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FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Parts 1605, 1650, and 1690

RIN 3222-AA00

Roth In-Plan Conversions

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Federal Retirement Thrift Investment Board (FRTIB) is amending a regulation to permit participants in the Thrift Savings Plan (TSP) to convert amounts in their traditional TSP balances to their Roth TSP balances, subject to applicable tax consequences.

DATES: The effective date is January 28, 2026.

FOR FURTHER INFORMATION CONTACT: *For press inquiries:* James Kaplan at (202) 465-5220. *For other inquiries:* Laurissa Stokes at (202) 942-1645.

SUPPLEMENTARY INFORMATION: The FRTIB administers the TSP, which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99-335, 100 Stat. 514. The TSP is a retirement savings plan for Federal civilian employees and members of the uniformed services. It is similar to cash or deferred arrangements established for private-sector employees under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)). The provisions of FERSA that govern the TSP are codified, as amended, largely at 5 U.S.C. 8351 and 8401-80.

I. Background

A Roth in-plan conversion allows a TSP participant to move funds from a traditional (pre-tax and tax-exempt) balance to a Roth (after-tax) balance within the TSP. This conversion triggers taxation on the converted amount but offers the potential for tax-free withdrawals in retirement. Since Roth TSP contributions were introduced in 2012, participants have expressed

interest in converting traditional balances to Roth balances within the plan. The 2024 TSP Participant Satisfaction Survey asked participants about their interest in a Roth in-plan conversion feature. Thirty-five percent of respondents who were familiar with Roth contributions replied that they are "likely" or "extremely likely" to use an in-plan conversion feature if offered in the TSP. In response, the FRTIB collaborated with its record keeper to enable these conversions, which require a regulatory amendment.

II. Proposed Rule

On October 15, 2025, the FRTIB published a proposed rule in the **Federal Register** (90 FR 48267) to amend 5 CFR part 1650 by adding Subpart F. This new subpart establishes rules for Roth in-plan conversions in the TSP.

III. Response to Public Comments

The FRTIB received comments from 36 individuals and entities in response to the proposed rule regarding Roth in-plan conversions within the TSP. Overall, commenters supported adding this feature, noting its potential to increase flexibility in retirement planning for TSP participants. To organize our response, we have grouped the comments into four general categories:

- In-scope comments addressing the substance of the proposed rule;
- Out-of-scope comments about topics beyond the scope of this rulemaking;
- Comments related to tax liability implications; and
- Miscellaneous comments that did not fit neatly into the other categories.

Before addressing the public comments, we will respond to two rulemaking petitions received during the comment period. The petitioners alleged procedural deficiencies under the Regulatory Flexibility Act, the Paperwork Reduction Act, and the Unfunded Mandates Reform Act. Specifically, the petitioners claimed the rule would negatively impact small entities and that the FRTIB failed to comply with requirements under these Acts to assess such impacts.

Upon review, we find the petitioners' concerns to be unfounded. The rule applies exclusively to TSP participants and does not impose any obligations on other entities, including other defined

contribution plans. Additionally, the petition reflects a misunderstanding of the rule's origin, incorrectly attributing its issuance to the Internal Revenue Service (IRS) rather than the FRTIB. Accordingly, the FRTIB denies the petitions. We find no procedural deficiencies in the rulemaking process.

A. In-Scope Comments

1. Conversion Frequency

Two commenters recommended that the final rule specify the number of Roth conversions permitted annually, rather than leaving this determination to the discretion of the TSP record keeper. The FRTIB agrees with this recommendation and has revised the regulatory text to allow participants to request up to a maximum of 26 conversions per calendar year. This limit aligns with the biweekly pay schedule used by many federal payroll offices and provides participants with regular opportunities to manage their retirement savings strategy. Participants may make multiple conversions within a single pay period; the rule does not restrict them to one conversion per pay period.

2. Eligibility To Request In-Plan Conversions

One commenter asked for clarification regarding who may request a Roth in-plan conversion. A conversion may be requested by "a participant or a beneficiary participant." This includes active participants, separated participants who maintain TSP accounts after leaving federal service, and surviving spouses of deceased participants for whom a separate beneficiary participant account has been established. Non-spouse beneficiaries or alternate payees are not eligible to request Roth in-plan conversions.

3. Conversion of Tax-Exempt Balances

One commenter recommended that the rule permit Roth conversions of tax-exempt balances, such as contributions made from combat zone pay, in addition to pre-tax balances. The term "traditional balance", as defined in the 5 CFR 1690.1, encompasses both tax-exempt balances and pre-tax balances. Accordingly, the FRTIB confirms that the final rule authorizes conversions of both tax-exempt balances and pre-tax balances. These conversions must comply with IRS pro rata requirements, which mandate that any Roth

conversion proportionally include tax-exempt and pre-tax amounts based on their ratio of the total traditional balance.

4. \$500 Conversion Minimum

One commenter recommended elimination of the \$500 minimum for Roth in-plan conversions “[t]o facilitate immediate or automatic conversions.” The FRTIB established the \$500 minimum to discourage small, frequent conversions that could increase administrative complexity and costs, and to promote operational efficiency. A minimum threshold ensures that conversions are substantive and mitigates potential burdens on the TSP’s recordkeeping system. The \$500 amount was selected as a reasonable balance between flexibility for participants and operational considerations for the TSP record keeper. Accordingly, the final rule retains the \$500 conversion minimum.

5. \$500 Minimum Balance

Four commenters objected to the provision requiring participants to retain \$500 in each balance type with payroll contributions. This requirement is designed to mitigate the impact of payroll errors and corrections, which are typically small and often under \$500. For example, if a payroll office mistakenly deposits funds into the wrong balance, having a buffer in place ensures that those errors can be easily corrected without creating negative balances or operational complications. Accordingly, the final rule retains the requirement that participants keep at least \$500 in each of their tax-deferred employee contribution, tax-exempt contribution, agency automatic (1%) contribution, and agency matching contribution balances when requesting a Roth conversion.

6. Automatic Conversion Tool

Two commenters suggested implementing a tool that would automatically convert traditional balances to Roth balances once the traditional balance reaches a certain threshold amount. While the FRTIB understands the appeal of automation, Roth in-plan conversions carry significant tax implications. To ensure participants make informed and deliberate decisions, the FRTIB will not implement automatic conversions.

B. Out-of-Scope Comments

Several comments offered valuable perspectives on TSP participant preferences and concerns. Although these suggestions are beyond scope of this rulemaking, the FRTIB will

consider them as part of its ongoing evaluation of TSP features and efforts to address participant needs.

1. Different Investment Allocations for Roth and Traditional Balances

Fifteen commenters requested the ability to allocate Roth and traditional balances to different TSP funds. While the FRTIB understands the rationale for these requests in light of common financial planning strategies, implementing such functionality would require extensive modifications to the TSP’s recordkeeping and investment systems. These changes would involve significant programming, testing, and operational adjustments, resulting in increased complexity and costs for all participants. Because these modifications are beyond the scope of this rulemaking, they are not addressed in the final regulation.

Similarly, one commenter expressed concern that investment allocations are shown for traditional and Roth balances in the aggregate and not as separate balances, on participant statements and My Account, and therefore participants are prevented from determining the allocation of specific fund holdings of those balances. The TSP’s investment and recordkeeping systems are designed to apply a single investment allocation across the entirety of a participant’s account regardless of tax treatment. Allowing separate allocations for traditional and Roth balances would require fundamental changes to these systems and are beyond the scope of this rulemaking. However, participants can easily determine the allocation themselves since the system applies allocations proportionally across all balances.

2. Designation of Agency Contributions as Roth

Four commenters suggested allowing agency automatic and matching contributions to be designated as Roth contributions, as permitted under section 604 of the SECURE Act 2.0. While the FRTIB recognizes the reasoning behind these requests, this rulemaking is narrowly focused on permitting participants to convert existing traditional balances to Roth balances. The FRTIB will consider this suggestion as a potential future enhancement.

3. Fund-Specific Withdrawals

One commenter suggested allowing participants to choose which TSP funds their withdrawals come from, rather than having withdrawals applied proportionally across all funds. This issue pertains to the broader withdrawal

mechanics of the TSP and is, therefore, outside the scope of this rulemaking.

4. Voluntary After-Tax Contributions

Eight commenters recommended permitting voluntary after-tax contributions in addition to Roth and traditional contributions. The TSP is governed by FERSA, which only authorizes Roth and traditional contributions. Implementing voluntary after-tax contributions would require an amendment to FERSA by Congress. Because this statutory authority does not currently exist and this topic is beyond the scope of this rulemaking, the final regulation does not address this request.

C. Tax Liability

Several commenters made suggestions related to the tax implications of Roth in-plan conversions, which we address below. The FRTIB does not have authority to alter the tax consequences of Roth in-plan conversions or to determine the methods available for paying tax obligations. These tax implications are governed by section 402A of the Internal Revenue Code. Such matters fall under the jurisdiction of the Internal Revenue Service and cannot be addressed through FRTIB regulations. However, the FRTIB recognizes the importance of providing clear communication to help participants understand the tax consequences of their decisions.

1. Education on Tax Liability

Commenters emphasized the need for clear guidance on the tax consequences of converting traditional TSP balances to Roth and the ways in which participants can pay for the income tax due as a result of the conversion. The FRTIB agrees that education is essential and is actively developing participant communications to explain the tax implications, including that converted amounts are subject to federal income tax and must be paid using personal funds from another source, such as a savings account. These materials will be made available on the TSP website and through other participant outreach channels.

2. Estimating Tax Obligations

Commenters requested tools to help participants estimate their federal, state, and local tax liabilities resulting from conversions. The FRTIB is developing a calculator that will allow participants to model the estimated tax effect of their conversions. This tool will be available prior to the implementation of the Roth in-plan conversion feature.

3. Paying Income Taxes on Converted Amounts

Three commenters suggested that the final rule permit withholding or specify the withholding rates for taxable converted amounts. The FRTIB cannot adopt these suggestions because, under IRS guidance, no withholding applies to a Roth in-plan conversion of an otherwise nondistributable amount, and no part of the conversion may be withheld voluntarily pursuant to 26 U.S.C. 3402(p). Therefore, participants must use personal funds from another source, such as a savings account, to satisfy their tax obligations.

D. Miscellaneous

Several commenters raised questions and suggestions that fall into a miscellaneous category. These comments touched on operational clarity, participant communications, and procedural transparency. In response, the FRTIB has adopted one commenter's suggestion and offers the following clarifications.

1. Notices

Commenters stated the rule should require the TSP record keeper to provide participants with clear written notice of the tax consequences of a Roth in-plan conversion, and that participants acknowledge receipt of such notice before the conversion is executed. The FRTIB agrees that participant education is essential. Accordingly, the TSP will provide comprehensive communications, including web content, notices, and interactive tools explaining the tax implications of conversions. We will also require participants to acknowledge receipt and understanding of such communications prior to completing a Roth in-plan conversion.

While the FRTIB agrees that providing clear information about the tax consequences of Roth conversions is essential, we do not believe it is appropriate to include this requirement in the regulatory text because section 402(f) of the Internal Revenue Code and IRS regulations already govern the obligation of retirement plans to provide notice to plan participants of tax consequences of certain transactions. The FRTIB will ensure compliance with section 402(f) of the Internal Revenue Code and related IRS guidance.

2. Explanation of Conversion Denials

One commenter recommended requiring the TSP record keeper to (1) provide a written explanation when a conversion request is denied, (2) identify the corrective actions needed, and (3) set a clear timeline and

procedure for appeals. The FRTIB has adopted this recommendation in part. Newly added paragraph (g) requires the TSP record keeper to promptly notify the requester if their Roth in-plan conversion request is denied. However, the rule does not prescribe the format of the notice, allowing flexibility as transaction methods evolve. Initially, conversions will be processed online only. Notice of ineligibility for a Roth in-plan conversion will be prominently displayed, in real time, on the screen. To determine corrective actions needed, participants may be required to call the ThriftLine. The timeline and procedure for appeals are set forth in 5 CFR 1605.22.

3. Required Minimum Distributions (RMDs)

A commenter asked whether Roth conversions can be processed in years in which participants are subject to RMDs. The FRTIB clarifies that conversions may occur in such years; however, the RMD must be satisfied in full before any conversion is processed. This ensures compliance with IRS rules prohibiting the conversion of RMD amounts.

4. Roth Character of Converted Balances

A commenter suggested FRTIB regulations should state whether converted Roth balances retain their Roth character for purposes of rollovers requested after conversion. Rules that determine tax treatment of distributions after conversion are established under the Internal Revenue Code and enforced by the IRS. Because these requirements fall under IRS authority, they are not incorporated into FRTIB regulations.

IV. Non-Substantive Conforming Amendments

The final rule adds a definition of the term Roth in-plan conversion. The definition references 26 U.S.C. 402A(c)(4) to ensure consistency with the Internal Revenue Code, which governs the tax treatment of such conversions. By directly incorporating the statutory reference, the regulation avoids ambiguity and reduces the risk of conflicting interpretations.

The final rule also replaces all instances of the term "Roth initiation date" in 5 CFR part 1600 with the term "Roth begin date" to align with terminology now used in communications and educational materials provided to TSP participants.

Regulatory Flexibility Act

This final regulation will not have a significant economic impact on a substantial number of small entities. This regulation will affect Federal

employees and members of the uniformed services who participate in the TSP and who choose to convert their traditional balance to a Roth balance within the TSP.

Paperwork Reduction Act

This final regulation does not require additional reporting under the criteria of the Paperwork Reduction Act.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, and 1501–1571, the effects of this regulation on State, local, and Tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of \$100 million or more by State, local, and Tribal governments, in the aggregate, or by the private sector. Therefore, a statement under 2 U.S.C. 1532 is not required.

Submission to Congress and the Government Accountability Office

Pursuant to 5 U.S.C. 801(a)(1)(A), the FRTIB submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Government Accountability Office before publication of this rule in the **Federal Register**. This rule is not a major rule as defined at 5 U.S.C. 804(2).

List of Subjects

5 CFR Part 1605

Claims, Government employees, Pensions, Retirement.

5 CFR Part 1650

Alimony, Claims, Government employees, Pensions, Retirement.

5 CFR Part 1690

Government employees, Pensions, Retirement.

Ravindra Deo,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons stated in the preamble, the FRTIB amends 5 CFR parts 1605, 1650, and 1690 as follows:

PART 1605—CORRECTION OF ADMINISTRATIVE ERRORS

■ 1. The authority citation for part 1605 continues to read as follows:

Authority: 5 U.S.C. 8351, 8432a, 8432d, 8474(b)(5) and (c)(1). Subpart B also issued under section 1043(b) of Public Law 104–106, 110 Stat. 186 and § 7202(m)(2) of Public Law 101–508, 104 Stat. 1388.

§§ 1605.11, 1605.15, 1605.17 [Amended]

■ 2. Amend §§ 1605.11(c)(13), 1605.15(d), and 1605.17(c)(1) by removing the words “Roth initiation date” and adding, in their place, the words “Roth begin date.”

PART 1650—METHODS OF WITHDRAWING FUNDS FROM THE THRIFT SAVINGS PLAN

■ 3. The authority citation for part 1650 continues to read as follows:

Authority: 5 U.S.C. 8351, 8432d, 8433, 8434, 8435, 8474(b)(5) and 8474(c)(1).

Subpart A—General

■ 4. Amend § 1650.1(b) by adding, in alphabetical order, the definition for “Roth in-plan conversion” to read as follows:

§ 1650.1 Definitions.

* * * * *

(b) * * *

Roth in-plan conversion means a taxable rollover to a designated Roth account as stated in 26 U.S.C. 402A(c)(4).

* * * * *

§ 1650.25 [Amended]

■ 5. Amend § 1650.25(c) by removing the words “Roth initiation date” and adding, in their place, the words “Roth begin date”.

■ 6. Amend part 1650 by adding subpart F to read as follows:

Subpart F—Roth In-Plan Conversions**§ 1650.60 Eligibility and general rules for Roth in-plan conversions.**

(a) A participant or beneficiary participant may request up to a maximum of 26 Roth in-plan conversions per calendar year.

(b) To be eligible for a Roth in-plan conversion, the participant or beneficiary participant must have a vested account balance of at least \$500 at the time of the request.

(c) The total amount of a conversion request must be at least \$500.

(d) Participants must retain at least \$500 in each of their tax-deferred employee contribution, tax-exempt contribution, agency automatic (1%) contribution, and agency matching contribution balances.

(e) Amounts invested in the Mutual Fund Window cannot be converted unless those amounts are first transferred back into one or more of the TSP core funds.

(f) Administrative holds placed pursuant to § 1690.15 will restrict an

individual from requesting a Roth in-plan conversion.

(g) The TSP record keeper shall promptly notify the participant or beneficiary participant if their Roth in-plan conversion request is denied.

PART 1690—THRIFT SAVINGS PLAN

■ 7. The authority citation for part 1690 continues to read as follows:

Authority: 5 U.S.C. 8474.

§ 1690.1 Definitions.

■ 8. Amend § 1690.1 by removing the definition for “Roth initiation date” and adding, in alphabetical order, the definition for “Roth begin date” to read as follows:

* * * * *

Roth begin date means

(1) The earlier of:

(i) The actual date of a participant’s first Roth contribution to the TSP;

(ii) The “as of” date or attributable pay date (as defined in § 1605.1 of this subchapter) that established the date of the participant’s first Roth contribution to the TSP; or

(iii) The date used, by a plan from which the participant directly rolled over Roth money into the TSP, to measure the participant’s Roth 5 year non-exclusion period.

(2) If a participant has a civilian account and a uniformed services account, the Roth initiation date for both accounts will be the same.

* * * * *

[FR Doc. 2026–00765 Filed 1–14–26; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA–2025–0632; Airspace Docket No. 24–ASW–23]

RIN 2120–AA66

Establishment of Class E Airspace; Zuni, NM; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule that FAA published in the **Federal Register** on December 8, 2025. The final rule established Class E airspace extending upward from 700 feet above the surface for Zuni, NM. This action corrects an error in the legal description.

DATES: The effective date of the final rule published in the **Federal Register** on December 8, 2025 (90 FR 56682) remains May 14, 2026, 0901 UTC. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11K, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at www.faa.gov/air_traffic/publications/. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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

SUPPLEMENTARY INFORMATION:**History**

The FAA published a final rule for Docket No. FAA–2025–0632 in the **Federal Register** (90 FR 56682; December 8, 2025), establishing Class E airspace extending upward from 700 feet above the surface at Zuni, NM. After publication, the FAA found that an incorrect region was used in the header. This action corrects the error, which listed the region as AWP (Western Pacific). The correct region is ASW (Southwest). The dimensions of the airspace remain unchanged.

Correction to the Final Rule

Accordingly, pursuant to the authority delegated to me, Docket No. FAA–2025–0632 published in the **Federal Register** on December 8, 2025 (90 FR 56682), FR Doc. 2025–22145, is corrected as follows:

§ 71.1 [Corrected]

■ 1. On page 56683, in the third column, delete the bolded header text: “AWP NM E5 Zuni, NM [Established]” and replace it with: “ASW NM E5 Zuni, NM [Corrected]”.

Issued in Fort Worth, Texas, on January 8, 2026.

Courtney E. Johns,

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

[FR Doc. 2026–00752 Filed 1–14–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA–2025–0277; Airspace
Docket No. 24–AGL–29]

RIN 2120–AA66

**Amendment of Jet Route J–146 and
Establishment of United States RNAV
Route Q–186 in the Vicinity of
Chardon, OH**

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Jet Route J–146 and establishes United States Area Navigation (RNAV) Route Q–186 segments within U.S. airspace. The FAA is taking this action due to the planned decommissioning of the Very High Frequency Omnidirectional Range (VOR) portion of the Chardon, OH (CXR), VOR/Distance Measuring Equipment (VOR/DME) navigational aid (NAVAID). The Chardon VOR is being decommissioned in support of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Effective date 0901 UTC, March 19, 2026. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the notice of proposed rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at www.regulations.gov using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from www.federalregister.gov.

FAA Order JO 7400.11K, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at www.faa.gov/air_traffic/publications/. You may also contact the Rules and Regulations Group, Policy Directorate, Federal Aviation Administration, 600 Independence Avenue SW, Washington, DC 20597; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Steven Roff, Rules and Regulations Group, Policy Directorate, Federal Aviation Administration, 600 Independence Avenue SW, Washington, DC 20597; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the National Airspace System as necessary to preserve the safe and efficient flow of air traffic.

History

The FAA published a NPRM for Docket No. FAA–2025–0277 in the **Federal Register** (90 FR 9884; February 19, 2025), proposing to amend Jet Route J–146 and establish RNAV Route Q–186 due to the planned decommissioning of the VOR portion of the Chardon, OH, VOR/DME NAVAID. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

Differences From the NPRM

Subsequent to publishing the NPRM, the FAA coordinated with NAV CANADA, the air traffic service provider in Canada, for the FAA to only establish the portions of the proposed Q–186 that are within U.S. airspace and NAV CANADA to establish the portion of Q–186 that is within Canada's airspace. To accomplish that, two waypoints (WPs) are being established, named STUNK and FOODO, on the U.S./Canada border where the proposed Q–186 crosses. These two WPs will retain the route's cross-border connectivity following the removal of the J–146 route segment affected by the Chardon VOR decommissioning. This action is changed from the NPRM proposal to establish two segments of Q–186 within U.S. airspace to connect to a third segment of Q–186 that NAV CANADA is establishing within Canada's airspace. Collectively, the segments of Q–186 established within U.S. and Canadian airspace will match the route as it was proposed in the NPRM.

Incorporation by Reference

Jet Routes are published in paragraph 2004 and United States Area Navigation Routes (Q-routes) are published in

paragraph 2006 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11K, dated August 4, 2025, and effective September 15, 2025. These amendments will be published in the next update to FAA Order JO 7400.11. FAA Order JO 7400.11K, which lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points, is publicly available as listed in the **ADDRESSES** section of this document.

The Rule

This action amends 14 CFR part 71 by amending Jet Route J–146 and establishing United States RNAV Route Q–186 segments within U.S. airspace due to the planned decommissioning of the VOR portion of the Chardon, OH, VOR/DME NAVAID. The Air Traffic Service route actions are described below.

J–146: Prior to this final rule, J–146 extended between the Los Angeles, CA, VOR/Tactical Air Navigation (VORTAC) and the Kennedy, NY, VOR/DME, excluding the portion within Canada. The route segment between the Gipper, MI, VORTAC and the Keating, PA, VORTAC is removed. The exclusion language is also removed. As amended, the airway is changed to now extend between the Los Angeles VORTAC and the Gipper VORTAC, and between the Keating VORTAC and the Kennedy VOR/DME.

Q–186: Q–186 is a new United States RNAV route established to extend between the ZIINE, MI, WP located approximately 0.5 nautical mile (NM) east of the Gipper, MI, VORTAC and the STUNK, OH, WP being established on the U.S./Canada border; and between the FOODO, OH, WP that is also being established on the U.S./Canada border and the SCAAM, PA, WP being established approximately 8 NM east of the Keating, PA, VORTAC. The new route segments, when connected with the segment being established by NAV CANADA in Canadian airspace, will provide an RNAV alternative to the J–146 amendment above.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT

Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action of amending J-146 and establishing Q-186 qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) and in accordance with FAA Order 1050.1G, *FAA National Environmental Policy Act Implementing Procedures*, paragraph B-2.5(a), which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (*see* 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points) and paragraph B-2.5(i), which categorically excludes from further environmental impact review the establishment of new or

revised air traffic control procedures conducted at 3,000 feet or more above ground level (AGL); procedures conducted below 3,000 feet AGL that do not cause traffic to be routinely routed over noise sensitive areas; modifications to currently approved procedures conducted below 3,000 feet AGL that do not significantly increase noise over noise sensitive areas; and increases in minimum altitudes and landing minima. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with the FAA's NEPA implementation policy and procedures regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact statement.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

Q-186 ZIINE, MI to SCAAM, PA [New]

ZIINE, MI	WP	(Lat. 41°46'11.17" N, long. 086°18'26.72" W)
IDEAS, MI	FIX	(Lat. 41°46'17.18" N, long. 083°33'06.56" W)
STUNK, OH	WP	(Lat. 41°41'11.97" N, long. 082°42'02.27" W)
and		
FOODO, OH	WP	(Lat. 41°40'35.84" N, long. 082°36'14.44" W)
SPYDY, OH	WP	(Lat. 41°32'45.18" N, long. 081°24'44.10" W)
TEESY, PA	WP	(Lat. 41°25'15.99" N, long. 080°06'42.56" W)
MIGET, PA	FIX	(Lat. 41°17'40.43" N, long. 078°51'51.49" W)
SCAAM, PA	WP	(Lat. 41°11'37.46" N, long. 077°58'15.20" W)

* * * * *

Issued in Washington, DC, on January 12, 2026.

Alex W. Nelson,

Manager, Rules and Regulations Group.

[FR Doc. 2026-00730 Filed 1-14-26; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF COMMERCE

15 CFR Part 0

[Docket ID 260107-0010]

RIN 0605-AA75

Removing Unnecessary Department-Specific Regulations Related to Employee Responsibilities and Conduct

AGENCY: Office of the Secretary, Department of Commerce.

ACTION: Final rule.

SUMMARY: By this rule, the Department of Commerce (the "Department") eliminates regulations that relate to the responsibilities and conduct of the Department's employees. None of the regulations at Part 0 is required by statute and, as a whole, Part 0 has been

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

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

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11K, Airspace Designations and Reporting Points, dated August 4, 2025, and effective September 15, 2025, is amended as follows:

Paragraph 2004 Jet Routes.

* * * * *

J-146 [Amended]

From Los Angeles, CA; Daggett, CA; Las Vegas, NV; Dove Creek, CO; Blue Mesa, CO; Goodland, KS; Lincoln, NE; Iowa City, IA; Joliet, IL; to Gipper, MI. From Keating, PA; Milton, PA; Allentown, PA; to Kennedy, NY.

* * * * *

Paragraph 2006 United States Area Navigation Routes.

* * * * *

supplanted and rendered obsolete by various Executive branch-wide regulations in Title 5 of the Code of Federal Regulations and Department Administrative Orders ("DAOs"). The removal of Part 0 is necessary to streamline the Department's regulations and to eliminate unnecessary regulatory complexity and clutter. The intended effect of this action is to reduce the potential for confusion regarding employee conduct and to promote administrative efficiency.

DATES: The rule is effective January 15, 2026.

FOR FURTHER INFORMATION CONTACT: Daniel Sweeney, Senior Counsel, Office of the General Counsel, at (202) 482-1395.

SUPPLEMENTARY INFORMATION:

I. Discussion

The regulations at 15 CFR part 0 govern the responsibilities and conduct of the Department's employees. Such regulations are generally authorized by 5 U.S.C. 301, which provides that "[t]he head of an Executive department . . . may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property."

