agency must be reasonably able to quantify that the amount of this assistance exceeds the $20 threshold. State agencies must develop workable, reasonable procedures to determine how in-kind assistance would be quantified, including how to reasonably estimate the value of those goods, and must apply those procedures consistently and fairly across the caseload. The Department revises the regulations at proposed 7 CFR 273.9(d)(6)(iii)(C)(*1*)(*iii*) and redesignates this section to 7 CFR 273.9(d)(6)(iii)(D)(*3*), as described above, to incorporate this change.

Split Households

The Department proposed that if a household that received a qualifying LIHEAP or other payment subsequently splits into two SNAP households, State agencies must determine which household is eligible for the HCSUA. The Department maintained the State agency is in the best situation to determine which household would receive the HCSUA based on the qualifying LIHEAP or other payment. The State's chosen policy would need to be applied in a consistent and equitable way. The Department proposed to revise 7 CFR 273.9(d)(6)(iii)(C) to incorporate these standards.

Commenters expressed concern that the regulatory language in the LIHEAP NPRM provided too much State discretion and could have error-prone results. For example, one commenter argued that because there are so many ways for a household to divide, State agencies will find it difficult to apply the policy consistently, which could lead to quality control errors. This commenter, in addition to others, suggested that the fairest and most administratively straightforward way to apply this policy is to make the HCSUA available to any member who lived in a household that received a qualifying LIHEAP payment in the prior 12 months.

Due to concerns that the proposed regulatory language could lead to inconsistent application and be unfair for households, the Department is revising the regulations at proposed 7 CFR 273.9(d)(6)(iii)(C)(*1*)(*iii*) (redesignated at 7 CFR 273.9(d)(6)(iii)(D)(*3*) in this final rule). The Department is making this change to require State agencies that elect to use the HCSUA to grant the HCSUA to a household in which a member: (1) previously received a qualifying LIHEAP payment as part of different household, or (2) was previously a member of a different household on which behalf a LIHEAP payment was made. While these individuals no longer reside in the same household, they did receive a qualifying payment in the preceding 12 months, and therefore are eligible for the HCSUA under the Act. This procedure will allow for consistent treatment of all impacted SNAP households.

Actions on Changes

The Department explained in the LIHEAP NPRM preamble that if a SNAP household subsequently receives a qualifying LIHEAP or other payment after certification, or if one is made on the household's behalf during the certification period, the State agency must take action according to the rules of their chosen reporting system under 7 CFR 273.12.

One commenter requested that the Department add this language to the regulatory text. This commenter explained that it is not clear that receipt of LIHEAP should be known to the State agency and acted on during a certification period without further action from the household. While the Department appreciates this feedback, provisions regarding reporting and State agency actions on changes, including unclear information, are addressed in 7 CFR 273.12, and this rulemaking will not affect those provisions. Specifying the applicability of the 7 CFR 273.12 procedures to enumerated issues may cause confusion. The provision is finalized as proposed.

Verification

Under Federal rules, households applying for SNAP do not need to provide verification for utility costs unless questionable, if the household is claiming expenses in excess of the

State's HCSUA, or in accordance with a State-specific verification requirement. Similarly, the Department proposed that receipt of more than $20 in qualifying LIHEAP or other payments would not require verification for SNAP purposes unless questionable.

Two commenters commended the Department for codifying that LIHEAP or similar energy assistance payments do not need to be verified for SNAP unless questionable. One of those commenters also said when a State agency learns of a payment from an energy assistance provider, the information should be verified upon receipt and the State agency should immediately change the benefit level. That commenter also believes State agencies should be encouraged to develop regular automated data feeds from energy assistance providers. Similarly, three commenters requested clarification regarding the treatment of payments received after certification and asked the Department to work with States to develop best practices for prompt re-budgeting.

The Department appreciates these comments. Federal requirements at 7 CFR 273.2(f)(1)(iii) provide that utility costs must be verified only if questionable, if the household is claiming expenses in excess of the State's SUA, or in accordance with a State-specific verification requirement. State agencies establish standards for what is questionable. For purposes of LIHEAP payments, when the information is received directly from an energy assistance provider by the State agency, there is no Federal requirement for the State agency to request additional information from the household unless it is considered questionable. In limited situations, a household's receipt of a LIHEAP payment may be considered questionable, and the State agency could require a household to provide verification, for example, if the household has moved. The existing regulations at 7 CFR 273.12(c) provide State agency requirements for processing changes. Note that although the regulations only require State agencies to verify utility information if it is questionable, State agencies have the option under 7 CFR 273.2(f)(3) to choose to verify utility costs even if not questionable. If a State agency chooses to verify non-questionable utility costs, the State agency must ensure that procedures are consistent across the caseload.

For the reasons stated above, the Department is finalizing this provision as proposed.

Tracking

The Department proposed that State agencies would be responsible for tracking the date of receipt of the qualifying LIHEAP or other similar energy assistance payment to ensure the requirements are met. At 7 CFR 273.9(d)(6)(iii)(C)(*1*)(*iii*), the Department proposed that the State agency must document the date of receipt of a payment made under LIHEAA or other similar energy assistance program to ensure the payment was received in the current month or the immediately preceding 12 months and exceeded $20 annually. Five commenters found the use of the term ''document'' confusing as it could be interpreted as ''verification''. They also requested clarification that the documentation requirement is the responsibility of State agencies, not the household.

The Department proposed to use the term ''document'' in the regulatory text instead of the term ''verify'' intentionally. Regardless of the State agency's choice on verification when the information is not questionable, the State agency must document in the case file the date of receipt of a qualifying payment. This will ensure the payment was received in the current month or the immediately preceding 12 months and exceeded $20 annually. State agencies have the discretion to follow whatever procedure works best for them to ensure that they accurately document this information in the case file beyond the general requirement that the State agency document the receipt of payment. This provision is finalized as proposed in the redesignated 7 CFR 273.9(d)(6)(iii)(D)(*3*)(*iii*).

Data Sharing Agreements

In the LIHEAP NPRM, the Department encouraged State agencies to modify data sharing agreements with their respective LIHEAP agencies, as appropriate, to ensure transmission of timely and accurate information needed for SNAP eligibility and benefit determinations. One commenter recommended that the final rule should include safeguards to ensure that State agencies have data sharing agreements with LIHEAP administrative agencies.

While the Department appreciates this suggestion, the Department declines to finalize this requirement. The Agricultural Act of 2014 does not require State agencies to enter into data sharing agreements with LIHEAP administrative agencies and requiring such agreements in regulation may be unwieldy. Nevertheless, the Department believes these agreements could be highly beneficial for both the State agencies and the LIHEAP agencies. Such agreements could establish standard operating procedures, expectations, and other details that would help ensure both parties are clear on the terms of the relationship. The Department encourages States to enter into data sharing agreements when possible. States should modify their data sharing agreements with their respective LIHEAP agencies as appropriate to ensure transmission of timely and accurate information needed for SNAP eligibility and benefit determination.

Weatherization

Because the Act requires that the LIHEAP or other payment must have been received by or made on behalf of a household, the Department proposed that weatherization payments paid to a landlord cannot confer eligibility for the HCSUA. The Department declined to confer eligibility for the HCSUA for households within a multi-family dwelling when the multi-family dwelling receives weatherization project funding. The Department explained that the Act does not explicitly address how State agencies should evaluate LIHEAP funds that are used to pay for weatherization projects in multi-family dwellings and noted that a June 15, 1999, Information Memorandum [22] issued by the Department of Health and Human Services (HHS), which oversees LIHEAP at the Federal level, found that weatherization of multi-unit buildings ''is not a benefit provided to an individual, household or family eligibility unit.'' [23] The Department requested comments on this issue and potential alternative approaches.

Three commenters responded to the Department's request for feedback on this issue. One commenter believed receipt of weatherization assistance from a LIHEAP or other similar energy assistance program should automatically confer the HCSUA to a household. Two commenters encouraged the Department to allow multi-unit weatherization projects to make all SNAP households within the multi-unit dwelling eligible for HCSUA. To do so, these commenters suggested that State agencies could divide the total value of a weatherization payment (or in-kind service, per the discussion

[22] U.S. Department of Health & Human Services. *LIHEAP IM 1999–10 on Federal Public Benefits Under the Welfare Reform Law—Revised Guidance,* June 15, 1999. Retrieved from *https://www.acf.hhs.gov/ocs/policy-guidance/liheap-im-1999-10-federal-public-benefits-under-welfare-reform-law-revised* in July 2022.

[23] HHS has since confirmed that this guidance was issued exclusively for a different purpose and requested its removal from consideration. See preamble language for additional information.

above on quantifiable benefits) by the number of units in the multi-unit dwelling to determine the payment received on behalf of each household. One of these commenters argued that prohibiting weatherization payments from conferring the HCSUA to households living in multi-family dwellings would unfairly exclude these households since LIHEAP funds often pay for weatherization programs.

The Department concurs with commenters that while the determination may be more difficult for multi-family dwellings, weatherization payments paid to a landlord could be considered a payment made on behalf of the household depending on the circumstances. The Department agrees that all households that receive a LIHEAP or other similar energy assistance program payment that meets the statutory requirements to confer HCSUA eligibility should be treated similarly. Further, HHS has since confirmed that its June 15, 1999, Information Memorandum was issued exclusively to assist in the application of rules under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and requested that the Department remove it from consideration in determining whether weatherization payments for multi-unit buildings can be considered a payment made ''on behalf of a household.'' As such, the Department is revising its position on weatherization payments and confirms that a household is eligible for the HCSUA if the household lives in a multi-unit dwelling or an individual unit and receives a qualifying weatherization program payment.

However, the Department maintains that prescribing how weatherization payments are divided among households in a multi-unit dwelling when they are paid directly to a building manager or contractor would be administratively burdensome and restrictive. While two commenters suggested a method for how State agencies could quantify multi-unit dwelling weatherization payments for each household within that dwelling, the Department understands that State SNAP agencies may have different access to weatherization funding information depending on the structure of the State, data sharing agreements, and eligibility systems. Further, the Department establishing a methodology could hinder State agencies from using more workable solutions based on the information they have access to or require other State agencies to establish complicated processes to meet this lone requirement.

Therefore, the Department is providing State agencies flexibility to determine the method for assessing whether a weatherization payment was received by (or on behalf of the household), in the current month or in the immediately preceding 12 months, and that the payment was greater than $20 annually, as required by the Act. State agencies must develop workable, reasonable procedures to determine how multi-unit dwelling weatherization payments would be quantified for households and must apply those procedures consistently and fairly across the caseload. The revised language is found at 7 CFR 273.9(d)(6)(iii)(D)(*3*)(*vii*).

Procedural Matters

Executive Order 12866, 13563, and 14094

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 14094 of April 6, 2023, focuses on modernizing regulatory review and updates the definition of a significant regulation.

This final rule has been determined to be significant under section 3(f)(1) of Executive Order (E.O.) 12866, as amended by E.O 14094, and was reviewed by OMB in conformance with Executive Order 12866.

Regulatory Impact Analysis

The Department estimates the total increase in Federal SNAP benefit spending associated with the SUA provisions of the final rule to be approximately $5.4 billion over the five-year period FY 2025–FY 2029. This represents an increase in Federal transfers (SNAP benefits). Effects on Federal transfers are expected to begin in FY 2025. Effects on Federal costs are expected to begin in FY 2025 and are estimated to be approximately $612,000 over the 5-year period FY 2025–FY 2029. Effects on State administrative costs are expected to begin in FY 2025 and are estimated to be approximately $561,000 over the five-year period. The final rule will not affect household burden.

The Department estimates that approximately 29 percent of SNAP households will see an average 6 percent increase in their monthly SNAP benefit ($15 per month, per household) and 5 percent of SNAP households will see an average 2.6 percent reduction their monthly SNAP benefit ($7 per month, per household). A very small number of households (less than 0.01 percent of all SNAP households) are estimated to lose benefits as a result of the final rule, losing an average of $30 in monthly benefits. The remaining 66 percent of households will see no change to their SNAP benefit. The rule is also expected to result in an increase in ongoing administrative burden for most State SNAP agencies.[24]

Regarding the LIHEAP provisions, the Department notes that States were required by statute to implement the Agricultural Act of 2014's change related to LIHEAP immediately for any household whose initial certification period began on or after March 10, 2014. Therefore, any reduction in transfers related to the LIHEAP provisions of this final rule is assumed to be fully incorporated into the current SNAP baseline.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, it has been certified that this rule would not have a significant impact on a substantial number of small entities.

The final rule primarily impacts SNAP households. Small entities, such as smaller SNAP-authorized retailers, would not be subject to any new requirement. On average, nationwide, SNAP retailers would likely see an increase in the amount of SNAP benefits redeemed at stores under this final rule as the final rule is expected to increase transfers (SNAP benefit spending) by 1.3 percent. As of FY 2022, approximately 76 percent of authorized SNAP retailers (about 195,700 retailers) were small groceries, convenience stores, combination grocery stores, and specialty stores, store types that are likely to fall under the Small Business Administration gross sales threshold to qualify as a small business for Federal Government programs. While these stores make up most authorized

[24] This rule will increase the existing burden currently approved (OMB Control Number 0584–0496; Expiration Date 7/31/2026).

retailers, collectively they redeem about 12 percent of all SNAP benefits.

Amongst States, 43 States are expected to experience a net increase in SNAP benefit as a result of the final rule, ranging from 0.1 percent to 3.4 percent. In these States, small retailers may experience a small increase in sales. The remaining 10 States are expected to see a net decrease, ranging from −0.4 percent to −1.8 percent, in total SNAP benefits because of the final rule. These States are: Maine, Massachusetts, New Hampshire, New Jersey, New York, North Dakota, Ohio, Rhode Island, South Dakota, and Vermont. Of the total 195,700 authorized SNAP retailers that likely qualify as a small business, 17 percent are located in these 10 States. They account for 16 percent of redemptions among likely small, authorized SNAP retailers.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs has determined that this rule meets the criteria set forth in 5 U.S.C. 804(2).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, or Tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This final rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and Tribal governments or the private sector of $100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

SNAP is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule codified in 7 CFR part 3015, subpart V, and a final rule related notice (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132.

The Department has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. Therefore, under section 6(b) of the Executive order, a federalism summary is not required.

Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

The Department has reviewed the final rule in accordance with the Department Regulation 4300–004, ''Civil Rights Impact Analysis'' (CRIA), to identify and address any major civil rights impacts the final rule might have on SNAP participants by gender, race, and ethnicity, as well as impacts on children, the elderly, and persons with disabilities. The final rule allows State agencies to continue to set their own SUA methodologies, subject to FNS approval. State agencies must submit for FNS approval their SUA methodologies at least every five years. Methodology submissions must incorporate any revisions necessary to demonstrate that the baseline expenditure data and underlying methodology reflect recent trends and changes. State agencies' methodologies must also meet certain criteria. The final rule also expands allowable shelter expenses to include basic internet costs. Finally, the final rule finalizes updates to the treatment of LIHEAP payments, in accordance with the Agricultural Act of 2014 (2014 Farm Bill).

The Department ran a simulation using FY 2022 SNAP Quality Control data to estimate how the final rule would impact SNAP participants by gender, race, and ethnicity, as well as impacts on children, the elderly, and persons with disabilities. SNAP participants identified as female are slightly more likely to both gain and lose benefits than SNAP participants identified as male. Households with children are slightly less likely to gain or lose benefits than all households. Households headed by a non-Hispanic White individual or Asian individual are more likely to lose benefits under the final rule. Households headed by an Asian individual are also slightly more likely to gain benefits compared to all households. Households headed by a non-Hispanic Black individual are slightly less likely to gain benefits compared to all households. Among households expected to lose benefits under the final rule, households headed by an Asian or Hispanic individual are expected to experience a larger average benefit loss. Additionally, households with elderly individuals or individuals with disabilities are more likely to lose or gain benefits due to finalized changes to SUAs because these households are not subject to the cap on the allowable excess shelter deduction. Thus, these households with elderly individuals and individuals with disabilities are more likely to be impacted by changes to the HCSUA. The mitigation and outreach strategies outlined in the regulation and this CRIA are intended to minimize the impacts on the protected groups.

