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# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG–110032–25]

RIN 1545–BR63

#### Occupations That Customarily and Regularly Received Tips; Definition of Qualified Tips

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notification of change to telephonic-only public hearing on a proposed rulemaking.

**SUMMARY:** This document announces that the public hearing originally scheduled for October 23, 2025, for a notice of proposed rulemaking (REG–110032–25) that was published in the **Federal Register** on Monday, September 22, 2025, has been changed to a telephonic-only hearing. The proposed regulations identify occupations that customarily and regularly received tips on or before December 31, 2024, and provide a definition of “qualified tips” for purposes of the income tax deduction for qualified tips.

**DATES:** The public hearing scheduled for October 23, 2025, at 10 a.m. Eastern Time (ET) has been changed to a telephonic-only hearing.

**ADDRESSES:** Public comments that have been submitted on the proposed regulations (REG–110032–25) are available on the Federal eRulemaking Portal at <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Stephanie Caden or Andrew Holubeck at (202) 317–4774; concerning submission of comments or the public hearing, please contact Publications and Regulations Section at (202) 317–6901 (not toll-free numbers) or by email at [publichearings@irs.gov](mailto:publichearings@irs.gov) (preferred).

**SUPPLEMENTARY INFORMATION:** A notice of proposed rulemaking and public hearing that appeared in the **Federal**

**Register** on Monday, September 22, 2025 (90 FR 45340), announced that a public hearing was scheduled for October 23, 2025.

Due to the lapse in appropriations, the in-person public hearing scheduled for October 23, 2025, is changed to a telephonic-only hearing. If no timely requests to speak at the telephonic hearing are received, the public hearing will not be held. The deadline to provide comments on the notice of proposed rulemaking and to request to testify at the hearing remains October 22, 2025. All individuals who timely request to attend the public hearing will receive the telephone number and access code.

Individuals who have already sent an email to [publichearings@irs.gov](mailto:publichearings@irs.gov) to request to attend the hearing by telephone or in person do not need to make a second request to attend the hearing being held by telephone only. The IRS will provide those individuals with a telephone number and access code for the hearing by email.

**Oluwafunmilayo A. Taylor,**

*Section Chief, Publications and Regulations, Associate Chief Counsel, (Procedure and Administration).*

[FR Doc. 2025–19634 Filed 10–21–25; 11:15 am]

**BILLING CODE 4831–GV–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R09–OAR–2025–0101; FRL–12600–01–R9]

#### Approval and Promulgation of Air Quality Implementation Plans; Nevada; Regional Haze State Implementation Plan for the Second Implementation Period

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve portions of the regional haze state implementation plan (SIP) revisions submitted by the Nevada Division of Environmental Protection (NDEP) on August 12, 2022 (“2022 Nevada Regional Haze Plan”) and on May 28, 2025 (“2025 SIP Supplement”), as satisfying applicable requirements

under the Clean Air Act (CAA) and the EPA’s Regional Haze Rule (RHR) for the program’s second implementation period. These revisions address 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 revisions also address 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:** Written comments must be received on or before November 24, 2025.

(1) *Addresses:* Submit your comments, identified by Docket ID No. EPA–R09–OAR–2025–0101 at <https://www.regulations.gov>. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Emily Millar, Geographic Strategies & Modeling Section (ARD-2-2), Planning & Analysis Branch, Air & Radiation Division, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, telephone number: (213) 244-1882, email address: [millar.emily@epa.gov](mailto:millar.emily@epa.gov).

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

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### I. What action is the EPA proposing?

On August 12, 2022, NDEP submitted the 2022 Nevada Regional Haze Plan, titled “Nevada Regional Haze State Implementation Plan for the Second Planning Period” as a revision to the Nevada SIP to address regional haze for the second implementation period.<sup>1</sup> NDEP made this SIP submission to satisfy the requirements of the CAA’s

<sup>1</sup> Letter dated August 12, 2022, from Greg Lovato, Administrator, NDEP, to Martha Guzman, Regional Administrator, U.S. Environmental Protection Agency Region 9 (submitted electronically August 12, 2022).

regional haze program pursuant to CAA sections 169A and 169B and 40 CFR 51.308. The EPA found this submission complete on August 16, 2022.<sup>2</sup> On July 27, 2023, NDEP withdrew the reasonable progress determinations for Tracy Generating Station’s Piñon Pine Unit (also known variously as Tracy Unit 4 and Tracy Unit 7) and North Valmy Generating Station’s Unit 1 and Unit 2.<sup>3</sup> On May 28, 2025, NDEP submitted the 2025 SIP Supplement, titled “Nevada Regional Haze Revision to the State Implementation Plan for the Second Planning Period,” which includes revised reasonable progress determinations for those two sources.<sup>4</sup> The 2025 Supplement also includes updated permits for three sources, replacing those submitted as part of the 2022 Nevada Regional Haze Plan.<sup>5</sup> At this time the EPA is not proposing to act on the revised reasonable progress determinations for Tracy Unit 7 (Piñon Pine Unit 4) and North Valmy Generating Station’s Unit 1 and Unit 2, which were included in the 2025 SIP Supplement. However, the EPA is proposing to find that the 2022 Nevada Regional Haze Plan, as revised by the July 27, 2023 partial withdrawal, and the permits submitted in appendix A of the 2025 SIP Supplement, meets the applicable statutory and regulatory requirements. Thus, we propose to approve the 2022 Nevada Regional Haze Plan (excluding the portions withdrawn on July 27, 2023) and appendix A (“Air Quality Permits Incorporated by Reference”) of the 2025 Supplement (collectively “the Plan”) into the Nevada SIP.

### 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.<sup>6</sup> For additional background on the 2017 RHR revisions, please refer to section III. Overview of Visibility Protection Statutory Authority, Regulation, and Implementation of “Protection of Visibility: Amendments to Requirements for State Plans” of the

<sup>2</sup> Letter dated August 16, 2022, from Elizabeth Adams, Director, Air and Radiation Division, EPA Region IX, to Greg Lovato, Administrator, NDEP.

<sup>3</sup> Letter dated July 27, 2023, from Jennifer L. Carr, Administrator, NDEP, to Martha Guzman, Regional Administrator, U.S. Environmental Protection Agency Region 9 (submitted electronically August 2, 2023).

<sup>4</sup> Letter dated May 23, 2025, from Jennifer L. Carr, Administrator, NDEP, to Josh F.W. Cook, Regional Administrator, U.S. Environmental Protection Agency Region 9 (submitted electronically May 27, 2025).

<sup>5</sup> 2025 SIP Supplement, appendix A.

<sup>6</sup> See 90 FR 13516 (March 24, 2025).

2017 RHR.<sup>7</sup> The following is an abbreviated history and background of the regional haze 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.<sup>8</sup> The CAA establishes as a national goal the “prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution.”<sup>9</sup>

Regional haze is visibility impairment that is produced by a multitude of anthropogenic sources and activities which are located across a broad geographic area and that emit pollutants that impair visibility. Visibility impairing pollutants include fine and coarse particulate matter (PM) (e.g., sulfates, nitrates, organic carbon, elemental carbon, and soil dust) and their precursors (e.g., sulfur dioxide (SO<sub>2</sub>), nitrogen oxides (NO<sub>x</sub>), and, in some cases, volatile organic compounds (VOC) and ammonia (NH<sub>3</sub>)). Fine particle precursors react in the atmosphere to form PM<sub>2.5</sub>, which impairs visibility by scattering and absorbing light. Visibility impairment reduces the perception of clarity and color, as well as visible distance.<sup>10</sup>

To address regional haze visibility impairment, the 1999 RHR established an iterative planning process that requires both states in which Class I areas are located and states “the emissions from which may reasonably

<sup>7</sup> 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>.

<sup>8</sup> CAA 169A. Areas statutorily designated as mandatory Class I Federal areas consist of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977. CAA 162(a). There are 156 mandatory Class I areas. The list of areas to which the requirements of the visibility protection program apply is in 40 CFR part 81, subpart D.

<sup>9</sup> CAA 169A(a)(1).

<sup>10</sup> There are several ways to measure the amount of visibility impairment, i.e., haze. One such measurement is the deciview, which is the principal metric used by the RHR. Under many circumstances, a change in one deciview will be perceived by the human eye to be the same on both clear and hazy days. The deciview is unitless. It is proportional to the logarithm of the atmospheric extinction of light, which is the perceived dimming of light due to it 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  $10 \ln(b^{ext})/10 Mm^{-1}$ . 40 CFR 51.301.

be anticipated to cause or contribute to any impairment of visibility” in a Class I area to periodically submit SIP revisions to address such impairment.<sup>11</sup>

On January 10, 2017, the EPA promulgated revisions to the RHR, which apply for the second and subsequent implementation periods.<sup>12</sup> 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. 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), which include representation from state and Tribal governments, the EPA, and FLMs, were developed in the lead-up to the first implementation period to address regional haze. RPOs evaluate technical information to better understand how emissions from State and Tribal land impact Class I areas across the country, pursue the development of regional strategies to reduce emissions of particulate matter and other pollutants leading to regional haze, and help states meet the consultation requirements of the RHR.

The Western Regional Air Partnership (WRAP), one of the five RPOs, is a collaborative effort of state governments, Tribal governments, and various Federal agencies established to initiate and coordinate activities associated with the management of regional haze, visibility, and other air quality issues in the western corridor of the United States. Member states (listed alphabetically) include: Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and

Wyoming. The Federal partner members of WRAP are the EPA, U.S. National Parks Service (NPS), U.S. Fish and Wildlife Service (FWS), and U.S. Forest Service (USFS). There are also 468 federally recognized Tribes within the WRAP region.

### **III. Requirements for Regional Haze Plans for the Second Implementation Period**

Under the CAA and the EPA’s regulations, all 50 states, the District of Columbia, and the U.S. Virgin Islands were required to submit regional haze SIP revisions 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.<sup>13</sup> 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 section 40 CFR 51.308(f)(1) through (3) generally mirroring the order of the steps in the reasonable progress analysis<sup>14</sup> and (f)(4) through (6) containing additional, related requirements. Broadly speaking, a state first must identify the Class I areas within the state and determine the Class I areas outside the state in which visibility may be affected by emissions from the state. These are the Class I areas that must be addressed in the state’s long-term strategy.<sup>15</sup> For each Class I area within its borders, a state must then 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).<sup>16</sup> 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. 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 emissions limitations, compliance schedules, and other measures that are necessary to make reasonable progress in such areas. A reasonable progress determination is based on applying the four factors in CAA section 169A(g)(1) to sources of visibility-impairing pollutants that the state has selected to assess for controls for the second implementation period. Additionally, as further explained below, the RHR at 40 CFR 51.308(f)(2)(iv) separately provides five “additional factors”<sup>17</sup> that states must consider in developing their long-term strategies.<sup>18</sup> A state evaluates potential emissions reduction measures for those selected sources and determines which are necessary to make reasonable progress. Those measures are then incorporated into the state’s long-term strategy. After a state has developed its long-term strategy, it then establishes RPGs for each Class I area within its borders by modeling the visibility impacts of all reasonable progress controls at the end of the second implementation period, *i.e.*, in 2028, as well as the impacts of other requirements of the CAA. The RPGs include reasonable progress controls not only for sources in the state in which the Class I area is located, but also for sources in other states that contribute to visibility impairment in that area. The RPGs are then compared to the baseline visibility conditions and the URP to ensure that progress is being made towards the statutory goal of preventing any future and remedying any existing anthropogenic visibility impairment in Class I areas.<sup>19</sup> There are additional requirements in the rule, including FLM consultation, that apply to all visibility protection SIPs and SIP revisions.<sup>20</sup>

#### *A. Long-Term Strategy for Regional Haze*

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

<sup>11</sup> CAA 169A(b)(2). The RHR expresses the statutory requirement for states to submit plans addressing out-of-state class I areas by providing that states must address visibility impairment “in each mandatory Class I Federal area located outside the State that may be affected by emissions from within the State.” 40 CFR 51.308(d), (f). See also 40 CFR 51.308(b), (f) (establishing submission dates for iterative regional haze SIP revisions); 64 FR 35714, 35768 (July 1, 1999).

<sup>12</sup> 82 FR 3078 (January 10, 2017).

<sup>13</sup> CAA 169A(b)(2)(B).

<sup>14</sup> The EPA explained in the 2017 RHR Revisions that we were adopting new regulatory language in 40 CFR 51.308(f) that, unlike the structure in 51.308(d), “tracked the actual planning sequence.” 82 FR 3078, 3091 (January 10, 2017).

<sup>15</sup> See 40 CFR 51.308(f), (f)(2).

<sup>16</sup> See 40 CFR 51.308(f)(1).

<sup>17</sup> 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.

<sup>18</sup> See 40 CFR 51.308(f)(2).

<sup>19</sup> 40 CFR 51.308(f)(2)–(3).

<sup>20</sup> See, *e.g.*, 40 CFR 51.308(i).

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.<sup>21</sup> This is accomplished by considering the four factors—“the costs of compliance, the time necessary for compliance, and the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any existing source subject to such requirements.”<sup>22</sup> The EPA has explained that the four-factor analysis is an assessment of potential emissions 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 to satisfy the CAA’s reasonable progress mandate.”<sup>23</sup> Thus, for each source it has selected for four-factor analysis,<sup>24</sup> a state must consider a “meaningful set” of technically feasible control options for reducing emissions of visibility impairing pollutants.<sup>25</sup>

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.<sup>26</sup>

<sup>21</sup> The CAA provides that, “[i]n determining reasonable progress there shall be taken into consideration” the four statutory factors. CAA 169A(g)(1). However, in addition to four-factor analyses for selected sources, groups of sources, or source categories, a state may also consider additional emissions 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.

<sup>22</sup> CAA 169A(g)(1).

<sup>23</sup> 82 FR 3078, 3091 (January 10, 2017).

<sup>24</sup> “Each source” or “particular source” is used here as shorthand. While a source-specific analysis is one way of applying the four factors, neither the statute nor the RHR requires states to evaluate individual sources. Rather, states have “the flexibility to conduct four-factor analyses for specific sources, groups of sources or even entire source categories, depending on state policy preferences and the specific circumstances of each state.” 82 FR at 3088 (January 10, 2017).

<sup>25</sup> *Id.* at 3088 (January 10, 2017).

<sup>26</sup> See, *e.g.*, Responses to Comments on Protection of Visibility: Amendments to Requirements for

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 above, 40 CFR 51.308(f)(2)(i) requires states to determine the emissions reduction measures for sources that are necessary to make reasonable progress by considering the four factors. Pursuant to 40 CFR 51.308(f)(2), measures that are necessary to make reasonable progress towards the national visibility goal must be included in a state’s long-term strategy and in its SIP. If the outcome of a four-factor analysis is that an emissions reduction measure is necessary to make reasonable progress towards 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 emissions 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”<sup>27</sup> that states must consider in developing their long-term strategies: (1) Emissions 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. If a state, pursuant to consultation, agrees that certain measures (*e.g.*, a certain emissions limitation) are necessary to make reasonable progress at a Class I area, it must include those measures in its SIP.<sup>28</sup> Additionally, the RHR requires that states that contribute to visibility impairment at the same Class I area consider the emissions reduction measures the other contributing states have identified as being necessary to make reasonable progress for their own sources.<sup>29</sup> If a state has been asked to consider or adopt certain emissions reduction measures, but ultimately determines those measures are not necessary to make reasonable progress, that state must document in its SIP submission the actions taken to resolve the disagreement.<sup>30</sup> Under all circumstances, a state must document in its SIP submission all substantive consultations with other contributing states.<sup>31</sup>

### B. Reasonable Progress Goals

Reasonable progress goals “measure the progress that is projected to be achieved by the control measures states have determined are necessary to make reasonable progress based on a four-factor analysis.”<sup>32</sup>

For the second implementation period, the RPGs are set for 2028. RPGs are not enforceable targets.<sup>33</sup> While states are not legally obligated to achieve the visibility conditions described in their RPGs, 40 CFR 51.308(f)(3)(i) requires that “[t]he long-term strategy and the RPGs must provide for an improvement in visibility for the most impaired days since the baseline period and ensure no

<sup>28</sup> 40 CFR 51.308(f)(2)(ii)(A).

<sup>29</sup> 40 CFR 51.308(f)(2)(ii)(B).

<sup>30</sup> 40 CFR 51.308(f)(2)(ii)(C).

<sup>31</sup> 40 CFR 51.308(f)(2)(ii)(C).

<sup>32</sup> 82 FR 3078, 3091 (January 10, 2017).

<sup>33</sup> 40 CFR 51.308(f)(3)(iii).

State Plans; Proposed Rule (81 FR 26942, May 4, 2016), Docket Number EPA-HQ-OAR-2015-0531, U.S. Environmental Protection Agency, p. 186.

<sup>27</sup> 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.

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 towards the national visibility goal. To support this approach, the RHR requires states with Class I areas to compare the 2028 RPG for the most impaired days to the corresponding point on the URP line (representing visibility conditions in 2028 if visibility were to improve at a linear rate from conditions in the baseline period of 2000–2004 to natural visibility conditions in 2064). If the most impaired days RPG in 2028 is above the URP (*i.e.*, if visibility conditions are improving more slowly than the rate described by the URP), each state that contributes to visibility impairment in the Class I area must demonstrate, based on the four-factor analysis required under 40 CFR 51.308(f)(2)(i), that no additional emissions reduction measures would be reasonable to include in its long-term strategy.<sup>34</sup> To this end, 40 CFR 51.308(f)(3)(ii) requires that each state contributing to visibility impairment in a Class I area that is projected to improve more slowly than the URP provide “a robust demonstration, including documenting the criteria used to determine which sources or groups [of] sources were evaluated and how the four factors required by paragraph (f)(2)(i) were taken into consideration in selecting the measures for inclusion in its long-term strategy.”

#### 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 section apply either to states with Class I areas within their borders, states with no Class I areas but that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area, or both. 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.<sup>35</sup>

All states’ SIP submissions 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.<sup>36</sup> 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.<sup>37</sup>

#### D. Requirements for Periodic Reports Describing Progress Towards the Reasonable Progress Goals

Section 51.308(f)(5) requires a state’s regional haze SIP revision to address the requirements of 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.<sup>38</sup> 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 emissions reduction measures from the first implementation period, and the resulting emissions reductions.<sup>39</sup>

#### E. Requirements for State and Federal Land Manager 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 or FLMs; pursuant to that consultation, the state must include a summary of the FLMs’ conclusions and recommendations in the notice to the public. Consistent with this statutory requirement, the RHR also requires that states “provide the [FLM] with an opportunity for consultation, in person and at a point early enough in the State’s policy analyses of its long-term strategy emission reduction obligation so that information and recommendations provided by the [FLM] can meaningfully inform the State’s decisions on the long-term strategy.”<sup>40</sup> 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.<sup>41</sup> Finally, a SIP revision must provide procedures for continuing consultation between the state and FLMs regarding the state’s visibility protection program, including development and review of SIP revisions, five-year progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas.<sup>42</sup>

## IV. The EPA’s Evaluation of Nevada’s Regional Haze Submissions for the Second Implementation Period

### A. Background on Nevada’s First Implementation Period SIP Submission

NDEP submitted its regional haze plan for the first implementation period to the EPA on November 18, 2009. The requirements for regional haze SIP submissions for the first implementation period are contained in 40 CFR 51.308(d) and (e).<sup>43</sup> On March 26, 2012, the EPA approved all portions of the 2009 plan, but did not act on the BART determination for Reid Gardner Generating Station (RGG) for NO<sub>x</sub>.<sup>44</sup> On August 23, 2012, we partially approved and partially disapproved this remaining portion of the plan. Specifically, the EPA approved NDEP’s selection of a NO<sub>x</sub> emissions limit of 0.20 pounds per million British thermal units (lb/MMBtu) as BART for RGG Units 1 and 2. We disapproved two provisions of NDEP’s BART determination for NO<sub>x</sub> at RGG: the NO<sub>x</sub> emissions limit for Unit 3 and the compliance method for all three units. As a result, the EPA promulgated a FIP, which replaced the disapproved SIP provisions by establishing a BART emissions limit for NO<sub>x</sub> of 0.20 lb/MMBtu at Unit 3, and a 30-day averaging period for compliance on a heat input-weighted basis across all three units.<sup>45</sup> The EPA later rescinded the RGG FIP because RGG Units 1–3 were permanently decommissioned.<sup>46</sup>

Pursuant to 40 CFR 51.308(g), NDEP was also responsible for submitting a five-year progress report as a SIP revision for the first implementation period, which it did on November 18, 2014. The EPA approved the progress

<sup>34</sup> 40 CFR 51.308(f)(3)(ii).

<sup>35</sup> 40 CFR 51.308(f)(6), (f)(6)(i), (f)(6)(iv).

<sup>36</sup> 40 CFR 51.308(f)(6)(ii), (iii), (v).

<sup>37</sup> 40 CFR 51.308(f)(6)(vi).

<sup>38</sup> See 81 FR 26942, 26950 (May 4, 2016); 82 FR 3078, 3119 (January 10, 2017).

<sup>39</sup> 40 CFR 51.308(g)(1) and (2).

<sup>40</sup> 40 CFR 51.308(i)(2).

<sup>41</sup> 40 CFR 51.308(i)(3).

<sup>42</sup> 40 CFR 51.308(i)(4).

<sup>43</sup> 40 CFR 51.308(b).

<sup>44</sup> 77 FR 17334 (March 26, 2012).

<sup>45</sup> 78 FR 53033 (August 28, 2013).

<sup>46</sup> 83 FR 54053 (October 26, 2018).

report into the Nevada SIP on August 8, 2017.<sup>47</sup>

### *B. Nevada's Second Implementation Period SIP Submissions and the EPA's Evaluation*

In accordance with CAA sections 169A and the RHR at 40 CFR 51.308(f), on August 12, 2022, NDEP submitted the 2022 Nevada Regional Haze Plan to address its regional haze obligations for the second implementation period, which runs through 2028. NDEP made the 2022 Nevada Regional Haze SIP submission available for public comment on June 23, 2022. NDEP received and responded to public comments and included the comments and responses to those comments in its submission. On July 27, 2023, NDEP withdrew the reasonable progress determinations for the Tracy Generating Station's Piñon Pine Unit and North Valmy Generating Station's Unit 1 and Unit 2 and related portions of the 2022 Nevada Regional Haze Plan.

On May 27, 2025, NDEP submitted the 2025 SIP Supplement that includes the revised reasonable progress determinations. NDEP made the 2025 SIP Supplement available for public comment on February 28, 2025. NDEP received and responded to public comments and included the comments and responses to those comments in its submission.<sup>48</sup> The following sections describe the Plan, including analyses conducted by the WRAP and Nevada's determinations based on those analyses, NDEP's 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 area and nearby Class I areas. This notice also provides the EPA's evaluation of the Plan against the requirements of the CAA and RHR for the second implementation period of the regional haze program.

### *C. Identification of Class I Areas*

Section 169A(b)(2) of the CAA requires each state in which any Class I area is located or "the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility" in a Class I area to have a plan for making reasonable progress toward the national visibility goal. The RHR implements this statutory requirement at 40 CFR 51.308(f), which provides that each state's plan "must address regional haze in each mandatory Class I Federal area located

within the State and in each mandatory Class I Federal area located outside the State that may be affected by emissions from within the State," and (f)(2), which requires each state's plan to include a long-term strategy that addresses regional haze in such Class I areas.

The EPA concluded in the 1999 RHR that "all [s]tates contain sources whose emissions are reasonably anticipated to contribute to regional haze in a Class I area,"<sup>49</sup> 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.

Nevada has one mandatory Class I Federal area within its borders, the Jarbidge Wilderness Area located within the Humboldt National Forest in the northeastern portion of Nevada.

For the second implementation period, the Regional Haze Planning Work Group of the WRAP performed technical analyses,<sup>50</sup> including source apportionment modeling<sup>51</sup> and weighted emissions potential analyses<sup>52</sup> to help assess source and state-level contributions to visibility impairment at Jarbidge Wilderness Area and at Class I areas in adjacent states. NDEP determined that the following Class I areas in neighboring states are affected the most by emissions originating in Nevada: Grand Canyon, Arizona; Ike's Backbone (Pine Mountain and Mazatzal), Arizona; Desolation Wilderness, California; Craters of the Moon, ID; Hells Canyon, Oregon; and Zion Canyon, Utah. NDEP used the source apportionment modeling results to analyze significant contributors at

<sup>49</sup> 64 FR 35714, 35721 (July 1, 1999).

<sup>50</sup> The WRAP's Emissions Inventory and Modeling Protocols Subcommittee, along with its contractor, Ramboll Inc., performed these modeling analyses for the WRAP states, including Nevada. NDEP also provided updated WRAP and WESTAR links in a clarification letter. See Letter dated September 8, 2025, from Andrew Tucker, Chief, Bureau of Air Quality Planning, NDEP, to Rynda Kay, Manager, Geographic Strategies & Modeling Section, U.S. Environmental Protection Agency Region 9.

<sup>51</sup> The CAMx photochemical model version 7.0 with the Particle Source Apportionment Technology (PSAT) tool was applied at a regional level to separate U.S. anthropogenic contributions from those of fire, natural, and international anthropogenic contributions for a current period (2014–2018) and a future year in 2028. See section 4.3 of the 2022 Nevada Regional Haze Plan.

<sup>52</sup> The Weighted Emissions Potential (WEP) tool is an analysis technique that identifies the predominant emission source regions contributing haze-forming pollutants at each Class I area based on 5 years of historical meteorology during the most impaired days. See chapter 1 and section 4.4 of the 2022 Nevada Regional Haze Plan.

Jarbidge Wilderness Area.<sup>53</sup> The overall SO<sub>2</sub> emissions sources for the most impaired days are primarily from the states of California, Idaho, Oregon and Washington. For all these states, contributions to sulfate are primarily from non-EGU and industrial sources. Remaining anthropogenic source sectors outside of point and mobile sources is the next largest contributor among these states. Nevada's EGU sector is also one of the most significant contributors to ammonium sulfate extinction at Jarbidge Wilderness Area. For nitrate, the dominant WRAP source area contributions for the most impaired days are from California, Idaho, Oregon, and Washington. Mobile source emissions are the dominant source category for NO<sub>x</sub> emissions, followed by non-EGU and area sources.

NDEP also used the source apportionment modeling results to determine which Class I areas in adjacent states might be affected by emissions from Nevada sources. NDEP identified the rank and percentage of the total modeled concentration due to SO<sub>2</sub> and NO<sub>x</sub> emissions from sources within Nevada to the IMPROVE monitors representing all Class I areas in the five adjacent states, and evaluated total contributions compared to total light extinction at each Class I area.<sup>54</sup> The highest contribution from Nevada anthropogenic sources to an out-of-state Class I area's sulfate extinction in 2028 is Craters of the Moon at 1.15 percent. Among all evaluated Class I areas, EGU, non-EGU, and remaining anthropogenic sources tend to be the largest contributors to sulfate extinction. The highest contribution to an out-of-state Class I area's nitrate extinction in 2028 is Desolation Wilderness at 6.16 percent. Additionally, among all evaluated Class I areas, NDEP indicated that the mobile source sector is generally the largest contributor to nitrate extinction.

In sum, NDEP determined that sources and emissions within the state contribute to visibility impairment at both Jarbidge Wilderness Area and at certain Class I areas in nearby states.<sup>55</sup> Furthermore, the state took part in the consultation process as a member of the Regional Haze Planning Work Group (RHPWG) of the WRAP.<sup>56</sup> As discussed in further detail below, Nevada also identified sources using a Q/d > 5

<sup>53</sup> 2022 Nevada Regional Haze Plan, sections 4.3.2 and 4.3.3.

<sup>54</sup> 2022 Nevada Regional Haze Plan, tables 4–4, 4–5, and 4–6.

<sup>55</sup> Id.

<sup>56</sup> 2022 Nevada Regional Haze Plan, appendix E.

<sup>47</sup> 82 FR 37020, (August 8, 2017).

<sup>48</sup> 2025 SIP Supplement, section 6.2 and appendix G.

analysis<sup>57</sup> to conduct a four-factor analysis, and determined reasonable measures that could be implemented by 2028, considering the cost of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts, and the remaining useful life of any potentially affected sources. We therefore propose to find that Nevada appropriately identified Class I areas that may be affected by emissions from the state.

*D. Calculations of Baseline, Current, and Natural Visibility Conditions; Progress to Date; and the Uniform Rate of Progress*

Section 51.308(f)(1) requires states to determine the following for “each mandatory Class I Federal area located within the State”: baseline visibility conditions for the most impaired and clearest days, natural visibility conditions for the most impaired and clearest days, progress to date for the most impaired and clearest days, the differences between current visibility conditions and natural visibility conditions, and the URP. This section also provides the option for states to propose adjustments to the URP line for a Class I area to account for visibility impacts from anthropogenic sources outside the United States and/or the impacts from wildland prescribed fires that were conducted for certain, specified objectives.<sup>58</sup>

In the 2022 Nevada Regional Haze Plan, NDEP noted that Jarbidge Wilderness Area has 2000–2004 baseline visibility conditions of 2.56 deciviews on the 20 percent clearest days and 8.73 deciviews on the 20 percent most impaired days.<sup>59</sup> NDEP calculated an estimated natural visibility conditions of 1.14 deciviews on the 20 percent clearest days and 5.23 deciviews on the 20 percent most impaired days for the Jarbidge Wilderness Area.<sup>60</sup> The current visibility conditions, which are based on 2014–2018 monitoring data, were 1.84 deciviews on the clearest days and 7.97 deciviews on the most impaired

days,<sup>61</sup> which are 0.70 deciviews and 2.74 deciviews greater than natural conditions on the respective sets of days.<sup>62</sup> The progress to date, subtracting current conditions from baseline conditions, yields a 0.72 deciview improvement for the 20 percent clearest days and 0.76 deciview improvement for the 20 percent most impaired days.<sup>63</sup>

NDEP chose to adjust its URP for international anthropogenic impacts and to account for the impacts of wildland prescribed fires using adjustments developed by the WRAP.<sup>64</sup> The WRAP/WAQS Regional Haze modeling platform used scaled 2014 NEI wildland prescribed fire data for purposes of calculating the URP adjustments. WRAP used the results from the CAMx 2028OTBa2 High-Level Source Apportionment (H–L SA) run to determine pollutant concentrations attributable to international emissions and to prescribed fire. These concentrations were then used in a relative sense: the modeled relative effect of removing each of these emissions categories was applied to projections of 2028 concentrations. This gave a reduced 2028 concentration, and the reduction was taken as the contribution of prescribed fire and international emissions for use in adjusting the URP. The international and prescribed fire contributions were therefore calculated in a manner consistent with each other and with the 2028 projections. This approach is consistent with the default method described in the EPA’s September 2019 regional haze modeling Technical Support Document (“EPA 2019 Modeling TSD”)<sup>65</sup> and with the source apportionment approach described in the EPA’s 2018 Visibility Tracking Guidance.<sup>66</sup> Two different adjusted

glidepath options, “International Emissions Only (A)” and “International Emissions + Wildland Rx Fire (B)”, were made available on the WRAP Technical Support System (TSS)<sup>67</sup> to adjust the URP glidepath end points projections at 2064 for Class I Federal areas on the most impaired days. NDEP used the “International Emissions + Wildland Rx Fire (B)” option to adjust the URP for Jarbidge.<sup>68</sup> The inclusion of international emissions added 2.0 dv to the 2064 URP end point, and the wildland prescribed fire added another 0.2 dv, resulting in a 7.4 dv adjusted URP value for 2064. Based on this adjustment, NDEP calculated an annual URP of 0.022 deciviews per year needed to reach natural visibility on the 20 percent most impaired days.<sup>69</sup>

The EPA is proposing to find that the Nevada Regional Haze Plan meets the requirements of 40 CFR 51.308(f)(1) related to the calculations of baseline, current, and natural visibility conditions; progress to date; the differences between current visibility conditions and natural visibility conditions, and the URP for the second implementation period.

*E. Long-Term Strategy for Regional Haze*

Each state having a Class I area within its borders or emissions that may affect visibility in a Class I area must develop a long-term strategy for making reasonable progress towards the national visibility goal. 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. In developing its long-term strategies, a state must also consider the five additional factors in 40 CFR 51.308(f)(2)(iv). As part of its reasonable progress determinations, the state must describe the criteria used to determine which sources or group of sources were evaluated in a four-factor analysis for the second implementation period and

Second Implementation Period of the Regional Haze Program.” December 20, 2018, available at [https://www.epa.gov/sites/default/files/2018-12/documents/technical\\_guidance\\_tracking\\_visibility\\_progress.pdf](https://www.epa.gov/sites/default/files/2018-12/documents/technical_guidance_tracking_visibility_progress.pdf).

<sup>67</sup> WRAP Technical Support System, <http://views.cira.colostate.edu/tssv2/>. The specific WRAP procedures for adjusting the URP are described in “Procedures for Making Visibility Projections and Adjusting Glidepaths using the WRAP–WAQS 2014 Modeling Platform (October 21, 2021, updated final draft),” available at [https://views.cira.colostate.edu/iwdw/docs/WAQS\\_and\\_WRAP\\_Regional\\_Haze\\_spec\\_sheets.aspx](https://views.cira.colostate.edu/iwdw/docs/WAQS_and_WRAP_Regional_Haze_spec_sheets.aspx), direct link: [https://views.cira.colostate.edu/docs/IWDW/PlatformDocs/WRAP\\_2014/2028\\_Vis\\_Proj\\_Glidepath\\_Adj\\_20211021\\_draft\\_final.pdf](https://views.cira.colostate.edu/docs/IWDW/PlatformDocs/WRAP_2014/2028_Vis_Proj_Glidepath_Adj_20211021_draft_final.pdf).

<sup>68</sup> 2022 Nevada Regional Haze Plan, section 6.9.1 and Figure 6–2.

<sup>69</sup> Id. section 2.6.

<sup>61</sup> Id., section 2.4 and table 2–3.

<sup>62</sup> Id. NDEP mistakenly calculated the difference for the most impaired days relative to the adjusted URP, rather than natural conditions, yielding a difference of 0.58 deciviews. The correct difference of 2.74 deciviews can be derived by subtracting natural conditions (5.23 deciviews) from current conditions (7.97 deciviews).

<sup>63</sup> Id. table 2–3.

<sup>64</sup> Id. sections 2.6 and 6.9.1.

<sup>65</sup> Memorandum from Richard A. Wayland, Director, Air Quality Assessment Division, EPA, to Regional Air Division Directors, Subject: “Availability of Modeling Data and Associated Technical Support Document for the EPA’s Updated 2028 Visibility Air Quality Modeling,” September 19, 2019, available at <https://www.epa.gov/visibility/technical-guidance-tracking-visibility-progress-second-implementation-period-regional>, direct link: <https://www.epa.gov/visibility/technical-support-document-epas-updated-2028-regional-haze-modeling>.

<sup>66</sup> Memorandum from Richard A. Wayland, Director, Air Quality Assessment Division, EPA, to Regional Air Division Directors, Subject: “Technical Guidance on Tracking Visibility Progress for the

<sup>57</sup> Q/d represents a source’s annual emissions in tons (Q) divided by the distance in kilometers (d) between the source and the nearest Class I area. For regional haze purposes, only primary visibility-impairing pollutants were included in a source’s total Q: NO<sub>x</sub>, SO<sub>2</sub>, and PM<sub>10</sub>. Nevada used emissions from the 2014v2 NEI to calculate a source’s total Q.

<sup>58</sup> 40 CFR 51.308(f)(1)(vi)(B).

<sup>59</sup> 2022 Nevada Regional Haze Plan, section 2.2.

<sup>60</sup> Id., tables 2–1 and 2–2. NDEP stated elsewhere in Chapter 2 that natural visibility on the 20 percent most impaired days for the Jarbidge Wilderness Area is 7.39 deciviews. However, in Chapter 6, NDEP clarified that this 7.39 deciviews is the value used for the adjusted URP and includes international impacts and prescribed fire impacts.

how the four factors were taken into consideration in selecting the emissions reduction measures for inclusion in the long-term strategy.<sup>70</sup>

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.<sup>71</sup> 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.

The consultation requirements of 40 CFR 51.308(f)(2)(ii) provide that states must consult with other states that are reasonably anticipated to contribute to visibility impairment in a Class I area to develop and coordinate emissions management strategies containing the emissions reduction measures that are necessary to make reasonable progress. Section 51.308(f)(2)(ii)(A) and (B) require states to consider the emissions reduction measures identified by other states as necessary for reasonable progress and to include agreed upon measures in their SIPs, respectively. Section 51.308(f)(2)(ii)(C) speaks to what happens if states cannot agree on what measures are necessary to make reasonable progress.

The following sections summarize NDEP's long-term strategy for the second planning period, as set forth in the 2022 Nevada Regional Haze Plan. The EPA's evaluation with respect to the requirements of § 51.308(f)(2) is provided in section IV.E.7.

1. Determination of Which Pollutants To Consider

In Chapter 3 of the 2022 Nevada Regional Haze Plan, NDEP provided summaries of its base year (2014) and projected (2028) emissions inventories for visibility impairing pollutants. In Chapter 4 of the 2022 Nevada Regional Haze Plan, NDEP provided the results of visibility and source apportionment modeling performed by WRAP. Based on this information and analyses, in Chapter 5 of the 2022 Nevada Regional Haze Plan, NDEP chose to consider NO<sub>x</sub>, SO<sub>2</sub>, and PM<sub>10</sub> in its source selection and four factor analyses.

2. Source Selection

NDEP used a Q/d <sup>72</sup> threshold of five based on the 2014 National Emissions Inventory (NEI) Version 2 (2014v2) NO<sub>x</sub>, SO<sub>2</sub>, and PM<sub>10</sub> emissions, which resulted in a list of eight sources, as shown in table 1.<sup>73</sup> These eight sources are: RGGGS, North Valmy Generating Station, McCarran International Airport, Lhoist North America Apex Plant, Nevada Cement Fernley Plant, Tracy Generating Station, TS Power Plant, and Graymont Pilot Peak Plant.

TABLE 1—LIST OF SELECTED SOURCES

	Nearest Class I area (CIA)	CIA state	Total Q (tpy)	Distance to CIA (km)	Q/d
RGGGS .....	Grand Canyon NP .....	AZ	6,944	84	82.56
North Valmy Generating Station .....	Jarbidge Wilderness Area .....	NV	12,173	162	75.10
McCarran International Airport .....	Grand Canyon NP .....	AZ	2,770	107	25.97
Lhoist North America Apex Plant .....	Grand Canyon NP .....	AZ	1,662	88	18.84
Nevada Cement Fernley Plant .....	Desolation Wilderness .....	CA	1,482	102	14.55
Tracy Generating Station .....	Desolation Wilderness .....	CA	683	82	8.33
TS Power Plant .....	Jarbidge Wilderness Area .....	NV	834	131	6.39
Graymont Pilot Peak Plant .....	Jarbidge Wilderness Area .....	NV	673	131	5.13

Source: 2022 Nevada Regional Haze Plan, table 5–1.

NDEP screened out three of the eight sources listed above prior to conducting four-factor analyses. As explained in in section IV.A. of this document, NDEP screened out RGGGS because it ceased operation and was completely decommissioned and dismantled. NDEP also screened out McCarran International Airport, now named the Harry Reid International Airport, because the vast majority of emissions are due to aircraft takeoffs, landings, and ground movement, falling outside of the local air agencies' scope of authority. Additionally, the allowable

emissions for NO<sub>x</sub>, SO<sub>2</sub>, and PM<sub>10</sub> listed in the operating permit for the airport yielded a Q/d of 1.35, which was below NDEP's Q/d threshold of five.<sup>74</sup> NDEP also removed TS Power Plant as the facility is operating BACT controls for NO<sub>x</sub>, SO<sub>2</sub>, and PM<sub>10</sub>.<sup>75</sup> The TS Power Plant has one pulverized coal, dry bottom boiler with a gross capacity of 220 megawatts (MW). NDEP also provided a demonstration to show that the BACT controls are not necessary to make reasonable progress, because historical and projected emission rates for NO<sub>x</sub>, SO<sub>2</sub>, and PM<sub>10</sub> remain low and

consistent, making it reasonable to assume that the source will continue to implement its existing measures and will not increase its emissions rates.<sup>76</sup>

3. Overall Approach to Four-Factor Analyses

The remaining five sources that NDEP identified in the source selection step to require a four-factor analysis elected to submit their own four-factor analyses to evaluate existing controls and consider potential additional control measures that may be necessary to achieve reasonable progress. For the majority of

<sup>70</sup> 40 CFR 51.308(f)(2)(iii).

<sup>71</sup> Id.

<sup>72</sup> Q/d represents a source's annual emissions in tons per year (tpy) (Q) divided by the distance in kilometers (km) (d) between the source and the nearest Class I area.

<sup>73</sup> 2022 Nevada Regional Haze Plan, chapter 5.

<sup>74</sup> Id. table 5–2.

<sup>75</sup> Table 5–39 of the 2022 Nevada Regional Haze Plan lists the existing controls that reduce visibility impairing pollutants at the facility, along with the corresponding BACT emission limits that can be

found in the facility's air quality operating permit (Permit No. AP4911–2502).

<sup>76</sup> 2022 Nevada Regional Haze Plan, section 5.4.6 and appendix B.3.

the sources, NDEP requested additional information to supplement the initial four-factor analyses submitted by sources, resulting in multiple response letters from the sources to bolster the documentation for the four-factor analysis. Based on its review of these analyses and applying a cost-effectiveness threshold of \$10,000 per ton of pollutant reduced, Nevada made a “Reasonable Progress Control Determination” for each relevant unit and pollutant.<sup>77</sup> In addition, for each unit and pollutant where it determined that no additional control measures are necessary to make reasonable progress at a source, NDEP evaluated whether existing control measures implemented at the source are necessary to make reasonable progress.

4. Summary of Four-Factor Analyses

a. North Valmy Generating Station

The North Valmy Generating Station is an electric generating facility owned by NV Energy (NVE) consisting of two coal-fired boilers that provide high pressure steam to steam turbine generators used to produce electricity.<sup>78</sup> The facility screened in with a Q/d value of 75.14, and the nearest Class I area is Jarbidge Wilderness Area at 162 kilometers away.

In the 2022 Nevada Regional Haze Plan, NVE committed to shutting down and permanently ceasing operation at both units at North Valmy by December 31, 2028. The effective closure date was incorporated into the consideration of the remaining useful life for each

potential new measure considered for the North Valmy units. NDEP had relied on a closure date of December 31, 2028 for Units 1 and 2 as necessary to achieve reasonable progress.

However, as explained in the 2025 SIP Supplement, changes in the energy landscape along with transmission system reliability considerations in Nevada necessitated reconsideration of the retirement of North Valmy Units 1 and 2 by December 31, 2028. In August 2023, NVE filed an application for the Fifth Amendment to the 2021 Joint Integrated Resource Plan (IRP) with the Public Utilities Commission of Nevada (PUCN), seeking approval to convert the existing coal fueled plant at North Valmy Generating Station to a natural gas-fueled plant and continue operating it to 2049. In March 2024, the PUCN approved proceeding with these projects at North Valmy. NDEP withdrew the reasonable progress determination for North Valmy Generating Station on July 27, 2023, and then submitted a new reasonable progress determination for North Valmy Generating Station as part of the 2025 SIP Supplement on May 28, 2025. The EPA is not proposing to act on the revised reasonable progress determination for North Valmy Generating Station in the 2025 SIP Supplement at this time.

b. Tracy Generating Station

Tracy Generating Station is an electric generating facility owned by NVE that consists of one conventional, pipeline natural gas-fired 113 MW steam boiler

(Unit 3); two pipeline natural gas and distillate-fired combustion turbines at 83.5 MW each (Units 5 and 6); one pipeline natural gas-fired combined cycle unit at 107 MW with 23 MW duct burners (Unit 7, also known as Piñon Pine Unit 4), and two pipeline natural gas-fired combined cycle units at 254 MW each (Units 32 and 33).<sup>79</sup> The facility screened in with a Q/d value of 8.33, and the nearest Class I area is Desolation Wilderness, California at 81 kilometers away. NDEP screened out Units 5 and 6 from further consideration of potential new control measures based on low utilization and low emissions.<sup>80</sup> In addition, NDEP screened out Units 32 and 33 based on existing effective controls (Dry Low NO<sub>x</sub> combustor and SCR) and low emissions.<sup>81</sup>

NDEP evaluated Tracy Unit 3 for potential new control measures for NO<sub>x</sub> emissions considering the four statutory factors. NDEP did not evaluate new control measures for SO<sub>2</sub> and PM<sub>10</sub> at the Tracy Generating Station, as all units burn natural gas, resulting in low annual emissions for SO<sub>2</sub> and PM<sub>10</sub>. Additionally, to comply with BART during the first round of Regional Haze in Nevada, Unit 3 discontinued the occasional use of distillate fuel and was retrofitted with the best available Low-NO<sub>x</sub> Burners. These control measures are already incorporated into Nevada’s SIP. A summary of the cost-effectiveness values for each technically feasible control technology considered at Tracy Unit 3 is provided in table 2.

TABLE 2—TRACY FOUR-FACTOR ANALYSIS COST-EFFECTIVENESS SUMMARY

Control	Unit	Baseline emissions (tpy)	Tons reduced	Total annualized costs	Cost-effectiveness (ton)
SNCR .....	Tracy Unit 3 .....	138 tpy NO <sub>x</sub> .....	35 tpy NO <sub>x</sub> .....	\$474,641	\$13,561
SCR .....	Tracy Unit 3 .....	138 tpy NO <sub>x</sub> .....	124 tpy NO <sub>x</sub> .....	1,387,040	11,186

Source: 2022 Nevada Regional Haze Plan, table 5–16.

For Unit 3, NDEP identified SCR and SNCR as technically feasible NO<sub>x</sub> control measures. The four-factor analysis for Unit 3 used baseline emissions derived from the annual average of emissions observed from 2016 through 2020. NDEP estimated two to three years to fully implement SCR or SNCR at Unit 3. NDEP also factored in an annual electricity cost for SCR to

account for increased electrical demand caused by a backpressure. NDEP relied on the remaining useful life of 20 years and 30 years, respectively, for SNCR and SCR. As shown in table 4, all potential control measures evaluated for Unit 3 yield a cost-effectiveness value above NDEP’s threshold of \$10,000 per ton of NO<sub>x</sub> reduced.<sup>82</sup> Based on the four statutory factors, NDEP concluded that

no new control measures for Tracy Unit 3 are necessary to make reasonable progress.