A. Regulatory History

The Department first established a comprehensive framework for employee conduct in a final rule published on November 2, 1967 (32 FR 15222). That rule was issued to conform the Department's policies with government-wide standards prescribed in Executive Order 11222 of May 8, 1965, and regulations issued by the Civil Service Commission, now codified at 5 CFR part 735. The 1967 rule aimed to address ethical and administrative challenges inherent to the Department's functions by setting forth specific policies and procedures for employee conduct. Key provisions included establishing standards to prevent conflicts of interest, or the appearance of such conflicts, and implementing a requirement for certain employees to submit statements of their outside employment and financial interests. The 1967 rule also established an administrative structure for enforcement, outlining the responsibilities of individual employees, supervisors, and the Department's operating units in upholding these ethical standards.

Over time, the Executive branch developed more centralized, government-wide ethics regulations. Following the passage of the Ethics in Government Act of 1978, the Office of Government Ethics ("OGE") promulgated comprehensive regulations governing financial disclosure and standards of ethical conduct, codified at 5 CFR parts 2634 and 2635, respectively. In a final rule published on May 9, 2003 (68 FR 24879), the Department amended its regulations to remove its own internal conduct provisions that were rendered obsolete by, or were duplicative of, the new OGE regulations. The 2003 amendment removed and reserved several subparts and sections of 15 CFR part 0 and revised § 0.735-2 to direct employees to the controlling Executive branch-wide standards.

In a final rule published on August 11, 2006 (71 FR 46073), the Office of Personnel Management ("OPM") updated certain regulations governing the responsibilities and conduct of all Executive branch employees, codified at 5 CFR part 735. And, in a final rule published on June 25, 2008 (73 FR 36186), OGE issued regulations governing post-employment conflict of interest violations by former Executive branch employees, codified at 5 CFR part 2641.

B. Description of the Regulations Being Amended

Part 0 currently consists of five subparts: Subpart A, Subpart D, Subpart F, Subpart G, and Subpart H. (Subparts B, C, and E are currently reserved.)

Subpart A contains the "General Provisions" for Part 0. Specifically, it addresses the purpose of Part 0, *see* 15 CFR 0.735-1; it cross-references some of the applicable Executive branch-wide regulations governing employee responsibilities and conduct, *see* 15 CFR 0.735-2; it clarifies the applicability of Part 0 to all persons included within the term "employee," *see* 15 CFR 0.735-3; and it sets forth various definitions (including for the term "employee"), *see* 15 CFR 0.735-4.

Subpart D sets forth regulatory limitations upon employee conduct. In particular, it discusses, in broad terms, the applicability of certain statutory limitations, *see* 15 CFR 0.735-10; it addresses the issue of employee indebtedness, *see* 15 CFR 0.735-16; it sets forth certain restrictions on activities related to gambling, *see* 15 CFR 0.735-17; it restricts certain general categories of conduct that are prejudicial to the government, *see* 15 CFR 0.735-18; and it requires each employee to report any use or attempted use of undue influence, *see* 15 CFR 0.735-19.

Subpart F sets forth rules government supplementary regulations related to employee conduct. Specifically, it acknowledges that the Assistant Secretary for Administration and each individual operating unit may set forth additional regulations related to employee conduct. *See* 15 CFR 0.735-32, 0.735-33. It also sets forth a rule regarding the effective date of any supplementary regulations. *See* 15 CFR 0.735-34.

Subpart G is titled "Administration." It identifies the responsibilities of employees and of operating units within the Department. *See* 15 CFR 0.735-35, 0.735-36. It also sets forth requirements related to (i) the review of statements of employment and financial statements, *see* 15 CFR 0.735-37; (ii) the availability

of employee counseling, *see* 15 CFR 0.735-38; (iii) authorizations for certain conduct, *see* 15 CFR 0.735-39; (iv) disciplinary and remedial actions, *see* 15 CFR 0.735-40; and (v) inquiries and exceptions, *see* 15 CFR 0.735-41.

Lastly, Subpart H sets forth the rules governing disciplinary actions for post-employment conflict of interest violations. Specifically, it contains regulatory provisions (i) explaining its scope, *see* 15 CFR 0.735-42; (ii) requiring all employees to report any known conflict of interest violations by former employees, *see* 15 CFR 0.735-43(a); (iii) setting forth administrative procedures for the various stages of disciplinary actions, *see* 15 CFR 0.735-43(b)-(d), 0.735-44, 0.735-45, 0.735-46, 0.735-47, 0.735-48, 0.735-49; and (iv) acknowledging the availability of judicial review, *see* 15 CFR 0.735-50.

II. Regulatory Amendments

By this rule, the Department is eliminating 15 CFR part 0 in its entirety for the following reasons.

As an initial matter, none of the regulatory provisions within Part 0 is specifically required by statute. The lack of a specific statutory mandate, by itself, suffices to warrant reconsideration of Part 0, as the Department is committed to ensuring that its regulations do not exceed the scope of its lawful authority.

And, upon careful reconsideration, the Department has determined that the regulatory provisions at Part 0 are not justified by any compelling interest. As discussed above, since the Department first established a regulatory framework governing employee conduct, numerous Executive branch-wide regulations governing employee conduct have been promulgated by OMB and OGE. *See, e.g.,* 5 CFR part 735 ("Employee Responsibilities and Conduct"), 5 CFR part 2634 ("Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture"), 5 CFR part 2635 ("Standards of Ethical Conduct for Employees of the Executive Branch"), 5 CFR part 2641 ("Post-Employment Conflict of Interest Restrictions"). The Department has also since issued numerous DAOs related to employee conduct. *See, e.g.,* DAO 202-250 ("Delegation of Authority for Human Resources Management"); DAO 202-299 ("Clearance of Separating Employees"); DAO 202-751 ("Discipline"); DAO 203-9 ("Gifts"). The Department is satisfied that these Executive branch-wide regulations, their underlying statutory authorities, and the Department's numerous DAOs adequately address employee conduct and render Part 0 substantially obsolete. But even apart from those other authorities, certain

provisions within Part 0 are obsolete by themselves. For example, § 0.735–4(a)(1)(i) references the Environmental Science Services Administration—an agency that ceased to exist back in 1970. And certain other provisions within Part 0 simply restate underlying statutory law, such as § 0.735–50 (with respect to availability of judicial review).

Furthermore, the continued maintenance of Part 0 inevitably poses some risk of distracting from—and causing confusion about the application of—the Executive branch-wide regulations on employee conduct, as well as the related statutory requirements and restrictions.

Overall, eliminating Part 0 would simplify both the Department's own regulations and the broader body of regulations and authorities pertaining to the conduct of Executive branch employees, and the Department is satisfied that the value of proceeding with this elimination outweighs the value currently added by Part 0.

III. Regulatory Certifications

A. Administrative Procedure Act

The Department issues this final rule without prior public notice and comment pursuant to the Administrative Procedure Act's exception for rules "relating to agency management or personnel or to public property, loans, grants, benefits, or contracts." 5 U.S.C. 553(a)(2). This rule falls into that exception, as all of the affected regulatory provisions pertain to agency management and/or personnel.

B. Executive Orders 12866, 14192, 13132

The Office of Management and Budget has determined this rule is not significant pursuant to E.O. 12866. This rule is an E.O. 14192 deregulatory action. This rule does not contain policies having federalism implications as the term is defined in E.O. 13132.

C. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public participation are not required to be given for this rule by 5 U.S.C. 553(a)(2), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

D. Paperwork Reduction Act

This rule will not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

List of Subjects for 15 CFR Part 0

Administrative practice and procedure, Authority delegations (Government agencies), Conflict of interests, Government employees, Organization and functions (Government agencies).

Dated: January 13, 2026.

Paul Dabbar,

Deputy Secretary of Commerce.

PART 0—[REMOVED AND RESERVED]

■ Accordingly, for the reasons set forth above and under the authority of 5 U.S.C. 301, part 0 of title 15 of the Code of Federal Regulations is removed and reserved.

[FR Doc. 2026–00685 Filed 1–14–26; 8:45 am]

BILLING CODE 3510–BW–P

DEPARTMENT OF COMMERCE

15 CFR Part 1

[Docket ID 260107–0011]

RIN 0605–AA71

Removing Unnecessary Regulations Regarding the Seal of the Department of Commerce

AGENCY: Office of the Secretary, Department of Commerce.

ACTION: Final rule.

SUMMARY: By this rule, the Department of Commerce ("Department") removes unnecessary regulations related to the Department's official seal. The intended effect is to reduce regulatory complexity and eliminate clutter from the Code of Federal Regulations.

DATES: The rule is effective on January 15, 2026.

FOR FURTHER INFORMATION CONTACT: Daniel Sweeney, Senior Counsel, Office of the General Counsel, at (202) 482–1395.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Commerce (the Department) is amending its regulations at 15 CFR part 1, which establish and govern its official seal, by removing two unnecessary regulations—§§ 1.1 and 1.3.

The regulations in 15 CFR part 1 govern the description, design, and use of the official seal of the Department. The authority for these regulations originates from the Act of February 14, 1903 (32 Stat. 825, as amended; 15 U.S.C. 1501), which established the Department and directed the Secretary of Commerce to create a seal of office, subject to Presidential approval. The

design for the seal was subsequently approved by the President on April 4, 1913. The current regulations were published as a final rule in the **Federal Register** of June 26, 1968 (33 FR 9337), to codify existing standards and formally delegate the authority to affix the seal to official documents.

Section 1.1 states that the purpose of the part is to describe the seal and to delegate authority for its use on certifications and other official documents. Section 1.2 describes the historical basis and design of the seal, including its core components: a ship symbolizing commerce, a lighthouse representing commercial enlightenment and guidance, and an American bald eagle as the crest to denote the national scope of the Department's activities. Section 1.3 delegates the Secretary's authority to affix the seal for official purposes, including certifications under 28 U.S.C. 1733(b). This authority is granted to the Chief Administrative Officer of each operating unit and the Director of the Office of Administrative Services, with a provision allowing the Assistant Secretary for Administration to make further delegations.

Following a review of these regulations, the Department is removing §§ 1.1 and 1.3 for the reasons discussed below.

II. Discussion

This rule removes §§ 1.1 and 1.3 from 15 CFR part 1. The Department has determined that these regulations, which state the purpose of part 1 and delegate the authority to affix the Department's seal, are not necessary and do not provide any significant value to the public. Their removal represents a commonsense effort to streamline the Department's regulations and eliminate rules that provide no substantive guidance or requirements for the public.

Elimination of Unnecessary Regulations

As noted, § 1.3 delegates the authority to affix the seal to certain departmental officers and thus is a matter of internal agency administration. However, such delegations are elsewhere documented in Department Organization Orders 10–5 and 20–1 and Department Administrative Order 201–1. There is no compelling reason for these delegations to also be documented in the Code of Federal Regulations. Removing this section aligns the Department's practices with modern standards of administrative governance by separating internal management procedures from public-facing substantive regulations.

Section 1.1, meanwhile, serves as only a statement of the purpose of part 1. With the elimination of § 1.3, the

Department has determined that § 1.1 is fit for elimination as well, since the purpose and contents of § 1.2—the only other section of part 1—are sufficiently clear based on the language of § 1.2 by itself.

III. Classification

A. Administrative Procedure Act

Pursuant to 5 U.S.C. 553(a)(2), the provisions of the APA requiring notice of proposed rulemaking and the opportunity for public participation are inapplicable to this rule because it relates to “agency management or personnel or to public property, loans, grants, benefits, or contracts.” This rule modifies 15 CFR part 1, which is related to the Department’s management of its official seal and the authority among agency personnel to affix the seal to official documents, and thus falls within the scope of 5 U.S.C. 553(a)(2).

B. Executive Orders 12866, 14192, 13132

The Office of Management and Budget has determined this rule is not significant pursuant to E.O. 12866. This rule is an E.O. 14192 deregulatory action. This rule does not contain policies having federalism implications as the term is defined in E.O. 13132.

C. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public participation are not required to be given for this rule by 5 U.S.C. 553(a)(2), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

D. Paperwork Reduction Act

This rule will not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

List of Subjects for 15 CFR Part 1

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies), Seals and insignia.

Dated: January 13, 2026.

Paul Dabbar,

Deputy Secretary of Commerce.

Accordingly, for the reasons set forth above, part 1 of title 15 of the Code of Federal Regulations is amended as follows:

PART 1—THE SEAL OF THE DEPARTMENT OF COMMERCE

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

Authority: Sec. 1, 32 Stat. 825, as amended, 15 U.S.C. 1501.

§ 1.1 [Removed and Reserved]

■ 2. Remove and reserve § 1.1.

§ 1.3 [Removed and Reserved]

■ 3. Remove and reserve § 1.3.

[FR Doc. 2026–00688 Filed 1–14–26; 8:45 am]

BILLING CODE 3510–17–P

DEPARTMENT OF COMMERCE

15 CFR Part 2

[Docket No. 260107–0007]

RIN 0605–AA83

Updating and Streamlining the Regulations Governing the Handling and Settlement of Claims Under the Federal Tort Claims Act

AGENCY: Office of the Secretary, Department of Commerce.

ACTION: Final rule.

SUMMARY: By this rule, the Department of Commerce (“Department”) is amending its regulations governing the administrative handling and settlement of claims under the Federal Tort Claims Act (“FTCA”). This rule updates outdated references to a position that no longer exists within the Department, eliminates redundant restatements of sections of the FTCA and other applicable authorities, consolidates and simplifies the framework governing the issuance of supplementary regulations, and removes some unnecessary and inconsequential language. This action is necessary to update and streamline the Department’s regulations governing the handling and settlement of FTCA claims and to ensure that such regulations conform with the underlying statutory text. The intended effect is to promote accuracy and clarity for the public and to ensure that the Department’s regulations are both statutorily proper and efficient.

DATES: The rule is effective January 15, 2026.

FOR FURTHER INFORMATION CONTACT: Daniel Sweeney, Senior Counsel, Office of the General Counsel, at (202) 482–1395.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

The Department is amending its regulations at 15 CFR part 2, which

govern the handling and settlement of FTCA claims pursuant to 28 U.S.C. 2671–2680, as amended by Public Law 89–506, 80 Stat. 306. Specifically, the Department is amending Part 2 by updating the references to the “Assistant General Counsel for Finance and Litigation” in §§ 2.4(b), 2.5(a), and 2.5(b), and by removing §§ 2.2, 2.3(c), 2.4(c), 2.5(d), and 2.7. The updates will promote accuracy and clarity, and the removals will reduce regulatory complexity and clutter by eliminating language that is redundant, inconsequential, and/or otherwise unwarranted. The removals will also ensure proper conformity and alignment with underlying statutory text by removing regulatory elaboration that is neither clearly required nor clearly authorized by such text. The Department is making these revisions to clarify and simplify the regulatory requirements and processes set forth in Part 2, and to ensure that such requirements and processes are both statutorily proper and efficient.

II. Background

A. Regulatory History

The Department is amending its regulations at 15 CFR part 2, which pertain to the handling and settlement of claims under the FTCA. The FTCA grants private parties the ability to bring suit and seek compensation for torts committed by federal employees acting within the scope of their employment. As relevant, 28 U.S.C. 2672 provides that “[t]he head of each Federal agency or his designee, in accordance with regulations prescribed by the Attorney General, may consider, ascertain, adjust, determine, compromise, and settle any claim for money damages against the United States for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the agency while acting within the scope of his office or employment.” Consistent with 28 U.S.C. 2672, the regulations at 15 CFR part 2 establish the Department’s framework for the delegation of authority to settle or deny such claims and the procedures for the administrative adjudication of such claims. *See* 15 CFR 2.1(a).

The Department originally established the procedures in this Part 2 through a final rule published on March 7, 1967 (32 FR 3769). That rule was promulgated to implement the FTCA, as amended by Public Law 89–506, which required claimants to present a claim to the appropriate Federal agency for administrative adjudication before filing suit in court. The original 1967 rule

delegated the authority to settle or deny FTCA claims to specific Department officials and required that all procedures be guided by the comprehensive regulations issued by the Attorney General, found at 28 CFR part 14.

The Department has amended its FTCA regulations twice since their original promulgation. On July 11, 1983, the Department published a final rule (48 FR 31636) that revised the regulations to reflect an organizational change, transferring the primary responsibility for handling FTCA claims from the Assistant Secretary for Administration to the General Counsel. Thereafter, in a final rule published on June 2, 1998 (63 FR 29945), the Department amended the procedures again to conform with contemporary practice, organizational shifts, and statutory changes. The 1998 amendment transferred procedural responsibilities to the Assistant General Counsel for Finance and Litigation, removed several outdated provisions including a departmental requirement for an annual report, and updated the regulations to be consistent with amendments to the FTCA made by Public Law 100–694, which expanded the personal immunity of federal employees acting within the scope of their employment.

B. Description of the Regulations in 15 CFR Part 2

Part 2 consists of seven regulatory sections: §§ 2.1–2.7.

Section 2.1 states the purpose of Part 2 as being “to delegate authority to settle or deny claims under the [FTCA], and to establish procedures for the administrative adjudication of such claims accruing on or after January 18, 1967.” 15 CFR 2.1(a).

Section 2.2 identifies and summarizes applicable provisions of law and other regulations thereunder. Specifically, paragraph (a) consists of quoted language from 28 U.S.C. 2672; paragraph (b) consists of quoted language from 28 U.S.C. 2675(a); paragraph (c) summarizes 28 U.S.C. 2678; paragraph (d) consists of quoted language from 28 U.S.C. 2401(b); and paragraph (e) explains that the Attorney General has issued regulations pursuant to 28 U.S.C. 2672 at 28 CFR part 14. 15 CFR 2.2(a)–(e).

Section 2.3 pertains to the delegation of authority. Paragraph (a) provides that “[t]he General Counsel is hereby named as the designee of the Secretary of Commerce with respect to tort claims filed under section 2672 of Title 28, U.S. Code, as described in § 2.2, with authority to act on such claims as provided in said section 2672, including

denial thereof.” 15 CFR 2.3(a). Paragraph (b) provides that “[a]uthority delegated under this section may, with the approval of the General Counsel, be redelegated to other designees.” 15 CFR 2.3(b). And paragraph (c) states that “[s]ettlement or denial of any claim under this part is final for the Department of Commerce.” 15 CFR 2.3(c).

Section 2.4 pertains to the procedure for filing claims. Paragraph (a) states that such procedure shall be pursuant to §§ 14.2, 14.3, and 14.4 of the regulations set forth by the Attorney General at 28 CFR part 14. 15 CFR 2.4(a). Paragraph (b) states that claims shall be filed with the Department’s Assistant General Counsel for Finance and Litigation, and that any claims filed elsewhere in the Department “shall immediately be recorded and transmitted to the Assistant General Counsel for Finance and Litigation.” 15 CFR 2.4(b)–(c).

Section 2.5 establishes administrative procedures for the adjudication and settlement of claims. In particular, it sets forth certain procedures for the Assistant General Counsel for Finance and Litigation to follow, *see* 15 CFR 2.5(a)–(c), and it states that “[d]esignees hereunder are responsible for the control over and expeditious handling of claims, bearing in mind the applicable statutory time limitations for adjudications of claims,” 15 CFR 2.5(d).

Section 2.6 pertains to the payment of claims. It provides that “[w]hen an award is made, the file on the case shall be transmitted to the appropriate fiscal office for payment by the Department or for transmittal for payment as prescribed by § 14.10” of the Attorney General’s regulations at 28 CFR part 14. 15 CFR 2.6. Section 2.6 further provides that “[p]rior to payment[,] appropriate releases shall be obtained, as provided in said section.” *Id.*

Lastly, § 2.7 pertains to the issuance of supplementary regulations. Paragraph (a) provides that “[t]he Assistant General Assistant General Counsel for Finance and Litigation may from time to time issue such supplementary regulations or instructions as he/she deems appropriate to carry out the purpose of this part.” 15 CFR 2.7(a). And paragraph (b) provides that designees may issue regulations or instructions with the approval of the Assistant General Counsel for Finance and Litigation. 15 CFR 2.7(b).

III. Discussion

The Department is amending its regulations pertaining to the administrative handling and settlement of claims under the FTCA, located at 15 CFR part 2. The Department is

amending said regulations to update the outdated references to the “Assistant General Counsel for Finance and Litigation,” and to remove several provisions that are redundant, statutorily unnecessary, and/or otherwise unwarranted. The Department is making these amendments to reduce regulatory complexity and to promote accuracy, clarity, statutory conformity, and efficiency. The provisions being updated are §§ 2.4(b), 2.5(a), and 2.5(b), and the provisions being removed are §§ 2.2, 2.3(c), 2.4(c), 2.5(d), and 2.7. The reasoning for each of these amendments is explained below.

Updating the References to an Outdated Position

First, the Department is updating the references in Part 2 to the “Assistant General Counsel for Finance and Litigation,” *see* 15 CFR 2.4(b), 2.5(a)–(b), as that position does not currently exist within the Department. Instead, the appropriate official is now the Assistant General Counsel for Employment, Litigation and Information. The Department is amending Part 2 accordingly, to ensure that its regulations are accurate and up-to-date.

Removing Redundant Restatements of Other Authorities

Next, the Department is removing certain provisions that restate other authorities and lack a sufficient, independent justification. Section 2.2, for instance, provides a redundant overview certain sections of the FTCA and regulations issued thereunder at 28 CFR part 14. 15 CFR 2.2(a)–(e). While it is of course helpful to include in Part 2 some reference to those related and applicable authorities, §§ 2.1, 2.3(a), and 2.4(a) already refer to such authorities. *See* 15 CFR 2.1, 2.3(a), 2.4(a). The Department is satisfied that §§ 2.1, 2.3(a), and 2.4(a) provide readers with adequate notice of the FTCA and 28 CFR part 1, and it is the Department’s policy to encourage readers to consult other authorities directly. In particular, reprinting provisions of the FTCA in the Code of Federal Regulations serves no practical purpose, as those statutory provisions are legally binding on their own and are readily accessible to the public. By simply reprinting statutory language in the Code of Federal Regulations, agencies risk issuing regulations that may become outdated or inconsistent if Congress amends the underlying statute. The Department therefore considers § 2.2 to be redundant and unwarranted.

The Department considers § 2.3(c) to also be redundant and unwarranted. That provision states that a “settlement

or denial of any claim under this part is final for the Department of Commerce.” 15 CFR 2.3(c). This language is duplicative of 28 U.S.C. 2672, which provides that “any . . . determination” on a claim for money damages against the United States under the FTCA “shall be final and conclusive on all officers of the Government, except when procured by means of fraud.” Because § 2.3(c) does not add any new substantive dimension beyond what 28 U.S.C. 2672 conveys, the Department considers § 2.3(c) to be unnecessary, a potential source of confusion, and appropriate for removal.

Removing Provisions Authorizing the Delegated Issuance of Supplementary Regulations

Next, the Department is removing § 2.7, which authorizes the Assistant General Counsel and other designees to issue their own supplementary regulations and instructions. As a legal matter, the text of the FTCA does not clearly require or authorize such a provision; the absence of a statutory mandate, alone, warrants reconsideration under the Department’s broader deregulatory effort. As a matter of policy, the Department is of the view that § 2.7 creates a risk of fragmented and inconsistent regulations and internal directives. Given these considerations, the Department has determined that § 2.7 should be removed.

Removing Minor and Unnecessary Language

Lastly, the Department is removing two relatively minor and unnecessary provisions for the purpose of streamlining Part 2. Section 2.4(c) provides that, “[i]f a claim is filed elsewhere in the Department,” meaning not with the appropriate Assistant General Counsel, “[the claim] shall be immediately recorded and transmitted” to that Assistant General Counsel. 15 CFR 2.4(c). Similarly, § 2.5(d) states that “[d]esignees hereunder are responsible for the control over and expeditious handling of claims, bearing in mind the applicable statutory time limitations for adjudications of claims.” 15 CFR 2.5(d). Both of these provisions concern internal administrative requirements and expectations; neither is necessary or especially helpful to include in Part 2 for the public. The Department has accordingly determined that both §§ 2.4(c) and 2.5(d) are appropriate for removal.

IV. Regulatory Certifications

A. Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b)(B), the Department finds good cause to waive the prior notice and opportunity for public participation requirements of the Administrative Procedure Act for this final rule. The Department considers this rule to be uncontroversial, and has determined that prior notice and opportunity for public participation is unnecessary, because this rule only updates outdated references and removes language that is redundant, not clearly required or authorized by statute, inconsequential, and/or otherwise unwarranted; public participation would not justify the continued inclusion of any of the affected language in 15 CFR part 2. For the same reasons, the Department has determined that delaying the effectiveness of these amendments would be contrary to the public interest. The language being removed by this rule contributes to regulatory complexity, poses a risk of confusion, and exceeds the bounds of what is clearly required or authorized by the underlying statute; its removal will immediately benefit the public at little to no cost. The Department therefore finds good cause to waive the public notice and comment period under 553(b)(B) and to waive the 30-day delay in effectiveness under 553(d).

B. Executive Orders 12866, 14192, 13132

The Office of Management and Budget has determined this rule [is not] significant pursuant to Executive Order (E.O.) 12866. This rule is an E.O. 14192 deregulatory action. This rule does not contain policies having federalism implications as the term is defined in E.O. 13132.

C. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public participation are not required to be given for this rule by 5 U.S.C. 553(b)(B), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

D. Paperwork Reduction Act

This rule will not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

List of Subjects in 15 CFR Part 2

Administrative practice and procedure, Authority delegations (Government agencies), Claims.

Dated: January 13, 2026.

Paul Dabbar,

Deputy Secretary of Commerce.

Accordingly, for the reasons set forth above, part 2 of title 15 of the Code of Federal Regulations is amended as follows:

PART 2—PROCEDURES FOR HANDLING AND SETTLEMENT OF CLAIMS UNDER THE FEDERAL TORT CLAIMS ACT

- 1. The authority citation for part 2 continues to read as follows:

Authority: 28 U.S.C. 2672

§ 2.2 [Removed and Reserved]

- 2. Remove and reserve § 2.2.

§ 2.3 [Amended]

- 3. Remove and reserve § 2.3(c).
- 4. Revise § 2.4 to read as follows:

§ 2.4 Procedure for filing claims.

(a) The procedure for filing and the contents of claims shall be pursuant to §§ 14.2, 14.3, and 14.4 of the Regulations (28 CFR part 14).

(b) Claims shall be filed with the Assistant General Counsel for Employment, Litigation and Information, Department of Commerce, Washington, DC 20230.

(c) [Reserved]

- 5. Revise § 2.5 to read as follows:

§ 2.5 Adjudication and settlement of claims.

