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DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 287

[CIS No. 2827–25; DHS Docket No. USCIS–2025–0106]

RIN 1615–AD03

Codification of Certain U.S. Citizenship and Immigration Services Law Enforcement Authorities

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security (DHS) is amending its regulations to codify certain law enforcement authorities delegated by the Secretary of Homeland Security (Secretary) to the Director of U.S. Citizenship and Immigration Services (USCIS) and subsequently redelegated to particular officers or employees of USCIS. These authorities allow particular USCIS personnel to investigate and enforce civil and criminal violations of the immigration laws within the jurisdiction of USCIS. These authorities include, but are not limited to, the issuance and execution of warrants, the arrest of individuals, and carrying of firearms.

DATES: This final rule is effective on October 6, 2025.

FOR FURTHER INFORMATION CONTACT: Security and Public Safety Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security, 5900 Capital Gateway Drive, Camp Springs, MD 20746; telephone (240) 721–3000.

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BCIS—Bureau of Citizenship and Immigration Services
 CBP—U.S. Customs and Border Protection
 CPI-U—Consumer Price Index for All Urban Consumers
 CRA—Congressional Review Act
 DHS—Department of Homeland Security
 DOJ—Department of Justice
 FDNS—Fraud Detection and National Security Directorate
 HSA—Homeland Security Act of 2002
 ICE—U.S. Immigration and Customs Enforcement
 INA—Immigration and Nationality Act
 MOA—Memorandum of Agreement
 NEPA—National Environmental Policy Act
 SBREFA—Small Business Regulatory Enforcement Fairness Act of 1996
 UMRA—Unfunded Mandates Reform Act of 1995

USCIS—U.S. Citizenship and Immigration Services

I. Background

A. Creation of the Department of Homeland Security and the Homeland Security Act

After the horrific September 11, 2001, terrorist attacks, Congress legislated the combining of functions of various agencies involved in the administration and enforcement of the civil and criminal immigration laws into one department within the Executive Branch, led by a cabinet-level secretary. On November 25, 2002, President George W. Bush signed into law the Homeland Security Act of 2002 (Pub. L. 107–296) (HSA), which created the Department of Homeland Security (DHS). The HSA abolished the Department of Justice's (DOJ) former Immigration and Naturalization Service (INS) and transferred its immigration and other functions to the Secretary of Homeland Security. The Secretary gained authority over all functions and roles within DHS, and except where prohibited, she can delegate any of her functions to any officer, employee or organizational unit in DHS. *See* 6 U.S.C. 112; 8 U.S.C. 1103(a)(4); 8 CFR 2.1.

Sections 1512(d) and 1517 of the HSA provide that references relating to legacy INS in statutes, regulations, directives, or delegations of authority, shall be deemed to refer to the appropriate official or component of DHS, as delegated by the Secretary, who holds authority over all functions and roles within DHS. 6 U.S.C. 552(d), 557. Additionally, the HSA, as amended, directed the division of the prior immigration functions of INS to three immigration bureaus within DHS, specifically the Bureau of Citizenship and Immigration Services (BCIS),¹ the Bureau of Customs and Border Protection (CBP),² and the Bureau of Immigration and Customs Enforcement (ICE).³ The BCIS (now USCIS) was

¹ 6 U.S.C. 271.

² 6 U.S.C. 211.

³ 6 U.S.C. 252. In 2007, The Bureau of Immigration and Customs Enforcement became U.S. Immigration and Customs Enforcement (ICE), and the Bureau of Customs and Border Protection became U.S. Customs and Border Protection (CBP). Sixty days after DHS made the required notice, the change became official on March 31, 2007. The public was informed of this change via notice in the *Federal Register* on April 23, 2007. *See* 72 FR 20131.

delegated the adjudicatory and naturalization functions of the former INS.⁴ Further, when establishing DHS, Congress explained that DHS was prohibited from relying on the authority provided by 6 U.S.C. 542 to reorganize the former INS's authorities and functions into DHS by recombining, joining, or consolidating the functions and organizational units within the Bureau of Border Security⁵ or the Bureau of Citizenship and Immigration Services. See 6 U.S.C. 291(b). DHS is not recombining USCIS and ICE into a single agency or otherwise combining, joining, or consolidating functions or organizational units together. Instead, this final rule codifies USCIS' independent authority to investigate and enforce civil and criminal violations of the immigration laws within the jurisdiction of USCIS.

All authorities and functions of DHS to administer and enforce the immigration laws of the United States are vested with the Secretary and may be redelegated by the Secretary by various means. See 6 U.S.C. 112; 8 U.S.C. 1103(a)(4). Therefore, since the inception of DHS, the Department's full authority has rested with the Secretary and has been delegated as he or she saw fit for organizational and operational purposes. To further clarify the Secretary's authority over DHS, on March 6, 2003, DHS promulgated a final rule at 8 CFR 2.1, which amended the previous regulation by removing the reference to the Commissioner of the INS and updating the regulation with an equivalent authority and redelegation provision for the Secretary of Homeland Security. See *Authority of the Secretary of Homeland Security; Delegations of Authority; Immigration Laws*, 68 FR 10922 (Mar. 6, 2003). The regulation acknowledges and explains the Secretary's authority to delegate her authority and that such delegation "[...] may be made by regulation, directive, memorandum, or other means as deemed appropriate by the Secretary in the exercise of the Secretary's discretion" and that "[a] delegation of authority or function may in the Secretary's discretion be published in the **Federal Register**, but such publication is not required." 8 CFR 2.1.

On June 5, 2003, then-Secretary Ridge exercised his authority to delegate certain immigration responsibilities to the Bureau of Citizenship and Immigration Services (now USCIS). See DHS Delegation No. 0150.1 (June 5, 2003). Specifically, USCIS was delegated the authority to interrogate aliens, issue subpoenas, administer oaths, take and consider evidence, and fingerprint and photograph aliens under sections 287(a), (b), and (f) of the Immigration and Nationality Act (INA), 8 U.S.C. 1357(a), (b), and (f), and section 235(d) of the INA, 8 U.S.C. 1225(d). See DHS Delegation No. 0150.1(II)(S). Section III of DHS Delegation No. 0150.1 specifically limited the enforcement authority of USCIS. It prohibited USCIS from enforcing immigration laws by inspection of aliens or vehicles, issuance or execution of warrants, detention or release of aliens on bond, removal of aliens from the United States, issuance of stays of removal, reinstatement of removal orders, or any other enforcement authority exclusively delegated to the Commissioner of CBP or the Assistant Secretary (now Director) for ICE. See DHS Delegation No. 0150.1(III).

Title 8 of the CFR continued to be valid as DHS was the successor to INS. However, it was appropriate at that time to conform Title 8 of the CFR to the new governmental structures as laid out in the HSA and the Department of Homeland Security Reorganization Plan, as modified, (Reorganization Plan).⁶ On June 13, 2003, DHS published the final rule "Powers and Authority of Officers and Employees; Revisions to the Internal Review Process for Alleged Violations of the Standards for Enforcement Activities" (2003 Final Rule) to amend Title 8 of the CFR to reflect the structural organization of DHS. See 68 FR 35273. The 2003 Final Rule was published without having gone through notice and comment rulemaking because it was determined the rule was excepted from the notice and comment requirements of the Administrative Procedure Act as a rule of agency organization, procedure, or

practice. *Id.* at 35274; see also 5 U.S.C. 553(b)(A).

The 2003 Final Rule amended parts 1, 103, 239, and 287 of Title 8 of the CFR. In the 2003 Final Rule definitions were added for the three immigration bureaus within DHS that were delegated the authorities of the former INS—the Bureau of Citizenship and Immigration Services (BCIS), the Bureau of Customs and Border Protection (CBP), and the Bureau of Immigration and Customs Enforcement (ICE). The 2003 Final Rule clarified that the functions of INS continued under DHS and highlighted instances where there was a transfer of function to other departments such as the Department of Health and Human Services.⁷ The 2003 Final Rule also amended powers and authorities, departments, job titles, and delegations under the Secretary's general authority found in 8 CFR 2.1. Except where prohibited, the Secretary can delegate any of his or her functions to any officer, employee, or organization unit in DHS.⁸

For example, deportation officers and immigration enforcement agents were provided the authority to execute search warrants under 8 CFR 287.5(e)(1)(v) and 287.5(e)(1)(vi). Similarly, deportation officers and immigration enforcement agents were provided the authority to make arrests under INA 236(a) under 8 CFR 287.5(c)(1) through (6), serve warrants of arrest for non-immigration violations under 8 CFR 287.5(e)(4)(v) and 287.5(e)(4)(vi), and issue detainers under 8 CFR 287.7(b)(3) and 287.7(b)(6). In all cases, those authorities were delegated by the Secretary.⁹ At that time, BCIS (now USCIS) was not delegated the same authorities through regulation or other delegation.

B. Creation of the USCIS Fraud Detection and National Security Directorate

In 2004, USCIS created the Fraud Detection and National Security Office (FDNS) in response to a Congressional recommendation to establish an organization "responsible for developing, implementing, directing, and overseeing the joint [US]CIS–ICE anti-fraud initiative, and conducting law enforcement/background checks on

⁴ See 6 U.S.C. 271. In 2004, BCIS became U.S. Citizenship and Immigration Services (USCIS). Sixty days after DHS made the required notice to the appropriate congressional committees, the change from BCIS to USCIS became official effective August 23, 2004. The public was informed of this change via notice in the **Federal Register** on October 13, 2004. See 69 FR 60938.

⁵ The then Bureau of Border Security (now ICE and CBP) was to oversee border patrol, detention and removal, and investigations. See 6 U.S.C. 252.

⁶ See 6 U.S.C. 542. The original DHS Reorganization Plan was submitted on November 25, 2002, pursuant to Section 1502 of the HSA, 6 U.S.C. 542, which included two categories of information concerning plans for the new DHS; the "transfer of agencies, personnel, assets, and obligations," and "any consolidation, reorganization, or streamlining of agencies transferred" to DHS. The Reorganization Plan was amended on January 7, 2003. See A Reorganization Plan for the Department of Homeland Security (Jan. 7, 2003). 108th Congress, 1st Session, House Document: 108–16.

⁷ See section 462 of the HSA, as amended, 6 U.S.C. 279 (concerning unaccompanied alien children).

⁸ See 6 U.S.C. 112.

⁹ See DHS Delegation No. 7030.2, Delegation of Authority to the Assistant Secretary for U.S. Immigration and Customs Enforcement (Mar. 1, 2003), https://www.ice.gov/doclib/foia/policy/7030.2_DelegationAuthority_03.01.2003.pdf; DHS Delegation No. 0150.1, Delegation to the Bureau of Citizenship and Immigration Services (June 5, 2003), <https://www.hsd.org/c/view?docid=234775>.

every applicant, beneficiary, and petitioner prior to granting any immigration benefits.”¹⁰ In 2010, USCIS responded to public concerns about the integrity of the immigration system by elevating FDNS from an office to a Directorate¹¹ which elevated the profile of its work within USCIS, ensured that an anti-fraud and national security perspective informed agency policy making at the highest levels, brought about operational improvements, and enhanced the integration of the FDNS mission in all facets of the agency’s work.

Currently, FDNS supports the USCIS mission by establishing guidance and overseeing processes to identify and mitigate threats to national security and public safety posed by those seeking immigration benefits; detecting, pursuing, and deterring immigration benefit fraud; identifying and removing systemic vulnerabilities in the process of the legal immigration system; developing and implementing security screening programs and procedures; and acting as a USCIS conduit for information sharing and collaboration with other governmental agencies.

The initial delegation from the Secretary to USCIS directed USCIS to coordinate with ICE and CBP on complementary, concurrent, or overlapping authorities. *See* DHS Delegation No. 0150.1(III). One authority concurrently delegated to both USCIS and ICE was the authority to conduct civil and criminal investigations of violations of immigration laws, including but not limited to alleged fraud, with respect to immigration benefits available under the INA.¹²

In 2017, then-Secretary Johnson reaffirmed the delegated authority of the Director of USCIS to conduct certain law enforcement activities relating to the accessing of internet and publicly available social media content. *See* DHS Delegation No. 15002 (Jan. 19, 2017). Specifically, the delegation stated that

[i]n matters under the jurisdiction of USCIS, to protect the national security and public safety, to conduct law enforcement

activities, including but not limited to accessing internet and publicly available social media content using a fictitious account or identity, provided that such activities shall only be conducted by properly trained and authorized officers, and in a manner consistent with the Reservations set forth in Department of Homeland Security Delegation Number 0150.1 and consistent with the Department’s obligations to protect privacy and civil rights and civil liberties.¹³

Subsequently, on March 28, 2017, the USCIS Director delegated the authority to conduct law enforcement activities relating to accessing internet and publicly available social media content to the Associate Director for FDNS¹⁴ and the Chief of the Office of Security and Integrity.¹⁵ This authority was to be exercised in matters under the jurisdiction of their respective directorates to protect national security and public safety and was only to be enacted by properly trained and authorized officers and employees of USCIS.¹⁶

On July 23, 2025, USCIS and ICE entered into their fourth memorandum of agreement (MOA) to coordinate on the investigation of immigration benefit fraud and referral of cases for criminal investigation.¹⁷ The MOA provides that ICE has sole responsibility for detecting, deterring, and conducting criminal investigations of immigration benefit fraud. USCIS is primarily responsible for identifying and detecting potential fraud through civil investigations conducted in the ordinary course of the adjudication of applications and petitions for immigration benefits. Thus, USCIS currently must refer any potential criminal activity or

investigation to ICE. The MOA divides criminal and civil immigration benefit fraud investigations between ICE and USCIS, respectively.

While there is an overlap between the original ICE and USCIS delegations, the current MOA explains DHS policy and the division of labor between the two components based upon the original delegations. These internal DHS policies and MOAs will be appropriately updated as a result of the Secretary’s 2025 delegation to USCIS discussed below and following publication of this rule.

C. Secretary’s 2025 Delegation to USCIS

As described in Executive Order 14159, “Protecting the American People Against Invasion,” the United States saw “an unprecedented flood of illegal immigration” with many of these aliens presenting significant threats to national security and public safety. 90 FR 8443 (published Jan. 29, 2025). It is this administration’s stated policy that it is the federal government’s responsibility to “faithfully execute the immigration laws against all inadmissible and removable aliens, particularly those aliens who threaten the safety or security of the American people.” *Id.* Additionally, Executive Order 14159 directs the leaders of ICE, CBP, and USCIS to “set priorities for their agencies that protect the public safety and national security interests of the American people, including by ensuring the successful enforcement of final orders of removal.” *Id.* In order to meet the stated goals of Executive Order 14159 it is necessary for DHS to maximize the use of all of its available resources while also ensuring they are deployed in a judicious and efficient manner.

USCIS performs critical work for DHS and is integral to the enforcement of immigration laws by actively supporting and collaborating with the law enforcement community at all levels as well as civilly enforcing immigration laws through its adjudications. However, DHS Delegation No. 0150.1 has historically limited the scope of USCIS’ authority, capabilities, and involvement in the enforcement of immigration laws.

To be responsive to Executive Order 14159 and to ensure that DHS resources are being leveraged to their greatest capacity, the Secretary has determined that USCIS will assume a more engaged and proactive posture in the Department’s efforts to enforce immigration laws. To facilitate this, the Secretary delegated to the Director of USCIS the authority to conduct additional law enforcement activities to

¹⁰ H.R. Conf. Rep. 108–774, at 74 (2004), as reprinted in 2004 U.S.C.A.N. 1198, 1242.

¹¹ USCIS is divided into directorates and program offices with the former being director-led departments in charge of multiple divisions and the latter chief-led offices that have a specific function. *See* USCIS, Directorates and Program Offices, <https://www.uscis.gov/about-us/organization/directorates-and-program-offices> (last visited Jul. 29, 2025).

¹² *See* DHS Delegation No. 0150.1(II)(I) (June 5, 2003) and DHS Delegation No. 07030.2(2)(I), Delegation of Authority to the Assistant Secretary for the Bureau of Immigration and Customs Enforcement (Mar. 1, 2003).

¹³ *See* Secretary of Homeland Security Delegation No. 15002, Delegation to the Director of U.S. Citizenship and Immigration Services to Conduct Certain Law Enforcement Activities, Section II (Jan. 19, 2017).

¹⁴ Delegation of Authority to Conduct Certain Law Enforcement Activities Including, But Not Limited to, Accessing Internet and Publicly Available Social Media Content Using a Fictitious Account or Identity (Mar. 28, 2017).

¹⁵ Delegation of Authority to Access the Internet and Publicly Available Social Media Content Using Fictitious Account or Identity (Feb. 11, 2023).

¹⁶ *See* 5 U.S.C. 2104, 2105(a). The terms officer and employee do not include contractor personnel.

¹⁷ Memorandum of Agreement Between USCIS and ICE Regarding National Security, Public Safety and Immigration Benefit Fraud Case Referrals (Jul. 23, 2025) (Note this MOA supersedes three related MOAs addressing referral of immigration cases with public safety (*i.e.*, criminality issues) and national security concerns, entitled Memorandum of Agreement between USCIS and ICE on the Issuance of Notices to Appear to Aliens Encountered during an Adjudication (June 20, 2006), Memorandum of Agreement between USCIS and ICE on the Investigation of Immigration Benefit Fraud (Sept. 25, 2008) and Memorandum of Agreement Between USCIS and ICE Regarding the Referral of Immigration Benefit Fraud and Public Safety Cases (Dec. 15, 2020).

enforce civil and criminal violations of immigration laws within the jurisdiction of USCIS. *See* DHS Delegation No. 15006 (May 2, 2025). DHS Delegation No. 15006 provides the Director of USCIS with the authority to order expedited removal under 8 U.S.C. 1225, issue and execute detainers and warrants of arrest or removal, detain aliens, release aliens on bond and other appropriate conditions as provided by law, and remove aliens from the United States. Further, DHS Delegation No. 15006, upon redelegation by the USCIS Director, bolsters USCIS's existing authority to investigate alleged civil and criminal violations of the immigration laws by delegating necessary law enforcement authorities within the jurisdiction of USCIS, including but not limited to issuance and execution of warrants, and making recommendations for prosecutions or other appropriate action when advisable.

These additional authorities are provided to enhance DHS resources that may be employed to execute the administration's critical work to enforce immigration laws. DHS is now codifying certain provisions of DHS Delegation No. 15006 described in this final rule to provide notice to the public of these organizational changes that bring USCIS in line with other DHS components engaged in the enforcement of immigration laws. The changes are published as a final rule and will take effect 30 days post publication. Upon publication of this final rule, USCIS internal policies and MOAs, such as that with ICE, will be updated to reflect the recent delegations of law enforcement authority to the Director of USCIS.

II. Discussion of This Final Rule

A. Purpose of the Regulatory Action

On May 2, 2025, the Secretary delegated authorities to the USCIS Director to take additional actions to investigate and enforce civil and criminal violations of the immigration laws. *See* DHS Delegation No. 15006. The authority delegated by the Secretary includes standard law enforcement authorities commensurate with other federal law enforcement personnel, including but not limited to the ability to arrest persons for crimes committed in the presence of the law enforcement officer or for felonies. The purpose of this rule is to codify specific authorities delegated by the Secretary to the Director of USCIS. DHS is amending 8 CFR part 287 to reflect this enhancement to the authorities delegated to the Director of USCIS.

This rule will allow the Director of USCIS to more thoroughly fulfill USCIS' national security, public safety, and fraud missions for cases within its jurisdiction. Allowing USCIS to take law enforcement actions on cases identified in the USCIS adjudicatory process will increase national security, public safety, and the integrity of the United States' immigration system.

B. Legal Authority

The authority for the Secretary to issue this final rule is found in section 103(a) of the INA, 8 U.S.C. 1103(a), which authorizes the Secretary to administer and enforce the immigration and nationality laws, establish such regulations and perform such other acts as the Secretary deems necessary for carrying out such authority, and require or authorize any DHS employee to exercise any of the powers, privileges, or duties conferred upon DHS under the immigration laws. In addition, section 102 of the HSA, 6 U.S.C. 112, vests all of the functions of DHS in the Secretary and authorizes the Secretary to issue regulations.¹⁸ Specifically, section 102(a)(3) of the HSA, 6 U.S.C. 112(a)(3), states that all functions of all officers, employees, and organizational units are vested in the Secretary, and section 102(b)(1) of the HSA, 6 U.S.C. 112(b)(1), states that the Secretary may delegate any of the Secretary's functions to any officer, employee, or organizational unit of DHS. Originally, on June 5, 2003, the Secretary exercised his authority to delegate certain immigration responsibilities to the Bureau of Citizenship and Immigration Services, now USCIS. *See* DHS Delegation No. 0150.1. Most recently, on May 2, 2025, the Secretary exercised her authority and delegated to the USCIS Director the authority to perform specific law enforcement functions which will allow USCIS to take additional actions to enforce civil and criminal violations of the immigration laws. *See* DHS Delegation No. 15006.

C. Summary of the Major Provisions of the Regulatory Action

The law enforcement authorities delegated to the Director of USCIS include, but are not limited to, the authority to investigate alleged civil and criminal violations of the immigration laws within the jurisdiction of USCIS,

¹⁸ Although several provisions of the INA discussed in this final rule refer exclusively to the "Attorney General," such provisions are now to be read as referring to the Secretary of Homeland Security by operation of the HSA. *See* 6 U.S.C. 202(3), 251, 271(b), 542 note, 557; 8 U.S.C. 1103(a)(1) and (g), 1551 note; *Nielsen v. Preap*, 586 U.S. 392, 397 n.2 (2019).

issue and execute both search and arrest warrants, detain and remove aliens, and make recommendations for prosecutions or other appropriate action when deemed advisable. To reflect the new authority delegated to the Director of USCIS, this final rule amends the following regulations to codify USCIS law enforcement authorities commensurate with those authorities previously only delegated to ICE and CBP regarding the enforcement of immigration laws. This is in addition to the Director of USCIS' current regulatory authority to designate individuals or a class of individuals to arrest aliens for immigration violations or immigration related felonies, issue immigration detainers, and inspect aliens seeking admission to the United States. *See* 8 CFR 287.5(c)(1)(viii), 287.5(d)(8), 287.7. This rule expands upon these existing law enforcement related powers to include:

i. Definition of Law Enforcement or Other Official (*See* 8 CFR 287.1(e) and (g) as Amended)

DHS is adding language to the definition of "law enforcement official (or other official)" to include a delegation by the Secretary regarding the administration of criminal justice. This change is intended for clarity and is already permitted by statute. DHS is also adding language to specify that the Director of USCIS, like the Commissioner of CBP and Assistant Director of ICE, may determine what is considered "substantially equivalent" to basic immigration law enforcement training.

ii. Disposition of Criminal Cases (*See* 8 CFR 287.2 as Amended)

DHS is adding "supervisory law enforcement official(s) designated by the Director of USCIS" to the list of positions that may initiate an investigation into a violation of the criminal provisions of the INA.

iii. Arrests of Persons Under INA § 287(a)(5)(A) or Any Offense Committed in the Presence of an Officer (*See* 8 CFR 287.5(c)(3)(vii) as Amended)

DHS is adding the Director of USCIS as a position that may designate individuals or a class of individuals as having the authority to arrest persons for crimes committed in the presence of the designated officer. This is standard for federal immigration law enforcement.

iv. Arrests of Persons Under INA § 287(a)(5)(B) for any Felony While Performing Duties (See 8 CFR 287.5(c)(4)(ii)(G), 287.5(c)(4)(iii) as Amended)

DHS is adding the Director of USCIS as a position that may designate individuals or a class of individuals as having the authority to arrest persons for *any* felony, if the officer is performing immigration enforcement duties at the time of the arrest and if there is a likelihood of the person escaping before an arrest warrant can be obtained. This authority is standard for most federal immigration law enforcement. DHS is also adding language to specify that the Director of USCIS, like the Commissioner of CBP and Director of ICE, may revoke the certification provided to officers following successful completion of the required training course that allows officers to make arrests for any felonies committed while the immigration officer is performing duties related to immigration enforcement with just cause.

v. Arrests of Persons for Facilitating Unlawful Entry of Aliens Into the United States (See 8 CFR 287.5(c)(5)(ii)(G) as Amended)

DHS is adding the Director of USCIS as a position that may designate individuals or a class of individuals as having the authority to arrest persons who bring in, induce, transport, or harbor certain aliens for the purposes of unlawfully entering the United States.

vi. Power and Authority To Execute Search Warrants and Service of Arrest Warrants (See 8 CFR 287.5(e)(1)(viii), (e)(3)(viii), (e)(4)(viii) as Amended)

DHS is adding the Director of USCIS as a position that may designate individuals or a class of individuals as having the authority to execute search warrants, as well as service of arrest warrants for immigration and non-immigration violations. This authority is standard for federal immigration law enforcement.

vii. Carrying Firearms (See 8 CFR 287.5(f)(8) as Amended)

DHS is adding the Director of USCIS as a position that may designate individuals or a class of individuals as having the authority to carry firearms, provided these individual(s) receive appropriate training and maintain proficiency. This authority is standard for federal immigration law enforcement officials.

viii. Standards for Law Enforcement Activities (See 8 CFR 287.8(a)(1)(iv)(H); (a)(2)(iii)(H); and (e)(2)(v) as Amended).

DHS is adding the Director of USCIS as a position that will grant individuals or a class of individuals the authority to use non-deadly force, deadly force (in situations where the designated immigration officer or other persons are in danger), and initiate a vehicular pursuit to apprehend fleeing suspects who are attempting to avoid apprehension.

ix. Criminal Search Warrant and Firearms Policies (See 8 CFR 287.9(a) and (b) as Amended)

DHS is adding language requiring the Director of USCIS to provide guidance regarding officers' conduct relating to search, seizure, and firearms. Designated USCIS personnel will be authorized certain law enforcement authorities as delegated by the Secretary through the Director of USCIS. Historically these authorities were granted to CBP and ICE under the HSA and each agency has codified the required requisite training necessary to grant their law enforcement personnel basic immigration law enforcement authority. Both CBP and ICE establish in 8 CFR 287.1(g) that requisite training, as used in 8 CFR 287.5 and 287.8, is defined as the successful completion of a select list of established CBP or ICE Immigration Officer, Border Patrol, Immigration Detention Enforcement, or Special Agent academies or training courses or any training substantially equivalent thereto. This rule grants the Director of USCIS (in equivalent to the abilities to the Commissioner of CBP and the Director of ICE) the authority to determine what constitutes any training substantially equivalent to the codified basic immigration law enforcement trainings noted under 8 CFR 287.1(g). The Director of USCIS, in consultation with peer agencies CBP and ICE, will establish a substantially equivalent training course/academy to ensure USCIS designated law enforcement personnel successfully perform their duties upholding the immigration laws of the United States. Additionally, USCIS will establish ongoing training and continued learning metrics to ensure that designated officers maintain the necessary skills, stay updated on legal and procedural changes, and improve officer safety.

x. Technical Edits and Edits for Clarity

DHS is making technical edits to update or remove outdated organizational references. The rule amends 8 CFR 287.8(f)(1) to update the

legacy term "Border and Transportation Security Directorate" to "Department of Homeland Security." See 8 CFR 287.8(f)(1) as amended.

III. Statutory and Regulatory Requirements

A. Administrative Procedure Act

Under the Administrative Procedure Act, the normal notice and comment procedures do not apply to an action that is a rule of agency organization, procedure, or practice. See 5 U.S.C. 553(b)(A). This exception to notice and comment rule making is colloquial referred to as the "procedural exception." *Am. Fed'n of Labor & Cong. of Indus. Orgs. v. NLRB*, 57 F.4th 1023, 1043 (D.C. Cir. 2023). In general, the procedural exception is intended for "internal house-keeping measures organizing agency activities." *Am. Hosp. Ass'n v. Bowen*, 834 F.2d 1037, 1045 (D.C. Cir. 1987). The "statutory exception for procedural rules 'was provided to ensure that agencies retain latitude in organizing their internal operations.'" *Nat'l Sec. Couns. v. CIA*, 931 F. Supp. 2d 77, 106 (D.D.C. 2013) (quoting *Batterton v. Marshall*, 648 F.2d 694, 707 (D.C. Cir. 1980)). The changes made by this final rule to 8 CFR part 287 do nothing more than organize internal DHS operations through the codification of an internal delegation of certain law enforcement authorities by the Secretary of Homeland Security to a component head, the Director of USCIS. This delegation is wholly contained within the internal structure of DHS and aligns delegable authorities with the current administration's priorities.

As this is a rule of agency organization, procedure, or practice, DHS publishes it as a final rule in accordance with 5 U.S.C. 553(b)(A).

B. Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review), and 14192 (Unleashing Prosperity Through Deregulation)

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 14192 (Unleashing Prosperity Through Deregulation) directs agencies to significantly reduce the private

expenditures required to comply with Federal regulations and provides that “any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations.”

This rulemaking is limited to agency organization, management or personnel matters, and therefore is not a regulation or rule as defined by section 2 of Executive Order 12866. Moreover, the Office of Management and Budget has not designated this rule a “significant regulatory action” under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it.

Additionally, this final rule is not an Executive Order 14192 regulatory action because it is being issued with respect to an immigration-related function of the United States. The rule’s primary direct purpose is to implement or interpret the immigration laws of the United States (as described in section 101(a)(17) of the INA, 8 U.S.C. 1101(a)(17)) or any other function performed by the U.S. Federal Government with respect to aliens. *See* OMB Memorandum M–25–20, “Guidance Implementing Section 3 of Executive Order 14192, titled “Unleashing Prosperity Through Deregulation” (Mar. 26, 2025).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). 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 RFA’s regulatory flexibility analysis requirements apply only to those rules for which an agency is required to publish a general notice of proposed rulemaking pursuant to 5 U.S.C. 553 or any other law. *See* 5 U.S.C. 604(a). DHS did not issue a notice of proposed rulemaking for this action. Therefore, a regulatory flexibility analysis is not required for this rule. Furthermore, the RFA’s regulatory flexibility analysis requirements apply only to small entities subject to the requirements of the rule, of which there

are none.¹⁹ This rule is one of agency organization, procedure or practice, because it codifies certain law enforcement authorities delegated by the Secretary of Homeland Security to USCIS through the Director of USCIS.

D. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and Tribal governments. Title II of UMRA requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed rule, or final rule for which the agency published a proposed rule, which includes any Federal mandate that may result in a \$100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector.²⁰ The inflation adjusted value of \$100 million in 1995 is approximately \$206 million in 2024 based on the Consumer Price Index for All Urban Consumers (CPI-U).²¹ This rule is exempt from the written statement requirement, because DHS did not publish a notice of proposed rulemaking for this rule. In addition, this final rule does not contain a Federal mandate as the term is defined under UMRA.²² The requirements of title II of UMRA, therefore, do not apply, and DHS has not prepared a statement under UMRA.

¹⁹ *See* U.S. Small Business Administration, A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act at 9 (Aug. 2017), <https://advocacy.sba.gov/wp-content/uploads/2019/07/How-to-Comply-with-the-RFA-WEB.pdf>.

²⁰ *See* 2 U.S.C. 1532(a).

²¹ *See* BLS, “Historical Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, all items, by month,” <https://www.bls.gov/cpi/tables/supplemental-files/historical-cpi-u-202412.pdf> (last visited May 26, 2025). Calculation of inflation: (1) Calculate the average monthly CPI-U for the reference year (1995) and the current year (2024); (2) Subtract reference year CPI-U from current year CPI-U; (3) Divide the difference of the reference year CPI-U and current year CPI-U by the reference year CPI-U; and (4) Multiply by 100 = [(Average monthly CPI-U for 2024 – Average monthly CPI-U for 1995) ÷ (Average monthly CPI-U for 1995)] × 100 = [(313.689 – 152.383) ÷ 152.383] = (161.306 ÷ 152.383) = 1.059 × 100 = 105.86 percent = 106 percent (rounded). Calculation of inflation-adjusted value: \$100 million in 1995 dollars × 2.06 = \$206 million in 2024 dollars.

²² The term “Federal mandate” means a Federal intergovernmental mandate or a Federal private sector mandate. *See* 2 U.S.C. 658(5) and (6) (defining a federal intergovernmental mandate as, *inter alia*, a regulation that imposes an enforceable duty upon State, local, or tribal governments, except for a duty arising from participation in a voluntary Federal program); 2 U.S.C. 1502(1).

E. Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act)

This rule does not fall within the definition of “rule” as defined by the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) by section 804 of SBREFA, Public Law 104–121, 110 Stat. 847–873. *See* 5 U.S.C. 804(3)(C) (defining the term “rule” to exclude “any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties”). DHS is nonetheless submitting this rule to both houses of Congress and the Comptroller General before the rule takes effect, as required by 5 U.S.C. 801(a)(1).

F. Executive Order 13132 (Federalism)

This rule does 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 section 6 of Executive Order 13132, Federalism, the Department of Homeland Security has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Executive Order 12988 (Civil Justice Reform)

This rule was drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform. This rule was written to provide a clear legal standard for affected conduct and was reviewed carefully to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the Federal court system. DHS has determined that this rule meets the applicable standards provided in section 3 of Executive Order 12988.

H. Family Assessment

DHS has reviewed this rule in line with the requirements of section 654 of the Treasury General Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998). DHS has systematically reviewed the criteria specified in section 654(c)(1), by evaluating whether this regulatory action: (1) impacts the stability or safety of the family, particularly in terms of marital commitment; (2) impacts the authority of parents in the education, nurture, and supervision of their children; (3) helps the family perform its functions; (4) affects disposable

income or poverty of families and children; (5) only financially impacts families, if at all, to the extent such impacts are justified; (6) may be carried out by State or local government or by the family; or (7) establishes a policy concerning the relationship between the behavior and personal responsibility of youth and the norms of society. If the agency determines a regulation may negatively affect family well-being, then the agency must provide an adequate rationale for its implementation.

DHS has determined that the implementation of this regulation will not negatively affect family well-being and will not have any impact on the autonomy and integrity of the family as an institution.

I. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it will 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 (NEPA)

DHS and its components analyze regulatory actions to determine whether the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, applies and, if so, what degree of analysis is required. DHS Directive 023–01 Rev. 01 “Implementation of the National Environmental Policy Act” (Dir. 023–01 Rev. 01) and Instruction Manual 023–01–001–01 Rev. 01 (Instruction Manual)²³ establish the policies and procedures that DHS and its components use to comply with NEPA.

NEPA allows Federal agencies to establish, in their NEPA implementing procedures, categories of actions (“categorical exclusions”) that experience has shown do not, individually or cumulatively, have a significant effect on the human environment and, therefore, do not require an environmental assessment or environmental impact statement.²⁴ The Instruction Manual, Appendix A lists the DHS Categorical Exclusions.²⁵

Under DHS NEPA implementing procedures, for an action to be categorically excluded, it must satisfy each of the following three conditions: (1) The entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect.²⁶

This rule is limited to amending DHS regulations to codify certain law enforcement authorities delegated by the Secretary of Homeland Security to USCIS through the Director of USCIS, which is a rule of agency organization, procedure, and practice. DHS has reviewed this rule and finds that no significant impact on the environment, or any change in environmental effect will result from the amendments being promulgated in this rule.

Accordingly, DHS finds that the promulgation of this rule’s amendments to current regulations clearly fits within categorical exclusion A3 established in DHS’s NEPA implementing procedures as an administrative change with no change in environmental effect, is not part of a larger Federal action, and does not present extraordinary circumstances that create the potential for a significant environmental effect.

K. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–12, all agencies are required to submit to OMB, for review and approval, any reporting requirements inherent in a rule. This rule does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects in 8 CFR Part 287

Immigration, Law enforcement officers.

Accordingly, DHS amends part 287 of chapter I of title 8 of the Code of Federal Regulations as follows:

PART 287—FIELD OFFICERS; POWERS AND DUTIES

- 1. The authority citation for part 287 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1225, 1226, 1251, 1252, 1357; Homeland Security Act of 2002, Pub. L. 107–296 (6 U.S.C. 1, *et seq.*); 8 CFR part 2.

- 2. Section 287.1 is amended by revising paragraphs (e) and (g) to read as follows:

§ 287.1 Definitions.

* * * * *

(e) *Law enforcement or other official.* The phrase *law enforcement official (or other official)*, as used in section 287(d) of the Act, means an officer or employee of an agency engaged in the administration of criminal justice pursuant to statute, executive order, or delegation by the Secretary, including

(1) Courts;

(2) A government agency or component which performs the administration of criminal justice as defined in 28 CFR part 20 including performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders.

* * * * *

(g) *Basic immigration law enforcement training.* The phrase basic immigration law enforcement training, as used in §§ 287.5 and 287.8, means the successful completion of one of the following courses of training provided at the Immigration Officer Academy or Border Patrol Academy: Immigration Officer Basic Training Course after 1971; Border Patrol Basic Training Course after 1950; Immigration Detention Enforcement Officer Basic Training Course after 1977; and Immigration Customs Enforcement Special Agent Training, after 2002; or training substantially equivalent thereto as determined by the Commissioner of CBP, the Assistant Secretary/Director of ICE, or the Director of USCIS with respect to personnel in their respective bureaus. The phrase basic immigration law enforcement training also means the successful completion of the Other than Permanent Full-Time (OTP) Immigration Inspector Basic Training Course after 1991 in the case of individuals who are OTP immigration inspectors. Conversion by OTP immigration to any other status requires training applicable to that position.

* * * * *

- 3. Section 287.2 is revised to read as follows:

§ 287.2 Disposition of criminal cases.

Whenever a special agent in charge, port director, chief patrol agent, or supervisory law enforcement official designated by the Director of USCIS has reason to believe that there has been a violation punishable under any criminal provision of the immigration and nationality laws administered or enforced by the Department, he or she shall immediately initiate an investigation to determine all the pertinent facts and circumstances and

²³ The Instruction Manual contains DHS’s procedures for implementing NEPA and was issued November 6, 2014, <https://www.dhs.gov/ocr/eeed/epb/nepa> (last visited April 23, 2025).

²⁴ See 42 U.S.C. 4336(a)(2), 4336e(1).

²⁵ See Instruction Manual, Appendix A, Table 1.

²⁶ Instruction Manual at V.B(2)(a) through (c).

shall take such further action as he or she deems necessary. In no case shall this investigation prejudice the right of an arrested person to be taken without unnecessary delay before a United States magistrate judge, a United States district judge, or, if necessary, a judicial officer empowered in accordance with 18 U.S.C. 3041 to commit persons charged with offenses against the laws of the United States.

■ 4. Section 287.5 is amended by revising paragraphs (c)(3)(vii), (c)(4)(ii)(G), (c)(4)(iii), (c)(5)(ii)(G), (e)(1)(viii), (e)(3)(viii), (e)(4)(viii), and (f)(8) to read as follows:

§ 287.5 Exercise of power by immigration officers.

* * * * *

(c) * * *

(3) * * *

(vii) Immigration officers who need the authority to arrest persons under section 287(a)(5)(A) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP, the Assistant Secretary/Director of ICE, or the Director of USCIS.

(4) * * *

(ii) * * *

(G) Immigration officers who need the authority to arrest persons under section 287(a)(5)(B) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP, the Assistant Secretary/Director of ICE, or the Director of USCIS.

(iii) Notwithstanding the authorization and designation set forth in paragraph (c)(4)(ii) of this section, no immigration officer is authorized to make an arrest for any felony under the authority of section 287(a)(5)(B) of the Act until such time as he or she has been certified as successfully completing a training course encompassing such arrests and the standards for enforcement activities are defined in § 287.8. Such certification will be valid for the duration of the immigration officer's continuous employment, unless it is suspended or revoked by the Commissioner of CBP, the Assistant Secretary/Director of ICE, or the Director of USCIS, or their respective designees, for just cause.

(5) * * *

(ii) * * *

(G) Immigration officers who need the authority to arrest persons under section 274(a) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP,

the Assistant Secretary/Director of ICE, or the Director of USCIS.

* * * * *

(e) * * *

(1) * * *

(viii) Immigration officers who need the authority to execute search warrants under section 287(a) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP, the Assistant Secretary/Director of ICE, or the Director of USCIS.

* * * * *

(3) * * *

(viii) Immigration officers who need the authority to execute arrest warrants for immigration violations under section 287(a) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP, the Assistant Secretary/Director of ICE, or the Director of USCIS.

(4) * * *

(viii) Immigration officers who need the authority to execute warrants of arrest for non-immigration violations under section 287(a) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP, the Assistant Secretary/Director of ICE, or the Director of USCIS.

(f) * * *

(8) Immigration officers who need the authority to carry firearms under section 287(a) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP, the Assistant Secretary/Director of ICE, or the Director of USCIS.

■ 5. Section 287.8 is amended by revising paragraphs (a)(1)(iv)(H), (a)(2)(iii)(H), (e)(2)(v), and (f)(1) to read as follows:

§ 287.8 Standards for enforcement activities.

(a) * * *

(1) * * *

(iv) * * *

(H) Immigration officers who need the authority to use non-deadly force under section 287(a) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP, the Assistant Secretary/Director of ICE, or the Director of USCIS.

(2) * * *

(iii) * * *

(H) Immigration officers who need the authority to use deadly force under

section 287(a) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP, the Assistant Secretary/Director of ICE, or the Director of USCIS.

* * * * *

(e) * * *

(2) * * *

(v) Immigration officers who need the authority to initiate a vehicular pursuit in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP, the Assistant Secretary/Director of ICE, or the Director of USCIS.

(f) * * *

(1) Site inspections are Department of Homeland Security activities undertaken to locate and identify aliens illegally in the United States, or aliens engaged in unauthorized employment, at locations where there is a reasonable suspicion, based on articulable facts, that such aliens are present.

* * * * *

■ 6. Section 287.9 is amended by revising paragraphs (a) and (b) introductory text to read:

§ 287.9 Criminal search warrant and firearms policies.

(a) A search warrant should be obtained prior to conducting a search in a criminal investigation unless a specific exception to the warrant requirement is authorized by statute or recognized by the courts. Such exceptions may include, for example, the consent of the person to be searched, exigent circumstances, searches incident to a lawful arrest, and border searches. The Commissioner of CBP, the Assistant Secretary of ICE, and the Director of USCIS shall promulgate guidelines governing officers' conduct relating to search and seizure.

(b) In using a firearm, an immigration officer shall adhere to the standard of conduct set forth in § 287.8(a)(2). An immigration officer may carry only firearms (whether Department issued or personally owned) that have been approved pursuant to guidelines promulgated by the Commissioner of CBP, the Assistant Secretary of ICE, and the Director of USCIS. These officials shall promulgate guidelines with respect to:

* * * * *

Kristi Noem,

Secretary, U.S. Department of Homeland Security.

[FR Doc. 2025-16978 Filed 9-4-25; 8:45 am]

BILLING CODE 9111-97-P

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

[Docket No. FAA–2024–2423; Project Identifier AD–2024–00320–E; Amendment 39–23126; AD 2025–17–16]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines AG Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain International Aero Engines AG (IAE AG) Model V2522–A5, V2524–A5, V2525–D5, V2527–A5, V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, V2531–E5, and V2533–A5 engines. This AD was prompted by further analysis of an event involving an IAE AG Model V2533–A5 engine that had an uncontained failure of a high-pressure turbine (HPT) 1st-stage hub that resulted in high-energy debris penetrating the engine cowling. This AD requires revising the airworthiness limitations section (ALS) of the existing maintenance manual or instructions for continued airworthiness and the existing approved maintenance or inspection program, as applicable, to include new inspections of certain critical rotating parts. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 10, 2025.

ADDRESSES: *AD Docket:* You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2024–2423; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Carol Nguyen, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198 phone: (781) 238–7655; email: carol.nguyen@faa.gov.

SUPPLEMENTARY INFORMATION:**Background**

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain IAE AG Model V2522–

A5, V2524–A5, V2525–D5, V2527–A5, V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, V2531–E5, and V2533–A5 engines. The NPRM was published in the **Federal Register** on November 12, 2024 (89 FR 88908). The NPRM was prompted by further analysis of an event involving an IAE AG Model V2533–A5 engine that had an uncontained failure of an HPT 1st-stage hub that resulted in high-energy debris penetrating the engine cowling. In the NPRM, the FAA proposed to require revising the ALS of the existing maintenance manual or instructions for continued airworthiness and the existing approved maintenance or inspection program, as applicable, to include new inspections of the HPT 1st-stage hub and HPT 2nd-stage hub. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive**Comments**

The FAA received comments from seven commenters. The commenters were the Air Line Pilots Association, International (ALPA); JetBlue Airways (JetBlue); Lufthansa Technik AG (Lufthansa); Ryanair; SIA Engineering Company (SIAEC); United Airlines (UAL); and an anonymous commenter. ALPA supported the proposed AD without change. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Update Task Reference

JetBlue, Lufthansa, Ryanair, SIAEC, UAL, and an anonymous commenter requested that the FAA change one of the tasks in the “Inspection (Engine Manual Reference)” column in table 1 to paragraph (g) of the proposed AD from “Task 72–45–11–200–009” to “Task 72–45–31–200–009.” UAL, JetBlue, and Ryanair noted that Task 72–45–11–200–009 does not exist in the engine manual.

The FAA agrees and has updated the language in table 1 to paragraph (g) of this AD as requested.

Request To Update Paragraph (g) of the Proposed AD

An anonymous commenter requested that the FAA update paragraph (g) of the proposed AD to read as follows: “Revise the Maintenance Scheduling Section (MSS) of the Time Limits Manuals (TLM): T–V2500–11A Task 05–10–00–990–000–B00 (A5), T–V2500–31A Task 05–10–00–990–000 (D5), and T–V2500–[???] Task 05–10–00–990–000(?) (E5), and for air carrier operations revise the approved continuous airworthiness maintenance program; by incorporating the information specified in table 1 to

paragraph (g) of this AD, as applicable.” The anonymous commenter noted that the use of the word “your” to describe the existing approved maintenance or inspection program is not clear and the statement should be changed to clarify that the action relates to each FAA certificated air carrier.

The FAA partially agrees. The FAA does not agree with the wording proposed by the anonymous commenter because not all operators use the term “continuous airworthiness maintenance program.” The FAA agrees to meet the commenter's intent in paragraph (g)(1) and (2) of this AD by updating those paragraphs as set forth in the AD section of this rule.

Request To Clarify Responsibility for Required Actions

Lufthansa requested that the FAA reword paragraph (g) of the proposed AD to ensure that parts are inspected during each qualifying shop visit directly after the effective date of the proposed AD and to clarify which requirements are to be done by the repair shops and which must be done on-wing by the air carriers.

The FAA agrees and has updated the language in paragraph (g) of this AD to specify required actions for air carrier operations and to clarify that TASK 72–45–11–200–006 and TASK 72–45–31–200–009 are located in paragraph B.1 of the Maintenance Scheduling section of the applicable TLM, which is done at piece-part exposure.

Request To Clarify Inspection Task Requirement

An anonymous commenter requested that the FAA clarify that the performance of each inspection task is not directly required by the proposed AD, and that the only required actions are the one time update to the (FAA Approved) Maintenance Scheduling sections for the V2500–A5, V2500–D5, and V2500–D5 TLM, and the one time update to each FAA Certificated Air Carrier's Continuous Airworthiness Maintenance Program.

The FAA agrees to clarify. This AD requires an update to the operator's ICA, which includes the Engine Maintenance Manual (EMM). The operator's EMM will need to be updated to include TASK 72–45–11–200–006 and TASK 72–45–31–200–009 in the TLM in order to comply with this AD. For some operators, this would be considered their Continuous Airworthiness Maintenance Program. The performance of these tasks is required by other FAA regulations that are then required upon compliance with this AD. The FAA did

not change this AD as a result of this comment.

Request To Clarify Responsibility for EMM Revision

SIAEC requested that the FAA update paragraph (g) of this AD to clarify who is responsible for revising the EMM. SIAEC notes that the proposed AD requires a revision to the Maintenance Scheduling paragraph of the ALS of the existing approved EMM, but an operator is unable to revise the EMM because it is the responsibility of the original equipment manufacturer (OEM).

The FAA disagrees that the revision to the EMM is solely the responsibility of the OEM because an operator may not be required to have the latest version of the OEM's EMM incorporated into their ICA. This AD requires the operator to include the latest two inspection tasks into the operator's EMM regardless of what version of the EMM they are currently required to have. The operator will then update their existing approved maintenance or inspection program, as applicable. The FAA did not change this AD as a result of this comment.

Request To Refer to the ALS of the Approved TLM

Lufthansa requested that the FAA refer to the ALS of the approved TLM in the proposed AD instead of the ALS of the approved EMM.

The FAA agrees and has updated the language in paragraph (g)(1) of this AD as requested.

Request To Clarify Compliance With AD Requirements

SIAEC requested that the FAA clarify whether the incorporation of TASK 72–45–11–200–006 and TASK 72–45–31–200–009 into the EMM constitutes

compliance with the requirement of the proposed AD and no further action is required.

The FAA agrees to clarify. The incorporation of TASK 72–45–11–200–006 and TASK 72–45–31–200–009 into the EMM only constitutes compliance with the requirements of this AD for those that do not by regulation have an existing approved maintenance or inspection program. For operators that do have such program, there is an additional requirement for operators to make changes to their existing approved maintenance or inspection program. The FAA did not change this AD as a result of this comment.

Request To Change the Proposed AD to a Supersedure

An anonymous commenter requested that the FAA designate the proposed AD as a supersedure to AD 2004–12–08, Amendment 39–13667 (69 FR 34051, June 18, 2004) (AD 2004–12–08). The commenter noted that all required actions of AD 2004–12–08 must have been completed within 90 days of July 23, 2004.

The FAA disagrees with the request to issue this final rule as a supersedure AD. The ALS revisions required by AD 2004–12–08 include enhanced inspections of certain life-limited parts at each piece-part exposure while this AD requires the inclusion of two additional inspections for only the HPT 1st-stage hub and HPT 2nd-stage hub at piece-part exposure. The FAA has determined that a stand-alone AD is appropriate because the only intent of this AD is to require updating the existing ALS to add the two new inspections of the HPT 1st-stage hub and HPT 2nd-stage hub at piece-part

exposure. The FAA did not change this AD as a result of this comment.

Request To Clarify Angle Ultrasonic Inspection (AUSI) Interval

SIAEC requested that the FAA clarify the inspection interval for the AUSIs that are required for the HPT stage 1 hub having part number (P/N) 2A5001 and HPT stage 2 hub having P/N 2A4802. SIAEC noted that these parts are already listed in AMP section 18 and require replacement before reaching 20,000 flight cycles, but the threshold for the AUSI is not listed in the proposed AD, TASK 72–45–11–200–006 or TASK 72–45–31–200–009.

The FAA agrees and has updated paragraph (g)(1) of this AD to clarify that TASK 72–45–11–200–006 and TASK 72–45–31–200–009 are located in paragraph B.1 of the Maintenance Scheduling section of the applicable TLM, which is done at piece-part exposure.

Conclusion

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

Costs of Compliance

The FAA estimates that this AD affects 1,514 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS				
Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Revise the ALS	1 work-hour × \$85 per hour = \$85	\$0	\$85	\$128,690

Authority for This Rulemaking

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

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under

that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

(1) Is not a “significant regulatory action” under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2025–17–16 International Aero Engines

AG: Amendment 39–23126; Docket No. FAA–2024–2423; Project Identifier AD–2024–00320–E.

(a) Effective Date

This airworthiness directive (AD) is effective October 10, 2025.

(b) Affected ADs

None.

(c) Applicability

This AD applies to International Aero Engines AG (IAE AG) Model V2522–A5, V2524–A5, V2525–D5, V2527–A5, V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, V2531–E5, and V2533–A5 engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7250, Turbine Engine Compressor Sections.

(e) Unsafe Condition

This AD was prompted by further analysis of an event involving an IAE AG model V2533–A5 engines that experienced an uncontained high-pressure turbine (HPT) 1st-stage hub failure that resulted in high-energy debris penetrating the engine cowling. The FAA is issuing this AD to prevent failure of the HPT 1st-stage hub and HPT 2nd-stage hub. The unsafe condition, if not addressed, could result in an uncontained hub failure, release of high-energy debris, damage to the engine, damage to the airplane, and loss of the airplane.

(f) Compliance

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

(g) Required Action

(1) Within 90 days after the effective date of this AD, revise paragraph B.1 of the Maintenance Scheduling section in the airworthiness limitations section (ALS) of the Instructions for Continued Airworthiness (ICA) located in the applicable existing Time Limits Manual (TLM), as listed in paragraphs (g)(1)(i) through (iii) of this AD, by incorporating the information specified in table 1 to paragraph (g) of this AD:

(i) Part Number (P/N) 2A4408, TASK 05–10–00–990–000–B00 Instructions For Continued Airworthiness (V2500–A5);

(ii) P/N 2A4417, TASK 05–10–00–990–000 Instructions For Continued Airworthiness (V2500–D5);

(iii) P/N 2A4384, TASK 05–10–00–990–000–A00 Instructions For Continued Airworthiness (V2500–E5).

(2) For air carrier operations, within 90 days after the effective date of this AD, revise the existing approved maintenance or inspection program, as applicable, by incorporating the information specified in table 1 to paragraph (g) of this AD, as applicable.

Table 1 to Paragraph (g)—ALS Additional Inspections

Part nomenclature	Part No.	Inspection (engine manual reference)
HPT Stage 1 Hub	2A5001	TASK 72–45–11–200–006.
HPT Stage 2 Hub	2A4802	TASK 72–45–31–200–009.

(h) Provisions for Alternative Actions

After the actions required by paragraph (g)(1) and (2) of this AD have been done, no alternative actions are allowed unless they are approved as specified in the provisions of paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520 Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the AIR–520 Continued Operational Safety Branch, send it to the attention of the person identified in paragraph (j) of this AD and email to: AMOC@faa.gov.

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

(j) Additional Information

For more information about this AD, contact Carol Nguyen, Aviation Safety

Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (781) 238–7655; email: carol.nguyen@faa.gov.

(k) Material Incorporated by Reference

None.

Issued on August 28, 2025.

Peter A. White,

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

[FR Doc. 2025–17066 Filed 9–4–25; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–2009; Project Identifier AD–2023–01286–R; Amendment 39–23121; AD 2025–17–11]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters, LLC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain MD Helicopters, LLC, Model 369 (Army YOH–6A), 369A (Army OH–6A), 369D, 369E, 369F, 369FF, 369H, 369HE, 369HM, 369HS, 500N, and 600N helicopters. This AD was prompted by multiple reports of cracked tail rotor (T/R) pedal support brackets. This AD requires repetitively inspecting certain part-numbered T/R pedal support

brackets and depending on the results, replacing the T/R pedal support bracket or refinishing any exposed areas. This AD also prohibits installing certain part-numbered T/R pedal support brackets. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 10, 2025.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of October 10, 2025.

ADDRESSES:

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2024-2009; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For MD Helicopters material identified in this AD, contact MD Helicopters, LLC, 4555 East McDowell Road, Mesa, AZ 85215-9734; phone: (480) 346-6300; email: info@mdhelicopters.com; website: mdhelicopters.com/contact/.

- You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222-5110. It is also available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2024-2009.

FOR FURTHER INFORMATION CONTACT:

Eduardo Orozco-Duran, Aviation Safety Engineer, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712; phone: (562) 627-5264; email: eduardo.orozco-duran@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to MD Helicopters, LLC, Model 369 (Army YOH-6A), 369A (Army OH-6A), 369D, 369E, 369F, 369FF, 369H, 369HE, 369HM, 369HS, 500N, and 600N helicopters with certain part-numbered T/R pedal support brackets installed. The NPRM published in the **Federal Register** on August 28, 2024 (89 FR 68837). The NPRM was prompted by multiple reports of cracked T/R pedal support brackets, including a report of

a forced emergency landing that was caused by a cracked magnesium cast T/R pedal support bracket. In the NPRM, the FAA proposed to require repetitively inspecting magnesium cast T/R pedal support brackets having P/N 369A7505-7, 369A7505-8, 369A7505-14, or 369A7505-15, and aluminum cast T/R pedal support brackets having P/N 369N2640-1 or 369N2640-2, and depending on the results, replacing the T/R pedal support bracket or refinishing any exposed areas. The FAA also proposed to prohibit installing magnesium cast T/R pedal support bracket P/N 369A7505-7, 369A7505-8, 369A7505-14, or 369A7505-15 on any helicopter. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from five commenters. The commenters were Bering Air Inc, MD Helicopters, an individual, and two anonymous commenters. An anonymous commenter and the individual supported the proposal without change, MD Helicopters and an anonymous commenter commented on the estimated costs to comply with the AD, Bering Air Inc, MD Helicopters, and an anonymous commenter requested different requirements for aluminum cast T/R pedal support brackets, and MD Helicopters requested changing the repetitive nondestructive inspections (NDIs). The following presents the comments received on the NPRM and the FAA's response to each comment.

Comments Regarding the Costs of Compliance

MD Helicopters and an anonymous commenter commented on the costs of the NDIs.

MD Helicopters stated that it believes the estimated cost information and the requirements proposed in the NPRM create an undue burden on operators. MD Helicopters stated that the work-hours and cost information to accomplish an NDI provided in the NPRM are very low, and that the FAA needs to do an availability assessment of certified NDI inspectors, as operators will likely have to remove and ship the bracket to a facility for the NDIs. MD Helicopters further stated that the cost information does not account for removing and reinstalling a bracket for this alternate action or its administrative costs such as shipping costs, nor does it account for lost revenue while the helicopter is out of service. MD

Helicopters also stated that a large portion of operators would need to do an NDI two to three times per year.

An anonymous commenter stated that the estimated cost information in the NPRM to accomplish an NDI is too low. The anonymous commenter stated that a Level II or Level III (inspector certified in the FAA-acceptable standards for NDI personnel) for two hours of work is between \$500-\$800, plus incidentals such as travel costs, which travel costs could double or triple compliance costs particularly for those in remote locations. The anonymous commenter further stated that the cost of repetitive inspections for some operators needs to be properly accounted for and the alternate option of treating the bracket as a rotatable part could also be costly.

The FAA acknowledges the commenters' concerns regarding the NDIs and the availability of Level II or Level III inspectors. The cost information specified in AD rulemaking describes only the direct costs of the specific actions required by the AD. The manufacturer specified its best estimate of the number of work-hours necessary to accomplish an NDI in the material incorporated by reference. This number represents the time necessary to perform an NDI required by this AD. The FAA recognizes that, in doing the actions required by an AD, operators might incur incidental costs in addition to the direct costs. The cost analysis in AD rulemaking does not include indirect or incidental costs such as time for planning, down-time, loss of revenue, or other administrative actions since those costs might vary significantly among operators. In addition, the labor rate of \$85 per work-hour for the FAA to use when estimating the labor costs of complying with AD requirements is provided by the Bureau of Labor Statistics, found at bls.gov/oes/current/oes493011.htm. Lastly, the FAA recognizes that this AD may require operators to accomplish multiple instances of the repetitive NDIs each year on certain helicopters, particularly high usage helicopters as the high usage rate increases the likelihood of occurrence of T/R pedal support bracket cracking. Because of these comments, the FAA completed a Final Regulatory Flexibility Analysis (FRFA) for this AD to analyze its impact on small businesses and updated the number of affected helicopters. Further information regarding that analysis is provided in the Regulatory Flexibility Determination paragraph in the preamble of this final rule. While the costs for a Level II or Level III inspector do not impact the cost estimate, FAA evaluation removed the proposed

requirement that the inspections must be performed by a Level II or Level III inspector certified in the FAA-acceptable standards for nondestructive inspection personnel. This may assist in each operator's incidental costs associated with the requirements of this AD.

Comments Regarding Requirements for Aluminum Parts

Bering Air Inc, MD Helicopters, and an anonymous commenter requested different requirements for aluminum cast T/R pedal support brackets (P/Ns 369N2640-1 and 369N2640-2).

Bering Air Inc, asked why the same inspections for magnesium brackets are also required for aluminum brackets, since there have been no reports of cracks in the aluminum brackets. Bering Air Inc, questioned how many of the cracked 17 magnesium brackets were caused by corrosion and stated that the magnesium brackets have the issues, possibly due to poor corrosion control. The FAA infers that Bering Air Inc, is requesting the FAA to remove or differentiate requirements for aluminum cast T/R pedal support brackets having P/N 369N2640-1 or 369N2640-2.

The type design holder, MD Helicopters, stated that it believes aluminum cast T/R pedal support brackets having P/N 369N2640-1 or 369N2640-2 should not be included in the applicability of this AD because they have not experienced a problem as existing visual inspections specified in the maintenance manual are adequate. MD Helicopters explained that these brackets incorporate a protective coating and are not as susceptible to corrosion issues or fatigue cracking compared to the magnesium brackets. Lastly, MD Helicopters stated that installation of these brackets should be terminating action for the requirements of the AD.

An anonymous commenter suggested the FAA consider relieving compliance terms and times for aluminum cast T/R pedal support brackets having P/N 369N2640-1 or 369N2640-2 or consider these parts as closing actions. The FAA infers that "closing actions" means requiring installation of aluminum cast T/R pedal support brackets as terminating action for the requirements for magnesium cast T/R pedal support brackets having P/N 369A7505-7, 369A7505-8, 369A7505-14, or 369A7505-15. The anonymous commenter stated that the aluminum cast T/R pedal support brackets have not been involved in an event and this would provide operators with a cost-effective means of compliance.

The FAA acknowledges these comments and disagrees with different

requirements for aluminum cast T/R pedal support brackets (P/Ns 369N2640-1 and 369N2640-2). While the aluminum cast bracket material properties can offer greater mitigation of risk of corrosion, the aluminum cast bracket is still susceptible to deficiencies of cast parts and therefore, should be repetitively inspected. Additionally, no supporting data explaining or showing that aluminum cast brackets are resistant to the unsafe condition of fatigue damage and cracking was submitted for review with these comments. Although MD Helicopters service material is only applicable to the magnesium brackets, the FAA has determined that the aluminum material does not demonstrate an acceptable level of confidence and therefore the aluminum cast T/R pedal support brackets having P/N 369N2640-1 or 369N2640-2 are also part of the unsafe condition. Accordingly, the FAA has included those T/R pedal support brackets in the applicability of this final rule. However, once this AD is published, any person may request an alternative method of compliance (AMOC) by following the procedures specified in paragraph (h) of this AD. The FAA has made no changes to this AD based on those comments.

Request To Change Repetitive NDI Requirements

MD Helicopters stated that it believes the repetitive NDIs create an undue burden on operators. MD Helicopters stated that a Level II nondestructive technician is necessary for only the initial fluorescent penetrant inspection (FPI), and that repetitive visual inspections using 10X power magnifier or a borescope following the initial FPI are sufficient. The FAA infers that MD Helicopters is requesting the FAA to change the repetitive NDIs.

The FAA disagrees that the repetitive NDIs should be changed. The FAA determined that repetitive FPIs, eddy current inspections, or dye penetrant inspections, as specified in the material incorporated by reference, which was issued by MD Helicopters, are necessary to address the unsafe condition. Additionally, no supporting data explaining or showing that repetitive visual inspections for the second and subsequent instances of the NDIs substantiate an acceptable level of safety was submitted to review. However, the FAA determined that the proposal that the T/R pedal support bracket inspections be performed by a Level II or Level III inspector may be burdensome and that performing the inspections using a Level I inspector

provides an adequate level of safety, and this AD has been revised accordingly.

The FAA also determined that when refinishing any exposed areas following the determination that there is not a crack as a result of an NDI, it is necessary to ensure that the T/R pedal support bracket is cleaned from any penetrant residue. The FAA has revised that requirement accordingly.

Conclusion

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

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed MD Helicopters Service Bulletin SB369D-231R2 for Model 369D helicopters, SB369E-131R2 for Model 369E helicopters, SB369F-122R2 for Model 369F and 369FF helicopters, SB369H-265R2 for Model 369H, 369HE, 369HM, and 369HS helicopters, SB500N-068R2 for Model 500N helicopters, and SB600N-082R2 for Model 600N helicopters, each dated November 1, 2023 (co-published as one document). For magnesium cast T/R pedal support brackets P/N 369A7505-7, 369A7505-8, 369A7505-14, and 369A7505-15, this material specifies procedures for visually inspecting each T/R pedal support bracket for a crack and corrosion and depending on the results, replacing the bracket with an aluminum cast T/R pedal support bracket having P/N 369N2640-1 or 369N2640-2, or refinishing any exposed areas. For magnesium cast T/R pedal support brackets P/N 369A7505-7, 369A7505-8, 369A7505-14, and 369A7505-15, this material also specifies procedures for fluorescent penetrant inspecting, eddy current inspecting, or dye penetrant inspecting each T/R pedal support bracket for a crack and depending on the results, replacing the bracket with an aluminum cast T/R pedal support bracket having P/N 369N2640-1 or 369N2640-2, or refinishing any exposed areas. For the purpose of this AD, MD Helicopters, LLC, Model 369 (Army YOH-6A) and 369A (Army OH-6A) helicopters use MD Helicopters Service Bulletin SB369D-231R2, dated November 1, 2023, to accomplish certain actions required by this AD.

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

Costs of Compliance

The FAA estimates that this AD affects 556 helicopters of U.S. registry. Labor rates are estimated at \$85 per hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Visually inspecting the T/R pedal support brackets (up to two T/R pedal support brackets per helicopter) will take approximately 0.5 work-hour for an estimated cost of up to \$43 per helicopter and \$23,908 for the U.S. fleet per inspection cycle. Non-destructive inspection of the T/R pedal support brackets will take approximately 2 work-hours for an estimated cost of up to \$170 per helicopter and \$94,520 for the U.S. fleet per inspection cycle.

If required, replacing a T/R pedal support bracket will take approximately 8 work-hours and parts will cost approximately \$2,075 for an estimated cost of \$2,755 per T/R pedal support bracket. Refinishing any exposed areas could vary significantly from helicopter to helicopter. The FAA has no data to determine the costs to accomplish this action or the number of helicopters that may require this action.

Authority for This Rulemaking

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

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

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

Regulatory Flexibility Act Determination

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 and 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 considered the public comments in developing this AD and

this FRFA. As of February 13, 2024, there were 369 operators of affected helicopters in service and 556 total affected helicopters. The operators come from a diverse group ranging from the U.S. military, municipalities, federal government agencies, scheduled and unscheduled aviation entities, and electricity providers, to name a few. The U.S. Army is the most affected and operate 45 helicopters, 5 operators operate between 10 and 12 helicopters, 36 operators operate between 3 and 9 helicopters, and the remaining 327 operators operate 2 or less helicopters. Some operators use the affected helicopters to aid in their primary business objective—such as power and communication line companies that use them to install or repair their infrastructure. Others use them as their primary business objective—such as providing transportation to customers on a scheduled or unscheduled basis.

Given that there are many affected entities, FAA took a sample of 12 entities out of the 327 operators to determine the industries of these entities and their size. The FAA used a subscription-based online database of U.S. entities, D&B Hoovers Online, to determine the North American Industry Classification System (NAICS) code, revenue, and employee count for each entity. Based on the United States Small Business Administration (SBA) size standards¹ these 12 entities are considered small and are affected by this rule. The NAICS codes associated with these entities are and details about size standards are listed in Table 1.

TABLE 1—NAICS CODES OF SAMPLED IMPACTED SMALL ENTITIES

NAICS industry description	NAICS code	Small business size standard ¹	Average size of sample	Number of entities
Water and Sewer Line and Related Structures Construction	237110	\$45,000,000	\$8,520,000	1
Power and Communication Line and Related Structures Construction	237130	\$45,000,000	\$1,540,000	1
Scheduled Passenger Air Transportation	481111	1,500 Employees ...	36 Employees	2
Nonscheduled Chartered Passenger Air Transportation	481211	1,500 Employees ...	15 Employees	1
Other Nonscheduled Air Transportation	481219	\$25,000,000	\$5,661,000	6
Other Airport Operations	488119	\$40,000,000	\$2,020,000	1

¹ The figures represent either the average annual receipts or average employment of a firm.

The lowest cost an entity can incur for inspection from this AD is when only a visual inspection is required. This occurs when the bracket is visually inspected by a Level I Non-destructive Testing (NDT) Inspector and deems it does not require maintenance. FAA estimated the cost for visual inspection at \$43. The high-cost case that the FAA

estimated is \$170 which requires 2 work-hours to conduct non-destructive inspection. However, MD Helicopters commented that the total cost for one inspection would cost \$930. This estimate includes \$680 to remove the bracket, \$170 for the NDT inspection to be completed by an outside agency, and \$80 for shipping charges.² Due to the

issues of cost as provided by MD Helicopters, and the FAA's determination that performing the inspections using a Level I inspector provides an adequate level of safety, the FAA removed the proposed requirement that inspections must be performed by a Level II or Level III inspector certified in the FAA-acceptable standards for

¹ U.S. Small Business Administration—Table of Small Business Size Standards (2023). <https://www.sba.gov/sites/default/files/2023-06/>

Table%20of%20Size%20Standards_Effective%20March%2017%2C%202023%20%282%29.pdf.

² The shipping charge included shipping to the inspector and return after the inspection is completed.

nondestructive inspection personnel. This change broadens the personnel that can do the inspection. Thus the change (1) reduces the likelihood of needing to remove the bracket as it is easier to find a Level I NDT inspector to perform an on-site inspection of the bracket while it is being installed, (2) reduces the cost to conduct the inspection as a more credentialed (Level II/III) inspector would cost more, and (3) eliminates the shipping costs when NDT inspectors are able to do an on-site inspection. An NDT inspection should be done every 300 hours which, on average,³ is approximately once a year and can be conducted in conjunction with yearly inspections. Therefore, the MD Helicopters \$930 estimated cost can be as low as \$170, the same cost that the FAA estimated for brackets to have an NDT inspection.

Regulatory Findings

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2025–17–11 MD Helicopters, LLC:
Amendment 39–23121; Docket No. FAA–2024–2009; Project Identifier AD–2023–01286–R.

(a) Effective Date

This airworthiness directive (AD) is effective October 10, 2025.

(b) Affected ADs

None.

(c) Applicability

This AD applies to MD Helicopters, LLC, Model 369 (Army YOH–6A), 369A (Army OH–6A), 369D, 369E, 369F, 369FF, 369H, 369HE, 369HM, 369HS, 500N, and 600N helicopters, certificated in any category, with a tail rotor (T/R) pedal support bracket part number (P/N) 369A7505–7, 369A7505–8, 369A7505–14, 369A7505–15, 369N2640–1, or 369N2640–2, installed.

(d) Subject

Joint Aircraft System Component (JASC) Code: 6720, tail rotor control system.

(e) Unsafe Condition

This AD was prompted by multiple reports of cracked T/R pedal support brackets. The FAA is issuing this AD to detect a cracked T/R pedal support bracket. The unsafe condition, if not addressed, could result in failure of the T/R pedal support bracket, reduced controllability of the helicopter, and consequent loss of control of the helicopter.

(f) Compliance

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

(g) Required Actions

(1) Within 25 hours time-in-service (TIS) and thereafter at intervals not to exceed 100 hours TIS, using a 10X power magnification glass, mirror, and flashlight, visually inspect each T/R pedal support bracket for cracks and corrosion by following the Accomplishment Instructions, paragraph 2.A.(2), of MD Helicopters Service Bulletin SB369D–231R2, SB369E–131R2, SB369F–122R2, SB369H–265R2, SB500N–068R2, or SB600N–082R2, each dated November 1, 2023 (collectively referred to as “the service bulletins”), as applicable to your helicopter model; you may use a borescope as specified in the note in paragraph 2.A.(2) of the service bulletins. For the purpose of this AD, for MD Helicopters, LLC, Model 369 (Army YOH–6A) and 369A (Army OH–6A) helicopters, use MD Helicopters Service Bulletin SB369D–231R2, dated November 1, 2023, to accomplish the actions required by this AD.

(i) If there is a crack or any corrosion as a result of the inspections required by the introductory text of paragraph (g)(1) of this AD, before further flight, remove the T/R pedal support bracket from service and replace it with a serviceable T/R pedal support bracket P/N 369N2640–1 or 369N2640–2.

(ii) If there is not a crack and there is no corrosion as a result of the inspections required by the introductory text of paragraph (g)(1) of this AD, before further flight, refinish any exposed areas.

(2) Within 50 hours TIS and thereafter at intervals not to exceed 300 hours TIS, eddy current, dye penetrant, or fluorescent penetrant inspect each T/R pedal support bracket for a crack by following the Accomplishment Instructions, paragraph 2.B.(2), of the service bulletins, as applicable to your helicopter model.

(i) If there is a crack as a result of the actions required by the introductory text of paragraph (g)(2) of this AD, before further flight, remove the T/R pedal support bracket from service and replace it with a serviceable T/R pedal support bracket P/N 369N2640–1 or 369N2640–2.

(ii) If there is not a crack as a result of the actions required by the introductory text of paragraph (g)(2) of this AD, before further flight, refinish any exposed areas and ensure the T/R pedal support bracket is cleaned from any penetrant residue.

(3) As of the effective date of this AD, do not install magnesium cast T/R pedal support bracket P/N 369A7505–7, 369A7505–8, 369A7505–14, or 369A7505–15 on any helicopter.

(h) Alternative Methods of Compliance (AMOCs)

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

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

(i) Additional Information

(1) For more information about this AD, contact Eduardo Orozco-Duran, Aviation Safety Engineer, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712; phone: (562) 627–5264; email: eduardo.orozco-duran@faa.gov.

(2) For advisory circular material identified in this AD that is not incorporated by reference, go to faa.gov/regulations_policies/advisory_circulars/index.cfm/go/document.information/documentID/1023552.

(j) Material Incorporated by Reference

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

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

(i) MD Helicopters Service Bulletin SB369D–231R2, dated November 1, 2023.

(ii) MD Helicopters Service Bulletin SB369E–131R2, dated November 1, 2023.

(iii) MD Helicopters Service Bulletin SB369F–122R2, dated November 1, 2023.

(iv) MD Helicopters Service Bulletin SB369H–265R2, dated November 1, 2023.

³ FAA based this fleet usage average on information provided by MD Helicopters.

(v) MD Helicopters Service Bulletin SB500N–068R2, dated November 1, 2023.

(vi) MD Helicopters Service Bulletin SB600N–082R2, dated November 1, 2023.

Note 1 to paragraph (j)(2): The service bulletins identified in paragraphs (j)(2)(i) through (vi) of this AD are co-published as one document.

(3) For MD Helicopters material identified in this AD, contact MD Helicopters, LLC, 4555 East McDowell Road, Mesa, AZ 85215–9734; phone: (480) 346–6300; email: info@mdhelicopters.com; website: mdhelicopters.com/contact/.

(4) You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on August 29, 2025.

Steven W. Thompson,

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

[FR Doc. 2025–17026 Filed 9–4–25; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 310

RIN 3084–AA98

Telemarketing Sales Rule Fees; Correction

AGENCY: Federal Trade Commission.

ACTION: Notice; correction.

SUMMARY: The Federal Trade Commission (“Commission”) published a document in the **Federal Register** of August 27, 2025, amending its Telemarketing Sales Rule (“TSR”) by updating the fees charged to entities accessing the National Do Not Call Registry (“Registry”) as required by the Do-Not-Call Registry Fee Extension Act of 2007. Shortly after publication, Commission staff learned the document contained an incorrect date. The Commission issues this correction to reflect the corrected date. The revised fees will become effective October 1, 2025, not October 1, 2024.

DATES: The correction takes effect on September 5, 2025.

FOR FURTHER INFORMATION CONTACT: Ami Joy Dziekan, (202) 326–2648, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The rule document submitted by Commission

staff for publication contained a typographical error; specifically, the date for when the revised fees will become effective was off by one year in the **DATES**.

Correction

In final rule FR Doc. 2025–16430 appearing at 90 FR 41777 in the **Federal Register** of Wednesday, August 27, 2025, make the following correction. On page 41777, in the **DATES** section, the date of “October 1, 2024” is corrected to read “October 1, 2025”.

Dated: September 3, 2025.

Joel Christie,

Acting Secretary.

[FR Doc. 2025–17091 Filed 9–4–25; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2025–0122]

Special Local Regulation; Kailua Bay, Ironman World Championship, Kailua-Kona, HI

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a special local regulation for the Ironman Ho’ala practice swim and Ironman World Championship Triathlon on October 5 and 11, 2025, to provide for the safety of life on navigable waterways during these events. Our regulation for marine events within the USCG Oceania District (formerly known as the Fourteenth Coast Guard District) identifies the regulated area for this event on certain waters of Kailua Bay, Kailua-Kona, Hawaii. During the enforcement periods, the operator of any vessel in the regulated area must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

DATES: The regulations in 33 CFR 100.1402 will be enforced from 3:45 a.m. to 11:00 a.m. on October 5 and 11, 2025.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email MST1 Bradley Snyder, Waterways Management Division, U.S. Coast Guard Sector Honolulu; telephone (808) 541–4374, email William.a.snyder@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulation for the Ironman Ho’ala practice swim and Ironman World Championship Triathlon from 3:45 a.m. to 11 a.m. on October 5 and 11, 2025. This action is being taken to provide for the safety of life on navigable waterways during this event. Our regulation for marine events within the USCG Oceania District (formerly the Fourteenth Coast Guard District), § 100.1402, identifies the regulated area for this event. The regulated area covers all navigable waters of Kailua Bay within 100 yards adjacent to the 2.24 mile (4,224 yards) swim course, starting at the shoreline northeast of Kailua Pier at 19°38.341’ N, 155°59.782’ W; thence southeast to 19°37.416’ N, 155°59.444’ W; thence southwest to 19°37.397’ N, 155°59.500’ W; thence northwest to 19°38.150’ N, 155°59.760’ W, thence north and back to Kailua Pier at 19°38.398’ N, 155°59.816’ W, and returning along the pier to the originating point on the shoreline at 19°38.341’ N, 155°59.782’ W. All coordinate data are NAD 83. During the enforcement periods, the operator of any vessel in the regulated area must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

Entry into, transiting, or anchoring within the special local regulation is prohibited unless authorized by the Captain of the Port Honolulu or their designated on-scene representative. The Captain of the Port’s designated on-scene representative may be contacted via VHF Channel 16.

In addition to this publication in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of the enforcement of this special local regulation via Broadcast Notice to Mariners.

N.S. Worst,

Captain, U.S. Coast Guard, Captain of the Port Sector Honolulu.

[FR Doc. 2025–17016 Filed 9–4–25; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2025–0319]

RIN 1625–AA87

Security Zone; Intracoastal Waterway, Palm Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the enforcement of an existing security zone that encompasses certain waters of the Atlantic Ocean near the Mar-a-Lago Club and the Southern Boulevard Bridge in Palm Beach, FL. When the “East Zone” is activated all persons and vessels will be prohibited from entering, transiting, anchoring in, or remaining within the security zone unless authorized by the Captain of the Port Miami (COTP) or a designated representative.

DATES: This rule is effective September 5, 2025.

ADDRESSES: To view go to <https://www.regulations.gov> and search for USCG–2025–0319.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Lieutenant Guerschom Etienne, Waterways Management Division, U.S. Coast Guard; telephone 786–295–9051, email SectorMiamiWaterways@uscg.mil.

SUPPLEMENTARY INFORMATION:**I. Table of Abbreviations**

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information, Regulatory History, and Authority

On April 19, 2018, the Coast Guard established a security zone around Mar-a-Lago Club in 33 CFR 165.785 to ensure the safety of the president, official party, and any other persons under the protection of the secret service at his residence. The security zone in § 165.785 consists of 3 zones with varying levels of security within the Intracoastal Waterway and Atlantic Ocean adjacent to this location. While this security zone has been in effect since 2018, increased vessel traffic in the area has created a need for heightened restrictions in the East Zone when the President of the United States, members of the First Family, or other persons under the protection of the Secret Service are present or expected to be present.

In response, on July 10, 2025, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Security Zone; Intracoastal Waterway, Palm Beach, FL (90 FR 30603). There we stated why we issued the NPRM and invited comments on our proposed regulatory action related to this security zone. During the comment period that ended August 11, 2025, with 1 comments.

The Coast Guard is issuing this rule under the authority in 46 U.S.C. 70051 and 70124, which is needed to protect to ensure sufficient protection of the presidential party when they are in the vicinity of these waterways.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to enhance the security protections of presidential and VIP personnel present in the vicinity of this waterway.

III. Discussion of Comments, Changes, and the Rule

As noted above, we received 1 positive comments on our NPRM published July 10, 2025. This comment supported the rule as it is written; therefore, there are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule changes the enforcement of the “East Zone” security zone within 33 CFR 165.785, which is located on the waters of the Atlantic Ocean near the Mar-a-Lago Club and the Southern Boulevard Bridge in Palm Beach, FL. When the “East Zone” is activated all persons and vessels are prohibited from entering, transiting, anchoring in, or remaining within the security zone unless authorized by the COTP Miami or a designated representative.

IV. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders.

A. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities for the following reasons. Vessel traffic will be able to safely transit around the security zones which will impact a limited

restriction on the waterway while the President or members of the official party have been present in the Mar-a-Lago club. Moreover, the Coast Guard will rely on the methods described in 33 CFR 165.7 to notify the public prior to activation of any of the security zones described in paragraph (a) of this section. Coast Guard patrol assets will also be on-scene with flashing energized blue lights when the east security zone is in effect.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), if this rule will affect your small business, organization, or governmental jurisdiction and you have questions, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards by calling 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

B. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

C. Federalism and Indian Tribal Governments

We have analyzed this rule under Executive Order 13132, Federalism, and have determined that it is consistent with the fundamental federalism principles and preemption requirements in that Order. Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

D. Unfunded Mandates Reform Act

As required by The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Coast Guard certifies that this rule will not result in an annual expenditure of \$100,000,000 or more (adjusted for inflation) by a State, local, or tribal government, in the aggregate, or by the private sector.

E. Environment

We have analyzed this rule under Department of Homeland Security

Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment.

This rule is security zone. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, security measures, waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.4.

■ 2. Revise § 165.785 to read as follows:

§ 165.785 Security Zone; Presidential Security Zone, Palm Beach, FL.

(a) *Location.* The following area is a security zone:

(1) *Center zone.* All waters of Lake Worth Lagoon from surface to bottom within the following points: Beginning at Point 1 in position 26°41′21″ N, 80°02′39″ W; thence east to Point 2 in position 26°41′21″ N, 80°02′13″ W; thence south following the shoreline to Point 3 in position 26°39′58″ N, 80°02′20″ W; thence west to Point 4 in position 26°39′58″ N, 80°02′38″ W, thence back to origin at Point 1.

(2) *West zone.* All waters of Lake Worth Lagoon from surface to bottom within the following points: Beginning at Point 1 in position 26°41′21″ N, 80°02′39″ W; thence west to Point 2 in position 26°41′21″ N, 80°03′00″ W; thence south following the shoreline to Point 3 in position 26°39′58″ N, 80°02′55″ W; thence east to Point 4 in position 26°39′58″ N, 80°02′38″ W, thence back to origin at Point 1.

(3) *East zone.* All waters of the Atlantic Ocean from surface to bottom

within the following points: Beginning at Point 1 in position 26°41′21″ N, 80°02′01″ W; thence south following the shoreline to Point 2 in position 26°39′57″ N, 80°20′9″ W; thence east to Point 3 in position 26°39′57″ N, 80°01′36″ W; thence north to Point 4 in position 26°41′22″ N, 80°01′29″ W, thence back to origin at Point 1.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sector Miami (COTP) in the enforcement of the security zone.

(c) *Regulations.* (1) *Center zone.* All persons and vessels are prohibited from entering, transiting, anchoring in, or remaining within the security zone unless authorized by the COTP Miami or a designated representative.

(2) *West zone.* All persons and vessels are required to transit the security zone escorted by an on-scene designated representative at a steady speed and may not slow down or stop except in the case of unforeseen mechanical failure or other emergencies. Any persons or vessels forced to slow or stop in the zone shall immediately notify the COTP Miami via VHF channel 16.

(3) *East zone.* All persons and vessels are prohibited from entering, transiting, anchoring in, or remaining within the security zone unless authorized by the COTP Miami or a designated representative.

(4) *Contacting Captain of the Port.* To seek permission to enter, contact the COTP or the COTP's representative by telephone at (305)

535–4472 or may contact a designated representative via VHF radio on channel 16. Those in the security zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* (1) This section will be enforced when the President of the United States, members of the First Family, or other persons under the protection of the Secret Service are present or expected to be present at the Mar-a-Lago Club in Palm Beach, Florida. The Coast Guard will rely on the methods described in 33 CFR 165.7 to notify the public prior to activation of any of the security zones described in paragraph (a) of this section. Coast Guard patrol assets will also be on-scene with flashing energized blue lights when the center, west, or east security zone is in effect.

(2) [Reserved]

Frank J. Florio,

Captain, U.S. Coast Guard, Captain of the Port, Sector Miami.

[FR Doc. 2025–17092 Filed 9–4–25; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–1001]

RIN 1625–AA00

Safety Zone; Bay St. Louis, MS

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a safety zone for certain waters of St. Louis Bay. This action is necessary to provide for the safety of life on these navigable waters near Bay St. Louis, MS, during the annual Swim Across the Bay event. This rulemaking will prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Mobile or a designated representative. **DATES:** This rule is effective October 6, 2025.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rulemaking, call or email Lieutenant Lawrence J. Schad, Waterways Management Division, Sector Mobile, U.S. Coast Guard, telephone 251–441–5678, email sectormobilewaterways@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On July 11, 2024, an organization notified the Coast Guard that it will be conducting Swim Across the Bay, an annual recurring swim event that will occur on the 3rd or 4th Saturday or Sunday of September in St. Louis Bay. The Captain of the Port Sector Mobile (COTP) has determined that potential hazards associated with the swim event will be a safety concern for persons and vessels within the designated area, extending the entire width of the

channel, approximately 1 mile south of the Hwy 90 Bridge in Bay St. Louis, MS.

In response, on November 14, 2024, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Bay St. Louis, MS (89 FR 89940). There we stated why we issued the NPRM and invited comments on our proposed regulatory action related to this swim event. During the comment period that ended December 12, 2024, we received 2 comments. One commenter stated that the environmental analysis was not provided in the docket. The Coast Guard acknowledges that the Record of Environmental Consideration was completed on November 12, 2024, and was posted in the docket on November 14, 2024. The second commenter was generally in favor of the rule however questioned the necessity for an annual event and wondered whether law enforcement could be used in lieu of a rule. The Coast Guard finds that a safety zone provides the appropriate level of protection from potential hazards associated with this open water swim event for persons and vessels in the safety zone.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under the authority in 46 U.S.C. 70034. The COTP has determined that potential hazards associated with the swim event will be a safety concern for persons and vessels within the designated area, extending the entire width of the channel, approximately 1 mile south of the Hwy 90 Bridge in Bay St. Louis, MS. The purpose of this rule is to ensure safety of persons and vessels and the navigable waters in the safety zone before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received 2 comments on our NPRM published November 14, 2024. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a safety zone that will cover certain navigable waters at the opening of St. Louis Bay, extending the entire width of the channel, approximately 1 mile south of the Hwy 90 Bridge in Bay St. Louis, MS. The duration of the safety zone is intended to ensure the safety of persons and vessels in these navigable waters before, during and after the swim. The event will recur on an annual basis on the 3rd or 4th Saturday or Sunday of September. The exact dates and times of enforcement will be made public via a

notice of enforcement prior to the event date. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders.

A. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities for the following reasons. The safety zone will only be enforced on one day a year and we will provide advance notice of that date and time through local notice to mariners and **Federal Register** notice publications. The vessels can also contact the COTP for permission to transit through the safety zone.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain

about this rule or any policy or action of the Coast Guard.

B. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

C. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

D. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

E. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone lasting one day that will prohibit entry in, out, or through the navigable waters near the

opening of St. Louis Bay, extending the entire width of the channel approximately 1 mile south of the Hwy 90 Bridge in Bay St. Louis, MS annually on the 3rd or 4th Saturday or Sunday of September. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under the **ADDRESSES** section of this preamble.

List of Subjects in 33 CFR Part 165
Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.4.

■ 2. In § 165.801, amend Table 7, by adding in numerical order item 8 to read as follows:

§ 165.801 Annual fireworks displays and other events in the Eighth Coast Guard District requiring safety zones.

* * * * *

TABLE 7 OF § 165.801—SECTOR MOBILE ANNUAL AND RECURRING MARINE EVENTS

Date	Sponsor/name	Sector mobile location	Safety zone
* 8. 3rd or 4th Saturday or Sunday of September.	* Swim Across the Bay	* St. Louis Bay, Bay St. Louis, MS.	* St. Louis Bay, bounded by the following coordinates beginning at: 30°19.133' N, 89°19.317' W, thence to 30°18.967' N 89°17.417' W, thence to 30°18.367' N, 89°19.650' W, thence to 30°18.300' N, 89°17.567' W, then back to the point of origin.

M.O. Vega,
Captain, U.S. Coast Guard, Captain of the Port Sector Mobile.
[FR Doc. 2025–17089 Filed 9–4–25; 8:45 am]
BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2025–0784]

RIN 1625–AA00

Safety Zone; Ohio River, Owensboro, KY

AGENCY: Coast Guard, DHS.
ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters of the Ohio River, extending the entire width of the river, between mile markers (MM) 756.0–757.0. The safety zone is necessary to provide for the safety of life on these navigable waters near Owensboro, KY, during the Owensboro Riverfront Fireworks on September 14, 2025.

DATES: This rule is effective from 9 p.m. through 9:30 p.m. on September 14th, 2025.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2025–

0784 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Marine Science Technician Second Class Koa Krolik, and Sector Ohio Valley, U.S. Coast Guard; telephone 502–779–5343, email Koa.L.Krolik@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule under the authority in 5 U.S.C. 553(b)(B). This statutory provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” The Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The Coast Guard must establish this safety zone by September 14th, 2025, and lacks sufficient time to

provide a reasonable comment period and then consider those comments before issuing the rule.

Also, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because immediate action is necessary to ensure the safety of vessels and persons during a fireworks display on September 14, 2025. The Coast Guard will issue Broadcast Notice to Mariners (BNM) to advise mariners of the restrictions and enforcement times during this event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Ohio Valley (COTP) has determined that this action is necessary to provide for the safety of life on these navigable waters near Owensboro, KY during the Owensboro Fireworks Show on September 14, 2025. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the regulated area between MM 756.0–757.0 on the Ohio River from 9 p.m. through 9:30 p.m.

IV. Discussion of the Rule

This rule establishes a safety zone from 9 p.m. through 9:30 p.m. on September 14, 2025. The safety zone will cover the entire width of the Ohio

River between MM 756.0–757.0. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the firework display is conducted. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders.

A. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will restrict vessel navigation on the Ohio River for only 30 minutes, at a time when vessel traffic is normally low. In addition, the Coast Guard will issue a Broadcast Notice to Marines via VHF FM marine channel 16, which will allow small entities to adjust their transit plans, and the rule allows vessels to request permission to enter the zone from the COTP.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–

888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

B. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

C. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

D. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

E. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety

zone lasting only 30 minutes that will prohibit entry from MM 756.0–757.0 on the Ohio River from 9 p.m. to 9:30 p.m. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

- 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.4.

- 2. Add § 165.T08–0784 to read as follows:

§ 165.T08–0784 Safety Zone; Ohio River, Owensboro, KY.

(a) *Location.* The following area is a safety zone: All navigable waters of the Ohio river extending from mile marker 756.0–757.0, in the vicinity of Owensboro, KY.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sector Ohio Valley (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP’s designated representative.

(2) To seek permission to enter, contact the COTP or the COTP’s representative by VHF–FM radio channel 16 or phone at 1–502–779–5300. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP’s designated representative.

(d) *Enforcement period.* This section will be enforced from 9 p.m. to 9:30 p.m. on September 14, 2025.

Dated: August 29, 2025.

R.L. Preston,

Captain, U.S. Coast Guard, Captain of the Port Sector Ohio Valley.

[FR Doc. 2025–17090 Filed 9–4–25; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2025–0203; FRL–12755–02–R9]

Approval of Air Quality Implementation Plans; California; Regional Haze State Implementation Plan for the Second Implementation Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the regional haze state implementation plan (SIP) revision submitted by California on August 9, 2022 (hereinafter the “2022 California Regional Haze Plan” or “the Plan”), under the Clean Air Act (CAA) and the EPA’s Regional Haze Rule (RHR) for the program’s second implementation period. The Plan addresses the requirement that states must periodically revise their long-term strategies for making reasonable progress towards the national goal of preventing any future, and remedying any existing, anthropogenic impairment of visibility, including regional haze, in mandatory Class I Federal areas. The Plan also addresses other applicable requirements for the second implementation period of the regional haze program. The EPA is taking this action pursuant to CAA sections 110 and 169A.

DATES: This final rule is effective on October 6, 2025.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2025–0203. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through www.regulations.gov, or please contact the person identified in the **FOR FURTHER INFORMATION**

CONTACT section for additional availability information.

FOR FURTHER INFORMATION CONTACT:

Emily Millar, Geographic Strategies and Modeling Section (ARD–2–2), Planning & Analysis Branch, EPA Region IX, by email at millar.emily@epa.gov or phone at (213) 244–1882.

SUPPLEMENTARY INFORMATION:

Throughout this document, “we,” “us,” and “our” refer to the EPA.

Table of Contents

- I. Background
- II. Rationale for Final Action
- III. Public Comments and EPA Responses
- IV. Final Action
- V. Statutory and Executive Order Reviews

I. Background

On August 9, 2022, the California Air Resources Board (CARB) submitted the 2022 California Regional Haze Plan to address the requirements of the CAA’s regional haze program pursuant to CAA sections 169A and 169B and 40 CFR 51.308. On December 19, 2024, the EPA proposed to approve the elements of the Plan related to requirements contained in 40 CFR 51.308(f)(1), 40 CFR 51.308(f)(4)–(6), and 40 CFR 51.308(g)(1)–(5) and to disapprove the elements of the Plan related to requirements contained in 40 CFR 51.308(f)(2), 40 CFR 51.308(f)(3), and 40 CFR 51.308(i)(2)–(4).¹ During that public notice-and-comment period, the EPA received six sets of comments. The full text of comments received on the December 19, 2024 proposal are available via Docket ID Number EPA–R09–OAR–2024–0459 at www.regulations.gov.

On June 18, 2025, the EPA withdrew the December 19, 2024 proposal and proposed full approval of the Plan.² The June 18, 2025 proposal provided background on the requirements of the CAA and RHR, summarized California’s regional haze SIP submittal, and explained the rationale for our proposed action. That background and rationale will not be restated in full here.

II. Rationale for Final Action

In this final action, the EPA is affirming the Agency’s policy that, where projected 2028 visibility conditions on the most impaired days for a Class I Federal area impacted by a state are below the uniform rate of progress (URP) and the state has considered the four statutory factors, the state will have presumptively demonstrated reasonable progress for the second planning period for that area.

The policy was first articulated in a proposed action on the West Virginia regional haze SIP for the second planning period,³ which was then finalized.⁴

All twenty-nine areas Class I areas in California and twenty-four out of the twenty-five Class I areas in neighboring states are below the adjusted URP, and the Plan demonstrated that the state took into consideration the four reasonable progress factors listed in CAA 169A(g)(1)⁵ with respect to an adequate number of emissions sources. For the one remaining Class I area, Sycamore Canyon, projected 2028 visibility conditions on the most impaired days are above the adjusted URP. However, as detailed in our proposed rulemaking⁶ and section IV.A.3 of the Response to Comments Document available in the docket for this action (“RTC Document”), there is uncertainty with respect to the trends in visibility impairment and whether the site will really be above the URP in 2028, due to the monitor location having been moved in 2015. In addition, there is a strong downward trend in observed sulfate and nitrates, and modeled source apportionment data from WRAP shows a strong downward trend in modeled U.S. anthropogenic contributions to Sycamore Canyon between the baseline and 2028. Furthermore, even if we assume that Sycamore Canyon will be above the URP in 2028, the available evidence indicates that this is due to local sources of coarse mass and fine soil, not pollution transported from outside of Arizona. Finally, while the EPA’s policy establishes a presumption regarding areas that are projected to be *below* the URP, states whose emissions contribute to impairment in areas *above* the URP can still meet the applicable requirements of the CAA and the RHR. Indeed, the RHR specifically addresses this situation by requiring a “robust demonstration” that there are no additional emissions reduction measures at contributing sources that would be reasonable to include in the long-term strategy.”⁷ Because California did not determine that its sources contribute to impairment in Sycamore Canyon, it did not expressly make such

³ 90 FR 16478 (April 18, 2025).

⁴ 90 FR 29737, 29738 (July 7, 2025).

⁵ The four statutory factors required to be taken into consideration in determining reasonable progress are: the costs of compliance, the time necessary for compliance, and the energy and nonair quality environmental impacts of compliance, and the remaining useful life of any existing source subject to such requirements. CAA section 169(g)(1).

⁶ 90 FR 25929, 25940.

⁷ 40 CFR 51.308(f)(3)(ii)(B).

¹ 89 FR 103737.

² 90 FR 25929 (June 18, 2025).

a demonstration. However, as described in section IV.A.3 of the RTC Document, even if Sycamore Canyon is assumed to be above the 2028 URP, we find, consistent with 40 CFR

51.308(f)(3)(ii)(B), that there are no additional emissions reduction measures for anthropogenic sources or groups of sources in California that may reasonably be anticipated to contribute to visibility impairment in the Sycamore Canyon that would be reasonable to include in California's own long-term strategy. Thus, the EPA has determined that the Plan is fully approvable under the CAA, the RHR and the Agency's new policy.

III. Public Comments and EPA Responses

The EPA's June 18, 2025 proposal provided a 30-day public comment period that ended on July 18, 2025. The EPA received 10 comments during the comment period: one anonymous comment; four comments from private individuals; a comment letter from the California Air Resources Board (CARB); a comment from Mid-Atlantic/Northeast Visibility Union (MANEVU); a comment from the Power Generators Air Coalition; a joint comment letter signed by Access Fund, Central California Asthma Collaborative, Central California Environmental Justice Network, Central Valley Air Quality Coalition, Clean Water Action, Coalition to Protect America's National Parks, and the National Parks Conservation Association (NPCA); and a joint comment letter signed by NPCA, Sierra Club, and Coalition to Protect America's National Parks. After reviewing the anonymous comment and the comments from the private individuals, the EPA has determined that they fail to raise issues germane to the approval of the Plan, which is based on the criteria set forth in the Act, the RHR and relevant policy documents. Therefore, we have determined that these comments do not necessitate a response, and the EPA will not provide specific response to these comments. The comments from CARB and the Power Generators Air Coalition supported the EPA's proposed action. The EPA acknowledges these supportive comments, which are included in the docket for this action. We respond to the issues raised in the three remaining comment letters received on our proposed rulemaking in this document and the associated RTC Document, which is included in the docket for this rulemaking.

We briefly address in this section: (1) whether the EPA's new policy is consistent with the CAA and RHR; (2) whether the EPA sufficiently justified

its basis for the new policy; (3) whether the action is nationally applicable or based on a determination of nationwide scope and effect; (4) whether the action departs from national policy without complying with the EPA's consistency regulations at 40 CFR part 56; and (5) whether the Plan meets the applicable statutory and regulatory requirements in accordance with the new policy.

As detailed at length in the RTC Document section III.A, the EPA's new policy is consistent with the CAA. Pursuant to CAA 169A(a)(4), Congress explicitly delegated to the EPA the authority to promulgate regulations regarding reasonable progress towards meeting the national goal. As some comments note, to determine the measures necessary to make reasonable progress towards the national visibility goal under 169A(a)(1), Congress mandated "tak[ing] into consideration the cost of compliance, the time necessary for compliance, and the energy and nonair quality environmental impacts of compliance, and the remaining useful life of any existing source subject to such requirement."⁸

The EPA emphasizes that just because a Class I area is below the URP does not mean that a state is relieved of its obligations under the CAA and the RHR to make reasonable progress. In other words, the URP is not a "safe harbor," as that phrase has sometimes been used, because the EPA still must review a state's determination whether additional control measures are necessary to make reasonable progress, determine whether the state submitted those measures for incorporation into the SIP, and evaluate whether the measures are consistent with other provisions in the CAA.

As discussed in the West Virginia final action,⁹ the EPA's change in policy is consistent with *FCC v. Fox Television*, 556 U.S. 502 (2009). Under *FCC v. Fox*, an agency's change in policy is permissible if the agency acknowledges the change, believes it to be better, and "show[s] that there are good reasons for the new policy."¹⁰ In section V of our proposal for this rulemaking, we stated our reasons for implementing this new policy.¹¹ In sum, the EPA's proposal sufficiently justifies the change in policy under *FCC v. Fox*.

The decision in *FCC v. Fox* turned primarily on whether the FCC's change in policy would lead to the FCC "arbitrarily punishing parties without notice of the potential consequences of

their action."¹² As we explained in the proposal, the changed policy is prospective, which addresses the primary concern in *FCC v. Fox*. Additionally, the new policy "aligns with the purpose of the statute and RHR, which is achieving 'reasonable' progress, not maximal progress, toward Congress' natural visibility goal."¹³ Furthermore, we note that the legislative history of CAA section 169A is consistent with our change in policy. The reconciliation report for the 1977 CAA amendments indicates that the term "maximum feasible progress" in section 169A was changed to "reasonable progress" in the final version of the legislation passed by both chambers.¹⁴

As discussed in the West Virginia final action¹⁵ and the RTC document for this action in response III.C.1, the EPA's Regional Consistency regulations at 40 CFR part 56, and in particular 40 CFR 56.5(b), are not relevant to this action. 40 CFR 56.5(b) requires that a "responsible official in a Regional office shall seek concurrence from the appropriate EPA Headquarters office on any interpretation of the Act, or rule, regulation, or program directive when such interpretation may result in application of the act or rule, regulation, or program directive that is *inconsistent* with Agency policy." (emphasis added). As we expressly indicated in the proposal, the approval is *consistent* with the change in agency policy, first announced in *Air Plan Approval; West Virginia; Regional Haze State Implementation Plan for the Second Implementation Period*. Therefore, there is no obligation under the plain language of the EPA's Regional Consistency regulations for anyone in the region to seek concurrence from EPA Headquarters to take action consistent with EPA policy. The lack of relevance of these regulations to this action accounts for the lack of materials related to compliance with the Regional Consistency process in the docket for this rulemaking.

This action is "locally or regionally applicable" under CAA section 307(b)(1) because it applies only to a SIP submission from a single state, California.¹⁶ To determine whether an

¹² 556 U.S. at 517.

¹³ 90 FR at 16483.

¹⁴ See Legislative History of the Clean Air Act Amendments of 1977 Public Law 95–95 (1977), *H.R. Rep. No. 95–564*, at 535.

¹⁵ 90 FR 29737, 29740 (July 7, 2025).

¹⁶ See *Oklahoma v. EPA*, 605 U.S. ___, ___, (2025) (slip op., at 8) (a SIP is "a state-specific plan" and "the CAA recognizes this limited scope in enumerating a SIP approval as a locally or

⁸ CAA 169A(g)(1).

⁹ 90 FR 29737, 29738 (July 7, 2025).

¹⁰ 556 U.S. 502, 515.

¹¹ 90 FR 25929, 25933–25934.

action is “nationally applicable” or “locally or regionally applicable,” “court[s] need look only to the face of the agency action, not its practical effects. . . .”¹⁷ As discussed in the West Virginia final action¹⁸ and the RTC Document for this action in the response III.C.4, comments that claim that the EPA “must” publish a finding that this action is “based on a determination of nationwide scope [or] effect” are also unsupported and incorrect. The Supreme Court has recognized that “[b]ecause the ‘nationwide scope or effect’ exception can apply only when ‘EPA so finds and publishes’ that it does, EPA can decide whether the exception is even potentially relevant.”¹⁹ As the D.C. Circuit has also stated, the “EPA’s decision whether to make and publish a finding of nationwide scope or effect is committed to the agency’s discretion and thus is unreviewable.”²⁰ The Administrator has not made and published a finding that this action is based on a determination of nationwide scope or effect. Accordingly, any petition for review of this action must be filed in the United States Court of Appeals for the appropriate regional circuit.

Finally, as also detailed in section IV.A of the RTC Document, the Plan meets the applicable statutory and regulatory requirements. As required by the statute, California took into consideration the four statutory factors in CAA section 169A(g)(1) and determined that no additional controls for stationary sources were necessary to make reasonable progress. California therefore concluded that it was not

necessary to incorporate any new emissions limitations, schedules of compliance, or other measures for stationary sources into its SIP. Thus, California did not ignore the results of its consideration of the four statutory factors. Rather, consistent with the CAA, RHR, and EPA’s new policy, the state’s final decisions as to the measures necessary to make reasonable progress in the second planning period are reasonable.

In addition, the RHR requires states to submit a long-term strategy that addresses regional haze visibility impairment for each mandatory Class I Federal area within the State and for each mandatory Class I Federal area located outside the State that may be affected by emissions from the State,²¹ and the statute refers to “a State the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility in any such area.”²² However, there is no specific statutory or regulatory requirement to identify the precise set of Class I areas that are affected by emissions from California, and there is no requirement to establish a source contribution threshold in identifying those areas. In this case, CARB appropriately identified affected out-of-state Class I areas, as we explain in section IV.A.4 of the RTC document. The EPA believes CARB has reasonably documented its out-of-state Class I area contributions, and that, with one possible exception discussed in section II of this document and in the RTC at response section IV.A.3, emissions from California do not impact any Class I area whose 2028 RPG for the most impaired days is above the URP.

In conclusion, as discussed in more detail in the responses at section IV.B.8 of the RTC Document, California took into consideration the four statutory factors in CAA section 169A(g)(1) and selected four mobile source measures as necessary for reasonable progress.²³ Consistent with an approach used in many of its attainment plans, which has been upheld by the Ninth Circuit,²⁴ CARB did not adopt and submit the specific identified measures, but instead provided a “commitment to achieve aggregate emissions reductions of 40 tpd of NO_x emissions Statewide.”²⁵ Therefore, while some of these measures were subsequently invalidated, this

does not necessitate a disapproval of any portion of the Plan.

The full text of comments received is included in the publicly posted docket associated with this action at www.regulations.gov. The RTC Document, which is also included in the docket associated with this action, provides detailed responses to all significant comments received. The RTC Document is organized by topic. Therefore, if additional information is desired concerning how the EPA addressed a particular comment, the reader should refer to the appropriate section in the RTC Document.

IV. Final Action

For the reasons set forth in the June 18, 2025 proposal, the RTC Document, and in this final rule, the EPA is approving the 2022 California Regional Haze Plan as satisfying the regional haze requirements for the second planning period contained in 40 CFR 51.308(f), (g), and (i).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations.²⁶ Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the Act. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993);
- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because SIP actions are exempt from review under Executive Order 12866;
- 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

regionally applicable action”); see also, *Am. Rd. & Transp. Builders Ass’n*, 705 F.3d 453, 455 (D.C. Cir. 2013) (describing EPA action to approve a single SIP under CAA section 110 as the “[p]rototypical” locally or regionally applicable action).

¹⁷ *EPA v. Calumet Shreveport Refining, L.L.C.*, 605 U.S. ___ (2025) (slip op. at 12) (“[W]e determine an action’s range of applicability by ‘look[ing] only to the face of the [action], rather than to its practical effects.’”) (quoting *Am. Rd. & Transp. Builders Ass’n*, 705 F.3d at 456) and *Oklahoma*, 605 U.S. ___, ___ (2025) (slip op. at 9) (basis for EPA action is not relevant to determining its applicability); see also *Sierra Club v. EPA*, 926 F.3d 844, 849 (D.C. Cir. 2019) and *RMS of Georgia, LLC v. EPA*, 64 F.4th 1368, 1372 (11th Cir. 2023) (“our sister circuits have established a consensus that we should begin our analysis by analyzing the nature of the EPA’s action, not the specifics of the petitioner’s grievance”).

¹⁸ 90 FR 29737, 29740 (July 7, 2025).

¹⁹ *Calumet Shreveport Refining, L.L.C.*, 605 U.S. (slip op. at 16), citing *Sierra Club v. EPA*, 47 F.4th 738, 746 (D.C. Cir. 2022).

²⁰ *Sierra Club v. EPA*, 47 F.4th at 745; see also *Texas v. EPA*, 983 F.3d 826, 835 (5th Cir. 2020) (“when a locally applicable action is based on a determination of nationwide scope or effect, the EPA has discretion to select the venue for judicial review”).

²¹ 40 CFR 51.308(f)(2).

²² CAA section 169A(b)(2).

²³ Plan, p. 116.

²⁴ See, e.g., *Comm. for a Better Arvin v. EPA*, 786 F.3d 1169, 1179 (9th Cir. 2015)).

²⁵ Id.

²⁶ 42 U.S.C. 7410(k); 40 CFR 52.02(a).

Order 13132 (64 FR 43255, August 10, 1999);

- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it proposes to approve a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the 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 will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 4, 2025. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: August 25, 2025.

Joshua F.W. Cook,
Regional Administrator, Region IX.

For the reasons stated in the preamble, the EPA amends chapter I,

title 40 of the Code of Federal Regulations as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

- 2. In § 52.220a, in paragraph (e), amend table 1 by adding entries, in the following order, for “California’s Regional Haze Plan For the Second Implementation Period” and “California Air Resources Board Resolution 22–11, dated June 24, 2022” before the entry for “California Regional Haze Plan 2014 Progress Report” to read as follows:

§ 52.220a Identification of plan—in part.

* * * * *

(e) * * *

TABLE 1—GENERAL PROVISIONS OF CALIFORNIA STATE IMPLEMENTATION PLAN (SIP); INFRASTRUCTURE AND REGIONAL HAZE SIPs; MATERIALS RELATED TO THE PREVENTION OF SIGNIFICANT DETERIORATION (PSD) PROGRAM; AND COMPLIANCE SCHEDULES

Name of SIP provision	Applicable geographic area	State submittal date	EPA approval date	Explanation
* * *	* * *	* * *	* * *	* * *
California’s Regional Haze Plan For the Second Implementation Period.	Statewide	August 9, 2022	9/5/2025, 90 FR [Insert Federal Register page where the document begins].	Adopted by California Air Resources Board on June 24, 2022.
California Air Resources Board Resolution 22–11, dated June 24, 2022.	Statewide	August 9, 2022	9/5/2025, 90 FR [Insert Federal Register page where the document begins].	Resolution approving “California’s Regional Haze Plan For the Second Implementation Period”.
* * *	* * *	* * *	* * *	* * *

* * * * *

- 3. Amend § 52.281 by adding paragraph (h) to read as follows:

§ 52.281 Visibility protection

* * * * *

(h) *Approval.* On August 9, 2022, the California Air Resources Board submitted “California’s Regional Haze Plan For the Second Implementation Period” (“Plan”). The Plan meets the requirements of Clean Air Act sections 169A and 169B and the Regional Haze Rule in 40 CFR 51.308 for the second implementation period.

[FR Doc. 2025–17045 Filed 9–4–25; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2024–0545; FRL–11879–02–R10]

Air Plan Approval; ID; Regional Haze Plan for the Second Implementation Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the Idaho regional haze State Implementation Plan

(SIP) revision submitted on August 5, 2022, supplemented on September 27, 2024, and clarified on August 12, 2025, as satisfying applicable requirements under the Clean Air Act and the EPA’s Regional Haze Rule (RHR) for the program’s second implementation period. The Idaho SIP revision addressed the requirement to make reasonable progress toward the national goal of preventing any future, and remedying any existing, anthropogenic impairment of visibility in certain national parks and wilderness areas.

DATES: This final rule is effective October 6, 2025.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R10-OAR-2024-0545 at <https://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available at <https://www.regulations.gov>, or please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: John Chi, EPA Region 10, 1200 Sixth Avenue, Suite 155, Seattle, WA 98101, at (206) 553-1185 or chi.john@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, the use of “we” and “our” means “the EPA.”

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I. Background

On March 24, 2025, the EPA proposed to approve the regional haze State Implementation Plan (SIP) revision submitted by Idaho on August 5, 2022, supplemented on September 27, 2024, and clarified on August 12, 2025, as satisfying applicable requirements under the Clean Air Act and the EPA's Regional Haze Rule (RHR) for the program's second implementation period (90 FR 13516).

The public comment period for our notice of proposed rulemaking (NPRM) closed on April 23, 2025. We received six comments. We determined two of the comments were not germane to our action. One commenter requested that, “the EPA and the Idaho Department of

Environmental Quality [“IDEQ” or “DEQ”] consider a program to install supplemental catalytic converters on older gasoline cars to reduce NO_x, VOCs, and CO emissions.” The commenter further stated that the commenter's company has developed supplemental catalytic converters to reduce tailpipe emissions. This comment is outside the scope of this action. The revisions to Idaho's SIP addressed in this action do not relate to control of motor vehicle emissions in general, or the control of tailpipe emissions using supplemental catalytic converters. Rather, this action primarily addresses stationary source industrial emissions that may impact visibility in Class I areas in Idaho. In addition, the commenter did not indicate that the EPA approval of the Idaho regional haze plan submission is inconsistent with the Clean Air Act.

A second commenter recommended not approving the plan until Idaho attains clean air standards. The commenter also stated that “Idaho will need to degrowth, contract and regulate more to provide clean air for Idahoans health and safety.” This action addresses the Clean Air Act visibility protection requirements of sections 169A and 169B, not the Clean Air Act's health-based air quality standards, such as the national ambient air quality standards. Therefore, this comment is outside the scope of this action.

We also received one comment in support of this action. The commenter conveyed overall support for our NPRM, stating, “I am very happy and proud of the EPA for proposing this influential rule that will help in Idaho. However, seeing that Idaho has an average AQI of 62 which many other states are well above 70 I think similar rules to these should be implemented in other areas of our nation.” The EPA acknowledges the commenter's support.

We received germane, adverse comments from a coalition of conservation groups (the National Parks Conservation Association, the Coalition to Protect America's National Parks, and the Sierra Club), the Amalgamated Sugar Company (TASCO), and the Idaho Association of Commerce and Industry (IACI). The full text of the comments may be found in the docket for this action. We have reprinted in relevant part or summarized the comments and provided our responses in section II of this preamble.

II. EPA Responses to Comments Received

A. The National Parks Conservation Association, the Coalition To Protect America's National Parks, and the Sierra Club

1. Additional Facilities Considered

Comment: “[W]e believe DEQ should have considered additional facilities to strengthen their SIP Revision Package.”

Response: The RHR does not require a State to evaluate all sources of emissions, nor does it list factors that a State must or may consider when selecting sources. Rather, the RHR requires that a State's submission include “a description of the criteria it used to determine which sources or groups of sources it evaluated.”¹ The State must also appropriately document the technical basis for source selection, which may include methods for quantifying potential visibility impacts such as emissions divided by distance metrics, trajectory analyses, residence time analyses, and/or photochemical modeling.

As detailed in the submission and described in our NPRM, Idaho used the source selection methodology developed by the Western Regional Air Partnership (WRAP) for western States.² The WRAP's approach used the Q/d method, where Q is the sum of visibility impairing pollutants (NO_x, SO₂ and PM₁₀), and d is the distance (kilometers) to the boundary of the nearest Class I area. The Idaho DEQ screened sources as described in the following steps:³

1. Identify those facilities with total facility-wide emissions of visibility impairing pollutants (NO_x, SO₂ and PM₁₀) greater than 25 tons per year (tpy) based on 2014 National Emissions Inventory (NEI) data.

2. Calculate the distance from each facility identified in Step 1 to the nearest Class I area boundary (including those in other States) in kilometers (km). Facilities greater than 400 km from the nearest Class I area were considered to have minimal impact on visibility and were excluded.

3. Identify those facilities with a Q/d greater than the State-defined threshold. Idaho used a relatively low Q/d threshold of 2.0 because the State estimated that the threshold captured 70% to 80% of emissions from Idaho facilities.

4. Refine the Q/d analysis using more recent 2017 NEI data to screen out sources that have a Q/d less than the

¹ 40 CFR 51.308(f)(2)(i).

² See the WRAP Technical Support System (TSS) at www.wrapair2.org.

³ Idaho 2022 plan submission, page 54.

State-defined threshold for 2017 emissions.

Idaho's initial source screening used 2014 emissions inventory data to identify 14 facilities in Idaho with Q/d greater than 2.0.⁴ Idaho refined the Q/d analysis using 2017 emissions inventory data and screened out three additional facilities from the original 14 (Idaho Forest Group LLC-Riley Creek-Moyie Springs, Plummer Forest Group, Inc-Post Falls, and Rexburg Facility of Basic American Foods).⁵ Idaho also screened out a facility outside of the State's regulatory purview (Boise Airport), as well as a facility near Sawtooth Wilderness Area (Northwest Pipeline—Mountain Home) because the facility primarily emitted NO_x and WRAP modeling found anthropogenic contributions to NO_x at SAWT1 were negligible.⁶ This screening process yielded nine Idaho facilities with Q/d greater than 2.0.

Idaho also used the WRAP's weighted emissions potential (WEP) to further inform source selection.⁷ The WEP is a screening tool used to identify sources contributing to visibility impairment in the 2014–2018 period and still operating in 2028 that have the potential to contribute to haze formation at Class I areas.⁸ The rank point analysis consists of facility-level 2028 emissions for NO_x or SO₂ sources overlaid with the corresponding extinction-weighted residence time for ammonium nitrate or ammonium sulfate.⁹ Ultimately, Idaho determined that the sources it selected for review under the four statutory factors captured the sources potentially contributing to visibility impairment in Class I areas in other States. Importantly, Idaho noted that all the sources it reviewed had greater visibility impacts on Idaho Class I areas. Specifically, the 2028OTBa2 State-level source apportionment results indicated that Idaho facilities had the most significant impact on visibility impairment at Class I areas within the State. Thus, Idaho reasoned, and the neighboring States agreed, that addressing visibility impairment in Idaho's Class I areas would adequately capture Idaho sources' contribution to visibility impairment in Class I areas outside the State.

Furthermore, Idaho identified 27 Class I areas in five neighboring States (Montana, Nevada, Oregon, Washington,

Wyoming) that could potentially be affected by emissions from sources within Idaho. However, applying the same source screening analysis yielded no additional Idaho facilities beyond the nine already selected for four-factor analysis.¹⁰ Those nine facilities were ultimately selected for further evaluation by Idaho.

As explained in the NPRM, the RHR preamble, and in the response to the conservation group comments above, the RHR does not require States to consider controls for all sources, all source categories, or any or all sources in a particular source category. This is addressed on page 9 of the 2019 Regional Haze Guidance¹¹ as follows: "Instead, a state may reasonably select a set of sources for an analysis of control measures. The guidance that an analysis of control measures is not required for every source in each implementation period is based on CAA section 169A(b)(2)." Rather, the States have discretion to choose any source selection methodology or threshold that is reasonably calculated to evaluate and determine the emission reduction measures necessary to make reasonable progress, provided that the choices they make are reasonably explained. To this end, 40 CFR 51.308(f)(2)(i) requires that a State's SIP submission include "a description of the criteria it used to determine which sources or groups of sources it evaluated." The technical basis for source selection, which may include methods for quantifying potential visibility impacts such as emissions divided by distance metrics, trajectory analyses, residence time analyses, and/or photochemical modeling, must also be appropriately documented, as required by 40 CFR 51.308(f)(2)(iii).

On that basis, we find that Idaho included adequate information and an explanation of its source selection methodology in its regional haze plan submission and that the information submitted supports a finding that Idaho examined a reasonable set of sources for the second implementation period.

2. Low Cost-Effectiveness Threshold

Comment: "DEQ evaluated potential reasonable progress measures for its sources using an unreasonably low cost-effectiveness threshold. DEQ's average

cost-effectiveness threshold for evaluating controls was just \$6,100. DEQ should have used a higher cost-effectiveness threshold, similar to that employed by other states like Colorado, Nevada, and New Mexico, all of which used a \$10,000 per ton threshold."

Response: As the EPA stated in the NPRM, the EPA did not establish a cost-effectiveness threshold for the second implementation period. Rather, the EPA's 2019 Guidance clarified that States had the flexibility to decide a reasonable approach to evaluating costs.¹² Further, the RHR does not provide a specific cost effectiveness threshold. The fact that Idaho used a cost-effectiveness threshold that is lower than another State's threshold is not, by itself, an adequate basis for disapproving a State's regional haze plan.

In developing its regional haze plan for the second implementation period, Idaho established a cost-effectiveness threshold of \$6,100 per ton by adjusting the \$5,000 per ton best available retrofit technology (BART) cost-effectiveness threshold (used during the first implementation period) for inflation.¹³ Idaho then analyzed potential control measures using the four statutory factors for specific units at selected facilities. Control measures that would cost over \$6,100 per ton were considered too costly for purposes of the second implementation period. While there is no threshold for percentage of emissions captured for analysis, Idaho's approach is well reasoned and therefore we continue to find that Idaho documented a reasonable approach to evaluating costs and met its obligations under 40 CFR 51.308(f)(2)(i).

Additionally, although Nevada did set a \$10,000 per ton cost-effectiveness threshold in its second planning period regional haze SIP, the EPA disagrees with commenters' assertion that both New Mexico and Colorado also set \$10,000 per ton thresholds. Colorado only mentioned the possibility of a \$10,000 per ton threshold in its prehearing statement and in early drafts of its SIP revision for the second implementation period. However, this threshold was not carried over into the final SIP revision submitted to the EPA. Also, as of the time this comment was

¹⁰ *Id.*, tables 24–28.

¹¹ Guidance on Regional Haze State Implementation Plans for the Second Implementation Period. The EPA Office of Air Quality Planning and Standards, Research Triangle Park (August 20, 2019), page 38 (EPA 2019 Guidance), available in the docket for this action and at <https://www.epa.gov/visibility/guidance-regional-haze-state-implementation-plans-second-implementation-period>.

¹² Guidance on Regional Haze State Implementation Plans for the Second Implementation Period. The EPA Office of Air Quality Planning and Standards, Research Triangle Park (August 20, 2019), page 38 (EPA 2019 Guidance), available in the docket for this action and at <https://www.epa.gov/visibility/guidance-regional-haze-state-implementation-plans-second-implementation-period>.

¹³ Idaho 2022 plan submission, pages 64 and 65.

⁴ *Id.*, page 55. See table 22 as updated by Idaho 2024 supplemental submission.

⁵ *Id.*

⁶ *Id.*, page 56. See also figure 11.

⁷ *Id.*, pages 61–62.

⁸ *Id.*

⁹ *Id.*

submitted, New Mexico has not yet submitted their SIP revision for the second implementation period. Although New Mexico's draft SIP revision references a \$10,000 per ton threshold in its analysis, New Mexico has yet to submit a formal SIP revision to the EPA.

3. Clearwater Paper Corporation

Comment: "DEQ evaluated control measures for Clearwater Paper Corporation and determined that the figure of \$9,556/ton for selective catalytic reduction (SCR) was greater than the threshold of \$6,100/ton that DEQ set. DEQ then failed to propose SCR controls at No. 4 Power Boiler based on cost-effectiveness. In their SIP comments to Idaho's 2024 submission, NPS encouraged DEQ to evaluate whether requiring SCR to control NO_x emissions from the No. 4 Power Boiler would be reasonable. The Conservation Organizations support that recommendation and urge EPA to ensure SCR controls at No. 4 Power Boiler are included in its final proposal."

Response: We disagree with the commenters. In the 2024 submission, Idaho assessed the feasibility and costs of retrofitting the No. 4 Power Boiler with additional NO_x controls, including low-NO_x burners (LNB), Ultra-low NO_x burners (ULNB), selective non-catalytic reduction (SNCR), selective catalytic reduction (SCR), and low-temperature oxidation (LoTOx).¹⁴ Idaho determined that ULNB and flue gas recirculation were technologically infeasible. For the remaining, feasible controls, Idaho concluded that the cost to install LNB, SNCR, SCR, and LoTOx would exceed the State's established cost-effectiveness threshold.¹⁵ For SCR specifically, Idaho estimated that add-on controls would cost \$9,556 per ton of NO_x removed. Idaho used vendor quotes and the EPA's Control Cost Manual to estimate this cost.¹⁶ As discussed above, Idaho reasonably explained the basis for its cost effectiveness threshold of \$6,100/ton reduced. States may evaluate the cost factor using a cost threshold and use that threshold to provide a reasonable justification for four-factor analysis outcomes. Thus, Idaho was

reasonable to reject SCR as too costly based on this threshold.

4. ITAFOS Conda LLC

Comment: "[T]he NPS recommended that a wet packed scrubber would likely be cost-effective to reduce SO₂ emissions from the East Sulfuric Acid Plant. In the SIP Supplement, DEQ updated the information provided in appendix B including a new facility Four-Factor Analysis and DEQ's review of the analysis. In its review, DEQ provided an adjusted cost effectiveness for wet flue gas desulfurization or hydrogen peroxide scrubbing of about \$8,000/ton SO₂ removed. While the cost exceeds DEQ's cost threshold of \$6,100/ton of SO₂, given the facility's impact on Class I areas, we support NPS's recommendation on the SIP Supplement to require SO₂ scrubbing in this planning period."

Response: We disagree with this comment. As discussed above, the EPA finds that Idaho was reasonable in using a cost effectiveness threshold of \$6,100 to evaluate whether controls are necessary in the second implementation period. Idaho was thus reasonable to reject controls with projected costs in excess of this threshold. This was the case with all of the controls Idaho evaluated for the East Sulfuric Acid Plant.

To the extent the comment contests Idaho's cost estimates, we also disagree. With respect to cost calculations, the EPA recommended in the 2019 Guidance that States follow the EPA's Control Cost Manual recommendations to ensure consistent cost calculations across controls and sources.¹⁷ The EPA also recommended that States explain any deviations from those methods or alternative approaches.¹⁸ Finally, the Control Cost Manual provides for generic cost estimates using a consistent methodology but recommends that States obtain facility-specific vendor cost quotes when practical.¹⁹

In evaluating the cost of WFGD, a hydrogen peroxide scrubber, and DSI, Idaho obtained cost information from equipment vendors.²⁰ Idaho conducted subsequent evaluations of its initial cost estimates to ensure the cost estimates

took into consideration all the ancillary equipment necessary and site-specific complexities. Idaho adequately explained its cost calculation methodology, its use of the Control Cost Manual, and its rationale for adjusting initial vendor estimates based on site-specific information. Therefore, the EPA's position remains that Idaho adequately considered cost, along with the other three factors in 40 CFR 51.308(f)(2), in determining the controls necessary for reasonable progress at the East Sulfuric Acid Plant and the State was reasonable in rejecting controls with costs above \$6,100 per ton reduced.

5. J.R. Simplot—Don Siding Pocatello

Comment: "the NPS explained that because the Itafos analysis included a vendor quote for a packed tower wet scrubber using hydrogen peroxide and caustic soda as scrubbing reagents and the Simplot plants have higher permitted production capacity but are similar to the Itafos facility plant, the NPS used the Itafos vendor quote PEC and the "six-tenths" rule to apply these costs to the Simplot plants. The NPS explained that it detailed all analysis assumptions in the written documentation. The NPS's cost-effectiveness figures demonstrate that scrubbers on the Simplot sulfuric acid plants are cost effective for Plants No. 300 and 400, reducing emissions by 98% or roughly 733 tons per year. Thus, the EPA must ensure that Four-Factor Analyses are conducted and emission controls are included for these plants in the final action. Although the SIP Supplement concludes that existing permit conditions for both sulfuric acid plants are sufficient and that no Four-Factor Analysis or additional SO₂ controls are needed this planning period, we agree with NPS's recommendation that a wet packed-tower scrubber is still likely cost-effective for Plants No. 300 and 400 and should be required in this planning period."

Response: We disagree with the commenters that four-factor analyses are required for evaluating retrofit SO₂ controls on the Don Siding Plant sulfuric acid plants. In our NPRM, we proposed to approve the Idaho DEQ's determination that the Don Siding sulfuric acid plants were already subject to BACT-level SO₂ limits per a 2015 Federal consent decree to resolve PSD applicability issues and that those limits constituted existing effective controls.²¹

¹⁴ Idaho 2022 plan submission, Appendix B. Four-Factor Analyses and Reviews. Clearwater Paper Corp.—Pulp and Paperboard Division.

¹⁵ *Ibid.* Idaho determined that installing a low NO_x burner would have a cost effectiveness not >\$10,000 per ton reduced; SNCR \$11,600 per ton reduced; and LoTOx \$21,132 per ton reduced.

¹⁶ Idaho 2024 supplemental submission, appendix H, DEQ Responses to Public Comments (Replace), page 41.

¹⁷ EPA 2019 Guidance, page 37 ("We anticipate that the outcome of the decision-making process by a state regarding a control measure may most often depend on how the state assesses the balance between the cost of compliance and the visibility benefits, with the other three statutory factors either being subsumed into the cost of compliance or not being major considerations.").

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Idaho 2024 supplemental submission, appendix B Four Factor Analysis and Review (Append), page 5–10.

²¹ See <https://www.epa.gov/enforcement/consent-decree-jr-simplot-company/>. For the No. 300 Sulfuric Acid Plant, SO₂ emissions are limited to

In our NPRM we stated that in the EPA 2019 Guidance, the EPA acknowledged that a control technology review under the four regional haze factors was unlikely to find feasible, cost-effective controls for sources that recently went through PSD BACT.²² In this instance, both plants are subject to 2015 BACT limits imposed through a Federal consent decree with the EPA. Consistent with the EPA 2019 Guidance, and based on the submitted information, the EPA agreed with Idaho that additional control technology review under the four regional haze factors would be unlikely to find feasible, cost-effective controls.²³

As background, it is helpful to review the technology already in place on the plants to control SO₂ emissions. The No. 300 Sulfuric Acid Plant is already equipped with scrubber technology to reduce SO₂ emissions, specifically a DynaWave reverse-jet wet gas scrubber and an Ammsox packed bed ammonium scrubber in series. The No. 400 Sulfuric Acid Plant uses a double contact/double absorption (DCDA) process and makes use of a high-efficiency catalyst to maximize conversion of SO₂ to SO₃, which in turn reduces SO₂ emissions. In an SO₂ BACT analysis conducted in 2013, Simplot determined the No. 400 plant could meet BACT-level SO₂ limits based on DCDA technology and high-efficiency catalysts alone.²⁴ In its research for the BACT analysis, Simplot found that wet scrubbing is not typically used in combination with DCDA technology for SO₂ emissions control and that the use of a wet scrubber in combination with a high-efficiency catalyst would provide only marginal SO₂ reductions at significant cost.²⁵

We continue to find that Idaho's decision was reasonable—that additional control technology review under the four regional haze factors would be unlikely to find additional feasible, cost-effective retrofit SO₂ controls on the Simplot sulfuric acid plants. Therefore, we concur with Idaho

2.5 lb/ton of 100% sulfuric acid produced on a rolling 3-hour average basis, except during periods of startup, shutdown, or malfunction, and 1.5 lb/ton 100% sulfuric acid produced on a rolling 365-day average basis including periods of startup, shutdown, or malfunction. For the No. 400 Sulfuric Acid Plant, SO₂ emissions are limited to 2.5 lb/ton of 100% sulfuric acid produced on a rolling 3-hour average basis, except during periods of startup, shutdown, or malfunction, and 1.6 lb/ton 100% sulfuric acid produced on a rolling 365-day average basis including periods of startup, shutdown, or malfunction.

²² 2019 EPA Guidance, pages 22–23.

²³ *Ibid.*

²⁴ Simplot Don Siding Permit to Construct application, July 2013, pages 53 through 60 (section 4.7).

²⁵ *Ibid.*

that the existing consent decree limits constitute existing effective controls for purposes of the regional haze second implementation period.

6. TASCOPaul

Comment: “NPS recommended removing coal as a fuel for the pulp dryers at the TASCOPaul facility to further reduce SO₂ and NO_x emissions. In the SIP Supplement, DEQ found that eliminating coal from the north and south pulp dryers at the Paul facility is the most cost-effective option with the greatest emission reductions. However, no additional controls were required for this planning period due to the Foster-Wheeler boiler fuel conversion at the TASCOTwin Falls facility. We agree with NPS in their 2024 SIP Supplement that emission reductions at one facility do not justify bypassing cost-effective controls at another. We support NPS's recommendation to remove coal as a fuel for the pulp dryers at the TASCOPaul facility to reduce haze-causing emissions in this planning period.”

Response: In its submission, Idaho selected controls to achieve emissions reductions at the TASCOPampa and Twin Falls facilities over the TASCOPaul facility because doing so would achieve greater overall emissions reductions and because the Pampa and Twin Falls facilities have greater visibility impacts on Class I areas. The RHR does not prohibit States from maximizing emissions reductions across multiple facilities impacting the same Class I area. We continue to find that Idaho's approach is consistent with the RHR.

7. Clearwater Paper Corporation Low Sulfur Fuel Oil Requirement

Comment: “The Conservation Organizations echo the recommendation of NPS to require the use of low-sulfur fuel oil as an alternative fuel in the No. 4 Power Boiler at this facility to ensure short-term changes in emissions.”

Response: In our NPRM we stated that we concur with Idaho's assessment that it is not feasible to require the facility to fire lower sulfur fuel oil in the No. 4 Power Boiler at this time. Information in the 2024 submission stated that the No. 4 Power Boiler fires hog fuel and natural gas primarily, and while being permitted to fire higher sulfur fuel oil, the facility must limit the amount of fuel oil fired due to operational requirements and to ensure compliance with the current 100 ton per year SO₂ emission limit.²⁶

²⁶ Idaho 2024 supplemental submission, appendix B, Clearwater power boiler fuel oil analysis.

B. The Amalgamated Sugar Company

1. Inclusion of Site-Specific Permit Conditions

Comment: “The IDEQ Air Permits and the site-specific permit conditions included in the proposed approval are federally enforceable through state delegated and EPA approved air quality programs, specifically New Source Review (and related Permits to Construct) and Title V (known as Tier I permits). While the IDEQ Air Permits included in the Idaho SIP contain conditions acceptable to ASC when the Idaho SIP was developed, economic and operational changes can and frequently do prompt necessary revisions. Revisions to federally enforceable permits issued by IDEQ are governed by state law and the applicable Federal framework incorporated by reference into state law. If the Idaho SIP is approved as proposed, with inclusion of specific permit conditions, then those included permit conditions are also subject to Federal processes to revise the Code of Federal Regulations (CFR) when circumstances at a facility change. This approach is impractical, creates delay and drains resources of ASC, IDEQ, and EPA.”

Response: The visibility requirements of the Clean Air Act and 40 CFR 51.308(f)(2) require each applicable implementation plan to contain such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the national goal of preventing and remedying visibility impairment in class I areas. See Clean Air Act 169A(b)(2). Consistent with these requirements, Idaho submitted for incorporation into its SIP permit conditions detailing emission limits, fuel requirements, monitoring, recordkeeping and reporting requirements, and compliance schedules that Idaho determined were necessary for reasonable progress. Accordingly, the EPA proposed to approve and incorporate by reference into the SIP these enforceable requirements. We acknowledge the commenter is concerned about future, potential necessary changes to permit conditions. The EPA commits to working collaboratively with Idaho on any future revisions to these permit conditions to ensure the revisions meet Clean Air Act requirements and to minimize processing delays.

2. Condition 4.6 Is Redundant in Permit T1–2019–0020

Comment: “Permit T1–2019–0020 issued November 5, 2021, to ASC's Paul facility, includes many conditions

proposed to be incorporated into the Idaho SIP. Specifically, conditions 4.4, 4.6, and 4.7, among others, limit utilization of the boilers at the ASC Paul facility, with some of the conditions overlapping others. ASC plans to request a permit revision from IDEQ to remove condition 4.6 to allow for greater flexibility in the facility's boiler utilization. Future operations may need to run three boilers simultaneously to achieve preferred load distribution and steam generation. Federally enforceable condition 4.4 limits the emissions generated by the facility boilers annually and condition 4.7 limits the amount of total energy consumed by the facility boilers annually (in therms). These conditions sufficiently limit the annual emissions of pollutants subject to regulation under the regional haze program. The facility's compliance with conditions 4.4 and 4.7, makes condition 4.6 redundant and unreasonably limits operational flexibility of the boiler system at the facility. ASC requests that EPA disapprove Idaho SIP inclusion of condition 4.6 of Permit T1-2019-0020 issued November 5, 2021, because it is redundant and unnecessary for reasonable further progress."

Response: The Idaho Department of Environmental Quality withdrew condition 4.6 of Permit T1-2019-0020 via a letter sent on August 12, 2025, because the State determined that this condition is not necessary for reasonable progress during the second planning period. The EPA agrees with the State. The EPA reviewed Idaho's 2022 and 2024 submissions and confirmed that condition 4.6 is not needed to sufficiently limit emissions from these specific boilers for purposes of the regional haze second implementation period. As discussed in the NPRM and in section II.A.6. of this preamble, Idaho determined that controls on TASCOPaul were not necessary for reasonable progress for the second implementation period because of the surplus emissions reductions at the TASCOTwin-Falls facility.

Therefore, our final action is not incorporating condition 4.6 by reference into the SIP.

C. The Idaho Association of Commerce and Industry

Comment: "IACI urges the restructuring of the Regional Haze

Program to simplify and streamline future permit revisions by deferring to federally enforceable actions of state permitting agencies that comply with the provisions of the Clean Air Act and applicable Federal regulations to avoid additional EPA process and delay and IACI urges EPA to revise the Regional Haze Program with sanity and purpose. This proposed action, incorporating existing and already enforceable site-specific permit conditions into the CFR, will result in impractical and unreasonable layers of process to revise permit conditions that support future economic growth in local communities and manifest the Great American Comeback. Additional processes also erode the cooperative federalism framework under the Clean Air Act and will add to the persistent SIP backlog."

Response: The EPA acknowledges IACI's concerns with the current RHR and support for revising the rule. On March 12, 2025, Administrator Zeldin announced the EPA's intention to review the RHR and to restore sanity and purpose to the program.²⁷ We encourage IACI to participate in any future regional haze rulemaking effort. This review of the RHR is separate from the EPA's actions on regional haze SIPs for the second planning period. The EPA's position remains that Idaho's regional haze plan for the second implementation period meets the requirements of Clean Air Act section 169A and 40 CFR 51.308(f).

Please see the EPA's response to the Amalgamated Sugar Company at section II.B.1. of this preamble for an explanation of the need to adopt source-specific enforceable emission limits into the SIP.

Regarding IACI's concern about economic growth, the EPA notes that adoption of existing emission limits into the SIP does not impact nor limit construction of new stationary sources or emission units within existing stationary sources. New construction will be governed by Idaho's existing minor and major new source review permit programs.

With respect to IACI's comment regarding the timing of the EPA's NPRM, the EPA notes that it is subject

to a Consent Decree obligation to finalize action on Idaho's regional haze plan by August 28, 2025 (originally May 30, 2025, before the Court granted the EPA's motion for extension). The EPA must publish proposed actions in sufficient time for the public to comment prior to finalization. Additionally, with respect to the commenter's concern about the SIP backlog, there are currently no backlogged Idaho SIP submissions, except this regional haze plan on which we are taking final action.

III. Final Action

For the reasons stated in our NPRM (90 FR 13516, March 24, 2025) and in section II. of this preamble, we are approving the Idaho SIP revision submitted on August 5, 2022, supplemented on September 27, 2024, and clarified on August 12, 2025, as satisfying the regional haze requirements for the second implementation period contained in 40 CFR 51.308. Idaho submitted the SIP revision to meet visibility protection requirements pursuant to Clean Air Act sections 169A and 169B and the EPA's implementing regulations at 40 CFR 51.308.

We are approving the SIP revision as meeting the following requirements:

- Identification of Class I area requirements of 40 CFR 51.308(f);
- Calculation of baseline, current, and natural visibility conditions; progress to date; and uniform rate of progress requirements of 40 CFR 51.308(f)(1);
- Long-term strategy requirements of 40 CFR 51.308(f)(2);
- Reasonable progress goal requirements of 40 CFR 51.308(f)(3);
- Reasonably attributable visibility impairment requirements of 40 CFR 51.308(f)(4);
- Monitoring strategy and other plan requirements of 40 CFR 51.308(f)(6);
- 5-year progress report requirements of 40 CFR 51.308(f)(5) and (g); and
- State and Federal Land Manager coordination requirements of 40 CFR 51.308(i).

We are also approving and incorporating by reference into the Idaho SIP at 40 CFR 52.670(d), *EPA approved source-specific requirements*, the following source-specific control requirements as part of Idaho's long-term strategy for regional haze:

²⁷ See Administrator Zeldin Begins Restructuring Regional Haze Program, March 12, 2025, available at <https://www.epa.gov/newsreleases/administrator-zeldin-begins-restructuring-regional-haze-program>.

TABLE 11—REGIONAL HAZE LONG-TERM STRATEGY SOURCE SPECIFIC PROVISIONS

Name of source	Permit or compliance agreement No.	State effective date	Explanations
Clearwater Paper Corp, Lewiston, Idaho.	Permit T1–2020.0024	3/30/2023	Permit conditions 5.4, 5.5, 5.6, 5.7, 5.10, 5.11, 5.12, 5.13, 5.14, 5.15, 7.1, 7.4, 7.9, 7.10, 8.1, 8.6, 9.1, 9.2, 9.6, 9.11, 26.22, 26.23, 26.26, 26.27, 26.28, and 26.29 only.
ITAFOS Conda, LLC, Soda Springs, Idaho.	Permit T1–2016.0015	3/2/2022	Permit conditions 5.1, 5.4, 5.5, 5.11, 16.22, and 16.23 only.
Northwest Pipeline LLC, Soda Springs, Idaho.	Compliance Agreement Schedule Case No. E–2023.0011.	9/1/2023	
P4 Production, LLC, Soda Springs, Idaho.	Compliance Agreement Schedule Case No. E–2023.0013.	11/27/2021	
P4 Production LLC, Soda Springs, Idaho.	Permit T1–2020.0029	12/23/2021	Permit conditions 4.2, 4.4, 4.5, 4.6, 4.7, 4.19, 4.20, 4.21, 13.22, and 13.33 only.
J.R. Simplot, Pocatello, Idaho ..	Permit T1–2017.0024	3/29/2023	Permit conditions 15.9, 15.10, 15.11, 15.19, 15.20, 15.21, 15.22, 15.25, 15.27, 16.6, 16.9, 16.10, 16.19, 16.20, 16.21, 16.22, 16.26, 16.27, 18.22, and 18.23 only.
Tamarack Mill LLC, New Meadows, Idaho.	Permit T1–2019–0024	10/17/2022	Permit conditions 5.2, 5.3, 5.5, 5.8, 5.17, 10.22, and 10.23 only.
The Amalgamated Sugar Company LLC—Nampa Factory, Nampa, Idaho.	Permit P–2018.0011	2/15/2023	Permit condition 4.8 only.
The Amalgamated Sugar Company LLC—Paul Factory, Paul, Idaho.	Permit T1–2019–0020	11/5/2021	Permit conditions 4.3, 4.4, 4.5, 4.7, 4.9, 4.10, 4.11, 4.12, 4.15, 4.16, 4.18, 11.22, and 11.23 only.
The Amalgamated Sugar Company LLC—Twin Falls Factory, Twin Falls.	Permit T1–2016.0017	1/21/2022	Permit condition 4.9 and 5.2 only.

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 the regulatory provisions described in section III. of this preamble. The EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the Clean Air Act as of the effective date of the final rule of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.²⁸

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's

role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because SIP actions are exempt from review under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

In addition, this final action is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on Tribal Governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Consistent with EPA policy, the EPA contacted four Tribes, specifically the Coeur d'Alene Tribe, the Shoshone Bannock Tribes of the Fort Hall Reservation, the Nez Perce Tribe, and the Kootenai Tribe of Idaho, and offered an opportunity to consult on a government-to-government basis in letters dated July 22, 2022. We received no consultation or coordination requests. The letters may be found in the docket for this action.

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

²⁸ 62 FR 27968 (May 22, 1997).

is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 4, 2025. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

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

Dated: August 22, 2025.

Emma Pokon,
Regional Administrator, Region 10.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart N—Idaho

■ 2. In § 52.670:

■ a. Amend paragraph (d), Table 4 by adding ten entries to the end of the table; and

■ b. Amend paragraph (e), Table 6 by adding the entry “Regional Haze SIP Revision for the Second Implementation Period” to the end of the table.

The additions read as follows:

§ 52.670 Identification of plan.

* * * * *

(d) * * *

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

Name of source	Permit No.	State effective date	EPA approval date	Explanation
* * * * *				
Clearwater Paper Corp, Lewiston, Idaho.	T1–2020.0024	3/30/2023	9/5/2025, 90 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS].	Permit conditions 5.4, 5.5, 5.6, 5.7, 5.10, 5.11, 5.12, 5.13, 5.14, 5.15, 7.1, 7.4, 7.9, 7.10, 8.1, 8.6, 9.1, 9.2, 9.6, 9.11, 26.22, 26.23, 26.26, 26.27, 26.28, and 26.29 only.
ITAFOS Conda LLC, Soda Springs, Idaho.	T1–2016.0015	3/2/2022	9/5/2025, 90 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS].	Permit conditions 5.1, 5.4, 5.5, 5.11, 16.22, and 16.23 only.
Northwest Pipeline LLC, Soda Springs, Idaho.	Compliance Agreement Schedule Case No. E–2023.0011.	9/1/2023	9/5/2025, 90 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS].	
P4 Production LLC, Soda Springs, Idaho.	Compliance Agreement Schedule Case No. E–2023.0013.	11/27/2021	9/5/2025, 90 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS].	
P4 Production LLC, Soda Springs, Idaho.	T1–2020.0029	12/23/2021	9/5/2025, 90 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS].	Permit conditions 4.2, 4.4, 4.5, 4.6, 4.7, 4.19, 4.20, 4.21, 13.22, and 13.33 only.
J.R. Simplot, Pocatello, Idaho	T1–2017.0024	3/29/2023	9/5/2025, 90 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS].	Permit conditions 15.9, 15.10, 15.11, 15.19, 15.20, 15.21, 15.22, 15.25, 15.27, 16.6, 16.9, 16.10, 16.19, 16.20, 16.21, 16.22, 16.26, 16.27, 18.22, and 18.23 only.
Tamarack Mill LLC, New Meadows, Idaho.	T1–2019–0024	10/17/2022	9/5/2025, 90 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS].	Permit conditions 5.2, 5.3, 5.5, 5.8, 5.17, 10.22, and 10.23 only.
The Amalgamated Sugar Company LLC—Nampa Factory, Nampa, Idaho.	P–2018.0011	2/15/2023	9/5/2025, 90 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS].	Permit condition 4.8 only.
The Amalgamated Sugar Company LLC—Paul Factory, Paul, Idaho.	T1–2019–0020	11/5/2021	9/5/2025, 90 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS].	Permit conditions 4.3, 4.4, 4.5, 4.7, 4.9, 4.10, 4.11, 4.12, 4.15, 4.16, 4.18, 11.22, and 11.23 only.

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—Twin Falls, Twin Falls, Idaho.	T1–2016.0017	1/21/2022	9/5/2025, 90 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS].	Permit condition 4.9 and 5.2 only.

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.

* * * * * (e) * * *

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
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
Regional Haze SIP Revision for the Second Implementation Period.	State-wide	8/5/2022, supplemented 5/8/2024.	9/5/2025, 90 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS].	

[FR Doc. 2025–17054 Filed 9–4–25; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2024–0473; FRL–12323–02–R9]

Air Plan Approval; California; State Implementation Plan Revision for Chico, Modesto and Stockton Carbon Monoxide Maintenance Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the California state implementation plan (SIP) that removes carbon monoxide (CO) contingency measures and monitoring requirements from the maintenance plan for three CO maintenance areas: Chico Urbanized Area, Modesto Urbanized Area, and Stockton Urbanized Area. We are approving the revision under the Clean Air Act (CAA or “Act”).

DATES: This rule is effective October 6, 2025.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2024–0473. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index,

some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. **FOR FURTHER INFORMATION CONTACT:** Ginger Vagenas, EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105; phone: (415) 972–3964; email: vagenas.ginger@epa.gov.

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

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- I. Proposed Action
- II. Public Comments and EPA Responses
- III. EPA Action
- IV. Statutory and Executive Order Reviews

I. Proposed Action

On March 31, 2025,¹ the EPA proposed to approve the “2023 Revision

to the California State Implementation Plan for Carbon Monoxide”² as a SIP revision to remove CO contingency measures and monitoring requirements from the “2004 Revision to the California State Implementation Plan for Carbon Monoxide”³ for the Chico, Modesto, and Stockton maintenance areas. The proposal includes the EPA’s analysis of monitoring data demonstrating that ambient levels of CO in the three maintenance areas were well below the CO national ambient air quality standards (NAAQS) throughout the maintenance period, as well as the EPA’s evaluation of the California Air Resources Board’s (CARB) demonstration that future CO emissions are consistent with continued compliance with the CO NAAQS through 2050.⁴ We proposed to approve this revision because we determined that it complies with the relevant CAA requirements. Our proposed action contains more information on the revision and our evaluation.

II. Public Comments and EPA Responses

The EPA’s proposed action provided a 30-day public comment period that

² CARB, “2023 Revision to the California State Implementation Plan for Carbon Monoxide,” February 9, 2024.

³ California Air Resources Board (CARB), “2004 Revision to the California State Implementation Plan for Carbon Monoxide,” adopted July 22, 2004.

⁴ See CARB, “2023 Revision to the California State Implementation Plan for Carbon Monoxide,” February 9, 2024, table 4.

¹ 90 FR 14224, March 31, 2025.

closed April 30, 2025. During this period, we received one non-germane comment and one comment opposing our action due to the human health and climate effects of CO.

The commenter correctly notes CO is a precursor for ozone, which is a greenhouse gas, and that high levels of CO have negative human health effects. However, as noted in our proposal, the ambient concentration of CO in the Chico, Stockton, and Modesto maintenance areas is well below the NAAQS for CO (the level that the EPA has determined to be protective of human health and the environment) and this action will not interfere with the maintenance of the CO NAAQS or other CAA requirements related to this standard.⁵ Further, these areas have been attaining the CO NAAQS for at least 20 years, CARB has demonstrated that they will likely continue to maintain the NAAQS due to declining CO emissions,⁶ and assessing the indirect effect of CO on the formation of greenhouse gases is beyond the scope of this action. Finally, CARB has satisfied the requirements in 40 CFR 58.14 to discontinue the CO monitors in the Chico Urbanized Area, Stockton Urbanized Area, and Modesto Urbanized Area.

III. EPA Action

No comments were submitted that change our assessment of the SIP revision, as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act and for the reasons provided in our March 31, 2025 proposed rulemaking, the EPA is taking final action to approve into the California SIP the “2023 Revision to the California State Implementation Plan for Carbon Monoxide,” submitted to the EPA on April 5, 2024.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided they meet the criteria of the Clean Air Act.

Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because SIP actions are exempt from review under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

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

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

is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 4, 2025. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 25, 2025.

Joshua F.W. Cook,

Regional Administrator, Region IX.

For the reasons stated in the preamble, the Environmental Protection Agency amends part 52, chapter I, title 40 of the Code of Federal Regulations as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

- 2. Section 52.220a is amended in paragraph (e), table 2, under the heading “Multi-Area Carbon Monoxide Maintenance Plans” by adding an entry for “2023 Revision to the California State Implementation Plan for Carbon Monoxide” before the entry for “2004 Revision to the California State Implementation Plan for Carbon Monoxide, Updated Maintenance Plan for Ten Federal Planning Areas” to read as follows:

§ 52.220a Identification of plan—in part.

* * * * *

(e) * * *

⁵ 90 FR 14224, 14226–14227 (March 31, 2025).

⁶ Id.

TABLE 2—1994 CALIFORNIA OZONE PLAN—STATE AND LOCAL MEASURES; VEHICLE INSPECTION AND MAINTENANCE (I/M) PROGRAM SIPs; GASOLINE AND DIESEL FUEL PROVISIONS AND RELATED TEST METHODS; BASE YEAR EMISSION INVENTORY AND VMT OFFSET DEMONSTRATION OZONE SIPs; PESTICIDE-RELATED SIPs; MULTI-AREA OZONE PLAN ELEMENTS; AND MULTI-AREA CARBON MONOXIDE MAINTENANCE PLANS

Name of SIP provision	Applicable geographic area	State submittal date	EPA approval date	Explanation
*	*	*	*	*
Multi-Area Carbon Monoxide Maintenance Plans				
2023 Revision to the California State Implementation Plan for Carbon Monoxide.	Chico Urbanized Area, Modesto Urbanized Area, and Stockton Urbanized Area.	April 4, 2024	9/5/2025, 90 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS].	Removes carbon monoxide (CO) contingency measures and monitoring requirements from the maintenance plan for certain areas.
*	*	*	*	*

* * * * *

[FR Doc. 2025–17061 Filed 9–4–25; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2022–0311; FRL–12956–01–R6]

Withdrawals of Findings of Failure To Submit State Implementation Plan and Finding of Failure To Attain for the Rusk and Panola Counties, Texas 2010 Sulfur Dioxide Primary National Ambient Air Quality Standard Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On May 16, 2025, the United States Court of Appeals for the Fifth Circuit (the Court) granted petitions for review of the EPA’s nonattainment area designation for the Rusk and Panola Counties area, Texas for the 2010 SO₂ National Ambient Air Quality Standard (NAAQS). Accordingly, that nonattainment designation for the area has been vacated. The vacatur of the nonattainment designation necessarily requires the withdrawal of two contingent actions since the underlying designation is no longer valid: EPA’s finding of failure to submit an attainment plan (FFS) issued on August 10, 2020, and EPA’s finding of failure to attain the NAAQS by the attainment date (FFA) issued on December 17, 2024. The EPA is withdrawing these two final actions in accordance with the court’s decision and finds that any requirements deriving from either the FFS or the FFA are no longer applicable.

DATES: This final rule is effective September 5, 2025.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2022–0311, at <https://www.regulations.gov>.

Docket: The index to the docket for this action is available electronically at <https://www.regulations.gov>. While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (e.g., Confidential Business Information (CBI)).

FOR FURTHER INFORMATION CONTACT:

Andrew Lee, EPA Region 6 Office, Infrastructure and Ozone Section, telephone number: (214) 665–6750, email address: lee.andrew.c@epa.gov. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION:

Throughout this document “we,” “us,” and “our” means the EPA.

I. Background

On June 22, 2010, the EPA published a new 1-hour primary SO₂ NAAQS of 75 parts per billion (ppb).¹ Subsequently, the EPA designated portions of Rusk and Panola Counties, Texas as nonattainment for this 2010 1-hour primary SO₂ NAAQS, effective January 12, 2017.² The primary major source of emissions in the area is the Martin Lake Steam Electric Station (Martin Lake), a coal-fired power plant owned by Luminant Generation Company LLC (Luminant), a subsidiary of Vistra Energy Corporation (Vistra). Under section 191 of the Clean Air Act (CAA), Texas was required to submit an SO₂

attainment plan to the EPA within 18 months of the effective date of the nonattainment designation, *i.e.*, by no later than July 12, 2018, for the Rusk-Panola area. Under CAA section 179(c)(1), the EPA was required to determine whether the nonattainment area had attained the NAAQS by the applicable attainment date, in this case, January 12, 2022.

On August 10, 2020, the EPA published “Findings of Failure to Submit State Implementation Plans Required for Attainment of the 2010 1-Hour Primary Sulfur Dioxide (SO₂) National Ambient Air Quality Standard (NAAQS)” addressing requirements for three SO₂ nonattainment areas, including the finding that Texas failed to submit the required SIP for the Rusk Panola nonattainment area by the July 12, 2018 CAA deadline.³ This finding, effective on September 9, 2020, triggered sanction clocks and the CAA section 110(c) requirement for the EPA to promulgate a federal implementation plan (FIP) for the area within two years of the finding (September 9, 2022) unless the state submitted and obtained EPA approval of a SIP revision correcting the deficiency. On February 28, 2022, the Texas Commission on Environmental Quality (TCEQ) submitted an attainment plan SIP for the Rusk Panola area. On August 24, 2022, the EPA determined that the submittal was complete under 40 CFR part 51, appendix V, which stopped the mandatory emissions offsets sanctions that were in effect and the 24-month sanction clock for the imposition of highway funding sanctions.⁴ However,

³ See 85 FR 48111; this document also addressed another 2010 SO₂ nonattainment area.

⁴ Completeness Determination Letter from David Garcia, Air and Radiation Division Director—EPA

Continued

this completeness determination did not eliminate the EPA's FIP obligation required by the FFS.

On December 17, 2024, the EPA published a "Finding of Failure To Attain the Primary 2010 One-Hour Sulfur Dioxide Standard" determining that Texas failed to attain the NAAQS for the Rusk Panola area by the January 12, 2022, CAA deadline. Under CAA section 179(d)(2), following a Finding of Failure to Attain, the responsible air agency has up to 12 months from the effective date of the determination to submit a revised SIP for the area demonstrating attainment. According to CAA section 179(d)(3), this revised SIP is to achieve attainment of the one-hour SO₂ NAAQS as expeditiously as practicable, but no later than 5 years from the effective date of the area's failure to attain.

II. Rationale for Withdrawals of the Finding of Failure To Submit and Finding of Failure To Attain for the Rusk Panola Area

Following the January 12, 2017, nonattainment designation of the Rusk Panola area, the State of Texas and industry petitioners (collectively, Petitioners) filed Petitions for Review challenging EPA's final action. The Fifth Circuit initially denied the petitions for review and upheld the nonattainment designation on January 11, 2024. *Texas v. EPA*, 91 F.4th 280 (5th Cir. 2024), vacated by, 137 F.4th 353 (5th Cir. 2025). Subsequently, Petitioners filed a petition for rehearing en banc. On May 16, 2025, the Court, in a panel rehearing, issued a revised opinion granting the petitions for review. *Texas v. EPA*, 137 F.4th 353 (5th Cir. 2025). The Court's mandate took effect on July 8, 2025, which vacated the nonattainment designation for the Rusk Panola area and remanded the designation of the area ". . . for EPA to consider the data that is available now" *Id.* at 375. As a result of the court's decision in *Texas v. EPA*, the Rusk Panola area no longer retains a nonattainment designation and therefore the EPA is withdrawing the August 2020 FFS and December 2024 FFA. The August 2020 FFS was required under CAA section 179(a)(1) where the EPA ". . . finds that a state failed, for an area designated as nonattainment. . . to submit a plan . . .". However, this finding is no longer appropriate in light of the court's decision. The December 2024 FFA was required under CAA section 179(c)

where the EPA must determine whether a nonattainment area has attained the NAAQS by the relevant attainment date. However, this finding is also no longer appropriate following the court's vacatur of the designation. Pursuant to the court's decision, the FFS for Rusk Panola must be withdrawn and the FFA for Rusk Panola must be withdrawn and removed from the Code of Federal Regulations (CFR).

III. Final Action

In accordance with the court's decision in *Texas v. EPA*, the EPA is withdrawing the August 2020 finding that Texas failed to submit an attainment plan SIP for the Rusk Panola area. EPA is also withdrawing the December 2024 finding that the Rusk Panola area failed to attain the NAAQS by its applicable CAA attainment date. This action does not impact the other areas addressed in the August 2020 FFS action. The requirements for the EPA to impose sanctions under CAA sections 179(a) and (b) and promulgate a FIP under CAA section 110(c) following an effective FFS are no longer applicable. The CAA requirement for Texas to submit a revised SIP for the Rusk Panola area demonstrating attainment under 179(d)(2) and the requirement for the Rusk Panola area to attain under an updated attainment date under 179(d)(3) following an effective FFA are no longer applicable.

The EPA is taking this action as a final rule without providing an opportunity for public comment or a public hearing because the EPA finds that the Administrative Procedure Act (APA) good cause exemption applies. In general, the APA requires that general notice of proposed rulemaking shall be published in the **Federal Register**. Such notice must provide an opportunity for public participation in the rulemaking process. However, the APA does provide an avenue for an agency to directly issue a final rulemaking in certain specific instances. This may occur when an agency for good cause finds (and incorporates the finding and a brief statement of reasons in the rule issued) that notice and public participation are impracticable, unnecessary, or contrary to the public interest. See 5 U.S.C. 553(b)(B). Because the court's mandate has already vacated the nonattainment area designation, EPA actions following are no longer valid and EPA must now reflect those changes. The EPA has determined that it is unnecessary to provide a public hearing or an opportunity for public comment on this action because the withdrawals of the August 2020 FFS as it applies to the Rusk Panola area and

the December 2024 FFA are simply necessary ministerial acts to carry out the Fifth Circuit's judgment in *Texas v. EPA*. Because the court vacated the 2017 nonattainment designation for the Rusk Panola area, the EPA no longer has the authority to uphold findings relying on the former, now vacated designation. Therefore, in as much as this action to withdraw these findings merely implements the binding, nondiscretionary decision of the court, it would serve no useful purpose to provide an opportunity for public comment or a public hearing on this issue as EPA no longer has authority to uphold those actions.

In addition, notice and comment would be contrary to the public interest because it would unnecessarily delay the withdrawal of the FFS and FFA and removal of the FFA from the CFR which could result in uncertainty for the state air agency and regulated industry about how the court's decision impacts the 2017 nonattainment designation, the 2020 and 2024 findings relying on this designation, and the sanctions and other requirements stemming from these findings. Promulgation of this rule soon after the court's decision serves to clarify that the vacatur of the nonattainment designation also serves to eliminate the basis for, and therefore requires a withdrawal of, the FFS and FFA. Given the potential costs and burdens on the State of Texas and industry associated with this uncertainty, it is in the public interest for the EPA to issue the withdrawals and amend the CFR without delay.

For those reasons, the EPA finds good cause to issue a final rulemaking pursuant to section 553 of the APA, 5 U.S.C. 553(b)(B).

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a significant regulatory action as defined in Executive Order 12866, as amended by Executive Order 14094, and was therefore not subject to a requirement for Executive Order 12866 review.

B. Executive Order 14192: Unleashing Prosperity Through Deregulation

This action is considered an Executive Order 14192 deregulatory action. This final rule provides burden reduction by withdrawing two rules that are no longer applicable to the State of Texas and associated industry.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the

Region 6 to Jon Niermann, Chairman, TCEQ, (August 24, 2022), available in the docket for this action.

PRA. This proposed action does not establish any new information collection requirements.

D. Regulatory Flexibility Act (RFA)

This rule is not subject to notice and comment requirements because the Agency has invoked the APA “good cause” exemption under 5 U.S.C. 553(b)(B).

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or Tribal governments or the private sector.

F. 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.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have Tribal implications as specified in Executive Order 13175. This action withdraws two rules impacting the State of Texas. No Tribe is subject to the requirement to submit an implementation plan under the findings of inadequacy relevant to this action. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order: 13045 Protection of Children From Environmental Health & Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it withdraws two rules that are no longer applicable to the State of Texas and does not directly or disproportionately affect children

I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act

This proposed action does not involve technical standards.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 4, 2025. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 26, 2025.

Walter Mason,

Regional Administrator, Region 6.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart SS—Texas

§ 52.2277 [Amended]

■ 2. Amend § 52.2277 by removing and reserving paragraph (c).

[FR Doc. 2025–17029 Filed 9–4–25; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2021–0577; FRL–12588–02–R5]

Air Plan Approval; Michigan; Second Period Regional Haze Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the Regional Haze State Implementation Plan (SIP) revision submitted by the Michigan Department of Environment, Great Lakes, and Energy (EGLE) on August 23, 2021, and supplemented on July 24, 2025, as satisfying applicable requirements under the Clean Air Act (CAA) and EPA’s Regional Haze Rule (RHR) for the program’s second implementation period. EGLE’s SIP submission addresses the requirement that States must periodically revise their long-term strategies for making reasonable progress towards the national goal of preventing any future, and remedying any existing, anthropogenic impairment of visibility, including regional haze, in mandatory Class I Federal areas. The SIP submission also addresses other applicable requirements for the second implementation period of the regional haze program. EPA is taking this action pursuant to sections 110 and 169A of the CAA.

DATES: This final rule is effective on October 6, 2025.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2021–0577. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through <https://www.regulations.gov> or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Matt

Rau, at (312) 886–6524 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Air and Radiation Division (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6524, rau.matthew@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

This supplementary information section is arranged as follows:

- I. Background
- II. Public Comment Process
- III. Summary of Public Comments and EPA’s Responses
- IV. What action is EPA taking?
- V. Statutory and Executive Order Reviews

I. Background

On August 23, 2021, EGLE submitted a revision to its SIP to address regional haze requirements for the second implementation period. On July 24, 2025, EGLE submitted a supplement (Supplement) to its original submission providing expanded source-specific analyses and emissions updates. EGLE made this SIP submission to satisfy the requirements of the CAA’s regional haze program pursuant to CAA sections 169A and 169B and 40 CFR 51.308.

EPA proposed to approve EGLE’s submission into the SIP on June 18, 2025. A full background, the specifics of the Michigan regional haze plan, and EPA’s evaluation of the plan are given in the proposed rule and will not be restated in this rule. See 90 FR 25975 (June 18, 2025). EGLE submitted the Supplement in draft for parallel processing on April 3, 2025. Detail on parallel processing is provided in the proposed rule.

In this final action, EPA is affirming that it is now the Agency’s policy that, where visibility conditions for a Class I Federal area impacted by a State are below the uniform rate of progress (URP) and the State has considered the four statutory factors, the State will have presumptively demonstrated reasonable progress for the second planning period for that area. EPA acknowledges that this final action reflects a change in policy as to how the URP should be used in the evaluation of regional haze second planning period SIPs but believes that this policy better aligns with the purpose of the statute and RHR: achieving “reasonable” progress towards natural visibility.

As described in the approval of West Virginia’s regional haze plan (90 FR 29737, July 7, 2025), EPA has discretion and authority to change its policy. In *FCC v. Fox Television Stations, Inc.*, the

U.S. Supreme Court plainly stated that an agency is free to change a prior policy and “need not demonstrate . . . that the reasons for the new policy are better than the reasons for the old one; it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency believes it to be better.” 566 U.S. 502, 515 (2009) (referencing *Motor Vehicle Mfrs. Ass’n of United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983)). See also *Perez v. Mortgage Bankers Assn.*, 135 S. Ct. 1199 (2015).

The Class I areas impacted by emissions from Michigan sources are all below the 2028 URP, and EGLE’s SIP submission demonstrated that the State took into consideration the four reasonable progress factors listed in CAA 169A(g)(1)¹ with respect to an adequate number of emissions sources. Thus, EPA determines that EGLE’s SIP revision is fully approvable.

In developing the regulations required by CAA section 169A(b), EPA established the concept of the URP for each Class I area. The URP is determined by drawing a straight line from the measured 2000 to 2004 baseline conditions (in deciviews) for the 20 percent most impaired days at each Class I area to the estimated natural conditions (in deciviews) for the 20 percent most impaired days in 2064. From this calculation, a URP value can be calculated for each year between 2004 and 2064. EPA developed the URP to address the diverse concerns of Eastern and Western States and account for the varying levels of visibility impairment in Class I areas around the country while ensuring an equitable approach nationwide. For each Class I area, States must calculate the URP for the end of each planning period (e.g., in 2028 for the second planning period).² 40 CFR 51.308(f)(1)(vi)(A). States may also adjust the URP to account for

¹ The four statutory factors required to be taken into consideration in determining reasonable progress are: the costs of compliance, the time necessary for compliance, and the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any existing source subject to such requirements. CAA section 169(g)(1).

² We note that RPGs are a regulatory construct that we developed to address the statutory mandate in CAA section 169B(e)(1), which required our regulations to include “criteria for measuring ‘reasonable progress’ toward the national goal.” Under 40 CFR 51.308(f)(3)(ii), RPGs measure the progress that is projected to be achieved by the control measures a State has determined are necessary to make reasonable progress. Consistent with the 1999 RHR, the RPGs are unenforceable, though they create a benchmark that allows for analytical comparisons to the URP and mid-implementation-period course corrections if necessary. 82 FR 3091–92 (January 10, 2017).

impacts from anthropogenic sources outside the United States and/or impacts from certain wildland prescribed fires. 40 CFR 51.308(f)(1)(vi)(B). Then, for each Class I area, States must compare the reasonable progress goal (RPG) for the 20 percent most impaired days to the URP for the end of the planning period. If the RPG is above the URP, then an additional “robust demonstration” requirement is triggered for each State that contributes to that Class I area. 40 CFR 51.308(f)(3)(ii)(B).

In the 2017 RHR Revisions, EPA addressed the role of the URP as it relates to a State’s development of its second planning period SIP. 82 FR 3078 (January 10, 2017). Specifically, in response to comments suggesting that the URP should be considered a “safe harbor” that relieve States of any obligation to consider the four statutory factors, EPA explained that the URP was not intended to be such a safe harbor. *Id.* at 3099. “Some commenters stated a desire for corresponding rule text dealing with situations where RPGs are equal to (“on”) or better than (“below”) the URP or glidepath. Several commenters stated that the URP or glidepath should be a ‘safe harbor,’ opining that States should be permitted to analyze whether projected visibility conditions for the end of the implementation period will be on or below the glidepath based on on-the-books or on-the-way control measures, and that in such cases a four-factor analysis should not be required.” *Id.*

Other comments indicated a similar approach, such as “a somewhat narrower entrance to a ‘safe harbor,’ by suggesting that if current visibility conditions are already below the end-of-planning-period point on the URP line, a four-factor analysis should not be required.” *Id.* EPA stated in its response that we did not agree with either of these recommendations. “The CAA requires that each SIP revision contain long-term strategies for making reasonable progress, and that in determining reasonable progress States must consider the four statutory factors. Treating the URP as a safe harbor would be inconsistent with the statutory requirement that States assess the potential to make further reasonable progress towards natural visibility goal in every implementation period.” *Id.*

Importantly, EPA’s recently adopted policy does not make the URP a safe harbor. The policy merely creates a presumption that the State’s second planning period SIP is making reasonable progress for a Class I Federal Area if the State has taken into consideration the four statutory factors

of 169A(g)(1) and that area is below the URP. This is consistent with the CAA and RHR.

II. Public Comment Process

The public comment period on EPA's proposed approval ended on July 18, 2025. During this period, EPA received three sets of comments. The Power Generators Air Coalition (PGen) and the Mid-Atlantic/Northeast Visibility Union (MANEVU) each submitted a set of comments. Four conservation groups, including the National Parks Conservation Association, the Sierra Club, the Environmental Law and Policy Center, and the Coalition to Protect America's National Parks, submitted a third set of comments and are collectively referred to as "the Conservation Groups" throughout this document.

III. Summary of Public Comments and EPA's Responses

EPA has included all comments in the rulemaking docket for this action. The August 25, 2025, Response to Comments (RTC) document is included in the docket for this rulemaking under Docket ID No. EPA-R05-OAR-2021-0577 and provides full and detailed responses to all significant comments that further explain the basis for our final action.

EPA received comments on the proposed rule that covered several topics including, but not limited to, EPA's URP policy,³ an "Ask" from a regional planning organization, source selection, analysis of effectively controlled sources, incorporation of measures into the SIP, four-factor analyses,⁴ and the impact on local communities.

PGen's comments, summarized as Comment 1 in the RTC document, are supportive of the proposed approval and EPA's URP policy. EPA concurs with the supportive comments and acknowledges the comment on the URP policy.

MANEVU commented on EPA's URP policy and its "Asks" about the DTE- St. Clair Power Plant. MANEVU's comments and EPA's responses can be found in the RTC document at Comment

2a and 2b and Response 2a and 2b. EPA disagrees with MANEVU's comment as the URP policy is consistent with the statute for the reasons as detailed in Response 2a in the RTC document. EPA also disagrees with MANEVU's comment regarding DTE-St. Clair Power Plant since EGLE fully responded to MANEVU's "Asks"⁵ in the Supplement, section 2.2. See Response 2b in the RTC document for more detail on how EGLE addressed the MANEVU "Asks."

The Conservation Groups commented on the economic, public health, and environmental benefits of reducing air pollution through Michigan's regional haze SIP. EPA notes, as explained in Response 3 of the RTC, that EGLE has made progress in reducing visibility-impairing pollution during the second implementation period as demonstrated in the monitoring data collected at the impacted Class I areas. EPA also notes that regional haze program is designed to address visibility concerns and that the National Ambient Air Quality Standards, required by the CAA, protect human health.

The Conservation Groups argue that EGLE's source selection process is arbitrary and capricious since EGLE did not select sources that the Conservation Groups previously recommended for selection. As explained in Response 4 of the RTC, EPA disagrees with the comment. EGLE addressed the requirements of 40 CFR 51.308(f)(2)(i) in its source selection process. EGLE provided information on its source selection process and the results in section 3.2.2 of its Supplement.

The Conservation Groups commented that EPA's proposal to approve EGLE's determination that no additional measures were necessary to make reasonable progress in the second implementation period is arbitrary and capricious. The Conservation Groups claim that EPA has no system to determine how current control technologies or past and potential ongoing emission reductions should be considered when evaluating whether additional measures are necessary. The Conservation Groups also assert that EPA failed to provide adequate public notice because the proposed approval did not provide a metric or an analysis to determine that no additional measures are necessary. See Comment and Response 5 in the RTC document for further details. EPA disagrees with the comment. EPA fully evaluated the information EGLE provided for the sources with current effective control technologies, as well as emission

reductions achieved in the second implementation period. In the proposed rule, EPA articulated its rationale in determining how to weigh current effective control measures and emission reductions to approve EGLE's determination that no additional measures are necessary for reasonable progress, citing references to effective control demonstrations in section 3(f) of the 2019 Regional Haze Guidance. See 90 FR 25975 (June 18, 2025). The record in the docket for this rulemaking contains evidence of enforceable emission reductions, as well as EPA's evaluation of emissions reductions in the Technical Support Document (TSD) accompanying the proposed rule. Therefore, EPA disagrees with the Conservation Groups that consideration of these emission reductions was improper in EGLE's determination that no additional measures are necessary to make reasonable progress in the second implementation period. EPA's proposed approval was not arbitrary or capricious because of a lack of a metric and analysis and, as such, does not constitute a failure of public notice.

The Conservation Groups claim that EGLE inappropriately failed to perform four-factor analyses for seven facilities that were improperly determined to be effectively controlled. The Conservation Groups state that the plain language of the CAA and the RHR does not allow EGLE or EPA to eliminate sources from analysis based on assertions that the sources are effectively controlled, but rather requires that States consider the four statutory factors. The Conservation Groups comment that the seven facilities are not effectively controlled and that there are likely cost-effective controls available for each of the sources that would further reduce emissions. The Conservation Groups also commented on two sources that EGLE did not select for analysis, saying EPA did not address or analyze EGLE's decision. As explained in Response 6 of the RTC document, EPA disagrees with this comment. Neither CAA section 169A(b)(2), CAA section 169A(g)(1), nor the RHR prohibit States from forgoing a four-factor analysis based on a source being effectively controlled. As outlined in the 2017 RHR, "the EPA has consistently interpreted the CAA to provide States with the flexibility to conduct four-factor analyses for specific sources, groups of sources or even entire source categories, depending on State policy preferences and the specific circumstances of each State." 82 FR 3088, January 10, 2017. EPA acknowledges that a State may reasonably decide not to select sources

³ A change in Agency policy was introduced in the approval of West Virginia's regional haze plan. See the April 18, 2025, (90 FR 16478) proposed rule) and the July 7, 2025, (90 FR 29737) final rule.

⁴ Under CAA 169A(g)(1), the four statutory factors are the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected sources. See also 40 CFR 51.308(f)(2)(i). An evaluation of potential control options for sources of visibility impairing pollutants based on applying the four statutory factors in CAA section 169A(g)(1) is referred to as a "four-factor" analysis.

⁵ The August 25, 2017, and July 27, 2018, MANEVU "Asks".

that have recently installed effective controls. EPA notes that if a source's emissions are already well-controlled, it is unlikely that further cost-effective reductions are available. In this case, EGLE evaluated the seven units, including permit limitations, control efficiencies, regulations, actual emissions, past emission trends, and projected 2028 emissions to demonstrate that the existing level of control makes it reasonable to conclude that the controls are effective and that a full four-factor analysis would likely result in the conclusion that no further controls are necessary. EPA also disagrees with the comment regarding two sources EGLE did not select for evaluation of potential additional control measures. EGLE properly addressed the requirements of 40 CFR 51.308(f)(2)(i) in the source selection process it used.

The Conservation Groups commented that EGLE's analyses of existing effective controls are flawed and that EPA's TSD for the proposed rule does not support EPA's proposed approval of EGLE's Regional Haze SIP revision. The Conservation Groups also commented that EGLE did not perform four-factor analyses for specific sources. Detail on the general existing effective controls is given in Comment and Response 6 in the RTC document. Comment and Response 6a in the RTC document provide details on the TSD comment. More detail on the comments regarding the specific sources EGLE did not perform a four-factor analysis on and the responses are found in the RTC document under Comment and Response 6b: J. H. Campbell, Units 1, 2, and 3; Comment and Response 6c: Consumers Energy—Dan E. Karn Units 3 and 4; Comment and Response 6d: Tilden Mining Company Kiln 1; Comment and Response 6e: Belle River Power Plant Units 1 and 2; Comment and Response 6f: St. Mary's Cement—Charlevoix Plant; Comment and Response 6g: Holcim US Lafarge Alpena Plant; and Comment and Response 6h: Neenah Paper Michigan-Munising. EPA disagrees with the assertion that CAA sections 169A(b)(2), (g)(1), or the RHR require every source exceeding the source selection threshold to require a four-factor analysis. EPA disagrees with the commenters on what those portions of the CAA and the RHR require of selected sources. Specifically, States have the flexibility to determine that a source is effectively controlled. As detailed in Response 6 in the RTC document, CAA section 169A(b)(2) does not discuss which sources, types of sources, or groups of sources must be

considered to determine reasonable progress. Reasonable progress is addressed in CAA section 169A(g)(1) in that States must "take into consideration" the four statutory factors. Similarly, the RHR does not give minimum source selection criteria. EPA disagrees that the TSD does not provide support for the proposed approval. As explained in the TSD and RTC, EPA's approval of the Michigan regional haze plan is based on the consideration of all evidence provided in EGLE's submission and additional information provided in the docket. EPA also disagrees with the notion that a four-factor analysis is required for each of the specific units that were identified by the Conservation Groups. In summary, EPA finds that EGLE reasonably concluded that the units are effectively controlled and that conducting a four-factor analysis would not likely result in additional measures being needed for reasonable progress.

The Conservation Groups also commented with concerns that two specific sources, Midland Cogeneration Venture and EES Coke Battery, were not selected for evaluation of possible additional control measures. Further information regarding these two sources is found in the RTC at Response 6i: Midland Cogeneration Venture and Response 6j: EES Coke Battery. EPA disagrees that Midland Cogeneration Venture and EES Coke Battery should have been selected for analysis and EPA finds that EGLE's source selection process was appropriate and well supported. EGLE sufficiently captured the State's sources with the greatest impact on visibility impairment.

The Conservation Groups expressed concerns about EPA's review of EGLE's four-factor analyses, arguing that EPA did not provide an evaluation of EGLE's analyses or a conclusion as to whether the State's determinations complied with the CAA and RHR. The Conservation Groups also made specific comments on the four-factor analyses for three facilities. A summary of this comment and EPA's full response can be found as Comment and Response 7 in the RTC document. The comments and responses on specific four-factor analyses for Tilden Mining Company LLC Kiln 2, Billerud—Escanaba LLC Power Boiler 11, and Graymont Western Lime Kiln 1 are detailed in the RTC document as Comments and Responses 7a, 7b, and 7c, respectively. EPA disagrees with this comment. As explained in the proposed rule, EPA carefully evaluated EGLE's entire SIP submission, including the Supplement, the comments from the FLM consultation and the State's responses to

comments received during the State comment period. EGLE worked directly with the sources in evaluating potential measures and concluded that additional control measures are not necessary for reasonable progress during the second implementation period based on the four factors. EPA disagrees with the comments on these specific facilities. EGLE considered the four statutory factors, current effective control technologies, emission reductions that have already occurred during the second implementation period, and the projected 2028 visibility conditions for Class I areas influenced by emissions from Michigan sources. EPA therefore finds that EGLE reasonably concluded that no additional measures are necessary to make reasonable progress in the second implementation period for any of the three identified sources.