For Unit 4 Piñon Pine, in the 2022 Nevada Regional Haze Plan NDEP relied on a closure date of December 31, 2031, as necessary to achieve reasonable progress. However, as explained in the 2025 SIP Supplement, changes in the energy landscape along with

<sup>77</sup> Appendix B of the 2022 Nevada Regional Haze Plan contains all documentation of Nevada’s reasonable progress conclusions each source, including the Reasonable Progress Control Determinations, four-factor analyses, and any subsequent response letters.

<sup>78</sup> 2022 Nevada Regional Haze Plan, section 5.5 and appendix B.6.

<sup>79</sup> 2022 Nevada Regional Haze Plan, section 5.6 and appendix B.5.

<sup>80</sup> See 2022 Nevada Regional Haze Plan, table 5–13 for the baseline emissions for Tracy Units 5, 6, 32, and 33. Average NO<sub>x</sub> emissions for Units 5, 6,

32, and 33 are 12, 10.6, 38.5, and 37.5 tpy, respectively. Average SO<sub>2</sub> emissions for Units 5, 6, 32, and 33 are 0.3, 0.2, 4, and 4 tpy, respectively. Average PM<sub>10</sub> emissions for Units 5, 6, 32, and 33 are 1, 0.8, 24.3, 23.8 tpy, respectively.

<sup>81</sup> Id.

<sup>82</sup> 2022 Nevada Regional Haze Plan, table 5–16.

transmission system reliability considerations in Nevada necessitated reconsideration of the retirement of Tracy Unit 4 Piñon Pine by December 31, 2031. Similar to what was done for North Valmy Generating Station, NDEP withdrew the reasonable progress determination for Tracy Unit 4 Piñon Pine on July 27, 2023, and then submitted a new reasonable progress determination for this unit as part of the 2025 SIP Supplement. The EPA is not

proposing to act on the revised reasonable progress determination for Tracy Unit 7 (Unit 4 Piñon Pine) in the 2025 SIP Supplement at this time.

Further, NDEP also determined that the existing NO<sub>x</sub> controls at Units 3, 5, 6, 7, 32, and 33 are necessary to make reasonable progress. The existing requirements for Unit 3 are already incorporated into the Nevada SIP as BART requirements. For the remaining existing controls, NDEP therefore

submitted portions of Tracy Generating Station’s permit, Permit No. AP4911–0194.04 for incorporation into the SIP.<sup>83</sup> Table 3 summarizes the relevant permit conditions and controls, emissions limits, and associated requirements at Tracy Generating Station, which NDEP submitted for SIP approval. To make the new control measures enforceable, NDEP adopted and submitted emissions limitation and associated requirements as part of regulation R138–24.

TABLE 3—TRACY PERMIT CONDITIONS INCORPORATED BY REFERENCE

Tracy Generating Station, Permit No. AP4911–0194.04	
Citation	Permit condition
<b>Unit 5 (System 05A—Clark Mountain Combustion Turbine #3)</b>	
NO <sub>x</sub> :	
IV.B.1.a .....	Emissions from S2.006 shall be controlled by Dry LNB while combusting natural gas only. Emissions from S2.006 shall be controlled with Water Injection while combusting No. 2 Distillate Fuel Oil under “Emergency” conditions defined in B.2.c. of this section.
IV.B.3.f .....	The discharge of NO <sub>x</sub> (oxides of nitrogen) to the atmosphere shall not exceed: (1) 9 parts per million by volume (ppmv) at 15 percent oxygen and on a dry basis, based on a 24-hour rolling period. (2) 42.0 pounds per hour, based on a 720-hour rolling period. (3) 122.64 tons per year, based on a 12-month rolling period.
<b>Unit 6 (System 06A—Clark Mountain Combustion Turbine #4)</b>	
NO <sub>x</sub> :	
IV.D.1.a .....	Emissions from S2.007 shall be controlled by Dry LNB while combusting Pipeline Natural Gas only. Emissions from S2.006 shall be controlled with Water Injection while combusting No. 2 Distillate Fuel Oil under “Emergency” conditions defined in D.2.c. of this section.
IV.D.3.f .....	The discharge of NO <sub>x</sub> (oxides of nitrogen) to the atmosphere shall not exceed: (1) 9 parts per million by volume (ppmv) at 15 percent oxygen and on a dry basis, based on a 24-hour rolling period. (2) 42.0 pounds per hour, based on a 720-hour rolling period. (3) 122.64 tons per year, based on a 12-month rolling period.
<b>Unit 7 (System 07C—Tracy Unit #4 Piñon Pine Combustion Turbine)</b>	
NO <sub>x</sub> :	
IV.F.1 .....	a. Emissions from S2.009 shall be controlled by a Steam Injection for control of NO <sub>x</sub> . b. Emissions from S2.009.1 shall be controlled by Dry Low NO <sub>x</sub> Burners.
<b>Unit 32 (System 32—Combined Cycle Combustion Turbine Circuit No. 8)</b>	
NO <sub>x</sub> :	
IV.L.1.a .....	NO <sub>x</sub> emissions from S2.064 and S2.065 shall be controlled by SCR. The SCR shall utilize Ammonia Injection into the SCR at a volume specified by the manufacturer.
IV.L.3.g .....	The discharge of NO <sub>x</sub> to the atmosphere shall not exceed 2.0 parts per million by volume (ppmv) at 15 percent oxygen on a dry basis, based on a 3-hour rolling period.
<b>Unit 33 (System 33—Combined Cycle Combustion Turbine Circuit No. 9)</b>	
NO <sub>x</sub> :	
IV.M.1.a .....	NO <sub>x</sub> emissions from S2.066 and S2.067 shall be controlled by SCR. The SCR shall utilize Ammonia Injection into the SCR at a volume specified by the manufacturer.
IV.M.3.g .....	The discharge of NO <sub>x</sub> to the atmosphere shall not exceed 2.00 parts per million (ppmv) by volume at 15 percent oxygen and on a dry basis, per 3-hour rolling period.
<b>All Units—Monitoring, Recordkeeping, Reporting</b>	
V.A & V.C .....	NO <sub>x</sub> Continuous Emissions Monitoring System (CEMS) Conditions.

Source: 2022 Nevada Regional Haze Plan, table 5–17.

<sup>83</sup> See 2022 Nevada Regional Haze Plan, section 5.6.7 and appendix A.5. See also 2025 Supplement, appendix A.2.

c. Lhoist North America Apex Plant

Lhoist North America Apex Plant is a lime production facility located in Clark County northeast of the Las Vegas metropolitan area. The plant includes four horizontal rotary preheater lime kilns, which are permitted to utilize coal, petroleum coke, and/or natural gas.<sup>84</sup> The permitting authority for this facility is the Clark County Department of Environment and Sustainability (DES). NDEP derived the baseline emissions for the facility from the annual average of emissions reported from 2016 to 2018. The facility screened in with a Q/d value of 18.84, and the nearest Class I area is Grand Canyon National Park at 88 kilometers away. A summary of NDEP’s cost-effectiveness

analysis for the Apex Plant is provided in table 4.

For NO<sub>x</sub>, NDEP identified LNB and SNCR as technically feasible control measures. Kilns 3 and 4 already implement LNB, so NDEP only evaluated LNB for Kilns 1 and 2. None of the kilns currently operate SNCR, so NDEP evaluated SNCR for all four kilns. For purposes of its analysis, NDEP assumed LNB would achieve a 10 percent NO<sub>x</sub> reduction, while SNCR would achieve a 20 percent NO<sub>x</sub> reduction at Kilns 1, 2, and 3, and a 50 percent NO<sub>x</sub> reduction at Kiln 4.<sup>85</sup> NDEP also assumed 20 years for the remaining useful life of the units.

For SO<sub>2</sub>, at Kilns 2 and 4, NDEP identified a switch to use of natural gas only as a technically feasible control measure. NDEP found that a fuel switch

to use of natural gas was not feasible for Kilns 1 and 3 because these kilns are intended to produce dolomitic lime, which cannot be produced using 100 percent natural gas. NDEP also noted that, while switching to 100 percent natural gas at Kilns 2 and 4 would reduce SO<sub>2</sub> and PM<sub>10</sub> emissions, it would increase NO<sub>x</sub> emissions. Therefore, for its analysis of a fuel switch, NDEP calculated baseline emissions and tons reduced from the sum of NO<sub>x</sub>, SO<sub>2</sub>, and PM<sub>10</sub> emissions. NDEP also assumed an estimated control life of 20 years.

NDEP found that existing baghouses that meet the definition of best available control technology (BACT) at all four kilns constitute effective controls for PM<sub>10</sub>.

TABLE 4—APEX PLANT FOUR-FACTOR ANALYSIS COST-EFFECTIVENESS SUMMARY

Control	Kiln	Baseline emissions (tpy)	Control efficiency (%)	Tons reduced (tpy)	Total annualized costs	Cost-effectiveness (ton)
LNB .....	1	304 tpy NO <sub>x</sub> .....	10	30.35 tpy NO <sub>x</sub> .....	\$25,792	\$850
	2	19 tpy NO <sub>x</sub> .....	10	1.91 tpy NO <sub>x</sub> .....	25,792	13,494
SNCR .....	1	304 tpy NO <sub>x</sub> .....	20	60.70 tpy NO <sub>x</sub> .....	164,394	2,708
	2	19 tpy NO <sub>x</sub> .....	20	3.82 tpy NO <sub>x</sub> .....	144,681	37,847
	3	154 tpy NO <sub>x</sub> .....	20	30.84 tpy NO <sub>x</sub> .....	154,044	4,995
	4	687 tpy NO <sub>x</sub> .....	50	343.34 tpy NO <sub>x</sub> .....	262,344	764
Fuel Switch to 100% NG .....	2	23.66 tpy NO <sub>x</sub> , SO <sub>2</sub> , and PM <sub>10</sub> .	<sup>a</sup> 99.92	1.02 tpy NO <sub>x</sub> , SO <sub>2</sub> , and PM <sub>10</sub> <sup>b</sup> .	8,708,565	8,666,204
	4	724.46 tpy NO <sub>x</sub> , SO <sub>2</sub> , and PM <sub>10</sub> .	<sup>a</sup> 99.62	– 147.92 tpy NO <sub>x</sub> , SO <sub>2</sub> , and PM <sub>10</sub> <sup>b</sup> .	1,589,821	N/A

Source: 2022 Nevada Regional Haze Plan, table 5–22.

<sup>a</sup> The control efficiency is for SO<sub>2</sub> emissions only.

<sup>b</sup> The tons reduced for fuel switch represent the net emissions change including NO<sub>x</sub>, SO<sub>2</sub>, and PM<sub>10</sub>. For Kiln 4, the increase in NO<sub>x</sub> emissions surpasses the reduced SO<sub>2</sub> and PM<sub>10</sub> emissions, resulting in an overall increase in emissions (negative tons reduced value).

Table 4 summarizes the cost-effectiveness analysis for the Apex Plant. Based on the four statutory factors, NDEP concluded that the implementation of LNB at Kiln 1, and the implementation of SNCR at Kilns 1, 3, and 4 are necessary to achieve reasonable progress during the second implementation period, as the cost-effectiveness values for these controls were below NDEP’s threshold. LNB were recently installed on Kilns 3 and 4 and NDEP determined that the

continued use of LNB on Kiln 3 and 4 is necessary to make reasonable progress as well. Accordingly, Clark County DES incorporated these new limits and other associated requirements into the Apex Plant’s air quality operating permit,<sup>86</sup> and NDEP submitted the relevant portions of the Apex Plant’s permit, Authority to Construct (ATC) Permit, for a Major Part 70 Source, Source ID: 3, for SIP approval.<sup>87</sup> Table 5 summarizes the relevant permit conditions for controls, emissions limits, and associated

requirements at the Apex Plant for approval into the SIP. NDEP clarified in the 2025 SIP Supplement that Apex’s ATC Permit expired 18 months after its original issue date of August 3, 2022, and was reissued by the Clark County DES on February 6, 2024. This permit was again renewed on April 30, 2025, and NDEP submitted the latest version of the permit in appendix A.1 of the 2025 SIP Supplement.

<sup>84</sup> 2022 Nevada Regional Haze Plan, section 5.7 and appendix B.1.

<sup>85</sup> The control efficiency of SNCR differs between Kiln 4 and the rest of the Apex Plant kilns due to differences in age and configuration (discussed

further in Lhoist’s four-factor analysis). See 2022 Nevada Regional Haze Plan, Chapter 5.7.3.

<sup>86</sup> New NO<sub>x</sub> emission limits (and other requirements) that reflect the use LNB and SNCR at Kilns 1, 3, and 4, are found in appendix B.1.a of the 2022 Nevada Regional Haze Plan.

<sup>87</sup> 2022 Nevada Regional Haze Plan appendix A.1. The Apex Plant is located in Clark County, so the permit for the facility is issued and enforced by the Clark County DES.

TABLE 5—APEX PLANT ATC PERMIT CONDITIONS INCORPORATED BY REFERENCE

Apex Plant, Authority to Construct Permit for a Major Part 70 Source, Source ID: 3, Clark County DES	
Citation	Permit condition
<b>Control Requirements (Facility-Wide)</b>	
NO <sub>x</sub> :	
2.2.1 .....	The control requirements and the NO <sub>x</sub> emission reductions proposed in the ATC are permanent and shall not be removed, changed, revised, or modified without the approval of NDEP and the EPA upon becoming effective.
2.2.2 .....	Effective no later than two years after the EPA's approval of the controls determination associated with the SIP, the permittee shall install and maintain low-NO <sub>x</sub> burners (LNB) on Kilns 1, 3 and 4 in order to achieve a reduction of NO <sub>x</sub> emissions (emission units (EUs): K102, K302, and K402).
2.2.3 .....	Effective no later than two years after the EPA's approval of the controls determination associated with the SIP, the permittee shall install, operate, and maintain selective non-catalytic reduction (SNCR) on Kilns 1, 3, and 4 (EUs: K102, K302, and K402) to achieve reduction of NO <sub>x</sub> emissions.
<b>Emission Limits (Facility-Wide)</b>	
NO <sub>x</sub> :	
3.2.1 .....	Effective no later than two years after the EPA's approval of the control's determination associated with the SIP, the permittee shall limit total NO <sub>x</sub> emissions from all operating kilns to 3.75 tons per day based on a consecutive 30-day average (EUs: K102, K202, K302, and K402).
3.2.2 .....	Effective no later than two years after the EPA's approval of the control's determination associated with the SIP, the permittee shall limit the combined total NO <sub>x</sub> emissions from all operating kilns to 3.59 lb/tons of lime produced (t/p) based on a consecutive 12- month average (EUs: K102, K202, K302, and K402).
<b>Monitoring, Recordkeeping, and Reporting Requirements</b>	
NO <sub>x</sub> :	
4.1 .....	Monitoring.
4.3 .....	Recordkeeping.
4.4.7, 4.4.8, 4.4.15, 4.4.16.	Reporting and Notifications.

Source: 2022 Nevada Regional Haze Plan, table 5–23 and 2025 SIP Supplement, appendix A.1.

d. Graymont Pilot Peak Plant

Graymont Pilot Peak Plant is a lime plant owned by Graymont Western US, Inc. that consists of three horizontal rotary preheater lime kilns.<sup>88</sup> The three kilns use coal as a primary fuel source. Kilns 1, 2, and 3 are permitted for producing lime at a rate of 25, 33.3, and 50 tons per hour, respectively. The facility initially screened in with a Q/d value of 5.15, and the nearest Class I area is the Jarbidge Wilderness Area at 130 kilometers away. The emissions used were from the 2014 NEIv2. However, updated NO<sub>x</sub> emissions later resulted in a Q/d value of 4.61.<sup>89</sup>

<sup>88</sup> 2022 Nevada Regional Haze Plan, section 5.8 and appendix B.2.

<sup>89</sup> 2022 Nevada Regional Haze Plan tables 5–27, 5–28, and 5–29. Graymont indicated that the emissions reported in the 2014 NEIv2, particularly the NO<sub>x</sub> emissions, did not agree with what was submitted by Graymont for Pilot Peak's 2014 Annual Emission Inventory (AEI). Graymont's AEI for Pilot Peak in 2014 resulted in a Total Q of 604 tons per year (tpy), rather than 673, resulting in a Q/d of 4.61. The AEI is calculated using the

Emissions for 2015–2018 also yielded Q/d values below 5. Emissions reported in 2019 and 2020 yielded Q/d values above 5, but NDEP cited several reasons for still screening out the facility, including the fact that using 2017 NEI data yields a Q/d of 3.66, and the overall average Q/d for the most recent seven years was below the threshold of 5. For these reasons, NDEP formally screened the facility out of a four-factor analysis requirement, but included information submitted for the facility's four-factor analysis in the Plan.

In addition, NDEP evaluated whether any existing measures at the facility were necessary to achieve reasonable progress. NDEP provided a weight-of-evidence demonstration for existing SO<sub>2</sub> and PM<sub>10</sub> control measures at the Pilot Peak Plant to determine that these controls are not necessary to make reasonable progress. NDEP indicated that historical and projected emissions rates for SO<sub>2</sub> and PM<sub>10</sub> remain low and reporting requirements in the facility's air quality operating permit.

consistent, making it reasonable to assume that the source will continue to implement its existing measures and will not increase its emissions rate. For the control of NO<sub>x</sub> emissions, Graymont Western has implemented LNB at all three of the Pilot Peak kilns in recent years. NDEP identified the continued use of existing LNB at all three kilns as necessary to make reasonable progress. Therefore, NDEP incorporated these new limits, and associated requirements into Pilot Peak's air quality operating permit and submitted the relevant portions of the permit as part of the 2022 Nevada Regional Haze Plan. NDEP issued a minor revision to this permit on June 14, 2024, and submitted the updated permit as part of the 2025 SIP Supplement.<sup>90</sup> Table 6 summarizes the relevant permit conditions for controls, emissions limits, and associated requirements at Pilot Peak, which NDEP submitted for approval into the SIP in the 2025 SIP Supplement.

<sup>90</sup> 2025 SIP Supplement, appendix A.3.

TABLE 6—PILOT PEAK PLANT PERMIT CONDITIONS TO BE INCORPORATED BY REFERENCE

Pilot Peak Plant, Permit No. AP3274–1329.03	
Citation	Permit condition
<b>Kiln 1 (System 10—Kiln #1 Circuit)</b>	
NO <sub>x</sub> :	
IV.K.1.a .....	Emissions from S2.031 through S2.033 shall be controlled by a baghouse (D–85) and LNB.
IV.K.3.b .....	The Permittee, within 240 days upon issuance of this operating permit, shall not discharge into the atmosphere from the exhaust stack of baghouse (D–85) the following pollutants in excess of the following specified limits: (1) Nevada Regional Haze SIP Limit—The discharge of NO <sub>x</sub> to the atmosphere shall not exceed 101.4 pounds per hour, based on a 30-day rolling average period.
IV.K.4.q, IV.K.4.u	Specific Monitoring, Recordkeeping, and Reporting Requirements.
V.B–C .....	NO <sub>x</sub> CEMS Requirements for System 10 (S2.031, S2.032, and S2.033), System 13 (S2.036, S2.037, S2.038), and System 17 (S2.042, S2.043, S2.044).
<b>Kiln 2 (System 13—Kiln #2 Circuit)</b>	
NO <sub>x</sub> :	
IV.N.1.a .....	Emissions from S2.036 through S2.038 shall be controlled by a baghouse (D–285) and LNB.
IV.N.3.b .....	The Permittee, within 240 days upon issuance of this operating permit, shall not discharge into the atmosphere from the exhaust stack of baghouse (D–285) the following pollutants in excess of the following specified limits: (1) Nevada Regional Haze SIP Limit—The discharge of NO <sub>x</sub> to the atmosphere shall not exceed 107.4 pounds per hour, based on a 30-day rolling average period.
IV.N.4.q, IV.N.4.u	Specific Monitoring, Recordkeeping, and Reporting Requirements.
V.B–C .....	NO <sub>x</sub> CEMS Requirements for System 10 (S2.031, S2.032, and S2.033), System 13 (S2.036, S2.037, S2.038), and System 17 (S2.042, S2.043, S2.044).
<b>Kiln 3 (System 17—Kiln #3 Circuit)</b>	
NO <sub>x</sub> :	
IV.S.1.a .....	Emissions from S2.042 through S2.044 shall be controlled by a baghouse (D–385) and Low-NO <sub>x</sub> Burners.
IV.S.3.b .....	The Permittee, within 240 days upon issuance of this operating permit, shall not discharge into the atmosphere from the exhaust stack of baghouse (D–385) the following pollutants in excess of the following specified limits: (1) Nevada Regional Haze SIP Limit—The discharge of NO <sub>x</sub> to the atmosphere.
IV.S.4.q, IV.S.4.u	Specific Monitoring, Recordkeeping, and Reporting Requirements.
V.B–C .....	NO <sub>x</sub> CEMS Requirements for System 10 (S2.031, S2.032, and S2.033), System 13 (S2.036, S2.037, S2.038), and System 17 (S2.042, S2.043, S2.044).

Source: 2025 SIP Supplement, appendix A.3.

#### e. Nevada Cement Company (NCC) Fernley Plant

NCC Fernley Plant is a Portland cement manufacturing plant located in Fernley, Nevada, consisting of two coal-fired long-dry process kilns.<sup>91</sup> The facility initially screened in with a Q/d value of 14.5,<sup>92</sup> and the nearest Class I area is Desolation Wilderness at 102 kilometers away.

The Fernley Plant is currently subject to an EPA Consent Decree to control NO<sub>x</sub> and SO<sub>2</sub> emissions.<sup>93</sup> The Consent Decree requires that both kilns at the Fernley Plant emit no more than 1.1 pound of SO<sub>2</sub> per ton of clinker. To control NO<sub>x</sub> emissions, the facility is required to install SNCR. After the

demonstration period, the consent decree requires the source to submit a demonstration report for each kiln's SNCR performance, and a final 30-day rolling average emission limit for NO<sub>x</sub> for both kilns is then derived from the findings of the demonstration report. The consent decree also requires the installation and continued use of Continuous Emission Monitoring Systems (CEMS) for both kilns to measure and monitor SO<sub>2</sub> and NO<sub>x</sub> emissions. The facility has since implemented CEMS for both kilns and relies on CEMS for SO<sub>2</sub> and NO<sub>x</sub> emissions reporting. NDEP stated that it is relying on the consent decree to screen the facility out of further consideration of potential new control measures, as the Consent Decree requires BACT-level controls for NO<sub>x</sub>, SO<sub>2</sub>, and PM<sub>10</sub> emissions. Once the EPA has approved all necessary limits through the process set forth in the CD, the CD requires these new limits to be incorporated into a federally enforceable permit issued under the Nevada SIP and then the facility's Title V permit. On this basis, NDEP concluded that the

consent decree controls for NO<sub>x</sub> and SO<sub>2</sub> are not necessary to achieve reasonable progress.

Although the Fernley Plant was not required to conduct a four-factor analysis for potential new control measures, NDEP asked the facility to evaluate the continuous use of the facility's existing DSI system, as opposed to occasional use, considering the four statutory factors to achieve additional SO<sub>2</sub> emissions reductions. The analysis did not yield additional cost-effective controls. Considering the four statutory factors outlined above, Nevada determined that the upgrade of the existing DSI system to operate at full capacity for both kilns is not necessary to achieve reasonable progress.

Further, based on consistent historical emissions and PM<sub>10</sub> emissions limits listed in the Fernley Plant's permit, Permit No. AP3241–0387.02, NDEP also determined that the existing baghouses used to achieve current PM<sub>10</sub> emissions limits listed in the facility's air quality

<sup>91</sup> 2022 Nevada Regional Haze Plan, section 5.9 and appendix B.4.

<sup>92</sup> Additional CEMS data yielded a Q/d value of 30.9 due to updated emissions of annual NO<sub>x</sub> and SO<sub>2</sub>. The new value does not change the source selection outcome for this facility.

<sup>93</sup> *United States of America v. Nevada Cement Company*, Civil Action No. 3:17–cv–00302–MMD–WGC. Available at <https://www.justice.gov/enrd/consent-decree/file/1089586/download> and <https://www.justice.gov/enrd/consent-decree/file/1089596/download>.

operating permit are not necessary to achieve reasonable progress.<sup>94</sup>

5. Summary of Control Determinations

In summary, in the 2022 Nevada Regional Haze Plan concluded that implementation of add-on controls at a lime production plant and the continued use of several existing controls are all necessary to achieve

reasonable progress for the second planning period. NDEP submitted permits incorporating these measures and associated monitoring, recordkeeping, and reporting requirements in Appendix A of the 2025 SIP Supplement. NDEP's control measure determinations from the 2022 Nevada Regional Haze Plan, including

specific permit conditions, are summarized in table 7 of this document. As previously noted, the EPA is not proposing to act on the revised reasonable progress determinations for Tracy Unit 7 (Piñon Pine Unit 4) and North Valmy Generating Station's Unit 1 and Unit 2, which were included in the 2025 SIP Supplement, at this time.

TABLE 7—NEVADA REGIONAL HAZE CONTROL MEASURE DETERMINATIONS

Table with 6 columns: Facility, Unit, Control, Pollutant, Existing or new measure, Compliance deadline. Rows include Tracy, Lhoist North America Apex Plant, and Graymont Pilot Peak Plant with various units and controls.

Source: 2022 Nevada Regional Haze Plan, table 5–5.

6. Additional Long-Term Strategy Requirements

NDEP indicated in its submittal that the State consulted with other WRAP states in development of this SIP.<sup>95</sup> Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming agreed to work together to address regional haze in the western continental United States. The majority of state consultation in the development of the regional haze SIPs was conducted through the RHPWG. NDEP participated in the RHPWG, which took the products of the WRAP technical analysis and consultation process discussed above and developed a process for establishing RPGs in the western Class I areas.

The WEP analysis conducted by the WRAP results shows the anthropogenic contributions at Jarbidge Wilderness Area. The point source contributions for nitrate come from industrialized portions of northern Nevada and along the Snake River Plain of Idaho, as well as more distant areas in southern Nevada and portions of California, including the Bay Area, Central Valley

and Los Angeles area.<sup>96</sup> The WEP analysis also show contributions from the main transportation corridors and population centers along I–80 in Nevada and Utah, I–84 in Utah, Idaho, and Oregon, and I–5 in California to NOx emissions at Jarbidge Wilderness Area. For sulfate, the point sources contributions come from the industrialized portions of northeastern Nevada and along the Snake River Plain of Idaho, as well as more distant areas in the Bay Area of California and Northwest Oregon.<sup>97</sup> For primary organic aerosol and elemental carbon, Nevada has one point source contributing one to three percent of the respective component impacting extinction at Jarbidge Wilderness Area.<sup>98</sup>

Aside from WRAP participation, NDEP engaged in direct state-to-state consultations with neighboring states and other states that are anticipated to impact visibility at Jarbidge, including: Arizona, California, Idaho, Oregon, Utah, Washington, and Wyoming.<sup>99</sup> NDEP addressed the state consultation requirements of the rule and concluded that there are no disagreements between

Nevada and any neighboring state. NDEP stated that it is not relying on reductions in another state to achieve reasonable progress at an in-state Class I area, and no neighboring states are relying on emissions reductions in Nevada to achieve reasonable progress in out-of-state Class I areas.

In its submittal, NDEP also committed to continue consultation with Arizona, California, Idaho, Oregon and Utah, and any other state which may reasonably be anticipated to cause or contribute to visibility impairment at the Jarbidge Wilderness Area.<sup>100</sup> NDEP will also continue consultation with any state for which Nevada's emissions may reasonably be anticipated to cause or contribute to visibility impairment in those states' Class I areas. NDEP also indicated that there were no disagreements between NDEP and any neighboring state with respect to regional haze commitments.

The documentation requirement of 40 CFR 51.308(f)(2)(iii) provides that states may meet their obligations to document the technical bases on which they are relying to determine the emissions reductions measures that are necessary

94 2022 Nevada Regional Haze Plan, table 5–36. Additionally, a demonstration with supporting documentation is included in the source's Control Determination in appendix B.

95 2022 Nevada Regional Haze Plan, section 9.1.3.

96 2022 Nevada Regional Haze Plan, section 4.4.1.

97 Id. section 4.4.2.

98 Id. sections 4.4.3 and 4.4.4.

99 Confirmation of state-to-state consultations is provided in appendix E of the 2022 Nevada Regional Haze Plan.

100 2022 Nevada Regional Haze Plan, section 9.2.3.

to make reasonable progress through an RPO, as long as the process has been “approved by all State participants.” As explained above, NDEP chose to rely on WRAP’s technical information, modeling, and analysis to support development of its long-term strategy. The WRAP technical analyses on which NDEP relied are listed in the 2022 Nevada Regional Haze Plan and include source contribution assessments and visibility modeling information. NDEP further evaluated emissions reductions based upon the new control measures that the State evaluated as necessary for reasonable progress.

Section 51.308(f)(2)(iii) also requires that the emissions information considered to determine the measures that are necessary to make reasonable progress include information on emissions for the most recent year for which the state has submitted triennial emissions data to the EPA (or a more recent year), with a 12-month exemption period for newly submitted data. The 2022 Nevada Regional Haze Plan included 2014 NEI emission data<sup>101</sup> for NO<sub>x</sub>, SO<sub>2</sub>, PM, VOCs and NH<sub>3</sub> and 2017 Air Markets Program Data (AMPD) emissions for NO<sub>x</sub> and SO<sub>2</sub>. NDEP also included 2017 NEI emissions data for comparison in its SIP submittal provided to confirm there are no significant differences between the emissions inventories developed and the most recent NEI to satisfy 40 CFR 51.308 (f)(2)(iii). NDEP’s supplemental information included 2019 AMPD and 2017 NEI emission data for NO<sub>x</sub> (“2023 Nevada Regional Haze Technical Supplement”).<sup>102</sup> NDEP also included an evaluation of NEI emissions from 2002 through 2017.

Pursuant to § 51.308(f)(2)(iv)(A), NDEP noted in section 7.5 of its SIP submittal that existing and ongoing state and federal emissions control programs that contribute to emissions reductions through 2028 would impact emissions of visibility impairing pollutants from point and nonpoint sources in the second implementation period. NDEP included in its SIP comprehensive lists of control measures, pollutants

addressed, and corresponding state regulations from the Nevada Administrative Code (NAC).<sup>103</sup>

NDEP’s consideration of measures to mitigate the impacts of construction activities as required by § 51.308(f)(2)(iv)(B) includes, in section 7.6 of the 2022 Nevada Regional Haze Plan, a summary of measures that NDEP has implemented to mitigate the impacts from such activities. Nevada manages the release of fugitive dust from construction related activities through the implementation of regulations set forth in the NAC. NDEP has implemented standards that reduce fugitive dust emissions from construction,<sup>104</sup> and requires an ongoing program, using best practical methods, to prevent particulate matter from becoming airborne. Additionally, a permit is required to disturb or cover five acres or more of land and a dust control plan is required for any disturbance greater than five acres for the Pahrump Valley in southern Nevada.

Pursuant to § 51.308(f)(2)(iv)(C), source retirements and replacement schedules are addressed in section 7.7 of the 2022 Nevada Regional Haze Plan. Source retirements and replacements were considered in developing the 2028 emissions projections, with on-the-books/on the way retirements and replacements included in the 2028 projections.<sup>105</sup> NDEP indicated that the State’s continued implementation of NSR and PSD requirements with FLM involvement for Class I area impact review will protect the clearest days from further degradation and will assure that no Class I areas experience degradation from expansion or growth of a single new source or large-scale regional development of stationary sources.

In considering smoke management as required in 40 CFR 51.308(f)(2)(iv)(D), NDEP explained, in section 7.8 of the 2022 Nevada Regional Haze Plan, that it addresses smoke management through open burning regulations found in NAC 445B.22067. Open burn rules apply to federal, state, and private lands equally and prohibit open burning of combustible refuse, waste, garbage, oil or open burning for any salvage operation. Additionally, the Nevada

Smoke Management Program<sup>106</sup> was developed to coordinate and facilitate the statewide management of prescribed outdoor burning. This program is designed to meet the requirements of Nevada’s air quality statutes administered by NDEP and compliance is achieved through a Memorandum of Understanding (MOU) between the various state and federal agencies that conduct prescribed burning, including the U.S. Bureau of Land Management, the U.S. Forest Service, the U.S. National Park Service, the U.S. Fish and Wildlife Service and Nevada state land management agencies. The signers of the MOU wrote a collaborative document, the Smoke Management Plan,<sup>107</sup> which details the applicability of the program and responsibilities of affected parties, provides information on open burn authorization requirements for those land managers using prescribed fire and wildland fires for land management purposes, and includes information on air quality monitoring at prescribed fires, burner qualifications and emissions reduction methods.

NDEP considered the anticipated net effect of projected changes in emissions as required by § 51.308(f)(2)(iv)(E) by discussing, in section 7.9 of the 2022 Nevada Regional Haze Plan, the photochemical modeling for the period of 2014 through 2028. The two modeling cases run were a 2028 base case, which considered only on-the-books controls, and a 2028 control case that considered implementation of the known controls, such as the implementation of existing federal and state regulations, existing SIP control measures and other relevant regulations that have gone into effect since 2014 or will go into effect before the end of 2028. NDEP discussed that the final 2028 visibility projection for Jarbidge Wilderness Area during the 20 percent most impaired days is 7.76 dv. The difference between the second implementation period’s baseline (7.97 dv) and RPG (7.76 dv), or anticipated visibility improvement, is 0.21 dv.

## 7. Conclusion

The EPA reviewed NDEP’s four-factor analyses and determinations of controls necessary for reasonable progress in the 2022 Plan. As explained in section

<sup>101</sup> WRAP agreed to rely on the 2014 NEIv2 for source selection. This was done so that the Representative Baseline emission inventory (based on years 2014–2018) used in the SIP would agree with emissions used for source selection. At the time source selection was conducted, in August of 2019, the 2017 and 2020 NEI were not yet available. 2022 Nevada Regional Haze Plan, section 3.1.

<sup>102</sup> Email dated July 31, 2023, from Steven McNeece, Nevada Division of Environmental Protection, to Khoi Nguyen, EPA Region IX. See also docket document “Progress Report Period (2013–2019) Emissions Analysis Supplement to the Nevada Regional Haze State Implementation plan for the Second Planning Period”.

<sup>103</sup> 2022 Nevada Regional Haze Plan, section 7.5.1.

<sup>104</sup> NAC 445B.22037.

<sup>105</sup> The 2028OTBa2 emissions scenario in the WRAP modeling includes reductions due to “on-the-way” and “on-the-books” controls, consent decree reductions, SIP control measures, and other relevant regulations that have gone into effect since 2014 or will go into effect before the end of 2028.

<sup>106</sup> The program meets Nevada’s air quality statutes in Nevada Revised Statutes (NRS) 445B.100 through 445B.845. The program does not, however, supersede the authority of local governments to regulate and control smoke and air pollution under NRS 244.361 and NRS 268.410 or the authority of the state forester to regulate controlled fires under NRS 527.122 through 527.128.

<sup>107</sup> Available at <https://ndep.nv.gov/uploads/air-pollutants-docs/smp-2013-final.pdf>.

IV.E.2., NDEP relied on a Q/d threshold of five and 2014v2 emissions to select sources to undergo the four-factor analysis requirement. This analysis yielded eight point sources. NDEP further screened out three sources from the four-factor analysis requirement based upon prior shutdown of RGGGS, emissions control beyond the scope of the State's authority for the McCarran International Airport, and existing BACT controls for TS Power Plant. The five remaining sources underwent NDEP's four-factor analysis and control determination process. We find that NDEP reasonably evaluated the sources that currently drive visibility impairment within the state, and that NDEP adequately explained and supported its decision to screen out three sources.

NDEP submitted numerous four-factor analyses and demonstrated that its determination of controls necessary for reasonable progress was based its consideration of the four statutory factors. Notably, NDEP's \$10,000 cost per ton threshold is one of the highest cost thresholds established by any state for evaluating controls for the regional haze program. NDEP also evaluated whether existing control measures are necessary to make reasonable progress. Finally, the State incorporated the selected measures into enforceable permit conditions and submitted these for SIP approval. Accordingly, we are proposing to determine that the Plan satisfies the requirements of 40 CFR 51.308(f)(2)(i) and CAA section 169A(g)(1) to evaluate and determine the emissions reduction measures that are necessary to make reasonable progress by considering the four statutory factors.

We have also reviewed the Plan with respect to the remaining requirements of § 51.308(f)(2). As described in section IV.E.6., NDEP participated in the WRAP RHPWG and engaged in direct state-to-state consultations with other states. NDEP is not relying on any neighboring state's emissions reductions to achieve reasonable progress at its Class I area, Jarbidge Wilderness Area, and no neighboring states are relying on emissions reductions in Nevada to achieve reasonable progress in their state Class I areas. For these reasons, we propose to determine that NDEP has satisfied the consultation requirements of § 51.308(f)(2)(ii).

Based on the extensive documentation provided by the State of its analyses and supporting analyses conducted by the WRAP, we also propose to find that the Plan satisfies the requirements of 40 CFR 51.308(f)(2)(iii). We also propose to find

that Nevada reasonably satisfied the requirements to consider the five additional factors of 40 CFR 51.308(f)(2)(iv) in developing its long-term strategy, as described in the section IV.E.6. Finally, we propose to find that NDEP has satisfied the requirement of § 51.308(f)(2) for the long-term strategy to "include the enforceable emissions limitations, compliance schedules, and other measures that are necessary to make reasonable progress, as determined pursuant to (f)(2)(i) through (iv)", by submitting the relevant permit conditions and regulations for approval into the SIP.

Furthermore, we note that, it is now the EPA's policy that, where visibility conditions for a Class I Federal area impacted by a state are below the 2028 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.<sup>108</sup> In developing the regulations required by CAA section 169A(b), the EPA established the concept of the URP for each Class I area. The URP is determined by drawing a straight line from the measured 2000–2004 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. The 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).<sup>109</sup> States may also adjust the URP to account for impacts from anthropogenic sources outside the United States and/or impacts from certain wildland prescribed fires.<sup>110</sup> Then, for each Class I area, states must compare the

<sup>108</sup> See, e.g., 90 FR 29737, 29738 (July 7, 2025); 90 FR 20425, 20434 (May 14, 2025).

<sup>109</sup> 40 CFR 51.308(f)(1)(vi)(A). 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 3091–3092 (January 10, 2017).

<sup>110</sup> 40 CFR 51.308(f)(1)(vi).

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.<sup>111</sup>

Projected 2028 visibility conditions at Nevada's one Class I area and at other Class I areas identified by NDEP as being impacted by emissions from Nevada, are below the URP. There is one Class I area in a neighboring state, Sycamore Canyon in Arizona, where 2028 visibility conditions for the most impaired days are projected to be above the URP.<sup>112</sup> However, Nevada did not identify Sycamore Canyon as being potentially affected by emissions from Nevada, based on WRAP source apportionment modeling. Moreover, the IMPROVE monitor for Sycamore Canyon was moved in 2015 (from SYCA1 to SYCA2), which creates uncertainty with respect to using data from the original monitor and the new monitor together to calculate visibility trends, and to comparing the 2028 model-projected Reasonable Progress Goal to the URP. As explained in the Arizona Regional Haze Plan, "a significant increase in soil and coarse mass extinction (two locally derived visibility impairing pollutants due to their limited transportability) occurred following the monitor's relocation."<sup>113</sup> Arizona further noted that:

The impacts of monitor relocation on long-term trends of certain visibility impairing species such as coarse mass and soil (which are generally are more localized in impact due to their transportability) may call into question the representativeness of a monitor located outside of the Class I area, as is the case for SYCA\_RHTS, when assessing Class I area visibility. This is especially true of the new SYCA2 IMPROVE monitoring site which is closely located to a small residential community and near dirt roads.<sup>114</sup>

The EPA reviewed ADEQ's analyses and WRAP modeling regarding the Sycamore Canyon sites and conducted additional analyses of the monitoring data from the Sycamore Canyon and other monitoring sites in Arizona. These analyses show that there was a large increase in coarse mass and fine soil extinction after 2015 at SYCA2 that did not occur at other sites in Arizona. This divergence between SYCA2 and other

<sup>111</sup> 40 CFR 51.308(f)(3)(ii).

<sup>112</sup> Arizona Department of Environmental Quality, "State Implementation Plan Revision: Regional Haze Program (2018–2028)" (August 15, 2022) ("2022 Arizona Regional Haze Plan"), p. 102.

<sup>113</sup> Id.

<sup>114</sup> Id. at 105.

monitors across the state indicates that the increase in coarse mass and fine soil extinction is likely due to local sources of coarse mass and fine soil at SYCA2 compared to SYCA1. Moreover, the increase was not consistent with modeled emissions changes in the WRAP multistate modeling domain and in Nevada occurring between 2014 and 2028, and not consistent with the transport of pollutants from Nevada. By contrast, the decreases in sulfate and nitrate extinction that were observed in the Sycamore Canyon monitoring through 2023, and that were predicted in the WRAP modeling of 2028, were consistent with emissions changes used in the modeling, and with greater progress in visibility than the glidepath. Data from the WRAP source apportionment modeling shows that in spite of recent observed increases in visibility impairment (primarily due to coarse mass and fine soil components), model-estimated US anthropogenic impairment is expected to be reduced by approximately 58 percent in 2028, compared to the 2000–2004 baseline. This is far more than the 40 percent reduction in impairment that would be required by the URP calculation between 2004 and 2028 to stay below the glidepath. Thus, given the modeled and monitored decrease in extinction from sulfate, nitrate, and organic matter, it is uncertain whether visibility impairment at Sycamore Canyon will be above the 2028 glidepath. Moreover, to the extent visibility impairment at Sycamore Canyon is above the 2028 glidepath, the available evidence indicates that this is due to local sources in Arizona, not Nevada. The EPA's analysis of impacts of Nevada's emissions on Sycamore Canyon is described in more detail in a memo included in the docket for this rulemaking action.<sup>115</sup>

Finally, we note that, 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."<sup>116</sup> We address Nevada's compliance with this

requirement in section IV.F. of this document.

In sum, Nevada selected a number of sources, evaluated emissions control measures, considered the four statutory factors, and determined that several existing and new controls were necessary to make reasonable progress. In addition, with the possible exception of Sycamore Canyon, all Class I areas in Nevada and neighboring states are at or below the glidepath. For the foregoing reasons, we propose to find that the Plan meets the requirements of 40 CFR 51.308(f)(2).

#### F. Reasonable Progress Goals

Section 51.308(f)(3) contains the requirements pertaining to RPGs for each Class I area. Because Nevada is host to a Class I area, it is subject to both § 51.308(f)(3)(i) and, potentially, to (ii). 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 emissions 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 strategies as reflected by the RPGs must provide for an improvement in visibility on the most impaired days relative to the baseline period and ensure no degradation on the clearest days relative to the baseline period. 40 CFR 51.308(f)(3)(ii) applies in circumstances in which a Class I area's RPGs for the most impaired days represents a slower rate of visibility improvement than the uniform rate of progress calculated under 40 CFR 51.308(f)(1)(vi). Under 40 CFR 51.308(f)(3)(ii)(A), if the state in which a mandatory Class I area is located establishes an RPG for the most impaired days that provides for a slower rate of visibility improvement than the URP, the state must demonstrate that there are no additional emissions reduction measures for anthropogenic sources or groups of sources in the state that would be reasonable to include in its long-term strategy. Section 51.308(f)(3)(ii)(B) requires that if a state contains sources that are reasonably anticipated to contribute to visibility impairment in a Class I area in *another* state, and the RPG for the most impaired days in that Class I area is above the URP, the upwind state must provide the same demonstration.

NDEP's 2028 RPGs for the clearest and most impaired days at Jarbidge were set at 1.72 and 7.76 deciviews,

respectively, in the 2022 Nevada Regional Haze Plan.<sup>117</sup> These values were based on WRAP photochemical modeling results, with adjustments to account for updated emissions estimates by NDEP, and emissions reductions from controls in the State's long-term strategy, summarized in Chapter 6 table 6–1 of the 2022 Nevada Regional Haze Plan. Appendix H of the 2022 Regional Haze Plan details how the SO<sub>2</sub> and NO<sub>x</sub> emissions reductions were used to scale WRAP modeled extinction as used in the IMPROVE equation, then summed and converted to deciviews.

NDEP incorporated the long-term strategy emissions controls in the RPG for the 20 percent most impaired days (MID) by scaling WRAP modeling results.<sup>118</sup> NDEP first, for both SO<sub>2</sub> and NO<sub>x</sub>, calculated the ratio of the EGU emissions reduction at the North Valmy and Tracy plants, and the non-EGU emissions reduction at the Apex and Fernley Plants, to the respective EGU and non-EGU sector emissions that were used in WRAP visibility modeling for 2028. Second, NDEP used the calculated SO<sub>2</sub> and NO<sub>x</sub> ratios to scale the modeled average MID contribution of the respective sectors to ammonium sulfate and nitrate light extinction at the Jarbidge Wilderness Area on MID. (These contributions were available from the WRAP source apportionment modeling.) The resulting new total light extinction was then converted to deciviews that reflect the controls. This approach used average extinction over the MID days and then computed deciviews. Finally, to account for this difference in deciviews calculation order, NDEP applied a correction factor, the ratio of corresponding quantities available on the WRAP TSS website (deciviews from MID-average extinction, and MID-average deciviews). The result was the RPG for MID, an estimate of

<sup>117</sup> 2022 Nevada Regional Haze Plan, table 6–3.

<sup>118</sup> For all of the western Class I areas, the WRAP performed preliminary 2028 visibility projections and compared them to the 2028 URP using the 2028OTBa2 and PAC2 CAMx modeling results and the old and new IMPROVE equations. The 2028OTBa2 inventory included emission reductions due to known controls (*i.e.*, implementation of existing federal and state regulations), existing SIP control measures and other relevant regulations that have gone into effect since 2014 or will go into effect before the end of 2028. Nevada quantified additional emission reductions achieved through reasonable progress controls and used them to determine the RPGs, using 2028OTBa2 as a foundation. We also note that Nevada indicated that the PAC2 WRAP modeling scenario included some potential measures from other WRAP states. However, Nevada did not use the projected 2028 visibility conditions at Jarbidge Wilderness Area from the PAC2 modeling scenario as RPGs.

<sup>115</sup> Memorandum September 4, 2025, from Scott Bohning, (EPA) to File/Rulemaking Docket EPA–R09–OAR–2025–0101, Subject: "Impact of Emissions from Nevada on Sycamore Canyon."

<sup>116</sup> 40 CFR 51.308(f)(3)(ii)(B).

deciviews on most impaired days for 2028 that reflects the controls.