Finally, households that previously qualified for the HCSUA based on receipt of a LIHEAP payment of less than $20 without actual costs experienced a benefit change due to the provisions contained in 2014 Farm Bill. Due to the unavailability of data on the specific individuals impacted by the LIHEAP provision within the final rule, the Department is unable to determine whether this change had an adverse or disproportionate impact on SNAP participants who are members of protected classes.

Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative

comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

This rule has potential Tribal implications. FNS provided an opportunity for consultation on this issue on October 30, 2020. One question was received and answered on the impact of the proposed changes State-by-State and no additional requests for consultation were received. If further consultation on the provisions of this final rule is requested, the Office of Tribal Relations will work with FNS to ensure quality consultation is provided.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35) requires OMB to approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number.

In accordance with the Paperwork Reduction Act of 1995, this final rule contains information collections that are subject to review and approval by the Office of Management and Budget. The Department solicited public comments in the respective NPRMs that were incorporated into this final rulemaking regarding changes in the information collection burden that would result from the finalization of changes in the rule. The respective NPRMs were proposed on October 3, 2019, ''Supplemental Nutrition Assistance Program: Standardization of State Heating and Cooling Standard Utility Allowances'' (RIN 0584–AE69); and on April 20, 2016, ''Supplemental Nutrition Assistance Program: Standard Utility Allowances Based on the Receipt of Energy Assistance Payments Under the Agricultural Act of 2014'' (RIN 0584–AE43). The Department will refer to the October 3, 2019, NPRM as the SUA NPRM and the April 20, 2016, NPRM as the LIHEAP NPRM. The LIHEAP NPRM finalized by this rulemaking does not have associated burden under the Paperwork Reduction Act.

These changes are contingent upon OMB approval under the Paperwork Reduction Act of 1995. Once the information collection request is approved by OMB, the agency will publish a separate notice in the **Federal Register** announcing OMB approval.

Due to the timeline of the SUA NPRM, the Department had initially requested a new information collection (designated by OMB as Control Number 0584–0651). However, there are no longer conflicts with the 0584–0496 revision timeline given changes to the final rule publication date. Therefore, instead of creating a new information collection, the Department is revising the existing information collection (0584–0496) to reflect State agencies updating SUA baseline methodology at least every five years; State agencies using contractors to support updates to SUA baseline methodology; and State agencies establishing a basic internet individual standard.

Title: Supplemental Nutrition Assistance Program (SNAP): State Agency Options for Standard Utility Allowances and Self-Employment Income.

OMB Number: 0584–0496.

Form Number: None.

Expiration Date: Previously approved through July 31, 2026.

Type of Request: Revision.

Abstract: Section 5 of the Food and Nutrition Act of 2008 (FNA), as amended, permits States to use standard utility allowances (SUAs) in lieu of actual utility expenses in determining a household's shelter costs for the purposes of the excess shelter deduction. This final rule revises SNAP regulations for calculating standard utility allowances and expands allowable shelter expenses to include basic internet costs.

Commenters on the proposed rule explained that portions of the proposed rule would not decrease or may increase State agency burden. The Department agrees and is including additional burden to account for changes in policy in the final rule, such as State agencies updating SUA methodology to align with criteria in the final rule and State agencies establishing SUAs including basic internet costs. The final rule also adjusts the estimates for updating and reporting on SUAs to reflect changes in the approved information collection during the 2023 revision of this information collection (OMB Control number: 0584–0496; Expiration Date 7/31/2026).

The Department is revising the existing information collection covering State agency reporting and recordkeeping for on SUAs (OMB Control Number: 0584–0496, Expiration Date 7/31/2026) to reflect changes from the final rule. There are no new or revised recordkeeping burden or third-party disclosure requirements.

This rule also finalizes the updates to the treatment of Low-Income Home Energy Assistance Program (LIHEAP) payments in accordance with amendments made to the FNA by the Agricultural Act of 2014. These changes do not have associated burden under the Paperwork Reduction Act and are not reflected in this section.

PRA-Related Comments on Proposed Rule

Following publication of the SUA NPRM, the Department received comments directly on the estimated cost and burden hours and comments related to the underlying proposed program changes. As a result, the Department has made changes to the estimated burden in the final rule. Two State agencies agreed that the proposal for FNS to standardize and calculate the Heating and Cooling Standard Utility Allowance (HCSUA) would reduce the State administrative burden associated with determining values and reporting to FNS. However, most comments asserted that State agencies would experience more administrative burden than reflected in the proposed rule.

Multiple commenters, representing two State agencies, a city government, a congressional office and six advocacy organizations, argued that due to the lower HCSUA because of the proposed rule, some State agencies would switch from using a mandatory HCSUA to a voluntary HCSUA. The commenters explained that these State agencies would have an increase in administrative burden due to calculating households' actual heating and cooling costs. Since the final rule does not require State agencies adopt a lower HCSUA and instead allows State agencies to continue calculating their own HCSUAs, subject to FNS approval, the Department does not expect State agencies will switch from using a mandatory HCSUA to a voluntary HCSUA.

A State agency and a non-profit organization commented that the proposed standardization of the HCSUA and proposed caps on LUAs would do little to relieve administrative burden on State agencies. The commenters argued that State agencies will still be required to calculate LUAs and that much of the data used to calculate LUAs are from the same sources that are used to calculate the HCSUA. The final rule requires State agencies to continue calculating all SUAs, including the HCSUA, LUAs and individual standards. Therefore, the Department increased the burden for State agencies to annually update SUAs.

A State agency and a county government suggested that State agencies and counties will incur administrative costs for policy and system automation changes required to implement the proposed rule. The

Department agreed and added start-up burden for each State agency to account for the hours they will spend establishing SUAs that include the cost of basic internet. The Department also considered the burden households may newly experience when reporting on applications or in interviews whether they incur internet costs and verifying costs if the State agency uses voluntary SUAs and the applicant wishes to claim actual expenses in excess of the State SUA. Similarly, State agencies will have burden associated with requesting such information. The Department maintains this burden is already included in OMB-approved ICR 0584–0064 (exp. 6/30/2027), which accounts for the burden on households and State agencies associated with the SNAP application process. This information collection includes burden for applications, interviews, and verification. Therefore, the Department is not including additional household or State burden related to these activities in this information collection.

Additionally, one advocacy organization expressed opposition to the proposed information collection due to their general opposition to the proposed rule. The commenter explained that they think the administrative burden component is irrelevant compared to the potential negative impact on families losing benefits under the proposed rule. The Department believes that the changes in the final rule, which give States more flexibility to reflect their households' unique utility needs, address the commenter's broad concerns.

Beyond specific comments on the information collection and administrative burden, other comments impact the total burden under the final rule. Commenters to the NPRM expressed concerns about the data sources the Department intends to use to calculate HCSUA values. In response to these and other comments, the Department is not finalizing the proposed HCSUA methodology standardization. Instead, the Department is providing State agencies with the flexibility to continue setting their own SUAs while standardizing the data and methodology criteria that FNS will use to approve SUAs. State agencies submit for FNS approval their SUA methodologies at least every five years. Methodology submissions must incorporate any revisions necessary to demonstrate that the baseline expenditure data and underlying methodology reflect recent trends and changes. The methodology update must include changes to the baseline expenditure data and an explanation of the State agency's methodology for deriving HCSUAs from such data. The Department added to the burden to reflect burden hours incurred by State agencies revising their SUA methodologies every five years. Additionally, given the methodology criteria, the Department assumes that some State agencies will choose to solicit contractor support to identify data sources and revise SUA methodologies. The Department added to the burden to reflect the time to solicit, award, and oversee such contracts, as well as the estimated cost of the contracts.

Changes to Burden Estimates in the Final Rule

In this revision, the Department differentiates between annual burden, burden incurred every five (5) years due to rule provisions, and start-up burden for implementing rule provisions. For the first year of implementation of the final rule, the reporting burden will include the annual burden, burden incurred every five (5) years, and start-up burden. The Department estimates the total first year reporting burden will be 6,680 total annual burden hours and 275 total annual responses from 53 State agencies. For subsequent years, the burden will only include annual burden and one-fifth (⅕) of the burden incurred every five (5) years. The Department estimates the subsequent year reporting burden will be 2,118 total burden hours and approximately 133 total annual responses from 53 State agencies. The Department estimates that the total recordkeeping annual burden will be 13.25 total burden hours and 53 annual responses from 53 State agencies.

In the proposed rule information collection request, the Department estimated that State agencies that accept the FNS-calculated HCSUA value would spend one (1) hour per State to update their existing LUAs and individual standards and respond to this data collection. The final rule requires that State agencies continue making annual updates to all SUAs, including the HCSUA, instead of accepting an FNS-calculated value. Therefore, the Department now estimates that all 53 State agencies will submit two (2) responses, at ten (10) hours each to update their SUAs annually. This includes burden to update SUAs based on the consumer price index (CPI) or similar sources, correspond with FNS, and update systems and policy materials.

Compared to the prior revision, this represents a decrease of 2.5 hours because the burden for updating SUA baseline methodology is now accounted for separately, as discussed below. In alignment with the prior revision, the burden now includes two responses to account for State agencies' review of their preliminary SUA amounts and their final SUA amounts. The estimated total burden for this provision is 1,060 hours (53 State agencies × 2 SUA requests per State agency × 10 hours per request = 1,060 hours).

In addition to annual updates, the Department estimates that given the requirements of the final rule to update SUA baseline methodology, in the first year and every five (5) years thereafter, all 53 State agencies will submit two (2) responses at 40 hours each. This includes burden to gather and analyze data sources, calculate SUAs, and submit revisions to SUA methodology to FNS. This includes two (2) responses to account for State agencies' review of their preliminary methodology and their final methodology. This estimate is based on the Department's recent experience evaluating annual SUA updates and providing technical assistance to State agencies, with additional time for State agencies to ensure data sources and methodology meet the criteria in the final rule. The estimated total burden for this provision is 4,240 hours (53 State agencies × 2 SUA methodology updates per State agency × 40 hours per request = 4,240 hours). Since the Department estimates State agencies will incur this burden every five (5) years, the average annual burden is 848 hours (4,240 hours/5 years = 848 hours annually).

The Department estimates that in the first year and every five (5) years thereafter, five (5) State agencies will solicit contractor support to make required updates to SUA baseline methodology. This estimate assumes that approximately one-fifth to one-quarter of the State agencies FNS identified as likely to make substantial revisions to their HCSUA methodology will solicit contractor support. Based on prior review of State agency SUA submissions, the Department assumes most State agencies will perform updates internally, but some may seek contractor support. The Department estimates that each State agency will spend approximately 160 hours soliciting, awarding, and managing such contracts and spend approximately $100,000 on such contracts. These estimates are based on the Department's experience with previous Federal and State agency contracts for data analysis. The estimated total burden for this provision is 800 hours (5 State agencies × 1 contract per State agency × 160 hours per request = 800 hours). Since the Department estimates State agencies

will incur this burden every five (5) years, the average annual burden is 160 hours (800 hours/5 years = 160 hours annually).

Additionally, there will be start-up responses for establishing SUAs covering basic internet costs. The Department estimates that in the first year all 53 States will submit one (1) response at ten hours each to establish a basic internet individual standard and HCSUA or LUAs covering basic internet costs. The includes the burden to gather and analyze internet data sources and to build the ability to use the basic internet individual standard into their systems and processes. The estimated total burden for this provision is 530 hours (53 State agencies × 1 response per State agency × 10 hours per request = 530 hours).

This rule also finalizes updates proposed on April 30, 2016, to the treatment of Low-Income Home Energy Assistance Program (LIHEAP) payments, in accordance with amendments made to the FNA by the Agricultural Act of 2014. These changes do not have associated burden under the Paperwork Reduction Act.

In addition to the program changes related to the final rule, this information collection also covers the burden of State agency methodologies for determining the cost of doing business in self-employment cases. Current data indicates 23 out of 53 State agencies have already incorporated a self-employment methodology. For this revision, the Department continues to estimate that five (5) State agencies will establish a new methodology for offsetting the cost of producing self-employment income, either for the first time or as an update to their current methodology. This estimate is consistent with the estimate in the most recent approval of this information collection, approved 7/7/2023. The Department has received few updates to State agencies' self-employment methodologies over the last five years, so five (5) States represents the high end of the estimate. The Department estimates that each of these five (5) responses will have a response time of 10 hours, for a total annual burden of 50 hours (5 State agencies × 1 request per State agency × 10 working hours per request = 50 hours). This burden estimate is consistent with the prior revision of this information collection.

Recordkeeping Burden

All 53 State agencies are required to keep and maintain one record of the information gathered and submitted to FNS for SUA and self-employment options, and the Department estimates this process takes 15 minutes (or 0.25 hours) per year. The total annual burden for this provision is estimated at 13.25 hours (53 State agencies × 1 record per State agency × 0.25 hours = 13.25 hours). This burden estimate is consistent with the prior submission for this activity.

There are no new recordkeeping or third-party disclosure requirements resulting from the final rule, and there have been no other changes to this recordkeeping requirement since the Department last consulted with State agencies on the estimate.

The full burden estimates are shown in the chart below:

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FNS SNAP SUA ICR Reporting Estimate (OMB Control No. 0584-0496)														
	Regulation	**Type of Respondent**	**Description of Activity**	**Number of Respondents**	**Frequency of Response**	**Total Annual Responses**	**Hours Per Response**	**Annual Burden (hours)**	**Hourly Wage Rate ($)**	**Total Annual Cost of Respondent Burden ($)**	**Previously Approved Burden Hours**	**Difference Due to Adjustments**	**Difference Due to Program Change**	**Total Difference in Burden Hours**
A	**B**	**C**	**D**	**E**	**F**	**G = E x F**	**H**	**I = G x H**	**J**	**K = I x J**	**L**	**M**	**N = I - L**	**O = M +N**
Annual	7 CFR 273.11(b)(3)	State/Local/ Tribal Government	Review of Self-Employment Methodology	5.00	1.00	5.00	10.00	50.00	26.67	1,333.33	50.00	0.00	0.00	0.00
	7 CFR 273.9(d)(6)(iii)(B)	State/Local/ Tribal Government	Update SUA for Annual Change in Cost	53.00	2.00	106.00	10.00	1,060.00	26.67	28,266.49	1,325.00	0.00	-265.00	-265.00
Every 5 Years	7 CFR 273.9(d)(6)(iii)(C)	State/Local/ Tribal Government	Update SUA Baseline Methodology	53.00	2.00	106.00	40.00	4240.00	26.67	113,065.96	0.00	0.00	4,240.00	4,240.00
	7 CFR 273.9(d)(6)(iii)(C)	State/Local/ Tribal Government	Solicit and manage contract for updating SUA baseline methodology	5.00	1.00	5.00	160.00	800.00	26.67	21,333.20	0.00	0.00	800.00	800.00
Start-Up	7 CFR 273.9(d)(6)(iii)(B)	State/Local/ Tribal Government	Establish SUAs including basic internet	53.00	1.00	53.00	10.00	530.00	26.67	14,133.25	0.00	0.00	530.00	530.00
Total Reporting Burden - First Year (Includes Start-Up)				**53.00**	**5.19**	**275.00**	**24.29**	**6,680.00**	$26.67	**$29,599.82**	**1,375.00**	**0.00**	**5,305.00**	**5,305.00**
Total Reporting Burden - Subsequent Years				**53.00**	**2.51**	**133.20**	**15.90**	**2,118.00**	$26.67	**$55,146.32**	**1,375.00**	**0.00**	**743.00**	**743.00**

FNS SNAP SUA ICR Recordkeeping Estimate (OMB Control No. 0584-0496)													
Regulation	**Type of Respondent**	**Description of Activity**	**Number of Respondents**	**Frequency of Response**	**Total Annual Responses**	**Hours Per Response**	**Annual Burden (hours)**	**Hourly Wage Rate**	**Total Annual Cost of Respondent Burden**	**Previously Approved Burden Hours**	**Difference Due to an Adjustment**	**Difference Due to Program Change**	**Total Difference in Burden Hours**
A	**B**	**C**	**E**	**F**	**G = E x F**	**H**	**I = G x H**	**J**	**K = I x J**	**L**	**M = I - L**	**N**	**O = M + N**
7 CFR 273.11(b)(3) and 273.9(d)(6)(iii)(B)	State/Local/ Tribal Government	Recordkeeping Requirements	53.00	1.00	53.00	0.25	13.25	$ 26.67	$ 353.33	13.25	0.00	0.00	0.00

Estimated Number of Respondents: 53 State Agencies.