The Conservation Groups commented that EPA did not analyze the impact of haze-forming pollution from Michigan sources on the communities that surround these facilities. See Comment and Response 8 in the RTC document. The RHR does not require an analysis of health impacts. Instead, the National Ambient Air Quality Standards are established to separately protect human health.

The Conservation Groups argue that EPA's URP Policy violates the CAA's visibility provisions. The Conservation Groups comment on specific portions of the CAA and cite several cases. Those comments and EPA's responses are detailed in Comments and Responses 9, 9a, 9b, 9c, and 9d in the RTC document. EPA disagrees with the comments. EPA's URP policy is consistent with the CAA. Pursuant to CAA 169A(a)(4), Congress explicitly delegated the authority to EPA to promulgate regulations regarding reasonable progress towards meeting the national goal. In determining the measures necessary to make reasonable progress, Congress mandated "tak[ing] into consideration the cost of compliance, the time necessary for compliance, and the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any existing source subject to such requirement." CAA 169A(g)(1). However, nothing in the statute defines what it means "to take into consideration" the four factors under CAA 169A(g)(1). Under this statutory framework, Congress has empowered EPA to give meaning to this statutory phrase. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 395 (2024). The phrase "to take into consideration" implies a broader process not limited to the four statutory factors, allowing

States to weigh other factors, like visibility, to support their determination of whether additional measures are necessary to make reasonable progress at Class I areas. This follows from the fact that reasonable progress requires the improvement of visibility. CAA 169A(b)(2). As such, visibility improvement must be a fundamental part of determining the extent of progress that is considered reasonable. Being below the URP does not relieve a State of its obligations under the CAA and the RHR to make reasonable progress.

The Conservation Groups state that the URP policy is inconsistent with the RHR. The Conservation Groups comment that, “EPA cannot square its new policy with the RHR.” See Comment 10 and Response 10 in the RTC document for further detail. EPA disagrees with this comment. EPA’s URP policy is consistent with the RHR. To meet the reasonable progress goal requirements under 40 CFR 51.308(f)(3), the reasonable progress goals established by a State must reflect the measures it deemed to be necessary to make reasonable progress within the applicable implementation period and must be projected to be achieved by the end of the applicable implementation period. Therefore, it is sufficient under 40 CFR 51.308(f)(3) that this SIP establishes reasonable progress goals that reflect visibility conditions that are projected to be achieved by the end of the second planning period.

The Conservation Groups commented that the URP policy violates the procedural requirements of the CAA. The Conservation Groups comment that the URP policy unlawfully departs from national policy, that the URP policy is inconsistent with actions across EPA Regions, that the URP policy effectively revises the RHR, and that EPA must determine if its URP policy has a nationwide scope. The comments and responses on each point are presented in detail as Comments and Responses 11a, 11b, 11c, and 11d in the RTC document. EPA disagrees with each comment. As for the comment noting that the URP policy was announced in a regional action and that this change violates the CAA requirements that SIP actions be consistent with national policy, EPA disagrees that our Regional Consistency regulations at 40 CFR part 56, and 40 CFR 56.5(b) in particular, are relevant to this action. The Conservation Groups mention other regional haze actions in commenting that the URP policy is inconsistent with actions across EPA Regions. EPA disagrees that its change in policy means that all of its actions on second planning period

regional haze SIPs that pre-date its proposed approval of the West Virginia second planning period submittal are inconsistent with the URP policy. See 90 FR 29737 (July 7, 2025). The policy is consistent with EPA’s long-standing position that the URP is not a “safe harbor.” EPA’s policy establishes a presumption that the reasonable progress requirements of the CAA and the RHR are met if the State has taken into consideration the four statutory factors and the visibility impairment for each Class I Area is projected to be below the URP (*i.e.*, the “glidepath”) at the end of the applicable planning period. Unlike treating the URP as a “safe harbor,” the policy does not exempt or allow a State to evade the requirements of the CAA or the RHR. Treating the URP as a “safe harbor” would exempt States from considering the four statutory factors and would allow States to exclude measures necessary for reasonable progress from the SIP. EPA disagrees with the comment that it must determine if the URP policy has a nationwide scope. EPA notes that this action applies to a SIP submission from one State—Michigan. EPA also states that the comment that EPA “must” publish a finding that this action is “based on a determination of nationwide scope [or] effect” is also unsupported and incorrect. Under CAA section 307(b)(1), 42 U.S.C. 7607(b)(1), a petition for review of an action that is “locally or regionally applicable may be filed only in the United States Court of Appeals for the appropriate circuit,” with one exception: if (i) the action “is based on a determination of nationwide scope or effect” and (ii) “if in taking such action the Administrator finds and publishes that such action is based on such a determination,” then any petition for review must be filed in the D.C. Circuit. The Administrator has not made and published a finding that this action is based on a determination of nationwide scope or effect. Accordingly, any petition for review of this action must be filed in the United States Court of Appeals for the appropriate regional circuit.

The Conservation Groups commented that EGLE’s SIP Revision and Supplement do not meet EPA’s URP policy for presumptive approval. The Conservation Groups commented on EGLE relying on the IMPROVE Network to satisfy the monitoring requirement of the RHR and EGLE’s URP adjustments, as well as on EGLE not addressing additional Class I areas. As explained in Responses 12a, 12b, and 12c of the RTC document, EPA disagrees with these

comments. The IMPROVE network was in operation up to the time EGLE submitted its SIP revision. EGLE continues to support and participate in the IMPROVE network. Concerns regarding the future funding of the IMPROVE network are speculative, out of the control of EGLE, and beyond the scope of the basis for our action on EGLE’s second planning period SIP. As for the URP adjustments, the RHR at 40 CFR 51.308(f)(1) also provides the option for States to propose adjustments to the URP line for a Class I area to account for visibility impacts from anthropogenic sources outside the United States and the impacts from wildland prescribed fires that were conducted for certain, specified objectives. EGLE provided this analysis for its Class I areas. Under 40 CFR 51.308(f)(2)(ii)(B), States must consider and address the emissions reduction measures identified by other States for their sources as being necessary to make reasonable progress in the mandatory out-of-state Class I area. EGLE analyzed the Class I areas impacted by Michigan emissions using Lake Michigan Air Directors Consortium (LADCO) modeling, as the comment noted. EGLE identified 13 out-of-state Class I areas in addition to its own two Class I areas where Michigan sources contribute to total visibility impairment above 1 percent. EGLE also identified two additional Class I areas within the LADCO States, Voyageurs National Park and Boundary Waters Canoe Area Wilderness in Minnesota, even though Michigan sources contribute below 1 percent to total visibility impairment in each of those areas. The comment included several additional Class I areas. EGLE found no additional measures to be necessary to make reasonable progress in the out-of-state Class I areas. The contribution from Michigan sources would be even smaller at more distant Class I areas so there is no reason to expect that EGLE would find additional measures necessary to make reasonable progress for those distant Class I areas. EPA concludes that EGLE properly considered Michigan sources that are reasonably anticipated to contribute to visibility impairment Class I areas.

IV. What action is EPA taking?

EPA is approving the Regional Haze SIP revision submitted by EGLE on August 23, 2021, and supplemented on July 24, 2025, as satisfying applicable requirements under the CAA and RHR for the program’s second implementation period.

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because SIP actions are exempt from review under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive

Order 13132 (64 FR 43255, August 10, 1999);

- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 4, 2025. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it

extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 26, 2025.
Anne Vogel,
Regional Administrator, Region 5.

For the reasons stated in the preamble, title 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

- 1. The authority citation for part 52 continues to read as follows:
Authority: 42 U.S.C. 7401 *et seq.*
- 2. In § 52.1170, the table in paragraph (e) is amended by adding an entry for "Regional Haze Plan for the Second Implementation Plan" after the entry for "Regional Haze Progress Report" to read as follows:
§ 52.1170 Identification of plan.
* * * * *
(e) * * *

EPA—APPROVED MICHIGAN NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
Regional Haze Plan for the Second Implementation Plan.	Statewide	8/23/2021, 7/24/2025.	9/5/2025, 90 FR [Insert Federal Register page where the document begins].	Full Approval.
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 52 and 62****[EPA–R07–OAR–2025–0263; FRL–12807–02–R7]****Air Plan Approval; Missouri; Control of Sulfur Dioxide Emissions and Approval and Promulgation of State Plan (Negative Declaration) for Designated Facilities and Pollutants****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve revisions to the Missouri State Implementation Plan (SIP) related to replacing the previous statewide sulfur dioxide (SO₂) rule with the latest version of a newer SO₂ rule (10 CSR 10–6.261). The SIP revisions include removing outdated requirements and reinstating SO₂ emission limits for the Ameren-Labadie and Evergy-Hawthorn power plants. The revisions do not impact the stringency of the SIP, nor do they impact the state's ability to attain or maintain the National Ambient Air Quality Standards (NAAQS). The EPA is also approving Missouri's negative declaration of sources subject to sulfuric acid production requirements. This final approval action is being done in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on October 6, 2025.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2025–0263. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov> or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Wendy Vit, Environmental Protection Agency, Region 7 Office, Air—Analysis, Grants, Partnership Programs, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7697; email address: vit.wendy@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document “we,” “us,” and “our” refer to EPA.

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- II. Have the requirements for approval of a SIP revision been met?
- III. The EPA's Response to Comments
- IV. What action is the EPA taking?
- V. Incorporation by Reference
- VI. Statutory and Executive Order Reviews

I. What is being addressed in this document?

The EPA is approving revisions to the Missouri SIP received on April 23, 2025. The EPA proposed to approve these revisions on June 27, 2025 (90 FR 27491). In its submission, Missouri requested rescinding 10 CSR 10–6.260 “Restriction of Emission of Sulfur Compounds” and replacing it with a newer statewide regulation, 10 CSR 10–6.261 “Control of Sulfur Dioxide Emissions” (state effective date May 30, 2025) in the Missouri SIP. Specifically, the revisions resulting from this action include adding an exemption for units burning ultra-low sulfur diesel fuel; removing sulfur compound stack gas concentration limits for non-indirect heating units along with eliminating these sources from the rule's applicability; consolidating all facility-specific SO₂ emission rate limits into a single table and removing the limits that are no longer necessary; consolidating and clarifying reporting, recordkeeping, and testing requirements; and making a number of other minor changes and error corrections.

The revisions also reinstate SO₂ emission limits applicable to Ameren-Labadie and Evergy-Hawthorn power plants that Missouri had previously removed from 10 CSR 10–6.261, which addresses the deficiencies identified in the EPA's disapproval action finalized on January 4, 2023 (88 FR 291). Regarding the Hawthorn SO₂ emission limit for boiler 5A, the revisions incorporate requirements for natural gas usage and dry scrubber operation during periods of startup and shutdown, ensuring that a continuous limit is in place. In addition, because the Hawthorn boiler 5A numeric limit along with the necessary monitoring, record keeping, and reporting requirements are now fully incorporated into the SIP via this action, any potential deficiencies in the SIP with respect to Hawthorn have been addressed and the enforceability and protectiveness of the limit previously approved into the SIP have been enhanced.

Concurrent with approving these revisions to the Missouri SIP, the EPA

is approving a negative declaration submitted on May 4, 2022 pursuant to the state's approved Clean Air Act (CAA) 111(d) plan for Sulfuric Acid Mist from Existing Sulfuric Acid Production Plants, which is codified at 40 CFR 62.6353. The negative declaration is necessary for Missouri to remove portions of 10 CSR 10–6.260 that are linked to the state's 111(d) plan for sulfuric acid production. The lone facility included in the state's 111(d) plan at 40 CFR 62.6353, W.R. Grace and Company, Joplin, Missouri, has permanently closed.

The proposed rule and the EPA's technical support document (TSD) included in this docket discuss our analysis of the Missouri SIP and 111(d) plan revisions in greater detail.

II. Have the requirements for approval of a SIP revision been met?

The State's submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfies the completeness criteria of 40 CFR part 51, appendix V. The State provided an initial 60-day public review and comment period on the Regulatory Impact Report, draft version of 10 CSR 10–6.261, and the CAA section 110(l) demonstration from February 2, 2024 to April 2, 2024. The State provided an additional public notice period from November 1, 2024 to December 12, 2024 and received zero (0) comments. A public hearing was held December 5, 2024. In addition, as explained in section III. of the proposed rule and in more detail in the TSD included in the docket for this action, the revisions meet the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

III. The EPA's Response to Comments

The public comment period on the EPA's proposed rule opened June 27, 2025, the date of its publication in the **Federal Register**, and closed on July 28, 2025. During this period, the EPA received no comments.

IV. What action is the EPA taking?

The EPA is taking final action to amend the Missouri SIP by approving the State's request to incorporate 10 CSR 10–6.261 “Control of Sulfur Dioxide Emissions” and revise 40 CFR 62.6353.

V. 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 the

Missouri state rule 10 CSR 10–6.261 discussed in section I. of this preamble and as set forth below in the amendments to 40 CFR part 52. The EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

Therefore, these materials have been approved by the EPA for inclusion in the State Implementation Plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.¹

Also, in this document, as described in the amendments to 40 CFR part 52 set forth below, the EPA is removing provisions of the EPA-Approved Missouri Regulations and Statutes from the Missouri State Implementation Plan, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

VI. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993);
- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025)

because SIP actions are exempt from review under Executive Order 12866;

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 4, 2025. Filing a petition for reconsideration by the

Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects

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.

40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 27, 2025.

James Macy,
Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA amends 40 CFR parts 52 and 62 as set forth below:

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 AA—Missouri

- 2. In § 52.1320, the table in paragraph (c) is amended by removing the entry “10–6.260” and adding the entry “10–6.261” in numerical order to read as follows:

§ 52.1320 Identification of plan.
* * * * *
(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				

¹ 62 FR 27968, May 22, 1997.

EPA-APPROVED MISSOURI REGULATIONS—Continued

Missouri citation	Title	State effective date	EPA approval date	Explanation
*	*	*	*	*
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
10–6.261	Control of Sulfur Dioxide Emissions	5/30/2025	9/5/2025, 90 FR [insert Federal Register page where the document begins].	
*	*	*	*	*

* * * * *

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

■ 3. The authority citation for part 62 continues to read as follows:

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

Subpart AA—Missouri**§ 62.6350 [Amended]**

■ 4. Amend § 62.6350 by removing and reserving paragraph(c)(2).

■ 5. Revise § 62.6353 to read as follows:

§ 62.6353 Identification of sources.

Letter from the Missouri Department of Natural Resources, submitted May 4, 2022, certifying that there are no sulfuric acid production plants in Missouri. Effective date: The revision effective date of the negative declaration and EPA withdrawal of the prior plan approval is October 6, 2025.

[FR Doc. 2025–17028 Filed 9–4–25; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 70**

[EPA–R03–OAR–2023–0026; FRL–11859–02–R3]

Air Plan Approval; West Virginia; Revision to the State Operating Permits Program Under Title V of the Clean Air Act To Revise 45 Code of State Rules 33; Acid Rain Provisions and Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a Title V Operating Permits Program revision

submitted by the West Virginia Department of Environmental Protection (WVDEP) on behalf of the State of West Virginia. The revision incorporated by reference final rules promulgated by the EPA, effective June 1, 2020, into West Virginia's Title V Operating Permits Program. The EPA is approving these revisions to the West Virginia Title V Operating Permits Program in accordance with the requirements of the Clean Air Act (CAA). The approval will serve to maintain consistency between the State and Federal counterpart regulations.

DATES: This final rule is effective on October 6, 2025.

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2023–0026. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information is not publicly available, *e.g.*, confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through www.regulations.gov, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Paul Entwistle, Permits Branch (3AD10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2343. Mr. Entwistle can also be reached via electronic mail at Entwistle.Paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 2024 (89 FR 66662), the EPA published a notice of proposed rulemaking (NPRM) for the State of West Virginia. In the August 2024 NPRM, the EPA proposed approval of amendments that West Virginia made to 45 Code of State Rules (CSR) 33, Acid Rain Provisions and Permits. The formal Title V Operating Permits Program revision was submitted by West Virginia on May 10, 2021. Specifically, WVDEP amended 45 CSR 33–1.3, 45 CSR 33–1.4, 45 CSR 33–1.5, 45 CSR 33–1.6, 45 CSR 33–2.2, and 45 CSR 33–4.1. The amendment to 45 CSR 33–4.1 incorporated by reference final regulations promulgated by the EPA and codified in 40 Code of Federal Regulations (CFR) parts 72, 74, 75, 76, and 77 under the CAA's Title IV Acid Rain program. West Virginia has requested that the EPA approve the submitted amendments to revise the West Virginia Title V Operating Permits Program approved at 40 CFR part 70, appendix A. West Virginia indicates that this revision to its approved 40 CFR part 70 program is necessary to ensure that 45 CSR 33 stays up to date with its Federal counterpart regulations, consistent with section 22–1–3(c) of the West Virginia Code.

The CAA requires all state and local permitting authorities to develop Operating Permits Programs that meet the requirements of Title V of the CAA, 42 U.S.C. 7661–7661f, and its implementing regulations, 40 CFR part 70. The West Virginia State Operating Permits Program under Title V of the CAA is codified in 45 CSR 30 of the West Virginia Code of State Rules.

II. Summary of Title V Operating Permits Program Revision and EPA Analysis

The EPA is approving into West Virginia's EPA-approved Title V program the amendments that the state made to 45 CSR 33, referenced above.

Most notably, the amendment to 45 CSR 33–4.1 adopted and incorporated by reference the following Federal regulations: 40 CFR part 72, “Permits Regulation;” 40 CFR part 74, “Sulfur Dioxide Opt-Ins;” 40 CFR part 75, “Continuous Emission Monitoring;” 40 CFR part 76, “Acid Rain Nitrogen Oxides Emission Reduction Program;” and 40 CFR part 77, “Excess Emissions,” as they existed on June 1, 2020. These Federal regulations included time-limited changes to the emissions reporting regulations applicable to sources that monitor and report emissions under the Acid Rain Program, the Cross-State Air Pollution Rule (CSAPR), and/or the nitrogen oxides (NO_x) state implementation plan (SIP) Call. These time limited changes were necessary during the COVID–19 national emergency to protect on-site power plant operators and other essential personnel from unnecessary risk of exposure to the coronavirus. These changes have since expired.

West Virginia’s revisions to 45 CSR 33–1.3, 45 CSR 33–1.4, 45 CSR 33–1.5, 45 CSR 33–1.6, and 45 CSR 33–2.2 are described in detail in the August 2024 NPRM.

West Virginia’s submittal requested that the EPA approve the state’s amended regulations to its Acid Rain Provisions and to its Title V program. The EPA finds that the May 10, 2021 submittal has met the requirements of CAA section 502, and is consistent with applicable EPA requirements in the Title V Operating Permits Program of the CAA and 40 CFR part 70. This rule approves the amendments to 45 CSR 33 contained in the West Virginia submittal as a revision to the EPA’s approved Title V program for West Virginia by adding a paragraph (i) into 40 CFR part 70 appendix A under West Virginia. This new paragraph will indicate the EPA’s approval of the revision. It should be noted that while the August 2024 NPRM proposed the addition of a paragraph (h) into 40 CFR part 70 appendix A under West Virginia, another paragraph (h) has since been added under this section as the result of an unrelated rulemaking, necessitating the addition of a paragraph (i).

Additional information regarding West Virginia’s submittal and the rationale for the EPA’s action are explained in the NPRM and will not be restated here. No public comments were received on the NPRM.

III. Final Action

Pursuant to 40 CFR 70.4(i)(2), the EPA is approving the revision to the West Virginia Title V Operating Permits Program. The revision meets the

relevant requirements of section 502 of the CAA and the implementing regulations.

IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because SIP actions are exempt from review under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as

specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 4, 2025. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 70

Environmental protection, Acid rain, Administrative practice and procedure, Air pollution control, Operating Permits, Intergovernmental relations, Reporting and recordkeeping requirements.

Amy Van Blarcom-Lackey,
Regional Administrator, Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR part 70 as follows:

PART 70—STATE OPERATING PERMIT PROGRAMS

- 1. The authority citation for part 70 continues to read as follows:

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

- 2. Appendix A to part 70 is amended by adding paragraph (i) under “West Virginia” to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

West Virginia

* * * * *

(i) The West Virginia Department of Environmental Protection submitted a program revision on May 10, 2021 for amendments that West Virginia made to 45 Code of State Rules 33, Acid Rain Provisions and Permits. The State revision included the incorporation by reference of Federal regulations with time-limited changes to the emissions reporting regulations applicable to sources that monitor and report emissions, as

well as other minor changes; approval effective on October 6, 2025.

* * * * *

[FR Doc. 2025–17064 Filed 9–4–25; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[EPA–R09–OAR–2025–0038; FRL–12574–02–R9]

Revisions to the Clean Air Act Operating Permit Program; California; San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: With this direct final rule, the Environmental Protection Agency (EPA) is promulgating approval of revisions to the Clean Air Act Operating Permit Program (title V) of the San Diego County Air Pollution Control District (SDCAPCD or “District”) in California. The EPA is taking this final action in accordance with federal regulations and the Clean Air Act (CAA or “Act”).

DATES: This rule is effective November 4, 2025 without further notice, unless the EPA receives adverse comments by October 6, 2025. If the EPA receives adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2025–0038 at <https://www.regulations.gov>. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). The EPA may publish

any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Camille Cassar, Rules Office (Air–3–2), U.S. Environmental Protection Agency, Region IX, cassar.camille@epa.gov.

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

Table of Contents

- I. Why is the EPA using a direct final rule?
- II. Background
- III. What is the State’s Proposed Title V Program Revision?
- IV. EPA Evaluation of Title V Program Revision
- V. Final Action
- VI. Statutory and Executive Order Reviews

I. Why is the EPA using a direct final rule?

The EPA is publishing this final rule approving the SDCAPCD’s proposed title V program revisions without prior proposal because we consider it to be a noncontroversial action and anticipate no adverse comments. However, in the “Proposed Rules” section of this **Federal Register** publication, the EPA is simultaneously publishing a proposal that will also serve as a public notice of San Diego’s proposed title V program revisions pursuant to title 40 of the Code of Federal Regulations (CFR), section 70.4(i).

II. Background

The CAA Amendments of 1990 include title V, which requires states to develop an operating permits program that meets the federal criteria codified in 40 CFR part 70. The title V program requires certain sources of air pollution to obtain federal operating permits from their respective states. These federal operating permits improve enforcement and compliance by consolidating all applicable federal requirements into one federally enforceable document. Before states can issue title V permits, the EPA must approve their programs as amendments to appendix A of part 70. States may submit revisions to their approved programs for EPA approval. See EPA’s Technical Support Document (TSD) for a more detailed discussion of the history of the title V program approvals for SDCAPCD.

III. What is the State’s proposed Title V program revision?

Table 1 lists the rule submitted as part of the SDCAPCD’s title V program revisions and the date it was adopted by the District and submitted by the California Air Resources Board (CARB), which is the governor’s designee for California rule submittals.

TABLE 1—SUBMITTED RULES

Rule No.	Rule title	Amended date	Submitted date ^b
1415	Title V Operating Permits—Permit Process—Public Notification	10/12/2023	01/19/2024

^b CARB transmitted the submittal to the EPA by letter dated January 19, 2024.

The District submitted revisions to Rule 1415 (Title V Operating Permits—Permit Process—Public Notification) at Sections (a), (c), (d), (g), and (j) to conform to current public noticing, application publication, and record retention requirements codified at 40 CFR 70.5(c), 70.7(h) and 70.8(a)(3). Details regarding the revisions made,

including a change-copy of Rule 1415, can be found in the TSD and the docket.

IV. EPA Evaluation of Title V Program Revision

EPA finds the District revisions to Rule 1415 (Title V Operating Permits—Permit Process—Public Notification) at Sections (a), (c), (d), (g), and (j) conform

to and are consistent with current public noticing, application publication, and record retention requirements codified at 40 CFR 70.5(c), 70.7(h) and 40 CFR 70.6(a)(3)(ii)(B), respectively. Details regarding the revisions made can be found in the TSD available at <https://www.regulations.gov>.

V. Final Action

As authorized in 40 CFR 70.4(i), the EPA is fully approving the submitted revisions because we find the proposed changes to Rule 1415 align with 40 CFR part 70 program elements. Therefore, the proposed changes are approvable as title V program revisions. We do not anticipate adverse comments, so we are finalizing this action without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments on the proposed revisions by October 6, 2025, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect. The EPA would then address all public comments in a subsequent final rule based on the proposed action. If we do not receive timely adverse comments, this direct final approval will be effective without further notice on November 4, 2025. Pursuant to section 307(b)(1) of the Act, judicial review of this final agency action may be sought by filing a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of publication in the **Federal Register**. We do not plan to open a second comment period on this action, so any parties interested in commenting should do so at this time.

VI. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve title V operating permit program revisions that comply with the Act and applicable federal regulations. See 42 U.S.C. 7661a(d). Thus, in reviewing title V permit program 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 Order 12866 (58 FR 51735, October 4, 1993);
- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because it is not a significant regulatory action under Executive Order 12866;
- 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 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

This rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the Title V action is not approved to apply in Indian country located in the State, and the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 4, 2025. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the

purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving California title V permit program revisions may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 19, 2025.

Joshua F. W. Cook,
Regional Administrator, Region IX.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—STATE OPERATING PERMIT PROGRAMS

- 1. The authority citation for part 70 continues to read as follows:

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

- 2. Appendix A to Part 70 is amended under "California" by adding paragraph (x)(7) to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *
California
* * * * *

(x) ***

(7) The District adopted revisions on October 12, 2023. The California Air Resources Board submitted revisions to the EPA on January 19, 2024. Approval is effective on September 5, 2025.

* * * * *

[FR Doc. 2025-17039 Filed 9-4-25; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA-R09-OAR-2024-0570; FRL-12518-02-R9]

Extension of the Attainment Date of the Coachella Valley Extreme Nonattainment Area Under the 1997 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing a one-year extension of the “Extreme” attainment date from June 15, 2024 to June 15, 2025, for the 1997 ozone national ambient air quality standards (NAAQS) to the Riverside County (Coachella Valley), California ozone nonattainment area (“Coachella Valley”). The EPA is also taking final action on the exceptional event request submitted by the California Air Resources Board (CARB) on October 11, 2024. This action is based on the EPA’s concurrence on the exceptional events demonstration, which removed from the design value (DV) calculation the wildfire-influenced data recorded at the Palm Springs—Fire Station monitor (AQS Site ID #060655001) on July 14–15, 2023, and the extension request submitted by the State of California.

DATES: This rule is effective October 6, 2025.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2024–0570. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** Tom Kelly, Geographic Strategies and Modeling Section (AIR–2–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; phone: (415) 972–3856; or email: kelly.thomas@epa.gov.

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

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- I. Proposed Action
- II. Public Comments and the EPA’s Responses
- III. The EPA’s Action
- IV. Statutory and Executive Order Reviews

I. Proposed Action

On March 17, 2025,¹ the EPA proposed to grant California’s request for a one-year extension of the Extreme attainment date for the 1997 ozone NAAQS, from June 15, 2024, to June 15, 2025, for the Coachella Valley. The proposed action was based on the EPA’s

evaluation of air quality monitoring data, and our determination that the State has satisfied the two statutory criteria for a one-year extension under CAA section 181(a)(5) and 40 CFR 51.907. For details regarding the EPA’s reasons for proposing to grant the one-year extension, please see the March 17, 2025, proposal.

II. Public Comments and the EPA’s Responses

The EPA’s proposed action provided a 30-day public comment period. During this period, we received comments from Amber R, Air Law for All (ALFA), and Colin Williams. All the comments, which were received on April 16, 2025, are summarized and addressed below. The comments from Amber R and Colin Williams have been combined.

Comment 1: One commenter acknowledged the potential for wildfires to affect ozone levels but questioned their use to justify another extension. The commenter emphasized the need for bold action by the South Coast Air Quality Management District (SCAQMD) and CARB to “accelerate efforts to reduce ozone forming emissions.” Another commenter was concerned that the EPA was prolonging exposure to respiratory illnesses, such as emphysema and bronchitis. The commenter recommended immediate aggressive response to reduce emissions, improve air quality, more stringently enforce existing regulations, develop a more robust system to monitor air quality, and adopt cleaner technologies.

Response 1: As discussed in the proposal to grant the one-year extension of the attainment date, the EPA reviewed 2023 annual mean concentrations at each of the regulatory monitoring sites in the Coachella Valley. We determined that such data indicate that ozone concentrations were at or below 0.084 parts per million (ppm),² which is one of two minimum criteria necessary to grant an extension.

Our determination relied on the exclusion of certain air quality monitoring data based on our December 10, 2024, concurrence on the State’s exceptional events demonstration. As described in our proposal, Congress provided the statutory authority for the exclusion of data influenced by “exceptional events” meeting specific criteria by adding section 319(b) to the CAA and granted the EPA with the authority to propose regulations to review and manage air quality

monitoring data influenced by exceptional events. As stated in CAA section 319(b), an exceptional event is an event that “(1) affects air quality, (2) is not reasonably controllable or preventable, (3) is caused by human activity that is unlikely to recur at a particular location or was a natural event, and (4) is determined by the Administrator through a process established in regulations to be an exceptional event.” For EPA to concur on an exceptional event demonstration, the exclusion of data showing an exceedance or violation of the NAAQS must have regulatory significance. Here, the Highland, Rabbit, and Reche wildfires had regulatory significance to qualify the area for an attainment date extension, pursuant to 40 CFR 50.14(1)(i)(D). Furthermore, under the EPA’s regulations implementing CAA section 319(b) for wildfires, the EPA is required to exclude exceptional events from wildfires “where a State demonstrates to the Administrator’s satisfaction that emissions from wildfires caused a specific air pollution concentration in excess of one or more national ambient air quality standard at a particular air quality monitoring location.”³ Because we found that the State’s demonstration satisfied the regulatory requirements and concurred on the demonstration, the excluded days were not considered in our evaluation of the air quality criteria for a one-year extension, as required by our regulations.⁴

Despite the extension, the area will remain subject to Extreme classification requirements for the 1997 ozone NAAQS. The area is not relieved of any planning obligations under the CAA as a result of the extension. Within six months of the June 15, 2025 attainment date, the CAA and EPA’s implementing regulations obligate the EPA to publish, in the **Federal Register**, a determination of whether the area has attained the 1997 ozone NAAQS. If the area has met the NAAQS, the EPA will publish a determination that the area attained by its attainment date. If the State does not demonstrate attainment with the 1997 ozone NAAQS based on the 2024 design value and is not eligible for a second one-year extension, the EPA will issue a finding of failure to attain and the State will become subject to additional CAA requirements to achieve attainment of the 1997 annual ozone

² The 1997 ozone standard was set at a level of 0.08 ppm, which is equivalent to 0.084 ppm using standard rounding conventions. For more information, see 73 FR 16436 (March 27, 2008).

³ 40 CFR 50.14(b)(4).

⁴ The State’s exceptional event demonstration is included in the docket for this action.

¹ 90 FR 12239, March 17, 2025.

NAAQS in the Coachella Valley.⁵ Furthermore, the nonattainment area remains subject to more stringent air quality standards under the 2008 and 2015 ozone NAAQS.

Regarding air quality monitoring, the SCAQMD has established a monitoring network consistent with the EPA's requirements at 40 CFR part 58, which is documented in our review of the District's annual monitoring network plans and technical systems audits. The docket for the rulemaking contains the District's annual monitoring plans for 2023 and 2024, the EPA's approval letters, and the findings from the EPA's technical systems audit. More information on the nonattainment area's monitoring network can be found in section II.B.2 of the proposed rule (90 FR 12239, March 17, 2025).

Comment 2.A: Commenters assert that the EPA's proposal did not explain whether the EPA has previously granted any one-year extensions for the Coachella Valley nonattainment area pursuant to CAA section 181(a)(5). In a footnote, commenters argue that a plain language reading of CAA section 181(a)(5) indicates that the statutory limitation of two one-year extensions applies to any extension for any ozone standard for a nonattainment area. They claim that omitting additional information regarding other one-year extensions from the proposal constitutes inadequate notice. Moreover, commenters argue that proper notice requires a statement of the legal effects of the proposal, which includes an indication of how many one-year extensions the nonattainment area has remaining.

Response 2.A: The EPA disagrees with commenters that CAA section 181(a)(5) can be read to limit a nonattainment area to two cumulative one-year extensions for all ozone NAAQS. As a result, the EPA believes it provided adequate notice in the proposed approval.

First, the best reading of the statute does not suggest such a strong limitation of the extension authority. CAA section 181, under subpart 2 of part D of title I, was written for a single ozone standard, the 1979 1-hour ozone NAAQS.⁶ Likewise, the analogous

provision under subpart 1, CAA section 172(a), governs classifications and attainment dates pertaining to a single NAAQS at a time.⁷ Subparts 3 and 4 also guide a state through the steps of classification and attainment dates for carbon monoxide and particulate matter nonattainment areas, respectively, for a single NAAQS at a time.⁸ With this context, it would be unreasonable to conclude that Congress intended the prohibition on the number of one-year extensions to apply to all NAAQS for a particular pollutant. This interpretation would lead to the undesirable outcome that a nonattainment area would not be able to avail itself of a one-year extension for a much more stringent ozone NAAQS decades in the future because they were granted two one-year extensions prior to attaining the 1979 1-hour ozone NAAQS.

Indeed, in the general preamble to the 1990 CAA amendments, the EPA described situations where an ozone nonattainment area would "receive one or two extensions (under section 181(a)(5)) for the 1979 1-hour ozone NAAQS."⁹ But at no point in the general preamble's discussion of CAA section 181(a)(5) does the EPA caution states or nonattainment areas that these extensions, if granted, would be the only two one-year extensions they could ever receive for any ozone NAAQS. Nor does the EPA acknowledge this sort of limitation in the agency's subsequent implementation of the 8-hour ozone NAAQS. Both the 2008 and 2015 ozone NAAQS implementation rules include their own unique provision referencing CAA section 181(a)(5), 40 CFR 51.1107 (2008 ozone NAAQS) and 40 CFR 51.1307 (2015 ozone NAAQS). Neither regulatory provision references a limitation on one-year extensions from previously granted extensions from other NAAQS (or from earlier classifications of the same NAAQS).¹⁰ Thus, the EPA's historical interpretation of CAA section 181(a)(5) also supports the EPA's conclusion in this final action.

⁶ 62 FR 38885 (July 18, 1997) ("These [Subpart 2] provisions do not lead to the conclusion that because Congress established them for the O₃ standard in effect at the time of the 1990 amendments, Congress meant that EPA could not revise that standard in order to appropriately protect public health.").

⁷ CAA section 172(a)(2)(A) ("The attainment date for an area designated nonattainment with respect to a national primary ambient air quality standard. . .").

⁸ Both subparts contain the same two one-year extension limitation as in subparts 1 and 2.

⁹ 57 FR 13507 (April 16, 1992).

¹⁰ Under 40 CFR 51.1119, the provisions in 40 CFR part 51 subpart AA for the 2008 ozone NAAQS apply to the revoked 1997 ozone NAAQS.

Because CAA section 181(a)(5) applies to a specific NAAQS, our proposal adequately explains the history of attainment dates for the Coachella Valley nonattainment area for the purposes of providing adequate notice of the legal effects for a one-year extension of the attainment date for the 1997 ozone NAAQS. As described in our proposal, following initial classification as "Serious" nonattainment for the 1997 ozone NAAQS, the EPA set the Coachella Valley nonattainment area's attainment date as no later than June 15, 2013.¹¹ Effective June 4, 2010, the EPA granted a reclassification request from Serious to "Severe-15" and set the attainment date as no later than June 15, 2019.¹² The EPA again approved a reclassification request on July 10, 2019, to reclassify the nonattainment area from Severe-15 to Extreme and set the attainment date as June 15, 2024.¹³ The EPA's proposed approval of a one-year extension concerns the extension of the June 15, 2024 attainment date.

Thus, as demonstrated in our proposal, the Coachella Valley nonattainment area has never requested and the EPA has never acted on a request from California for a one-year extension of the attainment date for the Coachella Valley nonattainment area for the 1997 ozone NAAQS.¹⁴ Upon finalizing this one-year extension, the Coachella Valley will be entitled to one additional one-year extension of the applicable attainment date for the 1997 ozone NAAQS, provided the nonattainment area meets the requirements of CAA section 181(a)(5).¹⁵

Comment 2.B: Commenters argue that under CAA section 181(a)(5)(A), a state

¹¹ 69 FR 23858 (April 30, 2004).

¹² 75 FR 24409 (May 5, 2010).

¹³ 84 FR 32841 (July 10, 2019).

¹⁴ For informational purposes, for the 2008 ozone NAAQS, the EPA designated and classified the Coachella Valley nonattainment area as Severe-15 and set the attainment date as no later than July, 20, 2027. 77 FR 30088 (May 21, 2012). Effective April 7, 2023, the EPA granted the Coachella Valley's voluntary reclassification request from Severe-15 to Extreme and set the attainment date as no later than July 20, 2032. 88 FR 14291 (March 8, 2023). For the 2015 ozone NAAQS, the EPA designated and classified the Coachella Valley nonattainment area as Severe and set the attainment date for no later than August 3, 2033. 83 FR 10376 (March 9, 2018). Thus, no one-year extensions have been granted for these NAAQS.

¹⁵ The EPA notes that, given the certified air quality levels in Coachella Valley from 2022 and 2023, a 2024 4th highest value that is below the NAAQS would put the 3-year design value below the standard, and thus, the area would demonstrate attainment with the 1997 ozone NAAQS. In other words, if the Coachella Valley satisfies the criteria for a second one-year extension, it will also be able to demonstrate attainment of the NAAQS, and an extension will be unnecessary.

⁵ The EPA notes that the certified data in a design value report for the Palm Springs monitor, the only monitor in the Coachella Valley that did not attain the 1997 ozone NAAQS, indicates the monitor has attained the NAAQS based on the 2024 design value. Air Quality Systems, 2024 Design Value Report, U.S. EPA, dated May 7, 2025, has been added to the docket for the rulemaking.

⁶ Later ozone NAAQS have relied on subpart 2 to guide implementation. See 69 FR 23951 (April 30, 2004) (implementing the 8-hour ozone NAAQS in accordance with subpart 1 and subpart 2); see also

must demonstrate that it has complied with all requirements and commitments pertaining to the applicable implementation plan, which includes any Federal Implementation Plan (FIP) governing the nonattainment area in question. Commenters then argue that because South Coast is a delegated authority to implement EPA's federal prevention of significant deterioration (PSD) regulations, which constitute a FIP, the District is required to certify that it is complying with the EPA's PSD regulations.

The commenters note that the nonattainment New Source Review (NNSR) permit program applies to Coachella Valley, but they argue that sources outside the area will impact ozone levels within the nonattainment area, and therefore, PSD regulations "pertain to the area" within the meaning of CAA section 181(a)(5).

Response 2.B: The EPA disagrees with commenters that a determination of California's compliance with Federal PSD regulations is necessary for granting a one-year extension under CAA section 181(a)(5) for the Coachella Valley nonattainment area for the 1997 ozone NAAQS, given the area's status under that NAAQS as Extreme and the NNSR permitting requirements that are therefore applicable to that area.

Under the CAA, a PSD permitting program applies to areas designated as attainment/unclassifiable.¹⁶ As commenters acknowledge, the nonattainment area's NNSR permit program applies for sources of ozone precursors within the Coachella Valley because the area is subject to nonattainment area requirements for all ozone NAAQS, including the 1997 ozone NAAQS. Indeed, there are no PSD permits within the Coachella Valley nonattainment area for sources of ozone precursors.¹⁷

The commenters appear to argue that because there may be PSD permitted sources outside of the Coachella Valley nonattainment area that impact ozone

levels within the nonattainment area, PSD regulations would nonetheless apply as requirements "pertaining to the area" within the meaning of CAA section 181(a)(5). The EPA does not believe there is any legal basis to this interpretation of the CAA, and the commenters do not cite to any authority to support their theory. The CAA section 181(a)(5)(A) requires that "the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan." The better reading of that provision is that it is limited to whether a state is complying with a requirement or commitment that actually applies to the area, not a requirement or commitment that could theoretically have some unspecified impact on the area. With respect to permitting requirements, the Coachella Valley SIP includes requirements for the NNSR permitting program that is applicable for new and modified sources within Coachella Valley.¹⁸ Further, the commenter asserts with no support that sources outside the area "will impact" ozone levels within the area and thus the PSD requirements qualify as requirements "pertaining to" the area. The commenter does not provide any factual basis for how the construction or modification of sources under the PSD program, outside of the Coachella Valley area, will have any such impact on the air quality in the area. There is no legal or factual basis for the commenter's interpretation of CAA section 181(a)(5).

Comment 2.C: Commenters argue that the EPA improperly ignored its discretion in granting the one-year extension. They argue that the EPA's proposal approached the statutory language as though it required the EPA to grant the extension, instead of the correct reading of the statutory language, which permits but does not require the EPA to grant the extension. They further argue that as a result, the EPA did not evaluate additional context regarding the nonattainment area, including the area's history of nonattainment, and its decision to grant the extension is therefore arbitrary and capricious.

Response 2.C: The EPA disagrees with commenters that it is improperly exercising its discretion in approving the one-year extension. The EPA does not dispute that CAA section 181(a)(5) grants the EPA the discretion to disapprove a state application for a one-year extension of the applicable attainment date, even if the area were to

satisfy the two statutory requirements under CAA 181(a)(5). But the EPA disagrees with commenters' characterization of that discretion, which turns the EPA's authority from CAA section 181(a)(5) inside-out, as well as the notion that the EPA, in responding to commenters, is now advancing a post-hoc explanation of its proposal.

First, the CAA and the EPA's associated regulations regarding one-year extensions for ozone nonattainment areas provide a clear framework for states and the EPA to evaluate whether a state qualifies for a one-year extension. To grant an extension, the EPA must determine that (1) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan; and (2) no more than one exceedance of the NAAQS level for ozone has occurred in the area in the year preceding the Extension Year. These are the elements Congress determined would indicate that an area is nearing attainment and that some flexibility may provide adequate time for the area to attain without requiring a new planning cycle. If the EPA determines that both criteria are satisfied, and the nonattainment area has not already been granted the two allowable one-year extensions for that NAAQS, the EPA may approve the one-year extension—the statute does not identify any other criteria the EPA must evaluate to do so.

Nonetheless, there are instances where the EPA may look beyond those two criteria and may even ultimately disapprove an application for a one-year extension on grounds not explicitly identified under the two statutory criteria. For example, the commenters point to guidance concerning procedures for processing bump-ups and extension requests for "Marginal" ozone nonattainment areas, including additional considerations for granting extensions to Marginal ozone nonattainment areas under CAA section 181(a)(5).¹⁹ But this guidance is illustrative of the reasons those considerations for Marginal ozone nonattainment areas are not applicable to the Coachella Valley nonattainment area for the 1997 ozone NAAQS, and thus, EPA's proposal adequately

¹⁶ See 89 FR 84286 (October 22, 2024) (The PSD "program sets forth procedures for the preconstruction review and permitting of new and modified stationary sources of air pollution located in areas meeting the National Ambient Air Quality Standards (NAAQS) ("attainment" areas) and areas for which there is insufficient information to classify an area as either attainment or nonattainment ("unclassifiable" areas)."); 40 CFR 52.21(a)(1) ("The provisions of this section are applicable to any State implementation plan which has been disapproved with respect to prevention of significant deterioration of air quality in any portion of any State where the existing air quality is better than the national ambient air quality standards.").

¹⁷ Email dated May 5, 2025, from Sang-Mi Lee (SCAQMD) to Thomas Kelly (EPA), Subject: "PSD Permits in Coachella Valley?".

¹⁸ See "Coachella Valley Extreme Area Plan for the 1997 Ozone Standard," p. 6–31.

¹⁹ Commenters also cite to a recent example in Uinta Basin regarding a one-year extension of a Marginal ozone nonattainment area. The EPA is currently reconsidering our final action on that extension. But the EPA's rationale in this final action regarding guidance for Marginal ozone nonattainment areas would apply equally to distinguishing Coachella Valley with the unique circumstances in the Uinta Basin.

explained its rationale for approving the extension.

The EPA's guidance cited by commenters encourages that, given the "very tight timeframes to implement the new SIP requirements [if a Marginal area ultimately fails to attain], in addition to achieving the reductions to meet the new attainment date," Marginal nonattainment areas applying for a one-year extension should start preparing for the potential that the area may be required to implement the next highest classification nonattainment area requirements.²⁰ To do so, the EPA suggested the State submit with their extension application: (1) documentation that the State has planned or begun the necessary monitoring activities to develop information for the modeling analysis that will be required for the new classification; (2) documentation that the State has examined its legislative authority and regulatory procedures to determine whether or not it can quickly adopt and implement the emissions controls needed to meet the new attainment date; and/or (3) a plan to meet the SIP submittals and attainment date required by the higher classification.²¹ With this guidance, the EPA leaves open, but does not commit the agency to, the possibility that the agency may find a one-year extension for a Marginal nonattainment area inappropriate if the area does not appear prepared for a bump-up or is otherwise not nearing attainment.

Notably, Marginal ozone nonattainment areas are not required to prepare reasonable further progress demonstrations, attainment demonstrations, or implement "reasonable available control measures" as a part of their SIP planning process. The lack of these planning obligations—and associated modeling—for Marginal ozone nonattainment areas makes it all the more important that the State has the planning capacity in place if they do not have an attaining design value by the Marginal attainment date, even if they qualify for the criteria for a one-year extension. Because higher ozone nonattainment classifications, like Extreme nonattainment, are required to model attainment and implement stricter control measures, they have already undergone significant nonattainment planning and much of the information lacking from a Marginal nonattainment area's one-year extension

request is already available for the EPA to fully evaluate the nonattainment area's control measure strategy for higher classifications or the likelihood that a one-year extension will lead to attainment by the extended attainment date.

Effective July 12, 2024, the EPA approved portions of the Coachella Valley's Extreme nonattainment SIP for the 1997 ozone NAAQS, specifically the area's RACM demonstration and attainment demonstration as well as other CAA requirements.²² Our final action approved a determination that "the District's control strategy [is] acceptable for purposes of attaining the 1997 ozone standards in the Coachella Valley" and that the attainment demonstration "shows the area attaining the 1997 ozone standards by the outermost statutory attainment date of June 15, 2024."²³ With this context, the EPA's proposed approval of a one-year extension for the Coachella Valley nonattainment area evaluated the state's progress towards implementing the control measures from the applicable SIP as well as the relevant air quality data for the nonattainment area. Based on our evaluation, we found that the area was complying with its SIP's implementation schedule and the area's air quality is nearing attainment of the NAAQS, with the area's air quality below the standard in 2023.²⁴ We therefore determined that the application was adequate to grant the one-year extension.

Commenters do not point to any specific characteristics of the Coachella Valley, the nonattainment area's control strategy, or its recent air quality that would weigh in favor of the EPA exercising its discretion to reject a nonattainment area's application that satisfies the statutory criteria. Nor do they identify any reason why rejecting the extension request and finding the area failed to attain would expedite attainment of the 1997 ozone NAAQS. The only specific detail commenters identify regarding the nonattainment area is that it has not yet attained the 1997 ozone NAAQS. The EPA

acknowledges that the Coachella Valley nonattainment area has historically struggled to attain this NAAQS and did not have an attaining design value by the applicable attainment date. But absent any other supporting justifications for rejecting California's application, these facts alone are not factors Congress instructed us to consider.²⁵ The very purpose of a one-year extension is to provide flexibility for areas that are not yet in attainment. Thus, based on our evaluation of air quality monitoring data and the extension request submitted by the California, we are finalizing the one-year extension as proposed.

III. The EPA's Action

In response to the request from the State of California on October 11, 2024, the EPA is granting a one-year extension to the applicable attainment date for the 1997 ozone NAAQS for Coachella Valley. Additionally, the EPA is taking final action on the exceptional events request submitted by CARB on October 11, 2024, and concurred with by EPA on December 10, 2024. This final action extends the applicable attainment date from June 15, 2024, to June 15, 2025, for this nonattainment area. This decision is based on the State's compliance with the requirements in the applicable SIP for the area and on the 2023 ozone monitoring data from sites in the Coachella Valley.

IV. Statutory and Executive Order Reviews

This action provides a one-year extension of the Coachella Valley attainment date for the 1997 ozone NAAQS from June 15, 2024, to June 15, 2025, and imposes no additional requirements. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because SIP actions are exempt from review under Executive Order 12866;
- 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.*);

²⁵ See *Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Auto. Ins. Co.*, 463 U.S. 29, 48 (1983).

²² 89 FR 26817 (April 16, 2024).

²³ 89 FR 26817 (June 15, 2024); 89 FR 49815 (June 12, 2024).

²⁴ The 2023 design value for Coachella Valley is 0.085 ppm, based on data from 2021 to 2023, which is down from 0.108 ppm in 2003. See Coachella Valley Extreme Area Plan for the 1997 Ozone Standard, p. 5–2. The EPA also notes that the certified data in a preliminary design value report for the Palm Springs monitor, the only monitor in the Coachella Valley that did not attain the 1997 ozone NAAQS, indicates the monitor has attained the NAAQS based on the 2024 design value. Air Quality Systems, Preliminary Design Value Report, U.S. EPA, dated May 7, 2025, has been added to the docket for the rulemaking.

²⁰ Memorandum from D. Kent Berry, Acting Director, "Procedures for Processing Bump Ups and Extension Requests for Marginal Ozone Nonattainment Areas" (February 3, 1994).

²¹ *Id.*

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 4, 2025. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 25, 2025.

Joshua F.W. Cook,

Regional Administrator, Region IX.

For the reasons stated in the preamble, the EPA amends part 81, chapter I, title 40 of the Code of Federal Regulations as follows:

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 1. The authority citation for part 81 continues to read as follows:

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

Subpart C—Section 107 Attainment Status Designations California

■ 2. Section 81.305 is amended in the table for “California 1997 8-Hour Ozone NAAQS [Primary and Secondary]” by:

■ a. Revising the entry for “Riverside Co. (Coachella Valley), CA”;

■ b. Adding footnote “h.”; and

■ c. Revising footnote “2”

The revisions and additions read as follows:

§ 81.305 California.

* * * * *

CALIFORNIA—1997 8-HOUR OZONE NAAQS

[Primary and Secondary]

Designated area	Designation ^a		Category/classification	
	Date ¹	Type	Date ¹	Type
* * * * *				
Riverside Co. (Coachella Valley), CA				
Riverside County (part) ^g		Nonattainment ..	6/12/19	Subpart 2/Extreme. ^h
That portion of Riverside County which lies to the east of a line described as follows: Beginning at the Riverside-San Diego County boundary and running north along the range line common to Range 4 East and Range 3 East, San Bernardino Base and Meridian; then east along the Township line common to Township 8 South and Township 7 South; then north along the range line common to Range 5 East and Range 4 East; then west along the Township line common to Township 6 South and Township 7 South to the southwest corner of Section 34, Township 6 South, Range 4 East; then north along the west boundaries of Sections 34, 27, 22, 15, 10, and 3, Township 6 South, Range 4 East; then west along the Township line common to Township 5 South and Township 6 South; then north along the range line common to Range 4 East and Range 3 East; then west along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 5 South, Range 3 East; then north along the range line common to Range 2 East and Range 3 East; to the Riverside-San Bernardino County line. And that portion of Riverside County which lies to the west of a line described as follows:				

CALIFORNIA—1997 8-HOUR OZONE NAAQS—Continued

[Primary and Secondary]

Designated area	Designation ^a		Category/classification	
	Date ¹	Type	Date ¹	Type
That segment of the southwestern boundary line of Hydrologic Unit Number 18100100 within Riverside County, further described as follows: Beginning at the Riverside-Imperial County boundary and running north along the range line common to Range 17 East and Range 16 East, San Bernardino Base and Meridian; then northwest along the ridge line of the Chuckwalla Mountains, through Township 8 South, Range 16 East and Township 7 South, Range 16 East, until the Black Butte Mountain, elevation 4504'; then west and northwest along the ridge line to the southwest corner of Township 5 South, Range 14 East; then north along the range line common to Range 14 East and Range 13 East; then west and northwest along the ridge line to Monument Mountain, elevation 4834'; then southwest and then northwest along the ridge line of the Little San Bernardino Mountains to Quail Mountain, elev. 5814'; then northwest along the ridge line to the Riverside-San Bernardino County line.				
*	*	*	*	*

^a Includes Indian Country located in each county or area, except as otherwise specified.

⁹ Excludes Indian country of the Agua Caliente Band of Cahuilla Indians, the Augustine Band of Cahuilla Mission Indians, the Cabazon Band of Mission Indians, the Santa Rosa Band of Cahuilla Indians, the Torres Martinez Desert Cahuilla Indians, and the Twenty-Nine Palms Band of Mission Indians in Riverside County.

¹ Attainment date is extended to June 15, 2025.

¹ This date is 30 days after June 15, 2004, unless otherwise noted.

² This date is June 4, 2010, unless otherwise noted.

* * * * *

[FR Doc. 2025–17060 Filed 9–4–25; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R01–RCRA–2025–0188; FRL 12874–02–R1]

Massachusetts: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final authorization.

SUMMARY: Massachusetts has applied to the Environmental Protection Agency (EPA) for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. The EPA has reviewed Massachusetts’ application and has determined that these revisions satisfy all requirements needed to qualify for final authorization. Therefore, we are taking direct final action to authorize the State’s changes. In the “Proposed Rules” section of this **Federal Register**, EPA is also publishing a separate document that serves as the proposal to authorize these revisions.

Unless EPA receives written comments that oppose this authorization during the comment period, the decision to authorize Massachusetts’ revisions to its hazardous waste program will take effect.

DATES: This final authorization will become effective on November 4, 2025, unless EPA receives adverse written comments by October 6, 2025. If the EPA receives adverse comment, we will either publish a timely withdrawal of this direct final action in the **Federal Register** informing the public that the authorization will not take effect, or we will publish a notice containing a response to comments that either reverses the decision or affirms that the final action will take effect. In the event that the final action is withdrawn, we would address all public comments and make a final decision on authorization in a subsequent final action.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–RCRA–2025–0188, at <https://www.regulations.gov/>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from www.regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business

Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you are unable to make electronic submittals or require alternative access to docket materials, please notify Sara Kinslow through the provided contact information in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Sara Kinslow, RCRA Waste Management and Lead Branch; Land, Chemicals, and Redevelopment Division; U.S. EPA Region 1, 5 Post Office Square, Suite 100 (Mail code 07–1), Boston, MA 02109–3912; phone: 617–918–1648; email: kinslow.sara@epa.gov.

SUPPLEMENTARY INFORMATION:

A. Why are revisions to State programs necessary?

States that have received final authorization from the EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, states must change their programs and ask the EPA to authorize the changes. Changes to state programs may be necessary when Federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273, and 279.

New Federal requirements and prohibitions imposed by Federal regulations that the EPA promulgates pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) take effect in authorized states at the same time that they take effect in unauthorized states. Thus, the EPA will implement those requirements and prohibitions in Massachusetts, including the issuance of new permits implementing those requirements, until the State is granted authorization to do so.

B. What decisions has the EPA made in this final action?

On August 26, 2024, Massachusetts submitted a complete program revision application seeking authorization of revisions to its hazardous waste program. The EPA concludes that Massachusetts' application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA, as set forth in RCRA Section 3006(b), 42 U.S.C. 6926(b), and 40 CFR part 271. Therefore, the EPA grants final authorization to Massachusetts to operate its hazardous waste program with the revisions described in its authorization application, and as listed below in Section G of this document.

The Massachusetts Department of Environmental Protection (MassDEP) has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its application, subject to the limitations of HSWA, as discussed above.

C. What is the effect of this authorization decision?

This decision authorizes Massachusetts for the revisions to its

authorized hazardous waste program described in its authorization application. These changes will become part of the authorized State hazardous waste program and will therefore be Federally enforceable. Massachusetts will continue to have primary enforcement authority and responsibility for its State hazardous waste program. The EPA would maintain its authorities under RCRA sections 3007, 3008, 3013, and 7003, including its authority to:

- Conduct inspections, and require monitoring, tests, analyses and reports;
- Enforce RCRA requirements, including authorized State program requirements, and suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

This action will not impose additional requirements on the regulated community because the regulations for which the EPA is authorizing Massachusetts are already effective under state law and are not changed by this action.

D. Why is the EPA using a direct final action?

The EPA is publishing this action without prior proposal because the EPA views this as a noncontroversial action and anticipates no adverse comment. This action is a routine program change. However, in the "Proposed Rules" section of this **Federal Register**, we are publishing a separate document that will serve as the proposed action allowing the public an opportunity to comment. For further information about commenting on this action, please refer to the **ADDRESSES** section and Section E of the **SUPPLEMENTARY INFORMATION** section.

E. What happens if the EPA receives comments that oppose this action?

If the EPA receives comments that oppose this authorization, we will either withdraw this action by publishing a document in the **Federal Register** before the action becomes effective, or we will publish a notice containing a response to comments that either reverses the decision or affirms that the final action will take effect. In the event that the final action is withdrawn, the EPA will base any further decision on the authorization of the State's program revisions on the proposal mentioned in the previous section, after considering all comments received during the comment period. The EPA will then address all such comments in a later final action.

If EPA receives comments that oppose only the authorization of a particular revision to the State's hazardous waste program, EPA will withdraw that part of this action, but the authorization of the program revisions that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What has Massachusetts previously been authorized for?

The Commonwealth of Massachusetts initially received final authorization effective February 7, 1985 (50 FR 3344, January 24, 1985) to implement its base hazardous waste management program. The EPA granted authorization for revisions to Massachusetts' regulatory program on the following dates: September 30, 1998, effective November 30, 1998 (63 FR 52180); October 12, 1999, effective immediately (64 FR 55153); March 12, 2004, effective immediately (69 FR 11801); January 31, 2008, effective March 31, 2008 (73 FR 5753); June 23, 2010, effective August 23, 2010 (75 FR 35660); and January 4, 2022, effective March 7, 2022 (87 FR 194). Additionally, on November 15, 2000, the EPA granted interim authorization for Massachusetts to regulate Cathode Ray Tubes under the Toxicity Characteristics rule through January 1, 2003, effective immediately (65 FR 68915). This interim authorization was subsequently extended to run through January 1, 2006 (67 FR 66338, October 31, 2002) which was then further extended until January 1, 2011 (70 FR 69900, November 18, 2005).

G. What revisions is the EPA proposing with this proposed action?

1. State-Initiated Revisions

On August 26, 2024, Massachusetts submitted a final complete program revision application, seeking authorization of additional revisions to its program in accordance with 40 CFR 271.21. Massachusetts seeks authority to administer the Federal requirements that are listed in Table 1 below. This table lists Massachusetts' analogous requirements that are being recognized as no less stringent than the analogous Federal requirements.

Massachusetts' regulatory references are to Title 310 of Code of Massachusetts Regulations (CMR), Chapter 30, as amended effective May 24, 2024. Massachusetts' statutory authority for its hazardous waste program is based on the Massachusetts

Hazardous Waste Management Act of 1979 (Massachusetts General Laws Chapter 21C).

The EPA determines, subject to public review and comment, that

Massachusetts' hazardous waste program revisions are equivalent to, consistent with, and no less stringent than the Federal program, and therefore satisfy all the requirements necessary to

qualify for final authorization. Therefore, the EPA grants final authorization to Massachusetts for the following program revisions:

TABLE 1—MASSACHUSETTS' ANALOGS TO THE FEDERAL REQUIREMENTS

Federal requirement	Federal Register page and date	Analogous State authority
Checklist (CL) 128: Wastes from the Use of Chlorophenolic Formulations in Wood Surface Protection.	59 FR 458; January 4, 1994.	Title 310 Code of Massachusetts Regulations (310 CMR) 30.012(k) and 30.160.
CL 148: RCRA Expanded Public Participation	60 FR 63417; December 11, 1995.	310 CMR 30.010, 30.831(1), 30.832(3), 30.833, 30.837, and 30.861(5).
CL 238: Confidentiality Determinations for Hazardous Waste Export and Import Documents.	83 FR 60894; December 26, 2017.	310 CMR 30.104(3)(h)1.e, 30.361, and 30.405(8)(d).
CL 240: Safe Management of Recalled Airbags	83 FR 61552; November 30, 2018.	310 CMR 30.010, 30.104(3)(k), and 30.353(8).
CL 241: Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine.	84 FR 5816; February 22, 2019.	310 CMR 30.136. ¹
CL 242: Universal Waste Regulations: Addition of Aerosol Cans.	84 FR 67202; December 9, 2019.	310 CMR 30.143(2), 30.1001(3), 30.1010, ² 30.1020(6), 30.1034(3)(b), ² 30.1034(6), 30.1043(2)(d), 30.1044(3), ² and 30.1044(6). (More stringent provisions: 310 CMR 30.1010 definition of "Large quantity handler of universal waste").
Special Consolidated Checklist for the Hazardous Waste Electronic Manifest Rules (CL 231 and 239).	79 FR 7518; February 7, 2014, and 83 FR 420; January 3, 2018.	310 CMR 30.010, 30.311(1), 30.311(6), 30.311(7), 30.311(8), 30.316, 30.361, 30.404, and 30.405(1).

Notes

¹ Massachusetts is only seeking authority for the State analog to the amended P075 waste listing for nicotine. Authority for other provisions in CL 241 will be considered in a future program revision.

² Massachusetts' analogous universal waste standards for mercury-containing lamps and equipment were previously authorized on January 4, 2022, effective March 7, 2022. Please see 87 FR 194 for a discussion of equivalency, scope, and stringency for these provisions.

H. Where are the revised State rules different from the Federal rules?

When revised State rules differ from the Federal rules in the RCRA state authorization process, the EPA determines whether the State rules are equivalent to, more stringent than, or broader in scope than the Federal program. Pursuant to RCRA section 3009, 42 U.S.C. 6929, State programs may contain requirements that are more stringent than the Federal regulations. Such more stringent requirements can be federally authorized and, once authorized, become federally enforceable. Although the statute does not prevent States from adopting regulations that are broader in scope than the Federal program, States cannot receive Federal authorization for such regulations. As such, the EPA cannot enforce broader-in-scope State rules; however, compliance with such rules is required by State law.

1. Massachusetts Requirements That Are Broader in Scope

Massachusetts' hazardous waste program contains certain provisions that are broader than the scope of the Federal program, including, but not limited to, the following:

(a) At 310 CMR 30.311(1), Massachusetts requires that a manifest must be used for any hazardous waste transported for "off-site treatment, storage, disposal or use . . ." To the extent that material "in use" has not met the criteria for being discarded, abandoned, used in a manner constituting disposal, sham recycled, or any of the other factors in the definition of solid waste at 40 CFR 261.2, the EPA would not consider it to be a solid or hazardous waste and, therefore, not subject to the hazardous waste management program including electronic manifest requirements. Additionally, the EPA does not consider material managed in compliance with the used oil standards at 40 CFR part 279—which may involve off-site shipment of used oil for recycling, burning for energy recovery, or other allowable "use"—to be hazardous waste. Such materials are considered "State-only" wastes for purposes of the electronic manifest requirements, as addressed in 40 CFR 260.5. Wastes required by the State to be transported with a manifest, for which there is no Federal analog, make Massachusetts' universe of regulated wastes and entities larger than the EPA's and, therefore, broader in scope.

2. Massachusetts Requirements That Are More Stringent Than the Federal Program

Massachusetts' hazardous waste program contains several provisions that are more stringent than the Federal RCRA program, noted in Table 1, above. They include, but are not limited to, the following:

(a) Both Massachusetts and the EPA define a Large Quantity Handler (LQH) of Universal Waste (UW) as a UW handler who accumulates 5,000 kilograms or more total of UW at any time. Under the Federal program, designation as an LQH is retained through the end of the calendar year in which the 5,000-kilogram level is met or exceeded. Massachusetts includes in its definition at 310 CMR 30.010 and 30.1010 that an LQH designation is retained until such time as a change of status request is received by MassDEP, and through the end of the calendar year in which the change of status request was received. This additional step to notify MassDEP of a change in UW handler status, also discussed in the Massachusetts UW notification requirements at 310 CMR 30.1043(3), is more stringent than the EPA UW definitions and notification requirements in 40 CFR part 273.

I. Who handles permits after the authorization takes effect?

Massachusetts will continue to issue permits covering all the provisions for which it is authorized and will administer the permits it issues. The EPA will continue to administer and enforce any RCRA and HSWA permits or portions of permits that the EPA issued prior to the effective date of this authorization in accordance with the signed Memorandum of Agreement, dated September 30, 2021, which was included in the docket for the authorization effective March 7, 2022 (87 FR 194). Until such time as formal transfer of the EPA permit responsibility to Massachusetts occurs and the EPA terminates its permit, the EPA and Massachusetts agree to coordinate the administration of permits in order to maintain consistency. The EPA will not issue any new permits or new portions of permits for the provisions listed in Section G after the effective date of this authorization. The EPA will continue to implement and issue permits for HSWA requirements for which Massachusetts is not yet authorized.

J. How would this action affect Indian Country (18 U.S.C. 115) in Massachusetts?

Massachusetts has not applied for and is not authorized to carry out its hazardous waste program in Indian country within the State, which includes the land of the Wampanoag tribe. Therefore, this action has no effect on Indian country. The EPA retains jurisdiction over Indian country and will continue to implement and administer the RCRA program on these lands.

K. What is codification and will the EPA codify Massachusetts' hazardous waste program as authorized in this action?

Codification is the process of placing citations and references to the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. The EPA does this by adding those citations and references to the authorized State rules in 40 CFR part 272. The EPA is not codifying the authorization of Massachusetts' revisions at this time. However, the EPA reserves the ability to amend 40 CFR part 272, subpart W for the authorization of Massachusetts' program at a later date.

L. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action from

the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action authorizes State requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB. This action is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because actions such as today's authorization of Massachusetts' revised hazardous waste program under RCRA are exempted under Executive Order 12866. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This action is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA section 3006(b), the EPA grants a state's application for authorization as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a state authorization application, to require the

use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in taking this action, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of this action in accordance with the “Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). “Burden” is defined at 5 CFR 1320.3(b).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: August 13, 2025.

Mark Sanborn,

Regional Administrator, U.S. EPA Region I.

[FR Doc. 2025–17053 Filed 9–4–25; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Parts 73 and 74**

[GN Docket No. 16–142; DA 25–761; FR ID 310636]

Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Media Bureau of the Federal Communications Commission (FCC or Commission) released an Order that re-codifies

language that was inadvertently eliminated from the Commission's rules relating to information that must be provided by Next Gen TV broadcast stations in "non-expedited" applications for ATSC 3.0 service. This Order does not change any regulatory obligations.

DATES: Effective September 5, 2025.

FOR FURTHER INFORMATION CONTACT:

Evan Baranoff, *Evan.Baranoff@fcc.gov*, of the Media Bureau, Policy Division, (202) 418-7142.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, DA 25-761, adopted and released on Aug. 27, 2025. The full text of this document is available electronically via the FCC's website at <https://docs.fcc.gov/public/attachments/DA-25-761A1.pdf> or via the FCC's Electronic Comment Filing System (ECFS) website at <https://www.fcc.gov/ecfs>. (Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.) Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Synopsis

I. Introduction

1. In this *Order*, we re-codify language that was inadvertently eliminated from §§ 73.3801(f)(6)(iii), 73.6029(f)(6)(iii), and 74.782(g)(6)(iii) of the Commission's rules (Rules) relating to information that must be provided in "non-expedited" applications for ATSC 3.0 service. This amendment to the Rules does not change any regulatory obligations.

II. Background

2. In the *Next Gen TV First Report and Order*, 83 FR 4998 (Feb. 2, 2018), the Commission authorized television broadcasters to use the Next Gen TV transmission standard, also called ATSC 3.0, on a voluntary, market-driven basis. The Commission established a process for considering applications to deploy ATSC 3.0 service, which includes coverage requirements for a Next Gen TV station's ATSC 1.0 simulcast signal. As part of that process, the Commission affords expedited processing and a presumption in favor of grant to applications that provide ATSC 1.0 simulcast service to at least 95 percent of the predicted population within the station's original noise limited service contour (NLSC), while applicants that do not satisfy this threshold must

provide a more robust public interest showing with their application and will be considered on a case-by-case basis. The required information that must be contained in applications that do not qualify for expedited processing (*i.e.*, "non-expedited" applications) was set forth in §§ 73.3801(f)(6)(iii), 73.6029(f)(6)(iii), and 74.782(g)(6)(iii) of the Rules.

3. Subsequently, in the *Next Gen TV Third Report and Order*, 88 FR 45347 (Jul. 17, 2023), the Commission modified its ATSC 3.0 rules to, among other things, permit Next Gen TV stations to license multicast streams aired over an ATSC 1.0 multicast host. The Commission also made updates to the required information for ATSC 3.0 applications in §§ 73.3801(f)(6)(i) and (ii), 73.6029(f)(6)(i) and (ii), and 74.782(g)(6)(i) and (ii) of the Commission's rules in order to facilitate multicast licensing, but it did not make changes to the requirements for non-expedited applicants set forth in §§ 73.3801(f)(6)(iii), 73.6029(f)(6)(iii), and 74.782(g)(6)(iii). However, after *Federal Register* publication of the *Next Gen TV Third Report and Order*, these subsections were removed from the Code of Federal Regulations.

III. Discussion

4. We find that the deletion of §§ 73.3801(f)(6)(iii), 73.6029(f)(6)(iii), and 74.782(g)(6)(iii) of the Commission's rules from the Code of Federal Regulations was inadvertent, and, thus, re-codify this language. The *Next Gen TV First Report and Order* codified these provisions to provide clarity about the information that must be provided by non-expedited applicants for ATSC 3.0 service. The Commission never stated or implied in the *Next Gen TV Third Report and Order* that it intended to rescind these subsections. As noted above, the *Next Gen TV Third Report and Order* specifically referred to these provisions as remaining applicable. Accordingly, we amend the Rules as set out in the Appendix by including the inadvertently deleted subsections that set forth the required information non-expedited applications must include to show that such applications are in the public interest.

5. We find that notice and comment procedures are unnecessary under the "good cause" exception of the Administrative Procedure Act (APA) because re-codifying the inadvertently deleted subsections merely restores the provisions setting forth the showing that must be made by non-expedited applicants that the Commission adopted in the *Next Gen TV First Report and*

Order. The Commission did not state or imply that it intended to change or eliminate §§ 73.3801(f)(6)(iii), 73.6029(f)(6)(iii), and 74.782(g)(6)(iii) in the *Next Gen TV Third Report and Order*. Consequently, we find notice and comment procedures are unnecessary for this action.

6. We also conclude that good cause exists to make this change effective immediately upon publication in the *Federal Register*, pursuant to section 553(d)(3) of the Administrative Procedure Act. An expedited effective date is necessary to restore the rule in the Code of Federal Regulations as originally adopted by the Commission, which included codified provisions informing non-expedited applicants of the existing requirements for information that must be included in non-expedited applications and to allow the Bureau to promptly act upon such requests. Failure to make the rule change effective immediately may result in confusion among regulated entities as to the required showing and thereby impact the Bureau's ability to determine if applications are in the public interest, and thereby delay broadcasters' ability to commence ATSC 3.0 operation and provide new, innovative services to the public.

IV. Procedural Matters

7. *Regulatory Flexibility Act*. Because these rule changes are being adopted without notice and comment, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

8. *Paperwork Reduction Act*. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501-3521. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, 44 U.S.C. 3506(c)(4).

9. *Congressional Review Act*. The Bureau has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that this rule is non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Bureau will send a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

V. Ordering Clauses

10. *It is ordered* that, pursuant to the authority contained in sections 1, 4, 5(c)(1), 7, 301, 303 of the

Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 155(c)(1), 157, 301, 303, and 47 CFR 0.61, 0.283, this Order is *adopted and will become effective* immediately upon publication in the **Federal Register**.

11. *It is further ordered* that parts 73 and 74 of the Commission's rules are hereby amended as set forth in the Appendix, effective immediately upon publication in the **Federal Register**.

12. *It is further ordered* that the Bureau shall send a copy of this Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Parts 73 and 74

Communications equipment,
Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 73 and 74 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. Section 73.3801 is amended by adding paragraph (f)(6)(iii) to read as follows:

§ 73.3801 Full power television simulcasting during the ATSC 3.0 (Next Gen TV) transition.

* * * * *

(f) * * *

(6) * * *

(iii) If an application in paragraph (f)(2) of this section includes a request to air an ATSC 1.0 signal on the facilities of a host station and does not meet the 95 percent standard in paragraph (f)(6)(ii) of this section, the application must contain, in addition to the information in paragraphs (f)(6)(i) and (ii) of this section, the following information:

(A) Whether there is another possible host station(s) in the market that would result in less service loss to existing viewers and, if so, why the Next Gen TV broadcaster chose to partner with a host station creating a larger service loss;

(B) What steps, if any, the station plans to take to minimize the impact of the service loss (e.g., providing ATSC

3.0 dongles, set-top boxes, or gateway devices to viewers in the loss area); and

(C) The public interest benefits of the simulcasting arrangement and a showing of why the benefit(s) of granting the application would outweigh the harm(s). These applications will be considered on a case-by-case basis.

* * * * *

■ 3. Section 73.6029 is amended by adding paragraph (f)(6)(iii) to read as follows:

§ 73.6029 Class A television simulcasting during the ATSC 3.0 (Next Gen TV) transition.

* * * * *

(f) * * *

(6) * * *

(iii) If an application in paragraph (f)(2) of this section includes a request to air an ATSC 1.0 signal on the facilities of a host station and does not meet the 95 percent standard in paragraph (f)(6)(ii) of this section, the application must contain, in addition to the information in paragraphs (f)(6)(i) and (ii) of this section, the following information:

(A) Whether there is another possible host station(s) in the market that would result in less service loss to existing viewers and, if so, why the Next Gen TV broadcaster chose to partner with a host station creating a larger service loss;

(B) What steps, if any, the station plans to take to minimize the impact of the service loss (e.g., providing ATSC 3.0 dongles, set-top boxes, or gateway devices to viewers in the loss area); and

(C) The public interest benefits of the simulcasting arrangement and a showing of why the benefit(s) of granting the application would outweigh the harm(s). These applications will be considered on a case-by-case basis.

* * * * *

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

■ 4. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 307, 309, 310, 325, 336 and 554.

■ 5. Section 74.782 is amended by adding paragraph (g)(6)(iii) to read as follows:

§ 74.782 Low power television and TV translator simulcasting during the ATSC 3.0 (Next Gen TV) transition.

* * * * *

(g) * * *

(6) * * *

(iii) If an application in paragraph (g)(2) of this section includes a request to air an ATSC 1.0 signal on the facilities of a host station and does not meet the 95 percent standard in paragraph (g)(6)(ii) of this section, the application must contain, in addition to the information in paragraphs (g)(6)(i) and (ii) of this section, the following information:

(A) Whether there is another possible host station(s) in the market that would result in less service loss to existing viewers and, if so, why the Next Gen TV broadcaster chose to partner with a host station creating a larger service loss;

(B) What steps, if any, the station plans to take to minimize the impact of the service loss (e.g., providing ATSC 3.0 dongles, set-top boxes, or gateway devices to viewers in the loss area); and

(C) The public interest benefits of the simulcasting arrangement and a showing of why the benefit(s) of granting the application would outweigh the harm(s). These applications will be considered on a case-by-case basis.

* * * * *

[FR Doc. 2025–16990 Filed 9–4–25; 8:45 am]

BILLING CODE 6712–01–P

SURFACE TRANSPORTATION BOARD

49 CFR Part 1002

[Docket No. EP 542 (Sub-No. 33)]

Fees for Services Performed in Connection With Licensing and Related Services—2025 Update

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Board updates for 2025 the fees that the public must pay to file certain cases and pleadings with the Board. Pursuant to this update, 60 of the Board's 135 fees will increase, two will decrease, and 73 fees will remain at their current levels.

DATES: This final rule is effective October 5, 2025.

FOR FURTHER INFORMATION CONTACT:

Laura Mizner, (202) 914–1059, or Andrea Pope-Matheson, (202) 900–5240. If you require accommodation under the Americans with Disabilities Act, please call (202) 245–0245.

SUPPLEMENTARY INFORMATION: The Board's regulations at 49 CFR 1002.3(a) provide for an annual update of the Board's entire user-fee schedule. Fees are generally revised based on the cost study formula set forth at 49 CFR 1002.3(d), which looks to changes in salary costs, publication costs, and

Board overhead cost factors. Applying that formula, 60 of the Board's 135 fees will be increased, two will be decreased, and 73 will remain at their current levels.

Additional information is contained in the Board's decision. To obtain a free copy of the full decision, visit the Board's website at www.stb.gov or call (202) 245-0245. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245-0245.

List of Subjects in 49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information.

Decided: August 29, 2025.

By the Board, Board Members Fuchs, Hedlund, and Schultz.

Zantori Dickerson,
Clearance Clerk.

For the reasons set forth in the preamble, title 49, chapter X, part 1002, of the Code of Federal Regulations is amended as follows:

PART 1002—FEES

■ 1. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A), (a)(6)(B), and 553; 31 U.S.C. 9701; and 49 U.S.C. 1321. Section 1002.1(f)(11) is also issued under 5 U.S.C. 5514 and 31 U.S.C. 3717.

■ 2. Section 1002.1 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 1002.1 Fees for records search, review, copying, certification, and related services.

* * * * *

(a) Certificate of the Records Officer, \$26.00.

(b) Services involved in examination of tariffs or schedules for preparation of certified copies of tariffs or schedules or extracts therefrom at the rate of \$55.00 per hour.

(c) Services involved in checking records to be certified to determine authenticity, including clerical work, etc. incidental thereto, at a rate of \$38.00 per hour.

* * * * *

■ 3. Section 1002.2, paragraph (f), is revised to read as follows:

* * * * *

(f) *Schedule of filing fees.*

Type of proceeding	Fee
PART I: Non-Rail Applications or Proceedings To Enter Into a Particular Financial Transaction or Joint Arrangement	
(1) An application for the pooling or division of traffic	\$6,700.
(2) (i) An application involving the purchase, lease, consolidation, merger, or acquisition of control of a motor carrier of passengers under 49 U.S.C. 14303.	\$2,900.
(ii) A petition for exemption under 49 U.S.C. 13541 (other than a rulemaking) filed by a non-rail carrier not otherwise covered.	\$4,600.
(iii) A petition to revoke an exemption filed under 49 U.S.C. 13541(d)	\$3,900.
(3) An application for approval of a non-rail rate association agreement. 49 U.S.C. 13703	\$41,700.
(4) An application for approval of an amendment to a non-rail rate association agreement:	
(i) Significant amendment	\$6,800.
(ii) Minor amendment	\$150.
(5) An application for temporary authority to operate a motor carrier of passengers. 49 U.S.C. 14303(i)	\$750.
(6) A notice of exemption for transaction within a motor passenger corporate family that does not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with motor passenger carriers outside the corporate family.	\$2,300
(7)–(10) [Reserved]	
PART II: Rail Licensing Proceedings Other Than Abandonment or Discontinuance Proceedings	
(11) (i) An application for a certificate authorizing the extension, acquisition, or operation of lines of railroad. 49 U.S.C. 10901.	\$10,900.
(ii) Notice of exemption under 49 CFR 1150.31–1150.35	\$2,500.
(iii) Petition for exemption under 49 U.S.C. 10502	\$18,900.
(12) (i) An application involving the construction of a rail line	\$112,800.
(ii) A notice of exemption involving construction of a rail line under 49 CFR 1150.36	\$2,500.
(iii) A petition for exemption under 49 U.S.C. 10502 involving construction of a rail line	\$112,800.
(iv) A request for determination of a dispute involving a rail construction that crosses the line of another carrier under 49 U.S.C. 10902(d).	\$350.
(13) A Feeder Line Development Program application filed under 49 U.S.C. 10907(b)(1)(A)(i) or 10907(b)(1)(A)(ii)	\$2,600.
(14) (i) An application of a class II or class III carrier to acquire an extended or additional rail line under 49 U.S.C. 10902.	\$9,200.
(ii) Notice of exemption under 49 CFR 1150.41–1150.45	\$2,500.
(iii) Petition for exemption under 49 U.S.C. 10502 relating to an exemption from the provisions of 49 U.S.C. 10902.	\$9,900.
(15) A notice of a modified certificate of public convenience and necessity under 49 CFR 1150.21–1150.24	\$2,400.
(16) An application for a land-use-exemption permit for a facility existing as of October 16, 2008 under 49 U.S.C. 10909.	\$9,000.
(17) An application for a land-use-exemption permit for a facility not existing as of October 16, 2008 under 49 U.S.C. 10909.	\$31,900.
(18)–(20) [Reserved]	
PART III: Rail Abandonment or Discontinuance of Transportation Services Proceedings	
(21) (i) An application for authority to abandon all or a portion of a line of railroad or discontinue operation thereof filed by a railroad (except applications filed by Consolidated Rail Corporation pursuant to the Northeast Rail Service Act [Subtitle E of Title XI of Pub. L. 97–35], bankrupt railroads, or exempt abandonments).	\$33,400.
(ii) Notice of an exempt abandonment or discontinuance under 49 CFR 1152.50	\$5,300.
(iii) A petition for exemption under 49 U.S.C. 10502	\$9,400.
(22) An application for authority to abandon all or a portion of a line of a railroad or operation thereof filed by Consolidated Rail Corporation pursuant to Northeast Rail Service Act.	\$700.
(23) Abandonments filed by bankrupt railroads	\$2,800.

Type of proceeding	Fee
(24) A request for waiver of filing requirements for abandonment application proceedings	\$2,700.
(25) An offer of financial assistance under 49 U.S.C. 10904 relating to the purchase of or subsidy for a rail line proposed for abandonment.	\$2,300.
(26) A request to set terms and conditions for the sale of or subsidy for a rail line proposed to be abandoned	\$34,300.
(27) (i) Request for a trail use condition in an abandonment proceeding under 16 U.S.C. 1247(d)	\$350.
(ii) A request to extend the period to negotiate a trail use agreement	\$650.
(28)–(35) [Reserved]	

PART IV: Rail Applications To Enter Into a Particular Financial Transaction or Joint Arrangement

(36) An application for use of terminal facilities or other applications under 49 U.S.C. 11102	\$28,500.
(37) An application for the pooling or division of traffic. 49 U.S.C. 11322	\$15,300.
(38) An application for two or more carriers to consolidate or merge their properties or franchises (or a part thereof) into one corporation for ownership, management, and operation of the properties previously in separate ownership. 49 U.S.C. 11324:	
(i) Major transaction	\$2,253,600.
(ii) Significant transaction	\$450,700.
(iii) Minor transaction	\$10,300.
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	\$2,300.
(v) Responsive application	\$10,300.
(vi) Petition for exemption under 49 U.S.C. 10502	\$14,000.
(vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a).	\$8,300.
(39) An application of a non-carrier to acquire control of two or more carriers through ownership of stock or otherwise. 49 U.S.C. 11324:	
(i) Major transaction	\$2,253,600.
(ii) Significant transaction	\$450,700.
(iii) Minor transaction	\$10,300.
(iv) A notice of an exempt transaction under 49 CFR 1180.2(d)	\$1,800.
(v) Responsive application	\$10,300.
(vi) Petition for exemption under 49 U.S.C. 10502	\$14,000.
(vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a).	\$8,300.
(40) An application to acquire trackage rights over, joint ownership in, or joint use of any railroad lines owned and operated by any other carrier and terminals incidental thereto. 49 U.S.C. 11324:	
(i) Major transaction	\$2,253,600.
(ii) Significant transaction	\$450,700.
(iii) Minor transaction	\$10,300.
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	\$1,600.
(v) Responsive application	\$10,300.
(vi) Petition for exemption under 49 U.S.C. 10502	\$14,000.
(vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a).	\$8,300.
(41) An application of a carrier or carriers to purchase, lease, or contract to operate the properties of another, or to acquire control of another by purchase of stock or otherwise. 49 U.S.C. 11324:	
(i) Major transaction	\$2,253,600.
(ii) Significant transaction	\$450,700.
(iii) Minor transaction	\$10,300.
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	\$1,900.
(v) Responsive application	\$10,300.
(vi) Petition for exemption under 49 U.S.C. 10502	\$9,900.
(vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a).	\$8,300.
(42) Notice of a joint project involving relocation of a rail line under 49 CFR 1180.2(d)(5)	\$3,400.
(43) An application for approval of a rail rate association agreement. 49 U.S.C. 10706	\$105,600.
(44) An application for approval of an amendment to a rail rate association agreement. 49 U.S.C. 10706:	
(i) Significant amendment	\$19,400.
(ii) Minor amendment	\$150.
(45) An application for authority to hold a position as officer or director under 49 U.S.C. 11328	\$1,200.
(46) A petition for exemption under 49 U.S.C. 10502 (other than a rulemaking) filed by rail carrier not otherwise covered.	\$12,000.
(47) National Railroad Passenger Corporation (Amtrak) conveyance proceeding under 45 U.S.C. 562	\$350.
(48) National Railroad Passenger Corporation (Amtrak) compensation proceeding under Section 402(a) of the Rail Passenger Service Act.	\$350.
(49)–(55) [Reserved]	

PART V: Formal Proceedings

(56) A formal complaint alleging unlawful rates or practices of carriers:	
(i) A formal complaint filed under the coal rate guidelines (Stand-Alone Cost Methodology) alleging unlawful rates and/or practices of rail carriers under 49 U.S.C. 10704(c)(1).	\$350.
(ii) A formal complaint involving rail maximum rates filed under the Simplified-SAC methodology	\$350.
(iii) A formal complaint involving rail maximum rates filed under the Three Benchmark methodology	\$150.
(iv) All other formal complaints (except competitive access complaints)	\$350.
(v) Competitive access complaints	\$150.

Type of proceeding	Fee
(vi) A request for an order compelling a rail carrier to establish a common carrier rate	\$350.
(57) A complaint seeking or a petition requesting institution of an investigation seeking the prescription or division of joint rates or charges. 49 U.S.C. 10705.	\$13,400.
(58) A petition for declaratory order:	
(i) A petition for declaratory order involving a dispute over an existing rate or practice which is comparable to a complaint proceeding.	\$1,000.
(ii) All other petitions for declaratory order	\$1,400.
(59) An application for shipper antitrust immunity. 49 U.S.C. 10706(a)(5)(A)	\$10,500.
(60) Labor arbitration proceedings	\$350.
(61) (i) An appeal of a Surface Transportation Board decision on the merits or petition to revoke an exemption pursuant to 49 U.S.C. 10502(d).	\$350.
(ii) An appeal of a Surface Transportation Board decision on procedural matters except discovery rulings	\$550.
(62) Motor carrier undercharge proceedings	\$350.
(63) (i) Expedited relief for service inadequacies: A request for expedited relief under 49 U.S.C. 11123 and 49 CFR part 1146 for service emergency.	\$350.
(ii) Expedited relief for service inadequacies: A request for temporary relief under 49 U.S.C. 10705 and 11102, and 49 CFR part 1147 for service inadequacy.	\$350.
(64) A request for waiver or clarification of regulations except one filed in an abandonment or discontinuance proceeding, or in a major financial proceeding as defined at 49 CFR 1180.2(a).	\$900.
(65)–(75) [Reserved]	

PART VI: Informal Proceedings

(76) An application for authority to establish released value rates or ratings for motor carriers and freight forwarders of household goods under 49 U.S.C. 14706.	\$1,800.
(77) An application for special permission for short notice or the waiver of other tariff publishing requirements	\$150.
(78) (i) The filing of tariffs, including supplements, or contract summaries	\$1. per page. (\$37. min. charge.)
(ii) The filing of water carrier annual certifications	\$37.
(79) Special docket applications from rail and water carriers:	
(i) Applications involving \$25,000 or less	\$75.
(ii) Applications involving over \$25,000	\$200.
(80) Informal complaint about rail rate applications	\$900.
(81) Tariff reconciliation petitions from motor common carriers:	
(i) Petitions involving \$25,000 or less	\$75.
(ii) Petitions involving over \$25,000	\$200.
(82) Request for a determination of the applicability or reasonableness of motor carrier rates under 49 U.S.C. 13710(a)(2) and (3).	\$350.
(83) Filing of documents for recordation. 49 U.S.C. 11301 and 49 CFR 1177.3(c)	\$62. per document.
(84) Informal opinions about rate applications (all modes)	\$400.
(85) A railroad accounting interpretation	\$1,700.
(86) (i) A request for an informal opinion not otherwise covered	\$2,200.
(ii) A proposal to use on a voting trust agreement pursuant to 49 CFR 1013 and 49 CFR 1180.4(b)(4)(iv) in connection with a major control proceeding as defined at 49 CFR 1180.2(a).	\$7,700.
(iii) A request for an informal opinion on a voting trust agreement pursuant to 49 CFR 1013.3(a) not otherwise covered.	\$750.
(87) Arbitration of certain disputes subject to the statutory jurisdiction of the Surface Transportation Board under 49 CFR 1108:	
(i) Complaint	\$75.
(ii) Answer (per defendant), Unless Declining to Submit to Any Arbitration	\$75.
(iii) Third Party Complaint	\$75.
(iv) Third Party Answer (per defendant), Unless Declining to Submit to Any Arbitration	\$75.
(v) Appeals of Arbitration Decisions or Petitions to Modify or Vacate an Arbitration Award	\$150.
(88) Basic fee for STB adjudicatory services not otherwise covered	\$350.
(89)–(95) [Reserved]	

PART VII: Services

(96) Messenger delivery of decision to a railroad carrier's Washington, DC agent	\$49. per delivery.
(97) Request for service or pleading list for proceedings	\$37. per list.
(98) Processing the paperwork related to a request for the Carload Waybill Sample to be used in an STB or State proceeding that:	
(i) Annual request does not require a Federal Register (FR) notice:	
(A) Set cost portion	\$200.
(B) Sliding cost portion	\$72. per party.
(ii) Annual request does require a FR notice:	
(A) Set cost portion	\$500.
(B) Sliding cost portion	\$72. per party.
(iii) Quarterly request does not require a FR notice:	
(A) Set cost portion	\$61.
(B) Sliding cost portion	\$17. per party.
(iv) Quarterly request does require a FR notice:	
(A) Set cost portion	\$230.
(B) Sliding cost portion	\$17. per party.

Type of proceeding	Fee
(v) Monthly request does not require a FR notice:	
(A) Set cost portion	\$20.
(B) Sliding cost portion	\$5. per party.
(vi) Monthly request does require a FR notice:	
(A) Set cost portion	\$165.
(B) Sliding cost portion	\$5. per party.
(99) (i) Application fee for the STB's Practitioners' Exam	\$250.
(ii) Practitioners' Exam Information Package	\$25.
(100) Carload Waybill Sample data:	
(i) Requests for Public Use File for all years prior to the most current year Carload Waybill Sample data available, provided on CD-R.	\$250. per year.
(ii) Specialized programming for Waybill requests to the Board	\$152. per hour.

* * * * *

[FR Doc. 2025-17006 Filed 9-4-25; 8:45 am]

BILLING CODE 4915-01-P

Proposed Rules

Federal Register

Vol. 90, No. 170

Friday, September 5, 2025

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2025-2274; Project Identifier MCAI-2023-01244-R]

RIN 2120-AA64

Airworthiness Directives; Airbus Helicopters Deutschland GmbH Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus Helicopters Deutschland GmbH Model MBB-BK 117 C-2, MBB-BK 117 D-2, and MBB-BK 117 D-3 helicopters. This proposed AD was prompted by reports of damaged hoist hooks and hoist hook nuts. This proposed AD would require performing an inspection of the affected hoist hook and affected hook nut and, depending on the results of the inspection, replacing the affected hoist hook and affected hook nut. This proposed AD would also prohibit installing an affected assembly (hoist hook attached to the hook damper) unless it is installed using updated procedures. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this NPRM by October 20, 2025.

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

- *Federal eRulemaking Portal:* Go to [regulations.gov](https://www.regulations.gov). Follow the instructions for submitting comments.

- *Fax:* (202) 493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2025-2274; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

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

- You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222-5110. It is also available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2025-2274.

FOR FURTHER INFORMATION CONTACT:

Ramon A. Walker Perez, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (847) 294-7337; email: ramon.a.walker.perez@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments using a method listed under **ADDRESSES**. Include "Docket No. FAA-2025-2274; Project Identifier MCAI-2023-01244-R" at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other

information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to [regulations.gov](https://www.regulations.gov), including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as "PROPIN." The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Ramon A. Walker Perez, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2023-0213, dated December 8, 2023 (EASA AD 2023-0213) (also referred to as the MCAI), to correct an unsafe condition on Airbus Helicopters Deutschland GmbH Model MBB-BK117 C-2, D-2, D-3, and D-3m helicopters, all variants, all serial numbers. The MCAI states that occurrences of damage to the threaded part of the affected hoist hook and to the threads of the affected hook nut have been reported. Investigation identified galling as the root cause of the damage. This condition, if not corrected, could lead to failure of the affected assembly, which could result in loss of the hoist load and injury to persons. The FAA is proposing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2025–2274.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed EASA AD 2023–0213, which specifies procedures for inspecting the affected hoist hook and the affected hook and replacing both the hoist hook and hoist nut if any debris, dent, or crack is found in accordance with updated installation procedures. EASA AD 2023–0213 also prohibits installing an affected assembly (hoist hook attached to the hook damper) or any higher assembly having an affected assembly installed on a helicopter unless it is installed using the updated installation procedures. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section.

FAA’s Determination

These products have been approved by the civil aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA’s bilateral agreement with this State of Design Authority, that authority has notified the FAA of the unsafe

condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2023–0213, described previously as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this proposed AD. See “Differences Between this Proposed AD and the MCAI” for a general discussion of these differences.

Differences Between This Proposed AD and the MCAI

The MCAI applies to MBB–BK117 D–3m helicopters, whereas this proposed AD would not because that model does not have an FAA type certificate.

Explanation of Required Compliance Information

In the FAA’s ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA

ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2023–0213 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2023–0213 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2023–0213 does not mean that operators need comply only with that section. For example, where the AD requirement refers to “all required actions and compliance times,” compliance with this AD requirement is not limited to the section titled “Required Action(s) and Compliance Time(s)” in EASA AD 2023–0213. Material required by EASA AD 2023–0213 for compliance will be available at *regulations.gov* under Docket No. FAA–2025–2274 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 176 helicopters of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect hoist hook and hoist nut	2 work-hours × \$85 per hour = \$170	\$0	\$170	\$29,920

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

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

number of helicopters that might need this replacement.

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Install hoist hook	1 work-hour × \$85 per hour = \$85	\$8,562	\$8,647

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA’s authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency’s authority. The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under

that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. For the reasons discussed above, I certify this proposed regulation:

(1) Is not a “significant regulatory action” under Executive Order 12866,

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Helicopters Deutschland GmbH:

Docket No. FAA–2025–2274; Project Identifier MCAI–2023–01244–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by October 20, 2025.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Helicopters Deutschland GmbH Model MBB–BK 117 C–2, MBB–BK 117 D–2, and MBB–BK 117 D–3 helicopters, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 2500, Cabin Equipment/Furnishings.

(e) Unsafe Condition

This AD was prompted by reports of damage to the threaded part of the affected hoist hook and the threads of the affected hook nut due to galling. The FAA is issuing this AD to detect and correct damage to the hoist hook and hook nut, which if not corrected, could lead to failure of the affected assembly (hoist hook attached to the hook damper), which could result in loss of the hoist load and injury to persons.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required

actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2023–0213, dated December 8, 2023 (EASA AD 2023–0213).

(h) Exceptions to EASA AD 2023–0213

(1) Where EASA AD 2023–0213 refers to its effective date, this AD requires using the effective date of this AD.

(2) This AD does not adopt the “Remarks” section of EASA AD 2023–0213.

(i) No Reporting or Returning Parts Requirement

Although the material referenced in EASA AD 2023–0213 specifies to submit information and return parts to the manufacturer, this AD does not require those actions.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(k) Additional Information

For more information about this AD, contact Ramon A. Walker Perez, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (847) 294–7337; email: ramon.a.walker.perez@faa.gov.

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2023–0213, dated December 8, 2023.

(ii) [Reserved].

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

(4) You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on

the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov.

Issued on September 2, 2025.

Steven W. Thompson,

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

[FR Doc. 2025–17063 Filed 9–4–25; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2025–2272; Project Identifier MCAI–2025–00818–A]

RIN 2120–AA64

Airworthiness Directives; Piaggio Aviation S.p.A. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Piaggio Aviation S.p.A. (Piaggio) Model P–180 airplanes. This proposed AD was prompted by a report of leakage from the flexible hydraulic hoses connected to the hydraulic pump package (HPP). This proposed AD would require replacing the affected flexible hydraulic hoses. This proposed AD would also prohibit installing the affected flexible hydraulic hoses on any airplane. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this NPRM by October 20, 2025.

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

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

- *Fax:* (202) 493–2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA–2025–2272; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except

Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For Piaggio Aerospace material identified in this proposed AD, contact Piaggio, P180 Customer Support, via Pionieri e Aviatori d'Italia, snc—16154 Genoa, Italy; phone: +39 331 679 74 93; email: technicalsupport@piaggioaerospace.it.

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

FOR FURTHER INFORMATION CONTACT:

Adam Hein, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (316) 946-4116; email: adam.hein@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments using a method listed under **ADDRESSES**. Include “Docket No. FAA-2025-2272; Project Identifier MCAI-2025-00818-A” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act

(FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Adam Hein, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2025-0102, dated May 5, 2025 (EASA AD 2025-0102) (also referred to as the MCAI), to correct an unsafe condition on Piaggio Model P-180 Avanti and Avanti II airplanes, manufacturer serial numbers 1002, 1004 to 1234 inclusive, and 3001 to 3018 inclusive. The MCAI states that leakage from the flexible hydraulic hoses was reported on a Model P-180 airplane. A subsequent investigation revealed that the failure of the HPP electrical motor caused an anomalous current to return through the HPP body, resulting in electrical arcing. This arcing, which occurred as the HPP body was in contact with a flexible steel braided hose, punctured the flexible hydraulic hose. Additionally, the improper installation of the HPP, specifically the incorrect routing of the hydraulic flexible lines according to the airplane maintenance manual, contributed to the incident. This condition, if not detected and corrected, could lead to leaks developing in the flexible hydraulic hoses, which could result in loss of the hydraulic system or fire in the HPP area.

To address the unsafe condition, the MCAI requires replacing the affected

flexible hydraulic hoses with a new serviceable part.

You may examine the MCAI in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2025-2272.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed Piaggio Aerospace Service Bulletin 80-0497, Revision 0, dated March 5, 2025 (Piaggio SB 80-0497, Revision 0). This material specifies procedures for replacing the affected flexible hydraulic hoses with new flexible hydraulic hoses that have a non-metallic and non-conductive abrasion sleeve covering the steel braid which will provide electrical insulation that can prevent arcing and electrostatic discharge in case of accidental contact between the flexible hydraulic hoses and HPP body. This material is reasonably available because the interested parties have access to it through their normal course of business or by means identified in the **ADDRESSES** section.

FAA's Determination

These products have been approved by the civil aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, that authority has notified the FAA of the unsafe condition described in the MCAI and material referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the material already described. This proposed AD would also prohibit installing the affected flexible hydraulic hoses on any airplane.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 107 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace flexible hydraulic hoses	22 work-hours × \$85 per hour = \$1,870	\$1,241	\$3,111	\$332,877

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Piaggio Aviation S.p.A.: Docket No. FAA–2025–2272; Project Identifier MCAI–2025–00818–A.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by October 20, 2025.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Piaggio Aviation S.p.A. Model P–180 airplanes, manufacturer serial numbers 1002, 1004 through 1234 inclusive, and 3001 through 3018 inclusive, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 2910, Hydraulic System, Main.

(e) Unsafe Condition

This AD was prompted by a report of leakage from the flexible hydraulic hoses connected to the hydraulic pump package (HPP). The FAA is issuing this AD to prevent contact between the flexible hydraulic hoses and the HPP body, which could result in leaks developing in the flexible hydraulic hoses. The unsafe condition, if not addressed, could result in loss of the hydraulic system or fire in the HPP area.

(f) Compliance

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

(g) Required Action

For airplanes with flexible hydraulic hoses part number (P/N) AS117–04–0205 or P/N 98E0520FAMA000W (landing gear (LG) up and LG down lines); or flexible hydraulic hoses P/N MS8006G207AL or P/N 99G0530FDFD000W (return line) installed: Within 660 hours time-in-service after the effective date of this AD, replace the affected flexible hydraulic hoses in accordance with part 2. B. and 2. C. of the Accomplishment Instructions of Piaggio Aerospace Service Bulletin 80–0497, Revision 0, dated March 5, 2025.

(h) Installation Prohibition

For all airplanes, after the effective date of this AD, do not install flexible hydraulic hoses with part number (P/N) AS117–04–0205 or P/N 98E0520FAMA000W (LG up and LG down lines); or flexible hydraulic hoses P/N MS8006G207AL or P/N 99G0530FDFD000W (return line) on any airplane.

(i) Alternative Methods of Compliance

The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local

Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (j) of this AD and email to: AMOC@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(j) Additional Information

For more information about this AD, contact Adam Hein, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (316) 946–4116; email: adam.hein@faa.gov.

(k) Material Incorporated by Reference

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

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

(i) Piaggio Aerospace Service Bulletin 80–0497, Revision 0, dated March 5, 2025.

(ii) [Reserved]

(3) For Piaggio Aerospace material identified in this AD, contact Piaggio Aviation S.p.A., P180 Customer Support, via Pionieri e Aviatori d'Italia, snc—16154 Genoa, Italy; phone: +39 331 679 74 93; email: technicalsupport@piaggioaerospace.it.

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

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

Issued on August 28, 2025.

Paul R. Bernado,

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

[FR Doc. 2025–17033 Filed 9–4–25; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[USCG–2025–0783]

RIN 1625–AA00

Safety Zone; Patapsco River, Francis Scott Key Bridge

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish two temporary safety zones

for certain waters of the Patapsco River. This action is necessary to provide for the safety of life on these navigable waters at the Francis Scott Key Bridge during demolition and construction operations. This rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Maryland-National Capital Region or a designated representative. We invite your comments on this proposed rulemaking.

DATES: This temporary rule would be in effect from October 15, 2025 to October 15, 2028. Comments and related material must be received by the Coast Guard on or before September 28, 2025.

ADDRESSES: You may submit comments identified by docket number USCG–2025–0783 using the Federal Docket Management System at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments. This notice of proposed rulemaking with its plain-language, 100-word-or-less proposed rule summary will be available in this same docket.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email LCDR Kate M. Newkirk, Sector Maryland-NCR, Waterways Management Division, U.S. Coast Guard: telephone 410–576–2674, email D05-DG-SectorMD-NCR-Prevention-WWM@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code
MDTA Maryland Transportation Authority
COTP Captain of the Port

II. Background, Purpose, and Legal Basis

Maryland Transportation Authority has notified the Coast Guard that it will be resuming demolition and construction of the Francis Scott Key Bridge on the Patapsco River which was previously protected by a safety zone in effect from July 7, 2025, through August 30, 2025. See 90 FR 29457 (July 3, 2025) for notice of that safety zone. Debris removal and hydrographic surveying will be conducted on both the Hawkins Point side of the remaining bridge segments and the Sollers point side. Marine equipment, including barges, positioned in the Patapsco River will be used to support bridge demolition, debris removal operations, and bridge

construction. This operation requires the use of a temporary commercial mooring buoy in the Patapsco River in the vicinity of the old bridge where the barges will be kept. This operation will not impede vessels requiring the use of the federal navigation channel.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within 1500 feet of the construction area. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034.

III. Discussion of Proposed Rule

The COTP is proposing to establish two safety zones from 12:01 a.m. on October 15, 2025, until October 15, 2028. The safety zone will cover the following areas:

All navigable waters of the Patapsco River, encompassed by a line connecting the following four points of the first box 39°13'01.2" N, 076°31' 50.9 W, 39°12'51.5" N 76°31'40.7" W, 39°12'47.8" N 76°32'08.3" W, 39°12'38.8" N 76°31'57.3" W. All navigable waters of the Patapsco River, encompassed by a line connecting the following four points of the second box 39°13'27.7" N 76°31'16.5" W, 39°13'18.7" N 76°31'05.4" W, 39°13'09.0" N 76°31'40.8" W, 39°12'59.3" N 76°31'30.6" W.

The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled demolition and debris removal. The main channel will remain open to vessel traffic. Except for marine equipment and vessels operated by MDTA, or its subcontractors, no vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The term designated representative also includes a supervisor or contractor on site for the sole purposes of designating and establishing safe transit corridors, to permit passage into or through the safety zone, or to notify vessels and individuals that they have entered the safety zone and are required to leave.

The COTP will notify the public that the safety zone will be enforced by all appropriate means to the affected segments of the public, as practicable, in accordance with 33 CFR 165.7(a). Such means of notification will also include, but are not limited to, Broadcast Notice to Mariners. Vessels or persons violating this rule are subject to the penalties set forth in 46 U.S.C. 70036 and 46 U.S.C. 70052. The regulatory text appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analysis based on a number of these statutes and Executive orders.

A. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, this rule will not have a significant economic impact on any vessel owner or operator, for the following reasons.

The safety zones do not restrict the main channel. These safety zones would impact the parts of the Patapsco River during the duration of construction, but we anticipate there will be no vessels that are unable to conduct business. Excursion vessels and commercial fishing vessels are not impacted by this rulemaking. Excursion vessels do not operate in this area, and commercial fishing vessels are not impacted because of their draft. Some towing vessels may be impacted, but bridge project personnel have been conducting outreach throughout the project to coordinate with those vessels. Moreover, the Coast Guard would issue Local Notices to Mariners and a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for

compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the potential effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning

COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves safety zones lasting the duration of construction that would prohibit entry within a portion of the Patapsco River when the presence of a public safety vessel and a broadcast on VHF Ch 16 are present. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Docket Management System at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG–2025–0783 in the search box and click “Search.” Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select “Supporting & Related Material” in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the [https://](https://www.regulations.gov)

www.regulations.gov Frequently Asked Questions web page. Also, if you click on the Dockets tab and then the proposed rule, you should see a “Subscribe” option for email alerts. The option will notify you when comments are posted, or a final rule is published.

Personal information. We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS’s eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

INFORMATION CONTACT section, above.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

PART 165 SAFETY ZONE; PATAPSCO RIVER, FRANCIS SCOTT KEY BRIDGE

- 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.4.

- 2. Add § 165.T05–0783 to read as follows:

§ 165.T05–0783 Safety Zone; Patapsco River, Francis Scott Key Bridge.

(a) *Location.* The following areas are safety zones. These coordinates are based on datum NAD 83.

(1) The safety zone will cover the following area: All navigable waters of the Patapsco River, encompassed by a line connecting the following four points of the first box 39°13′01.2″ N, 076°31′ 50.9 W, 39°12′51.5″ N 76°31′40.7″ W, 39°12′47.8″ N 76°32′08.3″ W, 39°12′38.8″ N 76°31′57.3″ W. All navigable waters of the Patapsco River, encompassed by a line connecting the following four points of the second box 39°13′27.7″ N 76°31′16.5″ W, 39°13′18.7″ N 76°31′05.4″ W, 39°13′09.0″ N 76°31′40.8″ W, 39°12′59.3″ N 76°31′30.6″ W.

(b) *Definitions.* As used in this section—

Captain of the Port (COTP) means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

Designated representative means any Coast Guard commissioned, warrant, or petty officer, including a Coast Guard

coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Maryland-National Capital Region (COTP) in the enforcement of the safety zone. The term also includes an employee of MDTA for the sole purposes of designating and establishing safe transit corridors, to permit passage into or through the safety zone, or to notify vessels and individuals that they have entered the safety zone and are required to leave.

Marine equipment means any vessel, barge or other equipment operated by MDTA, or its subcontractors.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, except for marine equipment, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP, MDTA, or the COTP's designated representative. If a vessel or person is notified by the COTP, MDTA, or the COTP's designated representative that they have entered the safety zone without permission, they are required to immediately leave in a safe manner following the directions given.

(2) Mariners requesting to transit any of these safety zone areas must first contact the MDTA designated representative, the on-site project manager Marine Band Radio VHF-FM channels 13 and 16. If permission is granted, mariners must proceed at their own risk and strictly observe any and all instructions provided by the COTP, MDTA, or designated representative to the mariner regarding the conditions of entry to and exit from any area of the safety zone. The COTP or the COTP's representative can be contacted by telephone number 410-576-2693 or on Marine Band Radio VHF-FM channel 16 (156.8 MHz).

(3) The Coast Guard will publish a notice in the Coast Guard East District Local Notice to Mariners and issue marine information broadcasts on VHF-FM marine band radio announcing specific enforcement dates and times.

(d) *Enforcement officials.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement period.* This section will be in effect from 12:01 a.m. on October 15, 2025 until 12:01 a.m. on October 15, 2028.

Dated: August 29, 2025.

Patrick C. Burkett,

Captain, U.S. Coast Guard, Captain of the Port, Sector Maryland-National Capital Region.

[FR Doc. 2025-17094 Filed 9-4-25; 8:45 am]

BILLING CODE 9110-04-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2024-0572, FRL-12455-01-R10]

Air Plan Approval; OR; Lane County Permitting Rule Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve the June 26, 2024, submitted revisions to the Oregon State Implementation Plan (SIP) applicable in Lane County, Oregon. The changes update the local stationary source permitting regulations to align with existing State regulations. The revisions eliminate generic plant site emission limits in favor of source-specific and source-category specific limits, update construction notification requirements, clarify the use of modeling and monitoring for compliance assurance, and streamline the permit application process.

DATES: Comments must be received on or before October 6, 2025.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R10-OAR-2024-0572, at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from <https://www.regulations.gov>. The EPA may publish any comment received to its public docket. Do not electronically submit any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia

submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Throughout this document, wherever “we” or “our” is used, it means “the EPA.”

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I. Background

A. State Implementation Plan

The Clean Air Act requires the EPA to establish national ambient air quality standards (NAAQS) for carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide.¹ Each State has a State Implementation Plan (SIP) designed to meet the NAAQS through various air pollution regulations, control measures and strategies. A SIP contains elements such as emission limits, pollution control technology requirements, permitting programs, and enforcement mechanisms, among other elements.

¹ See Clean Air Act section 109.

Each State revises its SIP over time to respond to new Federal requirements and to address changing air quality conditions.

States submit each SIP revision to the EPA for review and approval.² The EPA takes action through notice and comment rulemaking to approve and incorporate the submitted State air quality regulations by reference into the SIP, codified in the Code of Federal Regulations (CFR). As part of the SIP, State regulations are enforceable by the EPA and by citizens in Federal district court.³

B. State Submission

On June 26, 2024, the Oregon Department of Environmental Quality (DEQ) and the Lane Regional Air Protection Agency (LRAPA) submitted a SIP revision to the EPA for approval into the Oregon SIP, codified at 40 CFR part 52, subpart MM. The Oregon Department of Environmental Quality (Oregon DEQ) is the permitting authority throughout the State, except where LRAPA has been authorized to permit sources located in Lane County, Oregon. The submitted changes, State effective May 25, 2024, update the stationary source permitting programs in LRAPA regulations to align with changes to State rules (89 FR 59611, July 23, 2024).

II. Evaluation

The following sections of this preamble describe the submitted changes to air permitting regulations applicable in Lane County and evaluate the changes with respect to Clean Air Act requirements.⁴ We have focused on the substantive rule revisions. We have not described all submitted typographical corrections, numbering updates, and minor wording changes that do not alter the meaning of the rules.

A. Title 12 General Provisions and Definitions

Title 12 of the LRAPA regulations contains generally applicable provisions and definitions used throughout the air quality rules applicable in Lane County. LRAPA updated title 12 of the local air regulations to align with corresponding State requirements in OAR chapter 340, division 200. In section 12–001, LRAPA added language outlining the authority of the local air agency to implement the State air quality rules in Lane County and implement any local rule in lieu of

a State rule provided: (1) the local rule is at least as stringent as the State rule; (2) the rule is submitted to the EQC for approval; and (3) the Oregon Environmental Quality Commission (EQC) has not disapproved the rule. We propose to approve this clarification.

In section 12–005, LRAPA combined the definition of “air pollution control device” with “control device” to be consistent with the definition in Oregon’s rules, approved by the EPA in a prior action on July 23, 2024 (89 FR 59611). Also, consistent with changes the Oregon DEQ recently made, LRAPA made clear that the definition of “construction” includes the replacement of a source and that the definition of “emission limit” includes a permit condition or order. These changes are appropriate because they strengthen and clarify the SIP.

LRAPA also made updates to certain terms in section 12–005. LRAPA clarified that all fluorinated greenhouse gases, as defined in 40 CFR part 98, are included in the LRAPA definition of “greenhouse gas,” consistent with the same definition in State rules. LRAPA also clarified the definition of “major source” to ensure that all uses of the term throughout the air quality rules point to the corresponding definition based on the applicable permitting program. This update is consistent with State rule changes approved by the EPA on July 23, 2024 (89 FR 59611).

Also in section 12–005, LRAPA updated the centralized definition of “opacity” to change the test method from EPA Method 203B to EPA Method 9.⁵ This change was designed to align with the change LRAPA made to update the form of its general visible emission standards from an aggregate exception of three minutes in a 60-minute period to a 6-minute block average. For more details, please see our discussion in section II.D. of this preamble.

LRAPA also clarified the correct definition of “particulate matter” to be used in regulating visible emissions, consistent with prior changes made to State rules. LRAPA revised the definition of “regulated air pollutant” to make clear that hazardous air pollutants regulated under Clean Air Act section 112 and toxic air contaminants regulated under Cleaner Air Oregon are not to be included in the definition as used in certain sections of LRAPA’s air regulations. The definition of “significant emission rate” was updated to point to the EPA test method used to

measure inorganic fluoride compounds and updated the definition of “VOC” to align with the Federal definition in 40 CFR 51.100(s). We propose to approve these clarifying updates.

Finally, LRAPA updated the definition of “significant impact level” in section 12–005 to remove the levels established for the coarse particulate matter (PM₁₀) annual NAAQS. This change is consistent with the EPA’s revocation of the PM₁₀ annual NAAQS on October 17, 2006 (71 FR 61144). LRAPA also struck the definition of “generic plant site emission limit (PSEL)” because the Oregon DEQ and LRAPA have repealed the permitting regulations in which the term is used. For further discussion, please see section II.K. of this preamble. We propose to approve the changes.

In section 12–010, LRAPA numbered the abbreviations and acronyms used throughout the air quality rules to aid the reader, removed the abbreviation for Rogue Valley Council of Governments (RVCOG) because it is no longer used in the air quality rules, and added the acronym “SER” for “significant emission rate” to the list. We propose to approve these housekeeping edits.

Section 12–020 lists activities that are not subject to local air quality regulations. Paragraph (2) spells out exceptions, including that local air regulations are appropriate to the extent such regulations are necessary to implement Clean Air Act requirements. LRAPA made a minor change to make clear that local air regulations are appropriate, when necessary, in the LRAPA Board’s or the Oregon Environmental Quality Commission’s discretion, to regulate dairy air contaminant emissions. We propose to find that section 12–020 remains comparable to OAR 340–200–0030 and Oregon Revised Statutes (ORS) 468A–020.

Section 12–025 includes materials referenced by the air quality regulations. LRAPA updated the date by which provisions of the CFR are referenced in the rules, from July 1, 2018, to July 1, 2023. We propose to approve and incorporate by reference this change and the other submitted changes to title 12.

We note that LRAPA did not submit section 12–030 related to compliance schedules for approval into the SIP. Any compliance schedule established by LRAPA under this provision must be specifically submitted to, and approved by the EPA, before it will be federally enforceable or change the requirements of the EPA-approved SIP.⁶

² See Clean Air Act section 110.

³ See Clean Air Act section 304.

⁴ We intend to address the submitted changes to title 36 of the LRAPA regulations, related to excess emissions requirements, in a separate, future action.

⁵ Method 203B—40 CFR part 50, appendix M; Method 9—Visual Determination of the Opacity of Emissions from Stationary Sources described in 40 CFR part 60, appendix A–4.

⁶ 40 CFR 51.102(a)(2) and (c) and 40 CFR 51.260.

B. Title 13 General Duties and Powers of Board and Director

Title 13 of the LRAPA regulations sets out general authority to adopt, implement and enforce regulations in Lane County, including issuing permits. These general authority provisions were first approved into the Oregon SIP in 1993 (58 FR 47385, September 9, 1993). We note, that at the time of that original approval, the general authority provisions were in title 12 and were later renumbered to title 13. These provisions contain long-standing requirements for the make-up of the LRAPA Board and disclosures of potential conflicts of interest for the board members and the director, and were previously approved by the EPA as meeting Clean Air Act State board requirements under section 128.⁷

In the submission, LRAPA made minor editorial changes for plain language and clarified State statutory references. We find that title 13 remains consistent with Clean Air Act section 110 requirements for permit issuance, enforcement authority, State and local agencies, and State boards. We propose to approve and incorporate by reference title 13 into the Oregon SIP at 40 CFR part 52, subpart MM.

C. Title 29 Designation of Air Quality Areas

Title 29 details the nonattainment, maintenance and reattainment area designations in Lane County. Title 29 also includes the original Clean Air Act air quality control regions and prevention of significant deterioration areas. LRAPA made only minor, insignificant wording and numbering changes to sections 29–0010, 29–0020, 29–0030, 29–0040, 29–0050, 29–0060, 29–0070, 29–0310, and 29–0320. We propose to approve these clarifying changes.

D. Title 31 Public Participation

Title 31 of the LRAPA regulations governs public participation in the review of proposed permit actions. LRAPA updated title 31 to align with corresponding State requirements in OAR chapter 340, division 209. LRAPA updated the public hearing procedures in section 31–0070 to make clear that the presiding officer will present a summary of the proposed permit action and preliminary decision during the public hearing, and that LRAPA will prepare a hearing report after the public hearing. We propose to approve the clarifications.

In section 31–0080, consistent with State rule changes (89 FR 59611, July 23, 2024), LRAPA spelled out the timeline and actions required for an owner or operator to appeal a permit decision, specifically adding text stating that an issued permit is effective on the date of signature, unless the applicant requests a hearing to contest the permit within 20 days of the notification date. Also to align with State rules, LRAPA made clear that a permit denial is effective 60 days from the notification date unless the applicant requests a hearing within that timeframe. We propose to approve the changes because they make the permit appeal process transparent to applicants and the public and because the public participation rules remain consistent with the Clean Air Act and Federal requirements for public notice of new source review actions.⁸

E. Title 32 Emission Standards

Title 32 of the LRAPA regulations contains emission standards and provisions of general applicability, including requirements for highest and best practicable treatment and control, operation and maintenance, typically achievable control technology, additional requirements imposed on a permit-by-permit basis, particulate emission limits for process equipment and other sources (other than fuel or refuse burning equipment or fugitive emissions), and alternative emission limits. LRAPA updated title 32 of the LRAPA regulations to align with corresponding State requirements in OAR chapter 340, divisions 208 and 226, as described in the following paragraphs.

LRAPA revised section 32–005 by clarifying that LRAPA will include appropriate conditions in permits to ensure that the highest and best practicable treatment and control of emissions is provided and that the permit conditions ensure that the degree of treatment and control provided must be such that further degradation of existing air quality is minimized to the greatest extent possible. LRAPA also streamlined language in section 32–005 to align with State rule at OAR 340–226–0100, most recently approved by the EPA on July 23, 2024 (89 FR 59611). LRAPA did the same in section 32–008, related to typically achievable control technology, to align the rule language with that in OAR 340–226–0130. These

changes are appropriate and consistent with State rules.

In section 32–009, related to additional control requirements for stationary sources of air contaminants, LRAPA added language consistent with OAR 340–226–0140 spelling out that any air quality analysis must be conducted in accordance with the procedures in title 40 of the LRAPA regulations. In section 32–010, LRAPA updated the visible air contaminant limitations to make clear that the limits in section 32–010 do not apply to recovery furnaces that are subject to the separate standards for wood products industries in title 33 of the LRAPA regulations. This clarification are intended to make the rules easier to interpret.

Also in section 32–010, LRAPA revised its general visible emission standards from a form that uses an aggregate exception of three minutes in a 60-minute period to a form based on a 6-minute block average, as measured by Method 9, a continuous opacity monitoring system (COMS), or an equivalent to Method 9. This change is intended to make the LRAPA rules consistent with State rules at OAR 340–208–0110 and align the rules with the general requirements in 40 CFR 60.11 for the Federal New Source Performance Standards (NSPS).⁹ This change is an appropriate choice.

Also in section 32–010, LRAPA removed text that historically served to phase in tighter, 20 percent opacity limits for wood-fired boilers. The limits are now widely applicable. In addition, LRAPA made visible emission standards applicable to each individual emissions unit, to preclude averaging across the source, consistent with State rules at OAR 340–208–0110. We propose to approve the submitted changes because they clarify how and where visible emission limits apply without relaxing the requirements.

LRAPA removed obsolete language from sections 32–015, 32–020, and 32–030 that historically phased in tighter grain loading standards to limit particulate matter emissions from sources other than fuel and refuse burning or solid fuel burning devices. The tighter limits, consistent with those in OAR 340–226–0210, are in effect and therefore LRAPA removed the old phase-in language. We propose to approve the changes because they are designed to improve permit program implementation and protect the NAAQS.

⁸ 40 CFR 51.161 (public availability of information), 40 CFR 51.165 (permit requirements), and 40 CFR 51.166 (prevention of significant deterioration of air quality).

⁹ The EPA approved OAR 340–208–0110, State effective April 16, 2015, on October 11, 2017 (82 FR 47122).

⁷ LRAPA section 12–025, renumbered to section 13–025; 58 FR 47385, September 9, 1993.

F. Title 33 Prohibited Practices and Control of Special Classes of Industry

Title 33 of the LRAPA regulations establishes requirements for certain industrial sectors, including kraft pulp mills. LRAPA updated title 33 of the LRAPA regulations to align with corresponding State requirements in OAR chapter 340, division 234. LRAPA revised the emission standards for kraft pulp mills in section 33–070 to spell out that categorically insignificant activities are not classified as “other sources” for purposes of total reduced sulfur limits. LRAPA updated the form of the opacity limit to a 6-minute average and made clear that kraft mills with specific particulate emission limits are exempt from the grain loading emission limits in title 32 of the LRAPA regulations. LRAPA also added language stating that LRAPA may require relevant monitoring requirements in the facility permit when more restrictive emission limits than the NSPS are established for a source. These clarifications are designed to improve implementation and enforcement.

G. Title 34 Stationary Source Notification Requirements

Title 34 of the LRAPA regulations addresses stationary source notification requirements. LRAPA updated title 34 of the LRAPA regulations to align with corresponding State requirements in OAR chapter 340, division 210. In section 34–010, LRAPA clarified the applicability provisions to spell out that an owner or operator of a proposed new source that will emit any regulated air pollutant, and that is not otherwise required to obtain an air contaminant discharge permit under LRAPA title 37 or a title V permit under OAR chapter 340, division 218, must notify the permitting authority, consistent with LRAPA title 34. In addition, an owner or operator seeking to modify an existing source must notify the permitting authority if the modification would increase regulated air pollutant emissions, replace an emissions device, or construct, modify, or replace an air pollution control device. We note that such a source seeking to modify may or may not have an existing air contaminant discharge permit or title V permit. This update to section 34–010 made the language in section 34–034 redundant and, therefore, LRAPA repealed section 34–034.

Section 34–015 addresses requests to owners and operators for information and analysis, including an air quality analysis of the source. LRAPA clarified that it will provide the source with a written request for information and that the source must provide the information

by a reasonable date. LRAPA revised this section to include that such requested analysis may include information necessary to determine whether a source's emissions may cause or contribute to a new exceedance of a NAAQS. In section 34–016, LRAPA addressed reporting due dates that may fall on a weekend or holiday, spelling out that the due date is adjusted to the next business day. These changes are intended to help the regulated community understand the rules and improve implementation.

LRAPA also updated the general registration provisions in section 34–025 to make clear to owners and operators of subject sources that appropriate record-keeping is required and that failure to pay fees may be cause to terminate registration.¹⁰ We propose to approve the submitted changes because they clarify what is required to maintain source registration.

In section 34–035, LRAPA added language consistent with OAR 340–210–0225 to clarify which kinds of changes fall under each notification type prescribed in the LRAPA title 34 rules (types 1, 2, 3 and 4), in addition to the associated requirements for owners and operators under each type. Type 1 changes generally consist of construction and modification for which an owner or operator is not required to obtain an air contaminant discharge permit or permit modification under LRAPA title 37, and where the changes would not increase emissions in a significant way, would not increase emissions above an existing plant site emission limit (PSEL), and would not be used to establish a federally enforceable limit on potential to emit.¹¹ A construction or modification may also be a type 1 change if it is one of a list of equipment, units, or activities that are expected to result in little to no change

in emissions.¹² Type 2 changes include construction or modification for which the owner or operator is not required to obtain an air contaminant discharge permit or permit modification under LRAPA title 37, and where the construction or modification would not cause or increase emissions above certain regulatory thresholds, such as the significant emission rate.¹³ Type 3 changes include construction or modification where the construction or modification would cause or increase emissions above certain regulatory thresholds, such as the significant emission rate.¹⁴ Finally, type 4 changes include construction or modification subject to new source review (NSR) requirements governed by LRAPA title 38. We propose to approve the changes because they are designed to ensure that construction activities receive the proper review by the permitting authority.

In section 34–036, LRAPA revised the notice to construct application requirements to be consistent with those in OAR 340–210–0230. LRAPA specified that an application must meet the requirements of the rules in effect on the date the complete application was submitted. LRAPA specified what should be in a notice to construct

¹² Activities that are expected to result in little or no change in emissions include, for example: vacuum pumps; hand-held sanding equipment; Lithographic printing equipment which uses laser printing; concrete application and installation; among numerous other activities. See submitted changes to section 34–035 in the submission in the docket for this action.

¹³ Specifically, construction or modification that would have emissions from any new, modified, or replaced device or activity, or any combination of devices or activities, of less than the significant emission rate (SER) defined in LRAPA title 12; not result in an increase of emissions from the source above any plant site emission limit (PSEL); not result in an increase of emissions from the source above the netting basis by more than or equal to the SER; not be used to establish a federally enforceable limit on the potential to emit; be used to establish a State-only enforceable limit on the potential to emit; not require a technically achievable control technology determination under LRAPA title 44 or a maximum achievable control technology determination under LRAPA title 32; and not cause or contribute to a new exceedance of the NAAQS for a new or replaced device or activity.

¹⁴ Specifically, construction or modification that would result in emissions from any new, modified, or replaced device or activity, or any combination of devices or activities, of more than or equal to the SER defined in LRAPA title 12; result in an increase of emissions from the source above any PSEL before applying unassigned emissions or emissions reduction credits available to the source but less than the SER after applying unassigned emissions or emissions reduction credits available to the source; be used to establish a federally enforceable limit on the potential to emit; require a TACT determination under LRAPA title 32 or a MACT determination under LRAPA title 44; or not cause or contribute to a new exceedance of a NAAQS adopted under title 50 for a new or replaced device or activity.

¹⁰ Registered sources include sources such as motor vehicle surface coating operations, dry cleaners using perchloroethylene, and other types of smaller sources. Registering such sources helps the Oregon DEQ and LRAPA inventory emissions, provide technical assistance, and communicate with owners and operators.

¹¹ More specifically, the construction or modification would: have emissions from any new, modified, or replaced device or activity, or any combination of devices or activities, of less than or equal to the de minimis levels defined in LRAPA title 12, table 1; not result in an increase of emissions from the source above any PSEL; not result in an increase of emissions from the source above the netting basis by more than or equal to the SER; not be used to establish a federally enforceable limit on the potential to emit; and not require a technically achievable control technology determination under LRAPA title 32 or a maximum achievable control technology determination under LRAPA title 44.

application and required that applicants must generally use the LRAPA-provided electronic forms. Applications must include, among other things, information on production, throughput, material usage, emissions with supporting calculations, the anticipated date of the commencement of construction, the anticipated date of construction or modification completion, and land use compatibility statement(s) required by a local planning agency. Any person proposing a type 2 or type 3 change for a new or replaced device or activity must also submit an air quality analysis, for any pollutants that are emitted above the de minimis emission level, demonstrating that the emissions from the individual device or activity, including reductions due to air pollution control devices or permitted limits on production capacity, will not cause or contribute to a new exceedance of a NAAQS. We propose to approve these revisions as strengthening the SIP because they require an air quality analysis to demonstrate the NAAQS are protected when type 2 and type 3 construction and modification activities are planned at a source.

If LRAPA determines that additional information or corrections are needed for consideration of any type of proposed construction or modification, LRAPA will supply the applicant with a written request to provide such information by a reasonable date. In addition, if LRAPA is not able to approve the application, or if the applicant does not provide the requested information in a timely fashion, LRAPA may return the application, retain fees, and issue a proposed denial of the application. The applicant must notify LRAPA of any corrections or revisions to plans and specifications that would impact emissions. The submitted rule changes are designed to improve understanding of the rules by the regulated community and improve permit program implementation.

Consistent with OAR 340–210–0240, LRAPA included rule language in section 34–037 to clarify when and how an applicant may proceed with construction or modification. For a type 1 change, an owner or operator may proceed with construction immediately after notifying LRAPA, unless the owner or operator requests confirmation. For a type 2 change, an owner or operator may construct or modify 60 calendar days after LRAPA receives the complete notice application and fees, or on the date that LRAPA approves the application in writing, whichever is sooner, unless LRAPA determines that the activity does not qualify as a type 2

change. When planning a type 3 or type 4 change, an owner or operator must obtain the appropriate air contaminant discharge permit prior to proceeding with construction or modification. Upon approval, an owner or operator must commence construction or modification within 18 months. Approval terminates if not commenced within 18 months, except that a source may request one 18-month extension of the deadline. Consistent with State rules, LRAPA also spelled out that any construction or modification must happen according to the plans and specifications reviewed and approved by LRAPA. We propose to approve the changes because they clarify the construction approval requirements and require owners and operators to construct according to approved plans.

LRAPA revised section 34–038 to make clear that the approval to construct does not provide approval to operate the constructed, modified, or replaced stationary source or air pollution control device unless otherwise allowed by the rule section or under an air contaminant discharge permit per LRAPA title 37 or an Oregon title V operating permit per OAR chapter 340, division 218. LRAPA also clarified which types of permits must be obtained for type 3 and 4 changes before obtaining approval to operate. We propose to approve these changes that are designed to improve understanding of the rules by the regulated community and improve implementation.

H. Title 37 Air Contaminant Discharge Permits

Title 37 of the LRAPA regulations addresses the requirements for owners and operators of subject stationary sources to obtain an air contaminant discharge permit (ACDP). LRAPA revised the ACDP requirements in title 37 of the LRAPA regulations, consistent with OAR chapter 340, division 216, to ensure proper permitting and NAAQS compliance, as described in the following paragraphs of section II.H. of this preamble.

1. Applicability and Jurisdiction

First, LRAPA updated the applicability and jurisdiction provisions in section 37–0020 to make clear that the owner or operator of a source must construct and operate the permitted facility in accordance with previously approved plans and specifications. Second, consistent with OAR 340–216–0020(4), LRAPA added clarifying language to state that an ACDP permit may not be required prior to obtaining an Oregon title V operating permit if the source may be placed onsite and

operated without any other construction necessary and the source obtains an Oregon title V operating permit prior to operation. LRAPA strengthened the rule by revising section 37–0020 to require that if a source must obtain an ACDP, it may not increase emissions above the PSEL by any amount (rather than above the PSEL by more than the de minimis level) without first obtaining a modified ACDP. We find that these changes to be consistent with already-approved State regulatory changes that strengthen the SIP.

2. Types of Permits

LRAPA revised section 37–0025 to update details about the types of ACDP permits. A short-term activity ACDP may be issued for activities included in section 37–0054 (activities that do not require a title V permit, unexpected or emergency activities, or operation of a pilot or an exploratory unit). LRAPA removed references to generic PSELs because these generic permit limits were removed entirely from LRAPA rules in this rulemaking, following the same change in State rules. LRAPA also revised the rules to eliminate the five-year permit term for a simple and standard ACDP permit. Such permits no longer expire. These changes are consistent with Oregon rules in OAR chapter 340, division 216 and we propose to approve them as SIP strengthening.

LRAPA added clarifying language to section 37–0025 stating that, notwithstanding the other eligibility requirements already established in the regulations for the different types of ACDPs, LRAPA may change the specific permit type to be issued to a source based on the nature, extent, toxicity and impact on human health and the environment of the source's emissions, the complexity of the source and rule that apply, the complexity of the emission controls, potential threat to human health and the environment if the emission controls fail, and the source's capacity, the location of the source, the compliance history of the facility's corporate officers, parent company, subsidiaries, and other related people and entities. We propose to approve these changes because they are designed to enhance oversight of stationary source construction and operation.

3. Definitions

In section 37–0030, LRAPA revised the definition of “moderate technical modification” to clarify that changes to permits that incorporate complex NSPS and National Emission Standards for Hazardous Air Pollutants (NESHAP)

requirements constitute a moderate technical modification when determining permit fees. Similarly, LRAPA revised the definition of a “simple technical modification” to spell out that changes to a permit to incorporate simple NSPS and NESHAP requirements constitute a simple technical modification when determining permit fees. This is appropriate because the Oregon DEQ categorizes an NSPS or NESHAP as “complex” or “simple” only to determine how much to charge applicants for a permit revision, not to limit or change an NSPS or NESHAP’s applicability and/or requirements.

4. Application Requirements

LRAPA updated the permit application provisions in section 37–0040 to require a complete application using LRAPA’s electronic forms and to spell out and clarify certain additional application materials needed when applying for a new, renewed, or modified permit. LRAPA clarified that, depending on the permit type and whether it’s a new permit or permit modification, an application must include, among other things: (1) a plot plan showing the location and height of all emissions units, devices, and activities that emit to the atmosphere, including any air pollution control devices and the nearest residential and commercial properties; (2) the make, model, and identification name or number of each device, activity, and air pollution control device, if known; (3) the exhaust parameters of each emissions unit, device, and air pollution control device; (4) a land use compatibility statement(s) required by the local planning agency; (5) the anticipated date of the commencement of construction completion; and (6) an air quality analysis conducted in accordance with the procedures in LRAPA title 40 demonstrating that the emissions will not cause or contribute to a new exceedance of the NAAQS, including the short-term NAAQS promulgated by the EPA in 2010 for SO₂ and NO₂, and adopted in title 50 of LRAPA’s regulations. LRAPA also added several pieces of information to be required as part of permit renewal applications. Owners and operators must include information about the devices and activities at the source, amount and type of each air contaminant emissions, changes to the source and changes to the information provided for the last permit renewal or issuance, and air quality analysis when required by LRAPA.

For all permit applications, if additional information is needed to complete the application, LRAPA will send a written request to the applicant and require the information be submitted within 60 days. Applicants may request a good cause extension. We propose to approve the changes to the permit application procedures because they are designed to provide LRAPA with the specific information needed to issue a permit that protects ambient air quality, including the short-term NAAQS, and provides transparency to permit applicants.

5. Short-Term Activity Permits

With respect to short-term activity ACDPs, LRAPA updated section 37–0054 to make clear that a short-term activity ACDP is only available for activities that either do not require a title V operating permit, that are unexpected or emergencies, or that involve a pilot plant or exploratory emissions unit. LRAPA made clear that the Oregon DEQ, and LRAPA if delegated, may request the application include an air quality impact analysis demonstrating that the source’s emissions will not cause or contribute to a new exceedance of the NAAQS. Short-term activity permits automatically terminate after 60 days, but LRAPA indicated that an applicant may request one 60-day extension. If a short-term activity permit is issued to an already-permitted source, that source must include the emissions from the short-term activity when determining compliance with applicable PSELs. We propose to approve these revisions because they are intended to prevent covered activities from causing or contributing to a new NAAQS exceedance.

6. Basic Permits

Basic ACDPs are permits designed for relatively small and low-emitting activities such as rock crushers that crush less than 25,000 tons per year crushed, coffee roasters roasting less than 30 green tons per year, surface coating operations that use less than 20 gallons of coating per year, among other source categories and operations. LRAPA added language to section 37–0056 to make clear that LRAPA may determine that a source is ineligible for a basic ACDP based on subsection 37–0025(7) and the considerations listed in section 37–0025(8). LRAPA also spelled out that a basic ACDP may contain any physical or operational limitation, restriction on hours of operation, and/or restrictions on throughput as permit conditions to limit short-term emissions. We propose to approve the

submitted changes because they are designed to protect the NAAQS.

7. General Permits

As specified in title 37 of the LRAPA regulations, general ACDPs are established by the permitting authority for specific source categories when there are multiple sources with the same, or substantially similar, types of operations. The general permit provisions indicate that such a permit is appropriate when all requirements applicable to a covered operation may be included in the general permit, the emission limitations, monitoring, recordkeeping and reporting are the same for all operations covered by the general permit, and the regulated pollutants emitted are of the same type for all covered operations. Examples include rock crushers and asphalt plants. For such general permits, LRAPA added language to section 37–0060 to make clear that LRAPA may determine that a source is ineligible for a general ACDP based on subsection 37–0025(7) and the considerations in 37–025(8). LRAPA also added procedures spelling out how a person may petition to add a new category to the list of source categories covered by general permits. Finally, LRAPA updated the source category list assigning fee classes, removing source categories that no longer existing in LRAPA’s jurisdiction and adding “air curtain incinerators” as fee class one. We propose to approve the revisions as strengthening the SIP.

8. Simple and Standard Permits

Simple ACDPs generally limit a source’s emissions to less than the SER for each pollutant. For simple permits, LRAPA added language to section 37–0064 to make clear that LRAPA may determine that a source is ineligible for a simple ACDP based on subsection 37–0025(7) and the considerations in 37–025(8). LRAPA also updated the fee requirements for simple permits to clarify what source sectors may be eligible for a low fee and when late fees may be charged. Additionally, LRAPA removed generic PSELs from this rule section, and added that each simple permit must include conditions that ensure that emissions from the permitted source will not cause or contribute to a new exceedance of a NAAQS by including a requirement to conduct ambient monitoring or an appropriate physical or operational limit. LRAPA revised the rule to extend the simple permit term from five years to ten years, consistent with State rules at OAR 340–216–0064.

For standard permits, LRAPA revised section 37–0066 in similar ways to the simple permits rule section, except that the permit term for standard permits will generally remain at five years, except when issued to meet major new source review (NSR), in which case the permit will have no expiration date. We propose to approve these changes as consistent with the EPA’s NSR regulations at 40 CFR 51.161 through 51.166. For further discussion, see section II.I. of this preamble.

9. Permit Expiration, Termination, Reinstatement, Revocation and Department-Initiated Permit Modifications

LRAPA made clarifications to the rule governing permit expiration, termination, reinstatement, and revocation at section 37–0082. A source may not operate after its permit expires unless a timely and complete application for renewal or reassignment has been submitted or another type of permit has been applied for or issued, authorizing operation. A source may not operate after its permit terminates, unless a source has been issued a renewal, been reassigned, or obtained a new permit for the same activity or operation. A source may potentially continue to operate if LRAPA determines a permit is no longer needed. A permit may be terminated if a source does not submit a timely and complete application for reassignment or renewal or if a source fails to pay appropriate fees.

LRAPA also revised section 37–0082 to include details on termination of construction approval. Specifically, construction approval terminates if construction is not commenced within 18 months after LRAPA issues such approval. However, when a construction approval permit is terminated for failure to commence or complete construction within required timeframes, a source may request an extension for good cause. LRAPA clarified that a terminated permit may be reinstated by LRAPA if the source submits a complete renewal application within 30 days of termination and pays all applicable fees, consistent with Oregon rules in division 216.

Lastly, LRAPA revised section 37–0084 to be consistent with OAR 340–216–0884, making clear that department-initiated modifications are issued consistent with procedures spelled out in LRAPA title 37. We propose to approve the changes because they are designed to improve permit implementation, ensure proper fees are collected, and ensure sources only operate under valid permits.

10. Tables of Activities and Sources and Permit Fees

Table 1, Section 37–8010

Table 1 of LRAPA section 37–8010 lists the activities and sources that are subject to the ACDP program. LRAPA made some minor edits to this table to make the language consistent with the statewide lists of activities and sources in table 1 of OAR 340–216–8010. First LRAPA clarified which fuel burning equipment and surface coating operations may qualify for a basic ACDP. Second, LRAPA clarified which gasoline dispensing facilities, molded plastic container manufacturing facilities, and motor coach manufacturing facilities may qualify for a general, simple, or standard ACDP. Third, LRAPA made clear that all sources subject to RACT, BACT, LAER, NESHAP, NSPS, or State MACT must obtain a general, simple or standard ACDP, unless otherwise specifically exempted by rule. Fourth, LRAPA added that landfills with more than 200,000 tons of waste in place and that emits more than 664 metric tons per year of methane, are required to get a standard ACDP. We propose to approve the changes because they are designed to make the LRAPA ACDP program at least as stringent as the Oregon ACDP program, ensure facilities are permitted under the appropriate permit types, and ensure proper fees are collected.

Table 2, Section 37–8020

In the submission, LRAPA requested to remove table 2 of LRAPA section 37–8020. This table includes the specific dollar amounts charged for various types of permit actions and is revised over time by LRAPA for inflation and needed revenue adjustments. We propose to approve LRAPA’s request to remove the fee table from the SIP because the requirements for sources to pay pre-construction permit fees at section 37–0020(1) will remain in the SIP, consistent with the requirements of Clean Air Act section 110(a)(2)(L).

I. Title 38 New Source Review

Title 38 of the LRAPA regulations governs pre-construction permitting for stationary sources, also known as new source review or NSR. As discussed in section II.H. of this preamble, LRAPA revised the standard ACDP requirements to remove the expiration dates from permits issued solely to implement the NSR requirements of LRAPA title 38 for a title V source, consistent with changes made to State rules. When a source is subject to both NSR and title V and the NSR permit conditions must be incorporated into

the title V operating permit, an unexpired NSR permit eliminates the need for the source to reapply for the same permit and for the permitting authority to reissue the permit. We propose to approve the removal of NSR permit expiration dates because the EPA’s NSR regulations at 40 CFR 51.161 through 51.166 do not mandate NSR permits expire after a specific duration and removal of the expiration dates does not affect the stringency of the SIP.

J. Title 40 Air Quality Analysis Requirements

Certain sources seeking permits in Lane County are subject to the air quality analysis requirements in title 40 of the LRAPA regulations. In the submission, LRAPA added language to the procedural requirements in section 40–0030, consistent with OAR 340–225–0030. Significant increases in total particulate matter emissions¹⁵ do not require an air quality impact analysis for comparison to significant impact levels, Prevention of Significant Deterioration (PSD) increments, and NAAQS. However, if applicable, LRAPA may require an owner or operator to speciate particulate matter and conduct an air quality analysis for PM₁₀ and PM_{2.5}. We propose to approve this clarification because it is appropriate to focus air quality analyses on PM_{2.5} and PM₁₀ for comparison to the PM₁₀ and PM_{2.5} NAAQS.

LRAPA also corrected the rule language in sections 40–0050 and 40–0070, addressing analyses to determine compliance with the NAAQS, PSD increments, visibility and other requirements, to consistently refer to a “proposed source or modification.” We propose to approve the changes because they correct inadvertent errors from a prior State rulemaking.

K. Title 41 Emission Reduction Credits

Title 41 of the LRAPA regulations address creating and banking emission reduction credits when a person reduces emissions by implementing more stringent controls than required by a permit or rule. LRAPA updated section 41–0030 to clarify that banked emission reduction credits are protected if the banking request comes in before LRAPA submits a notice of a proposed rule or plan development action for publication in the Oregon Secretary of State’s bulletin. LRAPA revised the rule to make clear that the Board or the Oregon EQC may reduce the amount of any banked credit. Lastly, LRAPA updated the status of the Oakridge PM_{2.5} area

¹⁵ Significant in this context means equal to or greater than the SER.

from nonattainment to maintenance because the area was redesignated by the EPA on August 22, 2022 (87 FR 51262). While the EPA does not use a formal “maintenance” area designation, the Oregon DEQ and LRAPA rules include a State designation of “maintenance” that applies to a former nonattainment area. Notably, the change in designation status does not change the minimum emission reductions required to bank credits for the Oakridge area (at least 1 ton per year).

L. Title 42 Stationary Source Plant Site Emission Limits

Plant site emission limits (PSELs) are included in LRAPA air contaminant discharge permits and Oregon title V operating permits as a means of regulating plantwide increases and decreases in air emissions. Historically, PSELs were established at either source-specific levels or standardized “generic” levels for each pollutant. Generic PSELs were defined in the LRAPA air regulations as annual limits set at one (1) ton less than the significant emission rate (SER) for each pollutant. In practice, a source with capacity less than the SER for a pollutant would often be assigned a generic PSEL in a permit. However, many such sources had actual emissions lower than the generic PSEL. This system was devised in 2001 as a permit streamlining practice that allowed owners or operators to increase emissions up to the generic PSEL without requiring a permit modification, if there were no physical modifications to the source. Oregon has since determined that the use of generic PSELs is no longer an appropriate permitting tool. In the submission, LRAPA followed the Oregon DEQ’s lead and eliminated generic PSELs in favor of PSELs specific to an individual source or source category. The changes are described in the following paragraphs of this preamble.

LRAPA clarified in the general requirements for establishing PSELs at section 42–0035 that such limits must include aggregate insignificant activities, if applicable, because aggregate insignificant activities must be considered when determining NSR applicability under title 38 of the LRAPA regulations. We propose to approve this clarification because it is intended to make sure that sources are appropriately brought into the NSR permitting program for review.

LRAPA repealed the generic PSEL option at 42–0040 and all references to generic PSELs. LRAPA then revised the annual PSEL provisions in 42–0041 to account for the repeal of the generic PSEL option and to further clarify how

LRAPA will establish all types of annual PSELs. Specifically, for a general ACDP, the permitting authority may establish a general PSEL for a pollutant based on the corresponding source category’s maximum potential to emit that pollutant.¹⁶ For each source subject to a simple ACDP, a source-specific PSEL is established for each regulated pollutant based on the facility’s potential to emit. In addition, for each source subject to a standard ACDP, the permitting authority will establish a source-specific PSEL for each regulated pollutant based on the facility’s potential to emit, netting basis, or a level requested by the applicant, whichever is less. This approach is designed to yield permits that more accurately reflect actual emissions and to ensure the permitting authority has the opportunity to require and review air quality modeling for compliance with the short-term NAAQS.

Finally, LRAPA clarified that an increase in the PSEL for PM₁₀ or PM_{2.5} is subject to air quality analysis requirements but an increase in total particulate matter is not, as described in section II.I. of this preamble. In reviewing the repeal of generic PSELs and the changes to LRAPA title 42, consistent with OAR chapter 340, division 222, we propose to approve the changes described as well as other changes LRAPA made to the PSEL rules because they clarify and strengthen the SIP.

M. Title 48 Rules for Fugitive Emissions

Title 48 of the LRAPA regulations details the rules for minimizing fugitive emissions to the greatest extent practicable. LRAPA made only minor, insignificant wording and numbering

¹⁶ Revised section 42–0041(1) states “For sources subject to a General ACDP or a General Oregon Title V Operating Permit, a PSEL may be set based on the potential to emit of the largest emitting source in that source category for all sources on that permit type in the State. PSELs will be set for all regulated pollutants emitted at more than the de minimis emission level.” The EPA interprets this to mean that the PSEL may be set based on the potential to emit of the largest emitting source in the source category for which the permitting authority issued the General ACDP. For example, the Oregon DEQ has issued a General ACDP for portable and stationary rock crushers, screens, and associated material handling activities (SIC 1442): Permit Number AQGP–008 (available at <https://www.oregon.gov/deq/FilterPermitsDocs/AQGP-008.pdf>). Revised LRAPA section 42–0041(1) permits the LRAPA to set the PSELs for sources eligible under this General ACDP to the potential to emit of the largest emitting portable and stationary rock crusher, screening, and material handling source that holds a current General ACDP under AQGP–008 in Oregon. The EPA further understands that a source with the potential to emit equal to or greater than the significant emission rate (SER) for a pollutant is subject to a standard ACDP and therefore any PSEL revisions for sources subject to General ACDPs will always be lower than prior Generic PSELs.

changes to sections 48–005 and 48–015. We propose to approve these clarifying changes.

N. Title 50 Ambient Air Standards and PSD Increments

Title 50 of the LRAPA regulations lists the ambient air quality standards and increments applicable in Lane County. LRAPA made only minor, insignificant wording and numbering changes to sections 50–001, 50–005, 50–025, 50–030, 50–035, 50–040, 50–045, 50–050, 50–055, and 50–065. We propose to approve these clarifying changes.

O. Title 51 Air Pollution Emergencies

Title 51 of the LRAPA regulations governs air pollution advisories, alerts, warnings, and emergencies, including pollutant levels that trigger specific public announcements and actions to be taken to abate pollution when necessary. LRAPA made only minor, insignificant wording and numbering changes to sections 51–005, 51–007, 51–010, 51–011, 51–015, 51–020, 51–025, Table I, Table II, and Table III.

III. Proposed Action

The EPA is proposing to approve revisions to the Oregon SIP applicable in Lane County and submitted on June 26, 2024.¹⁷ These changes are approved only to the extent the requirements apply to: (1) pollutants for which NAAQS have been established (criteria pollutants) and precursors to those criteria pollutants as determined by the EPA for the applicable geographic area; and (2) any additional pollutants that are required to be regulated under part C of title I of the Clean Air Act, but only for the purposes of meeting or avoiding the requirements of part C of title I of the Clean Air Act. The following paragraphs detail our proposed incorporations by reference.

A. Rule Sections Approved and Incorporated by Reference

The EPA is proposing to approve and incorporate specific LRAPA rule sections by reference. Upon final action, the regulatory portion of the Oregon SIP, at 40 CFR 52.1970(c), will include the following provisions, State effective May 25, 2024:

- LRAPA section 12–001 General (establishing general provisions applicable to all LRAPA air quality regulations);
- LRAPA section 12–005 Definitions (defining terms used in the LRAPA air quality regulations);

¹⁷ We intend to address the submitted changes to title 36 of the LRAPA regulations in a separate, future action.

- LRAPA section 12–010 Abbreviations and Acronyms (defining abbreviations and acronyms used in the LRAPA air quality regulations);
- LRAPA section 12–020 Exceptions (clarifying what activities are not covered by the LRAPA air quality regulations);
- LRAPA section 12–025 Reference Materials (specifying the title and version of each reference material used in the LRAPA air quality regulations);
- LRAPA section 13–005 General Duties and Powers of Board and Director (spelling out powers of the LRAPA board and LRAPA director);
- LRAPA section 13–010 Duties and Powers of the Board of Directors (listing the powers of the LRAPA board);
- LRAPA section 13–020 Duties and Function of the Director (listing the duties and functions of the LRAPA director);
- LRAPA section 13–025 Conflict of Interest (board conflict of interest requirements);
- LRAPA section 13–035 Public Records and Confidential Information (identifying public records requirements); LRAPA section 29–0010 Definitions (definitions for purposes of designation of air quality areas);
- LRAPA section 29–0020 Designation of Air Quality Control Regions (listing historic air quality control regions);
- LRAPA section 29–0030 Designation of Nonattainment Areas (identifying nonattainment areas in Lane County);
- LRAPA section 29–0040 Designation of Maintenance Areas (listing maintenance areas in Lane County);
- LRAPA section 29–0050 Designation of Prevention of Significant Deterioration Areas (listing PSD class I areas in Oregon and requirements for reclassifying areas);
- LRAPA section 29–0060 Redesignation of Prevention of Significant Deterioration Areas (procedures for redesignating PSD areas);
- LRAPA section 29–0070 Special Control Areas (designating special controls areas);
- LRAPA section 29–0300 Designation of Sustainment areas (listing areas designated as sustainment in Lane County);
- LRAPA section 29–0310 Designation of Reattainment Areas (listing areas designated as reattainment in Lane County);
- LRAPA section 29–0320 Priority Sources (identifying residential wood devices as priority sources for offsets);
- LRAPA section 31–0020 Applicability (listing types of permit actions requiring public notice);
- LRAPA section 31–0030 Public Notice Categories and Timing (establishing categories for different levels of public participation);
- LRAPA section 31–0040 Public Notice Information (detailing the information that is required in public notices);
- LRAPA section 31–0050 Public Notice Procedures (stating how notice will be provided to the public);
- LRAPA section 31–0080 Issuance or Denial of a Permit (procedures LRAPA will follow to issue or deny permits);
- LRAPA section 32–005 Highest and Best Practical Treatment and Control Required (permit conditions to ensure high degree of pollutant removal);
- LRAPA section 32–007 Operating and Maintenance Requirements (permit conditions to include operational, maintenance and work practices);
- LRAPA section 32–008 Typically Achievable Control Technology (TACT) (control determination procedures);
- LRAPA section 32–009 Additional Control Requirements for Stationary Sources of Air Contaminants (procedures for establishing additional pollution controls);
- LRAPA section 32–010 Visible Air Contaminant Limitations (setting visible emission standards and monitoring methods);
- LRAPA section 32–015 Particulate Emission Limitations for Sources Other Than Fuel Burning Equipment, Refuse Burning Equipment and Fugitive Emissions (limitations on particulate emissions and associated test methods);
- LRAPA section 32–020 Particulate Matter Weight Standards—Existing Combustion Sources (limitations on particulate emissions from existing fuel-burning equipment);
- LRAPA section 32–030 Particulate Matter Weight Standards—New (limitations on particulate emissions from new fuel-burning equipment);
- LRAPA section 32–045 Process Weight Emission Limitations and Determination of Process Weight (limitations on particulate emissions based on operation type);
- LRAPA section 32–060 Air Conveying Systems (setting particulate matter emissions from air conveying systems);
- LRAPA section 32–065 Sulfur Content of Fuels (setting limits on fuel oil sulfur content);
- LRAPA section 32–070 Sulfur Dioxide Emission Limitations (setting limits on sulfur dioxide emissions based on heat input);
- LRAPA section 32–090 Other Emissions (stating that detrimental emissions are not allowed);
- LRAPA section 32–100 Alternative Emission Controls (Bubble) (procedures for establishing alternative emission controls);
- LRAPA section 32–8010 Particulate Matter Emissions Standards for Process Equipment (process weight limits);
- LRAPA section 33–060 Board Products Industries (Hardboard, Particleboard, Plywood Veneer) (prohibited practices for board products industries);
- LRAPA section 33–065 Charcoal Producing Plants (pollution and monitoring requirements for charcoal plants);
- LRAPA section 33–070 Kraft Pulp Mills (emission limits for units at Kraft pulp mills) except, in (1) the definitions of “non-condensables”, “other sources”, and “TRS”, (3)(a), (4)(b), (5)(b), (6)(a) and (6)(b);
- LRAPA section 33–500 Particulate Matter Emissions Standards for Process Equipment (process weight limits);
- LRAPA section 34–010 Applicability and Requirements (identifying what types of sources are subject to the stationary source notification requirements);
- LRAPA section 34–015 Request for Information (requiring owners and operators to provide information and analysis as necessary to issue permits and ascertain compliance);
- LRAPA section 34–016 Records; Maintaining and Reporting (how to maintain records and report information to LRAPA);
- LRAPA section 34–020 Information Exempt from Disclosure (spelling out what is considered a trade secret or other category of information that may be exempt from disclosure);
- LRAPA section 34–025 Registration in General (stating that certain sources must register with LRAPA);
- LRAPA section 34–030 Registration Requirements and Re-Registration and Maintaining Registration (outlining the general requirements for registering sources, including the information to provide and forms to use);
- LRAPA section 34–035 Types of Construction/Modification Changes (listing the types of construction and modification changes requiring notification to LRAPA);
- LRAPA section 34–036 Notice to Construct Application (listing the information to be provided in a notice and required forms to use);
- LRAPA section 34–037 Construction Approval (requirements and limitations of approvals to construct and orders prohibiting construction);

- LRAPA section 34–038 Approval to Operate (requirements and limitations of approvals to operate);

- LRAPA section 37–0020

Applicability and Jurisdiction (sources required to obtain an air contaminant discharge permit (ACDP));

- LRAPA section 37–0025 Types of Permits (outlining the types of ACDPs);

- LRAPA section 37–0030 Definitions (terms defined for use in the ACDP rules);

- LRAPA section 37–0040

Application Requirements (detailing how to apply for an ACDP);

- LRAPA section 37–0052

Construction ACDP (describing the requirements for construction ACDPs);

- LRAPA section 37–0054 Short Term

Activity ACDPs (describing the requirements for short term activity ACDPs);

- LRAPA section 37–0056 Basic ACDPs (describing the requirements for basic ACDPs);

- LRAPA section 37–0060 General Air Contaminant Discharge Permits (describing the requirements for general ACDPs);

- LRAPA section 37–0062 General ACDP Attachments (allowing sources to be assigned to general ACDP attachments);

- LRAPA section 37–0064 Simple ACDPs (describing the requirements for simple ACDPs);

- LRAPA section 37–0066 Standard ACDPs (describing the requirements for standard ACDPs);

- LRAPA section 37–0068 Simple and Standard ACDP Attachments (allowing the addition of requirements to existing simple and standard ACDPs);

- LRAPA section 37–0070 Permitting a Source with Multiple Activities or Processes at a Single Adjacent or Contiguous Site (allowing standard ACDPs for sources with multiple activities or processes);

- LRAPA section 37–0082 Expiration, Termination, Reinstatement or Revocation of an ACDP (governing the conditions and processes for expired, terminated, reinstated, and revoked ACDPs);

- LRAPA section 37–0084 LRAPA Initiated Modification (allowing for modifications to ACDPs when appropriate);

- LRAPA section 37–0090 Sources Subject to ACDPs and Fees (requiring sources to pay appropriate fees);

- LRAPA section 37–0094 Temporary Closure (adjusting annual fees due to temporary closure);

- LRAPA section 37–8010 (listing source categories that must obtain an ACDP);

- LRAPA section 38–0010

Applicability, General Prohibitions,

General Requirements, and Jurisdiction (specifying new source review applicability and general requirements);

- LRAPA section 38–0025 Major Modification (denoting what constitutes a major modification at an existing source);

- LRAPA section 38–0030 New Source Review Procedural Requirements (required information to be submitted for new source review);

- LRAPA section 38–0034 Exemptions (requirements for temporary emission sources);

- LRAPA section 38–0045

Requirements for Sources in Sustainment Areas (PSD and net air quality benefit requirements for sustainment areas);

- LRAPA section 38–0050 Requirements for Sources in Nonattainment Areas (LAER and net air quality benefit requirements for nonattainment areas);

- LRAPA section 38–0055 Requirements for Sources in Reattainment Areas (LAER, net air quality benefit and air quality analysis requirements for reattainment areas);

- LRAPA section 38–0060 Requirements for Sources in Maintenance Areas (PSD and net air quality benefit requirements for maintenance areas);

- LRAPA section 38–0070 Prevention of Significant Deterioration Requirements for Sources in Attainment or Unclassified Areas (PSD requirements including monitoring, BACT, and air quality analysis);

- LRAPA section 38–0245 Requirements for Sources in Sustainment Areas (air quality analysis, net air quality benefit and BACT requirements for sustainment areas);

- LRAPA section 38–0250 Requirements for Sources in Nonattainment Areas (State NSR requirements for nonattainment areas);

- LRAPA section 38–0255 Requirements for Sources in Reattainment Areas (State NSR requirements for reattainment areas);

- LRAPA section 38–0260 Requirements for Sources in Maintenance Areas (State NSR requirements for maintenance areas);

- LRAPA section 38–0270 Requirements for Sources in Attainment and Unclassifiable Areas (State NSR requirements for attainment and unclassifiable areas);

- LRAPA section 38–0500 Net Air Quality Benefit for Sources Located Within or Impacting Designated Areas (net air quality benefit emission offset requirements);

- LRAPA section 38–0510 Common Offset Requirements (reasonable further

progress common offset requirements), except 0510(3);

- LRAPA section 38–0530

Requirements for Demonstrating Net Air Quality Benefit for Non-Ozone Areas (major and State NSR offset requirements for non-ozone areas);

- LRAPA section 38–0540 Sources in a Designated Area Impacting Other Designated Areas (major and State NSR offset requirements in areas impacting other designated areas);

- LRAPA section 40–0010 Purpose (identifying the purpose of air quality analysis rules);

- LRAPA section 40–0020 Definitions (listing the definitions applicable to the air quality analysis rules);

- LRAPA section 40–0030 Procedural Requirements (air quality analysis procedures);

- LRAPA section 40–0040 Air Quality Models (requiring all modeling to be based on appendix W);

- LRAPA section 40–0045

Requirements for Analysis in Maintenance Areas (maintenance area impact analysis requirements);

- LRAPA section 40–0050 Requirements for Analysis in PSD Class II and Class III Areas (PSD impact analysis requirements);

- LRAPA section 40–0060 Requirements for Demonstrating Compliance with Standards and Increments in PSD Class I Areas (PSD impact analysis requirements);

- LRAPA section 40–0070 Requirements for Demonstrating Compliance with Air Quality Related Values Protection (Federal major source AQRV compliance);

- LRAPA section 41–0030 Emission Reduction Credits (how to establish emission reduction credits and bank them);

- LRAPA section 42–0020

Applicability (stationary source plant site emission limit applicability);

- LRAPA section 42–0030 Definitions (definitions that apply to plant site emission limit rules);

- LRAPA section 42–0035 General Requirements for Establishing All PSELs (PSEL requirements for sources);

- LRAPA section 42–0041 Annual PSEL (opportunity to obtain an annual PSEL when appropriate);

- LRAPA section 42–0042 Short Term PSEL (opportunity to obtain a short term PSEL when appropriate);

- LRAPA section 42–0046 Netting Basis (procedures for establishing a netting basis when appropriate);

- LRAPA section 42–0048 Baseline Period and Baseline Emission Rate (establishing baseline for criteria pollutants and greenhouse gases for purposes of permitting);

- LRAPA section 42–0051 Actual Emissions (determining actual emissions from baseline);
- LRAPA section 42–0055 Unassigned Emissions (tracking and managing the difference between netting basis and PTE);
- LRAPA section 42–0080 Plant Site Emission Limit Compliance (requiring specific monitoring and compliance methods);
- LRAPA section 42–0090 Combining and Splitting Sources and Changing Primary SIC Code (regarding the allowable ways to combine and split sources);
- LRAPA section 48–005 Definitions (definitions for purposes of the fugitive emissions rules);
- LRAPA section 48–015 General Applicability (listing examples of sources subject to the fugitive emissions rules);
- LRAPA section 50–001 Definitions (definitions for purposes of the ambient air standards and PSD increments);
- LRAPA section 50–005 Purpose and Scope of Ambient Air Standards (identifying the scope of ambient air standards);
- LRAPA section 50–015 Suspended Particulate Matter (listing the particulate matter ambient air standards);
- LRAPA section 50–025 Sulfur Dioxide (listing the sulfur dioxide ambient air standards);
- LRAPA section 50–030 Carbon Monoxide (listing the carbon monoxide ambient air standards);
- LRAPA section 50–035 Ozone (listing the ozone ambient air standards);
- LRAPA section 50–040 Nitrogen Dioxide (listing the nitrogen dioxide ambient air standards);
- LRAPA section 50–045 Lead (listing the lead ambient air standards);
- LRAPA section 50–050 General (identifying the purpose of PSD increments);
- LRAPA section 50–055 Ambient Air PSD Increments (listing the PSD increments by area class);
- LRAPA section 50–065 Ambient Air Quality Impact Levels for Maintenance areas (impact levels for carbon monoxide and particulate matter maintenance areas);
- LRAPA section 51–005 Introduction (introduction to air pollution emergency requirements);
- LRAPA section 51–007 Definitions (definitions for purposes of air pollution emergency requirements);
- LRAPA section 51–010 Episode Stage Criteria for Air Pollution Emergencies (criteria for air pollution emergency episode stages);

- LRAPA section 51–011 Special Conditions (ozone advisories and particle fallout special conditions);
- LRAPA section 51–015 Source Emission Reduction Plans (setting forth emission reduction measures to be taken during an air pollution alert, warning, or emergency);
- LRAPA section 51–020 Preplanned Abatement Strategies (establishing when source emission reduction plans are required); and
- LRAPA section 51–025, Table I, Table II, Table III (setting forth air pollution episode conditions and control actions).

B. Rule Sections Approved But Not Incorporated by Reference

We propose to approve the following rule sections to the extent the provisions relate to the implementation of requirements in the SIP, but we note we are not incorporating these provisions by reference into 40 CFR part 52, subpart MM. These types of rules are generally not incorporated by reference into the CFR because they may conflict with the EPA's independent administrative and enforcement procedures under the Clean Air Act.

- LRAPA section 31–0070 Hearing Procedures (setting procedures for permit hearings).

C. Rule Sections Removed From Incorporation by Reference

The EPA is proposing to remove from incorporation by reference the following LRAPA rule sections:

- LRAPA section 37–8020 Table 2 Air Contaminant Discharge Permit (fees for air contaminant discharge permits);
- LRAPA section 34–034 Requirements for Construction (notice of construction and approval of plans requirements); and
- LRAPA 42–0040 Generic Annual PSEL (providing for generic annual plant sit emission limits).

IV. Incorporation by Reference

In this document, the EPA is proposing to include in a final rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the provisions described in section III. of this preamble. The EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

Also in this document, the EPA is proposing to remove in a final rule, regulatory text from incorporated by reference, as described in section III. of this preamble.

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because SIP actions are exempt from review under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the proposed rulemaking would not have tribal

implications and would not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

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

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

Dated: August 22, 2025.

Emma Pokon,

Regional Administrator, Region 10.

[FR Doc. 2025–17055 Filed 9–4–25; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2024–0558; FRL–12961–01–R4]

Air Plan Approval; South Carolina; Charlotte-Gastonia-Rock Hill Area Maintenance Plan for the 2008 8-Hour Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On September 26, 2023, the State of South Carolina, through the South Carolina Department of Environmental Services (SCDES, formerly the “South Carolina Department of Health and Environmental Control”), submitted a request for the Environmental Protection Agency (EPA) to approve a State Implementation Plan (SIP) revision containing the State’s plan for maintaining the 2008 ozone National Ambient Air Quality Standard (NAAQS or standard) through 2036 for the South Carolina portion of the bi-state Charlotte-Rock Hill, North Carolina-South Carolina 2008 8-hour ozone nonattainment area (the entire area is hereinafter referred to as the “bi-State Charlotte Area” and the South Carolina portion is hereinafter referred to as the “York County Area”). EPA is proposing to approve and incorporate this maintenance plan, including the 2018 and 2036 motor vehicle emission budgets (budgets) for nitrogen oxides (NOx) and volatile organic compounds (VOC) for the York County Area, into the SIP. EPA is also notifying the public of the status of EPA’s adequacy

determination for the budgets for the York County Area.

DATES: Comments must be received on or before October 6, 2025.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2024–0558 at [regulations.gov](https://www.regulations.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

Nelsha Athauda, Multi Air Pollutant Coordination Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404)–562–9360. Ms. Athauda can also be reached via electronic mail at Athauda.Nelsha@epa.gov.

SUPPLEMENTARY INFORMATION:

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I. Summary of EPA’s Proposed Action

In accordance with the Clean Air Act, 42 U.S.C. 7401, *et seq.* (CAA or Act), EPA is proposing to approve the York

County Area’s maintenance plan for the 2008 8-hour ozone NAAQS, adopted by SCDES¹ on September 26, 2023, and submitted by SCDES as a revision to the South Carolina SIP on September 26, 2023.²

The York County Area’s maintenance plan for the 2008 8-hour ozone NAAQS, submitted by SCDES on September 26, 2023, is designed to maintain the 2008 8-hour ozone NAAQS within the York County Area through the end of the second 10-year portion of the maintenance period beyond redesignation (through 2036). EPA is proposing to approve the plan because it meets all applicable requirements under CAA sections 110 and 175A. EPA is also proposing to approve the 2018 and 2036 NOx and VOC budgets in the York County Area second maintenance plan because they meet the applicable transportation conformity requirements under 40 CFR 93.118(e).

II. Background

On March 12, 2008, EPA promulgated a revised 8-hour ozone NAAQS of 0.075 parts per million (ppm). *See* 73 FR 16436 (March 27, 2008). Under EPA’s regulations at 40 CFR part 50, the 2008 8-hour ozone NAAQS is attained when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.075 ppm. *See* 40 CFR 50.15. Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less

¹ On July 1, 2024, SCDES was restructured into a health agency, the Department of Public Health, and an environmental agency, the Department of Environmental Services (DES). In a letter dated June 20, 2024, South Carolina represented to EPA that all the functions, powers, and duties of the environmental divisions, offices, and programs of the South Carolina Department of Health and Environmental Control (SCDHEC), including the authority to administer and enforce state implementation plans, are retained and continued in full force and effect under DES. This letter is in the docket for this proposed rulemaking. Throughout this proposal, the terms, “Department”, “South Carolina Department of Health and Environmental Services”, “SCDHEC”, “South Carolina Department of Environmental Services”, and “SCDES” are interchangeable.

² The September 26, 2023, SIP submission, with exception of the supporting modeling files, is included in the docket for this action. Due to size and compatibility limitations of the Federal Docket Management System, the supporting modeling files are instead available at the EPA Region 4 office. To request these files, please contact the person listed in this Notice of Proposed Rulemaking (NPRM) under the section titled **FOR FURTHER INFORMATION CONTACT**.

than 75 percent data completeness as determined in Appendix I of part 50.

Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate as nonattainment any area that is violating the NAAQS, based on the three most recent years of complete, quality assured, and certified ambient air quality data at the conclusion of the designation process. The bi-state Charlotte Area was designated marginal nonattainment for the 2008 8-hour ozone NAAQS on May 21, 2012, (effective July 20, 2012) using 2009–2011 ambient air quality data. *See* 77 FR 30088 (May 21, 2012). The Area attained the standard, and on April 17, 2015, SCDES submitted a redesignation request and the first 10-year maintenance plan for the York County Area. In the final implementation rule for the 2008 8-hour ozone NAAQS (SIP Implementation Rule), EPA established ozone nonattainment area attainment dates based on Table 1 of section 181(a) of the CAA. *See* 80 FR 12264 (March 6, 2015). This rule established an attainment date three years after the July 20, 2012, effective date for areas classified as marginal areas for the 2008 8-hour ozone nonattainment designations. Therefore, the bi-state Charlotte Area's attainment date was July 20, 2015. In 2015, the York County Area was redesignated to attainment for the 2008 8-hour ozone NAAQS, the 10-year maintenance plan was approved, and the public was notified that EPA found the NOx and VOC budgets adequate. *See* 80 FR 76865 (December 11, 2015).

The primary guidance on maintenance plans and redesignation requests is the September 4, 1992, memorandum from John Calcagni, titled "Procedures for Processing Requests to Redesignate Areas to Attainment" ("Calcagni Memorandum").³ The Calcagni Memorandum outlines the key elements of a maintenance plan, which include the following: attainment emissions inventory, maintenance demonstration, monitoring network requirements, verification of continued attainment, and contingency plan elements.

On April 17, 2015, SCDES requested that EPA redesignate the South Carolina portion of the bi-state Charlotte Area to attainment for the 2008 8-hour ozone NAAQS and submitted a SIP revision

containing the State's plan for maintaining attainment of the 2008 8-hour ozone standard in the Area, including the 2014 and 2026 budgets for NOx and VOC for the York County Area. In a NPRM published on October 14, 2015, EPA proposed to determine that the bi-state Charlotte Area is continuing to attain the 2008 8-hour ozone NAAQS; to approve and incorporate into the South Carolina SIP the State's plan for maintaining attainment of the 2008 8-hour ozone standard in the Area, including the 2014 and 2026 budgets for NOx and VOC for the South Carolina portion of the bi-state Charlotte Area; and to redesignate the South Carolina portion of the bi-state Charlotte Area to attainment for the 2008 8-hour ozone NAAQS. *See* 80 FR 61775 (October 14, 2015). EPA approved the York County maintenance plan and the State's requests to redesignate the York County Area to attainment for the 2008 8-hour ozone NAAQS, effective January 11, 2016. *See* 80 FR 76865 (December 11, 2015).

Section 175A(b) of the CAA requires states to submit a revision to the SIP eight years after redesignation to provide for maintenance of the NAAQS for ten additional years following the end of the first 10-year period. Accordingly, on September 26, 2023, South Carolina submitted the second maintenance plan for the York County Area showing that the Area is expected to remain in attainment of the 2008 8-hour ozone NAAQS through 2036.

EPA has revised the ozone NAAQS once since the 2008 standards were finalized. On October 1, 2015, the Agency revised both the primary and secondary NAAQS for ozone to a level of 0.070 ppm (annual fourth-highest daily maximum 8-hour average concentration, averaged over 3 years). *See* 80 FR 65296 (October 26, 2015). On November 16, 2017, EPA designated areas for the 2015 8-hour ozone NAAQS. The bi-state Charlotte Area was designated attainment for that standard with an effective date of August 3, 2018. *See* 83 FR 25776 (June 4, 2018).

III. EPA's Evaluation of South Carolina's SIP Submittal

As mentioned above, on September 26, 2023, SCDES submitted the York County Area's maintenance plan to EPA as a revision to the South Carolina SIP. The submittal includes the maintenance plan, air quality data, emissions inventory information, motor vehicle emissions budgets, and appendices.

EPA has reviewed the York County Area's maintenance plan, which is designed to maintain the 2008 8-hour ozone NAAQS within the bi-state

Charlotte Area through the end of the 20-year period beyond redesignation, as required under CAA section 175A(b). The following is a summary of EPA's interpretation of the section 175A requirements⁴ and EPA's evaluation of how each requirement is met.

A. Attainment Emissions Inventory

For maintenance plans, a state should develop a comprehensive, accurate inventory of actual emissions for an attainment year to identify the level of emissions which is sufficient to maintain the NAAQS. A state should develop this inventory consistent with EPA's most recent guidance on emissions inventory development. For ozone, the inventory should be based on typical summer day emissions of VOC and NOx, as these pollutants are precursors to ozone formation.

As discussed above, EPA determined that the bi-state Charlotte Area had attained the 2008 8-hour ozone NAAQS at the time that it redesignated the North Carolina portion of the Area to attainment. *See* 80 FR 44873. The bi-state Charlotte Area continues to attain the 2008 8-hour ozone NAAQS. South Carolina selected 2018 as the base year (*i.e.*, attainment emissions inventory year) for developing a comprehensive emissions inventory for NOx and VOC, for which projected emissions could be developed for 2026 and 2036. The attainment inventory identifies a level of emissions in the Area that is sufficient to attain the 2008 8-hour ozone NAAQS. South Carolina began development of the attainment inventory by first generating a baseline emissions inventory for the State's portion of the bi-state Charlotte Area. South Carolina estimated projected summer day emission inventories using projected rates of growth in population, traffic, economic activity, and other parameters. In addition to comparing the final year of the plan (2036) to the base year (2018), South Carolina compared an interim year (2026) to the baseline to demonstrate that the years in between are also expected to show continued maintenance of the 2008 8-hour ozone standard.

The emissions inventory is composed of four major types of sources: point, nonpoint, onroad mobile, and nonroad mobile. South Carolina also included event sources (*i.e.*, wildfires and prescribed fires) in the inventory. The complete descriptions of how the inventories were developed are discussed in Appendices A, B, C, D, and E of the September 26, 2023, submittal,

³ "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereinafter referred to as the "Calcagni Memorandum"), available at <https://www.epa.gov/ground-level-ozone-pollution/procedures-processing-requests-redesignate-areas-attainment>.

⁴ *See* Calcagni Memorandum.

which can be found in the docket for this proposed action.

The point source emissions were tabulated from data collected by direct on-site measurements of emissions or mass balance calculations utilizing approved emission factors. There are usually several emission sources for each facility. Emissions data is collected for each point source at a facility and the data is entered into an in-house database system. For the projected year's inventory, point sources are adjusted by growth factors. Growth rates for the industrial point sources were calculated via the EPA 2016v2 modeling platform data.

For nonpoint sources, emissions were estimated by multiplying an emission factor by some known indicator of collective activity such as production, number of employees, or population. The emission factors used were obtained from the Emission Inventory Improvement Program (EIIP) Tech Reports;⁵ the Procedures document⁶ or EPA's Compilation of Air Pollutant Emission Factors, Fifth Edition (AP-42);⁷ and the Nonpoint Method Advisory Committee (NOMAD) collaboration.⁸ These types of emissions were estimated on the county level. Various sources of data, such as population growth, energy consumption by sector, and county business patterns from the Census, were used to determine the growth projections.

For onroad mobile sources, South Carolina used the EPA mobile model MOVES3.1⁹ to generate emissions. On January 7, 2021, EPA announced the availability of MOVES3 for official purposes outside of California. MOVES3 was the latest state-of-the-art upgrade to EPA's modeling tools for estimating

emissions from cars, trucks, buses, and motorcycles based on the latest data and regulations and was available for use in SIPs and transportation conformity analyses outside of California. The notice of availability started a two-year grace period that ended on January 7, 2023, after which MOVES3 was required to be used in new regional-emissions and hot-spot analyses for transportation conformity determinations outside of California.

EPA announced availability of a new versions of the MOVES model (MOVES4 and MOVES5) on September 12, 2023¹⁰ and December 11, 2024,¹¹ respectively. The CAA does not require states that have already submitted SIP revisions or will submit SIP revisions shortly after the release of a new model to revise these SIP revisions simply because a new motor vehicle emissions model is now available. Because South Carolina submitted the SIP on September 26, 2023, it used MOVES3.1 to estimate exhaust and evaporative emissions as well as brake and tire wear emissions from all types of on-road vehicles. The estimation of emissions involves multiplying an activity level by an emission factor and is done within the model. The activity level used by MOVES3.1 is vehicle miles traveled (VMT). For the future years' inventories, the MOVES3.1 mobile model takes into consideration expected federal tailpipe standards, fleet turnover, and new fuels.

EPA's MOVES3.1 mobile model was also used to calculate emissions for all nonroad sources except for railroad locomotive line haul emissions which are not included in the nonroad portion of the MOVES3.1 model and were calculated differently.

Events sources emissions estimates were calculated by EPA using the SMARTFIRE2 (SF2/B2) system, along with state provided inputs, including a list of all York County wildland fires (WLFs) and prescribed fires in 2017.¹²

The 2018 NOx and VOC emissions for the South Carolina portion of the Area, as well as the emissions for other years, were developed consistent with EPA guidance and are summarized in Tables 1 through 3 of the following subsection discussing the maintenance demonstration. See Appendices A–E of the September 26, 2023, submission for more detailed information on the emissions inventory.