For the 20 percent clearest days, NDEP used a slightly different scaling procedure, since only total extinction was available for sulfate and nitrate, not individual EGU and non-EGU extinction (*i.e.*, source apportionment modeling was not done for the clearest days). For both sulfate and nitrate, NDEP assumed that controls would reduce the clearest day total extinction in the same proportion that it did for the most impaired days. NDEP took the resulting scaled extinctions and converted them to deciviews, and applied a correction factor, in the same way as it did for the MID. The result was the RPG for the clearest days, an estimate of deciviews on the clearest days for 2028 that reflects the controls included in the long-term strategy.

Although NDEP's RPGs in the 2022 Nevada Regional Haze Plan accounted for emissions associated with then-anticipated shutdown of North Valmy Generating Station Units 1 and 2, NDEP noted that the resulting changes to the RPGs were "lost in rounding (still 7.76 dv for most impaired days and 1.72 dv for clearest days)." <sup>119</sup> Thus, regardless of the withdrawal of the enforceable shutdown of those units, NDEP's RPGs for Jarbidge of 7.76 deciviews for the most impaired days and 1.72 for the clearest days still reflect the visibility conditions that will be achieved at the end of the implementation period as a result of the NDEP's long-term strategy (as well as implementation of other CAA requirements) consistent with 40 CFR 51.308(f)(3)(i). The value of the adjusted URP in 2028 for the Jarbidge Wilderness Area is 8.2 deciviews.<sup>120</sup> Nevada's RPG of 7.76 deciviews for the most impaired days is thus below the adjusted URP and the demonstration requirement under § 51.308(f)(3)(ii)(A) is not triggered. In addition, the RPG of 1.72 for the clearest days is below the 2000–2004 baseline visibility conditions of 2.56 deciviews on the 20 percent clearest days. Therefore, the long-term strategy and the RPGs 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 consistent with 40 CFR 51.308(f)(3)(i).

Under § 51.308(f)(3)(ii)(B), a state that contains sources that are reasonably anticipated to contribute to visibility

impairment in a Class I area in another state for which a demonstration by the other state is required under § 51.308(f)(3)(ii)(B) must demonstrate that there are no additional emissions reduction measures that would be reasonable to include in its long-term strategy. NDEP explained in the Plan that the no neighboring states are relying on emissions reductions in Nevada to achieve reasonable progress in any of their Class I areas. In addition, NDEP conducted "URP Glidepath checks" for several out-of-state Class I areas that were specifically identified as being affected by emissions originating in Nevada (Grand Canyon, Arizona; Ike's Backbone, Arizona; Desolation Wilderness, California; Craters of the Moon, Idaho; Hells Canyon, Oregon; and Zion Canyon, Utah).<sup>121</sup> NDEP confirmed that projected visibility in 2028 (2028OTBa2) for the 20 percent most impaired days for each area fall below the adjusted glidepath.<sup>122</sup> In addition, as described in section IV.E.7. of this document, while the RPG for Sycamore Canyon in Arizona is above the adjusted glidepath, it is reasonable to conclude that sources in Nevada are not the cause of this. Because Nevada did not determine that its sources contribute to impairment in Sycamore Canyon, it did not expressly make a robust demonstration under 40 CFR 51.308(f)(3)(ii)(B). However, as previously noted, NDEP submitted a robust long-term strategy, including numerous well-documented four-factor analyses and required new controls at multiple sources based on the outcome of these analyses. Accordingly, we find that there are no additional emissions reduction measures for anthropogenic sources or groups of sources in the State that may reasonably be anticipated to contribute to visibility impairment in the Class I area that would be reasonable to include in its own long-term strategy. Therefore, if a robust demonstration were required, the Plan would have met this requirement as well.

For the foregoing reasons, the EPA proposes to determine that Nevada has satisfied the applicable requirements of 40 CFR 51.308(f)(3) relating to RPGs.

#### *G. Additional Monitoring To Assess Reasonably Attributable Visibility Impairment*

The EPA and FLMs have not previously advised Nevada that additional monitoring is needed to

assess reasonably attributable visibility impairment. Therefore, the requirements under 40 CFR 51.308(f)(4) are not applicable to Nevada.

#### *H. Monitoring Strategy and Other Implementation Plan Requirements*

Section 51.308(f)(6) specifies that each comprehensive revision of a state's regional haze plan 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 network.

According to section 1.4.1.1 of the 2022 Nevada Regional Haze Plan, two operating IMPROVE monitoring sites are located in Nevada, one at Great Basin National Park and the other at the Jarbidge Wilderness Area. Additionally, the Walker River Paiute Tribe, a third monitoring site in Nevada, operated from June 2003 to November 2005. The IMPROVE monitor representing the air quality at the Jarbidge Wilderness Area is identified as JARB1 in the IMPROVE monitoring network database. Nevada indicates that generally, JARB1 is expected to be representative of aerosol characteristics in the Jarbidge Wilderness Area especially when the atmosphere is well mixed and regionally homogeneous. However, the site is at a low elevation in the Jarbidge River Canyon that is separate from the Jarbidge Wilderness Area and upper East Fork of the Jarbidge River. Consequently, the monitoring site may at times be isolated from wilderness locations and potentially impacted by different local emissions sources.

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 mandatory Class I Federal areas within the state are being achieved. JARB1 was among the first 20 IMPROVE sites to start operation in 1988 and is sponsored by the U.S. Forest Service. Nevada indicates in section 8.4 that the JARB1 IMPROVE site representing Nevada's Class I area at the Jarbidge Wilderness Area is considered to be sufficiently representative to support a determination of reasonable progress for the Jarbidge Wilderness Area.

Section 51.308(f)(6)(ii) requires SIPs to provide for procedures by which

<sup>119</sup> 2022 Nevada Regional Haze Plan, p. 6–5.

<sup>120</sup> 2022 Nevada Regional Haze Plan, section 6.9.3. The 2028 URP glide path value of 8.2 dv is interpolated between the baseline 2004–2004 value of 8.7 dv and the adjusted 2064 URP endpoint of 7.4 dv.

<sup>121</sup> *Id.* section 6.9.4.

<sup>122</sup> *Id.* For this analysis, NDEP employed adjustments for international emissions and prescribed fire determined by WRAP in accordance with EPA guidance, as described in section IV.D of this document.

monitoring data and other information are used in determining the contribution of emissions from within the state to regional haze visibility impairment at mandatory Class I Federal areas both within and outside the state. The 2022 Nevada Regional Haze Plan indicates that generally, the WRAP has analyzed, deduced, and provided information on relative contributions to visibility impairment. Nevada also indicates that it has and will continue to use data reported by the IMPROVE program as input into the regional technical support analysis tool found at the Visibility Information Exchange Web System and WRAP's Technical Support System, as well as other analysis tools and efforts sponsored by the WRAP. Nevada will continue to participate in the regional analysis activities of the WRAP to collectively assess and verify the progress toward RPGs, as the RHR is implemented.

Section 51.308(f)(6)(iii) does not apply to Nevada, as it has a Class I area.

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. As noted above, the JARB1 IMPROVE monitor is located within the Jarbidge Wilderness Area and is operated and maintained by the U.S. Forest Service. The monitoring strategy for Nevada relies upon the continued availability of the IMPROVE network.

Section 51.308(f)(6)(v) requires SIPs to provide for a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment, including emissions for the most recent year for which data are available and estimates of future projected emissions. It also requires a commitment to update the inventory periodically. Nevada indicates that it has prepared a statewide inventory of emissions that can reasonably be expected to cause or contribute to visibility impairment in mandatory Class I areas with the support of the WRAP.<sup>123</sup>

Section 51.308(f)(6)(v) also requires states to include estimates of future projected emissions and include a commitment to update the inventory periodically. Nevada also committed to updating its statewide emissions inventory periodically, and the updates will be used for state tracking of emission changes, determining trends and providing input into the WRAP's evaluation of whether RPGs are being achieved, as well as other regional analyses. Nevada will also depend upon and participate in additional periodic

collective emissions inventory efforts by the WRAP.

The EPA proposes to find that Nevada has met the requirements of 40 CFR 51.308(f)(6) as described above, including through its continued participation in the IMPROVE network, continued inventory work with the WRAP, and commitment to update the inventory periodically, and that no further elements are necessary at this time for Nevada to assess and report on visibility pursuant to 40 CFR 51.308(f)(6)(vi).

#### *I. Requirements for Periodic Reports Describing Progress Towards the Reasonable Progress Goals*

40 CFR 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)–(5). The purpose of these requirements is to evaluate progress towards the applicable RPGs for each Class I area within the state and each Class I area outside the state that may be affected by emissions from within that state. Sections 51.308(g)(1) and (2) apply to all states and require a description of the status of implementation of all measures included in a state's first implementation period regional haze plan and a summary of the emissions 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. 40 CFR 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 emissions information is reported. Finally, 40 CFR 51.308(g)(5), which also applies to all states, requires an assessment of any significant changes in anthropogenic emissions within or outside the state have occurred since the period addressed by the first implementation period progress report, including whether such changes were anticipated and whether they have limited or impeded expected progress

towards reducing emissions and improving visibility.

Section 51.308(f)(5) specifies that a progress report submitted as part of a comprehensive regional haze SIP revision must address the time period since the most recent progress report. Nevada submitted the most recent 5-year progress report to EPA in November 2014, which presented data analysis for the period 2008 through 2012 and 2018 RPGs. Therefore, for Nevada, the time period required to be addressed in the progress report under the second planning period SIP began in 2013.

The 2022 Nevada Regional Haze Plan also describes the status of measures of the long-term strategy from the first implementation period.<sup>124</sup> During the first planning period for regional haze, programs that were put in place required control measures installed and operating by January 1, 2015, and focused on four sources, comprising 10 units—NV Energy's generating stations at Tracy (units 1, 2 and 3), Fort Churchill (units 1 and 2) and Reid Gardner (units 1, 2 and 3); and Southern California Edison's (SCE) Mohave Generating Station (units 1 and 2). Additionally, as mentioned in section IV.A., the EPA promulgated a FIP for RGGs in 2012 that was later rescinded in 2018 due to the shutdown of the facility. For Mohave Generating Station, Nevada describes that the facility was fully decommissioned and demolished and the operating permit for the facility was officially cancelled in April 2010. For NV Energy, Nevada describes that the Public Utilities Commission of Nevada granted approval for Tracy Units 1 and 2 to be retired, and approval to implement alternative equivalent control technology for BART and supplemental control technology for Unit 3 at Tracy and Units 1 and 2 at Fort Churchill. NV Energy retired Units 1 and 2 on December 31, 2014, and Nevada subsequently removed them from the Title V operating permit. Tracy Unit 3 discontinued the occasional use of distillate fuel and was retrofitted with the best available Low-NO<sub>x</sub> Burners before the compliance deadline. For Fort Churchill Units 1 and 2, the use of fuel oil has since been permanently suspended at the facility.

The 2022 Nevada Regional Haze Plan also contains a summary of the emissions from the long-term strategy from the first implementation period, comparing emissions of NO<sub>x</sub>, SO<sub>2</sub>, and PM<sub>10</sub> at BART facilities for years 2008

<sup>123</sup> 2022 Nevada Regional Haze Plan, chapter 3.

<sup>124</sup> 2022 Nevada Regional Haze Plan, section 6.10.2.1.

and 2018.<sup>125</sup> All BART sources show total emissions reductions, except for Mohave, which has emissions of 0 tpy for all pollutants in the analysis due to ceasing operations in 2005.

The EPA proposes to find that Nevada has met the requirements of 40 CFR 51.308(g)(1) and (2) because the Plan describes the measures included in the long-term strategy from the first implementation period, as well as the status of their implementation and the emissions reductions achieved through such implementation.

The 2022 Nevada Regional Haze Plan included summaries of the visibility conditions and the trend of the 5-year averages through 2018 at the Jarbidge Wilderness Area.<sup>126</sup> The Plan included the 5-year baseline (2000–2004) visibility conditions for the clearest and most impaired days of 2.56 and 8.73 deciviews, respectively. The status of the 2008–2012 period for the clearest and most impaired days are 1.84 and 7.88 deciviews, respectively. The Plan also included the current 5-year status (2014–2018) for the clearest and most impaired days of 1.84 and 7.97 deciviews, respectively. The EPA therefore proposes to find that Nevada has satisfied the requirements of 40 CFR 51.308(g)(3).

The 2022 Nevada Regional Haze Plan also addresses 40 CFR 51.308(g)(3)–(5).<sup>127</sup> Specifically, chapter 2 addresses the requirements of 40 CFR 51.308(g)(3), chapter 3 addresses the requirements of 40 CFR 51.308(g)(4), and chapter 4 addresses the requirements of 40 CFR 51.308(g)(5). In the 2023 Nevada Regional Haze Technical Supplement, NDEP also provided additional supporting information to address the requirements of 40 CFR 51.308(g)(4)–(5).

Pursuant to § 51.308(g)(4), NDEP provided a summary of emissions of NO<sub>x</sub>, SO<sub>2</sub>, PM<sub>10</sub>, PM<sub>2.5</sub>, VOC, and NH<sub>3</sub> from all sources and activities, including from point, nonpoint, non-road mobile, and on-road mobile sources for the progress report period, for NEI years 2002, 2005, 2008, 2011, 2014, and 2017. NDEP also provided 2013–2019 Clean Air Markets Program Data (CAMPD) data for all sources with emissions of visibility impairing pollutants. The reductions achieved by Nevada emissions control measures are seen in the emissions inventory and visibility progress. The EPA is therefore proposing to find that Nevada has met the requirements of § 51.308(g)(4) by

providing emissions information for NO<sub>x</sub>, SO<sub>2</sub>, PM<sub>10</sub>, PM<sub>2.5</sub>, VOC, and NH<sub>3</sub> broken down by type of sources and activities within the state.

Pursuant to § 51.308(g)(5), Nevada provided an assessment of any significant changes in anthropogenic emissions within or outside the state that have occurred since the period, including whether or not these changes in anthropogenic emissions were anticipated in that most recent plan, and whether they have limited or impeded progress in reducing pollutant emissions and improving visibility. NDEP noted overall reductions of 62 percent SO<sub>2</sub>, 5 percent PM<sub>10</sub>, 60 percent VOC, and 17 percent PM<sub>2.5</sub> when comparing 2014 with 2017 NEI data. NDEP noted emissions increases of 18 percent NO<sub>x</sub>, 68 percent NH<sub>3</sub>, and 17 percent PM<sub>2.5</sub> when comparing 2014 with 2017 NEI data. For these emissions increases, NDEP concluded that these increases are largely driven by increases in biogenic emissions. Nevada had a more intense wildfire season in 2017, where nearly 1.2 million acres were burned by wildfire, compared to roughly 80,000 acres burned in 2014. NDEP also noted increases in fertilizer application that affected NH<sub>3</sub> emissions and commercial cooking that affected PM<sub>2.5</sub> emissions. NDEP also noted that these increases have not limited or impeded visibility progress. NDEP further reported overall reductions of 34 percent NO<sub>x</sub> and 38 percent SO<sub>2</sub> in CAMPD EGU emissions during the progress report period. NDEP indicated that these reductions have met or exceeded the downward trend predicted from the regional haze plan in the first round. The EPA is therefore proposing to find that Nevada has met the requirements of § 51.308(g)(5).

#### *J. Requirements for State and Federal Land Manager Coordination*

CAA section 169A(d) 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, 40 CFR 51.308(i)(2)'s FLM consultation provision requires a state to provide FLMs with an opportunity for consultation that is early enough in the state's policy analyses of its emissions reduction obligation so that information and recommendations provided by the FLMs can meaningfully inform the state's decisions on its long-term strategy. If the consultation has taken place at least 120 days before a public hearing or public comment period, the opportunity for consultation will be

deemed early enough. Regardless, the opportunity for consultation must be provided at least sixty days before a public hearing or public comment period at the state level. 40 CFR 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. 40 CFR 51.308(i)(3) requires states, in developing their implementation plans, to include a description of how they addressed FLMs' comments.

Sections 9.1 and 9.2 of the 2022 Nevada Regional Haze Plan describes the coordination and consultation with FLMs. Nevada indicates in section 9.1.1 that Nevada has provided agency contacts to the FLMs as required in 40 CFR 51.308(i)(1). The section also describes past coordination and consultation with FLMs during the development of the 2022 Nevada Regional Haze Plan in accordance with the provisions of § 51.308(i)(2). Numerous opportunities were provided by the WRAP for FLMs to participate in the development of technical documents developed by the WRAP, such as the opportunity to review and comment on analyses, reports, and policies, and opportunities for coordination and consultation with FLMs through tele-meetings and stakeholder outreach. The FLM consultation process included the opportunity to discuss their assessment of visibility impairment at the Jarbidge Wilderness Area and to provide recommendations on RPGs and the development and implementation of visibility control strategies.

Section 9.1.1.1 of the 2022 Nevada Regional Haze Plan describes the formal FLM consultation process. A draft version of the 2022 Nevada Regional Haze Plan was submitted to the FLMs<sup>128</sup> on November 29, 2021, for a 60-day review and comment period. Comments were received from the National Parks Service and U.S. Forest Service on February 15, 2022. The U.S. Fish and Wildlife Service and Bureau of Land Management did not submit any comments as a result of the formal consultation period and expressed support for the contents of the draft SIP. As required by CAA 169A(d), Nevada indicates that the 2022 Nevada Regional Haze Plan also contained a summary of

<sup>125</sup> Id. section 6.10.2.2 and table 6–6.

<sup>126</sup> 2022 Nevada Regional Haze Plan, tables 2–1 and 2–2 and figures 2–4 and 2–5.

<sup>127</sup> 2022 Nevada Regional Haze Plan, table 6–7.

<sup>128</sup> Nevada indicates that FLMs consist of the National Parks Service, U.S. Fish and Wildlife Service, U.S. Forest Service, and the Bureau of Land Management.

conclusions and recommendations of the FLMs as part of the SIP submission made available for public comment, along with a summary of how Nevada has addressed all comments and requests submitted by the FLMs, as required by 40 CFR 51.308(i)(3). NDEP’s final response to comments received during the formal FLM consultation is provided in appendix C.

Section 9.2 of the 2022 Nevada Regional Haze Plan describes future coordination and consultation commitments. As required by 40 CFR 51.308(i)(4), Nevada indicates that it will continue to coordinate and consult with the FLMs during the development of future progress reports and plan revisions. The progress reports are to occur at five-year intervals, with the first report due five years from submittal of the initial RH SIP. Plan revisions are due every ten years, with the exception of the second SIP revision and subsequent progress report. The consultation process will provide ongoing and timely opportunities to address the status of the control programs identified in this SIP, the development of future assessments of sources and impacts, and the development of additional control

programs. Nevada will also provide the FLMs an opportunity to review and comment on future SIP revisions and the 5-year progress reports.

For the reasons stated above, the EPA proposes to find that Nevada has satisfied the requirements under 40 CFR 51.308(i) and CAA 169A(d) to consult with the FLMs on its regional haze SIP for the second implementation period and to include a summary of the FLMs’ conclusions and recommendations in the notice to the public.

The 2022 Nevada Regional Haze Plan includes a commitment to submit a regional haze SIP revision by July 31, 2028, and every ten years thereafter in section 9.5. NDEP also committed to submit periodic progress reports in accordance with § 51.308(f) and evaluate progress towards the RPG for 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 in accordance with § 51.308(g).

**V. Proposed Action**

The EPA is proposing to approve the Plan as satisfying the regional haze requirements for the second

implementation period contained in 40 CFR 51.308(f). Specifically, we are proposing to approve the 2022 Nevada Regional Haze Plan (excluding the portions withdrawn on July 27, 2023) and appendix A of the 2025 SIP Supplement into the Nevada SIP. Thus, the EPA is proposing to approve and incorporate by reference in 40 CFR 52.1470(d) (“EPA-approved State source-specific permits”), the source-specific requirements listed below as part of Nevada’s long-term strategy for regional haze, and as summarized in table 8 of this document.

- NDEP Permit No. AP4911–0194.04 (for Tracy Generating Station), Conditions IV.B.1.a, IV.B.3.f, IV.D.1.a, IV.D.3.f, IV.F.1, IV.L.1.a, IV.L.3.g, IV.M.1.a, IV.M.3.g, V.A, and V.C.
- Clark County DES Authority to Construct Permit for a Major Part 70 Source, Source ID: 3 (for Lhoist North America Apex Plant), Conditions 2.1.1, 2.2.1, 2.2.2, 2.2.3, 3.2.1, 3.2.2, 4.1, 4.3, 4.4.7, 4.4.8, 4.4.15, and 4.4.16.
- NDEP Permit No. AP3274–1329.03 (for Graymont Pilot Peak Plant), Conditions IV.K.1.a, IV.K.3.b, IV.K.4.q, IV.K.4.u, IV.N.1.a, IV.N.3.b, IV.N.4.q, IV.N.4.u, V.S.1.a, IV.S.3.b, IV.S.4.q, IV.S.4.u, and V.B–C.

TABLE 8—REGIONAL HAZE LONG-TERM STRATEGY SOURCE-SPECIFIC PROVISIONS

Name of source	Permit No.	State effective date	Explanation
Lhoist North America Apex Plant.	Clark County DES Authority to Construct Permit for a Major Part 70 Source, Source ID: 3.	April 30, 2025 .....	Permit conditions 2.1.1, 2.2.1, 2.2.2, 2.2.3, 3.2.1, 3.2.2, 4.1, 4.3, 4.4.7, 4.4.8, 4.4.15, and 4.4.16.
Graymont Pilot Peak Plant .....	NDEP Permit No. AP3274–1329.03.	June 14, 2024 .....	Permit conditions IV.K.1.a, IV.K.3.b, IV.K.4.q, IV.K.4.u, IV.N.1.a, IV.N.3.b, IV.N.4.q, IV.N.4.u, V.S.1.a, IV.S.3.b, IV.S.4.q, IV.S.4.u, and V.B–C.
Tracy Generating Station .....	NDEP Permit No. AP4911–0194.04.	March 23, 2022 ....	Permit conditions IV.B.1.a, IV.B.3.f, IV.D.1.a, IV.D.3.f, IV.F.1, IV.L.1.a, IV.L.3.g, IV.M.1.a, IV.M.3.g, V.A and V.C.

**VI. Incorporation by Reference**

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the regulatory and source-specific provisions described in section VI. 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 9 Office (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 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 Act. 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 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).

#### List of Subjects in 40 CFR Part 52

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

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

Dated: October 14, 2025.

**Cheree D. Peterson,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 2025–19637 Filed 10–22–25; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R09–OAR–2025–0191; FRL–12978–01–R9]

#### Air Plan Approval; Arizona; Interstate Transport Requirements for the 2012 Fine Particulate Matter National Ambient Air Quality Standard

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Clean Air Act (CAA) requires each state implementation plan (SIP) to contain adequate provisions prohibiting emissions that will significantly contribute to nonattainment or interfere with maintenance of air quality in other states. The State of Arizona submitted

SIP revisions to the Environmental Protection Agency (EPA) to address these requirements for the 2012 fine particulate (PM<sub>2.5</sub>) national ambient air quality standards (NAAQS). The EPA is proposing to approve Arizona’s SIP submission as meeting the requirement that the Arizona SIP contains adequate provisions to prohibit emissions activity, within the State, from emitting air pollutants in amounts that will significantly contribute to nonattainment or interfere with maintenance of the 2012 PM<sub>2.5</sub> NAAQS in any other state.

**DATES:** Comments must be received on or before November 24, 2025.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R09–OAR–2025–0191 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 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:** Michael Dorantes, Geographic Strategies and Modeling Section (AIR 2–2), EPA Region IX, telephone number: (415) 972–3934, email address: [dorantes.michael@epa.gov](mailto:dorantes.michael@epa.gov).

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

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### I. Background

#### A. Statutory Background

On January 15, 2013 the EPA promulgated a revision to the PM<sub>2.5</sub> NAAQS (2012 PM<sub>2.5</sub> NAAQS), lowering the level of the primary standard to 12.0 µg/m<sup>3</sup>, while maintaining the secondary standard.<sup>1</sup> Section 110(a)(1) of the CAA requires states to submit, within three years after promulgation of a new or revised NAAQS, SIP submissions meeting the applicable requirements of section 110(a)(2).<sup>2</sup> Within CAA section 110(a)(2), are the requirements in CAA section 110(a)(2)(D)(i)(I), otherwise known as the “interstate transport” or “good neighbor” provision, which generally requires SIPs to contain adequate provisions to prohibit in-state emissions activities from having certain adverse air quality effects on other states due to interstate transport of air pollution. There are two so-called “prongs” within CAA section 110(a)(2)(D)(i)(I), which require that the SIP for a new or revised NAAQS contain adequate provisions prohibiting any source or other type of emissions activity within the state from emitting air pollutants in amounts that will significantly contribute to nonattainment of the NAAQS in another state (prong 1) or interfere with maintenance of the NAAQS in another state (prong 2). The EPA and states must give independent significance to prong 1 and prong 2 when evaluating downwind air quality problems under CAA section 110(a)(2)(D)(i)(I).<sup>3</sup>

#### B. EPA’s Interstate Transport Considerations for the 2012 PM<sub>2.5</sub> NAAQS

The EPA has addressed the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the PM<sub>2.5</sub> NAAQS in several regulatory actions. In 2011, the EPA promulgated

<sup>1</sup> 78 FR 3086 (January 15, 2013).

<sup>2</sup> SIP revisions that are intended to meet the applicable requirements of section 110(a)(1) and (2) of the CAA are often referred to as infrastructure SIPs, and the applicable elements under section 110(a)(2) are referred to as infrastructure requirements.

<sup>3</sup> See *North Carolina v. EPA*, 531 F.3d 896, 909–911 (D.C. Cir. 2008).

the Cross-State Air Pollution Rule (CSAPR) to address the obligations of states under prongs 1 and 2 to prohibit air pollution from contributing significantly to nonattainment in, or interfering with the maintenance of, any other state with regard to several NAAQS, including the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS.<sup>4</sup> In that rule, we used an air quality threshold of one percent of the applicable PM<sub>2.5</sub> NAAQS to link contributing states to projected nonattainment or maintenance air quality monitors (*i.e.*, receptors). If air quality modeling projected that an upwind state contributed more than the one percent threshold to a downwind receptor, we determined that the state was “linked.” On September 13, 2013, the EPA issued the “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)” (“2013 I–SIP Guidance”) for the development of infrastructure SIPs for several NAAQS including the 2012 PM<sub>2.5</sub> standard.<sup>5</sup> On March 12, 2016, the EPA issued the memorandum titled “Information on the Interstate Transport ‘Good Neighbor’ Provision for the 2012 Fine Particulate Matter National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I)” (“2016 PM<sub>2.5</sub> Transport Memo”), specifically developed for the infrastructure SIP transport requirements for the 2012 PM<sub>2.5</sub> NAAQS.<sup>6</sup> Using CSAPR, the 2013 I–SIP guidance, and the 2016 PM<sub>2.5</sub> Transport Memo, we have developed a consistent framework for evaluating the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2012 PM<sub>2.5</sub> NAAQS, and outlined a four-step process to evaluate the obligations under interstate transport provision under 110(a)(2)(D)(i)(I), which includes:

- (1) Identifying downwind receptors that are expected to have problems attaining or maintaining the NAAQS;
- (2) Identifying which upwind states contribute to these identified problems in amounts sufficient to warrant further review and analysis;

<sup>4</sup> 76 FR 48208 (August 8, 2011).

<sup>5</sup> Memorandum dated September 13, 2013 from Stephen D. Page, Director, Office of Air Quality and Planning Standards, U.S. EPA, to Regional Air Division Directors, Regions 1–10, Subject: “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2).”

<sup>6</sup> Memorandum dated March 17, 2016, from Stephen D. Page, Director, Office of Air Quality and Planning Standards, U.S. EPA, to Regional Air Division Directors, Regions 1–10, Subject: “Information on the Interstate Transport ‘Good Neighbor’ Provision for the 2012 Fine Particulate Matter National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I).”

(3) For states identified as contributing to downwind air quality problems, identifying upwind emissions reductions necessary to prevent an upwind state from significantly contributing to nonattainment or interfering with maintenance of the NAAQS downwind;

(4) For states that are found to have emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS downwind, reducing the identified upwind emissions through adoption of permanent and enforceable measures.

To satisfy Step 1 of the interstate framework, the 2016 PM<sub>2.5</sub> Transport Memo provides annual PM<sub>2.5</sub> design values for monitors in the United States based on quality-assured and certified ambient air quality monitoring data. For each ambient monitoring site, the EPA calculated the projected average design value and projected maximum design values for the then future projection years of 2017 and 2025. In total, the 2016 PM<sub>2.5</sub> Transport Memo identified 17 California monitoring sites located in the San Joaquin Valley and the South Coast nonattainment areas, one site in Shoshone County, Idaho, and one site in Allegheny County, Pennsylvania as having projected 2017 and 2025 average and/or maximum future year PM<sub>2.5</sub> design values above the 2012 PM<sub>2.5</sub> NAAQS. The modeled annual PM<sub>2.5</sub> projections for the years 2017 and 2025 evaluated projected air quality relative to the 2012 PM<sub>2.5</sub> NAAQS and are therefore consistent with Step 1 of the four-step interstate framework originally used in CSAPR. This rulemaking considers these receptors, as well as additional analysis conducted by the State and the EPA when evaluating step 2 of the framework as to whether emissions from Arizona contribute to nonattainment or interfere with maintenance of the PM<sub>2.5</sub> NAAQS, and whether further evaluation under steps 3 and 4 are necessary.

## II. Arizona’s Submittal

The Arizona Department of Environmental Quality (ADEQ) submitted two SIP revisions to address the infrastructure SIP requirements in CAA sections 110(a)(1) and 110(a)(2) for the 2012 PM<sub>2.5</sub> NAAQS. On December 11, 2015, ADEQ submitted the “Arizona State Implementation Plan Revision for the 2012 Fine Particulate Matter (PM<sub>2.5</sub>) National Ambient Air Quality Standard” (“2015 PM<sub>2.5</sub> I–SIP Submittal”).<sup>7</sup> On February 10, 2022,

<sup>7</sup> Letter dated December 11, 2015, from Eric Massey, Director, Air Quality Division, ADEQ, to Jared Blumenfeld, Regional Administrator, EPA

ADEQ submitted the “State Implementation Plan Revision: Clean Air Act Section 110(a)(2) for the 2012 Fine Particulate & 2015 Ozone NAAQS” (“2022 I–SIP Supplement”).<sup>8</sup> The submittals collectively address the requirements of 110(a)(2)(D)(i)(I) as described by this proposed rulemaking. We refer to them collectively herein as “Arizona’s 2012 PM<sub>2.5</sub> I–SIP submittals.” We find that Arizona’s 2012 PM<sub>2.5</sub> I–SIP submittals meet the procedural requirements for public participation under CAA section 110(a)(2) and 40 CFR 51.102.<sup>9</sup> We have previously proposed or finalized actions on these submittals except for those portions of the 2012 PM<sub>2.5</sub> I–SIP submittals addressing prongs 1 and 2 of the interstate transport requirements under 110(a)(2)(D)(i)(I).<sup>10</sup> Herein, we are proposing action on these submittals with respect to the 110(a)(2)(D)(i)(I) interstate transport requirements for the 2012 PM<sub>2.5</sub> NAAQS.

## III. The EPA’s Evaluation

We have evaluated Arizona’s 2012 PM<sub>2.5</sub> I–SIP submittals for compliance with the infrastructure SIP requirements of CAA section 110(a)(2)(D)(i)(I) and the applicable regulations of 40 CFR part 51 (“Requirements for Preparation, Adoption, and Submittal of State Implementation Plans”). The technical support document (TSD) for this rulemaking is available in the docket and includes our detailed evaluation of direct and precursor emissions of PM<sub>2.5</sub> within Arizona and from other sources, geographical information, climatological information, and topographical information such as terrain and its potential effect on transport of

Region IX, Subject “Arizona Infrastructure State Implementation Plan for the 2012 PM<sub>2.5</sub> National Ambient Air Quality Standards.”

<sup>8</sup> Letter dated February 10, 2022, from Daniel Czecholinski, Director, Air Quality Division, ADEQ, to Martha Guzman, Regional Administrator, EPA Region IX, Subject: “Submittal of the Arizona State Implementation Plan Revision under Clean Air Act Sections 110(a)(2) for the 2012 Fine Particulate and the 2015 Ozone NAAQS.”

<sup>9</sup> For the 2015 PM<sub>2.5</sub> I–SIP submittal, ADEQ provided a 30-day public comment period that started on November 9, 2015, and concluded on December 9, 2015, with a public hearing occurring on the same date. No comments were expressed during the 30-day comment period no at the public hearing. The details of this public comment period and hearing can be found in appendix B of the 2015 PM<sub>2.5</sub> I–SIP submittal. Similarly, for the 2022 I–SIP supplement, ADEQ provided a 30-day public comment period between December 13, 2021, and January 13, 2022, with a public hearing occurring on January 13, 2022. ADEQ received no verbal nor written comments on the 2022 I–SIP supplement. The details of this public comment period and hearing can be found in appendix E to the 2022 I–SIP supplement.

<sup>10</sup> 89 FR 50245, June 13, 2024 and 89 FR 102744, December 18, 2024.

pollutants. Considering the weight of the evidence, the EPA agrees with the conclusion drawn by Arizona in the 2012 PM<sub>2.5</sub> I-SIP submittals that emissions from sources in Arizona will not significantly contribute to nonattainment or interfere with the maintenance of the 2012 PM<sub>2.5</sub> NAAQS in any other state. In particular, the EPA finds that Arizona is not “linked” to any out-of-state receptors, and as such, the State is not required to perform the last two steps of the four-step framework outlined in the EPA’s interstate transport guidance and rulemakings.

#### IV. Proposed Action and Request for Public Comment

Based on the EPA’s weight-of-evidence evaluation summarized in this document and fully detailed in the accompanying TSD, the EPA proposes to approve Arizona’s 2012 PM<sub>2.5</sub> I-SIP submittals with respect to the 2012 PM<sub>2.5</sub> NAAQS for the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I). The EPA is soliciting public comments on this proposed rulemaking. We will accept comments from the public for the next 30 days. We will consider any comments received before taking final action.

#### V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations.

42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive 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 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).

#### 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, Volatile organic compounds.

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

Dated: October 14, 2025.

**Cheree D. Peterson,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 2025–19638 Filed 10–22–25; 8:45 am]

**BILLING CODE 6560–50–P**

# Notices

Federal Register

Vol. 90, No. 203

Thursday, October 23, 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.

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## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Post Allowance and Reissue

**AGENCY:** United States Patent and Trademark Office, Department of Commerce.

**ACTION:** Notice of information collection; request for comments.

**SUMMARY:** The United States Patent and Trademark Office (hereafter “USPTO” or “Agency”), as required by the Paperwork Reduction Act of 1995, invites comments on the extension and revision of an existing information collection: 0651–0033 (Post Allowance and Reissue). The purpose of this notice is to allow 60 days for public comments preceding submission of the information collection to the Office of Management and Budget (OMB).

**DATES:** To ensure consideration, you must submit comments regarding this information collection on or before December 22, 2025.

**ADDRESSES:** Interested persons are invited to submit written comments by any of the following methods. Do not submit Confidential Business Information or otherwise sensitive or protected information.

- *Email:* [InformationCollection@uspto.gov](mailto:InformationCollection@uspto.gov). Include “0651–0033 comment” in the subject line of the message.

- *Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov).

- *Mail:* Justin Isaac, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

- *Telephone:* Raul Tamayo, Senior Legal Advisor, 571–272–7728.

#### FOR FURTHER INFORMATION CONTACT:

Requests for additional information should be directed to Raul Tamayo, Senior Legal Advisor at: United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; 571–272–7728; or [Raul.Tamayo@uspto.gov](mailto:Raul.Tamayo@uspto.gov) with “0651–0033 comment” in the subject line. Additional information about this information collection is also available at [www.reginfo.gov](http://www.reginfo.gov) under “Information Collection Review.”

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

This collection of information covers the submission of issue fee payments, requests for certificates of correction, and reissue patent applications to the USPTO.

##### *Issue Fee Payments*

The USPTO is required by 35 U.S.C. 131 and 151 to examine patent applications and, when appropriate, allow patent applications and issue them as patents. When an application for a patent is allowed by the USPTO, the USPTO issues a notice of allowance and the applicant must pay the specified issue fee within three months to avoid abandonment of the application. If the appropriate fees are paid within the proper time period, the USPTO can then issue the patent. The rules outlining the procedure or payment of the issue fee and issuance of a patent are found at 37 CFR 1.18, 1.311, and 1.314.

##### *Requests for Certificates of Correction and Reissue Patent Applications*

This collection of information also covers several transactions that may be taken after the issuance of a patent. Pursuant to 35 U.S.C. 254 and 255, a certificate of correction may be requested to correct an error or errors of an issued patent. If the USPTO determines that the request should be approved, the USPTO will issue a certificate of correction.

For an original patent that is believed to be wholly or partly inoperative or invalid, the original patentee, or the current patent owner if there has been a subsequent assignment, may apply for the reissue of the patent pursuant to 35 U.S.C. 251. The reissue patent application process requires, among other items, an oath or declaration specifically identifying at least one error being relied upon as the basis for reissue

and stating the reason for the belief that the original patent is wholly or partly inoperative or invalid (e.g., a defective specification or drawing, or claiming more or less than the patentee had the right to claim in the patent). The rules outlining reissue application procedures are found at 37 CFR 1.171–1.173 and 1.175–1.178.

##### II. Method of Collection

The USPTO prefers that the items in this information collection be submitted electronically via the USPTO patent electronic filing system (Patent Center). Respondents may also submit the information in paper form by mail, or by hand delivery to the USPTO.

##### III. Data

*OMB Control Number:* 0651–0033.

*Forms:* (AIA = America Invents Act; SB = Specimen Book; PTOL = Patent Trademark Official Legal Forms):

- PTO/AIA/05 (Reissue Application Declaration by the Inventor)
- PTO/AIA/06 (Reissue Application Declaration by the Assignee)
- PTO/AIA/07 (Substitute Statement in Lieu of an Oath or Declaration for Reissue Patent Application (35 U.S.C. 115(d) and 37 CFR 1.64)
- PTO/AIA/50 (Reissue Patent Application Transmittal)
- PTO/AIA/53 (Reissue Application: Consent of Assignee; Statement of Non-Assignment)
- PTO/SB/44 (Certificate of Correction)
- PTO/SB/51 (Reissue Application Declaration by the Inventor)
- PTO/SB/51S (Supplemental Declaration for Reissue Patent Application to Correct “Errors” Statement (37 CFR 1.175)
- PTO/SB/52 (Reissue Application Declaration by the Assignee)
- PTO/SB/53 (Reissue Application: Consent of Assignee; Statement of Non-Assignment)
- PTO/SB/56 (Reissue Application Fee Transmittal Form)
- PTOL–85B (Part B—Fee(s) Transmittal)

*Type of Review:* Extension and revision of a currently approved information collection.

*Affected Public:* Private sector.

*Respondent’s Obligation:* Required to obtain or retain benefits.

*Frequency:* On occasion.

*Estimated Number of Annual Respondents:* 473,710 respondents.

*Estimated Number of Annual Responses:* 473,710 responses.  
*Estimated Time per Response:* The USPTO estimates that the responses in this information collection will take the public approximately 30 minutes (0.50

hours) to 5.30 hours to complete. This includes the time to gather the necessary information, create the document, and submit the completed item(s) to the USPTO.

*Estimated Total Annual Respondent Burden Hours:* 392,186 hours.  
*Estimated Total Annual Respondent Hourly Cost Burden:* \$175,307,142.

TABLE 1—TOTAL BURDEN HOURS AND HOURLY COSTS TO PRIVATE SECTOR RESPONDENTS

Item No.	Item	Estimated annual respondents (a)	Responses per respondent (b)	Estimated annual responses (a) × (b) = (c)	Estimated time for response (hours) (d)	Estimated burden (hour/year) (c) × (d) = (e)	Rate <sup>1</sup> (\$/hour) (f)	Estimated annual respondent cost burden (e) × (f) = (g)
1	Certificate of Correction.	21,000	1	21,000	1.30 (80 minutes)	27,300	447	\$12,203,100
2	Petition to Correct Assignee After Payment of Issue Fee (37 CFR § 3.81(b)).	450	1	450	0.80 (46 minutes)	360	447	160,920
3	Reissue Documentation.	780	1	780	5.30 (318 minutes)	4,134	447	1,847,898
4	Reissue Patent Application Transmittal.	780	1	780	0.50 (30 minutes)	390	447	174,330
5	Reissue Patent Application Declaration by the Inventor or the Assignee or Substitute Statement in Lieu of an Oath or Declaration for Reissue Patent Application (35 U.S.C. § 115(d) and 37 CFR § 1.64).	1,450	1	1,450	0.80 (46 minutes)	1,160	447	518,520
6	Supplemental Declaration for Reissue Patent Application to Correct “Errors” Statement (37 CFR § 1.175).	55	1	55	0.60 (36 minutes)	33	447	14,751
7	Reissue Application: Consent of Assignee; Statement of Non-assignment.	1,045	1	1,045	0.50 (30 minutes)	523	447	233,781
8	Reissue Patent Application Fee Transmittal.	780	1	780	0.50 (30 minutes)	390	447	174,330
9	Issue Fee Transmittal	447,370	1	447,370	0.80 (46 minutes)	357,896	447	159,979,512
	Totals	473,710		473,710		392,186		175,307,142

<sup>1</sup> 2023 Report of the Economic Survey, published by the Committee on Economics of Legal Practice of the American Intellectual Property Law Association; pg. F-41. The USPTO uses the average billing rate for intellectual property work in all firms, which is \$447 per hour ([www.aipla.org/home/news-publications/economic-survey](http://www.aipla.org/home/news-publications/economic-survey)).

*Estimated Total Annual Respondent Non-hourly Cost Burden:* \$477,303,798. There are no capital start-up costs, maintenance costs, or recordkeeping costs associated with this information collection. However, the USPTO

estimates that the total annual non-hourly cost burden for this information collection, in the form of filing fees (\$477,279,160) and postage (\$24,638), is \$477,303,798.

*Filing Fees*

There are 13 filing fees associated with this information collection. The filing fees are detailed by entity size status and listed in the table below.

TABLE 2—FILING FEES

Item No.	Fee code	Item	Estimated annual responses (a)	Filing fee (\$) (b)	Non-hourly cost burden (a) × (b) = (c)
1	1811	Certificate of correction (Undiscounted entity)	5,700	172	\$980,400
1	2811	Certificate of correction (Small entity)	2,120	172	364,640
1	3811	Certificate of correction (Micro entity)	75	172	12,900
1	1816	Processing fee for correcting inventorship in a patent (Undiscounted entity)	400	172	68,800
1	2816	Processing fee for correcting inventorship in a patent (Small entity)	200	172	34,400
1	3816	Processing fee for correcting inventorship in a patent (Micro entity)	20	172	3,440
3	1014	Basic filing fee—Reissue (Undiscounted entity)	460	350	161,000
3	2014	Basic filing fee—Reissue (Small entity)	155	140	21,700
3	3014	Basic filing fee—Reissue (Micro entity)	20	70	1,400

TABLE 2—FILING FEES—Continued

Table with 6 columns: Item No., Fee code, Item, Estimated annual responses (a), Filing fee (\$) (b), and Non-hourly cost burden (a) x (b) = (c). Rows include various filing fees for reissues, searches, and patents, ending with a Totals row.

Postage Costs

While the USPTO prefers that the items in this information collection be submitted electronically, responses may be submitted by mail through the United States Postal Service. The USPTO estimates that 0.50% of the 473,710 items will be submitted in the mail, resulting in 2,369 mailed items. The USPTO estimates that the average postage cost for a mailed submission, using a Priority Mail legal flat rate envelope, is \$10.40. Therefore, the USPTO estimates the total mailing costs for this information collection at \$24,638.

IV. Request for Comments

The USPTO is soliciting public comments to:

(a) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected; and

(d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

All comments submitted in response to this notice are a matter of public record. The USPTO will include or summarize each comment in the request to OMB to approve this information collection. Before including an address, phone number, email address, or other personally identifiable information (PII) in a comment, be aware that the entire comment—including PII—may be made publicly available at any time. While you may ask in a comment to withhold

PII from public view, the USPTO cannot guarantee that it will be able to do so.

Justin Isaac,

Information Collections Officer, Office of the Chief Administrative Officer, United States Patent and Trademark Office.

[FR Doc. 2025-19644 Filed 10-22-25; 8:45 am]

BILLING CODE 3510-16-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-613; NRC-2024-0078]

US SFR Owner, LLC; Kemmerer Power Station, Unit 1; Final Environmental Impact Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC), in cooperation with the U.S. Department of Energy (DOE), is issuing a final environmental impact statement (EIS), NUREG-2268, "Environmental Impact Statement for the Construction Permit Application for Kemmerer Power Station, Unit 1: Final

Report.” The NRC is issuing this final EIS as part of its review of the application submitted by TerraPower, LLC (TerraPower) on behalf of US SFR Owner, LLC (USO), a wholly owned subsidiary of TerraPower, for a construction permit (CP) for a Natrium advanced reactor at a site in Lincoln County, Wyoming, designated as Kemmerer Power Station, Unit 1 (Kemmerer Unit 1). USO plans to build and operate Kemmerer Unit 1 to demonstrate the Natrium advanced reactor while ultimately replacing electricity generation capacity in the PacifiCorp service area following planned retirement of existing coal-fired facilities. The final EIS evaluates the environmental impacts of the proposed action of issuing a CP that would allow the construction of Kemmerer Unit 1, as well as the environmental impacts of alternatives to the proposed action.

**DATES:** The final EIS is available as of October 23, 2025.

**ADDRESSES:** Please refer to Docket ID NRC-2024-0078 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2024-0078. Address questions about Docket IDs in *Regulations.gov* to Bridget Curran; telephone: 301-415-1003; email: [Bridget.Curran@nrc.gov](mailto:Bridget.Curran@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC’s Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin 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](mailto:PDR.Resource@nrc.gov). The final EIS is available in ADAMS under Accession No. ML25287A017. The ADAMS accession number for each other 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](mailto:PDR.Resource@nrc.gov) or call 1-800-397-4209 or 301-415-

4737, between 8 a.m. and 4 p.m. eastern time, Monday through Friday, except Federal holidays.

- *Project Website:* The final EIS will also be available online at the Kemmerer Unit 1 project website at <https://www.nrc.gov/reactors/new-reactors/advanced/who-were-working-with/applicant-projects/terrapower.html>.