Estimated Frequency of Response: 5.19 (first year), 2.51 (subsequent years).

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Estimated Total Annual Responses: 275 (first year), 133.20 (subsequent years).

Estimated Time per Response: 24.29 hours (first year), 15.90 hours (subsequent years).

Estimated Total Annual Burden Hours: 6,680 (first year), 2,118 (subsequent years).

E-Government Act Compliance

The Department is committed to complying with the E-Government Act, 2002, 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.

List of Subjects in 7 CFR Part 273

Administrative practice and procedure, Claims, Employment, Food stamps, Fraud, Government employees, Grant programs—social programs, Supplemental Security Income, Wages.

Accordingly, 7 CFR part 273 is amended as follows:

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

■ 1. The authority citation for part 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

■ 2. In § 273.9, revise paragraphs (d)(6)(ii)(C) and (d)(6)(iii) to read as follows:

§ 273.9 Income and deductions.

* * * * *

(d) * * *

(6) * * *

(ii) * * *

(C) The cost of fuel for heating; cooling (*i.e.,* the operation of air conditioning systems or room air conditioners); electricity or fuel used for purposes other than heating or cooling; water; sewerage; well installation and maintenance; septic tank system installation and maintenance; garbage and trash collection; all service fees required to provide service for one telephone, including, but not limited to, basic service fees, wire maintenance fees, subscriber line charges, relay center surcharges, 911 fees, and taxes; service fees associated with basic internet connection, including, but not limited to, monthly subscriber fees (*i.e.,* the base rate paid by the household each month in order to receive service, which may include high-speed internet), taxes and fees charged to the household by the provider that recur on monthly bills, and the cost of one modem rental; and fees charged by the utility provider for initial installation of the utility. One-time deposits cannot be included.

* * * * *

(iii) *Standard utility allowances.* (A) A State agency may use standard utility allowances (standards) in place of actual costs in determining a household's excess shelter deduction. The State agency may use different types of standards but cannot allow households the use of two standards that include the same expense. The State agency may vary the standards by factors such as household size, geographical area, or season. Only utility costs identified in paragraph (d)(6)(ii)(C) of this section may be used in developing standards described in paragraphs (d)(6)(iii)(A)(*1*) through (*3*) of this section. The following standards are allowable:

(*1*) An individual standard for each type of utility expense;

(*2*) A standard utility allowance for all utilities that includes heating or cooling costs (HCSUA); and

(*3*) A limited utility allowance (LUA) that includes electricity and fuel for purposes other than heating or cooling, water, sewerage, well and septic tank installation and maintenance, and garbage or trash collection. The LUA may also include telephone and/or internet costs. The LUA must include expenses for at least two utilities.

(B) The State agency must review the standards annually and make adjustments to reflect changes in costs, rounded to the nearest whole dollar. State agencies must provide the amounts of standards to FNS annually and submit methodologies to FNS for approval when the methodologies are developed or changed.

(C) The State agency must submit for FNS approval their methodologies at least every five years. Methodology submissions must incorporate any revisions necessary to demonstrate that the baseline expenditure data and underlying methodology reflect recent trends and changes. State agencies' methodologies must:

(*1*) Reflect the entire State or geographic area the SUA covers;

(*2*) Use data sourced from utility providers or similarly reliable source;

(*3*) Reflect expenses incurred by low-income households;

(*4*) Distinguish if the utility is for heating or cooling, if applicable; and

(*5*) Reflect residential utility expenses.

(D) A standard with a heating or cooling component must be made available to the following households:

(*1*) Households that incur heating or cooling expenses separately from their rent or mortgage;

(*2*) Households in rental housing who are billed by their landlords on the basis of individual usage or who are charged a flat rate separately from their rent. However, households in public housing units which have central utility meters and which charge households only for excess heating or cooling costs are not entitled to a standard that includes heating or cooling costs based only on the charge for excess usage, unless the State agency mandates the use of standard utility allowances in accordance with paragraph (d)(6)(iii)(G) of this section; and

(*3*) Households that receive a payment or on behalf of which a payment was made under the Low Income Home Energy Assistance Act of 1981 (LIHEAA) or other similar energy assistance program, if in the current month or in the immediately preceding 12 months and such payment was greater than $20 annually.

(*i*) Other similar energy assistance programs are separate home energy assistance programs designed to provide heating or cooling assistance through a payment received by or made on behalf of low-income households. State agencies must establish clear and reasonable standards for evaluating whether a program constitutes a similar energy assistance program.

(*ii*) A payment received by a household or made on behalf of a household under LIHEAA or other similar energy assistance program must be quantifiable in order to confer eligibility for the heating and cooling standard utility allowance. A quantifiable payment is one that the State agency quantifies, in dollars. In-kind energy assistance, such as firewood or coal, may be considered an other similar energy assistance program payment if the State agency establishes reasonable procedures for quantifying the payment in a manner that is applied consistently across the caseload.

(*iii*) The State agency shall document the date and receipt of a payment made under LIHEAA or other similar energy assistance program to ensure the payment was received in the current month or the immediately preceding 12 months and exceeds $20 annually.

(*iv*) State agencies shall not consider anticipated receipt of a payment to be an actual payment received under the LIHEAA or other similar energy assistance program when determining a household's eligibility for the HCSUA. However, for purposes of this sub clause, a State agency may consider a payment under the LIHEAA or other similar energy assistance program to be received by the household, or on behalf of the household, if the household is scheduled to receive the payment in the current month.

(*v*) In a case where a payment is scheduled to be received in the current month and the payment is not actually made within that month, the State agency is responsible for determining whether an overissuance has occurred.

(*vi*) A State agency must grant the HCSUA to individuals who received a qualifying LIHEAP or other payment, regardless of changes in residence or address. Individuals who live in a household that received a qualifying LIHEAP or other payment who subsequently move into a separate household are entitled to receive the HCSUA in their new, separate households.

(*vii*) A household is eligible for the HCSUA if the household lives in a multi-unit dwelling or individual unit and receives a qualifying weatherization program payment. State agencies must develop workable, reasonable procedures to determine how multi-unit dwelling weatherization payments would be quantified for households and must apply those procedures consistently and fairly across the caseload.

(E) A household that has both an occupied home and an unoccupied home is only entitled to one standard.

(F) At initial certification, recertification, and when a household moves, the household may choose between a standard or verified actual utility costs for any allowable expense identified in paragraph (d)(6)(ii)(C) of this section, unless the State agency has opted, with FNS approval, to mandate use of a standard. Households certified for 24 months may also choose to switch between a standard and actual costs at the time of the mandatory interim contact required by § 273.10(f)(1) if the State agency has not mandated use of the standard.

(G)(*1*) A State agency may mandate use of standard utility allowances for all households with qualifying expenses if the State uses one or more standards that include the costs of heating and cooling and one or more standards approved by FNS that do not include the costs of heating and cooling, and the standards will not result in increased program costs. The prohibition on increasing program costs does not apply to necessary increases to standards resulting from utility cost increases.

(*2*) If the State agency chooses to mandate use of standard utility allowances, it must use a standard utility allowance that includes heating or cooling costs for residents of public housing units which have central utility meters and which charge the households only for excess heating or cooling costs. The State agency also must not prorate a standard utility allowance that includes heating or cooling costs provided to a household that lives and shares heating or cooling expenses with others.

(*3*) In a State that chooses this option, households entitled to the standard may not claim actual expenses, even if the expenses are higher than the standard. Households not entitled to the standard may claim actual allowable expenses.

(H) If a household lives with and shares heating or cooling expenses with another individual, another household, or both, the State agency shall not prorate the standard for such households if the State agency mandates use of standard utility allowances in accordance with paragraph (d)(6)(iii)(G) of this section. The State agency may not prorate the SUA if all the individuals who share utility expenses but are not in the SNAP household are excluded from the household only because they are ineligible.

■ 3. In § 273.10, revise paragraph (d)(6) to read as follows:

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(d) * * *

(6) *Energy assistance payments.* The State agency shall prorate energy assistance payments as provided for in § 273.9(d) over the entire heating or cooling season the payment is intended to cover. Any such prorated energy assistance payments may qualify an individual or household for the HCSUA in more than one heating or cooling season.

* * * * *

Tameka Owens,

Acting Administrator and Assistant Administrator, Food and Nutrition Service.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix A—Regulatory Impact Analysis

I. Statement of Need

The United States Department of Agriculture (the Department) is finalizing this rule, which revises Supplemental Nutrition Assistance Program (SNAP) regulations to expand allowable shelter expenses to include basic internet costs and establish clearer guidelines and requirements for State agencies to follow when developing standard utility allowances (SUAs) to ensure consistency and integrity in the application of SUAs across the country. While the Department is not finalizing the proposed rule's provision standardizing the methodology for calculating SUAs nor establishing a percentile at which they must be calculated, the Department maintains that clearer requirements will improve consistency and integrity in the program, which the Department believes is good governance. This rule also finalizes updates to the treatment of Low-Income Home Energy Assistance Program (LIHEAP) payments or other similar energy assistance program payments, in accordance with amendments made to the Food and Nutrition Act of 2008 by the Agricultural Act of 2014.

Without consistent parameters for SUA methodologies and the data used to calculate SUAs, the Department is concerned that information State agencies use to determine SUAs is outdated and may not reflect low-income households' current utility costs. In a 2017 study, ''Methods to Standardize State Standard Utility Allowances'' (Holleyman, et al., 2017) (referred to in this analysis as the 2017 SUA Study), the Department found differences in how well State heating and cooling standard utility allowance (HCSUA) values reflected data on utility expenditures among low-income households in each State. These findings persisted in a 2023 update, ''Updating Standardized State Heating and Cooling Utility Allowance Values'' (Holleyman, et al., 2023) (referred to in this analysis as the 2023 SUA Study). Establishing clearer requirements for how States should use data to establish SUAs is important to ensure SUAs are aligned with current household conditions and that the application of the excess shelter deduction reflects household circumstances and, ultimately, the appropriateness of the benefit level.

II. Summary of Impacts

The Department estimates the total increase in Federal SNAP benefit spending associated with the SUA provisions of the final rule to be approximately $5.4 billion over the five-year period FY 2025–FY 2029, averaging $1.1 billion per year. This represents a 1.34 percent increase in Federal transfers (SNAP benefits) upon full implementation. Effects on Federal transfers are expected to begin in FY 2025. Effects on Federal costs are expected to begin in FY 2025 and are estimated to be approximately $612,000 over the 5-year period FY 2025–FY 2029, averaging about $122,000 annually. Effects on State administrative costs are expected to begin in FY 2025 and are estimated to be approximately $561,000 over the five-year period (an increase of less than 0.01 percent from baseline projections), averaging $112,000 annually.

The Department estimates that approximately 29 percent of SNAP households will see an average 6 percent increase in their monthly SNAP benefit (averaging $15 per month, per household) and 5 percent of SNAP households will see an average 2.6 percent reduction their monthly SNAP benefit (averaging $7 per month, per household). Benefit increases are primarily due to the inclusion of internet service as an allowable shelter expense in SUAs. In addition, a small share of households will experience a benefit gain due to increases in some States' HCSUA values due to new data quality standards and periodic methodology reviews, particularly in States that have not updated their HCSUA methodologies or underlying data in recent

years. Benefit losses are due to expected decreases in some States' HCSUA values due to new data quality standards and periodic methodology reviews, particularly in States that have not updated their HCSUA methodologies or underlying data in recent years. The remaining 66 percent of households will see no change to their SNAP benefit. A very small number of households (less than 0.01 percent of all SNAP households) are estimated to lose benefits as a result of the final rule, losing an average of $30 in monthly benefits. The rule is also expected to result in an increase in ongoing administrative burden for most State SNAP agencies.[1] The final rule will not affect household burden.

The final rule's effects are summarized in the following table (Table 1). Increases in SNAP benefit payments are categorized as transfers in the accounting statement (Table 2); increases in administrative burden for States are categorized as costs; and Federal costs to administer the provisions of the final rule are categorized as Federal costs. Regarding the LIHEAP provisions of the final rule, which finalize how LIHEAP payments are considered to confer eligibility for the HCSUA, the Department notes that States were required by statute to implement the Agricultural Act of 2014's change related to LIHEAP immediately for any household whose initial certification period began on or after March 10, 2014. For households that were already certified for SNAP, States had some flexibility in determining when to implement this change but were required to implement no later than August 1, 2015, for most households. Thus, reductions in transfers related to the LIHEAP provisions of this final rule are assumed to be fully incorporated into the current SNAP baseline, as noted in Table 1, and therefore are not included in the accounting statement of transfer effects in Table 2. This analysis focuses on effects over the five-year period FY 2025–FY 2029. Ten-year estimates are available in Appendix Table A.

BILLING CODE 3410–30–P

[1] This rule will increase the existing burden currently approved (OMB Control Number 0584–0496; Expiration Date: July 31, 2026).

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As required by OMB Circular A–4, in Table 2 below, the Department has prepared an accounting statement showing the annualized estimates of benefits, costs, and

Table 1: Summary of Federal Budget Impacts, FY 2025-2029

In Millions of Dollars	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	FY 2025- FY 2029 Total
Transfers - SNAP benefit spending						
Establish guidelines for States' SUA Updates	$0	-$293	-$297	-$301	-$304	-$1,195
Allow basic internet as a shelter expense	$37	$1,604	$1,625	$1,643	$1,661	$6,571
Total Estimated Transfer Impacts[1]	**$37**	**$1,311**	**$1,328**	**$1,343**	**$1,357**	**$5,378**
LIHEAP Provisions[2]	-$427	-$425	-$431	-$436	-$441	**-$2,160**
Discounted Transfer Impact						
3 percent	$36	$1,235	$1,215	$1,193	$1,171	$4,850
7 percent	$34	$1,145	$1,084	$1,024	$968	$4,255
Federal and State Administrative Costs						
State Administrative Costs - Implementation	$0.41	$0.00	$0.00	$0.00	$0.00	$0.41
State Administrative Costs - Ongoing	$0.03	$0.03	$0.03	$0.03	$0.03	$0.15
Federal Costs	$0.49	$0.03	$0.03	$0.03	$0.03	$0.61
Total Estimated Federal and State Costs	**$1.44**	**$0.06**	**$0.06**	**$0.06**	**$0.06**	**$1.17**
Discounted Cost Impact						
3 percent	$0.88	$0.05	$0.05	$0.05	$0.05	$1.08
7 percent	$0.84	$0.05	$0.05	$0.04	$0.04	$1.02

1. Excludes impacts of LIHEAP provision for reasons explained in footnote 2.
2. Because these provisions were implemented shortly after passage of the 2014 Farm Bill, this reduction in transfers is fully captured in the SNAP baseline and not included in the Total Estimated Impacts line.
Note – Figures may not sum due to rounding. Estimates are nominal and include projected inflation in SNAP spending.

transfers associated with the provisions of this rule. Increases in SNAP benefit payments are categorized as transfers; increases in administrative burden for State agencies, households, and the Federal Government are categorized as costs.

Table 2: Accounting Statement

	Primary Estimate	Year Dollar	Discount Rate	Period Covered
Benefits – Qualitative: The final rule will help improve consistency and data integrity in State SUA calculations, while providing State agencies flexibility in creating their standards. Additionally, it will ensure SUAs account for internet costs, in recognition of the vital role internet access plays in households' economic well-being.				
Annualized Monetized ($millions/year)	N/A	2024	--	FY 2025-2029
Costs – This final rule will result in a small one-time burden for State agencies to establish SUAs that incorporate internet expenses. It will result in a periodic (every 5 years) burden for State agencies to update their HCSUA methodologies and data, and for the Federal government to review State agencies' methodology and data submissions. The Federal government will incur 50 percent of the cost related to increases in State agency burden.				
Annualized Monetized ($millions/year)	$0.24	2024	3%	FY 2025-2029
	$0.25	2024	7%	FY 2025-2029
Transfers – This final rule will increase the net amount of benefit payments to SNAP participants.				
Annualized Monetized ($millions/year)[1]	$1,059	2024	3%	FY 2025-2029
	$1,038	2024	7%	FY 2025-2029
Annualized Monetized ($millions/year)[2]	$627	2024	3%	FY 2025-2029
	$606	2024	7%	FY 2025-2029

[1]Estimates exclude impacts of LIHEAP provision (comparing against with-statute baseline).
[2]Estimates include impacts of LIHEAP provision (comparing against without-statute baseline).