B. Maintenance Demonstration

The maintenance plan includes a maintenance demonstration that:

- (i) Shows compliance with and maintenance of the 2008 8-hour ozone NAAQS by providing information to support the demonstration that current and future emissions of NOx and VOC remain at or below 2018 emissions levels.
- (ii) Uses 2018 as the attainment year and includes future emissions inventory projections for 2018, 2026, and 2036.
- (iii) Per 40 CFR part 93, NOx and VOC Budgets were established for the last year (2036) of the maintenance plan (see section VII below). Additionally, SCDES opted to establish a budget for an interim year (2026).
- (iv) Provides actual (2018) and projected emissions inventories, in tons per ozone season day (tons/OSD), for the South Carolina portion of the bi-state Charlotte Area, as shown in Tables 1 through 3, below.

TABLE 1—ACTUAL AND PROJECTED TYPICAL SUMMER DAY VOC EMISSIONS (TONS/OSD) FOR THE YORK COUNTY AREA

Source category	2018	2026	2036
Nonpoint	9.54	10.15	10.76
Nonroad	1.35	1.21	1.26
Onroad	2.82	1.72	1.38
Point	3.38	3.38	3.39
Event	0.18	0.18	0.18
Total	17.27	16.64	16.97

⁵ See Air Emissions Inventory Improvement Program (EIIP) Technical Report Series, available at: <https://www.epa.gov/air-emissions-inventories/air-emissions-inventory-improvement-program-eiip>.

⁶ See Procedures for the Development of Emissions Factors from Stationary Sources, available at: <https://www.epa.gov/air-emissions-factors-and-quantification/procedures-development-emissions-factors-stationary>.

⁷ See AP-42, Compilation of Air Pollutant Emission Factors, 5th edition, available at: <https://www.epa.gov/air-emissions-factors-and-quantification/ap-42-compilation-air-emissions-factors-stationary-sources>.

⁸ EPA default data for nonpoint sources was developed by EPA with the help of the Nonpoint Method Advisory (NOMAD) committee. NOMAD is a group of inventory developers from a variety of State and local agencies that collaborate on the development of methodologies to aid EPA in the

development of default data for the National Emissions Inventory (NEI).

⁹ See 86 FR 1106.

¹⁰ See 88 FR 62567.

¹¹ See 89 FR 99862.

¹² See Section 7 of the 2017 National Emissions Inventory (NEI) Technical Support Document for more details. Available at <https://www.epa.gov/air-emissions-inventories/2017-national-emissions-inventory-nei-technical-support-document-tds>.

TABLE 2—ACTUAL AND PROJECTED TYPICAL SUMMER DAY NO_x EMISSIONS (TONS/OSD) FOR THE YORK COUNTY AREA

Source category	2018	2026	2036
Nonpoint	1.03	1.05	1.06
Nonroad	1.49	0.94	0.85
Onroad	6.86	3.47	2.51
Point	4.13	4.22	4.37
Event	0.02	0.02	0.02
Total	13.53	9.7	8.81

TABLE 3—EMISSION ESTIMATES (TONS/OSD) FOR THE YORK COUNTY AREA

	VOC	NO _x
2018	17.27	13.53
2036	16.97	8.81
Difference from 2018 to 2036	−0.30	−4.72

Tables 1 through 3 summarize the 2018 and future projected emissions of NO_x and VOC from the York County Area. In situations where local emissions are the primary contributor to nonattainment, the NAAQS should not be violated in the future if emissions from within the area remain at or below the baseline with which attainment was achieved. South Carolina has projected emissions as described previously and determined that emissions in the South Carolina portion of the bi-state Charlotte Area will remain below those in the

attainment year inventory for the duration of the maintenance plan.

A “safety margin” is the amount by which the total projected emissions from all sources of a given pollutant are less than the total emissions that would satisfy the applicable requirement for reasonable further progress (RFP), attainment, or maintenance. See 40 CFR 93.101. The safety margin is calculated as the difference between emissions in an attainment year and projected emissions in the maintenance year. South Carolina selected 2018 as the attainment emissions inventory year for

the York County Area. South Carolina calculated safety margins in its submittal for year 2018, 2026, and 2036. Because the initial budget year of 2018 is also the base year for the maintenance plan inventory, there is no safety margin, therefore, no adjustments were made to the budget for 2018. The State has allocated 100% of the 2036 safety margin to the 2036 budgets for the York County Area. Table 4 displays the established safety margins for the York County Area in tons per ozone season day (OSD).

TABLE 4—SAFETY MARGINS FOR THE YORK COUNTY AREA

	VOC (tons/OSD)	NO _x (tons/OSD)
2018	N/A	N/A
2026	0.63	3.83
2036	0.30	4.72

The State decided to allocate one hundred percent of the 2036 safety margins to 2036 budgets to allow for unanticipated growth in VMT, changes and uncertainty in vehicle mix assumptions, etc., that will influence the emission estimations. After allocation of one hundred percent of the available 2036 safety margin, there is no remaining 2036 safety margin for NO_x

and VOC emissions. This allocation is discussed further in section IV of this proposed rulemaking along with the budgets to be used for transportation conformity proposes.

C. Monitoring Network

There are currently five Air Quality System (AQS) ozone monitors in the bi-State Charlotte Area: one in Lincoln County, North Carolina; two in

Mecklenburg County, North Carolina; one in Rowan County, North Carolina; and one in Union County, North Carolina. No monitors are located within the South Carolina portion of the bi-State Charlotte Area. The plan presents the design values (DV)¹³ (in ppm) for the currently active monitors in the bi-state Charlotte Area from 2012 to 2024.

TABLE 5—8-HOUR OZONE NAAQS DESIGN VALUES (ppm) FOR MONITORS IN THE BI-STATE CHARLOTTE AREA FROM 2012 TO 2024

County	AQS Site ID	2010–2012 DV	2011–2013 DV	2012–2014 DV	2013–2015 DV	2014–2016 DV	2015–2017 DV	2016–2018 DV	2017–2019 DV	2018–2020 DV	2019–2021 DV	2020–2022 DV	2021–2023 DV	2022–2024 DV
Crouse: Lincoln, NC.	37–109–0004.	0.075	0.072	0.068	0.065	0.067	0.067	0.065	0.064	0.060	0.061	0.061	0.065	0.064

¹³ Design values are calculated as the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration.

TABLE 5—8-HOUR OZONE NAAQS DESIGN VALUES (ppm) FOR MONITORS IN THE BI-STATE CHARLOTTE AREA FROM 2012 TO 2024—Continued

County	AQS Site ID	2010–2012 DV	2011–2013 DV	2012–2014 DV	2013–2015 DV	2014–2016 DV	2015–2017 DV	2016–2018 DV	2017–2019 DV	2018–2020 DV	2019–2021 DV	2020–2022 DV	2021–2023 DV	2022–2024 DV
Garinger: Mecklenburg, NC.	37–119–0041.	0.083	0.078	0.070	0.068	0.069	0.069	0.068	0.070	0.067	0.066	0.064	0.069	0.069
University Meadows: Mecklenburg, NC.	37–119–0046.	0.083	0.078	0.073	0.067	^a 0.070	^a 0.070	0.070	0.069	0.067	0.066	0.064	0.068	0.069
Rockwell: Rowan, NC.	37–159–0021.	0.078	0.073	0.068	0.064	0.065	0.064	0.062	0.062	0.061	0.062	0.061	0.065	0.065
Monroe: Union, NC.	37–179–0003.	0.073	0.070	0.068	0.065	0.068	0.067	0.068	0.068	0.063	0.062	0.061	0.067	0.066

^a Monitor started in 2016 to replace County Line (ID# 37–119–1009); EPA approved combining data for the two sites to calculate a design value; value reported is a combined design value.

As shown in Table 5, the design values derived from the monitors in the bi-State Charlotte Area have been below the level of the 2008 8-hour ozone NAAQS since redesignation. Furthermore, the overall ozone concentrations for the Area decreased by 14 ppb between the 2010–2012 and 2022–2024 design values at one of the Mecklenburg, NC, monitors (AQS ID 37–119–0046). As the ozone levels have dropped and remain relatively stable, it is reasonable to conclude that the bi-State Charlotte Area will not exceed the 2008 8-hour ozone NAAQS during the second 10-year maintenance period.

As noted above, all the monitors in the bi-state Charlotte Area are in the State of North Carolina. North Carolina, through the North Carolina Department of Air Quality (NCDAQ), has committed to continue operation of all those monitors in compliance with 40 CFR part 58,¹⁴ addressing the requirement for monitoring. For further details on monitoring, see the 2024–2025 North Carolina Annual Monitoring Network Plan¹⁵ as well as EPA's approval letter for the 2024–2025 Annual Network Plan, which can be found in the docket for this proposed action.

D. Verification of Continued Attainment

The State of South Carolina, through SCDES, has the legal authority to enforce and implement the requirements of the South Carolina portion of the Area 2008 8-hour ozone maintenance plan. This includes the authority to adopt, implement, and enforce any subsequent emissions control contingency measures

determined to be necessary to correct future ozone attainment problems.

Verification of continued attainment is accomplished through operation of the ambient ozone monitoring network and the periodic update of the York County Area's emission inventories. SCDES has been and will continue proactive efforts including reviewing monitoring data and evaluating trends in an effort to identify possible violations as early as possible. In addition, to track future levels of emissions, SCDES will continue to develop and submit to EPA updated emission inventories for all source categories at least once every three years consistent with the requirements of 40 CFR part 51, subpart A, and 40 CFR 51.122.

E. Contingency Plan

Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. See CAA section 175A(d). The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation, and a time limit for action by the state. A state should also identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must include a requirement that a state will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d).

In the September 25, 2023, maintenance plan, South Carolina affirms that all programs instituted by the State will remain enforceable and that sources are prohibited from reducing emissions controls unless such a change is first approved by EPA as a revision to the South Carolina SIP that

is consistent with Section 110(l) of the CAA. The plan also states that SCDES will implement all control measures with respect to NO_x, VOCs, and ozone that were contained in the SIP for the maintenance area before it was redesignated as attainment. The contingency plan included in the submittal includes a triggering mechanism to determine when contingency measures are needed and a process of developing and implementing appropriate control measures. The primary trigger of the contingency plan will be a certified design value that exceeds the 2008 8-hour ozone NAAQS (*i.e.*, when the three-year average of the 4th highest values is equal to or greater than 0.076 ppm at any monitor in the bi-state Charlotte Area). If certified data indicates a violating design value, the triggering event will be the date of the design value violation, not the final QA/QC date. If initial monitoring data indicates a possible design value violation but later certification indicates that a NAAQS violation did not occur, a triggering event will not have occurred, and contingency measures will not need to be implemented.

If the primary trigger is activated, SCDES will begin analyses to determine the emission control measures that will be necessary for attaining or maintaining the 2008 8-hour ozone NAAQS and implement contingency measures within 24 months of a violation trigger to bring the area back into attainment.¹⁶ In the September 25, 2023, maintenance plan, the State identified the following contingency

¹⁴ See 80 FR 29250 (May 21, 2015); 80 FR 44873 (July 28, 2015).

¹⁵ See docket for Volume 1 (Network Descriptions (All Regions)) of the 2024–2025 Annual Network Plan and EPA's approval letter for the 2024–2025 Annual Network Plan. Volume 2 (Site Descriptions by Region) of the 2024–2025 Annual Network Plan is available online at: <https://www.deq.nc.gov/about/divisions/air-quality/air-quality-monitoring/annual-network-plan/2024-2025-annual-monitoring-network-plan-north-carolina-air-quality>.

¹⁶ If SCDES determines that a longer schedule is required to implement specific contingency measures, then, upon selection of the appropriate measures, it will seek concurrence with EPA of the proposed schedule and provide sufficient information to demonstrate that the proposed measures are a prompt correction of the triggering event. Any extension would be subject to EPA's approval of the SIP revision containing the required contingency measure.

measures that may be considered for adoption upon a trigger of the contingency plan:

- Reasonably Available Control Technology (RACT) for NO_x on existing stationary sources not subject to existing requirements;
- Implementation of diesel retrofit programs, including incentives for performing retrofits for fleet vehicle operations;
- Alternative fuel programs for fleet vehicle operations;
- Gas can and lawnmower replacement programs;
- Voluntary engine idling reduction programs;
- Other measures deemed appropriate at the time as a result of advances in control technologies.

Finally, the Department will monitor periodic emissions inventory updates during the triennial National Emissions Inventory and compare them to projected emissions. If actual emissions exceed by more than 10 percent the projected emissions in this maintenance plan, the Department will investigate the differences and develop an appropriate strategy for addressing these differences.

Generally, the maintenance plan for the York County Area relies on similar contingency measures as those in the SCDES plans for the first 10-year period. The only change is that the second 10-year maintenance plan no longer lists the “Take a Break from Exhaust program,” as a potential contingency measure. EPA proposes to find that the contingency provisions in South Carolina’s second maintenance plan for the York County Area for the 2008 8-hour Ozone NAAQS meet the requirements of the CAA section 175A(d).

IV. EPA’s Analysis of South Carolina’s Proposed NO_x and VOC Budgets

Under section 176(c) of the CAA, new transportation plans, programs, and projects, such as the construction of new highways, must “conform” to (*i.e.*, be consistent with) the part of the state’s air quality plan that addresses pollution from cars and trucks. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS or any interim milestones. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP. The regional emissions analysis is one, but not the only, requirement for implementing transportation conformity. Transportation conformity is a requirement for nonattainment and maintenance areas. Maintenance areas are areas that were previously nonattainment for a particular NAAQS but have since been redesignated to attainment with an approved maintenance plan for that NAAQS.

Under the CAA, states are required to submit, at various times, control strategy SIPs and maintenance plans for nonattainment areas. These control strategy SIPs (including RFP and attainment demonstration requirements) and maintenance plans create budgets for criteria pollutants and/or their precursors to address pollution from cars and trucks. Per 40 CFR part 93, a budget must be established for the last year of the maintenance plan. A state may adopt budgets for other years as well. The budget is the portion of the total allowable emissions in the maintenance demonstration that is allocated to highway and transit vehicle use and emissions. *See* 40 CFR 93.101.

The budget serves as a ceiling on emissions from an area’s planned transportation system. The budget concept is further explained in the preamble to the November 24, 1993, Transportation Conformity Rule (58 FR 62188). The preamble also describes how to establish the budget in the SIP and how to revise the budgets.

In the first maintenance plan for the York County Area, SCDES used 2014 for the attainment year inventory because 2014 was one of the years in the 2012–2015 three-year design value period when the bi-state Charlotte Area first attained the 2008 ozone NAAQS. For the second maintenance plan, SCDES selected 2018 as the base emissions inventory. The base year of 2018 was selected because it is one of the more recent years for which the York County Area has an attaining design value for the 2008 8-hour ozone NAAQS while avoiding the potential underrepresentation of emissions caused by the response to the COVID–19 pandemic beginning in early 2020. According to the transportation conformity rule, a maintenance plan must establish budgets for the last year of the maintenance plan (in this case, 2036). *See* 40 CFR 93.118. The state may set a budget for an interim year (in this case 2026), but it is not a requirement. In the September 26, 2023, submittal, South Carolina requested that EPA replace the previous 2014 and 2026 NO_x and VOC budgets from the first 10-year maintenance plan with the 2018 and 2036 budgets. If approved as proposed, the previous 2014 and 2026 budgets will no longer apply for transportation conformity purposes. Table 6, below, provides the NO_x and VOC budgets in kilograms per day (kg/day), for 2018 and 2036.

TABLE 6—YORK COUNTY, SOUTH CAROLINA AREA BUDGETS
[kg/day]*

	2018		2036	
	NO _x	VOC	NO _x	VOC
Base Emissions	6224.03	2555.02	2273.63	1256.15
Safety Margin Allocated to Budget	N/A	N/A	4281.96	272.16
Total Budget	6224.03	2555.02	6555.59	1528.31

* To convert kg/day to tons/OSD, multiply the value in by 1.102×10^{-3} .

As mentioned above, South Carolina has chosen to allocate the available safety margin to the NO_x and VOC budgets for 2036 for the York County Area.

Through this rulemaking, EPA is proposing to approve the budgets for

NO_x and VOC for 2018 and 2036 for the York County Area because EPA believes that the Area maintains the 2008 8-hour ozone NAAQS with the emissions at the levels of the budgets. EPA is also proposing to replace the previous 2014 and 2026 NO_x and VOC budgets from

the first 10-year maintenance plan. If EPA finalizes that replacement, the 2014 and 2026 budgets will no longer apply for transportation conformity purposes. EPA intends to make its determination on the adequacy of the 2018 and 2036 budgets for the York County Area for

transportation conformity purposes in the near future by completing the adequacy process that was started on September 26, 2023. After EPA finds the 2018 and 2036 budgets adequate or approves them (whichever is completed first), they must be used for future conformity determinations. EPA is proposing to approve the budgets because they are consistent with maintenance of the 2008 8-hour ozone NAAQS through 2036.

V. EPA's Adequacy Determination for the Proposed NO_x and VOC Budgets

When reviewing submitted "control strategy" SIPs or maintenance plans containing budgets, EPA may affirmatively find those budgets adequate for use in determining transportation conformity. Once EPA affirmatively finds the submitted budget is adequate for transportation conformity purposes, that budget must be used by state and Federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA.

EPA's substantive criteria for determining adequacy of budgets are set out in 40 CFR 93.118(e)(4). The process for determining adequacy consists of three basic steps: Public notification of a SIP submission, a public comment period, and EPA's adequacy determination. This process for determining the adequacy of submitted budgets for transportation conformity purposes was initially outlined in EPA's May 14, 1999, guidance, "Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision." EPA adopted regulations to codify the adequacy process in the Transportation Conformity Rule Amendments for the "New 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change," on July 1, 2004 (69 FR 40004). Additional information on the adequacy process for transportation conformity purposes is available in the proposed rule entitled, "Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes," 68 FR 38974, 38984 (June 30, 2003).

As discussed earlier, South Carolina's September 26, 2023, maintenance plan includes NO_x and VOC budgets for the York County Area for 2018, an interim year of the maintenance plan, 2026, and the last year of the maintenance plan, 2036. EPA is reviewing the NO_x and VOC budgets through the adequacy

process. The York County Area NO_x and VOC budgets, opened for public comment on EPA's adequacy website on October 19, 2023, found at: <https://www.epa.gov/state-and-local-transportation/adequacy-review-state-implementation-plan-sip-submissions-conformity>. The EPA public comment period on adequacy for the budgets for 2018 and 2036 for the York County Area closed on November 20, 2023. No comments, adverse or otherwise, were received during EPA's adequacy process for the budgets associated with South Carolina's maintenance plan.

EPA intends to make its determination on the adequacy of the 2018 and 2036 budgets for the York County Area for transportation conformity purposes in the near future by completing the adequacy process that was started on September 26, 2023. If EPA finds the 2018 and 2036 budgets adequate or approves them, the new budgets for NO_x and VOC must be used for future transportation conformity determinations. For required regional emissions analysis years that involve 2018 through 2036, the applicable 2018 budgets will be used and for 2036 and beyond, the applicable budgets will be the new 2036 budgets established in the maintenance plan, as defined in Section IV of this proposed rulemaking.

VI. Effect of EPA's Proposed Action

EPA's proposed action establishes the basis upon which EPA may take final action on the issues being proposed for approval. Approval of South Carolina's SIP revisions would incorporate a plan for maintaining the 2008 8-hour ozone NAAQS in the Area through 2036 into the SIP. This maintenance plan includes contingency measures to remedy any future violations of the 2008 8-hour ozone NAAQS and procedures for evaluation of potential violations. The maintenance plan also establishes NO_x and VOC budgets for 2018 and 2036 for the York County Area. The budgets are listed in Table 4 in Section IV. Additionally, EPA is notifying the public of the status of EPA's adequacy determination for the newly established NO_x and VOC budgets for 2018 and 2036 for the York County Area.

VII. Proposed Action

EPA is proposing to approve the second maintenance plan for the 2008 8-hour ozone NAAQS for the South Carolina portion of the bi-state Charlotte Area, including the NO_x and VOC budgets for 2018 and 2036 (to replace the previous NO_x and VOC budgets for 2014 and 2026 from the first 10-year maintenance plan), into the South Carolina SIP under CAA section 175A.

The maintenance plan meets all applicable requirements for maintenance plans and related contingency provisions in CAA section 175A, including a demonstration that the bi-state Charlotte Area will continue to maintain the 2008 8-hour ozone NAAQS until January 11, 2036, the end of the 20-year maintenance period. Further, as part of this proposed action, EPA is describing the status of its adequacy determination for the NO_x and VOC budgets for 2018 and 2036 in accordance with 40 CFR 93.118(f)(1). Within 24 months from the publication date of EPA's final rule for this action (if EPA approves this maintenance plan and the underlying budgets), or the effective date of EPA's adequacy determination for the budgets, whichever is earlier, the transportation partners will need to demonstrate conformity to the new NO_x and VOC budgets pursuant to 40 CFR 93.104(e)(3).

VIII. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because SIP actions are exempt from review under Executive Order 12866;
- 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.

Because this proposed action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law, this proposed action for the State of South Carolina does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Therefore, this proposed action will not impose substantial direct costs on Tribal governments or preempt Tribal law. The Catawba Indian Nation (CIN) Reservation is located within the boundary of York County, South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27–16–120 (Settlement Act), “all state and local environmental laws and regulations apply to the [Catawba Indian Nation] and Reservation and are fully enforceable by all relevant state and local agencies and authorities.” The CIN also retains authority to impose regulations applying higher environmental standards to the Reservation than those imposed by state law or local governing bodies, in accordance with the Settlement Act.

List of Subjects in 40 CFR part 52 Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: August 27, 2025.

Kevin McOmber,

Regional Administrator, Region 4.

[FR Doc. 2025–17051 Filed 9–4–25; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2020–0164; FRL–12951–01–R6]

Air Plan Approval; Texas; Reasonably Available Control Technology in the Dallas-Fort Worth Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve the May 12, 2020, and May 13, 2020, revisions to the Texas State Implementation Plan (SIP) as satisfying the Serious classification Volatile Organic Compounds (VOC) Reasonably Available Control Technology (RACT) requirement for the Dallas-Fort Worth (DFW) 2008 8-hour ozone National Air Quality Ambient Air Quality Standards (NAAQS) nonattainment area. The DFW area, designated as Serious for the 2008 8-hour ozone NAAQS, consists of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties. Specifically, we are proposing to approve the revisions to 30 Texas Administrative Code (TAC) Chapter 115 to implement the major source Reasonably Available Control Technology (RACT) requirement for VOC as addressed in the VOC RACT analysis and negative declaration included with the Serious area Attainment Demonstration (AD) SIP revision. The Nitrogen Oxide (NO_x) portion of the RACT analysis in the May 13, 2020, revisions will be addressed in a separate action.

DATES: Written comments must be received on or before October 6, 2025.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2020–0164, at <https://www.regulations.gov> or via email to shahin.emad@epa.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include

discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact Emad Shahin, (214) 665–6717, shahin.emad@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov. While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (*e.g.*, CBI).

FOR FURTHER INFORMATION CONTACT: Emad Shahin, 214–665–6717, Emad.Shahin@epa.gov. We encourage the public to submit comments via <https://www.regulations.gov>, as there may be a delay in processing mail and courier or hand deliveries may not be accepted. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

I. Background

VOCs contribute to the production of ground-level ozone, or smog, which harms human health and the environment. Section 182(b)(2) of the CAA requires that SIPs for ozone nonattainment areas classified as Moderate or above include implementation of RACT for any source covered by a Control Techniques Guidelines (CTG) document and also for any major source of VOC not covered by a CTG. It is worth noting that for some CTG categories, RACT is applicable to minor or area sources. The EPA has defined RACT as the lowest emissions limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility. See 44 FR 53761 (September 17, 1979).

A Moderate, Serious, or Severe area major stationary source is one that emits, or has the potential to emit, 100, 50, or 25 tons per year (tpy) or more of VOCs, respectively. CAA sections 182(b) through (d). The EPA provides states with guidance concerning what types of controls could constitute RACT for a

given category of sources through the issuance of CTG and Alternative Control Techniques (ACT) documents.¹

On March 27, 2008, the EPA revised the primary and secondary ozone NAAQS to a level of 0.075 parts per million (ppm) (75 ppb).² On October 26, 2015 (80 FR 65292), EPA promulgated another revised ozone NAAQS, but the 2008 NAAQS remains in effect. This notice concerns the VOC RACT requirements under the 2008 8-hour ozone NAAQS.

Promulgation of a new or revised NAAQS triggers a requirement for the EPA to designate areas as nonattainment, attainment, or unclassifiable, and to classify the nonattainment areas at the time of designation. CAA section 181(a). Nonattainment areas are classified according to the severity of their ozone air quality problems as Marginal, Moderate, Serious, Severe, or Extreme determined by each area's design value.³

On May 21, 2012, the EPA published a rule establishing initial area designations and classifications for most areas of the country, including DFW, with respect to the 2008 primary and secondary 8-hour ozone NAAQS. 77 FR 30088. On the same day, EPA issued a separate rule that established air quality thresholds for each nonattainment classification for the 2008 NAAQS and set attainment deadlines for each classification. 77 FR 30160 (May 21, 2012).

Originally the DFW area was classified as Moderate (77 FR 30088, May 21, 2012). Based on the Moderate classification of the DFW area for the 2008 ozone NAAQS, under section 182(b) of the CAA, a major stationary source in the area is one that emits, or has the potential to emit, 100 tpy or more of VOCs. However, on August 23, 2019 (84 FR 44238), EPA found the DFW area did not attain by the 2008 ozone Moderate area attainment date. The DFW area was reclassified to Serious nonattainment with an attainment date of July 20, 2021. Under the Serious classification, the major

source threshold is 50 tpy or more of VOC. In the action reclassifying DFW to Serious, EPA set a deadline of August 3, 2021, for Texas to provide a demonstration that RACT was in place as necessary to meet the Serious area requirements.

On May 12, 2020, Texas submitted to EPA a SIP revision to 30 TAC Chapter 115 to implement major source RACT requirements for VOC associated with the Serious classification for the 2008 ozone NAAQS for the DFW area. On May 13, 2020, Texas submitted a SIP revision that includes an analysis that Serious level RACT for sources of VOC emissions in the DFW area is met for the 2008 8-hr ozone NAAQS. In its RACT analysis, to identify major stationary sources of VOC, Texas reviewed the TCEQ 2017 point source emissions inventory, the TCEQ New Source Review, and CAA Title V databases to locate potential sources.⁴ All sources in the Title V database that were listed as a major source for VOC emissions and have the potential to emit 50 tons per year or more are included in the RACT analysis. TCEQ noted that they reviewed sources that reported actual emissions as low as 25 tpy of VOC to account for the difference between actual and potential emissions. TCEQ also noted that sites from the emissions inventory database with emissions equal to or greater than a threshold of 25 tpy or more of VOC that were not identified in the Title V database and could not be verified as minor sources by other means are also included in the RACT analysis.

II. Evaluation

States should refer to existing CTG and ACT documents, all relevant information received during the public comment period, and any other information that is current at the time of development of the SIP to determine if RACT is being applied. See 80 FR 12264, 12278 (March 6, 2015). States may conclude, in some cases, that sources already addressed by RACT determinations to meet the 1-hour and/or the 1997 8-hour ozone NAAQS do not need to implement additional controls to meet the 2008 ozone NAAQS RACT requirement. *Id.* at 11278–9.

The EPA has previously determined that Chapter 115 VOC regulations for the DFW area have met RACT for requirements associated with past ozone NAAQS for all CTG and non-CTG major sources in the DFW area—including the

1-hour and 1997 8-hour ozone NAAQS⁵ and later, the 2008 Moderate NAAQS area classification⁶ and incorporated them into the Texas SIP. Texas' May 13, 2020, submittal demonstrates how the Chapter 115 rules also satisfy RACT requirements for CTG and non-CTG VOC major sources for the 2008 8-hour Serious classification for the entire DFW area.⁷

The EPA performed a VOC RACT analysis which compares Texas' CTG and non-CTG categorical RACT rules to other relevant state rules. This analysis may be found in the technical support document (TSD) for this proposed action, which is available in the public docket for this action. The analysis in the TSD also includes a search and comparison of EPA's RACT/BACT/LAER Clearinghouse (RBLCL),⁸ New Source Performance Standards, Maximum Achievable Control Technology, and National Emissions Standards for Hazardous Air Pollutants, where applicable. The EPA has not identified any new control technologies that are reasonably available considering technological and economic feasibility for these sources. Based upon our findings, EPA proposes to determine that Texas Chapter 115 rules, as revised in the May 12, 2020, submittal, continue to represent RACT.

We are proposing to find that the Chapter 115 rules, which the State amended in its May 12, 2020, submittal to apply the 50 tpy threshold to Wise County, meet RACT for the 2008 8-hour ozone NAAQS in the ten county DFW Moderate nonattainment area. We have determined this is appropriate because the analysis in the TSD shows that the Texas rules are representative of the control technologies reasonably available at the time the SIP submission was developed. The Chapter 115 rules provide appropriate VOC emissions controls that are equivalent to control options cited in the CTG documents, and any non-CTG major sources are appropriately controlled. In addition, EPA conducted a state comparison analysis, which can be found in the

¹ See <https://www.epa.gov/ground-level-ozone-pollution/control-techniques-guidelines-and-alternative-control-techniques> for a listing of EPA-issued CTGs and ACTs.

² Although the level of ozone NAAQS are specified in the units of ppm (*i.e.*, 0.075 ppm), ozone concentrations are described using the units of parts per billion (ppb) in this action for consistency with the common convention for information discussions. In ppb, 0.075 ppm is equivalent to 75.

³ The air quality design value for the 8-hour ozone NAAQS is the three-year average of the annual fourth highest daily maximum 8-hour average ozone concentration. See 40 CFR part 50, appendix I.

⁴ See Appendix F, *Reasonably Available Control Technology Analysis*, of the state's SIP submittal, available at https://www.tceq.texas.gov/assets/public/implementation/air/sip/dfw/dfw_ad_sip_2019/DFWAD_19078SIP_Appendix_F_Final.pdf.

⁵ 58 FR, 44124, September 24, 1992; 59 FR 60709, November 28, 1994; 60 FR 12438, March 7, 1995; 61 FR 55894, October 30, 1996; 64 FR 3841, January 26, 1999; 64 FR 12759, March 15, 1999; 65 FR 79745, December 26, 2000; 66 FR 54688, October 30, 2001; 74 FR 1903, January 14, 2009; 79 FR 45105, August 4, 2014; and 80 FR 16291, March 27, 2015.

⁶ 82 FR 60546 (December 21, 2017); 84 FR 5601 (February 22, 2019).

⁷ See EPA–R06–OAR–2005–TX–0018, EPA–R06–OAR–2012–0100 and EPA–R06–OAR–2017–0055, available through the *Regulations.gov* website at: <https://www.regulations.gov/>.

⁸ See <https://www.epa.gov/cat/cact/ractbactlaer-clearinghouse-rblc-basic-information>.

TSD, where it compared Texas' RACT rules to other relevant state rules. As explained further in the TSD, EPA found Texas' rules to be consistent with similar rules adopted by other states. The EPA has not identified any new control technologies that are reasonably available considering technological and economic feasibility for the Texas sources. As a result of EPA's analysis, EPA is proposing to determine that the Texas VOC RACT regulations are still representative of RACT for the DFW nonattainment area for purposes of the Serious classification for the 2008 ozone standard.

VOC RACT Negative Declarations

States are not required to adopt RACT limits for categories of sources covered by a CTG for which no sources exist in a nonattainment area and can submit a negative declaration to that effect. The negative declaration should state that there are no CTG-covered sources in the area and provide an accompanying analysis to support that conclusion. Texas reviewed its emission inventory and determined that its previous negative declarations for fiberglass boat manufacturing materials, surface coating for flat wood paneling, letterpress printing, shipbuilding and ship repair surface coating operations, vegetable oil manufacturing, and rubber tire manufacturing categories are still applicable.⁹ Texas also submitted negative declarations for graphic arts—rotogravure and flexography, flexible package printing, refinery vacuum producing systems and process unit turnarounds, wood furniture manufacturing, and manufacture of synthesized pharmaceutical products for Wise County only. Negative declarations are discussed further in the TSD. The EPA proposes to approve these negative declarations.

In Texas' May 13, 2020 submission, Table F-3 of Appendix F, "*State Rules Addressing VOC RACT Requirements in ACT Reference Documents*" provides a listing of eighteen different categories of source types for which a VOC Alternate Control Technology document has been issued, the State's determination of how the technologies in the ACT have been addressed, and whether or not such a source is currently located in the DFW area.

We propose that RACT is in place for affected sources of VOC emissions and that the existing controls requirements continue to represent RACT for the DFW area.

III. Proposed Action

The EPA is proposing to determine that the SIP revisions submitted by TCEQ on May 13, 2020, fulfill the Serious VOC RACT requirements for the DFW nonattainment area for the 2008 ozone NAAQS. The EPA is also proposing to approve the concurrent 30 TAC Chapter 115 rule revisions, specifically revisions to sections 115.10, 115.111, 115.112, 115.119, 115.421, submitted by TCEQ on May 12, 2020, and the negative declarations made for the CTGs listed in section II of this document. The Texas regulations in 30 TAC Chapter 115 implement major source RACT requirements for VOC associated with the Serious classification for the 2008 ozone NAAQS. With that approval, EPA would incorporate the approved revisions by reference into the SIP.

IV. Incorporation by Reference

In this action, the EPA is proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference revisions to the Texas regulations as described in sections II and III of this preamble. The EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and in hard copy at the EPA Region 6 office.

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because SIP actions are exempt from review under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

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

List of Subjects in 40 CFR Part 52

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

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

Dated: August 26, 2025.

Walter Mason,

Regional Administrator, Region 6.

[FR Doc. 2025-17081 Filed 9-4-25; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2020-0165; FRL-12952-01-R6]

Air Plan Approval; Texas; Reasonably Available Control Technology in the Houston-Galveston-Brazoria Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

⁹ Submitted as part of its DFW VOC RACT SIP for the 1997 8-hour ozone NAAQS. See 79 FR 21144 (April 15, 2014).

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) is supplementing a proposed rule published on March 10, 2021, to approve revisions to the Texas State Implementation Plan (SIP) concerning Nitrogen Oxide (NO_x) Reasonably Available Control Technology (RACT) requirements for the Serious Houston-Galveston-Brazoria (HGB), 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS) nonattainment area. Because of comments received on the March 10, 2021, proposal, we are providing additional analysis, in this proposal, regarding RACT requirements which apply to sources of NO_x in this area. Consistent with this analysis, EPA is proposing to determine that Texas' rules meet NO_x RACT requirements for the 2008 standard under the Serious classification. The volatile organic compounds (VOC) portion of the RACT analysis in the Serious area Attainment Demonstration submittal is addressed in a separate action. The EPA is providing an opportunity for public comment on this supplemental proposal. Comments received on the March 10, 2021, proposal and this supplemental proposal will be addressed in a final rule.

DATES: Written comments must be received on or before October 6, 2025.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2020-0165 at <https://www.regulations.gov> or via email to ahuja.anupa@epa.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact Anupa Ahuja, (214) 665-2701, ahuja.anupa@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making

effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov. While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (*e.g.*, CBI).

FOR FURTHER INFORMATION CONTACT: Anupa Ahuja, EPA Region 6 Office, Infrastructure and Ozone Section, 214-665-2701, ahuja.anupa@epa.gov. We encourage the public to submit comments via <https://www.regulations.gov>. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

I. Background

On May 13, 2020, the Texas Commission on Environmental Quality (TCEQ or State) submitted to EPA a SIP revision addressing RACT requirements for the 2008 8-hour ozone NAAQS for the two Serious ozone nonattainment areas in Texas—the Dallas-Fort Worth (DFW) and HGB areas.¹ The EPA proposed approval of the portions of the submittal that addressed VOC and NO_x RACT requirements for the HGB area on March 10, 2021. For background information regarding the HGB area, Texas' May 13, 2020, SIP submittal, the ozone NAAQS, and RACT, please see the EPA's original proposal for this action at 86 FR 13679 (March 10, 2021). In this supplemental proposal, we refer to the May 13, 2020, Texas SIP revision as “the RACT submittal” and we refer to our March 10, 2021, proposed action and associated Technical Support Document (TSD) as “the March 2021 proposal.” We are supplementing the March 2021 proposal with respect to NO_x RACT. We will address the VOC RACT component of the RACT submittal in a separate action.

In our March 2021 proposal, we proposed to approve the RACT submittal for the HGB nonattainment

area as meeting the NO_x RACT requirements for an area designated as Serious. We proposed to determine that the Texas rules implemented RACT (*i.e.*, the lowest achievable emission rate considering technical and economic feasibility²) for all sources subject to RACT requirements.

During EPA's public comment period, we received a comment claiming that our proposed action would approve a state submission that relied on outdated RACT determinations. The EPA has since reviewed additional information and conducted additional analysis. We are providing this supplemental proposal and an associated Supplemental TSD containing our review of relevant information to confirm our previous proposal that Texas' rules meet Serious area NO_x RACT requirements for the 2008 ozone NAAQS.

II. EPA's Evaluation

A detailed analysis is provided in the supplemental TSD for this action, and the supplemental TSD and other supporting documents are available in the docket for this action at [regulations.gov](https://www.regulations.gov).

The EPA has reviewed the proposed RACT analysis in the attainment demonstration, Appendix F, and the proposed and final records provided by TCEQ for their Chapter 117 rule revisions which includes explanations and determinations on NO_x control technologies, economic and technical feasibility, and NO_x emissions reductions expected. The EPA also examined relevant technical information that was available to the State at the time they developed their SIP submission, including Best Available Control Technology (BACT) determinations, recent documents issued by the EPA that contained information on the performance of NO_x control technologies, resulting emissions reductions, and other state rules to compare to Texas' SIP submittal and in other states where similar source categories exist in NAAs.³ These documents are identified in the TSD and are available in the docket.

The EPA finds that records confirm our proposal that previously approved Texas Chapter 117 NO_x RACT rules

¹ Clean Air Act (CAA) section 182(b)(2) and (f), in combination, require that SIPs for ozone nonattainment areas classified as Moderate or higher include implementation of RACT for any source covered by a CTG document and also for any major source of VOC or NO_x. The major source threshold for Serious ozone nonattainment areas is 50 tons per year. CAA 182(c). The EPA has defined RACT as the lowest emissions limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility. See 44 FR 53761 (September 17, 1979).

² See 44 FR 53761 (September 17, 1979).

³ 2017 OTC White Paper on Control Technologies and OTC State Regulations for Nitrogen Oxides (NO_x) Emissions from Eight Source Categories, 2019 OTC Regulatory and Technical Guideline for Control of Nitrogen Oxides (NO_x) Emissions from Natural Gas Pipeline Compressor Fuel-Fired Prime Movers, 2023 EGU NO_x Mitigation Strategies Final Rule TSD, 2023 Final Non-EGU Sectors TSD. These documents are available in the docket at [regulations.gov](https://www.regulations.gov).

continue to comprise RACT level of control for the HGB nonattainment area for the 2008 ozone NAAQS.

III. Supplemental Proposed Action

The EPA is supplementing our March 2021 proposal addressing revisions to the Texas SIP with respect to the NO_x RACT requirements for the HGB Serious nonattainment area for the 2008 ozone NAAQS. In this supplemental proposal, we are providing an opportunity for public comment on EPA's supplemental NO_x RACT analysis that further supports the March 2021 proposed approval record in showing that Texas NO_x RACT regulations do implement RACT level controls, consistent with section 182(b)(2), (c), and (f) of the CAA. The EPA will address all comments received on our March 2021 proposal and on this supplemental proposal in our final action.

IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993);
- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because SIP actions are exempt from review under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
 - Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
 - Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.
- In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

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

Dated: August 26, 2025.

Walter Mason,

Regional Administrator, Region 6.

[FR Doc. 2025-17080 Filed 9-4-25; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2025-0023; FRL-12899-01-R4]

Air Plan Approval; Kentucky; Emissions Inventory and Nonattainment New Source Review for the Henderson-Webster Sulfur Dioxide Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve two State Implementation Plan (SIP) revisions submitted by the Commonwealth of Kentucky, through the Energy and Environment Cabinet (Cabinet), Division of Air Quality (DAQ) on January 26, 2024, and February 15, 2024, to certify two requirements under the Clean Air Act (CAA or Act). These revisions establish that the Kentucky SIP satisfies the nonattainment new source review (NNSR) and base year emissions inventory requirements for

the 2010 1-hour sulfur dioxide (SO₂) national ambient air quality standard (NAAQS) for the Henderson-Webster SO₂ nonattainment area (hereinafter "Henderson-Webster SO₂ Nonattainment Area" or "Area"). These actions are being proposed pursuant to the CAA.

DATES: Comments must be received on or before October 6, 2025.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2025-0023 at [regulations.gov](https://www.regulations.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

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

SUPPLEMENTARY INFORMATION:

I. Background

SO₂ is a gas that is formed by the burning of fossil fuels from power plants and other industrial facilities, such as extracting metal from ore; natural sources, such as volcanoes; and locomotives, ships, and other vehicles and heavy equipment that burn fuel with a high sulfur content. SO₂ is the component of greatest concern amongst sulfur oxides (SO_x) and is used as the indicator for the larger group of gaseous SO_x. Control measures that reduce SO₂

can generally be expected to reduce people's exposures to all gaseous SO_x.

On June 2, 2010, EPA revised the primary SO₂ NAAQS. Specifically, EPA established a 1-hour SO₂ standard at a level of 75 parts per billion (ppb), based on the 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations.¹ See 75 FR 35520 (June 22, 2010). The 1-hour standard is met at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations does not exceed 75 ppb, as determined in accordance with appendix T of 40 CFR part 50. See 75 FR 35520, codified at 40 CFR 50.17(a)–(b).

Upon promulgation of a new or revised SO₂ NAAQS, section 107(d) of the CAA requires EPA to designate as nonattainment any area that is violating the NAAQS (or that contributes to ambient air quality in a nearby area that is violating the NAAQS). As part of the designation process for the 2010 1-hour SO₂ NAAQS, the Henderson-Webster SO₂ Nonattainment Area was designated as a nonattainment area in the fourth round of designations on December 21, 2020.^{2,3} These area designations became effective on April 30, 2021. See 86 FR 16055 (March 26, 2021). States with nonattainment areas for the SO₂ NAAQS must provide nonattainment SIP revisions meeting the applicable requirements of CAA sections 110(a), 172, 191, and 192⁴ for the SO₂ NAAQS. EPA's regulations governing nonattainment SIPs are set forth at 40 CFR part 51, with specific procedural

requirements and control strategy requirements residing at subparts F and G, respectively.

Section 172(c) directs states with nonattainment areas to submit a SIP that contains an attainment demonstration showing that the affected area will attain the relevant standard as expeditiously as practicable, but no later than the applicable statutory attainment date (April 30, 2026, for the Henderson-Webster SO₂ Nonattainment Area).⁵ On April 23, 2014, EPA issued guidance for meeting the statutory requirements in SO₂ SIPs under the 2010 revised NAAQS in a document entitled "Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions"⁶ (hereinafter referred to as "2014 SO₂ Nonattainment Guidance") which describes the statutory requirements for nonattainment at CAA section 172(c), including an accurate inventory of actual emissions from all sources in nonattainment areas; an attainment demonstration; a demonstration of reasonable further progress; implementation of Reasonably Available Control Measures (RACM) (including Reasonably Available Control Technologies (RACT)); NNSR; enforceable emissions limitations and control measures; and adequate contingency measures for the affected area. For EPA to fully approve a SIP revision as meeting the requirements of CAA sections 110, 172, and 191–192 and EPA's regulations at 40 CFR part 51, the SIP for the affected area must demonstrate to EPA's satisfaction that each of the requirements have been met. State air agencies with nonattainment areas for the 2010 1-hour primary SO₂ NAAQS are required to submit a SIP revision that addresses these requirements within 18 months after an area is designated nonattainment (no later than October 30, 2022, for the Henderson-Webster SO₂ Nonattainment Area).⁷ Kentucky's January 26, 2024, and February 15, 2024, SIP revisions address the air agency's NNSR permitting and emissions inventory

obligations pursuant to section 172(c)(5) and 172(c)(3) of the Act, respectively.

A. Nonattainment New Source Review

As mentioned above, based on the nonattainment designation for the Henderson-Webster SO₂ Nonattainment Area in 2020, Kentucky was required to develop a SIP revision addressing, among other requirements, NNSR permitting requirements pursuant to section 172(c)(5) of the CAA for the 2010 1-hour SO₂ NAAQS. Section 172(c)(5) of the CAA requires each state with a nonattainment area to submit a SIP revision requiring NNSR permits in the nonattainment area in accordance with the permitting requirements of CAA section 173. The NNSR requirements apply on a pollutant-specific basis with respect to each nonattainment pollutant for which a source has the potential to emit in amounts greater than the applicable major source threshold for the pollutant.⁸ Kentucky's January 26, 2024, SIP revision addresses NNSR permitting requirements for the 2010 1-hour SO₂ NAAQS for the Henderson-Webster SO₂ Nonattainment Area. EPA's analysis of Kentucky's SIP revision regarding the NNSR requirements for the 1-hour SO₂ is provided in Section II.A, below.

B. Emission Inventory

On February 15, 2024, the Cabinet submitted a second SIP revision that addresses the base year emissions inventory requirements for the Henderson-Webster SO₂ Nonattainment Area at section 172(c)(3) of the CAA. Each state with a nonattainment area should develop a comprehensive, accurate, and current inventory of actual emissions from all sources of a relevant pollutant, or pollutants, such as SO₂, in a nonattainment area as well as any sources located outside the nonattainment area which may affect attainment in the area.⁹ This inventory should be consistent with the EPA's most recent emissions inventory data requirements as codified at 40 CFR part 51, subpart A.¹⁰ An emission inventory

¹ This rule became effective on August 23, 2010, and revoked the 24-hour and annual primary SO₂ standards.

² See Round 4 SO₂ Designations at <https://www.epa.gov/sulfur-dioxide-designations/epa-completes-fourth-round-sulfur-dioxide-designations>.

³ The Henderson-Webster SO₂ Nonattainment Area is comprised of a portion of Henderson County and a portion of Webster County. EPA designated the Henderson-Webster SO₂ Nonattainment Area in 2020 based on a violating ambient air monitor—the Sebree data requirements rule (DRR) monitor (Air Quality System ID: 21–101–1011)—sited to characterize the maximum 1-hour SO₂ concentrations in the area. (The DRR may be found at 40 CFR 51.1205). The extent of the partial county Henderson-Webster SO₂ Nonattainment Area was defined based on air dispersion modeling during round 4 SO₂ designations in 2020. See 40 CFR 81.318.

⁴ Section 191(a) of the CAA directs states to submit SIPs for areas designated as nonattainment for the SO₂ NAAQS to EPA within 18 months of the effective date of the designation. Under CAA section 192(a) these SIPs are required to demonstrate that their respective areas will attain the NAAQS as expeditiously as practicable, but no later than 5 years from the effective date of designation. In addition, sections 110(a) and 172(c), as well as EPA regulations at 40 CFR part 51, set forth substantive elements each SIP must contain to be approved by EPA.

⁵ Soon after the 1990 amendments to the CAA were enacted by Congress, EPA issued comprehensive guidance on SIPs in a document entitled the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," published in the *Federal Register* at 57 FR 13498 (April 16, 1992) (General Preamble). Among other things, the General Preamble addressed SO₂ SIPs and fundamental principles for SIP control strategies. *Id.* at 13545–49, 13567–68.

⁶ See https://www.epa.gov/sites/production/files/2016-06/documents/20140423guidance_nonattainment_sip.pdf.

⁷ See CAA section 191(a).

⁸ For new sources in areas that are designated nonattainment for the 2010 SO₂ NAAQS, the major source threshold is 100 tpy or more of SO₂. See 40 CFR 51.165(a)(1)(iv)(A)(1). Similarly, NNSR requirements for SO₂ also apply to any existing major stationary source of SO₂ that proposes a major modification, *i.e.*, a physical change or change in the method of operation that results in a significant net emissions increase (40 tons per year (tpy) or more) of SO₂. See 40 CFR 51.165(a)(1)(x)(A).

⁹ See CAA section 172(c)(3); 2014 SO₂ Nonattainment Guidance at 7–8.

¹⁰ The air emissions reporting requirements at 40 CFR part 51, subpart A sets out how states are to report their emission inventories to EPA. See 2014 SO₂ Nonattainment Guidance at 8.

for SO₂ is an estimation of actual SO₂ emissions in an area.

Emission inventories provide emissions data that inform a variety of air quality planning tasks, including establishing baseline emission levels, calculating emission reduction triggers necessary to attain the NAAQS, determining emission inputs for SO₂ air quality modeling analyses, and tracking emissions over time to determine progress toward achieving air quality and emission reduction goals. Pursuant to the CAA, states are required to submit estimates of SO₂ emissions for four general classes of anthropogenic sources: individual stationary sources such as electrical generating units or industrial facilities (point sources); smaller stationary sources such as small scale industrial sources, collectively referred to as area (non-point) sources; on-road mobile sources (on-road), including automobiles, truck, motorcycles, and the like; and off-road mobile sources (non-road), including agricultural equipment, aircrafts, locomotives, and the like. Kentucky's February 15, 2024, SIP revision provides the required accounting of actual SO₂ emissions for the Henderson-Webster SO₂ Nonattainment Area. EPA's analysis of Kentucky's SIP SO₂ emissions inventory is discussed in Section II.B, below.

II. EPA's Analysis of the Commonwealth's Submittal

A. NNSR Requirements

Kentucky's SIP-approved NNSR regulation at 401 Kentucky Administrative Regulation (KAR) 51.052, *Review of new sources in or impacting upon nonattainment areas* (401 KAR 51:052), establishes air quality permitting requirements for the construction or modification of major stationary sources located within, or impacting, areas designated as nonattainment. In its January 26, 2024, SIP revision, Kentucky certifies that the version of 401 KAR 51:052 in the SIP satisfies the federal NNSR requirements for the Henderson-Webster SO₂ Nonattainment Area at CAA sections 172(c)(5) and 173 and 40 CFR 51.165, and thus, a modification to the Commonwealth's SIP-approved regulations at 401 KAR 51:052 is not necessary.

The SIP-approved version of 401 KAR 51:052 addresses the NNSR permitting requirements for the Henderson-Webster SO₂ Nonattainment Area and remains adequate to meet all applicable NNSR requirements for the 2010 1-hour SO₂ NAAQS. EPA is therefore proposing to approve Kentucky's certification that 401 KAR 51:052 meets the NNSR requirements for implementation of the 2010 1-hour SO₂ NAAQS.

B. Emissions Inventory

Section 172(c)(3) of the CAA provides that nonattainment SIPs include a comprehensive, accurate, and current inventory of actual emissions from all sources of SO₂ emissions in each nonattainment area. The emissions inventory and source emission rate data for an area serve as the foundation for air quality modeling and other analyses that enable states to: (1) estimate the degree to which different sources within a nonattainment area contribute to violations within the affected area; and (2) assess the expected improvement in air quality within the nonattainment area due to the adoption and implementation of control measures.¹¹

According to the DAQ, at the time of SO₂ designations, the Henderson-Webster SO₂ Nonattainment Area included the following major stationary sources: Century Aluminum Sebree LLC (Century Aluminum) in Henderson County, Big Rivers Electric Corporation (BREC) Robert A. Reid Station and Henderson Municipal Power and Light (HMP&L) Station 2 (Reid/HMP&L), and BREC Robert D. Green Station (BREC-Green Station). The Cabinet's base year emissions inventory evaluated years 2017 and 2018, which are two of the three years in the three-year design value used to designate the Henderson-Webster SO₂ Area as nonattainment for the 2010 1-hour SO₂ standard. The Cabinet chose to use 2017 SO₂ actual emissions data from the National Emissions Inventory (NEI) to represent the base year emission levels within the Henderson-Webster SO₂ Nonattainment Area for non-point and non-road source categories. Kentucky states that on-road emissions for 2017 were developed from EPA's Motor Vehicle Emissions Simulator (MOVES3.0.4) software

program. For point sources, Kentucky used 2018 SO₂ actual emissions from the Commonwealth's inventory, KYEIS, to represent the base year emission levels.¹²

Only a portion of the land area of each county is included in the Henderson-Webster SO₂ Nonattainment Area. Kentucky determined nonattainment area partial county emissions (for on-road, non-road) by apportioning a ratio of the whole and partial county population using the 2010 U.S. Census data to each relevant emission source category.¹³ DAQ estimated partial county population using census blocks data within the respective partial county boundary. Then DAQ multiplied the whole and partial county population to obtain an area population ratio that was then multiplied by the Henderson and Webster County emissions data to obtain the partial county emissions data for non-road, on-road and non-point source categories (*i.e.*, eight percent for Henderson County and 25 percent for Webster County). See Appendix A of Kentucky's February 15, 2024, SIP revision. Because the point sources are located completely within the nonattainment area, DAQ did not apportion the population ratio to this category. Table 1 below summarizes the level of SO₂ emissions, expressed in tpy for 2017 and 2018 base year in the Henderson-Webster SO₂ Nonattainment Area by emission source type. Table 1 also includes total county emissions for Henderson and Webster County for context. Additional discussion for each emission source category is provided below.

¹² The Cabinet relied on their 2018 KYEIS for point source emissions data instead of the 2017 point source NEI data because at the time, the Commonwealth's emission data set was more recent than the 2017 NEI point source data. The Cabinet chose not to use 2019 KYEIS point source data due to the operational changes that occurred at the BREC Henderson Municipal Power and Light facilities in 2019. These operational changes led to emissions reductions in the Area, making 2019 unrepresentative of the base year emissions for point sources. See Section 1.a.(ii) of the February 15, 2024, SIP revision.

¹³ Kentucky chose the 2010 census year because at the time the emissions inventory was developed it was the most recent and complete census database prior to the 2018 base year. Additionally, Kentucky acknowledged there were no census tract population data for the 2020 census at the time the emissions inventory was developed.

¹¹ See EPA's 2014 SO₂ Nonattainment Guidance at 7–8.

TABLE 1—BASE YEAR SO₂ EMISSIONS INVENTORY FOR THE HENDERSON-WEBSTER SO₂ NONATTAINMENT AREA [tpy]

	Point	Non-point	On-road	Non-road
Henderson County				
Total County Emissions	¹⁴ 4240.18	14.13	0.14	0.40
Area percent adjustment (eight percent)	* N/A	1.13	0.01	0.03
Nonattainment Area Emissions	4240.18	1.13	0.01	0.03
Webster County				
Total County Emissions	4962.91	6.43	0.05	0.16
Area percent adjustment (25 percent)	* N/A	1.61	0.01	0.04
Nonattainment Area Emissions	4962.91	1.61	0.01	0.04
Total Nonattainment Area Emissions for Webster and Henderson County +	9203.09	2.74	0.02	0.07

* All point sources are located within the Henderson-Webster SO₂ Nonattainment Area, so the area percent adjustment does not apply.
+ Point source data: 2018 KYEIS; Nonpoint, Onroad and Nonroad data: 2017 NEI. Please see Table 15 in the February 15, 2024, SIP revision.

C. Point Sources

The primary SO₂ emitting stationary sources in the Henderson-Webster SO₂ Nonattainment Area at the time of the nonattainment designation were the Century Aluminum facility in Henderson County and the BREC Green and Reid/HMP&L power plants in Webster County, according to the February 15, 2024, SIP revision. BREC owns all the electric generating units at BREC Reid/HMP&L Station 2 and BREC Green Station. Kentucky obtained 2018 actual SO₂ emissions data for these stationary sources from the Commonwealth’s emissions inventory database, KYEIS. Partial county emissions were not needed for the point source emission category because the

power plants and industrial sources are located within the Henderson-Webster SO₂ Nonattainment Area boundary.

- Century Aluminum is an aluminum producing facility that at the time of the nonattainment designation consisted of four primary SO₂ emission units: three primary aluminum potlines and one anode bake furnace (ABF).¹⁵ Century Aluminum’s title V permit provides a potential to emit of 5,853 tons SO₂ per year. According to the Cabinet, 46 percent of all SO₂ emissions in the Henderson-Webster SO₂ Nonattainment Area are from Century Aluminum and essentially all the SO₂ emitted from the facility comes from the oxidation of sulfur that comes into the plant in the petroleum coke and pitch raw materials. To accurately account for total SO₂

emissions, Century Aluminum uses a mass balance method based on the sulfur content of raw materials (*i.e.*, raw petroleum coke and pitch). Thus, each month, Century Aluminum compiles data on the sulfur content contained in the raw materials and estimates the sum of SO₂ emissions from each emission unit using the facility’s mass balance method¹⁶ taking into consideration various emission factors for each source (*i.e.*, sum of total ABF and potline emissions). The estimated annual SO₂ emissions from 2017–2019 using the mass balance method is found in Table 2 below.¹⁷ The 2018 emissions in Table 2 contribute to the total point source emissions for Henderson County in Table 1 above.

TABLE 2—CENTURY ALUMINUM ESTIMATED SO₂ EMISSIONS

	SO ₂ Emission totals (tpy)		
	2017	2018	2019
Century Aluminum	4629.26	4239.26	4314.17

- Green Station is a power plant in Webster County. At the time of SO₂ designations, Green Station consisted of two coal-fired boilers (Units G1 and G2) with actual SO₂ emissions for the 2018 base year of 4,114.50 tons of SO₂

combined contributing 45 percent of the total SO₂ emissions in the Henderson-Webster SO₂ Nonattainment Area. Both units were converted to natural gas-fired on May 26, 2022.¹⁸ Table 3 below provides the actual SO₂ emissions in tpy

for 2017 to 2019 for BREC-Green Station. The 2018 emissions in Table 3 contribute to the total point source emissions for Green Station in Table 1 above for Webster County.

¹⁴ EPA notes an emissions data discrepancy between Kentucky’s EIS 2018 point source emissions (4240.18 tons) and EPA’s 2018 NEI emissions (4629.79 tons). According to DAQ, the difference between the two databases was due to a reporting error. Because EPA uses data provided by states to reflect data in the NEI database the Kentucky’s EIS 2018 would provide the most current data available. For more information, please see the copy of the August 15, 2025, letter from DAQ included in the docket.

¹⁵ A list of all SO₂ emitting units at the facility may be found in Table 5 of Kentucky’s February 15, 2024, revision.

¹⁶ Century Aluminum’s mass balance approach has historically been termed the “SO₂ Calculation Engine.” The SO₂ Calculation Engine has previously been reviewed and approved by the Division and is currently the stipulated method within the facility’s title V permit for calculating actual 12-month rolling average SO₂ emissions. An example of the mass balance calculation using data from September of 2018 is included in Table 3—

September 2018 SO₂ Calculation Engine for Century Aluminum Emissions, from Kentucky’s February 15, 2024, SIP revision.

¹⁷ The SO₂ Calculation Engine calculations equal the actual emissions data found in Kentucky’s February SIP revision, Appendix A, a spreadsheet titled, “Henderson-Webster Base Year Emissions Inventory.”

¹⁸ See natural gas conversion documentation for BREC—Green Station in Appendix C of Kentucky’s February 15, 2024, SIP revision.

TABLE 3—BREC GREEN STATION 2 SO₂ EMISSIONS

	Unit	SO ₂ Emission totals (tpy)		
		2017	2018	2019
BREC-Green Station	G1	2,334.41	2,689.65	2,163.18
	G2	773.72	1,424.85	752.44
Emission Totals .....	.....	3,108.14	4,114.50	2,915.62

• The Robert Reid and HMP&L Station 2, at the time of the nonattainment designation, were permitted as a single, stationary electric power generating source in Webster County with one title V operating permit and four boilers. Two boilers were owned and operated by Reid Station (Unit 1—R1 and an emergency peaking unit Reid Combustion Turbine—RT).¹⁹ The remaining two coal-fired units were owned by HMP&L (Henderson Station Unit 1 (H1) and 2 (H2)) but also operated by BREC.

○ The Reid Station units ceased operations in May 2015 to convert from coal-fired burners to new natural gas-

fired low NO_x burners. However, due to compliance issues, the units never converted to natural gas, nor did the facility resume operations.²⁰ Reid Station's operating authority was officially revoked January 17, 2022, when its operating permit was merged with the BREC Green Station title V operating permit V-19-020 R2. Unit R1 has been removed from the permit.^{21 22} Reid station emitted no SO₂ emissions in 2018 due to the facility's operational shutdown in 2015. Thus, no actual 2018 SO₂ emissions for the facility are reflected in the total point source emissions in Table 1.

○ In 2018, the two HMP&L units (EU 02 and 03) were owned by the city of Henderson, operated by BREC, and emitted a cumulative 846.55 tons of SO₂. The remaining emergency diesel generator (EU 07), emergency fire pump (EU 08), and the Reid Combustion Turbine-RT (EU 06) emitted negligible SO₂ emissions in 2018.²³ The facility retired on February 1, 2019.²⁴ Table 4 shows the total SO₂ emissions from the BREC HMP&L Station 2 units from 2017 through 2019. The 2018 emissions are included in the total point source SO₂ emissions for Webster County provided in Table 1 above.

TABLE 4—BREC HMP&L STATION 2 SO₂ EMISSIONS

	Unit	SO ₂ Emissions totals (tpy)		
		2017	2018	2019
HMP&L	EU 02	591.47	423.55	7.60
	EU 03	816.58	423.00	9.30
	EU 06	1.27	1.85	2.89
	EU 07	0.01	0.00	0.00
	EU 08	0.00	0.00	0.00
Emission Totals .....	.....	1409.33	848.40	19.79

D. Minor Point Sources

Kentucky also identified five minor point sources in the Area. Cumulatively,

these minor point sources contributed less than one ton of SO₂ emissions in 2018. Table 5 below lists the minor point sources in the Area and their 2018

emissions. These emissions are included in the total point source emissions in Table 1.

TABLE 5—2018 MINOR POINT SOURCE ACTUAL SO₂ EMISSIONS FOR THE HENDERSON-WEBSTER SO₂ NONATTAINMENT AREA

Minor point source	SO ₂ Emissions (tpy)
Henderson	
AMG Aluminum North America LLC	0.01
American Tower Corp	0.02
Kentucky 5 Star Energy LLC	0.00
Tyson Chicken Inc.—Robards Facility	0.90
Webster	
Tyson Chicken Inc.—Sebree Feed Mill	0.02

¹⁹ See Permit No. V-11-003 R1 in Appendix B of Kentucky's February 15, 2024, SIP revision.

²⁰ In 2015, Reid Station ceased operating to undergo a natural gas conversion; however, this modification was delayed.

²¹ Reid Station Unit R1 was removed from the merged Green Station operating permit.

²² See Permit No. V-19-020 R2 in Appendix B of Kentucky's February 15, 2024, SIP revision.

²³ See Appendix C of Kentucky's February 15, 2024, SIP revision.

²⁴ See documentation for BREC HMP&L Station 2 in Appendix C of Kentucky's February 15, 2024, SIP revision.

TABLE 5—2018 MINOR POINT SOURCE ACTUAL SO₂ EMISSIONS FOR THE HENDERSON-WEBSTER SO₂ NONATTAINMENT AREA—Continued

Minor point source	SO ₂ Emissions (tpy)
Emission Total	0.95

E. Other Emission Source Categories

On-road emission source emissions include vehicles such as automobiles, trucks, motorcycles, and other motor vehicles traveling on public roadways that use gasoline, diesel, and other fuels in the Henderson-Webster SO₂ Nonattainment Area. As mentioned before, Kentucky utilized MOVES3.0.4 in collaboration with the Kentucky Transportation Cabinet²⁵ to develop the on-road emission estimates for the partial county Henderson-Webster SO₂ Nonattainment Area and apportioned to the Area based on the population adjustment percentage discussed above. Kentucky estimated the total 2017 on-road SO₂ emissions for the Henderson County portion and the Webster County portion of the Area at 0.01 tpy each; thus, collectively, the 2017 on-road emissions for the entire Henderson-Webster SO₂ Nonattainment Area is estimated to be 0.02 tpy.^{26 27} A more detailed discussion of the on-road emissions inventory development for the Area can be found in the Commonwealth's February 15, 2024, revision.

The Cabinet calculated non-point and non-road emissions for the Area using the 2017 NEI for each county and a percentage adjustment derived from 2010 Census Bureau population data. The Cabinet estimated the non-point emissions for the portion of Henderson County in the Area at 1.13 tpy SO₂ and 0.03 tpy for non-road SO₂ emissions. For the portion of Webster County in the Area, the Cabinet estimated 1.61 tpy of SO₂ for non-point and 0.04 tpy SO₂ for non-road SO₂ emissions. A more detailed discussion of the emissions inventory development for the Area can be found in the Commonwealth's February 15, 2024, revision.

Table 1 above summarizes the major point and minor point 2018 base year and on-road, non-road, and non-point 2017 base year emissions, expressed in tpy, in the Area. The Cabinet

determined that point sources account for more than 99 percent of the total SO₂ emissions in the Henderson-Webster SO₂ Nonattainment Area. According to Kentucky's estimates, Century Aluminum in Henderson County accounted for 45 percent of the total SO₂ emissions in the Area and BREC-Green Station accounted for 46 percent of the total. The remaining two point sources at BREC HMP&L Station 2 contributed nine percent, and, due to the 2015 operational shutdown, BREC Reid emitted no SO₂ emissions in 2018.

EPA has analyzed Kentucky's February 15, 2024, SIP revision for consistency with CAA section 172(c)(3). This included Kentucky's methodology for apportioning partial county emissions, its rationale for using 2018 base year emissions for point source and 2017 base year emissions for the remaining source categories (on-road, non-road, and non-point sources), and its methodology to quantify emissions estimates for on-road and non-road sources. Based on this analysis, EPA is proposing to approve Kentucky's base year emissions inventory for the Henderson-Webster SO₂ Nonattainment Area.

III. Proposed Actions

For the reasons discussed above, EPA is proposing to approve Kentucky's January 26, 2024, and February 15, 2024, SIP revisions containing a certification that its existing SIP-approved NNSR program meets the NNSR requirements for the 2010 SO₂ NAAQS and an emissions inventory, respectively, for the Henderson-Webster SO₂ Nonattainment Area.

IV. Statutory and Executive Order Reviews

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

state law. For that reason, these proposed actions:

- Are not significant regulatory actions subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993);
- Are not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because SIP actions are exempt from review under Executive Order 12866;
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do 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);
- Do not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because they approve a state program;
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Are not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Sulfur oxides.

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

²⁵ See Appendix D for more information on the data used.

²⁶ The emission totals in Henderson and Webster Counties were apportioned to the Henderson-Webster SO₂ Nonattainment Area using a percentage adjustment derived from 2010 Census Bureau population data.

²⁷ Emissions data can be found in Appendix A of the February 15, 2024, SIP revision.

Dated: August 27, 2025.

Kevin McOmber,

Regional Administrator, Region 4.

[FR Doc. 2025–17048 Filed 9–4–25; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[EPA–R09–OAR–2025–0038; FRL–12574–01–R9]

Revisions to the Clean Air Act Operating Permit Program; California; San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval of revisions to the Clean Air Act (CAA or “Act”) Operating Permit Program (title V) of the San Diego County Air Pollution Control District (SDCAPCD or “District”) in California. Once approved, these revisions will update the District’s public noticing requirements to conform to current federal requirements for title V programs. We are taking comments on these proposed revisions and are simultaneously publishing our final action approving these revisions in a direct final rule.

DATES: Written comments must be received on or before October 6, 2025.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2025–0038 at <https://www.regulations.gov>. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not

consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT:

Camille Cassar, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105; phone (415) 947–4164, email: cassar.camille@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, “we,” “us,” and “our” refer to the EPA. This proposal addresses the following local rule: SDCAPCD Rule 1415, “Title V Operating Permits—Permit Process—Public Notification.” In the Rules and Regulations section of this **Federal Register**, the EPA is approving the District’s submission as a direct final rule without prior proposal because we view this as a noncontroversial action and anticipate no adverse comments. A detailed rationale for the action is set forth in the preamble to the direct final rule. If the EPA receives no adverse comments, the EPA contemplates no further action. If the EPA receives adverse comments, the EPA will withdraw the direct final rule and will address all public comments in a subsequent final rule based on this proposed rule. We do not plan to open a second comment period on this action, so anyone interested in commenting should do so at this time. Please note that if the EPA receives an adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, the EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule of the same title that is located in the Final Rules section of this **Federal Register**.

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- I. Title V Background
- II. What are the requirements for approval of revisions to Title V programs?
- III. What is the State’s proposed Title V program revision?

I. Title V Background

The CAA Amendments of 1990 include title V, which requires states to develop an operating permits program that meets the Federal criteria codified in title 40 of the Code of Federal Regulations (CFR) part 70. The title V program requires certain sources of air pollution to obtain federal operating permits from their respective states. These federal operating permits improve enforcement and compliance by consolidating all applicable federal requirements into one federally enforceable document. Before a state can issue permits under 40 CFR part 70 (which are referred to as “title V permits”), the EPA must approve its programs as amendments to appendix A of 40 CFR part 70. States may submit revisions to their approved programs for EPA approval. See EPA’s Technical Support Document (TSD) for a more detailed discussion of the history of the title V program approvals for SDCAPCD.

II. What are the requirements for approval of revisions to Title V programs?

Pursuant to 40 CFR 70.4(i), either the EPA or the state may initiate a title V program revision “when the relevant Federal or State statutes or regulations are modified or supplemented.” It is the responsibility of the state to keep the EPA apprised of any proposed modifications to its basic statutory or regulatory authority or procedures. Additional details on the steps necessary to submit a title V program revision can be found in the TSD for this action.

III. What is the State’s proposed Title V program revision?

Table 1 lists the rule submitted as part of the SDCAPCD’s title V program revisions and the date that it was adopted by the District and submitted by the California Air Resources Board (CARB), which is the governor’s designee for California rule submittals.

TABLE 1—SUBMITTED RULE

Rule No.	Rule title	Amended date	Submitted date ^b
1415	Title V Operating Permits—Permit Process—Public Notification	10/12/2023	1/19/2024

^b CARB transmitted the submittal to the EPA by a letter dated January 19, 2024.

The District submitted revisions to Rule 1415 (Title V Operating Permits—Permit Process—Public Notification) at sections (a), (c), (d), (g), and (j) to conform to current public noticing, application publication, and record retention requirements codified in 40 CFR 70.5(c), 70.7(h) and 40 CFR 70.6(a)(3)(ii)(B). Details regarding the revisions made including a change-copy of Rule 1415 can be found in the appropriate docket files.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

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

Dated: August 18, 2025.

Joshua F.W. Cook,

Regional Administrator, Region IX.

[FR Doc. 2025–17038 Filed 9–4–25; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 174 and 180

[EPA–HQ–OPP–2025–0028; FRL–12474–06–OCSPP]

Receipt of Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities—June 2025

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petitions and request for comment.

SUMMARY: This document announces the Agency’s receipt of and solicits public comment on initial filings of pesticide petitions requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities. The Agency is providing this notice in accordance with the Federal Food, Drug, and Cosmetic Act (FFDCA). EPA uses the month and year in the title to identify when the Agency compiled the petitions identified in this notice of filing. Unit II. of this document identifies certain petitions received in 2023, 2024, and 2025 that are currently being evaluated by EPA, along with information about

each petition, including who submitted the petition and the requested action.

DATES: Comments must be received on or before October 6, 2025.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition (PP) of interest identified in Unit II. of this document, online at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT:

Each application summary in Unit II. specifies a contact division. The appropriate division contacts are identified as follows:

- BPPD (Biopesticides and Pollution Prevention Division) (Mail Code 7511M); Shannon Borges; main telephone number: (202) 566–1400; email address: BPPDFRNotices@epa.gov.
- RD (Registration Division) (Mail Code 7505T); Charles Smith; main telephone number: (202) 566–1030; email address: RDFFRNotices@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

This action provides information that is directed to the public in general.

B. What is the Agency’s authority for taking this action?

EPA regulations for residues of pesticide chemicals in or on various food commodities are established under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), requires EPA to publish a notice of receipt of these petitions in the **Federal Register** and provide an opportunity for public comment on the requests.

C. What action is the Agency taking?

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is

publishing notice of the receipt of pesticide petitions filed under FFDCA section 408 that request the establishment or modification of regulations for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the requests before responding to the petitioner. Pursuant to 40 CFR 180.7(f), a summary of the petition identified in this document, prepared by the petitioner, is included in a docket. EPA has determined that the pesticide petitions described in this document contain data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2), and 40 CFR 180.7(b); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting the pesticide petitions. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Based upon review of the data supporting these petitions and in accordance with its authority under FFDCA section 408(d)(4)(A)(i), EPA may establish a final tolerance or tolerance exemption that “may vary from that sought by the petitioner.” For example, EPA may determine that it is appropriate to vary the commodity name for consistency with EPA’s Food and Feed Commodity Vocabulary, which is located here <https://www.epa.gov/pesticide-tolerances/food-and-feed-commodity-vocabulary>, or vary the tolerance level based on available data, harmonization interests, or the trailing zeros policy. In addition, when evaluating a petition’s requests for a tolerance or exemption, EPA will consider how use of the pesticide on a crop for which a tolerance is requested may result in residues in or on commodities related to that requested commodity (e.g., whether use on sugar beets for which a tolerance was requested on sugar beet root also requires a tolerance on sugar beet tops or whether use on a cereal grain for which a grain tolerance was requested also requires a tolerance on related animal feed commodities derived from that cereal grain). Public commenters

should consider the possibility of such revisions in preparing comments on these petitions.

D. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit CBI to EPA through <https://www.regulations.gov> or email. If you wish to include CBI in your comment, please follow the applicable instructions at <https://www.epa.gov/dockets/commenting-epa-dockets#rules> and clearly mark the information that you claim to be CBI. In addition to one complete version of the comment that includes CBI, a copy of the comment without CBI must be submitted for inclusion in the public docket. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <https://www.epa.gov/dockets/commenting-epa-dockets>.

II. Petitions Received

- This unit provides the following information about the petitions:
 - The Pesticide Petition (PP) Identification (IN) number;
 - EPA docket ID number for the petition;
 - Information about the petition (*i.e.*, name of the petitioner, name of the pesticide chemical residue and the commodities for which a tolerance or exemption is sought);
 - The analytical method available to detect and measure the pesticide chemical residue or the petitioner's statement about why such a method is not needed; and
 - The division to contact for that petition.

Additional information on the petitions may be obtained through the petition summaries that were prepared by the petitioners pursuant to 21 U.S.C. 346a(d)(2)(A)(i)(I) and 40 CFR 180.7(b)(1), which are included in the docket for the petition as identified in this unit.

- PP 4F9135.* EPA-HQ-OPP-2024-0322. Gowan Company, LLC, P.O. Box 556, Yuma, AZ 85366, requests to convert the existing regional tolerance in 40 CFR part 180 for residues of the insecticide hexythiazox and its metabolites in or on the raw agricultural commodities of citrus crop group 10–10A at 0.6 parts per million (ppm) to include a national tolerance for crop subgroup 10–10B lemon/lime at 0.6 ppm, while establishing separate, remaining regional tolerances for grapefruit, subgroup 10–10C (CA, AZ, TX only) at

0.5 ppm and orange, subgroup 10–10A (CA, AZ, TX only) at 0.5 ppm. The methodology, Morse Laboratories, LLC, Analytical Method# Meth-220, Original, titled “Determination of Hexythiazox in/on Various Matrices,” dated May 6, 2013, with method modifications dated May 16, 2013, was reviewed by the Agency in the study entitled “Magnitude of the Residue of Hexythiazox in or on Citrus Raw Agricultural Commodities Following One Application of Onager® 1E Miticide”. The same method was used in the new residue data generated to amend the crop subgroup 10–10B lemon/lime tolerance, nationally. *Date of receipt:* April 9, 2024. *Contact:* RD.

- PP 5F9183.* EPA-HQ-OPP-2025-0294. FMC Corporation, 2929 Walnut Street, Philadelphia, PA 19104, requests to amend the tolerance in 40 CFR 180 for residues of the insecticide chlorantraniliprole in or on rice, grain at 10 parts per million (ppm) and rice, hulls at 30 ppm. The LC/MS/MS methods are used to measure and evaluate the chemical. *Date of receipt:* April 30, 2025. *Contact:* RD.

- PP 5F9183.* EPA-HQ-OPP-2025-0294. FMC Corporation, 2929 Walnut Street, Philadelphia, PA 19104, requests to amend the tolerance in 40 CFR 180 for residues of the insecticide chlorantraniliprole in or on rice, grain at 10 parts per million (ppm) and rice, hulls at 30 ppm. The LC/MS/MS methods are used to measure and evaluate the chemical. *Date of receipt:* April 30, 2025. *Contact:* RD.

- PP IN-11992.* EPA-HQ-OPP-2025-0154. Ramboll, 4245 North Fairfax Dr., Suite 700, Arlington, VA 22203, on behalf of Shell Trading (US) Company, 1000 Main Street 12th Floor, Houston, TX 77002, requests to establish an exemption from the requirement of a tolerance for residues of alkanes, C12–15-branched and linear (CAS Reg. No. 1437281–03–2); distillates (Fischer-Tropsch), C8–26-branched and linear (CAS Reg. No. 848301–67–7); and alkanes, C18–24-branched and linear (CAS Reg. No. 1437280–85–7) when used as pesticide inert ingredients (solvents) in pesticide formulations under 40 CFR 180.910 (limited to ≤40% by weight in water-based formulations and at no more than 95% by weight in neat spray oil formulations). The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Date of receipt:* June 11, 2025. *Contact:* RD.

- PP 4F9125.* EPA-HQ-OPP-2025-0099. Pioneer Hi-Bred International, Inc., 7300 NW 62nd Avenue, P.O. Box 1000, Johnston, IA 50131, requests to

establish an exemption from the requirement of a tolerance in 40 CFR part 174 for residues of the plant-incorporated protectant (PIP) *Bacillus thuringiensis* Cry1B.34.1 protein in or on all food and feed commodities. The petitioner believes no analytical method is needed because an exemption from the requirement of a tolerance is being sought. *Date of receipt:* April 24, 2025. *Contact:* BPPD.

- PP 4F9126.* EPA-HQ-OPP-2025-0100. Pioneer Hi-Bred International, Inc., 7300 NW 62nd Avenue, P.O. Box 1000, Johnston, IA 50131, requests to establish an exemption from the requirement of a tolerance in 40 CFR part 174 for residues of the plant-incorporated protectant (PIP) *Bacillus thuringiensis* Cry1B.61.1 protein in or on all food and feed commodities. The petitioner believes no analytical method is needed because an exemption from the requirement of a tolerance without is being sought. *Date of receipt:* April 24, 2025. *Contact:* BPPD.

- PP 4F9127.* EPA-HQ-OPP-2025-0089. Pioneer Hi-Bred International, Inc., 7300 NW 62nd Avenue, P.O. Box 1000, Johnston, IA 50131, requests to establish an exemption from the requirement of a tolerance in 40 CFR part 174 for residues of the plant-incorporated protectant (PIP) *Adiantum trapeziforme* var. *braziliense* IPD083Cb protein in or on all food and feed commodities. The petitioner believes no analytical method is needed because an exemption from the requirement of a tolerance is being sought. *Date of receipt:* April 24, 2025. *Contact:* BPPD.

- PP 3F9097.* EPA-HQ-OPP-2024-0402. FMC Corporation, 2929 Walnut Street, Philadelphia, PA 19104, requests to establish a tolerance in 40 CFR part 180 for residues of the herbicide tetflupyrolimet in or on Crop Group 7–22; Forage and Hay for Legume Vegetable Group at 0.2 ppm; Rice, grain at 0.04 parts per million (ppm); and Soybean, seed at 0.01 ppm. The high-pressure liquid chromatography with ESI-MS/MS detection, is used to measure and evaluate the chemical tetflupyrolimet, (3S, 4S)-N-(2-fluorophenyl)-1-methyl-2-oxo-4-[3-(trifluoromethyl)phenyl]-3-pyrrolidinecarboxamide, including its metabolites and degradates. *Date of receipt:* November 13, 2023. *Contact:* RD.

- PP 4F9135.* EPA-HQ-OPP-2024-0322. Gowan Company, LLC, P.O. Box 556 Yuma, AZ 85366, requests to convert the existing regionally restricted tolerance in 40 CFR part 180 for residues of the insecticide hexythiazox and its metabolites in or on the raw agricultural commodities of Citrus Crop

Group 10–10 at 0.6 parts per million (ppm) to include a national tolerance for Crop Subgroup 10–10B lemon/lime at 0.6 ppm, while establishing separate, remaining regionally restricted tolerances for Grapefruit, subgroup 10–10C (CA, AZ, TX only) at 0.5 ppm and Orange, subgroup 10–10A (CA, AZ, TX only) at 0.5 ppm. The methodology, Morse Laboratories, LLC, Analytical Method# Meth-220, Original, titled “Determination of Hexythiazox In/On Various Matrices,” dated May 6, 2013, with method modifications dated May 16, 2013, was reviewed by the Agency in the study entitled “Magnitude of the Residue of Hexythiazox in or on Citrus Raw Agricultural Commodities Following One Application of Onager® 1E Miticide”. The same method was used in the new residue data generated to amend the crop subgroup 10–10B lemon/lime tolerance, nationally. *Date of receipt:* April 9, 2024. *Contact:* RD.

- *PP 4F9136.* EPA–HQ–OPP–2024–0323. BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709, requests to establish tolerances in 40 CFR 180.649(a)(1) for residues of the herbicide saflufenacil, including its metabolites and degradates, in or on Corn, pop, forage at 0.4 parts per million (ppm); corn, pop, stover at 5 ppm; corn, sweet, forage at 0.5 ppm; corn, sweet, stover at 0.6 ppm; soybean, forage at 0.3 ppm; and soybean, hay at 0.3 ppm. Adequate enforcement methodology (liquid chromatography/mass spectrometry/mass spectrometry (LC/MS/MS)) methods for plant and livestock commodities are available to enforce the tolerance expression. *Date of receipt:* April 29, 2024. *Contact:* RD.

- *PP 4F9138.* EPA–HQ–OPP–2025–0183. Syngenta Crop Protection, LLC., P.O. Box 18300, Greensboro, NC 27419–8300, requests to establish a tolerance in 40 CFR part 180 for residues of the fungicide pydiflumetofen including its metabolites and degradates in or on sugarcane at 0.05 parts per million (ppm). The QuEChERS and GRM061.03A methods are used to measure and evaluate the chemical pydiflumetofen. *Date of receipt:* May 2, 2024. *Contact:* RD.

- *PP 4F9163.* EPA–HQ–OPP–2025–0219. BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, North Carolina 27709–3528, requests to establish a tolerance in 40 CFR part 180 for residues of the fungicide pyraclostrobin and its desmethoxy metabolite in or on tea, dried at 20 parts per million (ppm). The BASF no. 535/1 (L0076/09) method is used to measure and evaluate the chemical pyraclostrobin and its

metabolite. *Date of receipt:* December 17, 2024. *Contact:* RD.

- *PP5E9165.* EPA–HQ–OPP–2025–0210. Bayer CropScience LP, 800 N. Lindbergh Blvd., St. Louis, MO 63167, requests to establish a tolerance in 40 CFR 180 for residues of the fungicide fluopyram (N-[2-[3-chloro-5-(trifluoromethyl)-2-pyridinyl]ethyl]-2-(trifluoromethyl)benzamide) in or on crop subgroup 24B, tropical and subtropical, medium to large fruit, smooth, inedible peel subgroup at 1 parts per million (ppm). The high-performance liquid chromatography-electrospray ionization/tandem mass spectrometry (LC–MS/MS) is used to measure and evaluate the chemical fluopyram. *Date of receipt:* December 19, 2024. *Contact:* RD.

- *PP 5F9175.* EPA–HQ–OPP–2025–0158. ABERCO, Inc. A Balchem Company, 5 Paragon Drive, Suite 201, Montvale, NJ 07645, requests to establish a tolerance in 40 CFR part 180 for residues of the fungicide propylene oxide (PPO) in or on sesame, seed; turmeric, roots, dried; ginger, dried; pepper, bell, dried; and pepper, nonbell, dried at 300 parts per million (ppm) for PPO, including its metabolites and degradates and 6,000 parts per million (ppm) for its reaction product propylene chlorohydrin (PCH), including its metabolites and degradates. The analytical method using solvent extraction followed by gas chromatography (GC) in tandem with electron impact ionization mass spectrometry (EIMS) or electron capture detection (ECD) is used to measure and evaluate the chemical PPO. *Date of receipt:* February 11, 2025. *Contact:* RD.

Authority: 21 U.S.C. 346a.

Dated: August 22, 2025.

Kimberly Smith,

Acting Director, Information Technology and Resources Management Division, Office of Program Support.

[FR Doc. 2025–17008 Filed 9–4–25; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R01–RCRA–2025–0188; FRL 12874–01–R1]

Massachusetts: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Massachusetts has applied to the Environmental Protection Agency (EPA) for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. EPA proposes to grant final authorization to Massachusetts for these revisions by a direct final rule, which can be found in the “Rules and Regulations” section of this **Federal Register**. We have explained the reasons for this authorization in the preamble to the direct final rule. Unless EPA receives written comments that oppose this authorization during the comment period, the direct final rule will become effective on the date it establishes, and EPA will not take further action on this proposal.

DATES: Send your written comments by October 6, 2025.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–RCRA–2025–0188, at <https://www.regulations.gov/>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from www.regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Sara Kinslow, RCRA Waste Management and Lead Branch; Land, Chemicals, and Redevelopment Division; U.S. EPA Region 1, 5 Post Office Square, Suite 100 (Mail code 07–1), Boston, MA 02109–3912; phone: 617–918–1648; email: kinslow.sara@epa.gov.

SUPPLEMENTARY INFORMATION: In the “Rules and Regulations” section of this **Federal Register**, EPA is authorizing the revisions by a direct final rule. EPA did not make a proposal prior to the direct final rule because we believe this action is not controversial and do not expect

comments that oppose it. We have explained the reasons for this authorization in the preamble of the direct final rule. Unless EPA receives adverse written comments that oppose this authorization during the comment period, the direct final rule will become effective on the date it establishes, and EPA will not take further action on this proposal. If EPA receives comments that oppose this action, we will withdraw the direct final rule, and it will not take effect. EPA will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time. For additional information, please see the direct final rule published in the “Rules and Regulations” section of this **Federal Register**.

Authority: This proposed action is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: August 13, 2025.

Mark Sanborn,

Regional Administrator, U.S. EPA Region I.

[FR Doc. 2025–17052 Filed 9–4–25; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 401 and 404

[Docket No. USCG–2025–0252]

RIN 1625–AD03

Great Lakes Pilotage Rates—2026 Annual Review and Revisions to Methodology

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing new base Great Lakes pilotage rates for the 2026 shipping season while facilitating commerce and supply chains. The Coast Guard estimates that this proposed rule would result in an approximately 7-percent decrease in operating costs compared to the 2025 season. The Coast Guard is also proposing one change to the ratemaking methodology: the removal of Step 5 regarding the working capital fund. In accordance with the requirement to conduct a full ratemaking at least every 5 years, we are conducting a full ratemaking for 2026 and accepting comments on the Great Lakes pilotage ratemaking methodology.

DATES: Comments and related material must be received by the Coast Guard on or before October 8, 2025.

ADDRESSES: You may submit comments identified by docket number USCG–2025–0252 using the Federal Decision-Making Portal at www.regulations.gov. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments. This notice of proposed rulemaking, with its plain-language, 100-word-or-less proposed rule summary, will be available in this same docket.

FOR FURTHER INFORMATION CONTACT: For information about this document, call or email Mr. Brian Rogers, Commandant, Office of Waterways and Ocean Policy—Great Lakes Pilotage Division (CG–WWM–2), Coast Guard; telephone 571–608–8418 or email Brian.Rogers@uscg.mil.

SUPPLEMENTARY INFORMATION:

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- III. Discussion of Proposed Methodological Changes and Consideration of Past Comments
- IV. Summary of the Ratemaking Methodology
- V. Discussion of Proposed Rate Adjustments

District One

- A. Step 1: Recognize Previous Operating Expenses
- B. Step 2: Project Operating Expenses, Adjusting for Inflation or Deflation
- C. Step 3: Estimate Number of Registered Pilots and Apprentice Pilots
- D. Step 4: Determine Target Pilot Compensation Benchmark and Apprentice Pilot Wage Benchmark
- E. Redesignated Step 5: Project Needed Revenue (Previously Step 6)
- F. Redesignated Step 6: Calculate Initial Base Rates (Previously Step 7)
- G. Redesignated Step 7: Calculate Average Weighting Factors by Area (Previously Step 8)
- H. Redesignated Step 8: Calculate Revised Base Rates (Previously Step 9)
- I. Redesignated Step 9: Review and Finalize Rates (Previously Step 10)

District Two

- A. Step 1: Recognize Previous Operating Expenses
- B. Step 2: Project Operating Expenses, Adjusting for Inflation or Deflation
- C. Step 3: Estimate Number of Registered Pilots and Apprentice Pilots
- D. Step 4: Determine Target Pilot Compensation Benchmark and Apprentice Pilot Wage Benchmark
- E. Redesignated Step 5: Project Needed Revenue (Previously Step 6)
- F. Redesignated Step 6: Calculate Initial Base Rates (Previously Step 7)

- G. Redesignated Step 7: Calculate Average Weighting Factors by Area (Previously Step 8)
- H. Redesignated Step 8: Calculate Revised Base Rates (Previously Step 9)
- I. Redesignated Step 9 Review and Finalize Rates (Previously Step 10)

District Three

- A. Step 1: Recognize Previous Operating Expenses
- B. Step 2: Project Operating Expenses, Adjusting for Inflation or Deflation
- C. Step 3: Estimate Number of Registered Pilots and Apprentice Pilots
- D. Step 4: Determine Target Pilot Compensation Benchmark and Apprentice Pilot Wage Benchmark
- E. Redesignated Step 5: Project Needed Revenue (Previously Step 6)
- F. Redesignated Step 6: Calculate Initial Base Rates (Previously Step 7)
- G. Redesignated Step 7: Calculate Average Weighting Factors by Area (Previously Step 8)
- H. Redesignated Step 8: Calculate Revised Base Rates (Previously Step 9)
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I. Abbreviations

2021 final rule Great Lakes Pilotage Rates—2021 Annual Review and Revisions to Methodology final rule
 2023 final rule Great Lakes Pilotage Rates—2023 Annual Ratemaking and Review of Methodology
 2025 final rule Great Lakes Pilotage Rates—2025 Annual Review
 APA American Pilots' Association
 BLS Bureau of Labor Statistics
 CFR Code of Federal Regulations
 CPI Consumer Price Index
 DHS Department of Homeland Security
 Director U.S. Coast Guard's Director of the Great Lakes Pilotage
 ECI Employment Cost Index
 FOMC Federal Open Market Committee
 FR Federal Register
 GLPAC Great Lakes Pilotage Advisory Committee
 LPA Lakes Pilots Association
 NAICS North American Industry Classification System
 NPRM Notice of proposed rulemaking
 OMB Office of Management and Budget
 PCE Personal Consumption Expenditures § Section
 SBA Small Business Administration
 SLSPA Saint Lawrence Seaway Pilots Association

U.S.C. United States Code
WGLPA Western Great Lakes Pilots Association

II. Basis and Purpose

The legal basis of this rulemaking is 46 U.S.C. Chapter 93,¹ which requires foreign merchant vessels and United States vessels operating “on register” (meaning United States vessels engaged in foreign trade) to use United States or Canadian Registered Pilots while transiting the United States waters of the St. Lawrence Seaway and the Great Lakes system.² For United States Registered Pilots, the statute requires the Secretary to “prescribe by regulation rates and charges for pilotage services, giving consideration to the public interest and the costs of providing the services.”³ The statute requires that rates be established or reviewed and adjusted each year, not later than March

1.⁴ The statute also requires that base rates be established by a full ratemaking at least once every 5 years, and, in years when base rates are not established, they must be reviewed and, if necessary, adjusted.⁵ The Secretary’s duties and authority under 46 U.S.C. Chapter 93 have generally been delegated to the Coast Guard.⁶

The purpose of this rulemaking is to conduct a full ratemaking and issue new pilotage rates for the 2026 shipping season. The full ratemaking includes soliciting feedback regarding the entire methodology and the staffing model. The Coast Guard believes that the new rates and proposed changes to the methodology will continue to promote our goal, as outlined in 46 CFR 404.1, to promote safe, efficient, and reliable pilotage service on the Great Lakes by generating for each pilotage association sufficient revenue to

reimburse its necessary and reasonable operating expenses and fairly compensate trained and rested Pilots. The Coast Guard believes this ratemaking will continue to meet the other § 404.1 goal of providing an appropriate profit to use for improvements, as explained later in this preamble.

Rates are the foundation for safe, efficient, and reliable pilotage service to facilitate maritime commerce, protect the marine environment, and comply with National Transportation Safety Board recommendations regarding staffing and pilot fatigue. The pilotage rates for the 2026 season range from a proposed \$377 to \$966 per pilot hour, depending on which of the specific 6 areas pilotage service is provided. The rates are paid by shippers to the pilot associations.

TABLE 1—CURRENT AND PROPOSED PILOTAGE RATES ON THE GREAT LAKES

Area	Name	Final 2025 pilotage rate	Proposed 2026 pilotage rate
District One: Designated	St. Lawrence River	\$986	\$966
District One: Undesignated	Lake Ontario	643	617
District Two: Designated	Navigable waters from Southeast Shoal to Port Huron, MI.	753	681
District Two: Undesignated	Lake Erie	576	555
District Three: Designated	St. Marys River	825	860
District Three: Undesignated	Lakes Huron, Michigan, and Superior	440	377

There are three American pilotage districts on the Great Lakes, each represented by a pilot association.⁷ Each pilotage district is further divided into “designated” and “undesignated” areas. Designated areas, classified as such by Presidential Proclamation, are waters in which Pilots must direct the navigation of vessels at all times.⁸ Undesignated areas are open bodies of water where Pilots must only “be on board and available to direct the navigation of the vessel” at the discretion of the vessel Master.⁹ The three pilot associations, which are the exclusive source of United States Registered Pilots on the Great Lakes, use the revenue from the shippers to cover operating expenses, maintain infrastructure, compensate United States Apprentice and Registered Pilots, acquire and implement

technological advances, train new personnel, and provide for continuing professional development. Each pilot association is an independent business and is the sole provider of pilotage services in its district of operation. Each pilot association is responsible for funding its own operating expenses, infrastructure maintenance, and compensation for Pilots and Apprentice Pilots.¹⁰

The actual demand for service dictates the compensation amount for United States Registered Pilots. We divide that amount by the historic 10-year average for pilotage demand. We recognize that, in years where demand for pilotage services exceeds the 10-year average, pilot associations will accrue more revenue than projected, while, in years where demand is below average,

they will take in less. We believe that, over the long term, however, this scheme ensures that infrastructure will be maintained, and that Pilots will receive adequate compensation and work a reasonable number of hours, with adequate rest between assignments, to ensure retention of highly trained personnel. Using a 10-year average also results in less rate volatility.

In this notice of proposed rulemaking (NPRM), we are conducting a full ratemaking under 46 CFR 404.100(a) to establish base pilotage rates for 2026. We are electing to conduct a full ratemaking because the Coast Guard is proposing changes to the methodology. Specifically, 2e are proposing to remove Step 5, which calculates a working capital fund for each pilot association.

¹ 46 U.S.C. 9301–9308.

² 46 U.S.C. 9302(a)(1).

³ 46 U.S.C. 9303(f).

⁴ *Id.*

⁵ *Id.*

⁶ Department of Homeland Security (DHS) Delegation 00170.1, Revision No. 01.4, paragraph (II)(92)(f).

⁷ The Saint Lawrence Seaway Pilots Association (SLSPA) provides pilotage services in District One, which includes all U.S. waters of the St. Lawrence

River and Lake Ontario. The Lakes Pilots Association (LPA) provides pilotage services in District Two, which includes all U.S. waters of Lake Erie, the Detroit River, Lake St. Clair, and the St. Clair River. Finally, the Western Great Lakes Pilots Association (WGLPA) provides pilotage services in District Three, which includes all U.S. waters of the St. Mary’s River; Sault Ste. Marie Locks; and Lakes Huron, Michigan, and Superior.

⁸ Presidential Proclamation 3385, *Designation of restricted waters under the Great Lakes Pilotage Act of 1960*, December 22, 1960, <https://www.archives.gov/federal-register/codification/proclamations/03385.html>; accessed 08/08/25.

⁹ 46 U.S.C. 9302(a)(1)(B).

¹⁰ Apprentice Pilots and Applicant Pilots are compensated by the pilot association they are training with, which is funded through the pilotage rates. The ratemaking methodology accounts for an Apprentice Pilot wage benchmark in Step 4 per 46 CFR 404.104(d). The Applicant Pilot salaries are included in the pilot associations’ operating expenses used in Step 1 per 46 CFR 404.101.

We typically propose methodology changes only during full ratemakings, not during an adjustment ratemaking that follows the existing methodology to reach the annual rates. The statute requires us to conduct a full ratemaking at least once every 5 years but allows us the discretion to conduct them more frequently. The Coast Guard last conducted a full ratemaking in 2023, with the “Great Lakes Pilotage Rates—2023 Annual Ratemaking and Review of Methodology” final rule (hereafter the “2023 final rule”) (88 FR 12226, February 27, 2023). This proposed rule is a full ratemaking under 46 CFR 404.100(a). The Coast Guard has made several changes to the ratemaking over the last several final rules in consideration of the public interest and costs of providing services. The recent changes and their impacts are summarized in the 2023 final rule (88 FR 12226).

III. Discussion of Proposed Methodological Changes and Consideration of Past Comments

The Coast Guard is proposing one change to the ratemaking methodology: to remove Step 5 for calculating a working capital fund. We are accepting comments on the entire ratemaking methodology and staffing model as part of our full ratemaking year. In this section, we also address the public comments on recent interim year ratemakings that we committed to address in the next full ratemaking.

According to 46 U.S.C. 9303(f), and restated in 46 CFR 404.100(a), the Coast Guard must establish base rates by a full ratemaking at least once every 5 years. We have determined that the current base rate and existing methodology in Steps 1 through 4 and 6 through 10 still adhere to the Coast Guard’s goals of safety through rate and compensation stability, while promoting recruitment and retention of qualified United States Registered Pilots. Therefore, we are not recommending any methodological changes to Steps 1 through 4. For Steps 6 through 10, the only change we are recommending is that they be redesignated as Steps 5 through 9, and any references to previous steps be renumbered as required.

A. Removal of § 404.105—*Ratemaking Step 5: Project Working Capital Fund*

We are proposing to remove Step 5 and retain the other 9 steps of the ratemaking methodology. We are proposing this change in response to public comments and upon review of the three pilotage associations’ assets and expenses. We also discussed removing the working capital fund at

the 2024 Great Lakes Pilotage Advisory Committee (GLPAC) meeting. The discussion of the working capital fund removal begins on page 212 of the 2024 GLPAC meeting transcript. The transcripts are available in the docket for this rulemaking (USCG–2025–0252) and also for the “Great Lakes Pilotage Rates—2025 Annual Review” final rule (hereafter the 2025 final rule) (USCG–2024–0406), where indicated under the Public Participation and Request for Comments portion of the preamble. If adopted, existing Steps 6 through 10 would be redesignated as Steps 5 through 9 in the ratemaking methodology.

During the NPRM comment period for the 2025 final rule, we received a comment from industry stakeholders requesting that we remove the working capital fund.¹¹ In the 2025 final rule, we responded that we would consider it in the next full ratemaking.¹² The commenter stated, in part:

We support the Coast Guard on this matter and urge that Step 5 of the rate-setting process be eliminated in the future. This position is consistent with our past comments. In our submissions for the 2017, 2018, and 2019 rate-settings, we urged the Coast Guard to eliminate Step 5 for several reasons. First, we believe that pilot associations—like any well-run business—should plan for and reserve a portion of their revenue for routine capital needs. In the past we have supported special surcharges for extraordinary capital expenses, such as new pilot boats. We think a surcharge system is more transparent and easier to track.

The American Great Lakes Ports Association made this same point at the 2024 GLPAC meeting.¹³

We are proposing to remove Step 5 for the following reasons. The working capital fund was primarily put in place so that the three districts could have sufficient proof of funds to receive loans and lines of credit from financial institutions for large projects. The U.S. Coast Guard’s Director of the Great Lakes Pilotage (Director) has reviewed and monitored the working capital fund accounts each year and has determined that the pilot associations now have the funds needed and ability to plan ahead for infrastructure maintenance, non-recurring expenses, and credit worthiness. We anticipate, therefore, that the pilot associations will have sufficient revenues to cover most maintenance projects by early planning and setting funds aside.

¹¹ See docket USCG–2024–0406 on [regulations.gov](https://www.regulations.gov), specifically Comment ID USCG–2024–0406–0007. <https://www.regulations.gov/comment/USCG-2024-0406-0007>.

¹² 89 FR 100810, 100812, December 13, 2024.

¹³ *Ibid*.

If a necessary and reasonable expense presents itself as outside the financial means of the organization, the Director may approve the use of a surcharge, as we have done in the past. A surcharge would provide transparency in both the amount and the association’s purpose for collecting the funds. If a surcharge is authorized in the future, the amount collected would be included in the revenue reports for the Coast Guard’s review. Any surplus in revenue from the surcharge would be deducted from Step 1 expenses, as necessary.

In Section VI., Regulatory Analyses, in this preamble, table 47 shows the difference in rates for the 2026 season between retaining and removing Step 5: Project the working capital fund.

B. Suggestions Related to the Federal Open Market Committee Inflation Adjustment in Step 2

In the same industry comment on the NPRM for the 2025 final rule, we received a request to use the Federal Open Market Committee (FOMC) inflation adjustment in Step 2.¹⁴ During the 2025 final rule discussion of the comments, we indicated that we would address this request in the next full ratemaking.¹⁵ Step 2 of our methodology explains that inflation factors are taken from one of two sources—the Bureau of Labor Statistics (BLS) Consumer Price Index (CPI) for the Midwest Region or the FOMC median economic projections for Personal Consumption Expenditures (PCE) inflation. The commenter was concerned that we used the last 3 years of the BLS source. The commenter reasoned that recent high inflation numbers appear in the average in each of 3 consecutive years leading to a projection that is “unrealistically and permanently high.” The commenter asserted that continuing to rely on the BLS gives little prospect of the numbers being corrected by a downswing in inflation as the FOMC projections “drop highs and lows over the previous years to arrive at its estimates for mean inflation percentages.”

The Coast Guard appreciates the concern that very high inflation measures could lead to a high rate. However, Step 2 does not employ an average at any point when applying the inflation measures for the 3 different years. The goal of the methodology in Step 2 is to adjust the expenses from Step 1 by point estimates of inflation in each of the 3 years so that they are a more accurate representation of what future expenses (and therefore revenue

¹⁴ *Ibid*.

¹⁵ 89 FR 100810, 100812, December 13, 2024.

needed) will look like in the year that rates are being set for. That is, the three inflation rates are not averaged; they are compounded. This process can be found in 46 CFR 404.102.

For the 2025 final rule, the base year of expenses was 2022, requiring an adjustment for realized inflation in 2023 and projected inflation that would occur in 2024 and 2025. The three measures used in Step 2 of the 2025 final rule were, as noted in table 4 of this preamble, for inflation from 2022 to 2023 (3.8-percent), inflation from 2023 to 2024 (2.8 percent), and inflation from 2024 to 2025 (2.3 percent). The 3.8 figure is the 2023 12-month percent change in CPI for the categories of All Urban Consumers, All items in Midwest urban, all urban consumers, not seasonally adjusted, while the 2.8 and 2.3 are FOMC projections for 2024 and 2025. As the commenter notes, the FOMC figures are projections for future years for which there is not current data available, which is why the Coast Guard used these figures for 2024 and 2025. At the time of the 2025 final rule, the realized value for inflation in 2023 was available to adjust the 2022 expenses. It is most accurate to adjust the 2022 expenses by the actual value for 2023 rather than an average utilizing other years' data.

As this rulemaking is a full ratemaking, the Coast Guard welcomes any proposals for improvements or changes to Step 2 of the methodology that would better meet the goal of promoting safe, efficient, and reliable pilotage service on the Great Lakes by generating sufficient revenue for each pilotage association to reimburse its necessary and reasonable operating expenses, fairly compensate trained and rested Pilots, and provide appropriate funds to use for improvements.

C. Other Comments To Address in Full Ratemaking

The same industry comment from the NPRM to the 2025 final rule also suggested that the Coast Guard should conduct a line-by-line inspection of pilot association expenses to determine if they meet the “necessary and reasonable” standard. We stated in the 2025 final rule that we would address this comment in the next full ratemaking.¹⁶

The Coast Guard does not conduct a line-by-line inspection because it was unanimously voted at a previous GLPAC meeting that it would be best to

have a third party conduct a line-by-line inspection of pilot association expenses.¹⁷ Third parties, particularly professionals like auditors or financial advisors, bring unbiased expertise and credibility to the review process. A neutral third-party auditor provides a higher level of transparency in the way the review is conducted. Having a third party review the pilotage expenses can provide confidence to stakeholders that the process is thorough and trustworthy, without potential for bias or manipulation. The third party in this case is CohnReznick, a certified public accounting firm, whose team was mentioned by all three district presidents in the 2023 GLPAC meeting as doing a great job and being the best company to complete this important work. See pages 17–22 of the 2023 GLPAC transcript.

After these line-by-line items are reviewed by a third party, the Coast Guard reviews out-of-the-ordinary findings and determines if the expense is necessary and reasonable. The Coast Guard is open to considering alternative methods or expense reviews, which could be discussed in detail at the next GLPAC meeting or in the docket for this proposed rule.

Lastly, in their comment on the NPRM for the 2025 final rule, the Western Great Lakes Pilotage Association (WGLPA) requested an upward adjustment of \$45,296 based on a 2023 arbitration ruling that found that wages were owed for overtime work performed by their dispatch team.¹⁸ Because they were 2023 expenses, they were not included in the 2025 final rule ratemaking methodology. The 2025 final rule used 3-year-old expenses, from 2022, per Step 1 of the ratemaking methodology, because 2022 was the earliest full year of audited data we could obtain in time for the 2025 rulemaking. We explained in the 2025 final rule (89 FR at 100812) that, if WGLPA provided documentation of the expenses, those expenses would be evaluated in this year's ratemaking. The WGLPA did not provide documentation for this year's ratemaking.

The 2023 District 3 audited report included a total amount of \$45,296 as an adjusted expense for dispatch related work. However, the audited report does not provide a breakdown of the dispatch related expenses. According to WGLPA, this expense is associated with an arbitration ruling. We are required to determine that an expense is both

necessary and reasonable in order to include the amount in the expense base, but the burden is on the pilotage association to provide sufficient documentation to support a determination that an expense is both necessary and reasonable. We find we have insufficient information to make this determination. We are unable to include this expense without more detail from the association.

We also need additional information regarding the “overtime payments.” We believe WGLPA dispatchers are salaried employees, and we need a better understanding of these payments and how they compare to the collective agreement between the dispatchers and WGLPA. A more detailed line item expense breakdown would allow us to determine if the court-ordered amount was necessary and reasonable for the services provided. For example, in 2023, the WGLPA attempted to eliminate dispatchers and, instead, required the United States Registered Pilots in their association to monitor and track vessel movements. The Director found this proposal to be unsafe and ordered WGLPA to reinstate the dispatchers. We are unable to determine if the amount paid included overtime pay, such as time-and-a-half or double time, or any other punitive costs that may not have been necessary and reasonable had the association had a sufficient number of dispatchers in the first place.

In order to properly evaluate this expense, we require the following information: (1) the complete invoice for legal fees, with the same level of detail that a Federal court would require to award legal fees to a prevailing party, (2) the arbitrator's full decision with discussion and analysis for the award, and (3) proof of payment of the award. If WGLPA provides this information, it will be included with the final rule with any and all other information WGLPA provides.

The WGLPA was not able to provide us this detailed information by our requested deadline to develop the rates for this proposed rule when we asked on May 7, 2025. The association is welcome to provide this information during the comment period, and the Director will evaluate the claim further. At this time, we do not have sufficient information to determine if the dispatch adjustment expenses are necessary and reasonable expenses to include in Step 1 of this ratemaking.

¹⁶ 89 FR 100810, 100812. December 13, 2024.

¹⁷ See discussion on pp. 17–30 from the 2023 GLPAC transcript at <https://www.regulations.gov/document/USCG-2023-0438-0009>.

¹⁸ See docket USCG–2024–0406 on www.regulations.gov, specifically Comment ID USCG–2024–0406–0007. <https://www.regulations.gov/comment/USCG-2024-0406-0007>.

D. Proposed Rates and Pilot Staffing

Based on the 9-step ratemaking model proposed in this NPRM, we are proposing the rates shown in table 2.

TABLE 2—CURRENT AND PROPOSED PILOTAGE RATES ON THE GREAT LAKES

Area	Name	Final 2025 pilotage rate	Proposed 2026 pilotage rate
District One: Designated	St. Lawrence River	\$986	\$966
District One: Undesignated	Lake Ontario	643	617
District Two: Designated	Navigable waters from Southeast Shoal to Port Huron, MI	753	681
District Two: Undesignated	Lake Erie	576	555
District Three: Designated	St. Marys River	825	860
District Three: Undesignated	Lakes Huron, Michigan, and Superior	440	377

This proposed rule would affect 57 United States Registered Pilots, 5 Apprentice Pilots, 3 pilot associations, and the owners and operators of an average of 258 oceangoing vessels that transit the Great Lakes annually. This proposed rule is not economically significant under Executive Order 12866 and would not affect the Coast Guard's budget or increase Federal spending because foreign shippers, foreign cruise ships, and vessels requesting voluntary pilotage pay these rates directly to the respective pilot association.

The estimated overall annual regulatory economic impact of this rate change would be a net decrease of \$3,034,653 in estimated payments made by the foreign shippers, foreign cruise ships, and vessels requesting voluntary pilotage service, an approximately 7-percent decrease from operating costs in the 2025 shipping season. This represents a decrease in revenue needed for total target Pilot compensation, an increase in revenue needed for the total target Apprentice Pilot wage benchmark, a decrease in the revenue needed for adjusted operating expenses, and a decrease in the revenue needed for the working capital fund because of the proposed removal of Step 5 from the ratemaking.

E. Individual Target Pilot Compensation Benchmark

This NPRM would establish the proposed 2026 yearly base compensation for Pilots on the Great Lakes at \$483,548 per Pilot (a \$19,231 increase, or 4.14 percent, over their 2025 compensation). Because the Coast Guard must review, and, if necessary, adjust rates each year, we analyze these as single-year costs and do not annualize them over 10 years. Section VI., Regulatory Analyses, of this preamble provides the regulatory impact analyses of this proposed rule.

The Coast Guard is proposing to set the target Pilot compensation benchmark at the target compensation for the ratemaking year 2025, adjusted for inflation. This is the same method we used for setting the target compensation benchmark in the previous full ratemaking in 2023. This method resembles the interim ratemaking year requirements in § 404.104(b), where the base target Pilot compensation is adjusted annually for inflation. For a detailed history of how we arrived at the target benchmark in previous years, please see the 2023 final rule. For the reasons discussed in the 2023 final rule, we believe the base compensation as adjusted annually has remained fair.

Based on the information we have exchanged with the Pilots and industry over the past two ratemakings (2024–2025), the Director continues to believe that the level of target Pilot compensation for those years provided an appropriate level of compensation for United States Registered Pilots. According to § 404.104(a), the Director may make necessary and reasonable adjustments to the benchmark based on current information. However, current circumstances do not indicate that an adjustment, other than for inflation, is necessary. The Director bases this decision on the fact that there is no indication that United States Registered Pilots are resigning due to their compensation, or that this compensation benchmark is causing shortfalls in achieving reliable pilotage service. The Coast Guard finds that the Pilot compensation benchmark is appropriate relative to the expertise required to perform the necessary job functions. The compensation will continue to be adjusted annually, in accordance with published inflation rates, which will ensure the compensation remains competitive and current for upcoming years.

Therefore, the Coast Guard does not propose alternative benchmarks for target compensation at this time and, instead, proposes simply adjusting the amount of target Pilot compensation for inflation as our target compensation benchmark for 2025, as shown in Step 4. This target compensation benchmark approach has advanced and would continue to advance the Coast Guard's goals through rate and compensation stability while also promoting recruitment and retention of qualified United States Registered Pilots.

IV. Summary of the Ratemaking Methodology

The ratemaking methodology, outlined in current 46 CFR 404.101 through 404.110, consists of 10 steps that are designed to account for the revenues needed and total traffic expected in each district. The first several steps of the methodology establish base pilotage rates. Additional steps to incorporate the weighting factors are necessary to establish the final pilotage rates. The result is an hourly rate, determined separately for each of the six areas administered by the Coast Guard.

In Step 1, “Recognize previous operating expenses,” (§ 404.101) the Director uses an independent third party to review each pilot association's audited operating expenses from each of the three pilot associations. Operating expenses include all allowable expenses, minus Pilot and Apprentice Pilot wages and benefits. This number forms the baseline amount that each association is budgeted. Because of the time delay between when the association submits raw numbers and the Coast Guard receives audited numbers, this number is 3 years behind the projected year of expenses. Therefore, in calculating the 2026 rates in this proposal, we begin with the

audited expenses from the 2023 shipping season.

Of note, CohnReznick labeled District One and District Three salaries incorrectly, using the term “Applicant” and not “Apprentice” in their independent third-party review of 2023 district expenses. The term Apprentice was introduced in the 2022 final rule, *Great Lakes Pilotage Rates—2022 Annual Review and Revisions to Methodology* (87 FR 18488, March 20, 2022) under the definition of “apprentice pilot.” The incorrectly labeled Applicant salaries are actually Apprentice Pilot salaries that are excluded in District One and District Three. Apprentice salaries are included in Step 4 of the ratemaking methodology of this NPRM and are not to be included in the operating expenses.

While each pilotage association operates in an entire district (including both designated and undesignated areas), the Coast Guard determines costs by area. We allocate certain operating expenses to designated areas and certain operating expenses to undesignated areas. In some cases, we can allocate the costs based on where they are actually accrued. For example, we can allocate the costs for insurance for Apprentice Pilots who operate in undesignated areas only. In other situations, such as general legal expenses, expenses are distributed between designated and undesignated waters on a pro rata basis, based upon the proportion of income forecasted from the respective portions of the district.

In Step 2, “Project operating expenses, adjusting for inflation or deflation,” (§ 404.102) the Director develops the 2026 projected operating expenses. To do this, we apply inflation adjusters for 3 years to the operating expense baseline received in Step 1. The inflation factors are from the BLS CPI for the Midwest Region, or, if not available, the FOMC median economic projections for PCE inflation. This step produces the total operating expenses for each area and district.

In Step 3, “Estimate number of registered pilots and apprentice pilots,” (§ 404.103) the Director calculates how many United States Registered Pilots and Apprentice Pilots are needed for each district. To do this, the Director projects, based on the number of persons applying under 46 CFR part 401 to become United States Great Lakes Registered Pilots and on information provided by the district’s pilotage association, the number of Pilots expected to be fully working and compensated. The director then employs the staffing model, described in § 401.220, paragraphs (a)(1) through

(a)(3), to estimate how many Pilots would be needed to handle shipping during the opening and closing of the season. This number provides guidance to the Director in approving an appropriate number of Pilots. As noted in the 2025 final rule, the maximum number of Pilots is now the maximum amount allowed by the staffing model plus three, following the recommendation from GLPAC in 2023.¹⁹ The minimum is set at the current staffing model, with rounding as amended in the “Great Lakes Pilotage Rates—2021 Annual Review and Revisions to Methodology final rule” final rule (hereafter “the 2021 final rule”) (86 FR 14184, March 12, 2021).

In Step 4 of the ratemaking calculation, we determine the number of Pilots provided by the pilot associations (see § 404.103) and use that figure to determine how many Pilots need to be compensated via the pilotage fees collected. In Step 4, “Determine target Pilot compensation benchmark and apprentice pilot wage benchmark,” (§ 404.104(a)(1)), the Director determines base individual target Pilot compensation using a compensation benchmark, set after considering the most relevant currently available non-proprietary information. For supportable circumstances, the Director may make necessary and reasonable adjustments to the benchmark. For this proposed rule, the Director plans to adjust the previous year’s individual target Pilot compensation using the same process as in an interim year (§ 404.104(b)).

In Step 5, “Project working capital fund,” (§ 404.105) the Director calculates an added value to pay for needed capital improvements and other non-recurring expenses, such as technology investments and infrastructure maintenance. This value is calculated by adding the total operating expenses (derived in Step 2) to the total target Pilot compensation and total target Apprentice Pilot wage (derived in Step 4) and multiplying that figure by the preceding year’s average annual rate of return for new issues of high-grade corporate securities. This figure constitutes the working capital fund for each area and district. For the reasons given in the Section III., *Discussion of Proposed Methodological Changes and Consideration of Past Comments*, in this preamble, we are proposing to remove Step 5 for projecting the working capital fund. We would redesignate Steps 6 through 10 as

Steps 5 through 9. In Section VI., *Regulatory Analyses*, of this preamble, table 47 shows the difference in the rates for 2026 season between retaining and removing the working capital fund.

In proposed redesignated Step 5, previously Step 6, “Project needed revenue,” (§ 404.106) the Director simply adds the totals produced by the preceding steps. The projected operating expense for each area and district (from Step 2) is added to the total Pilot compensation, including Apprentice Pilot wage benchmarks (from Step 4). The total figure, calculated separately for each area and district, is the “needed revenue.”

In proposed redesignated Step 6, previously Step 7, “Calculate initial base rates,” (§ 404.107) the Director calculates an hourly pilotage rate to cover the needed revenue, as calculated in redesignated Step 5. This step consists of first calculating the 10-year average hours of traffic for each area. Next, we divide the revenue needed in each area (calculated in redesignated Step 6) by the 10-year average of traffic hours to produce an initial base rate.

An additional element, the “weighting factor,” is required under § 401.400. Pursuant to that section, ships pay a multiple of the base rate, as calculated in redesignated Step 6, by a number ranging from 1.0 (for the smallest ships, or “Class I” vessels) to 1.45 (for the largest ships, or “Class IV” vessels). This significantly increases the revenue collected, and we need to account for the added revenue produced by the weighting factors to ensure that shippers are not overpaying for pilotage services. We do this in the next step.

In proposed redesignated Step 7, previously Step 8, “Calculate average weighting factors by Area,” (§ 404.108), the Director calculates how much extra revenue, as a percentage of total revenue, has historically been produced by the weighting factors in each area. We do this by using a 10-year average of the applied weighting factors.

In proposed redesignated Step 8, previously Step 9, “Calculate revised base rates,” (§ 404.109) the Director modifies the base rates by accounting for the extra revenue generated by the weighting factors. We do this by dividing the initial pilotage rate for each area (from redesignated Step 6) by the corresponding average weighting factor (from redesignated Step 7), to produce a revised rate.

In proposed redesignated Step 9, previously Step 10, “Review and finalize rates,” (§ 404.110), often referred to informally as “Director’s discretion,” the Director reviews the revised base rates (from redesignated

¹⁹ See Page 89 of the 2023 GLPAC Transcript at <https://www.regulations.gov/document/USCG-2023-0438-0009>.

Step 8) to ensure that they meet the goals set forth in 46 U.S.C. 9303(f) and 46 CFR 404.1(a), which include promoting efficient, safe, and reliable pilotage service on the Great Lakes; generating sufficient revenue for each pilotage association to reimburse necessary and reasonable operating expenses; compensating trained and rested Pilots fairly; and providing appropriate revenue for improvements.

V. Discussion of Proposed Rate Adjustments

In this NPRM, based on the proposed methodology changes described in the previous section, we are proposing new pilotage rates for 2026. We propose to conduct the 2026 ratemaking as a full ratemaking, as we last did in 2023 (88 FR 12226). Thus, the Coast Guard is proposing to set the target Pilot compensation benchmark at the target compensation for the ratemaking year 2025, adjusted for inflation. This method resembles the interim

ratemaking year requirements in § 404.104(b), where the base target Pilot compensation is adjusted annually for inflation.

This section discusses the proposed rate changes using the ratemaking steps provided in 46 CFR part 404, including our proposal to remove the working capital fund calculation in Step 5. The following work demonstrates how we arrived at the proposed rate for each pilotage district.

District One

A. Step 1: Recognize Previous Operating Expenses

Step 1 in the ratemaking methodology requires that the Coast Guard review and recognize the operating expenses for the last full year for which figures are available (§ 404.101). To do so, we begin by reviewing the independent accountant's financial reports for each association's 2023 expenses and revenues.²⁰ For accounting purposes, the financial reports divide expenses

into designated and undesignated areas. For costs accrued by the pilot associations generally, such as employee benefits, for example, the cost is divided between the designated and undesignated areas on a pro rata basis. Adjustments have been made by the auditors and are explained in the auditor's reports, which are available in the docket for this rulemaking, where indicated under the Public Participation and Request for Comments portion of the preamble. As noted in the Summary of the Ratemaking Methodology, the 2023 expense report for District One included an expense for \$466,144 in "applicant salaries," but the Coast Guard believes that these are Apprentice Pilot salaries that are incorrectly labeled. Apprentice Pilot salaries are accounted for in Step 4 of the methodology; therefore, we excluded this expense from Step 1.

The recognized operating expenses for District One are shown in table 3.

TABLE 3—2023 RECOGNIZED EXPENSES FOR DISTRICT ONE

Reported operating expenses for 2023	District One		
	Designated	Undesignated	Total
	St. Lawrence River	Lake Ontario	
Applicant Pilot Compensation:			
Travel	\$11,548	\$7,699	\$19,247
License Insurance	2,872	1,915	4,787
Other Expenses	1,246	830	2,076
Employee Benefits	16,409	10,940	27,349
Total Applicant Pilot Compensation	32,075	21,384	53,459
Operating Expenses:			
Hotel/Lodging	54,912	36,608	91,520
Payroll Taxes	208,891	139,261	348,152
Pilot Subsistence	146,011	97,340	243,351
Travel	654,922	436,614	1,091,536
License Insurance	51,302	34,202	85,504
Total Other Pilotage Costs	1,116,038	744,025	1,860,063
Pilot Boat and Dispatch Costs:			
Dispatch Cost	207,397	138,265	345,662
Employee Benefits	57,739	38,492	96,231
Pilot Boat Cost	19,798	13,198	32,996
Travel	2,732	1,821	4,553
Salaries	243,523	162,348	405,871
Total Pilot and Dispatch Costs	531,189	354,124	885,313
Administrative Expenses:			
Accounting/Professional fees	12,300	8,200	20,500
American Pilots' Association (APA) Dues	29,374	19,583	48,957
Depreciation/Auto Leasing/Other	173,910	115,940	289,850
Depreciation/Auto Leasing/Other—D1–23–03	– 68,486	– 45,657	– 114,143
Dues and subscriptions	5,055	3,370	8,425
Employee benefits	3,685	2,456	6,141
Insurance	48,133	32,089	80,222
Interest	32,274	21,516	53,790
Interest—D1–23–04	– 17,344	– 11,562	– 28,906
Legal—Shared Counsel (K&L Gates)	52,858	35,239	88,097
Legal—Shared Counsel (K&L Gates)—D1–23–05	– 3,494	– 2,329	– 5,824

²⁰ These reports are available in the docket for this rulemaking.

TABLE 3—2023 RECOGNIZED EXPENSES FOR DISTRICT ONE—Continued

Reported operating expenses for 2023	District One		
	Designated	Undesignated	Total
	St. Lawrence River	Lake Ontario	
Legal	6,871	4,581	11,452
Other Expenses	174,482	116,321	290,803
Other Expenses—D1–23–02	8,642	5,761	14,403
Other Taxes	91,261	60,841	152,102
Payroll Taxes	56,253	37,502	93,755
Pilot Training	50,734	33,823	84,557
Real Estate taxes	23,053	15,369	38,422
Salaries	92,117	61,411	153,528
Travel	7,875	5,250	13,125
Travel—D1–23–01	–3,168	–2,112	–5,280
Utilities	29,952	19,968	49,920
Total Administrative Expenses	806,337	537,560	1,343,896
Total Expenses (OpEx + Applicant + Pilot Boats + Admin + Capital)	2,485,639	1,657,093	* 4,142,731

* Where the total column for a line from the expense report did not match manual addition, the Coast Guard manually matched to the line total for that expense and continued to sum down the column. As a result, the ending total for each column (designated, undesignated, and total) may not sum across.

B. Step 2: Project Operating Expenses, Adjusting for Inflation or Deflation

In accordance with the text in § 404.102, having identified the recognized 2023 operating expenses in Step 1, the next step is to estimate the

current year’s operating expenses by adjusting those expenses for inflation over the 3-year period. We calculate inflation using the BLS data from the CPI for the Midwest Region of the United States for the 2024 inflation rate.²¹ Because the BLS does not

provide forecasted inflation data, we use economic projections from the Federal Reserve for the 2025 and 2026 inflation modification.²² Based on that information, the calculations for Step 2 are as follows:

TABLE 4—ADJUSTED OPERATING EXPENSES FOR DISTRICT ONE

	District One		
	Designated	Undesignated	Total
Total Operating Expenses (Step 1)	\$2,485,639	\$1,657,093	\$4,142,731
2024 Inflation Modification (@2.7%)	67,112	44,742	111,854
2025 Inflation Modification (@2.5%)	63,819	42,546	106,365
2026 Inflation Modification (@2.2%)	57,565	38,376	95,941
Adjusted 2026 Operating Expenses	2,674,135	1,782,757	4,456,891

C. Step 3: Estimate Number of Registered Pilots and Apprentice Pilots

In accordance with the text in § 404.103, we estimate the number of fully registered Pilots in each district. As established by the 2021 final rule (86 FR 14184), the minimum number of United States Registered Pilots for District One is 18. Then, the 2025 final rule established the maximum number as 21. We determine the number of fully registered Pilots based on data provided by the SLSPA. We determine the number of Apprentice Pilots based on input from the district on anticipated

retirements and staffing needs. These numbers can be found in table 5.

TABLE 5—AUTHORIZED PILOTS FOR DISTRICT ONE

Item	District One
2026 Authorized United States Registered Pilots (total)	20
Pilots Assigned to Designated Areas	11
Pilots Assigned to Undesignated Areas	9
2026 Apprentice Pilots	1

D. Step 4: Determine Target Pilot Compensation Benchmark and Apprentice Pilot Wage Benchmark

In this step, we determine the total United States Registered Pilot compensation for each area. Because we are proposing a full ratemaking this year, we propose to follow the procedure outlined in paragraph (a) of § 404.104, which requires us to develop a benchmark after considering the most relevant currently available non-proprietary information. In accordance with the discussion in *Section III.E., Individual Target Pilot Compensation Benchmark*, of this preamble, the

²¹ The CPI is defined as “All Urban Consumers (CPI-U), All Items, 1982–4=100.” Series CUUR0200SA0. Available at <https://www.bls.gov/cpi/data.htm>, All Urban Consumers (Current Series), multiscreen data, not seasonally adjusted,

0200 Midwest, Current, All Items, Monthly, 12-month Percent Change and Annual Data; accessed 01/28/2025.

²² The 2025 and 2026 inflation rates are available at <https://www.federalreserve.gov/monetarypolicy/>

<files/fomcprojtabl20250319.pdf>. We used the Core PCE December Projection value found in table 1; accessed 03/19/2025.

proposed compensation benchmark for 2026 uses the 2025 compensation of \$464,317 per United States Registered Pilot as a base, then adjusts for inflation following the procedure outlined in paragraph (b) of § 404.104. First, we adjust the 2025 target compensation benchmark of \$464,317 by 1.9 percent, for a value of \$473,139. This accounts for the difference in actual fourth quarter 2024 Employment Cost Index (ECI) inflation, which is 4.2 percent, and the 2025 PCE estimate of 2.3 percent.

²³ 24

The second step accounts for projected inflation from 2025 to 2026, which is 2.2 percent.²⁵ Based on the projected 2026 inflation estimate, the target compensation benchmark for 2026 is \$483,548 per United States Registered Pilot. In accordance with § 404.104(d), the Apprentice Pilot wage benchmark is 36 percent of the target United States Registered Pilot compensation, or \$174,077 (\$483,548 × 0.36).

In accordance with § 404.104(c), we use the revised target individual compensation level to derive the total

United States Registered Pilot compensation by multiplying the individual target compensation by the estimated number of United States Registered Pilots for District One, as shown in table 6. We estimate that the number of Apprentice Pilots needed will be one for District One in the 2026 season. The total target wages for Apprentice Pilots are allocated with 60 percent for the designated area, and 40 percent for the undesignated area, in accordance with the allocation for operating expenses.

TABLE 6—TARGET COMPENSATION FOR DISTRICT ONE

	District One		
	Designated	Undesignated	Total
Target United States Registered Pilot Compensation	\$483,548	\$483,548	\$483,548
Number of United States Registered Pilots	11	9	20
Total Target United States Registered Pilot Compensation	\$5,319,028	\$4,351,932	\$9,670,960
Target Apprentice Pilot Compensation	\$174,077	\$174,077	\$174,077
Number of Apprentice Pilots			1
Total Target Apprentice Pilot Compensation	\$104,446	\$69,631	\$174,077

E. Redesignated Step 5: Project Needed Revenue (Previously Step 6)

In this step, we add all the expenses accrued to derive the total revenue

needed for each area. These expenses include the projected operating expenses (from Step 2), the total target United States Registered Pilot

compensation (from Step 4), and total target Apprentice Pilot wage (also from Step 4). We show these calculations in table 7.

TABLE 7—REVENUE NEEDED FOR DISTRICT ONE

	District One		
	Designated	Undesignated	Total
Adjusted Operating Expenses (Step 2)	\$2,674,135	\$1,782,757	\$4,456,891
Total Target United States Registered Pilot Compensation (Step 4)	5,319,028	4,351,932	9,670,960
Total Target Apprentice Pilot Compensation (Step 4)	104,446	69,631	174,077
Total Revenue Needed	8,097,609	6,204,320	14,301,928

F. Redesignated Step 6: Calculate Initial Base Rates (Previously Step 7)

Having determined the revenue needed for each area in the previous five steps, we develop an hourly rate by

dividing that number by the expected number of hours of traffic. Step 6 is a two-part process. In the first part, we calculate the 10-year average of traffic in District One, using the total time on task or Pilot bridge hours. To calculate the

time on task for each district, the Coast Guard uses billing data from SeaPro.²⁶ Because we calculate separate figures for designated and undesignated waters, there are two parts for each calculation. We show these values in table 8.

²³ Employment Cost Index, Total Compensation for Private Industry workers in Transportation and Material Moving, Annual Average (December 2024), Series ID: CIU2010000520000A. <https://www.bls.gov/news.release/eci.t05.htm>; accessed 01/31/2025.

²⁴ 2.3 percent was the latest figure available for the 2025 final rule. Table 1, Summary of Economic

Projections, Median Core PCE Inflation June Projection. <https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20240918.pdf>; accessed 10/02/2024.

²⁵ Table 1, Summary of Economic Projections, Median Core PCE Inflation December Projection. <https://www.federalreserve.gov/monetarypolicy/>

<files/fomcprojtabl20250319.pdf>; accessed 03/19/2025.

²⁶ SeaPro, used by all three pilot districts, is the approved dispatch and invoicing system that tracks pilot and vessel transits.

TABLE 8—TIME ON TASK FOR DISTRICT ONE
[Hours]

Year	District One	
	Designated	Undesignated
2024	6,232	8,075
2023	5,810	7,650
2022	6,577	8,356
2021	6,166	7,893
2020	6,265	7,560
2019	8,232	8,405
2018	6,943	8,445
2017	7,605	8,679
2016	5,434	6,217
2015	5,743	6,667
Average	6,501	7,795

Next, we derive the initial hourly rate by dividing the revenue needed by the average number of hours for each area.

This produces an initial rate, which is necessary to produce the revenue needed for each area, assuming the

amount of traffic is as expected. We present the calculations for District One in table 9.

TABLE 9—INITIAL RATE CALCULATIONS FOR DISTRICT ONE

	Designated	Undesignated
Revenue needed (Step 5)	\$8,097,609	\$6,204,320
Average time on task (hours)	6,501	7,795
Initial rate	\$1,246	\$796

G. Redesignated Step 7: Calculate Average Weighting Factors by Area (Previously Step 8)

undesignated area. We collect the weighting factors, set forth in 46 CFR 401.400, for each vessel trip. Using the weighting factor report from SeaPro, we calculate the average weighting factor

for each area using the data from each vessel transit from 2015 to 2024, as shown in tables 10 and 11.

In this step, we calculate the average weighting factor for each designated and

TABLE 10—AVERAGE WEIGHTING FACTOR FOR DISTRICT ONE, DESIGNATED AREAS

Vessel class/year	Number of transits	Weighting factor	Weighted transits *
Class 1 (2015)	41	1	41
Class 1 (2016)	31	1	31
Class 1 (2017)	28	1	28
Class 1 (2018)	54	1	54
Class 1 (2019)	72	1	72
Class 1 (2020)	8	1	8
Class 1 (2021)	10	1	10
Class 1 (2022)	39	1	39
Class 1 (2023)	19	1	19
Class 1 (2024)	26	1	26
Class 2 (2015)	295	1.15	339
Class 2 (2016)	185	1.15	213
Class 2 (2017)	352	1.15	405
Class 2 (2018)	559	1.15	643
Class 2 (2019)	378	1.15	435
Class 2 (2020)	560	1.15	644
Class 2 (2021)	315	1.15	362
Class 2 (2022)	462	1.15	531
Class 2 (2023)	481	1.15	553
Class 2 (2024)	467	1.15	537
Class 3 (2015)	28	1.3	36
Class 3 (2016)	50	1.3	65
Class 3 (2017)	67	1.3	87
Class 3 (2018)	86	1.3	112
Class 3 (2019)	122	1.3	159
Class 3 (2020)	67	1.3	87
Class 3 (2021)	52	1.3	68
Class 3 (2022)	103	1.3	134
Class 3 (2023)	34	1.3	44

TABLE 10—AVERAGE WEIGHTING FACTOR FOR DISTRICT ONE, DESIGNATED AREAS—Continued

Vessel class/year	Number of transits	Weighting factor	Weighted transits *
Class 3 (2024)	69	1.3	90
Class 4 (2015)	251	1.45	364
Class 4 (2016)	214	1.45	310
Class 4 (2017)	285	1.45	413
Class 4 (2018)	393	1.45	570
Class 4 (2019)	730	1.45	1059
Class 4 (2020)	427	1.45	619
Class 4 (2021)	407	1.45	590
Class 4 (2022)	446	1.45	647
Class 4 (2023)	420	1.45	609
Class 4 (2024)	471	1.45	683
Total	9,104	.....	11,735
Average weighting factor (weighted transits ÷ number of transits) .....	.....	1.29	.....

* Weighted transits are rounded to the nearest whole number for presentation, but the Total calculation uses unrounded figures.

TABLE 11—AVERAGE WEIGHTING FACTOR FOR DISTRICT ONE, UNDESIGNATED AREAS

Vessel class/year	Number of transits	Weighting factor	Weighted transits *
Class 1 (2015)	28	1	28
Class 1 (2016)	18	1	18
Class 1 (2017)	19	1	19
Class 1 (2018)	22	1	22
Class 1 (2019)	30	1	30
Class 1 (2020)	3	1	3
Class 1 (2021)	19	1	19
Class 1 (2022)	27	1	27
Class 1 (2023)	31	1	31
Class 1 (2024)	10	1	10
Class 2 (2015)	263	1.15	302
Class 2 (2016)	169	1.15	194
Class 2 (2017)	290	1.15	334
Class 2 (2018)	352	1.15	405
Class 2 (2019)	366	1.15	421
Class 2 (2020)	358	1.15	412
Class 2 (2021)	463	1.15	532
Class 2 (2022)	349	1.15	401
Class 2 (2023)	346	1.15	398
Class 2 (2024)	334	1.15	384
Class 3 (2015)	42	1.3	55
Class 3 (2016)	28	1.3	36
Class 3 (2017)	45	1.3	59
Class 3 (2018)	63	1.3	82
Class 3 (2019)	58	1.3	75
Class 3 (2020)	35	1.3	46
Class 3 (2021)	71	1.3	92
Class 3 (2022)	65	1.3	85
Class 3 (2023)	44	1.3	57
Class 3 (2024)	44	1.3	57
Class 4 (2015)	269	1.45	390
Class 4 (2016)	222	1.45	322
Class 4 (2017)	285	1.45	413
Class 4 (2018)	382	1.45	554
Class 4 (2019)	326	1.45	473
Class 4 (2020)	334	1.45	484
Class 4 (2021)	466	1.45	676
Class 4 (2022)	386	1.45	560
Class 4 (2023)	328	1.45	476
Class 4 (2024)	421	1.45	610
Total	7,411	.....	9,592
Average weighting factor (weighted transits ÷ number of transits) .....	.....	1.29	.....

** Weighted transits are rounded to the nearest whole number for presentation, but the Total calculation uses unrounded figures.

H. Redesignated Step 8: Calculate Revised Base Rates (previously Step 9)

After considering the impact of the weighting factors, we revise the base

rates in this step so that the total costs of pilotage will be equal to the revenue needed. To do this, we divide the initial base rates calculated in redesignated

Step 6 by the average weighting factors calculated in redesignated Step 7, as shown in table 12.

TABLE 12—REVISED BASE RATES FOR DISTRICT ONE

Area	Initial rate (Step 6)	Average weighting factor (Step 7)	Revised rate (Initial rate ÷ average weighting factor)
District One: Designated	\$1,246	1.29	\$966
District One: Undesignated	796	1.29	617

I. Redesignated Step 9: Review and Finalize Rates (Previously Step 10)

In this step, the Director reviews the rates set forth by the staffing model and ensures that they meet the goal of ensuring safe, efficient, and reliable pilotage. To establish this, the Director considers whether the proposed rates

incorporate appropriate compensation for United States Registered Pilots to handle heavy traffic periods and whether there is a sufficient number of United States Registered Pilots to handle those heavy traffic periods. The Director also considers whether the proposed rates would cover operating

expenses and infrastructure costs, including average traffic and weighting factors. Based on these considerations, the Director is not proposing any alterations to the rates in this step. We propose to modify § 401.405(a)(1) and (2) to reflect the final rates shown in table 13.

TABLE 13—PROPOSED FINAL RATES FOR DISTRICT ONE

Area	Name	Final 2025 pilotage rate	Proposed 2026 pilotage rate
District One: Designated	St. Lawrence River	\$986	\$966
District One: Undesignated	Lake Ontario	643	617

District Two

A. Step 1: Recognize Previous Operating Expenses

Step 1 in the ratemaking methodology requires that the Coast Guard review and recognize the operating expenses for the last full year for which figures are available (§ 404.101). To do so, we begin by reviewing the independent

accountant's financial reports for each association's 2023 expenses and revenues.²⁷ For accounting purposes, the financial reports divide expenses into designated and undesignated areas. For costs accrued by the pilot associations generally, such as employee benefits, for example, the cost is divided between the designated and undesignated areas on a pro rata basis.

The recognized operating expenses for District Two are shown in table 14.

Adjustments have been made by the auditors and are explained in the auditor's reports, which are available in the docket for this rulemaking, where indicated under the Public Participation and Request for Comments portion of the preamble.

TABLE 14—2023 RECOGNIZED EXPENSES FOR DISTRICT TWO

Reported operating expenses for 2023	District Two		
	Undesignated	Designated	Total
	Lake Erie	Southeast Shoal to Port Huron	
Applicant Pilot Employee Benefits	\$80	\$120	\$200
Total Other Applicant Cost	80	120	200
Other Pilotage Cost:			
Pilot Subsistence	93,840	140,760	234,600
Travel	37,469	56,204	93,673
License renewal	931	1,396	2,327
License Insurance	7,656	11,485	19,141
Total Other Pilotage Costs	139,896	209,845	349,741
Pilot Boat and Dispatch Costs:			
Pilot boat costs	76,785	115,177	191,962
Employee Benefits	88,722	133,084	221,806

²⁷ These reports are available in the docket for this rulemaking.

TABLE 14—2023 RECOGNIZED EXPENSES FOR DISTRICT TWO—Continued

Reported operating expenses for 2023	District Two		
	Undesignated	Designated	Total
		Southeast Shoal to Port Huron	
Insurance	11,550	17,324	28,874
Salaries	192,299	288,448	480,747
Total Pilot and Dispatch Costs	369,356	554,033	923,389
<i>Administrative Expenses</i>			
Legal—general counsel	3,947	5,921	9,868
Legal—shared counsel (K&L Gates)	4,955	7,432	12,386
Legal—shared counsel (K&L Gates)—D2–23–02	–2,071	–3,106	–5,177
Office Rent	29,508	44,262	73,770
Insurance	14,083	21,124	35,207
Employee benefits	28,614	42,922	71,536
Payroll Taxes	149,889	224,833	374,722
Other taxes	103,752	155,628	259,380
Other taxes—D2–23–01	–45,722	–68,583	–114,305
Real Estate taxes	8,193	12,289	20,482
Travel	20,430	30,646	51,076
Depreciation	23,140	34,710	57,850
APA Dues	16,428	24,641	41,069
Dues and subscriptions	2,634	3,950	6,584
Utilities	4,956	7,434	12,390
Salaries	65,850	98,776	164,626
Accounting/Professional fees	15,997	23,996	39,993
Pilot Training	17,644	26,465	44,109
Other	124,233	186,349	310,582
Other—D2–23–01	–70,962	–106,442	–177,404
Total Administrative Expenses	515,498	773,247	1,288,744
Total Expenses (OPEX + Applicant + Pilot Boats + Admin + Capital)	1,024,830	1,537,245	* 2,562,074

* Where the total column for a line from the expense report did not match manual addition, Coast Guard manually matched to the line total for that expense and continued to sum down the column. As a result, the ending total for each column (designated, undesignated, and total) may not sum across.

B. Step 2: Project Operating Expenses, Adjusting for Inflation or Deflation

In accordance with the text in § 404.102, having identified the recognized 2023 operating expenses in Step 1, the next step is to estimate the

current year's operating expenses by adjusting those expenses for inflation over the 3-year period. We calculate inflation using the BLS data from the CPI for the Midwest Region of the United States for the 2024 inflation rate.²⁸ Because the BLS does not

provide forecasted inflation data, we use economic projections from the Federal Reserve for the 2025 and 2026 inflation modification.²⁹ Based on that information, the calculations for Step 2 are as follows:

TABLE 15—ADJUSTED OPERATING EXPENSES FOR DISTRICT TWO

	District Two		
	Undesignated	Designated	Total
Total Operating Expenses (Step 1)	\$1,024,830	\$1,537,245	\$2,562,074
2024 Inflation Modification (@2.7%)	27,670	41,506	69,176
2025 Inflation Modification (@2.5%)	26,313	39,469	65,782
2026 Inflation Modification (@2.2%)	23,734	35,601	59,335
Adjusted 2026 Operating Expenses	1,102,547	1,653,821	2,756,367

²⁸ The CPI is defined as "All Urban Consumers (CPI-U), All Items, 1982–4=100." Series CUUR0200SA0. Available at <https://www.bls.gov/cpi/data.htm>, All Urban Consumers (Current Series), multiscreen data, not seasonally adjusted,

0200 Midwest, Current, All Items, Monthly, 12-month Percent Change and Annual Data (last accessed 01/28/2025).

²⁹ The 2025 and 2026 inflation rates are available at <https://www.federalreserve.gov/monetarypolicy/>

<files/fomcprojtbl20250319.pdf>. We used the Core PCE December Projection value found in table 1; accessed 03/19/2025.

C. Step 3: Estimate Number of Registered Pilots and Apprentice Pilots

In accordance with the text in § 404.103, we estimate the number of fully registered Pilots in each district. As established by the 2021 final rule, the minimum number of United States Registered Pilots for District Two is 16. Then, the 2025 final rule established the maximum number as 19. We determine the number of fully registered Pilots based on data provided by the Lakes Pilots Association (LPA). We determine the number of Apprentice Pilots based on input from the district on anticipated retirements and staffing needs. These numbers can be found in table 16.

TABLE 16—AUTHORIZED PILOTS FOR DISTRICT TWO

Item	District Two
2026 Authorized United States Registered Pilots (total)	17
Pilots Assigned to Designated Areas	10
Pilots Assigned to Undesignated Areas	7
2026 Apprentice Pilots	0

D. Step 4: Determine Target Pilot Compensation Benchmark and Apprentice Pilot Wage Benchmark

In this step, we determine the total United States Registered Pilot compensation for each area. Because we are proposing a full ratemaking this year, we propose to follow the procedure outlined in paragraph (a) of § 404.104, which requires us to develop a benchmark after considering the most relevant currently available non-proprietary information. In accordance with the discussion in *Section III.E., Individual Target Pilot Compensation Benchmark*, of this preamble, the proposed compensation benchmark for 2026 uses the 2025 compensation of \$464,317 per United States Registered Pilot as a base, then adjusts for inflation following the procedure outlined in paragraph (b) of § 404.104. First, we adjust the 2025 target compensation benchmark of \$464,317 by 1.9 percent, for a value of \$473,139. This accounts for the difference in actual fourth quarter 2024 ECI inflation, which is 4.2 percent, and the 2025 PCE estimate of 2.3 percent.^{30 31}

The second step accounts for projected inflation from 2025 to 2026, which is 2.2 percent.³² Based on the projected 2026 inflation estimate, the target compensation benchmark for 2026 is \$483,548 per United States Registered Pilot. In accordance with § 404.104(d), the Apprentice Pilot wage benchmark is 36 percent of the target Pilot compensation, or \$174,077 (\$483,548 × 0.36).

In accordance with § 404.104(c), we use the revised target individual compensation level to derive the total United States Registered Pilot compensation by multiplying the individual target compensation by the estimated number of United States Registered Pilots for District Two, as shown in table 17. We estimate that the number of Apprentice Pilots needed will be zero for District Two in the 2026 season. The total target wages for Apprentice Pilots are allocated with 60 percent for the designated area and 40 percent for the undesignated area, in accordance with the allocation for operating expenses.

TABLE 17—TARGET COMPENSATION FOR DISTRICT TWO

	District Two		
	Undesignated	Designated	Total
Target Pilot Compensation	\$483,548	\$483,548	\$483,548
Number of United States Registered Pilots	7	10	17
Total Target United States Registered Pilots Compensation	\$3,384,836	\$4,835,480	\$8,220,316
Target Apprentice Pilot Compensation	\$174,077	\$174,077	\$174,077
Number of Apprentice Pilots	0	0	0
Total Target Apprentice Pilot Compensation	\$0	\$0	\$0

E. Redesignated Step 5: Project Needed Revenue (Previously Step 6)

In this step, we add all the expenses accrued to derive the total revenue

needed for each area. These expenses include the projected operating expenses (from Step 2), the total target United States Registered Pilot

compensation (from Step 4), and total target Apprentice Pilot wage (also from Step 4). We show these calculations in table 18.

TABLE 18—REVENUE NEEDED FOR DISTRICT TWO

	District Two		
	Undesignated	Designated	Total
Adjusted Operating Expenses (Step 2)	\$1,102,547	\$1,653,821	\$2,756,367
Total Target United States Registered Pilot Compensation (Step 4)	3,384,836	4,835,480	8,220,316
Total Target Apprentice Pilot Compensation (Step 4)	0	0	0
Total Revenue Needed	4,487,383	6,489,301	10,976,683

³⁰ Employment Cost Index, Total Compensation for Private Industry workers in Transportation and Material Moving, Annual Average (December 2024), Series ID: CIU2010000520000A. <https://www.bls.gov/news.release/eci.t05.htm>; accessed 01/31/2025.

³¹ 2.3 percent was the latest figure available for the 2025 final rule. Table 1, Summary of Economic Projections, Median Core PCE Inflation June Projection. <https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20240918.pdf>; accessed 10/02/2024.

³² Table 1, Summary of Economic Projections, Median Core PCE Inflation December Projection. <https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20250319.pdf>; accessed 03/19/2025.

F. Redesignated Step 6: Calculate Initial Base Rates (Previously Step 7)

Having determined the revenue needed for each area in the previous five steps, we develop an hourly rate by dividing that number by the expected

number of hours of traffic. Step 6 is a two-part process. In the first part, we calculate the 10-year average of traffic in District Two, using the total time on task or Pilot bridge hours. To calculate the time on task for each district, the

Coast Guard uses billing data from SeaPro. Because we calculate separate figures for designated and undesignated waters, there are two parts for each calculation. We show these values in table 19.

TABLE 19—TIME ON TASK FOR DISTRICT TWO
[Hours]

Year	District Two	
	Undesignated	Designated
2024	5,809	8,308
2023	6,424	8,181
2022	7,695	9,044
2021	5,290	6,762
2020	6,232	8,401
2019	6,512	7,715
2018	6,150	6,655
2017	5,139	6,074
2016	6,425	5,615
2015	6,535	5,967
Average	6,221	7,272

Next, we derive the initial hourly rate by dividing the revenue needed by the average number of hours for each area.

This produces an initial rate, which is necessary to produce the revenue needed for each area, assuming the

amount of traffic is as expected. We present the calculations for District Two in table 20.

TABLE 20—INITIAL RATE CALCULATIONS FOR DISTRICT TWO

	Undesignated	Designated
Revenue needed (Step 5)	\$4,487,383	\$6,489,301
Average time on task (hours)	6,221	7,272
Initial rate	\$721	\$892

G. Redesignated Step 7: Calculate Average Weighting Factors by Area (Previously Step 8)

In this step, we calculate the average weighting factor for each designated and undesignated area. We collect the weighting factors, set forth in 46 CFR 401.400, for each vessel trip. Using the weighting factor report from SeaPro, we calculate the average weighting factor

for each area using the data from each vessel transit from 2015 to 2024, as shown in tables 21 and 22.

Of note, in the 2025 final rule, the Coast Guard published a figure of 8,092 hours as the total 2023 designated hours for District Two.³³ Since that publication, the Coast Guard received a revised figure of 8,181 hours through the 2023 Revenue Report for District Two, which noted that some winter

work had been excluded. We also received a revised 2023 weight factor report from District Two on March 6th, 2025, to reflect the transits by vessel class corresponding to the updated figure of 8,181 designated bridge hours for 2023. This updated report changes the number of Class 2 designated transits for 2023 from 312 to 318, as shown in table 22.

TABLE 21—AVERAGE WEIGHTING FACTOR FOR DISTRICT TWO, UNDESIGNATED AREAS

Vessel class/year	Number of transits	Weighting factor	Weighted transits *
Class 1 (2015)	35	1	35
Class 1 (2016)	32	1	32
Class 1 (2017)	21	1	21
Class 1 (2018)	37	1	37
Class 1 (2019)	54	1	54
Class 1 (2020)	1	1	1
Class 1 (2021)	7	1	7
Class 1 (2022)	57	1	57
Class 1 (2023)	54	1	54
Class 1 (2024)	19	1	19
Class 2 (2015)	354	1.15	407
Class 2 (2016)	380	1.15	437
Class 2 (2017)	222	1.15	255

³³ See p. 100822, 89 FR 100810.

TABLE 21—AVERAGE WEIGHTING FACTOR FOR DISTRICT TWO, UNDESIGNATED AREAS—Continued

Vessel class/year	Number of transits	Weighting factor	Weighted transits *
Class 2 (2018)	123	1.15	141
Class 2 (2019)	127	1.15	146
Class 2 (2020)	165	1.15	190
Class 2 (2021)	206	1.15	237
Class 2 (2022)	202	1.15	232
Class 2 (2023)	152	1.15	175
Class 2 (2024)	125	1.15	144
Class 3 (2015)	0	1.3	0
Class 3 (2016)	9	1.3	12
Class 3 (2017)	12	1.3	16
Class 3 (2018)	3	1.3	4
Class 3 (2019)	1	1.3	1
Class 3 (2020)	1	1.3	1
Class 3 (2021)	5	1.3	7
Class 3 (2022)	2	1.3	3
Class 3 (2023)	2	1.3	3
Class 3 (2024)	5	1.3	7
Class 4 (2015)	560	1.45	812
Class 4 (2016)	468	1.45	679
Class 4 (2017)	319	1.45	463
Class 4 (2018)	196	1.45	284
Class 4 (2019)	210	1.45	305
Class 4 (2020)	201	1.45	291
Class 4 (2021)	227	1.45	329
Class 4 (2022)	208	1.45	302
Class 4 (2023)	169	1.45	245
Class 4 (2024)	205	1.45	297
Total	5,176	.....	6,740
Average weighting factor (weighted transits ÷ number of transits) .....	.....	1.30	.....

* Weighted transits are rounded to the nearest whole number for presentation, but the Total calculation uses unrounded figures.

TABLE 22—AVERAGE WEIGHTING FACTOR FOR DISTRICT TWO, DESIGNATED AREAS

Vessel class/year	Number of transits	Weighting factor	Weighted transits *
Class 1 (2015)	15	1	15
Class 1 (2016)	28	1	28
Class 1 (2017)	15	1	15
Class 1 (2018)	42	1	42
Class 1 (2019)	48	1	48
Class 1 (2020)	7	1	7
Class 1 (2021)	12	1	12
Class 1 (2022)	53	1	53
Class 1 (2023)	56	1	56
Class 1 (2024)	24	1	24
Class 2 (2015)	217	1.15	250
Class 2 (2016)	224	1.15	258
Class 2 (2017)	127	1.15	146
Class 2 (2018)	153	1.15	176
Class 2 (2019)	281	1.15	323
Class 2 (2020)	342	1.15	393
Class 2 (2021)	240	1.15	276
Class 2 (2022)	327	1.15	376
Class 2 (2023)	318	1.15	366
Class 2 (2024)	318	1.15	366
Class 3 (2015)	8	1.3	10
Class 3 (2016)	4	1.3	5
Class 3 (2017)	4	1.3	5
Class 3 (2018)	14	1.3	18
Class 3 (2019)	1	1.3	1
Class 3 (2020)	5	1.3	7
Class 3 (2021)	2	1.3	3
Class 3 (2022)	4	1.3	5
Class 3 (2023)	5	1.3	7
Class 3 (2024)	11	1.3	14
Class 4 (2015)	340	1.45	493
Class 4 (2016)	281	1.45	407

TABLE 22—AVERAGE WEIGHTING FACTOR FOR DISTRICT TWO, DESIGNATED AREAS—Continued

Vessel class/year	Number of transits	Weighting factor	Weighted transits *
Class 4 (2017)	185	1.45	268
Class 4 (2018)	379	1.45	550
Class 4 (2019)	403	1.45	584
Class 4 (2020)	405	1.45	587
Class 4 (2021)	268	1.45	389
Class 4 (2022)	391	1.45	567
Class 4 (2023)	349	1.45	506
Class 4 (2024)	474	1.45	687
Total	6,380	.....	8,343
Average weighting factor (weighted transits ÷ number of transits) .....	.....	1.31	.....

*Weighted transits are rounded to the nearest whole number for presentation, but the Total calculation uses unrounded figures.

H. Redesignated Step 8: Calculate Revised Base Rates (Previously Step 9)

After considering the impact of the weighting factors, we revise the base

rates in this step so that the total costs of pilotage will be equal to the revenue needed. To do this, we divide the initial base rates calculated in redesignated

Step 6 by the average weighting factors calculated in redesignated Step 7, as shown in table 23.

TABLE 23—REVISED BASE RATES FOR DISTRICT TWO

Area	Initial rate (Step 6)	Average weighting factor (Step 7)	Revised rate (initial rate ÷ average weighting factor)
District Two: Designated	\$892	1.31	\$681
District Two: Undesignated	721	1.30	555

I. Redesignated Step 9: Review and Finalize Rates (Previously Step 10)

In this step, the Director reviews the rates set forth by the staffing model and ensures that they meet the goal of ensuring safe, efficient, and reliable pilotage. To establish this, the Director considers whether the proposed rates

incorporate appropriate compensation for United States Registered Pilots to handle heavy traffic periods, and whether there is a sufficient number of United States Registered Pilots to handle those heavy traffic periods. The Director also considers whether the proposed rates would cover operating

expenses and infrastructure costs, including average traffic and weighting factors. Based on these considerations, the Director is not proposing any alterations to the rates in this step. We propose to modify § 401.405(a)(3) and (4) to reflect the final rates shown in table 24.

TABLE 24 — PROPOSED FINAL RATES FOR DISTRICT TWO

Area	Name	Final 2025 pilotage rate	Proposed 2026 pilotage rate
District Two: Designated	Navigable waters from Southeast Shoal to Port Huron, MI.	\$753	\$681
District Two: Undesignated	Lake Erie	576	555

District Three

A. Step 1: Recognize Previous Operating Expenses

Step 1 in the ratemaking methodology requires that the Coast Guard review and recognize the operating expenses for the last full year for which figures are available (§ 404.101). To do so, we begin by reviewing the independent accountant's financial reports for each association's 2023 expenses and

revenues.³⁴ For accounting purposes, the financial reports divide expenses into designated and undesignated areas. For costs accrued by the pilot associations generally, such as employee benefits, for example, the cost is divided between the designated and undesignated areas on a pro rata basis. The recognized operating expenses for District Three are shown in table 25.

³⁴ These reports are available in the docket for this rulemaking.

Adjustments made by the auditors are explained in the auditor's reports, which are available in the docket for this rulemaking, where indicated under the Public Participation and Request for Comments portion of the preamble. As noted in the Summary of the Ratemaking Methodology, the 2023 expense report for District Three included an expense of \$969,812 in "applicant salaries," but Coast Guard believes that these are apprentice salaries that are incorrectly labeled. Apprentice salaries are accounted for in

Step 4 of the methodology; therefore, Coast Guard excluded this expense from

Step 1. We discuss the other Director's adjustment for the \$45,296 amount in

Section C. *Other Comments To Address in Full Ratemaking* of this preamble.

TABLE 25—2023 RECOGNIZED EXPENSES FOR DISTRICT THREE

Reported operating expenses for 2023	District Three			
	Undesignated	Designated	Undesignated	Total
	Lakes Huron and Michigan	St. Marys River	Lake Superior	
<i>Other Pilotage Costs:</i>				
Applicant Benefits	\$56,123	\$23,720	\$26,741	\$106,584
Pilot subsistence	163,861	69,254	78,076	311,190
Hotel/Lodging Cost	142,665	60,295	67,977	270,937
Hotel/Lodging Cost—D3—23—05	– 3,454	– 1,460	– 1,646	– 6,560
Travel	235,214	99,410	112,074	446,698
License Renewal	536	227	255	1,018
Payroll taxes	211,362	89,329	100,709	401,400
Payroll taxes—D3—23—04	– 5,075	– 2,145	– 2,418	– 9,637
License Insurance	16,953	7,165	8,078	32,196
Total Other Pilotage Costs	818,185	345,795	389,846	1,553,826
<i>Pilot Boat and Dispatch costs:</i>				
Pilot boat costs	613,308	259,207	292,227	1,164,742
Dispatch costs	149,831	63,324	71,391	284,546
Dispatch costs—D3—23—07	23,851	10,080	11,365	45,296
Insurance	33,584	14,194	16,002	63,779
Total Pilot boat and dispatch costs	820,574	346,805	390,985	1,558,363
<i>Administrative Cost:</i>				
Legal—general counsel	26,809	11,331	12,774	50,914
Legal—general counsel—D3—23—01	– 2,098	– 887	– 999	– 3,984
Legal—shared counsel (K&L Gates)	9,608	4,061	4,578	18,247
Legal—shared counsel (K&L Gates)—D3—23—01	– 1,007	– 426	– 480	– 1,913
Office Rent	6,719	2,840	3,201	12,760
Insurance	30,104	12,723	14,344	57,171
Employee benefits	116,979	49,440	55,738	222,156
Payroll Tax	57,428	24,271	27,363	109,062
Other taxes	2,708	1,145	1,290	5,143
Real Estate Taxes	1,609	680	766	3,055
Depreciation/Auto leasing/Other	88,577	37,436	42,205	168,218
Interest	13,424	5,673	6,396	25,493
APA Dues	30,519	12,899	14,542	57,960
APA Dues (D3—23—02)	– 2,373	– 1,003	– 1,131	– 4,507
Dues and subscriptions	5,792	2,448	2,760	10,999
Utilities	9,568	4,044	4,559	18,171
Salaries	60,558	25,594	28,855	115,007
Accounting/Professional fees	37,984	16,053	18,099	72,136
Pilot Training	13,645	5,767	6,501	25,913
Other expenses	84,033	35,516	40,040	159,589
Other expenses (D3—23—06)	– 13,191	– 5,575	– 6,285	– 25,051
Total Administrative Expenses	577,395	244,030	275,116	1,096,539
Total Operating Expenses (Other Costs+ Applicant Cost + Pilot Boats + Admin)	2,216,154	936,630	1,055,947	* 4,208,728
Directors Adjustments—Applicant Surcharge Collected	– 23,851	– 10,080	– 11,365	– 45,296
Total Directors Adjustment	– 23,851	– 10,080	– 11,365	– 45,296
Total Operating Expenses (OpEx + Adjustments)	2,192,303	926,550	1,044,582	4,163,432

*Where the total column for a line from the expense report did not match manual addition, Coast Guard manually matched to the line total for that expense and continued to sum down the column. As a result, the ending total for each column (designated, undesignated, and total) may not sum across.

B. Step 2: Project Operating Expenses, Adjusting for Inflation or Deflation

In accordance with the text in § 404.102, having identified the recognized 2023 operating expenses in Step 1, the next step is to estimate the current year's operating expenses by adjusting those expenses for inflation

over the 3-year period. We calculate inflation using the BLS data from the CPI for the Midwest Region of the United States for the 2024 inflation rate.³⁵ Because the BLS does not

³⁵ The CPI is defined as "All Urban Consumers (CPI-U), All Items, 1982–4 = 100." Series

provide forecasted inflation data, we use economic projections from the Federal

CUUR0200SA0. Available at <https://www.bls.gov/cpi/data.htm>. All Urban Consumers (Current Series), multiscreen data, not seasonally adjusted, 0200 Midwest, Current, All Items, Monthly, 12-month Percent Change and Annual Data (last accessed 01/28/2025).

Reserve for the 2025 and 2026 inflation information, the calculations for Step 2 modification.³⁶ Based on that are as follows:

TABLE 26—ADJUSTED OPERATING EXPENSES FOR DISTRICT THREE

	District three		
	Undesignated	Designated	Total
Total Operating Expenses (Step 1)	\$3,236,885	\$926,550	\$4,163,432
2024 Inflation Modification (@2.7%)	87,396	25,017	112,413
2025 Inflation Modification (@2.5%)	83,107	23,789	106,896
2026 Inflation Modification (@2.2%)	74,963	21,458	96,421
Adjusted 2026 Operating Expenses	3,482,351	996,814	4,479,162

C. Step 3: Estimate Number of Registered Pilots and Apprentice Pilots

In accordance with the text in § 404.103, we estimate the number of United States Registered Pilots in each district. As established by the 2021 final rule, the minimum number of United States Registered Pilots for District Three is 22. Then, the 2025 final rule established the maximum number as 25. We determine the number of fully registered Pilots based on data provided by the WGLPA. We determine the number of Apprentice Pilots based on input from the district on anticipated retirements and staffing needs. These numbers can be found in table 27.

TABLE 27—AUTHORIZED PILOTS FOR DISTRICT THREE

Item	District three
2026 Authorized United States Registered Pilots (total)	20
Pilots Assigned to Designated Areas	5
Pilots Assigned to Undesignated Areas	15
2026 Apprentice Pilots	4

D. Step 4: Determine Target Pilot Compensation Benchmark and Apprentice Pilot Wage Benchmark

In this step, we determine the total United States Registered Pilot compensation for each area. Because we are proposing a full ratemaking this year, we propose to follow the procedure outlined in paragraph (a) of § 404.104, which requires us to develop a benchmark after considering the most relevant currently available non-proprietary information. In accordance with the discussion in *Section III.E., Individual Target Pilot Compensation Benchmark*, of this preamble, the proposed compensation benchmark for 2026 uses the 2025 compensation of \$464,317 per United States Registered Pilot as a base, then adjusts for inflation following the procedure outlined in paragraph (b) of § 404.104. First, we adjust the 2025 target compensation benchmark of \$464,317 by 1.9 percent for a value of \$473,139. This accounts for the difference in actual fourth quarter 2024 ECI inflation, which is 4.2 percent, and the 2025 PCE estimate of 2.3 percent.^{37 38}

The second step accounts for projected inflation from 2025 to 2026, which is 2.2 percent.³⁹ Based on the projected 2026 inflation estimate, the target compensation benchmark for 2026 is \$483,548 per United States Registered Pilot. In accordance with § 404.104(d), the Apprentice Pilot wage benchmark is 36 percent of the target United States Registered Pilot compensation, or \$174,077 ($\$483,548 \times 0.36$).

In accordance with § 404.104(c), we use the revised target individual compensation level to derive the total United States Registered Pilot compensation by multiplying the individual target compensation by the estimated number of United States Registered Pilots for District Three, as shown in table 28. We estimate that the number of Apprentice Pilots needed will be four for District Three in the 2026 season. The total target wages for Apprentice Pilots are allocated with 22 percent for the designated area and 78 percent (53 percent + 25 percent) for the undesignated areas, in accordance with the allocation for operating expenses.

TABLE 28—TARGET COMPENSATION FOR DISTRICT THREE

	District Three		
	Undesignated	Designated	Total
Target United States Registered Pilots Compensation	\$483,548	\$483,548	\$483,548
Number of United States Registered Pilots	15	5	20
Total Target United States Registered Pilot Compensation	\$7,253,220	\$2,417,740	\$9,670,960
Target Apprentice Pilot Compensation	\$174,077	\$174,077	\$174,077
Number of Apprentice Pilots			4
Total Target Apprentice Pilot Compensation	\$543,120	\$153,188	\$696,308

³⁶ The 2025 and 2026 inflation rates are available at <https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20250319.pdf>. We used the Core PCE December Projection value found in table 1; accessed 03/19/2025.

³⁷ Employment Cost Index, Total Compensation for Private Industry workers in Transportation and Material Moving, Annual Average (December 2024),

Series ID: CIU2010000520000A. <https://www.bls.gov/news.release/eci.t05.htm>; accessed 01/31/2025.

³⁸ 2.3 percent was the latest figure available for the 2025 final rule. Table 1, Summary of Economic Projections, Median Core PCE Inflation June Projection. <https://www.federalreserve.gov/>

[monetarypolicy/files/fomcprojtabl20240918.pdf](https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20240918.pdf); accessed 10/02/2024.

³⁹ Table 1, Summary of Economic Projections, Median Core PCE Inflation December Projection. <https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20250319.pdf>; accessed 03/19/2025.

E. Redesignated Step 5: Project Needed Revenue (Previously Step 6)

In this step, we add all the expenses accrued to derive the total revenue

needed for each area. These expenses include the projected operating expenses (from Step 2), and the total target United States Registered Pilot

compensation (from Step 4). The calculations are shown in table 29.

TABLE 29—REVENUE NEEDED FOR DISTRICT THREE

	District Three		
	Undesignated	Designated	Total
Adjusted Operating Expenses (Step 2)	\$3,482,351	\$996,814	\$4,479,162
Total Target United States Registered Pilot Compensation (Step 4)	7,253,220	2,417,740	9,670,960
Total Target Apprentice Pilot Compensation (Step 4)	543,120	153,188	696,308
Total Revenue Needed	11,278,691	3,567,742	14,846,430

F. Redesignated Step 6: Calculate Initial Base Rates (Previously Step 7)

Having determined the revenue needed for each area in the previous five steps, we develop an hourly rate by

dividing that number by the expected number of hours of traffic. Step 6 is a two-part process. The first part is calculating the 10-year average of traffic in District Three using the total time on

task or Pilot bridge hours. Because we calculate separate figures for designated and undesignated waters, there are two parts for each calculation. We show these values in table 30.

TABLE 30—TIME ON TASK FOR DISTRICT THREE
[Hours]

Year	District Three	
	Undesignated	Designated
2024	26,359	3,437
2023	25,690	3,501
2022	24,148	3,426
2021	18,149	2,484
2020	23,678	3,520
2019	24,851	3,395
2018	19,967	3,455
2017	20,955	2,997
2016	23,421	2,769
2015	22,824	2,696
Average	23,004	3,168

Next, we derive the initial hourly rate by dividing the revenue needed by the average number of hours for each area.

This produces an initial rate, which is necessary to produce the revenue needed for each area, assuming the

amount of traffic is as expected. We present the calculations for District Three in table 31.

TABLE 31—INITIAL RATE CALCULATIONS FOR DISTRICT THREE

	Undesignated	Designated
Revenue needed (Step 5)	\$11,278,691	\$3,567,742
Average time on task (hours)	23,004	3,168
Initial rate	\$490	\$1,126

G. Redesignated Step 7: Calculate Average Weighting Factors by Area (Previously Step 8)

In this step, The Coast Guard calculates the average weighting factor

for each designated and undesignated area by first collecting the weighting factors, set forth in 46 CFR 401.400, for each vessel trip. Using the weight factor reports from SeaPro, we calculate the

average weighting factor for each area using the data from each vessel transit from 2015 to 2024, as shown in tables 32 and 33.

TABLE 32—AVERAGE WEIGHTING FACTOR FOR DISTRICT THREE, UNDESIGNATED AREAS

Vessel class/year	Number of transits	Weighting factor	Weighted transits *
Class 1 (2015)	56	1	56
Class 1 (2016)	136	1	136
Class 1 (2017)	148	1	148

TABLE 32—AVERAGE WEIGHTING FACTOR FOR DISTRICT THREE, UNDESIGNATED AREAS—Continued

Vessel class/year	Number of transits	Weighting factor	Weighted transits *
Class 1 (2018)	103	1	103
Class 1 (2019)	173	1	173
Class 1 (2020)	4	1	4
Class 1 (2021)	8	1	8
Class 1 (2022)	116	1	116
Class 1 (2023)	155	1	155
Class 1 (2024)	52	1	52
Class 2 (2015)	207	1.15	238
Class 2 (2016)	236	1.15	271
Class 2 (2017)	264	1.15	304
Class 2 (2018)	169	1.15	194
Class 2 (2019)	279	1.15	321
Class 2 (2020)	332	1.15	382
Class 2 (2021)	273	1.15	314
Class 2 (2022)	276	1.15	317
Class 2 (2023)	295	1.15	339
Class 2 (2024)	287	1.15	330
Class 3 (2015)	8	1.3	10
Class 3 (2016)	10	1.3	13
Class 3 (2017)	19	1.3	25
Class 3 (2018)	9	1.3	12
Class 3 (2019)	9	1.3	12
Class 3 (2020)	4	1.3	5
Class 3 (2021)	5	1.3	7
Class 3 (2022)	3	1.3	4
Class 3 (2023)	5	1.3	7
Class 3 (2024)	9	1.3	12
Class 4 (2015)	375	1.45	544
Class 4 (2016)	332	1.45	481
Class 4 (2017)	367	1.45	532
Class 4 (2018)	337	1.45	489
Class 4 (2019)	334	1.45	484
Class 4 (2020)	339	1.45	492
Class 4 (2021)	356	1.45	516
Class 4 (2022)	363	1.45	526
Class 4 (2023)	356	1.45	516
Class 4 (2024)	433	1.45	628
Total for Area 6	7,242	.....	9,275
Area 8			
Class 1 (2015)	0	1	0
Class 1 (2016)	4	1	4
Class 1 (2017)	4	1	4
Class 1 (2018)	0	1	0
Class 1 (2019)	0	1	0
Class 1 (2020)	1	1	1
Class 1 (2021)	5	1	5
Class 1 (2022)	10	1	10
Class 1 (2023)	5	1	5
Class 1 (2024)	6	1	6
Class 2 (2015)	169	1.15	194
Class 2 (2016)	174	1.15	200
Class 2 (2017)	151	1.15	174
Class 2 (2018)	102	1.15	117
Class 2 (2019)	120	1.15	138
Class 2 (2020)	180	1.15	207
Class 2 (2021)	124	1.15	143
Class 2 (2022)	89	1.15	102
Class 2 (2023)	118	1.15	136
Class 2 (2024)	122	1.15	140
Class 3 (2015)	0	1.3	0
Class 3 (2016)	7	1.3	9
Class 3 (2017)	18	1.3	23
Class 3 (2018)	7	1.3	9
Class 3 (2019)	6	1.3	8
Class 3 (2020)	1	1.3	1
Class 3 (2021)	1	1.3	1
Class 3 (2022)	6	1.3	8
Class 3 (2023)	0	1.3	0

TABLE 32—AVERAGE WEIGHTING FACTOR FOR DISTRICT THREE, UNDESIGNATED AREAS—Continued

Vessel class/year	Number of transits	Weighting factor	Weighted transits *
Class 3 (2024)	4	1.3	5
Class 4 (2015)	253	1.45	367
Class 4 (2016)	204	1.45	296
Class 4 (2017)	269	1.45	390
Class 4 (2018)	188	1.45	273
Class 4 (2019)	254	1.45	368
Class 4 (2020)	265	1.45	384
Class 4 (2021)	319	1.45	463
Class 4 (2022)	243	1.45	352
Class 4 (2023)	268	1.45	389
Class 4 (2024)	345	1.45	500
Total for Area 8	4,042	.....	5,433
Combined total	11,284	.....	14,708
Average weighting factor (weighted transits ÷ number of transits) .....	.....	1.30	.....

* Weighted transits are rounded to the nearest whole number for presentation, but the Total calculation uses unrounded figures.

TABLE 33—AVERAGE WEIGHTING FACTOR FOR DISTRICT THREE, DESIGNATED AREAS

Vessel class/year	Number of transits	Weighting factor	Weighted transits *
Class 1 (2015)	23	1	23
Class 1 (2016)	55	1	55
Class 1 (2017)	62	1	62
Class 1 (2018)	47	1	47
Class 1 (2019)	45	1	45
Class 1 (2020)	15	1	15
Class 1 (2021)	15	1	15
Class 1 (2022)	74	1	74
Class 1 (2023)	68	1	68
Class 1 (2024)	24	1	24
Class 2 (2015)	145	1.15	167
Class 2 (2016)	174	1.15	200
Class 2 (2017)	170	1.15	196
Class 2 (2018)	126	1.15	145
Class 2 (2019)	162	1.15	186
Class 2 (2020)	218	1.15	251
Class 2 (2021)	131	1.15	151
Class 2 (2022)	162	1.15	186
Class 2 (2023)	142	1.15	163
Class 2 (2024)	132	1.15	152
Class 3 (2015)	0	1.3	0
Class 3 (2016)	6	1.3	8
Class 3 (2017)	14	1.3	18
Class 3 (2018)	6	1.3	8
Class 3 (2019)	3	1.3	4
Class 3 (2020)	1	1.3	1
Class 3 (2021)	2	1.3	3
Class 3 (2022)	5	1.3	7
Class 3 (2023)	0	1.3	0
Class 3 (2024)	4	1.3	5
Class 4 (2015)	245	1.45	355
Class 4 (2016)	191	1.45	277
Class 4 (2017)	234	1.45	339
Class 4 (2018)	225	1.45	326
Class 4 (2019)	308	1.45	447
Class 4 (2020)	336	1.45	487
Class 4 (2021)	258	1.45	374
Class 4 (2022)	249	1.45	361
Class 4 (2023)	300	1.45	435
Class 4 (2024)	345	1.45	500
Total	4,722	.....	6,180
Average weighting factor (weighted transits ÷ number of transits) .....	.....	1.31	.....

* Weighted transits are rounded to the nearest whole number for presentation, but the Total calculation uses unrounded figures.

H. Redesignated Step 8: Calculate Revised Base Rates (Previously Step 9)

After considering the impact of the weighting factors, we revise the base

rates in this step so that the total costs of pilotage will be equal to the revenue needed. To do this, we divide the initial base rates calculated in redesignated

Step 6 by the average weighting factors calculated in redesignated Step 7, as shown in table 34.

TABLE 34—REVISED BASE RATES FOR DISTRICT THREE

Area	Initial rate (step 6)	Average weighting factor (step 7)	Revised rate (Initial rate ÷ average weighting factor)
District Three: Undesignated	\$490	1.30	\$377
District Three: Designated	1,126	1.31	860

I. Redesignated Step 9: Review and Finalize Rates (Previously Step 10)

In this step, the Director reviews the rates set forth by the staffing model and ensures that they meet the goal of ensuring safe, efficient, and reliable pilotage. To establish this, the Director

considers whether the proposed rates incorporate appropriate compensation for United States Registered Pilots to handle heavy traffic periods and whether there is a sufficient number of United States Registered Pilots to handle those heavy traffic periods. The Director also considers whether the

proposed rates would cover operating expenses and infrastructure costs including average traffic and weighting factors. Based on this information, the Director is not proposing any alterations to the rates in this step. We propose to modify § 401.405(a)(5) and (6) to reflect the final rates shown in table 35.

TABLE 35—PROPOSED FINAL RATES FOR DISTRICT THREE

Area	Name	Final 2025 pilotage rate	Proposed 2026 pilotage rate
District Three: Designated	St. Marys River	\$825	\$860
District Three: Undesignated	Lakes Huron, Michigan, and Superior	440	377

VI. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. A summary of our analyses based on these statutes or Executive orders follows.

A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 14192

(Unleashing Prosperity Through Deregulation) directs agencies to significantly reduce the private expenditures required to comply with Federal regulations and provides that “any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations.”

The Office of Management and Budget (OMB) has not designated this proposed rule a “significant regulatory action,” under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it.

This proposed rule is not an Executive Order 14192 regulatory action because this proposed rule is not significant under Executive Order 12866. See OMB Memorandum M–25–20, “Guidance Implementing Section 3

of Executive Order 14192, titled ‘Unleashing Prosperity Through Deregulation’” (Mar. 26, 2025).

The purpose of this proposed rule is to establish new base pilotage rates, as 46 U.S.C. 9303(f) requires that rates be established or reviewed and adjusted each year. The statute also requires that base rates be established by a full ratemaking at least once every 5 years, and, in years when base rates are not established, they must be reviewed and, if necessary, adjusted. For this ratemaking, the Coast Guard estimates a decrease in cost of approximately \$3.03 million to industry. This is approximately a 7-percent decrease because of the change in revenue needed in 2026 compared to the revenue needed in 2025, as shown in table 36.

TABLE 36—ECONOMIC IMPACTS DUE TO PROPOSED CHANGES

Change	Description	Affected population	Costs	Benefits
Rate changes	In accordance with 46 U.S.C. Chapter 93, the Coast Guard is required to review and adjust base pilotage rates annually.	Owners and operators of 258 vessels transiting the Great Lakes system annually, 57 United States Registered Pilots, 5 apprentice Pilots, and 3 pilotage associations.	Decrease of \$3,034,653 due to change in revenue needed for 2026 (\$40,125,041) from revenue needed for 2025 (\$43,159,694) as shown in table 37.	New rates cover an association's necessary and reasonable operating expenses. Promotes safe, efficient, and reliable pilotage service on the Great Lakes. Provides fair compensation, adequate training, and sufficient rest periods for Pilots.

TABLE 36—ECONOMIC IMPACTS DUE TO PROPOSED CHANGES—Continued

Change	Description	Affected population	Costs	Benefits
Removal of Working Capital Fund.	Following GLPAC recommendation, the Coast Guard proposes to remove Step 5 of the ratemaking.	The 3 pilotage associations	A decrease of \$1,980,709 in revenue needed for the Working Capital Fund for 2026 compared to 2025. This is equal to the revenue needed for the working capital fund approved in the 2025 ratemaking.	Rates are on average 5% lower, and the associations would need \$2,023,988 less in revenue for 2026 than if the Working Capital Fund had been included.