(a) Upon receipt of a claim by the Assistant General Counsel for Employment, Litigation and Information, the time and date of receipt shall be recorded. The Assistant General Counsel may, after recording the claim, transmit it to the Departmental office or primary operating unit involved in the claim and request that an investigation be conducted. The appropriate Departmental office or primary operating unit shall designate an official to conduct the investigation, who shall prepare a file, obtain additional information as necessary, and prepare for the Assistant General Counsel’s signature a proposed award or denial of the claim. If the investigation capabilities of the office or unit are insufficient for a proper and complete investigation, the office or unit shall consult with the Departmental Office of Investigations and Security to:

- (1) Have that Office conduct the investigation; or

(2) Request another Federal agency to conduct the investigation as necessary, pursuant to § 14.8 of the regulations (28 CFR part 14), all on a reimbursable basis.

(b) If the amount of the proposed award exceeds \$25,000 (in which case, approval by the Attorney General is required), or if consultation with the Department of Justice is desired or required pursuant to § 14.6 of the regulations, the Assistant General Counsel for Employment, Litigation and Information will prepare and compile the material required by the Department of Justice under § 14.7 of the Regulations.

(c) Denial of a claim shall be communicated as provided by § 14.9 of the regulations (28 CFR part 14).

(d) [Reserved]

§ 2.7 [Removed and Reserved]

■ 6. Remove and reserve § 2.7.

[FR Doc. 2026–00696 Filed 1–14–26; 8:45 am]

BILLING CODE 3510–BW–P

DEPARTMENT OF COMMERCE

15 CFR Part 9

[Docket ID 260107–0005]

RIN 0605–AA72

Removing Obsolete Regulations Establishing Procedures for a Voluntary Labeling Program for Household Appliances and Equipment To Effect Energy Conservation

AGENCY: Office of the Secretary, Department of Commerce.

ACTION: Final rule.

SUMMARY: By this rule, the Department of Commerce is removing its regulations establishing a voluntary labeling program for household appliances and equipment designed to promote energy conservation. This action is necessary because the voluntary program is obsolete and has been superseded by the comprehensive Appliance Labeling Rule, administered by the Department of Energy and the Federal Trade Commission, which mandates manufacturers attach EnergyGuide labels to their products to help consumers compare different products and make informed purchasing decisions. The intended effect of this removal is to streamline the regulatory code, eliminate a duplicative and unnecessary program, and reduce the potential for public confusion.

DATES: The rule is effective January 15, 2026.

FOR FURTHER INFORMATION CONTACT: Daniel Sweeney, Senior Counsel, Office of the General Counsel, at (202) 482–1395.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Commerce (the Department) is amending the regulations at 15 CFR part 9, “Procedures for a Voluntary Labeling Program for Household Appliances and Equipment to Effect Energy Conservation,” by removing part 9 in its entirety. These regulations establish the procedures for a voluntary program designed to provide consumers with energy consumption and efficiency information for household appliances; however, that program has been superseded by the comprehensive, mandatory EnergyGuide labeling program administered by the Department of Energy and the Federal Trade Commission.

Regulatory History

The Department of Commerce established the voluntary labeling program in a final rule published in the **Federal Register** on October 26, 1973 (38 FR 29574). The program was created in response to President Richard Nixon’s 1973 Energy Message to Congress, which directed the Department, in cooperation with the Council on Environmental Quality and the Environmental Protection Agency, to develop a voluntary labeling system for energy-consuming home appliances. The stated goal of the program was to encourage manufacturers to provide consumers with clear, uniform, and easily understandable information about the energy consumption and efficiency of household appliances at the point of sale. This information would enable consumers to compare products and select those that could achieve energy savings. The primary statutory authorities cited for the establishment of this part were 15 U.S.C. 272, Reorganization Plan No. 3 of 1946, and the President’s Message Concerning Energy Resources of April 18, 1973.

The Department later amended the regulations in a final rule published on August 13, 1975 (40 FR 33966). This amendment made two primary changes: it revised the definition of *manufacturer* to clarify the inclusion of private brand labelers, and it expanded the scope of the program by adding television receivers to the list of covered equipment.

Description of the Subject Regulations

The regulations at 15 CFR part 9 created a comprehensive framework for

the voluntary labeling program. Section 9.0 states the purpose of the part is to establish the procedures for this program. Section 9.1 outlines the program’s goal, which is to provide consumers with energy consumption and efficiency information for household appliances to help them make informed purchasing decisions. Section 9.2 provides definitions for key terms used throughout the part, such as *manufacturer*, *energy consumption*, and *energy efficiency*; the definition for *manufacturer* was revised in 1975 to explicitly include private brand labelers. Section 9.3 specifies the initial appliances and equipment included in the program, such as air conditioners, refrigerators, and water heaters, and was amended in 1975 to also include television receivers.

The regulations also established the operational mechanics of the program. Section 9.4 details the process for the Secretary of Commerce to develop “Voluntary Energy Conservation Specifications” for different classes of appliances. This process included publishing proposed specifications for public comment and ensuring each specification contained test methods, a prototype label, and conditions for manufacturer participation. Section 9.5 outlines the requirements for manufacturers who chose to participate, including notifying the Department, conducting tests to generate the data on the label, and displaying the label on their products. Section 9.6 specifies the conditions under which a manufacturer’s participation could be terminated. Section 9.7 required the Department to develop and register a “Department of Commerce Energy Conservation Mark” for use on the labels.

Finally, the part includes provisions for program maintenance and outreach. Section 9.8 provides a procedure for amending or revising the specifications. Section 9.9 directs the Department to conduct a consumer education program to explain the significance of the labels. Section 9.10 requires the Department to coordinate with State and local governments to promote uniformity in appliance labeling programs. Section 9.11 mandates that the Secretary prepare an annual report on the program’s activities.

II. Discussion

The Department of Commerce is removing 15 CFR part 9 in its entirety. These regulations, established in 1973, created a voluntary labeling program for household appliances to promote energy conservation. After a thorough review, the Department has determined that this

program is obsolete and has been entirely superseded by subsequent, more comprehensive federal energy conservation and labeling programs.

Elimination of a Duplicative and Unnecessary Program

The primary policy basis for removing 15 CFR part 9 is that its purpose and function have been rendered unnecessary and duplicative by the mandatory energy labeling program established under the Energy Policy and Conservation Act of 1975 (EPCA). That program, which is jointly administered by the U.S. Department of Energy (DOE) and the Federal Trade Commission (FTC), created the familiar yellow “EnergyGuide” label found on major home appliances today. The EnergyGuide program is a comprehensive, mandatory, and nationally recognized system that effectively achieves the original goals of the Department’s voluntary program from 1973. It provides consumers with clear, standardized information on appliance energy consumption and efficiency, enabling them to make informed purchasing decisions.

Given the success and ubiquity of the mandatory DOE/FTC program, the Department’s older, voluntary program serves no remaining practical purpose. Its continued existence in the Code of Federal Regulations is redundant and creates the potential for public confusion. Removing these obsolete regulations is a common-sense administrative action that streamlines the regulatory code and eliminates a program that no longer provides a benefit to the public, regulated entities, or the government. The removal of the entire part, from the purpose and definitions in §§ 9.0 through 9.2 to the operational procedures in §§ 9.3 through 9.8 and the outreach and reporting requirements in §§ 9.9 through 9.11, is necessary as all of these provisions are integral components of a program that is no longer active or needed.

The Department has concluded that the establishment of this specific voluntary labeling program is not mandated by statute. The program was originally created under the Department’s general authorities, including those found in 15 U.S.C. 272, and in response to a 1973 Presidential message. However, the cited statutory authorities grant general functions related to standards and technology; they do not contain a specific congressional command to create or maintain this particular appliance labeling program. Because the underlying program is not statutorily required and has been fully superseded

by a congressionally mandated program administered by other federal agencies, the Department believes that its complete removal is the most appropriate course of action.

III. Classification

A. Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b)(4)(B), the Department finds good cause to waive the prior notice and opportunity for public participation requirements of the Administrative Procedure Act for this final rule. The Department has determined that prior notice and opportunity for public participation is unnecessary because, as discussed above, the voluntary program being eliminated by this action has already been superseded and rendered obsolete by the comprehensive Appliance Labeling Rule, administered by the Department of Energy and the Federal Trade Commission, and the EnergyGuide program. Furthermore, because the Department firmly expects that it would not receive any comments—let alone any significant comments—on this rulemaking, and because eliminating clutter from the Code of Federal Regulations would provide some immediate benefits to the public, the Department finds that proceeding with notice and comment for this rulemaking would be contrary to the public interest.

For these reasons, there is also good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

B. Executive Orders 12866 and 14192

This rule has been determined to be not significant for purposes of E.O. 12866. This rule is an E.O. 14192 deregulatory action.

C. Regulatory Flexibility Act

Because prior notice and an opportunity for public participation are not required pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

D. National Environmental Policy Act

For the purposes of compliance with the National Environmental Policy Act (NEPA), the Department has concluded that this rulemaking action falls within the National Telecommunications and Information Administration (NTIA) categorical exclusion (CE) A–2, “Preparation of policy directives, rules, regulations, and guidelines of an administrative, financial, legal, technical, or procedural nature, or for

which the environmental effects are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or on a case-by-case basis.” The Department has consulted with NTIA pursuant to 42 U.S.C. 4336 and agreed that the Department will adopt this CE for the purposes of this rulemaking.

E. Paperwork Reduction Act

These regulations do not contain any information collection requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

List of Subjects for 15 CFR Part 9

Administrative practice and procedure, Consumer protection, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Dated: January 13, 2026.

Paul Dabbar,

Deputy Secretary of Commerce.

PART 9—[REMOVED AND RESERVED]

■ Accordingly, for the reasons set forth above part 9 of title 15 of the Code of Federal Regulations and under the authority of 15 U.S.C. 272 and 5 U.S.C. 301, the Department of Commerce removes 15 CFR part 9.

[FR Doc. 2026–00690 Filed 1–14–26; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

15 CFR Part 16

[Docket ID 260107–0006]

RIN 0605–AA74

Removing Obsolete Regulations Related to the Voluntary Consumer Product Information Labeling Program

AGENCY: Office of the Secretary, Department of Commerce.

ACTION: Final rule.

SUMMARY: By this rule, the Department of Commerce (Commerce) is eliminating its regulations establishing the procedures for a Voluntary Consumer Product Information Labeling Program (CPILP), as that program is now inactive, outdated, and unnecessary. This action is necessary to eliminate obsolete and unwarranted regulatory language from the Code of Federal Regulations and to ensure that Commerce’s regulations remain accurate and up-to-date. The intended effect of this action is to improve and streamline Commerce’s regulations and to reduce the risk of public confusion.

DATES: The rule is effective on January 15, 2026.

FOR FURTHER INFORMATION CONTACT: Daniel Sweeney, Senior Counsel, Office of the General Counsel, at (202) 482–1395.

SUPPLEMENTARY INFORMATION:

I. Background

Commerce is amending 15 CFR part 16, “Procedures for a Voluntary Consumer Product Information Labeling Program,” by removing all of the regulatory sections contained therein.

A. Regulatory History

Commerce first established its procedures for the CPILP in a final rule on May 25, 1977 (42 FR 26648). The regulations were promulgated under the authority of 15 U.S.C. 272, among other statutes, and were initially instituted on a limited pilot project basis. The stated goal of the program was to provide information on important product performance characteristics in a useful form, educate consumers and retailers on its use, and offer participating manufacturers a way to convey the advantages of their products.

The program sought to achieve its objectives by developing standardized test methods and labeling specifications for selected consumer products. The performance characteristics chosen for labeling were those of demonstrable importance to consumers that could not be evaluated by mere inspection but could be measured objectively. Any person could petition the Secretary of Commerce to find a need for labeling a particular product. If such a need was established, Commerce would develop a Performance Information Labeling Specification through a public notice-and-comment process. Each specification included the performance characteristics covered, the test methods to be used, a prototype label, and the conditions for participation.

Shortly after the program’s inception, Commerce issued several amendments to its procedures. In a rule published on November 4, 1977 (42 FR 57686), Commerce granted the Secretary the authority to suspend the program’s fees and charges. This change was made to provide greater flexibility and encourage manufacturer participation during the program’s pilot phase, modifying the original intent to make the program self-sufficient. Subsequently, in a rule published on March 1, 1978 (43 FR 8255), Commerce amended the program’s description to allow for the inclusion of performance information required by other Federal agencies on CPILP labels, provided the other agency

agreed. This was intended to simplify product comparison for consumers and reduce labeling complexity for manufacturers. A final technical amendment was published on September 18, 1990 (55 FR 38315), which updated the name of the National Bureau of Standards to the National Institute of Standards and Technology (NIST). Notably, that notice also indicated that the office responsible for such programs, the Office of Product Standards Policy, had been terminated on August 23, 1988, as part of a broader reorganization.

B. Description of Regulations

The regulations at 15 CFR part 16 established the framework for the CPILP. Section 16.1 stated the purpose of the part, and § 16.2 described the program’s goals and methods. Section 16.3 provided definitions for key terms such as *consumer*, *participant*, *consumer product*, and *performance characteristic*. The process for initiating and developing labeling standards was outlined in § 16.4, which detailed the requirements for a petition to find a need for a label, and § 16.5, which described the development of Performance Information Labeling Specifications. To ensure the program’s viability, § 16.6 authorized the establishment of fees and charges, intended to make the program’s operation self-sufficient. These fees were associated with the use of a Department of Commerce Mark, described in § 16.10, which was to be developed and registered for use on program labels. The procedures for manufacturers, importers, and other entities to voluntarily join the program were set forth in § 16.7, while § 16.8 outlined the conditions for the termination of participation, either by the Secretary for non-compliance or voluntarily by the participant. Section 16.9 established rules for “designated agents,” such as trade associations, which could be authorized to collect fees and statistical information from multiple participants. Finally, the part included provisions for the amendment of specifications (§ 16.11), consumer education (§ 16.12), coordination with State and local programs (§ 16.13), and the preparation of an annual report on the program’s activities (§ 16.14).

II. Discussion

By this rule, Commerce is eliminating 15 CFR part 16 in its entirety. As an initial matter, no statutory authority mandates the promulgation and maintenance of the regulations at part 16. To be sure, while 15 U.S.C. 272 grants general authority to Commerce

and NIST to cooperate with other government entities and industry on voluntary standards and to disseminate technical information, it does not require the specific procedural framework established by part 16. In the absence of a statutory mandate, and upon review, Commerce now finds part 16 to be unwarranted. The program to which part 16 relates is no longer active or relied upon within Commerce and, given current business practices as well as the existence of other mechanisms for the development of metrology-based packaging and labeling standards and practices, the regulations at part 16 no longer serve any meaningful function. The removal of part 16 is therefore consistent with Commerce’s broader deregulatory approach of reconsidering and eliminating regulations that are neither statutorily required nor justified by a compelling interest. The removal of part 16 will also reduce regulatory complexity and clutter and therefore reduce the possibility of public confusion related to the labeling of consumer products.

III. Classifications

A. Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b)(B), Commerce finds good cause to waive the prior notice and opportunity for public participation requirements of the Administrative Procedure Act for this final rule. Commerce considers this rule to be uncontroversial, and has determined that prior notice and opportunity for public participation is unnecessary, because this rule only removes outdated regulations that are not required by statute, that no longer serve any meaningful function, and that pose a genuine risk of creating confusion regarding governmental processes for the labeling of consumer products; the program to which part 16 relates is now fully defunct, and that would be not be changed by inviting public comment. For the same reasons, Commerce has determined, pursuant to 5 U.S.C. 553(d), that delaying the effectiveness, of these amendments would be contrary to the public interest. The outdated regulations being removed by this rule currently pose a risk of confusion and distraction; their immediate removal will benefit the public at little to no cost. Commerce therefore finds good cause to waive the public notice and comment period under 553(b)(B) and to waive the 30-day delay in effectiveness under 553(d).

B. Executive Orders 12866, 14192, 13132

The Office of Management and Budget has determined this rule is not significant pursuant to Executive Order (E.O.) 12866. This rule is an E.O. 14192 deregulatory action. This rule does not contain policies having federalism implications as the term is defined in E.O. 13132.

C. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public participation are not required to be given for this rule by 5 U.S.C. 553(b)(B), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

D. Paperwork Reduction Act

This rule will not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

List of Subjects for 15 CFR Part 16

Administrative practice and procedure, Advertising, Consumer protection, Education, Labeling, Reporting and recordkeeping requirements, Trademarks, Voluntary standards.

Dated: January 13, 2026.

Paul Dabbar,
Deputy Secretary of Commerce.

PART 16—[REMOVED AND RESERVED]

■ For the reasons set forth in the preamble under the authority of 15 U.S.C. 272 and 5 U.S.C. 301, the Department of Commerce removes and reserves 15 CFR part 16.

[FR Doc. 2026–00686 Filed 1–14–26; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

15 CFR Part 23

[Docket No. 260107–0009]

RIN 0605–AA81

Removing Outdated and Overly-Prescriptive Regulations Governing the Use of Penalty Mail in the Location and Recovery of Missing Children

AGENCY: Office of the Secretary, Department of Commerce.

ACTION: Final rule.

SUMMARY: By this rule, the Department of Commerce (“Department”) is

amending its regulations governing the use of penalty mail to assist in the location and recovery of missing children to remove several sections that are outdated, contain expired reporting requirements, or detail overly prescriptive internal administrative procedures. This action is necessary to streamline the Department’s regulations, remove obsolete provisions, and allow for more efficient internal management of this program. The intended effect of this rule is to enhance the clarity of these regulations and provide the Department with greater administrative flexibility, thereby strengthening the Department’s ability to implement this important national program.

DATES: The rule is effective January 15, 2026.

FOR FURTHER INFORMATION CONTACT: Daniel Sweeney, Senior Counsel, Office of the General Counsel, at (202) 482–1395.

SUPPLEMENTARY INFORMATION:

I. Background

The Department is amending the regulations at 15 CFR part 23, “Use of Penalty Mail in the Location and Recovery of Missing Children.” This part governs the Department’s participation in a national program to assist in the location and recovery of missing children through the use of official government mail, known as penalty mail.

A. Regulatory History

In response to growing public concern over the interstate problem of missing and exploited children, Congress enacted the Missing Children’s Assistance Act of 1984. This Act, along with 39 U.S.C. 3220, established a federal role in coordinating assistance for this issue. Subsequently, the Department published a final rule in the **Federal Register** of December 24, 1986 (51 FR 46614), establishing 15 CFR part 23. The purpose of this rule was to create internal management procedures for the Department to supplement the national effort by disseminating information about missing children on its penalty mail. The regulations were designed to be a cost-effective implementation plan that aligned with guidelines issued by the Office of Juvenile Justice and Delinquency Prevention (OJJDP). The rule established a detailed operational framework, designated the National Center for Missing and Exploited Children (NCMEC) as the sole source for photographic and biographical materials, and set priorities for

distributing these materials on mail sent to the public and federal employees.

B. Description of Regulations

As relevant, § 23.2, “Contact person,” designated a specific individual within the Department at the time to serve as the central point of contact for the program. This was connected to the detailed procedures outlined in § 23.7, “Notice to Department of Commerce organizational units of implementation and procedures,” which established the specific roles and responsibilities for this Department Contact Person, as well as for the heads of the Department’s various Operating Units and Administrative Support Centers. This section tasked the Contact Person with serving as the sole representative for ordering, supplying, and controlling all missing children materials from NCMEC. To support these procedural sections, § 23.6, “Definitions,” provided definitions for terms such as *Operating units* and *Organizational units*.

Additionally, the rule included provisions related to the initial implementation of the program that are now obsolete. Section 23.4, “Cost and percentage estimates,” provided the Department’s initial first-year cost estimate of \$39,530 and a projection that 9% of its penalty mail would be used for the program once fully implemented. Finally, § 23.5, “Report to the Office of Juvenile Justice and Delinquency Prevention,” required the Department to submit a one-time consolidated report to OJJDP by June 30, 1987. This report was to detail the Department’s experiences during the initial implementation period, including costs, problems encountered, and recommendations for making the program more effective.

Following a review of these regulations, the Department has determined that certain sections are appropriate for removal for the reasons discussed below.

II. Discussion

The Department is amending its regulations governing the use of penalty mail to assist in the location and recovery of missing children by removing provisions that are obsolete, have fulfilled their purpose decades ago, or contain overly prescriptive internal administrative procedures that are not appropriate for codification in the Code of Federal Regulations. This action is part of the Department’s ongoing effort to review and streamline its regulations to ensure they are current, effective, and not unduly burdensome. The removal of these sections will not weaken the Department’s underlying authority or

commitment to participating in this important national program.

Removal of Obsolete Administrative and Procedural Provisions

The Department is removing §§ 23.2, 23.6, and 23.7, as these sections collectively establish a detailed and rigid internal management framework for the penalty mail program that is now outdated and administratively inefficient. Specifically, § 23.2 identifies a specific contact person for the program who is now deceased, while § 23.7 outlines a highly detailed set of roles and responsibilities for this contact person, as well as for the heads of various departmental operating units and administrative support centers. Section 23.6 provides definitions for internal organizational terms that are relevant only in the context of the procedures described in § 23.7.

The Department has determined that codifying such specific internal administrative assignments and procedures in the Code of Federal Regulations is impractical and overly prescriptive. This level of detail hinders the Department's ability to adapt its internal operations and staffing to meet current needs without undertaking the formal rulemaking process. Matters of internal agency management, such as designating points of contact and assigning specific duties to personnel, are more appropriately handled through internal directives and standard operating procedures, which can be updated as necessary to maintain efficiency. Furthermore, the statute authorizing this program, 39 U.S.C. 3220, requires the Department to prescribe regulations for the use of penalty mail but does not mandate the codification of these specific internal administrative structures. Removing these sections streamlines the regulation by focusing on the program's substantive requirements while allowing the Department the flexibility to manage its internal implementation effectively.

Removal of Outdated Implementation and Reporting Requirements

The Department is also removing §§ 23.4 and 23.5, as these provisions are purely historical and have no future applicability. Section 23.4 contains cost and usage percentage estimates that were projected for the program's first year of implementation in 1986. This information is now obsolete and serves no practical purpose. Similarly, § 23.5 required the Department to submit a one-time report to the Office of Juvenile Justice and Delinquency Prevention by June 30, 1987, detailing its initial

experiences with the program. The requirement in § 23.5 was fulfilled decades ago, and the provision is now legally moot. Retaining these sections in the Code of Federal Regulations clutters the regulatory text with irrelevant, historical data and expired requirements, which can cause confusion for the public. The authorizing statutes for this part do not require the ongoing codification of such historical estimates or one-time reporting mandates. The removal of these sections is a common-sense action to clean up the regulations and ensure the Code of Federal Regulations contains only current and relevant rules.

III. Classifications

A. Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b)(B), the Department finds good cause to waive the prior notice and opportunity for public participation requirements of the Administrative Procedure Act for this final rule. The Department considers this rule to be uncontroversial, and has determined that prior notice and opportunity for public participation is unnecessary, because this rule only removes outdated and/or overly-prescriptive regulations that are not required by statute; public participation could not justify the continued inclusion of the such regulations under the Department's broader deregulatory policies. For the same reasons, the Department has determined that delaying the effectiveness of these amendments would be contrary to the public interest. The outdated regulations being removed by this rule currently pose a genuine risk of confusion and distraction, and the overly-prescriptive regulations being removed by this rule currently impose burdens that restrict the effective use of penalty mail in the location and recovery of missing children; the removal of these regulations will immediately improve a critical program and benefit the public at little to no cost. The Department therefore finds good cause to waive the public notice and comment period under 553(b)(B) and to waive the 30-day delay in effectiveness under 553(d).

B. Executive Orders 12866, 14192, 13132

The Office of Management and Budget has determined this rule is not significant pursuant to Executive Order ("E.O.") 12866. This rule is an E.O. 14192 deregulatory action. This rule does not contain policies having federalism implications as the term is defined in E.O. 13132.

C. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public participation are not required to be given for this rule by 5 U.S.C. 553(b)(B), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

D. Paperwork Reduction Act

This rule will not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

List of Subjects for 15 CFR Part 23

Administrative practice and procedure, Archives and records, Infants and children, Organization and functions (Government agencies), Postal Service, Reporting and recordkeeping requirements.

Dated: January 13, 2026.

Paul Dabbar,

Deputy Secretary of Commerce.

For the reasons set forth in the preamble, the Department amends 15 CFR part 23 as follows:

PART 23—USE OF PENALTY MAIL IN THE LOCATION AND RECOVERY OF MISSING CHILDREN

■ 1. The authority citation for part 23 continues to read as follows:

Authority: 39 U.S.C. 3220(a)(2); 5 U.S.C. 301.

§ 23.2 [Removed and reserved]

■ 2. Remove and reserve § 23.2.

§§ 23.4 through 23.7 [Removed and reserved]

■ 3. Remove and reserve §§ 23.4 through 23.7.

[FR Doc. 2026–00689 Filed 1–14–26; 8:45 am]

BILLING CODE 3510–17–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 742, 744, and 748

[Docket No. 260112–0028]

RIN 0694–AK43

Revision to License Review Policy for Advanced Computing Commodities

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is revising its license review policy for exports of certain semiconductors to China and Macau—changing it from a presumption of denial to a case-by-case review. The semiconductors covered by this rule are the Nvidia H200 and its equivalents, as well as less advanced chips—provided that (1) the semiconductors are commercially available in the United States at the time of publication of this rule and (2) the exporter certifies that: there is sufficient supply of this product in the United States; production of this product for exports to China will not divert global foundry capacity for similar or more advanced products for end users in the United States; the recipient has demonstrated sufficient security procedures; and the item undergoes independent, third-party testing in the United States to verify its performance specifications.

DATES: *Effective date:* The effective date of this rule is January 15, 2026.

FOR FURTHER INFORMATION CONTACT:

- For general questions, contact Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce at 202–482–2440 or by email: RPD2@bis.doc.gov.
- For Category 3 technical questions, contact Carlos Monroy at 202–482–3246 or by email: Carlos.Monroy@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Consistent with U.S. national security and foreign policy objectives, which recognize the need to maintain the United States' technological superiority, BIS is adjusting the license review policy to case-by-case for exports of certain commercially available advanced computing commodities to end-users located in China and Macau. BIS finds this action necessary to ensure the national security benefits of U.S. leadership in artificial intelligence (AI).

Specifically, for advanced computing commodities with a TPP less than 21,000 (as defined in Technical Note 2 to 3A090.a and 3A090.b), and a 'total DRAM bandwidth' less than 6,500 GB/s (as defined in the notes to paragraph (dd)(1) in supplement no. 2 to part 748), such as the NVIDIA H200 or AMD MI325X, this final rule specifies certain conditions that, if satisfied, allow for license applicants to move from a presumption of denial to a case-by-case license review policy for exports from the United States destined to China or Macau.

This rule maintains a presumption of denial licensing policy for exports to end-users located outside of Macau or destinations in Country Group D:5 to entities that are headquartered or have a parent company headquartered in Macau or a destination in Country Group D:5.