**FOR FURTHER INFORMATION CONTACT:** Patricia Vokoun, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-3470; email: [Patricia.Vokoun@nrc.gov](mailto:Patricia.Vokoun@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

By letter dated March 28, 2024 (ADAMS Package Accession No. ML24088A059), TerraPower on behalf of USO, a wholly owned subsidiary of TerraPower, submitted to the NRC pursuant to section 103 of the Atomic Energy Act of 1954, as amended, and part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), “Domestic Licensing of Production and Utilization Facilities,” an application for a CP that would allow the construction of Kemmerer Unit 1 in Lincoln County, Wyoming, as part of participation in DOE’s Advanced Reactor Demonstration Program. The proposed facilities would house one 840-megawatt thermal, pool-type, sodium-cooled fast reactor connected to a molten salt energy storage system that enables variable energy supply up to 500 megawatts electric net. This submission initiated the proposed Federal action of determining whether to issue the requested CP. The CP application was supplemented on May 2, 2024 (ADAMS Accession Nos. ML24123A242 and ML24123A243) and on May 9, 2024 (ADAMS Accession No. ML24130A181). A notice of receipt and availability of the CP application was published in the **Federal Register** (FR) on May 14, 2024 (89 FR 42004). A notice of intent to prepare an EIS and to conduct a scoping process was published on June 12, 2024 (89 FR 49917).

As set forth in 10 CFR 51.20(b), issuance of a CP to construct a nuclear power reactor is an action that requires an EIS. This notice is being published in accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the NRC’s regulations implementing NEPA at 10 CFR part 51, “Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.” In addition, pursuant to section 800.8(c) of title 36 of the *Code of the Federal*

*Regulations* (36 CFR), the NRC used the process and documentation for the preparation of the EIS to comply with section 106 of the National Historic Preservation Act of 1966, as amended, in lieu of the procedures set forth in 36 CFR 800.3 through 800.6.

A notice of availability of and request for comment on the draft EIS was published in the **Federal Register** on June 20, 2025 (90 FR 26333). The public comment period on the draft EIS ended on August 4, 2025, and the comments received on the draft EIS are addressed in the final EIS.

##### II. Discussion

As discussed in the final EIS, after weighing the environmental, economic, technical, and other benefits against environmental and other costs, and considering reasonable alternatives, the recommendation is, unless safety issues mandate otherwise, that the NRC issue the requested CP to USO. This recommendation is based on the CP application, information gathered during the environmental audit, and responses to requests for clarifying information; consultation with Federal, State, Tribal, and local agencies; the independent environmental review and assessment summarized in the final EIS; and consideration of public comments received during the scoping process and on the draft EIS. In addition, no environmentally preferable alternatives that meet the purpose and need for the proposed action were identified; therefore, there is no obviously superior alternative to the proposed action from an environmental perspective.

Dated: October 20, 2025.

For the Nuclear Regulatory Commission.

**Kimyata Savoy,**

*Acting Deputy Director, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 2025-19648 Filed 10-22-25; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

[Docket No. 70-7027; NRC-2022-0201]

### TRISO-X, LLC; Special Nuclear Material License Application for the TRISO-X Fuel Fabrication Facility; Draft Environmental Impact Statement

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft Environmental Impact

Statement (EIS) for a Special Nuclear Material License Application for the TRISO-X Fuel Fabrication Facility. TRISO-X, LLC (TRISO-X) would be authorized to possess and use special nuclear material to manufacture high-assay low enriched uranium (HALEU) fuel. The proposed fuel fabrication facility would be located on a 110-acre site at the Horizon Center in Oak Ridge, Roane County, Tennessee.

**DATES:** Members of the public are invited to submit comments by November 17, 2025. Comments received after that 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 that 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-2022-0201. Address questions about Docket IDs in *Regulations.gov* to Bridget Curran; telephone: 301-415-1003; email: [Bridget.Curran@nrc.gov](mailto:Bridget.Curran@nrc.gov). For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Mail comments to:* Office of Administration, Mail Stop: TWFN-7-A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Jill Caverly, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-7674; email: [Jill.Caverly@nrc.gov](mailto:Jill.Caverly@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Obtaining Information and Submitting Comments**

*A. Obtaining Information*

Please refer to Docket ID NRC-2022-0201 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this action using any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2022-0201.

- *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](mailto:PDR.Resource@nrc.gov). The draft EIS is available in ADAMS under Accession No. ML25267A128.

- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to [PDR.Resource@nrc.gov](mailto:PDR.Resource@nrc.gov) or call 1-800-397-4209 or 301-415-4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

- *Public Library:* A copy of the draft EIS for a Special Nuclear Material License Application for the TRISO-X Fuel Fabrication Facility will be available for public review at the Oak Ridge Public Library, 1401 Oak Ridge Turnpike, Oak Ridge, TN 37830.

*B. Submitting Comments*

The NRC encourages electronic comment submission through the Federal Rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC-2022-0201 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**

The NRC has prepared a draft EIS as part of its environmental review of the TRISO-X application for a 40-year

license to possess and use special nuclear material at a fuel fabrication facility (FFF) to be constructed on a 110-acre greenfield site in Oak Ridge, Roane County, Tennessee. This draft EIS assesses the potential environmental impacts of the TRISO-X license application and the associated proposal to construct, operate, and decommission the FFF, as well as an alternative to the proposed action.

The proposed federal action is the issuance of a license, under part 70 title 10 of the *Code of Federal Regulations* (10 CFR), "Domestic Licensing of Special Nuclear Material" to authorize TRISO-X to possess and use special nuclear material to manufacture HALEU fuel at a to-be-constructed FFF. The FFF would produce tri-structural isotropic-based coated particles and final fuel forms using uranium enriched to less than 20 weight percent uranium-235. Issuance of a license enabling the possession and use of special nuclear material at the FFF would be for a first-of-its-kind fabrication operation in the United States.

The draft EIS for TRISO-X's license application includes the NRC staff's preliminary analysis that evaluates the environmental impacts of the proposed action and the no-action alternative to the proposed action. The NRC staff based its recommendation on the following factors:

- The NRC staff's review of TRISO-X's environmental report (included as part of the TRISO-X license application) and associated responses from TRISO-X to requests from the NRC staff for clarifying information;
- The NRC staff's review of comments received as part of the scoping process;
- The NRC staff's communications with Federal, State, and local agencies, as well as Tribal officials; and
- The NRC staff's independent environmental review.

The NRC staff's preliminary recommendation, unless safety issues mandate otherwise, is that the NRC issue the license to possess and use special nuclear material to TRISO-X.

Dated: October 21, 2025.

For the Nuclear Regulatory Commission.

**Kimyata Savoy,**

*Acting Deputy Director, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety, and Safeguards.*

[FR Doc. 2025-19646 Filed 10-22-25; 8:45 am]

**BILLING CODE 7590-01-P**

**OFFICE OF PERSONNEL  
MANAGEMENT**
**Agency Information Collection  
Request: Federal Employees Dental  
and Vision Insurance Program  
Enrollment System, 3206–0272  
Renewal**

**AGENCY:** Office of Personnel Management.

**ACTION:** 30-Day notice and request for comments.

**SUMMARY:** The Office of Personnel Management (OPM) is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. As required by the Paperwork Reduction Act of 1995, amended by the Clinger-Cohen Act, OPM is soliciting comments for this collection. The purpose of this notice is to allow for 30 days of public comment.

**DATES:** Comments are encouraged and will be accepted until November 24, 2025. This process is conducted in accordance with 5 CFR 1320.8(d)(1).

**ADDRESSES:** Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection request by selecting “Office of Personnel Management” under “Currently Under Review,” then check “Only Show ICR for Public Comment” checkbox.

**FOR FURTHER INFORMATION CONTACT:** A copy of this information collection request (ICR), with applicable supporting documentation, may be obtained by contacting Meredith Gitangu, Office of Personnel Management, (202) 606–2678, or send via electronic mail to [FEDVIP@opm.gov](mailto:FEDVIP@opm.gov).

**SUPPLEMENTARY INFORMATION:** As required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2), OPM is soliciting comments for this collection. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on April 25, 2025, at 90 FR 17471. The 60-day comment period closed June 24, 2025. Two (2) comments were received. One commenter commented on OPM changing information to align with E.O. 14168. The commenter responded to OPM’s plans to change information relating to gender by raising concerns of discrimination, impacts on mental health and health equity, labor rights and equal access, accessibility of digital access for low-income and rural communities, enforcement

transparency, and the impact of federal workers’ dignity. OPM thanks the commenter for their submission. As a federal agency, OPM must comply with Section 3(e) of E.O. 14168 requiring forms to list an individual’s sex as male or female and not request gender identity.

The other commenter recommended a National Health Care System and prohibition of private insurance of any kind. OPM thanks the commenter for the input and has determined this comment is outside the scope of this Paperwork Reduction Act (PRA) activity.

The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of 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.

**Abstract:** The Federal Employees Dental and Vision Insurance Program Enrollment System uses BENEFEDS, which is the secure enrollment website sponsored by OPM that allows eligible individuals to enroll or change enrollment in a FEDVIP plan. OPM uses this enrollment system to carry out its responsibility to administer FEDVIP in accordance with 5 U.S.C. chapters 89A and 89B and implementing regulations (5 CFR part 894).

**Analysis**

**Agency:** Office of Personnel Management.

**Title:** Federal Employees Dental and Vision Insurance Program (FEDVIP) Enrollment System.

**OMB Number:** 3206–0272.

**Frequency:** Annual.

**Affected Public:** Individuals or Households.

**Number of Respondents:** 502,347.

**Estimated Time per Respondent:** 7.03 minutes.

*Total Burden Hours:* 58,775 hours.

**Alexys Stanley,**

*Federal Register Liaison.*

[FR Doc. 2025–19643 Filed 10–22–25; 8:45 am]

**BILLING CODE** 6325–64–P

**POSTAL REGULATORY COMMISSION**

[Docket Nos. K2025–155; MC2026–38 and K2026–38; MC2026–39 and K2026–39; MC2026–40 and K2026–40; MC2026–41 and K2026–41; MC2026–42 and K2026–42]

**New Postal Products**

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing for the Commission’s consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* October 28, 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:**
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- I. Introduction
- II. Public Proceeding(s)
- III. Summary Proceeding(s)

**I. Introduction**

Pursuant to 39 CFR 3041.405, the Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to Competitive negotiated service agreement(s). The request(s) may propose the addition of a negotiated service agreement from the Competitive product list or the modification of an existing product currently appearing on the Competitive product list.

The public portions of the Postal Service’s request(s) can be accessed via the Commission’s website (<http://www.prc.gov>). Non-public portions of the Postal Service’s request(s), if any, can be accessed through compliance

with the requirements of 39 CFR 3011.301.<sup>1</sup>

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. MC2026-38 and K2026-38; MC2026-39 and K2026-39; MC2026-40 and K2026-40).

<sup>1</sup> See Docket No. RM2018-3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19-22 (Order No. 4679).

## II. Public Proceeding(s)

1. *Docket No(s)*.: K2025-155; *Filing Title*: USPS Request Concerning Amendment One to Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 534, with Material Filed Under Seal; *Filing Acceptance Date*: October 20, 2025; *Filing Authority*: 39 CFR 3035.105 and 39 CFR 3041.505; *Public Representative*: Almaroof Agoro; *Comments Due*: October 28, 2025.

2. *Docket No(s)*.: MC2026-41 and K2026-41; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1444 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 20, 2025; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Madison Lichtenstein; *Comments Due*: October 28, 2025.

3. *Docket No(s)*.: MC2026-42 and K2026-42; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1445 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 20, 2025; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Samuel Robinson; *Comments Due*: October 28, 2025.

## III. Summary Proceeding(s)

1. *Docket No(s)*.: MC2026-38 and K2026-38; *Filing Title*: USPS Request to Add New Fulfillment Standardized Distinct Product, PM-GA Contract 884, and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 20, 2025; *Filing Authority*: 39 U.S.C. 3642 and 3633, 39 CFR 3035.105, and 39 CFR 3041.325.

2. *Docket No(s)*.: MC2026-39 and K2026-39; *Filing Title*: USPS Request to Add New Fulfillment Standardized Distinct Product, PM-GA Contract 885, and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 20, 2025; *Filing Authority*: 39 U.S.C. 3642 and 3633, 39 CFR 3035.105, and 39 CFR 3041.325.

3. *Docket No(s)*.: MC2026-40 and K2026-40; *Filing Title*: USPS Request to Add New Fulfillment Standardized Distinct Product, PM-GA Contract 886, and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 20, 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. 2025-19645 Filed 10-22-25; 8:45 am]

BILLING CODE 7710-FW-P

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. USTR-2025-0006]

### Notice of Determination and Request for Comments Concerning Action Pursuant to Section 301: Nicaragua's Acts, Policies, and Practices Related to Labor Rights, Human Rights and Fundamental Freedoms, and the Rule of Law

**AGENCY**: Office of the United States Trade Representative.

**ACTION**: Notice of determination and request for comments.

**SUMMARY**: The United States Trade Representative (U.S. Trade Representative) has determined that Nicaragua's acts, policies, and practices related to labor rights, human rights and fundamental freedoms, and the rule of law are unreasonable and burden or restrict U.S. commerce, and are therefore actionable under Section 301 of the Trade Act of 1974. The U.S. Trade Representative is proposing a range of actions, including but not limited to suspension, withdrawal, or prevention of application of benefits of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR) to Nicaragua, and additional duties of up to 100 percent on some or all products of Nicaragua. The Office of the U.S. Trade Representative (USTR) seeks public comments on these proposed actions.

**DATES**: To be assured of consideration, the following schedule applies:

*November 19, 2025*: Due date for written comments.

**ADDRESSES**: Submit documents in response to this notice, including written comments, through the online USTR portal at: <https://comments.ustr.gov/s/>. The docket number for comments is USTR-2025-0006.

**FOR FURTHER INFORMATION CONTACT**: For procedural questions concerning comments, contact the USTR Section 301 support line at (202) 395-5725. Direct all other questions regarding this notice to Philip Butler, Chair of the Section 301 Committee, Leigh Bacon, Chief Counsel for Negotiations, Legislation, and Administrative Law, or

Nathaniel Halvorson, Deputy Assistant U.S. Trade Representative for Monitoring & Enforcement, at (202) 395-5725.

#### SUPPLEMENTARY INFORMATION:

### I. Proceedings in the Investigation

On December 10, 2024, the U.S. Trade Representative initiated an investigation regarding Nicaragua's acts, policies, and practices related to labor rights, human rights, and the rule of law pursuant to 302(b)(1) of the Trade Act of 1974, as amended (Trade Act) (19 U.S.C. 2412(b)(1)). See 89 FR 101088 (December 13, 2024). The notice of initiation solicited written comments on, *inter alia*: Nicaragua's acts, policies, and practices related to labor rights, human rights, and the rule of law; whether Nicaragua's acts, policies, and practices related to labor rights, human rights, and the rule of law are unreasonable or discriminatory; whether Nicaragua's acts, policies, and practices burden or restrict U.S. commerce, and if so, the nature and level of the burden or restriction; and what action, if any, should be taken.

Interested persons filed over 160 written comments. In addition, USTR and the Section 301 Committee convened a public hearing on January 16, 2025, during which witnesses provided testimony and responded to questions. The public submissions are available at: <https://comments.ustr.gov/s/> in docket number USTR-2024-0021, and a transcript of the hearing is available on USTR's website.

On December 10, 2024, the U.S. Trade Representative requested consultations with the Government of Nicaragua pursuant to Section 303(a) of the Trade Act (19 U.S.C. 2413(a)). The Government of Nicaragua has declined to hold consultations regarding the investigation under the statutory framework.

Based on information obtained during the investigation, including the public submissions and the public hearing, USTR and the Section 301 Committee have prepared a comprehensive report on the acts, policies, and practices under investigation. The report supports a determination that Nicaragua's acts, policies, and practices with respect to labor rights, human rights and fundamental freedoms, and the rule of law are unreasonable and burden or restrict U.S. commerce. The report is available on USTR's website.

### II. Nicaragua's Abuses of Labor Rights, Human Rights and Fundamental Freedoms, and the Dismantling of Rule of Law Protections Against Arbitrary Actions

As detailed in the Section 301 report, Nicaragua has engaged in increasingly pervasive abuses of labor rights, as well as human rights and fundamental freedoms, and has systematically dismantled rule of law protections against arbitrary government action.

First, the Ortega-Murillo regime has committed or allowed a number of *abuses of internationally recognized labor rights*. These include repression of freedom of association and collective bargaining; interference in worker and employer organizations; seizure of assets and removal of citizenship of members of worker and employer organizations; arbitrary dismissals and arrests; child and forced labor; human trafficking; and workplace abuses, including wage deductions and theft, and retaliation for claiming rights violations. For example, the Government of Nicaragua controls all major unions, effectively nullifying the right of workers to join independent unions of their choosing, and has arrested and harassed union members to prevent them from organizing freely. The most recent data shows that 47 percent of Nicaraguan children between 10 and 14 years of age are working, including in gold mining operations, production of gravel and crushed stones, and quarrying of pumice.

Second, the Ortega-Murillo regime engages in *abuses of human rights and fundamental freedoms*, including against U.S. persons and property. The regime has repressed religious organizations through the forced closure and seizures of institutions and properties, including, for example, in August 2023, when Nicaragua closed—and seized—the Jesuit-run University of Central America and, in 2024, when Nicaragua arrested and tried the leaders of, and expropriated the property interests of, Nicaragua's largest U.S.-based evangelical church.

Third, the Ortega-Murillo regime has engaged in the *dismantling of the rule of law* in Nicaragua. This includes imposing arbitrary or incorrect fines, taxes, customs inspections, and rulings; revoking the legal status of prominent business organizations; and seizing property interests without legal recourse.

### III. Determination on the Acts, Policies, and Practices Under Investigation

Based on the information obtained during the investigation, reflected in the

public report on the findings in the investigation, and taking account of public comments and the advice of the Section 301 Committee and advisory committees, the U.S. Trade Representative has made the following determination under sections 301(b) and 304(a) of the Trade Act (19 U.S.C. 2411(b) and 2414(a)): the acts, policies, and practices covered in the investigation are unreasonable and burden or restrict U.S. commerce, and are thus actionable under section 301(b) of the Trade Act.

#### *A. Nicaragua's Acts, Policies, and Practices Related to Labor Rights, Human Rights and Fundamental Freedoms, and Rule of Law Are Unreasonable*

The acts, policies, and practices of Nicaragua related to abuses of labor rights, human rights and fundamental freedoms, and dismantling the rule of law are unreasonable within the meaning of the Section 301 statute for several reasons.

First, Nicaragua's acts, policies, and practices are fundamentally unfair and incompatible with norms against abuses of labor rights, human rights and fundamental freedoms, and the rule of law. These acts, policies, and practices run counter to basic norms and principles of fairness, human rights (including security of persons and property, and freedom of association and religion) and the rule of law. Second, Nicaragua's acts, policies, and practices are contrary to the norms, rules, and rights reflected in Nicaragua's own laws and constitution. Third, they are unreasonable in light of regional and international labor and human rights conventions, instruments, agreements, or treaties to which Nicaragua itself is party and that establish norms against the kind of acts, policies, and practices undertaken by Nicaragua's government.

#### *B. Nicaragua's Acts, Policies, and Practices Related to Labor Rights, Human Rights and Fundamental Freedoms, and the Rule of Law Burden or Restrict U.S. Commerce*

Nicaragua's acts, policies, and practices related to labor rights, human rights and fundamental freedoms, and the rule of law burden or restrict U.S. commerce. Through these acts, policies, and practices, Nicaragua has exploited its own workers resulting in unfair conditions of competition, confiscated the property interests of domestic and foreign religious institutions and U.S. persons or businesses, and created a high-risk environment for U.S. companies investing and conducting business in the country.

First, Nicaragua's acts, policies, and practices harm both Nicaraguans directly and U.S. workers and businesses indirectly through exploitation of workers resulting in unfair competition. For example, Nicaragua's exploitation of workers by denying basic labor rights suppresses Nicaraguan workers' wages and results in artificially low-cost Nicaraguan products, to the detriment of U.S. workers and businesses.

Second, Nicaragua's acts, policies, and practices negatively impact the Nicaraguan economy and market, with lost sales and exports for U.S. enterprises seeking to access or operate in Nicaragua's market. For example, Nicaragua's labor rights violations exploit workers, lowering worker wages and promoting unfair competition, which leads to lost sales by U.S. companies, weakens Nicaragua's economy by diminishing worker participation and productivity, and disincentivizes companies from investing and doing business in Nicaragua.

Third, Nicaragua's acts, policies, and practices lead to lost investment and commercial opportunities for U.S. workers and companies, including through the creation of a high-risk environment to invest or conduct business. For example, Nicaragua's attacks on religious freedom have led to unlawful closure and seizure of religious institutions and properties, including of U.S. churches. Likewise, Nicaragua's dismantling of rule of law protections against arbitrary government action has led to diminished investment, exports, and business activity by U.S. companies, higher costs through unjust fines, taxes, or corruption, and lost revenues (or increased costs) through lack of enforcement of court rulings.

#### IV. Proposed Action To Be Taken in the Investigation

Section 301(b) provides that upon determining that the acts, policies, and practices under investigation are actionable and that action is appropriate, the U.S. Trade Representative shall take all appropriate and feasible action authorized under section 301(c), subject to the specific direction, if any, of the President regarding such action, and all other appropriate and feasible action within the power of the President that the President may direct the U.S. Trade Representative to take under section 301(b), to obtain the elimination of that act, policy, or practice.

Section 301(c) of the Trade Act authorizes the U.S. Trade

Representative to take certain actions for purposes of carrying out the provisions of Section 301(b). For example, Section 301(c)(1)(A) authorizes the U.S. Trade Representative to "suspend, withdraw, or prevent the application of, benefits of trade agreement concessions to carry out a trade agreement with the foreign country referred to in such subsection." Section 301(c)(1)(B) also authorizes the U.S. Trade Representative to "impose duties or other import restrictions" on the goods of the foreign country subject to the investigation.

Pursuant to Sections 301(b) and (c), the U.S. Trade Representative proposes to determine that action is appropriate and that appropriate action would include:

- suspending the application of all Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR) benefits to Nicaragua, including tariff concessions and cumulation of Nicaraguan content for other CAFTA-DR partners, immediately or phased in over a period of time up to 12 months;
- suspending the application of some CAFTA-DR benefits to Nicaragua, including tariff concessions and cumulation of Nicaraguan content for other CAFTA-DR partners, immediately or phased in over a period of time up to 12 months;
- applying tariffs of up to 100 percent on all Nicaraguan imports, immediately or phased in over a period of time up to 12 months;
- applying tariffs of up to 100 percent on some Nicaraguan imports immediately, with tariffs for selected sectors phased in over a period of time up to 12 months.

#### V. Request for Public Comments

In accordance with section 304(b) of the Trade Act (19 U.S.C. 2414(b)), USTR invites comments from interested persons with respect to the appropriate action to be taken. To be assured of consideration, you must submit written comments on the proposed action by November 19, 2025, in accordance with the instructions in section VI below.

With respect to the proposed action, USTR invites comments regarding:

- The suspension of the application of CAFTA-DR benefits to Nicaragua, including tariff concessions and cumulation of Nicaraguan content for other CAFTA-DR partners, and the effective date of such suspension.
- The application of increased tariffs on Nicaraguan imports, including the level of increase and the effective date of any increase for specific sectors.

In commenting on the timing of increased duties for specific sectors,

USTR requests that commenters specifically address whether imposing increased duties on particular sectors or suspending or withdrawing concessions on a particular sector, would be practicable or effective to obtain the elimination of Nicaragua's acts, policies, and practices or would cause disproportionate economic harm to U.S. interests, including small- or medium-size businesses and consumers.

Additional instructions on how to submit written comments are provided in section VI below.

#### VI. Procedures for Written Submissions

You must submit written comments using the appropriate docket on the portal at <https://comments.ustr.gov/s/>. All submissions must be in English. To submit written comments, use the docket on the portal entitled "Request for Comments Concerning Proposed Action Pursuant to the Section 301 Investigation of Nicaragua's Acts, Policies, and Practices Related to Labor Rights, Human Rights and Fundamental Freedoms, and Rule of Law", docket number USTR-2025-0006.

You do not need to establish an account to submit comments. The first screen of each docket allows you to enter identification and contact information. Third party organizations such as law firms, trade associations, or customs brokers, should identify the full legal name of the organization they represent, and identify the primary point of contact for the submission. Information fields are optional; however, your comment or request may not be considered if insufficient information is provided.

Fields with a gray Business Confidential Information (BCI) notation are for BCI information which will not be made publicly available. Fields with a green (Public) notation will be viewable by the public.

After entering the identification and contact information, you can complete the remainder of the comment, or any portion of it by clicking "Next." You may upload documents at the end of the form and indicate whether USTR should treat the documents as business confidential or public information.

Any page containing BCI must be clearly marked 'BUSINESS CONFIDENTIAL' on the top of that page and the submission should clearly indicate, via brackets, highlighting, or other means, the specific information that is BCI. If you request business confidential treatment, you must certify in writing that disclosure of the information would endanger trade secrets or profitability, and that the

information would not customarily be released to the public.

Parties uploading attachments containing BCI also must submit a public version of their comments. If these procedures are not sufficient to protect BCI or otherwise protect business interests, please contact the USTR Section 301 support line at (202) 395-5725 to discuss whether alternative arrangements are possible.

USTR will post attachments uploaded to the docket for public inspection, except for properly designated BCI. You can view submissions on USTR's electronic portal at <https://comments.ustr.gov/sl>.

**Jennifer Thornton,**

*General Counsel, Office of the United States Trade Representative.*

[FR Doc. 2025-19635 Filed 10-22-25; 8:45 am]

**BILLING CODE 3390-F4-P**

## UNIFIED CARRIER REGISTRATION PLAN

### Sunshine Act Meetings

**TIME AND DATE:** October 28, 2025, 1:00 p.m. to 4:00 p.m., Eastern time.

**PLACE:** The meeting will be accessible via conference call and via Zoom Meeting and Screenshare. Any interested person may call (i) 1-929-205-6099 (US Toll) or 1-669-900-6833 (US Toll), Meeting ID: 929 6415 1687, to listen and participate in this meeting. The website to participate via Zoom Meeting and Screenshare is <https://kellen.zoom.us/meeting/register/DqjOGBmGToSFEAN94vV4tA>.

**STATUS:** This meeting will be open to the public.

**MATTERS TO BE CONSIDERED:** The Unified Carrier Registration Plan Enforcement Subcommittee (the "Subcommittee") will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement. The subject matter of this meeting will include:

### Proposed Agenda

#### I. Call to Order—UCR Enforcement Subcommittee Chair

The UCR Enforcement Subcommittee Chair will welcome attendees, call the meeting to order, call roll for the Subcommittee, confirm whether a quorum is present, and facilitate self-introductions.

#### II. Verification of Publication of Meeting Notice—UCR Executive Director

The UCR Executive Director will verify the publication of the meeting notice on the UCR website and distribution to the UCR contact list via email followed by the subsequent publication of the notice in the **Federal Register**.

#### III. Review and Approval of Subcommittee Agenda and Setting of Ground Rules—UCR Enforcement Subcommittee Chair

*For Discussion and Possible Subcommittee Action*

The Subcommittee Agenda will be reviewed, and the Subcommittee will consider adoption.

#### Ground Rules

➤ Subcommittee action only to be taken in designated areas on agenda.

#### IV. Review and Approval of Subcommittee Minutes From the July 16, 2025, Meeting—UCR Enforcement Subcommittee Chair

*For Discussion and Possible Subcommittee Action*

The draft minutes from the July 16, 2025, Subcommittee meeting will be reviewed. The Subcommittee will consider action to approve.

#### V. Enforcement Performance Snapshot Through Q3 2025—UCR Enforcement Subcommittee Chair, UCR Enforcement Subcommittee Vice-Chair

The UCR Enforcement Subcommittee Chair and Vice-Chair will present an overview of enforcement activity and compliance rates through the third quarter of 2025, highlighting trends and areas of focus.

#### VI. Planning for 2026 Enforcement Awareness Initiatives—UCR Enforcement Subcommittee Chair, UCR Enforcement Subcommittee Vice-Chair

The UCR Enforcement Subcommittee Chair and Vice-Chair will lead a discussion on the proposed dates for the 2026 Enforcement Awareness Weeks: January 11-17 (aligned with 2025 schedule and avoids the MLK holiday); June 7-13 (scheduled to avoid Juneteenth observance).

#### VII. Jurisdictional Mandates—Level 5 & 7 Inspections on Passenger Carriers—UCR Enforcement Subcommittee Chair, UCR Enforcement Subcommittee Vice-Chair

The UCR Enforcement Chair and Vice-Chair will review current mandates

requiring Level 5 and Level 7 inspections for passenger carriers, including jurisdictional compliance and enforcement strategies.

#### VIII. Expanding Jurisdictional Engagement—UCR Enforcement Subcommittee Chair, UCR Enforcement Subcommittee Vice-Chair

The UCR Enforcement Chair and Vice-Chair will lead a discussion on outreach efforts to additional jurisdictions to broaden enforcement collaboration.

#### IX. Visor Cards for Enforcement Personnel—UCR Enforcement Subcommittee Chair, UCR Enforcement Subcommittee Vice-Chair

The UCR Enforcement Chair and Vice-Chair will provide an update on the production and distribution of UCR visor cards to support enforcement personnel.

#### X. Virtual Enforcement Training—UCR Enforcement Subcommittee Chair, UCR Enforcement Subcommittee Vice-Chair

The UCR Enforcement Chair and Vice-Chair will lead a discussion concerning the establishment of a quarterly virtual training series for enforcement officers, modeled after the successful UCR auditor training program. The initiative aims to enhance knowledge sharing, standardization, and professional development.

#### XI. Other Business—UCR Enforcement Subcommittee Chair

The UCR Enforcement Subcommittee Chair will call for any other items Subcommittee members would like to discuss.

#### XII. Adjournment—UCR Enforcement Subcommittee Chair

The UCR Enforcement Subcommittee Chair will adjourn the meeting.

The agenda will be available no later than 5:00 p.m. Eastern time, October 20, 2025 at: <https://plan.ucr.gov>.

**CONTACT PERSON FOR MORE INFORMATION:** Elizabeth Leaman, Chair, Unified Carrier Registration Plan Board of Directors, (617) 305-3783, [eleaman@board.ucr.gov](mailto:eleaman@board.ucr.gov).

**Alex B. Leath,**

*Chief Legal Officer, Unified Carrier Registration Plan.*

[FR Doc. 2025-19647 Filed 10-21-25; 4:15 pm]

**BILLING CODE 4910-YL-P**



# FEDERAL REGISTER

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Part II

## Department of Homeland Security

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8 CFR Parts 106 and 216

U.S. Citizenship and Immigration Services Employment-Based Immigrant  
Visa, Fifth Preference (EB-5) Fee Rule; Proposed Rule

**DEPARTMENT OF HOMELAND SECURITY****8 CFR Parts 106 and 216**

[CIS No. 2777–24; DHS Docket No. USCIS–2025–0139]

RIN 1615–AC93

**U.S. Citizenship and Immigration Services Employment-Based Immigrant Visa, Fifth Preference (EB–5) Fee Rule****AGENCY:** U.S. Citizenship and Immigration Services, DHS.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Homeland Security (DHS) proposes to adjust Employment-Based Immigration, Fifth Preference (EB–5) immigration benefit request fees charged by U.S. Citizenship and Immigration Services (USCIS). This rule also proposes to codify certain elements of the EB–5 Reform and Integrity Act of 2022 and implement new statutory requirements. DHS intends for the rule to provide USCIS with the resources necessary to accomplish the goals of the EB–5 Reform and Integrity Act of 2022 and enhance and maintain the integrity of the EB–5 program.

**DATES: *Submission of Public Comments:*** Written comments must be submitted on this proposed rule on or before December 22, 2025. The electronic Federal Docket Management System will accept comments prior to midnight eastern time at the end of that day.

**ADDRESSES:** You may submit comments on the entirety of this proposed rule package, identified by DHS Docket No. USCIS–2025–0139, through the Federal eRulemaking Portal: <https://www.regulations.gov>. In accordance with 5 U.S.C. 553(b)(4), the summary of this rule found above may also be found at <https://www.regulations.gov>. Follow the website instructions for submitting comments. Comments must be submitted in English, or an English translation must be provided. Comments that will provide the most assistance to USCIS in implementing these changes will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. Comments submitted in a manner other than the one listed earlier, including emails or letters sent to DHS or USCIS officials, will not be considered comments on the proposed rule and may not receive a response from DHS. Please note that DHS and USCIS cannot accept any

comments that are hand delivered or couriered. In addition, USCIS cannot accept comments contained on any form of digital media storage devices, such as CDs/DVDs and USB drives. USCIS is also not accepting mailed comments at this time. If you cannot submit your comment by using <https://www.regulations.gov>, please contact the Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by telephone at 240–721–3000 for alternate instructions.

**FOR FURTHER INFORMATION CONTACT:** Office of the Chief Financial Officer, U.S. Citizenship and Immigration Services, Department of Homeland Security, 5900 Capital Gateway Drive, Camp Springs, MD 20746; telephone 240–721–3000.

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**Table of Abbreviations**

ABC	Activity-Based Costing
BLS	Bureau of Labor Statistics
CEQ	Council on Environmental Quality
CFO	Chief Financial Officer
CFR	Code of Federal Regulations
CPI–U	Consumer Price Index for All Urban Consumers
DHS	Department of Homeland Security
DOL	Department of Labor
EB–5	Employment-Based Immigration Visa Classification, Fifth Preference
E.O.	Executive Order
FDNS	Fraud Detection and National Security Directorate
FR	Federal Register
FY	Fiscal Year
GAO	Government Accountability Office
IEFA	Immigration Examinations Fee Account
INA	Immigration and Nationality Act of 1952
IOAA	Independent Offices Appropriations Act
IPO	Immigrant Investor Program Office
IRFA	Initial Regulatory Flexibility Analysis
JCE	Job-Creating Entity
NAICS	North American Industry Classification System
NCE	New Commercial Enterprise
NEPA	National Environmental Policy Act
OIRA	Office of Information and Regulatory Affairs
OPQ	Office of Performance and Quality
PRA	Paperwork Reduction Act
RFA	Regulatory Flexibility Act
RIA	Regulatory Impact Analysis
SBA	Small Business Administration
SOC	Standard Occupational Code
TEA	Targeted Employment Area
UMRA	Unfunded Mandates Reform Act
USCIS	U.S. Citizenship and Immigration Services
VPC	Volume Projection Committee

**I. Public Participation**

DHS invites all interested parties to participate in this rulemaking by submitting written data, views, comments, and arguments on all aspects of this proposed rule. DHS also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Comments must be submitted in English, or an English translation must be provided. Comments that will provide the most assistance to USCIS in implementing these changes will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. Comments submitted in a manner other than the one listed earlier, including emails or letters sent to DHS or USCIS officials, will not be considered comments on the proposed rule and may not receive a response from DHS.

*Instructions:* If you submit a comment, you must include the agency name (U.S. Citizenship and Immigration Services) and the DHS Docket No. USCIS–2025–0139 for this rulemaking. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at <https://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider

limiting the amount of personal information that you provide in any voluntary public comment submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy and Security Notice available at <https://www.regulations.gov>.

*Docket:* For access to the docket and to read background documents or comments received, go to <https://www.regulations.gov>, referencing DHS Docket No. USCIS–2025–0139. The docket includes additional documents that support the analysis contained in this proposed rule to determine the specific fees that are proposed. You may also sign up for email alerts on the online docket to be notified when comments are posted, or a final rule is published.

**II. Executive Summary**

*A. Purpose and Major Provisions of the Regulatory Action*

DHS proposes to adjust EB–5 immigration benefit request fees to meet certain requirements provided in the EB–5 Reform and Integrity Act of 2022, div. BB of the Consolidated Appropriations Act, 2022, Public Law 117–103 (EB–5 Reform Act), and continue to adequately fund the cost of administering the EB–5 program. DHS proposes the following major changes:

- Adjusting EB–5 program fees according to the schedule in Table 1;

- Establishing the USCIS EB–5 technology fee;
- Codifying EB–5 Integrity Fund fees and penalties; and
- Establishing Form I–527, Amendment to Legacy Form I–526.
- Clarifying the process by which an alien investor’s spouse and children file separate Form I–829 petitions when they are not included in the Form I–829 filed by the alien investor.

*B. Summary of the Proposed EB–5 Program Fees*

Table 1 summarizes the fees that DHS is proposing in this rule to meet EB–5 Reform Act requirements. The fees in the column titled Current Fees are the fees that DHS currently collects. See 8 CFR part 106. The fees in the column titled Proposed Fee(s) are the fees DHS proposes in this rule. The final two columns display the difference between current and proposed fees, based on dollar value and percentage. In addition, the draft version of USCIS Form G–1055, USCIS Fee Schedule, included in the docket for this rulemaking uses these proposed fees.

In certain cases, the proposed fee may be the sum of several fees. For example, as described in Section IV.D.2 of this preamble, the initial I–526 and I–526E EB–5 immigration benefit requests require an additional technology fee under this proposed rule. The table includes rows with the technology fee added to the Proposed Fee(s) column for clarity.

TABLE 1—COMPARISON OF CURRENT AND PROPOSED EB–5 FEES

Immigration benefit request	Current fee(s)	Proposed fee(s)	\$ Difference	% Difference
I–526 Immigrant Petition by Standalone Investor—Initial (with \$95 technology fee) .....	\$11,160	\$9,625	(\$1,535)	– 14
I–526E Immigrant Petition by Regional Center Investor—Initial (with \$95 technology fee) .....	11,160	9,625	(1,535)	– 14
I–526E Immigrant Petition by Regional Center Investor—Amendment .....	11,160	9,530	(1,630)	– 15
I–527 Amendment to Legacy Form I–526 .....	0	8,000	8,000	N/A
I–829 Petition by Investor to Remove Conditions on Permanent Resident Status .....	9,525	7,860	(1,665)	– 17
I–956 Application for Regional Center Designation—Initial (with Regional Center Termination cost) .....	47,695	28,895	(18,800)	– 39
I–956 Application for Regional Center Designation—Amendment (with Regional Center Termination cost) .....	47,695	18,480	(29,215)	– 61
I–956F Application for Approval of an Investment in a Commercial Enterprise—Initial or amendment (with Regional Center Termination cost) .....	47,695	29,935	(17,760)	– 37
I–956G Regional Center Annual Statement—Initial, amendment, or supplement .....	4,470	2,740	(1,730)	– 39
I–956H Bona Fides of Persons Involved with Regional Center Program .....	0	55	55	N/A
I–956K Registration for Direct and Third-Party Promoters .....	0	2,740	2,740	N/A

The EB–5 Reform Act established a special fund to be known as the EB–5 Integrity Fund. INA sec. 203(b)(5)(J), 8 U.S.C. 1153(b)(5)(J). The EB–5 Reform

Act requires the Integrity Fund to be financed through the collection of an annual fee (\$10,000 or \$20,000 annually) paid by and collected from

designated regional centers in relation to the number of total investors. INA sec. 203(b)(5)(J)(ii), 8 U.S.C. 1153(b)(5)(J)(ii). In addition, the

Integrity Fund is financed by the collection of \$1,000 from each regional center petitioner with their filing of a Form I-526E. *Id.*

DHS also proposes imposing penalties for failing to pay and for late payments of the EB-5 Integrity Fund fees. INA sec. 203(b)(5)(J), 8 U.S.C. 1153(b)(5)(J) requires a reasonable penalty fee for a regional center that does not pay the annual Integrity Fund fee within 30 days after the date on which such fee is due, and termination of a regional center that does not pay the fee within 90 days. DHS proposes to impose the following:

- Ten percent of the required integrity fee (e.g. 10 percent of \$10,000 or \$20,000 prior to adjusting such required amounts for inflation) for a regional center that pays its fees on day 31 through and including day 60 after the due date.
- Twenty percent of the required integrity fee for a regional center if their fee is paid on day 61 through and including day 90 after it is due.
- Termination of a regional center's designation if it fails to pay the fee within 90 days of the date on which such fee is due.

This rule proposes to codify in regulation the fees and penalties associated with the Integrity Fund, as explained in Section V of this preamble.

Finally, the rule clarifies when an immigrant investor's derivatives should be included in the principal alien investor's Form I-829 petition.<sup>1</sup> The regulations currently in effect do not clearly define the process by which derivatives may file a Form I-829 petition when they are not included on the principal's petition, including whether each derivative in such cases should file their own separate Form I-829 petition or whether the derivatives should jointly file on the same petition. This rule proposes: (1) when the principal is deceased, all derivatives (spouse and children) of the deceased investor may be included on a single Form I-829 petition, (2) each derivative must otherwise file a separate Form I-829 petition when the spouse and children are not included on the investor's Form I-829 petition, and (3) for any derivative beneficiary who files a Form I-829 petition separately from the principal investor, the deadline to

<sup>1</sup> DHS proposed and finalized this change as part of the EB-5 Immigrant Investor Program Modernization rulemaking. See 82 FR 4738 (Jan. 13, 2017) (proposed rule); 84 FR 35750 (July 24, 2019) (final rule). On June 22, 2021, a U.S. district court vacated the rule on grounds unrelated to this provision. *Behring Regional Center LLC v. Wolf*, 544 F. Supp. 3d 937 (N.D. Cal. 2021).

file is the same as would have applied to the principal investor.

### C. Summary of Economic Impacts

The fee schedule DHS is proposing would impact about 11,260<sup>2</sup> EB-5 program form filings annually and decrease form fees by about 14.7 percent, or by about \$2,259 based on a projected volume-weighted per form average. The impact for these 11,260 filings could accrue to individual investors,<sup>3</sup> regional centers,<sup>4</sup> and other persons or businesses involved in promoting program investments.

DHS estimates that the 10-year and annualized monetized costs would be about \$42.1 million and \$4.2 million, in order, in undiscounted terms. At a 3 percent discount rate, the figures would be \$35.9 million and \$3.6 million, in order. At a 7 percent discount rate, the figures would be \$29.6 million and \$3.0 million, in order. Impacts associated with filing the new Form I-527, as well as a few expected Form I-829 filings from dependents separate from the principal filers, are categorized as costs, as are changes in forms' burdens. The proposed fee changes (for EB-5 program forms that currently exist) would constitute transfer payments from DHS to requestors, estimated to be \$830.7 million over a 10-year period (a reduction of \$244.1 million from current filing fees).<sup>5</sup> Penalties and fees would also be classified as costs but are not estimated and quantified. There are also likely to be familiarization costs associated with the proposed rule.

Based on limited data and information, DHS analysis suggests that most regional centers and almost all new commercial enterprises (NCEs)<sup>6</sup> and job-creating entities (JCEs) involved in program investment activity would

<sup>2</sup> Volume is rounded from 11,262, comprising 10,805 projected FY 2024/2025 current forms and 457 new Form I-527 filings, (see Table 3, Projected Average Annual Receipts for EB-5 Immigration Benefit Requests in FY 2024/2025 Fee Review).

<sup>3</sup> For most investors the impact would be a lower fee; however, a new fee would accrue to investors who file an amendment on proposed new Form I-527.

<sup>4</sup> Regional centers would pay lower fees for their applications; however, they could be impacted by the new fee for those involved with the regional center program filing the Form I-956H.

<sup>5</sup> Transfer payments are monetary payments from one group to another that do not affect total resources available to society. See OMB Circular A-4 pp. 14 and 38 for further discussion of transfer payments and distributional effects. OMB Circular A-4 is available at: <https://trumpwhitehouse.archives.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf>.

<sup>6</sup> A "new commercial enterprise" is "any for-profit organization formed in the United States for the ongoing conduct of lawful business . . . that receives, or is established to receive, capital investment from [employment-based immigrant] investors." INA sec. 203(b)(5)(D)(vi).

be small entities under the Regulatory Flexibility Act of 1980 (RFA). Complete details on the possible impacts, a formal accounting statement, and important caveats to the initial small entity determination are provided in Section VI, Parts A and B, of this document.

## III. Background and Purpose

### A. The EB-5 Program

Congress created the EB-5 program in 1990 to stimulate the U.S. economy through job creation and capital investment by immigrant investors. Public Law 101-649, 104 Stat. 4978 (Nov. 29, 1990). Subsequently, the EB-5 regional center program was added in 1992 by the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, Public Law 102-395, sect. 610, 106 Stat 1828 (Oct. 6, 1992) (repealed 2022). As amended by the EB-5 Reform Act, the EB-5 program makes approximately 10,000 visas available annually to qualified immigrants (and their dependents) who invest at least \$1,050,000, or a discounted amount of \$800,000 if the investment is in a targeted employment area (TEA) (which includes certain rural areas and areas of high unemployment) or an infrastructure project, in a U.S. business that will create at least 10 full-time jobs in the United States for qualifying employees. See INA sec. 203(b)(5)(A)-(C), 8 U.S.C. 1153(b)(5)(A)-(C). Investors may satisfy up to 90 percent of the job creation requirements with jobs that are estimated to be created indirectly through qualifying investments within a new commercial enterprise associated with a regional center designated by USCIS for participation in the regional center program. INA sec. 203(b)(5)(E)(iv), 8 U.S.C. 1153(b)(5)(E)(iv).

USCIS is committed to maintaining the integrity and efficient administration of the EB-5 program.<sup>7</sup> As

<sup>7</sup> The DHS Office of the Inspector General (OIG) and U.S. Government Accountability Office (GAO) previously reviewed the EB-5 program and made recommendations. See OIG, OIG-14-19, "United States Citizenship and Immigration Services' Employment-Based Fifth Preference (EB-5) Regional Center Program" (Dec. 2013), [https://www.oig.dhs.gov/sites/default/files/assets/Mgmt/2014/OIG\\_14-19\\_Dec13.pdf](https://www.oig.dhs.gov/sites/default/files/assets/Mgmt/2014/OIG_14-19_Dec13.pdf); GAO, GAO-15-696, "Immigrant Investor Program: Additional Actions Needed to Better Assess Fraud Risks and Report Economic Benefit" (Aug. 12, 2015), <https://www.gao.gov/products/gao-15-696>; GAO, GAO-16-828, "Immigrant Investor Program: Progress Made to Detect and Prevent Fraud, but Additional Actions Could Further Agency Efforts" (Sept. 13, 2016), <https://www.gao.gov/products/gao-16-828>. GAO also reviewed USCIS fraud detection efforts, including those for EB-5. See GAO, GAO-22-105328, "U.S. Citizenship and Immigration Services: Additional Actions Needed to Manage

part of that commitment, beginning in fiscal year (FY) 2013, USCIS created the Immigrant Investor Program Office (IPO) in Washington, DC, to manage EB–5 matters. IPO consists of staff with expertise in economics, law, business, finance, securities, and banking to enhance consistency, timeliness, and integrity within the program. Since its creation, IPO has added staff and technology focused on managing the program, identifying and preventing fraud, and ensuring national security, public safety, and compliance within the program, and developed employees' expertise in financial investigations, anti-money laundering, and global sanctions.