The Coast Guard is required to review and adjust pilotage rates on the Great Lakes annually. See Section II., Basis and Purpose, of this preamble for detailed discussions of the legal basis and purpose for this rulemaking. Based on our annual review for this rulemaking, we propose adjusting the pilotage rates for the 2026 shipping season to generate sufficient revenues for each district to reimburse its necessary and reasonable operating expenses and fairly compensate trained and rested Pilots. The result would be a decrease in rates for all areas in District One and District Two. In District Three, the rate would increase for the designated area and would decrease for the undesignated area. These changes would also lead to a net decrease in the cost of service to shippers. The change in per unit cost to each individual shipper would be dependent on their area of operation.

A detailed discussion of our economic impact analysis follows.

Affected Population

This proposed rule affects United States Registered Pilots and Apprentice Pilots, the 3 pilot associations, and the owners and operators of 258 oceangoing vessels that transit the Great Lakes annually, on average, from 2022 to 2024. We estimate that there will be 57 United States Registered Pilots and 5 Apprentice Pilots during the 2026 shipping season. The shippers that would be affected by these rate changes are those owners and operators of domestic vessels operating “on register” (engaged in foreign trade) and owners and operators of non-Canadian foreign vessels on routes within the Great Lakes system. These owners and operators must have United States Registered Pilots or pilotage service as required by 46 U.S.C. 9302. There is no minimum tonnage limit or exemption for these vessels. The statute applies only to commercial vessels and not to recreational vessels. U.S.-flagged vessels not operating on register, and Canadian “lakers,” which account for most commercial shipping on the Great Lakes, are not required by 46 U.S.C.

9302 to have United States Registered Pilots. However, these United States and Canadian-flagged lakers may voluntarily choose to engage a United States Registered Pilot. Vessels that are U.S.-flagged may opt to have a United States Registered Pilot for varying reasons, such as unfamiliarity with designated waters and ports, or for insurance purposes.

The Coast Guard used billing information from the years 2022 through 2024 from SeaPro to estimate the average annual number of vessels affected by the proposed rate adjustment. SeaPro tracks data related to managing and coordinating the dispatch of Pilots on the Great Lakes and billing in accordance with the services. As described in the ratemaking methodology, we use a 10-year average to estimate the traffic. We used 3 years of the most recent billing data to estimate the affected population. When we reviewed 10 years of the most recent billing data, we found the data included vessels that have not used pilotage services in recent years. We believe that using 3 years of billing data is a better representation of the vessel population currently using pilotage services and that would be impacted by this proposed rule. We found that 425 unique vessels used pilotage services during the years 2022 through 2024. That is, these vessels had a United States Registered Pilot dispatched to the vessel and billing information was recorded in SeaPro. Of these vessels, 403 were foreign-flagged vessels and 22 were U.S.-flagged vessels. Again, U.S.-flagged vessels not operating on register are not required to have a United States Registered Pilot per 46 U.S.C. 9302, but they can voluntarily choose to have one. Any such vessels that voluntarily choose to have a Pilot are accounted for in the methodology.

Numerous factors affect vessel traffic, which varies from year to year. Therefore, rather than using the total number of vessels over the time period, the Coast Guard took an average of the unique vessels using pilotage services from the years 2022 through 2024 as the best representation of vessels estimated

to be affected by the rates in this proposed rule. From 2022 through 2024, an average of 258 unique vessels used pilotage services annually. On average, 249 of these vessels were foreign-flagged and 9 were U.S.-flagged vessels that voluntarily opted into the pilotage service (these figures are rounded averages).

Total Cost to Shippers

The rate changes resulting from this adjustment to the rates would result in a net decrease in the cost of service to shippers. However, the change in per unit cost to each individual shipper would be dependent on their area of operation.

The Coast Guard estimates the effect of the rate changes on shippers by comparing the total projected revenues needed to cover costs in 2025 with the total projected revenues to cover costs in 2026. We set pilotage rates, so pilot associations receive enough revenue to cover their necessary and reasonable expenses. Shippers pay these rates when they engage a United States Registered Pilot, as required by 46 U.S.C. 9302. Therefore, the aggregate payments of shippers to pilot associations are equal to the projected necessary revenues for pilot associations. The revenues each year represent the total costs that shippers must pay for pilotage services. The change in revenue from the previous year is the additional cost to shippers discussed in this proposed rule.

The impacts of the rate changes on shippers are estimated from the district pilotage projected revenues (shown in tables 7, 18, and 29 of this preamble). The Coast Guard estimates that, for the 2026 shipping season, the projected revenue needed for all three districts is \$40,125,041.

To estimate the change in cost to shippers from this proposed rule, the Coast Guard compared the 2026 total projected revenues to the 2025 projected revenues. Because we review and prescribe rates for Great Lakes pilotage annually, the effects are estimated as a single-year cost rather than annualized over a 10-year period. In the 2025 final rule, we estimated the total projected

revenue needed for 2025 as \$43,159,694.⁴⁰ This is the best approximation of 2025 revenues because, at the time of publication of this proposed rule, the Coast Guard does

not have enough audited data available for the 2025 shipping season to revise these projections. Table 37 shows the revenue projections for 2025 and 2026. The additional cost increases to

shippers are detailed by area and district as a result of the proposed rate changes on traffic in Districts One, Two, and Three.

TABLE 37—EFFECT OF THE PROPOSED RULE BY AREA AND DISTRICT
[\$U.S.; Non-discounted]

Area	Revenue needed in 2025	Revenue needed in 2026	Additional costs of this rule
Total, District One	\$14,713,084	\$14,301,928	– \$411,156
Total, District Two	11,883,331	10,976,683	– 906,648
Total, District Three	16,563,279	14,846,430	– 1,716,849
System Total	43,159,694	40,125,041	– 3,034,653

* All figures are rounded to the nearest dollar and may not sum.

The resulting difference between the projected revenue in 2025 and the projected revenue in 2026 is the annual change in payments from shippers to United States Registered Pilots as a result of the rate changes proposed by this rule. The effect of the rate changes to shippers would vary by area and district. The proposed rate changes would lead to affected shippers operating in District One experiencing a decrease in payments of \$411,156 over 2025. District Two and District Three

would experience a decrease in payments of \$906,648 and \$1,716,849, respectively, when compared with 2025. The overall adjustment in payments would be a decrease in payments by shippers of \$3,034,653 across all three districts (a 7-percent decrease when compared with 2025). Again, because the Coast Guard reviews and sets rates for Great Lakes pilotage annually, we estimate the impacts as single-year costs rather than annualizing them over a 10-year period.

Table 38 shows the difference in revenue by revenue-component from 2025 to 2026 and presents each revenue-component as a percentage of the total revenue needed. In both 2025 and 2026, the largest revenue-component was pilotage compensation (66 percent of total revenue needed in 2025, and 69 percent of total revenue needed in 2026), followed by operating expenses (29 percent of total revenue needed in 2025, and 29 percent of total revenue needed in 2026).

TABLE 38—DIFFERENCE IN REVENUE BY REVENUE-COMPONENT

Revenue component	Revenue needed in 2025	Percentage of total revenue needed in 2025	Revenue needed in 2026	Percentage of total revenue needed in 2026	Difference (2025 revenue–2026 revenue)	Percentage change from previous year
Adjusted Operating Expenses	\$12,354,186	29	\$11,692,420	29	– \$661,766	– 5
Total Target United States Registered Pilot Compensation	28,323,337	66	27,562,236	69	– 761,101	– 3
Total Target Apprentice Pilot Compensation	501,462	1	870,385	2	368,923	74
Working Capital Fund	1,980,709	5	0	0	– 1,980,709	– 100
Total Revenue Needed	43,159,694	100	40,125,041	100	– 3,034,653	– 7.03

* All figures are rounded to the nearest dollar and may not sum.

As stated above, we estimate that there would be a total decrease in revenue needed by the pilot associations of \$3,043,653. This represents a decrease in revenue needed for total target United States Registered Pilot compensation of \$761,101, an increase in revenue needed for total target Apprentice Pilot wage benchmark of \$368,923, a decrease in the revenue needed for adjusted operating expenses of \$661,766, and a decrease in the

revenue needed for the working capital fund of \$1,980,709.

The change in revenue needed for United States Registered Pilot compensation, \$761,101, is due to three factors: (1) The changes to adjust 2025 pilotage compensation to account for the difference between actual ECI inflation⁴¹ (4.2 percent) and predicted PCE inflation⁴² (2.3 percent) for 2025; (2) projected inflation of pilotage compensation in Step 2 of the methodology, using predicted

inflation⁴³ (2.2 percent) through 2026; and (3) a decrease of four Pilots in District Three compared to 2025.

The target compensation is \$483,548 per Pilot in 2026, compared to \$464,317 in 2025. The proposed changes to modify the 2025 Pilot compensation to account for the difference between predicted and actual inflation would increase the 2026 target compensation value by 1.9 percent. As shown in table 39, this inflation adjustment increases total compensation by \$8,822 per Pilot,

⁴⁰ 89 FR 100810, see table 40. <https://www.govinfo.gov/content/pkg/FR-2024-12-13/pdf/2024-29128.pdf>; accessed 03/25/2025.

⁴¹ Employment Cost Index, Total Compensation for Private Industry workers in Transportation and Material Moving, Annual Average (December 2024), Series ID: CIU2010000520000A; accessed 01/31/

2025. <https://www.bls.gov/news.release/eci.t05.htm>; accessed 03/25/2025.

⁴² 2.3 percent was the latest figure available for the 2025 final rule. Table 1, Summary of Economic Projections, Median Core PCE Inflation June Projection. <https://www.federalreserve.gov/>

monetarypolicy/files/fomcprojtabl20240918.pdf; accessed 10/02/2024.

⁴³ Table 1, Summary of Economic Projections, Median Core PCE Inflation December Projection. <https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20250319.pdf>; accessed 03/19/2025.

and the total revenue needed by \$502,855 when accounting for all 57 Pilots.

TABLE 39—CHANGE IN REVENUE RESULTING FROM THE CHANGE TO INFLATION OF PILOT COMPENSATION CALCULATION IN STEP 4

2025 Target United States Registered Pilot Compensation	\$464,317
Adjusted 2025 Compensation ($\$464,317 \times 1.019$)	473,139
Difference between Adjusted Target 2025 Compensation and Target 2025 Compensation ($\$473,139 - \$464,317$)	8,822
Increase in total Revenue for 57 Pilots ($\$8,822 \times 57$)	502,855

* All figures are rounded to the nearest dollar and may not sum.

Similarly, table 40 shows the impact of the difference between predicted and actual inflation on the target Apprentice Pilot compensation benchmark. The inflation adjustment increases the compensation benchmark by \$3,176 per Apprentice Pilot, and the total revenue needed by \$15,880 when accounting for all five Apprentice Pilots.

TABLE 40—CHANGE IN REVENUE RESULTING FROM THE CHANGE TO INFLATION OF APPRENTICE PILOT COMPENSATION CALCULATION IN STEP 4

2025 Target Apprentice Pilot Compensation	\$167,154
Adjusted 2025 Compensation ($\$167,154 \times 1.019$)	170,330
Difference between Adjusted Target 2025 Compensation and Target Compensation ($\$170,330 - \$167,154$)	3,176
Increase in total Revenue for Apprentices ($\$3,176 \times 5$)	15,880

* All figures are rounded to the nearest dollar and may not sum.

Another increase, \$634,948, would be the result of increasing compensation for the 61 United States Registered Pilots predicted for the 2025 season to account for future inflation of 2.2 percent in 2026. This would increase total compensation by \$10,409 per Pilot when accounting for all 61 Pilots in the 2025 final rule, as shown in table 41.

TABLE 41—CHANGE IN REVENUE RESULTING FROM INFLATING 2025 COMPENSATION TO 2026

Adjusted 2025 Compensation	\$473,139
2026 Target Compensation ($\$473,139 \times 1.022$)	483,548
Difference between Adjusted 2025 Compensation and Target 2026 Compensation ($\$483,548 - \$473,139$)	10,409
Increase in total Revenue for 61 United States Registered Pilots ($\$10,409 \times 61$)	634,948

* All figures are rounded to the nearest dollar and may not sum.

Similarly, an increase of \$11,241 would be the result of increasing compensation for the three Apprentice Pilots predicted for the 2025 season to account for future inflation of 2.2 percent in 2026. This would increase total compensation by \$3,747 per Apprentice Pilot when accounting for the three Apprentice Pilots in the 2025 final rule, as shown in table 42.

TABLE 42—CHANGE IN REVENUE RESULTING FROM INFLATING 2025 APPRENTICE PILOT COMPENSATION TO 2026

Adjusted 2025 Compensation	\$170,330
2026 Target Compensation ($\$483,548 \times 36\%$)	174,077
Difference between Adjusted Compensation and Target Compensation ($\$174,077 - \$170,330$)	3,747
Increase in total Revenue for 3 Apprentices ($\$3,747 \times 3$)	11,241

* All figures are rounded to the nearest dollar and may not sum.

As noted earlier, the Coast Guard predicts that 57 United States Registered Pilots would be needed for the 2026 season. This reflects a decrease of four United States Registered Pilots compared to the 2025 season, in District Three. Table 43 shows the decrease of \$1,898,904 in revenue needed solely for United States Registered Pilot compensation. As noted previously, to avoid double counting, this value excludes the change in revenue resulting from the change to adjust 2025 pilotage compensation to account for the difference between actual and predicted inflation.

TABLE 43—CHANGE IN REVENUE RESULTING FROM DECREASE OF FOUR PILOTS

2026 Target Compensation	\$483,548
Total Number of New United States Registered Pilots	– 4
Total Cost of New United States Registered Pilots ($\$483,548 \times -4$)	– 1,934,192
Difference between Adjusted Target 2025 Compensation and Target 2025 Compensation ($\$473,139 - \$464,317$)	8,822
Increase in total Revenue for – 4 United States Registered Pilots ($\$8,822 \times -4$)	– 35,288

TABLE 43—CHANGE IN REVENUE RESULTING FROM DECREASE OF FOUR PILOTS—Continued

Net Increase in total Revenue for – 4 United States Registered Pilots (– \$1,934,192 – – \$35,288)	– 1,898,904

* All figures are rounded to the nearest dollar and may not sum.

Similarly, the Coast Guard predicts that five Apprentice Pilots would be needed for the 2026 season. This would be a total increase of two Apprentice Pilots from the 2025 season. The difference reflects a decrease of one

Apprentice Pilot for District Two and an increase of three Apprentice Pilots for District Three.

Table 44 shows the increase of \$341,802 in revenue needed solely for Apprentice Pilot compensation. As noted previously, to avoid double

counting this value excludes the change in revenue resulting from the change to adjust 2025 apprentice pilotage compensation to account for the difference between actual and predicted inflation.

TABLE 44—CHANGE IN REVENUE RESULTING FROM INCREASE OF TWO APPRENTICES

2026 Apprentice Target Compensation	\$174,077
Total Number of New Apprentices	2
Total Cost of new Apprentices (\$174,077 × 2)	348,154
Difference between Adjusted Target 2025 Compensation and Target 2025 Compensation (\$170,330 – \$167,154)	3,176
Increase in total Revenue for 2 Apprentices (\$3,176 × 2)	\$6,352
Net Increase in total Revenue for 2 Apprentices (\$348,154 – \$6,352)	341,802

* All figures are rounded to the nearest dollar and may not sum.

Removing the working capital fund (previously Step 5) would result in a decrease of revenue needed of \$1,980,709 for 2026 compared to 2025. Since this is a proposed change in the methodology, we also show the change in what both revenue would be needed and rates would have been for 2026 if

the working capital fund remained in the methodology. To calculate the working capital fund for 2026, we would add the figures for projected operating expenses, total target United States Registered Pilot compensation, and total target Apprentice Pilot wage for each area. Then we would find the

preceding year's average annual rate of return for new issues of high-grade corporate securities. Using Moody's data, the number is 5.0442 percent.⁴⁴ By multiplying the two figures, we obtain what the 2026 working capital fund contribution would have been for each area, as shown in table 45.

TABLE 45—WORKING CAPITAL FUND CALCULATION FOR COMPARING 2025 AND 2026

	Designated	Undesignated	Total
District One:			
Adjusted Operating Expenses (Step 2)	\$2,674,135	\$1,782,757	\$4,456,891
Total Target United States Registered Pilot Compensation (Step 4)	5,319,028	4,351,932	9,670,960
Total Target Apprentice Pilot Compensation (Step 4)	104,446	69,631	174,077
Total 2026 Expenses	8,097,609	6,204,320	14,301,928
Working Capital Fund (5.0442% * Total 2026 Expenses)	408,460	312,958	721,418
District Two:			
Adjusted Operating Expenses (Step 2)	1,102,547	1,653,821	2,756,367
Total Target United States Registered Pilot Compensation (Step 4)	3,384,836	4,835,480	8,220,316
Total Target Apprentice Pilot Compensation (Step 4)	0	0	0
Total 2026 Expenses	4,487,383	6,489,301	10,976,683
Working Capital Fund (5.0442% * Total 2026 Expenses)	226,353	327,333	553,686
District Three:			
Adjusted Operating Expenses (Step 2)	3,482,351	996,814	4,479,162
Total Target United States Registered Pilot Compensation (Step 4)	7,253,220	2,417,740	9,670,960
Total Target Apprentice Pilot Compensation (Step 4)	543,120	153,188	696,308
Total 2026 Expenses	11,278,691	3,567,742	14,846,430
Working Capital Fund (5.0442% * Total 2026 Expenses)	568,920	179,964	748,884

Across the entire system, the three districts would have needed \$2,023,988 in revenue for the working capital fund

in 2026. The resulting total revenue needed for 2026 would have been \$42,149,029, a decrease of \$1,010,665 or

2.34 percent from 2025, as shown in table 46.

⁴⁴ Moody's Seasoned Aaa Corporate Bond Yield, average of 2024 monthly data. The Coast Guard uses the most recent year of complete data. Moody's is taken from Moody's Investors Service, which is a

bond credit rating business of Moody's Corporation. Bond ratings are based on creditworthiness and risk. The rating of "Aaa" is the highest bond rating assigned with the lowest credit risk. See <https://>

fred.stlouisfed.org/series/AAA; accessed 01/14/2025.

TABLE 46—DIFFERENCE IN REVENUE BY REVENUE-COMPONENT WITH WORKING CAPITAL FUND

Revenue component	Revenue needed in 2025	Percentage of total revenue needed in 2025	Revenue needed in 2026	Percentage of total revenue needed in 2026	Difference (2026 revenue—2025 revenue)	Percentage change from previous year
Adjusted Operating Expenses	\$12,354,186	29	\$11,692,420	28	–\$661,766	–5
Total Target United States Registered Pilot Compensation ...	28,323,337	66	27,562,236	65	–761,101	–3
Total Target Apprentice Pilot Compensation	501,462	1	870,385	2	368,923	74
Working Capital Fund	1,980,709	5	2,023,988	5	43,279	2
Total Revenue Needed	43,159,694	100	42,149,029	100	–1,010,665	–2.34

Similarly, rates with the working capital fund included would have been an average of 4.89 percent higher, ranging from \$396 to \$1,014, as shown in table 47, rather than the range of \$377 to \$966 proposed in this rule. The

absolute percent difference column shows the absolute difference of the 2026 pilotage rate With Capital Fund and the proposed 2026 pilotage rate relative to each other, rather than relative to the 2025 pilotage rate. For

example, the 4.85-percent absolute percent difference for district one designated area is calculated as $[(966 - 1,014) \div ((966 + 1,014) \div 2)]$.

TABLE 47—DIFFERENCE IN PROPOSED RATES WITH AND WITHOUT WORKING CAPITAL FUND

Area	Name	Final 2025 pilotage rate	2026 pilotage rate with capital fund	Proposed 2026 pilotage rate (without working capital fund)	Absolute percent difference between pilotage rate with and without working capital fund included
District One: Designated	St. Lawrence River	\$986	\$1,014	\$966	4.85
District One: Undesignated	Lake Ontario	643	648	617	4.90
District Two: Designated	Navigable waters from Southeast Shoal to Port Huron, MI.	753	715	681	4.87
District Two: Undesignated	Lake Erie	576	583	555	4.92
District Three: Designated	St. Marys River	825	903	860	4.88
District Three: Undesignated	Lakes Huron, Michigan, and Superior.	440	396	377	4.92

Table 48 presents the percentage change in revenue by area and revenue-

component, excluding surcharges, as they are applied at the district level.⁴⁵

TABLE 48—DIFFERENCE IN REVENUE BY REVENUE-COMPONENT AND AREA

	Adjusted operating expenses		Per-centage change	Total target pilot compensation			Total target apprentice pilot compensation			Working capital fund			Total revenue needed		
	2025	2026		2025	2026	Per-centage change	2025	2026	Per-centage change	2025	2026	Per-centage change	2025	2026	Per-centage change
District One: Designated	\$2,750,620	\$2,674,135	–3	\$5,107,487	\$5,319,028	4	\$100,292	\$104,446	4	\$382,799	\$0	–100	\$8,341,198	\$8,097,609	–3
District One: Undesignated	1,833,749	1,782,757	–3	4,178,853	4,351,932	4	66,862	69,631	4	292,422	0	–100	6,371,886	6,204,320	–3
District Two: Undesignated	1,310,973	1,102,547	–16	3,250,219	3,384,836	4	66,862	0	–100	222,609	0	–100	4,850,663	4,487,383	–7
District Two: Designated	1,966,459	1,653,821	–16	4,643,170	4,835,480	4	100,292	0	–100	322,747	0	–100	7,032,668	6,489,301	–8
District Three: Undesignated	3,566,457	3,482,351	–2	8,822,023	7,253,220	–18	132,052	543,120	311	602,238	0	–100	13,122,770	11,278,691	–14
District Three: Designated	925,928	966,814	8	2,321,585	2,417,740	4	35,102	153,188	336	157,894	0	–100	3,440,509	3,567,742	4

* All figures are rounded to the nearest dollar and may not sum.

⁴⁵ The 2025 projected revenues are from the Great Lakes Pilotage Rate-2025 Annual Review final rule

(89 FR 100810), tables 8, 20, and 32. The 2026

projected revenues are from tables 7,18, and 29 of this proposed rule.

Benefits

This proposed rule allows the Coast Guard to meet the requirements in 46 U.S.C. 9303 to review the rates for pilotage services on the Great Lakes. The rate changes promote safe, efficient, and reliable pilotage service on the Great Lakes by (1) ensuring that rates cover an association's operating expenses, and (2) providing fair United States Registered Pilot compensation, adequate training, and sufficient rest periods for United States Registered Pilots. The rate changes also help recruit and retain United States Registered Pilots, which ensures a sufficient number of United States Registered Pilots to meet peak shipping demand, helping to reduce delays caused by Pilot shortages. Maintaining safe, efficient, and reliable pilotage service also

facilitates commerce throughout the Great Lakes region.

B. Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. 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.

For the proposed rule, the Coast Guard reviewed recent company size and ownership data for the vessels identified in SeaPro, and we reviewed business revenue and size data provided by publicly available sources such as

ReferenceUSA.⁴⁶ As described in *Section VI.A., Regulatory Planning and Review*, of this preamble, we found that 425 unique vessels used pilotage services during the years 2022 through 2024. These vessels are owned by 62 entities, of which 48 are foreign entities that operate primarily outside the United States, and the remaining 14 entities are U.S. entities. We compared the revenue and employee data found in the company search to the Small Business Administration's (SBA) small business threshold as defined in the SBA's “Table of Size Standards” for small businesses to determine how many of these companies are considered small entities.⁴⁷ Table 49 shows the North American Industry Classification System (NAICS) codes of the U.S. entities and the small entity standard size established by the SBA.

TABLE 49—NAICS CODES AND SMALL ENTITIES SIZE STANDARDS

NAICS	Description	Small entity size standard
238910	Site Preparation Contractors	\$19,000,000.
423860	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers.	175 Employees.
483211	Inland Water Freight Transportation	1,050 Employees.
484230	Specialized Freight (except Used Goods)	\$34,000,000.
488390	Other Support Activities for Water Transportation	\$47,000,000.
523910	Miscellaneous Intermediation	\$47,000,000.
541611	Administrative Management and General Management Consulting Services.	\$24,500,000.
561510	Travel Agencies	\$25,000,000.
561599	All Other Travel Arrangement and Reservation Services	\$32,500,000.
562910	Remediation Services	\$25,000,000.
713930	Marinas	\$11,000,000.
813910	Business Associations	\$15,500,000.

Of the 14 U.S. entities, 5 exceed the SBA's small business standards for small entities. To estimate the potential impact on the 9 small entities, the Coast Guard used their 2024 invoice data to estimate their pilotage costs in 2026. Of the 9 small entities, from 2022 to 2024, 7 used pilotage services in 2024. We increased their 2024 costs to account for the changes in pilotage rates resulting from this proposed rule and the 2025 final rule. We estimated the change in cost to these entities resulting from this proposed rule by subtracting their estimated 2026 pilotage costs from their estimated 2025 pilotage costs and found the average impact to small firms would be approximately –\$16,717, with a range of –\$460 to –\$56,117. We then compared the estimated change in pilotage costs between 2025 and 2026 with each firm's annual revenue.

Because the rates in most areas decrease this year, the expected impact on small entities is a cost savings, rather than a net cost. That said, the Regulatory Flexibility Act directs agencies to consider the magnitude of the impact, positive or negative, on small entities. The change in per unit cost to each individual shipper would be dependent on their area of operation. This analysis considers the impact of the average –7 percent change on revenues and finds the impact ranges from –0.05 percent to –10.87 percent, with an average of –3.59 percent. Within this range of negative impacts, three entities experience an impact greater than 1 percent in absolute terms.

In addition to the owners and operators discussed previously, three U.S. entities that receive revenue from pilotage services would be affected by

this proposed rule. These are the three pilot associations that provide and manage pilotage services within the Great Lakes districts. District One's SLSPA uses the NAICS code “Inland Water Freight Transportation,” with a small-entity size standard of 1,050 employees. District Two's LPA uses the NAICS code, “Business Associations,” with a small-entity size standard of \$15,500,000 in revenue. District Three's WGLPA did not have a registered NAICS code through ReferenceUSA. All three associations are considered small entities by SBA size standards.

Finally, the Coast Guard did not find any small not-for-profit organizations that are independently owned and operated and are not dominant in their fields that would be impacted by this proposed rule. We also did not find any small governmental jurisdictions with

⁴⁶ See <https://resource.referenceusa.com/>; accessed 03/25/2025.

⁴⁷ See <https://www.sba.gov/document/support-table-size-standards>. SBA has established a “Table

of Size Standards” for small businesses that sets small business size standards by NAICS code. A size standard, which is usually stated in number of employees or average annual receipts (“revenues”),

represents the largest size that a business (including its subsidiaries and affiliates) may be in order to remain classified as a small business for SBA and Federal contracting programs; accessed March 2024.

populations of fewer than 50,000 people that would be impacted by this proposed rule. Based on this analysis, we conclude that this proposed rule would not affect a substantial number of small entities, nor have a significant economic impact on a substantial number of small entities.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment to the docket at the address listed in the **ADDRESSES** section of this preamble. In your comment, explain why you think it qualifies and how and to what degree this proposed rule would economically affect it.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

D. Collection of Information

This proposed rule would call for no new collection of information nor does it adjust an existing collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

E. Federalism

A rule has implications for federalism under Executive Order 13132 (Federalism) if it has a substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under Executive Order 13132 and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132. Our analysis follows.

Congress directed the Coast Guard to establish “rates and charges for pilotage services” 46 U.S.C. 9303(f). This regulation is issued pursuant to that statute and is preemptive of State law as specified in 46 U.S.C. 9306. Under 46 U.S.C. 9306, a “State or political subdivision of a State may not regulate or impose any requirement on pilotage on the Great Lakes.” As a result, States or local governments are expressly prohibited from regulating within this category. Therefore, this proposed rule is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

While it is well settled that States may not regulate in categories in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, the Coast Guard recognizes the key role that State and local governments may have in making regulatory determinations. Additionally, for rules with federalism implications and preemptive effect, Executive Order 13132 specifically directs agencies to consult with State and local governments during the rulemaking process. If you believe this proposed rule would have implications for federalism under Executive Order 13132, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

F. Unfunded Mandates

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100 million (adjusted for inflation) or more in any one year. Although this proposed rule would not result in such an expenditure, we do discuss the potential effects of this proposed rule elsewhere in this preamble.

G. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights).

H. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, (Civil Justice Reform), to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this proposed rule under Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks). This proposed rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

K. Energy Effects

We have analyzed this proposed rule under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (for example, specifications of materials, performance, design, or operation; test

methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this proposed rule under Department of Homeland Security (DHS) Management Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

This proposed rule would be categorically excluded under paragraph A3 and L54 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. Paragraph A3 pertains to the promulgation of rules of the following nature: (a) those of a strictly administrative or procedural nature; (b) those that implement, without substantive change, statutory or regulatory requirements; (c) those that implement, without substantive change, procedures, manuals, and other guidance documents; (d) those that interpret or amend an existing regulation without changing its environmental effect; (e) those that provide technical guidance on safety and security matters; and (f) those that provide guidance for the preparation of security plans. Paragraph L54 pertains to regulations which are editorial or procedural. This proposed rule involves setting or adjusting the pilotage rates for the 2026 shipping season to account for changes in district operating expenses, changes in the number of Pilots, and anticipated inflation. In addition, the Coast Guard is accepting comments on the entire Great Lakes pilotage ratemaking methodology, in accordance with the requirement to conduct a full ratemaking every 5 years. The Coast Guard is proposing one change to the methodology: the removal of step 5 regarding the working capital fund. All of these changes are consistent with the Coast Guard's maritime safety missions. We seek any comments or information

that may lead to the discovery of a significant environmental impact from this proposed rule.

VII. Public Participation and Request for Comments

The Coast Guard views public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision-Making Portal at www.regulations.gov. To do so, go to www.regulations.gov, type USCG–2025–0252 in the search box, and click "Search." Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using www.regulations.gov, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions. We review all comments received.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select "Supporting & Related Material" in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following the instructions on the Frequently Asked Questions web page, available at www.regulations.gov/faq. That page also explains how to subscribe for email alerts that will notify you when comments are posted or if a final rule is published.

Personal information. We accept anonymous comments. Comments we post to www.regulations.gov will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Public meeting. We do not plan to hold a public meeting, but we will consider doing so if we determine from public comments that a meeting would be helpful. We would issue a separate **Federal Register** notice to announce the date, time, and location of such a meeting.

List of Subjects

46 CFR Part 401

Administrative practice and procedure, Great Lakes; Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 404

Great Lakes, Navigation (water), Seamen.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR parts 401 and 404 as follows:

PART 401—GREAT LAKES PILOTAGE REGULATIONS

- 1. The authority citation for part 401 continues to read as follows:

Authority: 46 U.S.C. 2103, 2104(a), 6101, 7701, 8105, 9303, 9304; DHS Delegation No. 00170.1, Revision No. 01.4, paragraphs (II)(92)(a), (d), (e), (f).

- 2. Amend § 401.405 by revising paragraphs (a)(1) through (6) to read as follows:

§ 401.405 Pilotage rates and charges.

- (a) * * *
- (1) The St. Lawrence River is \$966;
 - (2) Lake Ontario is \$617;
 - (3) Lake Erie is \$555;
 - (4) The navigable waters from Southeast Shoal to Port Huron, MI is \$681;
 - (5) Lakes Huron, Michigan, and Superior is \$377; and
 - (6) The St. Marys River is \$860.

* * * * *

PART 404—GREAT LAKES PILOTAGE RATEMAKING

- 3. The authority citation for part 404 is revised to read as follows:

Authority: 46 U.S.C. 2103, 2104(a), 9303, 9304; DHS Delegation 00170.1, Revision No. 01.4.

§ 404.105 [Removed]

- 4. Remove § 404.105

§§ 404.106 through 404.110 [Redesignated]

- 5. Redesignate §§ 404.106 through 404.110 as follows:

Old section	New section
§ 404.106	§ 404.105
§ 404.107	§ 404.106
§ 404.108	§ 404.107
§ 404.109	§ 404.108
§ 404.110	§ 404.109

- 6. Revise §§ 404.105 through 404.109 to read as follows:

§ 404.105 Ratemaking Step 5: Project needed revenue.

The Director calculates each pilotage association's base projected needed revenue by adding the projected adjusted operating expenses from § 404.102 of this part, and the total target pilot compensation from § 404.104 of this part.

§ 404.106 Ratemaking Step 6: Calculate initial base rates.

(a) The Director calculates initial base hourly rates by dividing the projected needed revenue from § 404.105 by averages of past hours worked in each district's designated and undesignated waters, using available and reliable data for a multi-year period set in accordance with § 401.220(a) of this chapter.

(b) [Reserved]

§ 404.107 Ratemaking Step 7: Calculate average weighting factors by Area.

The Director calculates the average weighting factor for each area by computing the 10-year rolling average of weighting factors applied in that area, beginning with the year 2014. If less than 10 years of data are available, the Director calculates the average weighting factor using data from each year beginning with 2014.

§ 404.108 Ratemaking Step 8: Calculate revised base rates.

The Director calculates revised base rates for each area by dividing the initial base rate (from Step 6) by the average weighting factor (from Step 7) to produce a revised base rate for each area.

§ 404.109 Ratemaking Step 9: Review and finalize rates.

The Director reviews the base pilotage rates calculated in § 404.108 of this part to ensure they meet the goal set in § 404.1(a) of this part, and either finalizes them or first makes necessary and reasonable adjustments to them based on requirements of Great Lakes pilotage agreements between the United States and Canada, or other supportable circumstances.

Dated: September 3, 2025.

W.R. Arguin,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Prevention Policy.

[FR Doc. 2025-17095 Filed 9-4-25; 8:45 am]

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Notices

Federal Register

Vol. 90, No. 170

Friday, September 5, 2025

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-583-844]

Narrow Woven Ribbons With Woven Selvage From Taiwan: Preliminary Results and Rescission, in Part, of Antidumping Duty Administrative Review; 2023–2024

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that narrow woven ribbons with woven selvage (ribbons) from Taiwan were sold in the United States at less than normal value (NV) during the period of review (POR), September 1, 2023, through August 31, 2024. Additionally, Commerce is rescinding this administrative review, in part, with respect to certain companies for which requests for review were timely withdrawn. We invite interested parties to comment on these preliminary results.

DATES: Applicable September 5, 2025.

FOR FURTHER INFORMATION CONTACT: Paul Senoyuit, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6106.

SUPPLEMENTARY INFORMATION:

Background

On September 1, 2010, Commerce published in the **Federal Register** the antidumping duty (AD) order on ribbons from Taiwan.¹ On September 3, 2024,

Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order* for the POR.²

Pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b)(1), on September 30, 2024, Commerce received a timely request to conduct an administrative review of the *Order* for 59 producers/exporters from Berwick Offray LLC and its wholly-owned subsidiary Lion Ribbon Company, LLC (the petitioners).³ On October 17, 2024, based on this timely request, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the *Order*.⁴

On January 15, 2025, the petitioners timely withdrew their request for an administrative review with respect to five companies.⁵ In addition, on July 3, 2025, Commerce stated we intended to rescind this review for the 52 companies with no entries during the POR.⁶ For a complete description of the events that followed the initiation of this review, see the Preliminary Decision Memorandum.⁷

Scope of the Order

The products included in the scope of the *Order* are ribbons from Taiwan. For a complete description of the scope of the *Order*, see the Preliminary Decision Memorandum.⁸

Methodology

Commerce is conducting this review in accordance with sections 751(a)(1)(B)

Duty Orders, 75 FR 56982, 56985 (September 17, 2010) (collectively, *Order*).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review and Join Annual Inquiry Service List*, 89 FR 71254 (September 3, 2024).

³ See Petitioners' Letter, "Request for Administrative Review," dated September 30, 2024.

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 89 FR 83644 (October 17, 2024).

⁵ See Petitioners' Letter, "Withdrawal of Administrative Review Request as to Certain Companies," dated January 15, 2025 (Withdrawal of Review Request); see also Appendix II.

⁶ See Memorandum, "Notice of Intent to Rescind Review," dated July 3, 2025; see also Appendix II.

⁷ See Memorandum, "Decision Memorandum for the Preliminary Results of the 2023–2024 Administrative Review of the Antidumping Duty Order on Narrow Woven Ribbons with Woven Selvage from Taiwan," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁸ *Id.*

and (2) of the Act. Pursuant to sections 776(a) and (b) of the Act, Commerce preliminarily relied entirely upon facts otherwise available with adverse inferences for Lace Fashions Industrial Co., Ltd. (Lace Fashions) and Trydent Co., Ltd. (Trydent). For a complete description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is attached in Appendix I of 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 is available at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Rescission of Review, in Part

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. On January 15, 2025, the petitioners timely withdrew their request for an administrative review with respect to Dear Year Brothers Mfg. Co., Ltd.; Hao Shyang Ind. Co. Ltd.; Hsien Chan Enterprise Co., Ltd, Novelty Handicrafts Co., Ltd., and Shienq Huang Enterprise Co., Ltd.;⁹ Lung Che Ribbons Enterprises Co. Ltd.; and Maple Ribbon.¹⁰ Because no other parties requested a review of these companies, we are rescinding the administrative review with respect to these companies. Additionally, we are rescinding this administrative review with respect to 52 companies with no POR entries of subject merchandise. Accordingly, we are rescinding this administrative

⁹ These three companies are being treated as a single entity for AD purposes. See *Narrow Woven Ribbons with Woven Selvage from Taiwan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 7236 (February 18, 2010), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Narrow Woven Ribbons with Woven Selvage from Taiwan*, 75 FR 41804 (July 19, 2010).

¹⁰ See *Withdrawal of Review Request*.

¹ See *Narrow Woven Ribbons with Woven Selvage from Taiwan and the People's Republic of China: Antidumping Duty Orders*, 75 FR 53632 (September 1, 2010); see also *Narrow Woven Ribbons with Woven Selvage from Taiwan and the People's Republic of China: Amended Antidumping*

review, in part, with respect to the 57 companies listed in Appendix II. The administrative review remains active with respect to the mandatory respondents, Lace Fashions and Trydent.

Preliminary Results of Review

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist for the period September 1, 2023, through August 31, 2024:

Producer or exporter	Weighted-average dumping margin (percent)
Lace Fashions Industrial Co., Ltd	* 137.20
Trydent Co., Ltd	* 137.20

* This rate is based on facts available with adverse inferences.

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with its preliminary results finding within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of preliminary results in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because Commerce preliminarily applied total adverse facts available to the two individually examined companies subject to this review, in accordance with section 776 of the Act, there are no calculations to disclose.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 21 days after the date of publication of these preliminary results.¹¹ Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the date for filing case briefs.¹² Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and, (2) a table of authorities.¹³

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior

proceedings we have encouraged interested parties to provide an executive summary of their briefs that should be limited to five pages total, including footnotes. In this review, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹⁴ Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this administrative review. We request that interested parties include footnotes for relevant citations in the public executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹⁵

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, using Enforcement and Compliance’s ACCESS system within 30 days of publication of this notice.¹⁶ Requests should contain 1) the party’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. Issues raised in the hearing will be limited to those raised in the case and rebuttal briefs. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing at a time and location to be determined.¹⁷ Parties should confirm by telephone the date, time, and location of the hearing no fewer than two days before the scheduled date. Parties are reminded that all briefs and hearing requests must be filed electronically using ACCESS and received successfully in their entirety by 5:00 p.m. Eastern Time on the due date.

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act, upon completion of the final results of administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess,

antidumping duties on all appropriate entries covered by this review.¹⁸

For the companies for which this review is being rescinded, in part, Commerce will instruct CBP to assess antidumping duties on all appropriate entries. Antidumping duties shall be assessed at rates equal to the cash deposit rate for estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). With respect to the rescission of this review, in part, Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of this notice in the **Federal Register**.

For companies subject to this review, Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication in the **Federal Register** of the notice of final results of administrative review for all shipments of ribbons from Taiwan entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided for by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for Lace Fashions and Trydent will be equal to the weighted-average dumping margin established in the final results of this review; (2) for merchandise exported by a company not covered in this review but covered in a prior completed segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review or another completed segment of this proceeding, but the producer is, then the cash deposit rate will be the company-specific rate established for the completed segment for the most recent period for the producer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 4.37 percent, the all-others rate determined in the less-than-fair-value

¹¹ Commerce is exercising its discretion under 19 CFR 351.309(c)(1)(ii) to alter the time limit for the filing of case briefs. See 19 CFR 351.309(c)(1)(ii).
¹² See 19 CFR 351.309(d); see also *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Procedures*).
¹³ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁴ We use the term “issue” here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.
¹⁵ See *APO and Service Procedures*.
¹⁶ See 19 CFR 351.310(c).
¹⁷ See 19 CFR 351.310.

¹⁸ See 19 CFR 351.212(b)(1).

investigation.¹⁹ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Final Results of Review

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), Commerce will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their case briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties, and/or an increase in the amount of antidumping duties by the amount of countervailing duties.²⁰

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213(h) and 351.221(b)(4).

Dated: August 28, 2025.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Rescission of Review, In Part
- V. Discussion of the Methodology
- VI. Recommendation

Appendix II

Companies Rescinded From Review

1. A—MADEUS TEXTILE LTD.
2. A—MEN Ribbons Co., Ltd.
3. Antonio Proietti Int. Inc.
4. Apex Trimmings
5. Banduoo Ltd.
6. Bon-Mar Textiles
7. Chang Store Co. Ltd
8. Cheng Hsing Ribbon Factory
9. Cheng Mei Label Mfg. Corp.

10. Christmas Castle International Ltd.
11. Dear Year Brothers Mfg. Co., Ltd.
12. Dearclobber International Co Ltd
13. Ethel Enterprise Co., Ltd.; Glory Young Enterprise Co., Ltd.; King Young Enterprise Co., Ltd.
14. Everwin Textile Corp.
15. Fist Labeling Corp.
16. Friend Chiu Co., Ltd.
17. Fujian Rongshu Industry Co., Ltd.
18. Golden State Industrial Co. Ltd.
19. Great Texture Int'l Co., Ltd.
20. Guangzhou Complacent Weaving Co., Ltd.
21. Gyrostate Corp.
22. Hao Shyang Ind. Co. Ltd.
23. Hen Hao Trading Co. Ltd; Taiwan Tulip Ribbons and Braids Co. Ltd.
24. Hsien Chan Enterprise Co., Ltd.; Novelty Handicrafts Co. Ltd.; Shienq Huang Enterprise Co., Ltd.
25. Hubscher Ribbon Corp., Ltd.; Hubschercorp
26. Imprimerie Mikan Inc.
27. J.S. (Just Splendid) Co., Ltd.
28. JCBen Enterprises Co. Ltd.
29. Junmay Label Mfg Corp.
30. L'Emballage Tout 6
31. Linset Enterprises Co., Ltd.
32. Lung Che Ribbons Enterprises Co. Ltd.
33. Maple Ribbon Co., Ltd.
34. Maxtend Industry Corporation
35. May Favor Enterprise Co., Ltd
36. Ming Wei Co., Ltd.
37. Multicolor
38. N.K. Galleria Inc.
39. Nien Chow Industrial Co.
40. Pansy Weaving Co., Ltd.
41. Papillon Ribbon & Bow (Canada)
42. Papillon Ribbon & Bow (H.K.) Ltd.
43. Papillon Ribbon & Bow (Shanghai) Ltd.
44. Pearl Ribbons and Trims, Inc.
45. Ren Her Industry Co. Ltd.
46. Ribbon City Company
47. Rong Shu Industry Corporation;
48. Rubans G A R Inc. (Les)
49. Trio Co., Ltd
50. Tse Tien Shin Enterprise Co Ltd
51. Tsong Jiaw Enterprise Co., Ltd.
52. Wing Hung (Tw) Co Ltd
53. Xiamen Especial Industrial Co., Ltd.
54. Xiamen Yi-He Textile Co., Ltd.
55. Yanzhou Bepak Gifts & Crafts Co
56. Yih Jenq Textile Co. Ltd.
57. Yu Shin Development Co. Ltd.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–856]

Certain Oil Country Tubular Goods From Mexico: 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) determines that

certain oil country tubular goods (OCTG) from Mexico were sold in the United States at prices below normal value during the period of review (POR), May 11, 2022, through October 31, 2023.

DATES: Applicable September 5, 2025.

FOR FURTHER INFORMATION CONTACT:

Tyler Weinhold, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1121.

SUPPLEMENTARY INFORMATION:

Background

On December 5, 2024, Commerce published the *Preliminary Results* and invited interested parties to comment on the *Preliminary Results*.¹ On December 9, 2024, Commerce tolled the deadline to issue the final results in the administrative review by 90 days.² On June 25, 2025, Commerce extended the final results by 60 days.³ Accordingly, the deadline for these final results is now September 2, 2025.⁴ Commerce conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). A summary of the events that occurred since Commerce published these *Preliminary Results*, as well as a full discussion of the issues raised by parties for these final results, may be found in the Issues and Decision Memorandum.⁵

The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed

¹ See *Oil Country Tubular Goods from Mexico: Preliminary Results Recission, in Part, of Antidumping Duty Administrative Review; 2022–2023*, 89 FR 96639 (December 5, 2024) (*Preliminary Results*).

² See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,” dated December 9, 2024.

³ See Memorandum, “Extension of Deadline for Final Results of Antidumping Duty Administrative Review,” dated June 25, 2025.

⁴ Because the current deadline for these final results falls on a holiday (i.e., September 1, 2025), the deadline became the next business day (i.e., September 2, 2025). See *Notice of Clarification: Application of “Next Business Day” Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

⁵ See Memorandum, “Issues and Decision Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Certain Oil Country Tubular Goods from Mexico; 2022–2023,” dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

¹⁹ See *Order*, 75 FR at 56985.

²⁰ See 19 CFR 351.402(f)(3).

directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Order ⁶

The product covered by the *Order* is OCTG from Mexico. For a complete description of the scope of the *Order*, see the Issues Decision Memorandum.⁷

Analysis of Comments Received

All issues raised in the case and rebuttal briefs filed by interested parties in this review are addressed in the Issues and Decision Memorandum. A list of topics in the Issues and Decision Memorandum is attached as Appendix I to this notice.

Changes Since the Preliminary Results

Based on our review of the record and comments received from interested parties, we made certain changes to the margin calculations for Tubos de Acero de Mexico S.A. for these final results of review.⁸

Final Results of Review

We determine that the following estimated weighted-average dumping margin exists for the period May 11, 2022, through October 31, 2023:

Exporter/producer	Weighted-average dumping margin (percent)
Tubos de Acero de Mexico, S.A	26.10

Disclosure

We intend to disclose the calculations performed to parties in this proceeding within five days after the date of publication in the **Federal Register** of these final results of review, in accordance with 19 CFR 351.224(b).

Assessment Rate

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1), Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.⁹

⁶ See *Oil Country Tubular Goods from Argentina, Mexico, and the Russian Federation: Antidumping Duty Orders and Amended Final Affirmative Determination for the Russian Federation*, 87 FR 70785 (November 21, 2022) (*Order*).

⁷ See Issues and Decision Memorandum at 3–4.

⁸ See Issues and Decision Memorandum at Comments 4 and 7; see also Memorandum, “Final Analysis Memorandum for Tubos de Acero de Mexico, S.A.,” dated concurrently with this notice.

⁹ In these final results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and*

For entries of subject merchandise during the POR produced by the respondent for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate in the less-than-fair-value investigation if there is no rate for the intermediate company(ies) involved in the transaction.¹⁰

Commerce intends to issue assessment instructions to CBP no earlier than 41 days after the date of publication of the final results of this review in the **Federal Register**, in accordance with 19 CFR 356.8(a). 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 upon publication in the **Federal Register** of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2) of the Act: (1) the cash deposit rate for company subject to this review will be equal to the company-specific weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by a company not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation but the producer is, then the cash deposit rate will be the rate established in the most recently completed segment of the proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 44.93 percent, the all-others rate established in the less-than-fair-value investigation.¹¹ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Assessment Rate in Certain Antidumping Proceedings: Final Modification, 77 FR 8101 (February 14, 2012).

¹⁰ See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

¹¹ See *Order*, 87 FR at 70786.

Notification to Importers Regarding the Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in Commerce’s presumption that reimbursement of antidumping duties did occur and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order (APO)

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h) and 19 CFR 351.221(b)(5).

Dated: September 2, 2025.
Christopher Abbott,
Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

- List of Topics Discussed in the Issues and Decision Memorandum**
- I. Summary
 - II. Background
 - III. Scope of the *Order*
 - IV. Changes Since the *Preliminary Results*
 - V. Discussion of the Issues
 - Comment 1: Additional Thread Codes
 - Comment 2: U.S. Indirect Selling Expenses Incurred in a Third Country
 - Comment 3: Home Market Royalty Expenses
 - Comment 4: Constructed Export Price Offset
 - Comment 5: Further Manufacturing—Transactions Disregarded Rule
 - Comment 6: Further Manufacturing—Yield Loss Factor
 - Comment 7: Reporting for Product Characteristic “TYPE”
 - Comment 8: Home Market Credit Expenses

Comment 9: Differential Pricing
Methodology
Comment 10: Undervaluation of Entered
Values
Comment 11: Clerical Errors
VI. Recommendation

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XF096]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Oregon Department of Transportation's Yaquina Bay Dolphin Replacement Project in Newport, Oregon

AGENCY: National Marine Fisheries
Service (NMFS), National Oceanic and
Atmospheric Administration (NOAA),
Commerce.

ACTION: Notice; issuance of incidental
harassment authorization.

SUMMARY: In accordance with
regulations implementing the Marine
Mammal Protection Act (MMPA) as
amended, notification is hereby given
that NMFS has issued an incidental
harassment authorization (IHA) to the
Oregon Department of Transportation
(ODOT) for authorization to take marine
mammals incidental to construction
activities for the Yaquina Bay Dolphin
Replacement Project in Newport,
Oregon.

DATES: This authorization is effective for
1 year from the date of notification by
the IHA-holder, not to exceed 1 year
from the date of issuance (September 2,
2025).

ADDRESSES: Electronic copies of the
application and supporting documents,
as well as a list of the references cited
in this document, may be obtained
online at: [https://www.fisheries.
noaa.gov/national/marine-mammal-
protection/incidental-take-
authorizations-construction-activities](https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities).
In case of problems accessing these
documents, please call the contact listed
below.

FOR FURTHER INFORMATION CONTACT:
Kelsey Potlock, Office of Protected
Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

MMPA Background and Determinations

The MMPA prohibits the “take” of
marine mammals, with certain
exceptions. Among the exceptions is
section 101(a)(5)(D) of the MMPA (16

U.S.C. 1361 *et seq.*) which directs the
Secretary of Commerce (as delegated to
NMFS) to allow, upon request, the
incidental, but not intentional, taking by
harassment of small numbers of marine
mammals by U.S. citizens who engage
in a specified activity (other than
commercial fishing) within a specified
geographical region if certain findings
are made and the public has an
opportunity to comment on the
proposed IHA.

Specifically, NMFS will issue an IHA
if it finds that the taking will have a
negligible impact on the species or
stock(s) and will not have an
unmitigable adverse impact on the
availability of the species or stock(s) for
taking for subsistence uses (where
relevant). Further, NMFS must prescribe
the permissible methods of taking and
other “means of effecting the least
practicable adverse impact” on the
affected species or stocks and their
habitat, paying particular attention to
rookeries, mating grounds, and areas of
similar significance, and on the
availability of such species or stocks for
taking for certain subsistence uses
(referred to here as “mitigation”). NMFS
must also prescribe requirements
pertaining to the monitoring and
reporting of such takings. The
definitions of key terms, such as “take,”
“harassment,” and “negligible impact,”
can be found in the MMPA and the
NMFS’ implementing regulations (see
16 U.S.C. 1362; 50 CFR 216.103).

On July 22, 2025, a notice of NMFS’
proposal to issue an IHA to ODOT for
the take of marine mammals incidental
to construction activities for the
Yaquina Bay Dolphin Replacement
Project in Newport, Oregon was
published in the **Federal Register** (90
FR 34441). In that notice, NMFS
indicated the estimated numbers, type,
and methods of incidental take
proposed for each species or stock, as
well as the mitigation, monitoring, and
reporting measures that would be
required should the IHA be issued. The
Federal Register notice also included
analysis to support NMFS’ preliminary
conclusions and determinations that the
IHA, if issued, would satisfy the
requirements of section 101(a)(5)(D) of
the MMPA for issuance of the IHA. The
Federal Register notice included web
links to a draft IHA for review, as well
as other supporting documents.

No substantive comments were
received during the public comment
period. With the exception of the minor
change described below, there are no
changes to the specified activity, the
species taken, the proposed numbers,
type, or methods of take, or the

mitigation, monitoring, or reporting
measures in the proposed IHA notice.

No new information that would
change any of the preliminary analyses,
conclusions, or determinations in the
proposed IHA notice has become
available since that notice was
published, and therefore, the
preliminary analyses, conclusions, and
determinations included in the
proposed IHA are considered final.

Changes From the Proposed IHA to the Final IHA

We made a single change, which
incorporates an updated abundance
estimate for the Oregon/Washington
coastal stock of harbor seals, which is
updated to 22,549 from 24,731 animals
based on more recent best available
information (Pearson *et al.* 2024). This
change does not influence the estimated
take numbers under the proposed
notice/IHA or influence the preliminary
findings made in support of the
proposed IHA.

National Environmental Policy Act

To comply with the National
Environmental Policy Act of 1969
(NEPA; 42 U.S.C. 4321 *et seq.*) and
NOAA Administrative Order (NAO)
216–6A, NMFS must review our
proposed action (*i.e.*, the issuance of an
IHA) with respect to potential impacts
on the human environment.

This action is consistent with
categories of activities identified in
Categorical Exclusion B4 (IHAs with no
anticipated serious injury or mortality)
of the Companion Manual for NAO 216–
6A, which do not individually or
cumulatively have the potential for
significant impacts on the quality of the
human environment and for which we
have not identified any extraordinary
circumstances that would preclude this
categorical exclusion. Accordingly,
NMFS has determined that the issuance
of the proposed IHA qualifies to be
categorically excluded from further
NEPA review.

Endangered Species Act

Section 7(a)(2) of the Endangered
Species Act of 1973 (ESA; 16 U.S.C.
1531 *et seq.*) requires that each Federal
agency ensures that any action it
authorizes, funds, or carries out is not
likely to jeopardize the continued
existence of any endangered or
threatened species or result in the
destruction or adverse modification of
designated critical habitat. To ensure
ESA compliance for the issuance of
IHAs, NMFS consults internally
whenever we propose to authorize take
for endangered or threatened species.

No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Authorization

Accordingly, consistent with the requirements of section 101(a)(5)(D) of the MMPA, NMFS has issued an IHA to ODOT for authorization to take marine mammals incidental to construction activities for the Yaquina Bay Dolphin Replacement Project in Newport, Oregon.

Dated: September 2, 2025.

Kimberly Damon-Randall,

Director, Office of Protected Resources,
National Marine Fisheries Service.

[FR Doc. 2025-17005 Filed 9-4-25; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XF100]

Marine Mammals; Pinniped Removal Authority; Approval of Application

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability.

SUMMARY: NMFS announces approval of an application to intentionally take, by lethal methods, California sea lions (CSL; *Zalophus californianus*) and Steller sea lions (SSL; *Eumetopias jubatus*: Eastern stock) that are located in the mainstem of the Columbia River between river mile 112 (I-205 bridge) and river mile 292 (McNary Dam), or in any tributary to the Columbia River that includes spawning habitat of threatened or endangered salmon or steelhead (*Onchorynchus* spp.). This action is intended to reduce or eliminate sea lion predation on species that are listed as threatened or endangered under the Endangered Species Act (ESA) of 1973, and species of lamprey or sturgeon that are not listed as endangered or threatened but are listed as a species of concern by the state of Oregon. This authorization is pursuant to the Marine Mammal Protection Act (MMPA). NMFS also announces availability of decision documents and other information relied upon in making this determination.

ADDRESSES: Additional information about our determination may be obtained by visiting the NMFS West

Coast Region's website: <http://www.westcoast.fisheries.noaa.gov>, or by writing to us at: NMFS West Coast Region, Protected Resources Division, 1201 Lloyd Blvd., Suite 1100, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Anderson at the above address, by phone at (503) 231-2226, or by email at robert.c.anderson@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 120 (MMPA; 16 U.S.C. 1389, *et seq.*) allows the Secretary of Commerce, acting through the Assistant Administrator for Fisheries, and the West Coast Regional Administrator of NMFS, to authorize the intentional lethal taking of individually identifiable pinnipeds that are having a significant negative impact on the decline or recovery of salmonid species which have been listed as threatened or endangered species under the ESA, are approaching threatened species or endangered species status (as those terms are defined in that Act), or migrate through the Ballard Locks at Seattle, Washington. Section 120(b)(1) establishes the criteria whereby a state may apply to the Secretary requesting authorization for the intentional lethal taking of individually identifiable pinnipeds which are having a significant negative impact on the decline or recovery of salmonid species. Section 120(b)(2) requires that any such application shall include a means of identifying the individual pinniped or pinnipeds, and shall include a detailed description of the problem interaction and expected benefits of the taking.

The Endangered Salmon Predation Prevention Act of 2018 (Pub. L. 115-329) replaced the existing MMPA section 120(f) with a new section 120(f) titled Temporary Marine Mammal Removal Authority on the Waters of the Columbia River or its Tributaries. The new section 120(f) provides separate authority for NMFS to issue permits allowing the intentional lethal taking of sea lions for the purpose of protecting ESA-listed fish species and species of lamprey and sturgeon that are listed as species of concern. Under section 120(f), sea lions are deemed to be individually identifiable and having a significant negative impact on the protected fish species when the sea lions are located in defined areas of the Columbia River and its tributaries. These areas include the mainstem of the Columbia River between river mile 112 (I-205 bridge) and river mile 292 (McNary Dam), and in any tributary to the Columbia River that includes spawning habitat of

threatened or endangered salmon or steelhead (*Onchorynchus* spp.). Public Law 115-329 also included additional eligible entities¹ not identified in section 120(b)(1) that may apply for authorization to intentionally take, by lethal methods, sea lions present within the geographic area established in section 120(f).

Pursuant to section 120(f) of the MMPA, an eligible entity may request authorization to lethally remove sea lions, and the Regional Administrator is required to: (1) review the application to determine whether the applicant has produced sufficient evidence to warrant establishing a Pinniped-Fishery Interaction Task Force (Task Force) to address the situation described in the application; (2) publish a notice in the **Federal Register** requesting public comment on the application, if sufficient evidence has been produced; (3) establish and convene a Task Force; (4) consider any recommendations made by the Task Force in making a determination whether to approve or deny the application; and (5) if approved, immediately take steps to implement the intentional lethal taking, which shall be performed by agencies or qualified individuals under contract to such agencies (section 120(c)(4)), or by individuals employed by the eligible entities described in section 120(f)(6).

Section 120(c)(2) requires the Task Force be composed of the following: (1) employees of the Department of Commerce; (2) scientists who are knowledgeable about the pinniped interaction; (3) representatives of affected conservation and fishing community organizations; (4) Indian Treaty tribes; (5) the states; and (6) such other organizations as NMFS deems appropriate. The Task Force reviews the application and public comments and, as required by section 120, recommends to NMFS whether to approve or deny the application. The Task Force is also required to submit with its recommendations for the proposed location, time, and method of such taking; criteria for evaluating the success of the action; the duration of the intentional lethal taking authority; and a suggestion for non-lethal alternatives, if available and practicable, including a recommended course of action.

Section 120(f)(2)(C) requires the Secretary to establish procedures to coordinate issuance of permits (authorizations) under this subsection,

¹ The Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, the Confederated Tribes and Bands of the Yakama Nation; and the Willamette Committee as defined in section 120(f)(6)(D) of the MMPA.

including application procedures and timelines, delegation and revocation of permits to and between eligible entities, monitoring, periodic review, and geographic, seasonal take, and species-specific considerations. Pursuant to section 120(f)(2)(C), on June 4, 2019, NMFS issued a Decision Memorandum to fulfill this statutory requirement by establishing application requirements and program implementation procedures for prospective and approved authorizations issued to an eligible entity under section 120(f). Permits issued under section 120(f) may only authorize take of sea lions that are not listed under the ESA, or designated as a depleted or strategic stock under the MMPA.

On August 21, 2024, NMFS received an application pursuant to section 120(f) from the following entities: Oregon Department of Fish and Wildlife, the Washington Department of Fish and Wildlife, the Idaho Department of Fish and Game, the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, the Confederated Tribes and Bands of the Yakama Nation, and the Willamette Committee² (hereafter referred to as the “Eligible Entities”). The Eligible Entities requested authorization to intentionally take, by lethal methods, California sea lions and Steller sea lions that are located in the mainstem of the Columbia River between river mile 112 and river mile 292 (McNary Dam), or in any tributary to the Columbia River that includes spawning habitat of threatened or endangered salmon or steelhead (*Onchorynchus* spp.) to reduce or eliminate sea lion predation on the following species that are listed as threatened or endangered under the ESA: Lower Columbia River Chinook salmon (*O. tshawytscha*), Snake River Fall-run Chinook salmon, Snake River Spring/Summer-run Chinook salmon, Upper Columbia River Spring-run Chinook salmon, Upper Willamette River Chinook salmon, Lower Columbia

River steelhead, Middle Columbia River steelhead, Snake River Basin steelhead, Upper Columbia River steelhead, Upper Willamette River steelhead, Columbia River chum salmon (*O. keta*), Lower Columbia River coho salmon (*O. kisutch*), Snake River sockeye salmon (*O. nerka*), the southern distinct population segment of eulachon (*Thaleichthys pacificus*), and species of lamprey or sturgeon that are not listed as threatened or endangered but are listed as a species of concern by the state of Oregon. California sea lions and Steller sea lions (Eastern stock) are not listed under the ESA nor are they designated as a depleted or strategic stock under the MMPA. In response to the Eligible Entities’ August 21, 2024, MMPA section 120(f) application requesting NMFS renew their August 14, 2020, MMPA section 120(f) permit for a period of 5 years. In their application, the Eligible Entities only requested to take the balance of animals left over from the August 14, 2020, permit. Thus, we are giving them all the removal authority they are currently asking for. To date, the Eligible Entities have removed 116 CSL and 114 SSL. Thus, the remaining balance of sea lions that the Eligible Entities would be authorized to remove over the next 5 years would be 424 CSL and 62 SSL.

On September 3, 2024, NMFS provided the above-mentioned Eligible Entities a letter acknowledging receipt of their application and a determination that the application produced sufficient evidence of the problem interaction to warrant establishing a Task Force. On March 30, 2025, NMFS published a notice in the **Federal Register** (90 FR 14119) requesting public comment on the application, and any additional information NMFS should consider in making its decision. As required under the MMPA, after the close of the public comment period NMFS convened the Columbia River Basin Task Force on May 28, 2025. The Task Force meeting was open to the public.

The Task Force completed and submitted its report to NMFS on July 25, 2025. All Task Force members present at the meeting (12 of 20) recommended that NMFS approve the Eligible Entities’ application. All decision documents, including a copy of the authorization, are available on NMFS’ West Coast Region web page (see **ADDRESSES**).

Findings

NMFS didn’t engage in informal consultation or prepare an Environmental Assessment for this permit, but rather determined the existing compliance documents were

sufficient and did not require supplementation.

Based on these requirements, NMFS has determined that the requirements of section 120(f) of the MMPA have been met and it is therefore reasonable to issue a permit to the Eligible Entities authorizing them to remove (*i.e.*, place in permanent captivity or kill) no more than 424 California sea lions and no more than 62 Steller sea lions (eastern stock) through August 22, 2030.

Dated: September 2, 2025

Kim Damon-Randall,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 2025–16995 Filed 9–4–25; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE969]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Pier 171 Repair and Replacement Project in Newport, Rhode Island.

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from the U.S. Navy for authorization to take marine mammals incidental to Pier 171 Repair and Replacement Project in Newport, Rhode Island (RI). Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, 1-year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than October 6, 2025.

ADDRESSES: Comments should be addressed to Permits and Conservation

² The Willamette Committee fulfills the requirements for an eligible entity under section 120(f)(6)(A)(iii) of the MMPA. Pursuant to this section of the statute, the Committee members include the Oregon Department of Fish and Wildlife, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, the Confederated Tribes of the Grand Ronde Community, and the Confederated Tribes of the Siletz Indians of Oregon. The Confederated Tribes of the Grand Ronde Community and the Confederated Tribes of the Siletz Indians of Oregon will coordinate and conduct lethal removal activities in the Willamette River Basin with the member co-managers, but not elsewhere in the Columbia River Basin.

Division, Office of Protected Resources, National Marine Fisheries Service and should be submitted via email to ITP.gatzke@noaa.gov. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. In case of problems accessing these documents, please call the contact listed below.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act> without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Jennifer Gatzke, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who

engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (collectively referred to as “mitigation”); and requirements pertaining to the monitoring and reporting of the takings. The definitions of all applicable MMPA statutory terms used above are included in the relevant sections below and can be found in section 3 of the MMPA (16 U.S.C. 1362) and NMFS regulations at 50 CFR 216.103.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.*, the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality)

of the Companion Manual for NAO 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

Summary of Request

On February 27, 2025, NMFS received a request from U.S. Navy (Navy) for an IHA to take marine mammals incidental to the Pier 171 Repair and Replacement Project in Newport, RI. Following NMFS’ review of the application, the Navy submitted a revised version deemed adequate and complete on June 23, 2025. The Navy is requesting incidental take of 7 species of marine mammals, by Level B harassment only. Neither the Navy nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Proposed Activity

Overview

The Navy is proposing the Stillwater Basin Upgrade Project (project) located at Naval Station Newport (NAVSTA Newport), Stillwater Basin in Coddington Cove, Newport, RI. The project consists of partial demolition, repair, and replacement of the deteriorating and unstable Pier 171. Pier 171 was originally constructed in 1943 and is primarily used to berth Naval Undersea Warfare Center (NUWC) Division Newport vessels. Figure 1 provides a site overview and the site location.

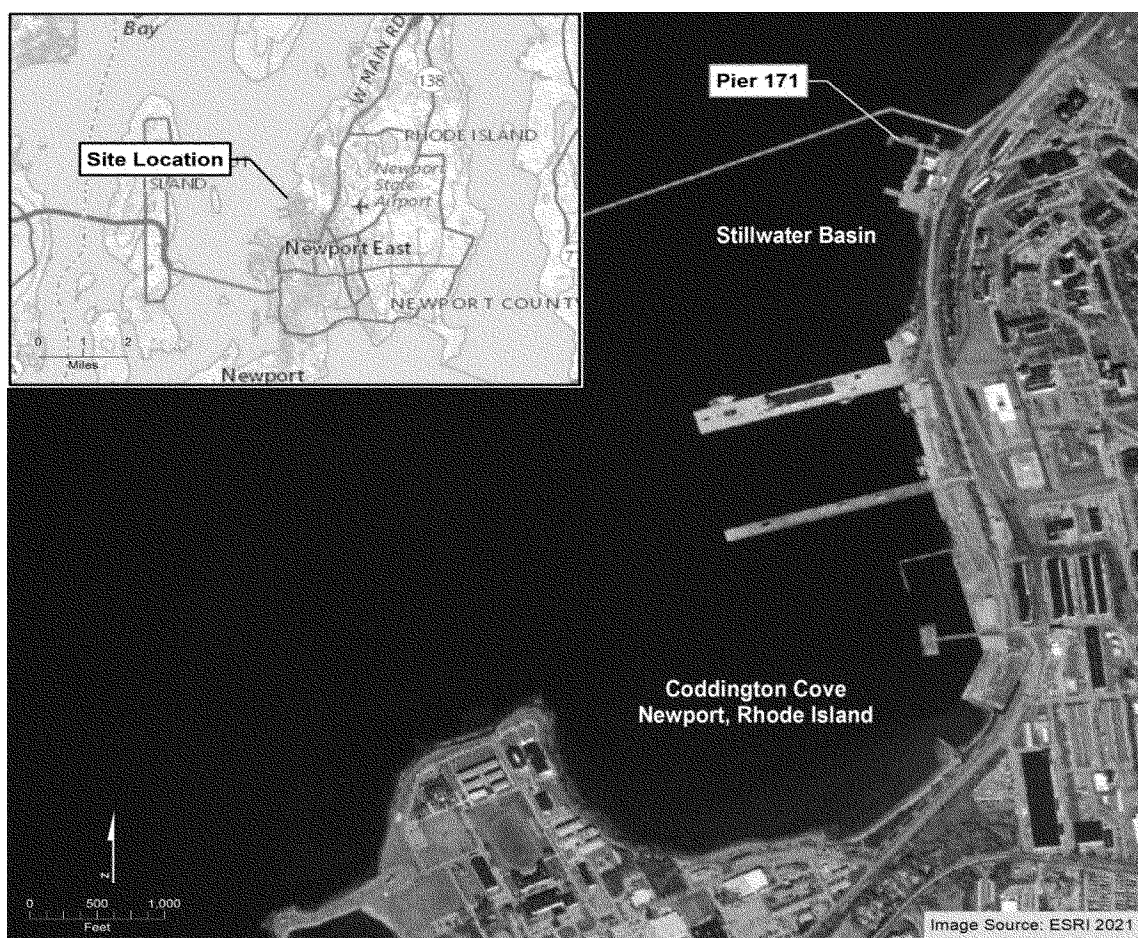


Figure 1. Project Location Map, Coddington Cove and Stillwater Basin, Naval Station Newport, RI.

Dates and Duration

The proposed IHA would be valid for the statutory maximum of 1 year from the date of effectiveness, and would become effective upon written notification from the applicant to NMFS but not beginning later than 1 year from the date of issuance or extending beyond 2 years from the date of issuance. Pier 171 is the northernmost pier within Stillwater Basin and the Navy proposes to conduct in-water activities from March 1, 2026–February 28, 2027.

Specific Geographic Region

Coddington Cove, RI is a protected embayment on the western side of Aquidneck Island in Narragansett Bay. The cove is protected immediately north of Pier 171 by a 1.2 kilometer (km) (4,000 foot (ft)) long rubble-mound breakwater, and to the south by the Coddington Point peninsula (Figure 1). The cove covers an area of 5.5 square km (km²) (1.6 square nautical miles) with water depths up to 15 m (50 ft).

The area is a restricted area and is closed to all commercial and recreational vessel traffic, unless authorized by the appropriate personnel (33 CFR 334.81). According to a 2015 bathymetric survey, water depths in the proposed project area are less than 34 ft (10 m) mean lower low water (NAVFAC 2015). Water depths in the pier are maintained via periodic dredging to accommodate the berthing of large ships.

Water temperature ranges from 36 degrees Fahrenheit (°F; 2 degrees Celsius (°C)) in winter to 68 °F (20 °C) in summer, with salinity about 31 parts per thousand (ppt). Substrate surrounding the timber piles of the pier include chunks of asphalt, sand, shell, mud, silt, and natural fluvial deposits. Proposed repairs would occur in these shallow nearshore waters (less than 34 ft; 10 m).

Detailed Description of the Specified Activity

This construction project involves the proposed repair and replacement of Pier

171 within Coddington Cove (Figure 1) from March 1, 2026 through February 28, 2027. The Navy originally proposed the Stillwater Basin Upgrade Project located at Naval Station Newport (NAVSTA Newport) in 2023, but the project was postponed. The project consists of partial demolition, repair, and replacement of the deteriorating and unstable Pier 171, with approximately 37 total days of pile driving. Pier 171 was originally constructed in 1943 and is primarily used to berth Naval Undersea Warfare Center (NUWC) Division Newport vessels. Upgrades to this L-shaped pier are necessary to support the Large Displacement Unmanned Underwater Vehicle (LDUUV) and the Extra Large Unmanned Underwater Vehicle (XLUUV) Programs. As part of these program requirements, Pier 171 requires the ability to support a gross vehicle weight limit of 20,000 pounds (lb; 9,072 kilograms (kg)). The existing 166 12-inch (in) to 14-in (30–35 cm) timber piles will be repaired and/or replaced

with approximately 165 12-in to 14-in (30–35 cm) timber piles, with fender systems located along both the north and south sides of the pier. Stressors that may cause incidental take during this project would include vibratory pile driving, with the option for impact pile

driving if necessary. Table 1 presents a summary of the proposed construction. Section 1 of the Navy's IHA application provides detailed description of the treatments proposed to fortify this structure, along with diagrams of two considered bid options. NMFS refers the

reader to this material for more description (<https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>).

TABLE 1—ESTIMATED PLANNED CONSTRUCTION

Method of timber pile driving	Approximate maximum number of piles	Pile strikes per pile	Pile-driving minutes per pile	Maximum number of piles installed or removed each day	Maximum number of days of pile-driving/removal required
Removal Vibratory	166	NA	10	16	13
Installation Vibratory	165	NA	1	8	24
Installation Impact		75	NA		

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Information regarding population trends and threats for the following species may be found in NMFS' Stock Assessment Reports (SARs; <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>) and more general information about these species (e.g., physical and behavioral descriptions) may be found on NMFS' website (<https://www.fisheries.noaa.gov/find-species>). Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially

affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, instead of reprinting the information.

Table 2 lists all species or stocks for which take is expected and proposed to be authorized for this activity and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or proposed to be authorized here, PBR and annual serious injury and mortality (M/SI) from anthropogenic sources are included here as gross indicators of the

status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments 2023 (Hayes *et al.* 2024). All values presented in table 2 are the most recent available at the time of publication (including from the draft 2024 SARs) and are available online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>.

TABLE 2—STATUS OF MARINE MAMMAL SPECIES^a LIKELY TO OCCUR NEAR THE PROJECT AREA

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) ^b	Stock abundance (CV, N _{min} , most recent abundance survey) ^c	PBR	Annual M/SI ^d
Order Artiodactyla—Cetacea—Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
<i>Family Delphinidae:</i>						
Atlantic white-sided dolphin	<i>Leucopleurus^e acutus</i>	Western North Atlantic	-, -, N	93,233 (0.71, 54,443, 2021).	544	28
Common dolphin/Short beaked.	<i>Delphinus delphis delphis</i>	Western North Atlantic	-, -, N	93,100 (0.56, 59,897, 2021).	1,452	414
<i>Family Phocoenidae (porpoises):</i>						
Harbor porpoise	<i>Phocoena phocoena</i>	Gulf of Maine/Bay of Fundy	-, -, N	85,765 (0.53, 56,420, 2021).	649	145
Order Carnivora—Superfamily Pinnipedia						
<i>Family Phocidae (earless seals):</i>						
Gray seal ^f	<i>Halichoerus grypus</i>	Western North Atlantic	-, -, N	27,911 (0.20, 23,624, 2021).	1,512	4,570
Harbor seal	<i>Phoca vitulina</i>	Western North Atlantic	-, -, N	61,336 (0.08, 57,637, 2018).	1,729	339
Harp seal	<i>Pagophilus groenlandicus</i>	Western North Atlantic	-, -, N	7.6 M (UNK, 7.1, 2019) ..	426,000	178,573

TABLE 2—STATUS OF MARINE MAMMAL SPECIES^a LIKELY TO OCCUR NEAR THE PROJECT AREA—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) ^b	Stock abundance (CV, N _{min} , most recent abundance survey) ^c	PBR	Annual M/SI ^d
Hooded seal	<i>Cystophora cristata</i>	Western North Atlantic	-, -, N	593,500 (UNK, UNK, 2005).	UNK	1,680

^aInformation on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (<https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies>).

^bEndangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

^cNMFS' marine mammal SARs can be found online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>. CV is the coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable.

^dThese values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range.

^eGenus Reclassification for Atlantic white-sided dolphins (Society for Marine Mammalogy, 2025). The Society for Marine Mammalogy (SMM) Taxonomy Committee completed the annual 2025 Taxonomic review of the Official List of Marine Mammal Species and Subspecies, announcing reclassification updates on July 21, 2025. Following work by Galatius et al. (2025) and Vollmer et al. (2019), the Committee implemented major revisions to the genera within the subfamily Lissodelphininae. The Atlantic white-sided dolphin (formerly *Lagenorhynchus acutus*) has been reassigned to the genus *Leucopleurus*, now *Leucopleurus acutus*. (Society for Marine Mammalogy (2025) List of Marine Mammal Species and Subspecies—Updated July 2025; available at <https://marinemammalscience.org/>; July 21, 2025).

^fNMFS' stock abundance estimate (and associated Potential Biological Removal value) applies to the U.S. population only. Total stock abundance (including animals in Canada) is approximately 394,311. The annual M/SI value given is for the total stock.

As indicated above, all seven species (with seven managed stocks) in Table 2 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. While several species of whales have been documented seasonally in New England waters, the spatial occurrence of these species is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here. The humpback (*Megaptera novaeangliae*), fin (*Balaenoptera physalus*), sei (*Balaenoptera borealis*), sperm (*Physeter macrocephalus*) and North Atlantic right whales (*Eubaleana glacialis*) occur seasonally in the Atlantic Ocean, offshore of RI. However, due to the relatively shallow depths of Narragansett Bay and nearshore location of the project area, these marine mammals are unlikely to occur in the project area. Therefore, the Navy did not request, and NMFS is not proposing to authorize takes of these species.

Marine mammal observation data is available from previous projects in and around NAVSTA Newport. A recent construction project within Coddington Cove to build a pier for NOAA ships included pile driving and removal from June 2024–January 2025. The monitoring report included 3 sightings of unidentified dolphins, including a pod of 5 animals on August 28, 2024, 10 animals on November 4, 2024 off Taylor Point (about 3 miles (4.8 km) WSW of the pier), and 1 animal on November 25, 2024 (Werre, 2025). The report also included a detection of 12 common dolphins off Taylor Point on November 1, 2024 (Werre 2025). Monitoring did not result in any confirmed harbor porpoise, gray seal, harp seal, or hooded seal sightings (Werre 2025). However,

harbor seals were the most prevalent observed protected species, accounting for 26 of the 31 total seal detections and 80 of the 109 total individual protected species detected, with the first detection on November 1, 2024 and regular occurrences through January 2025 (Werre 2025).

Harbor seals are also common in Narragansett Bay, with over 22 documented haul-out sites. Results from the bay-wide count for 2019 recorded 572 harbor seals, which also included counts from Block Island (DeAngelis 2020). During a 1-day Narragansett Bay-wide count in 2025, there were at least 551 seals observed with all 22 haul-out sites represented (The Jamestown Press 2025). This is an increase from 2021 when 357 seals were counted and above the average of 427 calculated for years prior (Save the Bay 2022).

The Three Sisters seal haulout is the closest to the project area, just over 1 mile (1.6 km) south of the pier on the open water edge of Coddington Cove. In RI waters, harbor seals prefer to haul out on isolated intertidal rock ledges and outcrops. Numerous Naval Station employees have reported seals hauled out on The Sisters haulout, which is approximately 1,066.8 m (3,500 ft) from the proposed project area (see Figure 4–1 of the application) (NUWC Division, 2011). This haulout site has been studied by the NUWC Division Newport since 2011 and has demonstrated a steady increase in use during winter months when harbor seals are present in the Bay. Harbor seals are rarely observed at The Sisters haulout in the early fall (September–October) but sighted in consistent numbers in mid-November (0–10 animals) and are regularly observed with a gradual increase of more than 20 animals until numbers

peak in the upper 40s during March, typically at low tide. The number of harbor seals begins to decline in April, and by mid-May are no longer observed hauled out (DeAngelis, 2020).

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities or hear over the same frequency range (e.g. Richardson *et al.*, 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Subsequently, NMFS (2018, 2024) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65-decibel (dB) threshold from the composite audiograms, previous analyses in NMFS (2018), and/or data from Southall *et al.* (2007, 2019). We note the names of two hearing groups and the generalized hearing ranges of all marine mammal hearing groups have been recently updated (NMFS, 2024) as reflected below in table 3. Of the species potentially present in the action area, white-sided and common dolphins are considered high-frequency (HF) cetaceans, and harbor porpoise are considered very high-

frequency (VHF) cetaceans. Harbor, gray, hooded and harp seals are phocid pinnipeds.

TABLE 3—MARINE MAMMAL HEARING GROUPS
[NMFS, 2024]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 36 kHz.
High-frequency (HF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
Very High-frequency (VHF) cetaceans (true porpoises, <i>Kogia</i> , river dolphins, <i>Cephalorhynchid</i> , <i>Lagenorhynchus cruciger</i> & <i>L. australis</i>).	200 Hz to 165 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	40 Hz to 90 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 68 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.*, all species within the group), where individual species' hearing ranges may not be as broad. Generalized hearing range chosen based on ~65 dB threshold from composite audiogram, previous analysis in NMFS 2018, and/or data from Southall *et al.* 2007; Southall *et al.* 2019. Additionally, animals are able to detect very loud sounds above and below that "generalized" hearing range.

For more detail concerning these groups and associated generalized hearing ranges, please see (NMFS, 2024) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and provides a discussion of the ways in which components of the specified activity may impact marine mammals and their habitat. The Estimated Take of Marine Mammals section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take of Marine Mammals section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Acoustic effects on marine mammals during the specified activity are expected to potentially occur from impact and vibratory pile installation and removal. The effects of underwater noise from the Navy's proposed activities have the potential to result in Level B harassment of marine mammals in the action area.

The proposed activities would result in the construction and placement of up to 331 pilings, 166 of which will be temporary. There are a variety of types and degrees of effects to marine mammals, prey species, and habitat that could occur as a result of the Project. Below we provide a brief description of the types of sound sources that would be generated by the project, the general impacts from these types of activities,

and an analysis of the anticipated impacts on marine mammals from the project, with consideration of the proposed mitigation measures.

Underwater noise data collected at NUWC during testing indicated that true ambient conditions (without static from the source) of underwater noise are approximately 120 to 123 decibels (dB) referenced to a pressure of 1 micropascal (re 1 µPa) root mean square (RMS) (Iafrate, 2017). The test site was directly adjacent to the wharf at Stillwater and 1.5 m (5 ft) below the surface. NUWC personnel indicated that a recording in the open water and at greater depth would likely be less (Iafrate, 2017). Because the proposed repairs would occur in shallow nearshore waters, for purposes of this analysis, ambient underwater noise in the project area is considered to be 120 dB RMS.

Description of Sound Sources for the Specified Activities

Activities associated with the project that have the potential to incidentally take marine mammals through exposure to sound would include impact and vibratory hammering. Impact hammers typically operate by repeatedly dropping and/or pushing a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is impulsive, characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper, 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the substrate. Vibratory hammers typically produce less sound (*i.e.*, lower levels) than impact hammers. Peak sound pressure levels (SPLs) may be 180 dB or greater but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman

et al., 2009; California Department of Transportation (CALTRANS), 2015, 2020). Sounds produced by vibratory hammers are non-impulsive; compared to sounds produced by impact hammers, the rise time is slower, reducing the probability and severity of injury, and the sound energy is distributed over a greater amount of time (Nedwell and Edwards, 2002; Carlson *et al.*, 2005).

The likely or possible impacts of the Navy's proposed activities on marine mammals could involve both non-acoustic and acoustic stressors. Potential non-acoustic stressors could result from the physical presence of the equipment and personnel; however, given there are no known pinniped haul-out sites within one mile of the pier, visual and other non-acoustic stressors would be limited, and any impacts to marine mammals are expected to primarily be acoustic in nature.

Potential Effects of Underwater Sound on Marine Mammals

The introduction of anthropogenic noise into the aquatic environment from impact and vibratory hammering is the primary means by which marine mammals may be harassed from the Navy's specified activity. Anthropogenic sounds cover a broad range of frequencies and sound levels and can have a range of highly variable impacts on marine life from none or minor to potentially severe responses depending on received levels, duration of exposure, behavioral context, and various other factors. Broadly, underwater sound from active acoustic sources, such as those in the Project, can potentially result in one or more of the following: temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, stress, and

masking (Richardson *et al.*, 1995; Gordon *et al.*, 2003; Nowacek *et al.*, 2007; Southall *et al.*, 2007; Götz *et al.*, 2009).

We describe the more severe effects of certain non-auditory physical or physiological effects only briefly as we do not expect that use of impact and vibratory hammers are reasonably likely to result in such effects (see below for further discussion). Potential effects from impulsive sound sources can range in severity from effects such as behavioral disturbance or tactile perception to physical discomfort, slight injury of the internal organs and the auditory system, or mortality (Yelverton *et al.*, 1973). Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to high level underwater sound or as a secondary effect of extreme behavioral reactions (e.g., change in dive profile as a result of an avoidance reaction) caused by exposure to sound include neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.*, 2006; Southall *et al.*, 2007; Zimmer and Tyack, 2007; Tal *et al.*, 2015). The Project activities considered here do not involve the use of devices such as explosives or mid-frequency tactical sonar that are associated with these types of effects.

In general, animals exposed to natural or anthropogenic sound may experience physical and psychological effects, ranging in magnitude from none to severe (Southall *et al.*, 2007, 2019). Exposure to anthropogenic noise has the potential to result in auditory threshold shifts and behavioral reactions (e.g., avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). It can also lead to non-observable physiological responses, such as an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions, such as communication and predator and prey detection.

The degree of effect of an acoustic exposure on marine mammals is dependent on several factors, including, but not limited to, sound type (e.g., impulsive vs. non-impulsive), signal characteristics, the species, age and sex class (e.g., adult male vs. mom with calf), duration of exposure, the distance between the noise source and the animal, received levels, behavioral state at time of exposure, and previous history with exposure (Wartzok *et al.*, 2004; Southall *et al.*, 2007). In general, sudden, high-intensity sounds can cause hearing loss as can longer exposures to lower-intensity sounds. Moreover, any

temporary or permanent loss of hearing, if it occurs at all, will occur almost exclusively for noise within an animal's hearing range. We describe below the specific manifestations of acoustic effects that may occur based on the activities proposed by the Navy.

Richardson *et al.* (1995) described zones of increasing intensity of effect that might be expected to occur in relation to distance from a source and assuming that the signal is within an animal's hearing range. First (at the greatest distance) is the area within which the acoustic signal would be audible (potentially perceived) to the animal but not strong enough to elicit any overt behavioral or physiological response. The next zone (closer to the receiving animal) corresponds with the area where the signal is audible to the animal and of sufficient intensity to elicit behavioral or physiological responsiveness. The third is a zone within which, for signals of high intensity, the received level is sufficient to potentially cause discomfort or tissue damage to auditory or other systems. Overlaying these zones to a certain extent is the area within which masking (i.e., when a sound interferes with or masks the ability of an animal to detect a signal of interest that is above the absolute hearing threshold) may occur; the masking zone may be highly variable in size.

Below, we provide additional detail regarding potential impacts on marine mammals and their habitat from noise in general, starting with hearing impairment, as well as from the specific activities the Navy plans to conduct, to the degree it is available.

Hearing Threshold Shifts. NMFS defines a noise-induced threshold shift (TS) as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018, 2024). The amount of threshold shift is customarily expressed in dB. A TS can be permanent or temporary. As described in NMFS (2018, 2024) there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (e.g., impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (i.e., spectral content), the hearing frequency range of the exposed species relative to the signal's frequency spectrum (i.e., how animal uses sound within the frequency band of the signal;

e.g., Kastelein *et al.*, 2014), and the overlap between the animal and the source (e.g., spatial, temporal, and spectral).

Auditory Injury (AUD INJ). NMFS (2024) defines AUD INJ as damage to the inner ear that can result in destruction of tissue, such as the loss of cochlear neuron synapses or auditory neuropathy (Houser 2021; Finneran 2024). AUD INJ may or may not result in a permanent threshold shift (PTS). PTS is subsequently defined as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2024). PTS does not generally affect more than a limited frequency range, and an animal that has incurred PTS has some level of hearing loss at the relevant frequencies; typically, animals with PTS or other AUD INJ are not functionally deaf (Au and Hastings, 2008; Finneran, 2016). Available data from humans and other terrestrial mammals indicate that a 40-dB threshold shift approximates AUD INJ onset (see Ward *et al.*, 1958, 1959; Ward, 1960; Kryter *et al.*, 1966; Miller, 1974; Ahroon *et al.*, 1996; Henderson *et al.*, 2008). AUD INJ levels for marine mammals are estimates, as with the exception of a single study unintentionally inducing PTS in a harbor seal (*Phoca vitulina*) (Kastak *et al.*, 2008), there are no empirical data measuring AUD INJ in marine mammals largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing AUD INJ are not typically pursued or authorized (NMFS, 2024).

Temporary Threshold Shift (TTS). TTS is a temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2024), and is not considered an AUD INJ. Based on data from marine mammal TTS measurements (see Southall *et al.*, 2007, 2019), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Finneran *et al.*, 2000, 2002; Schlundt *et al.*, 2000). As described in Finneran (2015), marine mammal studies have shown the amount of TTS increases with the 24-hour cumulative sound exposure level (SEL₂₄) in an accelerating fashion: at low exposures with lower SEL₂₄, the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SEL₂₄, the growth curves become steeper and approach linear

relationships with the sound exposure level (SEL).

Depending on the degree (elevation of threshold in dB), duration (*i.e.*, recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to more impactful (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more severe impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.*, 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Many studies have examined noise-induced hearing loss in marine mammals (see Finneran (2015) and Southall *et al.* (2019) for summaries). TTS is the mildest form of hearing impairment that can occur during exposure to sound (Kryter, 2013). While experiencing TTS, the hearing threshold rises, and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS) (Finneran 2015). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends. For cetaceans, published data on the onset of TTS are limited to captive bottlenose dolphin (*Tursiops truncatus*), beluga whale (*Delphinapterus leucas*), harbor porpoise (*Phocoena phocoena*), and Yangtze finless porpoise (*Neophocoena asiakororientalis*) (Southall *et al.*, 2019). For pinnipeds in water, measurements of TTS are limited to harbor seals (*Phoca vitulina*), elephant seals (*Mirounga angustirostris*), bearded seals (*Erignathus barbatus*) and California sea lions (*Zalophus californianus*) (Kastak *et al.*, 1999, 2007; Kastelein *et al.*, 2019b, 2019c, 2021, 2022a, 2022b; Reichmuth *et al.*, 2019; Sills *et al.*, 2020). TTS was not observed in spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to single airgun impulse sounds at levels matching previous predictions of TTS onset (Reichmuth *et al.*, 2016). These studies examine hearing thresholds

measured in marine mammals before and after exposure to intense or long-duration sound exposures. The difference between the pre-exposure and post-exposure thresholds can be used to determine the amount of threshold shift at various post-exposure times.

The amount and onset of TTS depends on the exposure frequency. Sounds below the region of best sensitivity for a species or hearing group are less hazardous than those near the region of best sensitivity (Finneran and Schlundt, 2013). At low frequencies, onset-TTS exposure levels are higher compared to those in the region of best sensitivity (*i.e.*, a low frequency noise would need to be louder to cause TTS onset when TTS exposure level is higher), as shown for harbor porpoises and harbor seals (Kastelein *et al.*, 2019a, 2019c). Note that in general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran, 2015). In addition, TTS can accumulate across multiple exposures, but the resulting TTS will be less than the TTS from a single, continuous exposure with the same SEL (Mooney *et al.*, 2009; Finneran *et al.*, 2010; Kastelein *et al.*, 2014, 2015). This means that TTS predictions based on the total, SEL₂₄ will overestimate the amount of TTS from intermittent exposures, such as sonars and impulsive sources. Nachtigall *et al.* (2018) describe measurements of hearing sensitivity of multiple odontocete species (bottlenose dolphin, harbor porpoise, beluga, and false killer whale (*Pseudorca crassidens*)) when a relatively loud sound was preceded by a warning sound. These captive animals were shown to reduce hearing sensitivity when warned of an impending intense sound. Based on these experimental observations of captive animals, the authors suggest that wild animals may dampen their hearing during prolonged exposures or if conditioned to anticipate intense sounds. Another study showed that echolocating animals (including odontocetes) might have anatomical specializations that might allow for conditioned hearing reduction and filtering of low-frequency ambient noise, including increased stiffness and control of middle ear structures and placement of inner ear structures (Ketten *et al.*, 2021). Data available on noise-induced hearing loss for mysticetes are currently lacking (NMFS, 2024). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species.

Relationships between TTS and AUD INJ thresholds have not been studied in marine mammals, and there are no measured PTS data for cetaceans, but such relationships are assumed to be similar to those in humans and other terrestrial mammals. AUD INJ typically occurs at exposure levels at least several dB above that inducing mild TTS (*e.g.*, a 40-dB threshold shift approximates AUD INJ onset (Kryter *et al.*, 1966; Miller, 1974), while a 6-dB threshold shift approximates TTS onset (Southall *et al.*, 2007, 2019). Based on data from terrestrial mammals, a precautionary assumption is that the AUD INJ thresholds for impulsive sounds (such as impact pile driving pulses as received close to the source) are at least 6 dB higher than the TTS threshold on a peak-pressure basis and AUD INJ cumulative sound exposure level thresholds are 15 to 20 dB higher than TTS cumulative sound exposure level thresholds (Southall *et al.*, 2007, 2019). Given the higher level of sound or longer exposure duration necessary to cause AUD INJ as compared with TTS, it is considerably less likely that AUD INJ could occur.

Behavioral Effects. Exposure to noise also has the potential to behaviorally disturb marine mammals to a level that rises to the definition of harassment under the MMPA. Generally speaking, NMFS considers a behavioral disturbance that rises to the level of harassment under the MMPA a non-minor response—in other words, not every response qualifies as behavioral disturbance, and for responses that do, those of a higher level, or accrued across a longer duration, have the potential to affect foraging, reproduction, or survival. Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.*, minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses may include changing durations of surfacing and dives, changing direction and/or speed; reducing/increasing vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); eliciting a visible startle response or aggressive behavior (such as tail/fin slapping or jaw clapping); and avoidance of areas where sound sources are located. In addition, pinnipeds may increase their haul out time, possibly to avoid in-water disturbance (Thorson and Reyff, 2006).

Behavioral responses to sound are highly variable and context-specific and

any reactions depend on numerous intrinsic and extrinsic factors (*e.g.*, species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.*, Richardson *et al.*, 1995; Wartzok *et al.*, 2004; Southall *et al.*, 2007, 2019; Weilgart, 2007; Archer *et al.*, 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.*, 2012), and can vary depending on characteristics associated with the sound source (*e.g.*, whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. Please see Appendices B and C of Southall *et al.* (2007) and Gomez *et al.* (2016) for reviews of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.*, 2004). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a "progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial," rather than as, more generally, moderation in response to human disturbance (Bejder *et al.*, 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure.

As noted above, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.*, 1995; Wartzok *et al.*, 2004; National Research Council (NRC), 2005). Controlled experiments with captive marine mammals have shown pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.*, 1997; Finneran *et al.*, 2003). Observed responses of wild marine mammals to loud pulsed sound sources (*e.g.*, seismic airguns) have been varied but often consist of avoidance behavior or other behavioral changes

(Richardson *et al.*, 1995; Morton and Symonds, 2002; Nowacek *et al.*, 2007).

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal (*e.g.*, Erbe *et al.*, 2019). If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. If a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.*, Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005). However, there are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Avoidance and displacement—Changes in dive behavior can vary widely and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.*, Frankel and Clark, 2000; Costa *et al.*, 2003; Ng and Leung, 2003; Nowacek *et al.*, 2004; Goldbogen *et al.*, 2013a, 2013b; Blair *et al.*, 2016). Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.*, foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.*, bubble nets or sediment plumes), or changes in dive behavior. Acoustic and movement bio-logging tools also have been used in some cases to infer responses to anthropogenic noise. For example, Blair *et al.* (2015) reported significant effects on humpback whale foraging behavior in Stellwagen Bank in response to ship noise including slower descent rates, and fewer side-rolling events per dive with increasing ship noise. In addition, Wisniewska *et al.* (2018) reported that tagged harbor porpoises demonstrated fewer prey capture attempts when encountering occasional high-noise levels resulting from vessel noise as well as more vigorous fluking,

interrupted foraging, and cessation of echolocation signals observed in response to some high-noise vessel passes. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.*, Croll *et al.*, 2001; Nowacek *et al.*, 2004; Madsen *et al.*, 2006; Yazvenko *et al.*, 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Respiration rates vary naturally with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (*e.g.*, Kastelein *et al.*, 2001; 2005; 2006; Gailey *et al.*, 2007). For example, harbor porpoise respiration rates increased in response to pile driving sounds at and above a received broadband SPL of 136 dB (zero-peak SPL: 151 dB re 1 micropascal (μPa); SEL of a single strike (SEL_{ss}): 127 dB re 1 $\mu\text{Pa}^2\text{-s}$) (Kastelein *et al.*, 2013).

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.*, 1995). For example, gray whales (*Eschrichtius robustus*) are known to change direction—deflecting from customary migratory paths—in order to avoid noise from seismic surveys (Malme *et al.*, 1984). Harbor porpoises, Atlantic white-sided dolphins (*Leukopleurus actus*), and minke whales have demonstrated avoidance in response to vessels during line transect surveys (Palka and Hammond, 2001). In addition, beluga whales in the St. Lawrence Estuary in Canada have been reported to increase levels of avoidance with increased boat presence by way of increased dive

durations and swim speeds, decreased surfacing intervals, and by bunching together into groups (Blane and Jaakson, 1994). Avoidance may be short-term, with animals returning to the area once the noise has ceased (e.g., Bowles *et al.*, 1994; Goold, 1996; Stone *et al.*, 2000; Morton and Symonds, 2002; Gailey *et al.*, 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (e.g., Blackwell *et al.*, 2004; Bejder *et al.*, 2006; Teilmann *et al.*, 2006).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (e.g., directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996; Bowers *et al.*, 2018). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (England *et al.*, 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (i.e., when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fishes and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (e.g., Beauchamp and Livoreil, 1997; Fritz *et al.*, 2002; Purser and Radford, 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (e.g., decline in body condition) and subsequent reduction in reproductive success, survival, or both (e.g., Harrington and Veitch, 1992; Daan *et al.*, 1996; Bradshaw *et al.*, 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a 5-day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.*, 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.*, 2007). Note that there is a difference between multi-day substantive (i.e., meaningful) behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

Physiological stress responses. An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (e.g., Selye, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress, including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (e.g., Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.*, 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and "distress" is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated.

In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (e.g., Holberton *et al.*, 1996; Hood *et al.*, 1998; Jessop *et al.*, 2003; Krausman *et al.*, 2004; Lankford *et al.*, 2005; Ayres *et al.*, 2012; Yang *et al.*, 2022). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.*, 2002b) and, more rarely, studied in wild populations (e.g., Romano *et al.*, 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. In addition, Lemos *et al.* (2022) observed a correlation between higher levels of fecal glucocorticoid metabolite concentrations (indicative of a stress response) and vessel traffic in gray whales. Yang *et al.* (2022) studied behavioral and physiological responses in captive bottlenose dolphins exposed to playbacks of "pile-driving-like" impulsive sounds, finding significant changes in cortisol and other physiological indicators but only minor behavioral changes. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as "distress." In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2005), however distress is an unlikely result of this project based on observations of marine mammals during previous, similar construction projects.

Vocalizations and Auditory Masking. Since many marine mammals rely on sound to find prey, moderate social interactions, and facilitate mating (Tyack, 2008), noise from anthropogenic sound sources can interfere with these functions, but only if the noise spectrum overlaps with the hearing sensitivity of the receiving marine mammal (Southall *et al.*, 2007; Clark *et al.*, 2009; Hatch *et*

al., 2012). Chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions (Clark *et al.*, 2009). Acoustic masking is when other noises such as from human sources interfere with an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.*, those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.*, 1995; Erbe *et al.*, 2016). Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired from maximizing their performance fitness in survival and reproduction. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.*, signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.*, sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions (Hotchkiss and Parks, 2013).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales (*Orcinus orca*) have been observed to increase the length of their songs (Miller *et al.*, 2000; Fristrup *et al.*, 2003) or vocalizations (Foote *et al.*, 2004), respectively, while North Atlantic right whales (*Eubalaena glacialis*) have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.*, 2007). Fin whales (*Balaenoptera physalus*) have also been documented lowering the bandwidth, peak frequency, and center frequency of their vocalizations under increased levels of background noise from large vessels (Castellote *et al.*, 2012). Other alterations to communication signals have also been observed. For example, gray whales, in response to playback experiments exposing them to vessel noise, have

been observed increasing their vocalization rate and producing louder signals at times of increased outboard engine noise (Dahlheim and Castellote, 2016). Alternatively, in some cases, animals may cease sound production during production of aversive signals (Bowles *et al.*, 1994; Wisniewska *et al.*, 2018).

Under certain circumstances, marine mammals experiencing significant masking could also be impaired from maximizing their performance fitness in survival and reproduction. Therefore, when the coincident (masking) sound is human-made, it may be considered harassment when disrupting or altering critical behaviors. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect (though not necessarily one that would be associated with harassment).

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect detection of mysticete communication calls and other potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (*e.g.*, Clark *et al.*, 2009) and may result in energetic or other costs as animals change their vocalization behavior (*e.g.*, Miller *et al.*, 2000; Foote *et al.*, 2004; Parks *et al.*, 2007; Di Iorio and Clark, 2010; Holt *et al.*, 2009). Masking can be reduced in situations where the signal and noise come from different directions (Richardson *et al.*, 1995), through amplitude modulation of the signal, or through other compensatory behaviors, including modifications of the acoustic properties of the signal or the signaling behavior (Hotchkiss and Parks, 2013). Masking can be tested directly in captive species (*e.g.*, Erbe, 2008), but in wild populations it must be either modeled or inferred from evidence of masking compensation. There are few studies addressing real-world masking sounds likely to be experienced by marine mammals in the wild (*e.g.*, Branstetter *et al.*, 2013).

Masking occurs in the frequency band that the animals utilize, and is more

likely to occur in the presence of broadband, relatively continuous noise sources such as vibratory pile driving. Energy distribution of pile driving sound covers a broad frequency spectrum, and is anticipated to be within the audible range of marine mammals present in the proposed action area. Since noises generated from the proposed construction activities are mostly concentrated at low frequencies (< 2 kHz), these activities likely have less effect on mid-frequency echolocation sounds produced by odontocetes (toothed whales). However, lower frequency noises are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey noise. Low-frequency noise may also affect communication signals when they occur near the frequency band for noise and thus reduce the communication space of animals (*e.g.*, Clark *et al.*, 2009) and cause increased stress levels (*e.g.*, Holt *et al.*, 2009). Unlike TS, masking, which can occur over large temporal and spatial scales, can potentially affect the species at population, community, or even ecosystem levels, in addition to individual levels. Masking affects both senders and receivers of the signals, and at higher levels for longer durations, could have long-term chronic effects on marine mammal species and populations. However, the noise generated by the Navy's proposed activities will only occur intermittently, across an estimated 37 days during the authorization period in a relatively small area focused around the proposed construction site. Thus, while the Navy's proposed activities may mask some acoustic signals that are relevant to the daily behavior of marine mammals, the short-term duration and limited areas affected make it very unlikely that the fitness of individual marine mammals would be impacted.

While in some cases marine mammals have exhibited little to no obviously detectable response to certain common or routine industrialized activities (Cornick *et al.*, 2011; Horley and Larson, 2023), it is possible some animals may at times be exposed to received levels of sound above the Level B harassment thresholds during the proposed project. This potential exposure in combination with the nature of planned activity (*e.g.*, vibratory pile driving, impact pile driving) means it is possible that take by Level B harassment could occur over the total estimated period of activities; therefore, NMFS in response to the Navy's IHA application proposes to authorize take by Level B harassment

from the Navy's proposed construction activities.

Airborne Acoustic Effects. Pinnipeds that occur near the project site could be exposed to airborne sounds associated with construction activities that have the potential to cause behavioral harassment, depending on their distance from these activities. Airborne noise would primarily be an issue for pinnipeds that are swimming or hauled out near the project site within the range of noise levels elevated above airborne acoustic harassment criteria. Although pinnipeds are known to haul-out regularly on man-made objects, we believe that incidents of take resulting solely from airborne sound are unlikely due to the proximity between the proposed project area and the known haulout sites (Figure 4–1 of application). Cetaceans are not expected to be exposed to airborne sounds that would result in harassment as defined under the MMPA.

We recognize that pinnipeds in the water could be exposed to airborne sound that may result in behavioral harassment when looking with their heads above water. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. For instance, anthropogenic sound could cause hauled-out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to flush from haulouts, temporarily abandon the area, and/or move further from the source. However, these animals would previously have been 'taken' because of exposure to underwater sound above the behavioral harassment thresholds, which are in all cases larger than those associated with airborne sound. Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Therefore, we do not believe that authorization of incidental take resulting from airborne sound for pinnipeds is warranted, and airborne sound is not discussed further here.

Potential Effects on Marine Mammal Habitat

The Navy's proposed activities could have localized, temporary impacts on marine mammal habitat, including prey, by increasing in-water SPLs. Increased noise levels may affect acoustic habitat and adversely affect marine mammal prey in the vicinity of the project areas (see discussion below). Elevated levels of underwater noise would ensnare the project areas where both fishes and mammals occur and could affect foraging success. Additionally, marine

mammals may avoid the area during the proposed construction activities; however, displacement due to noise is expected to be temporary and is not expected to result in long-term effects to the individuals or populations.

The total area likely impacted by the Navy's activities is relatively small compared to the available habitat in Narragansett Bay. Avoidance by potential prey (*i.e.*, fish) of the immediate area due to increased noise is possible. The duration of fish and marine mammal avoidance of this area after tugging stops is unknown, but a rapid return to normal recruitment, distribution, and behavior is anticipated. Any behavioral avoidance by fish or marine mammals of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity.

The proposed project will occur within the same footprint as existing marine infrastructure. The nearshore and intertidal habitat where the proposed project will occur is an area of relatively high marine vessel traffic. Most marine mammals do not generally use the area within the footprint of the project area. Temporary, intermittent, and short-term habitat alteration may result from increased noise levels during the proposed construction activities. Effects on marine mammals will be limited to temporary displacement from pile installation and removal noise, and effects on prey species will be similarly limited in time and space.

Water quality—Temporary and localized reduction in water quality will occur as a result of in-water construction activities. Most of this effect would occur during the installation and removal of piles when bottom sediments are disturbed. The installation and removal of piles would disturb bottom sediments and may cause a temporary increase in suspended sediment in the project area. During pile extraction, sediment attached to the pile moves vertically through the water column until gravitational forces cause it to slough off under its own weight. The small resulting sediment plume is expected to settle out of the water column within a few hours. Studies of the effects of turbid water on fish (marine mammal prey) suggest that concentrations of suspended sediment can reach thousands of milligrams per liter before an acute toxic reaction is expected (Burton, 1993).

Effects to turbidity and sedimentation are expected to be short-term, minor, and localized. Turbidity within the

water column has the potential to reduce the level of oxygen in the water and irritate the gills of prey fish species in the proposed project area. However, turbidity plumes associated with the project would be temporary and localized, and fish in the proposed project area would be able to move away from and avoid the areas where plumes may occur. Therefore, it is expected that the impacts on prey fish species from turbidity, and therefore on marine mammals, would be minimal and temporary. In general, the area likely impacted by the proposed construction activities is relatively small compared to the available marine mammal habitat in Narragansett Bay.

Potential Effects on Prey. Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.*, crustaceans, cephalopods, fishes, zooplankton). Marine mammal prey varies by species, season, and location and, for some, is not well documented. Studies regarding the effects of noise on known marine mammal prey are described here.

Fishes utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.*, Zelick *et al.*, 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.*, 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fish react to sounds that are especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (*e.g.*, feeding, spawning, migration), and other environmental factors. (Hastings and Popper, 2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fishes (*e.g.*, Scholik and Yan, 2001, 2002; Popper

and Hastings, 2009). Several studies have demonstrated that impulse sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (e.g., Fewtrell and McCauley, 2012; Pearson *et al.*, 1992; Skalski *et al.*, 1992; Santulli *et al.*, 1999; Paxton *et al.*, 2017). However, some studies have shown no or slight reaction to impulse sounds (e.g., Peña *et al.*, 2013; Wardle *et al.*, 2001; Jorgenson and Gyselman, 2009; Cott *et al.*, 2012). More commonly, though, the impacts of noise on fishes are temporary.

SPLs of sufficient strength have been known to cause injury to fishes and fish mortality (summarized in Popper *et al.*, 2014). However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.* (2012b) showed that a TTS of 4 to 6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long. Injury caused by barotrauma can range from slight to severe and can cause death, and is most likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.*, 2012a; Casper *et al.*, 2013, 2017).

Fish populations in the proposed project area that serve as marine mammal prey could be temporarily affected by noise from pile installation and removal. The frequency range in which fishes generally perceive underwater sounds is 50 to 2,000 Hz, with peak sensitivities below 800 Hz (Popper and Hastings, 2009). Fish behavior or distribution may change, especially with strong and/or intermittent sounds that could harm fishes. High underwater SPLs have been documented to alter behavior, cause hearing loss, and injure or kill individual fish by causing serious internal injury (Hastings and Popper, 2005).

Zooplankton is a food source for several marine mammal species, as well as a food source for fish that are then preyed upon by marine mammals. Population effects on zooplankton could have indirect effects on marine mammals. Data are limited on the effects of underwater sound on zooplankton species, particularly sound from construction (Erbe *et al.*, 2019). Popper and Hastings (2009) reviewed information on the effects of human-generated sound and concluded that no substantive data are available on whether the sound levels from pile

driving, seismic activity, or any human-made sound would have physiological effects on invertebrates. Any such effects would be limited to the area very near (1 to 5 m) the sound source and would result in no population effects because of the relatively small area affected at any one time and the reproductive strategy of most zooplankton species (short generation, high fecundity, and very high natural mortality). No adverse impact on zooplankton populations is expected to occur from the specified activity due in part to large reproductive capacities and naturally high levels of predation and mortality of these populations. Any mortalities or impacts that might occur would be negligible.

The greatest potential impact to marine mammal prey during construction would occur during impact and vibratory pile driving. However, the duration of impact pile driving would be limited to the final stage of installation ("proofing") after the pile has been driven as close as practicable to the design depth with a vibratory driver. In-water construction activities would only occur during daylight hours, allowing fish to forage and transit the project area in the evening. Vibratory pile driving would possibly elicit behavioral reactions from fishes such as temporary avoidance of the area but is unlikely to cause injuries to fishes or have persistent effects on local fish populations. Construction also would have minimal permanent and temporary impacts on benthic invertebrate species, a marine mammal prey source. In addition, it should be noted that the area in question is low-quality habitat since it is already highly developed and experiences a high level of anthropogenic noise from normal operations and other vessel traffic.

Potential Effects on Foraging Habitat

The project is not expected to result in any habitat related effects that could cause significant or long-term negative consequences for individual marine mammals or their populations, since installation and removal of many in-water piles would be temporary and intermittent. The total seafloor area affected by pile installation and removal is a very small area compared to the vast foraging area available to marine mammals outside this project area. The area impacted by the project is relatively small compared to the available habitat just outside the project area, and there are no areas of particular importance that would be impacted by this project. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and

marine mammal foraging habitat in the nearby vicinity. As described in the preceding, the potential for the Navy's construction to affect the availability of prey to marine mammals or to meaningfully impact the quality of physical or acoustic habitat is considered to be insignificant. Therefore, impacts of the project are not likely to have adverse effects on marine mammal foraging habitat in the proposed project area.

In summary, given the relatively small areas being affected, as well as the temporary and mostly transitory nature of the proposed construction activities, any adverse effects from the Navy's activities on prey habitat or prey populations are expected to be minor and temporary. The most likely impact to fishes at the project site would be temporary avoidance of the area. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. Thus, we preliminarily conclude that impacts of the specified activities are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes proposed for authorization through the IHA, which will inform NMFS' consideration of "small numbers," the negligible impact determinations, and impacts on subsistence uses.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines "harassment" as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, as use of the acoustic source (*i.e.*, pile driving) has the potential to result in disruption of behavioral patterns for individual marine mammals. Auditory injury (AUD INJ) (Level A harassment) is unlikely to

occur due to mitigation measures. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.*, shutdown) discussed in detail below in the Proposed Mitigation section, Level A harassment is neither anticipated nor proposed to be authorized.

As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below we describe how the proposed take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic criteria above which NMFS believes there is some reasonable potential for marine mammals to be behaviorally harassed or incur some degree of AUD INJ; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.*, previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimates.

Acoustic Criteria

NMFS recommends the use of acoustic criteria that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur AUD INJ of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure

context (*e.g.*, frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.*, bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.*, Southall *et al.*, 2007, 2021, Ellison *et al.*, 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 re 1 µPa) for continuous (*e.g.*, vibratory pile driving, drilling) and above RMS SPL 160 dB re 1 µPa for non-explosive impulsive (*e.g.*, seismic airguns) or intermittent (*e.g.*, scientific sonar) sources. Generally speaking, estimates of take by Level B harassment based on these behavioral harassment thresholds are expected to include any likely takes by TTS as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

The Navy’s proposed activity includes the use of continuous (vibratory hammer) and impulsive (impact hammer) sources, and therefore the

RMS SPL thresholds of 120 and 160 dB re 1 µPa are applicable.

Level A harassment—NMFS’ Updated Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 3.0) (Updated Technical Guidance, 2024) identifies dual criteria to assess AUD INJ (Level A harassment) to five different underwater marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive).

The 2024 Updated Technical Guidance criteria include both updated thresholds and updated weighting functions for each hearing group. The thresholds are provided in table 3 above. The references, analysis, and methodology used in the development of the criteria are described in NMFS’ 2024 Updated Technical Guidance, which may be accessed at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance-other-acoustic-tools>.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

To estimate the sound levels during installation and removal of the proposed piles in the project area, proxy source levels for the piles were identified from the literature. Vibratory source levels were based on the data from vibratory pile-driving of timber piles at Norfolk NAVSTA (Illingworth and Rodkin, 2017). Impact pile-driving source levels for timber piles was based on the summary of data for timber piles provided by Caltrans (2020). Table 4 describes the modeled source levels for both types of pile driving proposed for the project activities.

TABLE 4—UNDERWATER NOISE SOURCE LEVELS MODELED FOR IMPACT AND VIBRATORY PILE-DRIVING

Pile type	Method	Source for proxy values used	SPLs or SEL at 10 meters distance		
			Average Peak SPL, dB re 1 µPa	Average RMS SPL, dB re 1 µPa	Average SEL, dB re 1 µPa2-sec
Timber Pile	Impact	Caltrans (2020)	180	170	160
Timber Pile	Vibratory	Illingworth and Rodkin (2017)	NA	162	NA

SPL = Sound Pressure Levels; SEL = Sound Exposure Level; RMS = root mean square; dB re 1 µPa = decibels referenced to 1 micropascal; dB re 1 µPa2-sec = decibels referenced to 1 micropascal squared second; NA = not applicable. All SPLs and SELs are unattenuated.

Pile-driving will generate underwater noise that potentially could result in harassment to marine mammals swimming by the proposed project area.

Transmission loss (TL) underwater is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source until the source becomes

indistinguishable from ambient sound. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth,

water chemistry, and bottom composition and topography. A “Practical Spreading” value of 15 (referred to as “practical spreading loss”) is widely used for intermediate or spatially varying conditions when actual values for TL are unknown. This value was used to model the estimated range from pile-driving activity to various expected SPLs at potential project structures. This model follows a geometric propagation loss based on the distance from the driven pile, resulting in a 4.5 dB reduction in level for each doubling of distance from the source. In this model, the SPL at some distance away from the source (*e.g.*, driven pile) is governed by a measured source level, minus the TL of the energy as it dissipates with distance. The TL equation is:

$$TL = 15 \log_{10} (R_1/R_2)$$

Where:

TL is the transmission in dB,

R_1 is the distance of the modeled SPL from the driven pile, and

R_2 is the distance (usually 10 m) from the driven pile of the initial measurement.

The degree to which underwater noise propagates away from a noise source is dependent on a variety of factors, most

notably by bathymetry and the presence or absence of reflective or absorptive conditions, including the water surface and sediment type. The TL model described above was used to calculate the expected noise propagation from both impact and vibratory pile-driving using representative source levels to estimate the harassment or area exceeding the noise criteria. These zones are based on the pile location within the construction area with the greatest anticipated noise propagation.

The Navy used NMFS Technical Guidance, revised in 2024 (NMFS 2024a) to calculate the maximum distance to AUD INJ onset and behavioral onset associated with vibratory and impact pile-driving. The NMFS Multi-species calculator tool was used to calculate the distances to the AUD INJ isopleth based on the SEL_{24} thresholds and the behavioral thresholds for the three hearing groups are provided in Table 5 and Table 6 for vibratory and impact pile removal and installation activities, respectively. Calculated distances to Level B (behavioral) thresholds are large but do not account for attenuation from intersecting landmasses, which would

reduce the overall area of potential impact to the Region of Influence (ROI). Level A (AUD INJ onset) and Level B (behavioral) thresholds have the potential to be exceeded within the entire ROI.

Adjusted maximum distances are provided for the behavioral thresholds where the extent of noise reaches land prior to reaching the calculated radial distance to the threshold. Areas encompassed within the threshold (harassment zone) were calculated using the location of a representative pile. Sound source locations were chosen to model the greatest possible affected areas.

As shown in Table 5, the maximum radial distance (which would occur from the removal/installation of the outermost pile) to the Level A harassment isopleth (AUD INJ onset) for non-impulsive noise (vibratory pile-driving) would be approximately 16.9 m (55.4 ft) for harbor porpoise, 7.9 m (25.9 ft) for Atlantic white-sided and short-beaked common dolphins, and 87.3 ft (26.6 m) for seals. The maximum radial distance to the Level B harassment isopleth for all marine mammals would be 3.9 mi (6.31 km).

TABLE 5—CALCULATED MAXIMUM DISTANCES CORRESPONDING TO MMPA THRESHOLDS FOR UNDERWATER SOUND FROM NON-IMPULSIVE NOISE
[Vibratory pile] ¹

Timber pile	Injury (AUD INJ onset) Level A			Behavioral disturbance Level B
	High-frequency cetaceans 201 dB SEL_{CUM} threshold radial distance/area	Very high-frequency cetaceans 181 dB SEL_{CUM} threshold radial distance/area	Phocid pinnipeds 195 dB SEL_{CUM} threshold radial distance/area	All marine mammals 120 dB RMS threshold baseline radial distance/area ¹
Removal	7.9 m/196.1 m ²	16.9 m/897.2 m ²	26.6 m/2,222.3 m ²	6,310 m/7,810 m ² . 6,310 m/7,810 m ² .
Installation	1.1 m/3.8 m ²	2.3 m/16.6 m ²	3.6 m/40.7 m ²	

As shown in Table 6, the maximum distance to AUD INJ onset for impact pile-driving would be approximately 32.1 m (105.3 ft) for harbor porpoise, 2.6

m (8.5 ft) for Atlantic white-sided and short-beaked common dolphins, and 18.4 m (60.4 ft) for seals. The maximum radial distance to the impulsive

behavioral disturbance threshold (160 dB RMS) would be approximately 46 m (150 ft) for all marine mammals.

TABLE 6—CALCULATED MAXIMUM DISTANCES CORRESPONDING TO MMPA THRESHOLDS FOR UNDERWATER SOUND FROM IMPULSIVE NOISE
[Impact pile-driving] ¹

Timber pile	Injury (AUD INJ onset) Level A			Behavioral disturbance Level B
	High-frequency cetaceans 193 dB SEL_{CUM} threshold radial distance/area	Very high-frequency cetaceans 159 dB SEL_{CUM} threshold radial distance/area	Phocid pinnipeds 183 dB SEL_{CUM} threshold radial distance/area	All marine mammals 160 dB RMS threshold radial distance/area
Installation	2.6 m/21.2 m ²	32.1 m/3,237 m ²	18.4 m/1,063.6 m ²	46 m/6,647 m ² .

Marine Mammal Occurrence and Take Estimation

In this section we provide information about the occurrence of marine mammals, including density or other relevant information which will inform the take calculations.

Here we describe how the information provided above is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and proposed for authorization.

To determine the number of animals potentially exposed, the following equation was used:

Exposure estimate = (N × harassment zone) × days of pile-driving

Where:
N = density estimate used for each species
Harassment zone = the area where noise exceeds the noise threshold value

The exposure estimate was then rounded to a whole number at the end of the calculation.

The following assumptions were used to calculate potential exposures to impact and vibratory pile removal and installation noise for each threshold:

- Each animal can be taken via Level B harassment once every 24 hrs.
- The installation method that produces the largest harassment zone was used to estimate exposure of marine mammals to noise impacts.
- Days of pile removal/installation were based on the standard average daily production rates, but actual daily production rates may vary. Production rates would be maximized to the extent possible.

- All piles will have an underwater noise disturbance distance equal to the pile that causes the greatest noise disturbance (that is, the pile farthest from shore) installed with the method that has the largest harassment zone. The largest Level B harassment zone will be produced by vibratory driving. In this case, the harassment zone for an impact hammer will be encompassed by the larger behavioral harassment zone from the vibratory driver.

The best available marine mammal density data for the U.S. western North-Atlantic region is the Navy Marine Species Density Database (NMSDD). These values reflect data collected during offshore sightings, so they must be adjusted for inshore waters. Where cetacean density calculations produced a value greater than one but less than the average group size for cetacean species (Oliveira *et al.* 2024), the take estimate was adjusted to that higher value. As cetaceans travel in groups, average group sizes were used as a minimum value to estimate take. NMFS proposes using the average group size for Atlantic white-sided dolphins and common dolphins.

The NMSDD models harbor and gray seals as a guild due to the difficulty in distinguishing these species at sea (Roberts *et al.* 2023). Harbor seals are expected to be the most common pinniped sighted in Narragansett Bay, with a haulout known as The Sisters only 0.9 mi (1.5 km) away from the project site. Harbor seals are rarely observed at The Sisters haul-out from

September to October, however, they are regular visitors in mid-November (up to 10 seals per day). These numbers gradually increase, peaking in March (less than 50 individuals per day), and typically at low tide (DeAngelis 2023; Moll *et al.* 2017; Moll 2016). The maximum guild density (0.439 seals/km²) was determined to be appropriate for estimating takes of harbor seal since they are the most common in the Narragansett Bay.

Gray seals are the second most common seal at the project site and, based on stranding records, are commonly observed during spring to early summer and occasionally observed during other months of the year (Kenney, 2020). Therefore, the average density (0.306 species/km²) for the harbor-gray seal guild was used for gray seal occurrence in Narragansett Bay.

Harp seals and hooded seals are considered occasional visitors in Narragansett Bay but much rarer than harbor and gray seals (Kenney, 2015), so the minimum guild density was used to estimate take (0.127 species/km²) for the harp seal. Hooded seals are the rarest pinniped species that is reasonably likely to occur within Narragansett Bay. The Navy proposes, and NMFS concurs, that one hooded seal may occur within the project area over the course of the 37 days of pile driving. Densities used for calculating take are shown in Table 7, while proposed incidental take for the Pier 171 construction activity, including percentage of each stock is represented below in table 8.

TABLE 7—PROPOSED SEASONAL DENSITIES FOR SPECIES IN NARRAGANSETT BAY

Species	Relative and seasonal occurrence in Narragansett Bay ²	Density in the project ¹ area (animals/km ²)	Average group size ²
Atlantic white-sided dolphin	Occasional Summer and Fall	Winter: 0.000	13
		Spring: 0.0000.	
		Summer: 0.0001.	
		Fall: 0.0001.	
Common dolphin/Short-beaked	Occasional Winter and Fall	Winter: 0.003	31
		Spring: 0.002.	
		Summer: 0.0004.	
		Fall: 0.004.	
Harbor porpoise	Occasional Winter and Spring	Winter: 0.014	3
		Spring: 0.008.	
		Summer: 0.0001.	
		Fall: 0.0001.	
Harbor seal	Common Winter, Spring, and Fall	Winter: 0.439	1
		Spring: 0.364.	
		Summer: 0.395.	
		Fall: 0.402.	
Gray seal	Occasional Spring and Summer	Winter: 0.262	1
		Spring: 0.230.	
		Summer: 0.295.	
		Fall: 0.306..	
Harp seal	Rare Winter and Spring	Winter: 0.131	1
		Spring: 0.127.	
		Summer: 0.	
		Fall: 0.	

TABLE 7—PROPOSED SEASONAL DENSITIES FOR SPECIES IN NARRAGANSETT BAY—Continued

Species	Relative and seasonal occurrence in Narragansett Bay ²	Density in the project ¹ area (animals/km ²)	Average group size ²
Hooded seal	Rare Winter and Spring	Winter: 0.0000 Spring: 0.0000. Summer: 0.0000. Fall: 0.0000.	1

¹ Density calculations used the highest seasonal density for cetaceans, maximum density for harbor seals, average for gray seals, and minimum for harp and hooded seals.

² The average group size according to summarized AMAPPS data.

TABLE 8—PROPOSED TAKE OF MARINE MAMMALS BY LEVEL B HARASSMENT BY SPECIES, AND PERCENT OF STOCK

Species name	Stock	Stock abundance	Level A (AUD INJ)	Level B (behavioral)	Total proposed take	Proposed take as percentage of stock
Atlantic white-sided dolphin (<i>Leucopleurus acutus</i>).	Western North Atlantic Stock	93,233 (CV = 0.71)	0	16	16	.017
Short-beaked common dolphin (<i>Delphinus delphis delphis</i>).	Western North Atlantic Stock	93,100 (CV = 0.56)	0	31	31	.033
Harbor porpoise (<i>Phocoena phocoena</i>).	Gulf of Maine/Bay of Fundy	85,765 (CV = 0.53)	0	4	4	.005
Harbor seal (<i>Phoca vitulina vitulina</i>).	Western North Atlantic Stock	61, 336 (CV = 0.08).	0	127	127	.207
Gray seal (<i>Halichoerus grypus atlantica</i>).	Western North Atlantic Stock	27,911 (CV = 0.20)	0	88	88	.315
Harp seal (<i>Pagophilus groenlandicus</i>).	Western North Atlantic Stock	7,600,000 (CV = UKN).	0	38	38	.001
Hooded seal (<i>Cystophora cristata</i>).	Western North Atlantic Stock	UKN (CV = UKN) ..	0	1	1	NA

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine

mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost and impact on operations.

The mitigation requirements described in the following were proposed by the Navy in its adequate and complete application or are the result of subsequent coordination between NMFS and the Navy. The Navy has agreed that all of the mitigation measures are practicable. NMFS has fully reviewed the specified activities and the mitigation measures to determine if the mitigation measures would result in the least practicable adverse impact on marine mammals and their habitat, as required by the MMPA, and has determined the proposed measures are appropriate. NMFS describes these below as proposed mitigation requirements (see section 11 of the Navy's application for more

detail) and has included them in the proposed IHA.

In addition to the measures described later in this section, the Navy would follow these general mitigation measures:

- Authorized take, by Level A and Level B harassment only, would be limited to the species and numbers listed in Table 8. Construction activities must be halted upon observation of either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met, entering or is within the harassment zone.

- The taking by serious injury or death of any of the species listed in Table 8 or any taking of any other species of marine mammal would be prohibited and would result in the modification, suspension, or revocation of the IHA, if issued. Any taking exceeding the authorized amounts listed in Table 8 would be prohibited and would result in the modification, suspension, or revocation of the IHA, if issued.

- Ensure that construction supervisors and crews, the marine mammal monitoring team, and relevant Navy staff are trained prior to the start of all construction activities, so that responsibilities, communication

procedures, marine mammal monitoring protocol, and operational procedures are clearly understood. New personnel joining during the project must be trained prior to commencing work.

- The Navy, construction supervisors and crews, Protected Species Observers (PSOs), and relevant Navy staff must avoid direct physical interaction with marine mammals during construction activity. If a marine mammal comes within 10 meters of such activity, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions, as necessary to avoid direct physical interaction.
- Employ PSOs and establish monitoring locations as described in Section 5 of the IHA and the Navy’s Marine Mammal Monitoring and Mitigation Plan, which would be submitted to NMFS for approval no later than 30 days in advance of construction

work. The Navy must monitor the project area to the maximum extent possible based on the required number of PSOs, required monitoring locations, and environmental conditions. A minimum of two PSOs would be required for all activities; when zones exceed 1,000 m, a minimum of three PSOs would be required.

Additionally, the following mitigation measures apply to the Navy’s in-water construction activities:

Establishment of Shutdown Zones— To prevent injury from physical interaction with construction equipment, the Navy proposes a minimum shutdown zone of 10 m (33 ft) be implemented during all in-water construction activities having the potential to affect marine mammals. The Navy would establish shutdown zones with radial distances as identified in Table 9 for all construction activities involving pile driving. If a marine

mammal is observed entering or within the shutdown zone indicated in Table 9, pile driving activity must be delayed or halted. If pile driving is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zones or 15 minutes have passed without re-detection of the animal. If a marine mammal comes within or approaches the shutdown zone indicated in Table 9, such operations must cease. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones would vary based on the activity type and marine mammal hearing group.

TABLE 9—PROPOSED SHUTDOWN ZONES DURING PROJECT ACTIVITIES

Activity	Pile type/size	Shutdown zone (m)		
		HF cetaceans	VHF cetaceans	PW
Impact and vibratory Installation and removal	30–35 cm (12–14 in)	35 m (115 ft).		

Notes: cm = centimeter(s), m = meter(s).

Pre- and Post-Activity Monitoring— Monitoring would take place from 30 minutes prior to initiation of pile driving activity (*i.e.*, pre-start clearance monitoring) through 30 minutes post-completion of pile driving activity. In addition, monitoring for 30 minutes would take place whenever a break in the specified activity (*i.e.*, impact pile driving, vibratory pile driving) of 30 minutes or longer occurs. Pre-start clearance monitoring would be conducted during periods of visibility sufficient for the lead PSO to determine that the shutdown zones indicated in Table 9 are clear of marine mammals. Pile driving may commence following 30 minutes of observation when the determination is made that the shutdown zones are clear of marine mammals.

*Soft Start—*The Navy would use soft start techniques when impact pile driving. Soft start requires contractors to provide an initial set of three strikes at reduced energy, followed by a 30-second waiting period, then two subsequent reduced-energy strike sets. A soft start would be implemented at the start of each day’s impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer. Soft start

procedures are used to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity.

NMFS also considered the use of bubble curtains as a mitigation measure. Bubble curtains were deemed not practicable, as they would not be effective in the limited working area of Pier 171. Based on our evaluation of the applicant’s proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting

that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.*, presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.*, source characterization, propagation, ambient noise); (2) affected species (*e.g.*, life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.*, age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or

cumulative), other stressors, or cumulative impacts from multiple stressors;

- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (e.g., marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

The Navy would abide by all monitoring and reporting measures contained within the IHA, if issued, and their Marine Mammal Monitoring and Mitigation Plan (to be submitted for NMFS approval no later than 30 days prior to the start of construction). A summary of those measures and additional requirements proposed by NMFS is provided below.

Visual Monitoring—A minimum of two NMFS-approved PSOs must be stationed at strategic vantage points for the entirety of active construction operations. PSOs would be independent of the activity contractor (for example, employed by a subcontractor) and have no other assigned tasks during monitoring periods. At least one PSO would have prior experience performing the duties of a PSO during an activity pursuant to a NMFS-issued Incidental Take Authorization (ITA) or Letter of Concurrence (LOC). Other PSOs may substitute other relevant experience, education (degree in biological science or related field), or training for prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization.

- Where a team of three or more PSOs is required, a lead observer or monitoring coordinator would be designated. The lead observer must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued ITA or LOC.

PSOs would also have the following additional qualifications:

- The ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to: (1) the number and species

of marine mammals observed; (2) dates and times when in-water construction activities were conducted; (3) dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and (4) marine mammal behavior; and

- The ability to communicate orally, by radio or in person, with Project personnel to provide real-time information on marine mammals observed in the area as necessary.

The Navy must establish monitoring locations as described in the approved Marine Mammal Monitoring and Mitigation Plan (see figure 11–1 of the Navy's IHA application for map indicating potential locations). For all pile driving activities, a minimum of two PSOs must be assigned to each active pile driving location to monitor the shutdown zones. In order to effectively monitor a zone of 1000 m or more, at least three PSOs would be required. PSOs would record all observations of marine mammals, regardless of distance from the pile being driven, as well as the additional data indicated below and in section 6 of the IHA, if issued.

Acoustic Monitoring

The Navy must establish acoustic monitoring procedures as described in the Acoustic Monitoring Plan (see summary in section 13.4 of the Navy's application) to verify the sound source levels predicted. An acoustic monitoring plan would be submitted to NMFS no later than 60 days prior to the beginning of in-water construction for approval. The Navy proposes to monitor a minimum of 10 percent and up to 16 of each type of piling with at least 2 hydrophones, 1 placed approximately 10 m from the incident pile, and 1 further away in accordance with a hydroacoustic monitoring plan that would be approved by NMFS in advance of construction. The estimated harassment and/or shutdown zones may be modified with NMFS' approval following NMFS' acceptance of an acoustic monitoring report. See section 13 of the Navy's IHA application for more detail.

At minimum, the methodology would include:

- For underwater recordings, a stationary hydrophone system with the ability to measure SPLs will be placed in accordance with NMFS' most recent guidance for the collection of source levels (NMFS, 2012).
- A close-range hydrophone placed at a horizontal distance of 10 m from the pile. Additional hydrophones would be placed at (1) a horizontal distance no less than three times the water depth

and (2) in the far field, well away from the source. Hydrophones would be placed at a depth of half the water depth at each measurement location. Exact positioning of the hydrophone(s) would ensure a direct, unobstructed path between the sound source and the hydrophone(s);

- Measurement systems would be deployed using configurations which minimize self or platform noise and ensure stable positioning throughout the recordings;

- The recordings would be continuous throughout each acoustic event for which monitoring is required;

- The SSV measurement systems would have a sensitivity appropriate for the expected SPLs. The frequency range of SSV measurement systems would cover the range of at least 20 Hz to 20 kHz. The dynamic range of the measurement system would be sufficient such that at each location, the signals would avoid poor signal-to-noise ratios for low amplitude signals, and would avoid clipping, nonlinearity, and saturation for high amplitude signals;

- All hydrophones used in SSV measurements systems would be required to have undergone a full system laboratory calibration conforming to a recognized standard procedure, from a factory or accredited source to ensure the hydrophone(s) receives accurate SPLs, at a date not to exceed 2 years before deployment.

- Environmental data would be collected, including but not limited to, the following: wind speed and direction, air temperature, humidity, surface water temperature, water depth, wave height, weather conditions, and other factors that could contribute to influencing the airborne and underwater SPLs (e.g., aircraft, boats, etc.); and

- The project engineer would supply the acoustics specialist with the substrate composition, hammer model and size, hammer energy settings, depth of drilling, and boring rates and any changes to those settings during the monitoring.

For acoustically monitored construction activities, data from the continuous monitoring locations would be post-processed to obtain the following sound measures:

- Maximum peak sound pressure level recorded for all activities, expressed in dB re 1 μ Pa. This maximum value will originate from the phase of hammering during which hammer energy was also at maximum.
- From all activities occurring during the time that the hammer was at maximum energy, these additional measures will be made, as appropriate:

- mean, median, minimum, and maximum RMS SPL (dB re 1 μ Pa);
- mean duration of a pile strike (based on the 90 percent energy criterion);
- number of hammer strikes;
- mean, median, minimum, and maximum SEL_{ss} (dB re μ Pa² sec);
- Median integration time used to calculate RMS SPL (for vibratory monitoring, the time period selected is 1-second intervals. For impulsive monitoring, the time period is 90% of the energy pulse duration);
- A frequency spectrum (power spectral density) (dB re μ Pa² per Hz) based on all strikes with similar sound;
- Finally, the SEL₂₄ would be computed from all the strikes associated with each pile occurring during all phases, *i.e.*, soft start. This measure is defined as the sum of all SEL_{ss} values. The sum is taken of the antilog, with log₁₀ taken of result to express (dB re μ Pa² sec).

Reporting—The Navy would be required to submit an annual draft summary report on all construction activities and marine mammal monitoring results to NMFS within 90 days following the end of construction or 60 calendar days prior to the requested issuance of any subsequent IHA for similar activity at the same location, whichever comes first. The draft summary report would include an overall description of construction work completed, a narrative regarding marine mammal sightings, and associated raw PSO data sheets (in electronic spreadsheet format). Specifically, the report must include:

- Dates and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period, including: (a) how many and what type of piles were driven or removed and the method (*i.e.*, impact or vibratory); and (b) the total duration of time for each pile (vibratory driving) or number of strikes for each pile (impact driving);
- PSO locations during marine mammal monitoring; and
- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance.

Upon observation of a marine mammal the following information must be reported:

- Name of PSO who sighted the animal(s) and PSO location and activity at the time of the sighting;
- Time of the sighting;

- Identification of the animal(s) (*e.g.*, genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species;
- Distance and bearing of each observed marine mammal relative to the pile being driven or removed for each sighting;
- Estimated number of animals (min/max/best estimate);
- Estimated number of animals by cohort (*e.g.*, adults, juveniles, neonates, group composition, *etc.*);
- Animal's closest point of approach and estimated time spent within the estimated harassment zone(s);
- Description of any marine mammal behavioral observations (*e.g.*, observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.*, no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);
- Number of marine mammals detected within the estimated harassment zones, by species; and
- Detailed information about implementation of any mitigation (*e.g.*, shutdowns and delays), a description of specified actions that ensued, and resulting changes in behavior of the animal(s), if any.

Acoustic monitoring report(s) must be submitted on the same schedule as visual monitoring reports (*i.e.*, within 90 days following the completion of construction). The acoustic monitoring report must contain the informational elements described in the Acoustic Monitoring Plan (see summary in section 13.4 of the Navy's application) and, at minimum, must include:

- Hydrophone equipment and methods: (1) recording device, sampling rate, calibration details, distance (m) from the pile where recordings were made; and (2) the depth of water and recording device(s);
- Location, identifier, orientation (*e.g.*, vertical, battered), material, and geometry (shape, diameter, thickness, length) of pile being driven, substrate type, method of driving during recordings (*e.g.*, hammer model and energy), and total pile driving duration;
- Whether a sound attenuation device is used and, if so, a detailed description of the device used, its distance from the pile and hydrophone, and the duration of its use per pile;
- For impact pile driving: (1) number of strikes per day and per pile and strike rate; (2) depth of substrate to penetrate; (3) decade (one-third octave) band spectra in tabular and figure formats

computed on a per-pulse basis, including the arithmetic mean or median for all computed spectra; (4) pulse duration and median, mean, maximum, minimum, and number of samples (where relevant) of the following sound level metrics: (5) RMS SPL; (6) SEL₂₄, Peak (PK) SPL, and SEL_{ss}; and

- For vibratory driving/removal: (1) duration of driving per pile; (2) vibratory hammer operating frequency; (3) decade (one-third octave) band spectra in tabular and figure formats for 1-second windows, including the arithmetic mean or median for all computed spectra; and (4) median, mean, maximum, minimum, and number of samples (where relevant) of the following sound level metrics: 1-sec RMS SPL, SEL₂₄ (and timeframe over which the sound is averaged).

If no comments are received from NMFS within 30 days after the submission of the draft summary report, the draft report would constitute the final report. If the Navy received comments from NMFS, a final summary report addressing NMFS' comments would be submitted within 30 days after receipt of comments.

Reporting Injured or Dead Marine Mammals—In the event that personnel involved in the Navy's activities discover an injured or dead marine mammal, the Navy would report the incident to the NMFS Office of Protected Resources (OPR) (PR.ITP.MonitoringReports@noaa.gov, ITP.gatzke@noaa.gov) and to the Greater Atlantic Region Regional Stranding Coordinator as soon as feasible. If the death or injury was clearly caused by the specified activity, the Navy would immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the IHA. The Navy would not resume their activities until notified by NMFS. The report would include the following information:

- Description of the incident;
- Environmental conditions (*e.g.*, Beaufort sea state, visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Photographs or video footage of the animal(s) (if equipment is available);
- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;

- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive; and
- General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be “taken” through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.*, intensity, duration), the context of any impacts or responses (*e.g.*, critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS’ implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.*, as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the majority of our analysis applies to all the species listed in table 2, given that many of the anticipated effects of this project on different marine mammal stocks are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, they are described independently in the analysis below.

Pile driving activities associated with the Navy’s construction project has the potential to disturb or displace marine

mammals. Project activities may result in take, in the form of Level B harassment, from underwater sounds generated from pile driving and removal. Potential takes could occur if individuals are present in the ensonified zone when these activities are underway.

No serious injury or mortality would be expected, even in the absence of required mitigation measures, given the nature of the activities. Further, no take by Level A harassment is anticipated due to the application of proposed mitigation measures, such as shutdown zones that encompass the Level A harassment zones. The potential for harassment would be minimized through the construction method and the implementation of the planned mitigation measures (see Proposed Mitigation section).

Proposed takes by Level B harassment would be due to potential behavioral disturbance and TTS. A subset of the individuals that are behaviorally harassed could also simultaneously incur some small degree of TTS for a short duration of time. However, since the hearing sensitivity of individuals that incur TTS is expected to recover completely within minutes to hours, it is unlikely that the brief hearing impairment would affect the individual’s long-term ability to forage and communicate with conspecifics, and would therefore not likely impact reproduction or survival of any individual marine mammal, let alone adversely affect rates of recruitment or survival of the species or stock.

Effects on individuals that are taken by Level B harassment in the form of behavioral disruption, on the basis of reports in the literature as well as monitoring from other similar activities, would likely be limited to reactions such as avoidance, increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.*, Thorson and Reyff 2006). Most likely, individuals would simply move away from the sound source and temporarily avoid the area where pile driving is occurring. If sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activities are occurring. We expect that any avoidance of the project areas by marine mammals would be temporary in nature and that any marine mammals that avoid the project areas during construction would not be permanently displaced. Short-term avoidance of the project areas and energetic impacts of interrupted foraging or other important behaviors is unlikely to affect the reproduction or survival of individual

marine mammals, and the effects of behavioral disturbance on individuals is not likely to accrue in a manner that would affect the rates of recruitment or survival of any affected stock.

The project is also not expected to have significant adverse effects on affected marine mammals’ habitats. No ESA-designated critical habitat or biologically important areas (BIAs) are located within the project area. The project activities would not modify existing marine mammal habitat for a significant amount of time. The activities may cause a low level of turbidity in the water column and some fish may leave the area of disturbance, thus temporarily impacting marine mammals’ foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities and the relatively small area of the habitat that may be affected (with no known particular importance to marine mammals), the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences. Seasonal nearshore marine mammal surveys were conducted at NAVSTA Newport from May 2016 to February 2017, and several harbor seal haul outs were identified in Narragansett Bay, but no pupping was observed.

For all species and stocks, take would occur within a limited, relatively confined area (Coddington Cove) of the stock’s range. Given the availability of suitable habitat nearby, any displacement of marine mammals from the project areas is not expected to affect marine mammals’ fitness, survival, and reproduction due to the limited geographic area that would be affected in comparison to the much larger habitat for marine mammals within Narragansett Bay and outside the bay along the Rhode Island coasts. Level B harassment would be reduced to the level of least practicable adverse impact to the marine mammal species or stocks and their habitat through use of mitigation measures described herein.

Some individual marine mammals in the project area, such as harbor seals, may be present and be subject to repeated exposure to sound from pile driving activities on multiple days. However, pile driving and extraction is not expected to occur on every day, and these individuals would likely return to normal behavior during gaps in pile driving activity within each day of construction and in between work days. As discussed above, there is similar transit and haul out habitat available for marine mammals within and outside of the Narragansett Bay along the Rhode Island coast, outside of the project area,

where individuals could temporarily relocate during construction activities to reduce exposure to elevated sound levels from the project. Therefore, any behavioral effects of repeated or long duration exposures are not expected to negatively affect survival or reproductive success of any individuals. Thus, even repeated Level B harassment of some small subset of an overall stock is unlikely to result in any effects on rates of reproduction and survival of the stock.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or proposed for authorization;
- No Level A harassment is anticipated or proposed for authorization;
- The intensity of anticipated takes by Level B harassment is relatively low for all stocks. Level B harassment would be primarily in the form of behavioral disturbance, resulting in avoidance of the project areas around where impact or vibratory pile driving is occurring, with some low-level TTS that may limit the detection of acoustic cues for relatively brief amounts of time in relatively confined footprints of the activities;
- Nearby areas of similar habitat value (e.g., transit and haul out habitats) within and outside of Narragansett Bay are available for marine mammals that may temporarily vacate the project area during construction activities;
- The specified activity and associated ensonified areas do not include habitat areas known to be of special significance (BIAs or ESA-designated critical habitat);
- Effects on species that serve as prey for marine mammals from the activities are expected to be short-term and, therefore, any associated impacts on marine mammal feeding are not expected to result in significant or long-term consequences for individuals, or to accrue to adverse impacts on their populations;
- The ensonified areas are very small relative to the overall habitat ranges of all species and stocks, and would not adversely affect ESA-designated critical habitat for any species or any areas of known biological importance;
- The lack of anticipated significant or long-term negative effects to marine mammal habitat; and
- The efficacy of the mitigation measures in reducing the effects of the

specified activities on all species and stocks.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers (see 86 FR 5322, January 19, 2021). Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Table 8 demonstrates the number of instances in which individuals of a given species could be exposed to received noise levels that could cause take of marine mammals. The instances of take NMFS proposes to authorize is below one-third of the estimated stock abundance for all impacted stocks (table 8). In fact, take of individuals is less than 1 percent of the abundance for all affected stocks. The number of animals that we expect to authorize to be taken would be considered small relative to the relevant stocks or populations, even if each estimated take occurred to a new individual. Furthermore, these takes are likely to only occur within a small portion of the stock's range and the likelihood that each take would occur to a new individual is low.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks, with no species take exceeding 0.32 of the best

available population abundance estimate.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the ESA of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency ensures that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to the Navy for conducting pile driving activity in Newport RI, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>.

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHA for the proposed IHA. We also request comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, 1-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of

Proposed Activity section of this notice is planned or (2) the activities as described in the Description of Proposed Activity section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA).

- The request for renewal must include the following:

1. An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

2. A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

- Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: September 2, 2025.

Kimberly Damon-Randall,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 2025-16993 Filed 9-4-25; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP24-529-001]

Tennessee Gas Pipeline Company, L.L.C.; Notice of Request for Extension of Time

Take notice that on August 27, 2025, Tennessee Gas Pipeline Company, L.L.C. (Tennessee) requested that the Commission grant an extension of time,

until December 31, 2027, to construct and place into service its 507G Line Abandonment Project (Project) located in Acadia, Vermilion, Iberia, and St. Mary Parishes, Louisiana as authorized in the Order Approving Abandonment (Order).¹ The Order required Tennessee to complete abandonment of the facilities within one year of the date of the Order, or by July 24, 2026.

Tennessee states that it is in the process of obtaining permits needed to start the abandonment activities, but it needs more time than originally anticipated to obtain them and to coordinate with landowners to avoid unnecessary crop damage, and to implement measures to protect threatened and endangered species.

This notice establishes a 15-calendar day intervention and comment period deadline. Any person wishing to comment on Tennessee's request for an extension of time may do so. No reply comments or answers will be considered. If you wish to obtain legal status by becoming a party to the proceedings for this request, you should, on or before the comment date stated below, file a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (NGA) (18 CFR 157.10).

As a matter of practice, the Commission itself generally acts on requests for extensions of time to complete construction for NGA facilities when such requests are contested before order issuance. For those extension requests that are contested,² the Commission will aim to issue an order acting on the request within 45 days.³ The Commission will address all arguments relating to whether the applicant has demonstrated there is good cause to grant the extension.⁴ The Commission will not consider arguments that re-litigate the issuance of the certificate order, including whether the Commission properly found the project to be in the public convenience and necessity and whether the Commission's environmental analysis for the certificate complied with the National Environmental Policy Act (NEPA).⁵ At the time a pipeline requests

¹ *Tennessee Gas Pipeline Company, L.L.C.*, 192 FERC ¶ 61,079 (2025).

² Contested proceedings are those where an intervenor disputes any material issue of the filing. 18 CFR 385.2201(c)(1).

³ *Algonquin Gas Transmission, LLC*, 170 FERC ¶ 61,144, at P 40 (2020).

⁴ *Id.* at P 40.

⁵ Similarly, the Commission will not re-litigate the issuance of an NGA section 3 authorization, including whether a proposed project is not

an extension of time, orders on certificates of public convenience and necessity are final and the Commission will not re-litigate their issuance.⁶ The Director of the Office of Energy Projects, or his or her designee, will act on all of those extension requests that are uncontested.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>). 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.

The Commission strongly encourages electronic filings of comments in lieu of paper using the "eFile" link at <http://www.ferc.gov>. In lieu of electronic filing, you may submit a paper copy which must reference the Project docket number.

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's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, community organizations, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions,

inconsistent with the public interest and whether the Commission's environmental analysis for the permit order complied with NEPA.

⁶ *Algonquin Gas Transmission, LLC*, 170 FERC ¶ 61,144, at P 40 (2020).

comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or OPP@ferc.gov.

Comment Date: 5:00 p.m. Eastern Time on [September 17, 2025].

Dated: September 2, 2025.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2025-17043 Filed 9-4-25; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC25-142-000.

Applicants: Entergy Arkansas, LLC, Redfield PV I, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Entergy Arkansas, LLC, et al.

Filed Date: 8/29/25.

Accession Number: 20250829-5245.

Comment Date: 5 p.m. ET 9/19/25.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10-2374-023; ER17-2059-014.

Applicants: Puget Sound Energy, Inc., Puget Sound Energy, Inc.

Description: Second Supplement to 06/30/2025, Updated Triennial Market Power Analysis for Northwest Region of Puget Sound Energy, Inc.

Filed Date: 8/29/25.

Accession Number: 20250829-5240.

Comment Date: 5 p.m. ET 9/19/25.

Docket Numbers: ER17-2088-003; ER16-2035-003.

Applicants: Black Oak Wind, LLC, Apple Blossom Wind, LLC.

Description: Supplement to 08/07/2025, Notice of Change in Status of Apple Blossom Wind, LLC, et al.

Filed Date: 8/29/25.

Accession Number: 20250829-5246.

Comment Date: 5 p.m. ET 9/19/25.

Docket Numbers: ER25-3066-001.

Applicants: UGI Utilities, Inc., UGI Utilities Inc.

Description: Tariff Amendment: UGI Utilities Inc. submits tariff filing per 35.17(b); UGIU submits Formula Rate—Depreciation Rate Revision Errata Filing to be effective 10/1/2025.

Filed Date: 9/2/25.

Accession Number: 20250902-5086.

Comment Date: 5 p.m. ET 9/23/25.

Docket Numbers: ER25-3351-000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Amendment to Rate Schedule FERC No. 54 to be effective 10/29/2025.

Filed Date: 8/29/25.

Accession Number: 20250829-5151.

Comment Date: 5 p.m. ET 9/19/25.

Docket Numbers: ER25-3352-000.

Applicants: PPL Electric Utilities Corporation.

Description: § 205(d) Rate Filing: PPL Electric Order No. 898 Rate Filing to be effective 10/31/2025.

Filed Date: 8/29/25.

Accession Number: 20250829-5191.

Comment Date: 5 p.m. ET 9/19/25.

Docket Numbers: ER25-3353-000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original NSA, Service Agreement No. 7733; AG1-107/AF2-440 to be effective 8/4/2025.

Filed Date: 9/2/25.

Accession Number: 20250902-5082.

Comment Date: 5 p.m. ET 9/23/25.

Docket Numbers: ER25-3354-000.

Applicants: Public Service Company of Colorado.

Description: § 205(d) Rate Filing: 2025-08-08- PSC-MEAN-Psuedo Tie Boundary Meters-Facility Study-859 0.0.0 to be effective 10/7/2025.

Filed Date: 9/2/25.

Accession Number: 20250902-5098.

Comment Date: 5 p.m. ET 9/23/25.

Docket Numbers: ER25-3355-000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Amendment to Rate Schedule FERC No. 76 to be effective 11/3/2025.

Filed Date: 9/2/25.

Accession Number: 20250902-5104.

Comment Date: 5 p.m. ET 9/23/25.

Docket Numbers: ER25-3356-000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: Tariff Amendment: Notice of Cancellation of Rate Schedule FERC No. 280 to be effective 11/2/2025.

Filed Date: 9/2/25.

Accession Number: 20250902-5135.

Comment Date: 5 p.m. ET 9/23/25.

Docket Numbers: NJ25-9-000.

Applicants: Orlando Utilities Commission.

Description: Non: Revised Non-Jurisdictional Rate Sheets OATT (Scheds. 7, 8, & Attach. H) 2025 to be effective 10/1/2025.

Filed Date: 7/16/25.

Accession Number: 20250716-5098.

Comment Date: 5 p.m. ET 9/9/25.

The filings are accessible in the Commission's eLibrary system by

clicking on the links or querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at:

<http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, community organizations, 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: September 2, 2025.

Carlos D. Clay,
Deputy Secretary.

[FR Doc. 2025-17023 Filed 9-4-25; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: PR25-68-000.

Applicants: Black Hills/Kansas Gas Utility Company, LLC.

Description: § 284.123 Rate Filing: BHKG Revised SOC and Statement of Rates to be effective 8/1/2025.

Filed Date: 8/29/25.

Accession Number: 20250829-5066.

Comment Date: 5 p.m. ET 9/19/25.

Docket Numbers: RP25-1106-000.

Applicants: Columbia Gulf Transmission, LLC.

Description: Compliance filing: CGT Cashout Report 2025 to be effective N/A.

Filed Date: 8/28/25.
Accession Number: 20250828–5156.
Comment Date: 5 p.m. ET 9/9/25.
Docket Numbers: RP25–1107–000.
Applicants: Tres Palacios Gas Storage LLC.
Description: § 4(d) Rate Filing: TPGS Credit OBA Modifications eff 10–1–25 to be effective 10/1/2025.
Filed Date: 8/28/25.
Accession Number: 20250828–5179.
Comment Date: 5 p.m. ET 9/9/25.
Docket Numbers: RP25–1108–000.
Applicants: Texas Eastern Transmission, LP.
Description: Compliance filing: 2025 Operational Entitlements Filing to be effective N/A.
Filed Date: 8/28/25.
Accession Number: 20250828–5184.
Comment Date: 5 p.m. ET 9/9/25.
Docket Numbers: RP25–1109–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (Hartree Sep 25) to be effective 9/1/2025.
Filed Date: 8/28/25.
Accession Number: 20250828–5202.
Comment Date: 5 p.m. ET 9/9/25.
Docket Numbers: RP25–1110–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: Initial Rate Filing—Alabama Georgia Connector to be effective 10/1/2025.
Filed Date: 8/28/25.
Accession Number: 20250828–5215.
Comment Date: 5 p.m. ET 9/9/25.
Docket Numbers: RP25–1111–000.
Applicants: Alliance Pipeline L.P.
Description: § 4(d) Rate Filing: Negotiated Rates—Releases 09–01–2025 to be effective 9/1/2025.
Filed Date: 8/29/25.
Accession Number: 20250829–5001.
Comment Date: 5 p.m. ET 9/10/25.
Docket Numbers: RP25–1112–000.
Applicants: Florida Gas Transmission Company, LLC.
Description: § 4(d) Rate Filing: Fuel Filing on 8–29–25 to be effective 10/1/2025.
Filed Date: 8/29/25.
Accession Number: 20250829–5005.
Comment Date: 5 p.m. ET 9/10/25.
Docket Numbers: RP25–1113–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Amended Negotiated Rate Agreements—10/1/2025 to be effective 10/1/2025.
Filed Date: 8/29/25.
Accession Number: 20250829–5006.
Comment Date: 5 p.m. ET 9/10/25.
Docket Numbers: RP25–1114–000.

Applicants: WBI Energy Transmission, Inc.
Description: § 4(d) Rate Filing: 2025 Semi-Annual Fuel & Electric Power Reimbursement Adjustment to be effective 10/1/2025.
Filed Date: 8/29/25.
Accession Number: 20250829–5038.
Comment Date: 5 p.m. ET 9/10/25.
Docket Numbers: RP25–1115–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Remove Expired Negotiated Rate Agreements—10/1/2025 to be effective 10/1/2025.
Filed Date: 8/29/25.
Accession Number: 20250829–5043.
Comment Date: 5 p.m. ET 9/10/25.
Docket Numbers: RP25–1116–000.
Applicants: Southern Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: SNG Winter Period Fuel Rate Update Filing to be effective 10/1/2025.
Filed Date: 8/29/25.
Accession Number: 20250829–5053.
Comment Date: 5 p.m. ET 9/10/25.
Docket Numbers: RP25–1117–000.
Applicants: Tennessee Gas Pipeline Company, L.L.C.
Description: § 4(d) Rate Filing: Revised DIC and Cashout Language to be effective 10/1/2025.
Filed Date: 8/29/25.
Accession Number: 20250829–5065.
Comment Date: 5 p.m. ET 9/10/25.
Docket Numbers: RP25–1118–000.
Applicants: Kern River Gas Transmission Company.
Description: § 4(d) Rate Filing: 2025 CRC Permanent Capacity TSA Replacement to be effective 10/1/2025.
Filed Date: 8/29/25.
Accession Number: 20250829–5074.
Comment Date: 5 p.m. ET 9/10/25.
Docket Numbers: RP25–1119–000.
Applicants: NEXUS Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Various Releases eff 9–1–2025 to be effective 9/1/2025.
Filed Date: 8/29/25.
Accession Number: 20250829–5076.
Comment Date: 5 p.m. ET 9/10/25.
Docket Numbers: RP25–1120–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Electric Power Costs Filing to be effective 10/1/2025.
Filed Date: 8/29/25.
Accession Number: 20250829–5082.
Comment Date: 5 p.m. ET 9/10/25.
Docket Numbers: RP25–1121–000.
Applicants: Colorado Interstate Gas Company, L.L.C.
Description: Compliance filing: Operational Purchase and Sales Report 2025 to be effective N/A.

Filed Date: 8/29/25.
Accession Number: 20250829–5086.
Comment Date: 5 p.m. ET 9/10/25.
Docket Numbers: RP25–1122–000.
Applicants: Tennessee Gas Pipeline Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreements Filing—Sequent Energy Management LLC to be effective 9/1/2025.
Filed Date: 8/29/25.
Accession Number: 20250829–5089.
Comment Date: 5 p.m. ET 9/10/25.
Docket Numbers: RP25–1123–000.
Applicants: TransColorado Gas Transmission Company LLC.
Description: § 4(d) Rate Filing: TC Quarterly FL&U Update Aug. 2025 to be effective 10/1/2025.
Filed Date: 8/29/25.
Accession Number: 20250829–5104.
Comment Date: 5 p.m. ET 9/10/25.
Docket Numbers: RP25–1124–000.
Applicants: Northern Natural Gas Company.
Description: § 4(d) Rate Filing: 20250829 Negotiated Rate to be effective 9/1/2025.
Filed Date: 8/29/25.
Accession Number: 20250829–5153.
Comment Date: 5 p.m. ET 9/10/25.
Docket Numbers: RP25–1125–000.
Applicants: Colorado Interstate Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Annual Fuel and LUF True-up Filing Aug 2025 to be effective 10/1/2025.
Filed Date: 8/29/25.
Accession Number: 20250829–5161.
Comment Date: 5 p.m. ET 9/10/25.
Docket Numbers: RP25–1127–000.
Applicants: Cameron Interstate Pipeline, LLC.
Description: § 4(d) Rate Filing: Filing of Negotiated Rate Agreement 8.29.25 to be effective 10/1/2025.
Filed Date: 8/29/25.
Accession Number: 20250829–5177.
Comment Date: 5 p.m. ET 9/10/25.
Docket Numbers: RP25–1128–000.
Applicants: Gillis Hub Pipeline, LLC.
Description: § 4(d) Rate Filing: Filing of Negotiated Rate Agreement 08.29.25 to be effective 10/1/2025.
Filed Date: 8/29/25.
Accession Number: 20250829–5188.
Comment Date: 5 p.m. ET 9/10/25.
Docket Numbers: RP25–1129–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Negotiated Rate Capacity Release Agreements—9/1/2025 to be effective 9/1/2025.
Filed Date: 9/2/25.
Accession Number: 20250902–5046.
Comment Date: 5 p.m. ET 9/15/25.
Docket Numbers: RP25–1130–000.

Applicants: Mountain Valley Pipeline, LLC.

Description: § 4(d) Rate Filing: Negotiated Rate Capacity Release Agreements—9/1/2025 to be effective 9/1/2025.

Filed Date: 9/2/25.

Accession Number: 20250902–5057.

Comment Date: 5 p.m. ET 9/15/25.

Docket Numbers: RP25–1131–000.

Applicants: Transwestern Pipeline Company, LLC.

Description: § 4(d) Rate Filing: Housekeeping Filing on 9–2–25 to be effective 10/2/2025.

Filed Date: 9/2/25.

Accession Number: 20250902–5060.

Comment Date: 5 p.m. ET 9/15/25.

Docket Numbers: RP25–1132–000.

Applicants: Transwestern Pipeline Company, LLC.

Description: § 4(d) Rate Filing: Housekeeping Filing on 9–2–25 (Volume 1–A) to be effective 10/2/2025.

Filed Date: 9/2/25.

Accession Number: 20250902–5064.

Comment Date: 5 p.m. ET 9/15/25.

Docket Numbers: RP25–1133–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rates—Various Releases eff 9–1–2025 to be effective 9/1/2025.

Filed Date: 9/2/25.

Accession Number: 20250902–5077.

Comment Date: 5 p.m. ET 9/15/25.

Docket Numbers: RP25–1134–000.

Applicants: Rover Pipeline LLC.

Description: § 4(d) Rate Filing: Summary of Negotiated Rate Capacity Release Agreements 9–2–2025 to be effective 9/1/2025.

Filed Date: 9/2/25.

Accession Number: 20250902–5088.

Comment Date: 5 p.m. ET 9/15/25.

Docket Numbers: RP25–1135–000.

Applicants: Maritimes & Northeast Pipeline, L.L.C.

Description: § 4(d) Rate Filing: Negotiated Rates—Northern to to NRG Bus Mktg—eff 9–1–25 to be effective 9/1/2025.

Filed Date: 9/2/25.

Accession Number: 20250902–5090.

Comment Date: 5 p.m. ET 9/15/25.

Docket Numbers: RP25–1136–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (Sempra Sept 3 2025) to be effective 9/3/2025.

Filed Date: 9/2/25.

Accession Number: 20250902–5092.

Comment Date: 5 p.m. ET 9/15/25.

Any person desiring to intervene, to protest, or to answer a complaint in any

of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission’s Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP11–2473–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Refund Report: 2025 CICO Filing to be effective N/A.

Filed Date: 8/29/25.

Accession Number: 20250829–5077.

Comment Date: 5 p.m. ET 9/10/25.

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, community organizations, 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: September 2, 2025.

Carlos D. Clay,
Deputy Secretary.
[FR Doc. 2025–17022 Filed 9–4–25; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

**Federal Energy Regulatory
Commission**

**Notice of Effectiveness of Exempt
Wholesale Generator and Foreign
Utility Company Status**

	Docket Nos.
Sholes Energy Storage, LLC ...	EG25–342–000
Greeley Wind Nebraska, LLC ..	EG25–343–000
Rumble Solar, LLC	EG25–344–000
Elawan Cibeles Solar LLC	EG25–345–000
Sypert Branch Solar LLC	EG25–346–000
Anson Solar Center 2, LLC	EG25–348–000
Aggreko MSR Grid PC2 LLC ...	EG25–349–000
Aggreko MSR Grid PC5 LLC ...	EG25–350–000
Aggreko MSR Grid PC7 LLC ...	EG25–351–000
Ventasso Energy Storage, LLC	EG25–352–000
AL Solar G, LLC	EG25–353–000
AL Solar H, LLC	EG25–354–000
Emerald Green Solar LLC	EG25–355–000
Angiola East, LLC	EG25–356–000
SunZia Wind North LLC	EG25–357–000
SunZia Wind South LLC	EG25–358–000
Tilden Solar LLC	EG25–359–000
Vertus Energy Storage LLC	EG25–360–000
Clean Energy Future—Trumbull, LLC.	EG25–361–000
Kelso Solar LLC	EG25–362–000
64NB 8me LLC	EG25–363–000
OSCI Gildersleeve, LLC	EG25–364–000
West Boylston Energy Storage I LLC.	EG25–365–000
Kelso 2 Solar LLC	EG25–366–000
Mowata Solar, LLC	EG25–367–000
Juliet Energy Project, LLC	EG25–368–000
Jones City Energy Storage, LLC.	EG25–369–000
Jones City Solar II, LLC	EG25–370–000
Desert Pine Storage, LLC	EG25–371–000
Desert Pine Solar, LLC	EG25–372–000
Fiddle Leaf Solar, LLC	EG25–373–000
Emily Solar, LLC	EG25–374–000
Big Cajun I Units I and II LLC ..	EG25–375–000
Biscayne Falls SPV, LLC	EG25–376–000
174PG Torreon S. de RL de CV.	FC25–3–000

Take notice that during the month of August 2025, the status of the above-captioned entities as Exempt Wholesale Generators or Foreign Utility Companies became effective by operation of the Commission’s regulations. 18 CFR 366.7(a) (2025).

Dated: September 2, 2025.

Carlos D. Clay,
Deputy Secretary.
[FR Doc. 2025–17024 Filed 9–4–25; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3240–040]

Briar Hydro Associates and New Hampshire Department of Environmental Services Dam Bureau; 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 license to continue to operate and maintain the Rolfe Canal Hydroelectric Project No. 3240. The project is located on the Contoocook River in Merrimack County, New Hampshire. Commission staff have prepared an Environmental Assessment (EA) for the project.¹

The EA contains staff 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 on or before 5:00 p.m. Eastern Time on October 2, 2025.

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/>

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–2490–031.

For further information, contact Jeanne Edwards at (202) 502–6181 or by email at jeanne.edwards@ferc.gov.

Dated: September 2, 2025.

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2025–17040 Filed 9–4–25; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PL18–1–000 and PL18–1–001]

Certification of New Interstate Natural Gas Facilities; Notice of Secretary of Energy Proposal To Rescind the Draft Updated Certificate Policy Statement and Soliciting Comments

On August 29, 2025, the Secretary of Energy sent a letter to the Federal Energy Regulatory Commission pursuant to section 403 of the Department of Energy Organization Act, 42 U.S.C. 7173(a), proposing that the Commission terminate the policy statement proceeding in Commission Docket Nos. PL18–1–000 and PL18–1–001, *Certification of New Interstate Natural Gas Facilities*, concerning the Commission's authority under section 7(c) of the Natural Gas Act, 15 U.S.C. 717f(c). The Secretary of Energy's letter asserts that the Commission should rescind the 2022 draft Updated Certificate Policy Statement, terminate the related proceeding, and instead continue to rely on the framework established by the 1999 Certificate Policy Statement. The letter is filed in Docket Nos. PL18–1–000 and PL18–1–001 under Accession Number 20250902–4000.

Description of Proceeding: In 1999 the Commission issued a policy statement explaining its approach when considering applications to construct new interstate natural gas transportation

facilities under section 7 of the Natural Gas Act. *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (1999 Certificate Policy Statement). On April 19, 2018, the Commission issued a Notice of Inquiry seeking information to help the Commission explore whether, and if so how, it should revise its approach. 163 FERC ¶ 61,042 (2018). On February 18, 2021, the Commission issued a new Notice of Inquiry seeking further comments in response to revised and expanded questions. 174 FERC ¶ 61,125 (2021). On February 18, 2022, the Commission issued an Updated Certificate Policy Statement intended to explain how, going forward, the Commission's approach would differ from the 1999 Certificate Policy Statement. 178 FERC ¶ 61,107 (2022). On March 24, 2022, the Commission made the Updated Certificate Policy Statement a draft policy statement, invited further comment, and stated that the Commission would not apply the draft policy statement before the Commission issues final guidance. 178 FERC ¶ 61,197 (2022). Action remains pending.

The Commission now seeks comments on the Secretary of Energy's proposal that the Commission terminate the proceedings in Docket Nos. PL18–1–000 and PL18–1–001. The deadline for filing comments is September 9, 2025, 5:00 p.m. Eastern Time.

Any filing responding to this Notice must (1) bear in all capital letters the title "COMMENTS"; (2) set forth in the heading the name of the proceeding and the docket number; (3) furnish the name, address, and telephone number of the person commenting; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005.

The Commission strongly encourages electronic filing. Please file comments, using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier

¹ For tracking purposes under the National Environmental Policy Act, the unique identification number for documents relating to this environmental review is EAXX–019–20–000–1729248205.

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 the docket numbers PL18–1–000 and PL18–1–001. Comments emailed to Commission staff are not considered part of the Commission record.

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, community organizations, Tribal members, and others access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as comments, the public is encouraged to contact OPP at (202) 502–6595 or OPP@ferc.gov.

Dated: September 2, 2025.

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2025–17044 Filed 9–4–25; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ25–9–000]

Orlando Utilities Commission; Notice of Petition for Declaratory Order

Take notice that on July 16, 2025, pursuant to the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 35.28, Orlando Utilities Commission (OUC), submitted a Petition for Declaratory Order and revisions to its non-jurisdictional Open Access Transmission Tariff to be effective October 1, 2025.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Petitioner.

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.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the “eFiling” link at <http://www.ferc.gov>. Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

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, community organizations, 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.

Comment Date: 5:00 p.m. Eastern Time on September 9, 2025.

Dated: September 2, 2025.

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2025–17046 Filed 9–4–25; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6276–042]

Brooks Energy, LLC; Notice of Application for Surrender of Exemption Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- a. *Application Type:* Surrender of Exemption.
- b. *Project No:* 6276–042.
- c. *Date Filed:* August 5, 2025.
- d. *Applicant:* Brooks Energy, LLC.
- e. *Name of Project:* Lockville Dam Hydroelectric Project.
- f. *Location:* The project is located on the Deep River at a point where it forms the border between Chatham and Lee counties, North Carolina. The project does not occupy any federal lands.
- g. *Filed Pursuant to:* 18 CFR 4.102.
- h. *Applicant Contact:* William Dean Brooks, Manager, Owner, and Registered Agent, 1195 Beal Road, Goldston, NC 27252, ncge08@gmail.com.
- i. *FERC Contact:* Kelly Fitzpatrick, (202) 502–8435, kelly.fitzpatrick@ferc.gov
- j. *Cooperating agencies:* With this notice, the Commission is inviting federal, state, local, and Tribal agencies with jurisdiction and/or special expertise with respect to environmental issues affected by the proposal, that wish to cooperate in the preparation of any environmental document, if applicable, to follow the instructions for filing such requests described in item k below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of any environmental document cannot also intervene. See 94 FERC ¶ 61,076 (2001).
- k. *Deadline for filing comments, motions to intervene, and protests:* October 12, 2025 at 5:00 p.m. Eastern Time.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866)

208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: 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, MD 20852. The first page of any filing should include the docket number P–6276–042. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Request:* The applicant proposes to surrender the project exemption. The generating equipment has not operated since 2020 when hydropower generation was suspended due to necessary maintenance to the trash racks. The dam was breached in 2023. No modifications to the existing dam, buildings, or structures and no ground disturbing activities are proposed. The applicant has already disabled the interconnection switches within the powerhouse. The applicant proposes to open the interconnection switches which tie the generation to the utility delivery point, remove the generation breakers from the panel in the vicinity of the interconnection point, and remove the wiring connecting the generation to the utility interconnection point. There will be no work on the dam or spillway. After the surrender of the exemption, the dam will be removed by American Rivers and Resource Environmental Solutions as part of American Rivers' Watershed Restoration of the Upper Cape Fear and Lower Deep Rivers project, with funding and collaborative support from the National Oceanic and Atmospheric Administration and U.S. Fish and Wildlife Service.

m. *Locations of the Application:* This filing may be viewed on the Commission's website at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number

field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email FERCOnlineSupport@ferc.gov, for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

q. 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: September 2, 2025.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2025–17042 Filed 9–4–25; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–12714–01–ORD]

Ambient Air Monitoring Reference and Equivalent Methods; Designation of Three New Equivalent Methods and One New Reference Method

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of the designation of three new equivalent methods and one new reference method for monitoring ambient air quality.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has designated one new equivalent method for measuring SO₂, one new reference method for measuring NO₂, one new equivalent method for measuring concentrations of PM_{2.5}, and one new equivalent method for measuring PM_{10–2.5} in ambient air.

FOR FURTHER INFORMATION CONTACT: Cortina Johnson, Air Quality Assessment Division, Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711. Phone: 919–541–1143. Email: johnson.cortina@epa.gov.

SUPPLEMENTARY INFORMATION: In accordance with regulations at 40 CFR part 53, the EPA evaluates various methods for monitoring the concentrations of those ambient air pollutants for which EPA has established National Ambient Air Quality Standards (NAAQS) as set forth in 40 CFR part 50. Monitoring methods that are determined to meet specific requirements for adequacy are designated by the EPA as either reference or equivalent methods (as applicable), thereby permitting their use under 40 CFR part 58 by States and other agencies for determining compliance with the NAAQS. A list of all reference or equivalent methods that have been previously designated by EPA may be found at <http://www.epa.gov/ttn/amt/criteria.html>.

The EPA hereby announces the designation of one new equivalent method for measuring concentrations of SO₂ in ambient air. This designation is made under the provisions of 40 CFR part 53, as amended on March 6, 2024 (89 FR 16202–16406).

This new equivalent method for SO₂ is an automated method (monitor) utilizing the measurement principle based on UV fluorescence. This newly designated equivalent method is identified as follows:

EQSA-0225-267, "Vasthi Instruments Model Vair-9001 SO₂ Analyzer," UV fluorescence analyzer operated in a range of 0–0.5 ppm, with 0.5 µm, 47 mm diameter Teflon® filter installed, operated at temperatures between 20 °C and 30 °C, with temperature and pressure compensation, at a nominal sampling flow rate of 800 cc/min, using a 5 minute averaging time, with either 105VAC–125VAC or 200VAC–240VAC input power options, 280-watt power consumption, equipped with 7 inch LCD touch screen display, and operated according to the Vasthi Instruments Model Vair-9001 Sulphur Dioxide Gas Analyzer User's Instruction Manual.

This application for an equivalent method determination for this SO₂ method was received by the Office of Research and Development on September 30, 2024. This monitor is commercially available from the applicant, Vasthi Instruments Pvt. Ltd, Phase IV, Auto Nagar, Guntur, Andhra Pradesh, India.

The EPA hereby announces the designation of one new reference method for measuring concentrations of NO₂ in ambient air. This designation is made under the provisions of 40 CFR part 53, as amended on March 6, 2024 (89 FR 16202–16406).

This new reference method for NO₂ is an automated method (monitor) utilizing the measurement principle based on chemiluminescence. This newly designated reference method is identified as follows:

RFNA-0325-268, "Vasthi Instruments Model Vair-9002 NO₂ Analyzer," Chemiluminescent analyzer operated in a range of 0–0.5 ppm, with 0.5 µm, 47 mm diameter Teflon® filter installed, operated at temperatures between 20 °C and 30 °C, with temperature and pressure compensation, at a nominal sampling flow rate of 700 cc/min, using a 5 minute averaging time, with 220VAC–230VAC input power, 360-watt power consumption, equipped with 7 inch LCD touch screen display, and operated according to the Vasthi Instruments Model Vair-9002 Nitrogen Oxide Gas Analyzer User's Instruction Manual.

This application for a reference method determination for this NO₂ method was received by the Office of Research and Development on October 4th, 2024. This monitor is commercially available from the applicant, Vasthi

Instruments Pvt. Ltd, Phase IV, Auto Nagar, Guntur, Andhra Pradesh, India.

The EPA hereby announces the designation of one new equivalent method for measuring concentrations of PM_{2.5} in ambient air. This designation is made under the provisions of 40 CFR part 53, as amended on March 6, 2024 (89 FR 16202–16406).

This new equivalent method for PM_{2.5} is an automated method (monitor) utilizing the measurement principle based on beta attenuation analysis. This newly designated equivalent method is identified as follows:

EQPM-0325-269, "Focused Photonics Inc. BPM-200 PM_{2.5} Monitor" operated in the following concentration ranges: 0–1 mg/m³, 0–2 mg/m³, 0–5 mg/m³, or 0–10 mg/m³, analyzing ambient conditions temperatures between –30 °C to 50 °C while the monitor can operate in a conditioned space between 0 °C to 50 °C. The unit is operated for 24-hour average measurements, with the FPI P/N 1010500687 EPA PM₁₀ inlet, with a BGI Very Sharp Cut Cyclone (VSCC™) particle size separator or Tisch TE-PM_{2.5}C cyclone, glass fiber filter tape with axial inner diameter of 41mm (1360700223), the 220VAC 50Hz power supply, the FPI P/N 1010500688 Atmospheric Temperature Unit, the 1010500920 Air heating unit for maintaining moisture at about 35% and no ΔT control, the FPI P/N 1360600229 filter, the FPI P/N 1010500303 internal calibration device, 1041000215 Main Board, 1010503229 Interface board display. Instrument must be operated in accordance with the appropriate instrument manual and with software (firmware) version AQMSPlus.P005.V01A.US001. This designation applies to PM_{2.5} measurements only.

This application for an equivalent method determination for this PM_{2.5} method was received by the Office of Research and Development on October 3, 2023. This monitor is commercially available from the applicant, Focused Photonics Inc. (FPI) 760 Bin'an Rd., Binjiang District Hangzhou, Zhejiang, China.

The EPA hereby announces the designation of one new equivalent method for measuring concentrations of PM_{10–2.5} in ambient air. This designation is made under the provisions of 40 CFR part 53, as amended on March 6, 2024 (89 FR 16202–16406).

This new equivalent method for PM_{10–2.5} is an automated method (monitor) utilizing the measurement principle based on beta attenuation analysis. This newly designated equivalent method is identified as follows:

EQPM-0325-270, "Focused Photonics Inc. BPM-200 Monitor" for the determination of coarse particulate matter as PM_{10–2.5}, consisting of a pair of Focused Photonics Inc. BPM-200 monitors with one being a BPM-200 PM_{2.5} monitor under designation EQPM-0325-269 and the other being a BPM-200 p.m.₁₀ monitor under designation EQPM-0121-258 and operated in accordance with the associated BPM-200 instruction manuals. This designation applies to PM_{10–2.5} measurements only.

This application for an equivalent method determination for this PM_{2.5} method was received by the Office of Research and Development on March 18, 2025. This monitor is commercially available from the applicant, Focused Photonics Inc. (FPI) 760 Bin'an Rd., Binjiang District Hangzhou, Zhejiang, China.

Representative test monitors were tested in accordance with the applicable test procedures specified in 40 CFR part 53, as amended on March 6, 2024. After reviewing the results of those tests and other information submitted by the applicant, EPA has determined, in accordance with 40 CFR part 53, that these methods should be designated as equivalent and reference methods.

As designated equivalent and reference methods, these methods are acceptable for use by states and other air monitoring agencies under the requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, these methods must be used in strict accordance with the operation or instruction manual associated with these methods and subject to any specifications and limitations (e.g., configuration or operational settings) specified in the designated method descriptions (see the identification of the methods above).

Use of these methods should also be in general accordance with the guidance and recommendations of applicable sections of the "Quality Assurance Handbook for Air Pollution Measurement Systems, Volume I," EPA/600/R-94/038a and "Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II, Ambient Air Quality Monitoring Program," EPA-454/B-13-003, (both available at <http://www.epa.gov/ttn/amtic/qalist.html>). Provisions concerning modification of such methods by users are specified under Section 2.8 (Modifications of Methods by Users) of appendix C to 40 CFR part 58.