As part of the licensing process associated with the new case-by-case license review policy, the applicant must certify and provide necessary supporting data, that:

- the items operate below the performance criteria included in this final rule and specify how many units of the items have been shipped in the United States at the time of license application;
- there is sufficient supply of the product in the United States such that export of the product authorized by this license would not result in any delay in fulfilling any existing or new orders of any of its "advanced-node integrated circuits" from customers in the United States for end use in the United States (taking into account normal lead times); that global foundry capacity that would otherwise be used to produce similar node or more advanced integrated circuits for end users in the United States will not be diverted to produce the commodities authorized by this license for exports to China;
- the aggregate shipments of the product to China and Macau will be no more than 50% of the total product shipped to customers for end use in the United States of that product;
- the transaction is not prohibited by end user/use controls and controls for nonmilitary end uses/end-users;
- the ultimate consignee will employ rigorous Know Your Customer (KYC) procedures to screen and prevent unauthorized remote access to unauthorized parties (e.g., prohibited part 744 parties); and
- prior to export from the United States, every shipment of advance computing commodities will be reviewed by a qualified third-party testing lab to confirm the technical capabilities and functions of the AI commodities described in the exporter's license application.

The applicant must also provide a list of remote end users located in Belarus, China, Cuba, Iran, Macau, North Korea, Russia, and Venezuela, or whose ultimate parent company is headquartered in, Belarus, China, Cuba, Iran, Macau, North Korea, Russia, and Venezuela. Based on the records and information provided as part of the application process, BIS and reviewing

agencies will determine, on a case-by-case basis, whether to approve or deny the license of these specific commodities.

II. Revisions to § 742.6 Regional Stability

Section 742.6 (Regional stability) is being amended to provide a case-by-case licensing policy for license applications for certain advanced computing commodities described in § 742.6(a)(6)(iii). BIS is revising paragraph (b)(10)(iii)(A)(1) to include a case-by-case license review policy for license applications to export from the United States commodities with a TPP less than 21,000, and a 'total DRAM bandwidth' less than 6,500 GB/s (e.g., NVIDIA H200 or AMD MI325X), when destined to end-users located in either China or Macau, provided certain conditions are met. The additional conditions are set forth in supplement no. 2 to part 748 and described in section IV of this rule; they are intended to protect U.S. national security interests while allowing for a discretionary case-by-case licensing policy. These additional conditions will provide additional transparency on the commodities being exported and are intended to ensure that the advanced computing capabilities of the destination country do not exceed the capabilities or supply capacity of the United States, or negatively impact the global foundry capacity that would otherwise be used to produce similar node or more advanced integrated circuits, in a way that would be detrimental to U.S. national security interests. For reexports (including exports from abroad) and transfers (in-country) of AI commodities subject to the EAR with a TPP less than 21,000, and a 'total DRAM bandwidth' less than 6,500 GB/s, when destined to either Macau or a destination specified in Country Group D:5, the licensing policy remains a presumption of denial. For exports to entities that are headquartered or have a parent company headquartered in Macau or a destination in Country Group D:5, including end-users located outside of destinations in Country Group D:5 or Macau, the licensing policy is a presumption of denial. If a license application meets the criteria of more than one licensing policy, then this licensing policy and its requirements will apply. This final rule also makes a conforming change for case-by-case review policy under § 744.23 with revised § 742.6(b)(10)(iii). See Section III for more details.

III. Revisions to § 744.23 “Supercomputer,” “Advanced-Node Integrated Circuits,” and Semiconductor Manufacturing Equipment End Use Controls

This final rule makes a change to add a case-by-case license review policy based on the case-by-case license review policy described in § 742.6(b)(10)(iii) of the EAR. This final rule makes this change in § 744.23(d) (License review standards) by redesignating paragraph (d)(3)(iii) as new paragraph (d)(3)(iv) and adding a new paragraph (d)(3)(iii) to specify that license applications for items specified in § 744.23(a)(3)(i)(A) that meet the criteria for case-by-case license review under § 742.6(b)(10)(iii), will also be reviewed on a case-by-case basis for purposes of § 744.23. This final rule also includes a change that removes “or” at the end of paragraph (d)(3)(ii) and revises newly redesignated paragraph (d)(3)(iv) to add a reference to paragraph (d)(3)(iii).

IV. Supplement No. 2 to Part 748— Unique Application and Submission Requirements

This final rule adds paragraph (dd) to supplement no. 2 to part 748 to set forth the conditions that enable moving from a license review policy of presumption of denial to one of case-by-case for exports of advanced-node ICs with a TPP less than 21,000, and a ‘total DRAM bandwidth’ less than 6,500 GB/s, from the United States to end-users located in China or Macau.

BIS will require, prior to export from the United States, that an exporter confirm as part of the license application process that the AI commodities described in their license application will be reviewed by a qualified third-party testing lab to confirm the technical capabilities and functions of the AI commodities described in the exporter’s license application. Such a review can be performed by a representative sampling of a batch of semiconductors chosen by the lab, rather than the lab reviewing every individual semiconductor that the exporter intends to export. Third-party testing labs are independent organizations that evaluate products to ensure they meet quality, safety, and regulatory standards, and their impartiality sets them apart from in-house testing facilities. Because third-party testing labs must be free from any ties to manufacturers or suppliers, these labs provide unbiased assessments to produce test results that are credible and reliable.

Among the qualifications for a third-party testing lab, it must be

headquartered in the United States, not otherwise under the control of a company or other entity headquartered in or whose ultimate parent company or other entity is headquartered in Country Group D:5 or Macau, and the testing must take place in the United States. Further, the lab must not have any financial interest or ownership in any party to the transaction, and it must have the expertise to confirm that representations made on the technical capabilities and functions of the AI commodities described in the exporter’s license application—including but not limited to the ‘total processing performance,’ ‘total DRAM bandwidth,’ ‘interconnect bandwidth,’ and ‘copackaged DRAM capacity’—are accurate. Paragraph (dd)(3) of supplement no. 2 to part 748 describes the requirements and responsibilities of a third-party testing lab for an exporter to obtain the case-by-case licensing policy review described in § 742.6(b)(10)(iii)(A)(1).

The export application must clearly enumerate KYC and physical security measures adopted by the ultimate consignee/customer and stipulate that the receiving facility will also manage and limit Infrastructure as a Service (including AI model training and inference) for its customers to prevent unauthorized access to these advanced computing commodities.

In § 748.8 “Unique application and submission requirements,” this final rule adds a conforming change for the addition of new paragraph (dd) in supplement no. 2 to part 748, by adding a new paragraph (bb) (Export license application for advanced computing commodities) to make export license applicants aware of this new application requirement.

Export Control Reform Act of 2018 (ECRA)

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act (ECRA) (codified, as amended, at 50 U.S.C. 4801–4852). ECRA provides the legal basis for BIS’s principal authorities and serves as the authority under which BIS issues this rule. In particular, and as noted elsewhere, Section 1753 of ECRA (50 U.S.C. 4812) authorizes the regulation of exports, reexports, and transfers (in-country) of items subject to U.S. jurisdiction. Further, Section 1754(a)(1)–(16) of ECRA (50 U.S.C. 4813(a)(1)–(16)) authorizes, *inter alia*, the establishment of a list of controlled items; the prohibition of unauthorized exports, reexports, and transfers (in-

country); the requirement of licenses or other authorizations for exports, reexports, and transfers (in-country) of controlled items; apprising the public of changes in policy, regulations, and procedures; and any other action necessary to carry out ECRA that is not otherwise prohibited by law. Pursuant to Section 1762(a) of ECRA (50 U.S.C. 4821(a)), these changes can be imposed in a final rule without prior notice and comment.

Rulemaking Requirements

1. This rule has been determined to be significant pursuant to section 3(f) of E.O. 12866. Although it is a “significant regulatory action” for purposes of E.O. 12866, this rule is exempt from the requirements of E.O. 14192, because its primary direct benefit is to improve national security, per section 5(a) of E.O. 14192.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

This rule involves the following OMB-approved collections of information subject to the PRA:

- 0694–0088, “Multi-Purpose Application,” which carries a burden hour estimate of 29.7 minutes for a manual or electronic submission;
- 0694–0096 “Five Year Records Retention Period,” which carries a burden hour estimate of less than 1 minute;
- 0694–0122, “Licensing Responsibilities and Enforcement,” which carries a burden hour estimate of 10 minutes per electronic submission;
- 0694–0137, “License Exceptions and Exclusions,” which carries a burden hour estimate of 5 minutes per electronic submission; and
- 0607–0152 “Automated Export System (AES) Program,” which carries a burden hour estimate of 3 minutes per electronic submission.

The revision of license review policy for advanced computing commodities will affect the collection under control number 0694–0088, for the multipurpose application because of the increase of 100 more license applications per year, because industry is more likely to submit licenses when there is a case-by-case review versus a presumption of denial license review policy. BIS estimates that these changes will result in an increase in burden

hours of 28.3 hours. However, the increase in burden falls within the existing burden estimates currently associated with these control numbers. BIS also estimates a minimal increase under OMB control number 0694–0122 to account for the responsibility of the exporter to report the results from third-party testing lab confirmation.

Changes impacting OMB control numbers 0694–0096, 0694–0137, and 0607–0152 are not expected to result in an increase in burden hours.

Additional information regarding these collections of information—including all background materials—can be found at: <https://www.reginfo.gov/public/do/PRAMain> by using the search function to enter either the title of the collection or the OMB Control Number.

3. This rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

4. Pursuant to Section 1762 of ECRA (50 U.S.C. 4821), this action is exempt from the Administrative Procedure Act (APA) (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the APA (5 U.S.C. 553) or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

List of Subjects

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

15 CFR Part 748

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements, Terrorism.

For the reasons stated in the preamble, parts 742, 744, and 748 of the Export Administration Regulations (15 CFR parts 730 through 774) is amended as follows:

PART 742—CONTROL POLICY—CCL BASED CONTROLS

■ 1. The authority citation for part 742 is revised to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; Sec. 1503, Pub. L.

108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Notice of November 5, 2025, 90 FR 50737 (November 7, 2025).

■ 2. Section 742.6 is amended by revising paragraph (b)(10)(iii) heading and paragraph (b)(10)(iii)(A)(1) to read as follows:

§ 742.6 Regional stability.

* * * * *

(b) * * *

(10) * * *

(iii) *License review policy for items specified in paragraph (a)(6)(iii) of this section.*

(A)

(1) *Policy for Country Group D:5 and Macau.* There is a case-by-case license review policy for license applications for exports of commodities with a TPP (as defined in Technical Note 2 to 3A090.a and 3A090.b) less than 21,000, and a ‘total DRAM bandwidth’ (as defined in the notes to paragraph (dd)(1) in supplement no. 2 to part 748) less than 6,500 GB/s, when destined to end-users located in China or Macau, provided the applicant provides the additional information described in supplement no. 2 to part 748 under paragraph (dd). All other applications for exports, reexports, or transfers (in-country) will be reviewed under a presumption of denial to or within Macau or destinations specified in Country Group D:5 or to an entity headquartered in, or whose ultimate parent company is headquartered in, either Macau or a destination specified in Country Group D:5. If the license application meets the criteria of more than one licensing policy, then this licensing policy and its requirements will be applied.

* * * * *

PART 744—CONTROL POLICY: END-USER AND END-USE BASED

■ 3. The authority citation for part 744 is revised to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p.

783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 4, 2025, 90 FR 37999 (August 6, 2025); Notice of September 8, 2025, 90 FR 43903 (September 10, 2025); Notice of November 5, 2025, 90 FR 50737 (November 7, 2025).

■ 4. Section 744.23 is amended by:

■ a. Revising paragraph (d)(3)(ii);

■ b. Revising paragraph (d)(3)(iii); and

■ c. Adding paragraph (d)(3)(iv).

These amendments to read as follows:

§ 744.23 “Supercomputer,” “advanced-node integrated circuits,” and semiconductor manufacturing equipment end use controls.

* * * * *

(d) * * *

(3) * * *

(ii) For items subject to the license requirements of this section where there is a foreign-made item that is not subject to the license requirements of this section and performs the same function as an item subject to the EAR license requirements of this section;

(iii) For items specified in paragraph (a)(3)(i)(A) of this section that meet the criteria for case-by-case license review under § 742.6(b)(10)(iii)(A)(1); or

(iv) For all other applications not specified in paragraph (d)(1) or (2) or (d)(3)(i), (ii), or (iii).

* * * * *

PART 748—APPLICATIONS (CLASSIFICATION, ADVISORY, AND LICENSE) AND DOCUMENTATION

■ 5. The authority citation for part 748 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228.

■ 6. Section 748.8 is amended by adding paragraph (bb) to read as follows:

§ 748.8 Unique application and submission requirements.

* * * * *

(bb) Export license application for AI commodities.

■ 7. Supplement no. 2 to part 748 is amended by adding paragraph (dd) to read as follows:

Supplement No. 2 to Part 748—Unique Application and Submission Requirements

* * * * *

(dd) *AI commodities.* If you are submitting an application for advanced computing commodities for export to end-users located in China or Macau and want to have the application reviewed under the case-by-case license review policy under (b)(10)(iii)(A)(1), the following certification must be

provided as part of the license application. License applications that are not supported by the certification described under this paragraph or a commitment to submit the certificate prior to export, will be reviewed under the presumption of denial license review policy specified under § 742.6(b)(10)(iii)(A)(1) of the EAR.

(1) *Certification.* To qualify for the case-by-case licensing policy under § 742.6(b)(10)(iii)(A)(1), for commodities with a TPP less than 21,000, and a ‘total DRAM bandwidth’ less than 6,500 GB/s the license applicants must provide the following certifications that this license application meets all of these requirements described under paragraphs (dd)(1)(i) through (ix). BIS will routinely confirm the accuracy of relevant elements of the following certifications, using any methods it deems appropriate.

(i) The applicant provides the U.S. Government, at the time of the license application, the total number of units of any AI commodity described in the license application that were shipped to commercial customers in the United States for end use in the United States. The applicant must also provide the following performance specifications to BIS in the license application: the TPP, the ‘total DRAM bandwidth’, the ‘interconnect bandwidth’, ‘copackaged DRAM capacity’ and the peak power consumption at max TPP. The applicant must also provide an explanation for any changes to the specifications for this model since launched or previously shipped;

(ii) The applicant certifies and provides necessary supporting data, showing that there are sufficient supplies of the product in the United States such that any exports authorized by this license will not be filled if doing so would result in any delay in fulfilling any existing or new orders from customers in the United States for end use in the United States for any of its “advanced-node integrated circuits” products (taking into account normal lead times), and that global foundry capacity that would otherwise be used to produce similar node or more advanced integrated circuits for end users in the United States will not be diverted to produce commodities authorized by this license for exports to China;

(iii) The applicant shall supply evidence to BIS that, for the AI commodities described in the license application, (*i.e.*, as specified by the TPP, the “total DRAM bandwidth”, the “interconnect bandwidth”, “copackaged DRAM capacity” and the peak power consumption at max TPP), the aggregate

TPP of “advanced-node integrate circuits” exported to China or Macau will be no more than 50 percent of the aggregate TPP shipped to customers in the United States for end-use in the United States for the same advanced computing commodities from when such circuits started shipping to commercial U.S. customers in the United States for end-use in the United States to the time of the license application;

(iv) The applicant confirms the AI commodities described in the license application are not for a ‘military end use’, ‘military-intelligence end use’, ‘military end user’, or ‘military-intelligence end user’ as those terms are defined in §§ 744.21(f) and (g) and 744.22(f)(1) and (f)(2), respectively, are not for a nuclear, missile, or chemical or biological weapons end use or end user pursuant to §§ 744.2–4, the transaction does not involve a transaction party subject to §§ 744.8 or 744.11, and no parties subject to §§ 744.8, 744.11, or meeting the definition of a ‘military end user’ or ‘military-intelligence end user’ as defined in §§ 744.21(g) and 744.22(f)(2) will be granted remote access to the items;

(v) The applicant obtains a description of Know Your Customer procedures from the ultimate consignee for the AI commodities described in the license application to prevent remote access from end uses or end users described in paragraph (dd)(1)(iv). The applicant must submit this information to BIS.

(vi) *Remote end users.* The applicant provides BIS with a list of any intended ‘Infrastructure-as-a-Service (IaaS)’ remote end users of the AI commodities described in the license application, located in Belarus, China, Cuba, Iran, Macau, North Korea, Russia, and Venezuela, or an entity headquartered in, or whose ultimate parent company is headquartered in the foregoing destinations. The applicant must obtain this information from the ultimate consignee, or any other party to the transaction, with knowledge about the remote end users necessary to prevent unauthorized remote access from end users described in paragraph (dd)(1)(iv);

(vii) *Infrastructure-as-a-Service.* If the ultimate consignee or end user of the AI commodities described in the license application provides IaaS, the applicant verifies (through the ultimate consignee, if necessary) that the ultimate consignee or any Infrastructure-as-a-Service end user:

(1) is compliant with paragraph (dd)(1)(iv);

(2) will not transfer model weights trained on the AI commodities to any

end user not previously disclosed on the license or without authorization from BIS; and

(3) will not directly or indirectly provide a party described in (dd)(1)(iv) with remote access to any algorithm trained on the AI commodities;

(viii) *Security demonstration.* The applicant must describe the physical security for the ultimate consignee of the AI commodities described in the license application; and

(ix) The applicant confirms that, prior to export on an approved license from the United States, every shipment of advanced computing commodities described in this license application will be reviewed by a qualified third-party testing lab who meets the qualifications described in paragraph (dd)(3) of this supplement. The applicant shall also provide BIS with the name and U.S. address of the third-party testing lab in the certification prior to export from the United States.

Notes to paragraph (dd)(1):

1. ‘Total DRAM bandwidth’ refers to the aggregate memory bandwidth in gigabytes per second between the IC and dynamic random access memory (DRAM) ICs, including copackaged DRAM ICs and non-copackaged DRAM ICs. Copackaged DRAM ICs include, for example, high bandwidth memory (HBM). Non-copackaged DRAM ICs include, for example, graphics double data rate (GDDR) ICs.

1.a. ‘Total DRAM bandwidth’ does not include bandwidth from DRAM ICs accessed remotely over an interconnect medium if that bandwidth is included in the IC’s ‘interconnect bandwidth’.

1.b. All bandwidth between the IC and DRAM ICs, regardless of wherever those circuits are located and however those circuits are accessed, that is not included in the IC’s ‘interconnect bandwidth’, must be included in ‘total DRAM bandwidth’.

2. ‘Interconnect bandwidth’ refers to the aggregate bidirectional transfer rate over all of the IC’s inputs and outputs, including but not limited to connections over a system peripheral bus.

‘Interconnect bandwidth’ does not include bandwidth to other ICs on the same package.

(2) *Submissions.* License applicants must submit certifications to BIS via SNAP–R prior to the export of the advanced computing commodities from the United States.

(3) *Third-party testing lab qualifications and confirmation.*

(i) *Third-party testing lab qualifications.* A third-party testing lab must meet all of the following criteria:

(A) The third-party testing lab must be headquartered in the United States, not

otherwise under the control of a company or other entity headquartered in or whose ultimate parent company is headquartered in Country Group D:5 or Macau, and the testing must be conducted in the customs territory of the United States;

(B) The third-party testing lab must not have any ownership or financial stake in either the ultimate consignee, the exporter, or any other party to the transaction, and not otherwise benefit from the export other than by the fees they are paid for their testing service; and

(C) The third-party testing lab must have the expertise to ensure the representations made on the technical capabilities and functions of the advanced computing commodities described in this license application are accurate, including confirming that the ‘total processing performance’ (as defined in Technical Note 2 to 3A090.a and 3A090.b), the ‘total DRAM bandwidth’, the ‘interconnect bandwidth’, and the ‘copackaged DRAM capacity’ are at or below the specifications described in the license application.

(ii) *Third-party testing lab confirmation.* Prior to any export from the United States, the exporter must receive from the third-party testing lab a certification confirming that the technical capabilities and functions of the advanced computing commodities described in the exporter’s license application are accurate and submit that certification to BIS in accordance with the certification prior to export.

(iii) BIS may revoke the qualification of any third-party testing lab at any time and for any reason. This could be communicated, for example, in a letter to an exporter or a BIS publication such as website guidance. Such revocation suspends the case-by-case license review policy availability of § 742.6(b)(10)(iii)(A)(1) for any exporter working with that third-party testing lab until BIS is notified by the exporter that a new qualified third-party testing lab has been chosen pursuant to the terms of paragraph (dd)(3)(i) of this supplement.

* * * *

Julia A. Khersonsky,

Deputy Assistant Secretary for Strategic Trade.

[FR Doc. 2026–00789 Filed 1–13–26; 4:15 pm]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

15 CFR Part 801

[Docket ID 260108–0021]

RIN 0691–AA95

Survey of International Trade in Services Between U.S. and Foreign Persons and Surveys of Direct Investment

AGENCY: Bureau of Economic Analysis, Department of Commerce.

ACTION: Final rule.

SUMMARY: By this rule, the Department of Commerce is amending its regulations governing the collection of data on international trade in services and direct investment by removing certain provisions that merely restate what is clearly provided by the underlying statute and serve no meaningful purpose. The intended effect is to streamline such regulations, reduce regulatory clutter and complexity, and improve clarity for the public.

DATES: This rule is effective on January 15, 2026.

FOR FURTHER INFORMATION CONTACT: Daniel Sweeney, Senior Counsel, Office of the General Counsel, at (202) 482–1395.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Commerce is amending the regulations at 15 CFR part 801, which govern the collection of data on international trade in services and direct investment between United States and foreign persons. These data collection programs are conducted by the Bureau of Economic Analysis (BEA) under the authority of the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108) (the Act). The regulations in this part provide a framework for various surveys that gather comprehensive and reliable economic statistics on international investment and trade to support U.S. commercial policy, monitor the U.S. economy, and improve the ability of U.S. businesses to evaluate market opportunities.

The current structure of 15 CFR part 801 was established in a final rule published on April 24, 2012 (77 FR 24374). The primary purpose of the 2012 rulemaking was to simplify and streamline the process by which BEA conducts its surveys. Previously, the implementation of individual surveys often required separate notice-and-comment rulemaking actions. The 2012 rule created a more efficient,

generalized framework by allowing BEA to issue specific survey requirements, such as reporting criteria and due dates, through individual notices published in the **Federal Register**. BEA received no public comments on the proposed rule, indicating general acceptance of that procedural shift. That action also consolidated the regulatory framework by revising part 801 and removing and reserving 15 CFR parts 806 and 807. The legal basis for these regulations includes the Act, as well as 5 U.S.C. 301, 15 U.S.C. 4908, and Executive Orders 11961, 12318, and 12518.

Following the establishment of that framework, BEA has periodically amended part 801 to implement or modify specific mandatory benchmark surveys that are essential for producing accurate economic accounts. For example, in a final rule published on August 14, 2014 (79 FR 47575), BEA reinstated the BE–13, Survey of New Foreign Direct Investment in the United States, to gather information on the acquisition or establishment of U.S. business enterprises by foreign investors. Similarly, the regulations have been updated to set the requirements for other recurring benchmark surveys, such as the BE–10, Benchmark Survey of U.S. Direct Investment Abroad (84 FR 60915, Nov. 12, 2019) and the BE–12, Benchmark Survey of Foreign Direct Investment in the United States (87 FR 58954, Sept. 29, 2022). To better measure U.S. trade in services, BEA also established benchmark surveys for specific sectors, including the BE–120 for transactions in selected services and intellectual property (87 FR 54887, Sept. 8, 2022); the BE–140 for insurance transactions (87 FR 54888, Sept. 8, 2022); and the BE–180 for financial services transactions (85 FR 31052, May 22, 2020). BEA continually refines these surveys to adapt to the evolving economy and reduce respondent burden. These refinements often incorporate public feedback, such as when BEA added definitions and guidance to the BE–10 survey forms in response to requests for clarification on new digital economy questions (84 FR 60915, Nov. 12, 2019). In that same rulemaking, BEA also removed questions on contract manufacturing services that were burdensome for companies to provide and not widely used by data users.

As part of that framework, the regulations set forth general provisions that apply to the various surveys. Section 801.1 outlines the purpose of the regulations, stating that they provide general information on the data collection programs and reiterate the

purpose of the Act, which is to collect comprehensive information with minimal burden on respondents. Section 801.5 establishes the confidentiality of the information collected, explicitly stating that information collected pursuant to 22 U.S.C. 3104(c) is confidential. It restricts access to the data to designated Federal government officials and their contractors for analytical or statistical purposes only and prohibits the disclosure of information in any way that could identify an individual respondent. Section 801.6 specifies the civil and criminal penalties for noncompliance, in accordance with 22 U.S.C. 3105. It details that failure to report may result in civil penalties of not less than \$2,500 and not more than \$25,000, which are subject to inflationary adjustments, and that willful failure to report may result in criminal penalties, including a fine of not more than \$10,000 and, for an individual, imprisonment of not more than one year.

The Department of Commerce has determined that the second sentence of § 801.1, and §§ 801.5 and 801.6 in their entirety, are appropriate for removal for the reasons discussed below.

II. Discussion

This rule removes the second sentence of § 801.1 and both §§ 801.5 and 801.6 in their entirety. The Department has determined that each of these provisions merely restates what is already provided by the underlying statute and serves no meaningful purpose. By eliminating these sections, the Department aims to ensure that the Code of Federal Regulations generally contains only essential implementing rules and otherwise directs the public to the underlying statutes for foundational legal requirements. This action is part of the Department's ongoing commitment to reducing regulatory complexity and clutter, improving the clarity and efficiency of its rules, and recentring statutory text without any superfluous regulatory overlay.

To begin, the Department is removing § 801.5, which addresses the confidentiality of information collected through the surveys. The Department's primary policy rationale for this change is that the regulation is unnecessary and duplicative. The confidentiality protections that § 801.5 describes are already established with sufficient detail and force of law directly within the Act itself at 22 U.S.C. 3104(c). That statutory provision is comprehensive and self-executing, clearly defining who may access the data, the limited purposes for which it may be used, and

the strict prohibitions against any disclosure that could identify a specific person or entity. Because the statute provides a complete and legally binding framework for confidentiality, the corresponding regulation adds no substantive value. The removal of § 801.5 streamlines the regulatory landscape by making the statute the single, authoritative source for these critical protections, which enhances clarity and eliminates a superfluous regulatory layer. As a legal matter, the Department has determined that no provision within the Act mandates the issuance of implementing regulations for confidentiality, rendering § 801.5 not statutorily required.

Similarly, the Department is removing § 801.6, which outlines the civil and criminal penalties for failing to comply with the reporting requirements. The policy basis for this removal is that the regulation is redundant. Section 801.6 largely repeats the penalty provisions already explicitly detailed in the Act at 22 U.S.C. 3105. The statute itself clearly sets forth the fines and potential terms of imprisonment for violations, and these provisions are self-executing, meaning they are legally effective without any need for implementing regulations. Restating these penalties in the Code of Federal Regulations serves no practical purpose, provides no additional guidance to the public, and creates unnecessary regulatory text. Removing this section will direct the public to the statute as the definitive source for penalty information, promoting clarity and reducing regulatory complexity. And the Department has concluded that this regulation is not statutorily required because the Act does not necessitate any further rules to make its penalty provisions functional or enforceable.