In the discussion that follows, there is a section-by-section description of the impacts of each rule provision.

III. Proposed Rule and Comments Received

This final rule incorporates provisions originally proposed in two separate notices of proposed rulemaking (NPRM): The October 3, 2019, NPRM titled ''Supplemental Nutrition Assistance Program: Standardization of State Heating and Cooling Standard Utility Allowances'' (84 FR 52809), and the April 20, 2016, NPRM titled ''Supplemental Nutrition Assistance Program: Standard Utility Allowances Based on the Receipt of Energy Assistance Payments'' (81 FR 23189). While originally published as separate NPRMs, the provisions contained in these rules both relate to calculating household shelter expenses, and therefore the Department is combining the provisions from each rule into a single final rule. For clarity, provisions included in the October 3, 2019, proposed rule are referred to throughout this analysis as SUA NPRM provisions. Provisions included in the April 20, 2016, proposed rule are referred to as LIHEAP NPRM provisions.

The Department received over 125,000 public comment submissions on the SUA NPRM. Of these, approximately 6,500 were unique and nearly 118,800 were associated with form letter campaigns. Comments on the SUA NPRM came from a broad range of stakeholders, including State SNAP agencies, elected officials, local governments, advocacy groups, religious organizations, food banks, legal services organizations, private citizens, and others. The Department received nine comments on the LIHEAP NPRM from advocate groups, legal services organizations, and nonprofit organizations.

A. Comments Related to Impacts of SUA NPRM

While most comments received were related to provisions of the proposed rule that were expected to reduce monthly SNAP benefits for some households, the Department also received comments on the Regulatory Impact Analysis (RIA) published with the proposed rule. Commenters did not suggest alternative, national datasets nor alternative methods of analysis for use in the RIA. Many commenters discussed the effects of the proposed rule in general terms, though some commenters noted specific potential

costs that they did not believe were sufficiently addressed in the RIA, including secondary impacts. Secondary impacts noted in the received comments included:

- Healthcare costs related to increases in food insecurity and poverty;
- Costs to the U.S. and local economies due to SNAP's role in generating economic activity and acting as an economic stabilizer; and
- Impacts on other nutrition assistance programs or providers, including food banks.

The Department notes, that while there are studies that describe the relationships between SNAP, food security, poverty, and health care costs, these studies do not allow the Department to estimate potential costs specific to the impacts of the proposed rule, nor the final rule. Therefore, secondary impacts of reduced SNAP benefits are not assessed in this final rule RIA.

B. Comments Related to Administrative Costs of the Proposed Rule

Some commenters on the SUA NPRM stated that the Department had not adequately addressed potential administrative costs to State and local agencies of complying with the proposed rule. The final rule's RIA includes additional detail and updates to reflect costs State and local agencies will incur because of the final rule. The Department anticipates that the final rule will cause a small, intermittent increase in the administrative burden associated with SUAs for most State agencies because they will be required to periodically review and update their SUA methodology, making any revisions necessary to demonstrate that the baseline data and underlying methodology reflect low-income household utility costs, rather than continuously adjusting the prior year's SUA values with an index of inflation. Additionally, State agencies will experience a one-time increase in burden due to the inclusion of basic internet as an allowable shelter expense. These increases in administrative burden are discussed in greater detail in the Section-by-Section Analysis.

C. Comments Related to Impacts of the SUA NPRM on Vulnerable Populations

Many comments on the SUA NPRM noted specific impacts the proposed rule was anticipated to have on certain subgroups of SNAP participants. These are summarized below:

- Several commenters noted specific impacts on households with elderly or disabled members. In the proposed rule RIA, the Department discussed in-depth the impacts of the proposed rule, including disparate impacts on households with elderly or disabled members. The Department recognizes that households with individuals who are elderly or who have a disability may see a greater change (including increases and decreases) in their benefit amounts because of any changes to SUA values as they are not subject to a cap on their excess shelter deduction amount. The Department is committed to serving households with elderly and disabled members and will support State agencies' implementation of the final rule as they help these households understand any changes to their benefits and are available for questions, as necessary. The Department has made changes to the final rule that give States more flexibility to set SUA levels while also noting the expectation that SUAs will be sufficient to account for the utility expenses of the vast majority of households. The Department is not finalizing the requirement to standardize HCSUAs nor the provision that would have capped limited utility allowances (LUAs) and single utility allowances (also referred to as ''individual standards'').
- A legal services organization, trade association, and advocacy groups stated that rural communities would be more likely to be adversely impacted by the proposed rule because they spend a disproportionately higher share of their income on utilities. Approximately 6 percent of SNAP households live in a rural area.[2] However, the Department does not currently have data available that would allow it to determine if there is a meaningful difference between rural and non-rural SNAP households' utility expenses. Additionally, the Department is not finalizing the proposed rule's provision to standardize HCSUAs as statewide values. Instead, State agencies will retain the flexibility to develop SUAs for different regions within their State.
- Advocacy groups stated that the proposed rule would disproportionately and negatively impact renters as they have higher utility costs than homeowners. As previously discussed, the Department is not finalizing provisions included in the proposed rule that would have standardized SUA values.

Advocacy groups stated the proposed rule would negatively affect households with high housing costs and, by extension, households living in areas with expensive housing markets. The Department notes that the HCSUA and other SUAs are meant to represent utility costs incurred by low-income households, rather than other expenses that may be affected by living in an expensive housing market. Those expenses, like rent and mortgage payments, will continue to be accounted for in the excess shelter deduction calculation. However, the Department acknowledges that some households incur high utility expenses, and those expenses can vary by geographic region of a State. In the final rule, the Department is retaining States' flexibility to establish SUA values for different geographic regions within each State.

D. Comments Related to the SUA NPRM's RIA Methodology and Proposed Data Sources

The Department also received comments on the SUA NPRM that expressed concerns with the data sources used in the proposed rule's RIA and stated concerns that the methodology used in the RIA was not sufficiently clear. A legal services group stated that the use of data from the American Community Survey (ACS) is questionable because it relies on customer recall of their utility expenses and an advocacy group questioned the use of the Residential Energy Consumption Survey (RECS) because the 2015 data release did not provide individual estimates for every State. In addition, some commenters raised concerns that the RECS is only administered every four years, and there is a three- to four-year delay before the data are published. Many commenters, including advocacy groups and State government agencies expressed concerns that the data sources the Department intended to use do not sufficiently capture climate variations within States, cost variation within States (including in Tribal areas) or are less accurate than sources State agencies may currently use for their own methodologies.

The Department appreciates these comments and is making use of Federal survey data, like ACS and RECS, an available option for State agencies to use, rather than mandating their use. The Department maintains that, as of FY 2025, the Federal survey data sources used in the proposed rule's RIA methodology are the best existing national data sources on the utility expenditures of low-income households. Additionally, beginning with the 2020 RECS data collection, the Department notes that RECS data are available for each of the 50 States and the District of Columbia. These data sources may be used by State agencies to calculate their SUAs.

As discussed in the 2017 and 2023 SUA studies, ACS and RECS data each have strengths and limitations as sources of information about low-income households' utility expenditures. When used together, each survey's strengths can mitigate weaknesses in the other survey. For example, RECS data are not subject to customer recall bias that can affect ACS data because RECS collects billing data directly from energy providers to validate the responses provided by surveyed households. RECS data also specify whether a household incurred heating or cooling expenses, permitting estimation of energy expenditures specific to the households that would be eligible for an HCSUA. However, RECS data are not published on an annual basis. ACS data can provide a more recent estimation of low-income households' utility expenditures because it is an annual survey. ACS is also a larger survey than RECS, resulting in larger sample sizes of low-income households in each state and the District of Columbia. RECS and ACS both gather information about respondents' household income, permitting estimates specific to the low-income households who participate in SNAP. Further information about the strengths and weaknesses of each of the Federal surveys used in the proposed rule RIA can be found in the 2017 and 2023 SUA studies.

Although the Department is not finalizing the standardization provision of the proposed rule, which relied on Federal survey data sources to calculate States' HCSUA values, the Department maintains that ACS, RECS, and Consumer Expenditure Survey data from the Bureau of Labor Statistics remain reputable sources of data on low-income households' utility expenditures in each State and the District of Columbia.[3]

[2] Source: FY 2022 SNAP Quality Control data.

[3] Data on utility expenditures in U.S. territories administering SNAP (Guam and U.S. Virgin

Continued

The Department also received comments that expressed concerns about how the proposed telecommunications SUA would be calculated and how it was estimated in the proposed rule RIA. As proposed, the telecommunications standard would have been available to households with utility costs for one telephone, basic internet service, or both. Households with basic internet and/or telephone costs would either receive the telecommunications standard or use their actual costs, subject to the proposed national cap. The final rule no longer creates a telecommunications standard and, instead, includes basic internet service as an allowable shelter cost and allows State agencies to incorporate the cost of basic internet service into the HCSUA. Additionally, the final rule provides States with the option to develop a basic internet individual standard, independent from the telephone individual standard. State agencies may also include basic internet costs in their LUAs. The Department is not finalizing a standardized method of calculating basic internet costs. State agencies will develop their own methodology for including basic internet expenses in the HCSUA. Additionally, States that choose to include internet costs in their LUAs or as an individual standard will develop their own methodology and calculate their basic internet individual standards or LUAs containing the cost of basic internet each fiscal year and submit them to FNS for approval, like other individual standards or LUAs. Consistent with the requirements for other SUA methodologies, including individual standards like the telephone standard, State agencies must submit for FNS approval their basic internet individual standard methodology every five years, and data underlying these methodologies must meet certain criteria.

E. Comments Related to LIHEAP NPRM

Comments on the LIHEAP NPRM were generally favorable of the proposed provisions and did not directly address the LIHEAP NPRM's RIA.

IV. Background

A. Shelter Expenses and Standard Utility Allowances in SNAP

The Food and Nutrition Act of 2008, as amended, establishes uniform national eligibility standards for SNAP and defines the parameters used to calculate SNAP benefits. Household benefits are calculated by subtracting 30 percent of the household's total net income from the maximum allowable benefit allotted for that household's size. Net income is calculated by subtracting allowable deductions from the household's gross monthly income.

One such deduction is an excess shelter expense deduction, which is available to households with shelter costs exceeding 50 percent of their adjusted gross income after other deductions. This deduction has a maximum value for households that do not include elderly or disabled members that is updated annually (sometimes referred to as the ''shelter cap'').[4] Shelter expenses include the basic cost of housing like rent or mortgage payments, as well as utilities and other allowable expenses. Most parameters for eligibility are established at the Federal level, but States are afforded limited discretion to establish SUAs which may be used in place of actual utility expenses when calculating the excess shelter deduction. Using SUAs can help simplify the certification process for applicants and State agencies. State agencies have the option to require that households with eligible utility expenditures use a SUA rather than documenting actual utility costs; 48 State agencies have opted to make the use of SUAs mandatory.[5] [6]

State agencies with mandatory SUAs must establish at least two SUAs, one for households with heating and/or cooling expenses (the HCSUA), and another for households without such expenses. State agencies may establish multiple SUAs to reflect differences in households' circumstances. Types of SUAs include:

- A Heating and Cooling SUA (HCSUA), for households that pay heating and/or cooling expenses separate from their rent or mortgage;
- A Limited Utility Allowance (LUA), for households with expenses for at least two allowable utility costs, but no heating and/or cooling costs;
- A telephone-only allowance, for households that have no utility expenses other than telephone; and
- Other individual standards, for households with one utility expense, such as water, that is separate from rent or mortgage.

Nearly all State agencies have an HCSUA and a telephone individual standard. Most have LUAs and about half have at least one other individual standard. Appendix Table B contains the FY 2024 SUA values for each State. Table 3, below, provides information about the share of SNAP households that claim each type of SUA.

Table 3: Share of SNAP Households Claiming SUAs

Households claiming:	Percent
No SUA/Utilities	26.2%
HCSUA	62.3%
LUA	2.2%
Individual Standard (other than Telephone)	0.3%
Telephone Individual Standard	5.7%
Other	0.8%
Actual Expenses	0.2%
Missing	2.2%

Source: FY 2022 SNAP QC data.

Households that receive LIHEAP payments greater than $20 annually are eligible for the HCSUA and do not need to demonstrate actual utility costs. Section 4006 of the Agricultural Act of 2014 mandates that those State agencies electing to use an HCSUA may only offer the HCSUA to households receiving LIHEAP or other similar energy assistance if the household received a payment greater than $20 in the current month or in the immediately preceding 12 months. Prior to the Agricultural Act of 2014, HCSUAs were available to households that received any payment, or were eligible for a payment if not yet received, under LIHEAP

Islands) are not available from these surveys. However, GU and U.S. VI do not currently use HCSUAs.

[4] In FY 2024, the shelter deduction is capped at $672 in the contiguous 48 States and the District of Columbia, $1,073 in Alaska, $905 in Hawaii, $789 in Guam, and $529 in the U.S. Virgin Islands.

[5] The five States without mandatory SUAs are Guam, Hawaii, Tennessee, Virginia, and the U.S. Virgin Islands.

[6] Throughout this analysis, the term ''State'' is used to refer to the 50 States, as well as District of Columbia, Guam, and the U.S. Virgin Islands (53 State agencies, in total).

or a similar energy assistance program, regardless of the size of the payment.

State agencies must update SUAs annually, but are not directed to use specific data sources, and can revise their methodology at any time so long as they receive FNS approval. In practice, most States update their SUAs each October, at the start of the fiscal year,[7] and the values remain constant throughout the fiscal year. SUAs are not required to be benchmarked to a particular percentile, and State agencies may opt to set them at a higher percentile to ensure the SUA's value is sufficient for a large portion of the SNAP caseload.

Most State agencies use one of two different types of methodologies when calculating their SUAs. The first is a methodology that relies on State-specific recent utility data, often from a sample of areas and/or providers throughout the State. The second is a methodology that adjusts a base number using an inflation measure such as the Consumer Price Index (CPI). Some State agencies use a methodology that combines both approaches. A review of information available to FNS about how State agencies most recently updated their SUA values indicates that at least 10 States have not updated the utility data used to calculate their HCSUA in 10 or more years. These State agencies have adjusted their HCSUA on an annual basis using CPI-based inflation factors. However, inflationary adjustments alone cannot account for broader changes in the household utility expenditures, like the mix of energy sources households use, nor the quantity of energy used. They also are not specific to the circumstances of low-income households and may miss trends in spending among low-income households that diverge from trends among higher-income households.

While the use of SUAs simplifies the application process from the perspective of both the State agency and the applicant, the Department believes program simplification needs to be balanced with ensuring consistency and integrity in how SUAs are calculated. SUAs must align with low-income households' utility costs to ensure that the application of the excess shelter deduction reflects household circumstances and ultimately, the appropriateness of the benefit levels.

[7] All States except for Indiana and Maryland follow the Federal fiscal year calendar for their HCSUA updates. Indiana's update occurs in May and Maryland's update occurs in January.

B. HCSUA Values and Utility Expenditures

The 2017 SUA Study and the 2023 SUA Study found that States' HCSUA values differed considerably from data on what low-income households [8] paid for utilities, using different illustrative benchmarks.[9] The studies also revealed that HCSUA values may not respond to changes in low-income households' utility expenses. In particular, the 2023 SUA Study examined ACS data and found that average monthly energy costs for low-income households in States with HCSUAs were lower in 20 States in 2019 than in 2014.[10] However, 18 of the 20 State agencies had higher HCSUAs in FY 2019 than in FY 2014, with an average increase of $56. The 2023 Study also found that the range of utility expenses incurred by low-income households narrowed since FY 2014 in 48 States, meaning fewer households experienced extremely high monthly utility expenses.[11] These findings from FY 2014–FY 2019 suggest that there have been fundamental shifts in the energy market, like improvements in energy efficiency, changes in the types of energy used (*e.g.,* lower reliance on high-cost fuels), and changes in prices that have affected low-income households' utility expenses within the past 10 years. While CPI-based inflationary adjustments to base values may account for overall changes in expenses for a wide range of consumers, they are not specific to the expenses incurred by low-income households, are not responsive to changes in the mix of energy sources low-income households use, and are not responsive to increases or decreases in the number of low-income households who incur extremely high expenses (*i.e.,* the spread of expenses a SUA seeks to accommodate). This illustrates why the Department believes it is problematic for State agencies to rely on outdated methodologies and/or data sources to calculate their SUA values, which may not reflect current conditions. If the base-year data underlying a State agency's SUA calculation is outdated, the SUA will be reflective of outdated patterns in consumption, efficiency, and prices.