Consistent or repeated noncompliance with any of these conditions should be reported to: Director, Air Methods and

Characterization Division (MD-D205-03), Center for Environmental Measurement and Modeling, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of these methods are intended to assist the States in establishing and operating their air quality surveillance systems under 40 CFR part 58. Questions concerning the commercial availability or technical aspects of these methods should be directed to the applicant.

Gayle Hagler,

Acting Director, Center for Environmental Measurement and Modeling.

[FR Doc. 2025-17079 Filed 9-4-25; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP-OFA-194]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202-993-3272 or <https://www.epa.gov/nepa>. Weekly receipt of Environmental Impact Statements (EIS) Filed August 25, 2025 10 a.m. EST Through August 29, 2025 10 a.m. EST Pursuant to CEQ Guidance on 42 U.S.C. 4332.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: <https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search>.

EIS No. 20250127, Draft, BLM, NV, Silver Peak Lithium Operation Expansion Project, Comment Period Ends: 10/06/2025, Contact: Erik Bray 775-861-6451.

EIS No. 20250128, Final, DOE, PA, ADOPTION—GENERIC—License Renewal of Nuclear Plants Supplement 37 NUREG-1437 Regarding Three Mile Island Nuclear Station Unit 1 Dauphin County PA, Contact: Alicia Williamson 202-586-7272.

The Department of Energy (DOE) has adopted the Nuclear Regulatory Commission's Final EIS No. 20090218 filed 06/26/2009 with the Environmental Protection Agency.

Amended Notice

EIS No. 20250068, Draft, USACE, LA, 2025 Draft GRR SEIS Mississippi

River, Baton Rouge to the Gulf of Mexico Mississippi River-Gulf Outlet, Louisiana, New Industrial Canal Lock and Connecting Channels Project, Comment Period Ends: 09/12/2025, Contact: Mark H. Lahare 504-862-1344.

Revision to FR Notice Published 07/03/2025; Extending the Comment Period from 09/02/2025 to 09/12/2025.

Dated: September 2, 2025.

Nancy Abrams,

Associate Director, Office of Federal Activities.

[FR Doc. 2025-17034 Filed 9-4-25; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-12582-01-R3]

Delegation of Authority to the State of West Virginia To Implement and Enforce Additional or Revised National Emission Standards for Hazardous Air Pollutants Standards and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation of authority.

SUMMARY: On January 21, 2025, the Environmental Protection Agency (EPA) sent the State of West Virginia (West Virginia) a letter acknowledging that West Virginia's delegation of authority to implement and enforce the National Emissions Standards for Hazardous Air Pollutants (NESHAP) and New Source Performance Standards (NSPS) had been updated, as provided for under previously approved delegation mechanisms. To inform regulated facilities and the public, EPA is making available a copy of EPA's letter to West Virginia through this notice.

DATES: On January 21, 2025, EPA sent West Virginia a letter acknowledging that West Virginia's delegation of authority to implement and enforce Federal NESHAP and NSPS had been updated.

ADDRESSES: Copies of documents pertaining to this action are available for public inspection during normal business hours at the Air and Radiation Division, U.S. Environmental Protection Agency, Region III, Four Penn Center, 1600 John F Kennedy Boulevard, Philadelphia, Pennsylvania 19103. Copies of West Virginia's submittal are also available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601

57th Street SE, Charleston, West Virginia 25304.

FOR FURTHER INFORMATION CONTACT:

Casey Diaz, Permits Branch (3AD10), Air and Radiation Division, U.S. Environmental Protection Agency, Region III, Four Penn Center, 1600 John F Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2167. Ms. Diaz can also be reached via electronic mail at diaz.casey@epa.gov.

SUPPLEMENTARY INFORMATION: On July 1, 2024, West Virginia notified EPA that West Virginia had updated its incorporation by reference of Federal NESHAP and NSPS to include many such standards as found in Title 40 of the Code of Federal Regulations (CFR), parts 60, 61, and 63 as of June 1, 2023. On January 21, 2025, EPA sent West Virginia a letter acknowledging that effective June 1, 2024, West Virginia has the authority to implement and enforce the NESHAP and NSPS as specified by West Virginia in its notices to EPA, as provided for under previously approved automatic delegation mechanisms (49 FR 48692, 67 FR 15486, EPA delegation letters dated March 19, 2001 and January 8, 2002). All notifications, applications, reports, and other correspondence required pursuant to the delegated NESHAP and NSPS must be submitted to both EPA Region III and to the West Virginia Department of Environmental Protection, unless the delegated standard specifically provides that such submittals may be sent to EPA or a delegated State. In such cases, the submittals should be sent only to the West Virginia Department of Environmental Protection. A copy of EPA's January 21, 2025 letter to West Virginia follows:

Ms. Laura M. Crowder, Director
Division of Air Quality
West Virginia Department of Environmental Protection
601 57th Street SE
Charleston, West Virginia 25304
via email at laura.m.crowder@wv.gov
Dear Ms. Crowder:

This letter acknowledges your letter dated July 1, 2024 in which the West Virginia Department of Environmental Protection (WVDEP) Division of Air Quality (DAQ) informed the United States Environmental Protection Agency (EPA) that West Virginia had updated its incorporation by reference of federal National Emissions Standards for Hazardous Air Pollutants (NESHAP) and New Source Performance Standards (NSPS) to include many such standards as found in 40 CFR parts 60, 61, and 63 as of June 1, 2023. WVDEP DAQ noted in the letter that it understood it was automatically delegated the authority to implement these standards. WVDEP DAQ stated its intent to enforce the standards in conformance with the terms of

EPA's previous delegations of authority pursuant to the EPA final rules published at 49 FR 48692 and 67 FR 15486, and EPA delegation letters.

In two rulemakings, 49 FR 48692 (December 14, 1984) and 67 FR 15486 (April 2, 2002), EPA established the basis for delegation to West Virginia of specified federal standards at 40 CFR parts 60, 61, and 63. Subsequently, in a letter dated March 19, 2001 to WVDEP Director Michael Callaghan, EPA delegated to the State of West Virginia the authority to implement and enforce various federal NESHAP found in 40 CFR part 63. In another letter to Director Callaghan dated January 8, 2002, EPA delegated to the State of West Virginia the authority to implement and enforce various federal NESHAP found in 40 CFR part 61 and NSPS found in 40 CFR part 60. In those letters, EPA also established that future Part 60, Part 61, and Part 63 standards would be automatically delegated to West Virginia subject to the conditions set forth in those letters. Those rulemakings and letters continue to control the conditions of delegation of future standards and their terms should be consulted for the specific conditions that apply to each regulatory program. However, in general terms, for automatic delegation to take effect, the letters establish conditions that can be paraphrased as requiring: legal adoption of the standards; restrictions on the kinds of wording changes West Virginia may make to the federal standards when adopting them; and specific notification from West Virginia to EPA when a standard has been adopted.

WVDEP DAQ provided copies of the revised West Virginia Legislative Rules which specify the NESHAP and NSPS regulations West Virginia has adopted by reference. These revised Legislative Rules are entitled 45 CSR 34—"Emission Standards for Hazardous Air Pollutants," and 45 CSR 16—"Standards of Performance for New Stationary Sources." These revised Rules have an effective date of June 1, 2024. EPA has reviewed the revised rules and determined that they meet the conditions for automatic delegation as established by EPA in its prior letters and rulemakings.

Accordingly, EPA acknowledges that West Virginia now has the authority, as provided for under the terms of EPA's previous delegation actions, to implement and enforce the NESHAP and NSPS standards which West Virginia adopted by reference in West Virginia's revised Legislative Rules 45 CSR 34 and 45 CSR 16, effective on June 1, 2024.

If you have any questions, please contact me or Ms. Mary Cate Opila, Chief, Permits Branch, at 215-814-2041.

Sincerely,
Cristina Fernández, Director
Air and Radiation Division
Enclosures

March 19, 2001 letter to WVDEP Director
Michael Callaghan

January 8, 2002 letter to WVDEP Director
Michael Callaghan

cc: Renu Chakrabarty (via email at
renu.m.chakrabarty@wv.gov)

Mike Egnor (via email at michael.egnor@wv.gov)

This notice acknowledges the updates of West Virginia's delegation of authority to implement and enforce NESHAP and NSPS.

Michael Dunn,

*Acting Director, Air and Radiation Division,
Region III.*

[FR Doc. 2025-17065 Filed 9-4-25; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS25-10]

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), and its Rules of Operation, 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 Zoom. 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: September 16, 2025.

Time: 10:00 a.m. ET.

Status: Open.

Reports

Acting Chair

Acting Executive Director

Grants Director

Delegated State Compliance Reviews

Notation Votes

Discussion and Action Items

Approval of the June 18, 2025

Quarterly Meeting Minutes

Fiscal Year 2026 ASC Budget

Proposal

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.

Loretta Schuster,

Management & Program Analyst.

[FR Doc. 2025-17021 Filed 9-4-25; 8:45 am]

BILLING CODE 6700-01-P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10 a.m., Tuesday,
September 16, 2025.

PLACE: The Richard V. Backley Hearing Room, Room 511, 1331 Pennsylvania Avenue NW, Suite 504 North, Washington, DC 20004 (enter from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor v. Cactus Canyon Quarries, Inc.*, Docket No. CENT 2022-0010 (Issues include: (1) whether the Commission's Chief Judge abused his discretion when he granted the Secretary of Labor's motion for an extension of time to file a penalty petition; (2) whether Cactus Canyon's Fairland Plant is a "mine" subject to the jurisdiction of the Secretary's Mine Safety and Health Administration pursuant to section 3(h)(1)(c) of the Mine Act, 30 U.S.C. 802(h)(1)(c); and (3) whether the Judge erred in affirming a violation of the safety standard at 30 CFR 56.12019).

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION:

Rory P. Smith (202) 525-8649/(202) 708-9300 for TDD Relay/1-800-877-8339 for toll free.

Phone Number for Listening to Meeting: 1-(866) 236-7472. Passcode: 678-100.

(Authority: 5 U.S.C. 552b.)

Dated: September 3, 2025.

Rory P. Smith,

Attorney-Advisor.

[FR Doc. 2025-17072 Filed 9-3-25; 4:15 pm]

BILLING CODE 6735-01-P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**Sunshine Act Meetings**

TIME AND DATE: 10 a.m., Wednesday, October 15, 2025.

PLACE: The Richard V. Backley Hearing Room, Room 511, 1331 Pennsylvania Avenue NW, Suite 504 North, Washington, DC 20004 (enter from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor v. Cargill Inc.*, Docket No. LAKE 2022–0285 and LAKE 2023–0013 (Issues include: (1) whether substantial evidence supports the Judge’s determination that the operator did not violate the mandatory safety standard at 30 CFR 57.11051(a); and (2) whether the Judge erred in concluding that, even if a violation of section 57.11051(a) had been established, a lack of notice did not support the assessment of a penalty).

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Rory P. Smith (202) 525–8649/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Phone Number for Listening to Meeting: 1 (866) 236–7472. Passcode: 678–100.

(Authority: 5 U.S.C. 552b.)

Dated: September 3, 2025.

Rory P. Smith,
Attorney-Advisor.

[FR Doc. 2025–17085 Filed 9–3–25; 4:15 pm]

BILLING CODE 6735–01–P

owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board’s Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than October 6, 2025.

A. Federal Reserve Bank of Dallas (Lindsey Wieck, Director, Mergers & Acquisitions) 2200 North Pearl Street, Dallas, Texas 75201–2272. Comments can also be sent electronically to Comments.applications@dal.frb.org:
1. *Prosperity Bancshares, Inc., Houston, Texas*; to merge with American Bank Holding Corporation, and thereby indirectly acquire American Bank, National Association, both of Corpus Christi, Texas.

B. Federal Reserve Bank of Philadelphia (William Spaniel, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521. Comments can also be sent electronically to Comments.applications@phil.frb.org:

1. *Norwood Financial Corp., Honesdale, Pennsylvania*; to acquire PB Bankshares, Inc., and thereby indirectly acquire Presence Bank, both of Coatesville, Pennsylvania.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,
Associate Secretary of the Board.

[FR Doc. 2025–17062 Filed 9–4–25; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Medicare & Medicaid Services**

[Document Identifier: CMS–10861]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS’ intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency’s functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by November 4, 2025.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to <http://www.regulations.gov>. Follow the instructions for “Comment or Submission” or “More Search Options” to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

FEDERAL RESERVE SYSTEM**Formations of, Acquisitions by, and Mergers of Bank Holding Companies**

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing>.

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786-4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS-10861 Medicare Health Outcomes Survey Field Test

Under the PRA (44 U.S.C. 3501-3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collections

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Health Outcomes Survey Field Test; *Use:* CMS is required to collect and report quality and performance of Medicare health plans under provisions of the Social Security Act. Specifically, Section 1851(d) of the Act (Providing Information to Promote Informed Choice) requires CMS to collect data for MA plan comparison, including data on enrollee satisfaction and health outcomes, and report this information and other plan quality and performance indicators to Medicare beneficiaries prior to the annual enrollment period.⁶ The HOS meets the requirement for collecting and publicly reporting quality

and other performance indicators, as HOS survey measures are incorporated into the Medicare Part C Star Ratings that are published each fall for consumers on the Medicare website.

The data collected in this field test will be used by CMS to inform decisions on possible changes to HOS content and survey administration procedures. The items in the questionnaire reflect current health priorities and would provide CMS with data to study new longitudinal PROMs, cross-sectional measures, and enhancements to existing HOS measures for MA plans to use as a focus of their quality improvement efforts. Potential new measures derived from new HOS items will go through the Measures Under Consideration (MUC) process and rulemaking before they are added to Star Ratings. *Form Number:* CMS-10861 (OMB control number: 0938-1464); *Frequency:* Once; *Affected Public:* Individuals and Households; *Number of Respondents:* 50; *Number of Responses:* 6,800; *Total Annual Hours:* 1,700. (For questions regarding this collection, contact Alyssa Rosen at (410) 786-8559 or Alyssa.rosen@cms.hhs.gov).

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2025-16983 Filed 9-4-25; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS-10305]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments

regarding the burden estimate 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 on the collection(s) of information must be received by the OMB desk officer by October 6, 2025.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing>.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786-4669.

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. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of*

Information Collection: Medicare Part C and Part D Data Validation (42 CFR 422.516(g) and 423.514(j)); **Use:** This “Medicare Part C and Part D Data Validation (42 CFR 422.516(g) and 423.514(j))” forms will be used by Data Validation Contractors (DVCs) to evaluate the quality of data submitted by plans for the Medicare Parts C and D Reporting Requirements. The Centers for Medicare and Medicaid Services (CMS) established reporting requirements for Medicare Part C and Part D sponsoring organizations (Medicare Advantage Organizations [MAOs], Cost Plans, and Medicare Part D sponsors) under the authority described in 42 CFR 422.516(a) and 423.514(a), respectively. Under these reporting requirements, each sponsoring organization must submit Medicare Part C, Medicare Part D, or Medicare Part C and Part D data; **Form Number:** CMS–10305 (OMB control number: 0938–1115); **Frequency:** Yearly; **Affected Public:** Businesses or other for-profits; **Number of Respondents:** 840; **Total Annual Responses:** 840; **Total Annual Hours:** 10,920. (For policy questions regarding this collection contact Bindu Aryal at 667–414–0889 or bindu.aryal@cms.hhs.gov.)

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2025–17019 Filed 9–4–25; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4211–FN]

Medicare Program; Approved Renewal of Deeming Authority of the Utilization Review Accreditation Commission (URAC) for Medicare Advantage Health Maintenance Organizations and Local Preferred Provider Organizations

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final notice.

SUMMARY: This final notice announces the Centers for Medicare & Medicaid Services decision to renew the Utilization Review Accreditation Commission’s application for Medicare Advantage “deeming authority” of Health Maintenance Organizations and Preferred Provider Organizations for a term of 6 years.

DATES:

Effective Date: The notice is effective on October 13, 2025.

Applicability Date: The approval communicated in this notice is applicable July 10, 2025 through July 10, 2031.

FOR FURTHER INFORMATION CONTACT:

Dawn Johnson Scott, (410) 786–3159 or Katie Schenck, (410) 786–0628.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services through a Medicare Advantage (MA) organization that contracts with the Center for Medicare & Medicaid Services (CMS). The regulations specifying the Medicare requirements that must be met for a Medicare Advantage organization (MAO) to enter into a contract with CMS are located at 42 CFR 422.503(b). These regulations implement Part C of Title XVIII of the Social Security Act (the Act), which specifies the services that an MAO must provide and the requirements that the organization must meet to be an MA contractor. Generally, for an entity to be an MAO, the organization must be licensed under State law, or otherwise authorized to operate under State law, as a risk bearing organization, as set forth in 42 CFR 422.400.

As a method of assuring compliance with certain Medicare requirements, an MAO may choose to become accredited by a CMS-approved accreditation organization (AO). By virtue of its accreditation by a CMS-approved AO, the MAO may be “deemed” compliant in one or more requirements set forth in section 1852(e)(4)(B) of the Act. For CMS to recognize an AO’s accreditation program as establishing an MA plan’s compliance with our requirements, the AO must, as set forth in § 422.157(a)(1), prove to CMS that their standards are at least as stringent as Medicare requirements for MAOs. MAOs that are licensed as health maintenance organizations (HMOs) or preferred provider organizations (PPOs) and are accredited by an approved AO may receive, at their request, “deemed” status for our requirements for the deemable areas. These areas include Quality Improvement, Anti-Discrimination, Confidentiality and Accuracy of Enrollee Records, Information on Advance Directives, and Provider Participation Rules.

At this time, we do not recognize accreditation of the following areas: Access to Services set out in § 422.156(b)(3) or the Part D areas of review set out at § 423.165(b) as part of the MA deeming program. AOs that

apply for MA deeming authority are generally recognized by the health care industry as entities that accredit HMOs and PPOs. As specified at § 422.157(b)(2)(ii), the term for which an AO may be approved by CMS may not exceed 6 years. For continuing approval, the AO must apply to CMS to renew their deeming authority for a subsequent approval period.

The Utilization Review Accreditation Commission (URAC) was previously approved by CMS as an accreditation organization for MA deeming of HMOs and PPOs for a term from May 31, 2019 to June 2, 2025. On March 14, 2025, URAC submitted its initial application to renew its deeming authority, including materials requested by us that included information intended to address the requirements set out in regulations at §§ 422.158(a) and (b) that are prerequisites for receiving approval of its accreditation program.

II. Provisions of the Proposed Notice

In the May 16, 2025 **Federal Register** (90 FR 21041), we published a proposed notice announcing URAC’s request to renew its Medicare Advantage deeming authority for HMOs and PPOs. In the May 16, 2025 proposed notice, we detailed our evaluation criteria. Under section 1852(e)(4) of the Act and § 422.158 (Federal review of accrediting organizations), we conducted a review of URAC’s application in accordance with the criteria specified by our regulations which include, but are not limited to the following:

- The types of MA plans that it would review as part of its accreditation process.

- A detailed comparison of URAC’s accreditation requirements and standards with the Medicare requirements (for example, a crosswalk) in the following five deemable areas: (1) Quality Improvement; (2) Anti-Discrimination; (3) Confidentiality and Accuracy of Enrollee Records; (4) Information on Advance Directives; and (5) Provider Participation Rules.

- Detailed information about the organization’s survey process, including—

- ++ Frequency of surveys and whether surveys are announced or unannounced.
- ++ Copies of survey forms, and guidelines and instructions to surveyors.

- ++ Descriptions of—

- The survey review process and the accreditation status decision making process.

- The procedures used to notify accredited MAOs of deficiencies and to monitor the correction of those deficiencies.

—The procedures used to enforce compliance with accreditation requirements.

- Detailed information about the individuals who perform surveys for the AO, including—

- ++ The size and composition of accreditation survey teams for each type of plan reviewed as part of the accreditation process.

- ++ The education and experience requirements surveyors must meet.

- ++ The content and frequency of the in-service training provided to survey personnel.

- ++ The evaluation systems used to monitor the performance of individual surveyors and survey teams.

- ++ The organization's policies and practice for participation, in surveys or in the accreditation decision process, by an individual who is professionally or financially affiliated with the entity being surveyed.

- A description of the organization's data management and analysis system for its surveys and accreditation decisions, including the kinds of reports, tables, and other displays generated by that system.

- A description of the organization's procedures for responding to and investigating complaints against accredited organizations, including policies and procedures regarding coordination of these activities with appropriate licensing bodies and ombudsmen programs.

- A description of the organization's policies and procedures for the withholding or removal of accreditation for failure to meet the AO's standards or requirements, and other actions the organization takes in response to noncompliance with its standards and requirements.

- A description of all types (for example, full, partial) and categories (for example, provisional, conditional, temporary) of accreditation offered by the organization, the duration of each type and category of accreditation and a statement identifying the types and categories that would serve as a basis for accreditation if CMS approve the AO.

- A list of all currently accredited MAOs and the type, category, and expiration date of the accreditation held by each of them.

- A list of all full and partial accreditation surveys scheduled to be performed by the AO.

- The name and address of each person with an ownership or control interest in the AO.

- CMS also considered URAC's past performance in the deeming program and results of recent deeming validation

reviews or equivalency reviews conducted as part of continuing Federal oversight of the deeming program under § 422.157(d).

In accordance with section 1865(a)(3)(A) of the Act, the May 16, 2025 proposed notice solicited public comments regarding whether URAC's requirements met or exceeded the Medicare conditions of participation as an accrediting organization for MA HMOs and PPOs.

III. Analysis of and Responses to Public Comments on the Proposed Notice

We received no public comments on the proposed notice.

IV. Provisions of the Final Notice

A. Differences Between URAC's Standards and Requirements for Accreditation and Medicare's Conditions and Survey Requirements

We compared the standards and survey process contained in URAC's application with the Medicare conditions for accreditation. Our review and evaluation of URAC's application for our continued approval were conducted as described in section II. of this final notice, and yielded the following:

- Under § 422.158(a)(2), URAC submitted a crosswalk and standards that clearly cross-walked to our regulations, and any applicable oversight protocols, in each of five deemable areas: (1) Quality Improvement; (2) Anti-discrimination; (3) Confidentiality and Accuracy of Enrollee Records; (4) Information on Advance Directives; and (5) Provider Participation rules.

- URAC submitted additional information and/or documentation regarding its survey process that was intended to address our regulations at §§ 422.158(a)(1) through (11), and (b)(1) through (3).

B. Term of Approval

Based on the review and observations described in section II. of this final notice, we have determined that URAC's accreditation program requirements meet or exceed our requirements. Therefore, we approved URAC as a national accreditation organization with deeming authority for MA HMOs and PPOs on July 10, 2025 for a term of approval to continue through July 10, 2031. We informed URAC of their renewal via a letter dated July 10, 2025.

V. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or

third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Mehmet Oz, having reviewed and approved this document, authorizes Trenesha Fultz-Mimms, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Trenesha Fultz-Mimms,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2025-17037 Filed 9-4-25; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2025-N-0734]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Manufactured Food Regulatory Program Standards

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by October 6, 2025.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting "Currently under Review—Open for Public Comments" or by using the search function. The OMB control number for this information collection is 0910-0601. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A-12M, 11601 Landsdown St., North Bethesda, MD

20852, 301–796–8867, PRAStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Manufactured Food Regulatory Program Standards

OMB Control Number 0910–0601—Revision

This information collection helps implement FDA's "Manufactured Food Regulatory Program Standards" (MFRPS). Section 1012 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 399c) authorizes FDA to administer training and education programs for employees of State, local, Territorial, and Tribal food safety authorities relating to regulatory programs. Also, under section 205 of the FDA Food Safety Modernization Act (codified in 21 U.S.C. 2224), FDA, together with the Centers for Disease Control and Prevention, is directed to enhance foodborne illness surveillance to improve the collection, analysis, reporting, and usefulness of data on foodborne illnesses. As part of this effort, we have initiated programs that include developing and instituting regulatory standards intended to reduce the risk of foodborne illness through coordinated efforts with our strategic partners. Regulatory program standards establish a uniform foundation for the design and management of State, local, Tribal, and Territorial programs that have the responsibility for regulating human and animal food. Partnering with other regulatory officials also helps maximize limited resources in administering FDA regulations pertaining to manufacturing/processing,

packing, or holding of food for consumption in the United States.

The MFRPS are the result of external collaboration and coordination with the Association of Food and Drug Officials (AFDO) and State manufactured food regulatory programs. FDA, AFDO, and states worked collaboratively to develop the content of the MFRPS. A copy of the standards and accompanying worksheets and forms is available in the **Federal Register** docket for this notice. We recommend that State manufactured food regulatory programs use these program standards as the framework to design and manage their manufactured food regulatory programs. The States that assisted in the development of MFRPS were representative of the 42 State programs enrolled currently conducting manufactured food inspections via funding from a cooperative agreement grant entitled "RFA–FD–18–001: Flexible Funding Model—Infrastructure Development and Maintenance for State Manufactured Food Regulatory Programs (U18)." For more information on this cooperative agreement, visit our website at: <https://www.fda.gov/food/regulatory-program-standards-food/manufactured-food-regulatory-program-standards-mfrps>.

The regulatory program standards provide a uniform and consistent approach to manufactured food regulation in the United States. States may implement the program standards on a voluntary basis. The MFRPS is the framework that each participating State should use to design, manage, and improve its manufactured food regulatory program. The MFRPS provides for the following standards: (1) regulatory foundation; (2) training program; (3) inspection program; (4) inspection audit program; (5) food-related illness, outbreak, and hazards response; (6) compliance and

enforcement program; (7) industry and community relations; (8) program resources; (9) program assessment; and (10) laboratory support. For more information, including access to the program standards and appendices, visit our website at: <https://www.fda.gov/federal-state-local-tribal-and-territorial-officials/integrated-food-safety-system-ifss-programs-and-initiatives/regulatory-program-standards>.

The MFRPS includes appendices to help the State program assess and meet the program elements in the standard. State programs are not obligated to use the appendices provided with the standards. Other manual or automated forms, worksheets, and templates may be used if the pertinent data elements are present. Records and other documents specified in the standards must be current and fit for use by the State program and must be available to verify the implementation of each standard. As set forth in the standards, the State program is expected to develop or update a strategic improvement plan that aids the State program in achieving and maintaining conformance with the program elements of each standard and addresses any necessary corrective actions.

Description of Respondents: Respondents are State Departments of Agriculture or Health regulatory officials who enroll in the MFRPS. We estimate 42 respondents to the information collection based on current participation.

In the **Federal Register** of June 16, 2025 (90 FR 25309), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN^{1 2}

Type of respondent; information collection activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
State Governments; Maintenance of data records consistent with the MFRPS	42	11	462	88.09	40,698

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

² Totals may not sum due to rounding.

One State program is no longer participating in the MFRPS and two enrolled state agencies have been reorganized into one state agency since our last evaluation. We have consolidated our estimates from the previous request for renewal of this information collection to account for

burden attributable to reporting tasks in the recordkeeping table. This consolidation of reporting and recordkeeping hours results in an increase in the average burden per recordkeeping. Due to the decrease in respondents, the total estimated burden

for this collection has decreased by 1,938 hours.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2025–17056 Filed 9–4–25; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Health Resources and Services Administration****Maternal Health Research Collaborative for Minority-Serving Institutions Coordinating Center and Linking the Boston Birth Cohort and Pregnancy to Health Databases: A Longitudinal Cohort of Mother-Child Dyads**

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice of supplemental funding.

SUMMARY: HRSA administers the Maternal Health Research Collaborative for Minority-Serving Institutions (MH–RC–MSI) Coordinating Center (CC) grant using funding made available by the U.S. Department of Health and Human Services' Assistant Secretary for Planning and Evaluation from the Patient-Centered Outcomes Research Trust Fund. This Fund supports this multi-agency data linkage project to build further data capacity. The recipient of the MH–RC–MSI CC, Morgan State University, does not need to submit special documentation to establish eligibility. If this exception is not granted, Morgan State University will not have the funds to test the data linkage.

FOR FURTHER INFORMATION CONTACT: Evva Assing-Murray, Senior Health Scientist, Division of Research, Office of Epidemiology and Research, Maternal and Child Health Bureau, Health Resources and Services Administration, at EAssing-Murray@hrsa.gov or 301–594–4113.

SUPPLEMENTARY INFORMATION:

Intended Recipient of the Award: Morgan State University.

Amount of Non-Competitive Award: One award for \$350,000.

Project Period: September 30, 2023, to September 29, 2028.

Assistance Listing Number: 93.110.

Award Instrument: Non-competitive single-source supplement.

Authority: 26 U.S.C. 9511(d)(2)(C).

TABLE 1 RECIPIENT AND AWARD AMOUNT

Grant No.	Award recipient name	City, state	Award amount
UR5MC50340	Morgan State University	Baltimore, MD	\$350,000

Justification: This project will create a dataset with a broad array of data on biological, socio-economic, home and neighborhood environment, behavioral risk and protective factors, health services and expenses across the developmental and life stages. In addition, this project intends to make this novel dataset shareable to other researchers. This supplement will support testing the dataset, its user-friendliness, and the sharing process.

The MH–RC–MSI CC recipient is uniquely qualified to test and validate the data linkage and sharing process through use cases and research studies because:

- They have the current infrastructure and connections with sixteen HRSA funded MH–RC–MSI research centers to ensure coordinated testing and validation;
- They support numerous early-stage investigators through a mentorship program who can use the dataset to conduct research projects on maternal health;
- They have a record of successfully managing HRSA's Maternal and Child Health Bureau-funded projects that examine a broad range of adverse maternal health outcomes since 2023 and have consistently met goals and objectives.

These data linkage activities will run from September 2025 to July 2027, years

3 through 4 of the MSI project period. This is a new activity.

Thomas J. Engels,

Administrator.

[FR Doc. 2025–17025 Filed 9–4–25; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting**

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Division of Intramural Research Board of Scientific Counselors, NIAID.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute Of Allergy And Infectious Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Division of Intramural Research Board of Scientific Counselors, NIAID.

Date: December 8–10, 2025.

Time: 7:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Address: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 50 Center Drive, Conference Room 1227/1233, Bethesda, MD 20892.

Meeting Format: In Person.

Contact Person: Amy Collins, Committee Manager, Division of Intramural Research, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 4G39, Rockville, MD 20892, 301–402–7684, amy.collins@nih.gov. (Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 3, 2025.

Bruce A. George,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2025–17059 Filed 9–4–25; 8:45 am]

BILLING CODE 4140–01–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: Research Education Program.

Date: October 8, 2025.

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.

Meeting Format: Virtual Meeting.

Contact Person: Jolanta M. Topczewska, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6710B Rockledge Drive, Rm. 2131B, Bethesda, MD 20892, (301) 451-0000, jolanta.topczewska@nih.gov.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Maximizing Investigators' Research Award—F Study Section.

Date: October 8–9, 2025.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Brian Paul Chadwick, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594-3586, chadwickbp@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Projects: Centers of Biomedical Research Excellence.

Date: October 8, 2025.

Time: 1:30 p.m. to 4:40 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Kausik Ray, Ph.D., Scientific Review Officer, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, 6001 Executive Blvd., Rockville, MD 20852, 301-402-3587, rayk@nidcd.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Innovative Research in Cancer Nanotechnology.

Date: October 9–10, 2025.

Time: 9:15 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Raj K. Krishnaraju, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, MSC 7804, Bethesda, MD 20892, (301) 435-1047, krishna@csr.nih.gov.

Name of Committee: Oncology 1-Basic Translational Integrated Review Group; Cancer Cell Biology Study Section.

Date: October 9–10, 2025.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Alyssa Diane Gregory, Scientific Review Officer, The Center for Scientific Review, The National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 480-4906, alyssa.gregory@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR-25-210 and PAR-25-211: Enhancing Mechanistic Research on Precision Probiotic Therapies.

Date: October 9, 2025.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Dayadevi Jirage, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4422, Bethesda, MD 20892, (301) 867-5309, jiragedb@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Projects: Lung and Sleep.

Date: October 14–15, 2025.

Time: 9:00 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.

Meeting Format: Virtual Meeting.

Contact Person: Melissa H. Nagelin, Ph.D., BS, Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6705 Rockledge Drive, Room 207-K, Bethesda, MD 20892, 301-827-7951, nagelinmh2@nhlbi.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Project: Advanced Laboratories for Accelerating the Reach and Impact of Treatments for Youth and Adults with Mental Illness (ALACRITY).

Date: October 15, 2025.

Time: 9:00 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.

Meeting Format: Virtual Meeting.

Contact Person: Preethy Nayar, Ph.D., Section Chief, Scientific Review Branch,

National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, 3WFN, MSC 6021, Bethesda, MD 20892, (301) 594-3087, preethy.nayar@nih.gov.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Molecular Genetics Study Section.

Date: October 15–16, 2025.

Time: 9:00 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.

Meeting Format: Virtual Meeting.

Contact Person: Altaf Ahmad Dar, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 827-2680, altaf.dar@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: September 2, 2025.

Sterlyn H. Gibson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2025-16994 Filed 9-4-25; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2025 Notice of Supplemental Funding Opportunity

AGENCY: Substance Abuse and Mental Health Services Administration, Department of Health and Human Services (HHS).

ACTION: Notice of intent to award supplemental funding.

SUMMARY: This notice is to inform the public that the Substance Abuse and Mental Health Services Administration (SAMHSA) is supporting administrative supplements in scope of the parent award for the 56 eligible grant recipients funded in FY 2025 Projects for Assistance in Transition from Homelessness Grant (PATH), Notice of Funding Opportunity (NOFO) SM-24-F2. Each PATH recipient may receive up to \$9,083. These awards have a project end date of September 29, 2026.

FOR FURTHER INFORMATION CONTACT: Doug Slothouber, Chief, State and Homeless Programs Branch, Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockville, MD 20857; Email: Doug.Slothouber@samhsa.hhs.gov.

SUPPLEMENTARY INFORMATION:

Funding Opportunity Title: FY 2025 Projects for Assistance in Transition from Homelessness, SM–24–F2.

Assistance Listing Number: 93.150.

Authority: The PATH program was originally authorized as Section 521 of the Public Health Service Act (42 U.S.C. 290cc–21) established by the Stewart B. McKinney Homeless Assistance Amendments Act of 1990 (Pub. L. 101–645) and was most recently re-authorized through the Consolidated Appropriations Act, 2023 (Pub. L. 117–328).

Justification: Eligibility for this supplemental funding is limited to the 56 PATH recipients awarded under funding announcement SM–24–F2 as they are currently providing services as defined in statute.

This is not a formal request for application. Assistance will only be provided to the 56 PATH recipients based on the receipt of a statement requesting the funds, including a description of how the PATH recipient intends to use the supplemental funds.

Dated: September 3, 2025.

Ann Ferrero,
Public Health Analyst.
[FR Doc. 2025–17047 Filed 9–4–25; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning the opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer at (240) 276–0361.

Comments are invited on: (a) whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency’s estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Mandatory Guidelines for Federal Workplace Drug Testing Programs (OMB No. 0930–0158)—Extension

SAMHSA will request OMB approval for extension of the Federal Drug Testing Custody and Control Form (CCF) for federal agency and federally regulated drug testing programs which must comply with the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine (UrMG) dated October 12, 2023 (88 FR 70768) and using Oral Fluid (OFMG) dated October 12, 2023 (88 FR 70814), and OMB approval for information provided by test facilities (laboratories and Instrumented Initial Test Facilities, IITFs) for the National Laboratory Certification Program (NLCP).

The CCF is used by all federal agencies and by employers regulated by the Department of Transportation (DOT) and the Nuclear Regulatory Commission (NRC) to document the collection and chain of custody of a urine or oral fluid specimen at the collection site, for HHS-certified test facilities to document chain of custody and report results, and for Medical Review Officers (MROs) to document and report a verified result. SAMHSA allows the use of the CCF as a paper or electronic form.

The current OMB-approved CCF has an August 31, 2026, expiration date. In March 2025, SAMHSA was notified of a potential issue with the current Federal CCF. Most hardcopy paper CCFs are provided as a 5-part form using carbonless paper. When expiration dates for primary/single and split specimen oral fluid collection devices were handwritten in Step 4 on Copy 1, the

annotations covered some donor information in Step 5 on Copies 2–5. SAMHSA notified certified test facilities of the issue and approved some laboratory requests for modifications.

SAMHSA plans to submit the CCF with the following revisions for OMB approval:

Copies 2–5

Revised Step 5

1. Shorten the email address line
2. Replace the 2 date fields for “Daytime Phone No.” and “Evening Phone No.” with a single field “Phone No.”
3. Move the “Date of Birth” field to the left.

Laboratories and IITFs seeking HHS certification under the NLCP must complete and submit the NLCP application form. The 3 NLCP Applications (*i.e.*, for urine laboratories, for urine instrumented initial test facilities [IITFs], and for oral fluid laboratories) have been updated in accordance with the current UrMG and OFMG. The revisions enable provision of information for analytes in the Authorized Testing Panels now published separately from the Mandatory Guidelines and enable applicant and certified test facilities to submit information on new technologies/instruments.

Prior to an inspection, an HHS-certified laboratory or IITF is required to submit specific information regarding its procedures. Collecting this information prior to an inspection allows the inspectors to thoroughly review and understand the testing procedures before arriving for the onsite inspection. The NLCP information checklist has been updated in accordance with the current UrMG and OFMG. The changes enable provision of information for analytes in the Authorized Testing Panels now published separately from the Mandatory Guidelines and enable applicant and certified test facilities to submit information on new technologies/instruments.

The annual total burden estimates for the CCF, the NLCP application, the NLCP information checklist, and the NLCP recordkeeping requirements are shown in the following table.

Form/respondent	Number of respondents	Responses per respondent	Total number of responses	Burden per response (hours)	Annual burden (hours)	Hourly wage rate (\$)	Total cost (\$) ³
Custody and Control Form ¹ :							
Donor	6,726,610	1	6,726,610	0.08	538,129	25	13,453,225
Collector	6,726,610	1	6,726,610	0.07	470,683	15	7,060,245
Laboratory	6,726,610	1	6,726,610	0.05	336,331	35	11,771,585
IITF	1	0	0	0.05	0	35	0
Medical Review Officer	6,726,610	1	6,726,610	0.05	336,331	150	50,449,650

Form/respondent	Number of respondents	Responses per respondent	Total number of responses	Burden per response (hours)	Annual burden (hours)	Hourly wage rate (\$)	Total cost (\$) ³
NLCP Application Form 2:							
Laboratory	20	1	20	3	60	35	2,100
IITF	0	0	0	3	0	35	0
Sections B and C—NLCP Information Checklist:							
Laboratory	19	1	19	1	19	35	665
IITF	1	1	1	1	1	35	35
Record Keeping:							
Laboratory	19	1	19	250	4,750	35	166,250
IITF	0	0	0	250	0	35	0
Total	6,726,669	.....	26,906,499	.....	1,686,304	.....	82,903,755

¹ **Note:** The time it takes each respondent (*i.e.*, donor, collector, laboratory, IITF, and MRO) to complete the Federal CCF is based on an average estimated number of minutes it would take each respondent to complete their designated section of the form or regulated entities (*e.g.* HHS, DOT, and NRC).

¹ **Note:** The above number of responses is based on an estimate of the total number of specimens collected annually (approximately 150,000 federal agency specimens; 6,500,000 DOT regulated specimens, and 145,000 NRC regulated specimens).

² **Note:** The estimate of 20 applications per year is based on requests for a laboratory application (urine or oral fluid) or IITF application in the past year (*i.e.*, at the time of these calculations).

² **Note:** The estimate of three burden hours to complete the application has not changed.

³ **Note:** At the time of these calculations, there were 18 certified laboratories and one certified IITF undergoing 2 maintenance inspections each year, and 1 applicant laboratory.

³ **Note:** The wage rates listed for each respondent are based on estimated average hourly wages for the individuals performing these tasks.

Send comments to SAMHSA Reports Clearance Officer, Room 15–E–57–A, 5600 Fishers Lane, Rockville, MD 20857 OR email a copy to samhsapra@samhsa.hhs.gov. Written comments should be received by November 4, 2025.

Alicia Broadus,

Reports Clearance Officer.

[FR Doc. 2025–17035 Filed 9–4–25; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. CISA–2024–0016]

Agency Information Collection Activities: National Initiative for Cybersecurity Careers and Studies Cybersecurity Education and Training Catalog Collection

AGENCY: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

ACTION: 30-Day notice and request for comments; revised information collection request, 1670–0030.

SUMMARY: NICCS within CISA will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. CISA previously published this information collection request (ICR) in the **Federal Register** on June 20, 2024, for a 60-day public comment period. No comments were received by CISA. The purpose of this notice is to allow additional 30-days for public comments.

DATES: Comments are encouraged and will be accepted until October 6, 2025. This process is conducted in accordance with 5 CFR 1320.10

ADDRESSES: You may submit comments, identified by docket number CISA–2024–0016, at: Federal eRulemaking Portal: <http://www.regulations.gov>. Please follow the instructions for submitting comments. Instructions: All submissions received must include the agency name and docket number CISA–2024–0016. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Shannon Nguyen, 703–705–6246, shannon.nguyen@cisa.dhs.gov.

SUPPLEMENTARY INFORMATION: The Cybersecurity and Infrastructure Security Agency (CISA) Office of the Chief Learning Officer (OCLO) National Initiative for Cybersecurity Careers and Studies (NICCS) Training Catalog Batch Data seeks to collect information from organizations and academic institutions regarding their course specific technical information to NICCS regarding how their training courses map to the National Initiative for Cybersecurity (NICE) Workforce Framework for Cybersecurity (NICE Framework) Specialty Areas. The NICCS website is a national online resource for cybersecurity awareness, education, talent management, and professional development and training. Its mission is to provide comprehensive cybersecurity resources to the public. To promote cybersecurity education, and to provide

a comprehensive resource for the Nation, NICCS developed the Cybersecurity Training and Education Catalog. The NICCS Education and Training Catalog is a central location to help cybersecurity professionals of all skill levels find cybersecurity-related courses online and in person across the nation. All of the courses are aligned to the specialty areas of The Workforce Framework for Cybersecurity (NICE Framework). Organizations and or academic institution interested in listing courses with NICCS are requested to complete a vendor vetting process in order to be considered for inclusion in the NICCS education and Training Catalog. Once approved, organizations and academic institutions are asked to provide technical information (“training catalog batch data”) to NICCS regarding how their training courses map to the National Initiative for Cybersecurity Education (NICE) Workforce Framework for Cybersecurity (NICE Framework) Specialty Areas. Course mapping to these Specialty Areas allows users to tailor their individual coursework and is dependent upon the training catalog batch data to do so. The training catalog batch data is technical in nature, is not privacy sensitive, and does not include personally identifiable information. The training catalog batch data is submitted to the CISA NICCS Supervisory Office (SO) for review. Then upon further review and approval, the organization/academic institution’s course is listed in the NICCS Education and Training Catalog. The cyber-specific authorities to receive such information support the Department’s general authority to receive information from any federal or non-federal entity in support of the mission responsibilities of the Department. Section 201 of the

Homeland Security Act authorizes the Secretary “[t]o access, receive, and analyze law enforcement information, intelligence information, and other information from agencies of the Federal Government, State and local government agencies (including law enforcement agencies), and private sector entities, and to integrate such information, in support of the mission responsibilities of the Department.” 6 U.S.C. 121(d)(1); see also 6 U.S.C. 121(d)(12). The following authorities also permit DHS to collect this information: Federal Information Security Management Act of 2002 (FISMA), 44 U.S.C. 3546; Presidential Policy Directive (PPD)–21, Critical Infrastructure Identification, Prioritization, and Protection (2003); and National Security Presidential Directive (NSPD)–54/HSPD–23, Cybersecurity Policy (2009). *Note:* Any information received from the public in support of the NICCS Cybersecurity Training and Education Catalog is completely voluntary. Organizations and individuals who do not provide information can still utilize the NICCS website and Catalog without restriction or penalty. An organization or individual who wants their information removed from the NICCS website and/or Cybersecurity Training and Education Catalog can email the NICCS Supervisory Office. There are no requirements for a provider to fill out a specific form for their information to be removed; standard email requests will be honored. The Office of Management and Budget is particularly interested in comments which:

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; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Analysis

CISA OCLO seeks to utilize four separate forms in order to collect the

requested information from organizations and academic institutions. CISA OCLO will use the NICCS Cybersecurity Training Course Form and the NICCS Cybersecurity Certification Form to collect information via a publicly accessible website called the National Initiative for Cybersecurity Careers and Studies (NICCS) website (<https://niccs.cisa.gov>). Collected information from these two forms will be included in the Cybersecurity Training and Education Catalog that is hosted on the NICCS website. Requested information categories in these forms include the training providers name, course title, course description, course length, course modality, among other course information useful for users. The NICCS Supervisory Office will use information collected from the NICCS Vendor Vetting Form to primarily manage communications with the training/workforce development providers; this collected information will not be shared with the public and is intended for internal use only. Additionally, this information will be used to validate training providers before uploading their training and certification information to the Training Catalog. Requested information in the NICCS Vendor Vetting form include vendor name, address, points of contact and a few multiple-choice questions to ensure they are a legitimate business. The NICCS Supervisory Office will use information collected from the NICCS Mapping Tool Form to provide an end user with information of how their position or job title aligns to the new Cybersecurity Framework 1.1. This collection of inputs and output (in the form of a report) will be savable by the end user on their computer to be uploaded at a later time for further use if required. This collected information will not be shared with the public and is intended for internal use only. Requested information in the NICCS Mapping form include: Selecting various work roles (based on the NICE Framework), selecting tasks required for that work role, and including job description details. The information will be collected via fully electronic web forms or partially electronic via email. Collection will be coordinated between the public and NICCS via email.

The following forms are fully electronic:

- NICCS Vendor Vetting Web Form
- NICCS Cybersecurity Training Course Web Form
- NICCS Mapping Tool Web Form

The following forms are partially electronic:

- NICCS Certification Course Form

All information collected from the NICCS Cybersecurity Training Course Web Form, and the NICCS Certification Course Form will be stored in the public accessible NICCS Cybersecurity Training and Education Catalog (<https://niccs.cisa.gov/educationtraining/catalog>).

The NICCS Supervisory Office will electronically store information collected via the NICCS Vendor Vetting Form. This information collected will not be publicly accessible. Information collected for the NICCS Certification Course Form is collected via email in a CSV format, and then compiled by the NICCS staff for upload to the NICCS Education and Training Catalog.

Information collected by the NICCS Mapping Tool is not being stored by NICCS. The information collected will not be publicly accessible. Users have the option of saving their input and results to be used at a later time, and the information would only be stored the user’s device.

Analysis

Agency: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS)

Title: Revised Collection.

OMB Number: 1670–0030.

Frequency: Annually.

Affected Public: General Public.

Number of Respondents: 500.

Estimated Time Per Respondent: 0.775 Hours.

Total Burden Hours: 387.5.

Annualized Respondent Cost:

\$24,482.

Total Annualized Respondent Out-of-Pocket Cost: \$0.

Total Annualized Government Cost: \$161,490.

Robert J. Costello,

Chief Information Officer, Department of Homeland Security, Cybersecurity and Infrastructure Security Agency.

[FR Doc. 2025–17049 Filed 9–4–25; 8:45 am]

BILLING CODE 9111–LF–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[A2407–014–004–065516; #O2412–014–004–047181.1; LLID935000]

Filing of Surveys; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The plats and/or field notes of the following described surveys are

scheduled to be officially filed in the Bureau of Land Management, Idaho State Office, Boise, Idaho. The surveys announced in this notice were conducted for the management of lands administered by the agencies indicated.

DATES: Protests must be received by the Bureau of Land Management (BLM) no later than the close of business hours on October 6, 2025.

ADDRESSES: Protests must be delivered to and, upon required payment, a copy of the survey record may be obtained from the Public Room at the Bureau of Land Management, Idaho State Office, 1387 S Vinnell Way, Boise, ID 83709–1657.

FOR FURTHER INFORMATION CONTACT:

Michael L. Hart, Idaho State Office Branch of Cadastral Survey, Bureau of Land Management, 1387 S. Vinnell Way, Boise, ID 83709–1657; (208) 373–3981; email: mlhart@blm.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 7–1–1 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The plats of survey described below represent official surveys executed at the request of the BLM and other agencies to facilitate the management of these lands. These official surveys include resurveys of boundaries and subdivisional lines, subdivisions of sections, and specific metes-and-bounds surveys, all within the Boise Meridian, Idaho. These surveys are necessary to define land boundaries for effective land management.

Boise Meridian, Idaho

The dependent resurvey of portions of the west boundary and subdivisional lines, and the subdivision of section 6, Township 6 South, Range 16 East, accepted April 11, 2025, under Group No. 1481.

The dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 21, Township 8 South, Range 18 East, accepted April 21, 2025, under Group No. 1535.

The dependent resurvey of a portion of the subdivisional lines and a portion of the subdivision of section lines in sections 12, 13 and 23; the further subdivision of sections 12 and 23; and certain metes-and-bounds surveys in sections 12, 13 and 23, Township 4 South, Range 43 East, accepted April 21, 2025, under Group No. 1485.

The dependent resurvey of portions of the west boundary and subdivisional lines, and the subdivision of sections 7, 18, 19, and 30, Township 4 South, Range 19 East, accepted April 29, 2025, under Group No. 1502.

The dependent resurvey of a portion of the north and east boundaries, and a portion of the subdivisional lines, and the subdivision of sections 1, 2, and 3, Township 22 North, Range 1 East, accepted May 8, 2025, under Group No. 1552.

The dependent resurvey of portions of the east boundary and subdivisional lines, and the subdivision of section 12, Township 16 South, Range 15 East, accepted May 6, 2025, under Group No. 1530.

The dependent resurvey of portions of the Tenth Standard Parallel North (south boundary) and subdivisional lines, and the subdivision of sections 27 and 34, the survey of the 2016 meanders of the summer pool level of Coeur d'Alene Lake in sections 26 and 35, and certain metes-and-bounds surveys in sections 26 and 35, Township 49 North, Range 4 West, accepted May 19, 2025, under Group No. 1462.

The dependent resurvey of a portion of the East Boundary of the Nez Perce Indian Reservation and a portion of the subdivisional lines, and the subdivision of section 23, Township 33 North, Range 4 East, accepted June 9, 2025, under Group No. 1518.

The dependent resurvey of a portion of Mineral Survey No. 2B (lot 38B), and the survey of Tract 37, approximately located in unsurveyed section 30, Township 24 North, Range 19 East, accepted June 17, 2025, under Group No. 1611.

The dependent resurvey of a portion of the north boundary and subdivisional lines, and the subdivision of sections 3, 4, 9, and 10, Township 9 South, Range 29 East, accepted July 7, 2025, under Group No. 1519.

The metes-and-bounds survey of Tract 45 and the survey of the 2023 meanders of the summer pool level of the left bank of the Spokane River in sections 11 and 14, Township 50 North, Range 4 West, Boise Meridian, Idaho, accepted July 28, 2025, under Group No. 1581.

If you wish to protest one or more of the surveys identified above, you must file a written notice of protest with the Idaho State Director, ID935, Bureau of Land Management, by the date listed in the **DATES** section of this notice at the address listed in the **ADDRESSES** section of this notice. The protest must identify the survey(s) that the person or party wishes to protest and contain all reasons and evidence in support of the protest. A protest is considered filed on the date

it is received by the Idaho State Director, Bureau of Land Management, during regular business hours; if received after regular business hours, a protest will be considered filed the next business day.

Before including your address, phone number, email address, or other personally identifiable information in a protest, you should be aware that the documents you submit, including your personally identifiable information, may be made publicly available in their entirety at any time. While you may ask us to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 U.S.C. chapter 3)

Michael L. Hart,

Chief Cadastral Surveyor for BLM Idaho.

[FR Doc. 2025–16985 Filed 9–4–25; 8:45 am]

BILLING CODE 4331–19–P

DEPARTMENT OF THE INTERIOR

National Park Service

[N6492; NPS–WASO–NAGPRA–NPS0041015; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: Santa Barbara Museum of Natural History, Santa Barbara, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Santa Barbara Museum of Natural History intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after October 6, 2025.

ADDRESSES: Send additional, written requests for repatriation of the cultural items in this notice to Luke Swetland, President and CEO, Santa Barbara Museum of Natural History, 2559 Puesta del Sol, Santa Barbara, CA 93105, email lswetland@sbnature2.org.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Santa Barbara Museum of Natural History, and additional information on the determinations in this notice, including

the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of 40 cultural items have been requested for repatriation. The 40 unassociated funerary objects consist of olivella shell beads and one bird bone [femur] fragment. These items were collected from a cave southeast of Indian Wells, CA, on April 2, 1920, by invertebrate zoologist S. Stillman Berry, and donated to the Museum in 1985.

Determinations

The Santa Barbara Museum of Natural History has determined that:

- The 40 unassociated funerary objects described in this notice are reasonably believed to have been placed intentionally with or near human remains, and are connected, either at the time of death or later as part of the death rite or ceremony of a Native American culture according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization. The unassociated funerary objects have been identified by a preponderance of the evidence as related to human remains, specific individuals, or families, or removed from a specific burial site or burial area of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization.

- There is a reasonable connection between the cultural items described in this notice and the Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California; Cabazon Band of Cahuilla Indians (*previously* listed as Cabazon Band of Mission Indians, California); Chemehuevi Indian Tribe of the Chemehuevi Reservation, California; Morongo Band of Mission Indians, California; Torres Martinez Desert Cahuilla Indians, California; and the Twenty-Nine Palms Band of Mission Indians of California.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after October 6, 2025. If competing requests for repatriation are received, the Santa Barbara Museum of Natural History must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The Santa Barbara Museum of Natural History is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: August 26, 2025.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2025–17014 Filed 9–4–25; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[N6494; NPS–WASO–NAGPRA–NPS0041011; PPWOCRADNO–PCU00RP14.R50000]

Notice of Inventory Completion: University of Florida, Florida Museum of Natural History, Gainesville, FL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Florida, Florida Museum of Natural History (FLMNH), has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after October 6, 2025.

ADDRESSES: Send written requests for repatriation of the human remains and associated funerary objects in this notice to Megan Fry, University of Florida, Florida Museum of Natural History, 1659 Museum Road, Gainesville, FL 32611, email NagpraOffice@floridamuseum.ufl.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the

National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the FLMNH, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Weedon Island (8PI1) was a village complex consisting of middens, domiciliary mounds, and a sand burial mound. It is noted as one of the most important sites in Pinellas County, being excavated formally by archaeologists as well as looters. The mounds are largely destroyed but much of the village remains intact, due to its' proximity to a power plant. Numerous collections, many containing Ancestors, were presented to FLMNH, along with a museum expedition done by William Sears in the 1950s. Weedon Island was previously reported in the 2003 inventory as culturally unaffiliated with an MNI of one and did not report any associated funerary objects. Human remains representing at least five individuals have been identified. The 145 associated funerary objects include fauna, pottery, an awl, and a cobble tool.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains and associated funerary objects described in this notice.

Determinations

The FLMNH has determined that:

- The human remains described in this notice represent the physical remains of five individuals of Native American ancestry.
- The 145 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a connection between the human remains and associated funerary objects described in this notice and the Miccosukee Tribe of Indians and the Seminole Tribe of Florida.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains and associated funerary objects described in this notice to a requestor may occur on or after October 6, 2025]. If competing requests for repatriation are received, the FLMNH must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The FLMNH is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: August 26, 2025.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2025-17010 Filed 9-4-25; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[N6488; NPS-WASO-NAGPRA-NPS0041010; PPWOCRADN0-PCU00RP14.R50000]

Notice of Inventory Completion: University of Florida, Florida Museum of Natural History, Gainesville, FL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Florida, Florida Museum of Natural History (FLMNH), has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after October 6, 2025.

ADDRESSES: Send written requests for repatriation of the human remains and

associated funerary objects in this notice to Megan Fry, University of Florida, Florida Museum of Natural History, 1659 Museum Road, Gainesville, FL 32611, email NagpraOffice@floridamuseum.ufl.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the FLMNH, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Nona's Site (8SO85d) is a single component site at the edge of a year-round pond, dating to the Middle Archaic Period. The site was mapped in the 1960s and partially destroyed by the General Development Cooperation who dug a drainage ditch through the cemetery leading to the pond. The site was later excavated multiple times between 1977 and 1983. There have been several instances of Ancestors recorded at the site. Human remains representing at least three individuals have been identified. The 202 associated funerary objects include fauna, lithics, and sediment.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains and associated funerary objects described in this notice.

Determinations

The FLMNH has determined that:

- The human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- The 202 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a connection between the human remains and associated funerary objects described in this notice and the Miccosukee Tribe of Indians and the Seminole Tribe of Florida.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in

this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains and associated funerary objects described in this notice to a requestor may occur on or after October 6, 2025. If competing requests for repatriation are received, the FLMNH must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The FLMNH is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: August 26, 2025.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2025-17009 Filed 9-4-25; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[N6491; NPS-WASO-NAGPRA-NPS0041014; PPWOCRADN0-PCU00RP14.R50000]

Notice of Intended Repatriation: Santa Barbara Museum of Natural History, Santa Barbara, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Santa Barbara Museum of Natural History intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after October 6, 2025.

ADDRESSES: Send additional, written requests for repatriation of the cultural

items in this notice to Luke Swetland, President and CEO, Santa Barbara Museum of Natural History, 2559 Puesta del Sol, Santa Barbara, CA 93105, email lswetland@sbnature2.org.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Santa Barbara Museum of Natural History, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of 1,052 cultural items have been requested for repatriation. The 1,052 unassociated funerary objects consist of shell beads, stone beads, historic glass beads, shell pendants, projectile points, lithic flakes, one fish vertebra, and asphaltum fragments. These items were collected from a previously "pot-hunted" cremation site in the San Joaquin Valley, west of Buttonwillow, California between the 1950s and the 1980s by Thomas F. Bird of Bailey, Colorado, and donated to the Museum in 1990.

Determinations

The Santa Barbara Museum of Natural History has determined that:

- The 1,052 unassociated funerary objects described in this notice are reasonably believed to have been placed intentionally with or near human remains, and are connected, either at the time of death or later as part of the death rite or ceremony of a Native American culture according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization. The unassociated funerary objects have been identified by a preponderance of the evidence as related to human remains, specific individuals, or families, or removed from a specific burial site or burial area of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization.
- There is a reasonable connection between the cultural items described in this notice and the Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Table Mountain Rancheria; Tejon Indian Tribe; Tule River Indian Tribe of the Tule River Reservation, California; and the Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after October 6, 2025. If competing requests for repatriation are received, the Santa Barbara Museum of Natural History must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The Santa Barbara Museum of Natural History is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: August 26, 2025.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2025-17013 Filed 9-4-25; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[N6490; NPS-WASO-NAGPRA-NPS0041013; PPWOCRADNO-PCU00RP14.R50000]

Notice of Intended Repatriation: North Carolina State University, Gregg Museum of Art & Design, Raleigh, NC

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Gregg Museum of Art & Design intends to repatriate a certain cultural item that meets the definition of a sacred object and that has a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural item in this notice may occur on or after October 6, 2025.

ADDRESSES: Send additional, written requests for repatriation of the cultural item in this notice to Lee Chavis-Tartaglia, North Carolina State University, Gregg Museum of Art & Design, 1903 Hillsborough Street, Campus Box 7330, Raleigh, NC 27695, email lgtag@ncsu.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Gregg Museum of Art & Design, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of one cultural item has been requested for repatriation. The one sacred object is a "drinking gourd" ipu pawehe, ca. 1850. This item came to the Gregg Museum as a donation in 2020. The item was originally thought to be Cherokee by the donor, but later confirmed to be Hawaiian, potentially from the island of Ni'ihau. Based on consultation with Native Hawaiian Organizations, the Gregg Museum of Art & Design identifies this item as a sacred object of the Kingdom of Hawai'i. Gregg Museum of Art & Design records indicate no known hazardous substances.

Determinations

The Gregg Museum of Art & Design has determined that:

- The one sacred object described in this notice are specific ceremonial objects needed by a traditional Native American religious leader for present-day adherents to practice traditional Native American religion, according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization.
- There is a reasonable connection between the cultural item described in this notice and Hui Iwi Kuamo'o.

Requests for Repatriation

Additional, written requests for repatriation of the cultural item in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or

a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural item in this notice to a requestor may occur on or after October 6, 2025. If competing requests for repatriation are received, the Gregg Museum of Art & Design must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural item are considered a single request and not competing requests. The Gregg Museum of Art & Design is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: August 26, 2025.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2025-17012 Filed 9-4-25; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[N6489; NPS-WASO-NAGPRA-NPS0041012; PPWOCRADNO-PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Land Management, Alaska State Office, Anchorage, AK

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of the Interior, Bureau of Land Management, Alaska State Office (BLM), has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after October 6, 2025.

ADDRESSES: Send written requests for repatriation of the human remains and associated funerary objects in this notice to Robin O. Mills, Bureau of Land Management, 222 W 7th Avenue #13, Anchorage, AK 99513, email rmills@blm.gov.

SUPPLEMENTARY INFORMATION: This notice is published as part of the

National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the BLM, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, two individuals have been reasonably identified. The 195 associated funerary objects include a lamp, potsherds, matting, a birch bark container, glass beads, bracelets, animal teeth, a boot creaser, an ulu handle, and a lump of agate. The remains of two ancestors were collected by archaeologist Frederica de Laguna in 1935 at two locations along the Anvik River. One ancestor (an adult woman) was collected from an old habitation site called Red Stone Village, located 8.6 miles due west of the modern village of Anvik, up the Anvik River. A total of 149 funerary objects were found and collected with this ancestor. The second ancestor (an adult, probably male) was collected from the Anvik Point site, overlooking the Yukon River directly across from modern Anvik, on the north side of the mouth of the Anvik River. A total of 46 funerary objects were found with this ancestor. The remains and associated funerary objects were placed in the University of Pennsylvania Museum, in Philadelphia, PA, in 1935, where they have remained ever since.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains and associated funerary objects described in this notice.

Determinations

The BLM Alaska State Office has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- The 195 objects described in this notice are reasonably believed to have been placed intentionally with or near the two individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a reasonable connection between the human remains and associated funerary objects described in this notice and Anvik Village.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after October 6, 2025. If competing requests for repatriation are received, the BLM must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The BLM is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: August 26, 2025.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2025-17011 Filed 9-4-25; 8:45 am]

BILLING CODE 4312-52-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-772-774 and 731-TA-1756-1758 (Preliminary)]

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules From India, Indonesia, and Laos; 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 there is a reasonable indication that an industry in the United States is materially injured by reason of imports of crystalline silicon photovoltaic cells, whether or not assembled into modules,

¹ The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

from India, Indonesia, and Laos, provided for in subheadings 8541.42.00 and 8541.43.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (“LTFV”) and alleged to be subsidized by the governments of India, Indonesia, and Laos.²

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission’s rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in § 207.21 of the Commission’s rules, upon notice from the U.S. Department of Commerce (“Commerce”) of affirmative preliminary determinations in the investigations under §§ 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under §§ 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Any other party may file an entry of appearance for the final phase of the investigations after publication of the final phase notice of scheduling. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations. As provided in section 207.20 of the Commission’s rules, the Director of the Office of Investigations will circulate draft questionnaires for the final phase of the investigations to parties to the investigations, placing copies on the Commission’s Electronic Document Information System (EDIS, <https://edis.usitc.gov>), for comment.

Background

On July 17, 2025, the Alliance for American Solar Manufacturing and Trade³ filed petitions with the Commission and Commerce, alleging

that an industry in the United States is materially injured or threatened with material injury by reason of LTFV and subsidized imports of crystalline silicon photovoltaic cells, whether or not assembled into modules, from India, Indonesia, and Laos. Accordingly, effective July 17, 2025, the Commission instituted countervailing duty investigation Nos. 701-TA-772-774 and antidumping duty investigation Nos. 731-TA-1756-1758 (Preliminary).

Notice of the institution of the Commission’s investigations and of a public conference 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** of July 22, 2025 (90 FR 34518). The Commission conducted its conference on August 7, 2025. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to §§ 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on September 2, 2025. The views of the Commission are contained in USITC Publication 5665 (September 2025), entitled *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from India, Indonesia, and Laos: Investigation Nos. 701-TA-772-774 and 731-TA-1756-1758 (Preliminary)*.

By order of the Commission.

Issued: September 2, 2025.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2025-16986 Filed 9-4-25; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-759 and 731-TA-1740-1741 (Final)]

Multifunctional Acrylate and Methacrylate Monomers and Oligomers (MAMMOs) From South Korea and Taiwan; Scheduling of the Final Phase of Countervailing Duty and Antidumping Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of countervailing duty investigation No. 701-TA-759 (Final) pursuant to the Tariff Act of 1930 to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of multifunctional acrylate and methacrylate monomers and oligomers (“MAMMOs”) from Taiwan, provided for in subheadings 2916.12.5050, 2916.14.2050, 3824.99.2900, 3907.29.0000 and 3907.30.0000 of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce (“Commerce”) to be subsidized. Commerce’s preliminary determinations with respect to imports of MAMMOs from South Korea and Taiwan alleged to be sold in the United States at less than fair value, are pending.

DATES: August 25, 2025.

FOR FURTHER INFORMATION CONTACT:

Junie Joseph ((202) 205-3363), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission’s TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for these investigations may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Scope.— For purposes of these investigations, Commerce has defined the subject merchandise as “certain multifunctional acrylate and methacrylate monomers, and acrylated bisphenol-A epoxy based oligomers (collectively, certain monomers and oligomers or CMOs) that are derived from chemical reactions involving the use of acrylic or methacrylic acid. Products within the scope are listed below and have the following Chemical Abstracts Service (CAS) numbers:

² 90 FR 38736 and 90 FR 38745 (August 12, 2025).

³ Members include Hanwha Q CELLS USA Inc., First Solar, and Mission Solar.

CAS No.	Description	Molecular formula
109–16–0	Triethylene glycol dimethacrylate (TEGDMA)	C ₁₄ H ₂₂ O ₆
13048–33–4	1,6-hexanediol diacrylate (HDDA)	C ₁₂ H ₁₈ O ₄
42978–66–5	Tripropylene glycol diacrylate (TPGDA)	C ₁₅ H ₂₄ O ₆
3290–92–4	Trimethylolpropane trimethacrylate (TMPTMA)	C ₁₈ H ₂₆ O ₆
15625–89–5	Trimethylolpropane triacrylate (TMPTA)	C ₁₅ H ₂₀ O ₆
28961–43–5	Ethoxylated trimethylolpropane triacrylate (EOTMPTA)	(C ₂ H ₄ O) _n (C ₂ H ₄ O) _n (C ₂ H ₄ O) _n C ₁₅ H ₂₀ O ₆
57472–68–1	Dipropylene glycol diacrylate (DPGDA)	C ₁₂ H ₁₈ O ₅
55818–57–0	Bisphenol-A-epichlorohydrin copolymer acrylate (EPOXY ACRYLATE)	(C ₁₅ H ₁₆ O ₂ ·C ₃ H ₅ ClO) _x ·xC ₃ H ₄ O ₂

The monomers are generally known as multifunctional acrylates (MFAs) or multifunctional methacrylates (MFMA) depending on whether the functional groups are acrylate or methacrylate. The monomers generally contain stabilizers/inhibitors, which include but are not limited to Hydroquinone, Methyl Hydroquinone, and Butylated Hydroxy Toluene. The monomers are either difunctional or trifunctional (having 2 or 3 functional groups/molecule), have viscosities of 9 to 15 centipoise (cPs) at 25 degrees Celsius (if difunctional) or 44 to 110 cPs at 25 degrees Celsius (if trifunctional), have (meth)acrylate equivalent weights (molecular weight per number of functional groups) between 99 and 158 and molecular weights between 226 and 472 grams per mol.

The acrylated bisphenol-A epoxy based oligomer is commonly referred to as epoxy acrylate or acrylated epoxy. In contrast to epoxy resin, the main characteristic of the epoxy acrylate oligomer is that it contains acrylate functional groups which make them curable by free-radical polymerization. The epoxy acrylate has a molecular weight between 508 to 536 grams per mol and a viscosity of 2400 to 3600 cPs at 65 degrees Celsius. The epoxy acrylate generally contains stabilizers/inhibitors, which include but are not limited to Hydroquinone, Methyl Hydroquinone, and Butylated Hydroxy Toluene.

Certain monomers and oligomers are subject to the scope even if an in-scope monomer or oligomer is blended or mixed with one or more other in-scope monomers or oligomers.

Certain monomers and oligomers in any blend or mixture are also subject to the scope, so long as the blend or mixture contains no less than 20 percent by weight of in-scope CMOs.

The scope includes merchandise matching the above description that has been processed in a third country, including by commingling, diluting, introducing, or removing ingredients, or performing any other processing that would not otherwise remove the merchandise from the scope of the

investigation if performed in the subject country.

The scope also includes CMOs that are commingled, mixed or blended with in-scope product from sources not subject to this investigation.

Only the subject component(s) of such blends, mixtures or commingled products described above is covered by the scope of this investigation. Subject merchandise contained in a blended, mixed or commingled product described above will not have undergone a chemical reaction as a result of being blended, mixed or commingled.

Notwithstanding the above, specifically excluded from the scope are downstream products, including but not limited to, inks, coatings and overprint varnishes. For purposes of this exclusion, the downstream product requires only the application of energy to be cured, *e.g.*, inks or varnish applied to packaging, coatings applied to wood flooring, etc. The energy source required to cure the downstream product to its substrate can be thermal, ultraviolet radiation, visible light, electron beam radiation, or infrared radiation.

This merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 2916.12.5050, 2916.14.2050, 3824.99.2900, 3907.29.0000 and 3907.30.0000. Subject merchandise may also be entered under subheadings 2916.12.1000 and 3824.99.9397. The HTSUS subheadings and CAS registry numbers are provided for convenience and customs purposes only; the written description of the scope is dispositive."

Background.—The final phase of these investigations is being scheduled pursuant to sections 705(b) and 731(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)), as a result of an affirmative preliminary determination by Commerce that certain benefits which constitute subsidies within the meaning of § 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in Taiwan of MAMMOs. Commerce's preliminary determinations with respect to imports of MAMMOs from South

Korea and Taiwan alleged to be sold in the United States at less than fair value, are pending. The investigations were requested in petitions filed on March 27, 2025, by Arkema, Inc. (King of Prussia, Pennsylvania).

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

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.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice.

Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on October 24, 2025, and a public version will be issued thereafter, pursuant to § 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on November 7, 2025. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before November 5, 2025. Any requests to appear as a witness via videoconference must be included with your request to appear. Requests to appear via videoconference must include a statement explaining why the witness cannot appear in person; the Chairman, or other person designated to conduct the investigation, may in their discretion for good cause shown, grant such a request. Requests to appear as a remote witness due to illness or a positive COVID-19 test result may be submitted by 3:00 p.m. the business day prior to the hearing. Further information about participation in the hearing will be posted on the Commission's website at <https://www.usitc.gov/calendarpad/calendar.html>.

A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference, if deemed necessary, to be held at 9:30 a.m. on November 3, 2025. Parties shall file and serve written testimony and presentation slides in connection with their presentation at the hearing by no later than noon on November 6, 2025. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission.

Prehearing briefs must conform with the provisions of § 207.23 of the Commission's rules; the deadline for filing is 5:15 p.m. on October 31, 2025. Parties shall also file written testimony in connection with their presentation at the hearing, and posthearing briefs, which must conform with the provisions of § 207.25 of the Commission's rules. The deadline for filing posthearing briefs is 5:15 p.m. on November 14, 2025. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before 5:15 p.m. on November 14, 2025. On December 1, 2025, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before 5:15 p.m. on December 3, 2025, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures*, available on the Commission's website at https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf, elaborates upon the Commission's procedures with respect to filings.

Additional written submissions to the Commission, including requests pursuant to § 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.

Issued: September 2, 2025.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2025–16977 Filed 9–4–25; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1117–0033]

Agency Information Collection Activities; Proposed eCollection, eComments Requested; Extension Without Change of a Previously Approved Collection; Title—Report of Mail Order Transactions

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Drug Enforcement Administration (DEA) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until November 4, 2025.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Heather E. Achbach, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrisette Drive, Springfield, Virginia 22152; Telephone: (571) 776–3882; Email: Heather.E.Achbach@dea.gov or DEA.PRA@dea.gov.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the

information to be collected can be enhanced; and

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Abstract: The Drug Enforcement Administration (DEA) collects information regarding mail order transactions conducted between a person regulated by the agency and a nonregulated person (that is, someone who does not further distribute the product) involving the chemicals

ephedrine, pseudoephedrine, and phenylpropanolamine. Transactions must use, or attempt to use, the United States Postal Service or any private or commercial carrier.

Overview of This Information Collection

1. Type of Information Collection:

Extension of a previously approved collection.

2. The Title of the Form/Collection:

Report of Mail Order Transactions.

3. The agency form number, if any, and the applicable component of the Department sponsoring the collection: Form Number: None. The Department of Justice component is the Drug Enforcement Administration, Diversion Control Division.

4. Affected public who will be asked or required to respond, as well as the obligation to respond: Affected Public: Business or other for-profits. The obligation to respond is mandated by 21 U.S.C. 830(b)(3).

5. An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: The total or estimated number of respondents is 18. The time per response is 1 hour.

6. An estimate of the total annual burden (in hours) associated with the collection: The total annual burden hours for this collection is 216 hours.

7. An estimate of the total annual cost burden associated with the collection, if applicable:

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response	Total annual burden (hours)
Mail Order Reports	18	12	216	1 hour	216
Total	18	12	216	.....	216

If additional information is required contact: John R. Carlson, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W-218, Washington, DC 20530.

Dated: September 3, 2025.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2025-17050 Filed 9-4-25; 8:45 am]

BILLING CODE 4410-09-P

NATIONAL SCIENCE FOUNDATION

Membership of National Science Foundation's Senior Executive Service Performance Review Board

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation is announcing the members of the Senior Executive Service Performance Review Board.

ADDRESSES: Comments should be addressed to Section Chief, Executive Resources, Division of Human Resource Management, National Science Foundation, Room W15219, 2415 Eisenhower Avenue, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Munz at the above address or (703) 292-2478.

SUPPLEMENTARY INFORMATION: The membership of the National Science Foundation's Senior Executive Service Performance Review Board is as follows: Micah Cheatham, Chief Management Officer

Irina Dolinskaya, Directorate Head, Directorate for Computer and Information Science and Engineering
Saul Gonzalez, Deputy Directorate Head, Directorate for Mathematical and Physical Sciences
Theresa Good, Directorate Head, Directorate for Biological Sciences
Simon Malcomber, Chief Science Officer, Chairperson
Clyde Richards, Office Head and Chief Information Officer, Office of the Chief Information Officer
Monya Ruffin, Deputy Directorate Head, Directorate for STEM Education
Angel Williams, General Counsel, Office of General Counsel

This announcement of the membership of the National Science Foundation's Senior Executive Service Performance Review Board is made in compliance with 5 U.S.C. 4314(c)(4).

Dated: September 2, 2025.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2025-16988 Filed 9-4-25; 8:45 am]

BILLING CODE 7555-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2025-0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of September 8, 15, 22, 29, and October 6, 13, 2025. 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 and closed.

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 September 8, 2025

Tuesday, September 9, 2025

10:00 a.m. All Employees Meeting
(Public Meeting) (Contact: Wesley
Held: 301-287-3591)

Additional Information: The meeting will be held in the TWFN Auditorium, 11545 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/>. If attending in person, please contact the staff member listed above at least 24 hours in advance of the meeting to ensure timely processing into the building.

Thursday, September 11, 2025

10:00 a.m. Briefing on NRC
International Activities (Closed Ex.
1 and 9)

Week of September 15, 2025—Tentative

There are no meetings scheduled for the week of September 15, 2025.

Week of September 22, 2025—Tentative

There are no meetings scheduled for the week of September 22, 2025.

Week of September 29, 2025—Tentative

There are no meetings scheduled for the week of September 29, 2025.

Week of October 6, 2025—Tentative

Tuesday, October 7, 2025

10:00 a.m. Meeting With the
Organization of Agreement States
and the Conference of Radiation
Control Program Directors (Public
Meeting) (Contact: Jeffrey Lynch:
301-415-5041)

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/>. If attending in person, please contact the staff member listed above at least 24 hours in advance of the meeting to ensure timely processing into the building.

Week of October 13, 2025—Tentative

There are no meetings scheduled for the week of October 13, 2025.

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: September 3, 2025.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2025-17020 Filed 9-3-25; 11:15 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70-7033; EISX-429-00-000-1754990851; NRC-2025-1007]

Global Laser Enrichment, LLC; Paducah Laser Enrichment Facility; Notice of Intent To Conduct Scoping Process and Prepare Environmental Impact Statement

AGENCY: Nuclear Regulatory
Commission.

ACTION: Notice; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) will conduct a scoping process to gather information necessary to prepare an environmental impact statement (EIS) to evaluate the environmental impacts of issuing a license to Global Laser Enrichment, LLC (GLE) to construct and operate a uranium enrichment facility in McCracken County, Kentucky. As part of the EIS development process, the NRC is seeking comments on the scope of the EIS.

DATES: Submit comments on the scope of the EIS by October 6, 2025. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website.

- *Federal rulemaking website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2025-1007. Address questions about Docket IDs in *Regulations.gov* to Bridget Curran; telephone: 301-415-1003; email: Bridget.Curran@nrc.gov. For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Email comments to:* Comments may be submitted to the NRC electronically using the email address: GLE-PLEF-EIS@nrc.gov.

- *Mail comments to:* Office of Administration, Mail Stop: TWFN-7-A60M, U.S. Nuclear Regulatory

Commission, Washington, DC 20555-0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

Amy Minor, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 817-200-1454; email: Amy.Hestermminor@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2025-1007 when contacting the NRC about the availability of information regarding this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2025-1007.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin ADAMS Public Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, at 301-415-4737, or by email to PDR.Resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

- *Public Library:* A copy of the environmental report for the GLE license application is available for review at the McCracken County Public Library, 555 Washington St., Paducah, KY 42003.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>). Please include

Docket ID NRC–2025–1007 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the comment submissions into ADAMS.

The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Discussion

By letters dated June 13, 2025 (ADAMS Package Accession No. ML25164A077) and June 27, 2025 (ADAMS Package Accession No. ML25179A000), GLE submitted to the NRC an application for a license to construct and operate a uranium enrichment facility in McCracken County, Kentucky, to be known as the Paducah Laser Enrichment Facility (PLEF). The requested license would authorize GLE to receive title to, own, acquire, receive, possess, use, transfer, and/or deliver source material, special nuclear material, and byproduct material as specified in the license for the purposes of constructing, and then operating for up to 40 years, a facility that uses laser-based isotope separation technology to enrich uranium. The requested license would authorize the PLEF to re-enrich depleted uranium hexafluoride (UF₆) tails and enrich natural-grade UF₆ to a maximum of 8 weight percent uranium-235.

The GLE PLEF would be located in McCracken County, Kentucky, northeast of the intersection of Hobbs Road and State Route 725/Woodville Road on undeveloped property abutting southern portions of the U.S. Department of Energy Paducah Gaseous Diffusion Plant. The site is situated in a rural area on privately owned land zoned for heavy industry, on an approximately 130-hectare (322-acre) greenfield site. The applicant's environmental report can be found in ADAMS Package Accession No. ML25164A077.

The NRC staff completed an acceptance review of GLE's license

application and determined it contains sufficient information for the NRC to conduct a detailed technical review. An acceptance letter was issued to GLE on August 4, 2025 (ADAMS Accession No. ML25202A201).

III. Request for Comment

This notice informs the public of the NRC's intention to conduct environmental scoping and prepare an EIS regarding the license application for the PLEF in accordance with part 51 of title 10 of the *Code of Federal Regulations* (10 CFR), "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions." This notice also provides the public an opportunity to participate in the environmental scoping process, as defined in 10 CFR 51.29, "Scoping-environmental impact statement and supplement to environmental impact statement."

The EIS will address the potential impacts from the proposed action and its alternatives. As part of its environmental review, the NRC will first conduct a scoping process and, as soon as practicable thereafter, will prepare a draft EIS for public comment. Participation in this scoping process by members of the public and local, State, Tribal, and Federal government agencies is encouraged. While the NRC will not hold a public scoping meeting, persons may participate in the scoping process by submitting written comments, as explained in this notice, regarding the appropriate scope of the EIS, including significant environmental issues to be analyzed in depth, as well as those that should be eliminated from detailed study because they are peripheral or are not significant. In accordance with 10 CFR 51.29, the scoping process for the draft EIS will be used to accomplish the following:

- a. Define the proposed action that is to be the subject of the EIS;
- b. Determine the scope of the EIS and identify the significant issues to be analyzed in depth;
- c. Identify and eliminate from the detailed study those issues that are peripheral or are not significant or that have been covered by prior environmental review;
- d. Identify any environmental assessments and other EISs that are being or will be prepared that are related to, but are not part of, the scope of the EIS under consideration;
- e. Identify other environmental review and consultation requirements related to the proposed action;
- f. Indicate the relationship between the timing of the preparation of the environmental analyses and the NRC's

tentative planning and decision-making schedule;

g. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the EIS to the NRC and any cooperating agencies; and

h. Describe how the EIS will be prepared, including any contractor assistance to be used.

In accordance with 10 CFR 51.28, "Scoping—participants," the NRC invites the following persons to participate in the scoping process:

- a. The applicant, GLE;
- b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved or that is authorized to develop and enforce relevant environmental standards;
- c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards;
- d. Any affected Indian Tribe;
- e. Any person who requests or has requested an opportunity to participate in the scoping process; and
- f. Any person who has petitioned or intends to petition for leave to intervene under 10 CFR 2.309.

Participation in the scoping process for the PLEF EIS does not entitle participants to become parties to the proceeding to which PLEF EIS relates.

After the close of the scoping period, the NRC staff will prepare a concise summary of its scoping process, the comments received, as well as the NRC's responses to substantive comments. The summary will be made available to the public as an appendix to the draft EIS and will be sent to each participant in the scoping process for whom the NRC staff has an email or mailing address.

The NRC staff will also have a public comment period for the draft EIS. Availability of the draft EIS and the dates of the public comment period will be announced in a future **Federal Register** notice. The final EIS will include the NRC's responses to public comments received on the draft EIS.

Dated: September 2, 2025.

For the Nuclear Regulatory Commission.

Robert Sun,

Chief, Environmental Project Management, Branch 2, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2025–17007 Filed 9–4–25; 8:45 am]

BILLING CODE 7590-01-P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2024–213; CP2024–434; CP2024–529; K2025–490; MC2025–1653 and K2025–1644; MC2025–1654 and K2025–1645; MC2025–1655 and K2025–1646; MC2025–1656 and K2025–1647; MC2025–1657 and K2025–1648; MC2025–1658 and K2025–1649; MC2025–1660 and K2025–1651]

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:* September 9, 2025.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <https://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:**Table of Contents**

- I. Introduction
- II. Public Proceeding(s)
- III. Summary Proceeding(s)

I. Introduction

Pursuant to 39 CFR 3041.405, the Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to Competitive negotiated service agreement(s). The request(s) may propose the addition of a negotiated service agreement from the Competitive product list or the modification of an existing product currently appearing on the Competitive product list.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.¹

Section II identifies the docket number(s) associated with each Postal

Service request, if any, that will be reviewed in a public proceeding as defined by 39 CFR 3010.101(p), the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each such request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 and 39 CFR 3000.114 (Public Representative). The Public Representative does not represent any individual person, entity or particular point of view, and, when Commission attorneys are appointed, no attorney-client relationship is established. 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. The comment due date discussed above does not apply to Section III proceedings (Docket Nos. MC2025–1657 and K2025–1648; Docket Nos. MC2025–1660 and K2025–1651).

II. Public Proceeding(s)

1. *Docket No(s):* CP2024–213; *Filing Title:* USPS Request Concerning Amendment One to Priority Mail & USPS Ground Advantage Contract 201, with Material Filed Under Seal; *Filing Acceptance Date:* August 29, 2025; *Filing Authority:* 39 CFR 3035.105 and

39 CFR 3041.505; *Public Representative:* Almaroof Agoro; *Comments Due:* September 9, 2025.

2. *Docket No(s):* CP2024–434; *Filing Title:* USPS Request Concerning Amendment One to Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 161, with Materials Filed Under Seal; *Filing Acceptance Date:* August 29, 2025; *Filing Authority:* 39 CFR 3035.105 and 39 CFR 3041.505; *Public Representative:* Christopher Mohr; *Comments Due:* September 9, 2025.

3. *Docket No(s):* CP2024–529; *Filing Title:* USPS Request Concerning Amendment One to Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 229, with Materials Filed Under Seal; *Filing Acceptance Date:* August 28, 2025; *Filing Authority:* 39 CFR 3035.105 and 39 CFR 3041.505; *Public Representative:* Arif Hafiz; *Comments Due:* September 9, 2025.

4. *Docket No(s):* K2025–490; *Filing Title:* USPS Request Concerning Amendment One to Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 789, with Materials Filed Under Seal; *Filing Acceptance Date:* August 29, 2025; *Filing Authority:* 39 CFR 3035.105 and 39 CFR 3041.505; *Public Representative:* Christopher Mohr; *Comments Due:* September 9, 2025.

5. *Docket No(s):* MC2025–1653 and K2025–1644; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 834 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 28, 2025; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Arif Hafiz; *Comments Due:* September 9, 2025.

6. *Docket No(s):* MC2025–1654 and K2025–1645; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1405 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 28, 2025; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Maxine Bradley; *Comments Due:* September 9, 2025.

7. *Docket No(s):* MC2025–1655 and K2025–1646; *Filing Title:* USPS Request to Add Priority Mail Contract 925 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 28, 2025; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Maxine Bradley; *Comments Due:* September 9, 2025.

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).

8. *Docket No(s)*: MC2025–1656 and K2025–1647; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 835 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: August 28, 2025; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Elsie Lee-Robbins; *Comments Due*: September 9, 2025.

9. *Docket No(s)*: MC2025–1658 and K2025–1649; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 837 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: August 29, 2025; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Jennaca Upperman; *Comments Due*: September 9, 2025.

III. Summary Proceeding(s)

1. *Docket No(s)*: MC2025–1657 and K2025–1648; *Filing Title*: USPS Request to Add New Fulfillment Standardized Distinct Product, PM–GA Contract 836, and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: August 29, 2025; *Filing Authority*: 39 U.S.C. 3642 and 3633, 39 CFR 3035.105, and 39 CFR 3041.325.

2. *Docket No(s)*: MC2025–1660 and K2025–1651; *Filing Title*: USPS Request to Add New Fulfillment Standardized Distinct Product, PM–GA Contract 838, and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: August 29, 2025; *Filing Authority*: 39 U.S.C. 3642 and 3633, 39 CFR 3035.105, and 39 CFR 3041.325.

This Notice will be published in the **Federal Register**.

Erica A. Barker,
Secretary.

[FR Doc. 2025–16987 Filed 9–4–25; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235–0522]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension: Rule 701—Exemption for Offers and Sales of Securities Pursuant to Certain Compensatory Benefit Plans and Contracts Relating to Compensation

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (“Commission”) has submitted to the Office of Management and Budget (“OMB”) this request for extension of the previously approved collection of information discussed below.

Rule 701 (17 CFR 230.701) under the Securities Act of 1933 (“Securities Act”) (15 U.S.C. 77a *et seq.*) provides an exemption for certain issuers from the registration requirements of the Securities Act for limited offerings and sales of securities issued under compensatory benefit plans or contracts. The purpose of Rule 701 is to enable issuers that are not reporting companies under the Securities Exchange Act of 1934 to compensate employees and others without registering an offer and sale of securities under the Securities Act, while requiring issuers, as a condition of reliance on the rule, to provide investors with certain information that is important to investment decision making. Information provided under Rule 701 is mandatory for an issuer to be able to rely on the registration exemption under Rule 701. We estimate that approximately 3,725 issuers annually rely on the Rule 701 exemption and that it takes approximately two hours to prepare each response. We estimate that 25% of the 2 hours per response (0.5 hours) is prepared by the issuer for a total annual burden of 1,863 hours (0.5 hours per response × 3,725 responses annually). We estimate that 75% of the two hours per response (1.5 hours) is carried by outside professionals retained by the issuer at an estimated cost of \$600 per hour, for a total annual cost burden of \$3,352,500 (1.5 hours per response × \$600 per hour × 3,725 responses annually).

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 public may view and comment on this information collection request at: https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202505-3235-019 or send an email comment to MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov within 30 days of the day after publication of this notice by October 6, 2025.

Dated: September 3, 2025.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2025–17030 Filed 9–4–25; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–103824; File No. SR–CboeBZX–2025–072]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Exempt Closed-End Management Investment Companies Registered Under the Investment Company Act of 1940 That Are Listed as of or After May 20, 2025 From the Annual Meeting of Shareholders Requirement Set Forth in Exchange Rule 14.10(f)

September 2, 2025.

I. Introduction

On May 20, 2025, 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 (“Exchange Act”) ¹ and Rule 19b–4 thereunder, ² a proposed rule change to exempt closed-end management investment companies registered under the Investment Company Act of 1940 (“1940 Act”) ³ that are listed as of or after May 20, 2025 from the annual meeting of shareholders requirement set forth in Exchange Rule 14.10(f). The proposed rule change was published for comment in the **Federal Register** on June 6, 2025. ⁴

On July 14, 2025, pursuant to Section 19(b)(2) of the Exchange Act, ⁵ 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. ⁶ The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act ⁷ to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposed Rule Change

BZX Rule 14.8 (General Listing Requirements—Tier I) sets forth listing

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ 15 U.S.C. 80a–1 *et seq.*

⁴ See Securities Exchange Act Release No. 103166 (June 2, 2025), 90 FR 24172 (“Notice”). Comments on the proposed rule change are available at: <https://www.sec.gov/comments/sr-cboebzx-2025-072/srcboebzx2025072.htm>.

⁵ 15 U.S.C. 78s(b)(2).

⁶ See Securities Exchange Act Release No. 103452, 90 FR 33449 (July 17, 2025). The Commission designated September 4, 2025, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

⁷ 15 U.S.C. 78s(b)(2)(B).

requirements for closed-end management investment companies registered under the 1940 Act (“CEFs”).⁸ BZX Rule 14.10(f) generally requires that each Company⁹ listing common stock or voting preferred stock, and their equivalents, shall hold an annual meeting of shareholders¹⁰ no later than one year after the end of the Company’s fiscal year-end. BZX Rule 14.10(e) sets forth certain exemptions from certain corporate governance requirements, including certain exemptions to the annual shareholder meeting requirement in BZX Rule 14.10(f).¹¹ Any CEF that is listed on the Exchange is required to comply with the annual shareholder meeting requirement set forth in BZX Rule 14.10(f) and is not subject to an exemption. The Exchange proposes to amend BZX Rule 14.10(e)(1)(E) to exempt CEFs that are listed on the Exchange as of or after May 20, 2025 from the BZX Rule 14.10(f) requirement to hold annual shareholder meetings. The Exchange also proposes to amend Interpretations and Policies .13 (Management Investment Companies) and .15 (Meetings of Shareholders or Partners) to BZX Rule 14.10 to specify that (i) CEFs listed on the Exchange as of or after May 20, 2025 are exempt from the annual shareholder meeting requirement set forth in BZX Rule 14.10(f); (ii) CEFs that were listed on another exchange prior to May 20, 2025 and transfer their listing to the Exchange will continue to be subject to the annual

shareholder meeting requirement set forth in BZX Rule 14.10(f); and (iii) an existing CEF that merges or reorganizes into a new CEF does not constitute a listing transfer for purposes of BZX Rule 14.10.

III. Proceedings To Determine Whether To Approve or Disapprove SR–CboeBZX–2025–072 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act¹² to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,¹³ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change’s consistency with the Exchange Act and, in particular, with Section 6(b)(5) of the Exchange Act, which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.¹⁴

The development and enforcement of meaningful corporate governance exchange listing standards is of substantial importance to financial markets and the investing public, especially given investor expectations regarding the nature of companies that have achieved an exchange listing for their securities and the role of an exchange in overseeing its market and ensuring compliance with its listing standards.¹⁵ The corporate governance

standards embodied in exchange listing standards play an important role in assuring that listed companies observe good governance practices, including safeguarding the interests of shareholders.¹⁶

In particular, the Commission has consistently recognized the importance of the annual shareholder meeting requirement to the protection of investors and the public interest.¹⁷ Among other things, annual shareholder meetings allow the shareholders of a company the opportunity to elect directors and meet with, and engage, management to discuss company affairs.¹⁸ The Commission has

Sale of Securities Below the Minimum Price to a Substantial Security Holder of the Company) (“NYSE 2023 Order”); 100816 (Aug. 26, 2024), 89 FR 70674, 70677–78 (Aug. 30, 2024) (SR–NASDAQ–2024–019) (Order Granting Approval of a Proposed Rule Change, to Rules 5605, 5615 and 5810 To Amend Phase-In Schedules for Certain Corporate Governance Requirements and Applicability of Certain Cure Periods) (“Nasdaq Order”).

¹⁶ See e.g., NYSE 2023 Order at 116; NASDAQ Order at 70678; Securities and Exchange Act Release No. 91517 (Apr. 14, 2021), 86 FR 20556 (Apr. 20, 2021) (SR–NASDAQ–2020–100) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Modify the Quorum Requirement). Strong qualitative corporate governance requirements that serve to safeguard the interests of public shareholders are consistent with Section 6(b)(5) of the Exchange Act, in that they are, among other things, designed to protect investors and the public interest. See, e.g., Securities Exchange Act Release Nos. 48108 (June 30, 2003), 68 FR 39995, 40005 (July 3, 2003) (SR–NYSE–2002–46 and SR–NASDAQ–2002–140) (Order Approving NYSE and Nasdaq Proposed Rule Changes and Notice of Filing and Order Granting Accelerated Approval to NYSE Amendments No. 1 and 2 and Nasdaq Amendments No. 2 and 3 Thereto Relating to Equity Compensation Plans) (stating that the exchanges’ proposals, which require shareholder approval of equity compensation plans, should have the effect of safeguarding the interests of shareholders); 65225 (Aug. 30, 2011), 76 FR 55148, 55152 (Sept. 6, 2011) (SR–BATS–2011–018) (Order Approving Proposed Rule Change to Adopt Rules for the Qualification, Listing and Delisting of Companies on the Exchange) (stating that qualitative listing requirements, including shareholder approval rules, are designed to ensure that companies trading on a national securities exchange will adequately protect the interest of public shareholders).

¹⁷ The Commission has stated that the right of shareholders to vote at an annual meeting is an essential and important one. See, e.g., Securities Exchange Act Release Nos. 86406 (July 18, 2019), 84 FR 35431, 35432 (July 23, 2019) (SR–NYSE–2019–20) (Order Granting Approval of a Proposed Rule Change Amending Section 302 of the Listed Company Manual To Provide Exemptions for the Issuers of Certain Categories of Securities From the Obligation To Hold Annual Shareholders’ Meetings) (“NYSE 2019 Order”); 57268 (Feb. 4, 2008), 73 FR 7614, 7616 (Feb. 8, 2008) (SR–Amex–2006–31) (Order Approving Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3 Thereto, Relating to Annual Shareholder Meeting Requirements) (“Amex Order”).

¹⁸ See, e.g., Amex Order at 7614; Securities Exchange Act Release No. 53578 (Mar. 30, 2006), 71 FR 17532 (Apr. 6, 2006) (SR–NASDAQ–2005–073)

⁸ See BZX Rules 14.8(e) and (i). The Exchange states that there are currently no CEFs listed on the Exchange. See Notice, *supra* note 4, at 24173 n.7.

⁹ The term “Company” means the issuer of a security listed or applying to list on the Exchange. See BZX Rule 14.1(a)(3).

¹⁰ The term “Shareholder” means a record or beneficial owner of a security listed or applying to list. See BZX Rule 14.1(a)(28).

¹¹ Specifically, BZX Rule 14.10(e)(1)(F)(i) exempts from this annual shareholder meeting requirement issuers whose only securities listed on the Exchange are nonvoting preferred securities, debt securities, or Derivative Securities. BZX Rule 14.10(e)(1)(F)(ii) defines “Derivative Securities” as Commodity Futures Trust Shares (Rule 14.11(e)(7)), Commodity Index Trust Shares (Rule 14.11(e)(6)), Commodity-Based Trust Shares (Rule 14.11(e)(4)), Commodity-Linked Securities (Rule 14.11(d)(K)(ii)), Currency Trust Shares (Rule 14.11(e)(5)), Equity Gold Shares (Rule 14.11(e)(2)), Equity Index-Linked Securities (Rule 14.11(d)(K)(i)), ETF Shares (Rule 14.11(l)), Fixed Income Index-Linked Securities (Rule 14.11(d)(K)(iii)), Futures-Linked Securities (Rule 14.11(d)(K)(iv)), Index Fund Shares (Rule 14.11(c)), Index-Linked Exchangeable Notes (Rule 14.11(e)(1)), Managed Fund Shares (Rule 14.11(i)), Managed Portfolio Shares (Rule 14.11(k)), Managed Trust Securities (Rule 14.11(e)(10)), Multifactor Index-Linked Securities (Rule 14.11(d)(K)(v)), Partnership Units (Rule 14.11(e)(8)), Portfolio Depository Receipts (Rule 14.11(b)), SEEDS (Rule 14.11(e)(12)), Tracking Fund Shares (Rule 14.11(m)), Trust Certificates (Rule 14.11(e)(3)), and Trust Issued Receipts (Rule 14.11(f)).

¹² 15 U.S.C. 78s(b)(2)(B).

¹³ See *id.*

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ See, e.g., Securities Exchange Act Release Nos. 99238 (Dec. 26, 2023), 89 FR 113, 116 (Jan. 2, 2024) (SR–NYSE–2023–34) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, Amending Sections 312.03(b) and 312.04 of the NYSE Listed Company Manual To Modify the Circumstances Under Which a Listed Company Must Obtain Shareholder Approval of a

recognized that, in limited circumstances, the exchange requirement to hold an annual shareholder meeting may not be necessary for certain issuers of specific types of securities where the holders of such securities do not directly participate as equity holders or vote in the annual election of directors or generally on the affairs, operations, or policies of the listed company.¹⁹ However, when approving a prior exchange proposal for specific exemptions from the annual shareholder meeting requirement, which included an exemption for exchange-traded funds (“ETFs”), the Commission expressly stated that CEFs are still required to hold annual meetings under that exchange’s rules.²⁰

The Exchange states in support of its proposal that it believes the annual shareholder meeting requirement is unnecessary for CEFs because the 1940 Act preserves shareholder ability to elect directors, requires independent directors to approve significant actions, and requires a shareholder vote on material governance and policy changes.²¹ The Exchange states that it believes that since no other registered investment companies listed on the Exchange are required to hold an annual shareholder meeting, there is no substantive justification for imposing such a requirement on CEFs.²²

(Order Granting Approval of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 Thereto Relating to Rule 4350(e) To Amend the Annual Shareholder Meeting Requirement) (“NASD Order”).

¹⁹ See NYSE 2019 Order at 35432; Amex Order at 7616. See also NASD Order at 17533. The Commission has also stated that where an exchange has exempted issuers of certain categories of securities from the exchange requirement to hold an annual meeting, such issuers would remain subject to any applicable state and federal securities laws that relate to annual meetings and may still be required to hold annual shareholder meetings in accordance with such state and federal securities laws. See NYSE 2019 Order at 35432; Amex Order at 7616; NASD Order at 17533. In addition, such issuers would remain subject to state and federal securities laws that may require other types of shareholder meetings, such as special meetings of shareholders. See NYSE 2019 Order at 35432; NASD Order at 17533. The Commission has also stated that the exemptions apply only with respect to particular securities, and that if a company also lists other common stock or voting preferred stock, or their equivalent, such company must nevertheless hold an annual meeting for the holders of such securities during each fiscal year. See NYSE 2019 Order at 35433; Amex Order at 7616; NASD Order at 17533.

²⁰ See NYSE 2019 Order at 35433 n.20.

²¹ See Notice, *supra* note 4, at 24176.

²² See *id.* When justifying its prior proposal to exempt ETFs listed on the Exchange from the annual shareholder meeting requirement of BZX Rule 14.10(f), the Exchange stated, among other things, that such securities are issued by an open-end investment company registered under the 1940

Act that the Exchange, the tendency for CEFs to trade at NAV discounts represents an “inherent structural feature” that investors both recognize and frequently leverage strategically, rather than an issue that would be remedied by annual shareholder meetings.²³

The Exchange also states that retail shareholder participation in annual meetings is limited and the current annual shareholder meeting requirement provides opportunities for concentrated minority shareholders to wield disproportionate influence over CEFs.²⁴ In addition, the Exchange states that removing the annual shareholder meeting requirement would enhance investor protection by preventing the exploitation of retail shareholder non-participation at annual meetings and reducing opportunities for minority interests to change a fund’s established investment approach.²⁵ The Exchange further states that removing the annual shareholder meeting requirement will facilitate capital formation by bringing more CEFs to the public market and will reduce operational costs for CEFs.²⁶

Finally, the Exchange states that its proposal will preserve existing CEF shareholders’ rights because the proposal only applies to CEFs listed as of or after May 20, 2025.²⁷ The

Act that are available for creation and redemption on a continuous basis, and require dissemination of an intraday portfolio value; that these requirements provide important investor protections and ensure that the net asset value (“NAV”) and the market price remain closely tied to one another while maintaining a liquid market for the security; and that these protections, along with the disclosure documents regularly received by investors, allow their shareholders to value their holdings on an ongoing basis and lessen the need for such shareholders to directly deal with management at an annual meeting. See Securities Exchange Act Release No. 99524 (Feb. 13, 2024), 89 FR 12919, 12930 (Feb. 20, 2024) (SR-CboeBZX–2024–010) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Corporate Governance Requirements, as Provided Under Exchange Rule 14.10 and Make Certain Other Changes to Its Listing Rules as Provided Under Exchange Rules 14.3, 14.6, 14.7, and 14.12) (“BZX ETF Filing”).

²³ See Notice, *supra* note 4, at 24176. The Exchange further states that many investors deliberately purchase listed CEFs on the secondary market when they are trading at a discount to NAV and these discounts may represent buying opportunities that allow investors to acquire shares or reinvest dividends below NAV, thereby boosting their dividend yield and potential return. See *id.* at 24174.

²⁴ See *id.* at 24175.

²⁵ See *id.* at 24176.

²⁶ See *id.* at 24175, 24176.

²⁷ See *id.* at 24175. According to the Exchange, a CEF listed as of or after May 20, 2025 would not be required to hold an annual meeting until one year after its first fiscal year-end following listing, which would be after the Commission’s final decision on this proposal. See *id.* The Exchange states that it believes that applying the proposed

Exchange also states that CEFs listed as of or after May 20, 2025 would retain the flexibility to voluntarily incorporate annual meeting provisions into their organizational bylaws should they elect to do so.²⁸

The Commission received comments supporting the proposal.²⁹ One commenter stated that CEFs are investment vehicles that allow retail investors to access the private equity markets while still being afforded protections under the 1940 Act.³⁰ Because these products are not designed to provide for daily investor redemptions, managers are able to fully invest in an underlying investment strategy that may focus on less liquid investments.³¹ This commenter stated that certain shareholders have engaged in practices that undermine these purposes, and that removing the annual shareholder meeting for CEFs would eliminate the ability of such shareholders to use annual shareholder meetings as a means to take over funds.³² This commenter also stated that certain investors exploit the current annual shareholder meeting requirement for their own gain—for example, by forcing a liquidity event and then exiting their position, but not focusing on any change to governance.³³

exemption to the annual shareholder meeting requirement to CEFs listed as of or after May 20, 2025 would provide potential benefits without requiring funds to delay listing or undergo a merger or reorganization after adoption of the proposal. See *id.*

²⁸ See *id.* at 24176.

²⁹ See Letters from Paul G. Cellupica, General Counsel, and Kevin Ercoline, Assistant General Counsel, Investment Company Institute (“ICI”), dated June 27, 2025 (“ICI Letter”); James P. McKay, dated July 22, 2025 (“McKay Letter”); and David Young, dated July 25, 2025 (“Young Letter”).

³⁰ See ICI Letter at 3. This commenter stated that it provided data that it believes demonstrates that retail investors often buy shares of listed CEFs at a discount and reinvest dividends when CEFs continue to trade at a discount, showing that some shareholders buy and hold shares of listed CEFs for the yield and distributions as opposed to any future opportunity to exit at NAV. See *id.* at 8 (citing Letter from Paul G. Cellupica, General Counsel, and Kevin Ercoline, Assistant General Counsel, ICI, dated Nov. 5, 2024, at 3–5 (“2024 ICI Letter”).

³¹ See ICI Letter at 3.

³² See *id.* at 4. See also *id.* at 8–9 (citing 2024 ICI Letter, which discussed data concerning shareholder engagement and shareholder activism, and citing Letter from Paul G. Cellupica, General Counsel, Kevin Ercoline, Assistant General Counsel, and Shelly Antoniewicz, Chief Economist, ICI, dated Jan. 24, 2025, which discussed prior academic literature on shareholder activism). Another commenter that supports the proposal stated that large minority investors liquidate CEFs at low prices, thwarting his investment strategy to hold the CEF as a long-term investment. See McKay Letter.

³³ See ICI Letter at 5. See also Young Letter (stating that certain investors hurt CEFs’ value to realize short-term profits, at the expense of long-term shareholders).

This commenter further stated that removing the annual shareholder meeting requirement would hamper the ability of certain shareholders to engage in activity that prevents the capital formation of products.³⁴ This commenter also stated that exempting CEFs from the requirement to hold annual shareholder meetings would remove “a key disincentive” to listing new CEFs by protecting them from such actors.³⁵

This commenter also stated that if a CEF chose not to hold annual shareholder meetings it would still have protections as provided in the 1940 Act (e.g., independent directors who would maintain their fiduciary duty to monitor discounts and direct changes).³⁶ This commenter further stated that exempting CEFs from the Exchange’s annual shareholder meeting requirement would allow the decision regarding whether to hold such a meeting to be determined by state law and the CEF’s organizational documents.³⁷ In addition, this commenter stated that because the exemption from the requirement to hold annual shareholder meetings would only be available to new funds that do not yet have shareholders, no existing “right” to a meeting would be taken away under the proposal.³⁸ This commenter stated that a CEF registered after May 20, 2025 would still have the ability to preserve the right to an annual shareholder meeting in its by-laws if it determines that retail shareholders value that right.³⁹

The Commission also received comments opposing the proposal.⁴⁰ Comment letters from individuals opposing the proposal generally requested that the Commission not

allow their voting rights to be taken away and stated that annual shareholder meetings are necessary to hold managers accountable so that CEFs are not devalued.⁴¹ One commenter stated that the historical backdrop of the adoption of the 1940 Act, when at the time an annual meeting was required by every state’s laws, makes clear that Congress never contemplated elimination of an annual shareholder meeting for CEFs, regardless of the other shareholder protections set forth in the 1940 Act.⁴² Other commenters stated that CEFs are different from other registered investment companies, including ETFs listed on the Exchange, which are not required to hold annual shareholder meetings.⁴³ In particular, commenters stated that, unlike ETFs which trade at or near their NAV, CEFs commonly trade at significant discounts to their NAV, meaning that CEF shareholders cannot trade out of their shares if they are dissatisfied with management without incurring large losses.⁴⁴ Several commenters stated that annual shareholder meetings are essential in order to hold the directors of CEFs accountable and that, without this accountability, boards will be less responsive to shareholder concerns and discounts to NAV will widen.⁴⁵ Other commenters stated that although the Exchange contends that the proposal will not affect shareholders of CEFs listed as of or after May 20, 2025, existing CEFs will just merge or reorganize into new CEFs in order to be

exempt from the annual shareholder meeting requirements.⁴⁶

The Commission has concerns about whether BZX’s proposal to exempt CEFs listed on the Exchange as of or after May 20, 2025 from the annual shareholder meeting requirement set forth in BZX Rule 14.10(f) is designed to protect investors and the public interest, as required by Section 6(b)(5) of the Exchange Act.⁴⁷ Although BZX’s rules provide a similar exemption for ETFs listed on the Exchange,⁴⁸ there are important differences between CEFs and ETFs. Shares of CEFs often trade at prices that are less than, or at a “discount” to, the funds’ NAV per share. In contrast, while ETFs may trade at a discount, it is often to a much lesser degree than CEFs.⁴⁹ The Exchange states that eliminating the annual shareholder meeting requirement would not undermine investor protection because the tendency for CEFs to trade at NAV discounts represents an operational characteristic that investors recognize and frequently leverage strategically.⁵⁰ However, certain commenters disagree and state that shareholders of CEFs may have an interest in expressing their views at annual shareholder meetings in order to hold CEF managers accountable, particularly because CEF shareholders may not be able to trade out of their positions without incurring losses.⁵¹ As a result, the Commission believes there may be investor protection concerns for CEF shareholders with respect to eliminating the right to an annual shareholder meeting that may not be present for shareholders of ETFs listed on the Exchange.

In addition, while the Exchange states that the proposal would maintain existing voting rights for shareholders in established CEFs because it would only be applicable to CEFs listed on the Exchange as of or after May 20, 2025,⁵² the Exchange’s proposal also provides that an existing CEF that merges or reorganizes into a new CEF would not constitute a listing transfer for purposes

⁴¹ See, e.g., Brostoff Letter; Chance Letter; Kerr Letter; Letters from Daniel Lippincott, President and Chief Investment Officer, Karpus Investment Management, dated July 18, 2025 (“Karpus Letter”); Bernard Haven, dated July 22, 2025 (“Haven Letter”).

⁴² See Bulldog Letter. See also *CorpGov.net* Letter; Letter from Devin Hanrahan, dated July 23, 2025 (“Hanrahan Letter”).

⁴³ See, e.g., Saba Letter at 6–7; Karpus Letter; Haven Letter.

⁴⁴ See, e.g., Saba Letter at 6–7; Karpus Letter; Haven Letter.

⁴⁵ See, e.g., ATG Letter at 1; SLK Letter; Hanrahan Letter. See also Saba Letter at 8–9. One commenter referenced letters from academics on a prior iteration of proposal that, among other things, discussed data on the costs of director entrenchment, reasons CEFs trade at NAV discounts, and shareholder activism. See Saba Letter at 9 (citing Letters from Profs. Lucian A. Bebchuk, Harvard School of Law, and Robert J. Jackson, Jr., NYU School of Law, dated July 30, 2024; Profs. Daniel J. Taylor, The Wharton School, Edwin Hu, University of Virginia Law School, Shiva Rajgopal, Columbia Business School, Robert E. Bishop, Duke School of Law, Bradford Levy, Chicago Booth School of Business, and Jonathon Zytynick, Georgetown University Law Center, on behalf of the Working Group on Market Efficiency and Investor Protection in Closed-End Funds, dated July 30, 2024; Prof. Robert J. Jackson, Jr., dated Nov. 14, 2024).

⁴⁶ See, e.g., Saba Letter at 1–2; Letter from Timothy Fischer, dated July 24, 2025. See also Saba Letter at 3–6.

⁴⁷ 15 U.S.C. 78f(b)(5).

⁴⁸ See BZX ETF Filing, *supra* note 22.

⁴⁹ See Securities Act Release No. 10695, Investment Company Act Release No. 33646, S7–15–18 (Sept. 25, 2019), 84 FR 57162, 57165 (Oct. 24, 2019) (Exchange-Traded Funds Final Rule) (“The combination of the creation and redemption process with secondary market trading in ETF shares and underlying securities provides arbitrage opportunities that are designed to help keep the market price of ETF shares at or close to the NAV per share of the ETF.”). See also *supra* note 22.

⁵⁰ See *supra* note 23 and accompanying text.

⁵¹ See *supra* notes 44–45 and accompanying text.

⁵² See *supra* note 27 and accompanying text.

³⁴ See ICI Letter at 4.

³⁵ See *id.* This commenter stated that the campaigns of certain minority activists have negatively impacted the market for CEF IPOs, noting that no CEFs launched in 2023, only three launched in 2024, and none have launched yet in 2025, as compared to the rates of launches for other products that do not require an annual shareholder meeting requirement (e.g., 518 ETFs launched in 2023 and 757 launched in 2024). See *id.* at 3.

³⁶ See *id.* at 6.

³⁷ See *id.* at 5–6.

³⁸ See *id.* at 6.

³⁹ See *id.* at 2.

⁴⁰ See, e.g., Letters from Michael D’Angelo, Saba Capital Management, LP, dated June 27, 2025 (“Saba Letter”); Phillip Goldstein, Managing Partner, Bulldog Investors LLP, dated July 5, 2025 (“Bulldog Letter”); Gabi Gliksberg, ATG Capital Management LLC, dated June 27, 2025 (“ATG Letter”); Hank Krakover, SLK Private Wealth, dated July 8, 2025 (“SLK Letter”); Ben Brostoff, dated July 4, 2025 (“Brostoff Letter”); James Ritchie, CorpGov.net, dated July 7, 2025 (“CorpGov.net Letter”); Kenneth Chance, dated July 8, 2025 (“Chance Letter”); Tom Kerr, dated July 10, 2025 (“Kerr Letter”).

of BZX Rule 14.10. Thus, any CEF previously listed on another exchange prior to May 20, 2025 that mergers or reorganizes into a new CEF listed on the Exchange would be exempt from the Exchange's annual shareholder meeting requirement. Similarly, a CEF listed on BZX would be able to merge or reorganize into a new CEF that is not subject to the annual shareholder meeting requirement. As a result, the proposal could allow for the elimination of the rights of existing CEF shareholders to engage management at an annual shareholder meeting, a right which a shareholder may have relied on when purchasing the CEF shares and which may be particularly important to existing shareholders given the tendency of CEF shares to trade at a discount to NAV. The Exchange has not addressed how this potential elimination of the rights of existing shareholders is consistent with the protection of investors and the public interest, as required by Section 6(b)(5) of the Exchange Act.

The Commission also has concerns about whether the application of the proposal to CEFs that list on the Exchange after the date of filing of this proposed rule change (*i.e.*, May 20, 2025) but before Commission action on the proposal is consistent with the protection of investors under Section 6(b)(5) of the Exchange Act because whether such CEFs would be subject to an annual shareholder meeting requirement may be unknown at the time that shareholders purchase the CEF shares.

As a result, the Commission believes there are questions as to whether the proposal is consistent with Section 6(b)(5) of the Exchange Act⁵³ and its requirement, among other things, that the rules of a national securities exchange be designed to protect investors and the public interest. For this reason, it is appropriate to institute proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act⁵⁴ to determine whether the proposal should be approved or disapproved.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their data, views, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the

proposed rule change is consistent with Section 6(b)(5) of the Exchange Act⁵⁵ or any other provision of the Exchange Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of data, views, and arguments, the Commission will consider, pursuant to Rule 19b-4 under the Exchange Act,⁵⁶ any request for an opportunity to make an oral presentation.⁵⁷

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by September 26, 2025. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by October 10, 2025. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. 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-CboeBZX-2025-072 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to file number SR-CboeBZX-2025-072. 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 filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable

information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeBZX-2025-072 and should be submitted on or before September 26, 2025. Rebuttal comments should be submitted by October 10, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁸

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103828; File No. SR-NYSE-2025-19]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing of a Proposed Rule Change To Amend the Connectivity Fee Schedule To Add Hardware Procurement Services and Managed Services

September 2, 2025.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on August 27, 2025, NYSE National, Inc. ("NYSE National" 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 proposes to amend the Connectivity Fee Schedule to add hardware procurement services and managed services in the colocation halls at the Mahwah Data Center. The proposed change is available on the Exchange's website at www.nyse.com and at the principal office of the Exchange.

⁵⁵ 15 U.S.C. 78f(b)(5).

⁵⁶ 17 CFR 240.19b-4.

⁵⁷ Section 19(b)(2) of the Exchange Act, as amended by the Securities Acts Amendments of 1975, Public Law 94-29 (June 4, 1975), grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

⁵⁸ 17 CFR 200.30-3(a)(57).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁵³ 15 U.S.C. 78f(b)(5).

⁵⁴ 15 U.S.C. 78s(b)(2)(B).

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 proposes⁴ to amend the Connectivity Fee Schedule to add hardware procurement services and managed services in the colocation halls at the Mahwah Data Center ("MDC").⁵

Hardware Procurement Services

The Exchange has recently received requests from several Users⁶ and prospective Users for the Exchange to start providing hardware procurement services in the colocation halls at the MDC. Under such services, FIDS⁷ would engage a third-party procurement specialist to procure, purchase, format, and deliver hardware for the User to use in the colocation halls at the MDC based on specifications provided by the User.⁸

⁴ The Exchange previously filed and withdrew an earlier version of this proposal. See Securities Exchange Act Release No. 103127 (May 27, 2025), 90 FR 23409 (June 2, 2025) (SR-NYSE-2025-10).

⁵ Through its Fixed Income and Data Services ("FIDS") business, Intercontinental Exchange, Inc. ("ICE") operates the MDC. The Exchange and its affiliates New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., and NYSE Texas, Inc. (the "Affiliate SROs") are indirect subsidiaries of ICE. Each of the Exchange's Affiliate SROs has submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSE-2025-34, SR-NYSEAMER-2025-55, SR-NYSEARCA-2025-63, and SR-NYSETEX-2025-28.

⁶ 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-NYSE-2018-07). As specified in the Connectivity 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.

⁷ In this proposal, the term "FIDS" includes FIDS and any ICE subsidiaries that are successors-in-interest to FIDS.

⁸ Installation is handled either by FIDS or by the User or prospective User.

Specifically, under this arrangement, FIDS would work with one or more specific third-party procurement specialists (each, a "Procurement Specialist").⁹ A User or prospective User interested in the service would work with a Procurement Specialist to identify the specific hardware it wishes to procure. The Procurement Specialist would contact various original equipment manufacturers to determine equipment availability and the pricing of one or more procurement options (e.g., outright purchase of the equipment vs. 12-month lease vs. 24-month lease). The quotes would be passed on to the User or prospective User, with FIDS adding to each quote a 10% service fee.

The User or prospective User would have the opportunity to review all terms before deciding whether to proceed. If the User or prospective User decides to proceed, it would enter into a contract with FIDS for the services, and would send payment to FIDS. FIDS would forward the payment to the Procurement Specialist, less the 10% service fee, which FIDS would retain.

The Exchange understands that some Users would find such an arrangement desirable because it would allow them to obtain all necessary hardware from FIDS, with whom the User already has a contractual relationship, as opposed to having to contract directly with a procurement specialist or with multiple third-party hardware vendors. These Users have explained that contracting with FIDS to obtain hardware would allow the Users to avoid the onerous process of onboarding the hardware vendors as approved sellers in their procurement systems. It is the Exchange's understanding that such onboarding generally requires Users to, among other things: evaluate each vendor's financial and credit history; check their service track record; evaluate their sustainability credentials; assess their compliance with regulations; obtain their agreement to an ethical code of conduct; and establish ordering processes, payment terms, and delivery processes with each vendor.¹⁰ By contrast, the proposed arrangement would permit the User to obtain necessary hardware by contracting only with FIDS—a vendor already established in the User's systems—in exchange for paying FIDS a service fee equal to 10% of the Procurement

⁹ FIDS currently plans to work with only one specific third-party procurement specialist, but may determine in the future to work with a different specialist or more than one specialist.

¹⁰ The Procurement Specialist would already be an approved seller in FIDS' procurement systems.

Specialist's fees for procuring such hardware.

A Procurement Specialist working with FIDS under the proposed arrangement would not receive any advantages or privileges (in terms of access to the MDC or otherwise) over any other third-party procurement specialist that a User may independently hire. In addition, any Procurement Specialist working with FIDS pursuant to this proposal would retain its ability to separately contract with customers outside of the FIDS arrangement described in this proposal.

Managed Services

Similarly, some Users and prospective Users have also requested that the Exchange begin providing "managed services" in the colocation halls at the MDC. The term "managed services" typically refers to a customer's hiring a third-party vendor to provide information technology ("IT") support for the customer's hardware in a data center, so that the customer can focus its own IT resources elsewhere. A vendor providing managed services typically deploys software and technical tooling to monitor the health and status of the customer's servers and other hardware in the data center, diagnoses solutions for configuration challenges, works with the data center's operations team regarding any changes to such configurations, and provides around-the-clock monitoring, trouble-shooting, and remediation of any problems concerning the customer's hardware in the data center.

As with hardware procurement, Users and prospective Users have asked the Exchange to add a service in the colocation halls at the MDC that would permit FIDS to contract with a third-party managed services provider on the User's or prospective User's behalf. This would allow the Users and prospective Users to benefit from managed services within the colocation halls at the MDC while avoiding the many challenges (listed above) with onboarding a new vendor as an approved seller in their procurement systems.

Under the proposed arrangement, FIDS would work with one or more specific third-party managed service providers (each, a "Managed Services Specialist").¹¹ A User or prospective User interested in the service would work with the Managed Services Specialist to identify the specific services it wishes to procure. The quote

¹¹ FIDS currently plans to work with only one specific third-party managed services specialist, but may determine in the future to work with a different specialist or more than one specialist.

for those services would be sent to the User or prospective User, with FIDS adding to each quote a 10% service fee.

The User or prospective User would have the opportunity to review all terms before deciding whether to proceed with the arrangement. If the User or prospective User decides to proceed, it would enter into a contract with FIDS for the services, and would send payment to FIDS. FIDS would forward the payment to the Managed Services

Specialist, less the 10% service fee, which FIDS would retain.¹²

A Managed Services Specialist working with FIDS under the proposed arrangement would not receive any advantages or privileges (in terms of access to the MDC or otherwise) over any other third-party managed services specialist that a User may independently hire. In addition, any Managed Services Specialist working with FIDS pursuant to this proposal

would retain its ability to separately contract with customers outside of the FIDS arrangement described in this proposal.

Proposed Amendment

Accordingly, FIDS proposes to amend Section A of the Connectivity Fee Schedule regarding Co-Location Fees to add hardware procurement services and managed services, as follows:

Type of service	Description	Amount of charge
Hardware Procurement Services	FIDS' engaging a hardware procurement specialist to obtain hardware on User's behalf.	Procurement specialist's fees (which FIDS passes through to the procurement specialist) plus 10% service fee payable to FIDS.
Managed Services	FIDS' engaging a managed services provider on User's behalf.	Managed services provider's fees (which FIDS passes through to the managed services provider) plus 10% service fee payable to FIDS.

Application and Impact of the Proposed Changes

The proposed changes are not targeted at, or expected to be limited in applicability to, a specific segment of market participant. The proposed services would be available to any potential User on a non-discriminatory basis. The proposed changes would not apply differently to distinct types or sizes of Users. Rather, they would apply to all Users equally. The Exchange anticipates that some of the Users currently requesting the services from FIDS would use the service.

The proposed services are completely voluntary. Users or potential Users who do not wish to order the proposed services from FIDS can instead contract directly with any number of vendors, hardware procurement specialists, and managed services specialists. There are numerous third parties that currently provide hardware procurement and managed services in the colocation halls at the MDC without the involvement of FIDS or the Exchange, and Users and potential Users could continue to obtain such services from these third parties. The Exchange would not take any actions to block or prevent such third parties from providing their services.

The proposed changes are not otherwise intended to address any other issues relating to services related to the MDC and/or related fees, and the Exchange is not aware of any problems that market participants would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁴ 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,¹⁵ 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. First, with respect to the fees charged by the Procurement Specialist and the Managed Services Specialist, it is reasonable that the Exchange would pass any payments it receives from the User for such services on to the specialist who performed the services.

Second, the Exchange believes it is reasonable for FIDS to charge and retain a 10% fee for performing the service of contracting with the Procurement Specialist or Managed Service Specialist on the User's behalf and handling the User's payments of such specialists' fees. The proposed 10% service fee is a nominal amount that would compensate FIDS for its work contracting and handling payments on behalf of the User.

Moreover, the Exchange believes the proposed fee is reasonable because the Exchange is subject to competitive forces. The proposed 10% service fee is reasonable because any Users or potential Users who do not wish to pay it can instead contract directly with any number of vendors, hardware procurement specialists, and managed services specialists. The User or prospective User would have the opportunity to review all terms before deciding whether to proceed. There are numerous third parties that currently provide hardware procurement and managed services in the colocation halls at the MDC without the involvement of FIDS or the Exchange, and Users and potential Users could continue to obtain such services from these third parties. The Exchange would not take any actions to block or prevent such third parties from providing their services.

In addition, there is no requirement that any User or potential User purchase the services proposed in this filing. As noted above, the Exchange is proposing such services as a convenience to Users and potential Users who have specifically indicated their preference to

¹² The Managed Services Specialist would already be an approved seller in FIDS' procurement systems.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78f(b)(4).

buy such services from FIDS instead of from a different vendor, and to pay FIDS a fee for facilitating that arrangement. If a User believes the 10% service fee is too high, it has the option of acquiring the services it needs by contracting directly with vendors or specialists instead.

The Proposed Change Is an Equitable Allocation of Fees and Credits

The Exchange believes that its proposal equitably allocates its fees among Users. The Exchange believes that the proposed fees are equitable because they would not apply differently to distinct types or sizes of Users. Rather, it would apply equally to any Users who opted to purchase the proposed services.

In addition, the Exchange believes that the proposal is equitable because only market participants that voluntarily select to use the proposed hardware procurement services or the managed services would be charged for them. The proposed services would be available to all Users on an equal basis, and all Users that voluntarily choose to use the proposed services would be charged the fees incurred on their behalf by the Procurement Specialist or the Managed Services Specialist, plus the same 10% service fee payable to FIDS. The User or prospective User would have the opportunity to review all terms before deciding whether to proceed.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes its proposal is not unfairly discriminatory. The proposed change does not apply differently to different types or sizes of Users. Rather, it would apply to all Users equally.

In addition, the Exchange believes that the proposal is not unfairly discriminatory because only Users that voluntarily select to receive the proposed services would be charged for them. The proposed services would be available to all Users on an equal basis, and all Users that voluntarily choose to use the service would be charged the fees incurred on their behalf by the Procurement Specialist or the Managed Services Specialist, plus the same 10% service fee payable to FIDS. The User or prospective User would have the opportunity to review all terms before deciding whether to proceed.

For all these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,¹⁶ the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change would not affect competition among national securities exchanges or among members of the Exchange. Rather, the Exchange believes that by offering the proposed services, it will provide an alternate, non-exclusive method for Users who wish to purchase hardware procurement services or managed services to obtain such services in the MDC, in addition to the numerous third-party vendors from whom Users can obtain such services directly.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSENAT-2025-19 on the subject line.

¹⁶ 15 U.S.C. 78f(b)(8).

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-2025-19. 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 filing 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-2025-19 and should be submitted on or before September 26, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2025-16998 Filed 9-4-25; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103825; File No. SR-NYSE-2025-34]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of a Proposed Rule Change To Amend the Connectivity Fee Schedule To Add Hardware Procurement Services and Managed Services

September 2, 2025.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that on August 27, 2025, New York Stock Exchange LLC ("NYSE" 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

¹⁷ 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.

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Connectivity Fee Schedule to add hardware procurement services and managed services in the colocation halls at the Mahwah Data Center. The proposed rule change is available on the Exchange's website at www.nyse.com and at the principal office of the Exchange.

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 proposes⁴ to amend the Connectivity Fee Schedule to add hardware procurement services and managed services in the colocation halls at the Mahwah Data Center ("MDC").⁵

Hardware Procurement Services

The Exchange has recently received requests from several Users⁶ and

prospective Users for the Exchange to start providing hardware procurement services in the colocation halls at the MDC. Under such services, FIDS⁷ would engage a third-party procurement specialist to procure, purchase, format, and deliver hardware for the User to use in the colocation halls at the MDC based on specifications provided by the User.⁸

Specifically, under this arrangement, FIDS would work with one or more specific third-party procurement specialists (each, a "Procurement Specialist").⁹ A User or prospective User interested in the service would work with a Procurement Specialist to identify the specific hardware it wishes to procure. The Procurement Specialist would contact various original equipment manufacturers to determine equipment availability and the pricing of one or more procurement options (e.g., outright purchase of the equipment vs. 12-month lease vs. 24-month lease). The quotes would be passed on to the User or prospective User, with FIDS adding to each quote a 10% service fee.

The User or prospective User would have the opportunity to review all terms before deciding whether to proceed. If the User or prospective User decides to proceed, it would enter into a contract with FIDS for the services, and would send payment to FIDS. FIDS would forward the payment to the Procurement Specialist, less the 10% service fee, which FIDS would retain.

The Exchange understands that some Users would find such an arrangement desirable because it would allow them to obtain all necessary hardware from FIDS, with whom the User already has a contractual relationship, as opposed to having to contract directly with a procurement specialist or with multiple third-party hardware vendors. These Users have explained that contracting with FIDS to obtain hardware would allow the Users to avoid the onerous process of onboarding the hardware vendors as approved sellers in their procurement systems. It is the Exchange's understanding that such onboarding generally requires Users to, among other things: evaluate each vendor's financial and credit history; check their service track record; evaluate their sustainability credentials;

subject to colocation fees for the same colocation service charged by the Affiliate SROs.

⁷ In this proposal, the term "FIDS" includes FIDS and any ICE subsidiaries that are successors-in-interest to FIDS.

⁸ Installation is handled either by FIDS or by the User or prospective User.

⁹ FIDS currently plans to work with only one specific third-party procurement specialist, but may determine in the future to work with a different specialist or more than one specialist.

assess their compliance with regulations; obtain their agreement to an ethical code of conduct; and establish ordering processes, payment terms, and delivery processes with each vendor.¹⁰ By contrast, the proposed arrangement would permit the User to obtain necessary hardware by contracting only with FIDS—a vendor already established in the User's systems—in exchange for paying FIDS a service fee equal to 10% of the Procurement Specialist's fees for procuring such hardware.

A Procurement Specialist working with FIDS under the proposed arrangement would not receive any advantages or privileges (in terms of access to the MDC or otherwise) over any other third-party procurement specialist that a User may independently hire. In addition, any Procurement Specialist working with FIDS pursuant to this proposal would retain its ability to separately contract with customers outside of the FIDS arrangement described in this proposal.

Managed Services

Similarly, some Users and prospective Users have also requested that the Exchange begin providing "managed services" in the colocation halls at the MDC. The term "managed services" typically refers to a customer's hiring a third-party vendor to provide information technology ("IT") support for the customer's hardware in a data center, so that the customer can focus its own IT resources elsewhere. A vendor providing managed services typically deploys software and technical tooling to monitor the health and status of the customer's servers and other hardware in the data center, diagnoses solutions for configuration challenges, works with the data center's operations team regarding any changes to such configurations, and provides around-the-clock monitoring, trouble-shooting, and remediation of any problems concerning the customer's hardware in the data center.

As with hardware procurement, Users and prospective Users have asked the Exchange to add a service in the colocation halls at the MDC that would permit FIDS to contract with a third-party managed services provider on the User's or prospective User's behalf. This would allow the Users and prospective Users to benefit from managed services within the colocation halls at the MDC while avoiding the many challenges (listed above) with onboarding a new

¹⁰ The Procurement Specialist would already be an approved seller in FIDS' procurement systems.

⁴ The Exchange previously filed and withdrew an earlier version of this proposal. See Securities Exchange Act Release No. 103129 (May 27, 2025), 90 FR 23393 (June 2, 2025) (SR-NYSE-2025-17).

⁵ Through its Fixed Income and Data Services ("FIDS") business, Intercontinental Exchange, Inc. ("ICE") operates the MDC. The Exchange and its affiliates NYSE American LLC, NYSE Arca, Inc., NYSE National, Inc., and NYSE Texas, Inc. (the "Affiliate SROs") are indirect subsidiaries of ICE. Each of the Exchange's Affiliate SROs has submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSEAMER-2025-55, SR-NYSEARCA-2025-63, SR-NYSENAT-2025-19, and SR-NYSETEX-2025-28.

⁶ 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 Connectivity Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be

vendor as an approved seller in their procurement systems.

Under the proposed arrangement, FIDS would work with one or more specific third-party managed service providers (each, a “Managed Services Specialist”).¹¹ A User or prospective User interested in the service would work with the Managed Services Specialist to identify the specific services it wishes to procure. The quote for those services would be sent to the User or prospective User, with FIDS adding to each quote a 10% service fee.

The User or prospective User would have the opportunity to review all terms

before deciding whether to proceed with the arrangement. If the User or prospective User decides to proceed, it would enter into a contract with FIDS for the services, and would send payment to FIDS. FIDS would forward the payment to the Managed Services Specialist, less the 10% service fee, which FIDS would retain.¹²

A Managed Services Specialist working with FIDS under the proposed arrangement would not receive any advantages or privileges (in terms of access to the MDC or otherwise) over any other third-party managed services

specialist that a User may independently hire. In addition, any Managed Services Specialist working with FIDS pursuant to this proposal would retain its ability to separately contract with customers outside of the FIDS arrangement described in this proposal.

Proposed Amendment

Accordingly, FIDS proposes to amend Section A of the Connectivity Fee Schedule regarding Co-Location Fees to add hardware procurement services and managed services, as follows:

Type of service	Description	Amount of charge
Hardware Procurement Services.	FIDS’ engaging a hardware procurement specialist to obtain hardware on User’s behalf.	Procurement specialist’s fees (which FIDS passes through to the procurement specialist) plus 10% service fee payable to FIDS.
Managed Services	FIDS’ engaging a managed services provider on User’s behalf.	Managed services provider’s fees (which FIDS passes through to the managed services provider) plus 10% service fee payable to FIDS.

Application and Impact of the Proposed Changes

The proposed changes are not targeted at, or expected to be limited in applicability to, a specific segment of market participant. The proposed services would be available to any potential User on a non-discriminatory basis. The proposed changes would not apply differently to distinct types or sizes of Users. Rather, they would apply to all Users equally. The Exchange anticipates that some of the Users currently requesting the services from FIDS would use the service.

The proposed services are completely voluntary. Users or potential Users who do not wish to order the proposed services from FIDS can instead contract directly with any number of vendors, hardware procurement specialists, and managed services specialists. There are numerous third parties that currently provide hardware procurement and managed services in the colocation halls at the MDC without the involvement of FIDS or the Exchange, and Users and potential Users could continue to obtain such services from these third parties. The Exchange would not take any actions to block or prevent such third parties from providing their services.

The proposed changes are not otherwise intended to address any other issues relating to services related to the MDC and/or related fees, and the Exchange is not aware of any problems

that market participants would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁴ 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,¹⁵ 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.

First, with respect to the fees charged by the Procurement Specialist and the Managed Services Specialist, it is reasonable that the Exchange would pass any payments it receives from the User for such services on to the specialist who performed the services.

Second, the Exchange believes it is reasonable for FIDS to charge and retain a 10% fee for performing the service of contracting with the Procurement Specialist or Managed Service Specialist on the User’s behalf and handling the User’s payments of such specialists’ fees. The proposed 10% service fee is a nominal amount that would compensate FIDS for its work contracting and handling payments on behalf of the User.

Moreover, the Exchange believes the proposed fee is reasonable because the Exchange is subject to competitive forces. The proposed 10% service fee is reasonable because any Users or potential Users who do not wish to pay it can instead contract directly with any number of vendors, hardware procurement specialists, and managed services specialists. The User or prospective User would have the opportunity to review all terms before deciding whether to proceed. There are numerous third parties that currently provide hardware procurement and managed services in the colocation halls at the MDC without the involvement of FIDS or the Exchange, and Users and potential Users could continue to obtain

¹¹ FIDS currently plans to work with only one specific third-party managed services specialist, but may determine in the future to work with a different specialist or more than one specialist.

¹² The Managed Services Specialist would already be an approved seller in FIDS’ procurement systems.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78f(b)(4).

such services from these third parties. The Exchange would not take any actions to block or prevent such third parties from providing their services.

In addition, there is no requirement that any User or potential User purchase the services proposed in this filing. As noted above, the Exchange is proposing such services as a convenience to Users and potential Users who have specifically indicated their preference to buy such services from FIDS instead of from a different vendor, and to pay FIDS a fee for facilitating that arrangement. If a User believes the 10% service fee is too high, it has the option of acquiring the services it needs by contracting directly with vendors or specialists instead.

The Proposed Change Is an Equitable Allocation of Fees and Credits

The Exchange believes that its proposal equitably allocates its fees among Users. The Exchange believes that the proposed fees are equitable because they would not apply differently to distinct types or sizes of Users. Rather, it would apply equally to any Users who opted to purchase the proposed services.

In addition, the Exchange believes that the proposal is equitable because only market participants that voluntarily select to use the proposed hardware procurement services or the managed services would be charged for them. The proposed services would be available to all Users on an equal basis, and all Users that voluntarily choose to use the proposed services would be charged the fees incurred on their behalf by the Procurement Specialist or the Managed Services Specialist, plus the same 10% service fee payable to FIDS. The User or prospective User would have the opportunity to review all terms before deciding whether to proceed.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes its proposal is not unfairly discriminatory. The proposed change does not apply differently to different types or sizes of Users. Rather, it would apply to all Users equally.

In addition, the Exchange believes that the proposal is not unfairly discriminatory because only Users that voluntarily select to receive the proposed services would be charged for them. The proposed services would be available to all Users on an equal basis, and all Users that voluntarily choose to use the service would be charged the fees incurred on their behalf by the Procurement Specialist or the Managed Services Specialist, plus the same 10%

service fee payable to FIDS. The User or prospective User would have the opportunity to review all terms before deciding whether to proceed.

For all these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,¹⁶ the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change would not affect competition among national securities exchanges or among members of the Exchange. Rather, the Exchange believes that by offering the proposed services, it will provide an alternate, non-exclusive method for Users who wish to purchase hardware procurement services or managed services to obtain such services in the MDC, in addition to the numerous third-party vendors from whom Users can obtain such services directly.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSE-2025-34 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-2025-34. 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 filing 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-2025-34 and should be submitted on or before September 26, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2025-16999 Filed 9-4-25; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235-0108]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Revision: Rule 14f-1—Change in Majority of Directors

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) ("PRA"), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget

¹⁶ 15 U.S.C. 78f(b)(8).

¹⁷ 17 CFR 200.30-3(a)(12).

(“OMB”) this request for extension of the previously approved collection of information. The Commission also is requesting approval from OMB to designate this existing collection of information (OMB Control No. 3235–0108) as a “common form” for purposes of PRA submissions¹ because the Board of Governors of the Federal Reserve System uses this information collection (under OMB Control No. 7100–0091).

Under Securities Exchange Act of 1934 (“Exchange Act”) Rule 14f–1 (17 CFR 240.14f–1), if, pursuant to any arrangement or understanding with a person or persons acquiring securities of an issuer in a transaction subject to Section 13(d) or 14(d) of the Exchange Act, persons constituting a majority of the issuer’s directors are to be elected or designated as issuer directors, otherwise than at a meeting of security holders, then, not less than 10 days prior to the date any such person takes office as a director, or such shorter period as the Commission may authorize, the issuer must file with the Commission and transmit to all holders of record of securities of the issuer information, primarily concerning prospective new directors of the issuer, required by Rule 14f–1. The information required by Rule 14f–1 is mandatory, and filings made in response to Rule 14f–1 are publicly available on the Commission’s Electronic Data Gathering, Analysis, and Retrieval system. We estimate that it takes approximately 18 burden hours to provide the information required under Rule 14f–1 and that the information is filed by approximately 21 respondents annually for a total annual burden of 378 hours (18 hours per response × 21 responses).

¹ See ROCIS PRA Module User Guide v.8.2, at 110–111 (Mar. 2024), available at <https://www.rocis.gov/rocis/viewResources.do> (“A ‘common form’ is an information collection that can be used by two or more agencies, or government-wide, for the same purpose. The Common Forms Module [in ROCIS] allows a ‘host’ agency to obtain [OMB] approval of an information collection for use by one or more ‘using’ agencies. After OMB grants approval, any prospective using agency that seeks to collect identical information for the same purpose can obtain approval to use the ‘common form’ by providing its agency-specific information to OMB (e.g., burden estimates and number of respondents). The host agency will indicate in the **Federal Register** notices that it is requesting approval of a common form and, if known, identify other agencies that may use the information collection. Both the **Federal Register** notices and the ICR should account only for the burden imposed by the host agency’s use of the common form. Once the host agency has received approval from OMB, any agency will be able to request OMB approval for its use of the common form in ROCIS by providing its agency specific information to OMB (e.g., burden estimates and number of respondents). Additional public notice by those agencies will not be required.”).

An agency may conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view and comment on this information collection request at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202506-3235-006 or may send an email comment to MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov within 30 days of the day after publication of this notice by October 6, 2025.

Dated: September 3, 2025.

Sherry Haywood,

Assistant Secretary.

[FR Doc. 2025–17031 Filed 9–4–25; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Investment Company Act Release No. 35735; File No. 812–15801

HarbourVest Private Investments Fund, et al.

September 2, 2025.

AGENCY: Securities and Exchange Commission (“Commission” or “SEC”).

ACTION: Notice.

Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the “Act”) and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

Summary of Application: Applicants request an order to permit certain business development companies (“BDCs”) and closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment entities.

Applicants: HarbourVest Private Investments Fund, HarbourVest Registered Advisers L.P., HarbourVest Partners, LLC, HarbourVest Partners L.P., HarbourVest Advisers L.P., HarbourVest Partners (Ireland) Limited, HarbourVest Partners (Canada) Limited, and certain of their affiliated entities as described in Appendix A to the application.

Filing Dates: The application was filed on May 15, 2025, and amended on August 28, 2025.

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 Secretaries-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 September 29, 2025, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer’s interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission’s Secretary at Secretaries-Office@sec.gov.

ADDRESSES: The Commission: Secretaries-Office@sec.gov. Applicants: Monique Austin, maustin@harbourvest.com, and Daniel Chisolm, dchisholm@harbourvest.com, HarbourVest Private Investments Fund, legal@harbourvest.com, and Rajib Chanda, Rajib.chanda@stblaw.com, Ryan Brizek, ryan.brizek@stblaw.com, and Matthew Micklavzina, matthew.micklavzina@stblaw.com, Simpson Thacher Bartlett LLP.

FOR FURTHER INFORMATION CONTACT: Adam Large, Senior Special Counsel, Stephan N. Packs, Senior Counsel, or Daniele Marchesani, Assistant Chief Counsel, at (202) 551–6825 (Division of Investment Management, Chief Counsel’s Office).

SUPPLEMENTARY INFORMATION: For Applicants’ representations, legal analysis, and conditions, please refer to Applicants’ First Amended and Restated Application, dated August 28, 2025, 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 www.sec.gov/edgar/searchedgar/companysearch. You may also call the SEC’s Office of Investor Education and Advocacy at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2025–16992 Filed 9–4–25; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–103829; File No. SR–NYSETEX–2025–28]

Self-Regulatory Organizations; NYSE Texas, Inc.; Notice of Filing of a Proposed Rule Change To Amend the Connectivity Fee Schedule To Add Hardware Procurement Services and Managed Services

September 2, 2025.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b–4 thereunder,³ notice is hereby given that, on August 27, 2025, the NYSE Texas, Inc. (“NYSE Texas” 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 proposes to amend the Connectivity Fee Schedule to add hardware procurement services and managed services in the colocation halls at the Mahwah Data Center. The proposed rule change is available on the Exchange’s website at www.nyse.com and at the principal office of the Exchange.

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 proposes⁴ to amend the Connectivity Fee Schedule to add hardware procurement services and managed services in the colocation halls at the Mahwah Data Center (“MDC”).⁵

Hardware Procurement Services

The Exchange has recently received requests from several Users⁶ and prospective Users for the Exchange to start providing hardware procurement services in the colocation halls at the MDC. Under such services, FIDS⁷ would engage a third-party procurement specialist to procure, purchase, format, and deliver hardware for the User to use in the colocation halls at the MDC based on specifications provided by the User.⁸

Specifically, under this arrangement, FIDS would work with one or more specific third-party procurement specialists (each, a “Procurement Specialist”).⁹ A User or prospective User interested in the service would work with a Procurement Specialist to identify the specific hardware it wishes to procure. The Procurement Specialist would contact various original equipment manufacturers to determine equipment availability and the pricing of one or more procurement options (e.g., outright purchase of the equipment

vs. 12-month lease vs. 24-month lease). The quotes would be passed on to the User or prospective User, with FIDS adding to each quote a 10% service fee.

The User or prospective User would have the opportunity to review all terms before deciding whether to proceed. If the User or prospective User decides to proceed, it would enter into a contract with FIDS for the services, and would send payment to FIDS. FIDS would forward the payment to the Procurement Specialist, less the 10% service fee, which FIDS would retain.

The Exchange understands that some Users would find such an arrangement desirable because it would allow them to obtain all necessary hardware from FIDS, with whom the User already has a contractual relationship, as opposed to having to contract directly with a procurement specialist or with multiple third-party hardware vendors. These Users have explained that contracting with FIDS to obtain hardware would allow the Users to avoid the onerous process of onboarding the hardware vendors as approved sellers in their procurement systems. It is the Exchange’s understanding that such onboarding generally requires Users to, among other things: evaluate each vendor’s financial and credit history; check their service track record; evaluate their sustainability credentials; assess their compliance with regulations; obtain their agreement to an ethical code of conduct; and establish ordering processes, payment terms, and delivery processes with each vendor. By contrast, the proposed arrangement would permit the User to obtain necessary hardware by contracting only with FIDS—a vendor already established in the User’s systems—in exchange for paying FIDS a service fee equal to 10% of the Procurement Specialist’s fees for procuring such hardware.

A Procurement Specialist working with FIDS under the proposed arrangement would not receive any advantages or privileges (in terms of access to the MDC or otherwise) over any other third-party procurement specialist that a User may independently hire. In addition, any Procurement Specialist working with FIDS pursuant to this proposal would retain its ability to separately contract with customers outside of the FIDS arrangement described in this proposal.

Managed Services

Similarly, some Users and prospective Users have also requested that the Exchange begin providing “managed services” in the colocation halls at the MDC. The term “managed services”

⁴ The Exchange previously filed and withdrew an earlier version of this proposal. See Securities Exchange Act Release No. 103128 (May 27, 2025), 90 FR 23391 (June 2, 2025) (SR–NYSETEX–2025–07).

⁵ Through its Fixed Income and Data Services (“FIDS”) business, Intercontinental Exchange, Inc. (“ICE”) operates the MDC. The Exchange and its affiliates New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., and NYSE National, Inc. (the “Affiliate SROs”) are indirect subsidiaries of ICE. Each of the Exchange’s Affiliate SROs has submitted substantially the same proposed rule change to propose the changes described herein. See SR–NYSE–2025–34, SR–NYSEAMER–2025–55, SR–NYSEARCA–2025–63, and SR–NYSENAT–2025–19.

⁶ 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 Connectivity 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.

⁷ In this proposal, the term “FIDS” includes FIDS and any ICE subsidiaries that are successors-in-interest to FIDS.

⁸ Installation is handled either by FIDS or by the User or prospective User.

⁹ FIDS currently plans to work with only one specific third-party procurement specialist, but may determine in the future to work with a different specialist or more than one specialist.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

typically refers to a customer’s hiring a third-party vendor to provide information technology (“IT”) support for the customer’s hardware in a data center, so that the customer can focus its own IT resources elsewhere. A vendor providing managed services typically deploys software and technical tooling to monitor the health and status of the customer’s servers and other hardware in the data center, diagnoses solutions for configuration challenges, works with the data center’s operations team regarding any changes to such configurations, and provides around-the-clock monitoring, trouble-shooting, and remediation of any problems concerning the customer’s hardware in the data center.

As with hardware procurement, Users and prospective Users have asked the Exchange to add a service in the colocation halls at the MDC that would permit FIDS to contract with a third-party managed services provider on the User’s or prospective User’s behalf. This

would allow the Users and prospective Users to benefit from managed services within the colocation halls at the MDC while avoiding the many challenges (listed above) with onboarding a new vendor as an approved seller in their procurement systems.

Under the proposed arrangement, FIDS would work with one or more specific third-party managed service providers (each, a “Managed Services Specialist”).¹⁰ A User or prospective User interested in the service would work with the Managed Services Specialist to identify the specific services it wishes to procure. The quote for those services would be sent to the User or prospective User, with FIDS adding to each quote a 10% service fee.

The User or prospective User would have the opportunity to review all terms before deciding whether to proceed with the arrangement. If the User or prospective User decides to proceed, it would enter into a contract with FIDS for the services, and would send

payment to FIDS. FIDS would forward the payment to the Managed Services Specialist, less the 10% service fee, which FIDS would retain.¹¹

A Managed Services Specialist working with FIDS under the proposed arrangement would not receive any advantages or privileges (in terms of access to the MDC or otherwise) over any other third-party managed services specialist that a User may independently hire. In addition, any Managed Services Specialist working with FIDS pursuant to this proposal would retain its ability to separately contract with customers outside of the FIDS arrangement described in this proposal.

Proposed Amendment

Accordingly, FIDS proposes to amend Section A of the Connectivity Fee Schedule regarding Co-Location Fees to add hardware procurement services and managed services, as follows:

Type of service	Description	Amount of charge
Hardware Procurement Services	FIDS’ engaging a hardware procurement specialist to obtain hardware on User’s behalf.	Procurement specialist’s fees (which FIDS passes through to the procurement specialist) plus 10% service fee payable to FIDS.
Managed Services	FIDS’ engaging a managed services provider on User’s behalf.	Managed services provider’s fees (which FIDS passes through to the managed services provider) plus 10% service fee payable to FIDS.

Application and Impact of the Proposed Changes

The proposed changes are not targeted at, or expected to be limited in applicability to, a specific segment of market participant. The proposed services would be available to any potential User on a non-discriminatory basis. The proposed changes would not apply differently to distinct types or sizes of Users. Rather, they would apply to all Users equally. The Exchange anticipates that some of the Users currently requesting the services from FIDS would use the service.

The proposed services are completely voluntary. Users or potential Users who do not wish to order the proposed services from FIDS can instead contract directly with any number of vendors, hardware procurement specialists, and managed services specialists. There are numerous third parties that currently provide hardware procurement and managed services in the colocation halls at the MDC without the involvement of FIDS or the Exchange, and Users and

potential Users could continue to obtain such services from these third parties. The Exchange would not take any actions to block or prevent such third parties from providing their services.

The proposed changes are not otherwise intended to address any other issues relating to services related to the MDC and/or related fees, and the Exchange is not aware of any problems that market participants would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5) of the Act,¹³ 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,¹⁴ 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. First, with respect to the fees charged by the Procurement Specialist and the Managed Services Specialist, it is reasonable that the Exchange would pass any payments it receives from the User for such services on to the specialist who performed the services.

¹⁰ FIDS currently plans to work with only one specific third-party managed services specialist, but may determine in the future to work with a different specialist or more than one specialist.

¹¹ The Managed Services Specialist would already be an approved seller in FIDS’ procurement systems.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78f(b)(4).

Second, the Exchange believes it is reasonable for FIDS to charge and retain a 10% fee for performing the service of contracting with the Procurement Specialist or Managed Service Specialist on the User's behalf and handling the User's payments of such specialists' fees. The proposed 10% service fee is a nominal amount that would compensate FIDS for its work contracting and handling payments on behalf of the User.

Moreover, the Exchange believes the proposed fee is reasonable because the Exchange is subject to competitive forces. The proposed 10% service fee is reasonable because any Users or potential Users who do not wish to pay it can instead contract directly with any number of vendors, hardware procurement specialists, and managed services specialists. The User or prospective User would have the opportunity to review all terms before deciding whether to proceed. There are numerous third parties that currently provide hardware procurement and managed services in the colocation halls at the MDC without the involvement of FIDS or the Exchange, and Users and potential Users could continue to obtain such services from these third parties. The Exchange would not take any actions to block or prevent such third parties from providing their services.

In addition, there is no requirement that any User or potential User purchase the services proposed in this filing. As noted above, the Exchange is proposing such services as a convenience to Users and potential Users who have specifically indicated their preference to buy such services from FIDS instead of from a different vendor, and to pay FIDS a fee for facilitating that arrangement. If a User believes the 10% service fee is too high, it has the option of acquiring the services it needs by contracting directly with vendors or specialists instead.

The Proposed Change Is an Equitable Allocation of Fees and Credits

The Exchange believes that its proposal equitably allocates its fees among Users. The Exchange believes that the proposed fees are equitable because they would not apply differently to distinct types or sizes of Users. Rather, it would apply equally to any Users who opted to purchase the proposed services.

In addition, the Exchange believes that the proposal is equitable because only market participants that voluntarily select to use the proposed hardware procurement services or the managed services would be charged for them. The proposed services would be

available to all Users on an equal basis, and all Users that voluntarily choose to use the proposed services would be charged the fees incurred on their behalf by the Procurement Specialist or the Managed Services Specialist, plus the same 10% service fee payable to FIDS. The User or prospective User would have the opportunity to review all terms before deciding whether to proceed.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes its proposal is not unfairly discriminatory. The proposed change does not apply differently to different types or sizes of Users. Rather, it would apply to all Users equally.

In addition, the Exchange believes that the proposal is not unfairly discriminatory because only Users that voluntarily select to receive the proposed services would be charged for them. The proposed services would be available to all Users on an equal basis, and all Users that voluntarily choose to use the service would be charged the fees incurred on their behalf by the Procurement Specialist or the Managed Services Specialist, plus the same 10% service fee payable to FIDS. The User or prospective User would have the opportunity to review all terms before deciding whether to proceed.

For all these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,¹⁵ the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change would not affect competition among national securities exchanges or among members of the Exchange. Rather, the Exchange believes that by offering the proposed services, it will provide an alternate, non-exclusive method for Users who wish to purchase hardware procurement services or managed services to obtain such services in the MDC, in addition to the numerous third-party vendors from whom Users can obtain such services directly.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSETEX-2025-28 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-NYSETEX-2025-28. 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 filing 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

¹⁵ 15 U.S.C. 78f(b)(8).

to file number SR-NYSETEX-2025-28 and should be submitted on or before September 26, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2025-17002 Filed 9-4-25; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103819; File No. SR-CboeBYX-2025-007]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 3, To Modify Rule 11.24 To Introduce an Enhanced RPI Order and Expand Its Retail Price Improvement Program To Include Securities Priced Below \$1.00

September 2, 2025.

On March 13, 2025, Cboe BYX Exchange, Inc. (the “Exchange” or “BYX”) 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 modify BYX Rule 11.24 to introduce an Enhanced RPI Order and expand its Retail Price Improvement Program to include securities priced below \$1.00.³ The Commission has not received any comments on the proposed rule change.⁴ On April 29, 2025, pursuant to Section 19(b)(2) of the Act,⁵ 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.⁶ On June 17, 2025, the Exchange submitted Amendment No. 3 to the proposed rule change, which replaced and superseded

the proposed rule change as originally filed.⁷ On June 18, 2025, the Commission published notice of Amendment No. 3 and instituted proceedings under Section 19(b)(2)(B) of the Act⁸ to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 3.⁹

Section 19(b)(2) of the Act¹⁰ provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of the notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for comment in the *Federal Register* on March 20, 2025.¹¹ The 180th day after publication of the Notice is September 16, 2025. The Commission is extending the time period for approving or disapproving the proposed rule change for an additional 60 days.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change and the issues raised therein. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,¹² designates November 15, 2025, as the date by which the Commission shall either approve or disapprove the proposed rule change, as modified by Amendment No. 3 (File No. SR-CboeBYX-2025-007).

⁷ On May 6, 2025, the Exchange submitted Amendment No. 1 to the proposed rule change. On June 16, 2025, the Exchange submitted Amendment No. 2. On June 17, 2025, the Exchange withdrew Amendment Nos. 1 and 2 and submitted Amendment No. 3 to the proposed rule change. In Amendment No. 3, the Exchange amended the proposed rule change to provide additional examples, justification and support for its proposal and made certain changes to the proposed rule text. The full text of Amendment No. 3 is available on the Commission’s website at: <https://www.sec.gov/comments/sr-cboebyx-2025-007/srcboebyx2025007.htm>.

⁸ 15 U.S.C. 78s(b)(2)(B).

⁹ See Securities Exchange Act Release No. 103291, 90 FR 26843 (June 24, 2025).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ See *supra* note 3.

¹² 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2025-16997 Filed 9-4-25; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103827; File No. SR-NYSEARCA-2025-63]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of a Proposed Rule Change To Amend the Connectivity Fee Schedule To Add Hardware Procurement Services and Managed Services

September 2, 2025.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on August 27, 2025, NYSE Arca, Inc. (“NYSE Arca” 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 proposes to amend the Connectivity Fee Schedule to add hardware procurement services and managed services in the colocation halls at the Mahwah Data Center. The proposed rule change is available on the Exchange’s website at www.nyse.com and at the principal office of the Exchange.

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,

¹³ 17 CFR 200.30-3(a)(57).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

¹⁶ 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. 102681 (March 14, 2025), 90 FR 13240 (“Notice”).

⁴ Comments received on the proposed rule change are available at: <https://www.sec.gov/comments/sr-cboebyx-2025-007/srcboebyx2025007.htm>.

⁵ 15 U.S.C. 78s(b)(2).

⁶ See Securities Exchange Act Release No. 102956, 90 FR 19013 (May 5, 2025) (designating June 18, 2025 as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change).

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 proposes⁴ to amend the Connectivity Fee Schedule to add hardware procurement services and managed services in the colocation halls at the Mahwah Data Center ("MDC").⁵

Hardware Procurement Services

The Exchange has recently received requests from several Users⁶ and prospective Users for the Exchange to start providing hardware procurement services in the colocation halls at the MDC. Under such services, FIDS⁷ would engage a third-party procurement specialist to procure, purchase, format, and deliver hardware for the User to use in the colocation halls at the MDC based on specifications provided by the User.⁸

Specifically, under this arrangement, FIDS would work with one or more specific third-party procurement specialists (each, a "Procurement Specialist").⁹ A User or prospective User interested in the service would work with a Procurement Specialist to identify the specific hardware it wishes to procure. The Procurement Specialist would contact various original

equipment manufacturers to determine equipment availability and the pricing of one or more procurement options (e.g., outright purchase of the equipment vs. 12-month lease vs. 24-month lease). The quotes would be passed on to the User or prospective User, with FIDS adding to each quote a 10% service fee.

The User or prospective User would have the opportunity to review all terms before deciding whether to proceed. If the User or prospective User decides to proceed, it would enter into a contract with FIDS for the services, and would send payment to FIDS. FIDS would forward the payment to the Procurement Specialist, less the 10% service fee, which FIDS would retain.

The Exchange understands that some Users would find such an arrangement desirable because it would allow them to obtain all necessary hardware from FIDS, with whom the User already has a contractual relationship, as opposed to having to contract directly with a procurement specialist or with multiple third-party hardware vendors. These Users have explained that contracting with FIDS to obtain hardware would allow the Users to avoid the onerous process of onboarding the hardware vendors as approved sellers in their procurement systems. It is the Exchange's understanding that such onboarding generally requires Users to, among other things: evaluate each vendor's financial and credit history; check their service track record; evaluate their sustainability credentials; assess their compliance with regulations; obtain their agreement to an ethical code of conduct; and establish ordering processes, payment terms, and delivery processes with each vendor.¹⁰ By contrast, the proposed arrangement would permit the User to obtain necessary hardware by contracting only with FIDS—a vendor already established in the User's systems—in exchange for paying FIDS a service fee equal to 10% of the Procurement Specialist's fees for procuring such hardware.

A Procurement Specialist working with FIDS under the proposed arrangement would not receive any advantages or privileges (in terms of access to the MDC or otherwise) over any other third-party procurement specialist that a User may independently hire. In addition, any Procurement Specialist working with FIDS pursuant to this proposal would retain its ability to separately contract with customers outside of the FIDS arrangement described in this proposal.

Managed Services

Similarly, some Users and prospective Users have also requested that the Exchange begin providing "managed services" in the colocation halls at the MDC. The term "managed services" typically refers to a customer's hiring a third-party vendor to provide information technology ("IT") support for the customer's hardware in a data center, so that the customer can focus its own IT resources elsewhere. A vendor providing managed services typically deploys software and technical tooling to monitor the health and status of the customer's servers and other hardware in the data center, diagnoses solutions for configuration challenges, works with the data center's operations team regarding any changes to such configurations, and provides around-the-clock monitoring, trouble-shooting, and remediation of any problems concerning the customer's hardware in the data center.

As with hardware procurement, Users and prospective Users have asked the Exchange to add a service in the colocation halls at the MDC that would permit FIDS to contract with a third-party managed services provider on the User's or prospective User's behalf. This would allow the Users and prospective Users to benefit from managed services within the colocation halls at the MDC while avoiding the many challenges (listed above) with onboarding a new vendor as an approved seller in their procurement systems.

Under the proposed arrangement, FIDS would work with one or more specific third-party managed service providers (each, a "Managed Services Specialist").¹¹ A User or prospective User interested in the service would work with the Managed Services Specialist to identify the specific services it wishes to procure. The quote for those services would be sent to the User or prospective User, with FIDS adding to each quote a 10% service fee.

The User or prospective User would have the opportunity to review all terms before deciding whether to proceed with the arrangement. If the User or prospective User decides to proceed, it would enter into a contract with FIDS for the services, and would send payment to FIDS. FIDS would forward the payment to the Managed Services

⁴ The Exchange previously filed and withdrew an earlier version of this proposal. See Securities Exchange Act Release No. 103126 (May 27, 2025), 90 FR 23401 (June 2, 2025) (SR-NYSEARCA-2025-35).

⁵ Through its Fixed Income and Data Services ("FIDS") business, Intercontinental Exchange, Inc. ("ICE") operates the MDC. The Exchange and its affiliates New York Stock Exchange LLC, NYSE American LLC, NYSE National, Inc., and NYSE Texas, Inc. (the "Affiliate SROs") are indirect subsidiaries of ICE. Each of the Exchange's Affiliate SROs has submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSE-2025-34, SR-NYSEAMER-2025-55, SR-NYSENAT-2025-19, and SR-NYSETEX-2025-28.

⁶ 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 Connectivity 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.

⁷ In this proposal, the term "FIDS" includes FIDS and any ICE subsidiaries that are successors-in-interest to FIDS.

⁸ Installation is handled either by FIDS or by the User or prospective User.

⁹ FIDS currently plans to work with only one specific third-party procurement specialist, but may determine in the future to work with a different specialist or more than one specialist.

¹⁰ The Procurement Specialist would already be an approved seller in FIDS' procurement systems.

¹¹ FIDS currently plans to work with only one specific third-party managed services specialist, but may determine in the future to work with a different specialist or more than one specialist.

Specialist, less the 10% service fee, which FIDS would retain.¹²

A Managed Services Specialist working with FIDS under the proposed arrangement would not receive any advantages or privileges (in terms of access to the MDC or otherwise) over any other third-party managed services

specialist that a User may independently hire. In addition, any Managed Services Specialist working with FIDS pursuant to this proposal would retain its ability to separately contract with customers outside of the FIDS arrangement described in this proposal.

Proposed Amendment

Accordingly, FIDS proposes to amend Section A of the Connectivity Fee Schedule regarding Co-Location Fees to add hardware procurement services and managed services, as follows:

Type of service	Description	Amount of charge
Hardware Procurement Services	FIDS' engaging a hardware procurement specialist to obtain hardware on User's behalf.	Procurement specialist's fees (which FIDS passes through to the procurement specialist) plus 10% service fee payable to FIDS.
Managed Services	FIDS' engaging a managed services provider on User's behalf.	Managed services provider's fees (which FIDS passes through to the managed services provider) plus 10% service fee payable to FIDS.

Application and Impact of the Proposed Changes

The proposed changes are not targeted at, or expected to be limited in applicability to, a specific segment of market participant. The proposed services would be available to any potential User on a non-discriminatory basis. The proposed changes would not apply differently to distinct types or sizes of Users. Rather, they would apply to all Users equally. The Exchange anticipates that some of the Users currently requesting the services from FIDS would use the service.

The proposed services are completely voluntary. Users or potential Users who do not wish to order the proposed services from FIDS can instead contract directly with any number of vendors, hardware procurement specialists, and managed services specialists. There are numerous third parties that currently provide hardware procurement and managed services in the colocation halls at the MDC without the involvement of FIDS or the Exchange, and Users and potential Users could continue to obtain such services from these third parties. The Exchange would not take any actions to block or prevent such third parties from providing their services.

The proposed changes are not otherwise intended to address any other issues relating to services related to the MDC and/or related fees, and the Exchange is not aware of any problems that market participants would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁴ 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,¹⁵ 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. First, with respect to the fees charged by the Procurement Specialist and the Managed Services Specialist, it is reasonable that the Exchange would pass any payments it receives from the User for such services on to the specialist who performed the services.

Second, the Exchange believes it is reasonable for FIDS to charge and retain a 10% fee for performing the service of contracting with the Procurement Specialist or Managed Service Specialist on the User's behalf and handling the User's payments of such specialists' fees. The proposed 10% service fee is a nominal amount that would compensate FIDS for its work contracting and

handling payments on behalf of the User.

Moreover, the Exchange believes the proposed fee is reasonable because the Exchange is subject to competitive forces. The proposed 10% service fee is reasonable because any Users or potential Users who do not wish to pay it can instead contract directly with any number of vendors, hardware procurement specialists, and managed services specialists. The User or prospective User would have the opportunity to review all terms before deciding whether to proceed. There are numerous third parties that currently provide hardware procurement and managed services in the colocation halls at the MDC without the involvement of FIDS or the Exchange, and Users and potential Users could continue to obtain such services from these third parties. The Exchange would not take any actions to block or prevent such third parties from providing their services.

In addition, there is no requirement that any User or potential User purchase the services proposed in this filing. As noted above, the Exchange is proposing such services as a convenience to Users and potential Users who have specifically indicated their preference to buy such services from FIDS instead of from a different vendor, and to pay FIDS a fee for facilitating that arrangement. If a User believes the 10% service fee is too high, it has the option of acquiring the services it needs by contracting directly with vendors or specialists instead.

The Proposed Change Is an Equitable Allocation of Fees and Credits

The Exchange believes that its proposal equitably allocates its fees among Users. The Exchange believes that the proposed fees are equitable

¹² The Managed Services Specialist would already be an approved seller in FIDS' procurement systems.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78f(b)(4).

because they would not apply differently to distinct types or sizes of Users. Rather, it would apply equally to any Users who opted to purchase the proposed services.

In addition, the Exchange believes that the proposal is equitable because only market participants that voluntarily select to use the proposed hardware procurement services or the managed services would be charged for them. The proposed services would be available to all Users on an equal basis, and all Users that voluntarily choose to use the proposed services would be charged the fees incurred on their behalf by the Procurement Specialist or the Managed Services Specialist, plus the same 10% service fee payable to FIDS. The User or prospective User would have the opportunity to review all terms before deciding whether to proceed.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes its proposal is not unfairly discriminatory. The proposed change does not apply differently to different types or sizes of Users. Rather, it would apply to all Users equally.

In addition, the Exchange believes that the proposal is not unfairly discriminatory because only Users that voluntarily select to receive the proposed services would be charged for them. The proposed services would be available to all Users on an equal basis, and all Users that voluntarily choose to use the service would be charged the fees incurred on their behalf by the Procurement Specialist or the Managed Services Specialist, plus the same 10% service fee payable to FIDS. The User or prospective User would have the opportunity to review all terms before deciding whether to proceed.

For all these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,¹⁶ the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change would not affect competition among national securities exchanges or among members of the Exchange. Rather, the Exchange believes that by offering the proposed services, it will provide an alternate, non-exclusive method for Users who wish to purchase hardware procurement services or

managed services to obtain such services in the MDC, in addition to the numerous third-party vendors from whom Users can obtain such services directly.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2025-63 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-2025-63. 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 filing 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-NYSEARCA-2025-63 and should be submitted on or before September 26, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2025-17000 Filed 9-4-25; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103823; File No. SR-NYSEAMER-2025-57]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend Rule 900.3NYP

September 2, 2025.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on August 25, 2025, 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, 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 proposes to amend Rule 900.3NYP (Orders and Modifiers) regarding the handling of Market Orders. The proposed rule change is available on the Exchange's website at www.nyse.com and at the principal office of the Exchange.

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

¹⁷ 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.

¹⁶ 15 U.S.C. 78f(b)(8).

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 Rule 900.3NYP (Orders and Modifiers) regarding the handling of Market Orders. Specifically, the Exchange proposes to eliminate one of the circumstances under which certain Market Orders would be cancelled or rejected.

Per Rule 900.3NYP(a)(1), a Market Order is “[a]n unpriced order message to buy or sell a stated number of option contracts at the best price obtainable, subject to the Trading Collar assigned to the order.”⁴ Rule 900.3NYP(a)(1)(A) provides that “[a] Market Order that arrives during continuous trading will be rejected, or that was routed, returns unexecuted, and has no resting quantity to join will be cancelled” if it fails the validations specified in Rule 900.3NYP(a)(1)(A)(i)–(iv).⁵ One such validation provides that, subject to certain exceptions, the Market Order will be rejected/cancelled if “[t]here are no contra-side Market Maker quotes on the Exchange or contra-side ABBO [Away Market Best Bid or Best Offer].”⁶ At the time it was adopted, the Exchange believed the validation would “prevent a Market Order from trading at prices that may not be current for that series in the absence of Market Maker quotations or an ABBO [Away Best Bid or Best Offer].”⁷ In this regard, this validation aligned with the Exchange’s treatment of a Market Order received when there is no NBB or NBO, per Rule 900.3NYP(a)(1)(A)(i) and (ii).

However, the Exchange has determined that this validation proved to be suboptimal because it would result in missed execution opportunities for the inbound Market Orders against the

resting orders on the Consolidated Book that would otherwise be eligible to execute with the inbound Market Order. The Exchange believes the benefit of providing more execution opportunities outweighs the risk of Market Orders trading at prices that may not be current. Thus, the Exchange proposes to delete this validation, which will improve execution opportunities for local interest and the inbound Market Order, and to renumber the balance of Rule in conformance with this change.⁸

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),⁹ in general, and furthers the objectives of Section 6(b)(5),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 facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would prevent the rejection or cancellation of Market Orders that may be executable against resting orders on the Exchange. The Exchange believes that increasing execution opportunities—including for resting Customer interest—would promote just and equitable principles of trade and serve to protect investors and the public interest. Further, the proposed change (including the technical conforming changes) would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would promote clarity and transparency regarding the Exchange’s handling of Market Orders.

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 notes that the proposed changes are not designed to address any

competitive issues, but rather to amend the Exchange’s rules relating to the handling of Market Orders.

The Exchange does not believe that its proposed rule change will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because it would apply in the same manner to all similarly-situated market participants that opt to utilize Market Orders.

The Exchange does not believe that its proposed rule change will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change is designed to improve execution opportunities for orders submitted to the Exchange.

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 Act¹¹ and Rule 19b–4(f)(6) thereunder.¹² Because the foregoing 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹³ and subparagraph (f)(6) of Rule 19b–4 thereunder.¹⁴

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

⁴ See Rule 900.3NYP(a)(1).

⁵ See *id.*

⁶ See *id.* The exception to Rule 900.3NYP(a)(1)(A)(iii) applies to Market Orders to sell, as set forth in provided for in paragraph (a)(1)(A)(ii) of this Rule.

⁷ See Securities Exchange Act Release No. 97869 (July 10, 2023), 88 FR 45730, 45732 (July 17, 2023) (SR–NYSEAmex–2023–34) (immediately effective rules applicable to options trading on the Pillar technology platform, including regarding the handling of Market Orders).

⁸ See proposed Rule 900.3NYP(a)(1)(A)(i)–(iii). In addition to renumbering the Rule, the Exchange has added “or” to new paragraph (a)(1)(A)(iii). See *id.*

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹² 17 CFR 240.19b–4(f)(6).

¹³ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁴ 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization 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.

Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) ¹⁵ 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-2025-57 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-2025-57. 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 filing 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-2025-57 and should be submitted on or before September 26, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103826; File No. SR-NYSEAMER-2025-55]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing of a Proposed Rule Change To Amend the Connectivity Fee Schedule To Add Hardware Procurement Services and Managed Services

September 2, 2025.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 ("Act") ² and Rule 19b-4 thereunder,³ notice is hereby given that, on August 27, 2025, NYSE American LLC ("NYSE American" 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 proposes to amend the Connectivity Fee Schedule to add hardware procurement services and managed services in the colocation halls at the Mahwah Data Center. The proposed rule change is available on the Exchange's website at www.nyse.com and at the principal office of the Exchange.

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 ⁴ to amend the Connectivity Fee Schedule to add hardware procurement services and managed services in the colocation halls at the Mahwah Data Center ("MDC").⁵

Hardware Procurement Services

The Exchange has recently received requests from several Users ⁶ and prospective Users for the Exchange to start providing hardware procurement services in the colocation halls at the MDC. Under such services, FIDS ⁷ would engage a third-party procurement specialist to procure, purchase, format, and deliver hardware for the User to use in the colocation halls at the MDC based on specifications provided by the User.⁸

Specifically, under this arrangement, FIDS would work with one or more specific third-party procurement specialists (each, a "Procurement Specialist").⁹ A User or prospective User interested in the service would work with a Procurement Specialist to identify the specific hardware it wishes to procure. The Procurement Specialist would contact various original equipment manufacturers to determine equipment availability and the pricing of one or more procurement options (e.g., outright purchase of the equipment

⁴ The Exchange previously filed and withdrew an earlier version of this proposal. See Securities Exchange Act Release No. 103125 (May 27, 2025), 90 FR 23389 (June 2, 2025) (SR-NYSEAMER-2025-28).

⁵ Through its Fixed Income and Data Services ("FIDS") business, Intercontinental Exchange, Inc. ("ICE") operates the MDC. The Exchange and its affiliates New York Stock Exchange LLC, NYSE Arca, Inc., NYSE National, Inc., and NYSE Texas, Inc. (the "Affiliate SROs") are indirect subsidiaries of ICE. Each of the Exchange's Affiliate SROs has submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSE-2025-34, SR-NYSEARCA-2025-63, SR-NYSENAT-2025-19, and SR-NYSETEX-2025-28.

⁶ 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 Connectivity 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.

⁷ In this proposal, the term "FIDS" includes FIDS and any ICE subsidiaries that are successors-in-interest to FIDS.

⁸ Installation is handled either by FIDS or by the User or prospective User.

⁹ FIDS currently plans to work with only one specific third-party procurement specialist, but may determine in the future to work with a different specialist or more than one specialist.

¹⁵ 15 U.S.C. 78s(b)(2)(B).

¹⁶ 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.

vs. 12-month lease vs. 24-month lease). The quotes would be passed on to the User or prospective User, with FIDS adding to each quote a 10% service fee.

The User or prospective User would have the opportunity to review all terms before deciding whether to proceed. If the User or prospective User decides to proceed, it would enter into a contract with FIDS for the services, and would send payment to FIDS. FIDS would forward the payment to the Procurement Specialist, less the 10% service fee, which FIDS would retain.

The Exchange understands that some Users would find such an arrangement desirable because it would allow them to obtain all necessary hardware from FIDS, with whom the User already has a contractual relationship, as opposed to having to contract directly with a procurement specialist or with multiple third-party hardware vendors. These Users have explained that contracting with FIDS to obtain hardware would allow the Users to avoid the onerous process of onboarding the hardware vendors as approved sellers in their procurement systems. It is the Exchange’s understanding that such onboarding generally requires Users to, among other things: evaluate each vendor’s financial and credit history; check their service track record; evaluate their sustainability credentials; assess their compliance with regulations; obtain their agreement to an ethical code of conduct; and establish ordering processes, payment terms, and delivery processes with each vendor.¹⁰ By contrast, the proposed arrangement would permit the User to obtain necessary hardware by contracting only with FIDS—a vendor already established in the User’s systems—in exchange for paying FIDS a service fee equal to 10% of the Procurement Specialist’s fees for procuring such hardware.

A Procurement Specialist working with FIDS under the proposed arrangement would not receive any advantages or privileges (in terms of access to the MDC or otherwise) over any other third-party procurement specialist that a User may independently hire. In addition, any Procurement Specialist working with FIDS pursuant to this proposal would retain its ability to separately contract with customers outside of the FIDS arrangement described in this proposal.

Managed Services

Similarly, some Users and prospective Users have also requested that the Exchange begin providing “managed services” in the colocation halls at the MDC. The term “managed services” typically refers to a customer’s hiring a third-party vendor to provide information technology (“IT”) support for the customer’s hardware in a data center, so that the customer can focus its own IT resources elsewhere. A vendor providing managed services typically deploys software and technical tooling to monitor the health and status of the customer’s servers and other hardware in the data center, diagnoses solutions for configuration challenges, works with the data center’s operations team regarding any changes to such configurations, and provides around-the-clock monitoring, trouble-shooting, and remediation of any problems concerning the customer’s hardware in the data center.

As with hardware procurement, Users and prospective Users have asked the Exchange to add a service in the colocation halls at the MDC that would permit FIDS to contract with a third-party managed services provider on the User’s or prospective User’s behalf. This would allow the Users and prospective Users to benefit from managed services within the colocation halls at the MDC

while avoiding the many challenges (listed above) with onboarding a new vendor as an approved seller in their procurement systems.

Under the proposed arrangement, FIDS would work with one or more specific third-party managed service providers (each, a “Managed Services Specialist”).¹¹ A User or prospective User interested in the service would work with the Managed Services Specialist to identify the specific services it wishes to procure. The quote for those services would be sent to the User or prospective User, with FIDS adding to each quote a 10% service fee.

The User or prospective User would have the opportunity to review all terms before deciding whether to proceed with the arrangement. If the User or prospective User decides to proceed, it would enter into a contract with FIDS for the services, and would send payment to FIDS. FIDS would forward the payment to the Managed Services Specialist, less the 10% service fee, which FIDS would retain.¹²

A Managed Services Specialist working with FIDS under the proposed arrangement would not receive any advantages or privileges (in terms of access to the MDC or otherwise) over any other third-party managed services specialist that a User may independently hire. In addition, any Managed Services Specialist working with FIDS pursuant to this proposal would retain its ability to separately contract with customers outside of the FIDS arrangement described in this proposal.

Proposed Amendment

Accordingly, FIDS proposes to amend Section A of the Connectivity Fee Schedule regarding Co-Location Fees to add hardware procurement services and managed services, as follows:

Type of service	Description	Amount of charge
Hardware Procurement Services	FIDS’ engaging a hardware procurement specialist to obtain hardware on User’s behalf.	Procurement specialist’s fees (which FIDS passes through to the procurement specialist) plus 10% service fee payable to FIDS.
Managed Services	FIDS’ engaging a managed services provider on User’s behalf.	Managed services provider’s fees (which FIDS passes through to the managed services provider) plus 10% service fee payable to FIDS.

Application and Impact of the Proposed Changes

The proposed changes are not targeted at, or expected to be limited in

applicability to, a specific segment of market participant. The proposed services would be available to any potential User on a non-discriminatory

basis. The proposed changes would not apply differently to distinct types or sizes of Users. Rather, they would apply to all Users equally. The Exchange

¹⁰ The Procurement Specialist would already be an approved seller in FIDS’ procurement systems.

¹¹ FIDS currently plans to work with only one specific third-party managed services specialist, but may determine in the future to work with a different specialist or more than one specialist.

¹² The Managed Services Specialist would already be an approved seller in FIDS’ procurement systems.

anticipates that some of the Users currently requesting the services from FIDS would use the service.

The proposed services are completely voluntary. Users or potential Users who do not wish to order the proposed services from FIDS can instead contract directly with any number of vendors, hardware procurement specialists, and managed services specialists. There are numerous third parties that currently provide hardware procurement and managed services in the colocation halls at the MDC without the involvement of FIDS or the Exchange, and Users and potential Users could continue to obtain such services from these third parties. The Exchange would not take any actions to block or prevent such third parties from providing their services.