The Department is revising the introductory text of §§ 801.7, 801.8, 801.10, 801.11, 801.12, and 801.13 to reflect the removal of §§ 801.5 and 801.6.

Lastly, the Department is removing certain language from § 801.1, which describes the purpose of the part. Specifically, the Department is removing the second sentence of this section. This sentence purports to restate the purpose of the Act itself, which is already more fully articulated by Congress in 22 U.S.C. 3101(b). The second sentence of § 801.1 is therefore, at the very least, redundant and unnecessary. Removing this sentence makes the regulation more concise and makes the text of the Act the single, authoritative source of the Act's purpose.

III. Procedural Issues and Regulatory Review

A. Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b)(B), the Department finds good cause to waive the prior notice and opportunity for public participation requirements of the Administrative Procedure Act for this final rule. The Department has determined that prior notice and opportunity for public participation is unnecessary because this rule only removes regulatory language that restates the underlying statute (and makes minor, conforming amendments). The redundant and unnecessary nature of the removed language is apparent and will not be affected by any public comment. For the same reason, the Department has determined that delaying the removal of this language for the sake of carrying out the notice and comment process would be contrary to the public interest. The Department therefore finds good cause to waive the public notice and comment period under 553(b)(B) and, for reasons stated above, to waive the 30-day delay in effectiveness under 553(d).

B. Executive Orders 12866, 14192, 13132

The Office of Management and Budget has determined this rule is not significant pursuant to E.O. 12866. This rule is an E.O. 14192 deregulatory action. This rule does not contain policies having federalism implications as the term is defined in E.O. 13132.

C. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public participation are not required to be given for this rule by 5 U.S.C. 553(b)(B), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

D. Paperwork Reduction Act

This rule will not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

List of Subjects in 15 CFR Part 801

Administrative practice and procedure, Confidential business information, Economic statistics, Foreign trade, Investments, Penalties, Reporting and recordkeeping requirements.

Dated: January 12, 2026.

Joyce Meyer,

Under Secretary for Economic Affairs.

For the reasons set forth in the preamble, the Department amends 15 CFR part 801 as follows:

PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS AND SURVEYS OF DIRECT INVESTMENT

- 1. The authority citation for part 801 continues to read as follows:

Authority: 5 U.S.C. 301; 15 U.S.C. 4908; 22 U.S.C. 3101–3108; E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12318 (3 CFR, 1981 Comp. p. 173); and E.O. 12518 (3 CFR, 1985 Comp. p. 348).

- 2. Revise § 801.1 to read as follows:

§ 801.1 Purpose.

The purpose of this part is to provide general information on international trade in services and direct investment data collection programs and analyses under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 to 3108, as amended) (the Act).

§ 801.5 [Removed and Reserved]

- 3. Remove and reserve § 801.5.

§ 801.6 [Removed and Reserved]

- 4. Remove and reserve § 801.6.
■ 5. Revise § 801.7 introductory text to read as follows:

§ 801.7 Rules and regulations for the BE–13, Survey of New Foreign Direct Investment in the United States.

The BE–13, Survey of New Foreign Direct Investment in the United States, is conducted to collect data on the acquisition or establishment of U.S. business enterprises by foreign investors and the expansion of existing U.S. affiliates of foreign companies to establish new facilities where business is conducted. Foreign direct investment is defined as the ownership or control by one foreign person (foreign parent) of 10 percent or more of the voting securities of an incorporated U.S. business enterprise, or an equivalent interest of an unincorporated U.S. business enterprise, including a branch. BEA will describe the proposed information collection in a public notice and will solicit comments according to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501–3520). All legal authorities, provisions, definitions, and requirements contained in §§ 801.1, 801.2, and 801.4, 22 U.S.C. 3104(c), and 22 U.S.C. 3105 are applicable to this survey. Specific additional rules and regulations for the

BE–13 survey are given in paragraphs (a) through (d) of this section. More detailed instructions are given on the report forms and instructions.

* * * * *

- 6. Revise § 801.8 introductory text to read as follows:

§ 801.8 Rules and regulations for the BE–10, Benchmark Survey of U.S. Direct Investment Abroad.

A BE–10, Benchmark Survey of U.S. Direct Investment Abroad, will be conducted every five years and covers years ending in 4 and 9. All legal authorities, provisions, definitions, and requirements contained in §§ 801.1, 801.2, and 801.4, 22 U.S.C. 3104(c), and 22 U.S.C. 3105 are applicable to this survey. Specific additional rules and regulations for the BE–10 survey are given in paragraphs (a) through (d) of this section. More detailed instructions are given on the report forms and instructions.

* * * * *

- 7. Revise § 801.10 introductory text to read as follows:

§ 801.10 Rules and regulations for BE–12, Benchmark Survey of Foreign Direct Investment in the United States.

A BE–12, Benchmark Survey of Foreign Direct Investment in the United States, will be conducted once every five years and covers years ending in 2 and 7. BEA will describe the proposed information collection in a public notice and will solicit comments accounting to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501–3520). All legal authorities, provisions, definitions, and requirements contained in §§ 801.1, 801.2, and 801.4, 22 U.S.C. 3104(c), and 22 U.S.C. 3105 are applicable to this survey. Specific additional rules and regulations for the BE–12 survey are given in paragraphs (a) through (e) of this section. More detailed instructions are given on the report forms and instructions.

* * * * *

- 8. Revise § 801.11 introductory text to read as follows:

§ 801.11 Rules and regulations for the BE–120 Benchmark Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons.

The BE–120 Benchmark Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons will be conducted once every five years and covers years ending in 2 and 7. BEA will describe the proposed information collection in a public notice and will solicit comments according to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501–3520).

All legal authorities, provisions, definitions, and requirements contained in §§ 801.1, 801.2, and 801.4, 22 U.S.C. 3104(c), and 22 U.S.C. 3105 are applicable to this survey. Specific additional rules and regulations for the BE–120 survey are given in this section. More detailed instructions are given on the report form and in instructions accompanying the report form.

* * * * *

- 9. Revise § 801.12 introductory text to read as follows:

§ 801.12 Rules and regulations for the BE–140 Benchmark Survey of Insurance Transactions by U.S. Insurance Companies with Foreign Persons.

The BE–140 Benchmark Survey of Insurance Transactions by U.S. Insurance Companies with Foreign Persons will be conducted once every five calendar years and covers years ending in 3 and 8. BEA will describe the proposed information collection in a public notice and will solicit comments according to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501–3520). All legal authorities, provisions, definitions, and requirements contained in §§ 801.1, 801.2, and 801.4, 22 U.S.C. 3104(c), and 22 U.S.C. 3105 are applicable to this survey. Specific additional rules and regulations for the BE–140 survey are given in this section. More detailed instructions are given on the report form and in instructions accompanying the report form.

* * * * *

- 10. Revise § 801.13 introductory text to read as follows:

§ 801.13 Rules and regulations for the BE–180 Benchmark Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons.

The BE–180 Benchmark Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons will be conducted every five years and covers fiscal years ending in 4 and 9. BEA will describe the proposed information collection in a public notice and will solicit comments according to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501–3520). All legal authorities, provisions, definitions, and requirements contained in §§ 801.1, 801.2, and 801.4, 22 U.S.C. 3104(c), and 22 U.S.C. 3105 are applicable to this survey. Specific additional rules and regulations for the BE–180 survey are given in this section. More detailed instructions are given on

the report form and in instructions accompanying the report form.

* * * * *

[FR Doc. 2026-00691 Filed 1-14-26; 8:45 am]

BILLING CODE 3510-06-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA-1180]

Schedules of Controlled Substances: Placement of 4-Fluoroamphetamine in Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.
ACTION: Final rule.

SUMMARY: With the issuance of this final rule, the Drug Enforcement Administration places 4-fluoroamphetamine (4-FA; 1-(4-fluorophenyl)propan-2-amine; *para*-fluoroamphetamine), including its salts, isomers, and salts of isomers, in schedule I of the Controlled Substances Act. This action is being taken, in part, to enable the United States to meet its obligations under the 1971 Convention on Psychotropic Substances. This action imposes the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis with, or possess) or propose to handle 4-fluoroamphetamine.

DATES: Effective February 17, 2026.

FOR FURTHER INFORMATION CONTACT: Dr. Terrence L. Boos, Drug and Chemical Evaluation Section, Diversion Control Division, Drug Enforcement Administration; Telephone: (571) 362-3249.

SUPPLEMENTARY INFORMATION:

Legal Authority

The United States is a party to the 1971 United Nations Convention on Psychotropic Substances (1971 Convention), Feb. 21, 1971, 32 U.S.T. 543, 1019 U.N.T.S. 175, as amended. Procedures respecting changes in drug schedules under the 1971 Convention are governed domestically by 21 U.S.C. 811(d)(2)–(4). When the United States receives notification of a scheduling decision pursuant to Article 2 of the 1971 Convention indicating that a drug or other substance has been added to a schedule specified in the notification,

the Secretary of Health and Human Services (Secretary),¹ after consultation with the Attorney General, shall first determine whether existing legal controls under subchapter I of the Controlled Substances Act (CSA) and the Federal Food, Drug, and Cosmetic Act meet the requirements of the schedule specified in the notification with respect to the specific drug or substance.² In the event that the Secretary did not so consult with the Attorney General, and the Attorney General did not issue a temporary order, as provided under 21 U.S.C. 811(d)(4), the procedures for permanent scheduling set forth in 21 U.S.C. 811(a) and (b) control.

Pursuant to 21 U.S.C. 811(a)(1) and (2), the Attorney General (as delegated to the Administrator of the Drug Enforcement Administration (DEA) pursuant to 28 CFR 0.100) may, by rule, and upon the recommendation of the Secretary, add to such a schedule or transfer between such schedules any drug or other substance, if she finds that such drug or other substance has a potential for abuse, and makes with respect to such drug or other substance the findings prescribed by 21 U.S.C. 812(b) for the schedule in which such drug or other substance is to be placed.

Background

4-Fluoroamphetamine (also known as 4-FA and *para*-fluoroamphetamine) is a central nervous system stimulant and shares structural and pharmacological similarities with schedule II stimulants, such as amphetamine and methamphetamine, and the schedule I substance 3,4-methylenedioxymethamphetamine. (MDMA). On May 15, 2018, the Secretary-General of the United Nations advised the Secretary of State of the United States that the Commission on Narcotic Drugs (CND), during its 61st session held in March 2018, voted to place 4-FA in Schedule II of the 1971 Convention (CND Dec/61/12).

As a signatory to the 1971 Convention, the United States is required, by scheduling under the CSA, to place appropriate controls on 4-FA to meet the minimum requirements of the treaty. Because the procedures in 21 U.S.C. 811(d)(3) and (4) for consultation

¹ As discussed in a memorandum of understanding entered into by the FDA and the National Institute on Drug Abuse (NIDA), FDA acts as the lead agency within HHS in carrying out the Secretary's scheduling responsibilities under the CSA, with the concurrence of NIDA. 50 FR 9518 (Mar. 8, 1985). The Secretary has delegated to the Assistant Secretary for Health of HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460 (July 1, 1993).

² 21 U.S.C. 811(d)(3).

and issuance of a temporary order for 4-FA, discussed in the above legal authority section, were not followed, DEA is utilizing the procedures for permanent scheduling set forth in 21 U.S.C. 811(a) and (b) to control 4-FA. Such scheduling would satisfy the United States' international obligations.

DEA and HHS Eight Factor Analyses

In a letter dated March 2, 2021, in accordance with 21 U.S.C. 811(b), and in response to DEA's September 6, 2019, request, the Department of Health and Human Services (HHS) provided to DEA a scientific and medical evaluation and scheduling recommendation for 4-FA. DEA reviewed the scientific and medical evaluation and scheduling recommendation for schedule I placement provided by HHS, and all other relevant data, pursuant to 21 U.S.C. 811(b) and (c), and conducted its own analysis under the eight factors stipulated in 21 U.S.C. 811(c). DEA found, under 21 U.S.C. 812(b)(1), that this substance warrants control in schedule I. Both DEA's and HHS' Eight-Factor analyses are available in their entirety under the tab Supporting Documents of the public docket for this action at <https://www.regulations.gov> under docket number DEA-1180.

Notice of Proposed Rulemaking to Schedule 4-FA

On June 3, 2025, DEA published a notice of proposed rulemaking (NPRM) to permanently control 4-FA in schedule I.³ Specifically, DEA proposed to add 4-FA to the list of stimulant substances under 21 CFR 1308.11(f). The NPRM provided an opportunity for interested persons to file a request for hearing in accordance with DEA regulations on or before July 3, 2025. DEA did not receive any requests for such a hearing. The NPRM also provided an opportunity for interested persons to submit comments on or before July 3, 2025.

Comments Received

DEA received nine comments in response to the NPRM for the placement of 4-FA into schedule I of the CSA. The submissions were from individuals or anonymous commenters. Two commenters supported the placement of 4-FA in schedule I of the CSA, five commenters were against the placement of 4-FA in schedule I of the CSA, and two commenters expressed statements that were neither for nor against the

³ Schedules of Controlled Substances: Placement of 4-Fluoroamphetamine in Schedule I, 90 FR 23477 (June 3, 2025).

proposed rule (one of which noted 4-FA has helped them feel calmer).

Support of Rulemaking: DEA received two comments in support of the placement of 4-FA in schedule I.

DEA Response: DEA appreciates these comments in support of this rulemaking.

Opposition to Rulemaking: DEA received five comments against the placement of 4-FA in schedule I of the CSA. Of these comments, one asserted that 4-FA is already controlled under schedule II of the CSA under the Controlled Substances Analogue Act, and that criminal illicit use is already illegal. Three of these comments noted that placing 4-FA in schedule I would negatively impact the ability to do research. One commenter asserted 4-FA could be an effective treatment for PTSD and depression and should not be controlled until additional studies have been conducted. The following is DEA's response to the comments against the proposed rulemaking.

DEA Response: DEA appreciates these comments and would like to emphasize that 4-FA is not currently scheduled under the CSA and to provide further clarification regarding the control of 4-FA. 4-FA has been placed under international control. In order to comply with treaty obligations, DEA must place 4-FA under the most appropriate schedule, taking into consideration all appropriate scientific data. Additionally, as set forth in the NPRM, 4-FA has no currently accepted medical use in treatment in the United States, nor were there any New Drug Applications. Therefore, 4-FA must be placed in schedule I of the CSA along with other substances which have no currently accepted medical use, lack accepted safety for use under medical supervision, and possess a high potential for abuse. With respect to research for potential medical use, the placement of substances in schedule I of the CSA does not preclude academic research on these substances.⁴ Those wishing to conduct research on 4-FA must seek permission to do so with the DEA.⁵

Scheduling Conclusion

After consideration of the public comments, scientific and medical evaluation and accompanying scheduling recommendation from HHS, and after its own eight-factor evaluation, DEA finds that these facts and all relevant data constitute substantial

evidence of potential for abuse of 4-FA. As such, DEA is permanently scheduling 4-FA as a controlled substance under schedule I of the CSA. The permanent scheduling of 4-FA fulfills the United States' obligations as a party to the 1971 Convention.

Determination of Appropriate Schedule

The CSA establishes five schedules of controlled substances known as schedules I, II, III, IV, and V. The CSA also specifies the findings required to place a drug or other substance in any particular schedule, 21 U.S.C. 812(b). After consideration of the analysis and recommendation of the then Assistant Secretary for Health of HHS and review of all other available data, the Administrator of DEA, pursuant to 21 U.S.C. 812(b)(1), finds that:

(1) 4-FA has a high potential for abuse that is comparable to other scheduled I and II substances, such as amphetamine, methamphetamine, and MDMA.

(2) 4-FA has no currently accepted medical use in treatment in the United States. In HHS' 2021 recommendation to control 4-FA, it was noted there are no approved New Drug Applications for 4-FA and no known therapeutic applications for 4-FA in the United States. DEA is not aware of any other evidence suggesting that 4-FA has a currently accepted medical use in treatment in the United States.⁶

⁶ Pursuant to 21 U.S.C. 812(b)(1)(B), when placing a substance in schedule I, DEA must consider whether the substance has a currently accepted medical use in treatment in the United States. First, DEA looks to whether the drug or substance has FDA approval. When no FDA approval exists, DEA has traditionally applied a five-part test to determine whether a drug or substance has a currently accepted medical use: (1) the drug's chemistry must be known and reproducible; (2) there must be adequate safety studies; (3) there must be adequate and well-controlled studies proving efficacy; (4) the drug must be accepted by qualified experts; and (5) the scientific evidence must be widely available. See *Marijuana Scheduling Petition; Denial of Petition; Remand*, 57 FR 10499 (Mar. 26, 1992), pet. for rev. denied, *Alliance for Cannabis Therapeutics v. Drug Enforcement Admin.*, 15 F.3d 1131, 1135 (D.C. Cir. 1994). DEA and HHS applied the traditional five-part test for currently accepted medical use in this matter and concluded the test was not satisfied. In a recent published letter in a different context, HHS applied an additional two-part test to determine currently accepted medical use for substances that do not satisfy the five-part test: (1) whether there exists widespread, current experience with medical use of the substance by licensed health care practitioners operating in accordance with implemented jurisdiction-authorized programs, where medical use is recognized by entities that regulate the practice of medicine, and, if so, (2) whether there exists some credible scientific support for at least one of the medical conditions for which part (1) is satisfied. On April 11, 2024, the Department of Justice's Office of Legal Counsel (OLC) issued an opinion, which, among other things, concluded that HHS' two-part test would be

(3) There is a lack of accepted safety for use of 4-FA under medical supervision. Because 4-FA has no approved medical use and has not been investigated as a new drug, its safety for use under medical supervision has not been determined.

Based on these findings, the Administrator of DEA concludes that 4-FA, as well as its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, warrants control in schedule I of the CSA.

Requirements for Handling 4-FA

4-FA is subject to the CSA's schedule I regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, import, export, engagement in research, conduct of instructional activities or chemical analysis with, and possession of, schedule I controlled substances, including the following:

1. **Registration.** Any person who handles (manufactures, distributes, reverse distributes, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses), or who desires to handle, 4-FA must register with DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312. Any person who currently handles 4-FA and is not registered with DEA must submit an application for registration and may not continue to handle 4-FA, unless DEA has approved that application for registration pursuant to 21 U.S.C. 822, 823, 957, 958, and in accordance with 21 CFR parts 1301 and 1312. Retail sales of schedule I controlled substances to the general public are not allowed under the CSA. Possession of any quantity in a manner not authorized by the CSA is unlawful and those in possession of any quantity may be subject to prosecution pursuant to the CSA.

2. **Disposal of Stocks.** Any person unwilling or unable to obtain a schedule I registration must surrender or transfer all quantities of currently held 4-FA to a person registered with DEA before the effective date of the final scheduling action in accordance with all applicable Federal, State, local, and Tribal laws. 4-

sufficient to establish that a drug has a currently accepted medical use. Office of Legal Counsel, Memorandum for Merrick B. Garland, Attorney General, Re: Questions Related to the Potential Rescheduling of Marijuana at 3 (April 11, 2024). For purposes of this final rule, there is no evidence that health care providers have widespread experience with medical use of 4-FA or that the use of 4-FA is recognized by entities that regulate the practice of medicine, so the two-part test also is not satisfied.

⁴ 21 U.S.C. 822(h); 21 U.S.C. 823(g)(2)(A); 21 U.S.C. 823(n).

⁵ <https://apps.deadiversion.usdoj.gov/webforms2/spring/login?execution=e1s1>.

FA must be disposed of in accordance with 21 CFR part 1317, in addition to all other applicable Federal, State, local, and Tribal laws

3. *Security.* 4-FA is subject to schedule I security requirements and must be handled and stored pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.71–1301.76, as of the effective date of this final scheduling action. Non-practitioners handling 4-FA must comply with the employee screening requirements of 21 CFR 1301.90 through 1301.93.

4. *Labeling and Packaging.* All labels, labeling, and packaging for commercial containers of 4-FA must comply with 21 U.S.C. 825 and be in accordance with 21 CFR part 1302.

5. *Quota.* Generally, only registered manufacturers are permitted to manufacture 4-FA in accordance with a quota assigned pursuant to 21 U.S.C. 826, and in accordance with 21 CFR part 1303.

6. *Inventory.* Every DEA registrant who possesses any quantity of 4-FA must take an inventory of 4-FA on hand, pursuant to 21 U.S.C. 827 and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11(a) and (d).

Any person who registers with DEA must take an initial inventory of all stocks of controlled substances (including 4-FA) on hand on the date the registrant first engages in the handling of controlled substances, pursuant to 21 U.S.C. 827 and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11(a) and (b).

After the initial inventory, every DEA registrant must take an inventory of all controlled substances (including 4-FA) on hand every two years, pursuant to 21 U.S.C. 827 and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

7. *Records and Reports.* Every DEA registrant must maintain records and submit reports for 4-FA, or products containing 4-FA, pursuant to 21 U.S.C. 827 and in accordance with 21 CFR 1301.74(b) and (c), 1301.76(b), and parts 1304, 1312 and 1317. Manufacturers and distributors must submit reports regarding 4-FA to the Automated Reports and Consolidated Ordering System pursuant to 21 U.S.C. 827 and in accordance with 21 CFR parts 1304 and 1312.

8. *Order Forms.* Every DEA registrant who distributes 4-FA must comply with the order form requirements, pursuant to 21 U.S.C. 828 and 21 CFR part 1305.

9. *Importation and Exportation.* All importation and exportation of 4-FA must comply with 21 U.S.C. 952, 953, 957, and 958, and in accordance with 21 CFR parts 1304 and 1312.

10. *Liability.* Any activity involving 4-FA not authorized by, or in violation of, the CSA or its implementing regulations, is unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Analyses

Executive Orders 12866, 13563, 14192, and 14294

In accordance with 21 U.S.C. 811(a), this final scheduling action is subject to formal rulemaking procedures performed “on the record after opportunity for a hearing,” which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the procedures and criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget (OMB) pursuant to section 3(d)(1) of Executive Order (E.O.) 12866 and the principles reaffirmed in E.O. 13563. DEA scheduling actions are not subject to either E.O. 14192, *Unleashing Prosperity Through Deregulation*, or E.O. 14294, *Overcriminalization of Federal Regulations*.

Executive Order 12988, Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988 to eliminate drafting errors and ambiguity, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132, Federalism

This rulemaking does not have federalism implications warranting the application of E.O. 13132. The rule does not have substantial direct effects on the states, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This rule does not have Tribal implications warranting the application of E.O. 13175. It does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Regulatory Flexibility Act

The Administrator of DEA, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601–612, has reviewed this final rule, and by

approving it, certifies that it will not have a significant economic impact on a substantial number of small entities.

DEA is placing the substance 4-FA (chemical name: 1-(4-fluorophenyl)propan-2-amine), including its salts, isomers, and salts of isomers, in schedule I of the CSA to enable the United States to meet its obligations under the 1971 Convention. This action imposes the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis with, or possess) or propose to handle 4-FA.

Based on the review of HHS’ scientific and medical evaluation and all other relevant data, DEA determined that 4-FA has high potential for abuse, has no currently accepted medical use in treatment in the United States, and lacks accepted safety for use under medical supervision. There appear to be no legitimate sources for 4-FA as a marketed drug in the United States, but DEA notes that this substance is available for purchase from legitimate suppliers for scientific research. There is no evidence of significant diversion of 4-FA from legitimate suppliers. Therefore, this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information requirement under the Paperwork Reduction Act of 1995.⁷ This action would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. However, this rule requires compliance with the following existing OMB collections: 1117–0003, 1117–0004, 1117–0006, 1117–0008, 1117–0009, 1117–0010, 1117–0012, 1117–0014, 1117–0021, 1117–0023, 1117–0029, and 1117–0056. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act of 1995

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1532, DEA has determined that this action would not result in any Federal mandate that may result “in the expenditure by State, local, and Tribal

⁷ 44 U.S.C. 3501 through 3521.

governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any 1 year” Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA of 1995.

Congressional Review Act

This rule is not a major rule as defined by the Congressional Review Act (CRA), 5 U.S.C. 804. However, pursuant to the CRA, DEA is submitting a copy of this rule to both Houses of Congress and to the Comptroller General.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, 21 CFR part 1308 is amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. Amend § 1308.11 by:

■ a. Redesignating paragraphs (f)(8) through (f)(13) as (f)(9) through (f)(14); and

■ b. Adding a new paragraph (f)(8).

The addition reads as follows:

§ 1308.11 Schedule I.

* * * * *

(f) * * *

(8) 4-Fluoroamphetamine (4-FA, 1-(4-fluorophenyl)propan-2-amine, *para*-fluoroamphetamine) 1476

* * * * *

Signing Authority

This document of the Drug Enforcement Administration was signed on January 8, 2026, by Administrator Terrance C. Cole. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2026-00633 Filed 1-14-26; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. OSHA-2019-0001]

RIN 1218-AC93

Hazard Communication Standard

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule; extension of compliance dates.

SUMMARY: OSHA is extending the compliance dates in its Hazardous

Communications Standard (29 CFR 1910.1200), published in the **Federal Register** on May 20, 2024 (89 FR 44144), by four months. The compliance date in § 1910.1200(j)(2)(i) is extended from January 19, 2026, until May 19, 2026; the compliance date in § 1910.1200(j)(2)(ii) is extended from July 20, 2026 to November 20, 2026; the compliance date in § 1910.1200(j)(3)(i) is extended from July 19, 2027 to November 19, 2027; and the compliance date in § 1910.1200(j)(3)(ii) is extended from January 19, 2028 to May 19, 2028.

DATES: Effective Date January 15, 2026.

FOR FURTHER INFORMATION CONTACT:

For Press Inquiries: Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone: (202) 693-1999; email: meilinger.francis2@dol.gov.

For General and Technical Information: Tiffany DeFoe, Director, Office of Chemical Hazards, Metals, Directorate of Standards and Guidance, OSHA, Room N-3718, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210; email: defoe.tiffany@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Overview

On May 20, 2024, the Occupational Safety and Health Administration (OSHA) finalized its update to the Hazard Communication Standard (HCS) (89 FR 44144). Paragraph (j) of the HCS specifies the dates by which compliance with the updated provisions of the HCS is required. OSHA adopted a tiered approach to compliance and finalized two sets of compliance dates for chemical manufacturers, importers, and distributors evaluating substances and mixtures (see 29 CFR 1910.1200(j)).