IPO also hired auditors to complete regional center compliance reviews of annual certification filings. See INA sec. 203(b)(5)(G), 8 U.S.C. 1153(b)(5)(G); 8 CFR 204.6(m)(6). Section 203(b)(5)(E)(vii) of the INA, as added by the EB–5 Reform Act, requires USCIS to audit each designated regional center at least once every 5 years. Regional center audits enhance EB–5 program integrity by verifying information in regional center applications, annual certifications, and associated investor petitions.<sup>8</sup> Currently, IPO generally conducts regional center audits in accordance with Generally Accepted Government Auditing Standards.<sup>9</sup> USCIS plans and performs the audits to obtain sufficient, appropriate evidence to provide a reasonable basis for its findings and conclusions based on the audit objectives. An audit provides USCIS the opportunity to verify the information submitted by designated regional centers in applications, petitions, and annual statements, and to confirm compliance with applicable laws and authorities to ensure continued eligibility for regional center designation. The audit includes, for example, researching information in government systems, reviewing commercial and public records, and substantiating evidence that accompanies regional center applications and certifications. It also includes obtaining information, on a

consensual basis, through requests for evidence, virtual meetings, and if necessary, an in-person audit.

The EB–5 Reform Act specifically supports or requires new fraud, national security and public safety functions for EB–5 adjudications. INA sec. 203(b)(5)(F)(iv), 8 U.S.C. 1153(b)(5)(F)(iv) (site visits); INA sec. 203(b)(5)(H)(iii), 8 U.S.C. 1153(b)(5)(H)(iii) (background checks); INA sec. 203(b)(5)(N)–(O), 8 U.S.C. 1153(b)(5)(N)–(O) (national security/fraud determinations); INA sec. 203(b)(5)(R), 8 U.S.C. 1153(b)(5)(R) (Office of Foreign Asset Control checks). In addition, DHS has the general authority to verify any information submitted to establish eligibility for immigration benefits at any time to ensure compliance with laws and authorities that authorize or govern the benefit, program, process, or status. See, e.g., INA sec. 103(a)(3), 8 U.S.C. 1103(a)(3); 8 CFR 103.2(b)(1).

USCIS will verify information and validate the assertions made and evidence provided in EB–5-related immigration benefit requests. USCIS verifies the eligibility of the requestor and validates the information they submitted using various methods of investigation, which include reviewing public records and information; contacting requesters, investors, employees, and related entities; reviewing information in the requestors' U.S. government records; and accessing publicly available records. USCIS conducts random and for-cause site visits and shares information with law enforcement agencies. USCIS intelligence research specialists assess national security concerns, review annual filings of regional centers, and audit regional centers to ensure ongoing compliance with the program. If adverse or derogatory information results from an audit, compliance review, verification, or site visit, USCIS generally will deny the request, revoke approval, or terminate the requestor's current status.<sup>10</sup>

The EB–5 Reform Act authorizes DHS to propose fees in this rule that will, among other things, recover the costs of adjudicating EB–5 immigration benefit requests. See Public Law 117–103, div. BB, sec. 106(b) and 106(c). Those costs include primary adjudication staff, supporting staff, technology for managing the EB–5 program, conducting audits, and the relevant portion of the costs of the Administrative Site Visit

and Verification Program.<sup>11</sup> These costs are described in the remaining sections of this rule and the fee study that is published as an addendum to this rule for the public to review and comment on.

#### B. USCIS Fees

USCIS is primarily funded by fees charged to applicants, petitioners, and requestors for immigration and naturalization benefit requests. USCIS manages the following four fee accounts:

- The Immigration Examinations Fee Account (IEFA), which includes premium processing revenues (INA secs. 286(m), (n), (t), and (u); 8 U.S.C. 1356(m), (n), (t), and (u));
- The Fraud Prevention and Detection Account (INA secs. 214(c)(12) and (13), 286(v); 8 U.S.C. 1184(c)(12) and (13), 1356(v));
- The H–1B Nonimmigrant Petitioner Account (INA secs. 214(c)(9) and (11), 286(s); 8 U.S.C. 1184(c)(9) and (11), 1356(s)); and
- The EB–5 Integrity Fund (INA sec. 203(b)(5)(J), 8 U.S.C. 1153(b)(5)(J)).

When USCIS provides adjudication and naturalization services, it is authorized to set IEFA fees at a level that will ensure recovery of the full costs of providing all such services. See INA sec. 286(m), 8 U.S.C. 1356(m). The fees that are collected from individuals and entities filing immigration benefit requests are deposited into the IEFA. *Id.* These fees fund the cost of adjudicating immigration benefit requests, including those provided without charge to refugee, asylum, and certain other applicants or petitioners. The IEFA accounted for approximately 94 percent of total funding for USCIS in FY 2023. The IEFA includes premium and non-premium processing revenues. Premium processing refers to the additional fees for expedited processing established under section 286(u) of the INA, 8 U.S.C. 1356(u). Non-premium processing refers to all other adjudication and naturalization services that USCIS funds from the IEFA account, including the costs of similar services provided without charge. IEFA non-premium funding represented approximately 73 percent, and IEFA premium funding represented approximately 21 percent of USCIS' FY 2023 total funding.<sup>12</sup> The remaining

Fraud Risks" (Sept. 19, 2022), <https://www.gao.gov/products/gao-22-105328>; GAO, GAO–23–106452, "Immigrant Investor Program: Opportunities Exist to Improve Fraud and National Security Risk Monitoring" (Mar. 18, 2023), <https://www.gao.gov/products/gao-23-106452>.

<sup>8</sup> See USCIS, "EB–5 Regional Center Audits," <https://www.uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-immigrant-investor-regional-centers/eb-5-regional-center-audits> (last updated Apr. 9, 2024).

<sup>9</sup> See GAO, GAO–24–106786, "Yellow Book: Government Auditing Standards: 2024 Revision" (Feb. 1, 2024), <https://www.gao.gov/yellowbook>.

<sup>10</sup> USCIS provides an opportunity to address any adverse or derogatory information before denial, revocation, or termination. See 8 CFR 103.2(b)(16)(i).

<sup>11</sup> See USCIS, "Administrative Site Visit and Verification Program," <https://www.uscis.gov/about-us/organization/directorates-and-program-offices/fraud-detection-and-national-security-directorate/administrative-site-visit-and-verification-program> (last updated May 13, 2025).

<sup>12</sup> See DHS, USCIS Budget Overview: FY 2025 Congressional Justification, <https://www.dhs.gov/>

USCIS funding came from appropriations (approximately 5 percent) or other fee accounts (approximately 1 percent) in FY 2023.<sup>13</sup> While premium processing funds are also IEFA fees, this rule does not propose premium processing fee changes or consider premium processing costs or revenue as part of the EB-5 fee setting approach described in this preamble.

The Fraud Prevention and Detection Account<sup>14</sup> and H-1B Nonimmigrant Petitioner Account<sup>15</sup> are both funded by fees for which the dollar amount is set by statute. DHS has no authority to adjust the fees for these accounts. The EB-5 Integrity Fund, a new account established in FY 2023, is discussed in a separate section of this preamble. See Section V of this preamble.

Since its inception, the EB-5 program has been funded by fees set by DHS under the IEFA authority. Historically, the fees that USCIS charges for its services that are deposited into the IEFA are generally described as “IEFA fees,”

[sites/default/files/2024-04/2024\\_0325\\_us\\_citizenship\\_and\\_immigration\\_services.pdf](https://www.federalregister.gov/sites/default/files/2024-04/2024_0325_us_citizenship_and_immigration_services.pdf).

<sup>13</sup> *Id.*

<sup>14</sup> The Fraud Prevention and Detection fees charged to certain employers petitioning for nonimmigrant workers in the H-1B, H-2B, and L-1 visa classifications are set by statute. Revenue is used for activities related to preventing and detecting fraud in immigration benefit requests. See 8 U.S.C. 1356(v)(2)(B) (“One-third of the amounts deposited into the Fraud Prevention and Detection Account shall remain available to the Secretary of Homeland Security until expended for programs and activities to prevent and detect immigration benefit fraud, including fraud with respect to petitions filed under paragraph (1) or (2)(A) of section 1184(c) of this title to grant an alien nonimmigrant status described in subparagraph (H) or (L) of section 1101(a)(15) of this title.”). Revenue is shared equally among USCIS, Department of State, and DOL. Effective July 25, 2018, USCIS also collects and retains the \$50 Commonwealth of the Northern Mariana Islands fraud fee. See 48 U.S.C. 1806(a)(6)(iv). DHS interprets Fraud Prevention and Detection Account authority as providing supplemental funding to cover activities related to fraud prevention and detection and not prescribing that only those funds may be used for that purpose. The Fraud Detection and National Security Directorate (FDNS) is funded out of both the IEFA and the Fraud Prevention and Detection Account. The fees deposited in the Fraud Prevention and Detection Account are fixed by statute and are insufficient to cover the full costs of FDNS. Therefore, USCIS uses both Fraud Prevention and Detection Account and IEFA funds for FDNS costs.

<sup>15</sup> Certain H-1B fees are required by other laws. Revenue is shared among USCIS, DOL, and the National Science Foundation. USCIS receives 5 percent of these funds. USCIS uses the H-1B Nonimmigrant Petitioner Account as supplemental funding for the limited H-1B petition and petition for immigrant worker adjudication activities authorized by statute. See 8 U.S.C. 1356(s)(5). The H-1B Nonimmigrant Petitioner Account does not fully fund the H-1B program at USCIS. As such, USCIS also uses IEFA fees to administer the program. IEFA fees are not required for those limited purposes authorized or required by sec. 1356(s)(5).

while the costs to provide such services—which are generally used as the basis to develop the IEFA fees—are described as “IEFA costs.” See, e.g., FY 2022/2023 fee rule, 89 FR 6194 (Jan. 31, 2024).

DHS issued a final rule to adjust the USCIS fee schedule on August 3, 2020. See 2020 fee rule, 85 FR 46788 (Aug. 3, 2020). The rule was scheduled to become effective on October 2, 2020. However, the rule was preliminarily enjoined, and USCIS did not implement the fees set out in the 2020 fee rule, though the provisions remained in the CFR until they were replaced by the FY 2022/2023 fee rule, effective April 1, 2024.<sup>16</sup>

### C. Legal Authority and Guidance

#### 1. EB-5 Reform and Integrity Act of 2022

DHS publishes this proposed rule under the authority of the EB-5 Reform Act. Among other things, the EB-5 Reform Act immediately repealed the former authorizing statutory provisions for the Regional Center Program under the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, Public Law 102-395, 106 Stat. 1828, sec. 610, and added new authorizing provisions to the Immigration and Nationality Act of 1952 (INA), substantially reforming the Regional Center Program effective May 14, 2022. The reformed Regional Center Program is authorized through September 30, 2027.<sup>17</sup>

The EB-5 Reform Act also directed DHS to conduct a fee study and set fees for EB-5 program-related immigration benefit requests.<sup>18</sup> Thus, DHS proposes the fees in this rule as authorized in section 106 of the Reform Act.

Specifically, the EB-5 Reform Act provides discretion for DHS to set fees to sufficiently recover the costs of providing such services, and attaining the goal of completing adjudications, on average, not later than:

<sup>16</sup> *Immigrant Legal Res. Ctr. v. Wolf*, 491 F. Supp. 3d 520 (N.D. Cal. 2020) (*ILRC*); *Nw. Immigrant Rights Project v. USCIS*, 496 F. Supp. 3d 31 (D.D.C. 2020) (*NWIRP*).

<sup>17</sup> This rule and its supporting analysis assume that the program will be extended and will not sunset on this date, as Congress has a history of reauthorizing the program when it is set to end. See, e.g., Public Law 112-176, 126 Stat. 1325.

<sup>18</sup> Although the deadline provided in section 106(b) for promulgation of the regulations has passed, the Supreme Court has repeatedly held that “if a statute does not specify a consequence for noncompliance with statutory timing provisions”—which the EB-5 Reform Act does not—the agency is not deprived of its power to act. *Barnhart v. Peabody Coal Co.*, 537 U.S. 149, 159 (2003) (quoting *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 63 (1993)).

- 180 days after receiving a regional center application (Form I-956) or application for approval of an investment in an NCE (Form I-956F);
- 90 days after receiving an application for approval of an investment in an NCE (Form I-956F) with respect to an investment that is located in a TEA;
- 240 days after receiving an immigrant investor petition for classification under INA sec. 203(b)(5)(E) (Form I-526E) or a petition to remove conditions under INA sec. 216A (Form I-829); and
- 120 days after receiving an immigrant investor petition for classification under INA sec. 203(b)(5)(E) (Form I-526E) with respect to an investment in a TEA.

See Public Law 117-103, div. BB, sec. 106(b).

In addition to setting the fees with the processing time goals of Public Law 117-103, div. BB, sec. 106(c), the EB-5 Reform Act also authorizes DHS to include the following costs in the EB-5 fees:

- An amount equal to the amount paid by all other fee-paying applicants to cover or reduce the costs of reduced or no fee applications (such as asylum applications), and
- An amount not greater than one percent of the immigrant investor petition filing fee to improve the information technology systems used to process, adjudicate, and archive EB-5 petitions and applications, and convert EB-5 petitions and applications to electronic formats.

See Public Law 117-103, div. BB, sec. 106(c).

In addition, as explained in more detail later in this preamble, the EB-5 Reform Act requires DHS to collect fees for the EB-5 Integrity Fund. INA sec. 203(b)(5)(J), 8 U.S.C. 1153(b)(5)(J). The EB-5 Reform Act established a fund in the U.S. Department of the Treasury for DHS to investigate international activities and compliance, conduct site visits, and detect fraud, among other integrity measures. INA sec. 203(b)(5)(J), 8 U.S.C. 1153(b)(5)(J). Specifically, DHS must collect \$10,000 or \$20,000 from each designated regional center (depending on the number of total investors) annually, must collect \$1,000 from each regional center petitioner with their filing of a Form I-526E, may increase such fees by regulation as necessary to ensure sufficient amounts in the fund, and may impose penalties for failure to pay the fee after it is due. INA sec. 203(b)(5)(J)(ii), 8 U.S.C. 1153(b)(5)(J)(ii).

In connection with implementation and administration of the Integrity

Fund, USCIS must pursue collection of nonpayments from designated regional centers by imposing reasonable penalties for nonpayment within certain periods of time and terminating the designation of a regional center that fails to pay the Integrity Fund fee as required. INA sec. 203(b)(5)(J)(iv), 8 U.S.C. 1153(b)(5)(J)(iv).

2. Other Legal Authorities

This proposed rule is also consistent with nonstatutory guidance on fees, the budget process, and Federal accounting principles.<sup>19</sup> DHS uses Office of Management and Budget (OMB) Circular A–25 as guidance for determining user fees for immigration benefit requests.<sup>20</sup> DHS also follows the annual guidance in OMB Circular A–11 if it requests appropriations to offset a portion of IEFA costs. USCIS used the activity-based costing (ABC) methodology supported in OMB Circulars A–25 and A–11 to conduct the EB–5 fee study and develop the proposed EB–5 program fee schedule.

In the future, if the fees proposed in this rule are established, USCIS will review the EB–5 program fees in accordance with the Chief Financial Officer (CFO) Act, 31 U.S.C. 901–903, which requires each agency’s CFO to review, on a biennial basis, the fees imposed by the agency for services it provides and recommend changes to the agency’s fees as necessary.

D. Full Cost Recovery

As noted previously, DHS publishes this proposed rule under the EB–5 Reform Act, which, as a general matter, authorizes DHS to set EB–5 program fees “at a level sufficient to ensure the full recovery *only* of the costs of

providing such services” (emphasis added), plus the cost of meeting the goal of completing adjudications within prescribed time frames, plus an “equal” amount for processing benefit requests with no fee or a reduced fee. See Public Law 117–103, div. BB, sec. 106(b) and 106(c).

DHS proposes this rule to address the projected fiscal effect of implementing the EB–5 Reform Act consistent with the EB–5 fee study described in Section IV of this preamble and fee study in the docket. DHS has examined recent USCIS budget history, service levels, and immigration trends to forecast EB–5 program costs, revenue, and operational metrics to determine the fees USCIS must collect to generate sufficient revenue to fund the anticipated EB–5 program operating costs and to meet the EB–5 Reform Act processing time goals. This assessment included EB–5 program support costs such as physical overhead, information technology, management and oversight, human resources, national security vetting and investigations,<sup>21</sup> accounting and budgeting, and legal support. As explained in this rule and the supporting documents, the projected costs of administering the EB–5 program will be lower than projected fee revenue with the current fees, indicating a need for a fee adjustment. However, USCIS estimates that the cost of administering the EB–5 program is increasing. For example, in the 2024 final rule, USCIS estimated the total cost of Form I–526 was approximately \$30.3 million.<sup>22</sup> In the EB–5 fee study, USCIS estimates that the total cost of Forms I–526/I–526E is approximately \$35.5 million, or a \$5.2 million increase. The primary cost

driver responsible for this cost increase is payroll, predominately because of the hiring of additional staff to meet, on average, the new processing time goals. However, as discussed later, the proposed fees are lower than the current fees because the proposed fees do not include any additional costs for processing benefit requests with no fee or a reduced fee, thus reducing the fees overall. As such, the proposed EB–5 fees would not fund a proportionate share of workload without fees and workload below full cost, and, thus, would not recover what DHS defined as full cost in previous fee rules. See section IV.B.4 for more information. Consistent with the EB–5 Reform Act, this proposed rule would ensure that USCIS recovers full EB–5 program operating costs by setting EB–5 fees at a level sufficient to fund overall requirements and general operations related to the EB–5 program.

E. EB–5 Fee Schedule

1. Current EB–5 Fees

On April 1, 2024, the FY 2022/2023 fee rule replaced the 2020 fee rule in its entirety by revising the regulatory changes codified by the enjoined 2020 fee rule. See 89 FR 6194 (Jan. 31, 2024). The fees that this rule proposes would replace the EB–5 fees set by the FY 2022/2023 fee rule. Throughout this proposed rule, the phrases “current fees” or “current fee schedule” refer to the fees in effect from the FY 2022/2023 fee rule. Table 2 summarizes the IEFA EB–5 immigration benefit requests currently in effect. Through this rule, DHS is proposing fees that would replace the EB–5 fees that were set in the FY 2022/2023 fee rule.

TABLE 2—CURRENT IEFA EB–5 IMMIGRATION BENEFIT REQUEST FEES

Form No. <sup>23</sup>	Immigration benefit request	Fee
I–526	Immigrant Petition by Standalone Investor	\$11,160
I–526E <sup>24</sup>	Immigrant Petition by Regional Center Investor	11,160
I–829	Petition by Investor to Remove Conditions on Permanent Resident Status	9,525
I–956	Application for Regional Center Designation (formerly Form I–924, Application for Regional Center Designation Under the Immigrant Investor Program).	47,695
I–956F	Application for Approval of an Investment in a Commercial Enterprise	47,695

<sup>19</sup> See OMB, Circular A–25, “User Charges,” 58 FR 38142 (July 15, 1993) (revising Federal policy guidance regarding fees assessed by Federal agencies for Government services). See also Federal Accounting Standards Advisory Board Handbook, Version 22 (12/23), Statement of Federal Financial Accounting Standards 4: Managerial Cost Accounting Standards and Concepts, SFFAS 4, [http://files.fasab.gov/pdffiles/handbook\\_sffas\\_4.pdf](http://files.fasab.gov/pdffiles/handbook_sffas_4.pdf) (generally describing cost accounting concepts and standards, and defining “full cost” to mean the sum of direct and indirect costs that contribute to the output, including the costs of supporting services provided by other segments and entities.); *id.* At 49–66 (July 31, 1995). See also OMB, Circular A–11, “Preparation, Submission, and Execution of the

Budget,” sec. 20.7(d), (g), <https://www.whitehouse.gov/wp-content/uploads/2018/06/a11.pdf> (Jul. 2024) (providing guidance on the FY 2026 budget and instructions on budget execution, offsetting collections, and user fees).

<sup>20</sup> For the purposes of this rule, OMB Circular A–25 is appropriate for the requirements to set fees that will fund the EB–5 program, but USCIS lacks cost data associated with the goal of achieving certain processing times. Thus, this proposed rule also seeks to address the projected fiscal impact of the processing time requirements using other methods.

<sup>21</sup> Congress recommended that DHS establish an organization “responsible for developing, implementing, directing, and overseeing the joint

USCIS-Immigration and Customs Enforcement anti-fraud initiative and conducting law enforcement/background checks on every applicant, beneficiary, and petitioner prior to granting immigration benefits.” See Conference Report to accompany H.R. 4567 [Report 108–774], “Making Appropriations for the Department of Homeland Security for the Fiscal Year Ending September 30, 2005,” p. 74, <https://www.gpo.gov/fdsys/pkg/CRPT-108hrpt774/pdf/CRPT-108hrpt774.pdf>.

<sup>22</sup> See USCIS, FY 2022/2023 IEFA Fee Review Supporting Documentation with Addendum (Nov. 2023), available at <https://www.regulations.gov/document/USCIS-2021-0010-8176>. Specifically, see Appendix Table 3: Projected Total Cost by Immigration Benefit Request, pg. 41–45.

TABLE 2—CURRENT IEFA EB-5 IMMIGRATION BENEFIT REQUEST FEES—Continued

Table with 3 columns: Form No., Immigration benefit request, and Fee. Rows include I-956G (Regional Center Annual Statement), I-956H (Bona Fides of Persons Involved), and I-956K (Registration for Direct and Third-Party Promoters).

2. State of EB-5 Fee Schedule Regulations

In the FY 2022/2023 fee rule, DHS adjusted the USCIS fee schedule and made changes to certain immigration benefit request requirements, including EB-5 program fees. See 89 FR 6194 (Jan. 31, 2024). The EB-5 fees in the FY 2022/2023 fee rule were calculated by using the full cost recovery model described in that rule. In the same manner as DHS and USCIS used in their fee rules since the EB-5 program's inception, the methodology used to determine the proposed EB-5 program fees was consistent with the fees proposed for other benefit requests. Generally, the fee amounts indicated by the full cost recovery model for the immigrant investor program forms were not capped or decreased below the estimated amount that resulted in full cost recovery. As described in the FY 2022/2023 fee rule, 88 FR 402, 418 (Jan. 4, 2023), DHS applied the discretion provided in section 286(m) of the INA, 8 U.S.C. 1356(m), to: (1) use ABC to establish a model for assigning costs to specific benefit requests consistent with

23 "Form, when used in connection with a benefit or other request to be filed with DHS to request an immigration benefit, means a device for the collection of information in a standard format that may be submitted in a paper format or an electronic format as prescribed by USCIS on its official [website]." 8 CFR 1.2 The term "Form" followed by an immigration form number includes an approved electronic equivalent of such form as made available by USCIS on its official website. See 8 CFR 1.2 and 299.1. The word "form" is used in this proposed rule in both the specific and general sense.

24 Note that the Immigrant Petition by Regional Center Investor (I-526E), Application for Approval of an Investment in a Commercial Enterprise (I-956F), Bona Fides of Persons Involved with Regional Center Program (I-956H), and Registration for Direct and Third-Party Promoters (I-956K) were a result of the EB-5 Reform Act and did not exist during the FY 2016/2017 fee rule. See 81 FR 73292 (Oct. 24, 2016). The current fees were set in the FY 2022/2023 fee rule. See 89 FR 6194 (Jan. 31, 2024). For new EB-5 workloads where a comparable benefit request was available, USCIS applied the same fee as that comparable form. Specifically, the fee for Form I-526E is the same as the fee for Form I-526, and the fee for Form I-956F is the same as the fee for Form I-956. For new EB-5 workloads where no comparable form existed (Forms I-956H and 956K), USCIS determined not to charge a fee at that time. Form I-527 is a new form being proposed now. Thus, Forms I-527, I-956H, and I-956K do not currently have any associated fees.

25 Id.

26 Id.

OMB Circular A-25; (2) allocate costs for programs for which a fee is not charged or a law limits the fee amount; (3) distribute costs that are not attributed to, or driven by, specific adjudication and naturalization services; and (4) make additional adjustments to effectuate specific policy objectives.27 Because the fee study had not yet been completed at the time, the EB-5 fees in the FY 2022/2023 fee rule were not set according to the fee study parameters and processing time goals of the EB-5 Reform Act, which are narrower in scope than the full cost recovery model that USCIS normally employs when determining IEFA fees through the authority of section 286(m) of the INA, 8 U.S.C. 1356(m). However, the EB-5 fees proposed in this rule are set using the parameters in the EB-5 Reform Act.28

F. Severability

DHS believes that the provisions in this rule can function independently of each other, like other USCIS fees under current regulations. See 89 FR 6194, 6237-6238 (Jan. 31, 2024); see also 8 CFR 106.6. For example, the EB-5 Integrity Fund penalty fees could be stalled while a new rule is undertaken without affecting all other fees generally. If DHS were prohibited from collecting any new fee for any reason, DHS believes this rule is structured so that a stay, injunction, or vacatur of a fee set by this rule could be narrowly tailored to remedy the specific harm that a court may determine exists from the specific fee or fees challenged. USCIS would be able to continue

27 DHS may provide services for free and fund those free services with the fees charged to other, unrelated filings. 8 U.S.C. 1356(m). Relatedly, short of providing services for free, DHS may adjust certain fees downward based on value judgments and public policy reasons and shift the unrecovered costs to the fees charged to other, unrelated filings.

28 DHS, "U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements," 89 FR 6194, 6287 (Jan. 31, 2024) (stating, "DHS interprets '[N]otwithstanding' in section 106(b) of the EB-5 Reform and Integrity Act of 2022 to mean that section 106 requires DHS to establish fees to achieve the processing time goals set out in section 106(b), but that authority and its separate study requirements exist separately from (or 'notwithstanding') INA sec. 286(m), 8 U.S.C. 1356(m), and, therefore, do not preclude USCIS from instituting new EB-5 program fees while that effort is undertaken").

operations, perhaps at a reduced level or by shifting resources in the absence of the fee until DHS is able to conduct new rulemaking to re-set fees and correct the deficiencies that resulted in the court order. Operating without one or a few of the new fees would be preferable to an invalidation of all the new fees, which may disrupt and deteriorate the EB-5 program at USCIS and would go against Congress' goal of timely processing EB-5 petitions.

IV. Fee Setting Approach

As noted previously, the EB-5 Reform Act directed DHS to conduct a fee study and set fees for EB-5 program-related immigration benefit requests at a level sufficient to recover the costs of providing such services and attain the goal of completing adjudications, on average, within certain time frames. See Public Law 117-103, div. BB, sec. 106(b). This rule proposes fees and provides data and supporting documents that serve as the basis for the EB-5 fee adjustments outlined in this rule. After considering comments on this rule, DHS will complete and publish a final fee study that will take effect 60 days after publication as required by Public Law 117-103, div. BB, sec. 106(b).

A. The Processing Times Referenced in the Integrity Reform Act

In accordance with the EB-5 Reform Act, DHS proposes fees in this rule with "the goal of completing adjudications, on average," within 90, 120, 180, or 240 days, as applicable, after the relevant immigration benefit request is received in accordance with 8 CFR 103.2(a)(7)(ii). See Public Law 117-103, div. BB, sec. 106(b) ("including the cost of attaining the goal of completing adjudications, on average, not later than . . .").

1. USCIS Efficiency Improvements

DHS and USCIS appreciate the processing times expectations expressed in the EB-5 Reform Act and agree that our current backlogs are excessive. As explained in the FY 2022/2023 fee rule, DHS appreciates the need for operational improvements regarding processing times, process improvement, customer service, interviews, streamlined filings, online filing, prioritization of certain requests,

training, and other steps to address the USCIS processing backlog. 89 FR 6194, 6254 (Jan. 31, 2024). As explained in the proposed fee rule, USCIS is reviewing its adjudication and administrative policies to find deficiencies, while strengthening the integrity of the immigration system. *See* 88 FR 402, 455 (Jan. 4, 2023). More recently, DHS sought to make changes to individual programs for employment-based immigration without making changes to fees. *See e.g.*, 89 FR 103054 (Dec. 18, 2024).

In the EB-5 program specifically, USCIS had made significant gains recently in EB-5-related requests processing times and backlogs, while strictly complying with Congress' anti-fraud and integrity provisions.<sup>29</sup> For example, by hiring new staff and making other important investments at IPO, the backlog of Form I-829s decreased from 9,989 pending forms at the end of FY23 to 7,249 by the end of Q3 in FY24, a decrease of 27.4 percent.<sup>30</sup>

## 2. Completion Goals Are Not Requirements

DHS notes, however, that the law does not prescribe hard deadlines for adjudications, nor does it impose specific consequences on USCIS (such as any requirement to refund fees) if the processing time for a specific request exceeds those goals. Therefore, consistent with the statute, DHS is not proposing to codify any processing deadlines, or any consequences for missing those processing time goals. USCIS will strive to process EB-5 requests as quickly and efficiently as possible to meet the time goals referenced in the EB-5 Reform Act and on which the fees in this rule are based, while keeping the integrity of the program utmost in mind.

### B. EB-5 Fee Study Methodology

Generally, USCIS does not perform fee reviews for individual programs, thus the EB-5 Reform Act requires that the agency depart somewhat from its normal fee setting practices. Nevertheless, some of USCIS' historical practices were still helpful here. DHS and USCIS use the biennial fee review process to capture any changes in operating costs and non-premium form fees across the USCIS enterprise. When

conducting a fee review to determine whether current immigration and naturalization benefit fees will generate sufficient revenue to fund the anticipated operating costs associated with administering the nation's legal immigration system, USCIS usually assesses its recent operating environment to determine the appropriate method to assign costs to immigration benefit requests. One of the primary methods that USCIS uses is ABC, a business management tool that assigns resource costs to operational activities and then to products, services, or both. USCIS uses commercially available ABC software to create financial models. These models determine the cost of each major step toward processing immigration benefit requests. This is the same methodology that USCIS has used in conducting five of the most recent previous IEFA fee reviews.<sup>31</sup> For this rule, USCIS conducted a FY 2024/2025 fee review for the biennial period to determine the fees needed to recover the full costs of operating the entirety of USCIS with certain modifications required to meet the new statutory requirements in the EB-5 Reform Act. The results are the basis for the EB-5 fee study. That study provided EB-5 program fees needed to recover EB-5 program costs relative to their contribution to the total operating costs of USCIS following our usual fee study methodology. Throughout this proposed rule, DHS may use the terms FY 2024/2025 fee review or EB-5 fee study interchangeably.

To assess whether the current EB-5 fees meet full operating-cost recovery consistent with the EB-5 Reform Act requirements, USCIS determined the EB-5 program projected workload receipts, developed cost estimates for staffing and other direct costs, and estimated the adjudication hours per completion (completion rates) for each EB-5 immigration benefit request form.

USCIS and its personnel have considerable expertise in conducting fee studies and analyzing the fees required to recover the full costs of administering programs and entire agencies. Nevertheless, the EB-5 Reform Act is new, and it establishes distinct requirements and reforms for the EB-5 program. Therefore, USCIS is unable to strictly follow the same methodology for the EB-5 program it has used in conducting past IEFA fee reviews,

because IEFA fees are generally based on workload, processing time, completion rates, staffing, and indirect costs of programs that are relatively well established and known. USCIS has studied and estimated the EB-5 program workload based on the processing burden estimates of experts in administering the legacy EB-5 program with certain modifications to meet new and reformed EB-5 program statutory requirements. The EB-5 Reform Act does not prescribe a method for its required fee study. However, the fees proposed in this rule adhere to OMB Circulars A-11 and A-25. DHS reviewed the EB-5 program fees using ABC, consistent with previous fee rules. DHS believes the fees proposed in this rule represent reasonable fees following fee study practices and incorporating adjustments based on public policy reasons as explained in this rule and its supporting documents. DHS cannot predict every policy change that may occur at all levels of the U.S.

Government or court decisions that may affect this rule but has used the best data available during this rule's development. As stated previously, any shortcoming caused by the lack of information and newness of the program reforms are mitigated by the requirement that USCIS review the EB-5 program fees in accordance with the CFO Act, 31 U.S.C. 901-03, 2 years after they take effect and recommend changes to the agency's fees as necessary.

## 1. Volume

USCIS generally uses two types of volume data to conduct fee reviews: workload and fee-paying volume. Workload volume is a projection of the total number of immigration benefit requests that USCIS will receive in a fiscal year. Fee-paying volume, on the other hand, is a projection of the number of customers that will pay a fee when filing requests for immigration benefits.<sup>32</sup> Given that EB-5 immigration benefit request fees are not eligible for fee waivers or fee exemptions, the entire annual EB-5 workload volume was considered for the EB-5 fee study.<sup>33</sup>

The workload volume forecasts are agreed upon by the USCIS Volume

<sup>32</sup> There are a number of immigration benefit requests that USCIS provides at no or reduced cost to the benefit requestor, such as filing for asylum. *See, e.g.*, USCIS, "Application for Asylum and for Withholding of Removal," <https://www.uscis.gov/i-589> (last updated Apr. 9, 2024). Other benefit requests fees may be waived. *See* 8 CFR 106.3(a).

<sup>33</sup> Please note that the volumes discussed in this section and used to estimate the proposed fees may be different than those used to estimate the public burden in the Paperwork Reduction Act section. *See* section VI.J. of this preamble.

<sup>29</sup> USCIS, Progress on USCIS Processing Times, <https://www.uscis.gov/newsroom/stakeholder-messages/progress-on-uscis-processing-times> (last reviewed/updated Apr. 30, 2024).

<sup>30</sup> USCIS, All USCIS Application and Petition Form Types (Fiscal Year 2024, Quarter 3), [https://www.uscis.gov/sites/default/files/document/data/quarterly\\_all\\_forms\\_fy2024\\_q3.xlsx](https://www.uscis.gov/sites/default/files/document/data/quarterly_all_forms_fy2024_q3.xlsx) (Aug. 29, 2024).

<sup>31</sup> Two of the last seven fee reviews did not result in fee changes. However, DHS revised USCIS fees five times based on fee review results that used similar methodology to this one. *See* 72 FR 29851 (May 30, 2007); 75 FR 58962 (Sept. 24, 2010); 81 FR 73292 (Oct. 24, 2016); 85 FR 46788 (Aug. 3, 2020); 89 FR 6194 (Jan. 31, 2024).

Projection Committee (VPC).<sup>34</sup> The mission of the VPC is to facilitate workload and fee projection data stakeholder collaboration, communication, and coordination of critical business decisions about projected workload. This group provides a forum for making enterprise-wide decisions about projected workload supported by input from knowledgeable subject matter experts from within USCIS, other governmental agencies, and the private sector. The scope of authority of the VPC includes but is not limited to:

- Assessing and documenting current USCIS workload projection methodologies;

- Benchmarking and documentation of workload projection methodologies, assumptions, or projection methodologies applied to similar entities in use by other government agencies and the private sector;
- Comparing VPC projections versus actual figures to determine what factors may account for material variances and to better refine its forecasting approach;
- Vetting each identified projection methodology through the use of legacy USCIS workload data to determine its efficacy for use in developing workload projections up to 7 years in the future; and
- Initiating and maintaining biannual meetings to update workload forecasts. The VPC predicts USCIS annual workload volumes using historical and

recent volume trends, statistical forecasts, and subject-matter expertise from various USCIS directorates and program offices, including the IPO, USCIS service centers, the National Benefits Center, and regional, district, and field offices. Workload volume is a key element used to determine the USCIS resources needed to process EB-5 benefit requests on average within the processing time goals established in the EB-5 Reform Act. EB-5 program workload volume is the primary cost driver for assigning activity costs to EB-5 immigration benefit requests. Table 3 displays the projected average annual receipts for EB-5 immigration benefit requests:

TABLE 3—PROJECTED AVERAGE ANNUAL RECEIPTS FOR EB-5 IMMIGRATION BENEFIT REQUESTS IN THE FY 2024/2025 FEE REVIEW

Immigration benefit request	Projected average annual receipts
I-526 Immigrant Petition by Standalone Investor .....	225
I-526E Immigrant Petition by Regional Center Investor .....	3,500
I-527 Amendment to Legacy Form I-526 .....	457
I-829 Petition by Investor to Remove Conditions on Permanent Resident Status .....	3,430
I-956 Application for Regional Center Designation .....	200
I-956F Application for Approval of an Investment in a Commercial Enterprise .....	450
I-956G Regional Center Annual Statement .....	500
I-956H Bona Fides of Persons Involved with Regional Center Program .....	2,100
I-956K Registration for Direct and Third-Party Promoters .....	400

2. Completion Rates

USCIS completion rates identify the adjudicative time required to complete (render a decision on) specific immigration benefit requests. The completion rate for each benefit type represents an average. Completion rates reflect what is termed “touch time,” or the time an employee with adjudicative responsibilities handles the case. This

rate does not reflect “queue time,” or time spent waiting, for example, for additional evidence or supervisory approval. Completion rates do not reflect the total processing time applicants, petitioners, and requestors can expect to wait for a decision on their case after USCIS accepts it.

In the EB-5 program context, USCIS uses subject-matter expertise to estimate

completion rates. The completion rates for this EB-5 fee study are estimates developed by USCIS’ Office of Performance and Quality (OPQ), using historical data and subject matter expert input from IPO. The EB-5 fee study completion rate estimates were also guided by the processing time goals contemplated by the EB-5 Reform Act, shown in Table 4 below.<sup>35</sup>

TABLE 4—EB-5 REFORM ACT AVERAGE PROCESSING TIME GOALS FOR EB-5 IMMIGRATION BENEFIT REQUESTS

Immigration benefit request	Processing time goal (in days)
I-526E Immigrant Petition by Regional Center Investor .....	240 (120 for TEA investments).
I-829 Petition by Investor to Remove Conditions on Permanent Resident Status .....	240.
I-956 Application For Regional Center Designation .....	180.
I-956F Application for Approval of Investment in a Commercial Enterprise .....	180 (90 if NCE is located in TEA).

USCIS was able to estimate the completion rates of the EB-5 forms by extrapolating staff hours spent on EB-5

adjudications and estimates from subject matter experts on EB-5 request processing. USCIS identified and

defined the activities required to support the relevant adjudications and the time personnel spent conducting

<sup>34</sup> See USCIS Volumes Projection Committee Consolidated Meeting Notes for EB-5 Fee Study in the docket for this proposed rule.

<sup>35</sup> For completion rates without these processing time goals or other changes from the EB-5 Reform Act, see Table 5 in this proposed rule and its

comparison to information from the proposed rule for the FY 2022/2023 fee rule. See 88 FR 402, 448–450 (Jan. 4, 2023). Processing time goals are not the only change in the completion rates. The EB-5 Reform Act or DHS implementation of it may also have changed purpose or adjudication requirements of some forms. For example, Form I-526 was

previously used by the old regional center program. USCIS revised Form I-526 and created Form I-526E as a result of the EB-5 Reform Act. Now Form I-526 is used for standalone investors. As such, Form I-526 receipts from previous years may be less comparable to future estimates.

each activity to estimate relevant completion rates. USCIS determined that, in general, it conducts the following activities when adjudicating EB-5 forms:

- Intake of documents;
- Sending receipt notices;
- Performing background checks;
- Inputting filing information into systems;
- Reviewing and analyzing evidence, information on forms, results of database searches, and interviews (if applicable);
- Drafting decisions;

- Reviewing decisions at a supervisory level;
- Issuing decisions;
- Updating systems;
- Conducting quality reviews, administrative investigations, site visits, and audits as applicable;
- Processing records; and
- Issuing documents.

The extrapolation of staff hours spent on these activities for the EB-5 program served as an input to determine the times required to adjudicate the subject forms. In addition, depending on the particular benefit request, USCIS may

conduct additional activities. For example, Forms I-829 and I-956H may include conducting fingerprint-based background checks.

In addition to using these data to set EB-5 fees, completion rates help determine appropriate staffing allocations to handle projected workload. Completion rates may change between IEFA fee reviews based on more recent estimates, data availability, or subsequent regulatory or policy changes. Table 5 displays the completion rates for EB-5 immigration benefit requests in this proposed rule.

TABLE 5—EB-5 COMPLETION RATES PER BENEFIT REQUEST  
[In hours]

Immigration benefit request	FY 2022/2023 fee rule	EB-5 fee study	Difference	% Difference
I-526 Immigrant Petition by Standalone Investor .....	5.01	16.30	11.29	225
I-526E Immigrant Petition by Regional Center Investor .....	5.01	16.30	11.29	225
I-527 Amendment to Legacy Form I-526 .....	N/A	13.30	N/A	N/A
I-829 Petition by Investor to Remove Conditions on Permanent Resident Status .....	12.13	12.13	0	0
I-956 Application for Regional Center Designation .....	108.50	N/A	N/A	N/A
I-956 Application for Regional Center Designation—Initial .....	N/A	37.50	N/A	N/A
I-956 Application for Regional Center Designation—Amendment .....	N/A	12.50	N/A	N/A
I-956F Application for Approval of Investment in a Commercial Enterprise ..	N/A	40.00	N/A	N/A
I-956G Regional Center Annual Statement .....	4.60	N/A	N/A	N/A
I-956H Bona Fides of Persons Involved with Regional Center Program .....	N/A	N/A	N/A	N/A
I-956K Registration for Direct and Third-Party Promoters .....	N/A	N/A	N/A	N/A
Regional Center Terminations .....	N/A	108.00	N/A	N/A

For Forms I-956G, Regional Center Annual Statement; I-956H, Bona Fides of Persons Involved with Regional Center Program; and I-956K, Registration for Direct and Third-Party Promoters, USCIS did not use completion rates in the analysis of those immigration benefit request fees which results in proposed fees that are lower than they would be if a completion rate was used.<sup>36</sup> In the ABC model for this proposed rule, Forms I-956G, I-956H, and I-956K include fewer activities, and thus lower costs, than other EB-5 workloads. For example, Forms I-956G, I-956H, and I-956K do not use the Make Determination activity, which is the adjudication activity in the fee review. As such, these proposed fees are much lower than other proposed fees in

this rule. This analysis is consistent with other USCIS fee rules, which do not use completion rates for every workload. *See, e.g.*, 88 FR 402, 446–447 (Jan. 4, 2023). While proposed fees for I-956G, I-956H, and I-956K are significantly lower than other proposed fees in this rule, it is still important for USCIS to recover these costs through the proposed fees. As noted previously, DHS is authorized by the EB-5 Reform Act to charge for “fees for services provided under sections 203(b)(5) and 216A of such Act (8 U.S.C. 1153(b)(5) and 1186b) at a level sufficient to ensure the full recovery only of the costs of such services” and additional fees. *See* Public Law 117–103, div. BB, sec. 106(b) and 106(c). Because USCIS relies almost entirely on fee revenue, in the absence of a fee schedule that ensures full cost recovery, USCIS would be unable to sustain an adequate level of service, let alone meet processing time goals. By proposing separate fees for Forms I-956G, I-956H, and I-956K, DHS ensures that USCIS will have the resources to complete these workloads rather than force USCIS to make trade-offs or shift resources to complete these workloads.

### 3. Legacy Workloads

DHS includes the cost of legacy EB-5 workloads in the FY 2024/2025 fee review because of their significant effect on the EB-5 fee study results. USCIS estimates that it may terminate 300 regional centers in FY 2024 and FY25, and the average completion rate for each is 108 hours. As explained later in this preamble, DHS proposed to distribute the cost of regional center terminations to the costs of applying for a regional center or seeking investment in a commercial enterprise activity, Forms I-956 and I-956F. Future fee reviews will reevaluate the effects of legacy EB-5 workload and whether it affects USCIS fees.

### 4. Cost Reallocation

As noted previously, the EB-5 Reform Act directed DHS to conduct a fee study and set fees for EB-5 program-related immigration benefit requests at a level sufficient to recover the costs of providing such services and attaining the goal of completing adjudications, on average, within certain time frames. *See* Public Law 117–103, div. BB, sec. 106(c). The EB-5 Reform Act did not prescribe a method for how DHS was to

<sup>36</sup> Although there is work involved in the review of each of these forms, the “completion rate” is not captured the same way as the other EB-5 workloads. Specifically, Form I-956G submissions are reviewed and then administratively closed. Form I-956K registrations are approved, but USCIS processes them as registrations and not applications or petitions to be adjudicated. Form I-956H is submitted as part of a Form I-956 or I-956F filing and is reviewed when those filings are adjudicated. Therefore, the “completion rate,” or time involved for processing Form I-956H submissions, is already captured in the Form I-956 or I-956F completion rates.

determine the fees and generally delegated the responsibility to DHS.

The EB-5 Reform Act also authorizes DHS to add an amount to EB-5 program fees by providing that DHS can charge fees in excess of the fee levels described in section 106(c), in an amount equal to the amount paid by all other classes of fee-paying applicants for immigration benefits, to cover or reduce the costs of processing benefit requests that are processed with no fee or a reduced fee. Public Law 117-103, div. BB, sec. 106(c):

Fees in excess of the fee levels described in subsection (b) may be charged only—(1) in an amount that is equal to the amount paid by all other classes of fee-paying applicants for immigration-related benefits, to contribute to the coverage or reduction of the costs of processing or adjudicating classes of immigration benefit applications that Congress, or the Secretary of Homeland Security in the case of asylum applications, has authorized to be processed or adjudicated at no cost or at a reduced cost to the applicant.

Because section 106(c) states that fees may be charged, DHS has decided not to use that authority to add an amount to EB-5 fees to support costs incurred to process all forms for which the fees are waived, exempted, or held below projected cost. As a result, the proposed EB-5 fees would not fund a proportionate share of workload without fees and workload with fees that do not recover full cost.

DHS interprets section 106(c) to authorize USCIS to charge EB-5 program filers for costs that USCIS incurs to adjudicate certain fee exempt, fee waived, reduced fee, and humanitarian immigration benefits. Next, that provision recognizes that DHS sets USCIS fees at the level required to recover immigration adjudication and naturalization service costs, while also requiring fee-paying applicants to cover some of the costs of applications processed at no or reduced cost (through fee reductions exemptions or fee waivers). *See, e.g.*, 88 FR 402, 450-451 (Jan. 4, 2023). Thus, section 106(c) recognizes that DHS historically sets fees as authorized by INA section 286(m), 8 U.S.C. 1356(m), in a manner that allows some filers to not pay any fees, or pay lower fees, while requiring others to pay higher fees that may otherwise be needed to cover the costs associated with processing their benefit requests. *Id.*

However, section 106(c)(1) contains inconsistencies with how DHS has historically set USCIS fees. First, section 106(c)(1) states, in relevant part

(emphasis added), “amount equal to the amount paid . . . to cover . . . requests . . . processed with no fee or a reduced fee . . . .” However, there is no such “equal” amount.<sup>37</sup> Instead, DHS proportionally assigns costs incurred to provide services for which USCIS does not receive revenue based on the ability-to-pay principle in Government Accountability Office (GAO) fee setting guidance<sup>38</sup> and the full cost recovery authority in 8 U.S.C. 1356(m), balancing access, affordability, equity, and benefits to the national interest while providing USCIS with the funding necessary to maintain adequate services.<sup>39</sup> For example, the cost reallocation to cover free or reduced fee services added in the FY 2016/2017 fee rule ranged from a negative amount (reduced below cost) to \$5,016. The cost reallocation assigned to Form I-140, Petition for Immigrant Worker, was \$197; Form N-600, Application for Certificate of Citizenship, was \$330; and Form I-485, Application to Register Permanent Residence or Adjust Status, was \$321.<sup>40</sup> Because there is no equal amount to impose, DHS must interpret what constitutes an amount “equal” for the EB-5 fees.