The proposed changes are not otherwise intended to address any other issues relating to services related to the MDC and/or related fees, and the Exchange is not aware of any problems that market participants would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁴ 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,¹⁵ 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. First, with respect to the fees charged by the Procurement Specialist and the

Managed Services Specialist, it is reasonable that the Exchange would pass any payments it receives from the User for such services on to the specialist who performed the services.

Second, the Exchange believes it is reasonable for FIDS to charge and retain a 10% fee for performing the service of contracting with the Procurement Specialist or Managed Service Specialist on the User's behalf and handling the User's payments of such specialists' fees. The proposed 10% service fee is a nominal amount that would compensate FIDS for its work contracting and handling payments on behalf of the User.

Moreover, the Exchange believes the proposed fee is reasonable because the Exchange is subject to competitive forces. The proposed 10% service fee is reasonable because any Users or potential Users who do not wish to pay it can instead contract directly with any number of vendors, hardware procurement specialists, and managed services specialists. The User or prospective User would have the opportunity to review all terms before deciding whether to proceed. There are numerous third parties that currently provide hardware procurement and managed services in the colocation halls at the MDC without the involvement of FIDS or the Exchange, and Users and potential Users could continue to obtain such services from these third parties. The Exchange would not take any actions to block or prevent such third parties from providing their services.

In addition, there is no requirement that any User or potential User purchase the services proposed in this filing. As noted above, the Exchange is proposing such services as a convenience to Users and potential Users who have specifically indicated their preference to buy such services from FIDS instead of from a different vendor, and to pay FIDS a fee for facilitating that arrangement. If a User believes the 10% service fee is too high, it has the option of acquiring the services it needs by contracting directly with vendors or specialists instead.

The Proposed Change Is an Equitable Allocation of Fees and Credits

The Exchange believes that its proposal equitably allocates its fees among Users. The Exchange believes that the proposed fees are equitable because they would not apply differently to distinct types or sizes of Users. Rather, it would apply equally to any Users who opted to purchase the proposed services.

In addition, the Exchange believes that the proposal is equitable because

only market participants that voluntarily select to use the proposed hardware procurement services or the managed services would be charged for them. The proposed services would be available to all Users on an equal basis, and all Users that voluntarily choose to use the proposed services would be charged the fees incurred on their behalf by the Procurement Specialist or the Managed Services Specialist, plus the same 10% service fee payable to FIDS. The User or prospective User would have the opportunity to review all terms before deciding whether to proceed.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes its proposal is not unfairly discriminatory. The proposed change does not apply differently to different types or sizes of Users. Rather, it would apply to all Users equally.

In addition, the Exchange believes that the proposal is not unfairly discriminatory because only Users that voluntarily select to receive the proposed services would be charged for them. The proposed services would be available to all Users on an equal basis, and all Users that voluntarily choose to use the service would be charged the fees incurred on their behalf by the Procurement Specialist or the Managed Services Specialist, plus the same 10% service fee payable to FIDS. The User or prospective User would have the opportunity to review all terms before deciding whether to proceed.

For all these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,¹⁶ the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change would not affect competition among national securities exchanges or among members of the Exchange. Rather, the Exchange believes that by offering the proposed services, it will provide an alternate, non-exclusive method for Users who wish to purchase hardware procurement services or managed services to obtain such services in the MDC, in addition to the numerous third-party vendors from whom Users can obtain such services directly.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78f(b)(4).

¹⁶ 15 U.S.C. 78f(b)(8).

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period *up to 90 days* (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEAMER-2025-55 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-2025-55. 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 filing 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-2025-55 and should be submitted on or before September 26, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2025-17004 Filed 9-4-25; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235-0540]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension: Rule 17a-25

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) ("PRA"), the Securities and Exchange Commission ("SEC" or "Commission") is submitting to the Office of Management and Budget ("OMB") this request for extension of the previously approved collection of information provided for in Rule 17a-25 (17 CFR 204.17a-25) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) ("Exchange Act").

Paragraph (a)(1) of Rule 17a-25 requires registered broker-dealers to electronically submit securities transaction information, including identifiers for prime brokerage arrangements, average price accounts, and depository institutions, in a standardized format when requested by the Commission staff. In addition, Paragraph (c) of Rule 17a-25 requires broker-dealers to submit, and keep current, contact person information for electronic blue sheets ("EBS") requests. The Commission uses the information for enforcement inquiries or investigations and trading reconstructions, as well as for inspections and examinations.

The Commission solicited comment on the continuing collection of information in Rule 17a-25, as required under the PRA. A **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on May

21, 2025.¹ The Commission received a comment letter regarding the existing collection of information, which is discussed in more detail below.²

The commenter stated that certain provisions of Rule 17a-25 are duplicative of the Consolidated Audit Trail ("CAT") rules. Specifically, the commenter stated that EBS is "duplicative of CAT, is not necessary for the proper performance of the functions of the Commission, and has no practical utility."³ The Commission disagrees.

EBS is not fully duplicative of the CAT. It differs in substance, functionality, and utility. EBS provides access to transactional information for certain fixed income products, like bonds, that is not captured by the CAT, as well as trade-level information that is not included in the CAT (e.g., branch office/registered representative number). EBS also contains older data than the CAT. Moreover, EBS makes it possible for regulatory users to request certain customer account level information that is no longer required to be reported to the CAT pursuant to exemptive relief granted by the Commission.⁴ The national securities exchanges and national securities association (collectively, "SROs") that are the participants to the national market system plan governing the CAT (the "CAT NMS Plan") have also recently submitted a proposed amendment to the CAT NMS Plan that would codify and expand this exemptive relief⁵—a step

¹ Proposed Collection; Comment Request; Extension: Rule 17a-25, 90 FR 21814 (May 21, 2025) ("60-Day Notice").

² See letter from Howard Meyerson, Managing Director, Financial Information Forum ("FIF") (July 21, 2025) ("FIF Letter").

³ See FIF Letter, at 3. In addition, FIF raised concerns regarding CAT costs, the security of EBS, and possible revisions to Rule 17a-25 to establish an automated request-and-response system centralized through FINRA. See, e.g., FIF Letter at 3, 6-8. These comments are beyond the limited scope of the PRA and the renewal sought by the Commission herein for Rule 17a-25, but are being actively considered by the Commission and its staff in other contexts.

⁴ See Exchange Act Release No. 88393 (Mar. 17, 2020), 85 FR 16152 (Mar. 20, 2020) (providing conditional exemptive relief to remove the obligation that the CAT collect (1) individual social security numbers or tax payer identification numbers and (2) dates of birth and account numbers associated with natural persons); Exchange Act Release No. 102386 (Feb. 10, 2025), 90 FR 9642 (Feb. 14, 2025) (providing exemptive relief from the obligation to collect names, addresses, and years of birth for U.S. natural persons).

⁵ See Exchange Act Release No. 102665 (Mar. 13, 2025), 90 FR 12845 (Mar. 19, 2025) (proposing to amend the CAT NMS Plan to codify and expand previously-issued exemptive relief). FIF has supported this proposal. See letter from Howard Meyerson, Managing Director, FIF, to Commission (July 14, 2025), available at <https://www.sec.gov/comments/4-698/4698-625367-1847814.pdf>; letter

¹⁷ 17 CFR 200.30-3(a)(12).

that if approved, would increase regulatory reliance on requests to broker-dealers for customer information such as through EBS.

While there is some transactional information in the CAT that can also be requested through EBS, the way that CAT information is used by regulators differs because EBS data and functionality supports different types of analyses than the CAT. Because of these differences, EBS remains a tool of great practical utility for the Commission in the proper performance of its functions, including examinations, enforcement inquiries, investigations, and market reconstructions.

In the 60-Day Notice, the Commission estimated for PRA purposes that it sends approximately 10,807 electronic blue sheet requests per year to clearing broker-dealers that in turn submit an average 213,233 responses.⁶ The Commission further estimated that each broker-dealer that responds electronically will take 8 minutes, and each broker-dealer that responds manually will take 1½ hours to prepare and submit the securities trading data requested by the Commission. This yielded an annual aggregate hour burden estimate for electronic and manual response firms of 28,562 (213,137 × 8 ÷ 60 = 28,418 hours) + (96 × 1.5 = 144 hours), respectively.⁷

One commenter stated that the Commission's estimates of the compliance burden do not reflect the actual compliance burden.⁸ The commenter stated that the Commission did not consider EBS requests by SROs. However, the SRO EBS rules are

independent of Rule 17a–25, which was modelled after then-existing SRO rules.⁹ Accordingly, the Commission is not including EBS requests sent by SROs in the estimate for Rule 17a–25.

In addition, the commenter stated that the Commission has not considered certain burdens in connection with its estimates, including overhead needed to be in a position to respond to EBS requests in a timely manner, data storage and maintenance costs, security costs related to protecting personalized identifiable information ("PII"), personnel costs related to the management of the data, and processing costs.¹⁰

However, the vast majority of the information required in Rule 17a–25 involves collections of information that broker-dealers already maintain in compliance with existing regulations, and the rules of the SROs (the registered securities exchanges and FINRA) currently require broker-dealers to have adequate systems and procedures to submit the EBS transaction reports. Further, broker-dealers already maintain all of the information required for EBS reports pursuant to Exchange Act Rules 17a–3 and 17a–4. Therefore, to the extent broker-dealers incur burdens or costs related to data creation, storage, maintenance, management, security, and processing, such costs are either usual and customary, or are already accounted for by other collections of information.¹¹

The commenter also stated that the Commission's estimate of eight minutes as an average response time for EBS requests is "well below" the actual average response time required for a broker-dealer to respond to these requests.¹² The commenter further stated that broker-dealers that have acquired other broker-dealers "often must" incur additional costs when responding to requests when data is stored in multiple systems.¹³ The commenter did not provide an estimate of the average response time for EBS requests.

In response, the Commission acknowledges that, in some cases, there may be additional time associated with the interpretation of the request, collection of responsive information

(including across multiple systems), and review of the response. Therefore, the Commission is increasing its estimate of the response time for electronic responses by 25%, for an average response time of 10 minutes. This yields an annual aggregate hour burden estimate for electronic and manual response firms of 35,667 (213,137 × 10 ÷ 60 = 35,523 hours) + (96 × 1.5 = 144 hours), respectively.

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.

Written comments are invited on: (a) whether this proposed collection of information is necessary for the proper performance of the functions of the SEC, including whether the information will have practical utility; (b) the accuracy of the SEC's estimate of the burden imposed by the proposed collection of information, including the validity of the methodology and the 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 respondents, including through the use of automated, electronic collection techniques or other forms of information technology.

The public may view and comment on this information collection request at: https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202504-3235-024 or email comment to MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov within 30 days of the day after publication of this notice, by October 6, 2025.

Dated: September 3, 2025.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2025–17027 Filed 9–4–25; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35734; File No. 812–15794]

Constitution Capital Access Fund, LLC, et al.

September 2, 2025.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice.

Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the "Act") and rule 17d–1 under the Act to permit certain joint transactions

from Howard Meyerson, Managing Director, FIF, to Commission (Apr. 9, 2025), available at <https://www.sec.gov/comments/4-698/4698-590975-1712522.pdf>.

⁶ A single EBS request has a unique number assigned to each request (e.g., "0900001"). However, the number of broker-dealer responses generated from one EBS request can range from one to several thousand. EBS requests are sent directly to clearing firms, as the clearing firm is the repository for trading data for securities transactions information provided by the clearing firm and the correspondent firms. Clearing brokers respond for themselves and other firms they clear for. There were 426,274 responses during the 24-month period, for an average of 213,137 annual responses.

⁷ Few respondents submit manual EBS responses. The small percentage of respondents that submit manual responses do so by hand, via email, spreadsheet, disk, or other electronic media. Thus, the number of manual submissions (approximately 96 per year) has minimal effect on the total annual burden hours.

⁸ See FIF Letter at 8. The commenter stated that the Commission provided an hours estimate but did not provide any cost estimates. See *id.* Because the Commission estimated that all hourly burdens are internal, these do not result in an annualized cost burden to respondents for purposes of OMB for approval.

⁹ See Exchange Act Release No. 44494 (June 29, 2001), 66 FR 35836, at 35837 (July 9, 2001) (Rule 17a–25 Adopting Release).

¹⁰ See FIF Letter at 8.

¹¹ See Records to be made by certain exchange members, brokers and dealers (OMB Control No. 3235–0033) and Records to be preserved by certain brokers and dealers (OMB control number 3235–0279).

¹² See FIF Letter at 8.

¹³ See FIF Letter at 9.

otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d-1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain business development companies (“BDCs”) and closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment entities.

APPLICANTS: Constitution Capital Access Fund, LLC; Constitution Capital PM, LP; Constitution Capital Equity Partners, L.P.; Constitution Capital Credit Partners, L.P.; and certain of their wholly-owned subsidiaries and affiliated entities as described in Schedule A to the application.

FILING DATES: The application was filed on May 12, 2025, and amended on August 28, 2025.

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 September 29, 2025, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer’s interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission’s Secretary at *Secretarys-Office@sec.gov*.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov*. Applicants: Daniel M. Cahill, Constitution Capital PM, L.P., *dcahill@concp.com*; Joshua B. Deringer, Esq., *joshua.deringer@faegredrinker.com*, and Joshua M. Lindauer, Esq., *joshua.lindauer@faegredrinker.com*, both of Faegre Drinker Biddle & Reath LLP.

FOR FURTHER INFORMATION CONTACT: Adam Large, Senior Special Counsel, Stephan N. Packs, Senior Counsel, or Daniele Marchesani, Assistant Chief Counsel, at (202) 551-6825 (Division of Investment Management, Chief Counsel’s Office).

SUPPLEMENTARY INFORMATION: For Applicants’ representations, legal analysis, and conditions, please refer to Applicants’ First Amended and Restated Application, dated August 28, 2025, 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 *www.sec.gov/edgar/searchedgar/companysearch*. You may also call the SEC’s Office of Investor Education and Advocacy at (202) 551-8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2025-16991 Filed 9-4-25; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103822; File No. SR-NYSEARCA-2025-65]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 6.62P-O

September 2, 2025.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on August 25, 2025, 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, 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 proposes to amend Rule 6.62P-O (Orders and Modifiers) regarding the handling of Market Orders. The proposed rule change is available on the Exchange’s website at *www.nyse.com* and at the principal office of the Exchange.

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 Rule 6.62P-O (Orders and Modifiers) regarding the handling of Market Orders. Specifically, the Exchange proposes to eliminate one of the circumstances under which certain Market Orders would be cancelled or rejected.

Per Rule 6.62P-O(a)(1), a Market Order is “[a]n unpriced order message to buy or sell a stated number of option contracts at the best price obtainable, subject to the Trading Collar assigned to the order.”⁴ Rule 6.62P-O(a)(1)(A) provides that “[a] Market Order that arrives during continuous trading will be rejected, or that was routed, returns unexecuted, and has no resting quantity to join will be cancelled” if it fails the validations specified in Rule 6.62P-O(a)(1)(A)(i)-(iv).⁵ One such validation provides that, subject to certain exceptions, the Market Order will be rejected/cancelled if “[t]here are no contra-side Market Maker quotes on the Exchange or contra-side ABBO [Away Market Best Bid or Best Offer].”⁶ At the time it was adopted, the Exchange believed the validation would “prevent a Market Order from trading at prices that may not be current for that series in the absence of Market Maker quotations or an ABBO [Away Best Bid or Best Offer].”⁷ In this regard, this validation aligned with the Exchange’s

⁴ See Rule 6.62P-O(a)(1).

⁵ See *id.*

⁶ See *id.* The exception to Rule 6.62P-O(a)(1)(A)(iii) applies to Market Orders to sell, as set forth in provided for in paragraph (a)(1)(A)(ii) of this Rule.

⁷ See Securities Exchange Act Release No. 94072 (January 26, 2022), 87 FR 5592, 5607 (February 1, 2022) (SR-NYSEArca-2021-47) (order approving rules applicable to options trading on the Pillar technology platform, including regarding the handling of Market Orders).

treatment of a Market Order received when there is no NBB or NBO, per Rule 6.62P–O(a)(1)(A)(i) and (ii).

However, the Exchange has determined that this validation proved to be suboptimal because it would result in missed execution opportunities for the inbound Market Orders against the resting orders on the Consolidated Book that would otherwise be eligible to execute with the inbound Market Order. The Exchange believes the benefit of providing more execution opportunities outweighs the risk of Market Orders trading at prices that may not be current. Thus, the Exchange proposes to delete this validation, which will improve execution opportunities for local interest and the inbound Market Order, and to renumber the balance of Rule in conformance with this change.⁸

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),⁹ in general, and furthers the objectives of Section 6(b)(5),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 facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would prevent the rejection or cancellation of Market Orders that may be executable against resting orders on the Exchange. The Exchange believes that increasing execution opportunities—including for resting Customer interest—would promote just and equitable principles of trade and serve to protect investors and the public interest. Further, the proposed change (including the technical conforming changes) would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would promote clarity and transparency regarding the Exchange’s handling of Market Orders.

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 notes that the proposed changes are not designed to address any competitive issues, but rather to amend the Exchange’s rules relating to the handling of Market Orders.

The Exchange does not believe that its proposed rule change will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because it would apply in the same manner to all similarly-situated market participants that opt to utilize Market Orders.

The Exchange does not believe that its proposed rule change will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change is designed to improve execution opportunities for orders submitted to the Exchange.

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 Act¹¹ and Rule 19b–4(f)(6) thereunder.¹² Because the foregoing 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹³ and subparagraph (f)(6) of Rule 19b–4 thereunder.¹⁴

¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹² 17 CFR 240.19b–4(f)(6).

¹³ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁴ 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization 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.

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)¹⁵ 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–2025–65 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–2025–65. 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 filing 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–NYSEARCA–2025–65 and should be submitted on or before September 26, 2025.

¹⁵ 15 U.S.C. 78s(b)(2)(B).

⁸ See proposed Rule 6.62P–O(a)(1)(A)(i)–(iii). In addition to renumbering the Rule, the Exchange has added “or” to new paragraph (a)(1)(A)(iii). See *id.*

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2025-17001 Filed 9-4-25; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Notification of Two Virtual Public Forums on Monetary-Based Industry Size Standards

AGENCY: U.S. Small Business Administration.

ACTION: Notification of virtual public forums on size standards.

SUMMARY: The U.S. Small Business Administration (SBA) is holding a series of two virtual public forums on size standards to update the public and to consider public testimony on proposed changes contained in the proposed rule titled *Small Business Size Standards: Monetary-Based Industry Size Standards*. Testimony presented at these forums will become part of the administrative record for SBA's consideration when developing the final rule.

DATES: The virtual forum dates are as follows:

- Wednesday, September 17, 2025, from 1:00 p.m. to 3:00 p.m. (EDT)
- Thursday, September 18, 2025, from 1:00 p.m. to 3:00 p.m. (EDT)

ADDRESSES: The forums will be held via the Microsoft Teams platform. Registration is required to attend these virtual events. Visit SBA's size standards web page at www.sba.gov/size to register.

FOR FURTHER INFORMATION CONTACT: Miriam Birdwell, Economist, Size Standards Division, (202) 205-6618 or sizestandards@sba.gov. The phone number above may also be reached by individuals who are deaf or hard of hearing, or who have speech disabilities, through the Federal Communications Commission's TTY-Based Telecommunications Relay Service teletype service at 711.

SUPPLEMENTARY INFORMATION:

I. Background

SBA is seeking public comments on a proposed rule (*Small Business Size Standards: Monetary-Based Industry Size Standards* (90 FR 41168, August 22, 2025)) that would increase its monetary based small business size

definitions (commonly referred to as 'size standards') for 263 industries (259 receipts based and four assets based). The comment period ends on October 21, 2025.

The changes contained in the proposed rule are part of SBA's third five-year review of size standards, as required under the Small Business Jobs Act of 2010 (Sec. 1344, Pub. L. 111-240, 124 Stat. 2545 (September 27, 2010)). The revised size standards reflect SBA's considerations of the relevant industry and programmatic data and SBA's proposed policy of not lowering any size standards, except for excluding dominant firms from qualifying as small. As part of the review of size standards, SBA considers the structural characteristics of individual industries, including average firm size, the degree of competition, and Federal Government contracting trends. This ensures that small business size standards reflect current economic conditions in those industries. SBA's proposed revisions relied on the "Size Standards Methodology" (Revised Methodology) issued on September 12, 2024, and available at www.sba.gov/size.

II. Virtual Public Forums on Size Standards

Under this notice, SBA is advising the public that it is hosting a series of two virtual public forums on size standards to update the public and to consider public testimony on proposed changes contained in the August 2025 proposed rule on size standards. These forums also conform to the requirements of section 1344 of the Small Business Jobs Act of 2010 which requires SBA to hold not less than two public forums during its quinquennial review of size standards.

SBA considers public forums on size standards as a valuable component of its deliberations and believes that these forums will allow for constructive dialogue with small businesses and their representatives, industry trade associations, participants in SBA's contracting and financial assistance programs, and other stakeholders.

The format of these forums will consist of a panel of SBA representatives who will preside over the session. The oral and written testimony as well as any comments SBA receives during the forum will become part of the administrative record for SBA's consideration when preparing the final rule. Written testimony may be submitted in lieu of oral testimony on or before October 21, 2025, at the Federal eRulemaking Portal at www.regulations.gov, using the following RIN number: RIN 3245-AI12

or SBA Docket No. SBA-2025-0102 or by mail to Dr. Khem R. Sharma, Chief, Size Standards Division, 409 3rd Street SW, Mail Code 6530, Washington, DC 20416. SBA will analyze the testimony, both oral and written, along with any written comments received and respond to all comments in the final rule. However, during the public forum, SBA officials will not provide comment on the testimony of speakers. SBA requests that commenters focus on SBA's August 2025 proposed rulemaking and the impacted industries described therein. SBA requests that commenters do not raise issues pertaining to industries not covered under the proposed rule, or issues outside the scope of the rule. Presenters are encouraged to provide a written copy of their testimony. SBA will accept written material that the presenter wishes to provide that further supplements his or her testimony. Electronic or digitized copies are encouraged.

The two virtual public forums on size standards will be held on September 17, 2025, and September 18, 2025, beginning at 1:00 p.m. and ending at 3:00 p.m. (EDT); SBA will adjourn early if all testimony has been delivered before the end time.

III. Registration

Participants must pre-register to attend either of the two virtual public forums on size standards by visiting SBA's size standards web page at www.sba.gov/size and registering at the link provided. On the registration form, participants may indicate whether they would like to testify at the forum. After registering, participants will receive an email with an access link and call-in information which can be used to access the forum on the scheduled date and time. Additional information about the forum is provided on 'announcements about updating size standards' on SBA's size standards web page at www.sba.gov/size, and on the invitation that participants receive upon registration. SBA will attempt to accommodate all interested parties that wish to present testimony. Based on the number of registrants it may be necessary to impose time limits to ensure that everyone who wishes to testify can do so.

IV. Information on Service for Individuals With Disabilities

For information on services for individuals with disabilities or to request special assistance contact

¹⁶ 17 CFR 200.30-3(a)(12).

Miriam Birdwell at the telephone number or email address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Demetrick “Tre” Pennie,

Associate Administrator, Office of Government Contracting and Business Development.

[FR Doc. 2025–17073 Filed 9–4–25; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #21270 and #21271; TENNESSEE Disaster Number TN–20026]

Administrative Declaration of a Disaster for the State of Tennessee

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is notice of an Administrative declaration of a disaster for the State of Tennessee dated September 2, 2025.

Incident: Severe Storms and Flooding.

DATES: Issued on September 2, 2025.

Incident Period: August 13, 2025.

Physical Loan Application Deadline Date: November 3, 2025.

Economic Injury (EIDL) Loan Application Deadline Date: June 2, 2026.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Sharon Henderson, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given as a result of the Administrator’s disaster declaration, applications for disaster loans may be submitted online using the MySBA Loan Portal <https://lending.sba.gov> or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at disastercustomerservice@sba.gov or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Hamilton.

Contiguous Counties:

Tennessee: Bledsoe, Bradley, Marion, Meigs, Rhea, Sequatchie.
Georgia: Catoosa, Dade, Walker, Whitfield.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners with Credit Available Elsewhere	6.000
Homeowners without Credit Available Elsewhere	3.000
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere ...	3.625
Non-Profit Organizations without Credit Available Elsewhere	3.625
<i>For Economic Injury:</i>	
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.625

The number assigned to this disaster for physical damage is 212706 and for economic injury is 212710.

The States which received an Agency declaration are Georgia, Tennessee.

(Catalog of Federal Domestic Assistance Number 59008)

(Authority: 13 CFR 123.3(b).)

James Stallings,

Associate Administrator.

[FR Doc. 2025–17088 Filed 9–4–25; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before November 4, 2025.

ADDRESSES: Send all comments to Kevin Valdes, kevin.valdes@sba.gov, Office of Surety Guarantees, Small Business Administration.

FOR FURTHER INFORMATION CONTACT: Kevin Valdes, Management Analyst, Office of Surety Guarantees, kevin.valdes@sba.gov, (202) 816–0137 and Shauniece Carter, Interim Agency

Clearance Officer, shauniece.carter@sba.gov, (202) 935–6942.

SUPPLEMENTARY INFORMATION: Under its Surety Bond Guarantee Program (SBG Program), the U.S. Small Business Administration is authorized to guarantee a bid bond, payment bond, performance bond, as well as any required related ancillary bonds, on a contract issued to a small business contractor up to \$9 million or up to \$14 million if a Federal contracting officer certifies that SBA’s guarantee is necessary. See Title IV of the Small Business Investment Act (SBIA), part B, 15 U.S.C. 694a *et seq.* The SBG Program was created to encourage surety companies to issue bonds for small business contractors. The SBIA authorizes SBA to establish the terms and conditions for providing surety bond guarantee assistance and for paying claims resulting from any contractor defaults.

This information collection consists of forms relating to the application process for an SBA-guaranteed bond and claims for the reimbursement of losses, including SBA Forms 990, 991, 994, 994B, 994F, 994H, a new Prior Approval surety participation agreement form, and a new Preferred Surety Bond (PSB) surety participation agreement form. Except in the case of SBA Form 994H and the surety participation agreement forms, SBA uses the information to evaluate whether the small business applicant meets the eligibility requirements for a surety bond, as well as the likelihood that the small business will successfully complete the bonded contract. The information collected for this purpose includes: Demographics on all owners of the bond applicant, which has no bearing on the approval decision; the status of any current or past SBA financial assistance provided to the applicant; NAICS code for applicant’s industry; financial statements; contract amount and nature of contract performance; and in the event performance has begun, evidence that applicant has paid all suppliers and subcontractors. With respect to SBA Form 994H, SBA uses the information collected to evaluate the surety’s claim for reimbursement of losses. Surety is required to provide information regarding the date the small business defaulted on the contract; the reason for the default, the amount of any recoveries, and any additional information that would support the surety’s claim for reimbursement. With respect to the new surety participation forms, SBA uses the information collected to document the

acknowledgement, by participating sureties and agencies, of the program's statutory and regulatory requirements for participation, and certification that the executing parties will comply with all requirements during their participation. The forms will only collect execution by a qualified representative of the surety and the date of execution.

Solicitation of Public Comments

SBA is requesting comments on (a) whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

PRA Number:
Title: Surety Bond Guarantee Assistance.
Description of Respondents: Surety companies, surety agents, small businesses, and project owners.
Form Number: SBA Form 990, 991, 994, 994B, 994F, 994H, TBD, TBD.
Total Estimated Annual Responses: 34,154.
Total Estimated Annual Hour Burden: 8,407.

Shauniece Carter,
Interim Agency Clearance Officer.
[FR Doc. 2025-17075 Filed 9-4-25; 8:45 am]
BILLING CODE 8026-09-P

DEPARTMENT OF STATE

[Delegation of Authority No. 597]

Delegation of Authority to the Under Secretary for Foreign Assistance, Humanitarian Affairs, and Religious Freedom

By virtue of the authority vested in the Secretary of State by the laws of the United States, including section 1(a) of the State Department Basic Authorities Act (22 U.S.C. 2651a(a)(4)), I hereby delegate to the Under Secretary for Foreign Assistance, Humanitarian Affairs, and Religious Freedom, to the extent authorized by law, all authorities vested in or delegated to the Director of Foreign Assistance; the Assistant Secretary for Population, Refugees, and Migration; the Assistant Secretary for Democracy, Human Rights, and Labor; the Coordinator of United States Government Activities to Combat HIV/AIDS Globally; the Ambassador-At-

Large for Global Health Security and Diplomacy; and the Coordinator for Reconstruction and Stabilization by any act, order, determination, delegation of authority, regulation, or executive order, now or hereafter issued.

The Secretary, Deputy Secretary, and Deputy Secretary for Management and Resources, may exercise any function or authority delegated herein. The authorities delegated herein may be re-delegated, to the extent authorized by law. This delegation of authority does not modify any other delegation of authority currently in effect.

This delegation of authority shall be published in the **Federal Register**.

Dated: August 21, 2025.
Marco Rubio,
Secretary of State.
[FR Doc. 2025-17084 Filed 9-4-25; 8:45 am]
BILLING CODE 4710-10-P

DEPARTMENT OF STATE

[Public Notice: 12814]

Specially Designated Global Terrorist Designations of Los Choneros and Los Lobos

Acting under the authority of and in accordance with section 1(a)(ii)(A) of Executive Order 13224, as amended ("E.O. 13224" or "Order"), I hereby determine that the persons known as Los Choneros (also known as The Choneros, Aguilas, Fatales); and Los Lobos (also known as The Lobos, Los Lobos Drug Trafficking Organization) are foreign persons who have committed or have attempted to commit, pose a significant risk of committing, or have participated in training to commit acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of E.O. 13224 that prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously, I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This determination shall be published in the **Federal Register**.

Dated: August 6, 2025.
Marco Rubio,
Secretary of State.
[FR Doc. 2025-17074 Filed 9-4-25; 8:45 am]
BILLING CODE 4710-AD-P

DEPARTMENT OF STATE

[Public Notice: 12813]

Foreign Terrorist Organization Designation of Los Choneros and Los Lobos

Based upon a review of the Administrative Records assembled in this matter, and in consultation with the Attorney General and the Secretary of the Treasury, I have concluded that there is a sufficient factual basis to find that the relevant circumstances described in section 219 of the Immigration and Nationality Act, as amended (hereinafter "INA") (8 U.S.C. 1189), exist with respect to: Los Choneros (also known as The Choneros, Aguilas, Fatales); and Los Lobos (also known as The Lobos, Los Lobos Drug Trafficking Organization).

Therefore, I hereby designate the aforementioned organizations and their respective aliases as Foreign Terrorist Organizations pursuant to section 219 of the INA.

This determination shall be published in the **Federal Register**. The designations go into effect upon publication.

Dated: August 6, 2025.
Marco Rubio,
Secretary of State.
[FR Doc. 2025-17067 Filed 9-4-25; 8:45 am]
BILLING CODE 4710-AD-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Land Swap at Huntsville International Airport (HSV) Huntsville, Alabama

AGENCY: Federal Aviation Administration, DOT.
ACTION: Notice of intent to rule on land release request.

SUMMARY: The FAA is considering a request from Huntsville-Madison County Airport Authority for a proposed land swap at Huntsville International Airport (HSV). The Land Swap will exchange Boeing Corporation owned (Non-Aeronautical) land of 18.8 acres of Tract R14 (*Taxiway Property*) for 19.52 acres of Spine Road Tract currently owned by HSV (Aeronautical).

DATES: Comments must be received on or before October 6, 2025.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Jackson Airports District Office Attn: Brian Hendry, Community Planner, 10 Canebrake Blvd., Suite 100, Flowood, MS 39232.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Huntsville-Madison County Airport Authority, Attn: Amy Murphree, Chief Legal Officer, 1000 Glenn Hearn Blvd., Huntsville, AL 35824.

FOR FURTHER INFORMATION CONTACT: Brian Hendry, Community Planner, Jackson Airports District Office, 10 Canebrake Blvd., Suite 100, Flowood, MS 39232, (769) 268-6979. The land release request may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by the Huntsville-Madison County Airport Authority for a proposed a land swap at Huntsville International Airport (HSV) under the provisions of Title 49, U.S.C. 47153(c).

The Boeing tract (Tract R-14) was originally acquired with Federal Aid to Airports Program (FAAP) grant funds in 1965 to establish the new airport. The FAA determined that the land swap requested at Huntsville International Airport (HSV) submitted by the Sponsor meets the procedural requirements of the Federal Aviation Administration, and the request will benefit HSV by allowing the airport to acquire parcels located along the south side of the existing Taxiway L (Lima) that is better suited for aeronautical development and by ensuring permanent access to the Air Traffic Control Tower area. This request does not and will not impact future aviation needs at the airport. The FAA may approve the request, in whole or in part, no sooner than thirty days after the publication of this notice. The property is located north of Boeing Blvd. SW, south of Taxiway L (Lima) and between the main runways at HSV. In accordance with 49 U.S.C. 47107(c)(2)(B)(i), the airport will receive fair market value for the property, and the net proceeds from the sale of this property will be used for maintenance and improvements at Huntsville International Airport (HSV).

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the request, notice and other documents germane to the request

in person at the Huntsville International Airport (HSV).

Issued in Jackson, Mississippi on September 4, 2025.

William J. Schuller,
Acting Manager, Jackson Airports District Office, Southern Region.

[FR Doc. 2025-17032 Filed 9-4-25; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Transportation Project in Nebraska

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of limitation on claims for judicial review.

SUMMARY: This notice announces actions taken by the FHWA, on behalf of the Nebraska Department of Transportation, that are final. The action(s) relate to the Central City Viaduct Project, located in the Central City, Merrick County, Nebraska. Those actions grant licenses, permits, and approvals for the project. The project will construct a portion of N-14 on a new alignment from US-30 halfway between 14th Avenue and 13th Avenue, proceeding north crossing over the Union Pacific Railroad (UPRR) and then proceeding west to connect back to existing N-14 at 10th Street. A 580-foot-long viaduct will be constructed over the UPRR. The two existing at-grade UPRR crossings at N-14/17th Avenue and 13th Street will be closed. The FHWA's National Environmental Policy Act (NEPA) Finding of No Significant Impact (FONSI) provides details on the Selected Alternative for the proposed improvements.

DATES: A claim seeking judicial review of the Federal agency actions on the listed highway project will be barred unless the claim is filed on or before February 2, 2026. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT:

For FHWA: James Simerl, Acting Division Administrator, Federal Highway Administration, 100 Centennial Mall North, Room 220, Lincoln, NE 68508, (402) 742-8460, james.simerl@dot.gov.

For NDOT: Kyle Keller, Project Development Engineer, 1500 Nebraska Parkway, Lincoln, NE 68502-4759, (402) 479-4795, kyle.keller@nebraska.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA has taken final agency actions within the meaning of 23 U.S.C. 139(l)(1) by issuing a NEPA FONSI for the Central City Viaduct Project, located in the Central City, Merrick County, Nebraska. The action(s) by FHWA, and the laws under which such actions were taken, are described in the FONSI and the associated agency records. That information is available by contacting FHWA at the addresses provided above.

The purpose of this project is to eliminate conflicts between trains and vehicles at the existing N-14 at-grade UPRR crossing, reduce traffic congestion and associated delays at the N-14 crossing of the UPRR tracks and at the intersection with US-30, and improve operations and reduce crash costs associated with the N-14 and US-30 intersection. A FONSI for the project was signed on May 9, 2025.

Information about the FONSI and associated records are available from FHWA at the addresses provided above and can be found at: <https://dot.nebraska.gov/projects/environment/environmental-documents/>, or obtained by contacting the individuals listed above. This notice applies to all Federal agency decisions related to the FONSI as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321-4347]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act, as amended [42 U.S.C. 7401-7671(q)].

3. *Land:* Section 6(f) of the Land and Water Conservation Fund Act of 1965 [16 U.S.C. 4601]; Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531-1544 and 1536]. Fish and Wildlife Coordination Act [16 U.S.C. 661-667(d)]. Migratory Bird Treaty Act [16 U.S.C. 703-712]. Bald and Golden Eagle Protection Act [16 U.S.C. 668-668c]. Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801 *et seq.*].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archaeological and Historic Preservation Act [16 U.S.C. 469-469(c)].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000d *et seq.*]; Farmland Protection Policy Act [7 U.S.C. 4201-4209].

7. *Wetlands and Water Resources:* Clean Water Act (Section 319, Section

401, Section 402, Section 404) [33 U.S.C. 1251–1377]. Safe Drinking Water Act [42 U.S.C. 300(f) *et seq.*].

8. *Executive Orders*: Executive Order 11990 Protection of Wetlands; Executive Order 11988 Floodplain Management; Executive Order 11593 Protection and Enhancement of Cultural Resources; Executive Order 13007 Indian Sacred Sites; Executive Order 13287 Preserve America; Executive Order 13175 Consultation and Coordination with Indian Tribal Governments; Executive Order 11514 Protection and Enhancement of Environmental Quality; Executive Order 13112 Invasive Species; Executive Order 13045 Protection of Children From Environmental Health Risks and Safety Risks.

(Authority: 23 U.S.C. 139(l)(1).)

James Simerl,

*FHWA Acting Division Administrator,
Lincoln, NE.*

[FR Doc. 2025–17077 Filed 9–4–25; 8:45 am]

BILLING CODE 4910-RY-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Transportation Project in Nebraska

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of Limitation on Claims for Judicial Review.

SUMMARY: This notice announces actions taken by the FHWA, on behalf of the Nebraska Department of Transportation, that are final. The action(s) relate to the Norfolk—Wisner Project, located in Stanton County and Cuming County, Nebraska. Those actions grant licenses, permits, and approvals for the project. The project will expand the existing two-lane highway to a four-lane expressway. The project begins east of Norfolk, approximately 0.30 miles east of the intersection of US–275 and Nebraska Highway 57 (N–57) at approximately mile marker (MM) 86. It extends east and south to approximately 17th Street in Wisner near MM 102, where it ties into the existing US–275 four-lane roadway. The FHWA’s National Environmental Policy Act (NEPA) Finding of No Significant Impact (FONSI) provides details on the Selected Alternative for the proposed improvements.

DATES: A claim seeking judicial review of the Federal agency actions on the listed highway project will be barred unless the claim is filed on or before

February 2, 2026. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT:

For FHWA: James Simerl, Acting Division Administrator, Federal Highway Administration, 100 Centennial Mall North, Room 220, Lincoln, NE 68508, (402) 742–8460, james.simerl@dot.gov.

For NDOT: Kyle Keller, Project Development Engineer, 1500 Nebraska Parkway, Lincoln, NE 68502–4759, (402) 479–4795, kyle.keller@nebraska.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA has taken final agency actions within the meaning of 23 U.S.C. 139(l)(1) by issuing a NEPA FONSI for the Norfolk—Wisner Project, located in Stanton County and Cuming County, Nebraska. The action(s) by FHWA and the laws under which such actions were taken, are described in the FONSI and the associated agency records. That information is available by contacting FHWA at the addresses provided above.

The purpose of the project is to fulfill legislative intent to continue development of the expressway system identified in the 1988 Nebraska Highway Needs Study; improve regional connectivity for vehicles in northeast Nebraska, including commercial vehicles, by providing important expressway connections with N–57, N–15, and N–51, while maintaining convenient highway access for communities in the area; maximize use of existing transportation infrastructure, including connecting highways and existing right-of-way (ROW); improve the condition of the existing infrastructure; and maximize the cost-effectiveness of the project. A FONSI for the project was signed on May 22, 2024.

Information about the FONSI and associated records are available from FHWA at the addresses provided above and can be found at: <https://dot.nebraska.gov/projects/environment/environmental-documents/>, or obtained by contacting the individuals listed above. This notice applies to all Federal agency decisions related to the FONSI as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General*: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4347]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air*: Clean Air Act, as amended [42 U.S.C. 7401–7671(q)].

3. *Land*: Section 6(f) of the Land and Water Conservation Fund Act of 1965 [16 U.S.C. 4601]; Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].

4. *Wildlife*: Endangered Species Act [16 U.S.C. 1531–1544 and 1536]. Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]. Migratory Bird Treaty Act [16 U.S.C. 703–712]. Bald and Golden Eagle Protection Act [16 U.S.C. 668–668c]. Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801 *et seq.*].

5. *Historic and Cultural Resources*: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archaeological and Historic Preservation Act [16 U.S.C. 469–469(c)];

6. *Social and Economic*: Civil Rights Act of 1964 [42 U.S.C. 2000d *et seq.*]; Farmland Protection Policy Act [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources*: Clean Water Act (Section 319, Section 401, Section 402, Section 404) [33 U.S.C. 1251–1377]. Safe Drinking Water Act [42 U.S.C. 300(f) *et seq.*].

8. *Executive Orders*: Executive Order 11990 Protection of Wetlands; Executive Order 11988 Floodplain Management; Executive Order 11593 Protection and Enhancement of Cultural Resources; Executive Order 13007 Indian Sacred Sites; Executive Order 13287 Preserve America; Executive Order 13175 Consultation and Coordination with Indian Tribal Governments; Executive Order 11514 Protection and Enhancement of Environmental Quality; Executive Order 13112 Invasive Species; Executive Order 13045 Protection of Children From Environmental Health Risks and Safety Risks.

Authority: 23 U.S.C. 139(l)(1).

James Simerl,

*FHWA Acting Division Administrator,
Lincoln, NE.*

[FR Doc. 2025–17082 Filed 9–4–25; 8:45 am]

BILLING CODE 4910-RY-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Transportation Project in Nebraska

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of limitation on claims for judicial review.

SUMMARY: This notice announces actions taken by the FHWA, on behalf of the

Lincoln/Lancaster County Railroad Transportation Safety District (RTSD), that are final. The action(s) relate to the North 33rd and Cornhusker Project (also known as the 33rd/Cornhusker Viaduct, Lincoln Project), located in the City of Lincoln, Lancaster County, Nebraska. Those actions grant licenses, permits, and approvals for the project. The project closes the at-grade railroad crossings at N. 33rd Street and Adams Street by improving the roadway network in this area and constructing a grade separation across the Burlington Northern Santa Fe (BNSF) Railway tracks at approximately N. 31st Street, south of Cornhusker Highway. The existing at-grade crossing at N. 44th Street will remain open to vehicle, bicycle, and pedestrian traffic and will be improved. Cornhusker Highway will be expanded to six lanes with turn lanes from Deadmans Run to 35th Street. The FHWA's National Environmental Policy Act (NEPA) Finding of No Significant Impact (FONSI) provides details on the Selected Alternative for the proposed improvements.

DATES: A claim seeking judicial review of the Federal agency actions on the listed highway project will be barred unless the claim is filed on or before February 2, 2026. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT:

For FHWA: James Simerl, Acting Division Administrator, Federal Highway Administration, 100 Centennial Mall North, Room 220, Lincoln, NE 68508, (402) 742-8460, james.simerl@dot.gov.

For RTSD: Roger Figard, RTSD Executive Director, 555 South 10th Street, Lincoln, NE, 68508, (402) 525-5620, rfigard@lincoln.ne.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA has taken final agency actions within the meaning of 23 U.S.C. 139(l)(1) by issuing a NEPA FONSI for the North 33rd and Cornhusker Project in Lincoln, Nebraska. The action(s) by FHWA and the laws under which such actions were taken are described in the FONSI and the associated agency records. That information is available by contacting FHWA at the addresses provided above.

The purpose of the project is to improve safety along the rail corridor between N. 27th and N. 48th streets by eliminating or reducing the potential conflict points between trains and other transportation modes (vehicles, pedestrians, and bicyclists). The project is needed due to the high volume of

vehicular and train traffic in the area along the BNSF rail corridor between N. 27th and N. 48th Streets. The high-volume traffic creates undesirable conditions regarding safety, traffic congestion, traffic delay, and mobility within the project area. In addition, facilities for walking, cycling, and public transit do not meet existing, or future needs for the area. A FONSI for the project was signed on May 9, 2025.

Information about the FONSI and associated records are available from FHWA at the addresses provided above and can be found at: <https://dot.nebraska.gov/projects/environment/environmental-documents/>, or obtained by contacting the individuals listed above. This notice applies to all Federal agency decisions related to the FONSI as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321-4347]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act, as amended [42 U.S.C. 7401-7671(q)].

3. *Land:* Section 6(f) of the Land and Water Conservation Fund Act of 1965 [16 U.S.C. 4601]; Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531-1544 and 1536]. Fish and Wildlife Coordination Act [16 U.S.C. 661-667(d)]. Migratory Bird Treaty Act [16 U.S.C. 703-712]. Bald and Golden Eagle Protection Act [16 U.S.C. 668-668c]. Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801 *et seq.*].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archaeological and Historic Preservation Act [16 U.S.C. 469-469(c)].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000d *et seq.*]; Farmland Protection Policy Act [7 U.S.C. 4201-4209].

7. *Wetlands and Water Resources:* Clean Water Act (Section 319, Section 401, Section 402, Section 404) [33 U.S.C. 1251-1377]. Safe Drinking Water Act [42 U.S.C. 300(f) *et seq.*].

8. *Executive Orders:* Executive Order 11990 Protection of Wetlands; Executive Order 11988 Floodplain Management; Executive Order 11593 Protection and Enhancement of Cultural Resources; Executive Order 13007 Indian Sacred Sites; Executive Order 13287 Preserve America; Executive Order 13175 Consultation and Coordination with Indian Tribal Governments; Executive

Order 11514 Protection and Enhancement of Environmental Quality; Executive Order 13112 Invasive Species; Executive Order 13045 Protection of Children From Environmental Health Risks and Safety Risks.

(Authority: 23 U.S.C. 139(l)(1).)

James Simerl,

FHWA Acting Division Administrator,
Lincoln, NE.

[FR Doc. 2025-17078 Filed 9-4-25; 8:45 am]

BILLING CODE 4910-RY-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Transportation Project in Nebraska

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of Limitation on Claims for Judicial Review.

SUMMARY: This notice announces actions taken by the FHWA, on behalf of the Nebraska Department of Transportation, that are final. The action(s) relate to the US-81 York-Columbus Project, located in York, Polk and Butler counties in Nebraska. Those actions grant licenses, permits, and approvals for the project. The project will expand the existing two-lane highway to a four-lane expressway, changing to three lanes in urban areas and returning to four lanes through the rural segments. The project starts near the north U.S. Highway 34 (US-34)/US-81 intersection at the end of the existing four-lane York bypass. The project extends north to just north of the Nebraska Highway 64 (N-64) and US-81 intersection, where it connects to the existing four-lane roadway. The FHWA's National Environmental Policy Act (NEPA) Finding of No Significant Impact (FONSI) provides details on the Selected Alternative for the proposed improvements.

DATES: A claim seeking judicial review of the Federal agency actions on the listed highway project will be barred unless the claim is filed on or before February 2, 2026. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT:

For FHWA: James Simerl, Acting Division Administrator, Federal Highway Administration, 100 Centennial Mall North, Room 220, Lincoln, NE 68508, (402) 742-8460, james.simerl@dot.gov.

For NDOT: Kyle Keller, Project Development Engineer, 1500 Nebraska Parkway, Lincoln, NE 68502-4759, (402) 479-4795, kyle.keller@nebraska.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA has taken final agency actions within the meaning of 23 U.S.C. 139(l)(1) by issuing a NEPA FONSI for the US-81 York-Columbus Project, in York, Polk and Butler counties in Nebraska. The action(s) by FHWA and the laws under which such actions were taken are described in the FONSI and the associated agency records. That information is available by contacting FHWA at the addresses provided above.

The purpose of the project is to fulfill legislative intent to continue the development of the expressway system identified in the 1988 Nebraska Highway Needs Study; improve regional connectivity for vehicles, including commercial vehicles, in east-central Nebraska by providing important expressway connections with US-34, Nebraska Highway 66 (N-66), Nebraska Highway 92 (N-92), Nebraska Highway 69 (N-69) and N-64, while maintaining convenient highway access for communities in the area; and improve the condition of the existing infrastructure. The project is needed because there is a gap in the US-81 Expressway from the Kansas-Nebraska border to Norfolk, a lack of connectivity in east-central Nebraska, and existing infrastructure deficiencies. A FONSI for the project was signed on May 9, 2025.

Information about the FONSI and associated records are available from FHWA at the addresses provided above and can be found at: <https://dot.nebraska.gov/projects/environment/environmental-documents/>, or obtained by contacting the individuals listed above. This notice applies to all Federal agency decisions related to the FONSI as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321-4347]; Federal-Aid Highway Act [23 U.S.C. 109].
2. *Air:* Clean Air Act, as amended [42 U.S.C. 7401-7671(q)].
3. *Land:* Section 6(f) of the Land and Water Conservation Fund Act of 1965 [16 U.S.C. 4601]; Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].
4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531-1544 and 1536]. Fish and Wildlife Coordination Act [16 U.S.C. 661-667(d)]. Migratory Bird Treaty Act [16 U.S.C. 703-712]. Bald

and Golden Eagle Protection Act [16 U.S.C. 668-668c]. Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801 *et seq.*].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archaeological and Historic Preservation Act [16 U.S.C. 469-469(c)];

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000d *et seq.*]; Farmland Protection Policy Act [7 U.S.C. 4201-4209].

7. *Wetlands and Water Resources:* Clean Water Act (Section 319, Section 401, Section 402, Section 404) [33 U.S.C. 1251-1377]. Safe Drinking Water Act [42 U.S.C. 300(f) *et seq.*].

8. *Executive Orders:* Executive Order 11990 Protection of Wetlands; Executive Order 11988 Floodplain Management; Executive Order 11593 Protection and Enhancement of Cultural Resources; Executive Order 13007 Indian Sacred Sites; Executive Order 13287 Preserve America; Executive Order 13175 Consultation and Coordination with Indian Tribal Governments; Executive Order 11514 Protection and Enhancement of Environmental Quality; Executive Order 13112 Invasive Species; Executive Order 13045 Protection of Children From Environmental Health Risks and Safety Risks.

Authority: 23 U.S.C. 139(l)(1).

James Simerl,

FHWA Acting Division Administrator, Lincoln, NE.

[FR Doc. 2025-17083 Filed 9-4-25; 8:45 am]

BILLING CODE 4910-RY-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Transportation Project in Nebraska

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of limitation on claims for judicial review.

SUMMARY: This notice announces actions taken by the FHWA, on behalf of the Nebraska Department of Transportation, that are final. The action(s) relate to the Minatare US-385 Project, located in Scotts Bluff County and Morrill County, Nebraska. Those actions grant licenses, permits, and approvals for the project. The project will expand the existing two-lane highway to a four-lane expressway. The project starts on US-26 just west of Minatare's Main Street and

extends east to the junction of US-26 and L-62A. The project continues east on L-62A to the junction with US-385. The FHWA's National Environmental Policy Act (NEPA) Finding of No Significant Impact (FONSI) provides details on the Selected Alternative for the proposed improvements.

DATES: A claim seeking judicial review of the Federal agency actions on the listed highway project will be barred unless the claim is filed on or before February 2, 2026. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT:

For FHWA: James Simerl, Acting Division Administrator, Federal Highway Administration, 100 Centennial Mall North, Room 220, Lincoln, NE 68508, (402) 742-8460, james.simerl@dot.gov.

For NDOT: Kyle Keller, Project Development Engineer, 1500 Nebraska Parkway, Lincoln, NE 68502-4759, (402) 479-4795, kyle.keller@nebraska.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA has taken final agency actions within the meaning of 23 U.S.C. 139(l)(1) by issuing a NEPA FONSI for the Minatare US-385 Project, located in Scotts Bluff County and Morrill County, Nebraska. The action(s) by FHWA and the laws under which such actions were taken are described in the FONSI and the associated agency records. That information is available by contacting FHWA at the addresses provided above.

The purpose of the project is to develop an improved transportation corridor connecting the junction of US-385 and L-62A, with the city of Minatare, Nebraska. The improved corridor is intended to provide an improved highway on a congressionally designated National Highway System (NHS) High Priority Corridor that increases the efficiency and safety of travel; fulfill federal legislative intent of ISTEA, TEA-21, SAFETEA-LU, and MAP-21; fulfill state legislative intent of the Build Nebraska Act and the Transportation Innovation Act; and address roadway and operational challenges of the existing facility. A FONSI for the project was signed on May 9, 2025.

Information about the FONSI and associated records are available from FHWA at the addresses provided above and can be found at: <https://dot.nebraska.gov/projects/environment/environmental-documents/>, or obtained by contacting the individuals listed

above. This notice applies to all Federal agency decisions related to the FONSI as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General*: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4347]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air*: Clean Air Act, as amended [42 U.S.C. 7401–7671(q)].

3. *Land*: Section 6(f) of the Land and Water Conservation Fund Act of 1965 [16 U.S.C. 4601]; Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].

4. *Wildlife*: Endangered Species Act [16 U.S.C. 1531–1544 and 1536]. Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]. Migratory Bird Treaty Act [16 U.S.C. 703–712]. Bald and Golden Eagle Protection Act [16 U.S.C. 668–668c]. Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801 *et seq.*].

5. *Historic and Cultural Resources*: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archaeological and Historic Preservation Act [16 U.S.C. 469–469(c)].

6. *Social and Economic*: Civil Rights Act of 1964 [42 U.S.C. 2000d *et seq.*]; Farmland Protection Policy Act [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources*: Clean Water Act (Section 319, Section 401, Section 402, Section 404) [33 U.S.C. 1251–1377]. Safe Drinking Water Act [42 U.S.C. 300(f) *et seq.*].

8. *Executive Orders*: Executive Order 11990 Protection of Wetlands; Executive

Order 11988 Floodplain Management; Executive Order 11593 Protection and Enhancement of Cultural Resources; Executive Order 13007 Indian Sacred Sites; Executive Order 13287 Preserve America; Executive Order 13175 Consultation and Coordination with Indian Tribal Governments; Executive Order 11514 Protection and Enhancement of Environmental Quality; Executive Order 13112 Invasive Species; Executive Order 13045 Protection of Children From Environmental Health Risks and Safety Risks.

(Authority: 23 U.S.C. 139(l)(1).)

James Simerl,

FHWA Acting Division Administrator,
Lincoln, NE.

[FR Doc. 2025–17076 Filed 9–4–25; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Actions on Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of actions on special permit applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that

the Office of Hazardous Materials Safety has granted or denied the application described herein.

DATES: Comments must be received on or before October 6, 2025.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT:

Donald Burger, Chief, Office of Hazardous Materials Safety General Approvals and Permits Branch, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington DC.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on September 2, 2025.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
Special Permits Data—Granted			
15577–M	Olin Winchester LLC	172.101(i)(3)	To modify the special permit to authorize transportation between additional Olin Winchester facilities.
16413–M	Amazon.com, Inc	171.22(b)(2), 171.24(d), 171.25(b), 172.315, 173.25, 173.306, 173.159a(c)(2), 173.185(c)(1)(iii), 173.185(c)(1)(iv), 173.185(c)(3).	To modify the special permit to exempt overpacks and packages from marking requirements and to authorize a copy of the special permit to be maintained at the headquarters office.
16606–M	5-State Helicopters, Inc	172.101(j), 172.200, 172.301(c), 172.302(c), 173.27(b)(2), 175.30, 175.30(a)(1).	To modify the special permit to authorize an additional hazardous material.
20260–M	Rogers Helicopters, Inc	172.101(j), 172.200, 172.200(a), 172.204(c)(3), 172.300, 172.300(a), 172.301(c), 172.400(b), 172.400a(a), 173.27(b)(2), 175.75(b), 175.75(c), 178.1010(a)(1).	To modify the special permit to authorize operations with a single pilot aboard a multi-engine aircraft carrying explosives.
20333–M	Antonov JSC	172.101(j), 172.203(a), 172.301(c), 173.27(b)(2), 175.30(a)(1).	To modify the special permit to increase the maximum weight authorized.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
20443-M	Northrop Grumman Systems Corporation.	172.101(j), 173.301(f), 173.302a(a)(1), 173.304a(a)(2).	To modify the special permit to authorize additional packagings and an increased number of tanks installed in a satellite.
20645-M	Walmart Inc	173.159a(c)(2), 173.185(c)(1)(iii), 173.185(c)(1)(iv), 173.185(c)(1)(v), 173.185(c)(3).	To modify the special permit to authorize an additional packaging type.
21222-M	Bren-Tronics, Inc	172.101(j), 173.185(b)(1)	To modify the special permit to authorize an additional battery design.
21607-M	Amazon.com, Inc	172.200(b)(3), 172.315(a)(2), 176.30.	To modify the special permit to authorize use by third-party logistics providers that utilize the grantee's hazardous materials classification system and customer fulfillment technologies in the Amazon Fulfillment Network.
21751-M	New Pig Corporation	172.200, 172.300, 172.400, 172.600, 172.700(a), 173.185(c)(1)(iii), 173.185(f).	To modify the special permit to not require testing of the batteries and cells and having a state of charge limitation.
21924-N	Antech Systems, Inc	180.205(g)	To authorize the transportation in commerce of the Composite Overwrapped Pressure Vessels (COPV), listed in paragraph 7. when Modal Acoustic Emission (MAE) Examination is used in lieu of the internal visual inspection and hydrostatic test as required in § 180.205 and the relevant special permits.
21932-N	EnerVenue, Inc	173.301(f), 173.302(a)	To authorize the transportation in commerce of non-DOT specification cylinders (battery receptacles) containing compressed flammable gas.
21970-M	Call2Recycle, Inc	173.185(f)	To modify the permit to authorize an additional transportation location.
22002-N	United Brands Products Design Development and Marketing, Inc.	173.301(a)(11), 173.301b(c)(1).	To authorize the transportation in commerce of certain DOT specification or UN cylinders containing nitrous oxide that use an alternative valve standard.
22007-N	EXOLaunch, Inc	173.301(f)(1), 173.304(a)	To authorize the transportation in commerce of non-DOT specification pressure vessels containing nitrous oxide without a pressure relief device.
22031-N	Store and Plus, Corp	171.2(k), 172.200, 172.300, 172.400, 172.500, 172.700(a).	To authorize the transportation in commerce of certain DOT 3AL, TC/3ALM, and UN ISO 7866 cylinders that contain carbon dioxide, with alternative hazard communication.
22034-N	Exel Inc	173.4a(g)(2)	To authorize the transportation in commerce of excepted quantities of isopropanol solution using a reduced size (50 mm by 50 mm) excepted quantity mark when transported via motor vehicle or rail.
22052-N	Northrop Grumman Systems Corporation.	172.203(a), 172.301(c), 173.302a(a)(1), 173.304a(a)(1).	To authorize a 5-year extension to the service life of cylinders manufactured under DOT-SP 8162.
22076-N	Northrop Grumman Systems Corporation.	173.56(b), 173.62(a)	To authorize the transportation in bulk quantities of unapproved waste explosive substances (large propellant slugs) unpackaged to a site for disposal.
22081-N	U.S. Environmental Protection Agency, Region 9.	173.150(b)	To authorize the transportation of expired, unsecured, and improperly stored hand sanitizer from two locations.

Special Permits Data—Denied

Special Permits Data—Withdrawn

21922-M	Archer Aviation Inc	172.101(j), 173.185(e)	To modify the special permit to authorize an additional packaging.
22063-N	Arcwood Environmental, LLC	173.12(c)(2)	To authorize the transportation in commerce by rail freight of previously used drums for the shipment of waste material transported for disposal or recovery.
22071-M	Environmental Protection Agency.	172.301(c), 172.320, 173.51(a), 173.54(a), 173.56(b).	To modify the special permit to authorize transportation of the hazard materials outside of the authorized hours.

DEPARTMENT OF TRANSPORTATION**Pipeline and Hazardous Materials Safety Administration****Hazardous Materials: Notice of Applications for New Special Permits**

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

DATES: Comments must be received on or before October 6, 2025.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT:

Donald Burger, Chief, Office of Hazardous Materials Safety General Approvals and Permits Branch, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH-13, 1200 New Jersey Avenue Southeast, Washington, DC 20590-0001, (202) 366-4535.

SUPPLEMENTARY INFORMATION: Each mode of transportation for which a particular special permit is requested is indicated by a number in the "Nature of

Application" portion of the table below as follows: (1) Motor vehicle, (2) Rail freight, (3) Cargo vessel, (4) Cargo aircraft only, (5) Passenger-carrying aircraft.

Copies of the applications are available for inspection in the Records Center, East Building, PHH-13, 1200 New Jersey Avenue Southeast, Washington, DC.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on September 2, 2025.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

SPECIAL PERMITS DATA

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
22077-N	Space Exploration Technologies Corp.	172.101(k)(8), 172.300(a), 172.400(a), 173.3(a), 176.63(b), 176.116(a)(1), 176.116(e)(1), 176.138(b).	To authorize the transportation in commerce of SpaceX Starship spacecraft and its associated support equipment containing non-DOT specification packagings of hazardous materials. (modes 1, 3)
22080-N	Atlas Air, Inc	172.101(a), 172.204(c)(3), 173.27(b)(2), 173.27(b)(3), 175.30(a)(1).	To authorize the transportation in commerce of certain Division 1.1, 1.2, 1.3, and 1.4 explosives which are forbidden or exceed quantities authorized for transport by cargo-only aircraft. (mode 4)
22082-N	W. A. Murphy, Inc	177.835(c), 177.835(d), 177.848(e), 177.848(f).	To authorize the transportation in commerce of hazardous materials contained in a multi-purpose bulk truck in combination with a separate transport vehicle carrying additional blasting agents or emulsion. (mode 1)
22083-N	Amazon.com, Inc	173.150(g)(1), 173.150(g)(1)(iii), 173.150(g)(2), 173.301(c).	To authorize the transportation in commerce of beverages, food, cosmetics and medicines, medical screening solutions, and concentrates sold as retail products containing linear or branched alcohols (except methanol) classed as a flammable liquid or solid containing linear or branched alcohols (except methanol) as being excepted from the Hazardous Materials Regulations (HMR). (modes 1, 2, 3, 4, 5)
22084-N	Wing Aviation LLC	49 CFR Parts 171-180	To authorize the transportation in commerce of certain hazardous materials in unmanned aircraft as not subject to the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) when transported to their final delivery destination. (mode 4)
22085-N	Amazon.com, Inc	49 CFR Parts 171-180	To authorize the transportation in commerce of certain hazardous materials as not subject to the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) when transported to their final delivery destination. (mode 1)
22086-N	The Alton & Southern Railway	172.203(a), 174.24(a)	To authorize the use of electronic means to maintain and communicate on board train consist information in lieu of paper documentation. (mode 2)
22087-N	Zipline International Inc	49 CFR Parts 171-180	To authorize the transportation in commerce of certain hazardous materials in unmanned aircraft as not subject to the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) when transported to their final delivery destination. (mode 4)
22088-N	Arthrex, Inc	173.185(c), 173.185(e)	To authorize the transportation in commerce of lithium-ion batteries packaged in equipment exceeding the 30% state of charge for decontamination or servicing. (mode 4)

[FR Doc. 2025–17015 Filed 9–4–25; 8:45 am]
BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials
Safety Administration

Hazardous Materials: Notice of
Applications for Modification to
Special Permits

AGENCY: Pipeline and Hazardous
Materials Safety Administration
(PHMSA), DOT.

ACTION: List of applications for
modification of special permits.

SUMMARY: In accordance with the
procedures governing the application
for, and the processing of, special
permits from the Department of
Transportation’s Hazardous Material
Regulations, notice is hereby given that
the Office of Hazardous Materials Safety

has received the application described
herein.

DATES: Comments must be received on
or before September 22, 2025.

ADDRESSES: Record Center, Pipeline and
Hazardous Materials Safety
Administration, U.S. Department of
Transportation, Washington, DC 20590.

Comments should refer to the
application number and be submitted in
triplicate. If confirmation of receipt of
comments is desired, include a self-
addressed stamped postcard showing
the special permit number.

FOR FURTHER INFORMATION CONTACT:
Donald Burger, Chief, Office of
Hazardous Materials Safety General
Approvals and Permits Branch, Pipeline
and Hazardous Materials Safety
Administration, U.S. Department of
Transportation, East Building, PHH–13,
1200 New Jersey Avenue Southeast,
Washington, DC 20590–0001, (202) 366–
4535.

SUPPLEMENTARY INFORMATION: Each
mode of transportation for which a
particular special permit is requested is
indicated by a number in the “Nature of
Application” portion of the table below
as follows: (1) Motor vehicle, (2) Rail
freight, (3) Cargo vessel, (4) Cargo
aircraft only, (5) Passenger-carrying
aircraft.

Copies of the applications are
available for inspection in the Records
Center, East Building, PHH–13, 1200
New Jersey Avenue Southeast,
Washington DC or at [http://
regulations.gov](http://regulations.gov).

This notice of receipt of applications
for special permit is published in
accordance with part 107 of the Federal
hazardous materials transportation law
(49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on September 2,
2025.

Donald P. Burger,
*Chief, General Approvals and Permits
Branch.*

SPECIAL PERMITS DATA

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
14940–M	Crown Cork & Seal USA, Inc	173.306(a)(3), 178.33, 178.33a.	To modify the special permit to authorize cargo aircraft and passenger-carrying aircraft as authorized modes of trans- portation. (modes 1, 2, 3, 4, 5)
16308–M	Vero Biotech Inc	173.175	To modify the special permit to authorize changes to the packaging. (modes 1, 2, 3, 4, 5)
21134–M	GATX Corporation	179.100–4(a), 179.200–4(a) ..	To modify the special permit authorizing new tank car own- ers to operate under the special permit until the next tank car qualification due date. (mode 2)
21308–M	Micropore, Inc	173.240(d), 173.240(d)(1)	To modify the special permit to authorize an additional packaging. (mode 1)
21408–M	GFS Chemicals, Inc	173.158(f)(3)	To modify the special permit to authorize the manufacture of plastic bottles with a smaller opening. (modes 1, 3)
21936–M	Electronic Fluorocarbons, LLC	171.23(a)(3), 173.23(b)(10) ...	To modify the special permit to authorize the export of an additional packaging containing residue. (modes 1, 2, 3)

[FR Doc. 2025–17017 Filed 9–4–25; 8:45 am]
BILLING CODE P



FEDERAL REGISTER

Vol. 90

Friday,

No. 170

September 5, 2025

Part II

Environmental Protection Agency

40 CFR Part 52

Air Plan Approval; Arkansas; Regional Haze State Implementation Plan for the Second Implementation Period; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2022–0735; FRL–9405–01–R6]

Air Plan Approval; Arkansas; Regional Haze State Implementation Plan for the Second Implementation Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Arkansas through the Division of Environmental Quality (DEQ) on August 8, 2022, and clarified by DEQ on July 29, 2025, as satisfying the requirements of the Act and the EPA's Regional Haze Rule (RHR) for visibility protection in mandatory Class I Federal areas (Class I areas) for the program's second implementation period. Arkansas' SIP submission addresses the requirement that states must revise their long-term strategies for making reasonable progress to prevent any future and remedy any existing man-made visibility impairment in the Class I areas. The EPA is taking this action pursuant to sections 110 and 169A of the CAA.

DATES: Written comments must be received on or before October 6, 2025.

ADDRESSES: Submit comments, identified by Docket No. EPA–R06–OAR–2022–0735, at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information that is considered to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment with multimedia submissions and should include all discussion points desired. The EPA will generally not consider comments or their contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact James E. Grady, 214–665–6745, grady.james@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions,

and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov. While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (*e.g.*, CBI).

FOR FURTHER INFORMATION CONTACT:

James E. Grady, EPA Region 6 Office, Regional Haze and SO₂ Section, (214) 665–6745; grady.james@epa.gov. We encourage the public to submit comments via <https://www.regulations.gov>. Please call or email Mr. Grady or call Mr. Bill Deese at 214–665–7253 if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION:

Throughout this document “we,” “us,” and “our” mean the EPA.

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I. What action is the EPA proposing?

On August 8, 2022, DEQ submitted its 2022 Arkansas Regional Haze Planning Period II SIP submission to the EPA to satisfy the regional haze program requirements for the second implementation period. The EPA is proposing to find that the Arkansas regional haze SIP submission for the second implementation period meets the applicable statutory and regulatory requirements and, therefore, is proposing to approve Arkansas' submission into its SIP. Specifically, the EPA is proposing to approve Arkansas' 2022 SIP submission, clarified by DEQ on July 29, 2025, as satisfying the requirements of (1) 40 CFR 51.308(f)(1): calculations of baseline, current, and natural visibility conditions, progress to date, and the uniform rate of progress (URP); (2) 40 CFR 51.308(f)(2): long-term strategy; (3) 40 CFR 51.308(f)(3): reasonable progress goals (RPGs); (4) 40 CFR 51.308(f)(4): reasonably attributable visibility impairment (RAVI); (5) 40 CFR 51.308(f)(5) and 40 CFR 51.308(g)(1) through (5): progress report requirements; (6) 40 CFR 51.308(f)(6): monitoring strategy and other implementation plan requirements; and (7) 40 CFR 51.308(i): Federal Land Manager (FLM) consultation. The State's submission can be found in the docket of this action.

II. Background and Requirements for Regional Haze Plans

A detailed history and background of the regional haze program is provided in multiple prior EPA proposal actions.¹ For additional background, please refer to Section III, “Overview of Visibility Protection Statutory Authority, Regulation, and Implementation” of the 2017 RHR revisions titled, “Protection of Visibility: Amendments to Requirements for State Plans.”² The following is an abbreviated history and background of the regional haze

¹ See 90 FR 13516 (March 24, 2025).

² See 82 FR 3078 (January 10, 2017) located at <https://www.federalregister.gov/documents/2017/01/10/2017-00268/protection-of-visibility-amendments-to-requirements-for-state-plans#h-16>.

program and 2017 RHR as it applies to the current action.

A. Regional Haze Background

In the 1977 CAA Amendments, Congress created a program for protecting visibility in the nation's mandatory Class I Federal areas, which include certain national parks and wilderness areas.³ CAA section 169A(a)(1) establishes as a national goal the "prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution."

Regional haze is visibility impairment that is produced by a multitude of anthropogenic sources and activities which are located across a broad geographic area that emit pollutants that impair visibility. Visibility impairing pollutants predominantly include fine particulates (PM_{2.5}) and their precursors but also coarse mass.⁴ (PM)_{2.5} particles consist of sulfates (SO₄²⁻), nitrates (NO₃⁻), organic carbon, elemental carbon, and soil dust. Precursors that react in the atmosphere to form PM_{2.5} consist of sulfur dioxide (SO₂), nitrogen oxides (NO_x), and, in some cases, volatile organic compounds (VOC) and ammonia (NH₃). PM_{2.5} impairs visibility by scattering and absorbing light, which reduces the perception of clarity and color, as well as visible distance.⁵

To address regional haze visibility impairment, the 1999 RHR established an iterative planning process to implement CAA section 169A(b)(2) that requires a state in which any Class I area is located or for a state "the emissions from which may reasonably be anticipated to cause or contribute to

any impairment of visibility" in a Class I area to each periodically submit comprehensive SIP revisions to address such impairment.⁶ On January 10, 2017, the EPA promulgated revisions to the RHR, that apply for the second and subsequent implementation periods. See 82 FR 3078 (January 10, 2017). The reasonable progress requirements as revised in the 2017 rulemaking (referred to here as the 2017 RHR Revisions) are codified at 40 CFR 51.308(f).

B. Roles of Agencies in Addressing Regional Haze

Because the air pollutants and pollution affecting visibility in Class I areas can be transported over long distances, successful implementation of the regional haze program requires long-term, regional coordination among multiple jurisdictions and agencies that have responsibility for Class I areas and the emissions that impact visibility in those areas. In order to address regional haze, states need to develop strategies in coordination with one another, considering the effect of emissions from one jurisdiction on the air quality in another. Five regional planning organizations (RPOs),⁷ which include representation from state and tribal governments, the EPA, and Federal Land Managers, were developed in the lead-up to the first implementation period to address regional haze. RPOs evaluate technical information to better understand how emissions from state and tribal land impact Class I areas across the country, pursue the development of regional strategies to reduce emissions of particulate matter and other pollutants leading to regional haze, and help states meet the consultation requirements of the RHR.

The Central Regional Air Planning Association (CENRAP), one of the five RPOs referred to, was a collaborative effort of tribal governments, state governments and various federal agencies representing the central states for the first planning period. Due to lack of funding in 2011, CENRAP subsequently ceased to function, and Arkansas now communicates through the Central States Air Resource

Agencies (CenSARA) with the other states that were part of CENRAP. The CenSARA region includes the states of Arkansas, Iowa, Kansas, Louisiana, Missouri, Nebraska, Oklahoma, Texas, and the local agencies within these states. CenSARA promotes the exchange of ideas, information, knowledge, experience and data, and develops strategies for addressing air quality issues that may affect the CenSARA states. CenSARA also conducts research and undertakes other activities as necessary to provide CenSARA states with information to support the development of sound air pollution control policy.

C. Previous Actions on Arkansas Regional Haze

The State of Arkansas submitted a regional haze SIP on September 9, 2008, intended to address the requirements of the first regional haze implementation period. On August 3, 2010, the State submitted a SIP revision with mostly non-substantive changes that addressed Arkansas Pollution Control and Ecology Commission (APCEC) Regulation 19, Chapter 15. On September 27, 2011, the State submitted a supplemental letter that clarified several aspects of the 2008 submittal. The EPA collectively refers to the original 2008 submittal, the supplemental letter, and the 2010 revision together as the 2008 Arkansas Regional Haze SIP. On March 12, 2012, the EPA partially approved and partially disapproved the 2008 Arkansas Regional Haze SIP.⁸ Specifically, the EPA disapproved certain BART compliance dates; the State's identification of certain BART-eligible sources and subject-to-BART sources; certain BART determinations for NO_x, SO₂, and PM₁₀; the State's reasonable progress analysis; and a portion of the State's long-term strategy. The remaining provisions of the 2008 Arkansas Regional Haze SIP were approved. The final partial disapproval started a 2-year FIP clock that obligated the EPA to either approve a SIP revision and/or promulgate a FIP to address the disapproved portions of the action.⁹ Because a SIP revision addressing the deficiencies was not approved and the FIP clock expired in April 2014, the EPA promulgated a FIP (the Arkansas

³ CAA 169A establishes visibility protection for mandatory Class I Federal areas and CAA 162(a) statutorily designates these areas as consisting of all national parks exceeding 6,000 acres, all national wilderness areas and memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977. There are 156 mandatory Class I areas. The list of areas to which the requirements of the visibility protection program apply is in 40 CFR part 81, subpart D.

⁴ Particles greater than PM_{2.5} but less than PM₁₀ are referred to as coarse mass.

⁵ 40 CFR 51.301 states that there are several ways to measure the amount of visibility impairment, *i.e.*, haze. One such measurement is the deciview, which is the principal metric used by the RHR. Under many circumstances, a change in 1 deciview will be perceived by the human eye to be the same on both clear and hazy days. The deciview is unitless. It is proportional to the logarithm of the atmospheric extinction of light, which is the perceived dimming of light due to its being scattered and absorbed as it passes through the atmosphere. Atmospheric light extinction (b_{ext}) is a metric used for expressing visibility and is measured in inverse megameters (Mm⁻¹). The formula for the deciview is $dv = 10^3 \ln(b_{ext}/10 \text{ Mm}^{-1})$.

⁶ 40 CFR 51.308(d), (f) expresses the statutory requirement for states to submit plans addressing out-of-state class I areas by providing that states must address visibility impairment "in each mandatory Class I Federal area located outside the State that may be affected by emissions from within the State." See also 40 CFR 51.308(b), (f) which establishes submission dates for iterative regional haze SIP revisions; 64 FR 35714, 35768 (July 1, 1999).

⁷ RPOs are sometimes also referred to as "multi-jurisdictional organizations," or MJOs. For the purposes of this notice, the terms RPO and MJO are synonymous.

⁸ 77 FR 14604 (March 12, 2012).

⁹ Under CAA section 110(c), the EPA is required to promulgate a FIP within 2 years of the effective date of a finding that a state has failed to make a required SIP submission or has made an incomplete submission, or of the effective date that the EPA disapproves a SIP in whole or in part. The FIP requirement is terminated only if a state submits a SIP, and the EPA approves that SIP as meeting applicable CAA requirements before promulgating a FIP.

Regional Haze FIP) on September 27, 2016, to address the disapproved portions of the 2008 Arkansas Regional Haze SIP.¹⁰ Among other things, the FIP established SO₂, NO_x, and PM₁₀ emission limits under the BART requirements for nine units at six facilities: Arkansas Electric Cooperative Corporation (AECC) Carl E. Bailey Plant Unit 1 Boiler; AECC John L. McClellan Plant Unit 1 Boiler; American Electric Power/Southwestern Electric Power Company (AEP/SWEPCO) Flint Creek Plant Boiler No. 1; Entergy Lake Catherine Plant Unit 4 Boiler; Entergy White Bluff Plant Units 1 and 2 Boilers and the Auxiliary Boiler; and the Domtar Ashdown Mill Power Boilers No. 1 and 2. The FIP also established SO₂ and NO_x emission limits under the reasonable progress requirements for the Entergy Independence Plant Units 1 and 2.

Following petitions for reconsideration submitted by the State, industry, and ratepayers, on April 25, 2017, the EPA issued a partial administrative stay of the effectiveness of the FIP for 90 days.¹¹ During that period, Arkansas started to address the disapproved portions of its regional haze SIP through several phases of SIP revisions. On July 12, 2017, the State submitted its proposed Phase I SIP revision (the Arkansas Regional Haze NO_x SIP revision) to address NO_x BART requirements for all electric generating units (EGUs) and the reasonable progress requirements with respect to NO_x. The Arkansas Regional Haze NO_x SIP submittal replaced all source-specific NO_x BART determinations for EGUs established in the FIP with reliance upon the Cross-State Air Pollution Rule (CSAPR) emissions trading program for ozone (O₃) season NO_x as an alternative to NO_x BART. The SIP submittal addressed the NO_x BART requirements for Bailey Unit 1, McClellan Unit 1, Flint Creek Boiler No. 1, Lake Catherine Unit 4; White Bluff Units 1 and 2, and the Auxiliary Boiler. The revision did not address NO_x BART for Domtar Ashdown Mill Power Boilers No. 1 and 2. On February 12, 2018, we took final action to approve the Arkansas Regional Haze NO_x SIP revision and to withdraw the corresponding NO_x provisions of the FIP.¹²

The State submitted its Phase II SIP revision (the Arkansas Regional Haze SO₂ and PM SIP revision) on August 8,

2018, that addressed most of the remaining parts of the 2008 Arkansas Regional Haze SIP that were disapproved in the March 12, 2012, action. The August 8, 2018, SIP submittal was intended to replace the federal SO₂ and PM₁₀ BART determinations as well as the reasonable progress determinations established in the FIP with the State's own determinations. Specifically, the SIP revision addressed the applicable SO₂ and PM₁₀ BART requirements for Bailey Unit 1; SO₂ and PM₁₀ BART requirements for McClellan Unit 1; SO₂ BART requirements for Flint Creek Boiler No. 1; SO₂ BART requirements for White Bluff Units 1 and 2; SO₂, NO_x, and PM₁₀ BART requirements for the White Bluff Auxiliary Boiler; and included a requirement that Lake Catherine Unit 4 not burn fuel oil until SO₂ and PM BART determinations for the fuel oil firing scenario are approved into the SIP by the EPA. The submittal addressed the reasonable progress requirements with respect to SO₂ and PM₁₀ emissions for Independence Units 1 and 2 and all other sources in Arkansas. In addition, it established revised reasonable progress goals (RPGs) for Arkansas' two Class I areas and revised the State's long-term strategy provisions. The submittal did not address BART and associated long-term strategy requirements for Domtar Ashdown Mill Power Boilers No. 1 and 2. On September 27, 2019, we took final action to approve a portion of the Arkansas Regional Haze SO₂ and PM SIP revision and to withdraw the corresponding parts of the FIP.¹³

On August 13, 2019, DEQ submitted the Arkansas Regional Haze Phase III SIP (Phase III SIP revision). The submittal contained a BART alternative measure to address BART and the associated long-term strategy requirements for two subject-to-BART sources (Power Boilers No. 1 and 2) at the Domtar Ashdown Mill located in Ashdown, Arkansas. On March 22, 2021, we withdrew the remaining portions of the 2016 FIP and in a separate action approved the Arkansas Regional Haze Phase III SIP revision as meeting the applicable regional haze BART alternative provisions set forth in 40 CFR 51.308(e)(2) for the Domtar Ashdown Mill.¹⁴ We also approved the reasonable progress components under

40 CFR 51.308(d)(1) relating to Domtar Power Boilers No. 1 and 2. With the approved Phase III SIP revision addressing BART alternative requirements and the previously approved Phase I and II SIP revision requirements, Arkansas addressed all reasonable progress requirements under section 51.308(d)(1) that were previously disapproved and achieved a fully approved regional haze SIP for the first implementation period.

Pursuant to 40 CFR 51.308(g), Arkansas was responsible for submitting a 5-year progress report as a SIP revision for the first implementation period, which it did on June 2, 2015. DEQ was also required to include a determination of adequacy of the regional haze SIP for the first implementation period as required under 40 CFR 51.308(h), at the same time as the progress report. On October 1, 2019, the EPA approved the progress report into the Arkansas SIP as meeting the applicable regional haze requirements set forth in section 51.308(g), and also approved the State's determination of adequacy under 40 CFR 51.308(h) that no additional controls were needed.¹⁵

D. Arkansas Regional Haze Planning Period II SIP Submittal

On August 8, 2022, DEQ submitted to the EPA the 2022 Arkansas Regional Haze Planning Period II SIP revision (2022 Planning Period II SIP) which is the subject of this action. It addresses the State's regional haze obligations for the second implementation period (2018–2028) under CAA sections 169A and 169B and the RHR at 40 CFR 51.308(f) and (i). The 2022 Planning Period II SIP submittal contains: the State's long-term strategy which includes analyses by DEQ and CenSARA and assesses potential controls needed for selected sources to meet reasonable progress, an assessment of progress made since the first implementation period in reducing emissions of visibility impairing pollutants, and the visibility improvement progress at its Class I areas and nearby Class I areas. On July 29, 2025, DEQ submitted a letter¹⁶ clarifying that its 2022 Planning Period II SIP submittal demonstrates reasonable progress under the RHR and CAA without the Administrative Order (LIS No. 22–084) for Entergy Independence. DEQ requested in the letter for EPA to act on its submittal without the inclusion of that Administrative Order.

¹⁰ 81 FR 66332 (September 27, 2016) as corrected on October 4, 2016 (81 FR 68319).

¹¹ 82 FR 18994 (April 25, 2017).

¹² See 83 FR 5927 (February 12, 2018) final action. See also 82 FR 42627 (September 11, 2017) for the proposed approval.

¹³ See 84 FR 51033 (September 27, 2019) for final approval. See also 83 FR 62204 (November 30, 2018) for proposed action and 84 FR 51056 (September 27, 2019) for the final FIP withdrawal action.

¹⁴ See 86 FR 15104 (March 22, 2021) final action (effective April 21, 2021). See also 85 FR 14847 (March 16, 2020) for proposed approval.

¹⁵ 84 FR 51986 (October 1, 2019).

¹⁶ See letter sent to EPA from DEQ signed by Secretary Khoury (dated July 28, 2025) and included in the docket of this action.

This action provides EPA's evaluation of the 2022 SIP submittal which we are proposing to approve as meeting the requirements of the CAA and RHR for the second implementation period of the regional haze program.

III. Requirements for Regional Haze Plans for the Second Implementation Period

A. Long-Term Strategy

Under the CAA and EPA's regulations, all 50 states, the District of Columbia, and the U.S. Virgin Islands are required to submit regional haze SIPs satisfying the applicable requirements for the second implementation period of the regional haze program by July 31, 2021. Each state's SIP must contain a long-term strategy for making reasonable progress toward meeting the national goal of remedying any existing and preventing any future anthropogenic visibility impairment in Class I areas. *See* CAA 169A(b)(2)(B). To this end, 40 CFR 51.308(f) lays out the process by which states determine what constitutes their long-term strategies, with the order of the requirements in 40 CFR 51.308(f)(1) through (f)(3) generally mirroring the order of the steps in the reasonable progress analysis¹⁷ and (f)(4) through (f)(6) containing additional, related requirements. Broadly speaking, a state first must identify the Class I areas within the state and determine the Class I areas outside the state in which visibility may be affected by emissions from the state. These are the Class I areas that must be addressed in the state's long-term strategy. *See* 40 CFR 51.308(f), (f)(2). For each Class I area within its borders, a state must calculate the baseline (five-year average period of 2000–2004), current, and natural visibility conditions (*i.e.*, visibility conditions without anthropogenic visibility impairment) for that area, as well as the visibility improvement made to date and the uniform rate of progress (URP). The URP is the linear rate of progress needed to attain natural visibility conditions, assuming a starting point of baseline visibility conditions in 2004 and ending with natural conditions in 2064. This linear interpolation is used as a tracking metric to help states assess the amount of progress they are making towards the national visibility goal over time in each Class I area. *See* 40 CFR 51.308(f)(1). Each state having a Class I area and/or

emissions that may affect visibility in a Class I area must then develop a long-term strategy that includes the enforceable emission limitations, compliance schedules, and other measures that are necessary to make reasonable progress in such areas. A reasonable progress determination is based on applying the four factors in CAA section 169A(g)(1) to sources of visibility-impairing pollutants that the state has selected to assess for controls for the second implementation period. Additionally, the RHR at 40 CFR 51.308(f)(2)(iv) separately provides five “additional factors”¹⁸ that states must consider in developing their long-term strategies. A state evaluates potential emission reduction measures for those selected sources and determines which are necessary to make reasonable progress. Those measures are then incorporated into the state's long-term strategy.

While states have discretion to choose any source selection methodology that is reasonable, whatever choices they make should be reasonably explained. To this end, 40 CFR 51.308(f)(2)(i) requires that a state's SIP submission include “a description of the criteria it used to determine which sources or groups of sources it evaluated.” The technical basis for source selection, which may include methods for quantifying potential visibility impacts such as emissions divided by distance metrics, trajectory analyses, residence time analyses, and/or photochemical modeling, must also be appropriately documented, as required by 40 CFR 51.308(f)(2)(iii). Once a state has selected the set of sources, the next step is to determine the emissions reduction measures for those sources that are necessary to make reasonable progress for the second implementation period.¹⁹ This is accomplished by considering the four reasonable progress factors—“the costs of compliance, the time necessary for compliance, and the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any existing source subject to such requirements.” *See* CAA

169A(g)(1). The EPA has explained that the four-factor analysis is an assessment of potential emission reduction measures (*i.e.*, control options) for sources; “use of the terms ‘compliance’ and ‘subject to such requirements’ in section 169A(g)(1) strongly indicates that Congress intended the relevant determination to be the requirements with which sources would have to comply in order to satisfy the CAA's reasonable progress mandate.”²⁰ Thus, for each source selected for four-factor analysis, a state must consider a “meaningful set” of technically feasible control options for reducing emissions of visibility impairing pollutants.²¹ The EPA has also explained that, in addition to the four statutory factors, states have flexibility under the CAA and RHR to reasonably consider visibility benefits as an additional factor alongside the four statutory factors.²² Ultimately, while states have discretion to reasonably weigh the factors and to determine what level of control is needed, 40 CFR 51.308(f)(2)(i) provides that a state “must include in its implementation plan a description of . . . how the four factors were taken into consideration in selecting the measure for inclusion in its long-term strategy.”

As explained previously, 40 CFR 51.308(f)(2)(i) requires states to determine the emission reduction measures for sources that are necessary to make reasonable progress by considering the four factors. Pursuant to 40 CFR 51.308(f)(2), measures that are necessary to make reasonable progress toward the national visibility goal must be included in a state's long-term strategy and in its SIP.²³ If the outcome

²⁰ 82 FR 3078, 3091 (January 10, 2017).

²¹ “Each source” or “particular source” is used here as shorthand. While a source-specific analysis is one way of applying the four factors, neither the statute nor the RHR requires states to evaluate individual sources. Rather, the 2017 RHR Revision (82 FR 3078, 3088) explains that states have “the flexibility to conduct four-factor analyses for specific sources, groups of sources or even entire source categories, depending on state policy preferences and the specific circumstances of each state.”

²² *See, e.g.*, Responses to Comments on Protection of Visibility: Amendments to Requirements for State Plans; Proposed Rule (81 FR 26942, May 4, 2016) (December 2016), Docket Number EPA–HQ–OAR–2015–0531, U.S. Environmental Protection Agency at 186.

²³ States may choose to, but are not required to, include measures in their long-term strategies beyond just the emission reduction measures that are necessary for reasonable progress. For example, states with smoke management programs may choose to submit their smoke management plans to the EPA for inclusion in their SIPs but are not required to do so. *See, e.g.*, 82 FR at 3108–09 (requirement to consider smoke management practices and smoke management programs under 40 CFR 51.308(f)(2)(iv) does not require states to

¹⁷ The EPA explained in the 2017 RHR Revision that we were adopting new regulatory language in 40 CFR 51.308(f) that, unlike the structure in 51.308(d), “tracked the actual planning sequence.” *See* 82 FR 3078, 3091 (January 10, 2017).

¹⁸ The five “additional factors” for consideration in 40 CFR 51.308(f)(2)(iv) are distinct from the four factors listed in CAA section 169A(g)(1) and 40 CFR 51.308(f)(2)(i) that states must consider and apply to sources in determining reasonable progress.

¹⁹ CAA 169A(g)(1) provides that, “in determining reasonable progress there shall be taken into consideration” the four statutory factors. However, in addition to four-factor analyses for selected sources, groups of sources, or source categories, a state may also consider additional emission reduction measures for inclusion in its long-term strategy, *e.g.*, from other newly adopted, on-the-books, or on-the-way rules and measures for sources not selected for four-factor analysis for the second planning period.

of a four-factor analysis is that an emission reduction measure is necessary to make reasonable progress toward remedying existing or preventing future anthropogenic visibility impairment, that measure must be included in the SIP.

The characterization of information on each of the factors is also subject to the documentation requirement in 40 CFR 51.308(f)(2)(iii). The reasonable progress analysis is a technically complex exercise and also a flexible one that provides states with bounded discretion to design and implement approaches appropriate to their circumstances. Given this flexibility, 40 CFR 51.308(f)(2)(iii) plays an important function in requiring a state to document the technical basis for its decision making so that the public and the EPA can comprehend and evaluate the information and analysis the state relied upon to determine what emission reduction measures must be in place to make reasonable progress. The technical documentation must include the modeling, monitoring, cost, engineering, and emissions information on which the state relied to determine the measures necessary to make reasonable progress. Additionally, the RHR at 40 CFR 51.3108(f)(2)(iv) separately provides five “additional factors”²⁴ that states must consider in developing their long-term strategies: (1) Emission reductions due to ongoing air pollution control programs, including measures to address reasonably attributable visibility impairment; (2) measures to reduce the impacts of construction activities; (3) source retirement and replacement schedules; (4) basic smoke management practices for prescribed fire used for agricultural and wildland vegetation management purposes and smoke management programs; and (5) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the long-term strategy.

Because the air pollution that causes regional haze crosses state boundaries, 40 CFR 51.308(f)(2)(ii) requires a state to consult with other states that also have emissions that are reasonably anticipated to contribute to visibility impairment in a given Class I area. 40 CFR 51.308(f)(2)(ii)(A) requires that if a state, pursuant to consultation, agrees that certain measures (e.g., a certain emission limitation) are necessary to

make reasonable progress at a Class I area, it must include those measures in its SIP. Additionally, 40 CFR 51.308(f)(2)(ii)(B) requires states that contribute to visibility impairment at the same Class I area consider the emission reduction measures the other contributing states have identified as being necessary to make reasonable progress for their own sources. If a state has been asked to consider or adopt certain emission reduction measures, but ultimately determines those measures are not necessary to make reasonable progress, 40 CFR 51.308(f)(2)(ii)(C) requires that a state must document in its SIP the actions taken to resolve the disagreement. Under all circumstances, a state must document in its SIP submission all substantive consultations with other contributing states.

B. RPGs

RPGs “measure the progress that is projected to be achieved by the control measures states have determined are necessary to make reasonable progress based on a four-factor analysis.”²⁵ After a state has developed its long-term strategy, it then establishes RPGs for each Class I area within its borders by modeling the visibility impacts of all reasonable progress controls at the end of the second implementation period (i.e., in 2028) as well as the impacts of other requirements of the CAA. The RPGs include reasonable progress controls not only for sources in the state in which the Class I area is located, but also for sources in other states that contribute to visibility impairment in that area. The RPGs are then compared to the baseline visibility conditions and the URP to ensure that progress is being made toward the statutory goal of preventing any future and remedying any existing anthropogenic visibility impairment in the Class I areas. *See* 40 CFR 51.308(f)(2) to (3). While states are not legally obligated to achieve the visibility conditions described in their RPGs, 40 CFR 51.308(f)(3)(i) requires that “the long-term strategy and the RPGs must provide for an improvement in visibility for the most impaired days since the baseline period and ensure no degradation in visibility for the clearest days since the baseline period.” RPGs may also serve as a metric for assessing the amount of progress a state is making toward the national visibility goal. To support this approach, the RHR requires states with Class I areas to compare the 2028 RPG on the most impaired days to the corresponding 2028 point on the URP line (representing visibility

conditions in 2028 if visibility were to improve at a linear rate from conditions in the 2000–2004 baseline period to 2064 natural visibility conditions). If the 2028 RPG on the most impaired days is above the 2028 URP point (i.e., if visibility conditions are improving slower than the rate described by the URP), each state that contributes to visibility impairment in the Class I area must demonstrate, based on the four-factor analysis required under section 51.308(f)(2)(i), that there are no additional emission reduction measures for anthropogenic sources or groups of sources in the state that would be reasonable to include in the long-term strategy. *See* 40 CFR 51.308(f)(3)(ii). To this end, 40 CFR 51.308(f)(3)(ii) requires that each state contributing to visibility impairment in a Class I area that is projected to improve slower than the URP must provide “a robust demonstration, including documenting the criteria used to determine which sources or groups of sources were evaluated and how the four factors required by paragraph (f)(2)(i) were taken into consideration in selecting the measures for inclusion in its long-term strategy.”

C. Monitoring Strategy and Other State Implementation Plan Requirements

Section 51.308(f)(6) requires states to have certain strategies and elements in place for assessing and reporting on visibility. Individual requirements under this subsection apply either to states with Class I areas within their borders, states with no Class I areas but that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area, or both. Compliance with the monitoring strategy requirement may be met through a state’s participation in the Interagency Monitoring of Protected Visual Environments (IMPROVE) monitoring network, which is used to measure visibility impairment caused by air pollution at the 156 Class I areas covered by the visibility program. *See* 40 CFR 51.308(f)(6), (f)(6)(i), and (f)(6)(iv). All states’ SIPs must provide for procedures by which monitoring data and other information are used to determine the contribution of emissions from within the state to regional haze visibility impairment in affected Class I areas, as well as a statewide inventory documenting such emissions. *See* 40 CFR 51.308(f)(6)(ii), (iii) and (v). All states’ SIPs must also provide for any other elements, including reporting, recordkeeping, and other measures, that are necessary for states to assess and report on visibility. *See* 40 CFR 51.308(f)(6)(vi).

adopt such practices or programs into their SIPs, although they may elect to do so).

²⁴ The five “additional factors” for consideration in section 51.308(f)(2)(iv) are distinct from the four factors listed in CAA section 169A(g)(1) and 40 CFR 51.308(f)(2)(i) that states must consider and apply to sources in determining reasonable progress.

²⁵ 82 FR 3078, 3091 (January 10, 2017).

D. Requirements for Periodic Reports Describing Progress Toward the RPGs

Section 51.308(f)(5) requires a state's regional haze SIP revision to address the requirements of paragraphs 40 CFR 51.308(g)(1) through (5) so that the plan revision due in 2021 will serve also as a progress report addressing the period since submission of the progress report for the first implementation period. The regional haze progress report requirement is designed to inform the public and the EPA about a state's implementation of its existing long-term strategy and whether such implementation is in fact resulting in the expected visibility improvement.²⁶ To this end, every state's SIP revision for the second implementation period is required to assess changes in visibility conditions and describe the status of implementation of all measures included in the state's long-term strategy, including BART and reasonable progress emission reduction measures from the first implementation period, and the resulting emissions reductions. *See* 40 CFR 51.308(g)(1) and (2).

E. Requirements for State and FLM Coordination

CAA section 169A(d) requires that before a state holds a public hearing on a proposed regional haze SIP revision, it must consult with the appropriate FLM; pursuant to that consultation, the state must include a summary of the FLM conclusions and recommendations in the notice to the public. Consistent with this statutory requirement, 40 CFR 51.308(i) provides the requirements for State and FLM coordination. Specifically, 40 CFR 51.308(i)(2) requires that states must "provide the FLM with an opportunity for consultation, in person and at a point early enough in the State's policy analyses of its long-term strategy emission reduction obligation so that information and recommendations provided by the FLM can meaningfully inform the State's decisions on the long-term strategy." In order for the EPA to evaluate whether FLM consultation meeting the requirements of the RHR has occurred, the SIP submission should include documentation of the timing and content of such consultation. The SIP revision submitted to the EPA must also describe how the state addressed any comments provided by the FLMs. *See* 40 CFR 51.308(i)(3). Finally, a SIP revision must provide procedures for continuing consultation between the state and FLMs regarding the state's

visibility protection program, including development and review of SIP revisions, 5-year progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas. *See* 40 CFR 51.308(i)(4).

IV. EPA's Evaluation of Arkansas' Regional Haze Planning Period II SIP Submittal

In this section of this document, we describe Arkansas' 2022 SIP submission and evaluate it against the requirements of the CAA and RHR for the second implementation period of the regional haze program.

A. Identification of Class I Areas

Section 169A(b)(2) of the CAA requires a state in which any Class I area is located or for a state "the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility" in a Class I area to each have a plan for making reasonable progress toward the national visibility goal. The RHR implements this statutory requirement at 40 CFR 51.308(f), which provides that each state's plan "must address regional haze in each mandatory Class I Federal area located within the State and in each mandatory Class I Federal area located outside the State that may be affected by emissions from within the State," and (f)(2), which requires each state's plan to include a long-term strategy that addresses regional haze in such Class I areas.

The EPA concluded in the 1999 RHR that "all states contain sources whose emissions are reasonably anticipated to contribute to regional haze in a Class I area," 64 FR 35721, and this determination was not changed in the 2017 RHR. Critically, the statute and regulation both require that the cause-or-contribute assessment consider all emissions of visibility impairing pollutants from a state, as opposed to emissions of a particular pollutant or emissions from a certain set of sources.

1. Arkansas Class I Areas

To address 40 CFR 51.308(f), Arkansas identified two Class I areas within its borders: the Caney Creek and Upper Buffalo Wilderness Areas. Caney Creek Wilderness is located in Polk County, Arkansas, and covers 14,460 acres on the southern edge of the Ouachita National Forest and protects a rugged portion of the Ouachita Mountains. The Caney Creek Wilderness Area monitor (CACR1) is located at latitude 34.4544, longitude -94.1429 in Polk County, Arkansas at an elevation of 683 meters (m) above

mean sea level (MSL). Upper Buffalo Wilderness area, located in Newton County, Arkansas, is an oak-hickory forest with intermittent portions of shortleaf pine located in the Ozark National Forest and offers 12,108 acres of boulder strewn and rugged scenery along the Buffalo River. The Upper Buffalo Wilderness monitor (UPBU1) is located 1 mile north of the U.S. Forest Service workstation near Deer, AR at an elevation of 722 m above MSL.

2. Other State Class I Areas Affected by Arkansas Emissions

In addition to the two Class I areas in Arkansas, DEQ used an area of influence analysis by Ramboll (*see* section IV.C.2.b for further details)²⁷ to identify Class I areas in and near the CenSARA region that may be influenced by emissions from Arkansas. DEQ examined distance-weighted residence time plots by Ramboll and applied a 0.05 percent threshold to the plots as a cutoff to identify areas of influence. Based on the contour plot qualitative results,²⁸ DEQ identified the following four Class I areas for which emissions from Arkansas sources may be reasonably anticipated to contribute to visibility impairment: Hercules Glades Wilderness (Hercules Glades) in Missouri;²⁹ Mammoth Cave National Park (Mammoth Cave) in Kentucky;³⁰ Sipsey Wilderness (Sipsey) in Alabama;³¹ and Wichita Mountains Wildlife Refuge (Wichita Mountains) in Oklahoma.³² In addition to the Class I

²⁷ *See* area of influence report in Appendix B of 2022 Planning Period II SIP submittal called 7AppB Area of Influence Report Prepared by Ramboll.pdf.

²⁸ *See* All Trajectories Distance-Weighted Residence Times contour plots for EWRT NO₃ and EWRT SO₄ for the 20 percent Most Impaired Days in the 2022 Planning Period II SIP: Figure III-10 for Hercules Glades; Figure III-20 for Mammoth Cave; Figure III-29 for Mingo; Figure III-48 for Sipsey; and Figure III-58 for Wichita Mountains. Note that air masses from Arkansas were not within the 0.05 percent distance-weighted residence time contour for Mingo on the most impaired days.

²⁹ The Hercules Glades Wilderness Area located in southwestern Missouri consists of 12,413 acres of open grasslands, forested knobs, steep rocky hillsides, and narrow drainages. The area is characterized by shallow, droughty soils and limestone outcrops. The Hercules Glades monitor (HEGL1) is located at latitude 36.6137, longitude -92.9220 in Missouri.

³⁰ The Mammoth Cave National Park in south central Kentucky consists of 51,303 acres in the Green River valley and contains the world's longest known cave system. The Mammoth Cave monitor (MACA1) is located at latitude 37.1317, longitude -86.1478 in Kentucky.

³¹ The Sipsey Wilderness consists of 12,646 acres in the Bankhead National Forest. The Sipsey monitor (SIPS1) is located at latitude 34.3433, longitude -87.3387 in Alabama.

³² The Wichita Mountains Wildlife Refuge in southwestern Oklahoma consists of 8,900 acres of

²⁶ 81 FR 26942, 26950 (May 4, 2016); 82 FR 3078, 3119 (January 10, 2017).

areas DEQ identified using distance-weighted residence times, DEQ also identified two additional Class I areas for which a particular source within Arkansas may contribute to visibility impairment: Mingo National Wildlife Refuge (Mingo) ³³ in Missouri was identified using the 2016 visibility impact surrogate (see section IV.C.2.b for further details) and Shining Rock Wilderness (Shining Rock) ³⁴ in North Carolina was identified through photochemical modeling. DEQ identified the Entergy Independence Power Plant in Arkansas as meeting its threshold for a reasonable progress analysis for Mingo in Missouri. The Visibility Improvement State and Tribal Association of the Southeast (VISTAS) ³⁵ RPO also made a request of DEQ to perform a reasonable progress analysis for the Entergy Independence Power Plant in Arkansas, as their modeling showed impacts at Shining Rock in North Carolina. DEQ, therefore, identified both Mingo and Shining Rock as Class I areas to consider for its source selection. Mingo was included in the analysis performed by Ramboll but Shining Rock in North Carolina was not included since that Class I area is not in the CenSARA region or adjacent to a CenSARA state. DEQ assessed state-by-state source contributions to visibility impairment for the two Class I areas in Arkansas (Caney Creek and Upper Buffalo) and also for the six Class I areas in other states (Hercules Glades,

Mammoth Cave, Mingo, Shining Rock, Sipsey, and Wichita Mountains) affected by emissions from Arkansas for the second planning period. DEQ also provided further evaluation of the sources from these Class I areas in and outside Arkansas by analyzing the key pollutants and then screening the main sources contributing toward visibility impairment for possible emission reduction controls. EPA provides our evaluation of DEQ's source selection process ³⁶ and the overall long-term strategy ³⁷ for these areas in section IV.C of this proposed action.

The EPA finds that DEQ has met the requirement in its 2022 Planning Period II SIP submittal of identifying the Class I areas located both within and outside Arkansas that may be affected by emissions from within Arkansas.

B. Calculations of Baseline, Current, and Natural Visibility Conditions; Progress to Date; and the URP for Arkansas' Class I Areas

Section 51.308(f)(1)(i) to (vi) requires DEQ to determine the following for each Class I area located within Arkansas: (i) baseline visibility conditions for the most impaired and clearest days, (ii) natural visibility conditions for the most impaired and clearest days, (iii) current visibility conditions for the most impaired and clearest days, (iv) progress to date for the most impaired and clearest days, (v) the differences between current visibility conditions

and natural visibility conditions, (vi) and the URP for each Class I area in the state. This section also provides the option for states to propose adjustments to the URP line for a Class I area to account for visibility impacts from anthropogenic sources outside the United States and/or the impacts from wildland prescribed fires that were conducted for certain, specified objectives. See 40 CFR 51.308(f)(1)(vi)(B).

DEQ reported the current visibility conditions and improvement realized at Arkansas' Class I areas in its 2022 Planning Period II SIP as required by 40 CFR 51.308(f)(1) and the 2018 Visibility Tracking Guidance.³⁸ DEQ relied on available IMPROVE monitoring data ³⁹ at Caney Creek and Upper Buffalo Wilderness Areas and developed figures showing visibility impairment trends. DEQ reported 2000–2019 annual observed visibility data and 5-year rolling average data in deciviews on the 20 percent clearest days and the 20 percent most impaired days as compared to the glidepaths at these areas.⁴⁰ DEQ also compared charts of baseline (2000–2004), current (2015–2019),⁴¹ and natural (2064) visibility conditions as measured by the IMPROVE monitors and determined that current visibility (2015–2019) at each Class I area for both the clearest and most impaired days has improved since the baseline period (see Tables 1 and 2).⁴²

TABLE 1—VISIBILITY AT ARKANSAS CLASS I AREAS FOR 20 PERCENT CLEAREST DAYS

Class I areas	Visibility (dv)		
	Baseline (2000–2004)	Current (2015–2019)	Natural conditions (2064)
Caney Creek Wilderness	11.24	7.79	4.23
Upper Buffalo Wilderness	11.71	8.17	4.18

canyons and grasslands that embrace the ancient Wichita Mountains. The Wichita Mountain monitor (WIMO1) is located at latitude 34.7322, longitude –98.7129 Oklahoma.

³³ The Mingo National Wildlife Refuge Wilderness Area in southeastern Missouri consists of 7,730 acres of swamp, riparian areas, and Ozark Plateau uplands. The Mingo monitor (MING1) is located at latitude 36.9716, longitude –90.1432 in Missouri.

³⁴ The Shining Rock Wilderness area consists of over 18,000 acres on the north side of the Pisgah Ledge in the Blue Ridge Mountains in North Carolina. The Shining Rock monitor (SHRO1) is located at latitude 35.3936, longitude –82.7743 in North Carolina.

³⁵ VISTAS is responsible for convening and collaborating on regional air quality analysis work necessary to support the development of regional haze SIPs. It is made up of 10 states (Alabama, Florida, Georgia, Kentucky, Mississippi, North

Carolina, South Carolina, Tennessee, Virginia, and West Virginia), the Eastern Band of Cherokee Indians, and Knox County, Tennessee (representing the 17 Southeastern local air agencies).

³⁶ See source screening spreadsheet in Appendix C of 2022 Planning Period II SIP submittal called 7AppC Arkansas Source Screening Method Spreadsheet-v8.xlsx.

³⁷ See 40 CFR 51.308(f)(2) for the long-term strategy requirements. See also CAA 169A(b)(2)(B).

³⁸ See December 20, 2018, memo, “Technical Guidance on Tracking Visibility Progress for the Second Implementation Period of the Regional Haze Program” from Richard A. Wayland at the EPA Office of Air Quality Planning and Standards, Research Triangle Park. https://www.epa.gov/sites/default/files/2018-12/documents/technical_guidance_tracking_visibility_progress.pdf.

³⁹ The Caney Creek IMPROVE monitor (CACR1) is located at latitude 34.4544, longitude –94.1429

in Polk County, AR at an elevation of 683 m above mean sea level (MSL). The Upper Buffalo Wilderness IMPROVE monitor (UPBU1) is located 1 mile north of the U.S. Forest Service workstation near Deer, AR at an elevation of 722 meters above MSL.

⁴⁰ See Figures II–2 and II–3 (pages II–5 to 6) for visibility progress at Caney Creek and Figures II–14 and II–15 (pages II–19 to 20) for visibility progress at Upper Buffalo in the 2022 Planning Period II SIP.

⁴¹ The period for calculating “current” visibility conditions is the most recent 5-year period for which data are available.

⁴² See Tables II–1 and II–2 (page II–4) for Caney Creek and Tables II–3 and II–4 (page II–18) for Upper Buffalo in the 2022 Planning Period II SIP for comparison of baseline, current, and natural visibility conditions.

TABLE 2—VISIBILITY AT ARKANSAS CLASS I AREAS FOR 20 PERCENT MOST IMPAIRED DAYS

Class I areas	Visibility (dv)		
	Baseline (2000–2004)	Current (2015–2019)	Natural conditions (2064)
Caney Creek Wilderness	23.99	17.65	9.54
Upper Buffalo Wilderness	24.21	17.52	9.41

DEQ reported, for the most impaired and clearest days, the progress made toward natural visibility conditions during the first planning period from the baseline period (2000–2004) to the

last 5-year average from that period (2014–2018); and total progress made to date toward natural visibility conditions from the baseline period (2000–2004) to the current 5-year average period (2015–

2019). The State also included the visibility improvement that is still required at Caney Creek and Upper Buffalo in order to meet natural conditions by 2064 (*see* Tables 3 and 4).

TABLE 3—VISIBILITY IMPROVEMENT PROGRESS TOWARD NATURAL VISIBILITY FOR 20 PERCENT CLEAREST DAYS AT ARKANSAS' CLASS I AREAS

Class I areas	Progress during planning period I* (dv)	Total progress to date** (dv)	Additional progress needed for natural conditions † (dv)
Caney Creek Wilderness	3.22	3.46	3.56
Upper Buffalo Wilderness	3.51	3.54	3.99

* Difference between baseline (2000–2004) average conditions and 2014–2018 average conditions.

** Difference between baseline (2000–2004) average conditions and 2015–2019 average conditions.

† Difference between 2015–2019 average conditions and 2064 natural conditions.

TABLE 4—VISIBILITY IMPROVEMENT PROGRESS TOWARD NATURAL VISIBILITY FOR 20 PERCENT MOST IMPAIRED DAYS AT ARKANSAS' CLASS I AREAS

Class I areas	Progress during planning period I* (dv)	Total progress to date** (dv)	Additional progress needed for natural conditions † (dv)
Caney Creek Wilderness	5.70	6.34	8.11
Upper Buffalo Wilderness	6.26	6.70	8.11

* Difference between baseline (2000–2004) average conditions and 2014–2018 average conditions.

** Difference between baseline (2000–2004) average conditions and 2015–2019 average conditions.

† Difference between 2015–2019 average conditions and 2064 natural conditions.

The URP is the uniform rate of visibility improvement (measured in deciviews of improvement per year) that would need to be maintained during each implementation period for the most impaired days in order to attain natural visibility conditions by the end of 2064. The State calculated the URP for Caney Creek and Upper Buffalo for the 20 percent most impaired days, and developed linear glidepaths for each area assuming a starting point of baseline visibility conditions in 2004 and ending with natural conditions in 2064.⁴³ The RHR allows states the option to adjust the 2064 glidepath endpoints to account for both international anthropogenic emissions and certain prescribed fire impacts at each Class I area. In the EPA's September 2019 memo and associated

technical support document (EPA 2019 Memo and Modeling TSD),⁴⁴ the EPA used 2028 modeling results to quantify the international anthropogenic and prescribed fire impacts⁴⁵ at Class I areas

⁴⁴ See Memorandum titled, "Availability of Modeling Data and Associated Technical Support Document for the EPA's Updated 2028 Visibility Air Quality Modeling," from Richard A. Wayland, Director of EPA's Air Quality Assessment Division, to EPA Regional Air Division Directors (September 19, 2019). <https://www.epa.gov/visibility/technical-support-document-epas-updated-2028-regional-haze-modeling>.

⁴⁵ See EPA 2019 Modeling Memo (page 2, footnote 4). The Regional Haze Rule also allows an adjustment of the glidepath endpoint to account for certain prescribed fire impacts. Modeled prescribed fire contributions were calculated by EPA, with results presented in the modeling TSD. However, consistent with the focus of the December 2018 Technical Guidance and the Administrator's Regional Haze Roadmap, the glidepath adjustments presented only include the international anthropogenic contributions. Additionally, the prescribed fire impacts are relatively small (–0–5 Mm^{–1}) compared to the international anthropogenic impacts (–3–19 Mm^{–1}). See the 2019 Modeling TSD at Table 5–1 (pages 44 and 52) for

on the 20 percent most anthropogenically impaired days. This linear tracking metric was used by the State to assess the amount of progress toward visibility improvement over time in each Class I area by comparing annual observed data and 5-year average visibility data to the URP glidepath. Caney Creek's URP was revised to be –0.212 dv per year based on an adjusted 2064 endpoint of 11.26 dv. Upper Buffalo's URP was revised to be –0.206 dv per year based on an adjusted 2064 endpoint of 11.83 dv. The adjusted URP glidepath 2064 endpoints were calculated by adding the contribution of international anthropogenic emissions as modeled by EPA⁴⁶ to the natural visibility conditions. The total international anthropogenic contributions for Caney

the impacts from prescribed fires at Caney Creek (1.88 Mm^{–1}) and at Upper Buffalo (3.68 Mm^{–1}).

⁴⁶ See EPA 2019 Modeling TSD, Table 5–2.

⁴³ See Figures II–2 and II–14 in the 2022 Planning Period II SIP for Caney Creek and Upper Buffalo's URP glidepaths on the 20 percent most impaired days.

Creek and Upper Buffalo Wilderness are 4.88 Mm⁻¹ and 7.02 Mm⁻¹, respectively. Table 5 shows the current

5-year rolling average on the 20 percent most impaired days for 2015–2019 and

the adjusted 2028 URP value for the Arkansas Class I areas.

TABLE 5—CURRENT VISIBILITY CONDITIONS AND 2028 ADJUSTED URP VALUES FOR 20 PERCENT MOST IMPAIRED DAYS AT ARKANSAS' CLASS I AREAS

Class I areas	Most current (2015–2019) (dv)	2028 Adjusted URP (dv)
Caney Creek Wilderness	17.65	* 18.90
Upper Buffalo Wilderness	17.52	** 19.26

* The unadjusted 2028 URP value at Caney Creek is 18.18 dv without accounting for international anthropogenic and prescribed fire contributions. See EPA 2019 Modeling TSD at 57, Table 5–2.

** The unadjusted 2028 URP value at Upper Buffalo is 18.32 dv without accounting for international anthropogenic and prescribed fire contributions. See EPA 2019 Modeling TSD at 64, Table 5–2.

The EPA is proposing to find that DEQ has met the requirements under 40 CFR 51.308(f)(1) in the 2022 Planning Period II SIP submittal for the two Class I areas located within Arkansas (the Caney Creek and Upper Buffalo Wilderness areas) related to the calculations of baseline, current, and natural visibility conditions for the most impaired and clearest days; progress to date for the most impaired and clearest days; differences between current and natural visibility conditions; and the URP for the second implementation period.

C. Long-Term Strategy

Each state that has a Class I area within its borders or has emissions that may affect visibility in a Class I area must develop a long-term strategy for making reasonable progress toward the national visibility goal. CAA 169A(b)(2)(B). The long-term strategy must include the enforceable emissions limitations, compliance schedules, and other measures that are necessary to make reasonable progress, as determined pursuant to 51.308(f)(2)(i) through (iv). 40 CFR 51.308(f)(2). A reasonable progress determination is based on applying the four statutory factors in CAA section 169A(g)(1) to sources of visibility-impairing pollutants that the state has selected to assess for controls for the second implementation period. After considering the four statutory factors, all measures that are determined to be necessary to make reasonable progress must be in the long-term strategy. Section 51.308(f)(2)(i) provides the requirements for the four-factor analysis. The first step of this analysis entails selecting the sources to be evaluated for emission reduction measures. The RHR provides states flexibility in selecting sources, and to that end, section 51.308(f)(2)(i) requires States to provide a description of the criteria used to determine which

sources or group of sources were evaluated (*i.e.*, subjected to four-factor analysis) for the second implementation period and how the four factors were taken into consideration in selecting the emission reduction measures for inclusion in the long-term strategy. In developing its long-term strategy, a state must also consider the five additional factors in section 51.308(f)(2)(iv). Each State must also document the technical basis on which it is relying to determine the emission reduction measures that are necessary to make reasonable progress in each mandatory Class I area it affects. 40 CFR 51.308(f)(2)(iii). States may rely on technical information developed by the RPOs of which they are members to select sources for four-factor analysis and to conduct that analysis, as well as to satisfy the documentation requirements under 40 CFR 51.308(f). Where an RPO has performed source selection and/or four-factor analyses (or considered the five additional factors in 40 CFR 51.308(f)(2)(iv)) for its member states, those states may rely on the RPO's analyses for the purpose of satisfying the requirements of 40 CFR 51.308(f)(2)(i) so long as the states have a reasonable basis to do so and all state participants in the RPO process have approved the technical analyses. 40 CFR 51.308(f)(2)(iii). States may also satisfy the requirement of 40 CFR 51.308(f)(2)(ii) to engage in interstate consultation with other states that have emissions that are reasonably anticipated to contribute to visibility impairment in a given Class I area under the auspices of intra- and inter-RPO engagement.

1. EPA's Rationale To Evaluate the Long-Term Strategy

In this section of this document, we summarize and evaluate Arkansas' long-term strategy against the requirements of the CAA and RHR for the second implementation period of the regional

haze program. As detailed further in sections IV.C.2 through 6 that follow, EPA is proposing to approve Arkansas' long-term strategy under 40 CFR 51.308(f)(2), including the source selection methodology (*see* section IV.C.2), the four factor analysis and determinations of the measures necessary to make reasonable progress under section 51.308(f)(2)(i) (*see* section IV.C.3); and other regional haze requirements for the long-term strategy (51.308(f)(2)(ii) through (iv)) such as consultation requirements (*see* section IV.C.4), documentation requirements (*see* section IV.C.5), and analysis of the five additional factors (*see* section IV.C.6).

In this proposed action, we note that it is the Agency's policy, as announced in our recent approval of the West Virginia Regional Haze SIP,⁴⁷ that where visibility conditions for a Class I area impacted by a State are below the 2028 URP and the State has also evaluated potential control measures by considering the four statutory factors, the State will have presumptively demonstrated reasonable progress for the second planning period for that area. We acknowledge that this reflects a change in policy as to how the URP should be used in the evaluation of regional haze second planning period SIPs. However, we find that this policy better aligns with the purpose of the statute and RHR, which is achieving "reasonable" progress, not maximal progress, toward Congress's natural visibility goal. We also note that we have the discretion and authority to change policy.⁴⁸

⁴⁷ See EPA's final action for West Virginia's regional haze SIP at 90 FR 29737 (July 7, 2025), and our notice of proposed rulemaking at 90 FR 16478, 16483 (April 18, 2025) which describes the policy. See also EPA's notice of proposed rulemaking for South Dakota at 90 FR 20425 (May 14, 2025).

⁴⁸ In *FCC v. Fox Television Stations, Inc.*, the U.S. Supreme Court plainly stated that an agency is free to change a prior policy and "need not demonstrate . . . that the reasons for the new policy are better

In developing the regulations required by CAA section 169A(b), we established the concept of the URP for each Class I area. As previously discussed, for each Class I area, there is a regulatory requirement to compare the projected visibility impairment represented by the RPG at the end of each planning period to the URP (e.g., in 2028 for the second planning period).⁴⁹ In the 2017 RHR Revisions, we also addressed the role of the URP as it relates to a state's development of its second planning period SIP.⁵⁰ Specifically, in response to comments suggesting that the URP should be considered a "safe harbor" and relieve states of any obligation to consider the four statutory factors, we explained that the URP was not intended to be such a safe harbor.⁵¹ Some commenters stated a desire for corresponding rule text dealing with situations where RPGs are equal to or below the URP glidepath. Several commenters stated that the URP glidepath should be a "safe harbor," opining that states should be permitted to analyze whether projected visibility conditions for the end of the implementation period will be on or below the glidepath based on on-the-way control measures, and that in such cases a four-factor analysis should not be required.⁵² Other 2017 RHR comments indicated a similar approach, such as "a somewhat narrower entrance to a 'safe harbor,'" by suggesting that if current visibility conditions are already below the end-of-planning-period point on the URP glidepath, a four-factor analysis should not be required.⁵³ We stated in our response that we do not agree with either of these

than the reasons for the old one; it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency believes it to be better." 566 U.S. 502, 515 (2009) (referencing *Motor Vehicle Mfrs. Ass'n of United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983)). See also *Perez v. Mortgage Bankers Assn.*, 135 S. Ct. 1199 (2015). However, the EPA believes that this policy aligns with the purpose of the statute and RHR, which is achieving "reasonable" progress, not maximal progress, toward Congress' natural visibility goal.

⁴⁹ See 82 FR 3078, 3091–3092 (January 10, 2017). RPGs are a regulatory construct that we developed to address statutory mandate in section 169B(e)(1), which required our regulations to include "criteria for measuring 'reasonable progress' toward the national goal." Under 40 CFR 51.308(f)(3)(ii), RPGs measure the progress that is projected to be achieved by the control measures a state has determined are necessary to make reasonable progress. Consistent with the 1999 RHR, the RPGs are unenforceable, though they create a benchmark that allows for analytical comparisons to the URP and mid-implementation-period course corrections if necessary.

⁵⁰ *Id.*

⁵¹ 82 FR 3099 (January 10, 2017).

⁵² *Id.*

⁵³ *Id.*

recommendations. The CAA requires that each SIP revision contain long-term strategies for making reasonable progress, and that in determining reasonable progress states must consider the four statutory factors. Treating the URP as a safe harbor would be inconsistent with the statutory requirement that states assess the potential to make further reasonable progress towards natural visibility goal in every implementation period.⁵⁴

Our policy is that as long as the visibility conditions, as reflected in the projected 2028 RPGs, of the Class I areas impacted by a state are below the 2028 URP values and the State evaluates the four factors, the State has presumptively demonstrated that it has already made reasonable progress for the second planning period for that area.⁵⁵ Indeed, we believe this policy also recognizes the considerable improvements in visibility impairment that have been made by a wide variety of state and federal programs in recent decades.

Applying this policy in our evaluation of Arkansas' SIP submission and as further detailed in the sections that follow, the EPA is proposing to approve that the long-term strategy outlined in Arkansas' 2022 Planning Period II SIP submission is adequate to demonstrate reasonable progress towards natural visibility at the Class I areas impacted by emissions from Arkansas sources.

2. Source Selection Methodology

a. Key Pollutants and Source Categories

Section 51.308(f)(2)(i) provides the requirements for the four-factor analysis. The first step of this analysis entails selecting the sources to be evaluated for emission reduction measures. DEQ analyzed key pollutants and source categories contributing toward visibility impairment for the two Class I areas in Arkansas and for the Class I areas in other states affected by emissions from Arkansas. DEQ's selection of key pollutants and source categories for evaluation in its reasonable progress analysis was based on examination of the particulate species from anthropogenic emissions that dominate visibility at the different Class I areas; relative contributions of various sectors to the Arkansas emission inventory; and projected 2028 sector-based source apportionment results from EPA's modeling.⁵⁶ DEQ noted that this approach is consistent with the

⁵⁴ *Id.*

⁵⁵ See EPA's final action for West Virginia's regional haze SIP at 90 FR 29737 (July 7, 2025), and our notice of proposed rulemaking at 90 FR 16478, 16483 (April 18, 2025) which describes the policy.

⁵⁶ See page V–1 of the 2022 Planning Period II SIP.

2019 guidance which provides that a state may focus on particulate species that contribute the most to visibility impairment and then select only sources with emissions of those dominant pollutants and their precursors.⁵⁷

DEQ relied on IMPROVE monitoring data at each Class I area and developed figures showing annual visibility impairment trends from 2002–2019 tracked in deciviews and included the relative light extinction compositions from contributing pollutant species for the most impaired and clearest days. DEQ also developed figures showing trends of selected daily light extinction data for 2019 with estimated pollutant contributions corresponding to anthropogenic sources and natural sources.⁵⁸ The pollutant extinction compositions were made up of varying amounts of ammonium sulfate, ammonium nitrate, coarse mass, organic mass, elemental carbon, soil, and sea salt at each Class I area. The 2002–2019 extinction data showed that visibility impairment on the most impaired days at all of the identified Class I areas in and outside of Arkansas were consistently dominated by ammonium sulfate, ammonium nitrate, or both.⁵⁹ In addition, the 2002–2019 data showed that light-extinction on the most impaired days from ammonium nitrate and ammonium sulfate was primarily attributable to anthropogenic sources. Elemental carbon, which is primarily from anthropogenic sources, makes up a small contribution to visibility impairment at the Class I areas. The State reported that organic mass contributed more than ammonium nitrate at Caney Creek but most of the organic mass was attributable to natural sources.⁶⁰ DEQ did not put weight on relative contributions to visibility impairment on the clearest days in its consideration of source selection since visibility impairment on the clearest days has remained below baseline conditions. Based on these monitor data observations, the State's strategy for addressing visibility impairment focused on ammonium nitrate and ammonium sulfate from anthropogenic sources in all Class I areas identified in

⁵⁷ See 2019 Guidance at 11.

⁵⁸ See chapter II and III of 2022 Planning Period II SIP for the specific figures of light extinction data at each class I area: Figures II–4 to 7 for Caney Creek; Figures II–16 to 19 for Upper Buffalo; Figures III–2 to 5 for Hercules Glades; Figures III–12 to 15 for Mammoth Cave; Figures III–22 to 25 for Mingo Wilderness; Figures III–31 to 34 for Shining Rock; Figures III–40 to 43 for Sipsey; and Figures III–50 to 53 for Wichita Mountains.

⁵⁹ See Table V–1 of 2022 Planning Period II SIP (page V–2): Summary of Key Anthropogenic Particulate Species at each Class I area.

⁶⁰ See 2022 Planning Period II SIP (page V–2).

and outside Arkansas with the exceptions of Sipsey and Shining Rock where its strategy focused on ammonium sulfate only since it was the main contributing pollutant in those areas. The State focused on target precursor pollutants for potential control as a strategy for reducing these pollutants. The State identified SO₂ and NH₃ precursor emissions for control since they are associated with ammonium sulfate, and NO_x precursor emissions for control since it is associated with ammonium nitrate.

DEQ reviewed categorized NEI state-wide emissions by sector for 2011, 2014, and 2017 as well as 2020 continuous emissions monitoring system (CEMS) emissions for EGUs.⁶¹ The pollutants inventoried were SO₂, NO_x, and NH₃ (the targeted precursor pollutants); as well as VOC (a precursor to a lesser extent), and primary PM_{2.5} which was not speciated but included all particulate species directly emitted rather than just ammonium sulfate and ammonium nitrate. These five pollutant inventories were categorized under major anthropogenic source groupings but also included biogenic sources. The anthropogenic source categories included EGU and non-EGU point; nonpoint; on and non-road mobile sources; off-road mobile sources (marine and rail); fires (agricultural, prescribed, wildfires, residential wood combustion); oil and gas; anthropogenic dust; and agricultural NH₃. The 2017 NEI inventory was the most recent comprehensive inventory of updated actual emissions available at the time DEQ prepared its SIP. For source selection, DEQ emphasized the 2017 NEI emissions from these NEI datasets and summarized the relative contribution of each sector to the total emissions in each pollutant inventory. DEQ eliminated NH₃ and VOC as well as directly emitted PM_{2.5} from consideration because the majority of emission categories in those inventories could not be controlled by the State. Nearly all of the 2017 NH₃ emissions (98 percent) came from sectors that DEQ does not have authority to regulate under Arkansas law or from which DEQ is pre-empted from regulating by EPA.⁶² As a result, DEQ eliminated NH₃ as a potential precursor pollutant control to

reduce ammonium sulfate in the State's long-term strategy. Similarly, DEQ eliminated primary PM_{2.5} as a potential pollutant to control since 85 percent of primary PM_{2.5} emissions in 2017 came from sectors outside its regulatory authority.⁶³ DEQ also eliminated VOC controls since the vast majority of 2017 annual VOC emissions in Arkansas are made up of biogenic emissions (79%) which are not anthropogenic or controllable. VOC emissions decreased from 2011 to 2017 across all other categories. DEQ focused on SO₂ and NO_x emissions for control as a result. For 2017 SO₂ and NO_x emissions, DEQ reported that 89% (57,213 tpy) of the total 64,284 tpy SO₂ emissions and 35% (68,608 tpy) of the total 196,022 tpy NO_x emissions in Arkansas came from sectors that DEQ does have authority to regulate under Arkansas law, and that EGUs and non-EGU point source sectors make up a large portion of these SO₂ and NO_x emissions.⁶⁴

DEQ also relied on EPA modeling analysis that provided projected 2028 visibility conditions and source sector contribution information. Based on the EPA's 2028 modeling projections, DEQ included source apportionment pie charts that represented the specific anthropogenic emission sector contributions at the different Class I areas on the most impaired days.⁶⁵ DEQ indicated that the 2028 sector-wide projections showed that the most prominent source categories contributing to visibility impairment at the Class I areas in and outside Arkansas are EGUs and non-EGU point sources with smaller contributions coming from other U.S. anthropogenic sources. DEQ also included the oil and gas sector as being a contributor at Wichita Mountains. As a result, DEQ concluded that the source apportionment data presented in the pie charts suggest that its strategy should focus on emissions from EGUs, non-

EGU point, and the oil and gas sector.⁶⁶ Based on this modeling analysis; the 2002–2019 IMPROVE extinction data; and the 2011, 2014, and 2017 categorized NEI state-wide emissions; DEQ focused its reasonable progress analysis on stationary sources of SO₂ and NO_x for planning period II.

The EPA finds that DEQ's strategy to focus its reasonable progress evaluation on stationary sources of NO_x and SO₂ in its 2022 Planning Period II SIP is reasonable for the second planning period. DEQ adequately assessed the key pollutants and source categories and formed the basis of its decision after weighing the monitoring data, emission inventory trends of key precursor pollutants, and projected 2028 source apportionment data.

b. Area of Influence Analysis

Through collaboration with CenSARA, Arkansas assessed state-by-state contributions to visibility impairment for the two Class I areas in Arkansas and for Class I areas in other states affected by emissions from Arkansas. Arkansas relied on an area of influence (AOI) analysis performed by Ramboll US Corporation (Ramboll) for the CenSARA states in its 2022 Planning Period II SIP to identify possible regional source locations impacting visibility. Ramboll performed the AOI analysis for CenSARA Class I areas and for neighboring Class I areas that might potentially be impacted by emissions from the CenSARA states. Ramboll produced an AOI report⁶⁷ that summarizes the approach of the analysis and an AOI spreadsheet⁶⁸ that the CenSARA states could use to evaluate the results for specific Class I areas. The AOI analysis used back-trajectory modeling⁶⁹ to identify the geographic

⁶⁶ See 2022 Planning Period II SIP Table V–2: Summary of Key Sectors Affecting Visibility Impairment in 2028

⁶⁷ See area of influence report in Appendix B of 2022 Planning Period II SIP submittal called 7AppB. Area of Influence Report Prepared by Ramboll.pdf.

⁶⁸ See screening spreadsheet in Appendix C of the 2022 Planning Period II SIP called 7AppC. Arkansas Source Screening Method Spreadsheet-v8.xlsx. DEQ developed this from the CenSARA AOI Analysis EWRT.QD 2016 All Trajectories Spreadsheet provided to CenSARA states.

⁶⁹ Back trajectory analyses estimate the most likely central path of air masses that would arrive at a receptor at a given time by accounting for the impact of wind direction and wind speed on delivery of emissions to the receptor. A back trajectory analysis for certain emissions starts at the Class I area and go backwards in time to examine the path that emissions took to get to the Class I areas. Ramboll ran HYSPLIT model for the 20 percent most anthropogenically impaired days and developed 72-hour back trajectories arriving at each of the IMPROVE sites at 06:00, 12:00, 18:00 and 24:00 from each Class I area following trajectory

⁶¹ See 2022 Planning Period II SIP, Tables IV–4 to IV–7.

⁶² See Figure V–2 (page V–4) in the 2022 Planning Period II SIP. The pie chart shows sector contributions to the NH₃ inventory consisting of agricultural NH₃ (78 percent), prescribed fire (11 percent), agricultural fire (6 percent), wildfire (2 percent), and other (1 percent) for 98 percent total. The chart also lists non-EGU point (1 percent) and on-road (1 percent).

⁶³ See Figure V–1 (page V–3) in the 2022 Planning Period II SIP. The pie chart shows sector contributions to the PM_{2.5} inventory consisting of prescribed fire (39 percent), anthropogenic dust (32 percent), non-EGU point (11 percent), wildfire (6 percent), nonpoint (4 percent), residential wood combustion (4 percent), agricultural fires (1 percent), on-road (1 percent), non-road (1 percent), and other (1 percent).

⁶⁴ See Figures V–3 and V–4 (pages V–5 to 6) for a breakdown of percent sector contributions to NO_x and SO₂ inventories; and Tables IV–4 and IV–5 showing the 2011, 2014, and 2017 categorized emissions of NO_x and SO₂ (pages IV–18 and IV–20) in the 2022 Planning Period II SIP.

⁶⁵ See chapters II and III of 2022 Planning Period II SIP for figures of projected 2028 emission sectors: Figures II–8, II–20, III–6, III–16, III–26, III–35, III–44, and III–53.

areas and anthropogenic emission sources with a high probability of impacting visibility at Class I areas within the CenSARA region and in nearby states. The analysis focused on SO₂ and NO_x as the primary anthropogenic particulate species precursors (for SO₄²⁻ and NO₃⁻, respectively) that impair visibility at the Class I areas in the CenSARA region. The AOI analysis report generated several metrics that states could use. Based on the individual back trajectories on the 20 percent most impaired visibility days, Ramboll carried out residence time analysis⁷⁰ generating residence time plots which graphically mapped trajectory paths for each IMPROVE monitoring site. Ramboll extended the analysis by weighting the residence times using various metrics like emissions, visibility extinction, and distance-weighted approaches. Distance-weighted residence time generally assessed the probability of air parcels originating outside a given Class I area to reach a particular area following a straight-line trajectory with constant speed from all directions. Extinction-weighted residence time (EWRT) assessed visibility extinction values attributable to specific pollutants (NO_x and SO₂ in this case) to help identify geographical areas of influence for each pollutant at each Class I area. The Ramboll report also examined the EWRT*Q/d metric which the report identifies as the most comprehensive residence time metric because it combines visibility extinction values and also considers the distance-weighted emissions from the source to the Class I area. More specifically, this metric considered point source emission contributions from each facility to visibility impairment at each Class I area by matching the EWRT with the facility-level emissions (Q) over distance (d) of the 2016 actual and 2028 projected point source emission inventories.⁷¹ To determine the total

ending altitudes of 100 m, 200 m, 500 m, and 1000 m.

⁷⁰ A more sophisticated trajectory-based analysis technique combines emissions, ambient PM data, and trajectory information. Residence time represents the cumulative time that emission trajectories would reside in each 36-km by 36-km grid square. This approach selects sources for analysis using an approach that gives each point source a score that takes into account the source's emissions, the daily values of light extinction at a Class I area, the distance between the source and a Class I area, and the relative frequency with which wind trajectories indicate that each source is upwind of the IMPROVE monitoring site.

⁷¹ The IMPROVE "most anthropogenically impaired days" data for 2017 was not available at the time the area of interest report was developed so the 2013–2017 period could not be used and the 2012–2016 period was used instead.

potential impact from sources of SO₂ and NO_x (precursors of SO₄²⁻ and NO₃⁻, respectively), the EWRT values for SO₄²⁻ and NO₃⁻ were combined with emissions from sources of SO₂ and NO_x. CenSARA states chose to focus on EGU and non-EGU point sources since these sources comprise major fractions of the NO_x and SO₂ emissions inventory. The EWRT*Q/d values for each grid cell were normalized by the domain total and then plotted for both 2016 and 2028 emissions. Arkansas applied a 0.05 percent extinction-weighted screening threshold to the 2016 EWRT NO_x results and 2016 EWRT SO₂ results for all trajectory heights combined to identify pollutant-specific areas of influence for each Class I area included in the AOI analysis.⁷² DEQ included those sources for screening in the AOI for each Class I area with an EWRT value greater than or equal to 0.05 percent for either pollutant. DEQ summed the combined EWRT*Q/d values for NO_x and SO₂ to produce a surrogate value for total visibility impact (the visibility impact surrogate) for each source in the AOI and then ranked them from largest to smallest for each Class I area. This allowed DEQ to identify the sources having the largest impact at each Class I area by comprehensively considering all combinations of impacts from the key pollutants from all stationary sources. DEQ used the AOI analysis and EWRT*Q/d to identify sources that impact the Class I areas in and around Arkansas and used that information to inform consultations with other states and to select Arkansas sources for additional analysis.

DEQ's evaluation of the visibility impact surrogate results for all SO₂ and NO_x sources in the 2016 AOI for Caney Creek Wilderness Area indicates that stationary sources in 16 states potentially contributed to visibility impairment on the most impaired days, with sources in Texas, Arkansas, Louisiana, and Oklahoma contributing the majority with 94 percent of the total visibility impact surrogate in the 2016 AOI analysis results (46, 23, 13, and 12 percent, respectively).⁷³ Stationary sources in 12 other states combined for the remaining 6 percent contribution: Missouri, Illinois, and Indiana contributed 3, 1, and 0.5 percent each

⁷² The RHR has no specific guidance on threshold values for residence time, so Ramboll chose normalized percentages across selected Class I areas and altitudes that represented a reasonable range.

⁷³ See Figure II–12 in the 2022 Planning Period II SIP (page II–16) which shows each state's percent contribution to the total visibility impact surrogate from all stationary sources in the 2016 AOI for Caney Creek Wilderness Area.

while the remaining nine states⁷⁴ all combined to contribute 0.7 percent. DEQ's evaluation of the visibility impact surrogate results for all sources in the 2016 AOI for Upper Buffalo Wilderness Area indicated that stationary sources in 16 states potentially contributed to visibility impairment on the most impaired days, with Arkansas, Missouri, Texas, Oklahoma, contributing the majority with 81 percent (48, 15, 9, and 9 percent, respectively).⁷⁵ Louisiana and Illinois contributed 5 and 4 percent each while sources in the remaining ten states each contributed 3 percent or less: Iowa, Indiana, Kansas, Kentucky, Nebraska Minnesota, Mississippi, South Dakota, Tennessee, and Wisconsin.

DEQ used the 2016 results from the AOI analysis to select stationary sources of SO₂ and NO_x for consideration for four-factor analyses. DEQ calculated the cumulative percentage of AOI source impacts for each source and applied a screening threshold of 70 percent of the cumulative percentage of 2016 AOI source impacts for NO_x and SO₂ combined.⁷⁶ Using this methodology, the stationary sources comprising 70 percent of the cumulative percentage of AOI source impacts at each Arkansas Class I area were identified for four-factor evaluation. The State reported five facilities in Arkansas (three EGU power plants and two non-EGU facilities) that were brought forward for further analysis by applying the 70 percent screening threshold:⁷⁷ White Bluff Power Plant, Independence Power Plant, FutureFuel Chemical Co., Domtar Ashdown Mill, and Flint Creek Power Plant. Out of Arkansas' total AOI sources impacts at Caney Creek—Independence, White Bluff, and Domtar contributed 16 percent out of the 23 percent Arkansas total state contributions (69 percent of total Arkansas impacts).^{78 79} Out of Arkansas' total AOI sources impacts at Upper Buffalo—Independence, White Bluff,

⁷⁴ Iowa, Kansas, Kentucky, Minnesota, Mississippi, Nebraska, North Dakota, Tennessee, and Wisconsin all combined contributed 0.7 percent of the total visibility impact surrogate from all stationary sources.

⁷⁵ See Figure II–24 in the 2022 Planning Period II SIP (page II–27) which shows each state's percent contribution to the total visibility impact surrogate from all stationary sources in the 2016 AOI for Upper Buffalo Wilderness Area.

⁷⁶ See 2022 Planning Period II SIP Appendix C spreadsheet: 7AppC_Arkansas Source Screening Method Spreadsheet-v8.xlsx.

⁷⁷ See Table V–3 of 2022 Planning Period II SIP.

⁷⁸ See Figure II–12 in the 2022 Planning Period II SIP (page II–16) which shows each state's percent contributions to visibility impairment at Caney Creek Wilderness Area for all sources in the AOI.

⁷⁹ See 2022 Planning Period II SIP Appendix C spreadsheet 7AppC_Arkansas Source Screening Method Spreadsheet-v8.xlsx.

FutureFuel, and Flint Creek contributed 40 percent out of the 48 percent Arkansas total state contributions (85 percent of total Arkansas impacts).^{80 81}

DEQ reported that it also considered a higher threshold of 80 percent for source selection during the early stages of the SIP development process. The State noted that application of an 80 percent threshold would result in additional Arkansas sources being brought forward for analysis when compared to the 70 percent threshold, but those additional sources would not have the potential to meaningfully reduce contributions to visibility impairment because they would all have minimal visibility impacts relative to the sources selected. In contrast, the 70 percent threshold occurred at a natural break in the data distribution and included the highest contributors to visibility impairment at the Class I areas without “unnecessarily” bringing forward additional sources with minimal-impact for four-factor analysis. An 80 percent threshold would bring

forward three additional Arkansas sources forward for Caney Creek—Weyerhaeuser NR Company-Dierks Mill, Albemarle Corporation-South Plant, and Ash Grove Cement Company—Foreman Cement Plant—but each would only contribute 1 percent or less to the AOI source impacts (1.13, 1.06, and 0.85 percent, respectively).⁸² Similarly, an 80 percent threshold would bring forward six additional Arkansas sources forward for Upper Buffalo—Dunn Compressor Station, Domtar Ashdown Mill (which has already been selected for four-factor analysis due to impacts at Caney Creek), Green Bay Packaging-AR Kraft-Morrilton, Albemarle Corporation-South Plant, SGL Carbon, LLC, and Plum Point Energy Station Unit 1—but each would only contribute 0.5 percent or less to the AOI source impacts (0.53, 0.49, 0.48, 0.48, 0.46, and 0.43 percent, respectively).⁸³

DEQ reported that the 70 percent threshold would also bring forward 18 sources in other states that impact Arkansas’ Class I areas (*see* Table 6).⁸⁴

Therefore, DEQ considered those sources and sent out consultation letters (“ask” letters) to those states where the 18 facilities are located and requested that those states consider whether performing a four-factor analysis was appropriate for each of those sources in accordance with 40 CFR 51.308(f)(2)(i); and, if so, whether any control measures for SO₂ or NO_x would be necessary to make reasonable progress toward natural visibility at Caney Creek and Upper Buffalo during the second planning period. DEQ also requested that each state share with them the results of any analyses, including technical supporting documentation, and provide an opportunity for consultation on the analyses and each state’s long-term strategy early enough in the process for DEQ to provide feedback. *See* section IV.C.4 of this action which discusses Consultation Requirements with States for further information.

TABLE 6—SOURCES IN OTHER STATES IMPACTING ARKANSAS’ CLASS I AREAS

State	Facility	Class I areas impacted
Texas	Martin Lake Electrical Station	—Caney Creek.
	AEP Pirkey	—Upper Buffalo.
	Welsh Power Plant	—Caney Creek.
Louisiana	WA Parish Electric Generating Station	—Upper Buffalo.
	CLECO Power LLC Dolet Hills	—Caney Creek.
	Entergy Louisiana LLC—Roy S Nelson Plant	—Upper Buffalo.
Oklahoma	Muskogee Generating Station	—Caney Creek.
	Hugo Generating Station	—Caney Creek.
	Grand River Energy Center	—Upper Buffalo.
Missouri	Ameren Missouri Labadie Plant	—Upper Buffalo.
	Ameren Missouri Rush Island Plant	—Upper Buffalo.
	New Madrid Power Plant Marston	—Upper Buffalo.
Illinois	City Utilities of Springfield Missouri John Twitty Energy Center	—Upper Buffalo.
	Thomas Hill Energy Center Power Division	—Upper Buffalo.
	Prairie Generating Station	—Upper Buffalo.
Indiana	Indiana Michigan Power DBA AEP Rockport	—Upper Buffalo.
	Duke Energy Indiana LLC—Gibson Genera	—Upper Buffalo.
Kentucky	Tennessee Valley Authority (TVA)—Shawnee Fossil Plant	—Upper Buffalo.

DEQ performed a source screening sensitivity analysis which omitted recently controlled or shut down SO₂ and NO_x emissions sources in Oklahoma and Texas from the 2016 inventory in the AOI analysis to see if those changes (which occurred after

2016) would impact the source selection results while maintaining the remainder of the inventory.⁸⁵ Specifically, DEQ zeroed out the emissions of three major point sources in Texas that shutdown in 2018—the Sandow Steam Electric Station, the Big Brown Steam Electric

Station, and Monticello Steam Electric Stations—and then used the 2019 emissions for the Muskogee and Sooner Generating Stations in Oklahoma to reflect SO₂ reductions from installed 2018 controls. DEQ performed this sensitivity analysis for each Class I area

⁸⁰ See Figure II–24 of the 2022 Planning Period II SIP (page II–27) which shows each state’s percent contributions to visibility impairment at Upper Buffalo Wilderness Area for all sources in the AOI.

⁸¹ See 2022 Planning Period II SIP Appendix C spreadsheet: 7AppC_Arkansas Source Screening Method Spreadsheet-v8.xlsx.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ See Table V–4 of 2022 Planning Period II SIP.

⁸⁵ See 2022 Planning Period II SIP Appendix E spreadsheet: AppE_AR Screening Method_V32_2016_InventoryOK_TX_Sensitivity_v9.xlsx.

that contained at least one Arkansas source in the 2016 AOI and at least one of the five revised emission sources. This included Caney Creek and Upper Buffalo in Arkansas, Hercules Glades in Missouri, and Wichita Mountains in Oklahoma. The State applied a 70 percent screening threshold to the cumulative percentage of AOI impacts for NO_x and SO₂ combined based on the revised 2016 inventory. The AOI sensitivity analysis identified two additional Arkansas sources that would be brought forward for consideration for four-factor analysis based on adjustments to the 2016 inventory—Weyerhaeuser NR Company—Dierks Mill (Dierks Mill) and Albemarle Corporation—South Plant (Albemarle South). Dierks Mill is a sawmill that processes lumber and wood residuals. It is 40 km from Caney Creek and has one major NO_x unit (100 tons per year (tpy) or greater) and none for SO₂. The NO_x unit is a wood-fired boiler with a rate of 249.0 MMBtu/hr. Albemarle South is a chemical manufacturer that extracts bromine-containing brine from geologic formations. It has one major SO₂ emission unit (100 tpy or greater) and none for NO_x. Albemarle South burns tail gas from a sulfur recovery plant that

removes sulfur from sour gas created from bromine separation from extracted brine. DEQ explained for Dierks Mill that the wood-fired boiler has not operated since 2017 and was removed from the permit in May 2020.⁸⁶ DEQ does not anticipate that retrofitting NO_x post-combustion controls to be reasonable even if operation had continued at Dierks Mill. DEQ also explained that after a review of the RACT/BACT/LAER Clearinghouse (RBLCL) database,⁸⁷ it could not identify technically feasible SO₂ controls for Albemarle South that could be implemented in conjunction with the existing tail gas incinerator. Based on this assessment, DEQ determined that the revised 2016 inventory used in the sensitivity analysis would not produce more potential for meaningfully reducing contributions from Arkansas sources at Caney Creek or Upper Buffalo. EPA notes that Dierks Mill and Albemarle South contribute 1.43 and 1.35 percent of the AOI source impacts at Caney Creek, and negligible AOI source impacts at Upper Buffalo (0.03 and 0 percent, respectively). Based on the State's assessment of the lack of technically feasible controls as well as low contributing emissions, DEQ

concluded that source selection sensitivity adjustments would not make a difference in the sources that DEQ would analyze. Therefore, DEQ did not make adjustments to the emissions inventory used in the AOI analysis and its source selection methodology.

After considering all of the sources screened in the AOI study from the different thresholds applied, and after considering potential adjustments to the 2016 emission inventory used in the AOI analysis, DEQ selected five Arkansas facilities to be included for four-factor analysis (see Table 7). Originally, DEQ brought forward White Bluff in its list of sources selected for a full four-factor analysis from the 70 percent screening threshold. However, after a partial four-factor analysis evaluating the existing control measures for White Bluff, DEQ determined in its 2022 Planning Period II SIP submittal that existing control measures at White Bluff Power Plant are sufficient for reasonable progress (see section IV.C.2.a for more details).⁸⁸ For each selected facility, DEQ identified the emission units that emit SO₂ and/or NO_x and identified existing controls in place at each emission unit.

TABLE 7—ARKANSAS SOURCES SELECTED FOR FOUR-FACTOR ANALYSIS AND EXISTING CONTROLS

Facility	Class I areas impacted	Units	Existing SO ₂ controls	Existing NO _x controls
Entergy White Bluff Power Plant.	—Caney Creek —Upper Buffalo. —Hercules Glades.	Two Coal-fired EGU Boilers: (SN-01 and SN-02).	—Low Sulfur Coal —0.60 lb/MMBtu SO ₂ limit for each unit.	Low NO _x Burners with Overfire Air.
Entergy Independence Power Plant.	—Upper Buffalo (26%) —Hercules Glades (20%). —Caney Creek (5%). —Mingo (3%). —Sipsey (1%).	Two Coal-Fired EGU Boilers: (SN-01 and SN-02).	Low Sulfur Coal	Low NO _x Burners with Overfire Air.
FutureFuel Chemical Co ...	—Upper Buffalo (3%) —Hercules Glades (2%). —Caney Creek (<1%). —Mingo (<1%). —Sipsey (<1%).	Three Coal-Fired Industrial Boilers: (6M01-01).	None	None.
Domtar Ashdown Mill	—Caney Creek (5%) —Upper Buffalo (<1%). —Hercules Glades (<1%). —Wichita Mtns (<1%).	No. 2 Power Boiler No. 3 Power Boiler No. 2 Recovery Boiler No. 3 Recovery Boiler.	Venturi Scrubbers None.	Overfire Air. None.
SWEPCO Flint Creek Power Plant.	—Upper Buffalo (1%) —Hercules Glades (1%). —Caney Creek (<1%).	One Coal-Fired EGU Boiler (SN-01 Boiler).	—Novel Integrated Desulfurization (Dry FGD). —0.06 lb/MMBtu SO ₂ limit.	—Low NO _x Burners with Overfire Air. —0.23 lb/MMBtu.

EPA finds that the State's source selection methodology and the criteria it used to determine which sources to select for four-factor evaluation is reasonable for the second implementation period. DEQ relied on a

comprehensive robust approach for its source selection to identify the geographic areas with anthropogenic emission sources with a high probability of impacting visibility at the different Class I areas. DEQ used the EWRT*Q/

d metric which is the most comprehensive residence time metric that combines visibility extinction values and also considers the distance-weighted emissions from the source to the Class I area. DEQ also relied on total

⁸⁶ See DEQ air permit No. 0023-AOP-R14 issued May 11, 2020.

⁸⁷ RACT, or Reasonably Available Control Technology, is required on existing sources in areas

that are not meeting national ambient air quality standards (*i.e.*, non-attainment areas). BACT, or Best Available Control Technology, is required on major new or modified sources in clean areas (*i.e.*,

attainment areas). LAER, or Lowest Achievable Emission Rate, is required on major new or modified sources in non-attainment areas.

⁸⁸ 2022 Planning Period II SIP (pages V-16 to 17).

visibility impact surrogate values for each source (summed EWRT*Q/d values for NO_x and SO₂) in the areas of influence, which enabled the State to identify each state's percent contribution to visibility impairment and the respective sources that have the largest impact at each Class I area. DEQ appropriately selected five facilities in Arkansas (Entergy White Bluff, Entergy Independence, FutureFuel, Domtar Ashdown Mill, and Flint Creek) for further analysis of potential emission reduction controls and documented its rationale in selecting those sources after analyzing the total source impacts from all contributing sources in Ramboll's AOI source screening analysis. We find that the State adequately weighed its decision after considering all sources screened from two different applied thresholds (70 and 80 percent) and then considering potential emission adjustments to the 2016 inventory. The State determined that the 70 percent threshold was more reasonable compared to the 80 percent threshold because it occurred at a natural break in the distribution and included the highest contributors to visibility impairment at the Class I areas. The 70 percent threshold also did not "unnecessarily" bring forward minimal-impact sources for four-factor analysis like the 80 percent threshold did. Any additional sources added above a 70 percent threshold would only contribute 1 percent or less to the AOI source impacts at either of the two Arkansas Class I areas. The five facilities selected with the 70 percent threshold represented a high proportion of the emission impacts at each Class I area in Arkansas. EPA notes that these sources contributed 16 out of the 23 percent AOI source impacts at Caney Creek and 40 out of the 48 percent AOI source impacts at Upper Buffalo. DEQ also performed a source screening sensitivity analysis which omitted recently controlled or shut down SO₂ and NO_x emissions sources in Oklahoma and Texas from the 2016 inventory, but those adjustments were not incorporated because they did not impact source selection. The two additional sources considered in the sensitivity analysis had minimal potential impacts relative to the five initially selected sources and the State did not identify any technically feasible controls for these two sources. These analyses show that the five sources brought forward from the 70 percent screening threshold represent a reasonable set of sources to evaluate for potential control within Arkansas.

3. Four Factor Analyses

For each facility selected to undergo four-factor analysis, the State identified potential emission reduction control strategies and asked each selected facility (through information collection request letters dated January 8, 2020)⁸⁹ to assess whether the identified controls by the State were technically feasible or not. If a strategy was not technically feasible, facilities were to provide a robust explanation explaining why.

For each technically feasible control, facilities were directed to provide information about the control effectiveness of each technology for each emission unit ranked from highest to lowest control efficiency (*i.e.*, percentage SO₂ and/or NO_x reduced).⁹⁰ Facilities were asked to include resulting actual annual emission reduction estimates (in tpy) that would be achieved through implementation of each control strategy. This was determined by calculating the difference in baseline and controlled emission rates in pounds per hour (pph) or pounds per million British thermal units (lb/MMBtu). Facilities were asked to provide baseline emission rates annualized on a maximum monthly basis for the 2017–2019 period⁹¹ to ensure that cost estimates would be based on appropriately sized equipment. DEQ also directed facilities to provide additional information for baseline emission rates annualized on an average monthly emission rate basis to estimate the typical emission reductions that may be achievable from each control. DEQ included a description of the criteria it required for the facilities to use to evaluate the four factors for each control measure being considered in its long-term strategy and

⁸⁹ See Appendices F through I of the 2022 Planning Period II SIP for the regional haze four-factor analysis information collection requests by DEQ which includes the identified technologies to Independence, FutureFuel, Domtar, and Flint Creek. DEQ did not send an information collection request to White Bluff for the two coal-fired EGU Boilers (SN–01 and SN–02). As mentioned, after a partial four-factor analysis evaluating the existing control measures for White Bluff, DEQ determined in its 2022 Planning Period II SIP submittal that existing control measures at White Bluff Power Plant are sufficient for reasonable progress.

⁹⁰ From EPA Menu of Control Measures which provides states with information on a broad, though not comprehensive, listing of potential emissions reduction measures, as well as relevant information concerning the efficiency and cost effectiveness of the measures. See <https://www.epa.gov/sites/default/files/2016-02/menuofcontrolmeasures.xlsx>.

⁹¹ A shorter baseline period (June 1, 2018–December 31, 2019) was provided for Flint Creek because construction of low NO_x burners with separated over fire air was completed on May 18, 2018, which reduced NO_x emissions from the SN–01 Boiler.

the underlying assumptions for each factor.

For cost of compliance, DEQ instructed facilities to follow the EPA Pollution Control Cost Manual overnight methodology⁹² which estimates capital costs, annual operating/maintenance costs, and annualized costs as if the project is completed "overnight" with no interest incurring during construction. Facilities expressed the costs in terms of annualized cost per ton of emissions reduced per year to compare the different control options for the same source and across different sources. DEQ noted that the amortization period should be based on the time between when the strategy could reasonably be in place and the remaining useful life of the emission control system. DEQ reviewed the cost per ton information provided by the facilities for the different identified control strategies and compared those results to different cost thresholds based on dollar per ton (\$/ton) values that were incurred from past BART and reasonable progress determinations from the first planning period.⁹³ DEQ adjusted those \$/ton values to 2019 dollars using the Chemical Engineering Plant Cost Index and then selected the 98th percentile⁹⁴ as the threshold for each emission unit type (see Table 8). The State selected the 98th percentile \$/ton metric because it is a robust approach that does not give undue weight to the extreme tail of a distribution and ensures that costs that have incurred multiple times from the first planning period by sources of a similar type are captured. DEQ noted that the different thresholds consider how imposed costs are financed and how investments are recovered from the different emission unit types. DEQ originally proposed to use a bank prime rate of 3.25 percent after considering EPA comments received during the public comment period concerning the rate at the time, but because of more recent upward trends of the federal interest rate, DEQ revised its analyses and calculated the annualized capital costs using the information provided by the different facilities and a 7 percent interest rate.

⁹² See EPA Air Pollution Cost Control Manual Section 1—Introduction, Chapter 2—Cost Estimation: Concepts and Methodology (page 11). An alternate way of describing this method is the present value cost that would have to be paid as a lump sum up front to completely pay for a construction project.

⁹³ See spreadsheet in Appendix J of 2022 Planning Period II SIP called 7AppJ_DescStats_PP1 DetermCosts-v9.xlsx.

⁹⁴ The 98th percentile means that for a given distribution, it is equal to or higher than 98 percent of the rest of the distribution.

TABLE 8—COST EFFECTIVENESS THRESHOLDS FOR DIFFERENT EMISSION UNIT TYPES IN 2019 DOLLARS

Equipment type	Cost threshold (\$/ton—98th percentile)
EGU Boiler	5,086
Industrial Boiler	3,328
Kiln	4,419
Smelter	1,041

For the time necessary for compliance, DEQ directed facilities to consider the time needed for a source to comply with a potential control measure and to justify the time needed to install a control measure as being reasonable. DEQ noted in its SIP submittal that a reasonable time period to establish a compliance deadline is one in which the source comes into compliance in an efficient manner without unusual amounts of overtime, above-market wages and prices, or premium charges for expedited delivery of control equipment. DEQ mentioned that, in addition to establishing compliance schedules, the time necessary for compliance may influence how capital costs of control measures are annualized if the remaining useful life of an emission unit is less than the life of the equipment involved.⁹⁵

For remaining useful life, DEQ instructed facilities to follow the EPA Pollution Control Cost Manual on typical useful life values of various emission control systems or should be based on enforceable shutdown dates. DEQ noted that for purposes of its evaluation, the remaining useful life was factored into the cost of compliance. DEQ based the annualization of capital costs on the expected life of the equipment involved for the potential control measures under evaluation and consideration of any other requirements.⁹⁶

For energy and non-air quality environmental impacts of compliance, DEQ directed facilities to factor any costs associated with these impacts into the cost of implementing the strategy, including without limitation: permitting costs if other regulatory requirements are triggered by the controls; costs associated with compliance with any other regulatory requirements triggered by the controls; and cost of waste disposal for wastes generated by proposed controls.

In addition to the four statutory factors, DEQ also included in its

evaluation of potential controls the context of historical visibility improvement that has been achieved at the Arkansas' Class I areas, and future 2028 anticipated visibility impairment in those areas.⁹⁷

The facilities responded to DEQ's information collection requests and provided reports with the requested information for each technically feasible control.⁹⁸ DEQ relied on the information provided in the facility reports in its 2022 Planning Period II SIP submittal and, based on the information provided, determined which control measures would be necessary for each facility to make reasonable progress for the second implementation period.

a. Entergy White Bluff Power Plant

Facility Information. DEQ selected the White Bluff Power Plant located in Jefferson County, Arkansas for further analysis. The State identified two boilers (SN-01 and SN-02 Boilers) as major sources that emitted a total of 18,336 tpy SO₂ emissions and a total of 9,719 tpy NO_x emissions in 2016.

The boiler units are identical tangentially-fired 850 megawatt (MW) boilers that have a maximum heat input capacity of 8,950 MMBtu/hr. Both units burn sub-bituminous coal as a primary fuel and No. 2 fuel oil or bio-diesel as the startup fuel at a maximum rate of 1,000 MMBtu/hr. The boilers supply steam which feed turbine generators to produce electricity.

Proposed Reasonable Progress Control Determination for Entergy White Bluff. In the State's evaluation of controls for White Bluff,⁹⁹ DEQ reported that both boilers burn low-sulfur coal to control SO₂ emissions, are equipped with low NO_x burners with separated overfire air to control NO_x emissions, and are equipped with electrostatic precipitators¹⁰⁰ to control PM

⁹⁷ See 2022 Planning Period II SIP submittal (page V-16).

⁹⁸ See Appendices F through I of the 2022 Planning Period II SIP for the regional haze four-factor analysis information collection requests by DEQ and the corresponding responses including four-factor analyses for the identified technologies from Independence, FutureFuel, Domtar, and Flint Creek. As mentioned, after a partial four-factor analysis evaluating the existing control measures for White Bluff, DEQ determined in its 2022 Planning Period II SIP submittal that existing control measures at White Bluff Power Plant are sufficient for reasonable progress. Therefore, DEQ did not send an information collection request to White Bluff for the two coal-fired EGU Boilers (SN-01 and SN-02).

⁹⁹ See 2022 Planning Period II SIP (pages V-16 to V-17).

¹⁰⁰ See EPA Air Pollution Cost Control Manual Section 6—Particulate Matter Controls Chapter 3—Electrostatic Precipitators (page 3-4). An electrostatic precipitator is an air pollution control device that functions by electrostatically charging

emissions. For SO₂ control, both boilers are subject to BART and are required to comply with an SO₂ emission limit of 0.60 lb/MMBtu for each boiler on a thirty-boiler-operating-day rolling average. This is based on fuel switching to lower sulfur coal by August 7, 2021, pursuant to an Administrative Order¹⁰¹ between DEQ and Entergy as part of the approved 2018 Phase II SIP revision from the first planning period.¹⁰² This state- and federally-enforceable Administrative Order incorporates the requirements of a Settlement Agreement and Consent Judgement (Consent Decree)¹⁰³ that resolves CAA claims brought by the Sierra Club. The Consent Decree and Administrative Order also require both boilers to cease coal-fired operations by no later than December 31, 2028, and was approved into the State's SIP as a source-specific SIP requirement in the first implementation period.¹⁰⁴ DEQ considered that enforceable requirement to cease coal-fired operations at White Bluff to be sufficient reason to not perform a four-factor analysis for this source for the second planning period. DEQ stated that additional NO_x control measures beyond the low NO_x burners and low sulfur coal, which have already been implemented at White Bluff to meet its obligations under CSAPR for O₃ season NO_x allocations, are not cost-effective due to the plant's remaining useful life. The annual cost of control measures evaluated during the first planning period¹⁰⁵ would only be expected to increase in an updated reasonable progress analysis because White Bluff is nearer to its termination of coal-fired operations date than it was in the previous analysis. The technologies available to reduce NO_x and SO₂ at power plants, such as White Bluff, have not changed since 2018. Because the low NO_x burners installed at White Bluff cannot be shut down temporarily, being an inherent part of the equipment design, no separate emission limit is necessary for inclusion in the SIP to ensure operation of the low NO_x

particles in a gas stream that passes through collection plates with wires. The ionized particulate matter is attracted to and deposited on the plates as the cleaner air passes through. A wet electrostatic precipitator is designed to operate with water vapor saturated air streams to remove liquid droplets such as sulfuric acid.

¹⁰¹ See Administrative Order (LIS No. 18-073), dated August 7, 2018.

¹⁰² See 84 FR 51033 (September 27, 2019) final approval.

¹⁰³ *Sierra Club and National Parks Conservation Association v. Entergy Arkansas, Inc., Entergy Power, LLC, and Entergy Mississippi, Inc.* Case No. 4:18-cv-00854-KGB (ED Ark., March 11, 2021).

¹⁰⁴ See 84 FR 51033 (September 27, 2019).

¹⁰⁵ *Id.* at 51033, 51040.

⁹⁵ See 2022 Planning Period II SIP submittal (page V-15). See also 2019 Guidance at 45.

⁹⁶ *Id.*

burners. Lastly, if Entergy chooses to continue operations of the White Bluff units after December 31, 2028, they must apply for a permit revision to burn a different fuel. Such a permit revision would be subject to new source review (NSR) requirements. If the change would result in a significant increase in emissions, Prevention of Significant Deterioration (PSD) and BACT requirements would be triggered. The most likely fuel switch would be to natural gas, which inherently emits much less SO₂ and NO_x relative to coal. Because of this reasoning, DEQ chose not to require White Bluff to perform additional analysis on potential control technologies.

DEQ considered the potential cost of controls and the remaining useful life of the SN-01 and SN-02 boilers and concluded that no additional analysis is required, and no additional measures are necessary to make reasonable progress for the second planning period at Entergy White Bluff. In addition, the projected 2028 visibility conditions at all Class I areas to which White Bluff contributes (Caney Creek, Upper Buffalo, and Hercules Glades) are all below their respective 2028 URP values.

The EPA is proposing to find that Arkansas demonstrated that it is making reasonable progress for the second planning period without requiring any additional measures for White Bluff.

b. Entergy Independence Power Plant

Facility Information: DEQ selected the Entergy Independence Power Plant located in Independence County, Arkansas for further analysis. Two coal-fired boilers (SN-01 and SN-02) were identified by the State as major sources that emitted a total of 22,570 tpy SO₂ emissions and a total of 9,864 tpy NO_x emissions in 2016. DEQ identified potential SO₂ and NO_x control technologies for each of these boilers in its January 8, 2020, information collection request letter to Entergy Services LLC.¹⁰⁶

The SN-01 and SN-02 Boilers are identical 900 MW boilers that were installed in 1978. The SN-01 Boiler was placed into operation in 1983, and the SN-02 Boiler was placed into operation in 1985. The boilers operate using sub-bituminous coal as their primary fuel and no. 2 fuel oil or bio-diesel as the start-up fuel. For NO_x emissions, both boilers operate with low NO_x burners and separated overfire air systems,

which were installed in 2017 in order to assist the facility in meeting its obligations under CSAPR for O₃ season NO_x allocations. The permit¹⁰⁷ contains limits of 6,090 pph NO_x and 0.7 lb/MMBtu NO_x that apply to both boilers. In addition, PM emissions are controlled with electrostatic precipitators and subject to a PSD limit of 0.04 lb/MMBtu.¹⁰⁸ SO₂ emissions are subject to a limit of 0.60 lb/MMBtu based on using low sulfur coal on a 30-boiler-operating-day averaging period, which became effective on August 7, 2021, and was incorporated into the SIP in the 2018 Phase II SIP revision from the first planning period.¹⁰⁹ CEMS measures SO₂ and NO_x emissions for these boilers.

Technically Feasible Controls. Entergy responded to DEQ's information collection request in a response letter dated April 7, 2020 (revised on July 24, 2020),¹¹⁰ which provided the facility's evaluation of seven potential controls identified by DEQ. Based on the information provided by Entergy, DEQ determined that four SO₂ control options and two NO_x controls would be technically feasible for the boilers (see Table 9).

TABLE 9—IDENTIFIED CONTROLS AT ENTERGY INDEPENDENCE POWER PLANT FOR SN-01 AND SN-02 BOILERS AND FEASIBILITY DETERMINATIONS

Unit	Pollutant controlled	Identified control technologies	Technically feasible?
SN-01 and 02 Boilers	SO ₂ and NO _x	Fuel Switch from Coal to Gas	No.
		Wet Flue Gas Desulfurization (WFGD) ¹¹¹	Yes.
		Spray Dry Absorber (SDA) ¹¹²	Yes.
		Dry Sorbent Injection (DSI) ¹¹³	Yes.
		Enhanced DSI ¹¹⁴	Yes.
		Select Catalytic Reduction (SCR) ¹¹⁵	Yes.
	NO _x	Select Non-Catalytic Reduction (SNCR) ¹¹⁶	Yes.

¹⁰⁶ See Appendix F-1 of the document: 7AppF_Entergy Independence.pdf in Appendix F of the 2022 Planning Period II SIP for DEQ's Information Collection Request to Entergy Independence.

¹⁰⁷ See DEQ air permit No. 0449-AOP-R18 issued January 17, 2023.

¹⁰⁸ This limit is for total suspended particulate (TSP), but guidance makes clear that PM₁₀ is the appropriate metric for the Title V permit threshold since TSP is no longer a regulated pollutant. See EPA Memorandum from Deputy Director L.N. Wegman dated October 16, 1995: "Definition of Regulated Pollutant for Particulate Matter for Purposes of Title V."

¹⁰⁹ See 83 FR 5927 (February 12, 2018) final action. See also 82 FR 42627 (September 11, 2017) for the proposed approval.

¹¹⁰ See Appendix F-2 of the document: 7AppF_Entergy Independence.pdf in Appendix F of 2022 Planning Period II SIP for the Entergy Independence Power Plant regional haze four-factor analysis response letter to DEQ prepared by Trinity Consultants (dated April 7, 2020). For follow up consultations and revisions (see Appendices F-3 to F-7), DEQ requested that Entergy Services LLC (July

21, 2020, email) review revised cost control calculations and Entergy provided feedback in a July 24, 2020, email with an updated version of the four factor analysis response to DEQ (dated July 23, 2020).

¹¹¹ See EPA Air Pollution Cost Control Manual (seventh edition) Section 5—SO₂ and Acid Gas Controls Chapter 1—Wet and Dry Scrubbers for Acid Gas Control (page 1-9 to 1-10). WFGD systems control SO₂ emissions using solutions containing alkali reagents or sorbents such as limestone, lime, sodium-based alkaline, or dual alkali-based sorbents. The sorbent reacts with the SO₂ and falls to the bottom of the absorber tower where it is collected and disposed of or recycled back into the system. WFGD systems generally have the highest control efficiencies. New WFGD systems can achieve SO₂ removal of 99 percent and HCl removal of over 95 percent. Packed tower WFGD systems may achieve efficiencies over 99 percent for some pollutant-solvent systems.

¹¹² See EPA Air Pollution Cost Control Manual (seventh edition) Section 5—SO₂ and Acid Gas Controls Chapter 1—Wet and Dry Scrubbers for Acid Gas Control (pages 1-4, 1-7, 1-10 to 1-11).

SDA systems consist of an absorber vessel, a bag house filter, an absorbent feeding tank, and an absorbent feeding system. Absorbents such as lime and sodium bicarbonate are often used and sprayed as a slurry into an absorber vessel. At high temperatures, the water is rapidly vaporized and exits the stack. The absorbent reacts with the acidic gases in the waste stream to form a byproduct that is collected in a fabric filter. Spray dryers can achieve typical SO₂ removal efficiencies of 85–95 percent and up to 98 percent for new systems.

¹¹³ See EPA Air Pollution Cost Control Manual (seventh edition) Section 5—SO₂ and Acid Gas Controls Chapter 1 (pages 1-11 to 1-12). DSI is a type of dry FGD system that is not a standalone, add-on air pollution control system but a modification to the combustion unit or ductwork where dry sorbent is injected directly into the furnace or into the ductwork following the furnace. Unlike the three other FGD systems, DSI can typically achieve SO₂ control efficiencies ranging from 50 to 70 percent and has been used in power plants, biomass boilers, and industrial applications.

Fuel switchin from coal to natural gas was determined to be not technically feasible because it would involve significant modifications to the plant that have not been demonstrated in similarly sized units. A switch to natural gas would also require constructing a new natural gas supply pipeline to serve the site. For these reasons, fuel switching to natural gas

was not further evaluated as a potential control strategy.

Control Effectiveness. DEQ determined the anticipated emission reductions and control effectiveness for each of the six technically feasible control technologies identified for the SN-01 and SN-02 Boilers as presented in Entergy's report (see Table 10).¹¹⁷ Entergy provided baseline SO₂ and NO_x emission rates on both an annualized

maximum monthly emission rate basis and an annualized average monthly emission rate basis from the baseline period of November 1, 2018, to December 31, 2019, for the SN-01 Boiler; and January 1, 2018, to December 31, 2019, for the SN-02 Boiler. The average monthly emission rate basis was used by DEQ to estimate the potential emission reductions.

TABLE 10—CONTROL EFFECTIVENESS AND EXPECTED EMISSION REDUCTIONS FOR THE TECHNICALLY FEASIBLE CONTROLS FOR THE SN-01 AND SN-02 BOILERS AT ENTERGY INDEPENDENCE POWER PLANT

Unit	Identified technology	Pollutant	Control efficiency (%) †	Baseline rate (avg. monthly basis) (tpy)	Controlled rates		Emission reduction (tpy)
					lb/MMBtu **	tpy †	
SN-01 Boiler	WFGD	SO ₂	92	9,945	0.04	841	9,104
	SDA		87	9,945	0.06	1,261	* 8,684
	Enhanced DSI		68	9,945	0.15	3,153	6,792
	DSI		26	9,945	0.35	7,358	2,587
	SCR	NO _x	66	3,423	0.055	1,156	2,267
	SNCR		20	3,423	0.13	2,733	690
SN-02 Boiler	WFGD	SO ₂	92	10,672	0.04	887	9,786
	SDA		88	10,672	0.06	1,330	9,342
	Enhanced DSI		69	10,672	0.15	3,325	7,347
	DSI	NO _x	27	10,672	0.35	7,759	2,914
	SCR		62	3,180	0.055	1,219	1,961
	SNCR		9	3,180	0.13	2,882	298

* EPA corrected this value in the table which was a typo by the State. See the revised cost spreadsheet in Appendix F of the 2022 Planning Period II SIP: 7AppF_7 Entergy Independence Post-Comment Period Cost Calculation Revisions.xlsx.

** The bases for the controlled rates in lb/MMBtu were determined in previous analyses as stated in Entergy's revised July 2020 report (pages 2-2, 2-3, and 3-1) for WFGD,¹¹⁸ SDA,¹¹⁹ DSI and enhanced DSI,¹²⁰ and NO_x Controls (SCR and SNCR).¹²¹

† EPA provided controlled rates in tpy (and resulting control efficiencies) from Entergy's revised report (pages 2-4 and 3-2) for a direct comparison to the baseline tpy values provided by DEQ in Table V-8 of the 2022 Planning Period II SIP.

Cost of Compliance. DEQ reviewed the cost information of the different identified control strategies provided by Entergy for the SN-01 and SN-02

Boilers and compared the \$/ton values to DEQ's \$5,086/ton cost threshold for EGU boilers (see Table 11). DEQ presented estimated costs for the control

strategies using Entergy's assumptions for remaining useful life and equipment life in 2019 dollars.¹²² Entergy

¹¹⁴ DEQ considered DSI with and without a fabric filter in its SIP. "Enhanced DSI" refers to DSI with a fabric filter and "DSI" refers to DSI without a fabric filter.

¹¹⁵ See EPA Air Pollution Cost Control Manual (seventh edition) Section 4—NO_x Controls Chapter 2—Selective Catalytic Reduction (page 2-9). SCR systems include a NH₃ storage and delivery system, NH₃ injection grid, and a catalyst reactor. A nitrogen-based reducing agent, such as NH₃ or urea-derived NH₃, is injected into the post-combustion flue gas. The reagent reacts selectively with the flue gas NO_x within a specific temperature range and in the presence of the catalyst and oxygen to reduce the NO_x into molecular nitrogen (N₂) and water vapor. SCR systems can be designed for NO_x removal efficiencies up close to 100 percent. In practice, commercial coal-, oil-, and natural gas-fired SCR systems are often designed to meet control targets of over 90 percent. However, the reduction may be less than 90 percent when SCR follows other NO_x controls.

¹¹⁶ See EPA Air Pollution Cost Control Manual (seventh edition) Section 4—NO_x Controls Chapter 1—Selective Non-Catalytic Reduction (page 1-9). SNCR systems have similar equipment to reduce

NO_x emissions as SCR systems and both utilize a reagent like urea or NH₃, but SNCR relies on a higher flue gas temperature at the point of injection instead of a catalyst to reduce NO_x. Efficiencies typically range from 30–70%.

¹¹⁷ See Tables V-7 and V-8 (pages V-19 to V-20) of the 2022 Planning Period II SIP.

¹¹⁸ The controlled emission rate of 0.04 lb/MMBtu for WFGD is based on information presented in Entergy's October 2013 Revised BART Five Factor Analysis for White Bluff Steam Electric Station (pages 5-3 to 5-4), included in Appendix D of the Phase II SIP revision from the first planning period.

¹¹⁹ The controlled emission rate for SDA is based on information presented in the following first planning documents: Entergy's August 18, 2017 Updated BART Five-Factor Analysis for SO₂ for Unit 1 and 2, (pages 4-1 to 4-3), included in Appendix D of the Phase II SIP revision from the first planning period; Sargent & Lundy's (S&L's) August 3, 2017 White Bluff Dry FGD Cost Estimate and Technical Basis, SL-01283, included in Appendix A of Entergy's 2020 response to DEQ's information collection request; and S&L's January 31, 2018 Independence Dry FGD Cost Estimate and

Technical Basis, SL-014308, included in Appendix A of Entergy's 2020 response to DEQ's four-factor information collection request.

¹²⁰ The controlled emission rates for DSI and Enhanced DSI are based on information presented in the following first planning period documents: Entergy's August 2017 White Bluff BART report, (pages 4-1 to 4-3); S&L's August 3, 2017, White Bluff DSI Cost Estimate Basis Document, SL-014000, and White Bluff Enhanced DSI Cost Estimate Basis Document, SL-014001, included in Appendix A of Entergy's 2020 response to DEQ's four-factor information collection request.

¹²¹ The controlled emission rates are based on information presented in Entergy's October 2013 White Bluff BART report, (pages 6-3 to 6-4), and S&L's May 16, 2013, NO_x Control Technology Cost and Performance Study, Entergy Services, Inc.—White Bluff and Lake Catherine, SL-011439, which is included in Appendix B of Entergy's 2020 response to DEQ's four-factor information collection request.

¹²² See Tables V-9 and V-10 (pages V-20 to V-22) of the 2022 Planning Period II SIP.

calculated the cost of compliance based on the assumption that the Independence units will cease coal-fired operations by a cessation date of December 31, 2030, as required in a Settlement Agreement and Consent Judgement (Consent Decree) that was entered between Entergy and Sierra Club.¹²³ Based on that cessation date, Entergy used 5.42 years remaining useful life for DSI and enhanced DSI; and 3.42 years remaining useful life for

all other technologies after consideration of time necessary for compliance of the evaluated controls. DEQ also calculated annual costs based on the expected life of the control equipment in the event that these units would continue to operate with no assumed operation cessation date. For equipment life, Entergy used 30 years for WFGD, SDA, DSI, Enhanced DSI, and SCR; and 20 years for SNCR. In addition, DEQ revised its analyses and

calculated the annualized capital costs using the information provided by Entergy and a 7 percent interest rate. Control cost calculations were completed using average-monthly baseline emission rates. Cost effectiveness was also evaluated based on an average of both boiler units because the units perform an identical function and have the same design.