[8] The studies defined ''low-income'' as households with incomes at or below 150 percent of the Federal poverty level.

[9] The 2023 SUA study primarily examined low-income households' average expenditures, as well as expenses at the 80th percentile, 90th percentile and 95th percentile. The 2017 SUA Study looked at average expenses for low-income households, as well as the 85th percentile.

[10] See Appendix Table F–1. Holleyman, Chris, Pratima, Damani, and Torres, Erick. Updating Standardized State Heating and Cooling Utility Allowance Values. Prepared by SP Group LLC. for the U.S. Department of Agriculture, Food and Nutrition Service, March 2023.

[11] This is indicated by what the report authors described as ''a slightly negative difference in the scaling factors used to escalate the average utility expenditures of low-income households to the 80th percentile of low-income households.'' In other words, the 80th percentile of low-income households had moved closer to the median, indicating that fewer households had expenses near the top of the range of all low-income households' expenses.

Internet as a Utility Expense

Under current SNAP regulations, internet service is not an allowable shelter cost that can be deducted from a SNAP household's gross income. However, internet access has become a necessity for school, work, and job search activities. As such, internet has become a necessary expense in SNAP households' monthly budgets and the Department is designating it as an allowable shelter cost in the final rule. To understand the costs incurred by low-income households for basic internet access, FNS's 2023 SUA Study included a methodology for developing a basic internet individual standard using estimates of typical costs for internet access in each State. Broadband was used to represent a level of service that is conducive to economically important household activities, like job searching and virtual education, in contrast to dial-up internet service. The study determined that no national, public database of household broadband expenditures is available at this time. The final rule will permit States to develop their own methodology to estimate internet costs for inclusion in SUAs.

In addition to geographic variation in the availability and price of internet service, the 2023 SUA study also found that understanding the costs low-income families incur for internet service requires evaluating participation in government programs that reduce the cost of internet for many low-income households. The Department notes that if a household does not pay any of its internet costs, including because those costs are paid in full by a program such as the Lifeline program or the former Affordable Connectivity Program (ACP), then the household would not qualify for the basic internet individual standard.

C. Baseline and Time Horizon for Analysis

Our baseline for measuring the costs, benefits, and transfers associated with this final rule is the Department's estimated SNAP participation and benefit spending for FYs 2025–2029, shown in Table 4 below.[12] This regulatory impact analysis (RIA) uses FY 2025–FY 2029 as the time horizon to measure the effects of the final rule. The Department chose this timeframe as it will permit assessment of all start-up costs as well as analysis of the ''steady state'' of the final rule's full implementation, expected to occur in FY 2027. A ten-year cost estimate (FY 2025–FY 2034) is provided as a supplementary resource in Appendix Table A. Additionally, changes in State administrative expenses (SAE) are compared to the Department's baseline projections.

Table 4: Estimated SNAP Participation and Benefit Spending

	2025	2026	2027	2028	2029
Participation (thousands)	41,747	40,217	39,341	38,492	37,688
Benefits ($millions)	$98,148	$97,812	$99,114	$100,195	$101,299
SAE ($millions)	$5,874	$6,041	$6,207	$6,384	$6,560

Source: Internal USDA Estimates (see footnote 12 of this appendix).
Note: Dollar estimates are nominal and include projected inflation in SNAP spending.

As previously noted, the LIHEAP NPRM provisions finalized in this rule have been in effect since FY 2015 and are therefore considered to be fully incorporated in the SNAP baseline presented above. This RIA uses FY 2013 as a reference year to estimate the impacts of the LIHEAP NPRM provisions of the final rule.

D. Methodology

i. Measuring Transfer Changes

The SNAP QC Minimodel is one of the microsimulation models maintained by FNS to estimate the impacts of changes in policy on current SNAP households. The FY 2022 SNAP QC Minimodel uses SNAP QC data from all States from October 2021, through September 2022. SNAP QC data are collected annually as part of the ongoing effort to determine the accuracy of SNAP certification actions.[13] Data are collected for a sample of SNAP households that is statistically representative at both the national and State levels. It includes data from 41,391 households, including information on household income, income sources, expenses, household composition, and utility allowances to simulate the impact of various policy changes to SNAP on current SNAP participants. The FY 2022 SNAP QC data and Minimodel are the most recent data available to FNS for microsimulation. The data are weighted to be representative of the SNAP caseload nationally and in each State. Like all microsimulation models, this model simulates the effects of program changes at the ''micro'' level (in this case, SNAP households). These micro-level effects on SNAP eligibility and benefit amounts are combined to estimate the total effect of program changes at the State and national level. Although most households received emergency allotments related to COVID–19 which supplemented their benefit amounts in FY 2022, this analysis uses households' certified, pre-supplement SNAP benefit amounts. Therefore, estimated benefit effects in this RIA are not affected by emergency allotments.

To estimate the impact on SNAP benefit spending (transfers) of the final rule, the FY 2022 QC Minimodel baseline was adjusted to better reflect current program operations. As all the income, deduction, and benefit data in the model, including HCSUA values, are from FY 2022, a revised baseline was created to reflect changes in the value of States' HCSUAs between FY 2022 and FY 2024, relative to the cap on shelter expense deductions. FNS determined that the FY 2022 HCSUA values in the model were not reflective of FY 2024 HCSUA values in some States because some States have made significant changes to their HCSUA values between FY 2022 and FY 2024 (see next paragraph for an illustrative example). As the changes to HCSUA values in this 2-year period were greater than changes to other parameters in the model, the marginal effect of a State's HCSUA in FY 2022 on a household's SNAP benefit calculation may not reflect its marginal effect in FY 2024, which is the outcome of interest for the purposes of this RIA.

To provide an example of how some State agencies' HCSUAs have changed substantially since FY 2022, State A, whose FY 2022 HCSUA was valued at 98 percent of the FY 2022 cap on the excess shelter deduction, has an FY 2024 HCSUA valued at 126 percent of the FY 2024 cap, a difference of 29 percent. To control for this type of change in States' behavior since FY 2022, the FY 2022 HCSUA values pre-programmed into the QC Minimodel were replaced by adjusted HCSUAs set to reflect the FY 2024 relationship between HCSUAs in each State and the shelter cap. To return to the example of State A, its HCSUA in the QC Minimodel was adjusted to equal 126 percent of the FY 2022 shelter cap.

Simulations of further changes to SUA values, reflecting changes caused by provisions of the final rule, were run against the revised baseline. A brief description of our methodology to measure the transfer effect of each provision of the final rule follows. Against the adjusted baseline described above, separate simulations individually evaluated each SUA-related provision of the final rule:[14]

1. Establishing standards for the quality of data used in SUA calculations and requiring updates at a minimum of 5-year intervals: To simulate the effects of this provision, we assume that 10 States will lower their HCSUAs by 10 percent and 6 States will increase their HCSUAs by 10 percent, on average, because of the final rule's data and methodological update requirements. This assumption was informed by a review of States' FY 2024 HCSUAs and information available to FNS about the methodologies and data used to produce those values. In some cases, FNS has limited information about the methodologies and data used because of the age of some State agencies' methodologies and/or the information shared with FNS lacks a robust description. The 16 States selected for adjustment in this simulation are those identified by FNS as most likely to require a significant revision to their current HCSUA calculation to meet the final rule's data and methodological update requirements. Additionally, these 16 States were determined to have HCSUAs with the greatest deviation from Federal survey data on average State-level utility expenditures among low-income households, defined as households below 150 percent of the Federal poverty level. These data are sources States may use to calculate their SUAs and are of the quality that State agencies will be required to use when developing SUAs. FNS made this determination by examining the Federal data sources examined in FNS's 2017 and 2023 SUA studies (ACS, RECS, and CEX). Some of these 16 States may need to make larger or smaller changes to their HCSUA as a result of the data quality and methodological review provision, but the Department is

[12] Each year as part of the process of developing the President's Budget, the Department produces estimates of expected SNAP participation and benefit spending over a 10-year period. Transfer estimates in this Regulatory Impact Analysis are based on Department estimates for the FY 2025 Mid-session Review of the President's Budget. Estimates related to State administrative expenses (SAE) are compared to the Department's FY 2025 President's Budget baseline estimates.

[13] Detailed information on the QC review process, including sampling requirements and procedures for conducting QC reviews, can be found on the FNS website here: *http://www.fns.usda.gov/snap/quality-control.*

[14] As noted previously, the LIHEAP provisions of the final rule are considered fully incorporated in the SNAP baseline due to their implementation in FY 2015.

estimating a 10 percent average change to the HCSUA in each of the 16 States. We assume 10 States will decrease their HCSUA by 10 percent and 6 States will increase their HCSUA by 10 percent. No States were assumed to change their LUA or individual standard values because of the final rule's data and methodological update provisions.[15] Alternative assumptions are tested in the sensitivity analysis of this RIA.

2. Requiring basic internet expenses as an allowable shelter expense within the HCSUA. To simulate changes to HCSUA values due to incorporating basic internet expenses into the allowance, we assumed States would increase their HCSUAs by an average of $50. This is based on two States which currently have approval from FNS to provide a basic internet individual standard through an administrative waiver. Both States use a $50 standard to represent internet expenses, providing an indication of how other State agencies may behave. While some States may use higher or lower values to approximate low-income households' internet expenses, $50 is used in this analysis to approximate the average value FNS estimates States will use. We assume that all States with an HCSUA choose to incorporate internet into the HCSUA. Alternative assumptions are tested in the sensitivity analysis of this RIA.

3. Providing States with the option of incorporating basic internet expenses in the LUA and as an individual standard: To simulate State-calculated internet allowances in the LUA and a new basic internet individual standard, we simulated a $50 average increase to LUA values for households that currently receive the LUA and estimated that about 5 percent of SNAP households would take-up a new basic internet individual standard.[16] We also assumed households using actual utility expenses would have an increase of $50 in utility expenses if they can newly claim basic internet expenses. We assume all State agencies will take the option to include internet expenses in the LUA and establish a basic internet individual standard, given expressed interest by State SNAP agencies in establishing internet allowances.

In each simulation, household benefits were recalculated for each household that claimed utility expenses and then aggregated to estimate the percentage change in total benefit spending and changes to eligibility. The percentage change applicable to each rule provision was applied to the baseline benefit spending (Table 4 above) to estimate the annual change in SNAP benefit spending (transfers) resulting from each rule provision.

An additional simulation was conducted to estimate the impact of the LIHEAP NPRM. A brief description of the methodology follows:

1. The QC Minimodel includes a variable that indicates whether the household received the HCSUA because they also received LIHEAP. This variable was used to estimate the annual benefit impact on households and total SNAP benefits if all households flagged as receiving a HCSUA due to receipt of LIHEAP no longer received the HCSUA.[17]

2. Because only 17 States providing energy assistance payments that conferred HCSUA eligibility and were affected by the Agricultural Act of 2014 provision, the simulated impacts were adjusted to remove the effects in the 34 unaffected States. The annual benefit impact was further adjusted because 13 of the 17 States that issued affected LIHEAP payments to their SNAP caseload opted to increase those payments above the $20 threshold. Therefore, the impact within these 13 States was removed from the initial estimate, leaving only the effects in the four States that did not increase their LIHEAP payments. These results were then used to estimate the average, per household benefit impact for households affected by the Agricultural Act of 2014's LIHEAP change.

Households that no longer receive LIHEAP payments may continue to receive a SUA (the HCSUA, the LUA, or a different utility standard) if they qualify based on incurred utility expenses. To estimate the proportion of households in the affected States that continued to be eligible for a SUA after discontinuation of LIHEAP payments that conferred HCSUA eligibility, we used SNAP QC data from before and after implementation of the Agricultural Act of 2014 to tabulate how many households in the affected States received the various types of SUAs. Table 5 shows how those percentages changed in the four States that discontinued use of LIHEAP payments to confer HCSUA eligibility.

Table 5: Percentage of Households Using SUAs Pre- and Post- Agricultural Act of 2014

SUA Type	Pre-2014 Farm Bill	Post-2014 Farm Bill	Difference (percentage point)
HCSUA based on LIHEAP receipt	**89.3%**	**35.3%**	**-54.0%**
No utilities and no LIHEAP	3.2%	26.9%	23.7%
Uses actual expenses	0.0%	0.0%	0.0%
HCSUA, no LIHEAP	5.6%	26.5%	20.9%
LUA	0.5%	3.8%	3.2%
Uses telephone only standard	0.6%	5.6%	5.1%
Uses single utility standards	0.6%	1.3%	0.7%
HCSUA, LIHEAP status unknown	0.1%	0.4%	0.3%
Other	0.0%	0.0%	0.0%

3. Based on this re-distribution, we see that 54 percent of households no longer receive the HCSUA based on LIHEAP receipt. These households are redistributed into the other SUA categories, with some households no longer receiving any SUA, some continuing to receive the HCSUA, and others receiving a different SUA (a LUA or individual standard).

4. Overall, of the 54 percent of households that no longer receive the HCSUA based on

[15] FNS does not anticipate that these changes will result in similar decreases or increases to LUA and individual standard values because FNS's review of States' current LUA and individual standard values indicates that these standards do not display the same degree of variability between States and misalignment with current utility data for low-income households that is present among current HCSUA values.

[16] Five percent was selected as an estimate, informed by the share of SNAP households that use a telephone individual standard, to approximate how many households might use a basic internet standard. In the absence of more precise data, the Department estimates that the share of households that may pay an internet bill, but not other utilities which would make them eligible for a LUA or HCSUA, may be similar to the share of household that only pay a telephone bill.

[17] This simulation used 2013 QC data as that was the period prior to implementation of the Agricultural Act of 2014's LIHEAP change.

receipt of LIHEAP, 43.8 percent no longer receive any SUA (calculated as 23.7/54.0), 39.2 percent continue to receive the HCSUA, 6.0 percent receive the LUA or an individual standard, and 10.6 percent receive only the telephone individual standard.[18]

5. Benefit impacts were adjusted as follows:

a. Households no longer eligible for any SUA were allocated 100 percent of the per-household benefit impact of this provision (0.438 × # affected households × per-household benefit impact × 1.00).

b. Households eligible for a LUA were allocated 50 percent [19] of the per-household impact of the provision (0.060 × # affected households × per-household benefit impact × 0.50).

c. Households eligible for a telephone individual standard were allocated 75 percent of the per-household impact of the provision (.106 × # affected households × per-household benefit impact × 0.75).

d. These amounts were totaled to get the annual SNAP benefit impact due to discontinued LIHEAP payments.

ii. Measuring Changes to State and Federal Costs

State administrative costs, burden estimates, and Federal costs (non-transfer) are estimated using information from revisions to a currently approved Information Collection Request (ICR) (OMB Control Number 0584–0496; Expiration Date 7/31/2026). This information collection addresses the State agency reporting burden associated with State options under SNAP for developing SUAs and a methodology for offsetting the cost of producing self-employment income, as required in 7 CFR part 273. The revision accounts for requirement in the final rule. The value of State administrative costs and Federal costs in future years are adjusted annually for inflation using the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) fiscal year-over-fiscal year projections from OMB's Economic Assumptions for the Mid-session Review of the FY 2025 President's Budget.

[18] These percentages vary from the percentages used in the proposed rule RIA because the final rule RIA uses actual changes in SUA receipt documented in the SNAP QC data, rather than estimated changes used before actual data were available. The proposed rule RIA assumed that 55 percent of households would no longer be coded as receiving the HCSUA due to LIHEAP. Of those, we estimated that 36 percent would receive no SUA, 55 percent would continue to receive the HCSUA, 1 percent would receive the LUA or an individual standard, and 7 percent would receive the telephone individual standard.