Second, section 106(c)(1), states, in part, “classes of immigration benefit applications that Congress, or the Secretary of Homeland Security in the case of *asylum applications*.” (Underlining added). As stated earlier, DHS uses cost reallocation to assign costs of all fee exemptions and waivers under INA section 286(m). Because section 106(c)(1) only mentions asylum applications, it could be interpreted to preclude the transfer of the costs of other fee exemptions to the EB-5

workload.<sup>41</sup> Because the language describing what no cost and reduced costs may be covered by EB-5 fee filers is inconsistent with how USCIS has historically set fee, DHS must interpret what costs are recoverable.

DHS believes that exercising the section 106(c)(1) authority would likely result in litigation, thus preventing or delaying USCIS from implementing the new fees, meeting the processing time goals, complying with the EB-5 Reform Act, and receiving the revenue from the new fee schedule. Because the total estimated amount of free and reduced service costs that the EB-5 fees would fund is only around \$47 million, and that amount is not a significant portion of the USCIS budget, DHS has determined that amount can be borne by a commiserate reduction in USCIS carryover balances and reserves. Furthermore, the One Big Beautiful Bill Act<sup>42</sup> establishes additional fees for asylum applications, which may provide USCIS with supplementary revenue to cover asylum costs. Therefore, after considering that costs caused by such litigation could exceed the fees that would be collected by our exercise of the section 106(c)(1) authority, DHS is proposing no cost reallocation in this rule. This proposed action would result in USCIS not recovering its full costs because the amount that the EB-5 fees would contribute to covering the costs of free services (and currently funded with the existing fees) could not be recovered from other fee payers in this rule. DHS appreciates comments specifically on the authority provided in section 106(c)(1) to use EB-5 program fees to fund the processing of other USCIS requests.

## 5. Regional Center Termination Costs

As stated previously, INA sec. 203(b)(5)(f), 8 U.S.C. 1153(b)(5)(f), requires DHS to terminate a regional center that does not pay the Integrity Fund fee. DHS may also terminate a regional center based on non-compliance with other applicable

<sup>37</sup> *See, e.g.*, 85 FR 46788, 46869 (Aug. 3, 2020) (stating, “For the fees that DHS does not limit, we use the total cost for each form to reallocate the cost of limited fee increases or workload without fees.”); 75 FR 58962, 58973 (Sept. 24, 2010) (stating, “To the extent not supported by appropriations, the cost of providing free or reduced services must be transferred to all other fee-paying applicants.”); 72 FR 29851, 29865 (May 30, 2007) (stating, “As with any other waiver, the loss of that fee revenue would necessarily be spread across all other benefit applications and petitions, having the potential to increase those fees.”). While the costs are “transferred” or “spread” to all other fee-paying applicants, they are not necessarily spread by assigning an “equal” “amount.”

<sup>38</sup> *See* GAO, GAO-08-386SP, “Federal User Fees: A Design Guide,” pp. 7-12 (May 29, 2008), <https://www.gao.gov/products/GAO-08-386SP>.

<sup>39</sup> Appendix Table 1 of the fee study included in this docket includes the cost estimate for various USCIS workloads without fees.

<sup>40</sup> The cost reallocation amounts come from Appendix Table 4 of the FY 2016/2017 fee review supporting documentation for the final rule. *See* USCIS, “FY 2016/2017 IEFA Fee Review Supporting Documentation with Addendum,” p. 53 (Oct. 2016), <https://www.regulations.gov/document/USCIS-2016-0001-0466>.

<sup>41</sup> For example, Congress has codified fee exemptions for military personnel who naturalize. *See, e.g.*, INA section 328(b)(4), 8 U.S.C. 1439(b)(4) (fee exemption for Military Naturalization Based on Peacetime Service); 8 CFR 106.2(b)(3)(i). The FY 2022/2023 fee rule maintained the existing fee exemptions for the military and added fee exemptions Form I-765, Application for Employment Authorization. *See* 89 FR 6194, 6214, 6226-6227; 8 CFR 106.2(a)(44)(ii)(I). Current and former military service may also qualify for fee waivers. *See* 89 FR 6194, 6214, 6232; 8 CFR 106.2(c).

<sup>42</sup> To provide for reconciliation pursuant to title II of H. Con. Res. 14., Public Law 119-21, 139 Stat. 72 (2025) <https://www.congress.gov/119/bills/hr/1/BILLS-119hr1eas.pdf>.

requirements. *See e.g.* INA 203(b)(5)(E)(vii)(III), 8 U.S.C. 1153(b)(5)(E)(vii)(III). Terminations are integral to maintain the integrity of the program. USCIS incurs costs for termination, and those costs have generally been funded from EB–5 request fees. USCIS previously used revenue from Forms I–956 and I–956F to recover the cost of regional center terminations. In previous fee rules, the time spent to terminate the designation of regional centers was part of the completion rate along with other adjudicative work. For example, the proposed fee rule used a completion rate of 108.5 hours for Form I–956 and it included hours spent on regional center terminations. *See* 88 FR 402, 509 (Jan. 4, 2023).

In this rule, DHS proposes to continue recovering the cost of regional center terminations with the fees for Forms I–956 and I–956F. In the EB–5 fee study, USCIS estimated the cost of regional center terminations separate from any other benefit request. USCIS determined the cost of regional center terminations by using the same methodology as other IPO workloads in the ABC model for the EB–5 fee study. USCIS estimated a completion rate of 108 hours for regional center terminations. *See* Table 5 of this preamble. The average annual total cost of these terminations is approximately \$6.8 million in the ABC model.<sup>43</sup> *See* the fee study in the docket for more information.

It would not be practical for USCIS to collect a fee specifically for terminations. It would be administratively burdensome for USCIS to attempt to collect a fee for terminations from regional centers during the process of termination, after already collecting fees relating to the filing of Forms I–956 and I–956F. USCIS also anticipates that collection of such a fee at the termination stage is impractical because entities facing termination of regional center designation may opt not to pay the fee at that stage, especially given that the termination itself may be based on failure to pay the Integrity Fund fee. For example, USCIS may terminate a regional center if it does not consent to an audit. *See* INA 203(b)(5)(E)(vii)(III), 8 U.S.C. 1153(b)(5)(E)(vii)(III). USCIS may also terminate the designation of any regional center that does not pay the EB–5 Integrity Fund fee within 90 days

of the due date. *See* INA 203(b)(5)(F)(iv)(II), 8 U.S.C. 1153(b)(5)(F)(iv)(II).

While the EB–5 Reform Act created the EB–5 Integrity Fund, the listed uses of the fund do not explicitly include typical adjudication activities. Instead, it explicitly mandates use for various compliance, fraud investigation, audit, and site visit activities. *See* INA 203(b)(5)(F)(iii), 8 U.S.C. 1153(b)(5)(F)(iii). As stated later in this preamble, USCIS will also use the EB–5 Integrity Fund to audit regional centers to ensure compliance with EB–5 requirements and review the flow of investor capital into capital investment projects. *See* section V of this preamble. Terminations of regional center designations are a function of administering the EB–5 program generally for which USCIS incurs costs and which may occur for a variety of reasons ranging from voluntary withdrawal to non-compliance with various legal requirements (which may be either discretionary or mandatory). *See e.g.* 8 CFR 204.6(m)(6)(vi); INA 203(b)(5)(E)(vii)(III), 8 U.S.C. 1153(b)(5)(E)(vii)(III); INA 203(b)(5)(F)(v)(II), 8 U.S.C. 1153(b)(5)(F)(v)(II); INA 203(b)(5)(G)(iii)(II)(dd), 8 U.S.C. 1153(b)(5)(G)(iii)(II)(dd); INA 203(b)(5)(H)(iv), 8 U.S.C. 1153(b)(5)(H)(iv); INA 203(b)(5)(I)(iv), 8 U.S.C. 1153(b)(5)(I)(iv); INA 203(b)(5)(J)(iv)(II), 8 U.S.C. 1153(b)(5)(J)(iv)(II); INA 203(b)(5)(N), 8 U.S.C. 1153(b)(5)(N); and INA 203(b)(5)(O), 8 U.S.C. 1153(b)(5)(O). Prior to enactment of the EB–5 Reform Act and creation of the EB–5 Integrity Fund, DHS paid for the costs of terminating regional center designations through request fees for the former Form I–924. DHS has continued to fund these costs through request fees for Form I–956 and Form I–956F after the enactment of the EB–5 Reform Act. The EB–5 Integrity Fund does not explicitly provide a separate revenue stream to pay for such costs. Consequently, DHS will continue with its historic practice and fund those costs from the request fees proposed in this rule.

### C. EB–5 Fee Study Projected Costs and Revenue

#### 1. EB–5 Fee Study Cost Projections

In developing the EB–5 fee study cost projection, IEFA non-premium costs were considered in addition to EB–5

program costs.<sup>44</sup> Therefore, the EB–5 fee study cost projection accounts for payroll and non-payroll for on-board and new staff, inflation, resource requirements or adjustments, and the removal of costs associated with temporary programs. USCIS started with its general FY 2024 Operating Plan. USCIS then made the following adjustments in the EB–5 fee study:

- Added \$317,000 to account for COVID–19 mandatory cuts to IPO expenses, including general expenditures, which represents all costs that are not related to pay or employee benefits (*e.g.*, supplies, training, and travel);
- Added staffing to support the EB–5 program, for a total of approximately 334 employees (FTEs) across multiple USCIS offices (237 FTEs in IPO, nine (9) FTEs in Administrative Appeals Office, two (2) FTEs in Office of the Chief Counsel, 86 FTEs in Fraud Detection and National Security Directorate). This new staffing<sup>45</sup> is necessary to meet the processing time goals of the EB–5 Reform Act;
- Accounted for pay inflation and promotions/within-grade increases, which includes annual Federal employee pay, cost of living adjustments, and new employees who are not related to the EB–5 program. The assumed inflation rate was 2 percent for FY 2024 and FY 2025; and
- Considered net additional costs, such as the costs of additional budget items. For example, USCIS added \$50 million to the operating plan in each year to increase the budget for the interagency agreement with U.S. Department of State.<sup>46</sup>

Table 6 below is a summary from the FY 2024 IEFA non-premium cost projection to the FY 2024/2025 annual average cost projection. The FY 2024/2025 annual average cost projection is estimated to be approximately \$5,315.9 million.

<sup>44</sup> IEFA non-premium refers to USCIS costs and revenue in the IEFA account excluding premium processing costs and revenue.

<sup>45</sup> The additional staffing figures are not current staffing totals; the figures reflect the number of additional positions that were estimated at the time of the EB–5 fee study.

<sup>46</sup> USCIS has executed formal interagency agreements (IAA) to govern the reimbursement of costs under the Economy Act, 31 U.S.C. 1535 and 1536. An IAA governs costs incurred by the State Department in providing goods or services for or on behalf of USCIS in areas where USCIS has no capacity or USCIS may receive reimbursement for goods and services it provides. *See* 48 CFR 17.5; 31 U.S.C. 1535–1536.

<sup>43</sup> In whole dollars, the average annual total cost of regional center terminations is \$6,846,310 in the ABC model for the FY 2024/2025 fee review.

TABLE 6—COST PROJECTION—FY 2024/2025 EB-5 FEE STUDY COST PROJECTION  
[In millions]

Total FY 2024 IEFA Non-Premium Cost Projection .....	\$5,095.4
Plus: Additional IPO Staffing .....	56.8
Plus: Additional IPO Expenses <sup>47</sup> .....	0.3
Plus: FY 2024 Additional Non-IPO EB-5 Staffing .....	2.5
Total FY 2024 EB-5 Cost Projection .....	5,155.0
Plus: Pay Inflation and Promotions/Within-Grade Increases .....	43.3
Plus: Net Additional Costs .....	278.5
Total FY 2025 IEFA Non-Premium Cost Projection .....	5,476.8
FY 2024/2025 Annual Average EB-5 Cost Projection .....	5,315.9

Additionally, USCIS incorporated biometric services costs into proposed EB-5 fees, consistent with the approach in the FY 2022/2023 fee rule. See 88 FR 402, 484–485 (Jan. 4, 2023); 89 FR 6194, 6277–6278 (Jan. 31, 2024).

2. EB-5 Fee Study Revenue Projections

USCIS' revenue projections are informed by internal immigration benefit request receipt forecasts agreed upon by the VPC.<sup>48</sup> To project EB-5 program revenue, USCIS develops petition volume projections using all available data at the time. USCIS uses statistical modeling, immigration receipt data, and internal assessments of future developments (such as planned immigration policy initiatives) to develop workload volume projections.

All relevant USCIS directorates and program offices are represented on the VPC. The VPC forecasts USCIS workload volume using statistical forecasts and subject-matter expertise from various directorates and program offices. Input from these offices helps refine the statistical volume projections. The VPC reviews short- and long-term volume trends. In most cases, time series models provide volume projections by form type. Time series models use historical receipt data to determine patterns (such as level, trend, and seasonality) or correlations with historical events to forecast receipts. When possible, other, more detailed models are also used to determine relationships within and between different benefit request types. At VPC

meetings, the committee members deliberate on the provided forecast, consider alternatives, and agree to forecast by group consensus.

USCIS then assumes a 100-percent fee-paying rate for each EB-5 petition type to reflect the fact that IEFA EB-5 fees are not eligible for fee waivers or exemptions. Therefore, the projected revenue is based on the IEFA fees USCIS currently charges for EB-5 immigration benefits, which were established by the FY 2022/2023 fee rule, and the anticipated EB-5 petition volumes for FY 2024 and FY 2025. USCIS' current IEFA fees are expected to yield \$4,192.3 million of average annual revenue during FY 2024/2025, as seen in Table 7 of this preamble.

TABLE 7—FY 2024/2025 FEE REVIEW ANNUAL AVERAGE REVENUE WITH CURRENT IEFA FEES

Immigration benefit request	Current IEFA fees (FY 2022/2023)	Projected annual receipts	Revenue with current IEFA fees (in millions)
I-526 Immigrant Petition by Standalone Investor .....	\$11,160	225	\$2.5
I-526E Immigrant Petition by Regional Center Investor .....	11,160	3,500	39.1
I-527 Amendment to Legacy Form I-526 .....	0	457	0.0
I-829 Petition by Investor to Remove Conditions on Permanent Resident Status .....	9,525	3,430	32.7
I-956 Application for Regional Center Designation—Initial .....	47,695	50	2.4
I-956 Application for Regional Center Designation—Amendment .....	47,695	150	7.2
I-956F Application for Approval of Investment in a Commercial Enterprise .....	47,695	450	21.5
I-956G Regional Center Annual Statement .....	4,470	500	2.2
I-956H Bona Fides of Persons Involved with Regional Center Program .....	0	2,100	0.0
I-956K Registration for Direct and Third-Party Promoters .....	0	400	0.0
EB-5 Subtotal .....	.....	11,262	<sup>49</sup> 107.5
All other IEFA non-premium revenue .....	.....	.....	4,084.8
Grand Total .....	.....	.....	4,192.3

3. EB-5 Fee Study Cost and Revenue Differential

The EB-5 fee study identified the difference between anticipated costs and revenue, assuming no changes in

fees, to determine whether the existing EB-5 fee schedule is sufficient to recover the projected full cost of providing EB-5 immigration adjudication services or whether a fee

adjustment is necessary. Following a fee review, if the revenue forecast is less than the budget forecast, then DHS will generally propose new or increased USCIS fees to cover the budget-revenue

<sup>47</sup> \$0.3 million is the reestablishment of IPO general expense funds that were cut during the COVID-19 pandemic.

<sup>48</sup> VPC receipt projections change based on the data trends (seasonality, overall trend, etc.) for each

form type, or if there is a change in policy surrounding a form or an anticipated policy change to take into account.

<sup>49</sup> The sum of the rounded amounts in the Revenue with Current IEFA Fees column for EB-

5 is \$107.6. However, the EB-5 projected revenue of \$107,478,500 is \$107.5 in millions. The difference is from rounding the other amounts in the table.

shortfall. Otherwise, USCIS may reduce certain costs or services or reduce reserves to cover the difference. Table 8 later in this preamble summarizes the projected EB-5 program cost and current revenue differential.

*D. EB-5 Fee Study Results and Proposed Fee Adjustments*

Through the EB-5 fee study, USCIS determined that, at current fee levels, projected costs for EB-5 workload in the FY 2024/2025 fee review exceed projected revenue but are lower than projected revenue in other cases. One example of projected costs that exceed projected revenue are the workloads for Forms I-956H and I-956K, which do not have fees and thus do not generate revenue. DHS proposes to adjust the fee schedule at a level that will enable USCIS to better align the costs of administering the EB-5 program, attain the EB-5 processing time goals as provided in the EB-5 Reform Act, and make improvements to the information technology systems used to administer

the EB-5 program. In most cases, the proposed fees are lower than the current fees because the proposed fees do not include cost reallocation, as explained earlier in this preamble. See section IV.B.4.

After resource costs are identified, the ABC model distributes them to USCIS' primary processing activities. See the fee study in the docket of this rulemaking for more information on the ABC model, activities, and results described in this section.

Next, the ABC model distributes activity costs to immigration benefit requests. Each total cost result is based on the resources, activities, and various drivers that contribute to the estimated cost of its completion. The ABC model estimates total cost before calculating unit costs. For total costs for EB-5 and other USCIS workloads, see Appendix Table 1 of the fee study included in this docket. For total cost by activity as unit costs, see Appendix Table 2 of the fee study included in this docket.

To focus the ABC model and study specifically on the EB-5 program forms,

the Department developed Table 8 of this preamble. Table 8 shows the revenue estimate, by EB-5 benefit requests, based on the current fees (set in the FY 2022/2023 fee rule), the total cost of adjudication by EB-5 form type, and the dollar and percent difference between the cost of adjudication and the revenue received for each EB-5 form type. This difference shows that the revenue estimate with current fees exceeds the full cost for these forms in most cases; in other cases, the cost is higher than the revenue because the workload does not have a current fee. As such, DHS is proposing to adjust the EB-5 benefit request fees. Most proposed fees are lower than the current fees while other proposed fees would recover the cost of EB-5 workloads that do not have fees. See Table 1 earlier in this preamble. DHS is proposing the fees in this rule to be aligned with EB-5 workloads, recover projected costs, and achieve the processing time goals of the EB-5 Reform Act, as detailed in the fee study.

TABLE 8—REVENUE WITH CURRENT IEFA FEES COMPARED TO TOTAL COSTS FROM EB-5 FEE STUDY RESULTS

Immigration benefit request	Revenue with current IEFA fees	Total cost from ABC model	\$ Difference	% Difference
I-526/I-526E Immigrant Petition by Standalone/Regional Center Investor ....	\$41,571,000	\$35,498,584	(\$6,072,416)	(15)
I-527 Amendment to Legacy Form I-526 .....	0	3,656,842	3,656,842	N/A
I-829 Petition by Investor to Remove Conditions on Permanent Resident Status .....	32,670,750	26,963,151	(5,707,599)	(18)
I-956 Application for Regional Center Designation—Initial .....	2,384,750	918,041	(1,466,709)	(62)
I-956 Application for Regional Center Designation—Amendment .....	7,154,250	1,192,033	(5,962,217)	(83)
I-956F Application for Approval of Investment in a Commercial Enterprise ..	21,462,750	8,730,992	(12,731,758)	(59)
I-956G Regional Center Annual Statement .....	2,235,000	1,369,965	(865,035)	(39)
I-956H Bona Fides of Persons Involved with Regional Center Program .....	0	118,387	118,387	N/A
I-956K Registration for Direct and Third-Party Promoters .....	0	1,095,971	1,095,971	N/A
Regional Center Terminations .....	0	6,846,310	6,846,310	N/A
<b>EB-5 Total (IEFA only) .....</b>	<b>107,478,500</b>	<b>86,390,276</b>	<b>(21,088,224)</b>	<b>(20)</b>

1. Proposed EB-5 Immigration Benefit Request Fee Adjustments

The EB-5 program currently encompasses Forms I-526, I-526E, I-829, I-956, I-965F, I-956G, I-956H, and I-956K. In addition, DHS proposes to create a new Form I-527, for legacy workloads, as described later in this section. In accordance with the EB-5 Reform Act and the INA, DHS proposes the following EB-5 immigration benefit request fee adjustments in this rule:

- DHS calculated a proposed fee for Form I-526, Immigrant Petition by Standalone Investor, and Form I-526E, Immigrant Petition by Regional Center Investor, as \$9,530 to recover full cost. See proposed 8 CFR 106.2(d)(2)(i). DHS is also proposing the EB-5 Technology Fee, in the amount of \$95, be added to

the fees for Forms I-526 and I-526E. See proposed 8 CFR 106.2(d)(2)(iii). The total proposed fee for Forms I-526 and I-526E is \$9,625 in most cases. Later in this section, the Department further discusses the EB-5 Technology Fee.

- DHS calculated a proposed fee for Form I-527, Amendment to Legacy Form I-526, as \$8,000. See proposed 8 CFR 106.2(d)(3). The Department discusses the purpose of the proposed amendment in section IV.B.3 of this preamble.

- DHS calculated a proposed fee for Form I-829, Petition by Investor to Remove Conditions on Permanent Resident Status, as \$7,860. See proposed 8 CFR 106.2(d)(4).

- DHS calculated a proposed fee for Form I-956, Application for Regional Center Designation, as \$28,895 for

initial filings and \$18,480 for amendments. See proposed 8 CFR 106.2(d)(5).

- DHS also proposes a \$29,935 fee for Form I-956F, Application for Approval of Investment in a Commercial Enterprise. See proposed 8 CFR 106.2(d)(6).

- The proposed fee for Form I-956G, Regional Center Annual Statement, is \$2,740. See proposed 8 CFR 106.2(d)(7).

- The proposed fee for Form I-956H, Bona Fides of Persons Involved with Regional Center Program, is \$55. See proposed 8 CFR 106.2(d)(8).

- The proposed fee for Form I-956K, Registration for Direct and Third-Party Promoters, is \$2,740. See proposed 8 CFR 106.2(d)(9).

As discussed earlier, projected volumes and completion rates are two of

the main drivers in the EB-5 fee study results. Staffing requirements and costs change as volume or completion rate estimates change. The proposed fees represent consistent application of the methodologies previously outlined in this preamble. In each case, the EB-5 proposed fees are based on the ABC model outputs that meet EB-5 Reform Act processing guidelines.

## 2. EB-5 Technology Fee

The EB-5 Reform Act authorized USCIS to begin charging a technology fee “. . . in an amount that is not greater than one percent of the fee . . . to make improvements to the information technology systems used by the Secretary of Homeland Security to process, adjudicate, and archive applications and petitions.” See Public Law 117-103, div. BB, sec. 106(c).

Through this rule, DHS proposes that the EB-5 technology fee will only apply to Form I-526, Immigrant Petition by Standalone Investor, and Form I-526E, Immigrant Petition by Regional Center Investor.<sup>50</sup> First, DHS calculated the proposed fee of \$9,530 for Forms I-526 and I-526E, as described earlier in the preamble. One percent of \$9,530 is \$95.30. DHS rounded \$95.30 down to the nearest \$5 increment to calculate the proposed \$95 EB-5 technology fee.<sup>51</sup> As such, the proposed \$95 EB-5 technology fee is approximately 0.997 percent of the proposed fees for forms I-526 and I-526E. This approach ensured that the applicable immigration benefit requests did not exceed 1 percent of the form fee and yielded a technology fee of \$95 per form. See proposed 8 CFR 106.2(d)(2)(iii). This amount is included in the total form fee for initial applications of Forms I-526 and I-526E, as noted in Table 1 of this preamble.

USCIS will use this fee revenue to move IPO from a paper-based filing

<sup>50</sup> Section 106(c)(2) permits the charging of the EB-5 technology for filing “a petition under section 203(b)(5) of the [INA],” which DHS interprets to mean only petitions for classification under section 203(b)(5) of the INA, 8 U.S.C. 1153(b)(5) (Form I-526 and Form I-526E). Other filings under that section of the INA are not referred to as petitions (e.g., Form I-956F, Application for Approval of an Investment in a Commercial Enterprise) and the only other type of EB-5 petition (Form I-829, Petition by Investor to Remove Conditions on Permanent Resident Status) is filed under section 216A of the INA, 8 U.S.C. 1186b.

<sup>51</sup> In other fee rules, DHS typically rounds USCIS fees to the nearest \$5 increment. See, e.g., 88 FR 402, 450-451 (Jan. 4, 2023); 81 FR 73292, 73303 n.43, 73304 n.45 (Oct. 24, 2016); 72 FR 29851, 29866 (May 30, 2007). In this case, DHS rounded down to \$95 to propose an EB-5 technology fee that is less than 1 percent of the proposed fees for Forms I-526 and I-526E.

system to a modern electronic process for the entire IPO case life cycle and make other technological and infrastructure improvements. DHS will review the adequacy of the technology fee along with all other fees in each biennial fee review as required by the CFO Act.

## 3. Form I-527, Amendment to Legacy Form I-526

Under section 203(b)(5)(M) of the INA, 8 U.S.C. 1153(b)(5)(M), certain good faith investors may retain eligibility following termination of their regional center or debarment of their NCE or JCE. USCIS interprets section 203(b)(5)(M) of the INA to apply to investors who filed Form I-526 petitions for classification before the EB-5 Reform Act was enacted. Therefore, USCIS proposes to create Form I-527, Amendment to Legacy Form I-526, for investors who filed their petitions before the EB-5 Reform Act was enacted who choose to amend their petition in order to retain their eligibility under section 203(b)(5)(M) of the INA, 8 U.S.C. 1153(b)(5)(M), where their regional center is terminated or their NCE or JCE is debarred. See section VI.J, Paperwork Reduction Act (PRA), for a more complete description of Form I-527.

## V. EB-5 Integrity Fund Fees and Penalties

### A. EB-5 Integrity Fund

The EB-5 Reform Act established a special fund to be known as the EB-5 Integrity Fund. INA sec. 203(b)(5)(J), 8 U.S.C. 1153(b)(5)(J). The Integrity Fund is to be used by DHS for the following:

- (1) Conducting investigations based outside of the United States, including monitoring and investigating program-related events and promotional activities and ensuring that an investor's funds were obtained from a lawful source and through lawful means;
- (2) Detecting and investigating fraud or other crimes;
- (3) Determining whether regional centers, NCEs, JCEs, and investors (and their spouses and children) comply with U.S. immigration laws;
- (4) Conducting audits and site visits; and
- (5) For other purposes as DHS determines necessary.

INA sec. 203(b)(5)(J)(iii), 8 U.S.C. 1153(b)(5)(J)(iii).

In FY 2023, USCIS issued a statement of policy and interpretive rule in the **Federal Register** regarding the EB-5

Integrity Fund Fee of \$20,000 or \$10,000. See 88 FR 13141 (Mar. 2, 2023). The notice explained how regional centers should determine the amount of the fee and provided the process for how to pay it. USCIS imposed the EB-5 Integrity Fund Fee without soliciting public comment because the fees are explicitly provided for in the EB-5 Reform Act.

### B. Current EB-5 Integrity Fund Fees

The EB-5 Integrity Fund is a separate fund maintained at the U.S. Department of the Treasury for collecting the fees designated in the EB-5 Reform Act. The INA makes the funds available to the Secretary for the permissible purposes outlined earlier. As USCIS solely administers the EB-5 program, DHS proposes that USCIS will continue to determine how to use these funds as appropriate to meet the statutory requirements.

These fees are to be used by USCIS to execute auditing activities for regional centers to ensure compliance with EB-5 requirements and review the flow of investor capital into capital investment projects. Table 9 identifies the fees as delineated in the EB-5 Reform Act.

Each Form I-526E filer is required to pay \$1,000 to the EB-5 Integrity Fund, in addition to any form fees. USCIS began collecting the new fee in 2022, as required by the EB-5 Reform Act. See 88 FR 13141, 13142 n.1 (Mar. 2, 2023). Each regional center is required to make an annual payment into the EB-5 Integrity Fund in relation to the number of total investors in its new commercial enterprises in the preceding fiscal year. Per the new provisions of the INA added by the EB-5 Reform Act, regional centers with 21 or more total investors are required to pay \$20,000 annually to the EB-5 Integrity Fund. Regional centers with 20 or fewer total investors are required to pay \$10,000 annually to the EB-5 Integrity Fund. The INA authorizes the Secretary to increase these amounts by regulation as may be necessary to ensure that the amounts in the EB-5 Integrity Fund are sufficient to carry out its designated purposes. See INA sec. 203(b)(5)(J)(ii)(III), 8 U.S.C. 1153(b)(5)(J)(ii)(III). DHS is proposing to increase these amounts, as discussed in the next section.

The measurement of the number of investors in a regional center and the timing of EB-5 Integrity Fund Fee payments is discussed in Section V.D.2.

TABLE 9—CURRENT EB–5 INTEGRITY FUND FEES

	Amount
I–526E EB–5 Integrity Fund Fee .....	\$1,000.
Regional Center Integrity Fund Fee (88 FR 13141 (Mar. 2, 2023)) .....	\$20,000 or \$10,000.

DHS believes that the INA’s language is plain and clear that each designated regional center must pay the Integrity Fund Fee annually to avoid the penalties required by the Act. *See* INA sec. 203(b)(5)(J)(iv)(I), 8 U.S.C. 1153(b)(5)(J)(iv)(I) (“if any regional center does not pay the fee required”) (emphasis added); INA sec. 203(b)(5)(J)(iv)(II), 8 U.S.C. 1153(b)(5)(J)(iv)(II) (“terminate the designation of any regional center that does not pay the fee required under clause (ii)”) (emphasis added). DHS notes that some stakeholders have read the INA’s language as excluding regional centers designated before the EB–5 Reform Act from needing to pay the Integrity Fund Fee because the INA orders DHS to collect the annual fee “from each regional center designated under subparagraph (D).” INA sec. 203(b)(5)(J)(ii)(I), 8 U.S.C. 1153(b)(5)(J)(iv)(I). They state that because pre-EB–5 Reform Act regional centers were not designated under subparagraph (D), they are not subject to the new provisions and requirements.<sup>52</sup>

DHS reiterates that the statutory language is clear in that these new provisions of the INA added by the EB–5 Reform Act, including the required fees and penalties, also apply to previously designated regional centers as of the date of enactment. Section 103(a) of the EB–5 Reform Act repealed section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note), which was the authority that established and formerly authorized the Regional Center Program, and under which regional centers were previously designated. Public Law 117–103, div. BB, sec. 103. The EB–5 Reform Act moved the relevant provisions regarding regional centers, including the authority

<sup>52</sup> Regional centers have sought to enjoin DHS’s collection of the EB–5 Integrity Fund fee from regional centers designated before enactment of the EB–5 Reform Act. Following denial of the regional centers’ motions for preliminary injunction, U.S. District Courts in the Southern District of Florida and District of Columbia subsequently rejected this interpretation advanced by these regional centers and granted DHS’s motions to dismiss these lawsuits. *Sunshine State Reg’l Ctr., Inc. v. Jaddou*, 23–cv–60795 (S.D. Fla. Dec. 29, 2023) (order granting DHS’s motion to dismiss), appeal filed Jan. 1, 2024; *EB5 Holdings, Inc. v. Jaddou*, 23–cv–1180 (D.D.C. Feb. 20, 2024) (order granting DHS’s motion to dismiss).

for their designation, to section 203(b)(5)(E) of the INA, 8 U.S.C. 1153(b)(5)(E), titled “Regional Center Program.” Section 203(b)(5)(E)(i) of the INA, 8 U.S.C. 1153(b)(5)(E)(i), then provides for visa allocations for post-EB–5 Reform Act regional center investors participating in the program involving regional centers “which [have] been designated by the Secretary of Homeland Security on the basis of a proposal for the promotion of economic growth.” The EB–5 Reform Act also added various new provisions to the INA to regulate designated regional centers in accordance with this newly codified statutory designation authority, including the requirement to file an annual statement under section 203(b)(5)(G)(i) of the INA, 8 U.S.C. 1153(b)(5)(G)(i), and to then pay an annual fee into the EB–5 Integrity Fund under section 203(b)(5)(J)(ii)(I) of the INA, 8 U.S.C. 1153(b)(5)(J)(ii)(I). Applying these provisions of the INA added by the EB–5 Reform Act, specifically the EB–5 Integrity Fund Fee and penalties, prospectively to existing regional centers is the best reading of the statute because they are designated regional centers under (E), as there is no longer any other existing authority under which they may be designated. Further, to deem them previously designated, and not designated under (E), could create a legal fiction and lead to arbitrary results. For example, that could mean that DHS has no legal authority to regulate those entities, verify compliance with EB–5 laws, protect the investors, and penalize regional centers that commit fraud, among other important measures.

Lastly, DHS does not believe applying these provisions of the INA added by the EB–5 Reform Act in this manner is impermissibly retroactive. Although previously designated regional centers became regional centers before the EB–5 Reform Act’s enactment, the EB–5 Reform Act did not explicitly exclude them from meeting the new requirements. A regional center is unlike a typical petitioner or applicant who generally submits one benefit request and establishes eligibility; rather, a regional center seeks a designation that they must actively maintain and for which they must annually demonstrate compliance to

DHS.<sup>53</sup> Because the previous regional center statutory authority was repealed, those that seek to maintain their designation must comply with the new requirements added to the INA by the EB–5 Reform Act. In accordance with the statute, DHS is proposing to continue to apply these requirements prospectively, as of the date of the EB–5 Reform Act’s enactment, to all regional centers.

### C. Proposed Inflation Adjustment to EB–5 Integrity Fund Fees

DHS proposes to increase EB–5 Integrity Fund fees by the rate of inflation since enactment of the EB–5 Reform Act on March 15, 2022. The EB–5 Reform Act authorized DHS to adjust the Integrity Fund fees as necessary to ensure that amounts in the Fund are sufficient to carry out the permissible uses of the fund. *See* INA sec. 203(b)(5)(J)(ii)(III), 8 U.S.C. 1153(b)(5)(J)(ii)(III); *see also* 8 U.S.C. 1153(b)(5)(J)(iii). While the authority for these fees is fairly new, and USCIS is adjusting to this new revenue stream, increasing the fees by the amount of inflation will allow USCIS to recover more of its operating costs associated with maintaining the integrity of the EB–5 program and help sustain USCIS efforts in future years.

DHS has a long history of adjusting fees by inflation; therefore, the rate of inflation is a particularly rational method on which to base an adjustment of those fees. DHS regularly increases certain fees by inflation because of specific statutory authority to do so. *See, e.g.*, 88 FR 89539 (Dec. 28, 2023) and 87 FR 18227 (Mar. 30, 2022). For over 24 years,<sup>54</sup> Congress has indicated that an increase in costs through inflation, more specifically the

<sup>53</sup> *See, e.g.*, INA sec. 203(b)(5)(E) (providing authority to designate regional centers for ongoing participation in the regional center program and requiring, among other things, periodic amendments to designation based on specified changes and ongoing recordkeeping and audit obligations), INA sec. 203(b)(5)(G) (requiring the submission of annual statements to provide recertification of compliance with particular requirements and provide periodic information regarding associated NCEs), INA sec. 203(b)(5)(I) (requiring periodic recertification of compliance with securities laws), and INA sec. 203(b)(5)(J) (requiring the annual payment of EB–5 Integrity Fund fees).

<sup>54</sup> *See* Public Law 106–553, App. B, tit. I, sec. 112, 114 Stat. 2762, 2762A–68 (Dec. 21, 2000).

Consumer Price Index for All Urban Consumers (CPI-U), is a rational reason for DHS to adjust a USCIS fee.<sup>55</sup> In the FY 2022/2023 fee rule, DHS limited some fee increases by inflation. *See* 89 FR 6194, 6212 (Jan. 31, 2024). In that same fee rule, DHS finalized a regulatory mechanism to adjust USCIS fees by inflation when they are not set by statute. *See* 89 FR 6194, 6281–6282 (Jan. 31, 2024); *see also* 8 CFR 106.2(d).

DHS proposes to adjust Integrity Act fees by using the change in the CPI-U from the first half of 2022 to the first half of 2024. In the first half of 2022, the CPI-U was 288.347, and in the first half of 2024, it was 312.145.<sup>56</sup> Therefore, between the first halves of 2022 and 2024 respectively, the CPI-U increased by 8.25 percent.<sup>57</sup> If this percentage increase were applied to the current fees, the I-526E EB-5 Integrity Fund Fee of \$1,000 would increase to \$1,085; the \$10,000 Regional Center Integrity Fund Fee would increase to \$10,825; and the \$20,000 Regional Center Integrity Fund Fee would increase to \$21,650.<sup>58</sup> *See* proposed 8 CFR 106.2(d).

DHS considered different date ranges and the resulting percentage change in CPI-U before determining the proposed inflation adjustment. For example, DHS considered using the change in CPI-U from March 2022 to November 2024, which was approximately 9.74 percent.<sup>59</sup> This approach would use the most recent data at the time of this writing, but it would also be subject to monthly volatility. Yet another alternative approach would be to use June 2022 to June 2024, similar to a premium processing fee increase, which would be approximately 6.03 percent.<sup>60</sup>

<sup>55</sup> *See, e.g.*, 8 U.S.C. 1356(u) (premium processing fees), 48 U.S.C. 1806(a)(6)(A)(ii) (Commonwealth of the Northern Mariana Islands education fee).

<sup>56</sup> The latest CPI-U data are available at <https://data.bls.gov/toppicks?survey=bls> (last visited Dec. 11, 2024). Select CPI-U 1982–84=100 (Unadjusted)—CUUR0000SA0 and click the Retrieve data button.

<sup>57</sup> DHS calculated this by subtracting the first half of 2022 CPI-U (288.347) from the first half of 2024 CPI-U (312.145), then dividing the result (23.80) by the first half of 2022 CPI-U (288.347). Calculation:  $(312.145 - 288.347) / 288.347 = 0.0825 \times 100 = 8.25$  percent.

<sup>58</sup> DHS rounds all fees to the nearest \$5 increment.

<sup>59</sup> DHS calculated this by subtracting the March 2022 CPI-U (287.504) from November 2024 CPI-U (315.493), then dividing the result (27.99) by the March 2022 CPI-U (287.504). Calculation:  $(315.293 - 287.504) / 287.504 = 0.0974 \times 100 = 9.74$  percent.

<sup>60</sup> Congress specified that DHS use CPI-U from June when adjusting premium processing fees by inflation. *See* INA sec. 286(u)(3)(C), 8 U.S.C. 1356(u)(3)(C); *see also* 8 CFR 106.4(d). DHS calculated this by subtracting the June 2022 CPI-U (296.311) from June 2024 CPI-U (314.175), then dividing the result (17.86) by the June 2022 CPI-U (296.311). Calculation:  $(314.175 - 296.311) / 296.311 = 0.0603 \times 100 = 6.03$  percent.

DHS proposes to use the 8.25 percent change from the first half of 2022 to the first half of 2024 because it marks the 2-year anniversary of the EB-5 Reform Act without relying on the monthly variation in the index. The proposed percentage increase may be considered a midrange estimate for inflation because it is less than the inflation changes using monthly data but more than the change between June 2022 and June 2024. In any case, it is likely that inflation will continue to increase before DHS could adopt this proposed increase in a final rule. Therefore, the fee amounts in the final rule will be based on inflation as of the date the final rule is scheduled to take effect, and they may increase slightly to account for the time required to address comments, draft and publish a final rule. That increase will be foreseeable and based on a non-variable calculation and a well-known published source, and will, therefore, be a logical outgrowth of the proposed rule. Otherwise, DHS would set fees in the final rule at a level that would not recover the cost of inflation at the time of a final rule.

Integrity Fund revenue has varied significantly, making it harder for USCIS to plan how to use it. In FY 2023 and FY 2024, the Integrity Fund collected approximately \$8 million and \$11 million, respectively. In FY 2025, forecasts with the current Integrity Fund fees range from approximately \$10 to \$14 million, which includes back payments from FY 2023 and FY 2024. The proposed increase to Integrity Fund fees may provide approximately \$1 million in additional revenue and better protect the purchasing power of USCIS investments in staffing and information technology for the EB-5 program.

#### D. EB-5 Integrity Fund Penalties

The EB-5 Reform Act directs DHS to impose penalties for failing to pay and for late payments of the EB-5 Integrity Fund fees. INA sec. 203(b)(5)(J), 8 U.S.C. 1153(b)(5)(J). Specifically, the law requires a reasonable penalty fee (to be paid to USCIS and deposited into the Integrity Fund when collected) on a regional center that does not pay the annual Integrity Fund fee within 30 days after the date on which such fee is due. INA sec. 203(b)(5)(J)(iv), 8 U.S.C. 1153(b)(5)(J)(iv). USCIS must terminate the designation of any regional center that does not pay the fee within 90 days after the date on which such fee is due. INA sec. 203(b)(5)(J)(iv)(II), 8 U.S.C. 1153(b)(5)(J)(iv)(II).

In its notice of March 2, 2023, USCIS articulated these requirements. *See* 88 FR 13141, 13143–13144 (Mar. 2, 2023). USCIS announced that it would comply

with the requirement that it terminate the designation of any regional center that does not pay the full required fee within 90 days after the date on which such fee is due, after providing a notice of intent to terminate and the opportunity for a regional center to prove that the fee was paid in the proper amount by the due date before sending a notice of termination. *Id.* However, USCIS decided that, as a matter of discretionary enforcement policy, it will not begin charging a late fee until the amount of the late fee, as well as the process for collecting the late fee is finalized. *Id.* DHS proposes the late fee as required in this rule and explains its rationale for the amount of the late fee in the section that follows.

#### 1. Proposed Penalties

DHS proposes to impose the following penalties for paying the Integrity Fund fee late (31 days or more after it is due):

- Ten percent of the required integrity fee (e.g., 10 percent of \$10,000 or \$20,000, subject to adjusting such required amounts for inflation) for a regional center that pays its fees on day 31 through and including day 60 after the due date.
- Twenty percent of the required integrity fee for a regional center if their fee is paid on day 61 through and including day 90 after it is due.
- Terminate a regional center designation if it fails to pay the fee within 90 days of the date on which such fee is due.

By requiring a “reasonable” penalty fee in section 203(b)(5)(J)(iv) of the INA, 8 U.S.C. 1153(b)(5)(J)(iv), Congress has assigned DHS the authority to give meaning to that statutory term. *See Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2263 (2024) (“In a case involving an agency, of course, the statute’s meaning may well be that the agency is authorized to exercise a degree of discretion. Congress has often enacted such statutes. For example, some statutes ‘expressly delegate’ to an agency the authority to give meaning to a particular statutory term. Others empower an agency to prescribe rules to ‘fill up the details’ of a statutory scheme, or to regulate subject to the limits imposed by a term or phrase that ‘leaves agencies with flexibility,’ such as ‘appropriate’ or ‘reasonable.’”) (internal citations omitted).

In determining what would constitute a reasonable penalty, DHS considered two main factors. First, DHS looked to the EB-5 Reform Act to find whether Congress codified any penalty percentages for this program. The EB-5 Reform Act authorizes graduated sanctions of up to 10 percent of

petitioner capital for regional centers that fail to submit an annual statement or that commit certain violations. INA sec. 203(b)(5)(G)(iii), 8 U.S.C. 1153(b)(5)(G)(iii). Although the 10-percent penalty in the EB-5 Reform Act is a capped percentage of petitioner capital per regional center, because Congress has designated that percentage as appropriate, DHS believed that 10 percent was a reasonable starting point in setting a penalty. Second, DHS considered whether the dollar amount itself was reasonable. In this case, the 10 percent would amount to \$1,000 or \$2,000 based on the required amounts prior to adjusting for inflation depending on the regional center, which DHS believes is a reasonable late charge for failing to pay the fee after 30 days. The 20 percent would amount to \$2,000 or \$4,000 based on the required amounts prior to adjusting for inflation depending on the regional center, which DHS believes is a reasonable late charge for failing to pay the fee after 60 days. The goal of the proposed penalties program is to ensure that penalties are effective in deterring noncompliance. In addition to the amount being consistent with penalties that the law requires in similar contexts, DHS believes that the proposed penalties effectuate the authority of the statute by providing an amount that balances affordability, ability to pay, and some measure of accountability for the violation. The amounts will encourage payment and ensure timely collection of the EB-5 Integrity Fund fees.<sup>61</sup>

DHS recognizes that the statute did not explicitly set a separate 60-day penalty for failing to timely pay the fee. DHS proposes a graduated fee structure because it is common that late fees for payments of debts and fees generally increase as the delinquency period increases and subsequent missed or delayed payments occur.<sup>62</sup> Thus, DHS decided to increase the late fee to 20 percent when the fee became more than 31 days past due. As stated earlier, the proposed penalties effectuate the authority of the statute and are sufficient to encourage payment and ensure timely collection of the EB-5

Integrity Fund fees. There is an operational burden on USCIS if it is forced to expend resources on program integrity without timely receiving the funds needed to administer the EB-5 program. As such, DHS believes there is justification for a higher fee after 31 days.

DHS believes it is equitable to provide another opportunity for regional centers to remedy the failure to pay before proceeding to termination. Further, a graduated late penalty will further support the goal of encouraging payment and ensure timely collection of the Integrity Fund fee, without resulting in a significant burden to the agency. DHS believes that the proposed penalties are reasonable because they strike the necessary balance between the need for the fees and the financial ability of a regional center to pay them when required.