TABLE 11—ESTIMATED COSTS OF CONTROL OPTIONS FOR SN-01 AND SN-02 BOILERS (ESCALATED TO 2019) *

Unit	Control option	Total annual costs (\$MM/year) **		Cost-effectiveness (\$/ton)	
		Based on remaining useful life	Based on equipment life	Based on remaining useful life	Based on equipment life
SN-01 Boiler	WFGD	173.97	69.43	19,109	7,627
	SDA	138.35	40.09	15,931	4,616
	Enhanced DSI	106.45	56.61	15,673	8,335
	DSI	56.92	30.93	22,001	11,955
	SCR	67.04	18.57	29,573	8,191
	SNCR	9.56	7.41	13,861	10,739
SN-02 Boiler	WFGD	173.97	69.43	17,778	7,095
	SDA	138.35	40.09	14,809	4,291
	Enhanced DSI	106.45	56.61	14,489	7,706
	DSI	56.92	30.93	19,532	10,613
	SCR	67.04	18.57	34,188	9,469
	SNCR	9.56	7.41	32,095	24,864
Boiler Average	WFGD			18,444	7,361
	SDA			15,370	4,454
	Enhanced DSI			15,081	8,020
	DSI			20,766	11,284
	SCR			31,881	8,830
	SNCR			22,978	17,802

* DEQ revised the cost and cost-effectiveness values obtained from Entergy's report. See spreadsheet in Appendix F of the 2022 Planning Period II SIP: 7AppF_7 Entergy Independence Post-Comment Period Cost Calculation Revisions.xlsx.

** The total annual cost values in Table V-9 of the 2022 Planning Period II SIP were transcribed incorrectly. EPA updated the values to reflect the total annual costs from the spreadsheet in Appendix F.

The cost effectiveness based on a 2030 cessation date to end coal operations was greater than the costs estimated based on the life of the different control equipment. Under the assumption of a 2030 cessation date, all of the \$/ton values for each of the control strategies

exceeded DEQ's \$5,086/ton cost threshold for EGU boilers by a large margin. In comparison, the \$/ton values based on equipment life all exceeded the cost threshold for EGU boilers except for SDA, which when averaged

over both boiler units, had a cost effectiveness of \$4,454/ton.

Time Necessary for Compliance. DEQ summarized the time estimates provided by Entergy that would be needed for the different control options and the basis for each (see Table 12).¹²⁴

TABLE 12—TIME NEEDED TO COMPLY FOR CONTROL OPTIONS FOR SN-01 AND SN-02 BOILERS

Control technology	Time for compliance (years)	Basis for compliance
WFGD	5	Time determined in 2016 FIP. ¹²⁵
SDA		
Enhanced DSI	3	Similar estimate in other analyses (FutureFuel's response to DEQ). ¹²⁶
DSI		
SCR	5	Precedent in Utah and North Dakota FIPs. ¹²⁷
SNCR		

¹²³ *Sierra Club and National Parks Conservation Association v. Entergy Arkansas, inc., Entergy Power, LLC, and Entergy Mississippi, Inc.* Case No. 4:18-cv-00854-KGB (ED Ark., March 11, 2021).

¹²⁴ See Table V-11 (page V-23) of the 2022 Planning Period II SIP.

¹²⁵ See FIP Proposal: 80 FR 18944, 18993 (April 8, 2015).

¹²⁶ See 2022 Planning Period II SIP Appendix G for the FutureFuel Chemical Company regional haze four-factor analysis response letter prepared by the facility.

¹²⁷ 77 FR 20894, 20944 (April 6, 2012) and 81 FR 43894, 43907 (July 5, 2016), respectively.

The Energy and Non-Air Quality Environmental Impacts of Compliance. DEQ reported that all of the SO₂ and NO_x control options would require waste removal and additional power requirements that were both factored into the cost of compliance. WFGD and SDA require increased water usage. WFGD generates large volumes of wastewater and solid waste/sludge that must be managed and/or treated. SDA utilizes lime slurry that would generate PM emissions that must be controlled through use of a baghouse or ESP and then collected and disposed of through landfilling.¹²⁸ DSI processes would require substantial storage and transportation. DSI fly ash could not be resold for beneficial reuse due to the solubility of the sodium salts present in the waste. SCR would require the disposal of spent catalyst waste. SCR and SNCR systems would both require storage and transport of NH₃. Accidental release of unreacted NH₃ could react with SO₄²⁻ and NO₃⁻ in the atmosphere to form ammonium sulfate and ammonium nitrate which are the predominant sources of regional haze. SCR and SNCR would both require electricity from ancillary equipment that would increase electrical demand to operate the systems.

Remaining Useful Life. As discussed, DEQ used 5.42 years remaining useful life for DSI and enhanced DSI; and 3.42 years remaining useful life for all other control technologies to annualize capital and indirect costs. These assumptions were based on the time necessary for compliance and an assumed 2030 cessation date to end coal-fired operations at the SN-01 and SN-02 Boilers.¹²⁹ As mentioned, DEQ also evaluated the cost effectiveness based on equipment life of the different control equipment.¹³⁰ As part of the 2022 Planning Period II SIP submittal, DEQ included an Administrative

Order¹³¹ that it entered with Entergy that would render the requirement to cease coal-fired operations by no later than December 31, 2030, to be federally enforceable upon final approval by EPA. However, on July 29, 2025,¹³² DEQ sent to EPA a letter determining that inclusion of the Administrative Order was not needed to fulfill the CAA and RHR requirements for the second planning period. DEQ requested in the letter for EPA to approve the remainder of the 2022 Planning Period II SIP submittal without the Administrative Order for Independence.

Visibility Considerations. DEQ also evaluated Entergy Independence's contribution to visibility impairment at the different Class I areas within and outside Arkansas alongside its consideration of the four statutory factors. DEQ noted that the AOI analysis indicated that emissions from Independence impacted five Class I areas (Caney Creek, Upper Buffalo, Hercules Glades, Mingo, and Sipsey) which are all on track to make greater progress than the URP glidepath in 2028, even before consideration of potential controls for Independence. Source apportionment from VISTAS modeling also indicated that Independence was projected to contribute 1.04 percent of the total SO₄²⁻ point source visibility impacts and 0.01 percent of total NO₃⁻ point source visibility impacts on the most impaired days in 2028 at Shining Rock. However, Shining Rock is also on track to make greater progress than the URP glidepath in 2028 before consideration of potential controls for Independence.

Proposed Reasonable Progress Control Determination for Entergy Independence. DEQ determined in its 2022 Planning Period II SIP and clarified in the July 29, 2025, letter to EPA that no additional controls are necessary for Entergy Independence to make reasonable progress during the second planning period. In making that determination, the 2022 Planning Period II SIP outlines how the four statutory factors were considered for control technologies that the State identified to reduce SO₂ and NO_x emissions at the SN-01 and SN-02 Boilers. DEQ initially determined that additional controls would not be cost effective because the cost-effectiveness values for each control option, based on the required December 31, 2030, cessation date from the consent decree and Agreed Order,

exceeded the cost threshold for EGU boilers. However, in its July 29, 2025, letter sent to EPA, DEQ indicated that after reconsidering its initial determination to include the Administrative Order (LIS No. 22-084) for Entergy Independence, the SIP submittal would meet the RHR and CAA requirements for the second planning period without the requirements contained in the Administrative Order. DEQ also noted in the letter that the Administrative Order's requirement to cease coal use at Entergy Independence by December 31, 2030, was previously set by a separate 2021 District Court order (Case No. 4:18cv854). In addition to DEQ's determination of no additional controls needed, DEQ noted in its 2022 Planning Period II SIP that all Class I areas for which Independence was within the AOI are on track to make greater reasonable progress than the URP glidepath in 2028 before any additional controls at Independence.

EPA is proposing to find that the State's determination of no additional controls for the SN-01 and SN-02 Boilers at the Entergy Independence Power Plant is reasonable and meets regional haze requirements for the second planning period. After appropriately identifying the boilers for potential controls, the State adequately took into consideration the four statutory factors on the selected control technologies and determined that the evaluated controls were not necessary to make reasonable progress for the second planning period. In addition to the four factor analyses of additional controls, the Class I areas (Upper Buffalo, Hercules Glades, Caney Creek, Mingo, Sipsey)¹³³ impacted by Entergy Independence are projected to be below their respective 2028 URP glidepath values with existing controls. Therefore, we are proposing to find that Arkansas demonstrated that it is making reasonable progress for the second planning period without requiring any additional controls for the Entergy Independence Power Plant.

c. FutureFuel Chemical Company

Facility Information. DEQ selected FutureFuel Chemical Company (FutureFuel), located in Batesville, Arkansas for further analysis. A three-

¹²⁸ Per Entergy's September 27, 2017, Analysis of Reasonable Progress Arkansas Regional Haze Program First Planning Period ("Entergy's September 2017 RP Report"), at 6-2, which is included in Appendix F of Phase II of the first planning period SIP revisions. Entergy has not indicated unusual circumstances that would create greater problems than experienced elsewhere that Dry FGD was utilized as BART. See also the 2018 Phase II SIP revision at 52.

¹²⁹ See 2022 Planning Period II SIP Appendix F for Entergy's revised July 23, 2020, response to DEQ's Four-Factor Analysis information collection request (page 2-4 and 3-2). These remaining useful life estimates were based on Entergy's assumption of an EPA approved SIP by July 31, 2022. The SIP is projected to be approved beyond this date so the cost-effectiveness numbers will be even higher than estimated in the SIP.

¹³⁰ For equipment life, Entergy used 30 years for WFGD, SDA, DSI, Enhanced DSI, and SCR; and 20 years for SNCR.

¹³¹ See Administrative Order (LIS No. 22-084) dated August 2, 2022, and included as part of the 2022 Planning Period II SIP submittal.

¹³² See letter sent to EPA from DEQ signed by Secretary Khoury (dated July 28, 2025) and included in the docket of this action.

¹³³ See the 2022 Planning Period II SIP (page V-24). The Entergy Independence Power Plant visibility surrogate value was 26 percent of the total source impacts for the Upper Buffalo AOI and 20 percent for the Hercules Glades AOI. Caney Creek, Mingo, and Sipsey AOI total source impacts were each impacted by 5 percent, 3 percent, and 1 percent, respectively, by Independence. See also 2022 Planning Period II SIP Appendix C spreadsheet: 7AppC_Arkansas Source Screening Method Spreadsheet-v8.xlsx.

boiler system (collectively known as 6M01–01) was identified by the State as a source that emitted a total of 2,132 tpy SO₂ emissions and a total of 323 tpy NO_x emissions in 2016.¹³⁴ DEQ identified potential SO₂ and NO_x control technologies for each of the three boilers in its January 8, 2020, information request letter to the facility.¹³⁵

The three-boiler system was installed in 1975, and each boiler is rated for 70 MMBtu/hr. All three boilers share a common primary fuel conveying system, a common ash handling system, and a common 200 ft tall stack. The three boilers are balanced draft, coal-fired steam generation boilers that have

been fitted with atomizing nozzles to facilitate burning of liquid chemical wastes. Each coal fired boiler is equipped with its own ESP to control PM emissions. The units do not have existing SO₂ or NO_x emission controls but are subject to emission limits for the three-boiler system of 1,391 pph SO₂ (5,982.9 tpy) and 106 pph NO_x (488.2 tpy), contained in the facility's permit.¹³⁶ FutureFuel is also subject to a permit condition that prohibits combustion of coal with sulfur content greater than 3.8 percent by weight. The three coal fired boilers are also subject to 40 CFR part 63, subpart EEE, National Emission Standards for Hazardous Air

Pollutants (NESHAP) from Hazardous Waste Combustors. Due to size and installation date, these boilers are not subject to any of the NSPS requirements.

Technically Feasible Controls.

FutureFuel responded to DEQ's information collection request in a response letter dated April 7, 2020 (with follow up consultations),¹³⁷ which provided the facility's evaluation of 15 potential controls identified by DEQ. Based on the information provided by FutureFuel, DEQ determined that 12 of the control measures would be technically feasible for the boilers (*see* Table 13).

TABLE 13—IDENTIFIED CONTROLS FOR THREE COAL FIRED BOILERS AT FUTUREFUEL AND FEASIBILITY DETERMINATIONS

Pollutant controlled	Identified technology		Technically feasible?
SO ₂ and NO _x	Fuel Switch from Coal to Gas	Retrofit 1 boiler	yes
		Retrofit 3 boilers	yes
		Replace 1 boiler	yes
		Replace 3 boilers	yes
SO ₂	Scrubber Strategies	WFGD with Lime Slurry	yes
		WFGD with Sodium Hydroxide (NaOH)	no
		SDA	yes
		DSI	yes
		Fuel Switch to Low Sulfur Coal	yes.
		2.5% Sulfur Content	yes
		2.0% Sulfur Content	yes
NO _x	Post Combustion Control of Flue Gas	1.5% Sulfur Content	yes
		Less than 1.5% Sulfur Content	no
		SCR	yes
		SNCR	yes
		Low-NO _x Burners	no

Three of the controls were not technically feasible. DEQ concluded that WFGD utilizing NaOH reagent to scrub SO₂ gas in the exit stream was technically infeasible because the facility could exceed its National Pollution Discharge Elimination System (NPDES) SO₄²⁻ permit limit of 70,000 ppd by 3,000 ppd due to salt formation from NaOH addition. DEQ noted that it could accommodate the additional 3,000 ppd SO₄²⁻ with a permit modification but decided to assess lime slurry instead as an alternative reagent since it is similar in cost and efficiency as NaOH. DEQ noted that it considers its assessment of WFGD with lime slurry as sufficient to apply to both reagents. DEQ

determined that fuel switching to low sulfur coal with a sulfur content less than 1.5 percent was technically infeasible after considering three coal supply options. FutureFuel considered low sulfur coal from a nearby plant (0.5 percent sulfur content), coal from Wyoming Powder River Basin, and coal from Uinta Basin. The local plant and the Powder River Basin coal supplies were not usable for stoker style boilers because their heating values and fusion temperatures are less than the design requirements of FutureFuel's three coal-fired boilers which requires at least 11,000 Btu/lb and a minimum temperature of 2,550 °F. Uinta Basin coal supply had a sufficient heating

value, but the coal did not meet the minimum required fusion temperature and the distance of the plant would require trucking fleet upgrades. Lastly, after reviewing the RBLC database, DEQ determined that low NO_x burners were technically infeasible because they have not been implemented for industrial coal fired stoker boilers as part of NSR. In addition, low NO_x burners are not listed as an available control strategy for industrial coal-fired stoker boilers in EPA's Air Pollution Control Cost Manual.¹³⁸

Control Effectiveness. DEQ determined the anticipated emission reductions and control effectiveness for each technically feasible control

¹³⁴ The three boilers emit 99 percent of the SO₂ and 72 percent of the NO_x from the facility. There are other emission units that emit SO₂ and NO_x, or both including: two natural gas-fired boilers, a regenerative thermal oxidizer, thermal oxidizers and caustic scrubbers, a chemical waste destructor, a flare, two hot oil systems, a diesel glycol pump, two diesel waste disposal pumps, a diesel generator, and a diesel fire water pump.

¹³⁵ See Appendix G–1 of the document: 7AppG_FutureFuel_4-factor.pdf in Appendix G of the 2022 Planning Period II SIP for DEQ's Information

Collection Request to Futurefuel Chemical Company.

¹³⁶ See DEQ air permit No. 1085–AOP–R–16 issued June 21, 2023.

¹³⁷ See Appendix G–2 of the document: 7AppG_FutureFuel_4-factor.pdf in Appendix G of the 2022 Planning Period II SIP for the FutureFuel Chemical Company regional haze four-factor analysis response letter prepared by the facility. For follow up consultations (*see* Appendices G–3 to G–7), DEQ requested FutureFuel (July 20, 2020, email) to review the cost and cost-effectiveness calculations;

provide additional technical justifications regarding the NPDES limit for the WFGD option; and provide feedback for not choosing low sulfur coal less than 1.5 percent. The facility provided feedback in a July 23, 2020, email.

¹³⁸ See EPA Air Pollution Control Cost Manual Section 4—NO_x Controls Chapter 1—Selective Non-Catalytic Reduction (page 1–2). Table 1.2, which identifies no available urea-based SNCR for stoker-fired.

¹³⁹ See Table V–12 (page V–29) of the 2022 Planning Period II SIP.

technology identified for the three coal-fired boilers (see Table 14).¹³⁹ FutureFuel provided baseline SO₂ and NO_x emission rates annualized on both a maximum monthly emission rate basis and an annualized average monthly

emission rate basis for the baseline period 2017–2019. Maximum monthly emissions are used to ensure that cost estimates for control technologies have appropriately sized equipment. DEQ used the annualized average monthly

emission rate basis to estimate the potential emission reductions for each identified control technology. The average baseline emissions rates for the three coal-fired boilers were calculated to be 2,171 tpy SO₂ and 247 tpy NO_x.

TABLE 14—CONTROL EFFECTIVENESS AND EXPECTED EMISSION REDUCTIONS FOR POTENTIAL CONTROLS FOR THE THREE BOILER SYSTEM

Identified technology	Control efficiency (%)		Baseline rate avg. monthly basis (tpy)		Emission reductions (tpy)		
	SO ₂	NO _x	SO ₂	NO _x	SO ₂	NO _x	Both
Fuel Switch from Coal to Gas: *							
Retrofit 1 boiler**	32	30	2,171	247	690	74	764
Retrofit 3 boilers	99	90	2,171	247	2,149	222	2,371
Replace 1 boiler**	32	30	2,171	247	690	74	764
Replace 3 boilers	99	90	2,171	247	2,149	222	2,371
Scrubber Strategies:							
WFGD with Lime Slurry	94	N/A	2,171	N/A	2,041	N/A	2,041
SDA	92	N/A	2,171	N/A	1,997	N/A	1,997
DSI	40	N/A	2,171	N/A	868	N/A	868
Fuel Switch to Low Sulfur Coal:							
2.5% Sulfur	10	N/A	2,171	N/A	215	N/A	215
2.0% Sulfur	27	N/A	2,171	N/A	591	N/A	591
1.5% Sulfur	44	N/A	2,171	N/A	966	N/A	966
Post Combustion Control:							
SCR	N/A	80	N/A	247	N/A	197	197
SNCR	N/A	40	N/A	247	N/A	99	99

* DEQ revised the cost of fuel for natural gas scenarios to reflect the incremental change in cost of using natural gas compared to coals currently in use for boilers based on EIA data. See FutureFuel's revised cost spreadsheets in Appendix G of the 2022 Planning Period II SIP: 7AppG_7_Futurefuel Post-Comment Period Cost Calculation Revisions.xlsx.

** The SO₂ emissions are estimated from fuel usage records based on feed stream analysis that assumes all sulfur entering the boilers through fuel is emitted as SO₂. The average emission rate for coal burned was 5.1 lb/MMBtu (2,092 tons) and the average emission rate for all fuels burned during the baseline was 4.6 lb/MMBtu (2,171 tons). For the option of retrofitting or replacing one boiler for natural gas, DEQ took the baseline rate of 2,092 tpy for 'coal burned' and multiplied that by a 33 percent control efficiency to give 690 tpy SO₂ reduced. DEQ then applied the baseline rate of 2,171 tpy 'for all fuels burned' to determine the SO₂ control efficiency for these options: 690 tpy ÷ 2,171 tpy = 32 percent. Note that the values are rounded. See spreadsheet in Appendix G of the 2022 Planning Period II SIP for details.

Cost of Compliance. DEQ reviewed the cost information of the different identified control strategies provided by FutureFuel for the three coal-fired boilers and compared the \$/ton values to DEQ's \$3,328/ton cost threshold for industrial boilers (see Table 15).¹⁴⁰ DEQ revised its analyses and calculated the annualized capital costs using the information provided by FutureFuel and a 7 percent interest rate. After consultation with EPA and other states, DEQ also calculated cost-effectiveness based on annual average emission rates for the three coal-fired boilers instead of a max monthly basis. DEQ made various revisions to the cost calculations provided by FutureFuel for consistency with the EPA control cost manual and similar technology assessments made

during the first planning period for regional haze.¹⁴¹

- Contingency costs were revised to 20 percent of total capital investment.¹⁴²
- AFUDC and owner's costs were removed consistent with EPA Control Cost Manual overnight estimation methodology.¹⁴³
- All line-item costs estimated using total capital investment were revised to reflect changes in contingency and removal of the disallowed costs.¹⁴⁴
- The cost of fuel for natural gas scenarios was revised to reflect the incremental change in cost of using natural gas compared to coal currently in use for boilers based on EIA data. The costs associated with electrical, maintenance, operating and support labor, permitting and compliance were removed because they do not represent

cost increases above the current cost of using coal.¹⁴⁵

- Costs for each lower sulfur content coal scenario were revised to reflect the incremental cost of the scenario above current costs for coal. The tax associated with the 1.5 percent sulfur coal control scenario was adjusted to remove cost of transportation from the taxable amount and costs were adjusted to reflect the incremental increase in cost above current stocks for each of the lower sulfur coal strategies (2.5, 2, and 1.5 percent).¹⁴⁶
- Lastly, equipment life for each control technology was revised to be consistent with EPA control cost manual and similar technology assessments made during the first planning period for regional haze.¹⁴⁷

¹⁴⁰ See Tables V–13 and V–14 (pages V–31 to V–32) of the 2022 Planning Period II SIP.

¹⁴¹ See FutureFuel's revised cost spreadsheets in Appendix G of the 2022 Planning Period II SIP: 7AppG_7_Futurefuel Post-Comment Period Cost Calculation Revisions.xlsx.

¹⁴² The EPA Control Cost Manual (Chapter 2, page 30) suggests using 20 percent of total capital investment for contingency for study level cost

estimates and 5–15 percent for "mature control technologies."

¹⁴³ EPA Control Cost Manual overnight estimation methodology (Chapter 2, pages 11 and 17).

¹⁴⁴ Using formulas provided by the EPA Control Cost Manual (Chapter 2, page 35): Administrative costs = 2 percent of capital investment; Property tax = 1 percent of capital investment; Insurance = 1 percent of capital investment.

¹⁴⁵ See email from Philip Antici on July 23, 2020, in Appendix G for follow-up consultation about cost and cost-effectiveness.

¹⁴⁶ See email from Philip Antici on 7/23/2020 in Appendix G for follow-up consultation about cost and cost-effectiveness; see also spreadsheet titled 7AppG–5_FutureFuel Baseline Heat Input.xlsx

¹⁴⁷ WFGD: 30 years; SDA: 30 years; DSI: 30 years; SCR: 30 years; and SNCR: 20 years.

TABLE 15—ESTIMATED COSTS OF CONTROLS OF THREE COAL-FIRED BOILERS (ESCALATED TO 2019)¹⁴⁸

Identified technology	Annualized capital investment (\$/year)**	Annual operating & maintenance costs (\$/year)**	Indirect annual costs (\$/year)**	Total annual costs (\$/year)	Cost effectiveness (\$/ton)
Fuel Switch from Coal to Gas:					
Retrofit 1 boiler	532,814	8,267,445	280,024	9,080,283	† 11,881
Retrofit 3 boilers	1,029,535	24,758,948	588,801	26,377,284	† 11,124
Replace 1 boiler	680,133	8,267,445	353,147	9,300,725	† 12,170
Replace 3 boilers	1,082,258	24,758,948	614,970	26,456,177	† 11,156
Scrubber Strategies:					
WFGD with Lime Slurry	5,594,635	3,043,215	4,388,002	13,025,851	6,383
SDA	4,808,346	2,067,599	3,384,422	10,260,367	5,137
DSI	4,737,737	921,467	2,643,393	8,302,597	9,561
Fuel Switch to Low Sulfur Coal:					
2.5% Sulfur	N/A	738,720	N/A	‡ 738,720	3,430
2.0% Sulfur	N/A	1,282,500	N/A	‡ 1,282,500	2,171
1.5% Sulfur	N/A	2,679,500	N/A	‡ 2,679,500	2,774
Post Combustion Control:					
SCR	3,725,537	541,053	1,992,806	6,259,396	31,720
SNCR	* 2,424,063	413,695	6,584	* 2,844,342	* 28,828

* EPA is correcting these cost values to reflect the revised 20-year life instead for SNCR. DEQ mentioned revising the SNCR cost values to reflect a 20-year life but reported the cost/ton values in Table V–14 (page V–32) of the 2022 Planning Period II SIP using a 30-year life instead.

** EPA is including these columns from DEQ's revised cost spreadsheet to give a breakdown of the total costs.

† DEQ reported the cost/ton values for fuel switching from coal to gas for SO₂ only in Table V–14 (page V–31) of the 2022 Planning Period II SIP. EPA is correcting these to reflect combined SO₂ and NO_x values in DEQ's revised cost spreadsheet in Appendix G.

‡ DEQ provided total annual cost calculations for switching to low sulfur coal based on quotes from coal brokers in \$/ton for each coal (\$13.68/ton for 2.5 percent sulfur coal; \$23.75/ton for 2 percent sulfur coal; and \$50.39/ton for 1.5 percent sulfur coal) and assuming a max usage of 50,000 tons each and an 8 percent usage tax. For example, 2 percent sulfur coal total annual cost = \$23.75/ton × 50,000 tons × 1.08 = \$1,282,500/year.

The cost effectiveness values showed that fuel switching to 2 percent sulfur content coal and fuel switching to 1.5 percent sulfur content coal were below DEQ's \$3,328/ton cost threshold for industrial boilers and were found to be cost-effective strategies for FutureFuel. The \$/ton values of all other potential control strategies were above DEQ's cost threshold. DEQ concluded that

switching to 2 percent sulfur content coal was the most cost-effective strategy. However, after discussions with FutureFuel representatives and consideration of public comments received on the proposed SIP, DEQ concluded that a commitment by FutureFuel to switch to 1.5 percent sulfur content coal also offered a cost-effective control with even greater

visibility benefits for Upper Buffalo and Hercules Glades Class I areas.

Time Necessary for Compliance. DEQ reviewed the time estimates provided by FutureFuel that would be needed for the different control options to meet compliance deadlines for the three coal-fired boilers and provided the times of compliance that were reasonable along with the basis for each (*see* Table 16).¹⁴⁹

TABLE 16—TIME NEEDED TO COMPLY FOR CONTROL OPTIONS FOR THE COAL-FIRED BOILERS

Identified technology	Time for compliance (years)	Basis for compliance
Fuel Switch from Coal to Gas:		
Retrofit one boiler	2	- All options require time for engineering design, DEQ review and approval, and logistics for shipping waste off-site. - Retrofitting options also require time for demolition of old feed system, installation of natural gas system, and optimization. - Replacing options also require time for equipment fabrication, delivery, and construction.
Replace one boiler		
Retrofit all three boilers	4	
Replace all three boilers	2.5	
SO ₂ Scrubber Strategies:		
WFGD with Lime Slurry	6	Time for engineering design, DEQ review and approval, vendor and equipment selection, demolition, delivery, construction, training, and startup.
SDA	4	
DSI	3	
Fuel Switch to Low Sulfur Coal:		
2.5% Sulfur	3	Time to complete contracts and exhaust existing coal stockpile.
2.0% Sulfur		
1.5% Sulfur		
NO _x Post Combustion Controls:		

¹⁴⁸ DEQ revised the cost values obtained from FutureFuel's report in response to public comments. *See* DEQ's revised cost spreadsheet in

Appendix G of the 2022 Planning Period II SIP: 7AppG_7_Futurefuel Post-Comment Period Cost Calculation Revisions.xlsx.

¹⁴⁹ *See* Table V–15 (pages V–32 to V–33) of the 2022 Planning Period II SIP.

TABLE 16—TIME NEEDED TO COMPLY FOR CONTROL OPTIONS FOR THE COAL-FIRED BOILERS—Continued

Identified technology	Time for compliance (years)	Basis for compliance
SCR	* 4	Time necessary for engineering design, DEQ review and approval, vendor and equipment selection, demolition or movement of an existing building, purchase and installation of equipment, training, and start-up.
SNCR		

* This was recommended as 5 years in FutureFuel's Response to DEQ in Appendix G of 2022 Planning Period II SIP (pages 43 and 46).

The Energy and Non-Air Quality Environmental Impacts of Compliance. DEQ reported that all of the control strategies except fuel-switching to lower sulfur coal would require waste disposal and would impact the boiler system's ability to burn waste for energy recovery. The impacted waste recovery costs and waste removal costs (including hazardous waste closure costs) were all factored into the cost of compliance for each control strategy. Fuel switching to gas would require solvent wastes that produce steam, including hazardous waste, to be shipped off-site for disposal. All three SO₂ scrubber strategies and both NO_x controls would require renting portable gas boilers for tie-ins during installation and shipping unburned wastes off-site. Additionally, WFGD would require lime slurry removal while SDA and DSI would require spent sorbent disposal.

Remaining Useful Life. DEQ reported that since there is no enforceable limit on the useful life of the three coal-fired boilers, FutureFuel revised the remaining useful life of each control technology evaluated to be consistent with the EPA control cost manual and similar technology assessments made during the first planning period. FutureFuel annualized the total capital investment based on the following recommended equipment life of each control strategy: WFGD: 30 years; SDA: 30 years; DSI: 30 years; SCR: 30 years; and SNCR: 20 years.

Visibility Considerations. DEQ evaluated FutureFuel's contribution to visibility impairment at the different Class I areas within and outside Arkansas alongside its consideration of the four statutory factors. DEQ noted that the AOI analysis indicated that emissions from FutureFuel impacted five Class I areas (Caney Creek, Upper Buffalo, Hercules Glades, Mingo, and Sipsey) which are all on track to make greater progress than the URP glidepath in 2028, even before consideration of potential controls for FutureFuel. FutureFuel did not meet the distance-weighted screening threshold of 0.05 percent for Mammoth Cave or Wichita Mountains. FutureFuel was not

identified as a source reasonably anticipated to contribute to visibility impairment at other Class I areas by modeling from other RPOs.

Proposed Reasonable Progress Control Determination for FutureFuel Chemical Company. DEQ determined in its 2022 Planning Period II SIP that fuel switching from coal with 3 percent sulfur content by weight to a low sulfur coal with 1.5 percent sulfur content (equating to 2.93 lb/MMBtu SO₂) for the three coal-fired boilers (SN:6M01–01) would be reasonable to ensure continued progress toward natural visibility conditions for the second regional haze planning period. DEQ's determination was based on considering the four statutory factors on the control technologies that the State identified to reduce SO₂ and NO_x emissions at the three-boiler system. The State put particular emphasis on the cost of controls because the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and remaining useful life were all factored into the cost of compliance. The State noted that all of the control strategies except fuel switching exceeded DEQ's cost threshold of \$3,328/ton for industrial boilers. DEQ determined that fuel switching offers a cost-effective control that results in improved visibility benefits for Upper Buffalo and Hercules Glades Class I areas; and also allows for greater reasonable progress than projected in Arkansas's RPGs. DEQ entered into an Administrative Order¹⁵⁰ with FutureFuel that would render the use of 1.5 percent sulfur content coal and the resulting SO₂ emission limit enforceable by DEQ, which would become federally enforceable by EPA upon approval of the 2022 Planning Period II SIP. DEQ included a contingency in the Administrative Order that allows for a time-limited temporary variance. In the event that coal that meets the prescribed sulfur concentration and other boiler requirements becomes temporarily

unavailable to FutureFuel, 2 percent sulfur content coal (equating to 3.69 lb/MMBtu SO₂) shall be used to temporarily satisfy the RHR requirements during the period that coal meeting a limit of 2.93 lb/MMBtu SO₂ is unavailable.

EPA is proposing to find that the State's determination of switching to 1.5 percent sulfur content coal (equal to 2.93 lb/MMBtu SO₂) for the three coal-fired boilers (SN:6M01–01) at the FutureFuel plant is reasonable and meets regional haze requirements for the second planning period. After appropriately identifying the three boilers for potential controls, the State adequately took into consideration the four statutory factors on the selected control technologies. The State sufficiently determined that all of the evaluated controls for these three boilers except fuel switching to low sulfur coal were not cost effective because all other \$/ton values exceeded DEQ's \$3,328/ton cost threshold for industrial boilers. The \$3,328/ton threshold was based on \$/ton values incurred from past BART and reasonable progress determinations from the first planning period and represents the 98th percentile of all costs incurred by sources to control emissions for that timeframe.¹⁵¹ The cost effectiveness of this fuel switch option was estimated by DEQ to be \$2,774/ton. Therefore, we are proposing to find that the determination by the State to implement a switch to low sulfur coal with 1.5 percent sulfur content is reasonable and demonstrates reasonable progress for the second planning period.

This control option of fuel switching to coal with 1.5 percent sulfur content has also been made enforceable by the State through an Administrative Order that has been adopted and incorporated in the 2022 Planning Period II SIP revision.¹⁵² We are proposing to approve the State's Administrative Order into the Arkansas SIP which will

¹⁵¹ See spreadsheet in Appendix J of 2022 Planning Period II SIP called 7AppJ_DescStats_PP1 DetermCosts-v9.xlsx.

¹⁵⁰ See Administrative Order (LIS No. 22–085) dated August 3, 2022, and included as part of the 2022 Planning Period II SIP submittal.

¹⁵² See Administrative Order (LIS No. 22–085) dated August 3, 2022, included as part of the 2022 Planning Period II SIP revision.

make the switch to 1.5 percent sulfur content coal and the SO₂ emission limit of 2.93 lb/MMBtu at the three coal-fired boilers (SN:6M01–01) federally enforceable upon approval of the 2022 Planning Period II SIP revision. The Administrative Order contains the compliance demonstration requirements for the 1.5 percent sulfur content coal which will be based on fuel usage records and feed stream analysis. It also includes demonstration requirements for a temporary variance to use 2 percent sulfur content coal during periods that coal meeting a limit of 2.93 lb/MMBtu SO₂ is unavailable. We are proposing to approve all of the specific provisions in the Administrative Order for the three coal-fired boilers (SN:6M01–01) as source-specific SIP requirements as part of the 2022 Planning Period II SIP revision.

d. Domtar Ashdown Mill

Facility Information. DEQ selected the Domtar Ashdown Mill located in Ashdown, Arkansas for further analysis. Four boilers were identified by the State (No. 2 Power Boiler, No. 3 Power Boiler, No. 2 Recovery Boiler, and No. 3 Recovery Boiler) as existing major sources¹⁵³ that emitted a total of 1,550 tpy SO₂ emissions and a total of 2,238 tpy NO_x emissions in 2016. DEQ identified potential SO₂ and NO_x control technologies for each of the four boilers in its January 8, 2020, information request letter to the facility (see Table 17).¹⁵⁴

The No. 2 Power Boiler was installed in 1975 and has a heat input rating of 820 MMBtu/hr with possible steam generation ranging from 100,000–300,000 pph. The No. 2 Power Boiler falls under the “biomass hybrid suspension grate” subcategory for the Boiler MACT at 40 CFR part 63, subpart DDDDD–NESHAP for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters. It is capable of burning a

variety of fuels including coal, petroleum coke, tire derived fuel,¹⁵⁵ natural gas, clean cellulosic biomass (e.g., bark, wood residuals, and other woody biomass materials), and wood chips used to absorb oil spills. It is equipped with a traveling grate,¹⁵⁶ a combustion air system that includes over-fire air, multi-clones for PM₁₀ removal,¹⁵⁷ and two venturi scrubbers in parallel for removal of SO₂ and remaining particulates.¹⁵⁸ The No. 2 Power Boiler was subject to BART for the first planning period and DEQ finalized a BART alternative that included limits for the No. 1 and No. 2 Power Boilers in the 2019 Phase III SIP revision. EPA approved that BART alternative (86 FR 15104) to replace the 2016 FIP BART limits¹⁵⁹ on March 22, 2021 (effective on April 12, 2021), making them federally enforceable. The BART alternative limits are also specified in the permit for the facility.¹⁶⁰ The BART alternative limits for the No. 1 Power Boiler are 5.2 pph PM₁₀, 0.5 pph SO₂, and 191.1 pph NO_x; and for the No. 2 Power Boiler are 81.6 pph PM₁₀, 435 pph SO₂, and 293 pph NO_x. The No. 2 Power Boiler’s actual 2016 emissions were 1,453 tpy SO₂ and 528 tpy NO_x.

The No. 3 Power Boiler was originally a recovery boiler, but was converted to a power boiler in 1990–91 and has a heat input rating of 790 MMBtu/hr with possible steam generation ranging 100,000–300,000 pph. It also falls under the “biomass hybrid suspension grate” subcategory for the Boiler MACT at 40 CFR part 63, subpart DDDDD–NESHAP for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters. It is capable of burning a variety of fuels (except coal) including clean cellulosic biomass (e.g., bark, wood residuals, and other woody biomass materials), wood chips used to absorb oil spills, tire derived fuel, and natural gas. Currently, the No. 3 Power Boiler does not burn any non-

condensable gases (including VOCs). It is equipped with a moving grate (hydragrate), combustion air system including over fire air, and a two chamber ESP for PM control. The No. 3 Power Boiler does not have existing combustion or post-combustion controls for NO_x or SO₂. However, the No. 3 Power Boiler is subject to emission limits of 0.30 lb/MMBtu NO_x and 0.10 lb/MMBtu SO₂ in the Ashdown Mill permit. The No. 3 Power Boiler’s actual 2016 emissions were 44 tpy SO₂ and 189 tpy NO_x.

The No. 2 and 3 Recovery Boilers were both last modified in 1989 and have heat input capacities of 1,160 MMBtu/hr and 1,088 MMBtu/hr, respectively. Each recovery boiler combusts black liquor solids to recover inorganic chemicals and natural gas. Neither recovery boiler has any combustion or post-combustion controls for NO_x or SO₂. The No. 2 Recovery Boiler is equipped with an ESP for PM control and is subject to emission limits of 309.2 pph NO_x and 286 pph SO₂ in the Ashdown Mill permit. The No. 3 Recovery Boiler is subject to emission limits of 270 pph NO_x and 425 pph SO₂ in the permit. The No. 2 and 3 Recovery Boiler’s actual 2016 emissions for SO₂ were 1.2 and 1.1 tpy; and for NO_x were 485 and 589 tpy, respectively.

Technically Feasible Controls. The Domtar Ashdown Mill responded to DEQ’s information collection request in a response letter dated April 6, 2020 (revised on May 7, 2020, and August 14, 2020),¹⁶¹ which provided the facility’s evaluation of five potential SO₂ scrubber options and 12 potential NO_x control options identified by DEQ for the four boilers. Based on the information provided by the Domtar Ashdown Mill, DEQ determined that four of the SO₂ scrubber controls and two of the NO_x controls would be technically feasible for the No. 2 and No. 3 Power Boilers (see Table 17).

¹⁵³ This facility is considered an existing major source under 40 CFR 52.21, PSD regulations because the facility is a Kraft Pulp Mill (one of the 28 listed industrial source categories) and has the potential to emit more than 100 tpy of a regulated NSR pollutant.

¹⁵⁴ See Appendix H–1 of the document: 7AppH_Domtar Ashdown Mill_4-factor-v9.pdf in Appendix H of the 2022 Planning Period II SIP for DEQ’s Information Collection Request to the Domtar Ashdown Mill.

¹⁵⁵ These are tires that are not discarded and are managed under the oversight of established tire collection programs.

¹⁵⁶ A traveling grate is a moving grate used to feed fuel to the boiler for combustion.

¹⁵⁷ A cyclone separator is an air pollution control device shaped like a conical tube that creates an air

vortex as air moves through it causing larger particles (PM₁₀) to settle as the cleaner air passes through. Multi-clones are a sequence of cyclone separators in parallel used to treat a higher volume of air. In this particular case, the cleaner air travels to the venturi scrubbers to remove the smaller remaining particles like PM_{2.5} and SO₂.

¹⁵⁸ The two scrubbers operate in parallel to control SO₂ and particulate emissions by absorption and chemical reaction with scrubbing fluid composed of NaOH, water, and pulp mill extraction stage filtrate.

¹⁵⁹ See FIP final action on September 27, 2016 (81 FR 66332) as corrected on October 4, 2016 (81 FR 68319).

¹⁶⁰ See current DEQ Air Permit No. 0287–AOP–R24 issued June 23, 2022, which renewed Permit No. 0287–AOP–R23 issued April 15, 2020.

¹⁶¹ See Appendices H–2 to H–4 of the document: 7AppH_Domtar Ashdown Mill_4-factor-v9.pdf in Appendix H of the 2022 Planning Period II SIP for the Domtar Ashdown Mill regional haze four-factor analysis response letter to DEQ prepared by Trinity Consultants (dated April 6, 2020, and revised on May 7, 2020, to update emission reductions to be based on actual hours of operation and include average emission rate for baseline period). For follow-up consultations and revisions (see Appendices H–5 to H–6), DEQ requested (July 20, 2020, email) that Domtar review revised control efficiency and cost assumptions made by the State and Domtar provided feedback in a July 24, 2020, email. Domtar submitted another revised four factor response letter to DEQ on August 14, 2020.

TABLE 17—IDENTIFIED CONTROLS AT DOMTAR ASHDOWN MILL AND FEASIBILITY DETERMINATIONS

Units	SO ₂ controls		NO _x controls	
	Identified technology	Technically feasible?	Identified technology	Technically feasible?
No. 2 Power Boiler	Install new add-on spray scrubber downstream of existing venturi scrubbers. Increase reagent usage in existing venturi scrubbers. Upgrade existing venturi scrubbers	yes	SCR	no
No. 3 Power Boiler	WFGD	yes	Regenerative SCR (RSCR) ¹⁶² .	yes *
	SDA.		SNCR	
			SCR	
No. 2 Recovery Boiler	None	N/A	RSCR. SNCR	yes no
No. 3 Recovery Boiler	None	N/A	SCR	no
			RSCR. SNCR.	

*DEQ noted that while SNCR is technically feasible for the No. 2 Power Boiler, the emission reduction capability of this technology is limited due to the wide variability in temperature at the unit.

DEQ concluded that none of the other potential SO₂ and NO_x controls for the four boilers were technically feasible. Specifically, the SO₂ control option to upgrade the existing venturi scrubbers at the No. 2 Power Boiler was not considered further because that option does not provide for any quantifiable decrease in SO₂ emissions. For both power boilers, SCR was determined to be technically infeasible in a previous analysis submitted in the first planning period;¹⁶³ and RSCR was determined to be technically infeasible since there is no comparable-type emission unit successfully implemented, and also because there are space and temperature constraints at the mill. DEQ determined that SCR, RSCR, and SNCR were not technically feasible for the recovery boilers based on information available in EPA's RBLC Clearinghouse, the National Council for Air and Stream Improvement information (NCASI),¹⁶⁴

and Trinity Consultants' library of air pollution control assessments. An RBLC query indicated that SCR and SNCR have not been applied to recovery boilers before.¹⁶⁵ DEQ reported that complex chemical reactions could potentially damage the system, and there could be potential difficulty injecting SNCR reagent due to varying loading. Although DEQ's information collection request did not list any specific SO₂ emission reduction options for consideration for the recovery boilers, Domtar's report considered FGD. DEQ concluded from the report that FGD was not technically feasible for the recovery boilers either because it is capital-intensive, energy-intensive, and its efficacy is unproven when considering the generally low but rapidly fluctuating levels of SO₂ in the kraft recovery furnace flue gases. Because no technically feasible control technologies were identified for the No.

2 and 3 Recovery Boilers, DEQ did not perform additional analysis for those emission units for emission reductions, control effectiveness, or characterizing the four reasonable progress factors.

Control Effectiveness. DEQ determined the anticipated emission reductions and control effectiveness for each technically feasible control technology identified for the No. 2 and No. 3 Power Boilers (see Table 18).¹⁶⁶ Domtar presented monthly average SO₂ and NO_x emission rates from 2017–2019 for the boilers based on CEMS records. Domtar provided baseline emission rates on both an annualized maximum monthly emission rate basis and an annualized average monthly emission rate basis from the baseline period of 2017–2019. The average monthly emission rate basis was used by DEQ to estimate the potential emission reductions.

TABLE 18—CONTROL EFFECTIVENESS AND EXPECTED EMISSION REDUCTIONS FOR POTENTIAL CONTROLS FOR THE NO. 2 AND 3 POWER BOILERS

Unit	Identified technology	Pollutant	Control efficiency (%)	Baseline rate (avg. monthly basis) (tpy)	Controlled rate (tpy)	Emission reductions (tpy)
No. 2 Power Boiler	New scrubber downstream	SO ₂	90	** 858.9	* 279.8	579.1
	Increase reagent in existing venturi scrubbers.		90	** 858.9	* 279.8	579.1
	SNCR	NO _x	† 3 ‡ 27.5	559.9 559.9	543.1 406	16.8 154

¹⁶² RSCR, also known as tail-end SCR, is placed downstream of a PM control device. It incorporates a regenerator which pre-heats the cool gas stream from the PM control device outlet before it enters the RSCR using the RSCR outlet gas that has been heated to within the optimal SCR temperature range. Space constraints often make retrofitting with an RSCR impossible.

¹⁶³ See 7AppH_Domtar Ashdown Mill_4-factor-v9.pdf in Appendix H of the 2022 Planning Period II SIP for the relevant first planning period SIP package information related to the No. 2 Power Boiler SO₂ emission reduction options (at 127–133 and 510–512) included as Appendix A to that report.

¹⁶⁴ NCASI Handbook of Environmental Regulations and Control, Volume 1: Pulp and Paper

Manufacturing, April 2013, Sections 6.8.3.3 and 6.8.3.4.

¹⁶⁵ RBLC searches were completed on February 3, 2020, for Process Types 30.211, 30.219, 30.290, 11.190, 11.290, and 11.900 and for process names that include the word "recovery."

¹⁶⁶ See Tables V–16 and V–17 (pages V–40 to V–41) of the 2022 Planning Period II SIP.

TABLE 18—CONTROL EFFECTIVENESS AND EXPECTED EMISSION REDUCTIONS FOR POTENTIAL CONTROLS FOR THE NO. 2 AND 3 POWER BOILERS—Continued

Unit	Identified technology	Pollutant	Control efficiency (%)	Baseline rate (avg. monthly basis) (tpy)	Controlled rate (tpy)	Emission reductions (tpy)
No. 3 Power Boiler	WFGD	SO ₂	90	46.9	4.7	42.2
	SDA		90	46.9	4.7	42.2
	SNCR	NO _x	3	290.1	281.4	8.7
			‡ 27.5	290.1	210.3	79.8

* Based on calculations presented in the February 2015 Technical Support Document for EPA's Proposed Action on the Arkansas Regional Haze FIP (2015 FIP TSD), (page 120). The controlled emission rate calculation for the two scrubber options for the No. 2 Power Boiler are the same as described by EPA in the 2015 FIP TSD: $858.9 \text{ tpy} \div (1 - 0.693) \times (1 - 0.90) = 279.8 \text{ tpy}$.

** DEQ reported the baseline emissions of 858.9 tpy SO₂ as already representing 69.3 percent control from uncontrolled SO₂ emissions of approximately 2,800 tpy SO₂.¹⁶⁷ Therefore, 90 percent overall control represents 20.7 percent more emission reduction (579.1 tpy) than is currently being achieved for a total reduction of 2,520 tpy SO₂ from the uncontrolled rate. The 579.1 tpy SO₂ reduced represents an effective incremental control efficiency of 67 percent from the current 858.9 SO₂ baseline.

‡ DEQ performed a sensitivity case study using a 27.5 percent control efficiency assumption which was used in the EPA 2016 FIP but was determined to be infeasible. Using this efficiency could result in stack emissions of 1,700 tpy or greater of unreacted urea due to variability in exit gas temperature that limits when an SNCR system can function.

† This was based on assumptions from the 2015 FIP TSD (page 120) that recommended operating the boiler at 40 percent efficiency for 7 percent of the total boiler operating time. EPA concluded that because of the wide variability in steam demand and wide range in furnace temperature observed at Power Boiler No. 2, the NO_x control efficiency of SNCR at the boiler would not reach optimal control levels on a long-term basis. Therefore, there was uncertainty as to the level of control efficiency that SNCR would be able to achieve on a long-term basis for Power Boiler No. 2.

Cost of Compliance. DEQ reviewed the cost information of the different identified control strategies provided by Domtar for the No. 2 and 3 Power

Boilers and compared the \$/ton values to DEQ's \$3,328/ton cost threshold for industrial boilers (see Table 19).¹⁶⁸ DEQ revised its analyses and calculated the

annualized capital costs using the information provided by Domtar and a 7 percent interest rate.

TABLE 19—ESTIMATED COSTS OF CONTROL OPTIONS FOR NO. 2 AND 3 POWER BOILERS

[Escalated to 2019]

Unit	Control option	Annualized capital costs (\$/year)	Annual direct and indirect/operations and maintenance costs (\$/year)	Total annual costs (\$/year)	Cost effectiveness (\$/ton) *
No. 2 Power Boiler	New scrubber downstream	609,722	9,759,619	10,369,341	17,914
	Increased reagent at existing scrubbers	16,996	2,066,829	2,083,824	3,600
	SNCR—3% option	99,390	294,560	393,950	25,129
	SNCR—27.5% option	793,042	263,545	1,056,587	6,862
No. 3 Power Boiler	WFGD—low	2,452,158	973,726	3,425,883	81,182
	WFGD—high	14,712,946	2,190,883	16,903,828	400,565
	SDA—low	2,942,589	1,217,157	4,159,746	98,572
	SDA—high	14,712,946	36,514,710	51,227,655	1,213,925
	SNCR—3% option	99,390	294,560	393,950	48,499
	SNCR—27.5% option	793,042	263,545	1,056,587	13,244

* DEQ revised the cost-effectiveness values obtained from Domtar's report post comment period utilizing a 7 percent interest rate (changed back from 3.25 percent). See Domtar cost spreadsheet in Appendix H of the 2022 Planning Period II SIP: 7AppH_7_Domtar Ashdown Mill_Post Comment Period Revised Cost Calculations.xlsx.

DEQ reported that all of the \$/ton values for the control strategies exceeded DEQ's \$3,328/ton cost threshold for industrial boilers.

Time Necessary for Compliance. DEQ presented the time estimates provided by Domtar that would be needed for the different control options to meet

compliance deadlines for the No. 2 and 3 Power Boilers and the basis for each (see Table 20).¹⁶⁹

¹⁶⁷ See spreadsheet 7AppH_7_Domtar Ashdown Mill_Post Comment Period Revised Cost Calculations.xlsx in Appendix H of 2022 Planning Period II SIP.

¹⁶⁸ See Table V–18 (page V–42) of 2022 Planning Period II SIP.

¹⁶⁹ See Table V–19 (pages V–42 to V–43) of the 2022 Planning Period II SIP.

TABLE 20—TIME NEEDED TO COMPLY FOR CONTROL OPTIONS FOR NO. 2 AND 3 POWER BOILERS

Unit	Control technology	Time for compliance (years)	Basis for compliance
No. 2 Power Boiler	New scrubber downstream	3	• Both options require an 18-month outage for No. 2 Power Boiler.
	Increased reagent at existing venturi scrubbers.	2	• The new scrubber option also requires 34 weeks for shipment and construction. • The increased reagent option also requires time to procure and install two new pumps.
No. 3 Power Boiler	SNCR	5	Precedent in Utah and North Dakota FIPs. ¹⁷⁰
	WFGD	5	Determinations for numerous SIPs for the first planning period.
	SDA		
	SNCR	5	Precedent in Utah and North Dakota FIPs.

The Energy and Non-Air Quality Environmental Impacts of Compliance. DEQ reported that installation of a new scrubber downstream of the existing scrubber would increase water usage and wastewater generation and also require additional power requirements. These were all factored into the cost of compliance. Energy and non-air quality impacts from increased reagent usage at the existing scrubbers are expected to be minimal. For WFGD or SDA, Entergy noted that the inherent scrubbing option represents no new energy or non-air quality environmental impacts.¹⁷¹ For SNCR, Entergy noted that storage and handling of NH₃/urea is required.¹⁷² DEQ noted that accidental release of unreacted urea could be emitted through the stack if operated outside of the optimal temperature window that is effective for only 7 percent of the boiler operating time.

Remaining Useful Life. DEQ reported that Domtar has no plans to cease operations of the No. 2 and 3 Power Boilers. The useful life values of the different control equipment (WFGD: 30 years; SDA: 30 years; and SNCR: 20 years) were determined from EPA's Air Pollution Control Costs Manual. The capital costs were annualized over amortization periods based on these respective useful life values and then added to the annual operating costs to determine the total annual costs.

Visibility Considerations. DEQ also evaluated Domtar Ashdown Mill's contribution to visibility impairment at the different Class I areas within and outside Arkansas alongside its consideration of the four statutory factors. DEQ noted that the AOI analysis

indicated that emissions from Domtar are anticipated to only contribute to Caney Creek which is on track to make greater progress than the URP glidepath in 2028, even before consideration of potential controls for Domtar. Three other Class I areas (Hercules Glades, Upper Buffalo, and Wichita Mountains) were impacted by less than 1 percent each and are not anticipated to have significant contributions to visibility impairment.

Proposed Reasonable Progress Control Determination for Domtar Ashdown Mill. DEQ determined in its 2022 Planning Period II SIP that no additional controls are necessary for the Domtar Ashdown Mill to make reasonable progress during the second planning period. DEQ's determination was based on considering the four reasonable progress factors on the control technologies that the State identified to reduce SO₂ and NO_x emissions at the No. 2 and 3 Power Boilers; and the No. 2 and 3 Recovery Boilers. The State put particular emphasis on the cost of controls and noted that all of the control strategies evaluated for the Domtar Ashdown Mill exceed DEQ's cost threshold of \$3,328/ton for industrial boilers. While the State emphasized cost, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and remaining useful life were all factored into the cost of compliance factor. In addition to DEQ's four-factor evaluation, the State concluded that the impacts from Domtar Ashdown Mill are smaller relative to other point sources.

EPA is proposing to find that the State's determination of no additional controls for the two power boilers at the Domtar Ashdown Mill is reasonable and meets regional haze requirements for the second planning period. Based on DEQ's consideration of the four statutory factors in its assessment of potential additional controls for reasonable progress and because the

projected 2028 visibility conditions for the affected Class I areas are below the 2028 URP glidepath values, Arkansas demonstrated reasonable progress toward the national visibility goal for the second planning period. After appropriately identifying the two power boilers (the recovery boilers were eliminated from consideration) for potential controls, the State adequately took into consideration the four statutory factors on the selected control technologies and determined that none of the evaluated controls were cost effective because each \$/ton value evaluated exceeded DEQ's \$3,328/ton cost threshold for industrial boilers. In addition to the four factor analyses of additional controls, the projected 2028 visibility improvement at the Class I areas (Caney Creek, Hercules Glades, Upper Buffalo, and Wichita Mountains)¹⁷³ impacted by the Domtar Ashdown Mill are all on track to make greater progress and be below their respective 2028 URP glidepath values with existing controls. Therefore, we are proposing to find that Arkansas demonstrated that it is making reasonable progress for the second planning period without requiring any additional controls for the Domtar Ashdown Mill.

e. SWEPCO Flint Creek Power Plant

Facility Information. DEQ selected the Flint Creek Power Plant located in Gentry, Arkansas for further analysis. One coal-fired boiler (SN-01) was identified by the State as a major source that emitted a total of 3,056 tpy NO_x emissions and a total of 1,637 tpy SO₂ in 2016. DEQ identified potential SO₂

¹⁷⁰ 77 FR 20894, 20944 (April 6, 2012) and 81 FR 43894, 43907 (July 5, 2016), respectively.

¹⁷¹ See Appendices H-2 in Appendix H of 7AppH_Domtar Ashdown Mill_4-factor-v9.pdf of the 2022 Planning Period II SIP (page 4-3).

¹⁷² See Appendices H-2 in Appendix H of 7AppH_Domtar Ashdown Mill_4-factor-v9.pdf of the 2022 Planning Period II SIP (page 3-4).

¹⁷³ See the 2022 Planning Period II SIP (page V-43). The Domtar Ashdown Mill visibility surrogate value was 5 percent of the total source impacts for Caney Creek's AOI, while it impacted the AOI's for Hercules Glades, Upper Buffalo, and Wichita Mountains by less than 1 percent each. See also 2022 Planning Period II SIP Appendix C spreadsheet: 7AppC_Arkansas Source Screening Method Spreadsheet-v8.xlsx.

and NO_x control technologies for this boiler in its January 8, 2020, information request letter to the Flint Creek Power Plant.¹⁷⁴

The SN-01 Boiler is a dry bottom wall-fired boiler that utilizes pulverized coal combustion technology to produce steam that generates a nominal 558 megawatts (MW) of electricity to operate a turbine generator. The boiler primarily burns low sulfur coal, but can also combust fuel oil and tire-derived fuels. The SWEPCO boiler is equipped with low-NO_x burners with separated overfire air to control NO_x emissions (completed May 8, 2018) in order to assist the facility in meeting its obligations under CSAPR for O₃ season NO_x allocations; dry FGD with a pulse jet fabric filter and activated carbon injection to control SO₂ emissions; and electrostatic precipitators to control PM emissions. The SWEPCO boiler is subject to BART and an SO₂ emission limit of 0.06 lb/MMBtu on a thirty-day rolling average. This SO₂ BART limit was established in EPA's 2016 FIP and was replaced with the State's own identical limit after final approval of the Phase II SIP revision from the first implementation period.¹⁷⁵ Flint Creek is subject to a NO_x emission limit of 4,426.8 pph in its permit.¹⁷⁶ However, the low-NO_x burners with over-fire air

are guaranteed to achieve an emission rate of 0.23 lb/MMBtu or less. DEQ noted that because the low NO_x burners are an inherent part of equipment design, they cannot be shut down temporarily, as is the case with a post-combustion control.

Technically Feasible Controls. SWEPCO responded to DEQ's information collection request in a response letter dated March 25, 2020 (with follow up consultations),¹⁷⁷ which provided the facility's evaluation of two potential NO_x controls (SCR and SNCR) identified by DEQ. Based on the information provided by SWEPCO, DEQ determined that both NO_x control measures would be technically feasible for the SN-01 Boiler to make reasonable progress for the second implementation period.

DEQ determined that no further analysis of potential SO₂ controls was necessary for the second planning period based on existing SO₂ controls and limits contained in the Arkansas SIP.¹⁷⁸ The SN-01 Boiler already operates under a more stringent SO₂ BART limit of 0.06 lb/MMBtu than the 0.2 lb/MMBtu limit specified in the 2012 Mercury Air Toxics Standards (MATS) rule.¹⁷⁹ DEQ concluded that it is unlikely that an analysis of control measures for a source already equipped

with a scrubber and meeting the MATS limit would conclude that an even more stringent control of SO₂ is necessary to make reasonable progress. Therefore, DEQ's information request focused solely on potential NO_x emission control strategies.

Control Effectiveness. DEQ determined the anticipated emission reductions and control effectiveness for each technically feasible control identified for the SN-01 Boiler (see Table 21).¹⁸⁰ Based on monthly data in EPA's Air Markets Program Data (AMPD) from the period between June 1, 2018, to December 31, 2019, for the SN-01 Boiler, SWEPCO provided baseline NO_x emission rates on both an annualized maximum monthly emission rate basis and an annualized average monthly emission rate basis. The average monthly baseline emission rate of 0.186 lb/MMBtu (or 2,868 tpy) was used by DEQ in the 2022 Planning Period II SIP to estimate potential emission reductions. This baseline rate represents the rate achieved in practice after installation of low NO_x burners with overfire air on May 8, 2018. Additionally, for the purpose of calculating the control cost estimates, the maximum monthly total emissions (0.2 lb/MMBtu) value during the baseline period was used.

TABLE 21—CONTROL EFFECTIVENESS AND EXPECTED NO_x EMISSION REDUCTIONS FOR POTENTIAL CONTROLS FOR THE SN-01 BOILER¹⁸¹

Identified technology	Control efficiency (%) [*]	NO _x baseline rate (Avg Monthly Basis)		NO _x controlled rate (lb/MMBtu) ^{**}	NO _x emission reductions (tpy)
		(tpy)	(lb/MMBtu) ‡		
SCR	70.4	2,868	0.186	0.055	2,020
SNCR	3.22	2,868	0.186	0.18	92.5

^{*} See spreadsheet 7AppI_5_Flint Creek Post-Comment Period Cost Calculation Revisions_SCR.xlsx. The control efficiency is calculated as follows: $100 \times (\text{baseline rate} - \text{controlled rate}) \div \text{baseline rate}$.

^{**} DEQ relied on the EPA NO_x BART evaluations from the 2016 FIP which used controlled emission rates of 0.055 lb/MMBtu for SCR and 0.2 lb/MMBtu for SNCR. DEQ adjusted the SNCR control rate in its SIP to be 0.18 lb/MMBtu which is at the lower end of the range provided by the vendor from the FIP (0.18 to 0.23 lb/MMBtu) but is more in line with current practice of the existing low NO_x burners with overfire air after their installation in 2018.

‡ The FIP used a maximum monthly baseline of 0.2 lb/MMBtu which was before low NO_x burners with overfire air were installed which is represented now with the average monthly baseline of 0.186 lb/MMBtu.

¹⁷⁴ See Appendix I-1 of the document: 7AppI_SWEPCO Flint Creek-v9.pdf in Appendix I of the 2022 Planning Period II SIP for DEQ's Information Collection Request to the SWEPCO Flint Creek Power Plant.

¹⁷⁵ See 84 FR 51033 (September 27, 2019).

¹⁷⁶ See DEQ air permit No. 0276-AOP-R10 issued June 28, 2022.

¹⁷⁷ See Appendix I-2 of the document: 7AppI_SWEPCO Flint Creek-v9.pdf in the 2022 Planning Period II SIP for the SWEPCO Flint Creek Power Plant regional haze four-factor analysis response letter to DEQ prepared by American Electric Power (AEP). For follow up consultations (see Appendices I-3 to I-5), DEQ requested AEP (July 20, 2020,

email) to review the cost and cost-effectiveness calculations and the facility provided feedback in a July 23, 2020, email.

¹⁷⁸ See 84 FR 51033 (September 27, 2019). See also DEQ's Title V air permit (No. 027-AOP-R10) which also incorporates this SO₂ limit into its Specific Conditions for the SN-01 Boiler and became effective August 7, 2018.

¹⁷⁹ See 2019 Guidance at 23. For the purpose of SO₂ control measures, if an EGU that has add-on FGD and already meets the applicable alternative SO₂ emission limit of the 2012 MATS rule for power plants, it may be reasonable for a state not to select that particular source for further analysis. The two limits in the rule (0.2 lb/MMBtu for coal-fired EGUs or 0.3 lb/MMBtu for EGUs fired with oil-

derived solid fuel) are low enough that it is unlikely that an analysis of control measures for a source already equipped with a scrubber and meeting one of these limits would conclude that even more stringent control of SO₂ is necessary to make reasonable progress.

¹⁸⁰ See 2022 Planning Period II SIP (pages V-45 to V-46).

¹⁸¹ See Cost Calculation spreadsheets for SCR and SNCR for control efficiency calculations in Appendix I of the 2022 Planning Period II SIP: 7AppI_5_Flint Creek Post-Comment Period Cost Calculation Revisions_SCR.xlsx and 7AppI_5_Flint Creek Post-Comment Period Cost Calculation Revisions_SNCR.xlsx.

Cost of Compliance. DEQ reviewed the cost information of SCR and SNCR provided by SWEPCO for the SN-01 Boiler and compared the \$/ton values to

DEQ's \$5,086/ton cost threshold for EGU boilers (*see* Table 22).¹⁸² DEQ revised its analyses and calculated the annualized capital costs using the

information provided by SWEPCO and a 7 percent interest rate.

TABLE 22—ESTIMATED COSTS OF CONTROL OPTIONS FOR SN-01 BOILER

[Escalated to 2019]

Control option	Direct annualized costs (\$/year)	Indirect annualized costs (\$/year)	Total annual costs (\$/year)	Cost effectiveness (\$/ton)*
SCR	2,080,085	13,756,224	15,836,308	8,641
SNCR**	480,382	998,556	1,478,938	17,620

* See Flint Creek's revised cost spreadsheets in Appendix I of the 2022 Planning Period II SIP that reflect changes to the cost effectiveness: 7Appl_5_Flint Creek Post-Comment Period Cost Calculation Revisions_SCR.xlsx and 7Appl_5_Flint Creek Post-Comment Period Cost Calculation Revisions_SNCR.xlsx.

** DEQ revised the cost calculations for SNCR obtained from SWEPCO's report to reflect the maximum NO_x inlet rate of 0.2 lb/MMBtu and a 10 percent maximum control efficiency. The previous analysis was based on a much higher NO_x inlet rate (0.33 lb/MMBtu) than the emission baseline used to calculate emission reductions.

The cost effectiveness values in \$/ton for both NO_x controls exceeded DEQ's \$5,086/ton cost threshold for EGU boilers.

Time Necessary for Compliance. DEQ reported that 3 years would be needed to implement SCR or SNCR to meet compliance deadlines for the SN-01 Boiler following engineering design, procurement, construction, testing, and SIP approval by EPA.

The Energy and Non-Air Quality Environmental Impacts of Compliance. DEQ reported that SCR and SNCR systems would both require storage and transport of NH₃. Accidental release of unreacted NH₃ could react with SO₄²⁻ and NO₃⁻ in the atmosphere to form ammonium sulfate and ammonium nitrate which are the predominant sources of regional haze. SCR and SNCR would both require electricity from ancillary equipment that would increase electrical demand to operate the systems. The anticipated costs on energy and non-air quality impacts for each system were factored into the cost of compliance.

Remaining Useful Life. DEQ reported that there are no effective limitations on remaining useful life of the SN-01 Boiler; therefore, the default useful life values for SCR and SNCR from the EPA's Air Pollution Control Cost Manual were assumed to be 30 years and 20 years, respectively.

Visibility Considerations. DEQ considered SWEPCO Flint Creek's contribution to visibility impairment at the different Class I areas within and outside Arkansas. DEQ noted that the AOI analysis indicated that emissions from the SWEPCO Flint Creek power

plant impacted three Class I areas (Caney Creek, Hercules Glades, and Upper Buffalo). Hercules Glades and Upper Buffalo are both on track to make greater progress than the URP glidepath in 2028, even before consideration of potential controls for Flint Creek. Caney Creek was impacted by less than 1 percent and is not anticipated to have significant contributions to visibility impairment.

Proposed Reasonable Progress Control Determination for SWEPCO Flint Creek Power Plant. DEQ determined in its 2022 Planning Period II SIP that no additional controls are necessary for the SN-01 Boiler at the SWEPCO Flint Creek Power Plant to make reasonable progress during the second planning period. DEQ's determination was based on weighing the four reasonable progress factors on the control technologies that the State identified to reduce NO_x emissions at the SN-01 Boiler. The State put particular emphasis on the cost of controls and noted that all of the control strategies evaluated for the SWEPCO Flint Creek Power Plant exceed DEQ's cost threshold of \$5,086/ton for EGU boilers. While the State emphasized cost, the time necessary for compliance, the energy and non-air quality environmental impacts, and remaining useful life were all factored into the cost of compliance. In addition to DEQ's four-factor evaluation, DEQ pointed out that Hercules Glades and Upper Buffalo Class I areas, of which Flint Creek is within the SO₄²⁻ or NO₃⁻ specific areas of influence, are both on track to make greater progress than the URP glidepath in 2028 with existing controls. DEQ also

stressed that Flint Creek recently installed SO₂ and NO_x controls and those emissions are well controlled.

EPA is proposing to find that the State's determination of no additional controls for the SN-01 Boiler at the SWEPCO Flint Creek Power Plant is reasonable and meets regional haze requirements for the second planning period. Based on DEQ's consideration of the four statutory factors in its assessment of potential additional controls for reasonable progress and because the projected 2028 visibility conditions for the affected Class I areas are below the 2028 URP glidepath values, Arkansas demonstrated reasonable progress toward the national visibility goal for the second planning period. After appropriately identifying the SN-01 Boiler for potential controls, the State adequately took into consideration the four statutory factors on the selected control technologies and determined that none of the evaluated controls were cost effective because each \$/ton value exceeded DEQ's \$5,086/ton cost threshold for EGU boilers. In addition to the four factor analyses of additional controls, the projected 2028 visibility improvement at the Class I areas (Hercules Glades, Upper Buffalo, and Caney Creek)¹⁸³ impacted by Flint Creek are all on track to make greater progress and be below their respective 2028 URP glidepath values with existing controls. EPA agrees with the State that the SN-01 Boiler is adequately controlled with recent existing measures. In particular, the SN-01 Boiler is subject to BART and an SO₂ emission limit of 0.06 lb/MMBtu on a thirty-day rolling average from the

¹⁸² See Table V-20 (page V-46) from 2022 Planning Period II SIP.

¹⁸³ See the 2022 Planning Period II SIP (page V-47). The SWEPCO Flint Creek Power Plant visibility

surrogate value was 1 percent of the total source impacts for both Hercules Glades and Upper Buffalo for their respective AOIs, while it was less than 1 percent for Caney Creek's AOI. See also 2022

Planning Period II SIP Appendix C spreadsheet: 7AppC_Arkansas Source Screening Method Spreadsheet-v8.xlsx.

first implementation period. Also, the SN-01 Boiler is equipped with low-NO_x burners with separated overfire air for NO_x control that completed installation on May 8, 2018. Therefore, we are proposing to find that Arkansas demonstrated that it is making reasonable progress for the second planning period without requiring any additional controls for the SWEPCO Flint Creek Power Plant.

f. Conclusion

EPA is proposing to find that DEQ has met the requirements under 40 CFR 51.308(f)(2)(i) in its 2022 Planning Period II SIP submittal by evaluating the five sources brought forward for additional analyses (Entergy White Bluff Power Plant, Entergy Independence Power Plant, FutureFuel Chemical Company, Domtar Ashdown Mill, and SWEPCO Flint Creek Power Plant) and determining the emission reduction measures that are necessary for each source to make reasonable progress for the second planning period after considering the four statutory factors.

4. Consultation Requirement With States

The consultation requirement of section 51.308(f)(2)(ii) provides that the State must consult with other states that are reasonably anticipated to contribute to visibility impairment in a Class I area in order to develop coordinated emission management strategies containing the emission reduction measures that are necessary to make reasonable progress. Section 51.308(f)(2)(ii)(A) requires that the State must demonstrate that it has included in its SIP all measures agreed to during state-to-state consultations or regional planning processes, or measures that will provide equivalent visibility improvement. The State must also consider the emission reduction measures identified by other states for their sources as being necessary to make reasonable progress. 40 CFR 51.308(f)(2)(ii)(B). Lastly, the State must describe the actions taken to resolve any disagreements if states cannot agree on the measures necessary to make reasonable progress. 40 CFR 51.308(f)(2)(ii)(C).

DEQ noted that it consulted regularly with neighboring states through CenSARA facilitated meetings and also had direct consultations with individual states. The CenSARA meetings consisted of regional haze conference calls where DEQ shared and received feedback regarding reasonable progress, monitoring efforts, and other strategies relevant to regional haze planning and program implementation. DEQ

consulted with individual states via conference, video calls, and emails/formal letters.¹⁸⁴ On February 4, 2020, DEQ sent interstate consultation “ask letters” to Illinois, Indiana, Kentucky, Louisiana, Missouri, Oklahoma, and Texas requesting that these neighboring states consider whether performing a four-factor analysis was appropriate for sources that DEQ identified as impacting Caney Creek and Upper Buffalo (see Table 6) in accordance with 40 CFR 51.308(f)(2)(i); and, if so, whether any additional control measures for NO_x and SO₂ were necessary to make reasonable progress towards natural visibility during the second planning period. DEQ requested that each state share with DEQ the results of any analyses, including technical supporting documentation, and provide an opportunity for consultation on each state’s long-term strategy early enough in the process for DEQ to provide feedback. On March 1, 2021, DEQ submitted additional consultation “ask letters” to these seven states and also to North Carolina to notify them of the availability of its pre-proposal draft SIP and provide them with the opportunity to discuss and provide feedback. Availability of the pre-proposal draft SIP was also announced during CenSARA planning calls that occurred on March 2, 2021, and April 12, 2021; which included state agency partners from Alabama, Georgia, Iowa, Kansas, and Nebraska. Texas was the only state that commented on the pre-proposal draft SIP but none of Texas’ comments disagreed with any of the Arkansas measures listed as needed for reasonable progress for the second planning period. DEQ noted that Arkansas had follow up conversations with Texas in CenSARA monthly meetings to fully meet the consultation requirements between the two states.

DEQ considered impacts to other state’s Class I areas from Arkansas sources and quantified the relative contribution of those sources using the 2016 AOI analysis. The AOI analysis indicated that Arkansas sources had a relatively small impact on Class I areas in other states with the exception of Hercules Glades in Missouri. Arkansas’s relative impacts were identified as 2 percent for Sipsey in Alabama; 4 percent for Mingo in Missouri; and less than 1 percent for Mammoth Cave and Wichita Mountains. No state identified any specific controls for DEQ to

consider during consultation after reviewing the AOI analysis. Therefore, DEQ limited its consideration of potential controls to the five facilities in Arkansas brought forward after applying the 70 percent screening threshold previously discussed. In addition to the CenSARA states, DEQ received a request from the VISTAS on behalf of North Carolina to perform a four-factor analysis on Entergy Independence because their modeling showed impacts at Shining Rock in North Carolina. However, VISTAS did not request specific controls for DEQ to consider.

EPA is proposing to find that DEQ has satisfied the consultation requirement of 40 CFR 51.308(f)(2)(ii) in its 2022 Planning Period II SIP. No states disagreed with the Arkansas proposed measures necessary for reasonable progress for the second implementation period and no other measures were identified or agreed upon by the other states for DEQ to include in its SIP.

5. Documentation Requirement for Emission Reduction Measures

The documentation requirement of 40 CFR 51.308(f)(2)(iii) provides that states must meet their obligations to document the technical basis on which they are relying to determine the emission reductions measures that are necessary to make reasonable progress. The State may meet this requirement by relying on technical analyses developed by an RPO, as long as the process has been approved by all State participants. Section 51.308(f)(2)(iii) also requires that the emission information considered to determine the measures that are necessary to make reasonable progress include information on emissions for the most recent year for which the State has submitted triennial emissions data to the EPA (or a more recent year), with a 12-month exemption period for newly submitted data.

All documentation that the State is relying on to determine the emission reduction measures necessary to make reasonable progress were included in the SIP submission in the various appendices. Arkansas included an AOI analysis performed by Ramboll for the CenSARA states in its 2022 Planning Period II SIP to identify possible regional source locations impacting visibility. Ramboll produced an AOI report that summarized the approach of its analysis and an AOI spreadsheet that DEQ used to evaluate the results for its specific Class I areas. DEQ assessed 2019 IMPROVE monitoring extinction data, 2017 NEI emission inventory trends for precursor pollutants, and EPA-projected 2028 source

¹⁸⁴ See Appendix D-2 Communication Log of the 2022 Planning Period II SIP that outlines DEQ communications on specific regional haze topics and the outcome of any associated conversations.

apportionment data.¹⁸⁵ DEQ evaluated four-factor analysis reports from the five sources brought forward for potential controls which included cost and emission reduction calculations (later supplemented by DEQ).¹⁸⁶ DEQ included Administrative Orders for SWEPCO FutureFuel¹⁸⁷ and Entergy Independence¹⁸⁸ as part of the 2022 Planning Period II SIP submittal to make emission reduction measures federally enforceable upon final approval of the SIP. However, based on the State's July 29, 2025 letter, the State clarified that after further consideration, the 2022 SIP submittal fulfills RHR and CAA requirements without the inclusion of the Administrative Order for Independence. Therefore, EPA's approval will not incorporate this Administrative Order by reference.

The EPA is proposing to find that DEQ has satisfied the requirements of 40 CFR 51.308(f)(2)(iii) in its 2022 Planning Period II SIP. Based on the documentation provided by the State, DEQ has demonstrated the technical bases and emission information on which it is relying to determine the emission reductions measures that are necessary to make reasonable progress for its long-term strategy for the second planning period.

6. Five Additional Factors for Long-Term Strategy

In developing its long-term strategy, a state must also consider the five additional factors in section 51.308(f)(2)(iv). As mentioned, the five additional factors for consideration in section 51.308(f)(2)(iv) are distinct from the four factors listed in CAA section 169A(g)(1) and 40 CFR 51.308(f)(2)(i) that states must consider and apply to sources in determining reasonable progress.

40 CFR 51.308(f)(2)(iv)(A) requires states to consider emission reductions

due to ongoing air pollution control programs, including measures to address reasonably attributable visibility impairment. DEQ explained in the 2022 Planning Period II SIP that ongoing programs for the second planning period include NSPS, NESHAPs, national on-road and nonroad emissions standards, reliance upon CSAPR, and other national rules that limit the emissions of pollutants that may contribute to visibility impairment.¹⁸⁹ The emission reductions achieved by these programs were factored into the 2028 emission projections used to develop the RPGs for Arkansas' Class I areas.¹⁹⁰ DEQ noted that the federal rules mentioned in the 2008 SIP submittal, as updated in 2018 Phase II SIP for the first planning period, reflect the list of ongoing state and federal air pollution control programs that have been implemented since the 2008 SIP submittal. Those rules remain in effect for the second planning period, so the emission reductions from those first planning period controls and ongoing state and federal programs are reflected in the emissions inventory information for Arkansas and the surrounding states.¹⁹¹

DEQ also performed an analysis of energy efficiency programs implemented by electric utilities. As an ongoing measure, DEQ is implementing Arkansas' energy efficiency resource standard as a part of its long-term strategy for the second planning period.¹⁹² DEQ's analysis projected that the implementation of the energy efficiency program by electric utilities will result in increased emission reductions of visibility impairing pollutants each year from 2021–2028 in Arkansas and throughout the Southeast and Lower Midwest. Based on analysis using estimated emissions reductions from EPA's "AVoided Emissions and geneRation Tool" (AVERT), DEQ projected that Arkansas' energy efficiency program will reduce annual emissions by 1,451 tons SO₂, 1,478 tons NO_x, and 150 tons PM_{2.5} across the lower Midwest and Southeast combined by 2028.¹⁹³

40 CFR 51.308(f)(2)(iv)(B) requires states to consider measures to mitigate the impacts of construction activities. DEQ noted that the Arkansas Water and Pollution Control Act¹⁹⁴ limits DEQ's authority with respect to certain construction activities, such as land clearing operations, land grading, and road construction. Therefore, as noted in Arkansas's 2008 Regional Haze SIP,¹⁹⁵ current and future federal programs result in some mitigation through incentive offerings for voluntary emission reduction measures and through tier standards for nonroad equipment. DEQ also provides funding opportunities for voluntary emission reduction projects for nonroad equipment used for construction through its "Go RED! program."

40 CFR 51.308(f)(2)(iv)(C) requires states to consider source retirement and replacement schedules. DEQ identifies in the 2022 Planning Period II SIP that Entergy Lake Catherine and Entergy White Bluff are two stationary sources in Arkansas that are anticipated to retire during the second planning period. Entergy Lake Catherine is listed in EPA's Emissions & Generation Resource Integrated Database (eGRID) as having a generator planned retirement in 2025.¹⁹⁶ The Consent Decree¹⁹⁷ also requires Entergy to cease operations of existing units at Lake Catherine by December 31, 2027, and requires Entergy White Bluff to cease coal-fired operations of all units by December 31, 2028. DEQ's AOI source screening analysis identified Dolet Hills (in Louisiana) and Indiana Michigan Power (in Indiana), but DEQ states that they are anticipated to retire during the second planning period. Cleco Power LLC notified LDEQ of the projected retirement of Dolet Hills Power Station.¹⁹⁸ In addition, DEQ noted publicly announced closures of sources in Texas. DEQ noted that it will manage new and modified sources in conformance with existing SIP

¹⁸⁵ See EPA's 2019 TSD "Availability of Modeling Data and Associated Technical Support Document for the EPA's Updated 2028 Visibility Air Quality Modeling." The goal of this modeling effort was to project 2028 visibility conditions and source sector contribution information, including international anthropogenic visibility impacts, for each mandatory Class I federal area. EPA conducted this visibility modeling to inform the regional haze SIP development process for the second implementation period under EPA's Regional Haze Rule.

¹⁸⁶ See Appendices F through I of the 2022 Planning Period II SIP for the four-factor analysis reports and all associated documents from Independence, FutureFuel, Domtar, and Flint Creek.

¹⁸⁷ See Administrative Order (LIS No. 22–085) dated August 3, 2022, and included as part of the 2022 Planning Period II SIP submittal.

¹⁸⁸ See Administrative Order (LIS No. 22–084) dated August 2, 2022, and included as part of the 2022 Planning Period II SIP submittal.

¹⁸⁹ See 2022 Planning Period II SIP (page VI–1).

¹⁹⁰ See EPA's 2019 Technical Support Document, "Preparation of Emissions Inventories for the Version 7.2 2016 North American Emissions Modeling Platform" (Pages 14–17).

¹⁹¹ See 2022 Planning Period II SIP (pages IV–8 to 9).

¹⁹² See 2022 Planning Period II SIP (pages VI–1 to 10).

¹⁹³ See Tables VI–1 and VI–2 in the 2022 Planning Period II SIP (pages VI–2 to 3). See also Energy Efficiency as a Haze Reduction Strategy in Appendix K of the 2022 Planning Period II SIP (page K–16).

¹⁹⁴ Section 8–4–305 of The Arkansas Water and Air Pollution Control Act states that "The provisions of this subchapter do not apply to: —; (4) Land clearing operations or land grading; (5) Road construction operations and the use of mobile and portable equipment and machinery incident thereto; —." It would require legislative action for these exceptions to be removed from the Act and to give DEQ explicit regulatory authority over these activities.

¹⁹⁵ See Arkansas' 2008 Regional Haze SIP (page 73).

¹⁹⁶ Planned retirement year for Entergy Lake Catherine: https://www.epa.gov/sites/production/files/2020-03/egrid2018_data_v2.xlsx.

¹⁹⁷ Sierra Club and National Parks Conservation Association v. Entergy Arkansas, inc., Entergy Power, LLC, and Entergy Mississippi, Inc. Case No. 4:18-cv-00854–KGB (ED Ark., March 11, 2021).

¹⁹⁸ <http://edms.deq.louisiana.gov/app/doc/view.aspx?doc=12235418&ob=yes&child=yes> and Energy Information Administration Form 860.

requirements pertaining to PSD and minor NSR. DEQ will also track source retirement and replacement through ongoing point source inventories and permitting actions.

40 CFR 51.308(f)(2)(iv)(D) requires states to consider basic smoke management practices for prescribed fire used for agricultural and wildland vegetation management purposes, and smoke management programs. Arkansas has adopted voluntary smoke management plans for both prescribed fire and agricultural burning.¹⁹⁹ These plans are implemented by Arkansas foresters and farmers on a voluntary basis with the assistance of the Arkansas Department of Agriculture. The Arkansas Department of Agriculture coordinates prescribed fire activities, reports fire weather, and assists with voluntary smoke management.²⁰⁰

40 CFR 51.308(f)(2)(iv)(E) requires states to consider the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the long-term strategy. DEQ performed air quality photochemical modeling to support the development of the 2022 Planning Period II SIP for the 2018–2028 implementation period. DEQ used Comprehensive Air Quality Model with Extensions (CAMx) to simulate visibility conditions at the Arkansas Class I areas, taking into consideration the control strategy in the Arkansas Planning Period II SIP, to establish RPGs for 2028 and to evaluate the effect of Arkansas's control strategy on the Class I areas in other states that are reasonably anticipated to be impacted by sources in Arkansas. The modeling setup for DEQ's CAMx modeling followed the same approach as the 2016 EPA modeling platform for regional haze. DEQ processed emissions using CAMx by simulating air quality conditions for the 2016 base year and the 2028 future year. DEQ post-processed CAMx outputs to evaluate the two Arkansas Class I areas and the six Class I areas outside Arkansas.²⁰¹ Further details on model assumptions, performance, results, and methodology are described in Appendix L. DEQ compared current visibility conditions in 2016 to projected visibility conditions in 2028 as a result of DEQ's

long-term strategy.²⁰² All of the modeled Class I areas show visibility improvement on the most impaired and clearest days from the 2016 base year to the 2028 future year. DEQ noted that its modeling does not take into account emission reductions that other states have determined necessary as a result of their reasonable progress analysis. Any emission reduction measures that other states may determine necessary to ensure reasonable progress would be anticipated to further improve visibility conditions in 2028. The modeling also does not take into account the change in long-term strategy for FutureFuel to a more stringent limit based on the use of 1.5 percent sulfur content coal. DEQ's modeling instead used an assumption of a 2 percent sulfur content coal limit for FutureFuel. Therefore, DEQ anticipates greater reductions of visibility impairment should be realized than projected by DEQ's RPGs.

The EPA is proposing to find that DEQ has met the requirements of 40 CFR 51.308(f)(2)(iv) in its 2022 Planning Period II SIP by reasonably considering the five "additional factors" in developing its long-term strategy for the second implementation period. DEQ adequately considered emission reductions due to ongoing air pollution control programs; measures to mitigate impacts of construction activities; source retirements and replacement schedules; smoke management practices and programs; and anticipated visibility conditions in 2028 resulting from implementation of its long-term strategy.

D. RPGs

Section 51.308(f)(3) contains the requirements pertaining to RPGs for each Class I area. Section 51.308(f)(3)(i) requires a state in which a Class I area is located to establish RPGs—one each for the most impaired and clearest days—reflecting the visibility conditions that will be achieved at the end of the implementation period as a result of the emission limitations, compliance schedules and other measures required under paragraph (f)(2) to be in states' long-term strategies, as well as implementation of other CAA requirements. The long-term strategy and the RPGs must provide for an improvement in visibility for the most impaired days since the baseline period and ensure no degradation in visibility for the clearest days since the baseline period. Section 51.308(f)(3)(ii) applies in circumstances in which a Class I area's RPG for the most impaired days

represents a slower rate of visibility improvement than the URP calculated under 40 CFR 51.308(f)(1)(vi). Under section 51.308(f)(3)(ii)(A), if a state in which a Class I area is located establishes an RPG for the most impaired days that provides for a slower rate of visibility improvement than the URP, the state must demonstrate that there are no additional emission reduction measures for anthropogenic sources or groups of sources in the state that would be reasonable to include in its long-term strategy. The State must provide a robust demonstration, including documenting the criteria used to determine which sources or groups or sources were evaluated and how the four factors required by paragraph (f)(2)(i) were taken into consideration in selecting the measures for inclusion in its long-term strategy. Section 51.308(f)(3)(ii)(B) requires that if a state contains sources that are reasonably anticipated to contribute to visibility impairment in a Class I area in another state, and the RPG for the most impaired days in that Class I area is above the URP, the upwind state must provide the same robust demonstration.

The State calculated the URPs for Caney Creek and Upper Buffalo for the 20 percent most impaired days, and developed linear glidepaths for each area assuming starting baseline visibility conditions in 2004 and ending with natural conditions in 2064.²⁰³ The URP glidepath results in section IV.B of this proposed action (*see* Table 5) help gauge how far visibility has improved so far in Arkansas for the most impaired days from the baseline period and represent the control measures already required or anticipated before the four-factor analyses have been conducted for the second planning period. DEQ expanded on those visibility results in its SIP by making RPG determinations using CAMx modeling that incorporated the control strategies and resulted in even greater visibility progress than what the URPs established for each Class I area in Arkansas. DEQ determined that the 2028 modeled RPGs for the 20 percent most impaired days for Caney Creek and Upper Buffalo Wilderness Areas are 16.31 dv and 16.49 dv, respectively (*see* Table 23).²⁰⁴ DEQ noted that these modeled RPG values do not include any

¹⁹⁹ *See* 2022 Planning Period II SIP (pages IV–9).

²⁰⁰ Copies of the most recent publications of the Arkansas voluntary smoke management plans for prescribed fires and row crops are available at: <https://www.agriculture.arkansas.gov/arkansas-voluntary-smoke-management-guidelines>.

²⁰¹ *See* Appendix L of the 2022 Planning Period II SIP for all documents associated with DEQ's CAMx modeling and projected visibility conditions in 2028.

²⁰² *See* Table VI–3 of the 2022 Planning Period II SIP (page VI–14).

²⁰³ *See* Figures II–2 and II–14 in the 2022 Planning Period II SIP for Caney Creek and Upper Buffalo's URP glidepaths on the 20 percent most impaired days.

²⁰⁴ *See* Tables VI–4 and VI–5 of the 2022 Planning Period II SIP for the adopted RPGs on the most impaired days; and for URP glidepath checks for Arkansas Class I areas (pages VI–15–16). Details on model assumptions, performance, results, and methodology are described in Appendix L of the 2022 Planning Period II SIP.

emission reductions that may occur as a result of adoption of the 2022 Planning Period II SIP control strategies by other states, except in those instances where there is an enforceable retirement. DEQ compared these 2028

RPG values for Caney Creek and Upper Buffalo to the 2028 URP values on the most impaired days; and also to the (2000–2004) baseline conditions on the clearest days. The results demonstrate that implementation of the long-term

strategy will result in faster progress and be below the adjusted URP glidepaths for each area on the most impaired days; and that there will be no degradation from the (2000–2004) baseline on the 20 percent clearest days.

TABLE 23—2028 VISIBILITY PROGRESS CHECK FOR ARKANSAS CLASS I AREAS

Class I areas	Most impaired days (dv)		Clearest days (dv)	
	2028 adjusted URP	2028 RPGs	Baseline (2000–2004)	2028 RPG
Caney Creek	* 18.90	16.31	11.24	7.50
Upper Buffalo	** 19.26	16.49	11.71	7.72

* The unadjusted 2028 URP value at Caney Creek is 18.18 dv without accounting for international anthropogenic and prescribed fire contributions. See EPA 2019 Modeling TSD at 57, Table 5–2

** The unadjusted 2028 URP value at Upper Buffalo is 18.32 dv without accounting for international anthropogenic and prescribed fire contributions. See EPA 2019 Modeling TSD at 64, Table 5–2

DEQ also compared the 2028 modeled RPGs for the six Class I areas outside the state that were identified as having potential visibility impacts from Arkansas emissions. All six Class I areas had RPG values below their respective unadjusted 2028 URPs for the most impaired days (see Table 24).²⁰⁵ This was before consideration of control measures determined to be necessary to ensure reasonable progress for those state's SIPs. There was also no degradation on the clearest days from

the (2000–2004) baseline for all six Class I areas.

DEQ consulted²⁰⁶ with neighboring states about whether they expected to adjust the glidepath for their respective Class I areas from the unadjusted 2028 URP values. All neighboring states commented that they would not adjust the glidepath for any Class I area. However, some states (Kentucky, Oklahoma, North Carolina) indicated in consultation that they would use the 2028 URP values based on the updated

natural conditions value for most impaired days from the 2020 EPA memo.²⁰⁷ The results in Table 24 do not account for visibility improvement that would be achieved from adoption of control measures in the second planning period by other states. As mentioned, no specific controls were requested from any other state for Arkansas sources, including the states that requested DEQ to perform four-factor analyses, or agreed to as part of consultation.

TABLE 24—URP PROGRESS CHECK FOR CLASS I AREAS OUTSIDE ARKANSAS AFFECTED BY ARKANSAS EMISSIONS

Class I areas	Most impaired days (dv)		Clearest days (dv)	
	2028 URP	2028 modeled RPGs	Baseline (2000–2004)	2028 modeled RPG
Hercules Glades	18.82	17.3	12.84	9.07
Mingo	19.48	18.83	14.29	10.47
Mammoth Cave *	21.82	19.37	16.51	10.47
Sipsey	20.44	17.41	15.57	10.04
Wichita Mountains *	17.36	16.81	9.78	8.17
Shining Rock *	20.98	13.83	7.7	4.0

* These states indicated in consultation that they were using the 2028 URP values based on the updated natural conditions value for most impaired days from the 2020 EPA memo.²⁰⁸

The EPA is proposing to find that the State adequately addressed the applicable provisions under 40 CFR 51.308(f)(3)(i) in its 2022 Planning Period II SIP by establishing RPGs for Arkansas' Class I areas that reflect the measures necessary for reasonable progress for the second implementation period. Arkansas' RPGs demonstrate that implementation of the long-term

strategy will result in faster progress and will be below the adjusted URP glidepaths on the most impaired days. There will also be no degradation from the baseline on the clearest days. The six Class I areas in other states affected by Arkansas emissions are also on track to achieve their visibility reduction goals and will be below their respective URP glidepaths. The EPA is also

proposing to find that because the projected visibility conditions at all these impacted Class I areas in and outside Arkansas are below their respective 2028 URP values, additional demonstrations under 40 CFR 51.308(f)(3)(ii) are not required.

²⁰⁵ See Tables VI–6 of the 2022 Planning Period II SIP for the URP glidepath checks for Class I areas affected by Arkansas emissions (pages VI–16).

²⁰⁶ See Arkansas' email correspondence between Alabama, Kentucky, Missouri, North Carolina, and

Oklahoma, dated September 29, 2021, through September 30, 2021, included in Appendix D.

²⁰⁷ "Recommendation for the Use of Patched and Substituted Data and Clarification of Data Completeness for Tracking Visibility Progress for

the Second Implementation Period of the Regional Haze Program" https://www.epa.gov/sites/default/files/2020-06/documents/memo_data_for_regional_haze_0.pdf.

²⁰⁸ Id.

E. Reasonably Attributable Visibility Impairment (RAVI)

The RHR contains a requirement at 40 CFR 51.308(f)(4) related to any additional monitoring that may be needed to address visibility impairment in Class I areas from a single source or a small group of sources. This is called “reasonably attributable visibility impairment,”²⁰⁹ also known as RAVI. Under this provision, if the EPA or the FLM of an affected Class I area has advised a state that additional monitoring is needed to assess RAVI, the state must include in its SIP revision for the second implementation period an appropriate strategy for evaluating such impairment. The EPA has not advised Arkansas to that effect, nor did the State indicate that FLMs for Caney Creek or Upper Buffalo identified any RAVI from Arkansas sources. For this reason, the EPA is proposing to approve the portions of the 2022 Planning Period II SIP relating to 40 CFR 51.308(f)(4).

F. Monitoring Strategy and Other Implementation Plan Requirements

Section 51.308(f)(6) specifies that each comprehensive revision of a state’s regional haze SIP must contain or provide for certain elements, including monitoring strategies, emissions inventories, and any reporting, recordkeeping and other measures needed to assess and report on visibility. A main requirement of this section is for states with Class I areas to submit monitoring strategies for measuring, characterizing, and reporting on visibility impairment. Compliance with this requirement may be met through participation in the IMPROVE monitoring network.

Section 51.308(f)(6)(i) requires SIPs to provide for the establishment of any additional monitoring sites or equipment needed to assess whether RPGs to address regional haze for all Class I areas within the state are being achieved. DEQ noted that the monitoring strategy for Arkansas’ Class I areas relies upon the IMPROVE monitoring network.²¹⁰ DEQ deploys IMPROVE monitors for Caney Creek and Upper Buffalo Wilderness areas to determine the visibility conditions at each area. The IMPROVE monitors consist of four sampling modules that collect PM_{2.5} and PM₁₀ data for 24 hours every 3 days. Data collected at the IMPROVE sites includes specific

information on the composition of haze-forming particles. This data is used to calculate visibility impairment and indicates the extent to which the visibility impairment is either a result of anthropogenic or natural air pollution. The Caney Creek IMPROVE monitor (CACR) is located in Polk County, Arkansas at an elevation of 683 meters above mean sea level at latitude 34.4544, longitude -94.1429. The Upper Buffalo Wilderness IMPROVE monitor (UPBU) is located 1 mile north of the U.S. Forest Service workstation near Deer, AR at an elevation of 722 meters above mean sea level.

For states with Class I areas (including Arkansas), section 51.308(f)(6)(ii) requires SIPs to provide for procedures by which monitoring data and other information are used in determining the contribution of emissions from within the state to regional haze visibility impairment at Class I areas both within and outside the state. DEQ relied on IMPROVE monitoring extinction data at each Class I area for determining the key pollutants and source categories that contribute within and outside the state. DEQ developed figures showing annual visibility impairment trends from 2002–2019 tracked in deciviews and included the extinction compositions from each contributing pollutant species for the most impaired and clearest days.²¹¹ The pollutant extinction compositions were made up of varying amounts of ammonium sulfate, ammonium nitrate, coarse mass organic mass, elemental carbon, soil, and sea salt at each Class I area. DEQ also developed figures showing trends of annual light extinction data for the same time frame with pollutant contributions corresponding to anthropogenic sources and natural sources. DEQ relied on EPA’s 2028 modeling projections and source apportionment charts that represented the specific anthropogenic emission sector contributions at the different Class I areas on the most impaired days.²¹² Those 2028 sector-wide projections showed the key sectors which would impact visibility the greatest at the Class I areas. Lastly, Arkansas relied on CenSARA’s AOI

analysis performed by Ramboll for the CenSARA states to identify possible regional source locations impacting visibility. Ramboll performed the AOI analysis for CenSARA Class I areas and also for neighboring Class I areas that might potentially be impacted by emissions from the CenSARA states. The AOI analysis used back-trajectory modeling to identify the geographic areas and anthropogenic emission sources with a high probability of impacting visibility at Class I areas within the CenSARA region and in nearby states.

Section 51.308(f)(6)(iii) requires states with no Class I areas to have SIPs provide for procedures by which monitoring data and other information are used in determining the contribution of emissions from within the state to regional haze visibility impairment at Class I areas in other States. Section 51.308(f)(6)(iii) does not apply since Arkansas has two Class I areas within the state.

Section 51.308(f)(6)(iv) requires the SIP to provide for the reporting of all visibility monitoring data to the Administrator at least annually for each Class I area in the state. DEQ noted that the monitoring strategy for Arkansas relies upon the continued availability of the IMPROVE network and works collaboratively with state, tribal, and federal agencies, and international partners.

Section 51.308(f)(6)(v) requires SIPs to provide for a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area. The inventory must include emissions for the most recent year for which data are available, and estimates of future projected emissions. The state must also include a commitment to update the inventory periodically. DEQ noted that it will continue to submit annual inventories of pollutants, including those reasonably anticipated to cause or contribute to visibility impairment, in accordance with EPA Air Emissions Reporting Requirements (AERR) in 40 CFR part 51 Subpart A to satisfy the requirement to provide for an emissions inventory for the most recent year for which data are available. The AERR requires states to submit updated emissions inventories for criteria pollutants to the EPA’s Emissions Inventory System (EIS) every 3 years. The emission inventory data is used to develop the NEI, which provides for, among other things, a triennial state-wide inventory of pollutants that are reasonably anticipated to cause or contribute to visibility impairment. DEQ

²⁰⁹ 40 CFR 51.301 defines “reasonably attributable visibility impairment” as “visibility impairment that is caused by the emission of air pollutants from one, or a small number of sources.”

²¹⁰ See the 2022 Planning Period II SIP (page VII–1).

²¹¹ See chapter II and III of 2022 Planning Period II SIP for the specific figures of light extinction data at each class I area: Figures II–4 to 7 for Caney Creek; Figures II–16 to 19 for Upper Buffalo; Figures III–2 to 5 for Hercules Glades; Figures III–12 to 15 for Mammoth Cave; Figures III–22 to 25 for Mingo Wilderness; Figures III–31 to 34 for Shining Rock; Figures III–40 to 43 for Sipsey; and Figures III–50 to 53 for Wichita Mountains.

²¹² See chapters II and III of 2022 Planning Period II SIP for figures of projected 2028 emission sectors: Figures II–8, II–20, III–6, III–16, III–26, III–35, III–44, and III–53.

included tables of NEI data in Chapter IV of its 2022 Planning Period II SIP. To satisfy the requirement to provide estimates of future projected emissions, DEQ processed emissions using CAMx by simulating air quality conditions for the 2016 base year and the 2028 future year to establish RPGs for its own and nearby Class I areas. Further details on model assumptions, performance, results, and methodology are described in Appendix L of the 2022 Planning Period II SIP submittal.

Lastly, section 51.308(f)(6)(vi) requires SIPs to provide other elements, including reporting, recordkeeping, and other measures, necessary to assess and report on visibility. Because Arkansas has continued ongoing participation in the IMPROVE network and the CenSARA RPO continues its on-going compliance with the AERR, no further elements are necessary at this time for Arkansas to assess and report on visibility.

The EPA is proposing to find that Arkansas has met the requirements under 40 CFR 51.308(f)(6) in its 2022 Planning Period II SIP by providing an adequate monitoring strategy through its IMPROVE monitoring network that measures, characterizes, and reports regional haze visibility impairment that is representative of all Class I areas within the State for the second implementation period. Therefore, the EPA is proposing to approve the monitoring strategy and other state implementation plan elements of Arkansas' 2022 Planning Period II SIP as meeting the requirements of 40 CFR 51.308(f)(6).

G. Requirements for Periodic Reports Describing Progress Toward the RPGs

Section 51.308(f)(5) requires that periodic comprehensive revisions of states' regional haze plans also address the progress report requirements of 40 CFR 51.308(g)(1) through (5). The purpose of these requirements is to evaluate progress toward the applicable RPGs for each Class I area within the state and each Class I area outside the state that may be affected by emissions from within that state. Sections 51.308(g)(1) and (2) apply to all states and require a description of the status of implementation of all measures included in a state's first implementation period regional haze plan and a summary of the emission reductions achieved through implementation of those measures. Section 51.308(g)(3) applies only to states with Class I areas within their borders and requires such states to assess current visibility conditions, changes in visibility relative to baseline

(2000–2004) visibility conditions, and changes in visibility conditions relative to the period addressed in the first implementation period progress report. Section 51.308(g)(4) applies to all states and requires an analysis tracking changes in emissions of pollutants contributing to visibility impairment from all sources and sectors since the period addressed by the first implementation period progress report. This provision further specifies the year or years through which the analysis must extend depending on the type of source and the platform through which its emission information is reported. Finally, section 51.308(g)(5), which also applies to all states, requires an assessment of any significant changes in anthropogenic emissions within or outside the state have occurred since the period addressed by the first implementation period progress report, including whether such changes were anticipated and whether they have limited or impeded expected progress toward reducing emissions and improving visibility.

Arkansas described the status of implementation of all measures included in the first implementation period long-term strategy as required by 40 CFR 51.308(g)(1). DEQ noted source specific SO₂, NO_x, and PM controls determined for seven facilities that are currently all fully implemented and federally enforceable.²¹³ DEQ listed CSAPR O₃ season NO_x emission allocations for 22 facilities.²¹⁴ The statewide O₃ season NO_x budget for Arkansas in 2017 was 12,048 tons with a variability limit of 2,530 tons and an assurance level of 14,578 tons. The statewide O₃ season NO_x budget for Arkansas from 2018 forward is 9,210 tons with a variability limit of 1,934 tons and an assurance level of 11,144 tons. DEQ noted that the ongoing federal programs from the 2008 SIP submittal were incorporated into the modeling to establish the first planning period RPGs (CAIR was replaced with CSAPR) and then updated with the 2018 Phase II SIP submittal. All of these were then incorporated into the emission inventories for emission reductions in the 2022 Planning Period II SIP submission. DEQ reported that Arkansas foresters have been implementing a voluntary smoke management plan for prescribed fires since 2007 and, more recently, the Arkansas Department of Agriculture adopted a voluntary smoke

management plan for row croppers.²¹⁵ The EPA is proposing to find that the State has adequately addressed the applicable provisions under 40 CFR 51.308(g)(1) in its 2022 Planning Period II SIP by reporting the status of implementation of measures for achieving the RPGs for Class I areas both within and outside the State for the second implementation period. The State also documented the status of all measures from the first implementation period and included a summary of the implementation status associated with each.

Pursuant to 40 CFR 51.308(g)(2), DEQ listed the emission reductions achieved from the first planning period measures. DEQ reported that SO₂, NO_x, and PM_{2.5} emissions reduced since 2011 due to the source specific measures. In 2019, annual emissions reductions from controlled stationary sources were 49 percent lower for SO₂ emissions; 61 percent lower for NO_x emissions; and 10 percent lower for primary PM_{2.5} emissions.²¹⁶ DEQ illustrated NO_x emissions trends from 2011–2020 for EGUs subject to CSAPR O₃ season NO_x. Annual NO_x emissions from Arkansas EGUs decreased by 25,692 tons (67 percent) during this period which was from the installation of low NO_x burners in 2017–2018.²¹⁷ DEQ reported changes in emissions from smoke management plans which limited smoke impacts from burning.²¹⁸ The EPA is proposing to find that the State has adequately addressed the applicable provisions under 40 CFR 51.308(g)(2) in its 2022 Planning Period II SIP by providing a summary of the emission reductions achieved throughout the State through implementation of measures on all visibility impairing pollutants.

Pursuant to 40 CFR 51.308(g)(3), DEQ provided an assessment of changes in visibility conditions. DEQ compared visibility at Arkansas' two Class I areas for the baseline period (2000–2004), the period included in the last progress report (2007–2011), and current conditions (2015–2019).²¹⁹ For progress reports due before January 31, 2025, the metrics for most impaired days and least impaired days are required. For progress reports due on and after January 31,

²¹⁵ Available at <https://www.agriculture.arkansas.gov/arkansas-voluntary-smoke-management-guidelines>.

²¹⁶ See Figures IV–1, IV–2, and IV–3 of the 2022 Planning Period II SIP.

²¹⁷ See Figures IV–5 of the 2022 Planning Period II SIP.

²¹⁸ See Figures IV–6, IV–7, and IV–8 of the 2022 Planning Period II SIP.

²¹⁹ See Table IV–3 of the 2022 Planning Period II SIP.

²¹³ See Table IV–1 of the 2022 Planning Period II SIP.

²¹⁴ See Table IV–2 of the 2022 Planning Period II SIP.

2025, the metric for most impaired days and clearest days metric are required. The State provided all three metrics for each period (most impaired days, clearest days, and least impaired days) and visibility has improved for all three metrics consecutively from each period to the next since the 2000–2004 baseline to the last period of the last progress report (2007–2011) to the current period (2015–2019) with most recent visibility conditions. The EPA is proposing to find that the State has adequately addressed the applicable provisions under 40 CFR 51.308(g)(3) in its 2022 Planning Period II SIP by assessing the changes in visibility conditions at Arkansas' Class I areas for the second implementation period.

Pursuant to 40 CFR 51.308(g)(4), DEQ presented categorized NEI state-wide emissions by sector for 2011, 2014, and 2017. The State also included 2020 CEMS emissions for EGUs in addition to the NEI data. The three targeted precursor pollutants for control (SO₂, NO_x, and NH₃) were inventoried as well as VOC and primary PM_{2.5}. The NEI inventories were categorized for all major visibility-impairing pollutants under various categories. The source categorization included EGU and non-EGU point; nonpoint; on and non-road mobile sources; off-road mobile sources (marine and rail); fires (agricultural, prescribed, wildfires, residential wood combustion); oil and gas; biogenic sources, anthropogenic dust, and agricultural NH₃. The 2017 NEI inventory was the most recent comprehensive inventory of updated actual emissions available at the time DEQ prepared its SIP.²²⁰ There was an overall downward trajectory of statewide NO_x emissions in Arkansas between 2011–2017. NO_x emissions in Arkansas have decreased by 69,003 annual tons since 2011. The largest emission decrease came from the on-road mobile sector with 36,938 tons reduced followed by EGUs with 19,843 tons reduced. All NO_x emission categories decreased except marine, residential wood, prescribed fire, and nonpoint sources which exhibited slight increases but only made-up 9 percent of the overall Arkansas NO_x inventory. There was an overall downward trend of statewide SO₂ emissions in Arkansas between 2011 and 2017. Overall SO₂ emissions in Arkansas decreased by 43,112 annual tons since 2011. The largest annual SO₂ emission decrease came from the EGU sector with 36,399 tons reduced. All SO₂ emission

categories decreased except for residential wood, prescribed fire, and nonpoint sources which increased but only made-up 9 percent of the overall Arkansas SO₂ inventory. Primary PM_{2.5} increased between 2011 and 2017 by 613 tons. Annual emissions increased in non-EGU Point, residential wood, prescribed fire, and nonpoint categories. In particular, non-EGU point source annual emissions increased by over 9,000 tons and residential wood annual emissions increased by approximately 4,500 tons. All other categories decreased in emissions of primary PM_{2.5}. Overall statewide annual emissions of NH₃ decreased since 2011. Overall NH₃ emissions in Arkansas decreased by 38,307 tons since 2011. The largest decrease came from the agricultural NH₃ category with 44,247 tons. There were increases from EGUs, agricultural fire, oil and gas, non-EGU point, residential wood, and nonpoint annual ammonia emissions with the majority increase coming from agricultural fires at 5,432 tons, but these increases only made-up 8 percent of the total NH₃ inventory. Overall statewide annual emissions of VOCs decreased since 2011. Total annual VOC emissions decreased by 374,066 tons. The largest decrease in VOC emissions came from biogenics at 332,701 tons. All other categories decreased with the exception of marine, anthropogenic dust, and nonpoint categories, which exhibited increases but only made-up 4 percent of the Arkansas VOC inventory. The EPA is proposing to find that the State has adequately addressed the applicable provisions under 40 CFR 51.308(g)(4) in its 2022 Planning Period II SIP by tracking changes in emissions by category across the entire emission inventory for the second implementation period. The results show that the emissions from SO₂ and NO_x, the main contributors of regional haze in Arkansas, have all decreased from 2011 to 2017.

Pursuant to 40 CFR 51.308(g)(5), DEQ provided an assessment of significant changes in anthropogenic emissions. DEQ noted that overall emissions of anthropogenic NO_x, SO₂, NH₃, and VOCs all decreased significantly since the last progress report, with the exception of primary PM_{2.5} emissions increasing by 613 tons. DEQ noted that this emission increase in primary PM_{2.5} is dwarfed by the annual emission reductions in NO_x and SO₂ (69,003 tpy and 43,112 tpy, respectively), which contribute the most to visibility impairment at Arkansas' Class I areas. As noted, there were other minor increases in emissions for certain source

sectors, but they represent a fairly small portion of the Arkansas inventory. Based on DEQ's evaluation of emissions trends for Arkansas sources and visibility trends at Caney Creek and Upper Buffalo since the last progress report, DEQ concluded that the changes in anthropogenic emissions are facilitating, rather than impeding, progress towards natural visibility conditions at Arkansas Class I areas. The EPA is proposing to find that the State has adequately addressed the applicable provisions under 40 CFR 51.308(g)(5) in its 2022 Planning Period II SIP regarding assessing any anthropogenic emission changes that could impede visibility progress for the second implementation period.

Because Arkansas' 2022 Planning Period II SIP addresses the requirements of 40 CFR 51.308(g)(1) through (5), the EPA is proposing to find that Arkansas met the progress report requirements of 40 CFR 51.308(f)(5). Therefore, we are proposing to approve Arkansas' 2022 Planning Period II SIP as meeting the requirements of 40 CFR 51.308(f)(5) and 40 CFR 51.308(g) for periodic progress reports.

H. State and FLM Coordination Requirements

Section 169A(d) of the Clean Air Act requires states to consult with FLMs before holding the public hearing on a proposed regional haze SIP, and to include a summary of the FLMs' conclusions and recommendations in the notice to the public. In addition, the FLM consultation provision in section 51.308(i)(2) requires a state to provide the FLMs with an opportunity for consultation that is early enough in the state's policy analyses of its emission reduction obligation so that information and recommendations provided by the FLMs can meaningfully inform the state's decisions on its long-term strategy. If the consultation has taken place at least 120 days before a public hearing or public comment period, the opportunity for consultation will be deemed early enough. Regardless, the opportunity for consultation must be provided at least 60 days before a public hearing or public comment period at the state level. Section 51.308(i)(2) also provides two substantive topics on which FLMs must be provided an opportunity to discuss with states: assessment of visibility impairment in any Class I area and recommendations on the development and implementation of strategies to address visibility impairment. Section 51.308(i)(3) requires states, in developing their implementation plans, to include a description of how they

²²⁰ See Figures IV–9 to IV–14; and Tables IV–4 to IV–8 of the 2022 Planning Period II SIP for statewide emissions by sector.

addressed FLMs' comments. Lastly, section 51.308(i)(4) requires that the plan must provide procedures for continuing consultation between the State and FLMs on the implementation of the visibility protection program.

DEQ consulted with FLMs on SIP development both formally and informally. DEQ submitted letters to the FLMs on March 1, 2021, to notify them of the availability of the pre-proposal draft SIP and provided them with the opportunity to discuss the FLM's assessment of visibility impairment in any Class I area, and the FLM's recommendations on the development and implementation of strategies for improving visibility. DEQ provided public notice of the final SIP proposal on February 27, 2022, and hosted a public hearing on March 29, 2022, to receive comments on the proposed SIP revision. The public comment period concluded on April 28, 2022. In the appendices of the SIP submittal,²²¹ DEQ provided the comments received during the public comment period, including FLM recommendations, and a summary of DEQ's responses to those comments, along with records from the public hearing. DEQ noted that it continues to include FLMs in regional haze consultation through monthly regional haze calls with CenSARA states to address ongoing consultation with FLMs under 40 CFR 51.308(i)(4). DEQ has consulted with FLMs throughout this planning period, and will continue to coordinate with FLMs in the implementation of the 2022 planning period II SIP elements.²²² In addition, DEQ's 5-year progress report was due by January 31, 2025, and DEQ anticipates communications regularly occurring prior to the report, which started as early as mid-2023 to ensure that proper consultation is achieved. In conclusion, DEQ is committed to effectively consulting FLMs as required under the RHR.

The EPA is proposing to find that DEQ has satisfied the FLM consultation requirements under section 169A(d) and 40 CFR 51.308(i) in its 2022 Planning Period II SIP for the second implementation period.

V. Proposed Action

The EPA is proposing to approve Arkansas' 2022 Regional Haze Planning

Period II SIP revision, submitted August 8, 2022, and clarified on July 29, 2025, as meeting the applicable regional haze program requirements for the second implementation period contained in 40 CFR 51.308(f), (g)(1) through (5), and (i).

The EPA is proposing to approve the State's determination for FutureFuel Chemical Company to require a fuel switch from coal with 3 percent sulfur content by weight to a low sulfur coal that has 1.5 percent sulfur content (equating to 2.93 lb/MMBtu SO₂) for its three coal-fired boilers (SN:6M01-01). This requirement has been made enforceable by the state through an Administrative Order (LIS No. 22-085) dated August 3, 2022, and is included as part of the 2022 Planning Period II SIP submittal. The EPA is proposing to approve all requirements set forth in this Administrative Order for FutureFuel Chemical Company included as part of the 2022 Planning Period II SIP submittal as a source specific revision to be incorporated into the Arkansas SIP.

VI. Incorporation by Reference

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to the Arkansas source specific requirements as described in section V of this preamble, Proposed Action. We have made, and will continue to make, these documents generally available electronically through www.regulations.gov (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VII. Statutory and Executive Order Reviews

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993);

- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because State Implementation Plan approvals under the CAA are exempt from review under Executive Order 12866;

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

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

List of Subjects in 40 CFR Part 52

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

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

Dated: August 26, 2025.

Walter Mason,

Regional Administrator, Region 6.

[FR Doc. 2025-17041 Filed 9-4-25; 8:45 am]

BILLING CODE 6560-50-P

²²¹ See Appendix D of the 2022 Planning Period II SIP for the FLM contact list, notification letters, comments received, and DEQ's written consideration of the comments received.

²²² See Appendix D-2 Communication Log of the 2022 Planning Period II SIP that outlines DEQ communications on specific regional haze topics and the outcome of any associated conversations.



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Part III

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Antitrust Division

United States of America et al. v. RealPage, Inc. et al. Proposed Final Judgment and Competitive Impact Statement; Notice

DEPARTMENT OF JUSTICE

Antitrust Division

United States of America et al. v. RealPage, Inc. et al. Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the Middle District of North Carolina in *United States of America et al. v. RealPage, Inc. et al.*, Civil Action No. 1:24–cv–00710. On January 7, 2025, the United States filed a Complaint alleging that Greystar Management Services, LLC’s agreements with RealPage and other landlords to share information and align pricing violate Section 1 of the Sherman Act, 15 U.S.C. 1. The proposed Final Judgment, filed on August 8, 2025, bars Greystar from licensing or using a revenue management software that relies on competitively sensitive data and prohibits Greystar from sharing competitively sensitive information with other landlords. Greystar must also establish an antitrust compliance policy and cooperate with the United States in this litigation.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division’s website at <http://www.justice.gov/atr> and at the Office of the Clerk of the United States District Court for the Middle District of North Carolina. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division’s website, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be submitted in English and directed to Danielle Hauck, Acting Chief, Technology and Digital Platforms Section, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 7100, Washington, DC 20530 (email

address: *ATR.Public-Comments-Tunney-Act-MB@usdoj.gov*).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

In The United States District Court the Middle District of North Carolina

UNITED STATES OF AMERICA, U.S. Department of Justice, Antitrust Division, 950 Pennsylvania Avenue NW, Washington, DC 20530; STATE OF NORTH CAROLINA, 114 W Edenton Street, Raleigh, NC 27603; STATE OF CALIFORNIA, 300 South Spring Street, Suite 1702, Los Angeles, CA 90013; STATE OF COLORADO, 1300 Broadway, 7th Floor, Denver, CO 80203; STATE OF CONNECTICUT, 165 Capitol Avenue, Hartford, CT 06106; STATE OF ILLINOIS, 115 S LaSalle St., Floor 23, Chicago, IL 60603; COMMONWEALTH OF MASSACHUSETTS, One Ashburton Place, 18th Floor, Boston, MA 02108; STATE OF MINNESOTA, 445 Minnesota Street, St. Paul, MN 55101; STATE OF OREGON, 100 SW Market St., Portland, OR 97201; STATE OF TENNESSEE, P.O. Box 20207, Nashville, TN 37202 and STATE OF WASHINGTON, 800 Fifth Avenue, Suite 2000, Seattle, WA 98104–3188, Plaintiffs, v. REALPAGE, Inc., 2201 Lakeside Blvd., Richardson, TX 75082; CAMDEN PROPERTY TRUST, 11 Greenway Plaza, Ste. 2400, Houston, TX 77046; CORTLAND MANAGEMENT, LLC, 3424 Peachtree Rd., Ste. 300, Atlanta, GA 30326; CUSHMAN & WAKEFIELD, INC., 225 W Wacker Dr., Ste. 3000, Chicago, IL 60606; GREYSTAR REAL ESTATE PARTNERS, LLC, 465 Meeting St., Ste. 500, Charleston, SC 29403; LIVCOR, LLC, 233 South Wacker Dr., Ste. 4700, Chicago, IL 60606; PINNACLE PROPERTY MANAGEMENT SERVICES, LLC, 2401 Internet Blvd., Ste. 110, Frisco, TX 75034, and WILLOW BRIDGE PROPERTY COMPANY, LLC, 2000 McKinney Ave., Ste. 1100, Dallas, TX 75201, Defendants.

AMENDED COMPLAINT

Case No. 1:24–cv–00710–LCB–JLW

JURY TRIAL DEMANDED

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I. Introduction

1. Renters are entitled to the benefits of vigorous competition among landlords. In prosperous times, that competition should limit rent hikes; in harder times, competition should bring down rent, making housing more affordable. RealPage has built a business out of frustrating the natural forces of competition. In its own words, “a rising tide raises all ships.” This is more than a marketing mantra. RealPage sells software to landlords that collects nonpublic information from competing landlords and uses that combined information to make pricing recommendations. In its own words, RealPage “*helps curb [landlords'] instincts to respond to down-market conditions by either dramatically lowering price or by holding price when they are losing velocity and/or occupancy. . . . Our tool [] ensures that [landlords] are driving every possible opportunity to increase price even in the most downward trending or unexpected conditions*” (emphases added).

2. In fact, as RealPage's Vice President of Revenue Management Advisory Services described, “*there is greater good in everybody succeeding versus essentially trying to compete against one another in a way that actually keeps the entire industry down*” (emphasis added). As he put it, if enough landlords used RealPage's software, they would

“*likely move in unison versus against each other*” (emphasis added). To RealPage, the “greater good” is served by ensuring that otherwise competing landlords rob Americans of the fruits of competition—lower rental prices, better leasing terms, more concessions. At the same time, the landlords enjoy the benefits of coordinated pricing among competitors.

3. RealPage replaces competition with coordination. It substitutes unity for rivalry. It subverts competition and the competitive process. It does so openly and directly—and American renters are left paying the price.

* * * * *

4. Americans spend more money on housing than any other expense. On average, American households allocate more than one-third of their monthly income to housing. Some purchase a home, while others choose to, or must, rent. A family's selection of an apartment reflects a complex set of values and criteria including comfort, safety, access to schools, convenience, and critically, affordability. To ensure they secure the greatest value for their needs, renters rely on robust and fierce competition between landlords.

5. RealPage distorts that competition. Across America, RealPage sells landlords commercial revenue management software. RealPage develops, markets, and sells this software to enable landlords to sidestep vigorous competition to win renters' business. Many of the largest landlords in the United States, including Greystar, Camden, Cortland, Cushman & Wakefield and Pinnacle, LivCor, and Willow Bridge (collectively, Defendant Landlords), which would otherwise be competing with each other, submit or have submitted on a daily basis their competitively sensitive information to RealPage.¹ This nonpublic, material, and granular rental data includes, among other information, a landlord's rental prices from executed leases, lease terms, and future occupancy. RealPage collects a broad swath of such data from competing landlords, combines it, and feeds it to an algorithm.

6. Based on this process and algorithm, RealPage provides daily, near real-time pricing “recommendations” back to competing landlords. These recommendations are based on the sensitive information of their rivals. But these are more than just “recommendations.” Because, in its

¹ As used in this Complaint, the term “landlord” refers to a variety of entities that are responsible for setting rents and other lease terms at multifamily properties, including owners, operators, and managers.

own words, a “rising tide raises all ships,” RealPage monitors compliance by landlords to its recommendations. RealPage also reviews and weighs in on landlords' other policies, including trying to—and often succeeding in—ending renter-friendly concessions (like a free month's rent or waived fees) to attract or retain renters. A significant number of landlords then effectively agree to outsource their pricing function to RealPage with auto acceptance or other settings such that RealPage as a middleman, and not the free market, determines the price that a renter will pay. Competing landlords choose to share their information with RealPage to “eliminate the guessing game” about what their competitors are doing and ultimately take instructions from RealPage on how to make business decisions to “optimize”—or in reality, maximize—rents.

7. Each landlord pays steep fees to license RealPage's software. RealPage's stated goals and value proposition are not a secret. Its executives are blunt: They want landlords to “avoid the race to the bottom in down markets.” Sometimes RealPage is even more direct, acknowledging that its software is aimed at “driving every possible opportunity to increase price” or observing that among landlords, “there is a greater good in everybody succeeding versus essentially trying to compete against one another in a way that actually keeps the entire industry down.”

8. But that is not how the free market works. A free market requires that landlords compete on the merits, not coordinate pricing. Landlords should win renters by offering whatever combination of price and quality they think is most attractive. For example, landlords could lower rents or provide other financial concessions, like free months of rent, or with investments in amenities like gyms, grilling areas, or pools. Put differently, the fear of losing a renter to a competitor should motivate rival landlords to compete vigorously.

9. RealPage's revenue management software ingests on a daily basis nonpublic rental rates, future apartment availability, and changes in competitors' rates and occupancy. As competitor-landlords increase their rents, RealPage's software nudges other competing landlords to increase their rents as well. RealPage calls this “maximiz[ing] opportunity[.]” As RealPage explained to one landlord, by using competitors' data, they can identify situations where “we may have a \$50 increase instead of a \$10 increase for that day.” This is what RealPage

encourages as “stretch and pull pricing.”

10. RealPage allows landlords to manipulate, distort, and subvert market forces. One landlord observed that RealPage’s software “can eliminate the guessing game” for landlords’ pricing decisions. Discussing a different RealPage product, another landlord said: “I always liked this product because your algorithm uses proprietary data from other subscribers to suggest rents and term. That’s classic price fixing. . . .” A third landlord explained, “Our very first goal we came out with immediately out of the gate is that we will not be the reason any particular sub-market takes a rate dive. So for us our strategy was to hold steady and to keep an eye on the communities around us and our competitors.”

11. RealPage’s scheme not only distorts competition to the detriment of renters, but also allows it to reinforce its dominant position in the market for commercial revenue management software. By its own account, RealPage controls at least 80 percent of that market. Its dominant position is protected by substantial data advantages due to its massive reservoir of ill-gotten competitively sensitive information from competing landlords. No other revenue management company can match RealPage’s access to landlords’ nonpublic, competitively sensitive rental data. This is why RealPage acknowledges that it “does not have any true competitors, mainly because our data is based on real lease transaction data.” RealPage’s conduct is predatory and exclusionary, which has allowed it to distort the market opportunities for honest providers of revenue management software.

12. At bottom, RealPage is an algorithmic intermediary that collects, combines, and exploits landlords’ competitively sensitive information. And in so doing, it enriches itself and compliant landlords, including Defendant Landlords, at the expense of renters who pay inflated prices and honest businesses that would otherwise compete.

13. The United States, and the States of North Carolina, California, Colorado, Connecticut, Illinois, Minnesota, Oregon, Tennessee, and Washington, and the Commonwealth of Massachusetts, acting by and through their respective Attorneys General, bring this action pursuant to Sections 1 and 2 of the Sherman Act to rid markets of (i) RealPage’s and Defendant Landlords’ unlawful information-sharing and pricing alignment schemes, and (ii) RealPage’s illegal monopoly in commercial revenue management

software. In so doing, Plaintiffs seek to restore the free market to deserving individuals, families, and honest businesses.

II. RealPages’s Revenue Management Software Is Fueled by Nonpublic, Competitively Sensitive Information Shared by Landlords

14. RealPage dominates the market for commercial revenue management software that landlords use to price apartments, controlling at least 80 percent of that market, according to its own estimates. RealPage currently offers three revenue management systems to landlords: YieldStar, AI Revenue Management (AIRM), and Lease Rent Options (LRO). The company’s main legacy software, YieldStar, is the product of three acquisitions and subsequent internal development. Its successor, AIRM, uses much of the same codebase as YieldStar, but RealPage claims that AIRM’s refined models and forecasting are more precise. RealPage acquired its other revenue management software, LRO, in 2017. RealPage has made plans to sunset both YieldStar and LRO by the end of 2024.

15. Competitively sensitive data collected from competing landlords is a critical input to RealPage’s revenue management software. AIRM and YieldStar collect this data, such as rental applications, executed new leases, renewal offers and acceptances, and forward-looking occupancy, and use it to generate price recommendations for the competing landlords. This information is among the most competitively sensitive data a landlord maintains.

16. The exploitation of sensitive data from competing landlords is central to RealPage’s approach. As part of pitching its software to landlords, RealPage highlights that its pricing algorithms use their competitors’ data sourced directly from “lease transaction data.” RealPage describes this nonpublic data from competitors as one of three “building blocks of price” in AIRM and YieldStar. Landlords thus share their competitively sensitive information with RealPage with the understanding that RealPage’s software will use the data to generate recommendations for rivals (and vice versa).

A. Landlords Agree To Share Nonpublic, Competitively Sensitive Transactional Data With RealPage for Use in Generating Competitors’ Pricing Recommendations

17. RealPage amasses nonpublic, competitively sensitive data from competing landlords through use of its pricing algorithms, other rental property

software, and thousands of monthly phone calls. The combined troves of nonpublic, competitively sensitive data are much more granular, sensitive, timely, and comprehensive than alternatives—and far more detailed than any data publicly available to potential renters. RealPage then uses this data in generating competitors’ pricing recommendations.

18. *Data shared through YieldStar and AIRM.* Each AIRM and YieldStar client agrees to share detailed data with RealPage that are private, updated nightly, and granular. The data includes lease-level information on each unit’s effective rent (rent net of discounts), rent discounts, rent term, and lease status, as well as unit characteristics such as layout and amenities. It also includes the number of potential future renters who have visited a property or submitted a rental application.

19. Landlords understand that AIRM and YieldStar use their data to recommend prices not just for their own units, but also for competitors. For example, a revenue management director at Greystar testified that she understood that Greystar, and other competing landlords who used AIRM or YieldStar, agreed with RealPage to share their data, which was combined in a single data pool for use by YieldStar and AIRM. An executive at Willow Bridge noted the advantages to using YieldStar at a property if others in the property’s submarket—the small geographic area around the property—also used YieldStar because “the shared data between the models at different communities can be a benefit in getting accurate transactional data on a timely basis.”

20. Landlords agree to provide this information for use by their competitors because they understand they will be able to leverage the sensitive information of their rivals in turn. In its pitch to prospective clients, RealPage describes AIRM’s and YieldStar’s access to competitors’ granular, transactional data as a meaningful tool that it claims enables landlords to outperform their properties’ competitors by 2–7%. RealPage clients receive training that highlights the role of competitors’ transactional data in the price recommendation process.

21. *Data Shared Through Other RealPage Products.* AIRM and YieldStar are not the only ways that RealPage shares nonpublic, competitively sensitive information among landlords. RealPage obtains the same confidential transactional data from landlords that license at least three other programs: OneSite, Performance Analytics with

Benchmarking, and Business Intelligence.

22. *OneSite* is RealPage's property management software, which operates as the central source of data for landlords' leasing activity. *Performance Analytics with Benchmarking* allows landlords to compare the performance of their properties and floor plans (e.g., a one-bedroom, one-bathroom unit) to their competitors. *Business Intelligence* is a data analytics tool that pulls data from a landlord's property management software and other products.

23. Each landlord using RealPage's *OneSite*, *Business Intelligence*, and *Performance Analytics with Benchmarking* products agrees to share its proprietary data with RealPage and agrees that RealPage's revenue management software can use the data to generate pricing recommendations. The license agreements for these products specifically identify the shared data, such as pricing information, as confidential, nonpublic information. RealPage takes this deeply confidential information and uses it to provide rent recommendations to competitors of these clients.

24. These agreements grant RealPage access to confidential information from over 16 million units across the country, including many that do not use its revenue management products. With respect to *Performance Analytics with Benchmarking* alone, a RealPage sales representative told a prospective client that "we have over 16 million units of data coming from various source operating systems (PMS) [property management software] into the PAB platform," making RealPage the top choice for "transactional data benchmarking." With properties containing approximately 3 million units using AIRM and YieldStar, these additional agreements meaningfully multiply the scale of the transactional data used by AIRM and YieldStar. This gives RealPage greater visibility, including into markets with less penetration by AIRM and YieldStar, granting even initial AIRM and YieldStar adopters in a new market the benefit of access to a significant amount of nonpublic, competitively sensitive information.

25. Landlords understand that AIRM and YieldStar will use data from these products. A revenue management director at Greystar explained that RealPage ingests transactional data from several RealPage products, besides AIRM and YieldStar, for use in revenue management. A property owner requested information from Greystar on which competing properties used revenue management software. In an

internal response, the Greystar director noted that RealPage has "access to more transactional history than anyone and [is] pulling data from anyone using RealPage products which includes companies who manually price or use other revenue management firms but leveraging their BI [Business Intelligence] products."

26. A revenue management executive at Willow Bridge asked RealPage if other specific landlords were using RealPage's non-revenue management products. The landlord's owner client was concerned about the data available to YieldStar because competing properties were unsophisticated and did not use revenue management. This executive wanted to confirm that "YieldStar will be able to leverage actual transactional data behind the scenes and not just look at offered rents for their comps." RealPage reminded the Willow Bridge executive that RealPage collected transactional data for *all* users of *OneSite*, *Business Intelligence*, and *Performance Analytics with Benchmarking*, and reassured the executive that YieldStar had ample transactional and survey data for that area.

27. *Calling Landlords*. RealPage has an additional, complementary product called *Market Analytics*. *Market Analytics* compiles data from over 50,000 monthly phone calls that RealPage makes to landlords across the country. On these calls RealPage collects nonpublic, competitively sensitive information by floor plan on occupancy rates, effective rents, and concessions, as well as information on the owner, management company, and any revenue management software used at the property. These market surveys cover over 11 million units and approximately 52,000 properties. Landlords, including but not limited to those that use AIRM, YieldStar, or other RealPage products, knowingly share this nonpublic information with RealPage.

B. AIRM and YieldStar Users Agree With RealPage To Use the Software To Align Pricing

28. In addition to agreeing to share nonpublic, competitively sensitive data with RealPage, each AIRM and YieldStar licensee agrees with RealPage to use the AIRM or YieldStar pricing software as RealPage designed it.² Landlords are expected to review daily AIRM or YieldStar floor plan price recommendations and use the programs

to set scheduled floor plan rents or even unit-level prices.

29. While landlords may not accept every price recommendation, they use AIRM or YieldStar as their pricing software, regularly review AIRM or YieldStar floor plan recommendations, use AIRM or YieldStar to set a scheduled floor plan rent, and use AIRM or YieldStar to set unit-level prices.

30. Landlords who use AIRM and YieldStar know that others are using the same software. Some landlords track which revenue management software their competitors use, including by contacting competing properties directly and exchanging nonpublic information. Other landlords, including prospective AIRM and YieldStar users, ask RealPage whether there are existing AIRM and YieldStar users nearby before they themselves license the products.

31. An executive at Willow Bridge, for example, explained to her team how she would learn from RealPage data or from a property's website whether a property used revenue management. This information is important because properties that use revenue management tend to update prices much more frequently, and so a landlord will react differently to those price changes if it knows the competitor is using revenue management.

32. RealPage frequently tells prospective and current clients that a "rising tide raises all ships." A RealPage revenue management vice president explained that this phrase means that "there is greater good in everybody succeeding versus essentially trying to compete against one another in a way that actually keeps the industry down." This rising tide lifts all landlords, including but not limited to AIRM and YieldStar users.

33. In using AIRM and YieldStar, landlords expect this pricing alignment and use RealPage software in part for this reason. One landlord echoed the RealPage executive, using the phrase "a rising tide rises [sic] all ships" to explain that AIRM would move prices in a "similar manner" to how the top and bottom of the market move. Elsewhere that same landlord noted that "if everyone in the market is doing well and everyone in the market has [sic] is having the rates go up, so should ours, right?" An employee at Willow Bridge referenced RealPage's use of the phrase "a rising tide raises all ships" to explain how AIRM would provide price recommendations that amplify market trends. Multiple landlords have expressed their preference that their competitors use YieldStar and AIRM because widespread use would benefit

² Defendants Camden, Cushman & Wakefield and Pinnacle, Greystar, LivCor, and Willow Bridge were active beta testers for AIRM and provided feedback to RealPage during the AIRM design process.

them all. An executive of one landlord (which itself uses YieldStar and AIRM) said in a 2021 earnings call that more sophisticated, “high-quality competition” was better for that landlord when “they all use revenue management. They are all smart. They raised rents when they should.” RealPage highlighted in promotional materials the sentiments of another landlord who noted, “It actually gives me chills to think about what a disadvantage we’d be at if we hadn’t adopted YieldStar, knowing others are using it.”

C. RealPage’s Transactional Data Is Fundamentally Different From Other Data Available to Landlords

34. The data that RealPage uses and supplies is unique relative to public data available to landlords on listing or property websites. As compared to public data, RealPage data is much more granular, covers a broader array of business information, and includes competitively sensitive data across several dimensions. For example:

- *Information on Actual Transactions.* RealPage’s data include, for each lease, the unit, floor plan, listed

rent, final transacted lease price (including any discounts), and lease term.

- *Renewals.* RealPage’s data include the same information for lease renewals. Information on renewals is not listed publicly—not even asking rents—leaving a significant blind spot for landlords not using RealPage.

- *Time Span.* AIRM and YieldStar have access to current and historical lease data, from the previous day and going back two to three years.

- *Future Demand.* The shared data further includes information on tenant demand, including detailed information on inquiries and applications by potential future tenants.

- *Accuracy.* Landlords have greater assurance of the accuracy of the data because it comes directly from the landlords’ own databases.

- *Coverage.* The RealPage data covers millions of units from users of its revenue management software and other products.

35. RealPage touts how its data is different. As one RealPage pitch deck put it, “we have [the] most data and the best data.” And the “[q]uality of data is best in class given that it is ‘lease transaction data’—this provides insight

into performance data from actual signed leases, both new and renewal, net effective of concessions.” Another noted that without YieldStar “you’ll be pricing your renewals in the dark without insight into actual lease transaction data that YS uses to help you make pricing decisions. This is critical to price renewals right[, especially in a downturn.”

36. Access to this data proves important in winning over revenue management clients, including skeptical ones. One RealPage senior manager noted that a “highly suspicious CFO” was won over in part by YieldStar’s “lease transaction data” that allowed his company to “achieve what his people couldn’t achieve on their own.”

37. One landlord explained the benefits of YieldStar to its owner clients by calling the use of competitors’ transactional data a “game changer! We have 100% truth on [competitors’] activity powering YieldStar recommendations.”

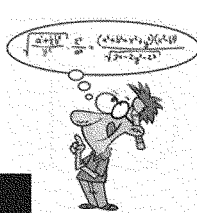
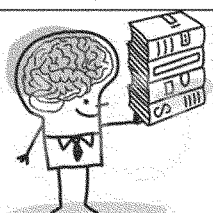
38. Another landlord’s internal training presentation on YieldStar highlighted the importance of having access to competitors’ transactional data:

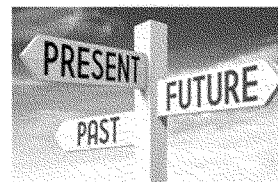
How Does it Work?

Calculates Price using complex algorithms:

- Historical data
- Current OneSite data
- Transactional Competitive Market Data

**Used to generate a price recommendation
EVERY day for EVERY unit!**



D. RealPage Revenue Management Software Uses Nonpublic, Competitively Sensitive Data To Recommend Prices

39. AIRM and YieldStar are built upon similar code and leverage competitive data in similar ways. LRO, on the other hand, was originally developed outside of RealPage and takes a different approach.

1. AIRM and YieldStar Leverage Competitively Sensitive Data To Generate Price Recommendations

40. AIRM uses competitors' nonpublic, transactional data in three separate stages of the pricing process: (1) model training, (2) floor plan price recommendations, and (3) unit-level prices. YieldStar uses competitors' nonpublic, transactional data in stages two and three of its process.

(a) AIRM Model Training Relies on Competitively Sensitive Data To Generate Learned Parameters

41. In the first stage, RealPage trains its AIRM models using nonpublic data from OneSite and other property management software, totaling millions of executed lease transactions, new lead applications, renewal applications, and guest cards filled out by visiting potential tenants. This data is run through a machine learning model to generate learned parameters for supply

and demand models that are then used for all AIRM clients across the country. Like the coefficients in a regression model, the learned parameters are applied to the data of a landlord's specific property, and to the data of its competitors, when AIRM makes pricing recommendations. RealPage generally retrains the models three to four times per year using updated nonpublic data.

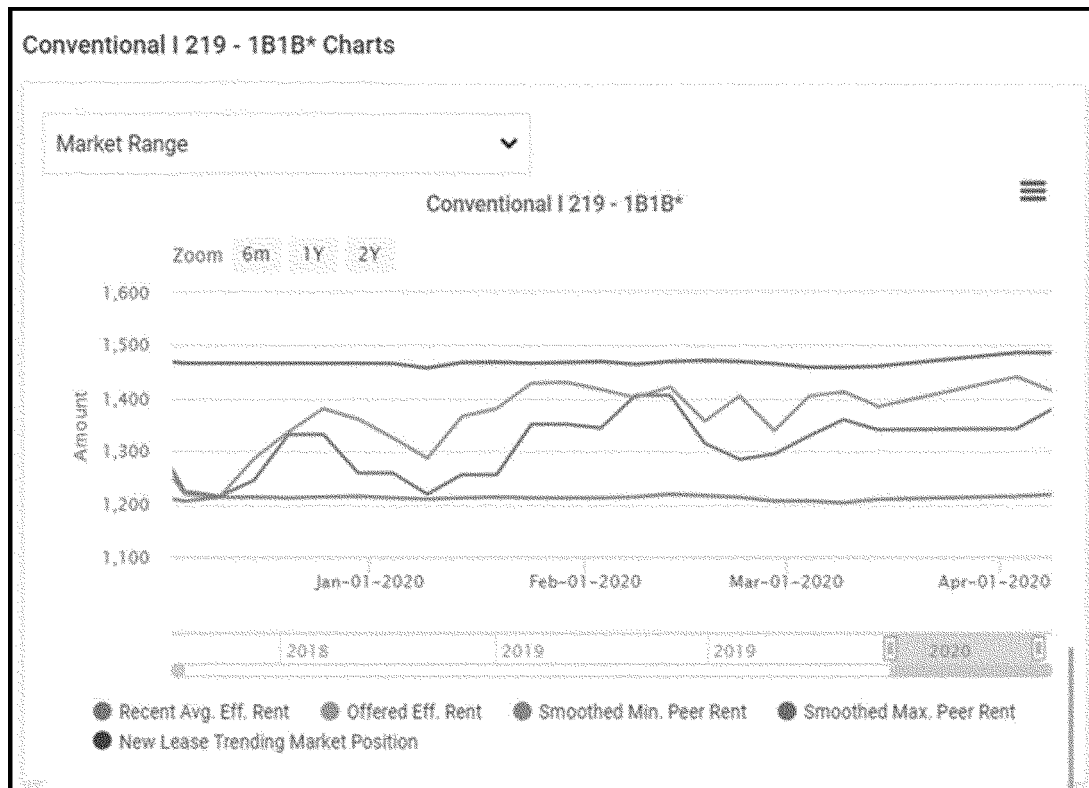
(b) AIRM and YieldStar Incorporate Competitors' Nonpublic Data To Generate Floor Plan Price Recommendations

42. In the second stage AIRM or YieldStar provides a price recommendation for every floor plan of a given property. A floor plan is a grouping of units that share similar characteristics, such as the number of bedrooms and bathrooms and square footage. Landlords define the floor plans in their buildings—for example, a large apartment building might have separate sets of floor plans for studios, one-bedroom, and two-bedroom apartments. As discussed below, AIRM and YieldStar use competitors' nonpublic, transactional data in nearly every step of setting a recommended floor plan price, including identifying peer properties, forecasting occupancy and leasing, increasing rents to match competitors' changes, and determining the magnitude of price changes.

43. *Identifying Peers.* First, AIRM and YieldStar use confidential transaction data to identify a property's peer properties, which include close competitors. In selecting peer properties, RealPage's algorithm generally looks for properties with similar floor plans, within close geographic proximity, and with similar effective rents over time. AIRM or YieldStar clients may review the list of peer properties and request that RealPage add or remove specific properties.

44. AIRM or YieldStar then uses the nonpublic data from competitors' executed leases to generate a market range chart for each floor plan. This chart identifies a "smoothed" market minimum effective rent and market maximum effective rent. The market minimum is a hard floor. AIRM and YieldStar will not recommend a rent below the market minimum. On the other hand, the market maximum is a "soft ceiling," and the programs will recommend prices above the ceiling.

45. The client has access to the market range chart within the AIRM and YieldStar interfaces. As shown below, for each floor plan the client can see the smoothed market minimum and market maximum and where the client's own floor plan sits within the market range.



46. *Forecasting Occupancy and Leasing.* Every night, for each participating property, AIRM applies the model's learned parameters to that property's internal transactional data to forecast the number of expected vacancies and expected lease applications for a certain period into the future. AIRM may also use competitors' data to adjust the projected supply.

47. AIRM or YieldStar then determines whether actual leasing for a floor plan is on track to meet predicted leasing. To do so, it creates a forecast of the number of leases over time, using nonpublic lease and application data from the subject property, and potentially from so-called surrogate properties (similar properties in the surrounding area).³ When there is an imbalance between a property's actual and forecasted leasing, it recommends a price change.

48. *Changing Rents to Match Competitors.* Even when a property's supply and demand are balanced, RealPage's software will still recommend a price change, based on competitors' nonpublic data, when it determines that the market is moving. For example, if the minimum and maximum of the competing floor plans' effective rents increase, it will recommend a price increase to maintain the floor plan's market position (its price position relative to its competitors).

49. *Determining Magnitude of Price Changes.* Once AIRM or YieldStar has determined that it will recommend a price increase or a price decrease, it again uses competitors' transactional data to determine *how much* the price should move and provide a floor plan price recommendation. It uses nonpublic transactional data from peer properties, in addition to data from the subject property and surrogate properties, to generate a market response curve—analogue to a market demand curve—for every floor plan. This demand curve provides an estimate of how demand for particular apartments would change in response to changes in rents, a measure that RealPage calls elasticity. In other words, it uses competitors' nonpublic transactional data to calculate how many leases the property will likely gain or lose for a particular floor plan, for every price point along the curve. Using this data, AIRM or YieldStar can determine how much the price can

increase and still achieve the target number of leases, or by how little price can decrease to maintain a target occupancy.

50. RealPage describes elasticity as a pivotal input into balancing supply and demand and, therefore, price.

51. The use of surrogate properties in this pricing process has the potential to push convergence on price even further. As two properties' surrogate sets become closer—and therefore their respective demand curves become more similar—AIRM and YieldStar will generate increasingly similar prices for the two properties. And the use of surrogates is common. One of the largest landlords in the country, for example, uses surrogates at over 80% of its properties.

52. This process repeats for every floor plan in the client's property, every night. A new floor plan price recommendation is generated daily.

(c) AIRM and YieldStar Use Competitors' Nonpublic Data—Including Data on Future Occupancy—To Determine Unit-Level Prices

53. A property manager at the landlord reviews each floor plan recommendation daily and enters the floor plan price. AIRM and YieldStar then use the floor plan price to generate prices for every unit within the floor plan. The unit price is shown in a pricing matrix, which provides the price for each combination of start date and lease term. To generate the price for an individual unit, the floor plan price is adjusted to account for unit-specific factors such as amenities (*e.g.*, a desirable view, the floor level, or an in-unit washer and dryer), staleness (*i.e.*, how long that specific unit has been vacant), and the timing of lease expirations. AIRM and YieldStar again use competitors' nonpublic data during this step in at least two ways.

54. First, AIRM and YieldStar use data on competitors' supply of multifamily housing to adjust recommendations to limit “exposure” with a feature called lease expiration management. Exposure refers to the number of units that are available for lease. Managing lease expirations is an important element of revenue management software. If too many leases expire and the corresponding units become available at the same time, supply increases and rents for those units will tend to drop. This process will also tend to repeat itself as the same units will become available at the same time a year later for leases with a standard twelve-month term.

55. The objective of expiration management is to smooth out this

exposure so that landlords, as explained by one RealPage employee, “remain in a position of pricing power.” For example, if AIRM or YieldStar sees that a large number of units will likely be available in twelve months, it will increase the price recommendation for a twelve-month lease relative to price recommendations for leases of other terms, such as 11 months or 13 months, in order to nudge potential renters to accept those terms. Expiration management can only raise prices—AIRM does not lower a unit's price if the lease term would fall in an underexposed period.

56. This calculation does not rely *only* on the predicted future supply for the client's property. For any landlord who uses a “market seasonality” setting, AIRM and YieldStar *also* rely on competitors' transactional data and the supply for those competitors—including the supply of competitors' existing leases that expire in the future. AIRM and YieldStar thus work to manage lease expirations for the client's units based on how competitors' supply will change. RealPage strongly recommends to landlords that they use market seasonality.

57. The use of competitors' nonpublic data in expiration management to fill out the pricing matrix occurs regardless of whether the landlord accepts the AIRM or YieldStar recommendation. Thus, even if a landlord were to override every price recommendation, its rental prices would still be influenced by nonpublic information about its competitors' supply.

58. Second, AIRM and YieldStar include an amenity optimization feature. By pricing specific amenities within units, landlords can avoid making wholesale pricing changes to a floor plan if a specific unit fails to lease. Within the amenity analysis, AIRM and YieldStar provide market values for specific amenities to landlords, allowing them to compare their perceived value of an amenity with the nonpublic valuation of their competitors. The peer data include the market minimum and maximum value for specific amenities.

2. LRO Relies Primarily on Landlords To Input Data on Competitors

59. RealPage's LRO also provides pricing recommendations to users. Each week, LRO users manually input competitor information into the system that they have obtained from public websites or more questionable means, such as communicating directly with their competitors.

60. A small number of LRO users subscribe to a feature called AutoComp. With this feature, RealPage provides

³ If there is insufficient historical data for a particular building, or floor plan within that building, RealPage will use data from what it calls a “surrogate property,” which is the confidential transactional data from another property with characteristics similar to the subject property.

information on competitors' rents, traffic, and occupancy. This information comes from market surveys that RealPage compiles using call centers to call competitor properties. Landlords may use LRO without using AutoComp.

E. RealPage Uses Multiple Mechanisms To Increase Compliance With Price Recommendations

61. AIRM and YieldStar provide daily price recommendations. RealPage has taken multiple steps to increase compliance with AIRM and YieldStar price recommendations. It designed AIRM and YieldStar to make it much easier to accept recommendations than to decline them. It built an auto-accept function and pushes clients to adopt it and increase its role. And its pricing advisors encourage landlords to follow AIRM and YieldStar pricing recommendations. Among their duties, pricing advisors review any request to override a price recommendation.

1. AIRM and YieldStar Make It Easy To Accept Recommendations and More Difficult and Time-Consuming To Decline

62. Every morning, the landlord's property manager chooses whether to accept the floor plan price recommendation, keep the previous day's rent, or override the recommendation. These options are the same for new leases and renewal leases. RealPage makes it easier and faster for a client to accept a recommendation than to decline it. When accepting recommendations, the manager can choose to do a bulk acceptance—she can accept all or multiple floor plan recommendations at once. But she cannot do the same when overriding, or rejecting, the recommendation.

63. Instead, for every recommendation that she does not accept—whether overriding or keeping the previous day's rent—the property manager must provide “specific business commentary” for diverging from the recommendation. This justification, RealPage instructs, should not be a mere preference for another price but must be based on a factor that the model cannot account for, such as local construction or renovations occurring in the building. It must be a “strong sound business minded approach.”

64. The property manager knows that these recommendation rejections and accompanying justifications will be sent to a RealPage pricing advisor.⁴ If the

pricing advisor disagrees with the rejection or justification, the disagreement is escalated for resolution to a landlord's regional manager, who typically supervises the property manager.

65. As one client who complained to RealPage explained, RealPage's design is “trying to persuade [clients] to take the recommendations (almost like we made it hard to do anything but).”

2. RealPage Pushes Clients To Adopt Auto-Accept Settings That Automatically Approve Recommendations

66. AIRM and YieldStar each include auto-accept functions. This functionality automatically accepts price recommendations falling within certain parameters. By default, AIRM and YieldStar set auto-accept parameters of a 3% daily change and an 8% weekly change. The landlord can change these parameters, disable or enable auto-accept, and even enable partial auto-accept. With partial auto-accept, if the recommendation exceeds the auto-accept parameters, the recommendation is accepted as far as the parameter permits. For example, if the auto-accept daily change limit is 4% and the price recommendation is 5%, using partial auto-accept will result in an increase of 4%. By enabling auto-accept, a landlord functionally delegates pricing authority to RealPage (within the bounds of the daily and weekly limits).

67. As part of the onboarding process, internal RealPage guidance states, “AUTO ACCEPT should be confirmed as ‘on’ with parameters in place.” Internal AIRM training explained that RealPage wanted to “widen auto accept parameters” by introducing the feature and then “creating enough trust so that over time we have client[s] that are willing to let auto accept run with very wide parameters . . . AKA—accept all recommendations.” RealPage trains pricing advisors to have an “accountability conversation” or a “refresher on short term vs long term goals” for clients that show less tolerance for increasing auto-accept parameters.

68. Even if a landlord does not want to use auto-accept, RealPage trains its advisors to convince the landlord to turn it on with 0% limits—a setting whereby auto-accept will never accept price changes. The reason? So that it is no longer a question of whether the client turns on auto-accept, but only a matter of convincing them to widen the

parameters and further delegate pricing decisions. RealPage instructs its advisors on best practices: “[I]f a partner is not ready to use auto acceptance, are they ready to use revenue management?”

3. RealPage Pricing Advisors Provide a “Check and Balance” on Property Managers To Increase Acceptance of Recommendations

69. RealPage offers landlords pricing advisory services. Landlords typically have an assigned pricing advisor, unless the client has internal revenue managers that were certified by RealPage. Pricing advisors play an important role in the daily review of pricing recommendations. Landlords' property managers are asked to review recommendations every morning by 9:30 a.m. After their review, a pricing advisor accepts agreed-upon pricing within an hour and escalates any disputes to the landlord's regional manager.

70. If a property manager disagrees with the direction of a recommended price change—e.g., the manager wants to implement a price decrease when the model recommends a price increase—the RealPage pricing advisor escalates the dispute to the manager's superior. As a pricing advisor manager explained in a client training, the advisor would “stop the process and reach out to our partners”—the property manager's supervisors—to “talk about this further.” The advisors, the manager elaborated, are part of a system of “checks and balances.” The client confirmed the value of this system to stop property managers from acting on emotions, which could limit RealPage's influence on their pricing.

71. Beyond the daily interactions between pricing advisors and their own property managers, clients agree to make meaningful changes when they use RealPage's pricing advisory services. Under the specifications for this service, clients agree to use AIRM or YieldStar exclusively to give quotes to potential renters, further tying landlords' pricing decisions to RealPage's software. Clients also agree to change their commission programs for leasing agents to “ensure these programs motivate sales behavior that is consistent with the objectives of revenue growth.” And clients further agree to revenue growth as the official metric to evaluate AIRM and YieldStar, as opposed to occupancy rates.

72. RealPage imposes additional requirements on landlords who want to use internal or in-house revenue management advisors with YieldStar or AIRM (rather than use RealPage pricing advisors). RealPage requires these

⁴ Some clients have internal revenue managers that are certified by RealPage. For those clients who have internalized the revenue management function, recommendation rejections may be routed

to the internal revenue manager rather than a RealPage pricing advisor.

landlords' employees go through RealPage certification. Certification is a multiday course in which landlords are trained—at times in the same session—on AIRM and YieldStar use and best practices, according to RealPage. Certification includes observing and leading pricing calls with property managers and passing a written exam. This certification program facilitates the landlords' agreements with RealPage to align pricing by ensuring that landlords' internal revenue managers are trained and tested to use AIRM and YieldStar in the same way.

4. Pricing Recommendations Heavily Influence Landlords' Behavior

73. RealPage defines an acceptance as where the final floor plan price is within 1% of the recommended floor plan price. According to that definition, the average acceptance rate across all landlords nationally for new leases between January 2017 and June 2023 is between 40–50%. But RealPage itself recognizes that acceptance rates are not necessarily the best measure of its influence; one employee explained that the spread between a floor plan recommendation and the final scheduled floor plan price is more useful for measuring model adoption—and therefore influence—than the binary accept/reject decision that the RealPage-defined acceptance rate reflects. Widening the definition of acceptance even slightly to account for partial acceptances illustrates the influence of recommendations: nearly 60% of final floor plan prices are within 2.5% of RealPage's recommendation, and more than 85% are within 5% of RealPage's recommendation.

74. RealPage's preferred measure of acceptance understates the influence of RealPage's price recommendations and the effect of competitors' data. AIRM and YieldStar use competitors' nonpublic transactional data to adjust unit-level pricing, after a floor plan recommendation has been accepted or rejected. RealPage's metric does not capture the cumulative effect of rate acceptances over time. Nor do they capture when a client is influenced by and partially accepts a recommendation.

III. Coordination Among Competing Landlords Is a Feature of This Industry

75. Several characteristics of apartment-rental markets make it easier for landlords to coordinate with, or accommodate, each other. Rental housing is a necessity for many Americans, meaning that demand is inelastic—that is, changes in rent produce relatively small changes in the number of renters. There is significant

concentration among landlords in local markets, and these landlords engage in widespread, regular communications with one another. And RealPage makes rental units more comparable to each other in AIRM and YieldStar, allowing landlords to track one another more easily. These industry characteristics exacerbate the harm to the competitive process—and ultimately to renters—from the exchange of nonpublic, competitively sensitive data through RealPage and the use of the AIRM and YieldStar models.

A. Rental Housing Is a Necessity for Millions of Americans

76. Shelter is a basic, foundational necessity of life. And for tens of millions of Americans, conventional multifamily apartment buildings are the only reasonable option for much of their lives. Many renters cannot afford the significant down payment needed to purchase a single-family home, among other requirements.

77. Demand for apartments is relatively inelastic. Rising rents have disproportionately affected low-income residents: The percentage of income spent on rent for Americans without a college degree increased from 30% in 2000 to 42% in 2017. In 2021, the proportion of severely burdened households—households spending more than half of their income on gross rent—was 25%, or approximately 10.4 million households, an increase in approximately 1 million households since 2019. By 2022, this number increased to 12.1 million households. For college graduates, the percentage of income spent on rent increased from 26% to 34% from 2000 to 2017.

B. The Multifamily Property Industry Is Rife With Cooperation Among Ostensible Competitors

78. Within particular metropolitan areas and neighborhoods, the multifamily property industry is concentrated and replete with competitively sensitive discussions among ostensible competitors. Landlords have agreed with one another to share nonpublic, sensitive information, both indirectly through RealPage software and directly outside of RealPage's software. RealPage facilitates some of these discussions, while others are made directly between competing landlords. These discussions supplement and reinforce the indirect information sharing among landlords that occurs through AIRM and YieldStar. As a result of this coordination, RealPage's pricing algorithms are even more likely to

restrain, rather than promote, competition.

1. At the Local Level, the Multifamily Property Industry Comprises a Small Number of Large Landlords Managing Buildings With Different Owners

79. In 595 zip codes with at least 1,000 total multifamily units across 125 core-based statistical areas, five or fewer landlords manage more than 50% of the multifamily units. Within the submarkets alleged in this complaint, there are at least 214 zip codes, each with at least 1,000 total multifamily units, in which five or fewer landlords manage more than half of those units. Similarly, within the ten core-based statistical areas alleged in the complaint, there are 144 zip codes, each with at least 1,000 total multifamily units, in which five or fewer landlords manage more than half of those units.

80. The same landlord often oversees nearby properties with different owners. In at least 502 zip codes, at least one landlord using AIRM or YieldStar oversees properties with different owners.

81. There is also overlap among RealPage pricing advisor assignments. In at least 683 zip codes, within 96 core-based statistical areas, a RealPage pricing advisor has responsibility for properties managed by different landlords. RealPage takes no steps to avoid assigning the same pricing advisor to properties with different owners, even if those properties compete with each other or are RealPage-mapped competitors.

2. Landlords Regularly Discuss Competitively Sensitive Topics With Their Competitors and Swap Information

82. Landlords regularly solicit and obtain nonpublic information about inquiries by prospective renters, occupancy, and rents from their direct competitors. Although this information is not as accurate or thorough as the transactional-level data shared with AIRM and YieldStar, it is nonetheless sensitive competitive information.

83. Landlords collect this information through a variety of means, including weekly phone calls, emails, and in-person visits. Some landlords also share information on their local geographic markets through shared Google Drive documents. One RealPage employee explained to his colleagues, reflecting on his former time working at a landlord, that these weekly inquiries “required cooperation among the comp[etitor]s but wasn't hard to get that.” In June 2023, a senior director at Cushman & Wakefield admitted that

“this practice has been prevalent in our industry for a long time.”

84. Landlords not only knew of these so-called “market surveys,” but expected their property managers to participate. As a manager of Cushman & Wakefield’s revenue management department explained, “we have always expected our properties to continue doing a traditional market survey[,]” which “gives us insight into the very specific handful of competitors closest to the subject property.”

85. At a February 2020 industry event, representatives from Cushman & Wakefield and two other landlords shared tips on collecting information on concessions and net effective rents from competitors. The suggestions included bi-weekly and monthly meetings with competitors, sponsored “cocktail hours for regional competitors to share info and build relationships and rapport,” and using Google Drive documents to share information on a weekly basis. Building relationships with competitors to get accurate data was “critical.” The representatives cautioned that the collected data was used to make “major decisions about pricing,” so the landlord employees collecting data should be trained accordingly to ask such questions as “are you seeing a slow down?” and “are you adjusting pricing?”

86. Some landlords engage in even more sensitive communications about price, demand, and market conditions. These communications are not isolated instances at a specific property. Rather, they are conversations at the corporate revenue management level about strategies and approaches to market conditions that apply to the landlords’ business across all markets.

87. For example, in January 2018, Willow Bridge’s director of revenue management reached out to Greystar’s director of revenue management and asked about Greystar’s use of auto accept in YieldStar. In response, Greystar’s director provided Greystar’s standard auto-accept settings, including daily and weekly limits and for which days of the week auto accept was used. The Greystar director, explaining why she provided this information, testified that the Willow Bridge director was a “colleague,” even though Willow Bridge was a competitor to Greystar.

88. In March 2020, Cushman & Wakefield’s director of revenue management reached out to Willow Bridge’s director of revenue management. The Cushman & Wakefield director wanted to hold a call among revenue management executives at multiple landlords to discuss market conditions, use of YieldStar, and

strategy plans. The Willow Bridge director agreed and suggested a small number of landlords to invite to keep the group “tight.” The directors agreed to reach out to Greystar, as well as several other landlords.

89. Also in March 2020, a senior executive at Greystar obtained a copy of Willow Bridge’s sensitive strategic plans regarding the COVID-19 pandemic. The plans included Willow Bridge’s corporate protocols for concessions, rent increases, and lease terms. The plans recommended that property managers work closely with YieldStar and LRO to preserve rent integrity. The Greystar executive forwarded Willow Bridge’s plans to executives at Cushman & Wakefield and another landlord. All four landlords compete with one another.

90. In September 2020, Camden’s director of revenue management reached out to Greystar’s director of its internal revenue management team. Camden asked Greystar—a direct competitor—what increases on renewal pricing Greystar had seen in August and offered what it had seen. Greystar’s director replied with information not only on August renewals, but also on how Greystar planned to approach pricing in the upcoming quarter. Greystar’s director further disclosed its practices on accepting YieldStar rates and use of concessions. As the conversation continued, the two competitors shared additional highly-sensitive information on occupancy—including in specific markets—demand, and the strategic use of concessions.

91. At the same time, Camden’s director emailed a revenue management executive at LivCor and asked how LivCor was faring on raising renewal rates. He explained his request by noting that Performance Analytics provided some good data, but it was “hard to see what our competitors are signing today.” The two executives shared information about their respective renewal increases. After the Camden executive passed this information along internally, he continued his outreach with several other landlords and with the LivCor executive—who in the meantime had reached out to three other landlords about their renewal rates. Camden’s internal team decided to raise a renewal cap to get to the same renewal gains as LivCor.

92. Camden’s director received competitively sensitive information from at least four competitors. Another senior executive at Camden asked him to compile the information so it could be shared internally. That executive noted the usefulness of the competitors’

information and the need to take advantage of the shared information while it was fresh.

93. In June 2021, Willow Bridge’s head of revenue management emailed Greystar’s revenue management director. She proposed collaborating with Greystar to convince a client to move all of its properties, including those managed by Willow Bridge and those managed by Greystar, to AIRM. But she also noted that, in thinking about “the larger picture as well,” it could be useful to “coordinate with the other companies that we often share business with” to prepare to move their clients to AIRM as well. Greystar responded favorably to transitioning the joint client to AIRM.

94. In November 2021, a revenue management executive at LivCor emailed an executive at Camden to propose a call to discuss Camden’s “renewal philosophy,” for the purpose of informing how LivCor calculated renewal increases. The two spoke that day. The following day, another LivCor executive—who was included on the call—thanked the Camden executive for the opportunity to “connect on industry best practices” and asked another “operational question” about implementing “larger renewal increases.” The executives exchanged emails over the next few months, including discussing their respective strategies on maximum increases to lease renewal prices. They shared not only their increase limits in specific markets but also what price increases they were able to achieve. For example, in April 2022, the executive at LivCor reached out to Camden to share that “my current thinking (not sure it’s right, just where my mind is at) is . . . prices for almost everything are up 20%.” Therefore, unless there is a good reason not to, should we be increasing rates on rentable items by 20%?” The Camden executive responded, “I like your thinking.” He continued, “Typically, we lean into the demand signals to inspire a price increase . . . I’m divided on whether the default increase should be 20% or closer to the 10% . . . Curious what your thoughts are!?”

95. In September 2021, a property manager at Cortland explained to a colleague that the manager had called two competitors and received from them pricing information on two-bedroom and three-bedroom units. The property manager asked for the information to decide how to act on YieldStar’s price recommendations.

96. Landlords also engage in group discussions with local and national competitors about sensitive topics. For example, for a number of months in

2020, dozens of “high-level participants” from competing landlords participated in weekly “multifamily leadership huddle” videoconferences. The organizer informed participants that “the goal of the call is to share information about what our companies are doing, share some collateral and resources,” and then—perhaps recognizing the problematic nature of these calls—he claimed that “then we hang up and make our own decisions.”

97. In one such call in April 2020 with over 100 attendees, participants discussed a number of topics, including “pricing and renewal strategies.” Several senior landlord executives, including a Greystar senior managing director and a CEO of another landlord, participated and shared their practices on new leases and renewals, use of renter payment plans, and use of YieldStar and other revenue management software. On a similar call in October 2020, participants discussed current and forecast rent prices, renewal strategies, and use of concessions. A Willow Bridge employee forwarded a colleague notes from the call, and he specifically highlighted information about a competitor’s use of concessions.

98. These conversations among competing landlords have extended from the national level to local markets across the country. For example, in Minnesota, property managers from Cushman & Wakefield, Greystar, and other landlords regularly discussed competitively sensitive topics, including their future pricing. When a property manager from Greystar remarked that another property manager had declined to fully participate due to “price fixing laws,” the Cushman & Wakefield property manager replied to Greystar, “Hmm... Price fixing laws huh? That’s a new one! Well, I’m happy to keep sharing so ask away. Hoping we can kick these concessions soon or at least only have you guys be the only ones with big concessions! It’s so frustrating to have to offer so much.” The property managers from Greystar and Cushman & Wakefield continued to discuss competitively sensitive topics. For example, in response to Greystar’s tipoff that it had reduced concessions and “hop[ed] the Spring/Summer market allow us to pull further back on concessions,” the Cushman & Wakefield property manager replied, “That’s great news and I love hearing about the concessions being pulled back. We have done the same and hoping the rest of the market follows suit.” These communications between RealPage users that are ostensibly competitors are examples of the industry-wide coordination that magnifies the

anticompetitive effects of RealPage’s software.

99. In addition to contacting each other directly, many landlords also exchange information through other intermediaries. One vendor offers a tool for landlords to exchange with one another nonpublic information on concessions, net effective rents, inquiries and visits by prospective renters, and occupancy that is pulled from each landlord’s property management software. Over 150 landlords nationally have used this service, including Greystar, LivCor, and some of the other largest landlords across the country. The vendor’s CEO described this as a “quid pro quo or give to get” arrangement among landlords where “if you share this data with me, I’ll share the same data.” A RealPage employee noted that this vendor makes it “quicker and easier to get your market surveys.”

100. Some landlords use this direct exchange of competitively sensitive information to update competitor rents within LRO—a practice that RealPage is aware of and accepts.

101. Recently, under the scrutiny of antitrust lawsuits, some landlords have adopted internal policies prohibiting “call arounds” and other direct sharing of competitively sensitive information with direct competitors. But even assuming that their property managers fully comply with these legally unenforceable internal policies, these landlords continue to use RealPage’s revenue management software.

3. At RealPage User Group Meetings, Landlords Discuss Competitively Sensitive Topics

102. RealPage holds monthly “user group” meetings attended by competing landlords that use RealPage’s software. There are separate user group meetings for LRO and for YieldStar and AIRM.⁵ One of RealPage’s stated purposes for the user groups is to “to promote communications between users.” Attendees include a wide mix of competing landlords. For example, the June 2022 YieldStar user group included representatives from five of the largest property management companies in the country, among a larger group.

103. Recurring topics at the user group meetings include product enhancements and an “idea exchange” on potential changes to the products. The user group participants often vote on the proposals discussed in the idea exchange. But discussions have covered competitively sensitive topics,

including managing lease expirations, pricing amenities, the use of concessions, pricing strategies, and how to manage properties during the COVID–19 pandemic. RealPage encouraged landlords to use the user group meetings to discuss such topics in their industry and set agendas for these meetings to aid them in doing just that, remarking that “[t]he user group is meant to be self-governed to a degree and the clients should be leading it.” These RealPage-fostered discussions among competitors enhance and facilitate the landlords’ agreement with RealPage to use AIRM and YieldStar to align pricing.

104. At an April 2020 YieldStar user group meeting, the participants discussed strategies for handling the COVID–19 pandemic. In the presentation, two RealPage employees and a landlord led a group discussion of trends in rent payments and collections and provided five strategic tips. One tip encouraged landlords to “push for occupancy but don’t give away the farm (pricing).” Another counseled landlords to “balance internal and external dynamics” and, referring to the nonpublic information used by YieldStar, to “use transactional market data for decision support and to know when you can be more aggressive” in pushing higher rents. Invited attendees included representatives from at least twelve landlords. At this meeting, Greystar and another landlord shared information on their usage of payment plans with tenants.

105. In May 2020, RealPage started a YieldStar user group meeting by surveying them on concessions. RealPage asked landlords how many of their properties offered concessions, whether concessions applied to new leases or renewals, and the types of concessions offered (such as discounts, gift cards, or other benefits). Invited attendees included representatives of thirteen landlords.

106. In March 2021, the user group meeting included a discussion on possible adjustments to how YieldStar calculated lease expiration premiums. A RealPage executive shared that she liked the idea of adding weekend premiums to incentivize prospective renters to move in during the week, and commented that “the rev[enue] potential would then scale up.” The LivCor representative responded in favor of weekend premiums, and another user group member suggested adding the proposal to the user group idea exchange. RealPage agreed to do so.

107. RealPage began its agenda for an April 2021 YieldStar user group meeting with “strategic insights” from a

⁵ RealPage previously held separate AIRM and YieldStar user groups but combined them in 2023.

RealPage economist. This employee shared “21 key strategic insights,” including “focus on renewals,” “be cautious with concessions,” and “drive up revenues—not just base rent.” Specifically, he urged the group to “push up new and renewal pricing where demand [is] solid” and warned against over-relying on concessions. They were instead to “trust the science” of YieldStar.

108. In May 2021, RealPage included a “Back to Basics” discussion in a YieldStar user group meeting. This discussion covered “returning to renewal increases post-COVID” and “declining concessions,” as well as eviction moratoria and areas where acceptance rates were “seeing significant uptick in past 6 months.” The meeting group chat is even more revealing. Over a period of approximately fifteen minutes, representatives from fifteen landlords shared their plans for renewal increases and their use of concessions. The questions were posed, “At what point do we go back to normal? If [f] we go back to normal[,] [i]s it now? Is anyone seeing that the model is raising rent and are you doing it?” In response, these representatives made statements on renewal increases such as “increasing, back to normal,” “major rent growth on the west coast,” “increasing the renewals,” “almost all markets we are raising rents,” “actually raising more than before covid at some,” “raising,” and “we are pushing to get back to normal. Sending increases.” A representative from LivCor stated, “increasing renewals and pushing new lease rents.”

109. The user group members were similarly open about their disinterest in concessions, signaling to each other that they do not intend to offer them or would offer them less frequently. Their pronouncements included “no concessions [sic],” “no concessions,” “considerably less concessions,” “less frequent and less aggressive,” “no concessions except in markets with a lot of lease-ups,” and “almost no concessions currently.” A representative from Willow Bridge noted concessions had “gone away a LOT. People asking for a free month on renewals and being denied, but still signing the renewal.”

110. When the discussion turned to acceptance rates, a RealPage employee stated that rates had “pretty much gone back to pre-COVID. Rate Acceptance has grown 11% over the past 6 months.” A landlord responded that they had “seen our acceptance rate increase tremendously.” Another user group member explained to the group, for “about ⅓ of the communities I manage

the [YieldStar] model was too slow to respond, and we are pushing rates above market and above YS rec[ommendation].” A representative from Willow Bridge concluded, “Are we deciding as a group to remove hesitation?.”

111. The LivCor representative who attended this May 2021 meeting testified that similar discussions happened numerous times during the COVID-19 pandemic—specifically, the beginning of 2020 through the middle of 2022. In these meetings, user group members discussed new and renewal rent increases, concessions, and renewal strategies, as well as other sensitive topics.

112. RealPage claims that this and other user group meetings were not recorded.

113. The July 2021 YieldStar user group meeting, held at RealWorld (a RealPage-hosted industry event), included a roundtable discussion among competitors. One of the discussion topics? “What is the one thing you consistently consider outside of the model when accepting or changing price and why?”

114. At the October 2021 YieldStar user group meeting, a RealPage economist gave a presentation regarding the 2022 market outlook. RealPage presented analyses on current occupancy and pricing, and on expected occupancy and rent growth in 2022 by geographic regions.

115. At the July 2022 RealWorld YieldStar user group meeting, RealPage hosted a “roundtable discussion” on market volatility and its impact on how to use revenue management, unit amenities and their impact on tenant rents, and best practices for conducting lease ups.⁶

116. RealPage recognized the sensitive nature of the information shared at these meetings. Beginning in late 2022, after public reporting about AIRM and YieldStar, RealPage added an antitrust compliance statement in the user group presentations. Among other directions, the statement instructed participants not to discuss “confidential or competitively sensitive information,” and then noted that this included “you or your competitors’ prices or anything that may affect prices, such as current or future pricing strategies, costs, discounts, concessions or profit margins.” But these were the very topics of previous user group meetings, as described above, that RealPage

encouraged its users to discuss. And these are the very types of nonpublic information that AIRM and YieldStar use to recommend and determine prices.

117. Landlords frequently take advantage of RealPage user group meeting invites to email each other directly. In August 2020, for example, an employee of Cortland emailed a user group invitee list and asked them to support a change to how YieldStar calculated the number of leases needed. In response, an employee of a different landlord agreed, adding that “I also rely on comparing available units to adj[usted] leases needed, to forecast leases, to gut check the pricing recs. These data points are always a factor in my pricing decisions.”

C. RealPage Uses Nonpublic Information To Allow Landlords To More Easily Compare Units on an Apples-to-Apples Basis

118. Renters typically search for a rental unit using certain key criteria, including the number of bedrooms and the location. Recognizing this market reality, RealPage enables landlords to more easily compare unit prices. When picking a property’s “peer set,” RealPage matches floorplans with the same number of bedrooms that are geographically proximate. This makes it easier for landlords, through AIRM and YieldStar, to track and respond to competitors’ movements at the floor plan level.

119. To account for amenities, RealPage instructs landlords to identify amenities using standardized naming conventions so that RealPage can use machine learning to group amenities together. RealPage then provides the market value for specific amenities, allowing landlords to more accurately identify and track how their competitors value these amenities and adjust their own pricing accordingly. The peer data include the market minimum and maximum value, as well as market quartile values, for specific amenities.

IV. RealPage Harms the Competitive Process and Renters by Entering Into Unlawful Agreements With Landlords To Share and Exploit Competitively Sensitive Data

120. AIRM’s and YieldStar’s use of nonpublic, competitively sensitive data is likely to harm, and has harmed, the competitive process and renters. AIRM and YieldStar distort the competitive process by using nonpublic data to maximize pricing increases and minimize pricing decreases. AIRM and YieldStar incorporate special rules, called “guardrails,” that override the

⁶ A lease up is typically a pre-leasing period (such as with a newly constructed property) where a landlord is seeking to reach a certain, initial occupancy threshold.

ordinary functioning of the algorithms in ways that tend to push rival landlords' rental prices higher than would occur in a competitive market. RealPage presses landlords to curtail "concessions" to renters. And AIRM and YieldStar's "lease expiration management" features aim to sequence vacancies to maximize landlords' pricing power.

A. AIRM and YieldStar Have the Purpose and Effect of Distorting the Competitive Pricing of Apartments

121. As RealPage frequently trumpets to landlords, "a rising tide raises all ships." AIRM and YieldStar ensure that the 'tide' flows primarily one way—higher rental prices. In a hot market, AIRM and YieldStar will recommend price increases to test what the market will bear, while in a down market AIRM and YieldStar will, to the extent possible, still increase or hold prices and minimize price decreases to reach the target occupancy rate.

122. AIRM and YieldStar are designed to help landlords press pricing beyond what they could otherwise achieve while reducing the risk that other landlords would undercut them. A revenue manager at Willow Bridge explained it succinctly: YieldStar is "designed to always test the top of the market whenever it feels it's safe to." By using competitors' sensitive nonpublic data to generate elasticity estimates, among other things, AIRM and YieldStar can recommend higher price increases to extract more money from renters without losing an additional lease. As RealPage explained to a YieldStar client in training, this pricing elasticity measurement informs "how far do we stretch and pull pricing within the market." That, in turn, means that "we may have a \$50 increase instead of a \$10 increase for that day."

123. That insight, gleaned from competitors sharing sensitive, transactional data with RealPage, which is in turn shared with landlords through pricing recommendations, removes

uncertainty and competitive pressure that benefits renters. As one landlord put it, these products "eliminate the guessing game" on rent.

124. As RealPage explains to its clients, AIRM and YieldStar reveal "hidden yield." This extra yield or revenue is hidden in a competitive market—a market in which competitors do not share sensitive information with each other—because landlords "can't see the opportunity" and "fail to capture [the] full opportunity."

125. AIRM and YieldStar disrupt the normal competitive bargaining process between landlords and renters. They place landlords in a better negotiating position vis-à-vis renters. Landlords using AIRM and YieldStar know that these models recommend floor plan prices and price units incorporating nonpublic data of their competitors, including effective rents and occupancy rates, all of which allow landlords to raise price with more certainty.

126. As landlords appreciate, AIRM and YieldStar use competitors' nonpublic data to predict with more certainty the highest price that the market will bear for a particular unit. A landlord is therefore less likely to negotiate on price. Any potential negotiation instead turns on lease term and move-in date, which AIRM and YieldStar adjust the pricing for to avoid overexposure for the landlord in the future.

127. AIRM and YieldStar also encourage landlords to follow each other in raising rents. When transactional data reveal that peers are raising effective rents—particularly the highest and lowest competitors for a given floor plan—AIRM and YieldStar follow with recommendations to increase rental prices. This movement with the market is ingrained in the AIRM and YieldStar models; AIRM and YieldStar will not recommend a floor plan price that falls below the market minimum.

128. Accordingly, as adoption of AIRM and YieldStar increases among

peer competitors, the use of AIRM and YieldStar can push prices up through a feedback effect. As peers move up, other AIRM or YieldStar users may move up accordingly. This phenomenon, where participating landlords "likely move in unison versus against each other," a RealPage executive testified, explains "the rising tide." The same executive saw evidence of this "rising tide" in 2020: When looking at multiple peer sites using YieldStar, "we started to see the trajectory of performance and trends be eerily similar when comparing subject sites and comp sets, thus showing that we are in fact 'r[aising] the entire tide.'" He acknowledged that YieldStar contributed to market prices rising as a tide.

129. Landlords rely on competitors' data within AIRM and YieldStar to determine their prices and how hard they need to try to be competitive. A revenue management director at Greystar noted in an internal AIRM deck that competitors' data is "like the boundaries of the street you are driving on." The director elaborated that "the competitive market range are [sic] the edges of the road, staying in those boundaries are [sic] necessary to get you to the destination."

130. Another landlord that used YieldStar told RealPage that within a week of adopting YieldStar they started increasing their rents, and within eleven months had raised rents more than 25% and eliminated concessions. The landlord added that they were now pricing at the top of their peers and, importantly, had "brought the rest of the Comps rents up with us." A RealPage executive responded internally that this was a "great case study that highlights performance before, during, and a result of YS [YieldStar]."