[19] We chose 50 percent based on the relative size of the LUA, compared to a HCSUA at the time the LIHEAP change went into effect. On average, the HCSUA value was about twice that of the LUA, so the benefit impact would be reduced by roughly 50 percent. Similarly, we chose 75% based on the relative size of a single utility allowance or telephone allowance, compared to a HCSUA. On average, the HCSUA value was about four times that of an individual or telephone standard, so the benefit impact would be reduced by roughly 75%. Information on the relative size of different utility allowances in FY 2024 can be found at: *https://www.fns.usda.gov/snap/eligibility/deduction/standard-utility-allowances.*

V. Section-by-Section Analysis

The costs and savings associated with each provision of the final rule are discussed separately in this section of the RIA. The section-by-section analysis often uses FY 2026 as a reference year to discuss the transfer and cost impacts of the final rule, given that FY 2026 is when all provisions of the final rule are expected to be fully implemented.

A. Requirement To Update SUA Calculation Methodology Every 5 Years and Meet Data Quality Specifications

Discussion: While the Department is not adopting the proposed rule's provisions to standardize the calculation of HCSUAs, nor cap LUAs and individual standards as a percentage of the HCSUA, it maintains that there should be clearer guidelines and requirements for State agencies to follow when developing their SUAs to ensure SUAs accurately reflect low-income households' utility costs. Therefore, the Department is establishing new requirements to guide State agencies' calculation of SUAs. These requirements apply to HCSUAs, LUAs, and individual standards. State agencies must submit for FNS approval their SUA methodologies at least every 5 years and make any revisions necessary to demonstrate that the baseline expenditure data and underlying methodology reflect low-income household utility costs along with recent trends and changes. The methodology update must include updated baseline expenditure data, per certain data criteria, and an explanation of the State agency's methodology for deriving HCSUAs from such data. In interim years, State agencies must continue to review and adjust their SUAs annually to reflect changes in costs, in line with existing regulations. State agencies may use appropriate indices of inflation, like the Consumer Price Index (CPI) values specific to the utilities incorporated into an HCSUA, to perform these interim, annual updates. State agencies must also continue to submit their methodologies for FNS approval any time the State agency develops or changes a methodology.

Additionally, State agencies' methodologies must:

- Reflect the entire State or geographic area the SUA covers;
- Use data sourced from utility providers or similarly reliable source;
- Reflect expenses incurred by low-income households;
- Distinguish if the utility is for heating or cooling, if applicable; and
- Reflect residential utility expenses.

The Department chose these criteria to ensure HCSUAs accurately represent the utility costs of low-income households, including households with higher-than-average utility costs, in the designated area while providing State agencies additional flexibility in creating their standards. These criteria align with the goals of the data and methodology the Department proposed to use in the SUA NPRM. The Department notes that, for the purposes of these criteria, ''utility providers'' includes any company or organization that supplies or sells a utility allowed under 7 CFR 273.9(d)(6)(ii)(C).

Additional SUA provisions in the final rule that are expected to have minimal effects include:

- Eliminating the option for State agencies to use a LUA instead of the HCSUA for public housing residents with excess heating and cooling costs, as proposed in the SUA NPRM.
- Eliminating the option for State agencies to use a LUA instead of the HCSUA for States where cooling expenses are minimal, as proposed in the SUA NPRM.

Effect on SNAP Participants: The Department anticipates that new guidelines directing States to update their SUA methodologies at least once every 5 years and establishing data quality requirements will result in changes to HCSUA values in States which currently use methodologies or data sources that would not meet the requirements of the final rule. The Department estimates that 10 States will reduce their HCSUAs and 6 States will increase their HCSUAs as a result of this provision, each by an average of 10 percent. These changes will reduce the monthly SNAP benefits of approximately 5.2 percent of all SNAP households by an average of 7.5 percent, or about $21 and will increase the monthly SNAP benefits of approximately 2.1 percent of all SNAP households by an average of 3.5 percent, or about $10. A small number of households (less than 0.01 percent) would no longer be eligible for SNAP if this provision was implemented without the internet provision, discussed later in this RIA, resulting in an average monthly benefit loss of $45. These households have a low average monthly benefit because they have monthly incomes close to the maximum allowed for SNAP eligibility. Affected households live in 16 States that FNS has identified as those most likely to require significant revisions to their HCSUA to meet the new data quality and recency guidelines. No effects are anticipated for SNAP households in the other 37 States.

Table 6: Effect on SNAP Households of Establishing Data Quality Standards and Requiring Updates at 5-Year Intervals

	Percentage of Households	Average Dollar Change per Affected Household	Percent Change per Affected Household
Receiving lower benefits	5.2%	-$21	-7.5%
Receiving higher benefits	2.1%	$10	3.5%
No longer eligible	<0.01%	-$45	100%
No change in benefits	92.7%	--	--

Source: Simulation using FY 2022 SNAP Quality Control Data.
Note: Average dollar change per household estimates are nominal.

Effect on Federal Spending: The data quality and methodological revision provision of the final rule is expected to decrease SNAP benefit payments (transfers) by $293 million in FY 2026 and by $1.2 billion over 5 years (FY 2025–FY 2029). Effects on transfers will not be fully phased-in until FY 2026 because FNS expects that States may need until the start of FY 2026 to revise their SUA methodologies and underlying data. This provision results in a 0.3 percent decrease in SNAP benefit payments when fully implemented. The decrease in transfers in 10 States that are estimated to reduce their HCSUAs is larger than the increase in transfers in 6 States that are estimated to increase their HCSUAs, resulting in a net decrease in transfers.

Additionally, Federal administrative burden and the Federal share of States' administrative expenses for this provision of the final rule are expected to increase. The Federal share of States' administrative expenses for initial implementation of this provision is estimated to be about $438,000 in FY 2025. The Federal share of all State agencies' ongoing administrative expenses caused by this provision of the final rule are estimated to be about $152,000 over five years (FY 2025–FY 2029), averaging about $30,000 annually. Federal administrative burden is expected to increase on an ongoing basis due to this provision of the final rule. Every 5 years, the Department expects FNS staff will spend a total of 689 hours reviewing and approving State agencies' methodological updates and providing technical assistance to State agencies as they make those updates. This is expected to cost about $51,000 in FY 2025, the first year in which a methodological update is expected to occur.

Effect on State Agencies: This provision of the final rule is expected to create start-up costs, in addition to recurring increases in State agency burden. FNS estimates 5 State agencies will opt to solicit contractor support to update their SUA methodologies, resulting in about $21,000 in staff costs and $250,000 in contract costs after 50 percent Federal reimbursement over FYs 2024 and 2025 ($271,000 total for 5 state agencies). Non-contract State costs associated with implementation burden and system changes are estimated to be about $145,000 after 50 percent Federal reimbursement across all 53 State agencies.

State agencies are not expected to incur annual increased administrative burden or costs because of this provision. However, every 5 years, State agencies will experience a greater increase in burden, when they will be required to conduct a full review of their SUA methodologies and update the base data used to calculate their SUAs.

B. Allow Basic Internet Costs as an Allowable Shelter Expense

Discussion: The final rule designates basic internet service as an allowable shelter cost and gives State agencies the option to include basic internet costs in their HCSUAs and LUAs and to develop a basic internet individual standard. State agencies will be expected to develop their own methodology for including the cost of basic internet service in the HCSUA, LUA, and as a standalone basic internet individual standard, as they are expected to do for all other allowable utility expenses. The Department assumes that 25 percent of the SNAP caseload lives in States that will establish an individual internet SUA in FY 2025, and all States will implement an individual internet SUA in FY 2026. We assume that all States will implement an HCSUA that incorporates internet expenses in FY 2026.

Effect on SNAP Participants: By allowing basic internet expenses to be incorporated into SUAs, SNAP households using the HCSUA or LUA will be eligible for a larger allowance, which can increase the excess shelter deduction for households that are not at the shelter cap. SNAP households that receive a larger excess shelter deduction may also see their benefits increase, depending on other household circumstances.

Additionally, a portion of SNAP households that do not use a SUA will be eligible for a basic internet individual standard or to claim the value of their actual expenses for basic internet if they incur out-of-pocket expenses for basic internet service. The Department expects the share of households that will claim a basic internet individual standard to be approximately 5 percent of all SNAP households, informed by the share of SNAP households that currently receive a telephone-only utility allowance (see Table 3). These households may also see their excess shelter deduction increase if they are not affected by the shelter cap, potentially increasing their benefits.

Inclusion of basic internet as an allowable utility expense is expected to increase SNAP benefits for an additional 27.1 percent of SNAP households (29.2 percent, total). This provision will not result in benefit losses for any SNAP households. Among households gaining benefits, because of this provision, monthly SNAP benefits will increase by an average of $15. No households are expected to lose eligibility because of this provision. Some of the <0.01 percent of households estimated to lose eligibility due to the previously discussed data quality and methodological review provision (if, hypothetically, that provision were finalized on its own) retain eligibility because of the inclusion of internet expenses in SUAs. Sample sizes for this group are too small for the Department to be more precise in its estimates for this group.

Effect on Federal Spending: Including basic internet as an allowable shelter expense is expected to increase SNAP benefit payments (transfers) by $1.6 billion upon full implementation in FY 2026 and by $6.6 billion over five years (FY 2025–FY 2029). This represents a 1.6 percent increase in SNAP benefit payments when fully implemented. On average, the Department estimates that including basic internet expenses will increase State-calculated HCSUA values by $50, though the amount is expected to vary by State. Additionally, the Federal share of States' administrative expenses to incorporate a basic internet individual standard is estimated to be a one-time expense of about $14,000. The Department does not estimate a measurable change in ongoing Federal burden or costs related to this provision.

Effect on State Agencies: The Department expects it will take each State agency approximately 10 hours to establish a new basic internet individual standard and include basic internet in their HCSUA and LUA calculations. States' share of this expense is estimated to be a total annual cost of about $14,000. The Department does not estimate a measurable change in State agencies' ongoing administrative expenses due to the new inclusion of basic internet as an allowable shelter cost.

C. LIHEAP Provisions

Discussion: The rule also finalizes how Low-Income Home Energy Assistance Program (LIHEAP) payments are considered to confer eligibility for the HCSUA, in accordance with amendments made to the Food and Nutrition Act of 2008 by the Agricultural Act of 2014. While originally published as a separate 2016 NPRM, the LIHEAP provisions are integrally linked to the SUA provisions, and therefore the Department is combining the provisions from each proposed rule into a single rule.

In accordance with the Agricultural Act of 2014, the final rule no longer allows States to confer HCSUAs to households receiving a payment, or on behalf of which payments were made, under the Low Income Home Energy Assistance Act (LIHEAA) or similar programs unless the payment is greater than $20 annually and received in either the current month or in the immediately preceding 12 months. This provision's effects are discussed in the following paragraphs.

Additional LIHEAP provisions which are expected to result in minimal effects include:

- Requiring State agencies to confer HCSUA eligibility to both households if a household receiving a qualifying LIHEAP payment splits into two households.
- Allowing weatherization payments to confer eligibility for the HCSUA in limited circumstances.

As previously discussed, the LIHEAP provisions of this final rule were self-implementing as of 2014 and are therefore fully captured in one of the SNAP participation and benefits baselines relevant to this regulatory analysis.

Effect on SNAP Participants: At the time of implementation, the Department estimates that one-third of SNAP households were affected in States that have a minimum LIHEAP payment below the $20 threshold when this change went into effect beginning in 2014. Most of these households remained eligible for SNAP but may have received a lower monthly benefit. Less than 0.1 percent of all SNAP households are estimated to have lost eligibility. Affected households with an elderly or disabled member generally saw greater reductions in their monthly benefit because they do not face a cap on the amount of their excess shelter expenses deduction. If they were no longer eligible for the HCSUA, their shelter deduction may have become smaller, resulting in a smaller monthly benefit.

Effect on Federal Spending: The Department estimates that these statutory changes reduced Federal transfers (SNAP benefit payments) by approximately $2.2 billion over the 5-year period of FY 2025–FY 2029. Because these provisions were implemented shortly after passage of the Agricultural Act of 2014, this reduction in transfers is already fully captured in one of the SNAP participation and benefits baselines relevant to this analysis and will not result in a reduction, as compared with that baseline, in predicted SNAP spending in future years relevant to this regulatory analysis.

Effect on State Agencies: Among the 17 States that issued LIHEAP payments to confer eligibility for the HCSUA prior to the amendments made by the Agricultural Act of 2014, the four States that opted not to raise those payments to meet the new threshold were required to make minimal, one-time changes to their eligibility systems, manuals, and training procedures for staff. Other minimal burdens imposed on State agencies, such as documenting LIHEAP receipt, were already required as part of the certification process and are considered usual and customary within the course of States' normal administrative activities. States had flexibility in terms of when they made the change for their current caseload, reducing administrative burden.

D. Combined Effects of the Final Rule

Effect on SNAP Participants: The Department estimates that most SNAP households will experience either an increase or no change to their SNAP benefit because of the final rule (see Table 7). Upon full implementation of the rule, about 4.9 percent of SNAP households are expected to receive, on average, 2.6 percent lower monthly benefits (an average monthly decrease of $7). An estimated 29.2 percent of SNAP households are expected to receive, on average, 6.0 percent higher monthly benefits (an average monthly increase of $15). The remaining two-thirds of SNAP households will see no change to their monthly benefits.

The internet provision of the final rule reduces the monthly benefit losses experienced by households in the States that are expected to reduce their HCSUAs because of the data quality and methodological review provision of the final rule. The internet provision reduces the share of households losing benefits under the final rule by 0.4 percentage points. Among households losing benefits due to the data quality and methodology requirements established by the final rule, the marginal effect of including internet expenses in SUAs reduces their average monthly benefit loss from $21 to $7.

Table 7: Combined Effects of Final Rule Provisions on SNAP Households

	Percentage of Households	Average Dollar Change per Household	Percent Change per Household
Receiving lower benefits	4.9%	-$7	-2.6%
Receiving higher benefits	29.2%	$15	6.0%
No longer eligible	<0.01%	-$30	-100%
No change in benefits	66.0%	--	--

Source: Simulation using FY 2022 SNAP Quality Control Data.
Note: Average dollar change per household estimates are nominal.

Effect on Federal Spending: The Department estimates full implementation of the final rule will increase SNAP benefit spending (transfers) by $1.3 billion in FY 2026 and $5.4 billion over the 5-year period FY 2025–FY 2029. This increase in spending is primarily driven by the rule's provision to allow internet as an allowable shelter expense. The full cost of the internet provision ($6.6 billion over 5 years) is partially offset by savings (−$1.2 billion over 5 years) due to establishing data quality and update frequency requirements for SUAs.

Total Federal non-transfer costs associated with the final rule are estimated to be about $612,000 over 5 years (FY 2025–FY 2029). Non-transfer costs will be higher at implementation in FY 2025 (about $489,000) and every 5 years thereafter, when State agencies are expected to conduct a complete review and resubmission of their SUA calculations. In intervening years, Federal non-transfer costs will be about $31,000.

Effect on State Agencies: The Department expects full implementation of the final rule will increase State agency costs by about $561,000 over 5 years (FY 2025–FY 2029) after 50 percent Federal reimbursement. Most of this cost (about $438,000 in FY 2025) is associated with staff burden and contract costs State agencies are expected to incur every 5 years, when they will be required to conduct a full review and update of their SUA calculations.