The initial compliance deadline in section 1910.1200(j)(2)(i) of January 19, 2026, for manufacturers, importers, and distributors evaluating substances, is imminent. Members of the regulated community have asked for additional guidance to comply with the updated HCS. Although OSHA has been working to finalize key guidance about the updated HCS for both the regulated community and agency personnel, the agency has not been able to complete these documents with sufficient time for the regulated community and OSHA personnel to benefit from them before the initial compliance date. OSHA has determined it is necessary to extend the initial compliance date in paragraph (j)(2)(i) by four months to allow time for the agency to publish the necessary guidance materials and for the regulated community to review those materials before the revised provisions take effect. To maintain the tiered approach to compliance adopted in the final rule (89 FR 44144, 44302), OSHA is also extending each of the subsequent compliance dates in paragraph (j)(2)(ii) and (j)(3) by four months.

This action does not alter existing paragraph (j)(4). Under that provision, between May 20, 2024 and the now-extended compliance dates in paragraphs (j)(2) and (j)(3), chemical manufacturers, importers, distributors, and employers may comply with either the previous version of this standard (77 FR 17574, Mar. 26, 2012), the updated HCS (89 FR 44144, May 20, 2024), or both.

II. Exemption From Notice-and-Comment and Delay of Effective Date

OSHA's implementation of this action without opportunity for public comment is based on the good cause

exception in 5 U.S.C. 553(b)(B), in that seeking public comment here would be impracticable, unnecessary and contrary to the public interest. OSHA finds that there is good cause to forgo notice and comment because of the imminence of the initial compliance deadline (29 CFR 1910.1200(j)(2)(i)). The regulated community has an immediate need to know whether compliance will be expected by the existing compliance date, despite the lack of official agency guidance, and the additional time needed for notice and comment would add further uncertainty about compliance obligations. Further, because the regulated community must continue to comply with the 2012 HCS, the revised standard, or a combination of both until the compliance date pursuant to paragraph (j)(4), this extension merely maintains the status quo for a short period of time. OSHA therefore finds that notice and comment in this instance would be impracticable, unnecessary, and contrary to the public interest.

OSHA also finds that there is good cause to extend the compliance dates in sections 1910.1200(j)(2)(ii), 1910.1200(j)(3)(i), and 1910.1200(j)(3)(ii) by four months without notice and comment. In the final rule, OSHA determined that a tiered approach to compliance was necessary to address commenters' implementation concerns (89 FR 44144, 44302). OSHA finds no reason to revisit that finding. Accordingly, because OSHA is merely extending these subsequent compliance dates to maintain the agency's previously established tiered approach, additional public comment is unnecessary.

In establishing the effective date of this action, OSHA invokes the good cause exception in 5 U.S.C. 553(d)(3), which allows the action to be immediately effective for "good cause" rather than subject to the requirement that rules become effective no earlier than 30 days after publication (5 U.S.C. 553(d)). OSHA finds that the nature of this action, which merely maintains the status quo for a short period time, along with the imminence of the initial compliance deadline, and the confusion that could result from a failure to timely amend paragraph (j), make it unnecessary, impractical, and contrary to the public interest to delay the effectiveness of this action by 30 days.

List of Subjects in 29 CFR Part 1910

Chemicals, Diseases, Explosives, Flammable materials, Gases, Hazardous substances, Labeling, Occupational safety and health, Safety, Signs and symbols.

Authority and Signature

David Keeling, Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this document. It is issued under the authority of sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); 5 U.S.C. 553; Section 304, Clean Air Act Amendments of 1990 (Pub. L. 101–549, reprinted at 29 U.S.C.A. 655 Note); Section 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Section 107, Contract Work Hours and Safety Standards Act (40 U.S.C. 3704); Section 1031, Housing and Community Development Act of 1992 (42 U.S.C. 4853); Section 126, Superfund Amendments and Reauthorization Act of 1986, as amended (reprinted at 29 U.S.C.A. 655 Note); Secretary of Labor's Order No. 07–2025 (90 FR 27878); and 29 CFR part 1911.

Signed at Washington, DC, on January 9, 2026.

David Keeling,

Assistant Secretary of Labor for Occupational Safety and Health.

For the reasons set forth above, 29 CFR 1910 is hereby amended as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Subpart Z—Toxic and Hazardous Substances

■ 1. The authority citation for subpart Z of 29 CFR part 1910 is revised to read as follows:

Authority: 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), or 5–2007 (72 FR 31159), 4–2010 (75 FR 55355) or 1–2012 (77 FR 3912), 08–2020 (85 FR 58393), or 07–2025 (90 FR 27878); 29 CFR part 1911; and 5 U.S.C. 553, as applicable.

All of subpart Z issued under 29 U.S.C. 655(b), except those substances that have exposure limits listed in Tables Z–1, Z–2, and Z–3 of § 1910.1000. The latter were issued under 29 U.S.C. 655(a).

Section 1910.1000, Tables Z–1, Z–2 and Z–3 also issued under 5 U.S.C. 553, but not under 29 CFR part 1911 except for the arsenic (organic compounds), benzene, cotton dust, and chromium (VI) listings.

Section 1910.1001 also issued under 40 U.S.C. 3704 and 5 U.S.C. 553.

Section 1910.1002 also issued under 5 U.S.C. 553, but not under 29 U.S.C. 655 or 29 CFR part 1911.

Sections 1910.1018, 1910.1029, and 1910.1200 also issued under 29 U.S.C. 653.

Section 1910.1030 also issued under Public Law 106–430, 114 Stat. 1901.

Section 1910.1201 also issued under 49 U.S.C. 1801–1819 and 5 U.S.C. 553.

■ 2. Amend § 1910.1200 by revising paragraphs (j)(2)(i) and (ii) and (j)(3)(i) and (ii) to read as follows:

§ 1910.1200 Hazard Communication.

* * * * *

(j) * * *
(2) * * *

(i) Manufacturers, importers, and distributors, evaluating substances shall be in compliance with all modified provisions of this section no later than May 19, 2026.

(ii) For substances, all employers shall, as necessary, update any alternative workplace labeling used under paragraph (f)(6) of this section, update the hazard communication program required by paragraph (h)(1) of this section, and provide any additional employee training in accordance with paragraph (h)(3) of this section for newly identified physical hazard, or health hazards or other hazards covered under this section no later than November 20, 2026.

(3) * * *

(i) Chemical manufacturers, importers, and distributors evaluating mixtures shall be in compliance with all modified provisions of this section no later than November 19, 2027.

(ii) For mixtures, all employers shall, as necessary, update any alternative workplace labeling used under paragraph (f)(6) of this section, update the hazard communication program required by paragraph (h)(1) of this section, and provide any additional employee training in accordance with paragraph (h)(3) of this section for newly identified physical hazards, health hazards, or other hazards covered under this section no later than May 19, 2028.

* * * * *

[FR Doc. 2026–00653 Filed 1–14–26; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[SATS No. PA–166–FOR; Docket ID: OSM–2017–0008; S1D1S SS08011000 SX064A000 256S180110; S2D2S SS08011000 SX064A000 25XS501520]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement

(OSMRE), approve an amendment to the Pennsylvania regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendment revises the Pennsylvania program by adding language consistent with section 5 of the Bituminous Mine Subsidence and Land Conservation Act, which specifies circumstances where a finding of presumptive evidence of potential pollution under the Commonwealth's Clean Streams Law is not warranted.

DATES: This rule is effective February 17, 2026.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

- I. Background on the Pennsylvania Program
- II. Submission of the Amendment
- III. OSMRE's Findings
- IV. Summary and Disposition of Comments
- V. OSMRE's Decision
- VI. Statutory and Executive Order Reviews

I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its approved State program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982.

You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Pennsylvania program in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning the Pennsylvania program and program amendments at 30 CFR 938.11, 938.12, 938.13, 938.15 and 938.16.

II. Submission of the Amendment

By letter dated August 4, 2017 (Administrative Record No. PA 899.00), the Pennsylvania Department of Environmental Protection (PADEP) sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). On July

21, 2017, the Pennsylvania General Assembly enacted Act 32, which amended section 5 of the Commonwealth's Bituminous Mine Subsidence and Land Conservation Act (BMSLCA), 52 P.S. 1406.5, by specifying circumstances where a finding of presumptive evidence of potential pollution, as the term "pollution" is defined under the Commonwealth's Clean Streams Law, 35 P.S. 691.1 (Definitions), is not warranted. The specified circumstances appear in new subsections 5(i) and 5(j) (52 P.S. 1406.5(i), -(j)).

Act 32 also amended subsection 9a(d) of BMSLCA, 52 P.S. 1406.9a(d), to except 52 P.S. 1406.5(i) from the rule in subsection 1406.9a(d) prohibiting anything in BMSLCA from being construed to amend, modify, or otherwise supersede any standard contained in the Pennsylvania Clean Streams Law at 35 P.S. 691.1 *et seq.* Notably, the new sections of 52 P.S. 1406.5(i)-(j) are not excepted from the rule at 52 P.S. 1406.9a(d)(1) prohibiting any part of BMSLCA from being construed to amend, modify, or otherwise supersede the standards related to prevailing hydrologic balance in SMCRA. Finally, section 3 of Act 32 specified that the amendments to 52 P.S. 1406.5(i)-(j) apply only to permits issued after October 8, 2005.

We announced receipt of the proposed amendment in the March 12, 2018, **Federal Register** (83 FR 10647). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment period was originally set to end on April 11, 2018. At the request of thirteen citizens, however, we reopened the public comment period and approved a request for a public hearing.

In a May 8, 2018, **Federal Register** notice (83 FR 20774), we erroneously stated that a public hearing would be held on May 1, 2018, with public comment period ending June 7, 2018. But in a May 16, 2018, **Federal Register** notice (83 FR 22607), we published a correction to the public hearing date. As corrected, the public comment period ended on June 15, 2018, and we held a public hearing on May 17, 2018, in Green Tree, Pennsylvania (Administrative record number PA 899.13). We received 55 substantive written comments and additional oral comments at a public hearing which are addressed in the "Public Comments" section of Part IV, "Summary and Disposition of Comments," below.

III. OSMRE's Findings

We are approving the amendment as described below. We made the following findings concerning Pennsylvania's amendment under SMCRA and the Federal regulations at 30 CFR 730.5, 732.15, and 732.17. Any revisions that we do not specifically discuss below concerning non-substantive wording or editorial changes can be found in the full text of the program amendment available at www.regulations.gov, searchable by the docket ID numbers referenced at the top of this notice.

Through Act 32, Pennsylvania added language to section 5 of BMSLCA, 52 P.S. 1406.5, specifying circumstances where a finding of presumptive evidence of potential pollution is not warranted. In particular, 52 P.S. 1406.5(i) states that, in a permit application to conduct underground bituminous coal mining operations, planned subsidence (that is, subsidence occurring in a predictable and controlled manner which is not predicted to result in the permanent disruption of premining existing or designated uses of surface waters) will not be considered presumptive evidence that the proposed operations have the potential to cause "pollution," as that term is defined in section 1 of the Clean Streams Law (Pub. L. 1987, No. 394, 35 P.S. 691.1 *et seq.*).

Act 32 provided language, at 52 P.S. 1406.5(j)(1), that section 52 P.S. 1406.5(i) only applies if (1) a person submits an application to conduct bituminous mining operations that specifically provides for the restoration of the premining range of flows and for restoration of premining biological communities in any waters of Pennsylvania predicted to be adversely affected by subsidence and (2) the application is approved by the Department. Act 32 further states, at 52 P.S. 1406.5(i)(1), that the referenced "restoration" must be consistent with the premining existing and designated uses of the waters of Pennsylvania.

The criteria for permit approval in Pennsylvania's administrative code appear in 25 Pa. Code 86.37. 25 Pa. Code 86.37(a)(3) currently provides that, to obtain a permit, an applicant must demonstrate that there is "no presumptive evidence of potential pollution of the waters of this Commonwealth." Act 32 specifies that planned subsidence in a predictable and controlled manner, which is not predicted to result in the permanent disruption of premining existing or designated uses of Pennsylvania surface waters, will not constitute evidence that

the proposed bituminous coal mining operations have the potential to cause pollution as defined in section 1 of the Clean Streams Law.

While there is no Federal counterpart to 25 Pa. Code 86.37(a)(3), the most closely related provisions for underground mining are found in (1) 30 CFR part 784, which governs permit applications for underground mining and sets forth the minimum requirements for the reclamation and operation plans required of operators and (2) 30 CFR part 817, which sets forth operational performance standards. 30 CFR part 784 includes provisions identifying the information required in reclamation and operation plans submitted during the application process, including information relating to hydrologic conditions (30 CFR 784.14) and fish and wildlife resources (30 CFR 784.21).

For example, 30 CFR 784.14(g) requires that such plans identify the steps to be taken to minimize disturbance to the hydrologic balance from underground mining within and adjacent to the permit area and to prevent material damage to the hydrologic balance outside the permit area. Similarly, 30 CFR 817.41(a) requires that underground mining and reclamation activities be “conducted to minimize disturbance of the hydrologic balance within the permit and adjacent areas, to prevent material damage to the hydrologic balance outside the permit area, and to support approved postmining land uses.” These provisions, including use of the term “minimize,” make clear that some amount of disturbance is permissible, provided it does not rise to the level of material damage.

PADEP, in approving applications for planned subsidence and addressing operational deficiencies, has historically interpreted the provisions in this manner. Act 32 codifies this interpretation and, contrary to the suggestions of several commenters, does not authorize destruction of streams, as we further explain in our responses to public comments in section IV.

We find that the Pennsylvania program, even with the addition of Act 32, exceeds Federal standards. The proposed statutory language leaves intact the regulatory requirement in 25 Pa. Code 86.37(a)(3) that mining applicants demonstrate there is no presumptive evidence of potential pollution and provides that subsidence, done in a predictable and controlled manner that is not predicted to result in the permanent disruption of premining existing or designated uses of surface waters, is not presumptive evidence of

potential pollution. We find this specification to be a proper exercise of regulatory authority given the broad language on presumptive evidence in the current version of 25 Pa. Code 86.37(a)(3).

Even with the addition of Act 32’s specification that properly planned subsidence is not presumptive evidence of potential pollution, the Pennsylvania program remains more effective than the relevant Federal regulations, particularly 30 CFR 784.14, 784.21, and 817.41, as discussed below. It also remains more stringent than section 516 of SMCRA (30 U.S.C. 1266).

Specifically, 30 U.S.C. 1266 provides that mine operators must “minimize” disturbances to the prevailing hydrologic balance and “avoid” acid or other mine drainage. By contrast, Pennsylvania’s Act 32 imposes an affirmative duty on permit applicants to demonstrate the absence of any “presumptive evidence of potential pollution,” even while limiting the scope of what automatically qualifies as such presumptive evidence. Moreover, section 5(j) of Act 32 provides that this exemption from presumptive evidence of pollution is only available when the permit application provides for the restoration of the premining range of flows and restoration of premining biological communities in any waters predicted to be adversely affected by subsidence, and that the restoration shall be consistent with the premining existing and designated uses of the waters of Pennsylvania.

Even as amended by Act 32, Pennsylvania’s regulatory scheme promotes the core objective of 30 U.S.C. 1266(b)(9), which is to minimize disturbances to the prevailing hydrologic balance at the minesite and in associated offsite areas and to the quantity of water in surface groundwater systems both during and after coal mining operations and during reclamation. Thus, the Pennsylvania regulatory scheme remains in accordance with SMCRA and consistent with (and more stringent than) the Federal regulations.

For these reasons, we are approving the proposed changes.

IV. Summary and Disposition of Comments

Public Comments

We announced the receipt of the proposed amendment in the March 12, 2018, **Federal Register** (83 FR 10647). In the same notice, we initially opened the public comment period through April 11, 2018, and provided an opportunity for a public hearing or meeting on the

adequacy of the amendment. As discussed in section II, above, the comment period was extended to June 15, 2018, and a public hearing was held in Green Tree, Pennsylvania, on May 17, 2018.

Public comments were received in writing and orally at the public hearing. Seven individuals spoke at the public hearing (three opposed to Act 32 and four in favor). Additionally, we received written public comments during the comment period. The substantive comments about the amendment that we received are summarized below, which also includes our responses. In addition, we received 62 non-substantive comments or comments that are beyond the scope of this amendment; no response to those comments are necessary. The comments are available in their entirety at www.regulations.gov.

Comment 1: This commenter opposed the amendment and raised specific concerns about the amendment’s consistency with a premise in the Pennsylvania regulatory scheme that if someone can show that mining will cause irreparable stream damage, no permit will be issued.

OSMRE Response: We disagree with the commenter’s characterization of the Pennsylvania program. Both before and after the enactment of Act 32, under the Pennsylvania program, the operator is required to demonstrate the absence of presumptive evidence of pollution. The proposed amendment simply adds that, if planned subsidence will be done in a predictable and controlled manner and is not predicted to result in the permanent disruption of streams, then it will not be considered presumptive evidence of pollution under the Clean Streams Law. In addition, this exemption is only available when the operator’s application provides for the restoration of the premining range of flows and restoration of premining biological communities predicted to be adversely affected by subsidence, and that such restoration is consistent with the premining existing and designated uses of Pennsylvania waters. Furthermore, to undertake planned subsidence, an operator must obtain approval from PADEP. This approval must be based on PADEP’s technical review of applications and supporting data. Under section 5(j) of Act 32, PADEP must conclude that the application adequately “provide[s] for” restoration of premining flows and premining biological communities.

Comment 2: Commenter stated that Act 32 fails to regulate and protect the common resources of State streams.

OSMRE Response: We disagree with the commenter’s assessment of the

proposed amendment; Act 32 clarifies the Pennsylvania regulatory program, and, operating in conjunction with the existing regulatory scheme, the program is in accordance with SMCRA and consistent with the Federal regulations that govern the protections for streams potentially impacted by coal mining. Section 5(j) ensures that permit applications specifically “provide for” restoration of the premining range of flows and for restoration of premining biological communities. It also directs that “restoration” be consistent with the premining existing and designated uses of the water resources. These additional regulatory requirements have no specific counterparts in the Federal regulations, and we find they make the Pennsylvania program more stringent than SMCRA in regard to hydrologic balance. Before enactment of Act 32, planned subsidence was allowable under long-standing practice, supported by PADEP’s view that it does not constitute presumptive evidence of pollution under the Clean Streams Law. Act 32 codifies that practice, which clarifies the law for operators, regulators, and the public. As noted, it also adds a safeguard by requiring operators that seek approval of planned subsidence to submit applications that “provide for” restoration of premining flows and premining biological communities. Additional safeguards are discussed in the responses to comments below.

Comment 3: Commenter claimed that most longwall mines dewater the streams above them, and this dewatering is often complete. Commenter claimed that, when this occurs, industry is unable to restore both the premining flow and the premining aquatic biology, which means that the damage to streams is often not repairable, and the water chemistry irreparably affected.

OSMRE Response: Under Federal and Pennsylvania law both before and after Act 32, “perfect” stream restoration is not required. Subsection 516(b)(1) of SMCRA (30 U.S.C. 1266(b)(1)) regulates surface effects of underground mining, requiring operators to adopt measures “consistent with known technology in order to prevent subsidence causing material damage to the extent technologically and economically feasible.” This standard is echoed in Pennsylvania law at 52 P.S. § 1406.5(e). In addition, subsection 516(b)(9) of SMCRA requires that activities be conducted to “minimize disturbance of the hydrologic balance within the permit and adjacent areas, to prevent material damage to the hydrologic balance outside the permit area, and to

support approved postmining land uses.” OSMRE’s regulations echo and reinforce these requirements. Under 30 CFR 817.41, underground mining and reclamation activities must be “conducted to minimize disturbance of the hydrologic balance within the permit and adjacent areas, to prevent material damage to the hydrologic balance outside the permit area, and to support approved postmining land uses.” As these provisions make clear, some amount of damage is permissible, provided it does not rise to the level of material damage. If it rises to material damage, remedies and enforcement mechanisms for addressing damage exist under the Pennsylvania program and the Federal regulations. *See, e.g.*, 25 Pa. Code § 86.211 (abatement orders); 25 Pa. Code § 86.194(b)(1)(i) (assessment of civil penalties for “damage or injury to the lands or to the waters . . . or their uses”); 30 CFR 843.11 (federal cessation orders, including imposition of “affirmative obligations” on the permittee to abate “imminent danger or significant environmental harm”). For all these reasons, we disagree with commenter’s suggestion that risk of dewatering or impacting water chemistry precludes approval of Act 32. In our oversight role, we will continue to monitor success with stream restoration following planned subsidence in accordance with the applicable standards.

Comment 4: Commenter pointed to proposed section 5(i), which adds planned subsidence to the circumstances where a finding of presumptive evidence of potential pollution is not warranted, and contended that operators will never predict permanent damage because there is “no solid evidence to assure [any disruption] won’t be permanent.”

OSMRE Response: Permit applications and supporting data are reviewed by PADEP technical staff. If an application predicts no permanent damage but the operational plans or supporting data (considered in light of site geology and hydrology) fail to support that prediction, PADEP would be obligated to disapprove the application. If an interested party objects to how PADEP exercises its discretionary authority and applies its technical expertise in approving planned subsidence, legal mechanisms exist for challenging PADEP’s approval, including appeal to Pennsylvania’s Environmental Hearings Board. Commenters’ concern that permanent damage is never predicted (and the implication that it would be carelessly approved) do not make Act 32 less stringent or less effective than SMCRA

or its implementing regulations, which is the standard governing OSMRE approval of state program amendments.

Comment 5: Commenter stated that the amendment is an attempt to ensure that environmental groups cannot argue that a longwall mine that predicts dewatering damage should be denied a permit.

OSMRE Response: Permit applications and supporting data are reviewed by PADEP technical staff. If an application predicts no permanent damage but the operational plans or supporting data (considered in light of site geology and hydrology) fail to support that prediction, PADEP would be obligated to disapprove the application. If an interested party objects to the how PADEP exercises its discretionary authority and applies its technical expertise in approving the permit, legal mechanisms exist for individuals or groups to challenge PADEP’s approval, including appeal to Pennsylvania’s Environmental Hearings Board. We recognize the commenter may be referring to a recent appeal of a PADEP permitting decision before Pennsylvania’s Environmental Hearings Board (Docket No. 2014–072–BP), in which the groups argued any stream subsidence is pollution within the meaning of the Clean Streams Law and that permit approval in such circumstances is unlawful. While the amendment may dissuade these groups from arguing in the future that subsidence is pollution, the fact is the legislature simply agreed with PADEP’s view (consistent with long-standing practice) that properly planned subsidence is not pollution within the meaning of the Clean Streams Law, and it enacted Act 32 to make that point explicit. OSMRE has no reason or authority to question the motives of the legislature or PADEP in submitting the proposed amendment. OSMRE must assure that a proposed amendment is in accordance with SMCRA and consistent with the relevant Federal regulations. In the case of Act 32, we conclude that it is.

Comment 6: Commenters opposed the amendment and argue that Act 32 was a response to the litigation discussed in comment 4, that it was intended to extinguish the arguments of the conservation organizations, and that the Pennsylvania legislature enacted Act 32 to “weaken the protections afforded to Pennsylvania streams and allow destruction of public natural resources for private profit.”

OSMRE Response: We refer commenters to our response to comment 4, in particular, our statement that it is our duty to assess the proposed

amendment to ensure that it is in accordance with SMCRA and consistent with the Federal regulations, which Act 32 is.

Comment 7: Commenters opined that the provisions in Act 32 are not in accordance with SMCRA and its implementing regulations because Act 32 does not adequately protect waters of the Commonwealth and their existing and designated uses.

OSMRE Response: We disagree with commenters' conclusion that Act 32 does not adequately protect streams. For the reasons stated in our response to comment 2, we believe it enhances stream protection over the level required by SMCRA and the Federal regulations. Under the proposed amendment, an operator seeking authorization for planned subsidence must submit an application that "provides for" restoration of the "premining range of flows" and restoration of "premining biological communities" in waters predicted to be adversely affected by subsidence, a provision that has no counterpart in the Federal regulations. Pennsylvania's previously approved program remains in effect, and Act 32 enhances that program, while codifying PADEP's long-standing regulatory interpretation of what constitutes evidence of presumptive pollution, which gives Act 32 a limited substantive effect. If commenters are concerned that the existing Pennsylvania program is inadequate, SMCRA provides other avenues for that challenge; however, for this amendment, we are only looking at the changes made to the Pennsylvania program by Act 32, which are in accordance with SMCRA and consistent with the Federal regulations.

Comment 8: Commenters stated that Act 32 was enacted for the sole benefit and private profit of the coal mining industry, and they alleged that article III, section 32, of the Pennsylvania Constitution prohibits such "special laws." Another commenter reiterated this concern and provided that "special laws" include laws granting special privileges to a "select industry," which does not serve to promote the general welfare of the public.

OSMRE Response: OSMRE has no authority to review whether acts of the Pennsylvania legislature violate the Pennsylvania Constitution. Our review of proposed amendments to the Pennsylvania program is limited to ensuring that such changes are in accordance with SMCRA and consistent with the Federal regulations.

Comment 9: Commenters stated that Act 32 attempts to exempt predicted impairment of streams from the Clean

Streams Law and that this contradicts Federal water quality standards required under the Clean Water Act.

OSMRE Response: We disagree with this characterization of the amendment. The Pennsylvania program, with the addition of Act 32, requires operators to submit applications; these applications now must include the supporting analysis and data that was contained in PADEP's 2005 Technical Guidance Document (TGD) and must "provide for" the restoration of premining flows and premining biological communities. The TGD set out PADEP's process for evaluating the sufficiency of mitigation plans for mining operations predicting flow loss to ensure that mitigation and restoration measures would restore protected uses. Act 32 codifies this process into law and eliminates PADEP discretion to deviate from its now-codified interpretation.

Act 32 also makes clear that planned subsidence, which meets existing regulatory requirements (as well as the regulatory requirements in Act 32), is not presumptive evidence of pollution. However, technical staff at PADEP still must apply their expertise to the applications and supporting data to make predictive judgments in approving permits allowing planned subsidence to ensure the regulatory requirements are met. They make this determination within the construct of the approved Pennsylvania program, which includes various regulations that we have found to be consistent with Federal standards for protecting the hydrologic balance at coal mining sites. In particular, the Pennsylvania program has been found to be consistent with the Federal regulation at 30 CFR 817.42 (Water quality standards and effluent limitations). Section 817.42 provides that water discharges "shall be made in compliance with all applicable State and Federal water quality laws and regulations and with the effluent limitations for coal mining promulgated by the [EPA] set forth in 40 CFR part 434," and this includes the Clean Water Act. Act 32 makes no change to this part of the Pennsylvania program's regulatory scheme pertaining to water quality and effluent limitations, except to the extent it strengthens stream protection through the specific requirements of section 5(j) of the Act (in particular, the requirement that an application "provide for" restoration of premining flows and premining biological communities). As these prior regulations in the Pennsylvania program require water discharges be in compliance with the Clean Water Act, we fail to see how Act 32 would contradict this existing requirement.