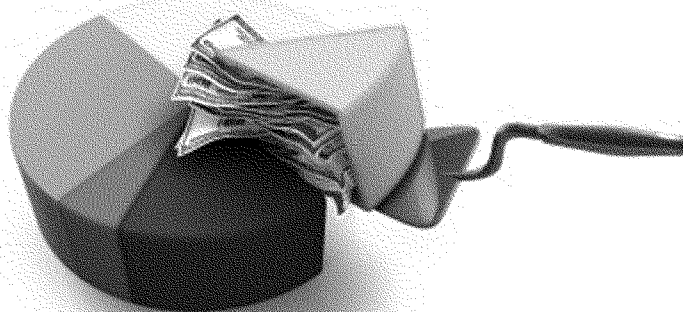
131. A landlord explained in an internal presentation that because YieldStar recommends floor plan pricing that moves with the market—a market position—YieldStar would use competitors' data to inform "how competitive we need to be [e]ach [d]ay."

Competing for the Pie

Demand is fixed, but our piece of the pie is variable

YieldStar recommends a Market Position every day, not a price

Previous achievement vs. Peers and Current need will determine *how competitive we need to be Each Day*



4

132. AIRM uses machine learning to train models on competing landlords' sensitive data. The parameters learned in this training are then applied to each AIRM client.⁷ As a result, the model uses the same method and learned parameters to generate price recommendations from the relevant data for each landlord.

133. This aligns and stabilizes prices in at least two ways. First, it reduces volatility in *how* prices change, compared to a situation in which each client sets prices independently. No longer do competitors react in distinctive ways to changing market conditions as they would in a market without access to competitors' transactional data. Instead, AIRM price recommendations tend to standardize those reactions. This leads to the second result: pricing recommendations, and consequently pricing decisions, become more predictable and aligned among competitors as each is using the same set of learned model parameters.

134. RealPage has even manipulated competitor mappings to increase the likelihood that AIRM or YieldStar

would recommend price increases. For example, a prominent client asked why a subject property had mapped peers located more than 100 miles away, in a different metropolitan area, when there were satisfactory mapped competitors within five miles. RealPage's response was that if these distant properties were not mapped, the client's property would be at the top of the market and it would be more difficult for AIRM to recommend price increases. RealPage had originally mapped these distant properties to give the model more room to recommend price increases for the client's property.

135. This dynamic exists not only in markets with growing demand, but also so-called "down markets," where demand is decreasing. In a competitive market with a fixed supply (at least in the short run) of housing units, a demand decrease would result in prices falling. But AIRM and YieldStar resist price decreases in down markets as much as possible while achieving targeted occupancy rates. RealPage told one prospective AIRM client that the combination of "AI and the robust data in the RealPage ecosystem" would allow the landlord to "avoid the race to the bottom in down markets."

136. Using competitors' transactional data to calibrate and set the bounds of its model enables YieldStar and AIRM

to decrease prices as little as possible in a down market. As one example, in 2023 a landlord reached out to RealPage with concerns about price recommendations at a property. Despite the property having too many vacancies and peer properties decreasing in price, AIRM was recommending price increases, frustrating the property owner. A senior RealPage executive responded that the model was not lowering prices because "there isn't much elasticity between the recommended position and the current one" and "the model would recommend the highest possible position [*i.e.*, price] without affecting demand."

137. RealPage succinctly summarized for landlords the effect of using AIRM and YieldStar in down markets: it "curbs [clients'] instincts to respond to down-market conditions by either dramatically lowering price or by holding price when they are losing velocity and/or occupancy." These tools instill pricing discipline in landlords, curbing normal fully independent competitive reactions by substituting them with interdependent decision-making (*i.e.*, through the use of pricing recommendations based on shared, competitively sensitive information). These products ensure that clients are "driving every possible opportunity to increase price even in the most

⁷ There are separate AI Supply models, and therefore potentially different learned model parameters, for clients using Yardi's property management software and clients using other property management software. But within these two categories the learned model parameters for the AI Supply models are the same.

downward trending or unexpected conditions.”

138. When one client wanted to cancel YieldStar, a RealPage executive noted to colleagues that with cancelation the client would lose “our helping them mitigate damage during rent control and covid.” In particular, the client would lose “us helping them rise with the tide given their strategy.”

139. Landlords understand the sensitivity of the information being shared and the likely anticompetitive effects. One potential client put it succinctly to RealPage: “I always liked this product [AIRM] because your algorithm uses proprietary data from other subscribers to suggest rents and term. That’s classic price fixing”

140. Cushman & Wakefield recognized the anticompetitive potential of sharing this level of detailed competitor data. When a property owner asked for information on specific competitors, Cushman & Wakefield’s director of revenue management replied that the requested tool, RealPage’s Performance Analytics with Benchmarking, did not provide information on specific competitors. The reason? Performance Analytics with Benchmarking “tracks transactional information therefore due [to] the potential pricing collusion, it’s anonymize[d] by RealPage.” Performance Analytics with Benchmarking draws from the same transactional database as AIRM and YieldStar. And while AIRM and YieldStar do not display the granular transactional data to the user, AIRM and YieldStar see and use that data. The price recommendations are based upon the very data that this client recognized could lead to collusion.

141. Even RealPage employees selling LRO recognized the anticompetitive harm from using competitors’ transactional data to recommend prices. In a 2018 training deck provided to clients, RealPage explained, “we often times get the question about if comps are on LRO, can we just update the rents for you? Unfortunately, no, we can’t. That could be considered price collusion, and it’s illegal.” But this is precisely what AIRM and YieldStar do.

B. AIRM and YieldStar Impose Multiple Guardrails Intended To Artificially Keep Prices High or Minimize Price Decreases

142. Unsatisfied with relying merely on competitively sensitive data to advantage landlords, RealPage created “guardrails” within AIRM and YieldStar to force adjustments to the price recommendation. But these guardrails serve as one-way ratchets that help landlords, not renters, by increasing

price recommendations or limiting a recommended decrease. And each of these guardrails makes use of competitively sensitive data that landlords agree to share with RealPage. These guardrails have even spurred multiple landlords to tell RealPage that AIRM and YieldStar are not dropping recommended rents as much as their individual conditions, or even market conditions, would warrant.

143. *Hard Floor.* AIRM and YieldStar will not recommend a floor plan price that falls below the smoothed market minimum effective rent. The market minimum is a hard floor. AIRM and YieldStar thus explicitly constrain floor plan price recommendations based on the prices of competitors, using shared nonpublic information.

144. *Revenue Protection Mode.* RealPage created a “revenue protection” mode that effectively lowers output to increase revenues. Revenue protection activates when AIRM or YieldStar predict—using calculations incorporating competitors’ data—that demand is too low for a landlord to meet its target occupancy. Rather than lowering the price to stimulate demand, the algorithm reduces the target number of leases. AIRM and YieldStar then maximizes revenue for the *reduced* occupancy level, which tends to reduce price decreases or increase rental prices.

145. RealPage acknowledges that revenue protection “may seem counterintuitive to leasing needs.” In June 2023, a landlord complained to RealPage that “something in your model is broken” because “the pricing model is not lowering rents dramatically” despite the client’s high exposure during a busy summer leasing season. RealPage explained that, with revenue protection, “the model still sees the way to make more revenue is to lease fewer units at higher prices.” In other words, the model seeks to “raise rates to get the highest dollar value possible for the leases we can statistically achieve” and ignore those leases that the client wants but the model predicts, using competitors’ data, the client will not get.

146. The model’s hard price floor can trigger revenue protection mode. In May 2022, for example, a landlord complained that AIRM was recommending price increases despite a projected shortfall in leases. Because revenue protection mode cannot be turned off, the RealPage pricing advisor recommended that the client reduce sustainable capacity. Sustainable capacity is a client-set parameter that imposes an inventory constraint and determines the number of leases AIRM and YieldStar will try to achieve. This is, of course, what revenue protection

mode functionally does on its own: increase inventory constraints to reduce output.

147. This phenomenon, a RealPage employee explained internally, was “true revenue protection mode.” The client’s floor plan was priced toward the bottom of its competitors. AIRM did not see any price decrease that would achieve the original target number of leases without dropping below the market floor (determined using competitors’ data). Because AIRM never recommends prices below the market floor, AIRM instead reduced the number of leases and optimized against that new, lower occupancy rate.

148. Revenue protection mode interrupts AIRM’s and YieldStar’s normal revenue maximization process. As a RealPage data scientist explained, “the model really wants to reduce rent but is prevented from doing so by the revenue protection restriction.” Revenue protection leads to higher prices and lower occupancy.

149. *Sold-Out Mode.* Once a landlord reaches its targeted capacity for a particular floor plan, the model considers that floor plan “sold out” even though units may still be physically available. In that situation, AIRM and YieldStar recommends the maximum rent charged by a property’s competitors, even if the floor plan’s previous price was far lower.

150. RealPage intentionally designed sold-out mode to use competitively sensitive data to lift rents. In an earlier version of the software, sold-out mode pushed rents to 95% of that floor plan’s highest recently achieved rent. But RealPage modified the algorithm in 2022 to go “straight to 100% of comps,” deliberately aligning rents with competitors’ highest rents, rather than the property’s own historical performance.⁸

151. *The Governor.* AIRM and YieldStar favor recommended price increases over price decreases. When the model calculates that the current day’s “optimal” price will result in greater revenue than the previous day, a feature called the “governor” causes the model to recommend the current day’s optimal price.⁹ But when AIRM or YieldStar calculates that the current

⁸ RealPage has at least considered changing this model logic because it introduced meaningful pricing volatility and significant price increases. Even if RealPage has implemented this proposed logic change, the new model logic still incorporates competitors’ confidential rents because AIRM and YieldStar recommend a market position that is tied to the bottom and top of the market, as defined by mapped competitors.

⁹ In some circumstances AIRM will cap the floor plan recommended price increase at a five percent increase.

day's optimal price will result in less revenue than the previous day, the governor recommends the recent average price *even though it is not optimal for the current day*. In other words, when market conditions weaken and the model calculates that a price decrease is warranted, this guardrail kicks in and recommends keeping the recent rent even though it is suboptimal. This asymmetry favors price increases over price decreases.

152. The effect of these guardrails is intentionally asymmetric. AIRM and YieldStar recommend price increases generated by the model. But the guardrails reduce or eliminate certain proposed price decreases even though the model has determined such deviations may contravene the landlord's individual economic interest.

C. AIRM and YieldStar Harm the Competitive Process by Discouraging the Use of Discounts and Price Negotiations

153. RealPage discourages landlords using AIRM and YieldStar from discounting rents. In the multifamily property industry, discounts typically consist of "concessions," which are financial allowances (such as a free month's rent or waived fees) offered to incentivize renters. Concessions may be offered generally or negotiated individually with a potential tenant.

154. In a competitive marketplace, each landlord may independently decide to offer concessions so that it can better compete in enticing lessors. But, again, RealPage seeks to replace fully independent, competitive decision-making with collective action by ending concessions. AIRM and YieldStar do not work as well when landlords use one-off or lumpy concessions. In its "best practices" for revenue management to landlords, RealPage's guidance is simple: "Eliminate concessions." Detailed "best practices" documents for both YieldStar and AIRM users explain that "concessions will no longer be used in conjunction with" YieldStar and AIRM.

155. When onboarding a new property, RealPage emphasizes the importance of accepting price recommendations without offering discounts, including "no concessions." Concessions cause landlords to deviate from what RealPage determines is the maximum revenue-generating price.

156. Landlords have worked to implement RealPage's requests. In one YieldStar training, Greystar explained that "Concessions are gone!" In a client-facing FAQ document about its revenue management products, RealPage explained that "the vast majority of our clients have discontinued the use of

concessions." A 2023 RealPage client presentation showed that the number of units offering concessions generally trended downward from approximately 30% of units in 2013 to under 15% in 2023. A client's refusal to offer concessions is bolstered by its awareness of competing landlords receiving the same advice from RealPage. In addition to discouraging discounts, RealPage discourages negotiating prices with renters. RealPage trains landlords that "YieldStar [or AIRM] is managing your Price," so the landlord's staff can focus on other things. The YieldStar or AIRM rent matrix is to be the source of prices that are given to a prospective renter. RealPage instructs leasing staff to provide prospective renters the specific price from the matrix that corresponds to the prospect's desired move-in date, unit, and lease term. RealPage cautions landlords not to show renters the matrix itself.

D. AIRM and YieldStar Increase and Maintain Landlords' Pricing Power by Using Competitors' Data To Manage Lease Expirations

157. Supply is a basic component of pricing. For this reason, information on a company's supply is highly sensitive, and its disclosure to competitors is particularly concerning. Yet AIRM and YieldStar use competitors' supply data precisely for the purpose of adjusting unit-level pricing, regardless of whether the landlord accepts the floor plan price recommendation. The goal of this "lease expiration management" is clear: As a RealPage senior manager explained for a client, using this data means that the client's property "will remain in a position of pricing power."

158. The purpose of lease expiration management is to avoid too many units becoming available in the market at the same time. Expiration management only increases unit-level prices. It never reduces the price.

159. Every landlord can choose to use "market seasonality" to inform its lease expiration management. As the name suggests, market seasonality adjusts the landlord's prices based on how many of its competitors' units will be vacant—that is, *future supply*. This feature is popular among landlords. For example, one of the largest landlords in the United States uses it in 98% of its properties. Every single property that uses market seasonality is leveraging RealPage's access to this highly sensitive, nonpublic data about its competitors' supply to inform pricing. RealPage trains landlords to turn on market seasonality as a best practice.

160. When activated, the market seasonality function changes unit-level prices across the different possible lease terms *regardless* of whether the landlord accepts the AIRM or YieldStar floor plan price recommendation.

161. RealPage determines for landlords an important input into lease expiration management: the expirations threshold. This threshold influences the point at which expiration premiums are added. The threshold calculation relies on nonpublic lease transaction data for the property's submarket and pulls from numerous RealPage products, including YieldStar, AIRM, OneSite, Business Intelligence, and Performance Analytics with Benchmarking. Landlords cannot adjust the expirations threshold.

162. Fueled by competitor data, expiration management results in "increased stability" and "pricing power." Using competitors' data reduces the risk of overexposure that "could erode rent roll growth." By adjusting price recommendations based on how much total supply is forecast in the market for a given time period, AIRM empowers landlords to charge higher prices than they could without access to competitors' nonpublic data.

E. No Procompetitive Benefit Justifies, Much Less Outweighs, RealPage's Use of Competitively Sensitive Data To Align Competing Landlords

163. AIRM and YieldStar do not benefit the competitive process or renters. Any legitimate benefits of revenue management software can be achieved through less anticompetitive means, and any theoretical additional benefits of AIRM and YieldStar are not cognizable and outweighed by harm to the competitive process and to renters.

V. RealPage Uses Landlords' Competitively Sensitive Data To Maintain Its Monopoly and Exclude Commercial Revenue Management Software Competitors

164. Landlords are not the only ones that benefit from RealPage's rental pricing practices. RealPage benefits too through maintaining its monopoly over commercial revenue management software for conventional multifamily housing rentals. In that market, RealPage's internal documents reflect that it commands an 80% share.

165. RealPage's core value proposition creates a self-reinforcing feedback loop of data and scale advantages. The sharing of competitively sensitive information among rivals attracts more landlords that seek to maximize revenues and extract more money from renters. As a result of its exclusionary conduct, RealPage has been able to

obstruct rival software providers from competing on the merits via revenue management products that do not harm the competitive process.

166. Over time, RealPage has become more entrenched and has stymied alternatives unless they too enter into similar unlawful agreements with landlords to obtain and use nonpublic transactional data to price units. Even then, RealPage's unparalleled troves of competitively sensitive data provide an ill-gotten advantage.

A. Landlords Are Drawn to RealPage Because of Access to Nonpublic Transactional Data That Is Used To Increase Landlords' Revenue

167. Landlords prize RealPage's accumulation of nonpublic transactional data from competing landlords. For example, Greystar noted that "RealPage supplies the best set of transactional data available via their millions of units of data—this becomes a valuable source of truth to our competitive landscape." In a training document for its employees, the same landlord explained that "better data = better outcomes" and that AIRM has "over 15 million units of data available." From the perspective of Greystar, "pricing decisions start with data" and that precision in pricing "comes from data driven decisions." Importantly, the landlord believed that AIRM's ability to "examine data quality . . . each night" via its property management software integrations, including guest card entry, "plays an important role" in pricing.

168. As another example, Cushman & Wakefield identified this data as especially helpful in a dense market because of insights into competitors' actions in the market. The same landlord also concluded that the more data points, the better confidence a landlord has in RealPage's rental recommendations. According to Cushman & Wakefield, more data—especially data about concessions—enabled the landlord to make better decisions because it showed the landlord where the market stood. Cushman & Wakefield's director of revenue management explained to a colleague that YieldStar "collects about 14 MILLION transactional lease data across the US and has over 20 years of historical records." The director acknowledged that "[t]his is huge! Essentially, this is a window into the market and the shifts we are going to experience . . . Having insight into this data, allows [landlords] to make changes with the dynamic changes in the market."

169. Willow Bridge, who compared AIRM to another commercial revenue

management software product, noted that the competing product "is about half of the cost and does a good job in reviewing rents and making recommendations but does it without the additional reporting capabilities and market data that AIRM uses." Ultimately, this landlord decided to push their owner clients towards AIRM. The landlord's decision to use AIRM was in part based on receiving "more accurate and time sensitive data" and noted that, although revenue management is not changing, "the amount of data and how that information is used to grow revenue is bigger and better than ever" with AIRM.

170. Landlords want access to RealPage's transactional data because RealPage advertises, and landlords believe, that the use of this data will increase a landlord's revenue. "Due to the amount of data RealPage possesses," Greystar explained, RealPage developed AIRM "to leverage machine learning to improve both the supply and demand modeling and provide a tool to further customize to each asset's needs." The materials sent to the landlord's clients also included a flyer explaining that AIRM will "outperform the market 2–7% year over year" and that it provides "[a]ctionable intelligence derived from the industry's largest lease transaction database of 13M+ units."

171. Landlords view the lack of access to transactional data as a significant shortcoming in other commercial revenue management software. One landlord received a request from a property owner client for information on YieldStar and how it compared to another commercial revenue management product. A landlord executive explained that YieldStar was backed by robust data and "millions of units of transactional data to support not only their demand and forecast modeling but also their market/competitive set information." She concluded that the other revenue management software was "in a completely different class" than YieldStar. More than two years later, the same executive again concluded that this company's new revenue management product was inferior to AIRM because AIRM had far more transactional data, supported by RealPage's Market Analytics survey data. In another example, a different landlord compared multiple commercial revenue management products to RealPage's YieldStar. He concluded that a major weakness of these alternatives was that they lacked access to transactional data on competitors' rents.

B. RealPage's Collection and Use of Competitively Sensitive Data Excludes Competition in Commercial Revenue Management Software

172. RealPage recognizes the barriers to competition on the merits that its data, scale, and business model provide. RealPage understands that "pricing decisions start with data." RealPage explains to its clients that "[t]he data entered into your [property management software] and collected each night, along with current market data (and lead data if OneSite) provides insight into advantageous demand drivers, identifies revenue risk and opportunity, and captures this competitive landscape for informed pricing."

173. This data and scale advantage is significant and creates a feedback loop that further increases barriers to competition for commercial revenue management software. RealPage touts its access to an "unmatched database." In one case from 2023, a RealPage sales representative noted that RealPage's "revenue management is the most widely adopted solution in the industry" and RealPage had "approximately 4.8M units on revenue management." In a 2023 presentation for AIRM, RealPage advertised that the "[a]mount of data we have (~17mm units) is unique to RealPage" and that the "[q]uality of data is best in class given that it is 'Lease Transaction Data.'" RealPage claimed this "supports that fact that the industry views RealPage as the source of truth for performance data."

174. RealPage has used this competitively sensitive data to develop an AI-driven revenue management solution that leverages the scale and scope of its data. RealPage's plan to use this database as fuel for its AI pricing model is spelled out in a Go-To-Market summary from 2019. In that document, RealPage describes that:

RealPage can achieve \$10 Million in organic ACV growth through delivery of the next generation of revenue management. Failure to do so reduces the opportunity to harvest gains from our \$300M investment in LRO and places a portion of current \$100M revenue management revenue at risk to emerging competitors, including Yardi and low-cost alternatives that say 'all revenue management is the same.' Over time we can sunset YieldStar and LRO reducing expense, and leverage LRO capabilities as a revenue management lite offering.

175. This plan came to fruition with the introduction of AIRM. In a RealPage training presentation from February 2020—right before the launch of AIRM—RealPage discusses a new optimization solution that is built on the "RealPage Foundation" which is

defined as “13.5m units of lease transactional data informing our models with real actionable intelligence in near real time.” As described earlier in the deck, RealPage’s competitors “lack the foundational capabilities on which to build upon” leaving RealPage with the possibility “to tie together each capability . . . in a single view.”

176. RealPage knows that its rivals do not have access to similar data sets. In one presentation from 2022, RealPage discussed competing revenue management products from Yardi and Entrata. Yardi and Entrata have fewer than 250,000 units, RealPage concluded, while RealPage had at least 4 million. Unlike RealPage, Yardi had a limited data set that used data only from Yardi’s property management software. RealPage likewise explained that Entrata lacked much data outside of student housing and Entrata’s revenue management software worked only with its own property management software, meaning Entrata could not pull data from RealPage’s OneSite or other property management software products. RealPage further criticized manual in-house pricing options for having biased data, introducing errors through manual pricing, and being inefficient.

177. RealPage pitches prospective clients on its unique access to and use of nonpublic transactional data that is competitively sensitive. In 2021, RealPage discussed internally how to pitch AIRM to a prospective client who was considering an alternative revenue management solution. A RealPage employee pointed to the competitor’s lack of “AI driven competitor information derived from lease transaction data.” Another employee added that the salesperson should amplify the prospective client’s concerns about the competitor’s lack of nonpublic transactional data, comparing it to buying a “Ferrari without an engine.” RealPage’s chief economist concurred.

178. RealPage’s use of competitors’ nonpublic transactional data provides it an important advantage on pricing renewals. Information on renewals is not available publicly. Competing revenue management vendors who do not use nonpublic, competitively sensitive data are left partially blind to this important part of the rental market. In 2022, a RealPage salesperson stressed this advantage to a prospective client who was also considering a competing commercial revenue management solution. The salesperson noted the lease transaction data RealPage collected on a nightly basis and declared that RealPage had an

“unequaled ability to stress test renewals *nightly* and drive amenity optimization.”

179. RealPage recognizes that its use of competitively sensitive data minimizes any competitive pressure it faces. A RealPage senior vice president explained in a strategy document that RealPage’s unique nonpublic data on leasing decisions was a “data moat,” protecting RealPage from competitors. In 2020 RealPage’s chief economist noted that RealPage’s access to this data was a “major competitive advantage” and a “major reason we can do what we do.” In 2021 a prospective client asked RealPage why AIRM cost three times the amount of a competing revenue management product. Internally, a RealPage employee pointed to AIRM leveraging daily transactional data of over 13 million units to collect competitors’ rents and forecast demand. He noted that multiple large landlords had refused to adopt the competing revenue management product rather than AIRM even when the competitor offered it for free. The same RealPage employee explained to another client that RealPage’s leveraging of lease transaction data—with access to confidential data for over 14 million units—was a key advantage over a competing commercial revenue management provider.

180. In June 2023 a landlord emailed RealPage and asked, “who are your competitors?” A RealPage sales executive responded, “Our revenue management solution does not have any true competitors, mainly because our data is based on real lease transaction data from all kinds of third-party property management systems”

181. In addition, when discussing a potential entrant, a RealPage executive noted that the entrant needed “to get the data to enable [revenue management].” He further noted that [g]etting the data (and more modern methods) . . . will be hurdles for [the entrant].” Another RealPage senior executive explained that shifting clients from LRO, which is less reliant on competitively sensitive information of rivals, to AIRM, which is very reliant on such information, reduced the threat from new entry when she noted that migrating LRO clients to AIRM was “critical to reducing the risk that may come from this new [entrant’s] offering.”

182. RealPage’s power and conduct in connection with commercial revenue management software serves to exclude rivals and maintain its monopoly power. RealPage has ensured rivals cannot compete on the merits unless they enter into similar agreements with landlords, offer to share competitively

sensitive information among rival landlords, and engage in actions to increase compliance. As a result of its exclusionary conduct, RealPage has been able to obstruct rival software providers from competing via revenue management products that do not harm the competitive process in addition to cementing its massive data and scale advantage that keeps increasing due to feedback effects.

VI. Relevant Markets

A. Conventional Multifamily Rental Housing Markets

1. Product Markets

183. Conventional multifamily rental housing is a relevant product market. Conventional multifamily rental housing includes apartments available to the general public in properties that have five or more living units. Conventional rental housing does not include student housing, affordable housing, age-restricted or senior housing, or military housing. This product market reflects consumer preferences, industry practice, and governmental policy.

184. In 2023, RealPage estimated the conventional multifamily rental market to cover approximately 14 million units. The 2021 American Housing Survey estimated a total of 21.1 million multifamily apartments—not limited to conventional—in the United States.

(a) Conventional Multifamily Rentals Are Distinct From Other Types of Multifamily Housing

185. Other types of multifamily apartment buildings are not good substitutes for conventional multifamily rentals. Some kinds of multifamily buildings are restricted to specific types of renters, such as student housing units, affordable housing units (*i.e.*, income-restricted housing), senior (*i.e.*, age-restricted) housing, and military housing. These housing units focused on different classes of renters are not reasonable substitutes for conventional multifamily rentals. RealPage distinguishes conventional multifamily as being in a different market segment from senior, affordable, and student housing in the ordinary course of business.

186. Non-conventional units are not widely available to all renters and can exhibit different buying patterns. For example, student housing serves individuals enrolled in higher education and is typically located on or near universities. Student housing is typically leased by the bed instead of by unit, and faces a significantly different leasing cycle and different patterns in

renewals and leasing practices. Recognizing these differences, RealPage will assign to student properties surrogates that are distant student assets rather than nearby conventional assets. RealPage in fact offers a different version of both AIRM and OneSite, its property management software, for the “student market.”

187. Affordable housing units are available only to individuals or households whose income falls below certain thresholds. Multiple federal affordable housing regulations, for example, require participants in affordable housing programs to have incomes lower than a set percentage, such as 30%, of the median family income in the local area. Affordable housing units are also relatively scarce, with families seeking such housing often waiting years on a waitlist. These legal and practical restrictions prevent affordable housing from being a reasonable substitute to conventional multifamily housing for the typical renter.

188. Senior housing is typically restricted to individuals aged 55 and older. RealPage separates senior housing into four categories: independent living, assisted living, memory care, and nursing care. Independent living offers senior-focused amenities—such as transportation, meals, and social gatherings among community members—that materially increase housing costs and are less desirable to younger households. The other three categories of senior housing provide professional or special care to assist renters with basic tasks like eating, bathing, and dressing, and they are not reasonable substitutes for conventional multifamily rentals.

189. Military housing is also not a reasonable substitute to conventional multifamily rentals. It is typically geographically proximate to military installations, with roughly 95% of military housing found on-base. Although civilians may in some cases be able to live in military housing properties experiencing low occupancy rates, military regulations place them below five higher-priority categories of potential renters, including active and retired military personnel.

(b) Single-Family Housing Is Not a Reasonable Substitute to Multifamily Rentals

190. The multifamily industry, government regulators, and policy documents distinguish between

properties with at least five units, which are classified as “multifamily housing” and those with fewer units, which are classified as “single-family rentals.”

191. The purchase of single-family or other types of homes is not a reasonable substitute for conventional multifamily housing rentals. A former RealPage economist explained that “the choice between renting and owning is first and foremost a life stage and lifestyle choice over a financial one.” Single-family homes also generally require a substantial down payment. In March 2023, a RealPage economist estimated an “entry premium” of \$800 per month to home ownership over rentals. According to a 2021 RealPage strategic planning guide, the “myth” that people were abandoning multifamily properties for single-family homes is false, stating that “rising home sales do not hurt apartment demand.” Single-family home sales are not reasonable substitutes for conventional multifamily housing.

192. More broadly, renters living in conventional multifamily apartments will not switch to single-family homes—purchases or rentals—because of a small increase in rent. The decision to move from an apartment building to a single-family home is primarily a life-stage and lifestyle choice. For example, the decision by a household to have children may spur a move to a single-family home. In many areas, relatively few children live in conventional multifamily apartments. Multifamily apartments typically offer community amenities and a different lifestyle, such as high walkability in an urban area, whereas single-family homes generally do not offer the same amenities and offer instead increased privacy, including private yards. A RealPage analyst explained in 2022 that because a move to a single-family home is a “lifestyle choice,” single-family home rentals were not direct competitors to multifamily rental housing. A 2022 RealPage deck, shared with a landlord, stated that multifamily rentals and single-family rentals were “complementary, not competitive,” and targeted different renters, with different floor plans, in different locations. Another RealPage analyst explained to a multifamily property owner that single-family rentals offer a different renter profile than multifamily rentals.

193. Industry participants agree that single-family rentals attract a different pool of renters from multifamily rentals. A managing director of a single-family

rental property management company explained in 2021 that a renter’s journey from multifamily apartment living to single-family rentals came as life stages evolved. The CEO of a single-family rental developer similarly explained that these single-family rental homes are for renters who age out of multifamily apartments.

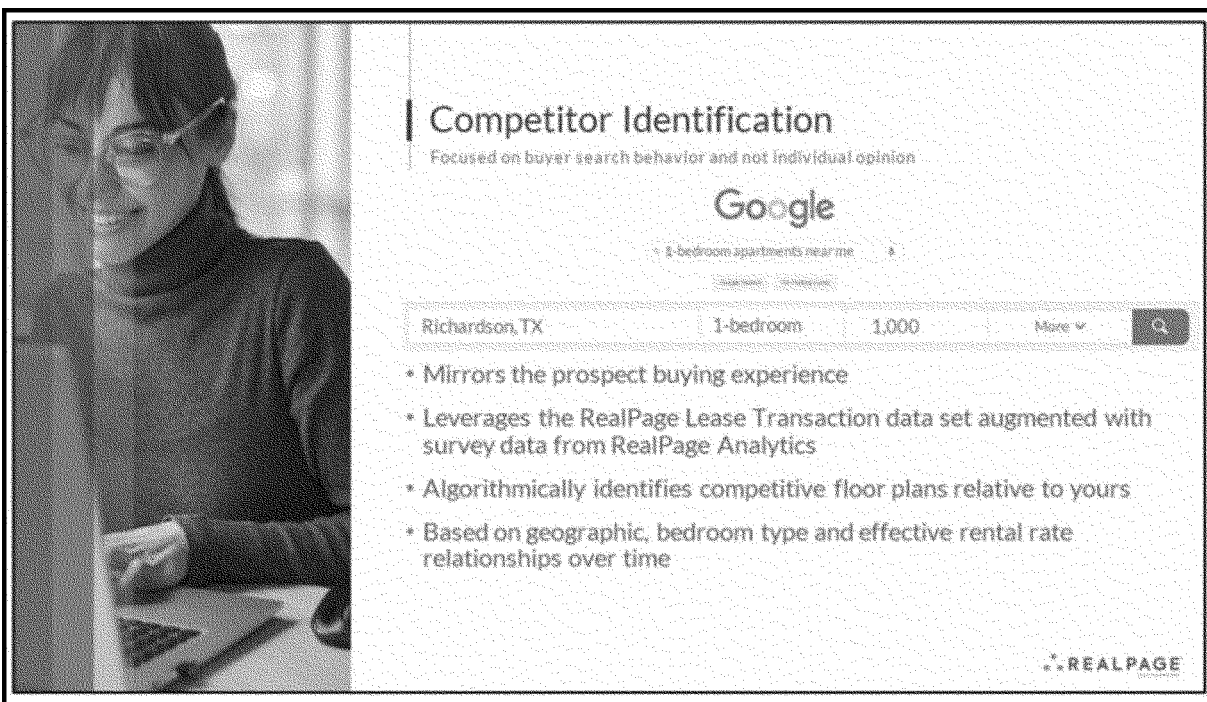
194. Single-family rentals are also typically priced higher than multifamily apartments, further reducing potential substitution between them. The chairman of one institutional multifamily property owner explained in a 2022 earnings call that multifamily housing was relatively affordable compared to single-family rentals. An industry price index showed that, in March 2024, single-family rent was approximately 18% higher than multifamily rent.

(c) Conventional Multifamily Rental Units With Different Bedroom Counts Are Relevant Product Markets

195. Different bedroom floor plans also constitute relevant product markets. A key criterion by which a current or prospective renter searches for a rental unit is the number of bedrooms. One-bedroom units are substitutes for other one-bedroom units, two-bedroom units are substitutes for other two-bedroom units, and so forth. Individual renters may change their desired numbers of bedrooms, but this is typically tied to changes in circumstance independent from price. For example, the birth of a new child may require a family to shift from a one-bedroom unit to a two-bedroom unit.

196. RealPage adopts this practical reality in the ordinary course of business. For every property using AIRM or YieldStar, RealPage maps peer floor plans. These mapped floor plans capture reasonable substitutes for the subject property floor plan and reflect the perceived market by a prospective renter.

197. To be selected as a peer, a floor plan must have the same number of bedrooms. A RealPage employee explained the mapping process to a client: “we are looking specifically at the bedroom level. The tool will only map 2b[edroom] with 2b[edroom] or 1b[edroom] with 1b[edroom].” The object of mapping peers is to mirror the prospect buying experience by identifying properties that a potential tenant will see in online searches when searching for a particular floor plan and price range.



Competitor Identification
Focused on buyer search behavior and not individual opinion

Google
1-bedroom apartments near me

Richardson, TX 1-bedroom 1,000 More

- Mirrors the prospect buying experience
- Leverages the RealPage Lease Transaction data set augmented with survey data from RealPage Analytics
- Algorithmically identifies competitive floor plans relative to yours
- Based on geographic, bedroom type and effective rental rate relationships over time

REALPAGE

198. AIRM and YieldStar price the different floor plans, which consist of different numbers of bedrooms, independently. RealPage testified that the model considers no cross-price elasticity between different floor plans: “when you set up the different floor plans, a one bedroom, a two bedroom, or three bedroom, those are completely independent. . . . [T]here’s no influence in what the pricing is for the two bedrooms, for example. . . . has no influence on what the pricing is for the one bedrooms.” Landlords also take steps to maintain a pricing spread between one- and two-bedroom units and avoid pricing one-bedrooms at a higher rate than two-bedroom units.

199. Landlords recognize that units with different bedroom counts face different demand from renters. For example, Greystar explained internally in 2022 that demand for studio apartments differs from demand for three-bedroom units. A separate 2023 training by Greystar reiterated that demand trends, and therefore pricing trends, differ by bedroom counts and that staff should not react to a downward trend in one category, such as two bedrooms, with discounts in one- or three-bedroom units. At another time, Greystar emphasized the benefit of RealPage’s lease expiration management feature because it is managed at the bedroom level—not at the property level—so it could match seasonal demand for units with that specific number of bedrooms. A revenue manager at Willow Bridge similarly

explained to colleagues that one-bedroom units have drastically different demand patterns from two-bedroom units and from three-bedroom units.

2. Geographic Markets

200. Defining relevant geographic markets help courts assess the potential anticompetitive impact of the agreements challenged. Here, the relevant geographic markets for the purposes of analyzing the anticompetitive effects of RealPage’s agreements with landlords are the areas in which the sellers (the landlords) sell and in which the purchasers (potential renters) can practicably turn for alternatives. RealPage’s agreements are alleged to have suppressed price competition in the markets for conventional multifamily housing. The relevant geographic markets to assess those agreements are those property locations close enough for their apartments to be considered reasonable substitutes. In delineating a geographic market for conventional multifamily housing, the focus is inherently local. Renters are typically tied to a particular location for work, family, or other needs.

201. RealPage recognizes the local nature of geographic markets. One RealPage former employee explained that under “Real Estate 101 rules, real estate is local, local, local.” Another RealPage former chief economist noted that an effective evaluation of a property’s performance must be done in comparison to similar properties in the

property’s neighborhood because competitive conditions in the neighborhood could differ widely from the city at large. When training landlords on lease expiration management, two RealPage executives explained that market seasonality was based on the most accurate geographic level, such as zip code, neighborhood, or submarket. They further explained that renters typically move locally. Similarly, a former property manager explained that potential tenants will look at a small number of properties in the same neighborhood, and it is on that neighborhood level where competition occurs among multifamily properties. This individual testified, “location really does matter in real estate.”

202. RealPage has created a tool called True Comps. Used in performance benchmarking products that provide decisional support to AIRM and YieldStar, True Comps provides a more accurate mapping of competitor properties. It uses an algorithm to find the properties most comparable to the subject property, as measured by characteristics including distance, effective rent, age, property height, and unit count and mix. By default, True Comps picks competitors within a 15-mile radius. In scoring distance, True Comps applies a “highly-punitive model”—the distance score drops from 99% for a distance of 0.05 miles, to 56% for a distance of 2 miles, and to 10% for a distance of 8 miles. Thus, RealPage acknowledges and incorporates small geographic areas as the appropriate

location in which to find true competitive alternatives.

203. During a property’s implementation process, AIRM and YieldStar require the mapping of peer properties, including competitors. RealPage starts by looking for competitors within a half-mile radius from the subject property and then expands as necessary. Geographic proximity is in fact so important that YieldStar has a default radius that limits its search for competing properties to no more than 5 miles in urban settings, and to no more than 10 miles in suburban settings. RealPage has an internal process for escalating any proposed peer property that is more than 15 miles away.

(a) RealPage-Defined Submarkets Identify Relevant Geographic Markets

204. RealPage defines geographic submarkets in the ordinary course of business. Each submarket reflects the geographic area, defined by a set of zip codes, that features similar properties that compete for the same pool of potential renters. In constructing submarkets, which are generally larger than its neighborhoods, RealPage considers major roads, city and county boundaries, and school districts. RealPage also considers socioeconomic factors and apartment market characteristics, such as the age of properties and rental rates.

205. Even within a city, apartment demand varies significantly based on factors such as employment. Supply may also vary widely as existing properties and new construction may be located in different parts of a city. A former RealPage chief economist explained that because “real estate is very local . . . you typically want to take a . . . more narrow view if you can on what’s going on in any given submarket.”¹⁰

206. The multifamily industry recognizes submarkets as an important geographic area for analyzing competition and pools of renters. Multiple industry analysts offer data by submarkets. A revenue management director at Greystar testified about a submarket that “everybody in our industry uses this term.” She further

stated that submarkets are a standard categorization system, used by RealPage and others, including to benchmark a subject property’s performance with comparable properties. A revenue manager at Cushman & Wakefield circulated a scorecard comparing performance to the submarket, and exclaimed that “we’re perfectly aligned with the submarket” on rent roll.

207. A revenue management executive at Willow Bridge testified that submarkets identify specific, smaller areas of a city where renters look to live to be close to schools or work. This executive testified that submarkets typically identify the area within which a renter is comparing apartment options. This landlord tracks other properties’ rents in a subject property’s submarket to make sure the subject property remains competitive, and if rents in a submarket increased, then the landlord expected that its property in that submarket would also raise its rents.

208. Appendix A lists RealPage-defined submarkets that identify relevant local markets in which the agreements among RealPage and landlords to share nonpublic, competitively sensitive information for use in pricing conventional multifamily rentals have harmed, or are likely to harm, competition and thus renters.

209. The RealPage-defined submarkets identified in Appendix A are relevant markets in which the agreements between RealPage and AIRM and YieldStar users to align pricing has harmed, or is likely to harm, competition and thus renters. In each of these markets, the penetration rate for AIRM and YieldStar ranges from at least around 26% to 69%, and for AIRM, YieldStar, and OneSite ranges from at least around 30% to 78%.¹¹ In each of these markets, the landlords using AIRM or YieldStar and/or sharing competitively sensitive information collectively have market power.

210. Appendix B identifies submarkets by bedroom count that are relevant markets in which the agreements between RealPage and landlords, and agreements among landlords, to share nonpublic, competitively sensitive information for use in pricing conventional multifamily

rentals have harmed, or are likely to harm, competition and thus renters.

211. The markets identified in Appendix B are relevant markets in which the agreements between RealPage and AIRM and YieldStar users to align pricing collectively have harmed, or are likely to harm, competition and thus renters. In each of these markets, the penetration rate for AIRM and YieldStar ranges from at least around 26% to 79%, and for AIRM, YieldStar, and OneSite ranges from at least around 30% to over 80%. In each of these markets, the landlords using AIRM or YieldStar and/or sharing competitively sensitive information collectively have market power.

(b) Core-Based Statistical Areas (CBSAs) Are Relevant Geographic Markets

212. A core-based statistical area (CBSA) is also a relevant geographic market. A CBSA is a geographic area based on a county or group of counties. A CBSA has at least one core of at least 10,000 individuals. A CBSA includes adjacent counties that have a high degree of social and economic integration with the core, as measured by commuting ties. A CBSA includes both metropolitan statistical areas and micropolitan statistical areas. A CBSA includes the set of reasonable conventional multifamily rental alternatives to which a renter would turn in response to a small but significant, nontransitory price increase.

213. RealPage itself tracks CBSAs in the ordinary course of business and refers to them as “markets.”

214. Table 1 identifies relevant markets in which the agreements between RealPage and landlords, and agreements among landlords, to share nonpublic, competitively sensitive information for use in pricing conventional multifamily rentals collectively have harmed, or are likely to harm, competition and/or consumers. In each of these markets, the penetration rate for AIRM and YieldStar ranges from at least around 26% to 37%, and for AIRM, YieldStar, and OneSite ranges from at least around 35% to 45%. Three of these markets are located in North Carolina.

TABLE 1—CORE-BASED STATISTICAL AREA (CBSA) MARKETS

Core-based statistical area (CBSA) markets	YS/AIRM 30% or more	YS/AIRM/OneSite 30% or more
Atlanta-Sandy Springs-Roswell, GA	Yes	Yes

¹⁰ RealPage also tracks data at a more granular level than a submarket, called a neighborhood.

¹¹ Including penetration rates for RealPage’s Business Intelligence and Performance Analytics

with Benchmarking products, which landlord users agree to share nonpublic data with RealPage that RealPage then uses in AIRM and YieldStar, would increase the data penetration rates subject to

unlawful agreements for these and all other relevant conventional multifamily rental housing markets identified in the Complaint.

TABLE 1—CORE-BASED STATISTICAL AREA (CBSA) MARKETS—Continued

Core-based statistical area (CBSA) markets	YS/AIRM 30% or more	YS/AIRM/OneSite 30% or more
Austin-Round Rock, TX	Yes	Yes
Charleston-North Charleston, SC .....	.....	Yes
Charlotte-Concord-Gastonia, NC-SC	Yes	Yes
Dallas-Fort Worth-Arlington, TX	Yes	Yes
Denver-Aurora-Lakewood, CO	Yes	Yes
Durham-Chapel Hill, NC	Yes	Yes
Nashville-Davidson—Murfreesboro—Franklin, TN .....	.....	Yes
Orlando-Kissimmee-Sanford, FL	Yes	Yes
Raleigh, NC	Yes	Yes

215. The markets identified in Table 1 are relevant markets in which the agreements between RealPage and AIRM and YieldStar users to align pricing collectively have harmed, or are likely to harm, competition and thus renters.

216. Table 2 identifies relevant CBSAs by bedroom counts that are relevant

markets in which the agreements between RealPage and landlords, and agreements among landlords, to share nonpublic, competitively sensitive information for use in pricing conventional multifamily rentals collectively have harmed, or are likely

to harm, competition and/or consumers. In each of these markets, the penetration rate for AIRM and YieldStar ranges from at least around 27% to 42%, and for AIRM, YieldStar, and OneSite ranges from at least around 33% to 45%.

TABLE 2—CORE-BASED STATISTICAL AREA (CBSA) MARKETS BY BEDROOM COUNT

Core-based statistical area (CBSA) markets	Number of beds	YS/AIRM 30% or more	YS/AIRM/OneSite 30% or more
Atlanta-Sandy Springs-Roswell, GA	1	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	2	Yes	Yes
Austin-Round Rock, TX	1	Yes	Yes
Austin-Round Rock, TX	2	Yes	Yes
Charleston-North Charleston, SC	1	Yes	Yes
Charleston-North Charleston, SC	2	.....	Yes
Charlotte-Concord-Gastonia, NC-SC	1	Yes	Yes
Charlotte-Concord-Gastonia, NC-SC	2	Yes	Yes
Dallas-Fort Worth-Arlington, TX	1	Yes	Yes
Dallas-Fort Worth-Arlington, TX	2	Yes	Yes
Denver-Aurora-Lakewood, CO	1	Yes	Yes
Denver-Aurora-Lakewood, CO	2	Yes	Yes
Durham-Chapel Hill, NC	1	Yes	Yes
Durham-Chapel Hill, NC	2	Yes	Yes
Nashville-Davidson—Murfreesboro—Franklin, TN	1	Yes	Yes
Nashville-Davidson—Murfreesboro—Franklin, TN	2	.....	Yes
Orlando-Kissimmee-Sanford, FL	1	Yes	Yes
Orlando-Kissimmee-Sanford, FL	2	Yes	Yes
Raleigh, NC	1	Yes	Yes
Raleigh, NC	2	Yes	Yes

217. The markets identified in Table 2 are relevant markets in which the agreements between RealPage and AIRM and YieldStar users to align pricing collectively have harmed, or are likely to harm, competition and thus renters.

218. Even assuming available land and no regulatory constrictions, local markets for conventional multifamily rental housing feature substantial barriers to entry. Landlords seeking to respond to rising rental prices by expanding supply, rather than simply acquiring an existing property, typically face substantial lead times to construct a new multifamily property. Additionally, there are significant upfront capital costs, including to fund expenditures on building material and

labor, that are recuperated over time, which may require landlords to secure financing.

B. Commercial Revenue Management Software Market

219. RealPage has monopoly power in the market for commercial revenue management software for conventional multifamily housing rentals in the United States, with a durable market share over 80%, according to internal documents and other information.

1. Product Market

220. Commercial revenue management software for conventional multifamily housing rentals is a relevant antitrust product market.

221. Other methods for pricing conventional multifamily housing units are not reasonable substitutes for commercial revenue management software. RealPage and others in the industry recognize that revenue management software companies for multifamily housing units compete primarily against each other and not manual or do-it-yourself pricing methods.

222. Internal documents from RealPage refer specifically to commercial revenue management for multifamily housing and recognize RealPage's substantial market share. For example, a 2021 strategy presentation described RealPage as “the market leader in commercial revenue

management for multifamily [housing] with 45 of the 50 Top NMHC Owner and Operators” all using RealPage’s revenue management products.

223. A presentation to RealPage’s board in 2022 noted that “[RealPage] has gained [the] pole position in Revenue Management largely through the success of AI Revenue Management, which has become RealPage’s leading differentiating product.” Additionally, the presentation described how “Revenue Management is experiencing strong growth driven by AIRM” due to its “PMS agnostic approach” which gives RealPage the ability to aggregate data from its clients resulting in “revenue management [that] has achieved a market share of 95% of the top 50 owners and operators.”

224. RealPage acknowledges its market power and durable market position. A 2023 RealPage presentation reviewing the use of artificial intelligence in property technology noted that “RealPage is already the de facto market leader in certain key areas at leveraging AI for multifamily proptech” and shows “revenue management” as the area where it is the furthest ahead.” Later, the same presentation noted that RealPage’s current offer for revenue management is “best-in-class” and that “[n]o other company is cross-pollinating their pricing tools with data in a way similar to [RealPage].” As early as 2019, a RealPage presentation for clients stated that RealPage “has around 80% of the Revenue Management market share.” That share has proved durable over time. In 2023, during a sales pitch to a property owner, a RealPage representative noted that “[RealPage] has 80% to 85% of the market share with the closest competitor around 12% (<750K units).”

225. In late 2021, a RealPage employee preparing competitor intelligence explained to RealPage’s chief economist that RealPage “dominate[d]” revenue management. He added that RealPage “dominate[d]” Yardi and Entrata, which are the next two largest commercial revenue management competitors.

226. RealPage’s monopoly power is protected by barriers to entry, including the unlawful collection and use of competitors’ nonpublic transactional data on millions of multifamily units.

227. Landlords also recognize RealPage’s substantial market share and market power over commercial revenue management software. In 2024, a landlord revenue management executive testified that manual pricing does not compete with AIRM. The same landlord pitched YieldStar to its owner clients by

explaining that “it’s evident manual pricing cannot solve at the level a revenue management tool can.”

228. In a 2023 pricing dispute with a large landlord, RealPage refused to lower the price for its AIRM software. In response, an employee employed by the landlord noted that it was no surprise they would not decrease their price, remarking that “[h]ere is the joy of a monopoly on a product category.” In 2021, a different landlord commented that “the entire industry is feeling the monopolizing effects of RealPage right now and everyone is hungry for a new product.” A third landlord noted during AIRM renewal negotiations in 2022 that it had no options besides RealPage, with a senior executive stating about RealPage, “too bad they have a monopoly going here!” Also in 2022, a fourth landlord, in the face of RealPage pushing a 400% increase in annual revenue management costs over a five-year period, bemoaned the “limited competition in the market around revenue management tools” and how “the industry desperately needs a solid competitor,” and then discussed a plan to “incubate a viable alternative to AIRM in the future.” In 2024, that alternative had less than one half of one percent market share.

2. Geographic Market

229. The United States is a relevant geographic market for commercial revenue management software. RealPage sells its commercial revenue management software in the United States and tracks its business in the United States in the ordinary course of business. RealPage sets its subscription prices on a nationwide basis. Further, RealPage can deploy its commercial revenue management software, which may use inputs from properties located throughout the country, in any U.S. state. Landlords in the United States purchase commercial revenue management software from RealPage to set rental prices for renters in the United States. Many landlords have centralized revenue management teams that set nationwide revenue management policies and conduct revenue management trainings for their employees across the United States.

VII. Jurisdiction, Venue, and Commerce

230. The United States brings this action pursuant to Section 4 of the Sherman Act, 15 U.S.C. 4, to prevent and restrain RealPage’s violations of Sections 1 and 2 of the Sherman Act, 15 U.S.C. 1, 2.

231. The Attorneys General assert these claims based on their independent authority to bring this action pursuant

to Section 16 of the Clayton Act, 15 U.S.C. 26, and common law, to obtain injunctive and other equitable relief based on RealPage’s anticompetitive practices in violation of Sections 1 and 2 of the Sherman Act, 15 U.S.C. 1, 2.

232. The Attorneys General are the chief legal officers of their respective States. They have authority to bring actions to protect the economic well-being of their States and their residents, and to seek injunctive relief to remedy and protect against harm resulting from violations of the antitrust laws.

233. This Court has subject matter jurisdiction over this action under Section 4 of the Sherman Act, 15 U.S.C. 4, and 28 U.S.C. 1331, 1337(a), and 1345.

234. The Court has personal jurisdiction over RealPage, Inc. (“RealPage”); venue is proper in this District under Section 12 of the Clayton Act, 15 U.S.C. 22, and under 28 U.S.C. 1391 because RealPage transacts business and resides within this District.

235. RealPage is a privately-owned company organized and existing under the laws of the State of Delaware and is headquartered in Richardson, Texas. It is registered to do business in the State of North Carolina as a foreign corporation offering software solutions for the multifamily housing industry and software as a service.

236. RealPage engages in, and its activities substantially affect, interstate trade and commerce. RealPage provides a range of products and services that are marketed, distributed, and offered to consumers throughout the United States and across state lines.

237. The Court has personal jurisdiction over Camden Property Trust (“Camden”); venue is proper in this District under Section 12 of the Clayton Act, 15 U.S.C. 22, and under 28 U.S.C. 1391 because Camden transacts business and resides within this District.

238. Camden is a publicly-traded multifamily company organized under the laws of the State of Delaware and is headquartered in Houston, Texas. Camden is registered to do business in the State of North Carolina. Camden owns or manages at least one multifamily rental property using AIRM within this District.

239. Camden engages in, and its activities substantially affect, interstate trade and commerce. Camden owns or manages multifamily rental units across the United States, including within this District. Camden’s rental properties are marketed and offered to consumers throughout the United States and across state lines.

240. The Court has personal jurisdiction over Cortland Management, LLC (“Cortland”); venue is proper in this District under Section 12 of the Clayton Act, 15 U.S.C. 22, and under 28 U.S.C. 1391 because Cortland transacts business and resides within this District.

241. Cortland is a privately-owned company organized under the laws of the State of Delaware and is headquartered in Atlanta, Georgia. Cortland is responsible for the management of multifamily rental housing properties, either directly owned by an affiliated entity or other third-party owners of multifamily housing properties. Cortland is registered to do business in the State of North Carolina. Cortland owns or manages multiple multifamily rental properties within this District, which use (or recently used) AIRM. Cortland has a registered agent for service of process in this District.

242. Cortland engages in, and its activities substantially affect, interstate trade and commerce. Cortland owns or manages multifamily rental units across the United States, including within this District. Cortland’s rental properties are marketed and offered to consumers throughout the United States and across state lines.

243. The Court has personal jurisdiction over Cushman & Wakefield, Inc. (“Cushman & Wakefield”) and Pinnacle Property Management Services, LLC (“Pinnacle”); venue is proper in this District under Section 12 of the Clayton Act, 15 U.S.C. 22, and under 28 U.S.C. 1391 because Cushman & Wakefield, including its subsidiary Pinnacle, transacts business and resides within this District.

244. Cushman & Wakefield is organized under the laws of the State of New York and is headquartered in Chicago, Illinois. Cushman & Wakefield’s multifamily rental property business is operated through its subsidiary Pinnacle, and also under the Cushman & Wakefield name since acquiring Pinnacle in March 2020. Pinnacle is organized under the laws of the State of Delaware and is headquartered in Frisco, Texas. Pinnacle is registered to do business in the State of North Carolina. Cushman & Wakefield U.S., Inc. is also registered to do business in the State of North Carolina. Pinnacle owns or manages multiple multifamily rental properties using YieldStar within this District.

245. Cushman & Wakefield engages in, and its activities substantially affect, interstate trade and commerce. Through Pinnacle, Cushman & Wakefield owns or manages multifamily rental units

across the United States, including within this District. Cushman & Wakefield provides a range of multifamily property and revenue management services that are marketed and offered to consumers throughout the United States and across state lines.

246. The Court has personal jurisdiction over Greystar Real Estate Partners, LLC (“Greystar”); venue is proper in this District under Section 12 of the Clayton Act, 15 U.S.C. 22, and under 28 U.S.C. 1391 because Greystar transacts business and resides within the District.

247. Greystar is a privately-owned company organized under the laws of the State of Delaware and is headquartered in Charleston, South Carolina. A Greystar management services entity is registered to do business in the State of North Carolina. Greystar owns or manages multiple multifamily rental properties using AIRM within this District.

248. Greystar engages in, and its activities substantially affect, interstate trade and commerce. Through its subsidiaries, including Greystar Management Services, LLC, Greystar North America Holdings, LLC, and GREP Washington, LLC, Greystar owns or manages multifamily rental units across the United States, including within this District. Greystar provides a range of products and services that are marketed and offered to consumers throughout the United States and across state lines.

249. The Court has personal jurisdiction over LivCor, LLC (“LivCor”); venue is proper in this District under Section 12 of the Clayton Act, 15 U.S.C. 22, and under 28 U.S.C. 1391 because LivCor transacts business and resides within this District.

250. LivCor is a privately-owned company organized under the laws of the State of Delaware and is headquartered in Chicago, Illinois. It is registered to do business in the State of North Carolina as a foreign corporation engaging in ownership and investment in real property and related services. LivCor owns or provides asset management services at least one multifamily rental property using AIRM within this District.

251. LivCor engages in, and its activities substantially affect, interstate trade and commerce. LivCor owns or provides asset management services for multifamily rental units across the United States, including within this District. LivCor provides multifamily asset management services that are marketed and offered to consumers throughout the United States and across state lines.

252. The Court has personal jurisdiction over Willow Bridge Property Company LLC (“Willow Bridge”); venue is proper in this District under 28 U.S.C. 1391 and Section 12 of the Clayton Act, 15 U.S.C. 22 because Willow Bridge transacts business and resides within this District.

253. Willow Bridge is a privately-owned company organized under the laws of the State of Texas and is headquartered in Dallas, Texas. Willow Bridge is registered to do business in the State of North Carolina as a foreign corporation offering services for the multifamily real estate industry. Willow Bridge owns or manages multiple multifamily rental properties using AIRM within this District.

254. Willow Bridge engages in, and its activities substantially affect, interstate trade and commerce. Willow Bridge owns or manages multifamily rental units across the United States, including within this District. Willow Bridge’s rental properties are marketed and offered to consumers throughout the United States and across state lines.

255. The Durham-Chapel Hill CBSA is partially or entirely within the Middle District of North Carolina.

256. RealPage tracks the number of rental housing units that use its commercial revenue management software products, including AIRM and YieldStar, by market (*i.e.*, a CBSA) and submarket, and several of these markets and submarkets are entirely or partially within North Carolina. These RealPage-defined markets include Raleigh/Durham, NC; Charlotte-Concord-Gastonia, NC-SC; Greensboro/Winston-Salem, NC; Wilmington, NC; Fayetteville, NC; and Asheville, NC. The submarkets include Southwest Durham, Northwest Durham/Downtown, East Durham, and Chapel Hill/Carrboro, all of which are located entirely or partially within this District.

257. Defendant Landlords each own or manage one or more properties in one or more relevant markets within the Middle District of North Carolina for which they, along with other landlords and RealPage, currently agree (or have in the past agreed) to share information and align pricing by using AIRM or YieldStar to generate rental pricing using pooled, competitively sensitive information.

258. A substantial part of the activities and conduct giving rise to the claims asserted in this Complaint occurred within this District. As alleged in paragraphs 208–211 above and Appendices A and B below, relevant local geographic markets in which competition and renters have been harmed by RealPage’s anticompetitive

conduct include the RealPage-defined submarkets in Raleigh/Durham. As alleged in paragraphs 214–217 above, relevant geographic markets in which competition and renters have been harmed by RealPage’s anticompetitive conduct include the Durham-Chapel Hill CBSA.

VIII. Violations Alleged

First Claim for Relief: Violation of Section 1 of the Sherman Act by Unlawfully Sharing Information for Use in Competitors’ Pricing

(By All Plaintiffs Against RealPage, Cushman & Wakefield, Greystar, LivCor, and Pinnacle; by All Plaintiffs Except Washington Against Camden and Willow Bridge; by the United States, Colorado, and North Carolina Against Cortland)

259. Plaintiffs incorporate the allegations of paragraphs 1 through 258 above.

260. Each landlord using AIRM and YieldStar, including each Defendant Landlord, has agreed with RealPage to provide RealPage daily nonpublic, competitively sensitive data. RealPage invites each landlord to share this information so that it can be pooled to generate pricing recommendations for the landlord and its competitors. Each of these landlords, including Defendant Landlords, uses (or has used) RealPage software, knowing or learning that RealPage will use this data to train its models and provide floor plan price recommendations and unit-level pricing not only for the landlord, but for the landlord’s competitors (and vice versa). Landlords are therefore joining together in a way that deprives the market of fully independent centers of decision-making on pricing.

261. Each landlord using OneSite, Business Intelligence, or Performance Analytics with Benchmarking has agreed with RealPage to provide RealPage daily nonpublic, competitively sensitive data. RealPage invites each landlord to share this information, and each of these landlords understands that RealPage will use this data in RealPage’s other products, including revenue management products that provide pricing recommendations and prices to competing landlords.

262. The transactional data these landlords agree to provide to RealPage, and indirectly to each other, includes current, forward-looking, granular, and highly competitively sensitive information. It includes information on effective rents, rent discounts, occupancy rates, availability, lease dates, lease terms, unit amenities, and unit layouts. Landlords also shared

information on guest cards and lease applications.

263. Landlords, including Defendant Landlords and other landlords that compete with each other in the relevant markets alleged, have agreed with one another, through RealPage and directly, to exchange nonpublic, competitively sensitive data, both through RealPage’s revenue management software and by other means. The other means include RealPage user groups, direct communications, market surveys, and other intermediaries. The information exchanged includes future pricing plans, current pricing and occupancy rates, pricing discounts, and guest traffic.

264. RealPage uses this nonpublic, competitively sensitive data to train its AIRM models and provide floor plan price recommendations and unit-level pricing to AIRM- and YieldStar-using landlords. AIRM and YieldStar are designed to increase prices as much as possible and minimize price decreases.

265. RealPage engages in a variety of conduct to increase compliance with the output of its products and the objectives it touts.

266. The sharing of nonpublic, competitively sensitive data with RealPage, and its use in AIRM and YieldStar, is anticompetitive. It harms or is likely to harm the competitive process and results, or is likely to result, in harm to renters and prospective renters in at least the relevant antitrust markets identified in this complaint.

267. In each relevant market, RealPage and participating landlords collectively have sufficient market power, including market and data penetration, to harm the competitive process and renters.

268. AIRM and YieldStar do not benefit the competitive process or renters. Any theoretical benefits are outweighed by harm to the competitive process and to renters.

269. Less restrictive alternatives are available to RealPage and the market. RealPage has recently altered AIRM or YieldStar for some clients to remove those clients’ access to competitors’ nonpublic data in at least certain portions of the software. RealPage has the ability to make changes to remove broader access to competitors’ nonpublic data in AIRM and YieldStar. RealPage has the capability to modify its software products to eliminate competitive defects. LRO does not require the same type and quantity of nonpublic, transactional data pulled from competitors’ property management

software.¹² RealPage has stopped offering LRO to new clients and made plans to discontinue LRO for legacy clients by the end of 2024.

Second Claim for Relief: Violation of Section 1 of the Sherman Act Through Agreements To Align Pricing

(By All Plaintiffs Against RealPage, Cushman & Wakefield, Greystar, LivCor, and Pinnacle; by All Plaintiffs Except Washington Against Camden and Willow Bridge; by the United States, Colorado, and North Carolina Against Cortland)

270. Plaintiffs incorporate the allegations of paragraphs 1 through 268 above.

271. Each landlord, including Defendant Landlords, that licenses AIRM or YieldStar has agreed with RealPage to use the software as it has been designed. This includes providing nonpublic, competitively sensitive transactional data to RealPage, but more broadly is an agreement to use AIRM or YieldStar as the means to price the landlord’s rental units. The landlord agrees to review AIRM or YieldStar floor plan price recommendations, use AIRM or YieldStar to set a scheduled floor plan rent, and use the AIRM or YieldStar pricing matrix to price units to renters.

272. AIRM and YieldStar are designed to “raise the tide” for all landlords, including AIRM- and YieldStar-using landlords. AIRM and YieldStar have the likely effect of aligning users’ pricing processes, strategies, and pricing responses.

273. These landlords understand this effect, and it is a reason why they sign up for and use AIRM or YieldStar and discuss their usage with one another in user group meetings and other settings.

274. RealPage engages in a variety of conduct to increase compliance with the output of its products and the objectives it touts.

275. RealPage’s user group meetings and its revenue management certification program facilitate landlords’ agreements with RealPage to align pricing.

276. Taken together, the agreements between each AIRM or YieldStar landlord and RealPage to use AIRM or YieldStar, respectively, harm or are likely to harm the competitive process and renters.

277. The agreement by a landlord to use AIRM or YieldStar is an agreement to align users’ pricing processes, strategies, and pricing responses.

¹² Landlords may nevertheless use LRO in ways that may likely harm competition, as illustrated in paragraphs 59–60 and 100 above.

Collectively, these agreements between landlords using AIRM or YieldStar and RealPage are harmful to the competitive process and to renters.

278. In each relevant submarket and CBSA, RealPage and participating AIRM or YieldStar landlords collectively have sufficient market power, including market and data penetration, to harm the competitive process and renters.

279. AIRM and YieldStar do not benefit the competitive process or renters. Any theoretical benefits are outweighed by harm to the competitive process and to renters, and less restrictive alternatives are available to RealPage and these landlords.

Third Claim for Relief: Violation of Section 2 of the Sherman Act Through Monopolization of the Commercial Revenue Management Software Market

(By All Plaintiffs Against RealPage)

280. Plaintiffs incorporate the allegations of paragraphs 1 through 279 above.

281. Commercial revenue management software for conventional multifamily housing rentals in the United States is a relevant antitrust market, and RealPage has monopoly power in that market.

282. RealPage has unlawfully monopolized the commercial revenue management market through unlawful exclusionary conduct. RealPage has amassed a massive reservoir of competitively sensitive data from competing landlords and used that data to sell AIRM and YieldStar. RealPage has ensured that rivals cannot compete on the merits unless they enter into similar agreements with landlords, offer to share competitively sensitive information among rival landlords, and engage in actions to increase compliance. As a result of its exclusionary conduct, RealPage has been able to obstruct rival software providers from competing via revenue management products that do not harm the competitive process in addition to cementing its massive data and scale advantage that keeps increasing due to self-reinforcing feedback effects.

283. RealPage's anticompetitive acts have harmed the competitive process and reduced feasible and less restrictive alternatives for landlords, which alternatives thereby pose less risk of competitive harm to renters.

284. RealPage's exclusionary conduct lacks a procompetitive justification that offsets the harm caused by RealPage's anticompetitive and unlawful conduct.

Fourth Claim for Relief, in the Alternative: Violation of Section 2 of the Sherman Act Through Attempted Monopolization of the Commercial Revenue Management Software Market

(By All Plaintiffs Against RealPage)

285. Plaintiffs incorporate the allegations of paragraphs 1 through 284 above.

286. Commercial revenue management software for conventional multifamily housing rentals in the United States is a relevant antitrust market.

287. RealPage has attempted to monopolize that market through unlawful exclusionary conduct enhanced by its self-reinforcing data and scale advantages. By amassing its massive reservoir of competitively sensitive data from competing landlords and the follow-on benefits that scale and its feedback effects provide in terms of blunting competition among landlords, RealPage's conduct excludes commercial revenue management rivals from competing on the merits in a lawful manner. As such, it has increased, maintained, or protected RealPage's power.

288. RealPage's anticompetitive acts have harmed the competitive process and reduced feasible and less restrictive alternatives for landlords, which alternatives thereby pose less risk of competitive harm to renters.

289. As inferred from the anticompetitive conduct described in Sections IV and V, *supra*, RealPage has acted with a specific intent to monopolize, and to eliminate effective competition in, the commercial revenue management software market in the United States. There is a dangerous probability that, unless restrained, RealPage will succeed in monopolizing the commercial revenue management software market in violation of Section 2 of the Sherman Act.

Fifth Claim for Relief: Violation of North Carolina Law

290. Plaintiff State of North Carolina incorporates the allegations of Paragraphs 1 through 289 above.

291. Defendants engaged in the conduct alleged above while operating their businesses in North Carolina markets, including, but not limited to, the markets alleged in paragraphs 214, 216, 256, and Appendices A and B. Defendants' anticompetitive conduct has affected commerce in North Carolina to a substantial degree by harming the competitive process and renters across the State including, but not limited to, in the North Carolina

markets identified in paragraphs 214, 216, 256, and Appendices A and B.

292. Defendants' acts as alleged in the First and Second claims for reliefs stated in paragraphs 259–279 above, violate the North Carolina Unfair or Deceptive Trade Practices Act in that they constitute contracts in restraint of trade or commerce in North Carolina, and/or acts and contracts in restraint of trade or commerce which violate the principles of the common law. N.C.G.S. §§ 75–1, 75–2.

293. Defendant Real Page's acts as alleged in the Third and Fourth claims for relief stated in paragraphs 280–289, above, violate the North Carolina Unfair or Deceptive Trade Practices Act, N.C.G.S. § 75–1 *et seq.*, in that they constitute unlawful monopolization of a part of trade or commerce in North Carolina. N.C.G.S. § 75–2.1.

Plaintiff State of North Carolina seeks the following remedies available for claims under federal law and claims under N.C.G.S. §§ 75–1, 75–2, and 75–2.1, without limitation:

a. Injunctive and other equitable relief pursuant to Section 16 of the Clayton Act, 15 U.S.C. 26, N.C.G.S. § 75–14, and the common law of North Carolina;

b. Civil penalties pursuant to N.C.G.S. § 75–15.2, which provides a penalty of up to \$5,000 per violation;

c. Costs of suit, including expert witness fees, costs of investigation, and attorney's fees pursuant to Section 16 of the Clayton Act, 15 U.S.C. 26 and N.C.G.S. § 75–16.1; and

d. Other remedies as the court may deem appropriate under the facts and circumstances of the case.

Sixth Claim for Relief: Violation of California Law

295. The State of California incorporates the allegations of Paragraphs 1 through 289 above.

296. Defendants' practices, as alleged above, violate the Sherman Act sections 1 and 2 and therefore constitute unlawful business practices under California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200, *et seq.*

297. Plaintiff State of California seeks the following:

a. injunctive relief and penalties pursuant to sections 17203 and 17206 of the UCL,

b. costs of suit, including expert witness fees, costs of investigation, and attorney's fees pursuant to Section 16 of the Clayton Act, 15 U.S.C. 26, and

c. other remedies as the court may deem appropriate under the facts and circumstances of the case.

Seventh Claim for Relief: Violation of Colorado Law

298. Plaintiff State of Colorado repeats and re-alleges and incorporates by reference Paragraphs 1 through 289 in this Complaint as if fully set forth herein.

299. The acts alleged in the Complaint violate the Colorado Antitrust Act, § 6–4–101 *et seq.*, including C.R.S. § 6–4–104 and C.R.S. § 6–4–105. These violations substantially affect the people of Colorado and have impacts within the State of Colorado.

300. Each of the unlawful agreements, arrangements, or acts alleged herein constitute at least one distinct violation of the Colorado Antitrust Act within the meaning of C.R.S. § 6–4–113.

301. Defendants' acts alleged herein constitute a continuous pattern and practice of behavior within the meaning of C.R.S. § 6–4–113(2)(c).

302. Defendants' acts alleged herein were willful within the meaning of C.R.S. § 6–4–113(2)(d).

303. The State of Colorado seeks the following remedies under federal law and the Colorado Antitrust Act, including, without limitation:

a. Injunctive and other equitable relief pursuant to Section 16 of the Clayton Act, 15 U.S.C. 26 and C.R.S. § 6–4–112;

b. Civil penalties pursuant to C.R.S. § 6–4–113 for each violation of the Colorado Antitrust Act;

c. Costs and attorneys' fees, pursuant to Section 16 of the Clayton Act, 15 U.S.C. 26, and C.R.S. § 6–4–112(5); and

d. Other remedies as the Court may deem appropriate based on the facts properly alleged and proven.

Eighth Claim for Relief: Violation of Connecticut Law

304. Plaintiff State of Connecticut, acting by and through its Attorney General pursuant to Conn. Gen. Stat. § 35–44a, incorporates the allegations of paragraphs 1 through 289 above. The State of Connecticut brings its state and federal law claims for relief against all Defendants except Cortland.

305. The acts alleged in the Complaint also constitute violations of the Connecticut Antitrust Act, Conn. Gen. Stat. § 35–24 *et seq.* These violations had impacts within the State of Connecticut and substantially affected the citizens of Connecticut.

306. Plaintiff State of Connecticut seeks all remedies available under federal law and the Connecticut Antitrust Act, including, without limitation, the following:

a. Civil penalties pursuant to Conn. Gen. Stat. § 35–38, which provides that in any action instituted by the Attorney

General, any person who has been held to have violated any of the provisions of the Connecticut Antitrust Act shall forfeit and pay to the state a civil penalty of not more than one million dollars for each violation;

b. Injunctive and other equitable relief pursuant to Section 16 of the Clayton Act, 15 U.S.C. 26, Conn. Gen. Stat. §§ 35–34, 35–44a;

c. Costs and fees including, without limitation, costs of investigation, litigation, expert witness fees, and attorney's fees pursuant to Section 16 of the Clayton Act, 15 U.S.C. 26, Conn. Gen. Stat. §§ 35–34, 35–44a; and

d. Other remedies as the Court may deem appropriate under the facts and circumstances of the case.

Ninth Claim for Relief: Violation of Illinois Law

307. Plaintiff State of Illinois, acting by and through its Attorney General, incorporates the allegations of paragraphs 1 through 289 above. The State of Illinois brings its state and federal law claims for relief against all Defendants except Cortland.

308. The acts alleged in the Complaint violate the Illinois Antitrust Act, 740 ILCS 10/1 *et seq.*, including 740 ILCS 10/3(1), 740 ILCS 10/3(2), and 740 ILCS 10/3(3). These violations substantially affect the people of Illinois and have impacts within the State of Illinois.

309. The State of Illinois seeks all available remedies under federal law and the Illinois Antitrust Act, including, without limitation:

a. Injunctive and other equitable relief pursuant to Section 16 of the Clayton Act, 15 U.S.C. 26; and 740 ILCS 10/7;

b. Civil penalties pursuant to 740 ILCS 10/7(4) for each violation of the Illinois Antitrust Act;

c. Disgorgement, damages, and/or other equitable or monetary relief pursuant to federal law including Section 4 of the Sherman Act, 15 U.S.C. 4, Section 4c of the Clayton Act, 15 U.S.C. 15c and state law including 740 ILCS 10/7, and treble damages for injuries sustained, directly or indirectly, by individuals residing in Illinois to their property, pursuant to the State of Illinois' *parens patriae* authority under 740 ILCS 10/7(2);

d. Costs and attorneys' fees, pursuant to Section 4c of the Clayton Act, 15 U.S.C. 15c, Section 16 of the Clayton Act, 15 U.S.C. 26, 740 ILCS 10/7(2); and

e. Other remedies as the Court may deem appropriate on the basis of the facts properly alleged and proven.

Tenth Claim for Relief: Violation of Massachusetts Law

310. Plaintiff Commonwealth of Massachusetts repeats, realleges, and incorporates the allegations of paragraphs 1 through 289 above as if fully set forth herein. The Commonwealth of Massachusetts brings its state and federal law claims for relief against all Defendants except Cortland.

311. The acts alleged in the aforementioned paragraphs of this Complaint, including but not limited to unlawful agreements in restraint of trade and unlawful monopolization, constitute unfair methods of competition and/or unfair or deceptive acts or practices in trade or commerce in violation of the Massachusetts Consumer Protection Act, M.G.L. c. 93A § 2 *et seq.*

312. Defendants knew or should have known that their conduct violated the Massachusetts Consumer Protection Act, M.G.L. c. 93A § 2 *et seq.*

313. Plaintiff Commonwealth of Massachusetts is entitled to and seeks the following relief under M.G.L. c. 93A § 4:

a. Injunctive and other equitable relief pursuant to M.G.L. c. 93A § 4;

b. Civil penalties of up to \$5,000 per each violation committed by the Defendants pursuant to M.G.L. c. 93A § 4;

c. Costs and fees including, without limitation, costs of investigation, litigation, and attorneys' fees pursuant to M.G.L. c. 93A § 4; and

d. Other remedies as the court may deem appropriate under the facts and circumstances of the case.

314. The Commonwealth of Massachusetts notified the Defendants of this intended action at least five days prior to the commencement of this action and gave the Defendants an opportunity to confer in accordance with M.G.L. c. 93A § 4.

Eleventh Claim for Relief: Violation of Oregon Law

315. Plaintiff State of Oregon, acting by and through its Attorney General, incorporates the allegations of paragraphs 1 through 289 above. The State of Oregon brings its state and federal law claims for relief against all Defendants except Cortland.

316. The acts alleged in the Complaint also constitute violations of the Oregon Antitrust Law, Oregon Revised Statutes ("ORS") 646.705 to ORS 646.836. These violations had impacts within the State of Oregon and substantially affected the people of Oregon.

317. The State of Oregon appears in its sovereign or quasi-sovereign

capacities and under its statutory, common law, and equitable powers, and as parens patriae on behalf of natural persons residing in the State of Oregon pursuant to ORS 646.775(1). The State of Oregon seeks all remedies available under federal law and the Oregon Antitrust Law, including, without limitation, the following:

a. Disgorgement and/or other equitable relief pursuant to federal law including Section 4 of the Sherman Act, 15 U.S.C. 4, and state law pursuant to ORS 646.770, and ORS 646.775;

b. Injunctive and other equitable relief pursuant to Section 16 of the Clayton Act, 15 U.S.C. 26, ORS 646.760, ORS 646.770, and ORS 646.775;

c. Civil penalties pursuant to ORS 646.760(1) which provides that a court may assess for the benefit of the state a civil penalty of not more than \$1,000,000 for each violation of the Oregon Antitrust Law,

d. Costs of suit, including expert witness fees, costs of investigation, and attorney's fees pursuant to Section 16 of the Clayton Act, 15 U.S.C. 26, ORS 646.760, ORS 646.770, ORS 646.775; and

e. Other remedies as the court may deem appropriate under the facts and circumstances of the case.

Twelfth Claim for Relief: Violation of Tennessee Law

318. Plaintiff State of Tennessee incorporates the allegations of paragraphs 1 through 289 above. The State of Tennessee brings its state and federal law claims for relief against all Defendants except Cortland.

319. Defendants engaged in the conduct described above, individually and collectively, to thwart competition for multifamily housing in Tennessee. This anticompetitive conduct in Tennessee harmed thousands of multifamily renters across the state.

320. Defendants' business practices have caused a reduction in competition in relevant Tennessee markets, including, but not limited to, in the markets identified in paragraphs 214 and 216 and Appendices A and B, and, as a result, Tennesseans have suffered anticompetitive harms.

321. Accordingly, Defendants' actions violate the Tennessee Trade Practices Act, Tenn. Code Ann. § 47–25–101, as amended.

322. Defendant RealPage engaged in the conduct described above to maintain its monopoly and exclude competing commercial revenue management software competitors.

323. Accordingly, Defendant RealPage's actions violate the Tennessee

Trade Practices Act, Tenn. Code Ann. § 47–25–102, as amended.

324. This conduct has affected Tennessee trade and commerce to a substantial degree.

325. To remedy this anticompetitive conduct, the Tennessee Attorney General and Reporter seeks all remedies available to which it is entitled under federal law and claims under Tenn. Code Ann. §§ 47–25–101, 102, and 106, as amended, including, without limitation, the following:

a. injunctive or other equitable relief; reasonable attorney fees, costs, and expenses, pursuant to Section 16 of the Clayton Act, 15 U.S.C. 26, Tenn. Code Ann. § 47–25–106(b), and the common law of Tennessee;

b. civil penalties pursuant to Tenn. Code Ann. § 47–25–106(g);

c. costs of suit, including expert witness fees, costs of investigation, and attorney's fees pursuant to Section 16 of the Clayton Act, 15 U.S.C. 26 and Tenn. Code Ann. § 47–25–106(b); and

d. other legal and equitable remedies as the court may deem appropriate and the interest of justice may require under the facts and circumstances of the case.

Thirteenth Claim for Relief: Violation of Washington Law

326. The State of Washington incorporates the allegations in Paragraphs 1 through 289, except for the portions of paragraphs 95, 96, 97, 117, 131, 171, and 228 that Washington was unable to review due to confidentiality redactions. Washington reserves the right to adopt the portions of those paragraphs which are later disclosed.

327. Washington brings its federal and state law claims for relief against Defendants RealPage, Cushman & Wakefield, Pinnacle, Greystar, and LivCor ("Washington Defendants").

328. Washington Defendants engaged in the conduct alleged above while operating their businesses in Washington. This anticompetitive conduct in Washington harmed the competitive process and renters across the State including in, but not limited to, the markets identified in Appendices A and B.

329. The acts alleged in the paragraphs incorporated by the State of Washington also constitute antitrust violations of the Washington Consumer Protection Act under Wash. Rev. Code § 19.86.030, which declares unlawful every contract, combination, or conspiracy in restraint of trade or commerce.

330. The acts alleged in the paragraphs incorporated by the State of Washington also constitute antitrust violations of the Washington Consumer

Protection Act under Wash. Rev. Code § 19.86.040, which declares monopolization or attempts to monopolize unlawful.

331. Washington seeks the following remedies available under the Washington Consumer Protection Act and federal law including, without limitation, the following:

a. That the Court adjudge and decree that conduct alleged in the complaint to be unlawful and in violation of the Washington Consumer Protection Act, Wash. Rev. Code § 19.86.030 and § 19.86.040;

b. Injunctive and other equitable relief pursuant to Wash. Rev. Code § 19.86.080;

c. Damages including treble damages; disgorgement; and/or restitution and any appropriate interest pursuant to federal law including Sherman Act, 15 U.S.C. 4, 15c and pursuant to state law including Wash. Rev. Code § 19.86.080;

d. Civil penalties pursuant to Wash. Rev. Code § 19.86.140;

e. Costs and attorney's fees and any appropriate interest on those fees and costs pursuant to Sherman Act, 15 U.S.C. 15c and/or pursuant to Wash. Rev. Code § 19.86.080; and

f. Other remedies, including pre-judgment interest, as the court may deem appropriate under the facts and circumstances of the case.

IX. Request for Relief

332. To remedy these illegal acts, Plaintiffs request that the Court:

a. Adjudge and decree that Defendants have acted unlawfully to restrain trade in conventional multifamily rental housing markets across the United States in violation of Section 1 of the Sherman Act, 15 U.S.C. 1;

b. Adjust and decree that RealPage has acted unlawfully to monopolize, or attempt to monopolize, the commercial revenue management software market in the United States in violation of Section 2 of the Sherman Act, 15 U.S.C. 2;

c. Enjoin Defendants from continuing to engage in the anticompetitive practices described herein and from engaging in any other practices with the same purpose and effect as the challenged practices;

d. Enter any other preliminary or permanent relief necessary and appropriate to restore competitive conditions in the markets affected by Defendants' unlawful conduct;

e. Enter any additional relief the Court finds just and proper; and

f. Award Plaintiffs an amount equal to their costs, including reasonable attorneys' fees, incurred in bringing this action.

X. Demand for a Jury Trial

333. Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury of all issues properly triable to a jury in this case.

Dated this 7th day of January, 2025.

Respectfully submitted,

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APPENDIX A: SUBMARKETS

Area	Submarket	YS/AIRM 30% or More	YS/AIRM / OneSite 30% or More
Anaheim-Santa Ana-Irvine, CA	South Orange County	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Alpharetta/Cumming	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Briarcliff	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Buckhead	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Chamblee/Brookhaven	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Decatur	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Downtown Atlanta	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Duluth	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Dunwoody	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Kennesaw/Acworth	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Midtown Atlanta	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Norcross	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Northeast Atlanta	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Northeast Cobb/Woodstock	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Northeast Gwinnett County	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Roswell	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Sandy Springs	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Smyrna	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	South Cobb County/Douglasville	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Southeast Gwinnett County	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Southeast Marietta	Yes	Yes

Area	Submarket	YS/AIRM 30% or More	YS/AIRM / OneSite 30% or More
Atlanta-Sandy Springs-Roswell, GA	Southwest Atlanta	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Vinings	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	West Atlanta	Yes	Yes
Austin-Round Rock, TX	Arboretum	Yes	Yes
Austin-Round Rock, TX	Cedar Park	Yes	Yes
Austin-Round Rock, TX	Downtown/University	Yes	Yes
Austin-Round Rock, TX	East Austin	Yes	Yes
Austin-Round Rock, TX	Far South Austin	Yes	Yes
Austin-Round Rock, TX	Far West Austin	Yes	Yes
Austin-Round Rock, TX	Near North Austin	Yes	Yes
Austin-Round Rock, TX	North Central Austin	Yes	Yes
Austin-Round Rock, TX	Northwest Austin	Yes	Yes
Austin-Round Rock, TX	Pflugerville/Wells Branch	Yes	Yes
Austin-Round Rock, TX	Round Rock/Georgetown	Yes	Yes
Austin-Round Rock, TX	South Austin	Yes	Yes
Austin-Round Rock, TX	Southwest Austin	Yes	Yes
Baltimore-Columbia-Towson, MD	Columbia/North Laurel	Yes	Yes
Birmingham-Hoover, AL	Southeast Birmingham	Yes	Yes
Boston-Cambridge-Newton, MA-NH	Chelsea/Revere/Charlestown		Yes
Boston-Cambridge-Newton, MA-NH	East Middlesex County		Yes
Boston-Cambridge-Newton, MA-NH	Quincy		Yes
Boston-Cambridge-Newton, MA-NH	West Norfolk County		Yes
Charleston-North Charleston, SC	Downtown/Mount Pleasant/Islands	Yes	Yes
Charleston-North Charleston, SC	West Ashley	Yes	Yes
Charlotte-Concord-Gastonia, NC-SC	Ballantyne	Yes	Yes
Charlotte-Concord-Gastonia, NC-SC	Huntersville/Cornelius	Yes	Yes
Charlotte-Concord-Gastonia, NC-SC	Matthews/Southeast Charlotte		Yes
Charlotte-Concord-Gastonia, NC-SC	Myers Park	Yes	Yes

Area	Submarket	YS/AIRM 30% or More	YS/AIRM / OneSite 30% or More
Charlotte-Concord-Gastonia, NC-SC	North Charlotte	Yes	Yes
Charlotte-Concord-Gastonia, NC-SC	South Charlotte	Yes	Yes
Charlotte-Concord-Gastonia, NC-SC	Southwest Charlotte	Yes	Yes
Charlotte-Concord-Gastonia, NC-SC	UNC Charlotte	Yes	Yes
Charlotte-Concord-Gastonia, NC-SC	Uptown/South End	Yes	Yes
Chicago-Naperville-Elgin, IL-IN-WI	The Loop	Yes	Yes
Colorado Springs, CO	North Colorado Springs	Yes	Yes
Dallas-Plano-Irving, TX	Addison/Bent Tree	Yes	Yes
Dallas-Plano-Irving, TX	Allen/McKinney	Yes	Yes
Dallas-Plano-Irving, TX	Carrollton/Farmers Branch	Yes	Yes
Dallas-Plano-Irving, TX	Central/East Plano	Yes	Yes
Dallas-Plano-Irving, TX	East Dallas	Yes	Yes
Dallas-Plano-Irving, TX	Frisco	Yes	Yes
Dallas-Plano-Irving, TX	Grand Prairie	Yes	Yes
Dallas-Plano-Irving, TX	Intown Dallas	Yes	Yes
Dallas-Plano-Irving, TX	Las Colinas/Coppell	Yes	Yes
Dallas-Plano-Irving, TX	Lewisville/Flower Mound	Yes	Yes
Dallas-Plano-Irving, TX	North Irving	Yes	Yes
Dallas-Plano-Irving, TX	North Oak Cliff/West Dallas	Yes	Yes
Dallas-Plano-Irving, TX	Oak Lawn/Park Cities	Yes	Yes
Dallas-Plano-Irving, TX	Richardson	Yes	Yes
Dallas-Plano-Irving, TX	Rockwall/Rowlett/Wylie	Yes	Yes
Dallas-Plano-Irving, TX	The Colony/Far North Carrollton	Yes	Yes
Dallas-Plano-Irving, TX	West Plano	Yes	Yes
Denver-Aurora-Lakewood, CO	Broomfield	Yes	Yes
Denver-Aurora-Lakewood, CO	Downtown/Highlands/Lincoln Park	Yes	Yes
Denver-Aurora-Lakewood, CO	Highlands Ranch	Yes	Yes
Denver-Aurora-Lakewood, CO	Littleton	Yes	Yes
Denver-Aurora-Lakewood, CO	Northeast Denver	Yes	Yes
Denver-Aurora-Lakewood, CO	Parker/Castle Rock	Yes	Yes
Denver-Aurora-Lakewood, CO	South Lakewood	Yes	Yes

Area	Submarket	YS/AIRM 30% or More	YS/AIRM / OneSite 30% or More
Denver-Aurora-Lakewood, CO	Southeast Aurora/East Arapahoe County	Yes	Yes
Denver-Aurora-Lakewood, CO	Southeast Denver	Yes	Yes
Denver-Aurora-Lakewood, CO	Tech Center	Yes	Yes
Denver-Aurora-Lakewood, CO	Thornton/Northglenn	Yes	Yes
Denver-Aurora-Lakewood, CO	Westminster	Yes	Yes
Fort Lauderdale-Pompano Beach-Deerfield Beach, FL	Plantation/Davie/West on	Yes	Yes
Fort Worth-Arlington, TX	Grapevine/Southlake	Yes	Yes
Fort Worth-Arlington, TX	Northeast Fort Worth/North Richland Hills		Yes
Hartford-West Hartford-East Hartford, CT	Southeast Hartford/Middlesex County		Yes
Houston-The Woodlands-Sugar Land, TX	Bear Creek	Yes	Yes
Houston-The Woodlands-Sugar Land, TX	Downtown/Montrose/River Oaks	Yes	Yes
Houston-The Woodlands-Sugar Land, TX	Far West Houston	Yes	Yes
Houston-The Woodlands-Sugar Land, TX	Friendswood/Pearland	Yes	Yes
Houston-The Woodlands-Sugar Land, TX	Galleria/Uptown	Yes	Yes
Houston-The Woodlands-Sugar Land, TX	Greater Heights/Washington Avenue	Yes	Yes
Houston-The Woodlands-Sugar Land, TX	Greenway/Upper Kirby	Yes	Yes
Houston-The Woodlands-Sugar Land, TX	Katy	Yes	Yes
Houston-The Woodlands-Sugar Land, TX	Memorial	Yes	Yes
Houston-The Woodlands-Sugar Land, TX	Sugar Land/Stafford	Yes	Yes
Houston-The Woodlands-Sugar Land, TX	The Woodlands	Yes	Yes
Houston-The Woodlands-Sugar Land, TX	West University/Medical Center/Third Ward	Yes	Yes
Jacksonville, FL	Baymeadows	Yes	Yes
Jacksonville, FL	Upper Southside	Yes	Yes
Kansas City, MO-KS	Lee's Summit/Blue Springs/Raytown	Yes	Yes

Area	Submarket	YS/AIRM 30% or More	YS/AIRM / OneSite 30% or More
Las Vegas-Henderson-Paradise, NV	Henderson	Yes	Yes
Las Vegas-Henderson-Paradise, NV	Northwest Las Vegas	Yes	Yes
Las Vegas-Henderson-Paradise, NV	Summerlin/The Lakes	Yes	Yes
Los Angeles-Long Beach-Glendale, CA	Downtown Los Angeles	Yes	Yes
Memphis, TN-MS-AR	Cordova/Bartlett	Yes	Yes
Memphis, TN-MS-AR	Germantown/Collierville	Yes	Yes
Mobile/Daphne, AL	North Mobile	Yes	Yes
Nashville-Davidson--Murfreestown-Franklin, TN	Central Nashville	Yes	Yes
Nashville-Davidson--Murfreestown-Franklin, TN	East Nashville	Yes	Yes
Nashville-Davidson--Murfreestown-Franklin, TN	Franklin/Brentwood	Yes	Yes
Nashville-Davidson--Murfreestown-Franklin, TN	South Nashville	Yes	Yes
Nashville-Davidson--Murfreestown-Franklin, TN	Southeast Nashville	Yes	Yes
Nashville-Davidson--Murfreestown-Franklin, TN	West Nashville		Yes
Orlando-Kissimmee-Sanford, FL	Altamonte Springs/Apopka	Yes	Yes
Orlando-Kissimmee-Sanford, FL	Casselberry/Winter Springs/Oviedo	Yes	Yes
Orlando-Kissimmee-Sanford, FL	Central Orlando	Yes	Yes
Orlando-Kissimmee-Sanford, FL	East Orange County	Yes	Yes
Orlando-Kissimmee-Sanford, FL	East Orlando	Yes	Yes
Orlando-Kissimmee-Sanford, FL	Kissimmee/Osceola County	Yes	Yes
Orlando-Kissimmee-Sanford, FL	Sanford/Lake Mary	Yes	Yes
Orlando-Kissimmee-Sanford, FL	South Orange County	Yes	Yes
Orlando-Kissimmee-Sanford, FL	Southwest Orlando	Yes	Yes
Orlando-Kissimmee-Sanford, FL	Winter Park/Maitland	Yes	Yes
Phoenix-Mesa-Scottsdale, AZ	Chandler	Yes	Yes
Phoenix-Mesa-Scottsdale, AZ	Deer Valley	Yes	Yes
Phoenix-Mesa-Scottsdale, AZ	North Glendale	Yes	Yes
Phoenix-Mesa-Scottsdale, AZ	South Phoenix	Yes	Yes
Portland-Vancouver-Hillsboro, OR-WA	Aloha/West Beaverton	Yes	Yes
Portland-Vancouver-Hillsboro, OR-WA	Central Portland	Yes	Yes
Portland-Vancouver-Hillsboro, OR-WA	Hillsboro	Yes	Yes

Area	Submarket	YS/AIRM 30% or More	YS/AIRM / OneSite 30% or More
Portland-Vancouver-Hillsboro, OR-WA	Lake Oswego/Tualatin/Wilsonville	Yes	Yes
Raleigh/Durham, NC	Central Raleigh	Yes	Yes
Raleigh/Durham, NC	Chapel Hill/Carrboro	Yes	Yes
Raleigh/Durham, NC	East Durham	Yes	Yes
Raleigh/Durham, NC	Far North Raleigh	Yes	Yes
Raleigh/Durham, NC	Near North Raleigh	Yes	Yes
Raleigh/Durham, NC	North Cary/Morrisville	Yes	Yes
Raleigh/Durham, NC	Northeast Raleigh	Yes	Yes
Raleigh/Durham, NC	Northwest Durham/Downtown		Yes
Raleigh/Durham, NC	Northwest Raleigh	Yes	Yes
Raleigh/Durham, NC	South Cary/Apex	Yes	Yes
Raleigh/Durham, NC	Southwest Durham	Yes	Yes
Reno, NV	South Reno	Yes	Yes
Richmond, VA	Northwest Richmond	Yes	Yes
Richmond, VA	Tuckahoe/Westhampton	Yes	Yes
Riverside-San Bernardino-Ontario, CA	Corona		Yes
Riverside-San Bernardino-Ontario, CA	Rancho Cucamonga/Upland	Yes	Yes
Riverside-San Bernardino-Ontario, CA	Temecula/Murrieta	Yes	Yes
Salt Lake City/Ogden/Clearfield, UT	Midvale/Sandy/Drapers	Yes	Yes
Salt Lake City/Ogden/Clearfield, UT	Southwest Salt Lake City	Yes	Yes
San Antonio-New Braunfels, TX	Far North Central San Antonio	Yes	Yes
San Antonio-New Braunfels, TX	Far Northwest San Antonio	Yes	Yes
San Antonio-New Braunfels, TX	North Central San Antonio		Yes
San Antonio-New Braunfels, TX	Northwest San Antonio	Yes	Yes
San Diego-Carlsbad, CA	Downtown San Diego/Coronado		Yes
San Diego-Carlsbad, CA	Northeast San Diego	Yes	Yes
Seattle-Bellevue-Everett, WA	Downtown Seattle		Yes
Seattle-Bellevue-Everett, WA	Federal Way/Des Moines		Yes

Area	Submarket	YS/AIRM 30% or More	YS/AIRM / OneSite 30% or More
Seattle-Bellevue-Everett, WA	Redmond		Yes
Seattle-Bellevue-Everett, WA	Renton	Yes	Yes
Tampa-St. Petersburg-Clearwater, FL	Carrollwood/Citrus Park	Yes	Yes
Tampa-St. Petersburg-Clearwater, FL	Central Tampa	Yes	Yes
Tampa-St. Petersburg-Clearwater, FL	Town and Country/Westchase	Yes	Yes
Tucson, AZ	Casas Adobes/Oro Valley	Yes	Yes
Tucson, AZ	Catalina Foothills	Yes	Yes
Washington-Arlington-Alexandria, DC-VA-MD-WV	Germantown	Yes	Yes
Washington-Arlington-Alexandria, DC-VA-MD-WV	Loudoun County	Yes	Yes
Washington-Arlington-Alexandria, DC-VA-MD-WV	Manassas/Far Southwest Suburbs	Yes	Yes
Washington-Arlington-Alexandria, DC-VA-MD-WV	Navy Yard/Capitol South	Yes	Yes
Washington-Arlington-Alexandria, DC-VA-MD-WV	Northeast DC	Yes	Yes
Washington-Arlington-Alexandria, DC-VA-MD-WV	Reston/Herndon	Yes	Yes
Washington-Arlington-Alexandria, DC-VA-MD-WV	Tysons Corner/Falls Church/Merrifield	Yes	Yes
Washington-Arlington-Alexandria, DC-VA-MD-WV	West Alexandria	Yes	Yes
Washington-Arlington-Alexandria, DC-VA-MD-WV	West Fairfax County	Yes	Yes
Washington-Arlington-Alexandria, DC-VA-MD-WV	Woodbridge/Dale City	Yes	Yes

APPENDIX B: SUBMARKETS BY BEDROOM COUNT

Area	Submarket	No. of Beds.	YS/AIR M 30% or More	YS/AIRM / OneSite 30% or More
Anaheim-Santa Ana-Irvine, CA	South Orange County	1	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Alpharetta/Cumming	1	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Briarcliff	1	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Buckhead	1	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Chamblee/Brookhaven	1	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Decatur	1	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Downtown Atlanta	1	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Duluth	1	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Dunwoody	1	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Kennesaw/Acworth	1	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Midtown Atlanta	1	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Norcross	1	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Northeast Atlanta	1	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Northeast Cobb/Woodstock	1	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Northeast Gwinnett County	1	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Roswell	1	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Sandy Springs	1	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Smyrna	1	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	South Cobb County/Douglasville	1	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Southeast Gwinnett County	1	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Southeast Marietta	1	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Southwest Atlanta	1	Yes	Yes

Area	Submarket	No. of Beds.	YS/AIR M 30% or More	YS/AIRM / OneSite 30% or More
Atlanta-Sandy Springs-Roswell, GA	Vinings	1	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	West Atlanta	1	Yes	Yes
Austin-Round Rock, TX	Arboretum	1	Yes	Yes
Austin-Round Rock, TX	Cedar Park	1	Yes	Yes
Austin-Round Rock, TX	Downtown/University	1	Yes	Yes
Austin-Round Rock, TX	East Austin	1	Yes	Yes
Austin-Round Rock, TX	Far South Austin	1	Yes	Yes
Austin-Round Rock, TX	Far West Austin	1	Yes	Yes
Austin-Round Rock, TX	Near North Austin	1	Yes	Yes
Austin-Round Rock, TX	North Central Austin	1	Yes	Yes
Austin-Round Rock, TX	Northwest Austin	1	Yes	Yes
Austin-Round Rock, TX	Pflugerville/Wells Branch	1	Yes	Yes
Austin-Round Rock, TX	Round Rock/Georgetown	1	Yes	Yes
Austin-Round Rock, TX	South Austin	1	Yes	Yes
Austin-Round Rock, TX	Southwest Austin	1	Yes	Yes
Baltimore-Columbia-Towson, MD	Columbia/North Laurel	1	Yes	Yes
Birmingham-Hoover, AL	Southeast Birmingham	1	Yes	Yes
Boston-Cambridge-Newton, MA-NH	Chelsea/Revere/Charlestown	1		Yes
Boston-Cambridge-Newton, MA-NH	East Middlesex County	1	Yes	Yes
Boston-Cambridge-Newton, MA-NH	Quincy	1	Yes	Yes
Boston-Cambridge-Newton, MA-NH	West Norfolk County	1		Yes
Charleston-North Charleston, SC	Downtown/Mount Pleasant/Islands	1	Yes	Yes
Charleston-North Charleston, SC	West Ashley	1	Yes	Yes

Area	Submarket	No. of Beds.	YS/AIR M 30% or More	YS/AIRM / OneSite 30% or More
Charlotte-Concord-Gastonia, NC-SC	Ballantyne	1	Yes	Yes
Charlotte-Concord-Gastonia, NC-SC	Huntersville/Cornelius	1	Yes	Yes
Charlotte-Concord-Gastonia, NC-SC	Matthews/Southeast Charlotte	1	Yes	Yes
Charlotte-Concord-Gastonia, NC-SC	Myers Park	1	Yes	Yes
Charlotte-Concord-Gastonia, NC-SC	North Charlotte	1	Yes	Yes
Charlotte-Concord-Gastonia, NC-SC	South Charlotte	1	Yes	Yes
Charlotte-Concord-Gastonia, NC-SC	Southwest Charlotte	1	Yes	Yes
Charlotte-Concord-Gastonia, NC-SC	UNC Charlotte	1	Yes	Yes
Charlotte-Concord-Gastonia, NC-SC	Uptown/South End	1	Yes	Yes
Chicago-Naperville-Elgin, IL-IN-WI	The Loop	1	Yes	Yes
Colorado Springs, CO	North Colorado Springs	1	Yes	Yes
Dallas-Plano-Irving, TX	Addison/Bent Tree	1	Yes	Yes
Dallas-Plano-Irving, TX	Allen/McKinney	1	Yes	Yes
Dallas-Plano-Irving, TX	Carrollton/Farmers Branch	1	Yes	Yes
Dallas-Plano-Irving, TX	Central/East Plano	1	Yes	Yes
Dallas-Plano-Irving, TX	East Dallas	1	Yes	Yes
Dallas-Plano-Irving, TX	Frisco	1	Yes	Yes
Dallas-Plano-Irving, TX	Grand Prairie	1	Yes	Yes
Dallas-Plano-Irving, TX	Intown Dallas	1	Yes	Yes
Dallas-Plano-Irving, TX	Las Colinas/Coppell	1	Yes	Yes
Dallas-Plano-Irving, TX	Lewisville/Flower Mound	1	Yes	Yes
Dallas-Plano-Irving, TX	North Irving	1	Yes	Yes
Dallas-Plano-Irving, TX	North Oak Cliff/West Dallas	1	Yes	Yes

Area	Submarket	No. of Beds.	YS/AIR M 30% or More	YS/AIRM / OneSite 30% or More
Dallas-Plano-Irving, TX	Oak Lawn/Park Cities	1	Yes	Yes
Dallas-Plano-Irving, TX	Richardson	1	Yes	Yes
Dallas-Plano-Irving, TX	Rockwall/Rowlett/Wylie	1	Yes	Yes
Dallas-Plano-Irving, TX	The Colony/Far North Carrollton	1	Yes	Yes
Dallas-Plano-Irving, TX	West Plano	1	Yes	Yes
Denver-Aurora- Lakewood, CO	Broomfield	1	Yes	Yes
Denver-Aurora- Lakewood, CO	Downtown/Highlands/Lincol n Park	1	Yes	Yes
Denver-Aurora- Lakewood, CO	Highlands Ranch	1	Yes	Yes
Denver-Aurora- Lakewood, CO	Littleton	1	Yes	Yes
Denver-Aurora- Lakewood, CO	Northeast Denver	1	Yes	Yes
Denver-Aurora- Lakewood, CO	Parker/Castle Rock	1	Yes	Yes
Denver-Aurora- Lakewood, CO	South Lakewood	1	Yes	Yes
Denver-Aurora- Lakewood, CO	Southeast Aurora/East Arapahoe County	1	Yes	Yes
Denver-Aurora- Lakewood, CO	Southeast Denver	1	Yes	Yes
Denver-Aurora- Lakewood, CO	Tech Center	1	Yes	Yes
Denver-Aurora- Lakewood, CO	Thornton/Northglenn	1	Yes	Yes
Denver-Aurora- Lakewood, CO	Westminster	1	Yes	Yes
Fort Lauderdale- Pompano Beach- Deerfield Beach, FL	Plantation/Davie/Weston	1	Yes	Yes
Fort Worth- Arlington, TX	Grapevine/Southlake	1	Yes	Yes
Fort Worth- Arlington, TX	Northeast Fort Worth/North Richland Hills	1	Yes	Yes
Hartford-West Hartford-East Hartford, CT	Southeast Hartford/Middlesex County	1		Yes

Area	Submarket	No. of Beds.	YS/AIR M 30% or More	YS/AIRM / OneSite 30% or More
Houston-The Woodlands-Sugar Land, TX	Bear Creek	1	Yes	Yes
Houston-The Woodlands-Sugar Land, TX	Downtown/Montrose/River Oaks	1	Yes	Yes
Houston-The Woodlands-Sugar Land, TX	Far West Houston	1	Yes	Yes
Houston-The Woodlands-Sugar Land, TX	Friendswood/Pearland	1		Yes
Houston-The Woodlands-Sugar Land, TX	Galleria/Uptown	1	Yes	Yes
Houston-The Woodlands-Sugar Land, TX	Greater Heights/Washington Avenue	1	Yes	Yes
Houston-The Woodlands-Sugar Land, TX	Greenway/Upper Kirby	1	Yes	Yes
Houston-The Woodlands-Sugar Land, TX	Katy	1	Yes	Yes
Houston-The Woodlands-Sugar Land, TX	Memorial	1	Yes	Yes
Houston-The Woodlands-Sugar Land, TX	Sugar Land/Stafford	1	Yes	Yes
Houston-The Woodlands-Sugar Land, TX	The Woodlands	1	Yes	Yes
Houston-The Woodlands-Sugar Land, TX	West University/Medical Center/Third Ward	1	Yes	Yes
Jacksonville, FL	Baymeadows	1	Yes	Yes
Jacksonville, FL	Upper Southside	1	Yes	Yes
Kansas City, MO-KS	Lee's Summit/Blue Springs/Raytown	1	Yes	Yes
Las Vegas-Henderson-Paradise, NV	Henderson	1	Yes	Yes
Las Vegas-Henderson-Paradise, NV	Northwest Las Vegas	1	Yes	Yes

Area	Submarket	No. of Beds.	YS/AIR M 30% or More	YS/AIRM / OneSite 30% or More
Las Vegas-Henderson-Paradise, NV	Summerlin/The Lakes	1	Yes	Yes
Los Angeles-Long Beach-Glendale, CA	Downtown Los Angeles	1	Yes	Yes
Memphis, TN-MS-AR	Cordova/Bartlett	1	Yes	Yes
Memphis, TN-MS-AR	Germantown/Collierville	1	Yes	Yes
Mobile/Daphne, AL	North Mobile	1	Yes	Yes
Nashville-Davidson--Murfreesboro--Franklin, TN	Central Nashville	1	Yes	Yes
Nashville-Davidson--Murfreesboro--Franklin, TN	East Nashville	1	Yes	Yes
Nashville-Davidson--Murfreesboro--Franklin, TN	Franklin/Brentwood	1	Yes	Yes
Nashville-Davidson--Murfreesboro--Franklin, TN	South Nashville	1	Yes	Yes
Nashville-Davidson--Murfreesboro--Franklin, TN	Southeast Nashville	1	Yes	Yes
Nashville-Davidson--Murfreesboro--Franklin, TN	West Nashville	1	Yes	Yes
Orlando-Kissimmee-Sanford, FL	Altamonte Springs/Apopka	1	Yes	Yes
Orlando-Kissimmee-Sanford, FL	Casselberry/Winter Springs/Oviedo	1	Yes	Yes
Orlando-Kissimmee-Sanford, FL	Central Orlando	1	Yes	Yes
Orlando-Kissimmee-Sanford, FL	East Orange County	1	Yes	Yes
Orlando-Kissimmee-Sanford, FL	East Orlando	1	Yes	Yes
Orlando-Kissimmee-Sanford, FL	Kissimmee/Osceola County	1	Yes	Yes
Orlando-Kissimmee-Sanford, FL	Sanford/Lake Mary	1	Yes	Yes
Orlando-Kissimmee-Sanford, FL	South Orange County	1	Yes	Yes
Orlando-Kissimmee-Sanford, FL	Southwest Orlando	1	Yes	Yes

Area	Submarket	No. of Beds.	YS/AIR M 30% or More	YS/AIRM / OneSite 30% or More
Orlando-Kissimmee-Sanford, FL	Winter Park/Maitland	1	Yes	Yes
Phoenix-Mesa-Scottsdale, AZ	Chandler	1	Yes	Yes
Phoenix-Mesa-Scottsdale, AZ	Deer Valley	1	Yes	Yes
Phoenix-Mesa-Scottsdale, AZ	North Glendale	1	Yes	Yes
Phoenix-Mesa-Scottsdale, AZ	South Phoenix	1	Yes	Yes
Portland-Vancouver-Hillsboro, OR-WA	Aloha/West Beaverton	1	Yes	Yes
Portland-Vancouver-Hillsboro, OR-WA	Central Portland	1	Yes	Yes
Portland-Vancouver-Hillsboro, OR-WA	Hillsboro	1	Yes	Yes
Portland-Vancouver-Hillsboro, OR-WA	Lake Oswego/Tualatin/Wilsonville	1	Yes	Yes
Raleigh/Durham, NC	Central Raleigh	1	Yes	Yes
Raleigh/Durham, NC	Chapel Hill/Carrboro	1		Yes
Raleigh/Durham, NC	East Durham	1	Yes	Yes
Raleigh/Durham, NC	Far North Raleigh	1		Yes
Raleigh/Durham, NC	Near North Raleigh	1	Yes	Yes
Raleigh/Durham, NC	North Cary/Morrisville	1	Yes	Yes
Raleigh/Durham, NC	Northeast Raleigh	1	Yes	Yes
Raleigh/Durham, NC	Northwest Durham/Downtown	1	Yes	Yes
Raleigh/Durham, NC	Northwest Raleigh	1	Yes	Yes
Raleigh/Durham, NC	South Cary/Apex	1	Yes	Yes
Raleigh/Durham, NC	Southwest Durham	1	Yes	Yes
Reno, NV	South Reno	1	Yes	Yes
Richmond, VA	Northwest Richmond	1	Yes	Yes
Richmond, VA	Tuckahoe/Westhampton	1	Yes	Yes
Riverside-San Bernardino-Ontario, CA	Corona	1	Yes	Yes
Riverside-San Bernardino-Ontario, CA	Rancho Cucamonga/Upland	1	Yes	Yes
Riverside-San Bernardino-Ontario, CA	Temecula/Murrieta	1	Yes	Yes

Area	Submarket	No. of Beds.	YS/AIR M 30% or More	YS/AIRM / OneSite 30% or More
Salt Lake City/Ogden/Clearfield, UT	Midvale/Sandy/Draper	1	Yes	Yes
Salt Lake City/Ogden/Clearfield, UT	Southwest Salt Lake City	1	Yes	Yes
San Antonio-New Braunfels, TX	Far North Central San Antonio	1	Yes	Yes
San Antonio-New Braunfels, TX	Far Northwest San Antonio	1	Yes	Yes
San Antonio-New Braunfels, TX	North Central San Antonio	1	Yes	Yes
San Antonio-New Braunfels, TX	Northwest San Antonio	1	Yes	Yes
San Diego-Carlsbad, CA	Downtown San Diego/Coronado	1	Yes	Yes
San Diego-Carlsbad, CA	Northeast San Diego	1	Yes	Yes
Seattle-Bellevue-Everett, WA	Downtown Seattle	1	Yes	Yes
Seattle-Bellevue-Everett, WA	Federal Way/Des Moines	1		Yes
Seattle-Bellevue-Everett, WA	Redmond	1	Yes	Yes
Seattle-Bellevue-Everett, WA	Renton	1	Yes	Yes
Tampa-St. Petersburg-Clearwater, FL	Carrollwood/Citrus Park	1	Yes	Yes
Tampa-St. Petersburg-Clearwater, FL	Central Tampa	1	Yes	Yes
Tampa-St. Petersburg-Clearwater, FL	Town and Country/Westchase	1	Yes	Yes
Tucson, AZ	Casas Adobes/Oro Valley	1	Yes	Yes
Tucson, AZ	Catalina Foothills	1	Yes	Yes
Washington-Arlington-Alexandria, DC-VA-MD-WV	Germantown	1	Yes	Yes
Washington-Arlington-Alexandria, DC-VA-MD-WV	Loudoun County	1	Yes	Yes
Washington-Arlington-Alexandria, DC-VA-MD-WV	Manassas/Far Southwest Suburbs	1	Yes	Yes

Area	Submarket	No. of Beds.	YS/AIR M 30% or More	YS/AIRM / OneSite 30% or More
Washington-Arlington-Alexandria, DC-VA-MD-WV	Navy Yard/Capitol South	1	Yes	Yes
Washington-Arlington-Alexandria, DC-VA-MD-WV	Northeast DC	1	Yes	Yes
Washington-Arlington-Alexandria, DC-VA-MD-WV	Reston/Herndon	1	Yes	Yes
Washington-Arlington-Alexandria, DC-VA-MD-WV	Tysons Corner/Falls Church/Merrifield	1	Yes	Yes
Washington-Arlington-Alexandria, DC-VA-MD-WV	West Alexandria	1	Yes	Yes
Washington-Arlington-Alexandria, DC-VA-MD-WV	West Fairfax County	1	Yes	Yes
Washington-Arlington-Alexandria, DC-VA-MD-WV	Woodbridge/Dalc City	1	Yes	Yes
Anaheim-Santa Ana-Irvine, CA	South Orange County	2	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Alpharetta/Cumming	2	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Briarcliff	2	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Buckhead	2	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Chamblee/Brookhaven	2	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Decatur	2	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Downtown Atlanta	2	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Duluth	2	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Dunwoody	2	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Kennesaw/Acworth	2	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Midtown Atlanta	2	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Norcross	2	Yes	Yes

Area	Submarket	No. of Beds.	YS/AIR M 30% or More	YS/AIRM / OneSite 30% or More
Atlanta-Sandy Springs-Roswell, GA	Northeast Atlanta	2	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Northeast Cobb/Woodstock	2	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Northeast Gwinnett County	2	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Roswell	2	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Sandy Springs	2	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Smyrna	2	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	South Cobb County/Douglasville	2	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Southeast Gwinnett County	2	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Southeast Marietta	2	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Southwest Atlanta	2	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	Vinings	2	Yes	Yes
Atlanta-Sandy Springs-Roswell, GA	West Atlanta	2	Yes	Yes
Austin-Round Rock, TX	Arboretum	2	Yes	Yes
Austin-Round Rock, TX	Cedar Park	2	Yes	Yes
Austin-Round Rock, TX	Downtown/University	2	Yes	Yes
Austin-Round Rock, TX	East Austin	2	Yes	Yes
Austin-Round Rock, TX	Far South Austin	2	Yes	Yes
Austin-Round Rock, TX	Far West Austin	2	Yes	Yes
Austin-Round Rock, TX	Near North Austin	2	Yes	Yes
Austin-Round Rock, TX	North Central Austin	2	Yes	Yes
Austin-Round Rock, TX	Northwest Austin	2	Yes	Yes
Austin-Round Rock, TX	Pflugerville/Wells Branch	2	Yes	Yes
Austin-Round Rock, TX	Round Rock/Georgetown	2	Yes	Yes

Area	Submarket	No. of Beds.	YS/AIR M 30% or More	YS/AIRM / OneSite 30% or More
Austin-Round Rock, TX	South Austin	2	Yes	Yes
Austin-Round Rock, TX	Southwest Austin	2	Yes	Yes
Baltimore-Columbia- Towson, MD	Columbia/North Laurel	2	Yes	Yes
Birmingham-Hoover, AL	Southeast Birmingham	2	Yes	Yes
Boston-Cambridge- Newton, MA-NH	East Middlesex County	2	Yes	Yes
Charleston-North Charleston, SC	Downtown/Mount Pleasant/Islands	2	Yes	Yes
Charleston-North Charleston, SC	West Ashley	2	Yes	Yes
Charlotte-Concord- Gastonia, NC-SC	Ballantyne	2	Yes	Yes
Charlotte-Concord- Gastonia, NC-SC	Huntersville/Cornelius	2	Yes	Yes
Charlotte-Concord- Gastonia, NC-SC	Myers Park	2	Yes	Yes
Charlotte-Concord- Gastonia, NC-SC	North Charlotte	2	Yes	Yes
Charlotte-Concord- Gastonia, NC-SC	South Charlotte	2	Yes	Yes
Charlotte-Concord- Gastonia, NC-SC	Southwest Charlotte	2	Yes	Yes
Charlotte-Concord- Gastonia, NC-SC	UNC Charlotte	2	Yes	Yes
Charlotte-Concord- Gastonia, NC-SC	Uptown/South End	2	Yes	Yes
Chicago-Naperville- Elgin, IL-IN-WI	The Loop	2		Yes
Colorado Springs, CO	North Colorado Springs	2	Yes	Yes
Dallas-Plano-Irving, TX	Addison/Bent Tree	2	Yes	Yes
Dallas-Plano-Irving, TX	Allen/McKinney	2	Yes	Yes
Dallas-Plano-Irving, TX	Carrollton/Farmers Branch	2		Yes
Dallas-Plano-Irving, TX	Central/East Plano	2	Yes	Yes
Dallas-Plano-Irving, TX	East Dallas	2	Yes	Yes
Dallas-Plano-Irving, TX	Frisco	2	Yes	Yes

Area	Submarket	No. of Beds.	YS/AIR M 30% or More	YS/AIRM / OneSite 30% or More
Dallas-Plano-Irving, TX	Grand Prairie	2	Yes	Yes
Dallas-Plano-Irving, TX	Intown Dallas	2	Yes	Yes
Dallas-Plano-Irving, TX	Las Colinas/Coppell	2	Yes	Yes
Dallas-Plano-Irving, TX	Lewisville/Flower Mound	2	Yes	Yes
Dallas-Plano-Irving, TX	North Irving	2		Yes
Dallas-Plano-Irving, TX	North Oak Cliff/West Dallas	2	Yes	Yes
Dallas-Plano-Irving, TX	Oak Lawn/Park Cities	2	Yes	Yes
Dallas-Plano-Irving, TX	Richardson	2	Yes	Yes
Dallas-Plano-Irving, TX	Rockwall/Rowlett/Wylie	2	Yes	Yes
Dallas-Plano-Irving, TX	The Colony/Far North Carrollton	2	Yes	Yes
Dallas-Plano-Irving, TX	West Plano	2	Yes	Yes
Denver-Aurora- Lakewood, CO	Broomfield	2	Yes	Yes
Denver-Aurora- Lakewood, CO	Downtown/Highlands/Lincol n Park	2	Yes	Yes
Denver-Aurora- Lakewood, CO	Highlands Ranch	2	Yes	Yes
Denver-Aurora- Lakewood, CO	Littleton	2	Yes	Yes
Denver-Aurora- Lakewood, CO	Northeast Denver	2	Yes	Yes
Denver-Aurora- Lakewood, CO	Parker/Castle Rock	2	Yes	Yes
Denver-Aurora- Lakewood, CO	South Lakewood	2	Yes	Yes
Denver-Aurora- Lakewood, CO	Southeast Aurora/East Arapahoe County	2	Yes	Yes
Denver-Aurora- Lakewood, CO	Southeast Denver	2	Yes	Yes
Denver-Aurora- Lakewood, CO	Tech Center	2	Yes	Yes
Denver-Aurora- Lakewood, CO	Thornton/Northglenn	2	Yes	Yes
Denver-Aurora- Lakewood, CO	Westminster	2	Yes	Yes

Area	Submarket	No. of Beds.	YS/AIR M 30% or More	YS/AIRM / OneSite 30% or More
Fort Lauderdale- Pompano Beach- Deerfield Beach, FL	Plantation/Davie/Weston	2	Yes	Yes
Fort Worth- Arlington, TX	Grapevine/Southlake	2	Yes	Yes
Fort Worth- Arlington, TX	Northeast Fort Worth/North Richland Hills	2		Yes
Hartford-West Hartford-East Hartford, CT	Southeast Hartford/Middlesex County	2	Yes	Yes
Houston-The Woodlands-Sugar Land, TX	Bear Creek	2		Yes
Houston-The Woodlands-Sugar Land, TX	Downtown/Montrose/River Oaks	2	Yes	Yes
Houston-The Woodlands-Sugar Land, TX	Far West Houston	2	Yes	Yes
Houston-The Woodlands-Sugar Land, TX	Friendswood/Pearland	2	Yes	Yes
Houston-The Woodlands-Sugar Land, TX	Galleria/Uptown	2	Yes	Yes
Houston-The Woodlands-Sugar Land, TX	Greater Heights/Washington Avenue	2	Yes	Yes
Houston-The Woodlands-Sugar Land, TX	Greenway/Upper Kirby	2	Yes	Yes
Houston-The Woodlands-Sugar Land, TX	Memorial	2	Yes	Yes
Houston-The Woodlands-Sugar Land, TX	Sugar Land/Stafford	2	Yes	Yes
Houston-The Woodlands-Sugar Land, TX	The Woodlands	2	Yes	Yes
Houston-The Woodlands-Sugar Land, TX	West University/Medical Center/Third Ward	2	Yes	Yes
Jacksonville, FL	Baymeadows	2	Yes	Yes
Jacksonville, FL	Upper Southside	2	Yes	Yes

Area	Submarket	No. of Beds.	YS/AIR M 30% or More	YS/AIRM / OneSite 30% or More
Kansas City, MO-KS	Lee's Summit/Blue Springs/Raytown	2	Yes	Yes
Las Vegas-Henderson-Paradise, NV	Henderson	2	Yes	Yes
Las Vegas-Henderson-Paradise, NV	Northwest Las Vegas	2	Yes	Yes
Las Vegas-Henderson-Paradise, NV	Summerlin/The Lakes	2	Yes	Yes
Los Angeles-Long Beach-Glendale, CA	Downtown Los Angeles	2	Yes	Yes
Memphis, TN-MS-AR	Cordova/Bartlett	2	Yes	Yes
Memphis, TN-MS-AR	Germantown/Collierville	2	Yes	Yes
Mobile/Daphne, AL	North Mobile	2	Yes	Yes
Nashville-Davidson--Murfreesboro--Franklin, TN	Central Nashville	2	Yes	Yes
Nashville-Davidson--Murfreesboro--Franklin, TN	East Nashville	2	Yes	Yes
Nashville-Davidson--Murfreesboro--Franklin, TN	Franklin/Brentwood	2	Yes	Yes
Nashville-Davidson--Murfreesboro--Franklin, TN	South Nashville	2	Yes	Yes
Nashville-Davidson--Murfreesboro--Franklin, TN	Southeast Nashville	2	Yes	Yes
Orlando-Kissimmee-Sanford, FL	Altamonte Springs/Apopka	2	Yes	Yes
Orlando-Kissimmee-Sanford, FL	Casselberry/Winter Springs/Oviedo	2	Yes	Yes
Orlando-Kissimmee-Sanford, FL	Central Orlando	2	Yes	Yes
Orlando-Kissimmee-Sanford, FL	East Orange County	2	Yes	Yes
Orlando-Kissimmee-Sanford, FL	East Orlando	2	Yes	Yes
Orlando-Kissimmee-Sanford, FL	Kissimmee/Osceola County	2	Yes	Yes

Area	Submarket	No. of Beds.	YS/AIR M 30% or More	YS/AIRM / OneSite 30% or More
Orlando-Kissimmee-Sanford, FL	Sanford/Lake Mary	2	Yes	Yes
Orlando-Kissimmee-Sanford, FL	South Orange County	2	Yes	Yes
Orlando-Kissimmee-Sanford, FL	Southwest Orlando	2	Yes	Yes
Orlando-Kissimmee-Sanford, FL	Winter Park/Maitland	2	Yes	Yes
Phoenix-Mesa-Scottsdale, AZ	Chandler	2	Yes	Yes
Phoenix-Mesa-Scottsdale, AZ	Deer Valley	2	Yes	Yes
Phoenix-Mesa-Scottsdale, AZ	North Glendale	2	Yes	Yes
Phoenix-Mesa-Scottsdale, AZ	South Phoenix	2	Yes	Yes
Portland-Vancouver-Hillsboro, OR-WA	Aloha/West Beaverton	2	Yes	Yes
Portland-Vancouver-Hillsboro, OR-WA	Central Portland	2	Yes	Yes
Portland-Vancouver-Hillsboro, OR-WA	Hillsboro	2	Yes	Yes
Portland-Vancouver-Hillsboro, OR-WA	Lake Oswego/Tualatin/Wilsonville	2	Yes	Yes
Raleigh/Durham, NC	Central Raleigh	2	Yes	Yes
Raleigh/Durham, NC	Chapel Hill/Carrboro	2	Yes	Yes
Raleigh/Durham, NC	East Durham	2	Yes	Yes
Raleigh/Durham, NC	Far North Raleigh	2	Yes	Yes
Raleigh/Durham, NC	Near North Raleigh	2	Yes	Yes
Raleigh/Durham, NC	North Cary/Morrisville	2	Yes	Yes
Raleigh/Durham, NC	Northeast Raleigh	2	Yes	Yes
Raleigh/Durham, NC	Northwest Raleigh	2	Yes	Yes
Raleigh/Durham, NC	South Cary/Apex	2	Yes	Yes
Raleigh/Durham, NC	Southwest Durham	2	Yes	Yes
Reno, NV	South Reno	2	Yes	Yes
Richmond, VA	Northwest Richmond	2	Yes	Yes
Richmond, VA	Tuckahoe/Westhampton	2	Yes	Yes
Riverside-San Bernardino-Ontario, CA	Corona	2	Yes	Yes
Riverside-San Bernardino-Ontario, CA	Rancho Cucamonga/Upland	2	Yes	Yes

Area	Submarket	No. of Beds.	YS/AIR M 30% or More	YS/AIRM / OneSite 30% or More
Riverside-San Bernardino-Ontario, CA	Temecula/Murrieta	2	Yes	Yes
Salt Lake City/Ogden/Clearfield, UT	Midvale/Sandy/Draper	2	Yes	Yes
Salt Lake City/Ogden/Clearfield, UT	Southwest Salt Lake City	2	Yes	Yes
San Antonio-New Braunfels, TX	Far North Central San Antonio	2	Yes	Yes
San Antonio-New Braunfels, TX	Far Northwest San Antonio	2	Yes	Yes
San Antonio-New Braunfels, TX	North Central San Antonio	2		Yes
San Antonio-New Braunfels, TX	Northwest San Antonio	2		Yes
San Diego-Carlsbad, CA	Downtown San Diego/Coronado	2	Yes	Yes
San Diego-Carlsbad, CA	Northeast San Diego	2	Yes	Yes
Seattle-Bellevue-Everett, WA	Downtown Seattle	2	Yes	Yes
Seattle-Bellevue-Everett, WA	Federal Way/Des Moines	2		Yes
Seattle-Bellevue-Everett, WA	Renton	2	Yes	Yes
Tampa-St. Petersburg-Clearwater, FL	Carrollwood/Citrus Park	2	Yes	Yes
Tampa-St. Petersburg-Clearwater, FL	Central Tampa	2	Yes	Yes
Tampa-St. Petersburg-Clearwater, FL	Town and Country/Westchase	2	Yes	Yes
Tucson, AZ	Casas Adobes/Oro Valley	2	Yes	Yes
Tucson, AZ	Catalina Foothills	2	Yes	Yes
Washington-Arlington-Alexandria, DC-VA-MD-WV	Germantown	2	Yes	Yes
Washington-Arlington-Alexandria, DC-VA-MD-WV	Loudoun County	2	Yes	Yes

Area	Submarket	No. of Beds.	YS/AIR M 30% or More	YS/AIRM / OneSite 30% or More
Washington-Arlington-Alexandria, DC-VA-MD-WV	Manassas/Far Southwest Suburbs	2	Yes	Yes
Washington-Arlington-Alexandria, DC-VA-MD-WV	Navy Yard/Capitol South	2	Yes	Yes
Washington-Arlington-Alexandria, DC-VA-MD-WV	Northeast DC	2	Yes	Yes
Washington-Arlington-Alexandria, DC-VA-MD-WV	Reston/Herndon	2	Yes	Yes
Washington-Arlington-Alexandria, DC-VA-MD-WV	Tysons Corner/Falls Church/Merrifield	2	Yes	Yes
Washington-Arlington-Alexandria, DC-VA-MD-WV	West Alexandria	2	Yes	Yes
Washington-Arlington-Alexandria, DC-VA-MD-WV	West Fairfax County	2	Yes	Yes
Washington-Arlington-Alexandria, DC-VA-MD-WV	Woodbridge/Dale City	2	Yes	Yes

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United States District Court for the Middle District of North Carolina

UNITED STATES OF AMERICA, Plaintiff,
v. GREYSTAR MANAGEMENT SERVICES,
LLC, Defendant.

No. 1:24-cv-00710-WLO-JLW

Proposed Final Judgment

Whereas, Plaintiff, United States of America, filed its Complaint on January 7, 2025;

And whereas, the United States and Defendant, Greystar Management Services, LLC, have consented to entry of this Final Judgment without the taking of testimony, without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party relating to any issue of fact or law;

And whereas, Defendant agrees to undertake certain actions and refrain from certain conduct to remedy the loss of competition alleged in the Complaint;

And whereas, Defendant represents that the relief required by this Final Judgment can and will be made and that Defendant will not later raise a claim of hardship or difficulty as grounds for asking the Court to modify any provision of this Final Judgment;

Now therefore, it is ordered, adjudged, and decreed:

I. Jurisdiction

The Court has jurisdiction over the subject matter of, and each of the parties to, this action. The Complaint states a claim upon which relief may be granted against Defendant under Section 1 of the Sherman Act, 15 U.S.C. 1.

II. Definitions

As used in this Final Judgment:

A. “Greystar” or “Defendant” means Defendant Greystar Management Services, LLC, a Delaware limited liability company with its headquarters in Charleston, South Carolina, and all of its direct and indirect subsidiaries, divisions, groups, affiliates, parents,

partnerships, and joint ventures engaged in the management or ownership of multifamily rental properties in the United States and its territories, their successors and assigns, and their directors, officers, managers, agents, and employees.

B. “Competitively Sensitive Information” means property-specific data or information (whether past, present, or prospective) which, individually or when aggregated with such data or information from other properties, (1) could be reasonably used to determine current or future rental supply, demand, or pricing at a property or of any property’s units, including but not limited to executed rents, rental price concessions or discounts, guest traffic, guest applications, occupancy or vacancy, lease terms or lease expirations; (2) relates to the Property Owner’s or Property Manager’s use of settings or user-specified parameters within Revenue Management Products with respect to such property or properties; or (3) relates to the Property

Owner's or Property Manager's rental pricing amount, formula, or strategy, including rental price concessions or discounts, in each case, with respect to such property or properties.

C. "Cooperation Subject Matter" means Greystar's use of RealPage's Revenue Management Products, prohibited conduct described in Paragraph V.A, and the claims alleged in *United States et al. v. RealPage et al.* (currently docketed as No. 1:24-cv-00710 in the Middle District of North Carolina), and includes conduct as well as the effects of conduct.

D. "External Nonpublic Data" means all Nonpublic Data from any Person other than Greystar. It does not include data from a Greystar Property.

E. "Greystar Property" means a multifamily rental property, located within the United States and its territories, owned or managed by Greystar or its agents (collectively referred to as "Greystar Properties").

F. "Including" means including, but not limited to.

G. "Model Training" means the process of analyzing data, including by machine learning or regression analysis, to create or adjust the parameters of a model or algorithm to improve the accuracy of the model's or algorithm's predictions. Model Training includes the training of a model or algorithm to predict supply or demand at a particular property, which is then used during Runtime Operation.

H. "Nonpublic Data" means any Competitively Sensitive Information that is not Public Data.

I. "Person" means any natural person, corporate entity, partnership, association, joint venture, or trust.

J. "Property Owner(s)" means any Person who (directly or indirectly) owns or controls a multifamily rental property or that Person's agent; multifamily rental properties have the same Property Owner if they are (directly or indirectly) owned or controlled by the same Person.

K. "Property Manager(s)" means any Person who manages a multifamily rental property or that Person's agent.

L. "Pseudocode" means any description of the steps in an algorithm or other software program in plain or natural language.

M. "Public Data" means information on a rental unit's asking price (including publicly offered concessions), amenities, and availability that is readily accessible to the general public, such as on the property's website, at a physical building, in brochures, or on an internet listing service. Public Data includes information on a rental unit's asking price, concessions, amenities,

and availability provided by a Property Manager or a Property Owner to any natural person who reasonably presents himself as a prospective renter. Public Data does not include any Competitively Sensitive Information obtained through communications between competitors.

N. "RealPage" means RealPage, Inc., a Delaware corporation with its headquarters in Richardson, Texas.

O. "RealPage Meeting(s)" means RealPage steering committees, RealPage subcommittees, RealPage user groups, RealPage Idea Exchange, or any variation of these meetings. For avoidance of doubt, a RealPage Meeting does not include any communications between Greystar and the Property Owner of a Greystar Property or any other Person providing services to that Greystar Property, or any software feedback provided solely to RealPage that is not otherwise shared by Greystar with other Property Managers or Property Owners.

P. "Revenue Management Product(s)" means any software or third-party service, including software as a service, that generates rental prices or rental pricing recommendations for multifamily rental properties. For avoidance of doubt, a Revenue Management Product does not include general purpose spreadsheet software like Microsoft Excel.

Q. "Runtime Operation" means any action taken by a Revenue Management Product while it runs, including generating rental prices or rental pricing recommendations for any unit or set of units at a property. Runtime Operation does not include Model Training.

R. "Settled Antitrust Claims" means any civil federal antitrust claim by the United States arising from Defendant's conduct accruing before the filing of the complaint in this action relating to (1) Revenue Management Products, including RealPage Revenue Management Products that use competitors' Competitively Sensitive Information, as well as (2) communications described by Paragraph V.A.

S. "States" means the states, commonwealths, and territories of the United States of America, as well as the District of Columbia.

III. Applicability

This Final Judgment applies to Defendant, as defined above, Defendant's officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with Defendant who receive actual notice of this Final Judgment.

IV. Use of Revenue Management Software

A. Beginning April 1, 2026 or 180 days after entry of the Stipulation and Order, whichever is earlier, Greystar must not, within the United States and its territories:

1. license or use any Revenue Management Product that: (i) uses External Nonpublic Data (other than Nonpublic Data of the Property Owner of the subject Greystar Property) in its Runtime Operation to generate rental prices or rental pricing recommendations for a Greystar Property; (ii) uses Nonpublic Data from a Greystar Property in its Runtime Operation to generate rental prices or rental pricing recommendations for any other Property Manager or Property Owner (unless the Property Owner of the non-Greystar Property is the same as the Property Owner of the Greystar Property from which the data arises or to which it relates); (iii) discloses in any way Nonpublic Data from a Greystar Property to any other Property Manager or Property Owner (unless the Property Owner of the non-Greystar Property is the same as the Property Owner of the Greystar Property from which the data arises or to which it relates); (iv) pools or combines Nonpublic Data from Greystar Properties that have different Property Owners; or (v) contains or uses a model or algorithm for which Nonpublic Data (other than Nonpublic Data of the Property Owner of the subject Greystar Property) was used during or as a part of Model Training;

2. license or use any commercially available Revenue Management Product that: (i) incorporates a rental price floor or a limit on rental price recommendation decreases (excluding a rental price floor, or limit on rental price decreases, that Greystar or the Property Owner selects and is not based on Nonpublic Data other than Nonpublic Data of the Property Owner of the subject Greystar Property); or (ii) requires Greystar to accept, or provides any economic incentives for Greystar to accept, any recommended rental prices or range of prices; or

3. agree (expressly or tacitly) with any other Property Owner or Non-Greystar Property Manager to use a particular Revenue Management Product (or the utilities or functionalities thereof) or require any other Person to use a particular Revenue Management Product (or the utilities or functionalities thereof). Greystar is not prohibited by the preceding sentence from using a particular Revenue Management Product at a particular property pursuant to an agreement with

another Person who is the Property Owner or who, along with Greystar, provides services to that particular property on behalf of the Property Owner, provided that the Revenue Management Product complies with Paragraphs IV.A.1–2.

B. If management responsibilities or ownership of a property within the United States or its territories is transferred from another Property Manager or Property Owner to Greystar, then Greystar will have 90 days from the date of transfer to comply with the requirements of Paragraph IV.A. for the transferred property.

C. By April 1, 2026 or within 180 days after entry of the Stipulation and Order, whichever is earlier, Defendant must notify the United States, in writing, of any commercially available Revenue Management Product that it licenses or uses at any Greystar Property. Thereafter, if Defendant intends to license or use any other commercially available Revenue Management Product at any Greystar Property, Defendant must first notify the United States, in writing, of its intention to license or use such a commercially available Revenue Management Product 30 calendar days prior to licensing or using the commercially available Revenue Management Product.

D. Notwithstanding Paragraph IV.A, Greystar may license or use a Revenue Management Product that complies with the terms of an agreed Final Judgment between the United States and RealPage in *United States et al. v. RealPage et al.* (currently docketed as No. 1:24-cv-00710 in the Middle District of North Carolina) (“RealPage Final Judgment”).

E. Beginning April 1, 2026 or 180 days after entry of the Stipulation and Order, whichever is earlier:

1. After entry by the Court of a RealPage Final Judgment, Defendant may license or use a RealPage Revenue Management Product at any Greystar Property without the need to obtain certification as required in this Paragraph IV.E.

2. If Defendant licenses or uses a commercially available Revenue Management Product from a Person other than RealPage or a reseller of a RealPage Revenue Management Product at any Greystar Property, or if Defendant licenses or uses a RealPage Revenue Management Product at any Greystar Property after a RealPage Final Judgment is filed but before entry by the Court, Defendant must secure and submit to the United States a certification from the vendor of the Revenue Management Product that the Revenue Management Product complies with the requirements in Paragraphs

IV.A.1–2 or complies with the requirements for Revenue Management Products established in a RealPage Final Judgment.

3. If Defendant licenses or uses a RealPage Revenue Management Product at any Greystar Property in the absence of a RealPage Final Judgment, Defendant must provide to the United States a certification from a Monitor appointed pursuant to Section VIII that the RealPage Revenue Management product complies with the requirements in Paragraph IV.A.1–2. If the Monitor has not yet been appointed, Defendant will have 90 days following appointment of the Monitor, subject to extension by the United States in its sole discretion, to obtain any certification required pursuant to this Paragraph IV.E.

V. Other Prohibited Conduct

A. Greystar must not, within the United States and its territories, as part of setting rental prices or generating rental pricing recommendations for any Greystar Property: (i) disclose Nonpublic Data to any other Property Manager or Property Owner; (ii) solicit External Nonpublic Data from any other Property Manager or Property Owner; or (iii) use External Nonpublic Data obtained from another Property Manager or Property Owner. Nothing in this Paragraph shall apply to communications between Greystar and the Property Owner of a Greystar Property, or any other Person providing services to that Greystar Property for whom the disclosure of Nonpublic Data is necessary to provide such services. For avoidance of doubt, the restrictions set forth in this Paragraph apply to External Nonpublic Data and Nonpublic Data obtained through any form, whether directly or through an intermediary, including call arounds or market surveys, in-person meetings, calls, text messages, chat communications, emails, surveys, spreadsheets, shared documents (e.g., Google documents and SharePoint documents), industry meetings (e.g., user groups), online fora, private meetings, Revenue Management Product, or information-exchange service.

B. Defendant will not attend or participate in any RealPage Meetings. If Greystar attends or participates in a RealPage Meeting it will report such meeting within 30 days to the United States. Defendant must identify the date, time, and location of the meeting, identify all participants in that meeting, provide a description of the content of the meeting, provide a description of any document shown during the meeting, produce all documents

received or provided by Defendant during the meeting, and produce any chats, recordings, or documents associated with the meeting.

C. Except for the rental prices set at any Greystar Property while that Property used a RealPage Revenue Management Product, Greystar must not, within the United States and its territories, use or access, as part of setting rental prices or generating pricing recommendations for any Greystar Property, any Nonpublic Data (other than Nonpublic Data of the Property Owner of the subject Greystar Property), or data derived from RealPage that used or relied on such Nonpublic Data, in Greystar’s possession, custody, or control as of entry of the Stipulation and Order, acquired through any means. Within 30 days of entry of the Stipulation and Order, Defendant must identify to the United States in writing the existence and location of any structured data set containing such data. For avoidance of doubt, the proscriptions in this Paragraph do not apply to data for Greystar Properties maintained in OneSite.

VI. Antitrust Compliance

A. Within 30 days of entry of the Stipulation and Order, Defendant must submit a written antitrust compliance policy for approval by the Division in its sole discretion, that complies with the obligations set forth in this Final Judgment, including the prohibitions in Sections IV and V. Defendant must annually train all employees on this written policy.

B. Within 30 days of entry of the Stipulation and Order, Defendant must designate an antitrust compliance officer, who will be responsible for implementing and enforcing Defendant’s antitrust compliance policy and annual training required by Paragraph VI.A. Defendant must identify to the United States the antitrust compliance officer’s name, business address, telephone number, and email address. Within forty-five (45) days of a vacancy in Defendant’s antitrust compliance officer position, Defendant must appoint a replacement and must identify to the United States the replacement’s name, business address, telephone number, and email address. Defendant’s initial and replacement appointment of an antitrust compliance officer is subject to the approval of the United States in its sole discretion. Defendant is responsible for all costs and expenses related to the antitrust compliance officer.

C. On an annual basis beginning April 1, 2026 or 180 calendar days after entry

of the Stipulation and Order, whichever is earlier, Defendant must:

1. submit to the Antitrust Division a certification from the General Counsel of Defendant's U.S. property management business attesting under penalty of perjury that (i) Defendant has established and maintained the antitrust compliance policy and annual training required by Paragraph VI.A; (ii) Defendant has complied with the attestation requirement in Paragraph VI.C.2; and (iii) the vendors of any Revenue Management Products licensed or used by Greystar Properties have provided the certification from the vendor as required by Paragraph VI.C.3;

2. require all Defendant's employees engaged in or overseeing Greystar's revenue or property management of multifamily rental properties in the United States and its territories to attest under penalty of perjury that they have complied with Paragraphs IV.A.3, V.A, and V.B;

3. if required under this Final Judgment, including Paragraph IV.E, obtain and submit to the Antitrust Division a certification, as described in Paragraph IV.E, that each Revenue Management Product that Greystar licenses or uses complies with Paragraphs IV.A.1–2; and

4. provide the Antitrust Division a report that identifies for each Greystar Property that uses a commercially available Revenue Management Product: (1) the name of the Property Owner, (2) any Revenue Management Product used within the preceding twelve months for that Greystar Property, (3) whether Greystar or the Property Owner is responsible for setting rental prices for that Greystar Property, and (4) whether Greystar provides revenue management services for that Greystar Property.

VII. Cooperation

A. Subject to reaching a settlement with all States that, as of the entry of the Stipulation and Order, are plaintiffs in *United States et al. v. RealPage et al.* (currently docketed as No. 1:24-cv-00710 in the Middle District of North Carolina), Defendant must cooperate fully and truthfully with the United States in any civil investigation or civil litigation the United States brings or has brought relating to the Cooperation Subject Matter. Defendant must use its best efforts to ensure that all current and former officers, directors, employees, and agents also fully and promptly cooperate with the United States.

Defendant's cooperation must include:

1. making up to 10 employees available for voluntary interviews for up to 40 hours total at the request of the United States relating to Section 2

claims alleged in *United States et al. v. RealPage et al.* (currently docketed as No. 1:24-cv-00710 in the Middle District of North Carolina) and considering reasonable requests for interviews of additional employees;

2. providing full and truthful written or oral testimony in deposition, trial, or other proceeding relating to the Cooperation Subject Matter and making witnesses available to the United States upon reasonable notice before any such testimony; and

3. providing proffers, which may be made by counsel for Defendant, describing Defendant's knowledge of, and evidence relating to, the Section 2 claims alleged in *United States et al. v. RealPage et al.* (currently docketed as No. 1:24-cv-00710 in the Middle District of North Carolina).

B. Defendant must:

1. within 30 days of receiving a written request (whether formal or informal) from the United States for documents, information, or other material relating to the Cooperation Subject Matter (or whatever additional time the Division grants in its sole discretion), produce to the United States all responsive documents, information, and other materials, wherever located, not protected under the attorney-client privilege or the work-product doctrine, in the possession, custody, or control of Defendant or its agents, as well as a log of any responsive documents, information, or other materials that were not provided, including an explanation of the basis for withholding such materials, and authenticating or otherwise assisting with establishing the evidentiary foundation of any documents Defendant produced or produces to the United States; and

2. take all necessary steps to preserve all documents, information, and other materials relating to the Cooperation Subject Matter until the United States provides written notice to Defendant that its obligation to do so has expired.

C. Subject to Defendant's full, truthful, and continuing cooperation, as required under Paragraphs VII.A–B, Greystar is fully and finally discharged and released from Settled Antitrust Claims.

D. Nothing in Paragraphs VII.A–B affects Defendant's obligation to respond to any formal discovery requests in litigation or a civil investigative demand issued by the United States.

VIII. Appointment of Monitor

A. Defendant will not be subject to a Monitor if by April 1, 2026, all commercially available Revenue Management Products that Defendant

licenses or uses at Greystar Properties have been certified pursuant to, or are otherwise compliant with, Paragraph IV.E.

B. However, upon application of the United States, which Defendant may not oppose, the Court will appoint a Monitor selected by the United States and approved by the Court if:

1. Defendant licenses or uses any commercially available Revenue Management Product that has not been certified pursuant to, or is not otherwise compliant with, Paragraph IV.E, at any Greystar Property after April 1, 2026, or

2. a Court finds that Greystar has violated any other term of the Final Judgment.

C. Defendant may propose a pool of three candidates for the Monitor appointment to the United States and the United States may consider Defendant's perspectives on the proposed candidates or any other candidates identified by the United States. The United States will retain the right, in its sole discretion, either to select the Monitor from among the three candidates proposed by Defendant or to select a different candidate. Once approved, the Monitor should be considered by the United States and Defendant to be an arm and representative of the Court. The Monitor will have no responsibility for operation of the Defendant's business. No attorney-client relationship will be formed between Defendant and the Monitor.

D. The Monitor will have the authority to take such steps as, in the Monitor's discretion and the United States' view, may be necessary to accomplish the Monitor's responsibilities set forth in Paragraph VIII.G. The Monitor may seek information from Defendant's personnel, including in-house counsel, compliance personnel, and internal auditors. Defendant will establish a policy, annually communicated to all employees, that employees may disclose any information to the Monitor without reprisal for such disclosure. Defendant must not retaliate against any employee or third party for disclosing information to the Monitor.

E. Defendant may not object to actions taken by the Monitor in fulfillment of the Monitor's responsibilities under any Order of the Court on any ground other than malfeasance by the Monitor. Disagreements between the Monitor and Defendant related to the scope of the Monitor's responsibilities do not constitute malfeasance. Objections by Defendant must be conveyed in writing to the United States and the Monitor within 10 calendar days of the Monitor's

action that gives rise to Defendant's objection, or else Defendant will have waived any such objections.

F. Defendant must use best efforts to cooperate fully with the Monitor and to assist the Monitor with its responsibilities under this Final Judgment. Subject to reasonable protection for trade secrets, other confidential research, development, or commercial information, or any applicable privileges, Defendant must provide the Monitor and agents or consultants retained by the Monitor with full and complete access to all personnel (current and former), agents, consultants, books, records, and facilities. Defendant may not take any action to interfere with, or to impede accomplishment of, the Monitor's responsibilities.

G. The Monitor will have the power and authority to monitor Defendant's compliance with the terms of this Final Judgment entered by the Court, as follows, and will have other powers as the Court deems appropriate: (i) to obtain and review Defendant's books, records, and documents relating to Defendant's compliance with the Final Judgment; (ii) to interview Defendant's officers, employees, and agents; and (iii) to make annual written reports to the Division, with the first report due six months after the Monitor's work plan is approved under Paragraph VIII.N, which process will include such monitoring and verification throughout the monitorship period as necessary to establish, that:

1. Defendant has complied with the obligations set forth in Paragraphs IV.A–B and V.A;

2. employees (including supervisors) functioning as internal revenue managers have complied with the obligations set forth in Paragraphs IV.A.3, V.A, and V.B; and

3. a selection of other local, regional, or supervisory employees of Defendant who manage property operations (not to exceed 15 annually), as designated by the Monitor, have complied with the obligations set forth in Paragraphs IV.A.3, V.A, and V.B.

H. If the Monitor learns of any potential violation of the Final Judgment by Defendant's officers, employees, or agents, the Monitor must promptly disclose to the United States the nature and extent of the potential violation and the United States may require, at its sole discretion and without prejudice to any other remedy available for any violation of this Final Judgment, that the Monitor conduct additional investigation and verification of compliance with this Final Judgment

beyond any limits otherwise provided by this Section.

I. The Monitor will serve at the cost and expense of Defendant pursuant to a written agreement with Defendant, on terms and conditions, including confidentiality requirements and conflict of interest certifications, approved by the United States in its sole discretion. If the Monitor and Defendant are unable to reach such a written agreement within 14 calendar days of the Court's appointment of the Monitor, or if the United States, in its sole discretion, declines to approve the proposed written agreement, the United States, in its sole discretion, may take appropriate action, including making a recommendation as to the Monitor's costs and expenses to the Court, which may set the terms and conditions for the Monitor's costs and expenses.

J. The Monitor may hire, at the cost and expense of Defendant, any agents and consultants that are reasonably necessary in the Monitor's judgment to assist with the Monitor's duties. These agents or consultants will be directed by, and solely accountable to, the Monitor and will serve on terms and conditions, including confidentiality requirements and conflict-of-interest certifications, approved by the United States in its sole discretion. Within three business days of hiring any agents or consultants, the Monitor must provide written notice of the hiring and the rate of compensation to Defendant and the United States.

K. The compensation of the Monitor and agents or consultants retained by the Monitor must be on reasonable and customary terms commensurate with the individuals' experience and responsibilities.

L. The Monitor must account for all costs and expenses incurred.

M. Defendant's failure to promptly pay the Monitor's accounted-for costs and expenses, including for agents and consultants, will constitute a violation of this Final Judgment and may result in sanctions imposed by the Court. If Defendant disputes any part of the Monitor's accounted-for costs and expenses, Defendant must establish an escrow account into which Defendant must pay the disputed costs and expenses until the dispute is resolved.

N. Within 30 days after appointment of the Monitor by the Court, and on a yearly basis thereafter, the Monitor must provide to the United States and Defendant a proposed written work plan. Defendant may provide comments on the proposed written work plan to the United States and the Monitor within 14 calendar days after receipt of the proposed written work plan, after

which the Monitor must produce a final work plan to the United States and Defendant, for approval by the United States in its sole discretion. Any disputes between Defendant and the Monitor with respect to any written work plan will be decided by the United States in its sole discretion. The United States retains the right, in its sole discretion, to request changes or additions to a work plan at any time. If the United States determines that the Monitor is exceeding its authority, not acting diligently or in a reasonably cost-effective manner, or if the Monitor becomes unable to continue in its role for any reason, the United States may recommend that the Court appoint a substitute.

O. Once appointed, the Monitor will serve until:

1. the expiration of the Final Judgment; or

2. if a Monitor has been appointed pursuant to Paragraph VIII.B.1, the United States will move the Court to terminate the monitorship upon the United States' determination that Defendant complies with the requirements in Paragraph IV.E.

IX. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment or related orders or determining whether this Final Judgment should be modified or vacated, upon written request of an authorized representative of the Assistant Attorney General for the Antitrust Division, and reasonable notice to Defendant, Defendant must permit, from time to time and subject to legally recognized privileges, authorized representatives, including agents retained by the United States:

1. to have access during Defendant's office hours to inspect and copy, or at the option of the United States, to require Defendant to provide, no later than 30 days after receiving a written request (whether formal or informal) from the United States, electronic copies of all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendant relating to any matters contained in this Final Judgment; and

2. to interview, either informally or on the record, Defendant's officers, employees, or agents, who may have their individual counsel present, relating to any matters contained in this Final Judgment. The interviews must be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendant.

B. For the purposes of determining or securing compliance with this Final

Judgment or related orders or determining whether this Final Judgment should be modified or vacated, upon the written request of an authorized representative of the Assistant Attorney General for the Antitrust Division, Defendant must submit written reports or respond to written interrogatories, under oath if requested, relating to any matters contained in this Final Judgment.

C. If Greystar uses an internal Revenue Management Product, the United States will have the right for the duration of the Term of this Final Judgment to:

1. obtain documents sufficient to show how Greystar's internal Revenue Management Product is trained and how it determines prices for Greystar Properties during its Runtime Operation and changes to these processes.

2. obtain and inspect at an Antitrust Division office, or at another location at the Division's discretion, the code and Pseudocode of the internal Revenue Management Product to ensure compliance with Paragraph IV.A.1. Greystar will be responsible for the costs and expenses associated with said inspection once annually.

X. Public Disclosure

A. No information or documents obtained pursuant to any provision of this Final Judgment, including reports the Monitor provides to the United States pursuant to Paragraph VIII.G, may be divulged by the United States or the Monitor to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party, including grand-jury proceedings, or as otherwise required by law.

B. In the event that the Monitor should receive a subpoena, court order, or other court process seeking production of information or documents obtained pursuant to any provision in this Final Judgment, including reports the Monitor provides to the United States pursuant to Paragraph VIII.G, the United States must notify Defendant prior to any disclosure.

C. In the event of a request by a third party, pursuant to the Freedom of Information Act, 5 U.S.C. 552, for disclosure of information obtained pursuant to any provision of this Final Judgment, the Antitrust Division will act in accordance with that statute, and the Department of Justice regulations at 28 CFR part 16, including the provision on confidential commercial information, at 28 CFR 16.7. Defendant, when submitting information to the Antitrust Division, should designate the

confidential commercial information portions of all applicable documents and information under 28 CFR 16.7. Designations of confidentiality expire 10 years after submission, "unless the submitter requests and provides justification for a longer designation period." See 28 CFR 16.7(b).

D. If at the time that Defendant furnishes information or documents to the United States pursuant to any provision of this Final Judgment, Defendant represents and identifies in writing information or documents for which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and the Defendant marks each pertinent page of such material "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," the United States must give Defendant 10 calendar days' notice before divulging the material in any legal proceeding (other than a grand jury proceeding).

XI. Retention of Jurisdiction

The Court retains jurisdiction to enable any party to this Final Judgment to apply to the Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XII. Enforcement of Final Judgment

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including the right to seek an order of contempt from the Court. Defendant agrees that in a civil contempt action, a motion to show cause, or a similar action brought by the United States relating to an alleged violation of this Final Judgment, the United States may establish a violation of this Final Judgment and the appropriateness of a remedy therefor by a preponderance of the evidence, and Defendant waives any argument that a different standard of proof should apply.

B. This Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore the competition the United States alleges was harmed by the challenged conduct. Defendant agrees that it may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and

unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

C. In an enforcement proceeding in which the Court finds that Defendant has violated this Final Judgment, the United States may apply to the Court for an extension of this Final Judgment, together with other relief that may be appropriate. In connection with a successful effort by the United States to enforce this Final Judgment against Defendant, whether litigated or resolved before litigation, Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as all other costs including experts' fees, incurred in connection with that effort to enforce this Final Judgment, including in the investigation of the potential violation.

D. For a period of four years following the expiration of this Final Judgment, if the United States has evidence that Defendant violated this Final Judgment before it expired, the United States may file an action against Defendant in this Court requesting that the Court order: (1) Defendant to comply with the terms of this Final Judgment for an additional term of at least four years following the filing of the enforcement action; (2) all appropriate contempt remedies; (3) additional relief needed to ensure Defendant complies with the terms of this Final Judgment; and (4) fees or expenses as called for by this Section.

XIII. Expiration of Final Judgment

Unless the Court grants an extension, this Final Judgment will expire 5 years from the date of its entry except that after two years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court and Defendant that continuation of this Final Judgment is no longer necessary or in the public interest.

XIV. Reservation of Rights

The Final Judgment relates only to the resolution of the Settled Antitrust Claims. The United States reserves all rights for any other claims against Defendant that may be brought in the future. The entry of the Final Judgment does not limit the ability of any non-settling attorney general of any State to bring or maintain any action under federal or state law against Defendant.

XV. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including by making available to the public copies of this

Final Judgment and the Competitive Impact Statement, public comments thereon, and any response to comments by the United States. Based upon the record before the Court, which includes the Competitive Impact Statement and, if applicable, any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

[Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16]

United States District Judge

United States District Court for the Middle District of North Carolina

UNITED STATES OF AMERICA, et al., Plaintiffs, v. *GREYSTAR MANAGEMENT SERVICES, LLC*, Defendant.

No. 1:24-cv-00710-WLO-JLW

Competitive Impact Statement

In accordance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (the “APPA” or “Tunney Act”), the United States of America files this Competitive Impact Statement related to the proposed Final Judgment against Defendant Greystar Management Services, LLC, which has been filed in this civil antitrust proceeding (ECF No. 152–1).

I. Nature and Purpose of the Proceeding

On August 23, 2024, the United States, along with co-plaintiff States, filed a civil antitrust Complaint (the “Complaint”) against RealPage, Inc. (“RealPage”). On January 7, 2025, the United States and its co-plaintiff States amended the Complaint to add Greystar Management Services, LLC (“Greystar”) and five other property management companies (“property managers”) as Defendants. Greystar licenses a revenue management product called AI Revenue Management (“AIRM”) from RealPage. RealPage also licenses AIRM and its other revenue management products to Greystar’s competitors, including the other property managers or property owners (collectively, “landlords”) named in the Complaint. Greystar and other landlords use RealPage’s revenue management products to determine how to price floor plans and units for the conventional multifamily rental housing that they each manage and lease, in competition with each other in numerous local rental housing markets around the country.

The Complaint alleges that Greystar violated Section 1 of the Sherman Act, 15 U.S.C. 1, by unlawfully sharing its confidential and competitively sensitive information with RealPage for use in its

and competing landlords’ pricing. Under their licensing agreements with RealPage, Greystar and competing landlords have provided RealPage with daily, competitively sensitive, nonpublic information relating to their leasing businesses, including details like how many leases have been renewed, for what terms, and at what price. The transactional data that Greystar and other landlords have agreed to provide to RealPage includes current, forward-looking, granular, and highly competitively sensitive information. As reflected in the design, development, and operation of its revenue management products, RealPage has used Greystar’s competitively sensitive, nonpublic information to influence rental prices and other recommendations across conventional multifamily rental housing managed by competing landlords. Through RealPage’s revenue management products, Greystar’s rental prices and related recommendations for conventional multifamily housing rentals were likewise influenced by its competitors’ competitively sensitive, nonpublic information. In each relevant market, RealPage and participating landlords, including Greystar, collectively have sufficient market power, as indicated by market and data penetration, to harm renters and the competitive process through their unlawful sharing of confidential and competitively sensitive information with each other.

The Complaint also alleges that Greystar and other landlords, by adopting and using RealPage’s revenue management products, have agreed with RealPage to align their pricing, thereby violating Section 1 of the Sherman Act, 15 U.S.C. 1. RealPage has entered into agreements with Greystar and its competing landlords relating to how to price floor plans and rental units by licensing its revenue management products, AIRM and YieldStar, to landlords, and by training and running its revenue management products using competitively sensitive, nonpublic transactional data shared by landlords. Adoption and use of RealPage’s revenue management products by Greystar and other landlords has the likely effect of aligning their pricing processes, strategies, and pricing responses, and Greystar and other landlord users understand this likely effect.

The Complaint also alleges monopolization and attempted monopolization claims against RealPage, but not against Greystar or any of its competing landlords. Through its licensing agreements, RealPage has amassed a massive reservoir of

competitively sensitive data from competing landlords. RealPage has ensured that other providers of revenue management products cannot compete on the merits unless they enter into similar agreements with landlords, thereby obstructing them from competing with products that do not harm the competitive process.

On August 8, 2025, the United States filed a proposed Final Judgment and a Stipulation and Order (“Stipulation and Order”), which are designed to remedy the loss of competition alleged in the Complaint due to Greystar’s conduct.

The proposed Final Judgment, which is explained more fully below, imposes several requirements and restrictions on Greystar that address the United States’ concerns regarding Greystar’s anticompetitive conduct alleged in the Complaint. Specifically:

- i. Greystar cannot license or use any revenue management product that uses third-party nonpublic data to recommend or set prices;
- ii. Greystar cannot license or use any revenue management product that pools information across Greystar properties with different owners;
- iii. Greystar cannot disclose, solicit, or use competitively sensitive information from competitors that can be used to set rental prices or generate pricing;
- iv. Greystar must cooperate in this civil antitrust proceeding (*United States et al. v. RealPage et al.*) with respect to the monopolization and attempted monopolization claims against RealPage;
- v. Greystar must adopt a written antitrust compliance policy and designate a chief antitrust compliance officer who will train Greystar employees on the policy;
- vi. Greystar must allow the United States to inspect its documents and to interview its employees to ensure compliance with the Final Judgment;
- vii. If Greystar uses a revenue management product, Greystar will be subject to a monitor unless Greystar obtains a certification that meets certain requirements, including affirming, among other things, that the product complies with all required limitations regarding use of competitors’ competitively sensitive data in its runtime operation or model training; and
- viii. Greystar will also be subject to a monitor if the Court finds that Greystar has violated the terms of the proposed Final Judgment.

Under the terms of the Stipulation and Order, Greystar must abide by and comply with the provisions of the proposed Final Judgment until it is entered by the Court or until the time

for all appeals of any Court ruling declining entry of the proposed Final Judgment has expired.

The United States and Greystar have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the APPA. Entry of the proposed Final Judgment will terminate this action with respect to Greystar, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof by Greystar.

II. Description of Events Giving Rise to the Alleged Sherman Act Violations

Greystar has been a user of commercial revenue management and property management products that RealPage licenses to landlords, and it has used RealPage's revenue management software to help set rental prices for the properties it manages and/or owns. RealPage currently licenses three revenue management products, including AIRM, to landlords. AIRM, which Greystar uses, leverages confidential, competitively sensitive data collected from competing landlords as a critical input to generate price recommendations for competing landlords. This data includes rental applications, executed new leases, renewal offers and acceptances, and occupancy estimates and projections. The data is pulled from property management software, such as RealPage's OneSite product, that Greystar and other landlords use to collect and track rental payments, manage leases, property maintenance, accounting, and other property management functions.

When deciding where to live, renters often visit numerous properties that are owned and managed by competing landlords so that they can compare rental offerings and select their best housing option considering price and other terms. When competing landlords do not have access to each other's nonpublic data, or recommendations informed by competitors' nonpublic data, they are more likely to act independently and compete more vigorously on price and better leasing terms to secure new leases and renewals from renters. RealPage, however, provides landlords who use its revenue management products with pricing recommendations and pricing based on competitors' competitively sensitive data. Widespread adoption and use of RealPage's revenue management products leads to pricing decisions by competing landlords such as Greystar that are based on recommendations coming from a common pricing model

and powered by competitively sensitive, nonpublic data, harming the ability of renters to obtain a competitive price for their housing. The use of competitors' competitively sensitive data in this manner thus harms renters as well as the competitive process itself.

Greystar, headquartered in Charleston, South Carolina, is one of the largest apartment managers in the United States. As of 2025, Greystar managed approximately 950,000 in the United States. As an apartment manager, Greystar makes strategic and competitive decisions for the apartments it manages, including determination of new lease and renewal terms, such as rental price. Greystar licenses AIRM from RealPage. Per the licensing agreement, Greystar relies on AIRM to recommend rental prices for its units, which is informed by competitively sensitive data provided by Greystar's competitors. Greystar also provides its competitively sensitive data to RealPage, to be used to inform the rental prices that RealPage's software recommends to Greystar's competitors. Further, Greystar has agreed with RealPage to use AIRM pricing software as RealPage designed it. It reviews AIRM floor plan price recommendations daily and uses the software to set scheduled floor plan rents and even unit-level prices.

In summary, the Complaint alleges that Greystar unlawfully shared its competitively sensitive information for use in pricing by competing landlords that also license RealPage's software, and that Greystar agreed to align its pricing with that of its competitors by using RealPage's software in the way the software was designed and with the data it uses. Greystar uses RealPage's revenue management products to inform its setting of rental prices and discounts—such as concessions of a free month of rent—and to make other competitive and strategic decisions relating to rental prices and terms.

III. Explanation of the Proposed Final Judgment

The relief required by the proposed Final Judgment will remedy the loss of competition in the conventional multifamily rental housing market¹³ alleged in the Complaint by precluding Greystar from sharing competitively sensitive, nonpublic information, directly or indirectly, with competing

landlords and from forming agreements, directly or indirectly, to align prices with its competitors. The terms described below are designed to ensure that Greystar ends its anticompetitive conduct and to prevent Greystar from engaging in the same or similar conduct in the future.

A. Greystar's Use of Revenue Management Products

The proposed Final Judgment imposes requirements on Greystar related to the type of data in any revenue management product Greystar licenses or uses. Paragraph IV.A.1 of the proposed Final Judgment requires Greystar to select a software that does not (1) use competitively sensitive data from different property managers, unless from the same property owner of the subject property, to set rental prices or generate rental pricing recommendations, (2) use data from different property owners to set rental prices or generate rental pricing recommendations, (3) disclose data from a Greystar property to a rival landlord or property owner, (4) pool or combine data from different property owners, or (5) contain or use a pricing algorithm that has been trained using nonpublic data from different property owners.

The restrictions regarding the use of competitively sensitive data from other landlords and different Greystar property owners require Greystar and each client Greystar serves (whether it be a property manager or property owner) to individually use their own data to make pricing decisions for conventional multifamily rental housing units. The restriction is designed to restore the competitive pressure among landlords.

The prohibition against pooling data from different owners prohibits property owners who compete in the conventional multifamily rental housing industry from using their relationship with Greystar to gain access to each other's data.

Additionally, the proposed Final Judgment prohibits Greystar from licensing or using a revenue management product in which the software's model has been trained using data from different owners. A model is a set of rules or instructions that software relies on to calculate a defined output which, in this case, is a recommended rental price for a floorplan or unit. Models are trained using data to define and refine the rules or instructions by which it operates. The restriction on pooling competitors' data thus also prohibits Greystar from training its software models using pricing and occupancy data from

¹³ As stated in the Complaint, the conventional multifamily rental housing market includes apartments available to the general public in properties that have five or more living units. It does not include student housing, affordable housing, age-restricted or senior housing, or military housing. (Am. Compl. ¶ 183).

competing property owners, therefore reducing concerns about competitors benefiting from using each other's competitively sensitive data to plan their pricing.

If Greystar decides to use a commercially available revenue management product, Paragraph V.A.2 also prohibits Greystar from selecting and using a revenue management product that sets rental floors or limits rental pricing recommendation decreases based on competing properties' rental prices.

The proposed Final Judgment includes an additional restriction on Greystar's ability to make agreements with non-clients regarding revenue management products. Specifically, Paragraph IV.A.3 prohibits Greystar from agreeing with a non-client property owner or a competing landlord to use a particular revenue management product. This provision reduces the risk of competitors agreeing with each other to use the same revenue management product across their clients.

In the event that the United States and RealPage, Inc. enter into a consent decree in this matter, and such consent decree permits RealPage to offer a Revenue Management Product, Paragraph IV.D allows Greystar to license or use such product.

B. Other Prohibited Conduct

In addition to restrictions and conditions on Greystar's use of revenue management products, the proposed Final Judgment also limits Greystar's ability to communicate with competitors regarding certain competitively sensitive information for the purpose of setting prices. Paragraph V.A prohibits Greystar from disclosing, soliciting, or using any competitively sensitive data from competitors as part of setting rental prices or generating rental price recommendations except for the property owner of a particular Greystar property. Paragraph V.A clarifies that the restrictions include any data obtained through any form of communication, including call rounds or market surveys, meetings, calls, text messages, emails, or shared documents.

In addition, the proposed Final Judgment prohibits Greystar from attending or participating in RealPage meetings, which include steering committees, RealPage subcommittees, RealPage user groups, and RealPage Idea Exchange. Paragraph V.B. provides that if Greystar attends a RealPage meeting, it must notify the United States within 30 days and provide a description of the content and any documents shown during the meeting. Additionally, Greystar must produce to the United

States any chats or documents associated with the meeting.

Paragraph V.C prevents Greystar from using any competitively sensitive data belonging to other landlords, whether Greystar derived that non-Greystar data from a revenue management product or obtained it from direct communications with other landlords. Greystar must also identify to the United States the existence and location of any such data. This does not apply to any data for Greystar properties maintained in OneSite.

C. Cooperation

Under the terms of the proposed Final Judgment, and subject to reaching settlement with certain States, Greystar must cooperate with the United States relating to the United States' monopolization and attempted monopolization claims against RealPage, as described above and included in the Complaint. This required cooperation includes voluntary interviews with at least 10 employees for up to 40 hours. In addition, Greystar must provide cooperation to the United States related to all claims alleged in *United States et al. v. RealPage et al.*, including by making witnesses available before trial, providing testimony, proffering evidence, and producing documents and other information.

D. Compliance Terms

Pursuant to Paragraph IX.A, Greystar must provide the United States with access to Greystar's books, records, data, and documents, including communications with other property managers, to enable the United States to assess Greystar's compliance with the terms of the Final Judgment. Greystar must also permit the United States to interview Greystar's officers, employees, or agents relating to any matters contained in this Final Judgment. Paragraph IX.C provides that if Greystar elects to use a proprietary revenue management product, Greystar must also provide the United States with documents describing how Greystar's proprietary software is trained and how it determines prices for properties it manages, as well as changes to these processes. Greystar must also allow the United States to inspect Greystar's software code and pseudocode of that software for independent verification.

Additionally, Paragraph VI.B requires Greystar's chief antitrust officer to implement and enforce Greystar's antitrust compliance policy and annual training. Paragraph VI.C requires Greystar to submit an annual certification from its General Counsel that Greystar has established and

maintained this annual antitrust compliance policy and training, that vendors of the revenue management products Greystar licenses or uses have provided certifications that the product satisfies the requirements in the proposed Final Judgment, and that Greystar has complied with the requirements in Paragraph VI.A to not disclose, solicit, or share competitively sensitive data. Finally, Greystar must provide a report to the United States that identifies each Greystar property that uses a commercially available revenue management product. The report must further identify who is responsible for setting prices for each Greystar property and whether Greystar provides revenue management services for that property.

E. Appointment of a Monitor

The proposal Final Judgment requires that Greystar be subject to an appointed compliance monitor in certain circumstances.

First, Paragraph VIII.B requires that a monitor be appointed if a Court determines that Greystar has violated the proposed Final Judgment.

In addition, Paragraph IV.C requires Greystar to notify the United States if it chooses to license or use any commercially available revenue management product at any of its properties. In that circumstance, Paragraph VIII.B requires that Greystar be subject to a monitor unless Greystar obtains a certification for such product, as required by Paragraph IV.E: (a) for a non-RealPage revenue management product, the product's vendor must certify that the product does not use competitors' competitively sensitive data to determine rental prices and satisfies other software requirements; (b) for a RealPage revenue management product, a monitor appointed pursuant to other terms of the proposed Final Judgment must certify that the product complies with the proposed Final Judgment's requirements.

In the event a monitor is appointed, the monitor will assess Greystar's compliance with the Final Judgment, in particular, its use of a revenue management product and communications with other landlords. Paragraph VIII.F provides the monitor with authority to investigate Greystar's compliance with the Final Judgment, including by selecting up to 15 Greystar employees to interview and giving the monitor access to review their files. Further, per Paragraph VIII.D, the monitor will have the authority to take steps necessary to ensure compliance with the Final Judgment. These steps may include interviewing Greystar

employees and collecting Greystar documents. The monitor will also provide an annual report to the United States setting forth Greystar's efforts to comply with its obligations under the Final Judgment.

If appointed, the monitor will serve at Greystar's expense, on such terms and conditions as the United States approves in its sole discretion. Greystar will be required to assist the compliance monitor in fulfilling his or her obligations. The monitor will serve for the remainder of the term of the Final Judgment or until Greystar obtains a certification, as described above.

F. Other Provisions

The proposed Final Judgment also contains provisions designed to promote compliance with and make enforcement of the Final Judgment more effective. Paragraph XII.A provides that the United States retains and reserves all rights to enforce the Final Judgment, including the right to seek an order of contempt from the Court. Under the terms of this paragraph, Greystar has agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of the Final Judgment, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that Greystar has waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance with the Final Judgment with the standard of proof that applies to the underlying offense addressed by the Final Judgment.

Paragraph XII.B provides additional clarification regarding the interpretation of the provisions of the proposed Final Judgment. Pursuant to Paragraph XII.B of the proposed Final Judgment, Greystar agrees that it will abide by the proposed Final Judgment and that it may be held in contempt of the Court for failing to comply with any provision of the proposed Final Judgment that is stated specifically and in reasonable detail, as interpreted in light of its procompetitive purpose.

Paragraph XII.C provides that if the Court finds in an enforcement proceeding that Greystar has violated the Final Judgment, the United States may apply to the Court for an extension of the Final Judgment, together with such other relief as may be appropriate. In addition, to compensate American taxpayers for any costs associated with investigating and enforcing violations of the Final Judgment, Paragraph XII.C provides that in any successful effort by the United States to enforce the Final

Judgment against Greystar, whether litigated or resolved before litigation, Greystar must reimburse the United States for attorneys' fees, experts' fees, and other costs incurred in connection with that effort to enforce this Final Judgment, including the investigation of the potential violation.

Paragraph XII.D of the proposed Final Judgment states that the United States may file an action against Greystar for violating the Final Judgment for up to four years after the Final Judgment has expired or been terminated. This provision is meant to address circumstances such as when evidence that a violation of the Final Judgment occurred during the term of the Final Judgment is not discovered until after the Final Judgment has expired or been terminated, or when there is not sufficient time for the United States to complete an investigation of an alleged violation until after the Final Judgment has expired or been terminated. This provision therefore makes clear that, for four years after the Final Judgment has expired or been terminated, the United States may still challenge a violation that occurred during the term of the Final Judgment.

Finally, Section XIII of the proposed Final Judgment provides that the Final Judgment will expire five years from the date of its entry, except that after two years from that date, the Final Judgment may be terminated upon notice by the United States to the Court and to Greystar that continuation of the Final Judgment is no longer necessary or in the public interest.

IV. Remedies Available to Potential Private Plaintiffs

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment neither impairs nor assists the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Greystar.

IV. Procedures Available for Modification of the Proposed Final Judgment

The United States and Greystar have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United

States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or within 60 days of the first date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the U.S. Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of the Final Judgment. The comments and the responses of the United States will be filed with the Court. In addition, the comments and the United States' responses will be published in the **Federal Register** unless the Court agrees that the United States instead may publish them on the U.S. Department of Justice, Antitrust Division's internet website.

Written comments should be submitted in English to: Danielle Hauck, Acting Chief, Technology and Digital Platforms Section, Antitrust Division, United States Department of Justice, 450 Fifth St. NW, Suite 7100, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

As an alternative to the proposed Final Judgment, the United States considered a full trial on the merits against Greystar. The United States could have continued its litigation against Greystar and brought the case to trial, seeking relief including an injunction against Greystar's sharing of its competitively sensitive, nonpublic data with RealPage and other landlords, an injunction against Greystar using AIRM, YieldStar, or similar products that use competing properties' nonpublic data to recommend prices, and an injunction preventing any communication with competitors that leads to alignment of prices. Under the circumstances present here, however,

the United States concludes that entry of the proposed Final Judgment is in the public interest insofar as it avoids the time, expense, and uncertainty of a full trial on the merits.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

Under the Clayton Act and APPA, proposed Final Judgments, or “consent decrees,” in antitrust cases brought by the United States are subject to a 60-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment “is in the public interest.” 15 U.S.C. 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the Court’s inquiry is necessarily a limited one as the government is entitled to “broad discretion to settle with the defendant within the reaches of the public interest.” *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *United States v. U.S. Airways Grp., Inc.*, 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the “court’s inquiry is limited” in Tunney Act settlements); *United States v. InBev N.V./S.A.*, No. 08–1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that a court’s review of a proposed Final Judgment is limited and only inquires “into whether the government’s determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the final judgment are clear and manageable”); *United States v. Charleston Area Med. Ctr., Inc.*, No. CV 2:16–3664, 2016 WL 6156172, at *2 (S.D.W. Va. Oct. 21, 2016) (explaining that in evaluating

whether the proposed final judgment is in the public interest, the inquiry is “a narrow one.”); *United States v. Mountain Health Care*, 1:02–CV–288–T, 2003 WL 22359598, at *7 (W.D.N.C. 2003) (“[W]ith respect to the adequacy of the relief secured by the decree, a court may not ‘engage in an unrestricted evaluation of what relief would best serve the public.’”) *citing United States v. BSN*, 858 F.2d 456, 462–63 (9th Cir. 1988)).

As the U.S. Court of Appeals for the D.C. Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government’s Complaint, whether the proposed Final Judgment is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether it may positively harm third parties. *See Microsoft*, 56 F.3d at 1458–62; *United States v. Math Works*, No. 02–888–A, 2003 WL 1922140, *17 (E.D. Va. 2003). With respect to the adequacy of the relief secured by the proposed Final Judgment, a court may not “make de novo determination of facts and issues.” *United States v. W. Elec. Co.*, 993 F.2d 1572, 1577 (D.C. Cir. 1993) (quotation marks omitted); *see also Microsoft*, 56 F.3d at 1460–62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *United States v. Enova Corp.*, 107 F. Supp. 2d 10, 16 (D.D.C. 2000); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. Instead, “[t]he balancing of competing social and political interests affected by a proposed antitrust decree must be left, in the first instance, to the discretion of the Attorney General.” *W. Elec. Co.*, 993 F.2d at 1577 (quotation marks omitted). “The court should also bear in mind the flexibility of the public interest inquiry: the court’s function is not to determine whether the resulting array of rights and liabilities is the one that will best serve society, but only to confirm that the resulting settlement is within the reaches of the public interest.” *Microsoft*, 56 F.3d at 1460 (quotation marks omitted); *see also United States v. Deutsche Telekom AG*, No. 19–2232 (TJK), 2020 WL 1873555, at *7 (D.D.C. Apr. 14, 2020); *Math Works*, 2003 WL 1922140 at *18; *Mountain Health Care*, 2003 WL 22359598, at *7. More demanding requirements would “have enormous practical consequences for the government’s ability to negotiate future settlements,” contrary to congressional intent. *Microsoft*, 56 F.3d at 1456. “The Tunney Act was not intended to create a disincentive to the use of the consent decree.” *Id.*

The United States’ predictions about the efficacy of the remedy are to be

afforded deference by the Court. *See, e.g., Microsoft*, 56 F.3d at 1461 (recognizing courts should give “due respect to the Justice Department’s . . . view of the nature of its case”); *United States v. Iron Mountain, Inc.*, 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016) (“In evaluating objections to settlement agreements under the Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.” (internal citations omitted)); *United States v. Republic Servs., Inc.*, 723 F. Supp. 2d 157, 160 (D.D.C. 2010) (noting “the deferential review to which the government’s proposed remedy is accorded”); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (“A district court must accord due respect to the government’s prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case.”). The ultimate question is whether “the remedies [obtained by the Final Judgment are] so inconsonant with the allegations charged as to fall outside of the ‘reaches of the public interest.’” *Microsoft*, 56 F.3d at 1461 (quoting *W. Elec. Co.*, 900 F.2d at 309).

Moreover, the Court’s role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the Court to “construct [its] own hypothetical case and then evaluate the decree against that case.” *Microsoft*, 56 F.3d at 1459; *see also U.S. Airways*, 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government’s decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 (“[T]he ‘public interest’ is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged”); *Math Works*, 2003 WL 1922140 at *18; *Mountain Health Care* 2003 WL 22359598, at *8. Because the “court’s authority to review the decree depends entirely on the government’s exercising its prosecutorial discretion by bringing a case in the first place,” it follows that “the court is only authorized to review the decree itself,” and not to “effectively redraft the complaint” to inquire into other matters that the United States did

not pursue. *Microsoft*, 56 F.3d at 1459–60.

In its 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of using judgments proposed by the United States in antitrust enforcement, Public Law 108–237 § 221, and added the unambiguous instruction that “[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.” 15 U.S.C. 16(e)(2); *see also U.S. Airways*, 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first enacted

the Tunney Act in 1974. As Senator Tunney explained: “[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.” 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). “A court can make its public interest determination based on the competitive impact statement and response to public comments alone.” *U.S. Airways*, 38 F. Supp. 3d at 76 (citing *Enova Corp.*, 107 F. Supp. 2d at 17).

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the

United States in formulating the proposed Final Judgment.

Dated: August 25, 2025
Respectfully submitted,
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