## 2. Calculation of Investors To Determine Amount Owed

The EB-5 Reform Act sets the standard annual fee at \$20,000 for each designated regional center. INA sec. 203(b)(5)(J)(ii), 8 U.S.C. 1153(b)(5)(J)(ii). However, for those with “20 or fewer total investors in its new commercial enterprises” during the preceding fiscal year (October 1–September 30), the annual fee is reduced to \$10,000. *Id.* Although “investor” is not specifically defined for purposes of INA sec. 203(b)(5), 8 U.S.C. 1153(b)(5), it is used extensively throughout that section to refer to individuals seeking classification, or classified, under INA sec. 203(b)(5) 8 U.S.C. 1153(b)(5) (*i.e.* I-526 and I-526E petitioners). For purposes of INA sec. 216A, “alien investor” is defined as “an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise)” under INA sec. 203(b)(5), 8 U.S.C. 1153(b)(5). *See* INA 216A(f)(1), 8 U.S.C. 1186b(f)(1). DHS recognizes that there is no legal requirement that an investor remain invested in an NCE within a specific time period after they file Form I-829, Petition by Investor to Remove Conditions on Permanent Resident Status. *See* INA sec. 216A(d)(1)(A), 8 U.S.C. 1186b(d)(1)(A). DHS has, therefore, determined that the filing of the Form I-829 is an appropriate demarcation for purposes of determining the number of “total investors in the preceding fiscal year” as intended by the EB-5 Reform Act.<sup>63</sup> The

Department welcomes public comments on that determination.

Accordingly, DHS proposes to define “total investors” in this context to include investors from the point of filing a petition for classification (Forms I-526, Immigrant Petition by Standalone Investor, or I-526E, Immigrant Petition by Regional Center Investor) through the point of filing a petition for removal of conditions (Form I-829, Petition by Investor to Remove Conditions on Permanent Resident Status). To calculate the total, DHS proposes to subtract the number of Forms I-829 associated with the regional center filed at any time on or before September 30 of that fiscal year (including filings from prior fiscal years) from the total number of pending and approved Forms I-526 associated with the regional center (filed on or before June 30, 2021) and Forms I-526E, Immigrant Petition by Regional Center Investor (filed on or after June 1, 2022, the date USCIS published the form) associated with the regional center filed at any time on or before September 30 of that same fiscal year (including filings from prior fiscal years). Proposed 8 CFR 106.2(d)(10)(i)(C). A Form I-829 that is filed separately by a spouse or child of an investor that obtained conditional permanent resident status based on their relationship to the investor and was not included on the principal investor’s Form I-829 will be excluded from the total investor calculation. For example, if a regional center had 30 associated Form I-526 petitions, 10 associated Form I-526E petitions, and 20 associated Form I-829 petitions filed on or before September 30, of a given year, USCIS would estimate that regional center has 20 total investors in its NCEs for the applicable fiscal year for purposes of calculating the applicable Integrity Fund fee.

USCIS has followed this policy since it was initially developed through the Notice of EB-5 Regional Center Integrity Fund Fee. As described in the Notice of EB-5 Regional Center Integrity Fund Fee, USCIS considered alternative methods of calculating the number of investors; however, it determined that those options generally would either not capture the entire population or involve manual calculations that USCIS believes would place an unreasonable burden on the Agency’s limited resources and be confusing and burdensome to the investor or regional center populations.

investment ceases would be impractical as it would require the collection and validation of information regarding continued investment beyond that which is required to be submitted to establish eligibility for removal of conditions under section 216A of the INA, 8 U.S.C. 1186b.

<sup>61</sup> As discussed in more detail below, regional centers derive revenue from several different sources including administrative fees from each associated investor. This administrative fee is typically 10 percent of the individual investment amount, which would typically equal \$80,000 per investor based on the reduced required investment amount of \$800,000.

<sup>62</sup> *See, e.g.,* Consumer Financial Protection Bureau, “Why did my credit card issuer increase my late payment fee?” <https://www.consumerfinance.gov/ask-cfpb/why-did-my-credit-card-issuer-increase-my-late-payment-fee-en-56/> (last reviewed Sept. 23, 2022).

<sup>63</sup> Though DHS recognizes that some EB-5 investors may remain invested in a new commercial enterprise even after filing or adjudication of their Form I-829 petition, determining when such

See 88 FR 13141, 13143 (Mar. 2, 2023). For example, USCIS considered generally counting only the Forms I-526 that were filed within 2 years of the applicable period used for determining the EB-5 Integrity Fund fee given the expected 2-year minimum timeframe for the investment, or sustainment period, under the EB-5 Reform Act. INA sec. 203(b)(5)(A)(i); 8 U.S.C. 1153(b)(5)(A)(i). However, that method would likely be underinclusive given that many investors are actively in the process of investing (*i.e.*, not yet fully invested) when they file their Form I-526 petition as permitted under applicable requirements and, additionally, would not align with the sustainment period for those who filed before the EB-5 Reform Act, which runs approximately to the point of the Form I-829 filing, regardless of when they filed their Form I-526 or made their investment. For Form I-526E petitions filed after the EB-5 Reform Act, USCIS also considered generally counting only Form I-526E petitions whose investments were still within the 2-year period of investment expected under section 203(b)(5)(A)(i) of the INA; however, manual verification of the time period of investment for each regional center investor, rather than conducting a systems inquiry for total petition filings, would exhaust valuable and significant USCIS resources that the agency believes, in the balance, are better used in ensuring timely processing.

USCIS acknowledges the practical limitations of determining how many total investors may be in an NCE during any given fiscal year to ensure that the correct fee is paid. Nonetheless, the Department believes the proposed formula reflects the best interpretation of the statute, ensures that USCIS' limited resources are used most efficiently to ensure compliance with the EB-5 Reform Act, and minimizes the burden on the affected regional centers. DHS notes that 445 Regional Centers successfully paid their FY 2023 Integrity Fund Fees. 473 Regional Centers successfully paid their FY 2024 Integrity Fund Fees. 531 Regional Centers successfully paid their FY 2025 Integrity Fund Fees. There have been no public concerns nor operational concerns with the fee calculation process.

### 3. Timeline and Payment Process

The INA, as amended by the EB-5 Reform Act, provides that the Integrity Fee is due each year on October 1. INA sec. 203(b)(5)(J)(ii)(I); 8 U.S.C. 1153(b)(5)(J)(ii)(I). As proposed in this rule, the fee would be considered paid

timely (*i.e.*, without penalty) if paid between October 1 and October 31, after which a late payment penalty would apply. Each designated regional center would need to pay the fee to USCIS online via the online form hosted on *Pay.gov* at *Pay.gov* EB5—Annual Fee for Regional Center.<sup>64</sup> Payment of this fee would need to be made by an authorized individual on behalf of a regional center. Proposed 8 CFR 106.2(d)(10)(i)(D). Each designated regional center would need to pay the fee with either a valid credit or debit card<sup>65</sup> or by authorizing an Automated Clearing House Debit transaction where the regional center provides its U.S. bank routing and checking account numbers to have money debited directly from its U.S. bank account. *Id.* DHS proposes to codify that fees must be paid using these methods to reduce administrative burdens and processing errors associated with fee payments. Requiring the use of a specific form of payment would not prevent regional centers from paying the required fees. Other payment methods, such as money orders and checks, require time-intensive procedures to input, reconcile, and verify receipts and deposits. USCIS can spend the time it would use for complying with payment processing requirements to adjudicate requests for benefits.

For each fiscal year after this rule becomes final, payments received November 1 through November 30 would require a late fee equal to 10 percent of the Integrity Fee amount to be paid in addition to the Integrity Fee. Payments received December 1 through December 30 would require an additional 20 percent to be added to the Integrity fee amount as a late fee.

If the regional center does not pay the full required fee, including the relevant 10 or 20 percent late fee, if assessed, before December 31, USCIS would initiate termination of the regional center. Proposed 8 CFR 106.2(d)(10)(ii)(A)–(B). USCIS would terminate the designation of any regional center that does not pay the full required fee within 90 days after the date on which such fee is due (*e.g.*, a regional center does not make payment, or a regional center pays \$10,000 when it owes \$20,000, by December 31 of the year the annual fee is due). Proposed 8

CFR 106.2(d)(10)(ii)(C). Termination would not be automatic and USCIS would provide a notice of intent to terminate and the opportunity for a regional center to prove that the fee, and all late fees if applicable, were paid in the proper amount by December 31 before sending a notice of termination. Proposed 8 CFR 106.2(d)(10)(ii)(C)(1). The termination of a regional center may be appealed as provided by 8 CFR 103.3. Proposed 8 CFR 106.2(d)(10)(ii)(C)(2).

### E. Technical Change

The proposed rule would clarify the process by which an immigrant investor's spouse and children file separate Form I-829 petitions when they are not included in the Form I-829 filed by the immigrant investor.<sup>66</sup> Generally, an immigrant investor's derivatives should be included in the principal immigrant investor's Form I-829 petition. However, there are situations in which derivatives may not be included on the principal immigrant investor's Form I-829 petition, such as when the immigrant investor dies during the conditional residence period, or when the immigrant investor decides not to continue their conditional permanent resident status. In such circumstances, if the immigrant investor would have otherwise been eligible to have their conditions on status removed, then the derivatives would remain eligible to apply to remove the conditions on their status even if the immigrant investor cannot or will not file a Form I-829 petition.<sup>67</sup>

The regulations currently in effect do not clearly define the process by which derivatives may file a Form I-829 petition when they are not included on the principal's petition, including whether each derivative in such cases should file their own separate Form I-829 petition or whether the derivatives should jointly file on the same petition. This proposed technical change specifies that where the dependent family members cannot be included in the Form I-829 petition filed by the principal investor because that principal is deceased, all dependents (spouse and children) of the deceased investor may

<sup>64</sup> See *Pay.gov*, "EB5—Annual Fee for Regional Center," <https://www.pay.gov/public/form/start/1055128580> (last visited Feb. 14, 2024).

<sup>65</sup> U.S. Department of Treasury guidelines permit USCIS to accept a maximum payment amount of \$24,999 from one credit card in one day, and a single obligation cannot be split into multiple credit card payments over multiple days in order to evade this limit.

<sup>66</sup> DHS proposed and finalized this change as part of the EB-5 Immigrant Investor Program Modernization rulemaking. See 82 FR 4738 (Jan. 13, 2017) (proposed rule); 84 FR 35750 (July 24, 2019) (final rule). On June 22, 2021, a U.S. district court vacated the rule on grounds unrelated to this provision. *Behring Regional Center LLC v. Wolf*, 544 F. Supp. 3d 937 (N.D. Cal. 2021).

<sup>67</sup> See INA sec. 204(l), 8 U.S.C. 1154(l) (providing that upon the death of the principal beneficiary, surviving relative petitions and "related applications" must be adjudicated notwithstanding the death of the principal beneficiary).

be included on a single Form I-829 petition. See proposed 8 CFR 216.6(a)(1)(ii). DHS also proposes that each dependent must file a separate Form I-829 petition in all other situations in which the investor's spouse and children are not included in the investor's Form I-829 petition. See *id.* DHS notes that the Form I-829 Instructions indicate that if one's spouse and children are not included on their petition to remove conditions, "each dependent must file [their] own petition separately."<sup>68</sup> DHS also recognizes that, for the less than 20 cases potentially impacted annually, there may have been an inconsistent agency practice with respect to when dependents were required to file a separate Form I-829 and seeks to clarify any inconsistency through this rulemaking. Lastly, these technical changes also propose to clarify that when a derivative beneficiary files a Form I-829 petition separately from the principal investor who does not file a Form I-829 petition (whether because of death or otherwise), the timeframe to file such petition is any time within which the principal investor would have been required to make such filing. This clarification aligns with and accords derivative beneficiaries the same process as the principal investor under the statutory requirements for petition filing. See INA sec. 216A(d)(2), 8 U.S.C. 1186b(d)(2).

**VI. Statutory and Regulatory Requirements**

*A. 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."

The Office of Management and Budget (OMB) has designated this rule a "significant regulatory action" under section 3(f) of Executive Order 12866, although not economically significant under section 3(f)(1). Accordingly, the rule has been reviewed by the Office of Management and Budget.

This 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 INA 101(a)(17), 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).

**1. Summary**

The Department proposes to adjust Employment-Based Immigration, Fifth

Preference (EB-5) immigration benefit request fees charged by USCIS. USCIS conducted an EB-5-specific fee study, as required by the EB-5 Reform Act. The fees are proposed to be set at a level that USCIS has determined would enable it to recover the costs of administering the EB-5 program and to allow it to attain the processing time goals and to ensure there are internal procedures and controls in place to try to maximize the likelihood that the statutory goals are met. It would also make improvements to the information technology systems used by DHS to administer the EB-5 program. This rule also proposes to codify elements of the EB-5 Reform Act in regulations, including the establishment of Form I-527.

The fee schedule DHS is proposing could impact approximately 11,260 EB-5 program filings (FY 2024/2025 projected estimate) annually across nine current forms and one new form. For the nine current forms (amounting to 10,805 projected filings), the collective fees would decrease from their current level by about 14.7 percent, or by about \$2,259.<sup>69</sup> DHS estimates that the 10-year and annualized monetized costs could be about \$42.1 million and \$4.2 million, in order, in undiscounted terms. At a 3 percent discount rate, the figures would be \$35.9 million and \$3.6 million, in order. At a 7 percent discount rate, the figures would be \$29.6 million and \$3.0 million, in order. The impacts are summarized in Table 10, in which population figures reflect annualized averages over the 10-year period of analysis and the monetized figures reflect the average annualized equivalence discounted at 7 percent.

TABLE 10—SUMMARY OF POSSIBLE IMPACTS OF THE PROPOSED RULE

Summary of proposed change	Potential impact
• Fee changes for current EB-5 program forms .....	<ul style="list-style-type: none"> <li>• Population: 10,805 filings.</li> <li>• Impact type: Transfers from requestors to DHS.<sup>70</sup></li> <li>• Estimate: \$24.4 million.</li> </ul>
• Creation of Form I-527, Amendment to Legacy Form I-526 .....	<ul style="list-style-type: none"> <li>• Population: 457 individual filers.</li> <li>• Impact type: Costs applicable to the filing fee and time burden.</li> <li>• Estimate: \$3.72 million.</li> </ul>
• Penalties for late filing of the Integrity Fund fee .....	<ul style="list-style-type: none"> <li>• Population: Maximum of 640 annual regional centers plus 3,500 investors affiliated with regional centers.</li> <li>• Impact type: Costs.</li> <li>• Impact estimate: Unquantified; unknown how many regional centers or affiliated investors would incur penalties, as the penalties are intended to act as an incentive for compliance.</li> </ul>

<sup>68</sup> USCIS, Form I-829, "Instructions for Petition by Investor to Remove Conditions on Permanent

Resident Status," p. 1 (expires Mar. 31, 2027), <https://www.uscis.gov/i-829>.

<sup>69</sup> Volume presented is rounded from 11,262, comprising 10,805 projected current forms and 457 new Form I-527 filings.

TABLE 10—SUMMARY OF POSSIBLE IMPACTS OF THE PROPOSED RULE—Continued

Summary of proposed change	Potential impact
<ul style="list-style-type: none"> <li>Projected changes (increases) in forms' time burdens .....</li> <li>Dependents filing Form I-829 separate from principal investor applicant.</li> </ul>	<ul style="list-style-type: none"> <li>Population: 10,805 (across current forms).</li> <li>Impact type: Costs.</li> <li>Impact estimate: \$403,722.</li> <li>Population: Less than 20 annually based on past volumes.</li> <li>Impact type: Costs applicable to the filing fee and time burden.</li> <li>Impact estimate: \$88,591.</li> </ul>

Source: USCIS analysis (Apr. 28, 2024).

In addition to the impacts summarized in Table 10, and as required by OMB Circular A-4, DHS presents the accounting statement showing the anticipated costs and benefits associated with this proposed regulation.<sup>71</sup>

TABLE 11—OMB CIRCULAR A-4 ACCOUNTING STATEMENT  
[Millions, \$2024; period of analysis: FY 2024 through FY 2033]

Category	Primary estimate	Minimum estimate	Maximum estimate	Notes	Source/citations
Benefits .....	N/A	N/A	N/A	Not estimated .....	NA.
Annualized monetized benefits:					
3% .....	N/A	N/A	N/A	Not estimated .....	NA.
7% .....	N/A	N/A	N/A		
Unquantified benefits .....	The proposed fees would recover the costs of administering the EB-5 program including the costs to hire staff and put internal procedures and controls in place within the program office with the intent of maximizing the likelihood that the statutory goals are met. It would make improvements to the information technology systems used by DHS to administer the EB-5 program.				RIA.
Costs .....	\$4.17	N/A	N/A	Applicable to filing costs and time burdens associated with the new Form I-527 and a small number of dependents who file their Form I-829 separately from the principal (investor); Increase in forms' time burdens.	RIA.
Annualized monetized costs:					
3% .....	3.6	N/A	N/A	N/A .....	RIA.
7% .....	3.0	N/A	N/A		
Unquantified costs .....				Penalties and fines applicable to late Integrity Fund payments are not estimated; Rule familiarization costs.	RIA.
Transfers .....	N/A	N/A	N/A	Applicable to proposed fee changes for the EB-5 program forms.	RIA.
Annualized monetized transfers (2%):					
3% .....	24.41	N/A	N/A	Transfers from requestors to DHS .....	RIA.
7% .....	24.41	N/A	N/A		
Effects on State, local, and tribal governments.	No significant impacts to national labor force or to the labor force of individual States is expected; DHS does not expect impacts to tribal governments.				RIA.
Effects on small businesses .....	Based on available, but limited, data and information, most regional centers and almost all NCEs and JCEs directly involved in EB-5 investment activity would be small entities according to Small Business Administration (SBA) size standards. <sup>72</sup> However, DHS cannot determine how the impacts found in this analysis (comprising costs and transfers) would affect small entities, or how they might respond to such impacts. As such, DHS cannot determine how the impacts could possibly affect downstream effects to investment activity or job creation. An important caveat is that the number and proportion of the entities that are truly small is likely to be lower than that found in the initial determination, as DHS does not have complete data on the income accruing to the EB-5 businesses.				RFA.
Effects on wages .....	None	None	None	None .....	NA.
Effects on growth .....	None	None	None	None .....	NA.

Source: DHS, USCIS analysis (Feb. 14, 2024).

<sup>70</sup> Transfer payments are monetary payments from one group to another that do not affect total resources available to society. See OMB Circular A-4 pp. 14 and 38 for further discussion of transfer

payments and distributional effects. OMB Circular A-4 is available at: <https://trumpwhitehouse.archives.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf>.

<sup>71</sup> OMB, Circular A-4, "Regulatory Analysis," p. 44 (Nov. 9, 2023), <https://trumpwhitehouse.archives.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf>.

2. Economic Impacts

a. Monetized Impact Estimates

In introducing the analysis, DHS presents in Table 12 information

captured from the preamble (Tables 1–3) to show the current and projected fees for the EB–5 program forms. As is shown, we calculate weighting factor based on the volume for each form

relative to the annualized total to generate a weighted average change in fees (which are accounted for as transfers), exclusive of the Form I–527, which this rule is introducing.<sup>73</sup>

TABLE 12—EB–5 PROGRAM FORMS WITH PROPOSED FEE CHANGES

Form	Volume	Weight	Current	Proposed	% Diff.	Change	Weight %	Weight
I–526	225	2.1	\$11,160.0	\$9,625.0	–13.8	–\$1,535.0	–0.3	–\$32.0
I–526E(i)	3,395	31.4	11,160.0	9,625.0	–13.8	–1,535.0	–4.3	–482.3
I–829	3,430	31.7	9,525.0	7,860.0	–17.5	–1,665.0	–5.5	–528.5
I–956(i)	50	0.5	47,695.0	28,895.0	–39.4	–18,800.0	–0.2	–87.0
I–956(a)	150	1.4	47,695.0	18,480.0	–61.3	–29,215.0	–0.9	–405.6
I–956F	450	4.2	47,695.0	29,935.0	–37.2	–17,760.0	–1.6	–739.7
I–956G	500	4.6	4,470.0	2,740.0	–38.7	–1,730.0	–1.8	–80.1
I–956H	2,100	19.4	0.0	55.0	0.0	55.0	0.0	10.7
I–956K	400	3.7	0.0	2,740.0	0.0	2,740.0	0.0	101.4
							–14.7	–2,258.8

Source: USCIS analysis (Jan. 13, 2025).

As is shown in the final columns of Table 12, based on the projected volumes in Table 3, and proposed fees, the fees decrease by \$2,259 or by 14.7 percent.

The volumes shown represent the average annual forecasts based on the USCIS VPC. The VPC predicts USCIS annual workload volumes using various factors, including statistical forecasts, and subject-matter expertise from various USCIS directorates and program offices, including the IPO, USCIS service centers, the National Benefits Center, and regional, district, and field offices.

The VPC makes projections 7 years out (FY 2024 through FY 2030). In many rulemakings DHS uses a baseline of previous years, usually between three and six. In this case, however, we think that projected volumes present a more salient baseline because there are new forms involved, and the EB–5 Reform Act made substantial changes in key

areas of the program. As a result, we cannot be reasonably certain that the past will represent the future. Since the changes are not fully implemented yet, there could be variation in the projections, but we rely on the projected volumes.

Because DHS is normally required to estimate impacts over a 10-year time horizon, for FY 2031 through FY 2033, we simply extend the forecasted value to FY 2034 out from the VPC FY 2024 through FY 2030 Figures.<sup>74</sup> Table 13 builds the economic impacts applicable to the proposed fee changes for current forms. The final columns report the annual total across all impacted forms, while the final rows report the 10-year average annual figures for each form, in order. While there is a single Form I–956, we have included two columns to account for initial filings (“i”) and amendments (“a”). The reason for parsing them out is that while their current fee is the same (\$47,695) their

proposed fees will be different (\$44,600 and \$28,525, in order). It is noted that the new Form I–527, Amendment to Legacy Form I–526, with a projected annual volume of 457, is not included in Table 13. The reason is that this form will incur a different accounting protocol from the other forms and is treated in a separate module. Specifically, the fee impacts associated with this form will be accounted for as a cost while the others will constitute transfers.

Table 13 presents the projected annual volumes as well as the filing fees at the current and proposed levels. Table 13 is set up this way because the volumes are projected to be the same each FY, and for brevity each actual year is therefore not shown. The table also presents the impact as the difference between current and future filing fees, and the final column shows the 10-year totals per form.

TABLE 13—EB–5 PROGRAM PROJECTED FILING COST IMPACTS

[Millions, FY 2024 through FY 2033]

Form No.	Annual volume projection	Current filing fees	Future filing fees	Impact (difference)	Ten year-total
I–526	225	\$2.51	\$2.17	–\$0.35	–\$3.45
I–526E(i)	3,395	37.89	32.68	–5.21	–52.11
I–526E(a)	105	1.17	1.00	–0.17	–1.71
I–829	3,430	32.67	26.96	–5.71	–57.11
I–956(i)	50	2.38	1.44	–0.94	–9.40
I–956(a)	150	7.15	2.77	–4.38	–43.82
I–956F	450	21.46	13.47	–7.99	–79.92
I–956G	500	2.24	1.37	–0.87	–8.65
I–956H	2,100	0.00	0.12	0.12	1.16
I–956K	400	0.00	1.10	1.10	10.96

<sup>72</sup> SBA size standards are found at: <https://www.sba.gov/document/support-table-size-standards>.

<sup>73</sup> While there is a single Form I–526E, we have included two columns to account for initial filings

(“i”) and amendments (“a”). The reason for parsing them out is that while their current fee is the same, their proposed fees will be different (as is explained below). In addition, the form I–956 is broken out the same way.

<sup>74</sup> The VPC is situated in the DHS, USCIS, OPQ, Workload Analysis and Resource Modeling (WARM) Division.

TABLE 13—EB-5 PROGRAM PROJECTED FILING COST IMPACTS—Continued  
[Millions, FY 2024 through FY 2033]

Form No.	Annual volume projection	Current filing fees	Future filing fees	Impact (difference)	Ten year-total
Annual .....	.....	107.48	83.07	-24.41	.....
Ten-year total .....	.....	1,074.8	830.72	-244.07	.....
Annual average .....	10,805	107.48	83.07	-24.41	.....

Source: USCIS Analysis (Jul. 20, 2024).

As Table 13 reports, based on the volume projections, at current fee rates the costs associated with filing forms for the EB-5 program would be \$1,074.8 million over 10 years or \$107.5 million annually in undiscounted terms. Based on the proposed future fees, the filing costs could be \$830.7 million over 10 years or \$83.1 million on an annually in undiscounted terms. The impact (difference) could be a decrease of \$244.1 million over 10 years or a decrease of \$24.4 million on an annual basis (Table 13). The impacts attributable to the proposed fee changes

would represent a net decrease in transfers from requestors to DHS.

b. Costs of the Proposed Rule

In addition to potential impacts pertinent to form related fees, several expected impacts are accounted for as costs. DHS has determined that there would be minor time burden changes applicable to the existing EB-5 Program forms due to this rule. To estimate the opportunity cost of time impacts, we need to rely on a wage bound. This is difficult because EB-5 entities can involve complex business activities. DHS does not have salient information

on the jobs the individual filers are involved in, but we assess that most individuals involved in the program investments are primarily involved (for regional centers, NCEs, and JCEs) in the business of arranging loans and financing and managing these efforts applicable to business plans. Therefore, we selected 20 occupations from the Bureau of Labor Statistics (BLS) Standard Occupational Codes (SOC) that we think reasonably capture the individuals involved in these activities. These SOC titles and associated terms mean hourly wage for the detailed industries are reported in Table 14.

TABLE 14—OCCUPATION TITLES AND HOURLY WAGES FOR EB-5 PROGRAM FORM FILERS

BLS SOC title	Wage (\$)
General and Operations Managers .....	\$64.00
Advertising and Promotions Managers .....	71.76
Marketing Managers .....	82.46
Sales Managers .....	77.37
Public Relations Managers .....	78.61
Fundraising Managers .....	66.01
Administrative Services Managers .....	60.59
Financial Managers .....	86.76
Managers, All Other .....	72.06
Project Management Specialists .....	51.97
Management Analysts .....	55.15
Market Research & Marketing Specialists .....	41.58
Business Operations Specialists .....	43.76
Accountants and Auditors .....	44.96
Financial and Investment Analysts .....	56.01
Financial Risk Specialists .....	57.66
Financial Examiners .....	49.83
Financial Specialists, All Other .....	45.14
Lawyers .....	87.86
Real Estate Brokers .....	44.07
Midpoint wage .....	64.72

Source: U.S. Department of Labor (DOL), BLS, Occupational Employment and Wage Statistics, National Occupational Employment and Wage Estimates: <https://data.bls.gov/oes/#/industry/000000>. (May 2024 data; analysis updated July 1, 2025).

The minimum, mid-point, and maximum of the above range are \$41.58, \$64.72,<sup>75</sup> and \$87.86, in order.

<sup>75</sup> This midpoint obtained by adding the minimum and maximum value and dividing by two; it is proximate to the true mean of \$61.87. The wage data obtained from BLS, BLS, Occupational Employment Statistics, "May 2024 Occupational Employment and Wage Estimates, United States,"

However, working recursively, the resulting monetized impacts are only very slightly affected by the wage range and thus, for brevity we will rely on the midpoint to base our estimates. DHS accounts for employee benefits by calculating a benefits-burden applicable

<https://data.bls.gov/oes/#/industry/000000> (last visited July 1, 2025).

to the most recent BLS report detailing the average employer costs for employee compensation for all civilian workers in major occupational groups and industries. The current burden to compensation from benefits is 45 percent.<sup>76</sup> DHS will rely on this burden

<sup>76</sup> See BLS, Economic News Release, "Employer Costs for Employee Compensation—December

to estimate the full costs incurred by new employees, including employee wages and salaries and the full cost of benefits such as paid leave, insurance,

retirement, and other benefits. With a benefits-burden multiple of 1.45, hourly compensation is \$93.84.<sup>77</sup>

The current, projected, and change in the time burdens (in hours) are provided in Table 15.

TABLE 15—EB-5 PROGRAM FORM TIME BURDEN IMPACTS

Form	Annual volume	Current burden hours	Projected burden hours	Burden hour difference	Impact/opportunity cost (annual)	Impact/opportunity cost (ten-year)	Weight factor
Heading	A	B	C	D	E	F	G
I-526	225	1.650	2.400	0.750	\$15,836.2	\$158,361.8	0.0158
I-526E(i)	3,395	1.650	2.270	0.620	197,532.2	1,975,322.0	0.1947
I-526E(a)	105	1.650	2.270	0.620	6,109.2	61,092.4	0.1947
I-829	3,430	3.620	4.090	0.470	151,285.9	1,512,859	0.1490
I-956(i)	50	22.820	23.290	0.470	2,205.3	22,053.3	0.0024
I-956(a)	150	22.820	23.290	0.470	6,616.0	66,160.0	0.0066
I-956F	450	24.820	25.000	0.180	7,601.4	76,013.6	0.0076
I-956G	500	15.850	16.180	0.330	15,484.3	154,842.6	0.0152
I-956H	2,100	1.470	1.470	0.000	0.0	0.0	0.0000
I-956K	400	2.042	2.070	0.028	1,051.1	10,510.5	0.0010
Total					403,721.6	4,037,215.80	0.5869

Source: PRA and USCIS Analysis (Jul. 1, 2025). Column G value is product of the form-volume weight (Table 12, third column, "weight") and the "Burden hour Difference" in the current table (column D).

To obtain the impact (opportunity cost) reported in Column E, the volume is multiplied by the change in the burden and by the mid-point compensation (\$93.84). Columns F report the annual and 10-year impacts per form, while the bottom rows provide the totals across forms. Based on the information provided, the annual total cost could be \$403,721.60 and about \$4.04 million over ten years. In addition to the totals, a weight factor is provided in the final column (G), which reflects the weight factor per-form (see Table 12) multiplied by the projected burden change (column D table 15). The weight factors sum to 0.5869 hours, which equates to about 35.2 minutes.

The new Form I-527 impacts would accrue to the direct cost of filing plus the opportunity costs associated with the time burden of filing. The proposed fee is \$8,000 and the time burden is estimated at 1.44 hours, which, based on the burdened mid-point compensation (discussed above of \$93.84) yields a time-related impact of \$135.14 per submission. Adding the two components amounts to \$8,135.14 per filing, which, at the projected annual volume (see Table 7, projected receipts 457), generates possible impacts of \$3.718 million annually or \$37.18 million over 10 years.

For the few cases in which an immigrant investor's spouse and

children file separate Form I-829 petitions when they are not included in the Form I-829 filed by the immigrant investor, as is stipulated in the preamble, the proposed revisions to the existing regulations would not impose any additional biometric, travel, or associated opportunity costs. The only costs expected from the rule would be the separate filing fee and associated opportunity cost. The proposed fee for Form I-829 is \$7,860 and the time burden is projected to be 4.09 hours. For the dependents we would use a lower wage than was utilized for investors. Without salient information concerning the wages these applicable filers would earn, we will assume they are working at various levels and will rely on the current average wage across all occupations, which is currently \$32.66, and is \$47.36 when burdened for benefits.<sup>78</sup> Each filer would face a time burden cost of \$176.48, which when added to the filing fee would be \$8,053.7. Based on 11 annualized filings' average over 9 years (FY 2015 through FY 2023),<sup>79</sup> the monetized impact that could accrue to the individual Form I-829 filers would be \$88,590.73 annually, or about \$.089 million over 10 years.

c. Total Monetized Impacts

We can now compile the monetized potential impacts of the proposed rule

based on the impacts for which we can reasonably develop a quantified estimate. The impacts associated with the current forms' fee changes are categorized as transfers from requestors to DHS. They are accounted for as transfers because a filing fee currently exists (inclusive of the two forms in which it is currently \$0) and the requestor expects to recoup a direct benefit from filing. The impacts associated with the new Form I-527 are classified as costs, as are the changes in the forms' burdens and filings applicable to the Form I-829, as discussed earlier.

In Table 16 the transfers and costs are listed individually since they are categorized differently under the OMB Circular A-4 framework. The transfers, payments made by EB-5 requestors when filing forms to DHS (IEFA), reflect the fee changes proposed. The costs column comprises the annual impacts, mainly to EB-5 requestors, accruing to the new Form I-527 and the small number of separate I-829 dependent filers, as well as the forms' burdens. The monetized impacts are presented in Table 16 in order of terms undiscounted, then discounted at 3 and 7 percent, in order.<sup>80</sup> In Table 16 each FY is shown, since the discounted terms for each year are not the same.

2022," Table 1. Employer costs for employer compensation by ownership, p. 4, [https://www.bls.gov/news.release/archives/eccec\\_03172023.pdf](https://www.bls.gov/news.release/archives/eccec_03172023.pdf) (last visited Nov. 4, 2023). The benefits-to-wage multiplier is calculated as follows: (Total Employee Compensation per hour)/(Wages and Salaries per hour) = \$42.48/\$29.32 = 1.45 (rounded). See BLS, Economic News Release, "Employer Costs for Employee Compensation—

December 2022," Table 1. Employer costs for employer compensation by ownership, p. 4, [https://www.bls.gov/news.release/archives/eccec\\_03172023.pdf](https://www.bls.gov/news.release/archives/eccec_03172023.pdf) (last visited Nov. 4, 2023).

<sup>77</sup> Calculation: Midpoint hourly wage of \$64.72 × multiplier of 1.45 = \$93.84.

<sup>78</sup> U.S. DOL, BLS, Occupational Employment and Wage Statistics, National Occupational Employment and Wage Estimates, All Occupations,

May 2024, available at: <https://data.bls.gov/oes/#/industry/000000>. (Jul. 8, 2024). Calculation: \$32.66 × multiplier of 1.45 = \$47.36.

<sup>79</sup> USCIS IPO Office, Claims 3 and Global tracking system (Oct. 12, 2023).

<sup>80</sup> See OMB, Circular A-4, "Regulatory Analysis," [https://obamawhitehouse.archives.gov/omb/circulars\\_a004\\_a-4/](https://obamawhitehouse.archives.gov/omb/circulars_a004_a-4/).

TABLE 16—MONETIZED IMPACTS OF THE PROPOSED RULE  
[Millions]

FY	Transfers	Costs
<b>16a. Undiscounted</b>		
2024	(\$24.41)	\$4.21
2025	(24.41)	4.21
2026	(24.41)	4.21
2027	(24.41)	4.21
2028	(24.41)	4.21
2029	(24.41)	4.21
2030	(24.41)	4.21
2031	(24.41)	4.21
2032	(24.41)	4.21
2033	(24.41)	4.21
10-year Total	(244.07)	42.1
10-year Annual Average	(24.41)	4.21
<b>16b. 3% Discount Rate</b>		
2024	(23.70)	4.09
2025	(23.01)	3.97
2026	(22.34)	3.85
2027	(21.68)	3.74
2028	(21.05)	3.63
2029	(20.44)	3.53
2030	(19.84)	3.42
2031	(19.27)	3.32
2032	(18.71)	3.23
2033	(18.16)	3.13
10-year Total	(208.19)	35.91
10-year Annual Average	(20.82)	3.59
<b>16c. 7% Discount Rate</b>		
2024	(22.81)	3.93
2025	(21.32)	3.68
2026	(19.92)	3.44
2027	(18.62)	3.21
2028	(17.40)	3.00
2029	(16.26)	2.81
2030	(15.20)	2.62
2031	(14.20)	2.45
2032	(13.28)	2.29
2033	(12.41)	2.14
10-year Total	(171.42)	29.57
10-year Annual Average	(17.14)	2.96

USCIS Analysis (July 1, 2025).

d. Unquantified Impacts

There are some other impacts that DHS has evaluated applicable to the proposed rule, and while these cannot be monetized, DHS offers a qualitative discussion concerning them. Foremost, there are likely to be familiarization costs associated with reading and understanding the rule. The costs of familiarization would accrue to the opportunity costs of the time embodied, which would constitute the number of hours spent on familiarization multiplied by the hourly compensation of the reviewer(s). DHS does not know

who (in terms of what occupation) would review the rule but will attribute the costs to lawyers trained in reading and interpreting the rule’s changes. The average hourly compensation would be \$87.86 which, at a benefits-burden multiple of 1.45, is \$127.40 per hour.<sup>81</sup> This reflects the cost of an in-house attorney. For outsourced attorneys, we utilize a multiplier of 2.5, which yields

<sup>81</sup> Calculation: The average hourly wage for Lawyers of \$87.86 × the benefits burden multiplier of 1.45 = \$127.407. The wage reflects the May 2024 data published by the BLS, cited in Table 14.

an hourly rate of \$219.65.<sup>82</sup> By relying on the earnings of lawyers, which are substantially higher than that of most occupations, DHS is being liberal in its estimates. DHS does not know how

<sup>82</sup> Calculation: The average hourly wage for Lawyers of \$87.86 × the benefits burden multiplier of 2.5 = \$219.65. See ICE, Final Small Entity Impact Analysis, “Safe-Harbor Procedures for Employers Who Receive a No-Match Letter” for the basis of the multiplier of 2.5 to convert in-house attorney wages to the cost of outsourced attorney based on information received in public comment to that rule: <https://www.regulations.gov/document/ICEB-2006-0004-0922>, p. G-4.

much time would be expended on such familiarization.

The EB-5 Reform Act authorizes graduated sanctions for regional centers that fail to submit an annual statement or that commit certain violations. Considering this authorization, DHS proposes to impose the following penalties for paying the Integrity Fund fee late:

- Ten percent of the required integrity fee (*e.g.*, 10 percent of \$10,000 or \$20,000, subject to adjusting such required amounts for inflation)<sup>83</sup> for a regional center that pays its fees on day 31 through and including day 60 after the due date.

- Twenty percent of the required integrity fee for a regional center if their fee is paid on day 61 through and including day 90 after it is due.

- Terminate a regional center designation if it fails to pay the fee within 90 days of the date on which such fee is due.

In determining the proposed penalties, as is discussed in the preamble, DHS believed that 10 percent was a reasonable starting point in setting a penalty. DHS also considered whether the dollar amount itself was reasonable. In this case, the 10 percent would amount to \$1,000 or \$2,000 depending on the regional center, which DHS believes is a reasonable late charge for failing to pay the fee after 30 days. The 20 percent would amount to \$2,000 or \$4,000 depending on the regional center (based on the number of investors), which DHS believes is a reasonable late charge for failing to pay the fee after 60 days.

The goal of the proposed penalties is to effectively deter noncompliance. DHS believes that the proposed penalties would be sufficient to encourage payment and ensure timely collection of the Integrity Fund fees, while not being so large as to be punitive or financially damaging. DHS cannot make an estimate of how many entities would pay penalties or how much they would pay.

Because the EB-5 program fees are proposed to decrease, on average, it may result in a question of whether this proposed rule would fully accomplish the authority that DHS proposes to exercise in this rule by adjusting EB-5 immigration benefit request fees to adequately fund the cost of administering the EB-5 program. In addition, would the decision to not utilize cost reallocation to recover other

USCIS costs impact USCIS' ability to continue to provide no cost services. The proposed fees are not lower through intentionally or artificially capping them but result from employing the cost and fee calculations described throughout this rule. The fees may be somewhat lower than current fees because the proposed fees do not include any additional costs for processing benefit requests with no fee or a reduced fee, thus reducing the fees overall. As such, the proposed EB-5 fees would not fund a proportionate share of workload without fees and workload below full cost, and, thus, would not recover what DHS defined as full cost in previous fee rules. *See, e.g.*, 88 FR 402, 450–451 (Jan. 4, 2023). However, as authorized by the EB-5 Reform Act, this proposed rule would recover full EB-5 program operating costs by setting EB-5 fees at a level sufficient to fund overall requirements and general operations related to the EB-5 program. As for funding the costs for processing benefit requests with no fee or a reduced fee, DHS does not believe the adjudication of such services will be impacted. As stated earlier, while the estimated \$47 million impact of the proposal to not utilize the authority in section 106(c)(1) is not negligible, DHS has determined that USCIS reserves can withstand a depletion in this amount without a noticeable hinderance of its operational capabilities.

The proposed rule would be expected to generate benefits to the public. The fees proposed would meet the level that would enable DHS to recover the costs of administering the EB-5 program; enable USCIS to attain the statutory processing time goals; and ensure there would be internal procedures/controls in place within the program office to maximize the likelihood that the statutory goals would be met. It would make improvements to the information technology systems used by DHS to administer the EB-5 program.

#### B. Regulatory Flexibility Act (RFA)

##### 1. Initial Regulatory Flexibility Analysis (IRFA)

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 and 602, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, tit. II, 110 Stat. 847 (5 U.S.C. 601 note)), requires Federal agencies to consider the potential impact of regulations on small businesses, small governmental jurisdictions, and small organizations during the development of their rules. 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.<sup>84</sup>

DHS has reviewed this proposed regulation in accordance with the RFA. As is explained in the Regulatory Impact Analysis (RIA), the fee changes applicable to the EB-5 program are accounted for as transfers from requestors to DHS, while there are costs associated with certain filings and form burdens. There are four types of entities that were evaluated in terms of the RFA as it pertains to the EB-5 program and the proposed rule: (1) regional centers; (2) NCEs; (3) JCEs; and (4) investors. DHS has determined that the investors in the program are individuals who willingly choose to invest their capital in the program and are not considered small entities for purposes of the RFA. An “individual” is not defined by the RFA as a small entity and costs to an individual from a rule are not considered for RFA purposes.<sup>85</sup> As a result of this determination, individuals are not covered in this Initial Regulatory Flexibility Analysis (IRFA), and DHS focuses this analysis on the business components pertinent to the EB-5 program directly involved in its investments.

##### a. Description of the Reasons Why the Action by the Agency Is Being Considered

DHS conducted an EB-5-specific fee study, as required by EB-5 Reform Act. The determination from the study is that the proposed fees applicable to the EB-5 program will be set at a level that the Department has determined would enable it to: recover the costs of administering the EB-5 program; allow the Agency to attain the processing times goals; and ensure there are internal procedures/controls in place within the program office to maximize the likelihood that the statutory goals are met. It is intended, further, to make improvements to the information technology systems used by DHS to administer the EB-5 program.

<sup>84</sup> A small business is defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act, 15 U.S.C. 632.

<sup>85</sup> An investor who wishes to immigrate to the United States through the EB-5 program must file an Immigrant Petition by Alien Investor (Form I-526). Individuals who file Form I-526 petitions apply for immigration benefits on their own behalf and thus do not meet the definition of a small entity.

<sup>83</sup> DHS is not accounting for the integrity fund payments for regional centers and regional center investors because they were enacted in the FY 2022 EB-5 Reform Act and also a Federal Register notice (88 FR 13141 (Mar. 2, 2023)).

b. Succinct Statement of the Objectives and Legal Basis of the Proposed Rule

The objective of this proposed rule is for DHS to adjust EB–5 benefit request fees to meet the requirements provided in the EB–5 Reform Act and adequately fund the cost of administering the EB–5 program. DHS seeks to meet this objective by: (i) adjusting fees according to the schedule presented in the preamble; (ii) establishing the USCIS EB–5 Technology Fee; and (iii) codifying EB–5 Integrity Fund Fees and Penalties.

In accordance with the EB–5 Reform Act, DHS is proposing the fees to sufficiently recover the costs of providing such services, and attaining the goal of completing adjudications, on average, not later than:

(1) 180 days after receiving a regional center application or application for investment in an new commercial enterprise (NCE);<sup>86</sup>

(2) 90 days after receiving an application for investment in an NCE that is located in a targeted employment area (TEA);<sup>87</sup>

(3) 240 days after receiving an immigrant investor petition for classification under section 203(b)(5)(E) of the Act or a petition to remove conditions under section 216A of the Act; and

(4) 120 days after receiving an immigrant investor petition for classification under section 203(b)(5)(E) of the Act with respect to an investment in a TEA.

DHS proposes this rule under the authority of the EB–5 Reform Act. Among other things, the EB–5 Reform Act immediately repealed the former authorizing statutory provisions for the Regional Center Program under the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act 1993, Public Law 102–395, 106 Stat. 1828, sec. 610, and added new authorizing provisions to the INA, substantially reforming the Regional Center Program effective May 14, 2022. The reformed Regional Center Program is authorized through September 30, 2027.

This proposed rule is also consistent with non-statutory guidance on fees, the

<sup>86</sup> A “new commercial enterprise” is “any for-profit organization formed in the United States for the ongoing conduct of lawful business. . . that receives, or is established to receive, capital investment from [employment-based immigrant] investors.” INA sec. 203(b)(5)(D)(vi).

<sup>87</sup> A targeted employment area (TEA) is a rural area, or an area designated by the Secretary of Homeland Security under INA sec. 203(b)(5)(B)(ii), 8 U.S.C. 1153(b)(5)(B)(ii) as a high unemployment area. Public Law 117–103, Division BB, sec. 102(a)(4), 136 Stat. 1070, 1074 (2022).

budget process, and Federal accounting principles.<sup>88</sup> DHS uses OMB Circular A–25 as guidance for determining user fees for immigration benefit requests. DHS also follows the annual guidance in OMB Circular A–11 if it requests appropriations to offset a portion of IEFA costs. DHS used the ABC methodology supported in OMB Circulars A–25 and A–11 to develop the proposed EB–5 program fee schedule.

c. Description and Estimate of the Number of Small Entities to Which the Proposed Rule Would Apply and a Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

A person wishing to immigrate to the United States under the EB–5 program is required to file an Immigrant Petition by Standalone Investor (Form I–526) or Immigrant Petition by Regional Center Investor (Form I–526E), containing information about their investment. The investment must be made into either an NCE within a designated regional center in accordance with the regional center program or a standalone NCE outside of the regional center program. A regional center is a business entity in the United States designated by DHS based on a proposal for the promotion of economic growth, including prospective job creation and increased domestic capital investment. Regional centers pool the capital of multiple investors together and arrange them typically as investments in NCEs under their purview. The NCE may create jobs directly (required for non-regional center investments) or serve as a source of funding for separate JCEs (allowable for regional center investments).

<sup>88</sup> See OMB, Circular A–25, “User Charges,” 58 FR 38142 (July 15, 1993) (revising Federal policy guidance regarding fees assessed by Federal agencies for Government services). See also Federal Accounting Standards Advisory Board Handbook, Version 23, “Statement of Federal Financial Accounting Standards 4: Managerial Cost Accounting Standards and Concepts,” SFFAS 4 (Sept. 2024), [http://files.fasab.gov/pdf/files/handbook\\_sffas\\_4.pdf](http://files.fasab.gov/pdf/files/handbook_sffas_4.pdf) (generally describing cost accounting concepts and standards, and defining “full cost” to mean the sum of direct and indirect costs that contribute to the output, including the costs of supporting services provided by other segments and entities.); *Id.* at 49–66 (July 31, 1995). See also OMB, Circular A–11, “Preparation, Submission, and Execution of the Budget,” sec. 20.7(d), (g) (June 29, 2018), <https://www.whitehouse.gov/wp-content/uploads/2018/06/a11.pdf> (providing guidance on the FY 2020 budget and instructions on budget execution, offsetting collections, and user fees).