Comment 10: Commenters stated that Act 32 creates an exception to State water quality standards and antidegradation standards, where operators predict subsidence-induced impairment to uses of overlying streams. According to commenters, such revisions to state water quality programs are not effective until approved by EPA under 40 CFR 123.62; therefore, this requirement necessitates, at the very least, consulting with EPA before making a decision approving the amendment.

OSMRE Response: As explained in the response to comment 9, Act 32 neither revises water quality standards or antidegradation standards nor does it create any exceptions or exemptions. Further, OSMRE did seek EPA comment, but EPA declined to comment.

Comment 11: Commenters opined that the amendment is incompatible with PADEP's duties as a trustee of Pennsylvania's public natural resources under article I, section 27 of the Pennsylvania Constitution, which protects individual environmental rights of citizens (citing *Robinson Township v. Commonwealth*, 83 A.3d 901 (Pa. 2013)).

OSMRE Response: OSMRE has no authority to review whether acts of the Pennsylvania legislature violate the Pennsylvania Constitution. Our review of proposed amendments to the Pennsylvania mining program is limited to ensuring that the proposed amendments are in accordance with SMCRA and consistent with the Federal regulations.

Comment 12: Commenter raised concerns that the amendment would allow "predicted adverse stream impacts . . . with no assurance that those adverse effects will ever be corrected."

OSMRE Response: The commenter misstates the relevant standard. Under 30 CFR 817.41(a), mining activities must be conducted "to minimize disturbance of the hydrologic balance" and to "prevent material damage to the hydrologic balance outside the permit area." As discussed in the response to comment 3, some amount of damage is permissible, provided it does not rise to the level of material damage.

Comment 13: Commenter stated that the amendment allows damage to streams and employs "Orwellian doublespeak to declare that such damages are not a violation of the Pennsylvania Clean Streams Law."

OSMRE Response: We refer the commenter to the responses in comments 3, and 12. SMCRA does not prohibit adverse impacts to streams; it

only prohibits those impacts that rise to the level of material damage outside of the permit area. Act 32 does not change the standard by which we review program amendments for consistency with the Federal regulations.

Comment 14: Commenter stated that accurate predictions as to whether undermined streams are likely to experience significant flow loss still are not being made, indicating that at least six streams had been irreparably damaged during the 2003–2008 period.

OSMRE Response: As discussed in response to the responses in comments 3, “perfect” stream restoration is not required under preexisting Pennsylvania and Federal law. SMCRA does not prohibit any impacts to streams. OSMRE cannot disapprove an amendment unless it is not in accordance with SMCRA or inconsistent with the Federal regulations.

Comment 15: Commenters noted that PADEP must prepare assessments on the effects of underground mining every five years and claimed that those assessments “consistently demonstrate” that damages from longwall mines have been increasing in numbers and severity over time and that repair of damage to “natural features particularly streams cannot be assured.” They cited a 2014 PADEP report that said the ability to repair stream damage “remains largely unknown.” Similarly, commenters stated that stream restoration “still is in its infancy” and does not have a “documented record of success.” Another commenter cited a 2012 report indicating that current stream restoration practices “cannot be assumed to provide demonstrable physical, chemical, or biological functional improvements” and cited additional studies, in 2002, 2003 and 2014 reaching similar conclusions.

OSMRE Response: As discussed in the response to comment 3, “perfect” stream restoration is not required under preexisting Federal law or even under the Pennsylvania program (either before or after the enactment of Act 32). SMCRA does not prohibit impacts so long as those impact do not rise to the level of material damage outside the permit area. OSMRE cannot disapprove an amendment unless it is not in accordance with SMCRA or inconsistent with the Federal regulations.

Comment 16: Because predicting restoration is difficult and because full restoration has a low chance of occurring, this commenter suggested that OSMRE should disapprove the amendment.

OSMRE Response: The relevant standard for OSMRE to approve a program amendment is whether the

amendment is “in accordance with” SMCRA and “consistent with” the Federal regulations as those terms are defined in 30 CFR 830.5. As we explain in the Findings and in the response to comment 3, Act 32 meets these standards. The comment appears to ignore the role of PADEP’s expert technical staff who review and approve applications under the requirements of Pennsylvania’s approved program. As discussed in the response to comment 4, if an application predicts no permanent damage but the operational plans or supporting data (considered in light of site geology and hydrology) fail to support that prediction, PADEP would be obligated to disapprove the permit application.

Comment 17: Commenter stated that approval of this amendment would be contrary to 30 CFR 817.41, which directs that underground mining be conducted to minimize disturbance to the hydrologic balance within the permit and adjacent areas, to prevent material damage to the hydrologic balance outside the permit area, and to support approved postmining land use(s).

OSMRE Response: We disagree. Approving Act 32 does not change the standards for protecting the hydrologic balance in Pennsylvania’s approved program below what is required in 30 CFR 817.41 and the other Federal regulations. As discussed in the response to comment 9 and elsewhere, Act 32 codifies PADEP’s prior regulatory interpretation of what constitutes evidence of presumptive pollution and adds requirements that strengthen stream protections. In particular, section 5(j) of Act 32 requires that permit applications specifically “provide for” restoration of the premining range of flows and for restoration of premining biological communities, which is a standard above that found in the Federal regulations. Thus, the Pennsylvania program with Act 32 is no less stringent than SMCRA and no less effective than the Federal regulations with regard to the protection of the hydrologic balance.

Comment 18: Commenter opined that approving the amendment would violate three SMCRA regulations—(i) 30 CFR 783.10 (requiring that each applicant provide an adequate description of the environmental baseline), (ii) 30 CFR 784.14 (requiring baseline hydrologic information); and (iii) 30 CFR 783.2 (requiring that applicants provide a complete and accurate description of the environmental resources that may be impacted or affected by proposed underground mining activities)—

because the amendment allows applicants to predict there will be no permanent disruption of premining uses and predicting is uncertain.

OSMRE Response: We disagree with the contention that Act 32 violates the cited provisions. As discussed above, Act 32 is more stringent than SMCRA and no less effective than the Federal regulations; Act 32 adds to the stream protections of SMCRA and makes no changes to the portions of the Pennsylvania program that give effect to the cited Federal regulations. In addition, the comment appears to ignore the role of PADEP’s expert technical staff who review and approve each application under requirements of the approved Pennsylvania program. As discussed in the response to comment 4, if an application predicts no permanent damage but the PADEP expert technical staff who review the operational plans or supporting data (considered in light of site geology and hydrology) determine that the application fails to support that prediction, PADEP would be obligated to disapprove the application.

Comment 19: Commenter stated that PADEP compiled no evidence to determine the reliability of such predictions, despite numerous requests to gather such evidence, and imposed no consequences on applicants who wrongly predicted no permanent damage.

OSMRE Response: We disagree. The commenter appears to ignore Act 32’s narrow scope, which leaves the other provisions of the current Pennsylvania program intact while codifying PADEP’s long-standing regulatory interpretation of what constitutes evidence of presumptive pollution and adding safeguards that enhance stream protections. We also note that the Pennsylvania program and Federal regulations include numerous enforcement mechanisms, including penalties and cessation orders, as discussed in the response to comment 3.

Comment 20: Commenter raised concerns that approving the amendment would violate unspecified provisions of Subchapter J, 30 CFR part 800 (Bond and Insurance Requirements), by removing “any assignment or determination of liability” and thereby negating any need for performance bonds.

OSMRE Response: We believe the commenter is incorrect in suggesting that Act 32 somehow negates the need for performance bonds. Pennsylvania’s bonding requirements in Subchapter F of Chapter 86, Title 25, will still apply following approval. Act 32 neither addresses bonding and nor amends

Pennsylvania's approved bonding scheme.

Comment 21: Commenter alleged that 30 CFR 732.15(c) prohibits state program provisions that interfere with or preclude implementation of SMCRA.

OSMRE Response: Although the commenter failed to provide a reason explaining how Act 32 purportedly interferes with or precludes implementation of SMCRA, we have reviewed Act 32 and compared it to SMCRA and the Federal regulations and disagree with the commenter's allegation. As discussed in the Findings section and in the response to comment 4, OSMRE must assure that a proposed amendment is in accordance with SMCRA and consistent with the Federal regulations. In the case of Act 32, after our review, we conclude that it meets that standard.

Comment 22: Commenter claimed that the amendment violates section 303 of the Clean Water Act and EPA's antidegradation regulations, which mandate that when the regulatory authority approves coal mining permits or approvals, it must ensure that the existing and designated uses of surface waters are maintained and protected.

OSMRE Response: Section 303 of the Clean Water Act sets forth an "anti-degradation policy," which requires that state standards be sufficient to maintain existing beneficial uses of navigable waters, preventing their further degradation. See 33 U.S.C. 1313(d)(4)(B). Pennsylvania's Clean Water Act program has met these requirements, and SMCRA provides that nothing in it can "be construed as superseding, amending, modifying or repealing" the Clean Water Act. See 30 U.S.C. 1292(a)(3). Act 32 does not change the fact that Pennsylvania must comply with the remainder of its SMCRA regulatory program and with all applicable portions of the Clean Water Act, including the anti-degradation policy. Rather, Act 32 leaves the rest of the current Pennsylvania SMCRA regulatory program as well as the Clean Water Act requirements intact. Act 32 simply codifies PADEP's long-standing regulatory interpretation of what constitutes evidence of presumptive pollution and adds safeguards that enhance stream protections. Moreover, as noted above we sought comments from EPA, which regulates the Clean Water Act, but EPA did not provide any comments.

Comment 23: Commenter suggested that the amendment will lead to the wholesale destruction of streams in coalfields where longwall mining occurs. According to the commenter, mine operators will no longer need to

make even a pretense of trying to avoid or minimize damage to streams.

OSMRE Response: As stated above, we conclude that Act 32 enhances and clarifies the existing Pennsylvania regulatory program. Section 516(b)(9) of SMCRA directs that permits require operators to minimize disturbances to the "prevailing hydrologic balance" and to the "quantity of water in surface ground water systems both during and after coal mining operations and during reclamation." See 30 U.S.C. 1266(b)(9). Pennsylvania's approach is more rigorous than that standard. As discussed in response to comment 2, Act 32 operates in conjunction with the existing regulatory scheme and expressly requires that permit applications "provide for" restoration of premining range of flows and restoration of premining biological communities. There is no comparable requirement in SMCRA that requires those restoration metrics. Act 32 imposes on operators the additional duty of demonstrating the absence of "presumptive evidence of potential pollution," something also not required by SMCRA or its implementing regulations. Given the protections in the Pennsylvania program, which is in accordance with SMCRA and consistent with the Federal regulations, we disagree with this commenter's allegations.

Comment 24: Commenter asserted that changes in baseflow of a stream can have "marked effects on the integrity of macroinvertebrate communities in stream ecosystems."

OSMRE Response: We agree that changes in baseflow can affect stream biology, but that fact does not support disapproval of this amendment. Planned subsidence is permissible under SMCRA and the approved Pennsylvania program. Act 32 clarifies the Pennsylvania program in regard to presumptive evidence of pollution and enhances the permitting process by adding greater stream protections, including the restoration of premining biological communities, as discussed in the response to comments 2 and 23.

Comment 25: Commenter requested that the scope of "biological communities" be more clearly defined and include invertebrate, algal, and piscivorous species, among others.

OSMRE Response: While we understand the commenter's request, the fact that Pennsylvania could have more clearly defined "biological communities" does not make the amendment not in accordance with SMCRA or inconsistent with the Federal regulations. If Pennsylvania later determines that additional clarification

of that term is necessary, Pennsylvania could always propose another amendment to their program to further define this term.

Comment 26: Commenter stated that the proposed changes do not facilitate the goals of the Clean Streams Law because altered streamflow regimes can adversely impact health of ecosystems, which will not lead to their net improvement.

OSMRE Response: We agree that altered streamflow can adversely impact stream ecosystems, but we note that "net improvement" is not a requirement under the Clean Streams Law or SMCRA. Instead, the SMCRA standard for approving a program amendment requires us to determine whether the amendment is in accordance with SMCRA and consistent with the Federal regulations as those terms are defined in 30 CFR 730.5. The applicable Federal regulation is 30 CFR 817.41(a), which requires that mining activities be conducted "to minimize disturbance of the hydrologic balance" and to "prevent material damage to the hydrologic balance outside the permit area." SMCRA's standards do not require "net improvement." As discussed in the response to comment 3, some amount of damage is permissible so long as it does not rise above the acceptable level of damage. If it does, remedies and enforcement mechanisms for addressing damage exist under the Pennsylvania program and Federal regulations.

Comment 27: Commenter raised concerns that Act 32 seeks to weaken the protections afforded to streams and allows the destruction of public natural resources for private profit.

OSMRE Response: We disagree and believe that Act 32 enhances the Pennsylvania program, as discussed in the responses in comments 2 and 23.

Comment 28: Commenter asserted that Act 32 "contradicts the minimum statutory floors" in Part 817 of SMCRA, referring specifically to 30 CFR 817.41(a), and contended that Act 32 violates the requirement that mining activities be conducted "to minimize disturbance of the hydrologic balance" and to "prevent material damage to the hydrologic balance outside the permit area."

OSMRE Response: As noted in our response to comment 26, we do not agree that Act 32 violates or contradicts 30 CFR 817.41(a). The current Pennsylvania program meets the standard of section 817.41, and, as explained further in the responses to comments 2 and 23, the addition of Act 32 serves to clarify and enhance the existing program.

Comment 29: Commenter stated that Act 32 uses “dangerously vague language,” by not defining “permanent,” as used in sec. 5(i), which provides that applications for planned subsidence cannot be approved if they predict “permanent disruption of premining existing or designated uses of surface waters”

OSMRE Response: Courts read terms in a statute or regulation that are not defined according to their plain meaning, a rule we observe in this instance. The absence of a definition for “permanent” in Act 32 does not demand disapproval of the amendment.

Comment 30: Commenter stated that healthy ephemeral streams could be predicted to change to intermittent streams which “would then essentially be gone” and their “aquatic life largely wiped out for [up to decades] before any restoration to premining flow occurs.”

OSMRE Response: While we recognize this possibility exists, we note that the approved Pennsylvania program includes numerous regulatory requirements serving as safeguards to assist in avoiding such outcomes, as discussed in the response to comment 6. As discussed in the response to comments 2 and 23, Act 32, with the new requirements related to restoration of premining range of flows and biological communities should actually enhance stream protections over the minimum standards contained in SMCRA and makes the outcomes described by the commenter less likely. Under the approved Pennsylvania program, technical staff at PADEP will apply their expertise to the applications and supporting data to make predictive judgments in approving planned subsidence. Act 32 does not change this requirement, except to the extent it enhances stream protection, as discussed throughout these comment responses.

Comment 31: Commenter states successful restoration is “extraordinarily difficult” to predict and argues Act 32 should not be approved because it “banks heavily on the viability of successful stream restoration techniques,” adding that “banking on modern day methodology to prevent future harms can and does fail.”

OSMRE Response: We refer the commenter to the responses to comments 16 and 23.

Comment 32: Commenter suggested that Act 32 was intended to “affirm the PADEP interpretation of the Clean Streams Law allowing temporary material damage to water resources from ‘planned subsidence’ provided that a plan was submitted to restore the

damaged resource.” Commenter also stated that Act 32 seeks to “legislatively resolve the question left open in” *UMCO Energy v. Department of Environmental Protection*, 938 A.2d 530 (2007).

OSMRE Response: We refer commenters to the response to comment 5, including the statement that it is the duty of PADEP and OSMRE to faithfully execute the law and that OSMRE has no reason or authority to question the legislature’s motives. It is our duty is to assess the proposed amendment under the SMCRA standard discussed in the response to comment 3.

Comment 33: Commenter stated that Act 32 “eliminates the presumption that planned subsidence . . . has the potential to cause pollution, provided that the permit application contains a plan to restore [premining flows and biological communities].”

OSMRE Response: This comment mischaracterizes the effect of section 5(j) of Act 32. Even prior to the enactment of Act 32, under the approved Pennsylvania program, there was no blanket presumption that planned subsidence has the potential to cause pollution; thus, the enactment of Act 32 could not cause such presumption to be eliminated. We recognize, however, that Act 32 does add language to section 5 of the Bituminous Mine Subsidence and Land Conversation Act, which specifies that planned subsidence meeting regulatory requirements is not a circumstance where a finding of presumptive evidence of potential pollution under the Clean Streams Law is warranted.

Comment 34: Commenter alleged that Act 32 ignores “temporal losses” of a stream’s “function, use, and values” and “sanctions temporary impacts on [water resources] in a fashion repugnant to SMCRA.”

OSMRE Response: Nothing in SMCRA would prohibit temporal losses; SMCRA requires restoration after subsidence, which necessarily means that temporal losses are expected under SMCRA between the time of impact and restoration. As discussed in the response to comment 3, some degree of disturbance is allowable under SMCRA; Act 32 does not go beyond what is allowable.

Comment 35: Commenter stated that Act 32 is arbitrary, capricious, and inconsistent with law as a matter of law and as a matter of fact and because it excludes temporary damage from “pollution.”

OSMRE Response: We disagree. As stated in responses other comments and our findings, the amendments made to the Pennsylvania program by Act 32 are

in accordance with SMCRA and consistent with the Federal regulations.

Comment 36: Commenter extensively summarized the law (including prior OSMRE rulemakings on protection of the hydrologic balance and prevention of material damage) and asserts that the Pennsylvania legislature “cannot linguistically redefine ‘pollution’ in a manner that effectively redefines ‘material damage’ . . . to mean only permanent or irreparable material damage.”

OSMRE Response: As stated elsewhere in this preamble, we do not believe Act 32 lowers the standard of “material damage” below the standard set forth in SMCRA. As stated in the response to comment 2, even before the enactment of Act 32, planned subsidence was permissible under the Pennsylvania program and PADEP’s long-standing practice. This practice was supported by PADEP’s view that planned subsidence, in and of itself, does not constitute presumptive evidence of pollution under the Clean Streams Law. While we recognize that some commenters may have a different interpretation, Act 32 codifies the interpretation that had previously been used by PADEP, which clarifies the operative standard for operators, regulators, and the public.

Comment 37: Commenter contended that neither the factual record nor the law supports approval of a state program amendment allowing PADEP the authority to approve planned subsidence “without an affirmative demonstration by the permit applicant and a finding by the agency” that the operation is designed to “‘prevent material damage to the hydrologic balance outside the permit area’ inclusive of both permanent and temporary interference with the designated and actual uses of the waterbody due to subsidence.”

OSMRE Response: Act 32 did not change the requirement of the approved Pennsylvania program at 25 Pa. Code § 86.37(a) that mandates that an application cannot be approved unless the application “affirmatively demonstrates and [PADEP] finds, in writing, on the basis of the information in the application or from information otherwise available,” that the “activities proposed under the application have been designed to prevent material damage to the hydrologic balance outside the proposed permit area.” In addition, under section 5(j) of Act 32, operators are required to make an affirmative demonstration sufficient for PADEP to conclude that the application adequately “provide[s] for” restoration of premining flows and premining

biological communities. Thus, PADEP still must make the findings required by SMCRA related to material damage caused by underground mining.

Comment 38: Commenter raised concerns that the amendment creates an exemption to an 80-year-old law that protects streams and water supplies and will allow mining companies to predictably damage or pollute streams based on a promise to clean them up later.

OSMRE Response: We disagree with the commenter's characterization of the amendment. As explained in the response to comment 7, Act 32 codifies PADEP's prior interpretation of what constitutes evidence of presumptive pollution and adds requirements that strengthen stream protection. To describe Act 32 as creating an exemption to Pennsylvania's Clean Streams Law would ignore PADEP's long-standing practice and regulatory interpretation that law's application to underground mining with planned subsidence.

Comment 39: Commenter noted that PADEP identified six streams in December 2012 as having been irreparably damaged after being dewatered, and, restoration of those streams were unsuccessful after five years.

OSMRE Response: While stream damage, such as the commenter has described, has occurred in the past, neither that fact nor the fact that PADEP has overseen many successful restorations is the standard by which we evaluate a proposed state program amendment. The Pennsylvania program, as amended by Act 32 and in accordance with SMCRA and consistent with the Federal regulations, does not require perfect restoration. Some amount of damage is permissible under these authorities, provided it does not rise to the level of material damage. If it does rise to the level of material damage, in accordance with SMCRA and consistent with the Federal regulations, the Pennsylvania program contains remedies and enforcement mechanisms to allow PADEP to address such a violation.

Comment 40: Commenter requested an extension of the comment period, because of the "horrendous damage this change would allow to Pennsylvania streams."

OSMRE Response: As indicated in section II, OSMRE extended the comment period April 11, 2018, to June 15, 2018. We disagree with commenter's allegation regarding the consequences of this amendment. As discussed in the Findings and in responses to comments 2 and 3, by imposing on operators a

duty of affirmatively demonstrating the absence of any "presumptive evidence of potential pollution," even while excepting planned subsidence from the demonstration, the proposed amendment promotes the core objective of subsection 516(b)(9) of SMCRA.

Comment 41: Commenter claimed that changes in baseflow can have "marked effects on the integrity of macroinvertebrate communities in stream ecosystems."

OSMRE Response: We agree that changes in baseflow can affect stream biology, but this fact is not a reason for disapproval. Planned subsidence is permissible under SMCRA and the approved State program. Act 32 clarifies the Pennsylvania program with regard to presumptive evidence of pollution and enhances the permitting process by adding greater stream protections, as discussed in the response to comments 2, and 23

Comment 42: Commenter stated that the scope of "biological communities" should be more clearly defined and should include invertebrate, algal, and piscivorous species, among others.

OSMRE Response: While we understand why the commenter suggested that a definition of "biological communities" be included, such a definition is not necessary for us to consider and approve this amendment. As written the proposed amendment is in accordance with SMCRA and consistent with the Federal regulations, as discussed in the response to comments 2 and 23.

At a public hearing in Green Tree, PA, OSMRE heard from three individuals opposed to the amendment. The comments in opposition to the proposed amendment raised concerns similar to those set out above and are addressed by these responses. At the same public hearing, OSMRE heard statements from four individuals in favor of the proposed amendment, who indicated, among other things, that Act 32 reaffirms the permitting protocols already employed under the Pennsylvania program and does not lessen existing standards; long wall mining is consistent with section 516 of SMCRA, which has been construed as allowing use of longwall mining methods; and some amount of stream damage is permissible so long as it does not rise to the level of material damage. We generally agree with these statements, and we appreciate all parties' participation in the process.

Federal Agency Comments

On February 21, 2019, pursuant to 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA (30 U.S.C. 1253(b)), we

requested comments on the amendment from various Federal agencies with an actual or potential interest in the Pennsylvania program (Administrative Record No. PA-899). We did not receive any comments.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to obtain written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Pennsylvania proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, on August 7, 2017, under 30 CFR 732.17(h)(11)(i), we requested comments from the EPA on the amendment (Administrative Record No. PA-899.00). The EPA responded (Administrative Records No. PA-899.003) via letter dated October 31, 2017, that they have reviewed the proposed amendment and would not be providing comments.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On August 7, 2017, we requested comments on the amendment (Administrative Record No. PA-899). We did not receive any comments.

V. OSMRE's Decision

Based on the above findings, we are approving the Pennsylvania amendment that was submitted on August 4, 2017 (Administrative Record No. PA-899.00). To implement this decision, we are amending the Federal regulations at 30 CFR part 938 that codify decisions concerning the Pennsylvania program. In accordance with the Administrative Procedure Act (5 U.S.C. 553), this rule will take effect 30 days after the date of publication.

VI. Statutory and Executive Order Reviews

Executive Order 12630—Governmental Actions and Interference With Constitutionally Protected Property Rights

This rule would not affect a taking of private property or otherwise have taking implications that would result in

public property being taken for government use without just compensation under the law. Therefore, a takings implication assessment is not required. This determination is based on an analysis of the corresponding Federal regulations.

Executive Order 12866—Regulatory Planning and Review and Executive Order 13563—Improving Regulation and Regulatory Review

Executive Order 12866, provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993 (OMB Memo M–94–3), the approval of State program amendments is exempted from OMB review under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has reviewed this rule as required by section 3 of Executive Order 12988. The Department has determined that this **Federal Register** document meets the criteria of section 3 of Executive Order 12988, which is intended to ensure that the agency review its legislation and proposed regulations to eliminate drafting errors and ambiguity; that the agency write its legislation and regulations to minimize litigation; and that the agency's legislation and regulations provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Because section 3 focuses on the quality of Federal legislation and regulations, the Department limited its review under this Executive order to the quality of this **Federal Register** document and to changes to the Federal regulations. The review under this Executive order did not extend to the language of the State regulatory program or to the program amendment that the Commonwealth of Pennsylvania drafted.

Executive Order 13132—Federalism

This rule has potential federalism implications as defined under section 1(a) of Executive Order 13132. Executive Order 13132 directs agencies to “grant the States the maximum administrative discretion possible” with respect to Federal statutes and regulations administered by the States. Pennsylvania, through its approved regulatory program, implements and administers SMCRA and its implementing regulations at the state level. This rule approves an amendment to the Pennsylvania program submitted and drafted by the State and, thus, is

consistent with the direction to provide maximum administrative discretion to States.

Executive Order 13175—Consultation and Coordination With Indian Tribal Government

The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their right to Tribal self-governance and sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on the distribution of power and responsibilities between the Federal government and Tribes.

The basis for this determination is that our decision on the Pennsylvania program does not include Indian lands as defined by SMCRA or other Tribal lands, and it does not affect the regulation of activities on Indian lands or other Tribal lands. Indian lands under SMCRA are regulated independently under the applicable Federal Indian program. The Department's consultation policy also acknowledges that our rules may have Tribal implications where the State proposing the amendment encompasses ancestral lands in areas with mineable coal. We are currently working to identify and engage appropriate Tribal stakeholders to devise a constructive approach for consulting on these amendments.

Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 requires agencies to prepare a statement of energy effects for a rulemaking that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not significant energy action under the definition in Executive Order 13211, a statement of energy effects is not required.

National Environmental Policy Act

Consistent with sections 501(a) and 702(d) of SMCRA (30 U.S.C. 1251(a) and 1292(d), respectively) and the U.S. Department of the Interior Departmental Manual, part 516, section 13.5(A), State program amendments are not major Federal actions within the meaning of section 102(2)(C) of the National

Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not include requests and requirements of an individual, partnership, or corporation to obtain information and report it to a Federal agency. As this rule does not contain information collection requirements, a submission to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon corresponding Federal regulations for which an economic analysis was prepared, and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) does not have an annual effect on the economy of \$100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to constitute a major rule.

Unfunded Mandates Reform Act

This rule will not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to impose an unfunded mandate. Therefore, a statement containing the information

required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Ben H. Owens,
Acting Regional Director, North Atlantic—Appalachian Region.