VI. Distributive Impacts

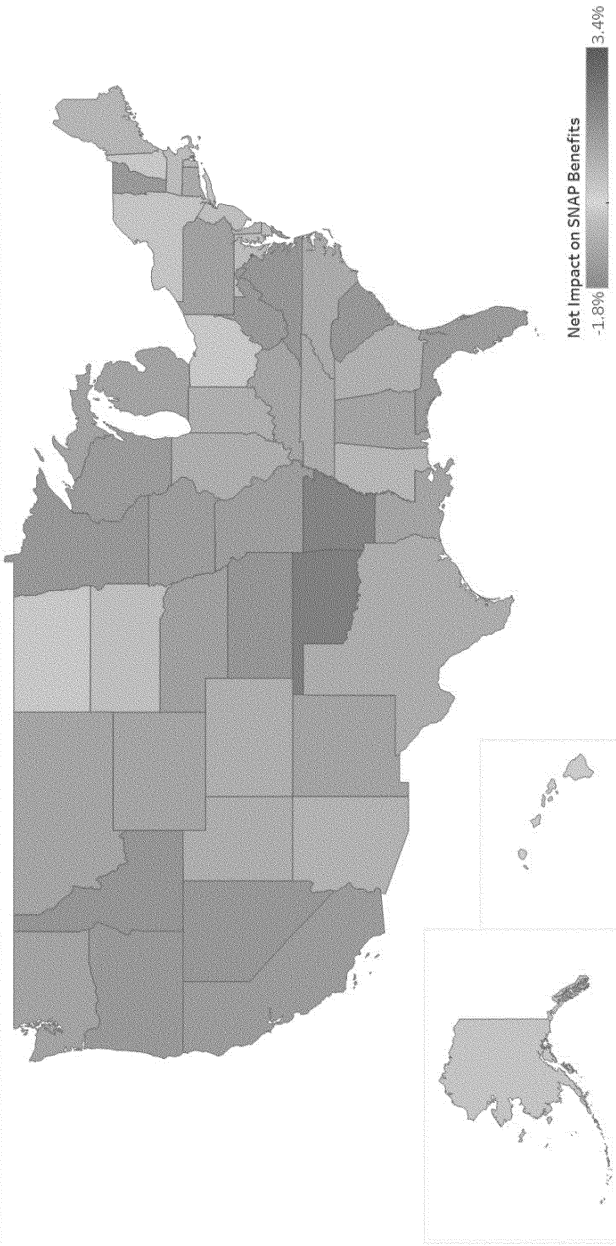
A. Differences in State-Level impacts

Effects of the final rule vary by State. The 4.9 percent of households expected to see

reduced SNAP benefits under the final rule are in 10 States, based on FNS's assessment of the likelihood that those 10 State agencies' HCSUA methodologies will require significant revisions to meet the guidelines established by the final rule. Within these 10 States, the share of households estimated to lose a portion of their SNAP benefits ranges from 21.5 percent to 44.9 percent. Among these 10 States, 9 are also expected to have a small share of their SNAP households gaining benefits because of the final rule, ranging from 0.3 percent to 11.6 percent. Simulation results indicated that one State agency is expected to have no households gaining benefits because of the final rule, however this result may be due to small sample sizes in that State, and it is possible that a small number of households in that State could see increased benefits. In the remaining 52 States, the share of households expected to gain benefits under the final rule in each State ranges from a high of 47.6 percent to a low of 0.3 percent. The share of households expected to be unaffected by the final rule ranges from 98.4 percent to 52.5 percent. The LIHEAP provisions of the final rule primarily affect just 4 States that previously issued LIHEAP payments to their SNAP caseloads to confer HCSUA eligibility and did not opt to increase those payments above the $20 threshold.[20]

[20] The four States that chose not to increase their LIHEAP payments to greater than $20.00 at the time of implementation are Delaware, New Hampshire, New Jersey, and Wisconsin.

Figure 1. Estimated Percentage Change in Total SNAP Benefits Based on Implementation of All Provisions in Final Rule, by State



Source: Simulation using FY 2022 SNAP QC data.

The average household monthly benefit gain within each State (among States with households gaining benefits) ranges from a low of $12 to a high of $23 among households that see larger benefits. Among all households expected to gain benefits

under the final rule, the nationwide average gain is about $15. The average household monthly benefit loss per State (among the 10 States with households losing benefits) ranges from −$4 to −$11 among households that see smaller benefits. Among all households expected to lose benefits under the final rule, the nationwide average loss is about −$7 per month. See Appendix Table C for estimates in each State.

Table 9: Distribution of Households Gaining and Losing, All States

	Households Losing Benefits	Households Gaining Benefits
Nationwide	4.9%	29.2%
Maximum, among States with households in column category	44.9%	47.6%
Minimum, among States with households in column category	21.5%	0.3%

Source: Simulation using FY 2022 SNAP Quality Control Data.

B. Differences Among Subgroups Resulting From Changes to SUA Methodology

The final rule's changes to SUAs have the greatest impact on households that contain an elderly or disabled individual. These households are not subject to the cap on the excess shelter deduction, and thus are more likely to be affected by changes to the HCSUA, as larger HCSUAs result in a larger shelter deduction.[21] Households with elderly members and households with disabled members make up a disproportionate share of those who gain benefits as well as of those who lose benefits, as shown in Table 10, below. Households with members who are elderly or disabled are more likely than other households to claim an excess shelter deduction, and those deductions are larger on average than the shelter deductions of other households (Table 11). More households with members who are elderly or disabled are expected to gain benefits under the final rule than to lose benefits. Additionally, the average benefit gain for these households is more than twice the average benefit loss.

SNAP households with children are slightly less likely than all SNAP households to gain benefits because of the final rule (27.3 percent, compared to 29.2 percent for all households) and are slightly less likely to lose benefits of the final rule (3.8 percent, compared to 4.9 percent for all households). SNAP households with children who gain or lose benefits because of the final rule are estimated to experience similar average changes in their monthly benefits as all SNAP households (see Table 10).

[21] All other things being equal, households containing elderly or disabled individuals may qualify for a larger shelter deduction than a similar household without an elderly or disabled member because their shelter deduction is not capped. As a result, the household with an elderly or disabled member has lower net income, resulting in a larger SNAP benefit.

Table 10: Gains and Losses by Demographic Subgroup and Race/Ethnicity Resulting from the Final Rule

	Households Losing Benefits	Households Gaining Benefits	Average Among Impacted Households: Benefit Loss	Benefit Increase
All Households	4.9%	29.2%	-$7	$15
Households with:				
Elderly	8.1%	41.0%	-$8	$15
Disabled	9.2%	47.2%	-$7	$15
Earnings	3.9%	29.4%	-$7	$15
Children	3.8%	27.3%	-$7	$15
Race/Ethnicity of Household Head				
Asian	7.0%	30.9%	-$9	$15
White, not Hispanic	7.0%	29.1%	-$7	$15
Black, not Hispanic	3.6%	26.9%	-$7	$15
Hispanic	5.3%	28.2%	-$9	$15
Unknown race/ethnicity*	1.0%	33.6%	-$7	$14

Source: Simulation using FY 2022 SNAP Quality Control Data.
*Race/ethnicity of household head is unknown for 15 percent of households.
Note: Average dollar change per household estimates are nominal.

Table 11: Excess Shelter Deduction Usage of SNAP Households, FY 2022

	Claiming Excess Shelter Deduction	Average Value*
All Households	70.1%	$466
Households with:		
Elderly individuals	80.6%	$478
No Elderly individuals	65.4%	$460
Households with:		
Non-elderly Individuals with Disabilities	81.6%	$473
No Non-elderly Individuals with Disabilities	67.5%	$465

Source: FY 2022 SNAP Quality Control Data.
*Average value of excess shelter deduction among households claiming the deduction.
Note: Average value estimates are nominal.

Households headed by a non-Hispanic white or Asian individual are more likely to lose benefits (about 7 percent, v. about 5 percent for all households). Households headed by an Asian individual are also slightly more likely to gain benefits due to the final rule (about 31 percent, v. about 29 percent for all households). Households headed by a non-Hispanic black individual are slightly less likely to gain benefits under the final rule (about 27 percent, v. about 29 percent for all households). Households headed by an Asian or Hispanic individual are expected to experience a larger average benefit loss (about −$9, v. about −$7 for all households). Average benefit gains are consistent across the protected class subgroups examined in this analysis (see Table 10).

VII. Uncertainties

Uncertainties related to this regulatory impact analysis include the following:

A. Changes in SNAP Caseload Numbers and Composition

This analysis estimates the economic circumstances of SNAP households based on historical data. Macroeconomic trends in employment, wage growth, and inflation may alter household incomes and expenses in future years in a way that differs significantly from the SNAP caseload in FY 2022. Households that gain or lose benefits under this rule do so because the changes to SUA values result in changes to households' net

incomes, which are used to calculate their SNAP allotments. Smaller SUAs mean households have higher net incomes and thus receive lower benefits; higher SUAs have the opposite effect. If SNAP households' shelter expenses rise faster than their incomes due to inflation in the housing market, they may be more likely to be subject to the cap on shelter expense deductions in the future and may not be impacted by changes to SUA values. Similarly, if SNAP households' gross incomes rise, the excess shelter deduction could have a more limited impact on their SNAP benefit calculation, as only those shelter expenses that exceed 50 percent of net income after other deductions may be deducted. As net income rises, the share of shelter expenses that can be deducted can decrease. In this scenario, changes in SUA values could have a more limited impact on their benefit calculation. It should be noted that households with elderly or disabled members are not subject to the cap on shelter expense deductions and would be less impacted by this uncertainty.

Additionally, State agencies have changed their SUA values, some in significant ways since FY 2022. The model used in this analysis attempted to control for these changes by adjusting each State's FY 2022 HCSUA value to proportionately reflect the relationship between each State's FY 2024 HCSUA and the FY 2024 shelter cap. The Department believes the methodology in this analysis controls for changes to HCSUA values since FY 2022 to the greatest extent feasible.

B. Values of Internet Component of HCSUAs and LUAs and Values of Internet Single Utility Allowances

It is possible that some State agencies may establish significantly higher or lower allowances for internet expenses than the Department anticipates. If States implement values that skew the average across States higher or lower than the $50 average value used in this RIA, the cost of the final rule could increase or decrease. Two alternative scenarios are explored in the following Sensitivity Analysis section. The Department does not currently have information about how each State agency may choose to calculate internet allowances in reaction to this rule.

C. Share of State Agencies That Opt To Include Internet in Their SUAs

While FNS expects all State agencies will choose to account for internet expenses in their HCSUAs, they are not required to do so. If fewer State agencies opt to include basic internet expenses in their SUAs, then the cost of the proposed rule will be lower. However, most of the final rule's cost is due to the mandatory inclusion of internet within States' HCSUAs. Therefore, States' individual decisions about including internet in the LUA or as an individual standard would likely have small effects on the rule's overall cost. An alternative scenario, in which 15 percent of the SNAP caseload lives in a State that chooses not to include internet expenses in its SUAs, is explored in the following Sensitivity Analysis section. The Department does not currently have information about whether some States will opt to only include internet expenses in their HCSUA.

D. Share of States That Issue LIHEAP Payments Greater Than $20 to Their SNAP Caseload

The estimates in this analysis are based on 4 of 17 States that discontinued LIHEAP payments to their SNAP caseloads that conferred HCSUA eligibility and 13 States continuing to provide payments above the $20 threshold. It is possible that more or fewer State agencies will issue LIHEAP payments above the $20 threshold in the future.

VIII. Sensitivity Analysis

Table 12, below, illustrates how the RIA's estimates of the finalized SUA NPRM provisions might change if different assumptions regarding the uncertainties discussed above were used. Sensitivity analysis estimates were produced using the same methodology as was used for the RIA estimates. Alternative assumptions used for the sensitivity analysis include:

A. Assume the average internet allowance value States calculate for their HCSUAs, LUAs, and basic internet individual standard is $40, rather than $50.

B. Assume the average internet allowance value States calculate for their HCSUAs, LUAs, and basic internet individual standard is $60, rather than $50.

C. Assume the average reduction in 10 States' HCSUAs and average increase in 6 States' HCSUAs due to the final rule's data quality and 5-year update requirements is lower, 5 percent rather than 10 percent.

D. Assume the average reduction in 10 States' HCSUAs and average increase in 6 States' HCSUAs due to the final rule's data quality and 5-year update requirements is higher, 15 percent rather than 10 percent.

E. Assume the average reduction in 10 States' HCSUAs and average increase in 6 States' HCSUAs due to the final rule's data quality and 5-year update requirements is higher, 20 percent rather than 10 percent.

F. Assume the average reduction in 10 States' HCSUAs is higher (20 percent) and the average increase in 6 States' HCSUAs remains 10 percent.

G. Assume the average reduction in 10 States' HCSUAs remains 10 percent and the average increase in 6 States' HCSUAs is higher (20 percent).

H. Assume 15 percent of the SNAP caseload lives in a State where the State agency does not opt to incorporate basic internet into their SUAs.

Table 12: Sensitivity Analysis

Estimated Increase in SNAP Benefits (in millions of dollars)	One-Year (FY 2026)	Five-Year (FY 2025-2029)
In RIA as finalized	**$1,311**	**$6,059**
Scenario A: Average internet allowance is $40	$988	$4,024
Scenario B: Average internet allowance is $60	$1,624	$6,614
Scenario C: 10 States reduce their HCSUA by 5%, 6 States increase their HCSUA by 5%	$1,448	$5,897
Scenario D: 10 States reduce their HCSUA by 15%, 6 States increase their HCSUA by 15%	$1,164	$4,741
Scenario E: 10 States reduce their HCSUA by 20%, 6 States increase their HCSUA by 20%	$1,007	$4,104
Scenario F: 10 States reduce their HCSUA by 20%, 6 States increase their HCSUA by 10%	$939	$3,825
Scenario G: 10 States reduce their HCSUA by 10 %, 6 States increase their HCSUA by 20%	$1,379	$5,618
Scenario H: Internet is not added to SUAs for 15% of households	$1,114	$4,538

Source: Simulation using FY 2022 SNAP Quality Control Data.
Note: Estimates are nominal and include projected inflation in SNAP spending.

The simulations that assessed Scenarios A and B (see table 12) indicate that, on average, a $10 change in the average internet allowances implemented by State agencies will result in approximately a corresponding one-third of a percentage point change in the final rule's effect on transfer spending. In the RIA, as finalized, the final rule results in a 1.34 percent increase in total SNAP benefit spending. If the average value of internet standards is $10 higher than anticipated, the final rule would be estimated to result in a 1.66 percent increase in total SNAP benefit spending. Similarly, if the average value of internet standards is $10 lower than anticipated, the final rule would be estimated to result in a 1.01 percent increase in total SNAP benefit spending. A one-third of a percentage point change in the overall impact of the final rule would result in approximately a $322 million increase or decrease in the cost of final rule in FY 2026.

Given that the Department cannot precisely estimate which States will change their HCSUA values because of the final rule, nor the degree to which they will increase or decrease their HCSUAs, several different scenarios were tested (see Table 12, Scenarios C–G). Across these scenarios, the transfer cost of the final rule in FY 2026 ranges from a low of $939 million to a high of $1.6 billion. Over the 5-year period FY 2025–FY 2029, the transfer cost of the final rule in scenarios C through G ranges from a low of $3.8 billion to a high of $6.6 billion.

Finally, if some State agencies decide not to incorporate basic internet expenses into their SUAs (Scenario H in Table 12), the Department estimates there would be a corresponding 0.2 percentage point decrease in the estimated transfer cost of the final rule. This would result in approximately a $197 million decrease in the transfer cost of the final rule in FY 2026 and approximately an $800 million decrease in the transfer cost of the final rule of the 5-year period FY 2025–FY 2029. To produce this estimate, the Department assumes 15 percent of SNAP households may live in a State that will choose not to include basic internet expenses in their SUAs.

X. Alternatives

The Department used the same methodology (as applicable) and FY 2022 SNAP QC Minimodel to assess the final rule and to assess the alternatives presented in this section.

A. Finalizing LIHEAP and Internet Provisions, Only

The Department considered finalizing the LIHEAP provisions of the 2016 NPRM and finalizing internet as an allowable shelter expense for the purposes of calculating the excess shelter expense deduction, without making any additional changes to SUA regulations. This alternative would have made no changes to how States calculate their HCSUAs, LUAs, and individual standards, except for permitting standard allowances to incorporate basic internet expenses. States would retain full flexibility in how they calculate SUAs.

Under this approach, no household would experience reduced monthly SNAP benefits, in comparison to the 4.9 percent of households estimated to lose an average of $7 in monthly benefits under the rule, as finalized. The transfer cost of the final rule would be higher ($6.6 billion over five years FY 2025- FY 2029, compared to $5.4 billion), as there would be no savings due to data quality and methodological requirements.

The Department determined this approach would not address concerns about consistency and data integrity in how States calculate their SUAs, and therefore was an insufficient alternative.