DHS cannot provide a precise assessment of the number of small entities that could be impacted by the proposed changes, nor can the Department determine what such impacts might be to small entities involved in the program or how they might respond to them.<sup>89</sup> EB–5 investment and business structures tend to be complex and involve multiple layers of business and financial activity. The Department has limited information and data to support a small entity analysis. However, based on data that are available, DHS can provide some criteria for an initial assessment. As noted earlier, investors are not considered under the purview of the RFA. Further, neither the amount of a typical individual investment itself—which is the reduced minimum investment amount of \$800,000—nor the pool of total investment capital, is appropriate to consider as income for this assessment.<sup>90</sup> Therefore, with these two caveats regional centers are assessed first, followed by other EB–5 businesses associated with the program.

i. Regional Centers

Based on the Department’s thirty years of experience administering the regional center program, it determined that regional centers earn income through three primary mechanisms. In the next three paragraphs DHS describes these three mechanisms.

First, regional centers charge investors an administrative fee earmarked to expenses for marketing and operations

<sup>89</sup> U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, see 89 FR 6194, Jan. 31, 2024. See Section V.B. Final Regulatory Flexibility Analysis, pages 6374–6376 explains the difficulty of assessing regional centers and on how they are structured in a variety of different ways, and can involve multiple business and financial activities, some of which may play a direct or indirect role in linking investor funds to new commercial enterprise (NCEs), and job-creating projects or entities. Regional centers also pose a challenge for analysis as the structure is often complex and can involve many related business and financial activities not directly involved with EB–5 activities. Regional centers can be made up of several complex layers of business and financial activities that focus on matching foreign investor funds to development projects to capture above market return differentials. DHS did consider the information provided by regional center applicants as part of the Forms I–956; however, it does not include adequate data to allow DHS to reliably identify the small entity status of individual applicants. Although regional center applicants typically report the NAICS codes associated with the sectors they plan to direct investor funds toward, these codes do not necessarily apply to the regional centers themselves. In addition, information provided to DHS concerning regional centers generally does not include regional center revenues or employment.

<sup>90</sup> See Section C.I.—Regional Centers investments made in FY 2021 and at the reduced amount, of \$800,000.

pertinent to the investment offering. The fee may also cover expenses related to document preparation, legal oversight, and the economic analysis utilized to model and estimate impacts and job creation. This administrative fee is typically 10 percent of the individual investment amount; hence DHS will rely on the typical percentage applied to most expected investments of \$800,000 to estimate an amount of \$80,000 per investor as a baseline.<sup>91</sup> This reliance is justified on grounds that almost all EB-5 activity has accrued to investments at the reduced threshold—which qualify for the current reduced investment requirement of \$800,000 as opposed to the standard amount of \$1,050,000.<sup>92</sup> For the period FY 2016 through FY 2021, there were 31,805 investments made under regional centers, of which 31,372, or 98.6 percent, were made at the reduced amount.<sup>93</sup>

Second, regional centers can also collect marketing, sales fees and other charges and income owed to arrangements with their affiliated NCEs and JCEs. Some regional centers provide information concerning these activities in their business plans or amendments submitted to DHS, but it is not required, and DHS does not have sufficient official data on this source of income to support an analysis.

Third, regional centers can earn residual income. They may capture income from the differential on the terms of the loans they bundle and what is returned to investors. There may also

be return on investment in the forms of profit from the end-state economic activity being conducted by the JCE. Some of this return on investment may be split with other business entities involved, but DHS does not have an adequate amount of data involving interest or profit accruing to regional centers to assess this type of income.<sup>94</sup>

To conduct the IRFA analysis, DHS utilized the 640 approved regional centers that were in approval status at date the analysis was conducted (November 14, 2023).<sup>95</sup> to run their respective regional center names in subscription-based, open-source business data providers to obtain income information on the regional centers. The search yielded 339 viable record matches that included an income figure and a North American Industry Classification System (NAICS) code. The income data point provided is deemed “sales revenue” and it is our assessment that the income reported in these data is most likely revenue attributed to sales, marketing, and other related charges involved, and neither the administrative fees charged to investors nor profits on loans or investment. While the sample size of 339 is more than sufficient to satisfy a 95-percent level of confidence level and a 5-percent confidence interval based on the population size (640), the data pose a constraint. The NAICS codes are provided at the 6-digit detailed industry level, but half the entities (173, or 51.0

percent) reported code 999990, which benchmarks “Non-Classifiable Establishments.” There is thus no Small Business Administration (SBA) size standard to weigh against for small entity status.<sup>96</sup> As a result, there would only be 166 entities to support an analysis. To attempt to mitigate this shortcoming, DHS extended the search query for regional centers approved from FY 2016 through FY 2022. From the matches, DHS culled the results to remove duplicates from the initial search result (339 of the of the 640 current regional centers), plus records that did not include both or either of a NAICS code (including non-classifiable) or a sales figure. This cleansing process yielded 32 additional entities, which when added to the 166 initial valid matches, resulted in 198 entities. This figure is still below the optimal sample size of 241, but the charge to precision is not overly debilitating, as the margin of error is 5.8 percent instead of the desired 5.0 percent.

As DHS will discuss, out of necessity of the constraints faced, the assessment is conducted along several different and unconventional paths. Hence, Table 17 presents metrics (in terms of the income alone from the web-based data) for both the “full” sample group (339 currently approved regional centers that are both classifiable and non-classifiable plus the 32 records obtained in the ancillary search) as well as the “restricted” (classifiable-only) group.

TABLE 17—METRICS FOR REVENUE DATA FOR RCs [FY 2016 through FY 2022]

Group	Full	Restricted
Entities (RCs) .....	371	198
Median .....	\$129,275	\$89,380
Mean .....	\$447,811	\$276,695
Minimum .....	\$12,980	\$12,980
Maximum .....	\$12,370,000	\$12,370,000

USCIS analysis (Nov. 14, 2023).

<sup>91</sup>The administrative fee is provided by regional centers in information provided to DHS. Almost all charge 10 percent though there are a few instances in which the fee is different. Information on the fees are captured in several DHS datasets, including Infact.

<sup>92</sup>TEAs that qualify for the reduced amount apply to either rural areas or to areas with unemployment rates at least 150 percent of the national average. DHS makes the determination that an investment qualifies for the reduced amount when the Investor files the I-526 form. Investor petitions therefore need to contain sufficient evidence that the location of the actual job creation project meets the standards for the reduced investment threshold. Additional information can be found at <https://www.uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/about-the-eb-5-visa-classification>.

*immigration-fifth-preference-eb-5/about-the-eb-5-visa-classification*. As a result of the 2022 Reform Act, the reduced investment threshold also applies to infrastructure investments.

<sup>93</sup>USCIS C3, Electronic Immigration System (ELIS), Infact Databases (Aug. 2, 2023). While there is no guarantee that the same percentage will apply to the future, at this time the Department does not have evidence to suggest it would be substantially smaller. Some projects might not qualify for the high-unemployment threshold, but this does not necessarily mean that they would not qualify for the reduced amount, as they could potentially substitute into a rural or infrastructure project. DHS welcomes public input on this subject.

<sup>94</sup>Another reason that it is difficult to assess income to regional centers from downstream projects, is that the affiliated NCE could be set up

as limited partnership, and the regional center loan income accrues to a general partner that may not be the regional center itself. Stated differently, there can be a degree of separation in linking the regional center and its residual income.

<sup>95</sup>USCIS, “Approved EB-5 Immigrant Investor Regional Centers,” <https://www.uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-immigrant-investor-regional-centers/approved-eb-5-immigrant-investor-regional-centers> (last updated Feb. 13, 2025).

<sup>96</sup>In addition to the NAICS code and concomitant industry, the data providers also can provide a “business description” based on their assessment of the business. For the non-classifiable entities, there was no additional information provided that could be useful in making an industry inference.

The large differences captured as the medians being below the means are indicative of non-normal, positively skewed data structures in which a small number of large values exert disproportionate weight on the means, as is further indicated by the extreme ranges. As is seen in Table 18, there are also differences between the means and

the medians across the two sample-groups.

Having valid data on regional center sales revenue, DHS turns to the next income source, administrative fees charged to investors. To conduct this module of the assessment, DHS queried internal EB-5 data repositories to obtain a figure for the number of investors for

the regional centers acquired in the above module.<sup>97</sup> A proxy for the number of investors is developed as the number of Form I-526 filings submitted under the purview of the regional center.<sup>98</sup> Key statistics applicable to investors are provided in Table 18.

TABLE 18—STATISTICS FOR INVESTORS PER-RC

Group	Full	Restricted
Entities (RCs) .....	371	198
Median .....	13	17
Mean .....	122	181
Minimum .....	1	1
Maximum .....	4, 430	4,430

USCIS analysis (Nov. 14, 2023).

As was the case with regional center sales revenue, the substantial differences between the means and medians, as well as the extreme range, demonstrate that the number of investors per regional center is also a non-normal distribution that is positively skewed.

DHS multiplied the number of investors by the reduced \$80,000 fee to capture an estimate of total administrative fees by regional center.<sup>99</sup> DHS next added this figure to sales revenue found in the subscription-based data. In addition, it cannot be ruled out that regional centers pass the Integrity Fund fees onto the investors as well. For regional centers with 20 or fewer total investors, DHS included the \$10,000 fee and for those with more than 20 total investors, a \$20,000 fee was added. By combining these components, DHS was able to make a revenue estimate for the sample of regional centers. Of the full sample, it is determined that 48.5 percent pay the \$10,000 fee and that 51.5 percent pay \$20,000, which based on the annual population of 640 (at the time the analysis was conducted), would be 310 and 330 regional centers,

in order. The breakdown could be slightly different, as the number of investors is based on the Form I-526 submissions under the purview of the regional center, as DHS did not calculate the total based on the proposed adjustment applicable to Form I-829 filings associated with the regional center discussed in the preamble.

Given the data constraints discussed thus far, for robustness we will assess the entities’ small entity status along three different methodological approaches. While DHS has the listed NAICS codes for the 198 classifiable entities, DHS extensively reviewed various NAICS codes and determined that the 6-digit, detailed industry NAICS code 522310, Mortgage and Nonmortgage Loan Brokers, defined as an “industry [that] comprises establishments primarily engaged in arranging loans by bringing borrowers and lenders together on a commission or fee basis,” is an appropriate NAICS code under which regional centers operate.<sup>100</sup> By this DHS means that while the NAICS code provided in the data often applies to the types of downstream

projects that the regional centers gear loans toward, the regional center is usually not involved directly in those activities, and is rather involved in bundling the investors’ funds into loans. The year 2022 SBA size standard for the NAICS category chosen is based on revenue of \$15.0 million.<sup>101</sup> Of the actual NAICS codes provided for classifiable industries, half accrued to several 6-digit codes under the 3-digit subsector 523, “Securities, Commodity Contracts, and Other Financial Investments and Related Activities.” The data providers describe these entities as “investment services” in the “business description” tab and all the individual industries in NAICS subsector 523 ensconce a size standard of \$47.0 million. The difference between the size standards (\$15.0 million and \$47.0 million) is large, and therefore for purposes of robustness we will evaluate the full sample of entities under each of the respective amounts. DHS also evaluates the restricted sample based on the actual NAICS code listed in the data. The results are presented in Table 19.

<sup>97</sup> The internal EB-5 program data set we relied on is known as *Infact*.

<sup>98</sup> There is a caveat to relying on the number of Form I-526 approvals as a proxy for regional center investors. Some individual investors may file more than one Form I-526, which could arise when an initial investment filing is denied for some reason or is not undertaken and a new investment under the regional center is promulgated. DHS does not know if the regional center would collect an additional administrative fee under this scenario, so it is possible that the basing such fee revenue on the number of investor petitions under their purview may overstate this revenue.

<sup>99</sup> DHS notes that a small portion (1.36 percent) of RC investments were made at the standard investment amount of \$1.05 million. Therefore, based on a standard 10 percent administrative fee, \$10.8 million can be thought of as the maximum amount by which our ensuing estimates of RC income are understated. This discrepancy alone would not likely change the ensuing small entity determination. This maximum amount would be allocated along some type of distribution to all RCs that actively invested between FY 2016 through FY 2021 and then extrapolated to our small pool of RCs. If some RCs had multiple investments in non-TEA areas (which is generally very rare) then it is possible that some individual RCs may have their total income understated.

<sup>100</sup> Where NAICs codes for regional centers were provided in the data, some were different than 522310, but we believe that this singular code is appropriate. While the regional center loans apply to different types of projects under different industries, as a general matter the regional center itself is not involved in those activities and is responsible for arranging and structuring the loans for the involved parties. The description can be found at: <https://www.census.gov/naics/>.

<sup>101</sup> SBA size standards effective: March 17, 2023, located at SBA, “Table of size standards,” <https://www.sba.gov/document/support-table-size-standards> (last updated Dec. 26, 2024).

TABLE 19—METRICS FOR REGIONAL CENTER INCOME

Group	Full	Full	Restricted
RCs .....	371 .....	371 .....	198.
Business Activity .....	Mortgage & Nonmortgage Loan Brokers.	Investment Services .....	Actual NAICS code provided.
Size standard .....	\$15.0 M .....	\$47.0 M .....	Varies.
Median .....	\$1,302,810 .....	\$1,302,810 .....	\$1,725,660.
Mean .....	\$10,028,770 .....	\$10,028,770 .....	\$14,973,215.
Minimum .....	\$107,495 .....	\$107,495 .....	\$107,495.
Maximum .....	\$359,685,572 .....	\$359,685,572 .....	\$359,685,572.
Small Entities:			
Number .....	323 .....	356 .....	173.
Percent .....	87.1 .....	96.0 .....	87.4.

USCIS analysis (Nov. 14, 2023).

As can be seen from Table 19 the median and means for the restricted sample-group are smaller than that for the full sample-group. As would be expected, the percentage of regional centers that are small is larger at the higher size standard of \$47 million under general investment services. However, still the large majority is small at the lower size standard. Based on these data, DHS can determine that a majority—at a minimum, 87.1 percent—of EB-5 regional centers are small entities in the context of the RFA.<sup>102</sup>

There are two important caveats to the determination made above; however, which taken together could have a net effect of reducing or increasing the number and percentage of regional centers that are small entities. As was noted earlier, this determination did not consider income accruing to interest income on loans or end-user derived profit that regional centers could collect, as DHS does not have sufficient data to support an analysis concerning such income. Such loan differential or profit income could be substantial and could reduce the true small entity share. But a limitation of this analysis that could have a countervailing effect owes to the timing of investments and administrative fees. In practice the administrative fees need not be

<sup>102</sup> In the 2022/2023 fee rule, USCIS could not determine at the time if RCs were large or small. The different determination in this IRFA (based on the data and analysis and considering the caveat noted above) is driven by two factors. First and foremost, when the FY 2022/2023 fee rule analysis was conducted, very few regional centers were found in the databases utilized to assess income (which was also the case going back to the FY 2020 EB-5 Modernization rule, at 84 FR 35750 (July 24, 2019)). In the current databases there are many more regional centers listed and there is more data on the ones that are listed. Second, USCIS economists reviewed an internal USCIS-IPO database that captures more data on regional centers and affiliated businesses/activities. This database provided more data and information to analyze for impacts, enabled better searches and matching, and allowed us to root out both false positives and false negatives. The resulting analysis is thus more robust.

collected in 1 year, as investments and fees could be collected over multiple years. However, DHS abridged all the regional center income to 1 year. It would be extremely difficult given the data structures we queried for this analysis to attempt to incorporate a time dimension to the income stream as it pertains to administrative fees. DHS is unable to conduct a distributional analysis of the potential impacts to regional center small entities. Specifically, for the set of 173-found small entities with matched revenue data, it is conceptually possible to divide into the income for each entity, the impacts from the rule, to derive a percentage of income the impact could embody. DHS estimates that a seven percent rate of discount, the impacts that could accrue to EB-5 entities (*i.e.*, filing fees and increases in form time burdens) could be about \$3 million annually. In practice, the costs would be higher, but DHS cannot estimate costs. However, we have no way of distributing the quantified costs across regional centers and therefore cannot determine how they will be impacted.

As it relates to regional centers, the fee changes applicable to the Form I-956 (initial and amendment) could be divided against entity income—although this would rest on the tenuous assumption that the initial and amendment filing were in the same year. However, this would constitute only a partial impact because DHS does not know how activity related to the other forms applicable to regional center activity would impact the business entity. The other forms would be filed by individuals, and we do not know if some of the impacts would be borne by the regional center, transferred to them, or passed through to other entities. As a result, DHS cannot determine what the impact to small entity regional centers would be.

#### ii. Other EB-5 Businesses

For nonregional center businesses involved in investment activity, DHS employed out of necessity an unconventional, multi-step approach to the small entity analysis. First, DHS was able to obtain about 5,000 unique NCE names and about 3,000 JCE names that were approved between FY 2018 through FY 2022 from the internal EB-5 program data and tracking databases. These entities were pooled and randomly scrambled to source and to run searches in the subscription-based, open-source business information providers on 400 of them, to attempt to satisfy a 95-percent level of confidence.<sup>103</sup> The searches yielded only 111 results that could reasonably be validated as matches. One of the challenges is that it can be difficult to match syntax in the entity names between DHS records and that in the other sources. The data providers relied upon match queries to results with close-fitting precision, but because there can be minor syntax differences in the names of the businesses in these providers and DHS record systems, there is a strong likelihood a match would not result.<sup>104</sup>

In addition to the low match-rate, two additional challenges were encountered. First, DHS faced the same issue as we did for regional centers; over one-third of the entities (42, or 37.8 percent) were non-classifiable and therefore incompatible to evaluate against an SBA size standard for status. Second, of the classifiable businesses, almost one-fifth (13, or 18.8 percent) were missing either or both of a NAICS code or a revenue

<sup>103</sup> The annual average for NCEs was 5,672 (Table 3). NCEs do not map one-to-one to JCEs, but since there are at least as many of the latter as the former, we consider the population to be 11,344, for which the sample size required to satisfy a confidence level of 95 percent is 372.

<sup>104</sup> Of course, the converse—false positives—can occur as well, such as in a case where the provider matches a named entity to a DHS-recorded entity when in fact the true name is slightly different.

figure. These constraints rendered the sample size down to a mere 56 entities. Given the challenges elucidated above, DHS employed an unconventional second-step approach. DHS ran queries against “variations” of the term “EB5” separately, which yielded 885 returns. We engaged a filtering process that first removed records with missing data (either or both of sales revenue or NAICS codes) and removed non-classifiable establishments. DHS then backed out likely regional centers first by culling

any results that contained the conjoined terms “regional” and “center.” DHS next bolstered this filtering process by further eliminating any regional center names either captured in our sample of regional centers, from that above module of this RFA, or that were otherwise approved in the past but are not currently active. Finally, DHS manually appraised each remaining entity and removed those that reasonably appeared to be businesses not directly involved with program

investment activity. These ancillary activities would primarily ensconce law firms, business advisories, or analytical consultancies that provide services to program businesses, but are themselves assumed to not be directly involved in the investment activity of the program. The filtering schema is summarized in Table 20, which shows the stepwise method. By adding the two subtotals shown, we obtain a viable sample of 489, which is more than sufficient to satisfy a confidence level of 95 percent.

TABLE 20—METHODOLOGY APPLICABLE TO NCE/JCES

Step 1: Search 400 random pooled NCE/JCE names (FY 2018 through FY 2022)	+111
Less:	
(a) Entities missing sales revenue or NAICS code	-42
(b) Non-classifiable establishments	-13
Step 1 Subtotal	56
Step 2: Boolean search of program terms <sup>105</sup>	+885
Less:	
(a) Entities missing sales revenue or NAICS code	-28
(b) Non-classifiable establishments	-316
(c) Entities with conjoined terms “regional” and “center”	-62
(d) Other explicit regional center names (from DHS records)	-27
(e) Ancillary EB-5 service providers	-19
Step 2 Subtotal	433
Grand total for IRFA analysis (sum of subtotals)	489

USCIS analysis (Nov. 14, 2023).

As was mentioned above, the JCEs and NCEs were pooled in the first-step query, and for the 433 additional entities resulting from the second-step query, we assume that most or all of them are JCEs and NCEs, though DHS cannot distinguish which are

specifically NCEs and which are JCEs. It is ultimately unimportant to distinguish them, because, unlike the approach to regional centers in which we relied on several evaluation methods—including imputing a NAICS codes based (twice) on the single industry description we

believe best fits—for the non-regional center businesses we based the NAICS codes solely on a single trial benchmarked to the reported NAICS code. The results of the analysis are captured in Table 21.

TABLE 21—SMALL ENTITY STATISTICS FOR NON-REGIONAL CENTER EB-5 BUSINESSES

Median	\$95,550
Mean	\$1,505,046
Minimum	\$944
Maximum	\$660,424,990
Small Entities:	
Number	488
Percent	≈100

USCIS analysis (Nov. 14, 2023).

While there is an extreme range for the income, only 1 entity (the maximum) exceeded the applicable SBA size standard, which essentially means that 100 percent are small. However, as was the case with regional centers, we do not know if the income applicable to these businesses is limited to the reported sales revenue. If they receive some income from lending activity, or some other form of return in profits, the

results could be quite different as potentially not all would be small entities. DHS is unable to conduct a distributional analysis of the potential impacts to small entities. Specifically, for the set of 488 small entities with matched revenue data, it is conceptual to divide into the income for each. These gross impacts constitute transfers and costs. As it relates to the businesses,

the fee changes applicable to the forms would accrue to individuals filing the petitions. DHS cannot say if and how these impacts would impact the related businesses involved and hence cannot determine what the impact to small entities would be.

iii. Concluding Remarks

The IRFA that DHS has prepared to support this proposed rule suggests that

<sup>105</sup> The searches included the variations: “EB5,” “EB-5,” and “EB 5.”

the majority—at least 87 percent of regional centers and essentially all other directly involved business entities (which to the best of our assessment would comprise NCEs and JCEs) involved in EB–5 program investment activity—could be small entities. However, it is emphasized that this determination is made on incomplete information, as sufficient data are not available on certain types of income that could accrue to such entities. To provide some context to this caveat, DHS evaluated 1,402 EB–5 projects in which an investment was conducted through a JCE between FY 2018 through FY 2022, for which viable data could be extracted on the amount of capital invested. The median, average, and maximum amount of program-specific capital was \$7.0 million, \$67.2 million, and \$11,070.0 million, in order. A little less than a quarter (22.2 percent) blended nonprogram capital. For the blended capital projects, the figures, in order again, were \$52.2 million, \$327.5 million, and \$12,585.7 million. From the size of these figures alone, it is reasonable to conjecture that if even a small portion of the loan amount or invested capital is renumeralated as residual income, the number and share of entities that are small would be lower than that found in our analysis. For example, the large financial services and advisory company, Deloitte, found that the general average rate of return on investments in 2021 was about 6.1 percent.<sup>106</sup> Applied to the average and maximum blended capital investments above, the return could be between \$6.5 million and \$767 million. If some, or all, of this potential return were captured by regional centers or other businesses, the share that would be small would almost certainly stand to be lower.

A second caveat to the determinations made in this IRFA is that DHS relied on alternative methodologies. As such, the findings are based on samples that are only partially random. The reason, it is recalled, is that the randomized procedures did not yield sufficient sample sizes, and while there is no reason to assume that there is any reporting or selection bias in the nonrandom-sampled portions, it cannot be completely ruled out either.

As is described in the associated economic analysis, the impacts of the proposed fee changes would accrue to transfers from requestors to DHS. The potential penalties associated with the Integrity Fund fees, which are not

estimated, would be accounted for as costs due to the EB–5 Reform Act. As was noted in Section VI.B.2.C.i of this small entity analysis, we treated Integrity Fund fees as income to regional centers, even though it is a cost to them, on grounds that they may attempt to pass some of those costs through to investors or other businesses. It is noted here that from a double-entry accounting perspective, an income flow earmarked to a cost could be considered a net zero-value transaction. But under the RFA purview, the flow would still be considered an income credit against the applicable SBA size standard (this is the case with the administrative fees—the regional center pays for the services embodied but then passes all or some of it to investors, and it is therefore income). Therefore, any such costs and transfers that regional centers or other businesses would incur from the proposed changes that are transferred or passed through to other entities could also affect the small entity determinations for EB–5 businesses. For example, we have no evidence to suggest, but cannot rule out, that for some entities the applicable fee changes might be large enough that they might be passed to investors or other entities.

DHS welcomes public input on EB–5 small entities and the impacts that the proposals could have on such entities, as well as the methodology and determination presented herein.

#### d. Identification, to the Extent Practicable, of All Relevant Federal Rules That May Duplicate, Overlap or Conflict With the Proposed Rule

DHS does not believe that there are Federal rules that may duplicate or conflict with the proposed rule. The Integrity Fund fees fund investigations and oversight to align the regional center program with applicable financial, legal, securities, compliance, and national security safeguards as warranted by other State and Federal rules, regulations, and procedures. However, such alignment is not considered duplicative in terms of the Federal regulatory framework.

In the FY 2022/2023 fee rule, DHS adjusted the USCIS fee schedule, including EB–5 program fees. For additional information on the interaction between this proposed rule and the FY 2022/2023 fee rule, please see section III.E.2 of this proposed rule.

#### e. Description of Any Significant Alternatives to the Proposed Rule That Accomplish the Stated Objectives of Applicable Statutes and That Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities

The fees proposed were determined via a specific fee study. Their level would: enable DHS to recover the costs of administering the EB–5 program; meet the EB–5 processing time goals as provided in the EB–5 Reform Act; make improvements to the information technology systems used by DHS to administer the EB–5 program.

Because the fee structure proposed is derived directly from the cost-study, which is mandated by the EB–5 Reform Act, DHS considered, but did not adopt, reduced fees for small businesses, because USCIS is almost entirely dependent on user fees. Moreover, charging less in fees (including different fees for businesses based on size) could potentially impact processing times, which could stand in contrast to process time goals outlined in the EB–5 Reform Act. Additionally, given the challenges in this RFA described above, applicable to the sampling procedures, data and information completeness, and unclassifiable entities, it would be very difficult and probably subjective for DHS to come up with an easily administrable definition of “small business” for the purpose of charging lower fees for small businesses vs. larger businesses. As a result, it would be challenging and subjective to attempt to present alternatives that could achieve the objectives of the EB–5 Reform Act, continue to adequately fund the cost of administering the EB–5 program, and reduce burdens on small entities such as:

(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(2) The clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;

(3) The use of performance rather than design standards; and

(4) An exemption from coverage of the rule, or any part thereof, for such small entities.

The Department welcomes suggestions from the public on alternatives or ways in which small entities’ burdens could be reduced.

The Department did consider a wide range of percentages for the late Integrity Fund fee penalties from zero to a higher amount. After considering and balancing the factors we discuss in that section, we settled on what we are

<sup>106</sup> See Deloitte, “2021 Study of Economic Assumptions,” pp. 8–9 (2021), <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/human-capital/us-2021-study-of-economic-assumptions.pdf>.

proposing, but we welcome public commenters' views on what is a reasonable late fee.

### *C. Unfunded Mandates Reform Act of 1995 (UMRA)*

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.<sup>107</sup> 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. *See* 2 U.S.C. 1532(a). The inflation adjusted value of \$100 million in 1995 is approximately \$206 million in 2024 based on the CPI-U.<sup>108</sup>

The term "Federal mandate" means a Federal intergovernmental mandate or a Federal private sector mandate. *See* 2 U.S.C. 1502(1), 658(6). The term "Federal intergovernmental mandate" means, in relevant part, a provision that would impose an enforceable duty upon State, local, or Tribal governments (except as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program). 2 U.S.C. 658(5). The term "Federal private sector mandate" means, in relevant part, a provision that would impose an enforceable duty upon the private sector except (except as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program). *See* 2 U.S.C. 658(7).

This proposed rule does not contain such a mandate, because it does not impose any enforceable duty upon any other level of government or private sector entity. Any downstream effects

<sup>107</sup> The term "Federal mandate" means a Federal intergovernmental mandate or a Federal private sector mandate. *See* 2 U.S.C. 1502(1), 658(5), (6).

<sup>108</sup> *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 Feb. 4, 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; (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.

on such entities would arise solely due to their voluntary choices and would not be a consequence of an enforceable duty. Similarly, any costs or transfer effects on State and local governments would not result from a Federal mandate as that term is defined under UMRA. *See* 2 U.S.C. 1502(1), 658(6). The requirements of title II of UMRA, therefore, do not apply, and DHS has not prepared a statement under UMRA.

### *D. Congressional Review Act*

The Congressional Review Act (CRA) was included 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, 868, *et seq.* This proposed rule is anticipated to be a major rule, although it is not expected to result in an annual effect on the economy of \$100 million or more, as defined by section 804 of SBREFA. *See* 5 U.S.C. 804(2)(A). Accordingly, absent exceptional circumstances, this proposed rule if enacted as a final rule would be effective at least 60 days after the date on which Congress receives a report submitted by DHS as required by 5 U.S.C. 801(a)(1).

### *E. Executive Order 13132 (Federalism)*

This proposed rule would not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with sec. 6 of E.O. 13132, it is determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

### *F. Executive Order 12988 (Civil Justice Reform)*

This proposed rule was drafted and reviewed in accordance with E.O. 12988, Civil Justice Reform. This proposed rule was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities to minimize litigation and undue burden on the Federal court system. DHS has determined that this proposed rule meets the applicable standards provided in sec. 3(b)(2) of E.O. 12988.

### *G. Family Assessment*

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being.

Agencies must assess whether the 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) if the regulatory action financially impacts families, is justified; (6) may be carried out by State or local government or by the family; and (7) establishes a policy concerning the relationship between the behavior and personal responsibility of youth and the norms of society. If the determination is affirmative, then an agency must prepare an impact assessment to address criteria specified in the law.

DHS has no data that indicate that this proposed rule will have any impacts on disposable income or the poverty of certain families and children, including U.S. citizen children. DHS acknowledges that this proposal would increase the fees that some families must submit and thus it may affect the disposable income for certain families. However, the proposed rule would provide USCIS with funds that would be used to administer the EB-5 investor program, meet the statutory processing times, and fund free and reduced fee services USCIS provides to abused children and spouses, refugees, victims of criminal activity or human trafficking, and other populations. DHS is required to administer the EB-5 program, is authorized to set and collect fees, and receives no funding to do so aside from the revenue generated by charging fees. While those fees could have a financial impact on a family that chooses to become an investor in an EB-5 program project, DHS has no alternatives other than this rulemaking. DHS also determined that this proposed rule would not have any impact on the autonomy or integrity of the family as an institution.

### *H. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)*

This proposed rule would not have "Tribal implications" under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Accordingly, E.O. 13175, Consultation and Coordination with Indian Tribal

Governments, requires no further agency action or analysis.

*I. National Environmental Policy Act (NEPA)*

DHS and its components analyze proposed 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 “Implementing the National Environmental Policy Act” (Dir. 023–01 Rev. 01) and Instruction Manual 023–01–001–01 Rev. 01 (Instruction Manual)<sup>109</sup> establish the policies and procedures that DHS and its components use to comply with NEPA, 42 U.S.C. 4321 *et seq.*

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. *See* 42 U.S.C. 4336(a)(2), 4336e(1). The Instruction Manual, Appendix A lists the DHS Categorical Exclusions.<sup>110</sup>

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.<sup>111</sup>

This proposed rule is limited to amending DHS regulations governing the EB–5 program and its fees. As such, DHS has reviewed this proposed 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 proposed rule.

Accordingly, DHS finds that the promulgation of this proposed rule’s amendments to current regulations clearly fits within categorical exclusion A3 established in DHS’s NEPA implementing procedures as an administrative change amending an existing regulation 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. Therefore, the proposed regulatory amendments are categorically excluded from further NEPA review.

*J. Paperwork Reduction Act (PRA)*

Under the PRA, 44 U.S.C. 3501–12, DHS must submit to OMB, for review and approval, any reporting requirements inherent in a rule unless they are exempt. Table 22 shows the summary of forms that are impacted by this rule.

TABLE 22—SUMMARY OF FORMS

OMB No.	Form No.	Form name	Type of PRA action
1615–0026	I–526	Immigrant Petition by Standalone Investor	No material or nonsubstantive change to a currently approved collection.
	I–526E	Immigrant Petition by Regional Center Investor.	
1615–NEW	I–527	Amendment to Legacy Form I–526	New Collection.
1615–0045	I–829	Petition by Investor to Remove Conditions on Permanent Resident Status.	Revision of a Currently Approved Collection.
1615–0159	I–956	Application for Regional Center Designation	No material or nonsubstantive change to a currently approved collection.
	I–956F	Application for Approval of an Investment in a Commercial Enterprise.	
	I–956G	Regional Center Annual Statement.	
	I–956H	Bona Fides of Persons Involved with Regional Center Program.	
	I–956K	Registration for Direct and Third-Party Promoters.	

This rule would require nonsubstantive edits to USCIS Forms I–526 and I–526E and I–956, I–956F, I–956G, I–956H, and I–956K. These edits include an update to the estimated annualized cost to the Federal government in each Supporting Statement located under Question 14, which is calculated by multiplying the estimated number of respondents by the filing fee. These edits are due to the update to the filing fee for each form. Accordingly, USCIS has submitted a Paperwork Reduction Act Change Worksheet to OMB for review and approval in accordance with the PRA.

USCIS consolidated all information related to form fees, fee exemptions, and how to submit fee payments into Form G–1055, Fee Schedule. 88 FR 402, 563 (Jan. 4, 2023) (proposed rule); 89 FR

6194, 6197, 6333 (Jan. 31, 2024) (final rule). Fee-related language is therefore not part of the individual Form Instructions documents.

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collections of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to each information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–NEW (I–527) or 1615–0045 (I–829) in the body of the letter and the agency name.

To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation sections of this rule to submit comments. Comments on the information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency’s estimate of the burden of the 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

<sup>109</sup> The Instruction Manual contains DHS’s procedures for implementing NEPA and was issued

November 6, 2014, <https://www.dhs.gov/ocrso/eed/epb/NEPA> (last updated July 29, 2025).

<sup>110</sup> See Instruction Manual, Appendix A, Table 1.

<sup>111</sup> Instruction Manual at V.B(2)(a)–(c).

(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 submission of responses).

USCIS Form I-527

#### Background

Section 203(b)(5)(M) of the INA allows qualified immigrants in certain circumstances to amend their qualified Form I-526, Immigrant Petition by Alien Investor, petition filed before March 15, 2022, seeking classification for a visa to enter the United States for the purpose of engaging in a commercial enterprise. This form provides affected investors an avenue to establish their ongoing eligibility for an EB-5 immigrant visa by amending their originally filed Form I-526. USCIS will use the data collected on this form to determine the ongoing eligibility of an investor seeking to enter the United States to engage in an NCE.

An investor may file this form if they filed a Form I-526 before March 15, 2022, and are seeking to retain eligibility under section 203(b)(5)(M) of the INA because their regional center has been terminated or their NCE or JCE has been debarred and they do not otherwise continue to be eligible notwithstanding such termination or debarment (for example, because the requisite amount of capital has been or will continue to be invested in their original NCE and the requisite number of jobs have been or will be created in accordance with their originally filed business plan). To maintain eligibility if their regional center is terminated, an investor's NCE may associate with another designated regional center, or the investor may make a qualifying investment in another new commercial enterprise. If the investor's NCE or JCE is debarred, the investor may associate their investment with another NCE in good standing and invest additional capital necessary to satisfy any remaining job creation requirements.

This form serves the purpose of standardizing requests for certain investors to amend a Form I-526 filed before March 15, 2022.

#### Overview of Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Amendment to Legacy Form I-526.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* I-527; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The form will be used by an investor to amend a Form I-526, Immigrant Petition by Alien Investor, filed before March 15, 2022, in order to retain eligibility under INA 203(b)(5)(M) where the investor's regional center is terminated, or their NCE or JCE is debarred.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I-527 is 457 and the estimated hour burden per response is 1.44 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information is 658 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$235,355.

USCIS Form I-829

#### Overview of Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition by Investor to Remove Conditions on Permanent Resident Status.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-829; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households; Business or other for-profit. This form is used by a conditional permanent resident who obtained such status through a qualifying investment to apply to remove the conditions on their conditional residence.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I-829 is 1,010 and the estimated hour burden per response is 3.62 hours; the estimated total number of respondents for the information collection of Biometrics is 1,010 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information is 4,838 hours.

The proposed changes to the Form I-829 instructions reflects the proposed changes in the rule to clarify the process by which an immigrant investor's derivatives file separate Form I-829 petitions when they are not included in the Form I-829 filed by the immigrant investor.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$437,330.

#### Differences in Information Collection Request Respondent Volume and Fee Model Filing Volume Projections

DHS notes that the estimates of annual filing volume in the PRA section of this preamble are not the same as those used in the model used to calculate the fee amounts in this final rule. For example, the fee calculation model projects 11,262 EB-5 program filings annually across eight current forms and one new form, while the estimated total number of respondents for the eight current forms and one new form is 12,289. As stated in section VI.A.2.a. of this preamble, the Volume Projection Committee forecasts USCIS workload volume based on short- and long-term volume trends and time series models, historical receipts data, patterns (such as level, trend, and seasonality), changes in policies, economic conditions, or correlations with historical events to forecast receipts. Workload volume is used to determine the USCIS resources needed to process benefit requests and is the primary cost driver for assigning activity costs to immigration benefits and biometric services in the USCIS ABC model. DHS uses a different method for estimating the average annual number of respondents for the information collection over the 3-year OMB approval of the control number, generally basing the estimate on the average filing volumes in the previous 3- or 5-year period, with less consideration of the volume effects on planned or past policy changes. Although the RIA uses similar historic average volumes, RIAs isolate the impacts of proposed policy using models that may use different periods of analysis and often make simplifying assumptions about costs such as information collection burdens not caused by the regulation. When the information collection request is nearing expiration USCIS will update the estimates of annual respondents based on actual results in the submission to OMB. The PRA burden estimates are generally updated at least every 3 years. Thus, DHS expects that the PRA estimated annual respondents will be

updated to reflect the actual effects of this rule within a relatively short period after a final rule takes effect.

### List of Subjects and Regulatory Amendments—List of Subjects

#### 8 CFR Part 106

Citizenship and naturalization, Fees, Immigration.

#### 8 CFR Part 216

Administrative practice and procedure, Aliens.

Accordingly, DHS proposes to amend chapter I of title 8 of the Code of Federal Regulations as follows:

### PART 106—USCIS FEE SCHEDULE

- 1. Revise the authority citation for part 106 to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1153, 1254a, 1254b, 1304, 1356; Pub. L. 107–609; 48 U.S.C. 1806; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 101 note); Pub. L. 115–218, 132 Stat. 1547; Pub. L. 116–159, 134 Stat. 709; Pub. L. 117–103, 136 Stat. 49.

- 2. Amend § 106.2 by:

- a. Revising paragraphs (a)(25), (53), and (65) through (69);

- b. Redesignating paragraph (d) as paragraph (e); and

- c. Adding a new paragraph (d).

The revisions and addition read as follows:

#### § 106.2 Fees.

(a) \* \* \*

(25) *Immigrant Petition by Standalone or Regional Center Investor, Forms I–526 and I–526E.* To petition USCIS for status as an immigrant to the United States under section 203(b)(5) of the Act. The fee for this request is provided in paragraph (d) of this section.

\* \* \* \* \*

(53) *Petition by Investor to Remove Conditions on Permanent Resident Status, Form I–829.* For a conditional permanent resident who obtained status through qualified investment to remove the conditions on their residence. The fee for this request is provided in paragraph (d) of this section.

\* \* \* \* \*

(65) *Application for Regional Center Designation, Form I–956.* To request designation as a regional center or to request an amendment to an approved regional center. The fee for this request is provided in paragraph (d) of this section.

(66) *Application for Approval of Investment in a Commercial Enterprise, Form I–956F.* To request approval of each particular investment offering through an associated new commercial enterprise. The fee for this request is

provided in paragraph (d) of this section.

(67) *Regional Center Annual Statement, Form I–956G.* To provide updated information and certify that a regional center under the Immigrant Investor Program has maintained its eligibility. The fee for this request is provided in paragraph (d) of this section.

(68) *Bona Fides of Persons Involved with Regional Center Program, Form I–956H.* For each person involved with a regional center to attest to their compliance with section 203(b)(5)(H) of the Act. The fee for this request is provided in paragraph (d) of this section.

(69) *Registration for Direct and Third-Party Promoters, Form I–956K.* For each person acting as a direct or third-party promoter (including migration agents) of a regional center, any new commercial enterprises, an affiliated job-creating entity, or an issuer of securities intended to be offered to immigrant investors in connection with a particular capital investment project. The fee for this request is provided in paragraph (d) of this section.

\* \* \* \* \*

(d) *EB–5 fees.*

(1) *Petition Fee.* Individuals filing a petition for classification under INA section 203(b)(5)(E) must submit \$1,085 in addition to any other fees associated with such petition.

(2) *Immigrant Petition by Standalone or Regional Center Investor, Forms I–526 and I–526E.* To petition USCIS for status as an immigrant to the United States under section 203(b)(5) of the Act.

(i) Immigrant Petition by Standalone Investor, Form I–526 initial filing: \$9,530.

(ii) Immigrant Petition by Regional Center Investor, Form I–526E initial filing or amendments: \$9,530.

(iii) Each initial filing of Form I–526 or I–526E requires an additional USCIS EB–5 Technology Fee of \$95.

(3) *Amendment to Legacy Form I–526, Form I–527.* For investors who filed their petitions before the EB–5 Reform Act was enacted to amend their petition to retain their eligibility after their regional center is terminated or their new commercial enterprise or job-creating entity is debarred. \$8,000.

(4) *Immigrant Petition by Investor to Remove Conditions on Permanent Resident Status, Form I–829.* For a conditional permanent resident who obtained status through qualified investment to remove the conditions on their residence. \$7,860.

(5) *Application for Regional Center Designation, Form I–956.* To request

designation as a regional center or to request an amendment to an approved regional center.

(i) For initial filing: \$28,895.

(ii) For filing amendment: \$18,480.

(6) *Application for Approval of Investment in a Commercial Enterprise, Form I–956F.* To request approval or an amendment to each particular investment offering through an associated new commercial enterprise. \$29,935.

(7) *Regional Center Annual Statement, Form I–956G.* To provide updated information and certify that a Regional Center under the Immigrant Investor Program has maintained its eligibility, amend or supplement a prior filing. \$2,740.

(8) *Bona Fides of Persons Involved with Regional Center Program, Form I–956H.* For each person involved with a regional center to attest to their compliance with section 203(b)(5)(H) of the Act. \$55.

(9) *Registration for Direct and Third-Party Promoters, Form I–956K.* For each person acting as a direct or third-party promoter (including migration agents) of a regional center, any new commercial enterprises, an affiliated job-creating entity, or an issuer of securities intended to be offered to immigrant investors in connection with a particular capital investment project. \$2,740.

(10) *EB–5 Integrity Fund Fees and Penalties.*

(i) *Regional Center Annual Fee.* On October 1 of each year, designated regional centers must submit:

(A) \$21,650; or

(B) \$10,825 if the regional center has 20 or fewer total investors in its new commercial enterprises as of the last day of the preceding fiscal year.

(C) For the purposes of this section, total investors:

(1) Means the number of individuals who have invested or are actively in the process of investing in a regional center's new commercial enterprises that have been classified or are seeking classification under section 203(b)(5) of the Act minus the number of such individuals who have filed a petition to remove conditions based on such investment under section 216A of the Act.

(2) Does not include any individual whose petition for classification was denied, withdrawn, or revoked or whose conditional lawful permanent resident status was otherwise terminated before filing a petition for removal of conditions.

(D) This fee must be paid online at *Pay.gov* following the instructions at that website for the Annual Fee for

Regional Center payment, or as may be provided by USCIS under section 106.1(b).

(ii) *Penalties for Failure to Submit Regional Center Integrity Fee.* (A) If a regional center does not pay the fee on or before October 31 of each year and instead pays the fee from November 1 until the end of the day on November 30, a monetary penalty equal to 10 percent of the required fee will be imposed on the regional center.

(B) If a regional center does not pay the fee on or before November 30 and instead pays the fee from December 1 until the end of the day on December 30, a monetary penalty equal to 20 percent of the required fee will be imposed on the regional center.

(C) If a regional center does not pay the fee plus any applicable penalty on or before December 30, USCIS will terminate the designation of such regional center.

(1) Prior to termination, USCIS will send a notice of intent to terminate and provide the opportunity for a regional center to prove that the fee and applicable late fees were paid in the proper amount on or before December 30.

(2) Termination of a regional center under paragraph (d)(9)(ii)(C) of this section may be appealed as provided by 8 CFR 103.3.

\* \* \* \* \*

**PART 216—CONDITIONAL BASIS OF LAWFUL PERMANENT RESIDENCE STATUS**

■ 3. The authority citation for part 216 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1154, 1184, 1186a, 1186b, and 8 CFR part 2.

■ 4. Amend § 216.6 by revising paragraph (a)(1)(ii) to read as follows:

(a) \* \* \*

(1) \* \* \*

(ii) An investor may include their spouse and children on a petition to remove conditions if the spouse and children obtained conditional permanent resident status based on their relationship to the investor. If the investor's spouse and children are not included on the investor's petition to remove conditions, the spouse and each child must each file their own petition to remove the conditions on their permanent resident status, unless the investor is deceased. Any spouse or child not included on the investor's petition to remove conditions may file a petition to remove the conditions on their residence at any time during the period when the investor is required to file a petition to remove conditions.

(A) If the investor is deceased, the spouse and children may file separate petitions or may be included in one petition. In either case, the spouse and child must file the petition(s) at any time during the period when the investor would have been required to file a petition to remove conditions and establish eligibility to remove conditions.

(B) An investor may include any child who turned 21 years of age or married during the period of conditional permanent resident status on their petition to remove conditions. If the investor does not include the child on their petition to remove conditions, the child must file their own petition to remove conditions.

(C) An investor may include a former spouse who was divorced from the investor during the period of conditional permanent resident status on their petition to remove conditions. If the investor does not include the former spouse on their petition to remove conditions, the former spouse must file their own petition to remove conditions.

(D) If an investor does not file a petition to remove conditions, any spouse, former spouse, or child that obtained conditional permanent resident status based on their relationship to the investor may remove the conditions on their status if they can establish eligibility to remove conditions. The spouse, former spouse, or child must file the petition(s) at any time during the period when the investor would have been required to file a petition to remove conditions.

\* \* \* \* \*

**Kristi Noem,**

*Secretary, U.S. Department of Homeland Security.*

[FR Doc. 2025-19642 Filed 10-22-25; 8:45 am]

**BILLING CODE 9111-97-P**

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