B. Standardizing HCSUAs at the 90th Percentile

The Department considered retaining the proposed rule's provision to standardize HCSUAs, though at the 90th percentile of low-income households' expenses, rather than the 80th percentile as proposed. Under this approach, the Department would have also finalized the LIHEAP provisions of the final rule and added internet as an allowable expense for the purposes of calculating the excess shelter expense deduction. It also would have retained the final rule provisions to make HCSUAs statewide values, calculated by FNS. The Department considered this approach as it would have addressed concerns about fairness and transparency in how SUAs are calculated, while also mitigating benefit losses to households if the 80th percentile was used, as proposed. The Department estimates that this approach would have resulted in a 2.8 percent reduction in SNAP benefit spending (−$11.2 billion over five years if implemented in FY 2026), compared to the 1.3 percent increase ($5.4 billion over five years) estimated for the final rule.

Although this approach would address concerns about consistency and transparency in calculating SUAs, the Department

determined that this approach would constrain States' flexibility in developing SUAs that utilize local utility provider data and respond to within-State variations in expenses, to a greater degree than necessary. It also would have resulted in approximately five times as many households losing benefits (25 percent, v. 5 percent) and about seven times larger average household benefit losses (−$41, v. −$6) than the final rule, resulting in disruption, confusion, and negative consequences for households' food budgets. See Table 13, below, for further details about this alternative's estimated effects on SNAP households.

Table 13: Estimated Effects on SNAP Households of Alternative B

	Percentage of Households	Average Dollar Change per Household	Percent Benefit Change per Household
No longer eligible	0.06%	-$54	-100%
Receiving lower benefits	24.6%	-$41	-15.2%
Receiving higher benefits	13.0%	$14	5.4%
No change in benefits	62.4%	--	--

Source: Simulation using FY 2022 SNAP Quality Control Data.
Note: Average dollar change estimates are nominal.

C. Permitting State Agencies a Longer Timeframe Between Methodological Updates

The Department considered permitting States to conduct methodological updates of their SUAs less frequently than every five years. If States were allowed to update their SUA methodologies and base data every seven years, State agencies would experience a reduced administrative burden due to conducting the updates. Less frequent methodological updates could also affect benefit spending if States continued to use SUAs that were out of alignment with households' current circumstances for a longer period of time. However, the Department cannot predict if less-frequent SUA updates in the future would be more likely to result in SUAs being inappropriately high or low, and therefore is unable to estimate if benefit spending would have increased or decreased under this alternative.

The Department determined that a five-year update requirement was more appropriate than a longer timeframe because it strikes an appropriate balance between ensuring SUAs remain responsive to current trends in consumption, efficiency, and utility prices, while minimizing the burden on State agencies to conduct frequent, extensive updates of their SUA methodologies. The Department believes a longer period between updates could result in SUAs become outdated, particularly if a State bases its SUA calculations on survey data, rather than data sourced directly from utility providers. Survey data from sources like ACS and RECS can lag behind current conditions by multiple years, and their publication does not always take place in time for an annual SUA update. As a result, allowing State agencies to update their methodologies every seven years could result in baseline SUA data that are a decade or more out-of-date.

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Appendix Table A
Ten-Year Summary of Federal Budget Impacts, FY 2025-2034

In Millions of Dollars	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	FY 2030	FY 2031	FY 2032	FY 2033	FY 2034	FY25-FY29 Total	FY25-FY34 Total
Transfers - SNAP benefit spending												
Establish guidelines for States' SUA Updates	$0	-$293	-$297	-$301	-$304	-$308	-$309	-$312	-$316	-$320	-$1,195	-$2,761
Allow basic internet as a shelter expense	$37	$1,604	$1,625	$1,643	$1,661	$1,682	$1,690	$1,708	$1,728	$1,750	$6,571	$15,128
Total Estimated Transfer Impacts[1]	**$37**	**$1,311**	**$1,328**	**$1,343**	**$1,357**	**$1,375**	**$1,380**	**$1,396**	**$1,412**	**$1,429**	**$5,376**	**$12,368**
LIHEAP Provisions[2]	-$427	-$425	-$431	-$436	-$441	-$446	-$448	-$453	-$458	-$464	-$2,160	-$4,429
Discounted Transfer Impact												
3 percent	$36	$1,235	$1,215	$1,193	$1,171	$1,151	$1,122	$1,102	$1,082	$1,064	$4,850	$10,372
7 percent	$34	$1,145	$1,084	$1,024	$968	$916	$860	$812	$768	$727	$4,255	$8,338
Federal and State Administrative Costs												
State Administrative Costs - Implementation	$0.41	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.41	$0.41
State Administrative Costs - Ongoing	$0.03	$0.03	$0.03	$0.03	$0.03	$0.47	$0.03	$0.03	$0.03	$0.04	$0.15	$0.76
Federal Costs	$0.49	$0.03	$0.03	$0.03	$0.03	$0.53	$0.03	$0.03	$0.03	$0.04	$0.61	$1.28
Total Estimated Federal and State Costs	**$0.93**	**$0.06**	**$0.06**	**$0.06**	**$0.06**	**$1.01**	**$0.07**	**$0.07**	**$0.07**	**$0.07**	**$1.17**	**$2.45**
Discounted Cost Impact												
3 percent	$0.88	$0.05	$0.05	$0.05	$0.05	$0.73	$0.05	$0.04	$0.04	$0.04	$1.08	$1.99
7 percent	$0.84	$0.05	$0.05	$0.04	$0.04	$0.58	$0.04	$0.03	$0.03	$0.03	$1.02	$1.73

1. Excludes impacts of LIHEAP provision.
2. Because these provisions were implemented shortly after passage of the 2014 Farm Bill, this reduction in transfers is fully captured in the SNAP baseline and not included in the Total Estimated Impacts line.

Appendix Table B

Supplemental Nutrition Assistance Program (SNAP) FY 2024 Standard Utility Allowances (SUA) by State, as of April 2024

State (with Region and Household Size)	Heating and Cooling Utility Allowance (HCSUA)	Basic/ Limited Utility Allowance (BUA/LUA)	Electricity	Gas and Fuel	Water	Sewage	Trash	Internet	Phone
Alabama	$601	$434	--	--	--	--	--	--	$52
Alaska – Central	$638	--	$131	$330	$57	$59	$36	--	$25
Alaska - Northern	$811	--	$171	$481	$43	$44	$38	--	$34
Alaska - Northwest	$1,082	--	$161	$736	$61	$49	$39	--	$36
Alaska - Southcentral	$592	--	$107	$317	$40	$63	$39	--	$26
Alaska - Southeast	$500	--	$69	$237	$49	$78	$32	--	$35
Alaska - Southwest	$1,026	--	$165	$652	$105	$52	$17	--	$35
Arizona - 1 to 3 members	$318	$150	--	--	--	--	--	--	$47
Arizona - 4 or more members	$431	$202	--	--	--	--	--	--	$47
Arkansas	$329	$263	--	--	--	--	--	--	$50
California	$596	$158	--	--	--	--	--	--	$19
Colorado	$560	$356	$67	$67	$67	$67	$67	--	$91
Connecticut	$912	$402	--	--	--	--	--	--	$34
Delaware	$534	$367	$82	$82	$82	$82	$82	--	$39
District of Columbia	$360	$323	$84	$84	$84	$84	$84	--	$72
Florida	$426	$340	--	--	--	--	--	--	$49
Georgia	$412	$349	--	--	--	--	--	--	$42
Guam - 1 member*	--	--	$173	$36	$38	$28	$30	--	$28
Guam - 2 members*	--	--	$194	$36	$50	$28	$30	--	$28
Guam - 3 members*	--	--	$199	$36	$50	$28	$30	--	$28
Guam - 4 members*	--	--	$238	$72	$69	$28	$30	--	$28
Guam - 5 members*	--	--	$270	$72	$85	$28	$30	--	$28
Guam - 6 members*	--	--	$309	$72	$111	$28	$30	--	$28
Guam - 7 members*	--	--	$351	$108	$136	$28	$30	--	$28
Guam - 8 members*	--	--	$368	$108	$150	$28	$30	--	$28
Guam - 9 members*	--	--	$393	$108	$171	$28	$30	--	$28
Guam - 10 members*	--	--	$393	$108	$171	$28	$30	--	$28
Guam - 11 members*	--	--	$403	$108	$178	$28	$30	--	$28
Guam - 12 members*	--	--	$403	$108	$178	$28	$30	--	$28
Guam - 13 member *	--	--	$403	$108	$178	$28	$30	--	$28
Hawaii - 1 member*	--	--	$300	$300	$57	$95	$95	--	$40

State (with Region and Household Size)	Heating and Cooling Utility Allowance (HCSUA)	Basic/ Limited Utility Allowance (BUA/LUA)	Electricity	Gas and Fuel	Water	Sewage	Trash	Internet	Phone
Hawaii - 2 members*	--	--	$326	$326	$64	$95	$95	--	$40
Hawaii - 3 members*	--	--	$378	$378	$70	$95	$95	--	$40
Hawaii - 4 to 5 members*	--	--	$473	$473	$83	$95	$95	--	$40
Hawaii - 6 members*	--	--	$559	$559	$95	$95	$95	--	$40
Hawaii - 7 to 10 members*	--	--	$632	$632	$114	$95	$95	--	$40
Idaho	$376	$301	$129	$129	$129	$129	$129	--	$42
Illinois	$577	$386	$62	$62	$62	$62	$62	--	$75
Indiana**	$502	$274	$60	$60	$60	$60	$60	--	$35
Iowa	$530	$277	--	--	--	--	--	--	$33
Kansas	$462	$327	--	--	--	--	--	--	$42
Kentucky	$452	$395	--	--	--	--	--	$50	$66
Louisiana	$414	$230	--	--	--	--	--	--	$74
Maine	$1,011	$341	--	--	--	--	--	--	$58
Maryland**	$551	$337	--	--	--	--	--	--	$40
Massachusetts	$852	$520	--	--	--	--	--	--	$59
Michigan	$686	--	$157	$34	$109	$109	$37	--	$31
Minnesota	$651	--	$213	--	--	--	--	--	$54
Mississippi	$287	$191	--	--	--	--	--	--	$45
Missouri	$475	$351	$153	$153	$153	$153	$153	--	$76
Montana	$723	$244	$105	$105	$105	$105	$105	--	$34
Nebraska	$580	$303	$60	$60	$60	$60	$60	--	$52
Nevada	$412	$350	$81	$81	$81	$81	$81	--	$27
New Hampshire	$956	$350	$204	--	--	--	--	$50	$37
New Jersey	$850	$464	--	--	--	--	--	--	$32
New Mexico	$417	$215	--	--	--	--	--	--	$46
New York - Nassau and Suffolk Counties	$923	$363	--	--	--	--	--	--	$31
New York - New York City	$992	$391	--	--	--	--	--	--	$31
New York - Rest of New York State	$819	$332	--	--	--	--	--	--	$31
North Carolina - 1 member	$585	$371	--	--	--	--	--	--	$41
North Carolina - 2 members	$643	$408	--	--	--	--	--	--	$41
North Carolina - 3 members	$707	$448	--	--	--	--	--	--	$41
North Carolina - 4 members	$770	$488	--	--	--	--	--	--	$41

State (with Region and Household Size)	Heating and Cooling Utility Allowance (HCSUA)	Basic/ Limited Utility Allowance (BUA/LUA)	Electricity	Gas and Fuel	Water	Sewage	Trash	Internet	Phone
North Carolina - 5 or more members	$839	$532	--	--	--	--	--	--	$41
North Dakota	$735	$270	$118	$118	$118	$118	$118	--	$34
Ohio	$724	$453	$102	$102	$102	$102	$102	--	$45
Oklahoma	$388	$334	--	--	--	--	--	--	$48
Oregon	$469	$370	$59	$59	$59	$59	$59	--	$76
Pennsylvania	$750	$401	$70	$70	$70	$70	$70	--	$34
Rhode Island	$787	--	--	--	--	--	--	--	$25
South Carolina	$369	$247	--	--	--	--	--	--	$27
South Dakota	$892	$250	$103	$103	$103	$103	$103	--	$57
Tennessee - 1 members*	$430	$164	--	--	--	--	--	--	$35
Tennessee - 2 members*	$445	$164	--	--	--	--	--	--	$35
Tennessee - 3 members*	$462	$164	--	--	--	--	--	--	$35
Tennessee - 4 members*	$480	$164	--	--	--	--	--	--	$35
Tennessee - 5 members*	$495	$164	--	--	--	--	--	--	$35
Tennessee - 6 members*	$511	$164	--	--	--	--	--	--	$35
Tennessee - 7 members*	$526	$164	--	--	--	--	--	--	$35
Tennessee - 8 members*	$542	$164	--	--	--	--	--	--	$35
Tennessee - 9 members*	$560	$164	--	--	--	--	--	--	$35
Tennessee - 10 or more members*	$574	$164	--	--	--	--	--	--	$35
Texas	$424	$391	--	--	--	--	--	--	$60
Utah	$503	$382	--	--	--	--	--	--	$55
Vermont	$1,020	$291	--	--	--	--	--	--	$36
Virgin Islands*	--	--	--	--	--	--	--	--	$33
Virginia - 1 to 3 members*	$414	--	--	--	--	--	--	--	$52
Virginia - 4 or more members*	$524	--	--	--	--	--	--	--	$52
Washington	$483	$383	--	--	--	--	--	--	$58
West Virginia	$496	$305	$79	$79	$79	$79	$79	--	--
Wisconsin	$502	$347	$144	$42	$99	$99	$26	--	$30
Wyoming	$478	$317	--	--	--	--	--	--	$56

*Indicates State is not a mandatory SUA State.

**Indicates the State does not follow the fiscal year for their SUA approvals. Indiana's SUA update is effective May 1. Maryland's SUA update is effective January 1.

Appendix Table C
State Level Impacts of Final Rule

State	Households Receiving Reduced Benefits (%)	Households Receiving Increased Benefits (%)	Net Impact on Total Benefits (%)
Alabama	0.0	41.9	1.8
Alaska	0.0	23.6	0.7
Arizona	0.0	28.8	1.3
Arkansas	0.0	41.1	2.8
California	0.0	39.4	2.0
Colorado	0.0	30.8	1.4
Connecticut	0.0	31.5	1.5
Delaware	0.0	24.2	1.2
District of Columbia	0.0	37.3	3.4
Florida	0.0	38.7	2.0
Georgia	0.0	30.9	1.4
Guam	0.0	12.3	0.2
Hawaii	0.0	23.7	0.5
Idaho	0.0	47.6	2.3
Illinois	0.0	28.5	1.5
Indiana	0.0	33.3	1.4
Iowa	0.0	37.6	2.0
Kansas	0.0	47.5	2.2
Kentucky	0.0	39.1	1.8
Louisiana	0.0	39.8	1.7
Maine	32.3	9.3	-1.0
Maryland	0.0	16.8	1.0
Massachusetts	29.1	1.1	-0.8
Michigan	0.0	34.2	1.8
Minnesota	0.0	39.1	2.2
Mississippi	0.0	24.8	1.2
Missouri	0.0	45.9	2.0
Montana	0.0	34.8	1.7
Nebraska	0.0	42.1	1.9
Nevada	0.0	26.6	2.2
New Hampshire	28.1	11.6	-0.4
New Jersey	32.3	0.8	-0.7
New Mexico	0.0	37.7	1.8
New York	21.5	1.3	-0.5
North Carolina	0.0	30.5	1.5
North Dakota	39.2	2.7	-0.4
Ohio	34.7	2.2	-0.4
Oklahoma	0.0	43.2	3.0

Oregon	0.0	36.4	2.1
Pennsylvania	0.0	36.6	1.8
Rhode Island	41.0	0.0	-0.9
South Carolina	0.0	29.6	2.2
South Dakota	30.8	1.0	-0.7
Tennessee	0.0	34.1	1.5
Texas	0.0	35.7	1.5
Utah	0.0	33.5	1.4
Vermont	44.9	0.3	-1.8
Virgin Islands	0.0	1.6	0.1
Virginia	0.0	30.1	2.2
Washington	0.0	30.3	1.8
West Virginia	0.0	37.3	2.1
Wisconsin	0.0	36.9	2.0
Wyoming	0.0	40.8	1.7
United States	**4.9**	**29.2**	**1.3**

Source: Simulation using FY 2022 SNAP QC data.

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