For the reasons set out in the preamble, 30 CFR part 938 is amended as set forth below:

PART 938—PENNSYLVANIA

■ 1. The authority citation for part 938 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Amend § 938.15 in the table by adding an entry in chronological order by “Date of Final Publication” for “August 4, 2017” to read as follows:

§ 938.15 Approval of Pennsylvania regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * *	* * *	* * *
August 4, 2017	January 15, 2026	Addition of subsections (i) and (j) to Section 5 of BMSLCA (52 P.S. § 1406.5(i) and (j)); amendment of Section 9a(d) of BMSLCA (52 P.S. § 1406.9a(d)).

[FR Doc. 2026–00701 Filed 1–14–26; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 246

[Docket ID: DOD–2023–OS–0058]
RIN 0790–AJ63

Stars and Stripes Media Organization

AGENCY: Office of the Assistant to the Secretary of Defense for Public Affairs (OATSD(PA)), Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: This final rule removes DoD’s regulation concerning the internal procedures of the Stars and Stripes Media Organization (often abbreviated as Stripes). The regulation is unnecessary and may be removed from the Code of Federal Regulations (CFR) because it does not have an impact or burden to the public.

DATES: This rule is effective on January 15, 2026.

FOR FURTHER INFORMATION CONTACT: Kyle Combs, (703) 695–6290.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule removes the DoD regulation at 32 CFR part 246, “Stars and Stripes (S&S) Newspaper and Business Operations,” because it addresses internal policy, responsibilities, and procedures for Stripes. The rule was published on April 22, 1994 (59 FR 19137). Although

a proposed rule was published in the **Federal Register** (89 FR 30296–30299) on April 23, 2024, for a 60-day public comment period to update its content and make the public aware of the unique mission of Stripes, after further review of the proposed rule and the public comments, which largely addressed internal procedures, the Department has determined this rule is not necessary. Rulemaking under the Administrative Procedure Act is not required and internal policy and procedures governing Stripes will continue to be published in DoD Directive 5122.11, “Stars and Stripes (S&S) Newspapers and Business Operations” (available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/512211p.pdf>).

II. Discussion of Public Comments and DoD Responses

During the public comment period for the proposed rule, a total of 91 comments were received. Three of the comments were not related to the rule and are not discussed in this preamble. In general, commenters were supportive of the Stripes program. The majority of the 88 public comments advocated for Stripes employees to be allowed to make Freedom of Information Act (FOIA) requests, to have unescorted access to DoD facilities to cover events or activities open to those with installation access even if commercial media did not have the same unescorted access, or to republish previously classified or controlled unclassified materials. One commenter raised a concern regarding Stripes employees being able to make FOIA requests in their official capacity because section

551 of title 5, United States Code, excludes a Federal agency from the definition of “person” for the purposes of obtaining information under FOIA. These comments will be considered in the update to DoD Directive 5122.11.

Some of the comments also advocated for not changing the existing rule because of perceived concerns that changes would restrict Stripes in continuing its mission of providing editorially independent news and information. However, the existing rule is outdated and does not reflect the current operation of Stripes, only referencing Stripes as a hardcopy/print publication and not the multi-platform (including web-based) publication it has become.

III. Notice-and-Comment Rulemaking Is Not Required

It has been determined that publication of this rule removal for public comment is unnecessary because the underlying rule addresses internal agency policies and procedures and its removal has no impact on the public.

IV. Regulatory Impact Analysis

This rule is administrative in nature with no requirements imposed on the public. This rule does not affect the cost of the program or require changes on behalf of Stripes subscribers. Stripes is partially funded through revenue-generating activities as a nonappropriated fund instrumentality. While Stripes also receives some appropriated funding, it is required to be funded to the maximum extent possible through the sale and distribution of the newspapers, other products, authorized advertising, and other sources of revenue. These internal

DoD procedures are outlined in DoD Directive 5122.11.

V. Regulatory Compliance Analysis

A. Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review”

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule is not a significant regulatory action under Executive Order 12866.

B. Executive Order 14192, “Unleashing Prosperity Through Deregulation”

This rule is not an Executive Order 14192 regulatory action because this rule is not significant under Executive Order 12866.

C. Congressional Review Act (CRA) (5 U.S.C. 801 *et seq.*)

This action is subject to the CRA (5 U.S.C. 801 *et seq.*), and DoD will submit a rule report to each House of Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

D. Public Law 96–354, “Regulatory Flexibility Act” (5 U.S.C. 601 *et seq.*)

The Assistant to the Secretary of Defense for Public Affairs certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the rule only addresses the operations of Stripes, and it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

E. Sec. 202, Public Law 104–4, “Unfunded Mandates Reform Act” (UMRA)

This action does not contain an unfunded mandate of \$100 million or more (in 1995 dollars) in any one year as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments.

F. Public Law 96–511, “Paperwork Reduction Act” (44 U.S.C. 3501 *et seq.*)

This rule does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

G. Executive Order 13132, “Federalism”

This action will not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it is not expected to have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the requirements of Executive Order 13132 do not apply to this action.

H. Executive Order 13175, “Consultation and Coordination With Indian Tribal Governments”

This action will not have Tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because it is not expected to have substantial direct effects on Indian Tribes, significantly or uniquely affect the communities of Indian Tribal governments and does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175 do not apply to this action.

List of Subjects in 32 CFR Part 246

Government publications, Newspapers and magazines.

PART 246—[REMOVED]

■ Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 246 is removed.

Dated: January 13, 2026.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2026–00695 Filed 1–14–26; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 350

[Docket No. MARAD–2026–0004]

RIN 2133–AC00

Seamen’s Service Awards; Amendment Replacing Gulf of Mexico With Gulf of America

AGENCY: Maritime Administration (MARAD), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule amends MARAD’s regulations governing Seamen’s Service Awards. The amendment changes the name “Gulf of Mexico” to “Gulf of America”

consistent with Executive Order (E.O.) 14172, *Restoring Names that Honor American Greatness*. The amendment also provides factual clerical changes, such as updating citations to authority and physical office names and addresses.

DATES: This final rule is effective January 15, 2026.

FOR FURTHER INFORMATION CONTACT: David Hatcher, Office of Sealift Support, at (202) 366–0688 or David.Hatcher1@dot.gov. The mailing address for the Maritime Administration, Office of Sealift Support is 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register’s home page at: www.federalregister.gov.

Background

This action conforms 46 CFR part 350 to Executive Order 14172 by changing “Gulf of Mexico” to “Gulf of America” in the name of a seaman’s service award during World War II specified in the regulations.¹ The rule would also provide necessary clerical updates to DOT’s regulations, such as updating citations to authority, physical office addresses, and office names.

Regulatory Analyses and Notices

Administrative Procedure Act

MARAD issues this final rule without prior notice and the opportunity for public comment and the 30-day delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA). Pursuant to 5 U.S.C. 553(b)(B), general notice and the opportunity for public comment are not required with respect to a rulemaking when an “agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” MARAD has determined that there is good cause to waive the opportunity for prior notice and comment, finding it unnecessary with respect to a geographic name change effectuated previously by Executive direction and for factual clerical changes such as updating citations to authority, physical office addresses, and

¹ MARAD is unable to revise 46 CFR 350.47(d) to update the term “Gulf of Mexico” to “Gulf of America” because the term “Gulf of Mexico” within the regulation is statutorily mandated in the term “Gulf of Mexico Fisheries” (see 16 U.S.C. 1852 (b)(2)(D)(i)).

office names. Neither of these updates imposes any regulatory requirements or costs on members of the public. MARAD waives the 30-day delay in effective date under 5 U.S.C. 553(d) for the same reasons.

Executive Orders 12866, 13563, 14192 and DOT Rulemaking Procedures

Executive Order (E.O.) 12866, as supplemented by E.O. 13563, provides for determining whether a regulatory action is “significant” and therefore subject to Office of Management and Budget (OMB) review and to the requirements of E.O. 12866.

Today’s final rule is not significant and has not been reviewed by OMB under E.O. 12866. This rule is limited to conforming the agency’s implementing regulation at 46 CFR part 350 to a geographic name change previously effectuated by Executive direction and making clerical updates to citations of authority, physical office addresses, office names. This rule does not result in any changes to costs or benefits.

Executive Order 14192, titled “*Unleashing Prosperity through Deregulation*,” directs that, unless prohibited by law, whenever an executive department or agency publicly proposes for notice and comment or otherwise promulgates a new regulation, it must identify at least two existing regulations to be repealed. In addition, any new incremental costs of all new regulations must be significantly less than zero. Only those rules deemed significant under section 3(f) of Executive Order 12866, “*Regulatory Planning and Review*,” are subject to these requirements. Per OMB Memo M–25–20, E.O. 14192 applies to a rulemaking action that is “a significant regulatory action as defined in Section 3(f) of E.O. 12866 that has been finalized and that imposes total costs greater than zero.” As discussed above, this rule provides clerical updates to the regulation and changes the name “Gulf of Mexico” to the “Gulf of America.” Accordingly, this action is neither a regulatory nor a deregulatory rule under Executive Order 14192.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (RFA), MARAD has considered the impacts of this rulemaking action on small entities (5 U.S.C. 601 *et seq.*). Rules that are exempt from notice and comment are also exempt from the RFA requirements, including conducting a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable,

unnecessary, or contrary to the public interest. See 5 U.S.C. 603(a). Because, as discussed above, this rule is exempt from the APA notice and comment requirements, MARAD is not required to conduct a regulatory flexibility analysis.

Executive Order 13132, Federalism

MARAD has examined this final rule pursuant to E.O. 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments, or their representatives is mandated beyond the rulemaking process. The Agency has concluded that the rulemaking would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule will not have, pursuant to E.O. 13132 section 1(a): “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.”

The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually, adjusted annually for inflation. This action will not result in additional expenditures by State, local, or tribal governments or by any members of the private sector. Therefore, MARAD has not prepared an economic assessment pursuant to the Unfunded Mandates Reform Act.

Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in the Spring and Fall of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This final rule includes no new collection of information and will not change any existing collections of

information as it does not actually waive any regulatory requirements.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT’s compliance with the Privacy Act, please visit <https://www.transportation.gov/privacy>.

List of Subjects in 46 CFR Part 350

Decoration, Seamen.

Accordingly, the Department of Transportation amends 46 CFR Part 350 as follows:

PART 350—SEAMEN’S SERVICE AWARDS

■ 1. Revise the authority citation for part 350 to read as follows:

Authority: 46 U.S.C. chapter 519; 49 U.S.C. 322(a); 49 CFR 1.93.

■ 2. Revise § 350.1 to read as follows:

§ 350.1 Purpose.

The purpose of this part is to prescribe regulations to implement 46 U.S.C. chapter 519 to authorize the issue of decorations, medals, and other recognition for service in the U.S. merchant marine, and for other purposes, and to provide for the replacement of awards previously issued for service in the U.S. merchant marine under prior law.

■ 3. Amend § 350.2 by revising paragraph (c) to read as follows:

§ 350.2 Special medals and awards.

* * * * *

(c) *Inquiries.* Direct all inquiries concerning eligibility and procedures for the issuance of these medals to Maritime Administrator, Attention: Seamen’s Service Awards, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

■ 4. Amend § 350.3 by revising paragraph (a)(7) to read as follows:

§ 350.3 Other original recognition of service.

* * * * *

(a) * * *

(7) *Atlantic War Zone Bar and Medal*, awarded to merchant seamen who served in the Atlantic War Zone, including the North Atlantic, South Atlantic, Gulf of America, Caribbean, Barents Sea, and the Greenland Sea,

between December 7, 1941, and November 8, 1945.

* * * * *

■ 5. Amend § 350.4 by:

- a. Revising paragraph (c); and
 - b. Removing paragraphs (d) and (e).
- The revision reads as follows:

§ 350.4 Eligibility for awards.

* * * * *

(c) *Inquiries.* The information establishing eligibility, along with a written request must be directed to Maritime Administrator, Attention: Seamen's Service Awards, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

■ 6. Revise § 350.5 to read as follows:

§ 350.5 Replacement decorations.

Decorations that have been previously issued may be replaced at cost upon written request made to Maritime Administrator, Attention: Seamen's Service Awards, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

(Authority: 46 U.S.C. Chapter 519; 49 U.S.C. 322(a); 49 CFR 1.93)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2026-00753 Filed 1-14-26; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA-2026-0001]

RIN 2127-AM79

Federal Motor Vehicle Safety Standards: Anti-Ejection Glazing for Bus Portals; Mandatory Applicability Beginning October 30, 2027

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule; partial grant of a petition for reconsideration.

SUMMARY: This document partially grants a petition for reconsideration of the October 30, 2024 final rule that established Federal Motor Vehicle Safety Standard (FMVSS) No. 217a, "Anti-ejection glazing for bus portals; Mandatory applicability beginning October 30, 2027." The standard intends to drive installation of advanced glazing

in over-the-road buses (motorcoaches) and other large buses to reduce occupant ejections. This final rule revises the minimum size requirement for applicable portals, adds a figure to illustrate a daylight opening periphery, and clarifies the target location for edge impact tests. This document denies all other portions of the petition for reconsideration, including revising the definition of "daylight opening."

DATES:

Effective Date: This final rule is effective January 15, 2026.

Compliance Date: The compliance date of this final rule is October 30, 2027. Optional early compliance is permitted.

Petitions for Reconsideration: If you wish to petition for reconsideration of this rule, your petition must be received by March 2, 2026.

ADDRESSES: Petitions for reconsideration of this final rule must refer to the docket and notice number set forth above and be submitted to the Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Note that all petitions received will be posted without change to the docket for this rulemaking at www.regulations.gov, including any personal information provided.

Confidential Business Information: If you wish to submit confidential business information, see the instructions in the rulemaking analyses and notices section.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may email Mr. James Myers, NHTSA Office of Crashworthiness Standards (James.Myers@dot.gov). For legal issues, you may email Mr. John Piazza, NHTSA Office of Chief Counsel (John.Piazza@dot.gov). You may contact these officials by phone at 202-366-1810 or by mail at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Background

On October 30, 2024, NHTSA published a final rule that established

FMVSS No. 217a, "Anti-ejection glazing for bus portals; Mandatory applicability beginning October 30, 2027" (89 FR 86255, Docket No. NHTSA-2024-0061). The purpose of this safety standard is to drive the installation of advanced glazing in over-the-road buses (motorcoaches) and other large buses¹ to reduce passenger and driver ejections. The standard is designed to ensure window glazing remains securely bonded to window frames, no potential ejection portals are created due to breaking of the glazing, and windows do not open during a crash, even if an occupant is thrown against the glazing. The October 30, 2024 final rule fulfilled a statutory mandate in the Motorcoach Enhanced Safety Act of 2012, which was incorporated and passed as part of the Moving Ahead for Progress in the 21st Century Act (MAP-21). Under section 32702 of MAP-21, "advanced glazing" means "glazing installed in a portal on the side or the roof of a motorcoach that is designed to be highly resistant to partial or complete occupant ejection in all types of motor vehicle crashes."

To accomplish this safety objective, FMVSS No. 217a specifies minimum requirements that applicable bus window glazing must meet when it is contacted by an impactor launched at the window at a specified speed. The impactor and impact speed are designed to simulate an average size unrestrained adult male thrown from one side of a large bus and impacting a window on the opposite side of the bus in a rollover. Each side window and glass panel/window on the roof may be subject to any one of three impacts, as selected by NHTSA in a compliance test: (a) an impact near a latching mechanism or (for windows without latches) the center of the lower window edge of an intact window; (b) an impact at the center of the daylight opening of an intact window; and (c) an impact at the center of the daylight opening of a pre-broken window. No part of the window may displace past a pre-defined ejection reference plane during the impact, and the window must prevent passage of a 102-millimeter (mm) (4 inch) diameter sphere after the impact. In addition, emergency exits must remain operable after the impactor test.

¹ FMVSS No. 217a is applicable to over-the-road buses manufactured on or after October 30, 2027. The standard is also applicable to buses, other than over-the-road buses, that have a gross vehicle weight rating (GVWR) greater than 11,793 kilograms (kg) manufactured on or after October 30, 2027. This standard does not apply to school buses, transit buses, prison buses, and perimeter-seating buses.

These requirements ensure that the glazing is securely bonded to the window frames, no potential ejection portals are created due to breaking of the glazing, the windows remain closed when impacted, and emergency exits remain operable after the crash. The test with the pre-broken glazing encourages the installation of advanced glazing. The requirements also help ensure the advanced glazing retains occupants within the structural sidewall of the bus in a crash.

II. Petition for Reconsideration and Agency Response

NHTSA received a petition for reconsideration of the October 30, 2024 final rule from one respondent, IC Bus, LLC (“IC Bus”).² In its petition, IC Bus requested that NHTSA adjust aspects of the final rule and requests clarification on aspects of the final rule. IC Bus also identified two typographical errors in the published standard.

a. Daylight Opening Definition

IC Bus requested two adjustments to the definition of “daylight opening.” It requested that NHTSA include the following statement in the daylight opening definition: “Only the innermost portion of the window frame is used to determine the daylight opening.”³ IC Bus also requested that NHTSA add a figure from the Technical Support Document that was included in the docket with the October 2024 final rule.⁴ The figure represents the cross-section of an example bus window, which illustrates the periphery of the daylight opening. The original figure can be found in the Technical Support Document published with the final rule in Docket No. NHTSA–2024–0061. IC Bus stated in its petition that, “the regulation does not provide any reference to this Technical Supporting Document, which leads to a concern that manufacturers looking at this regulation in the future may not be aware that such helpful clarification exists.”⁵

As defined in FMVSS No. 217a, daylight opening means, for openings

on the side of the vehicle (other than a door opening), the locus of all points where a horizontal line, perpendicular to the vehicle longitudinal centerline, is tangent to the periphery of the opening. For openings on the roof of the vehicle, daylight opening means the locus of all points where a vertical line is tangent to the periphery of the opening. The periphery includes surfaces 100 millimeters (mm) inboard of the inside surface of the window glazing and 25 mm outboard of the outside surface of the window glazing. The periphery excludes the following: Any flexible gasket material or weather stripping used to create a waterproof seal between the glazing and the vehicle interior; grab handles used to facilitate occupant egress and ingress; and any part of a seat.⁶ This definition is modified slightly from the definition used in FMVSS No. 226, “Ejection Mitigation” which establishes requirements for ejection mitigation systems to reduce the likelihood of occupant ejections in light-duty vehicles.⁷

Agency Response: NHTSA partially grants the petition to revise the definition of “daylight opening” as requested by IC Bus.

First, IC Bus requested NHTSA add the following statement into the definition of daylight opening: “Only the innermost portion of the window frame is used to determine the daylight opening.”⁸ This statement is unnecessary and may increase confusion interpreting the definition without also specifying what is meant by “innermost.”

Because the current definition explains that the periphery includes surfaces 100 mm inboard and 25 mm outboard of the glazing surface, the concept of IC Bus’s request is already included in the definition. Further, the

definition of “daylight opening” is modified only slightly from the existing standard FMVSS No. 226, and manufacturers have not informed NHTSA of any confusion when complying with that standard. Therefore, NHTSA denies IC Bus’s request to add the statement into the definition of “daylight opening.”

Next, IC Bus requested that Figure 7 in the Technical Support Document,⁹ which was submitted to the docket with the FMVSS No. 217a final rule, be included in the standard. The purpose of that figure and the Technical Support Document was to provide helpful context and examples for aspects of the final rule. This supplemental document and the figures within it will remain accessible on the public docket to manufacturers or other interested parties. However, NHTSA agrees with IC Bus that the figure could be a helpful addition to the regulatory text by making it easier for manufacturers to understand how to determine the daylight opening periphery. This figure is for illustrative purposes only and does not represent all possible daylight opening configurations. Therefore, NHTSA is adding the figure to the regulatory text and amending the definition of “daylight opening” to include the following sentence: “An example of a daylight opening periphery is provided in Figure 3 for illustrative purposes only.”

b. Minimum Size Requirement

FMVSS No. 217a states in paragraph S5 that the standard’s requirements do not apply to a side or roof portal whose minimum surface dimension measured through the center of its area is less than 279 mm. This minimum size requirement ensures that the glazing being tested is large enough for the impactor to effectively evaluate its anti-ejection capabilities without impacting the window frame or other structural components. IC Bus petitioned NHTSA to specify in paragraph S5 that the minimum size requirement applies to the daylight opening of the portal, and not the portal itself. Specifically, IC Bus recommended changing the relevant sentence of paragraph S5 to read as follows: “The requirements of this paragraph S5 do not apply to portals other than side and roof portals, and do not apply to a side or roof portal with a daylight opening whose minimum surface dimension measured through

² IC Bus, LLC, petition for reconsideration of FMVSS No. 217a final rule <https://www.regulations.gov/document/NHTSA-2024-0061-0004>.

³ *Ibid.*, p. 4.

⁴ National Highway Traffic Safety Administration, Technical Support Document: Impactor Details and Daylight Opening, Docket No. NHTSA–2024–0061, Supporting Documents Folder, <https://www.regulations.gov/document/NHTSA-2024-0061-0002>.

⁵ IC Bus, LLC, petition for reconsideration of FMVSS No. 217a final rule, p. 4, <https://www.regulations.gov/document/NHTSA-2024-0061-0004>.

⁶ U.S. Department of Transportation, National Highway Traffic Safety Administration, Federal Motor Vehicle Safety Standard No. 217a: Anti-Ejection Glazing for Bus Portals, 49 CFR 571.217a S4, <https://www.ecfr.gov/current/title-49/subtitle-B/chapter-V/part-571>.

⁷ FMVSS No. 226 uses the term “side daylight opening.” According to the standard, a side daylight opening “means, other than a door opening, the locus of all points where a horizontal line, perpendicular to the vehicle vertical longitudinal plane, is tangent to the periphery of the opening. The periphery includes surfaces 100 millimeters inboard of the inside surface of the window glazing and 25 mm outboard of the outside surface of the side glazing. The periphery excludes the following: any flexible gasket material or weather stripping used to create a waterproof seal between the glazing or door and the vehicle interior; grab handles used to facilitate occupant egress and ingress; and any part of a seat.”

⁸ IC Bus, LLC, petition for reconsideration of FMVSS No. 217a final rule, p. 4, <https://www.regulations.gov/document/NHTSA-2024-0061-0004>.

⁹ National Highway Traffic Safety Administration, Technical Support Document: Impactor Details and Daylight Opening, Figure 7, Docket No. NHTSA–2024–0061, Supporting Documents Folder, <https://www.regulations.gov/document/NHTSA-2024-0061-0002>.

the center of its area is less than 279 mm.”

Agency Response: NHTSA agrees with IC Bus and grants its petition as requested. The definition of a “portal” according to FMVSS No. 217a is “an opening that could, in the event of a crash involving the vehicle, permit the partial or complete ejection of an occupant from the vehicle, including a young child.” While a door or roof hatch may meet the definition of a portal even if there is no glazing present, such portals are outside the scope of FMVSS No. 217a. As previously stated, the intent of FMVSS No. 217a is to drive the installation of advanced glazing in motorcoaches and other large buses to reduce passenger and driver ejections. Therefore, to better align the requirements of the standard to the intent of the standard, NHTSA is adjusting paragraph S5 to state that the requirements “do not apply to a side or roof portal with a daylight opening whose minimum surface dimension measured through the center of its area is less than 279 mm.”

c. Discrete Attachment Point

Paragraph S6.1.1 of FMVSS No. 217a describes the test location for the edge impact test procedure. During the 2013 Motorcoach Side Glazing Retention Research testing,¹⁰ NHTSA determined there was a safety need for a test that assesses the ability of window latches to keep the window closed when subjected to impactor loading. The edge impact test is designed to test the glazing near the window latch if a latch is present. If the window does not have a latch, the glazing is impacted at the edge of the glazing as described in paragraph S6.1.1(a) or S6.1.1(b).

Paragraph S6.1.1 states that when aligning the impactor face to the test location for the edge impact test, it is positioned such that the center of the impactor face plate is as close as practicable to the center of the latch attachment point or discrete attachment point. In the preamble of the October 2024 final rule, NHTSA justified that choice because the location where the latch attaches to the movable portion of the window is where the latch is most likely to fail. The regulatory text specified the impactor face plate must align as closely as practicable to the center of the latch attachment point or discrete attachment point. The purpose of adding the term “discrete attachment point” was to account for varying latch

designs, where the handle of the latch, body of the latch, and attachment point of the latch to the window may be laterally or vertically offset from one another.

IC Bus requested that NHTSA define or clarify what is meant by a “discrete attachment point.” It emphasized that, according to the standard, the impactor face must be positioned adjacent to a latch or discrete attachment point when setting up the edge impact test. Since there is not a definition of “discrete attachment point” provided in the standard, IC Bus requested that NHTSA provide one. It also asked if discrete attachment points are in reference to physical fasteners that attach the window to the window frame, or to emergency exit window hinges that connect the overall window frame to the vehicle body.

Agency Response: As NHTSA described in the final rule preamble, the term “discrete attachment point” is applicable only in the context of a bus window latch.¹¹ NHTSA also stated in the May 2016 Notice of Proposed Rulemaking (NPRM)¹² that an intent of the edge impact test was to evaluate window latches if they are present. However, NHTSA agrees with IC Bus that the term could be misinterpreted in the regulatory text. In addition to latches, bus windows may have hinges or other hardware with discrete attachment points that connect the window to the bus frame. Targeting attachment components other than latches for testing is not included in the scope of this standard.

To address this request in IC Bus’s petition for reconsideration, NHTSA will remove the term “discrete attachment point” and define the term “latch attachment point.” The regulatory text does not need to reference both a “latch attachment point” and a “discrete attachment point” because both terms describe the same location. This approach simplifies the paragraph and ensures the test location is identified clearly for any window type or latch type. The term “latch attachment point” will be defined in paragraph S4 as “the center point of the latch’s interface connecting the window and the bus structure when the window is closed and the latch is in the locked position.”

This change removes reference to the term “discrete attachment point” within paragraph S6.1.1 and defines “latch attachment point” within paragraph S4. This point represents the part of the latching mechanism that connects the

window to the bus structure. This is the point where an insufficient latch could result in a failure to comply with the impactor testing as demonstrated in NHTSA’s 2013 Motorcoach Side Glazing Retention Research. Testing near this location also aligns with the intent of the edge impact test. The revisions to paragraphs S4 and S6.1.1 clarify any confusion surrounding discrete attachment points, answers IC Bus’s specific questions, and better describes the test location for the edge impact test.

d. Irregular Daylight Openings

The daylight opening for a typical bus window is usually a regular geometric shape with a clearly defined and easily measurable center point. However, there are scenarios where a window may be partially blocked by a structure such as a stowed wheelchair lift or a luggage rack, resulting in an irregularly shaped daylight opening. It may be difficult to accurately locate the center of an irregularly shaped daylight opening.

IC Bus provided a figure on page 5 of its petition for reconsideration, which depicts a bus window partially blocked by a stowed wheelchair lift. It noted that the resulting daylight opening may not be a regular geometric shape where the center would be obvious. IC Bus asked how NHTSA would measure the minimum surface dimension through the center of the daylight opening during a compliance test.

Agency Response: NHTSA will address this issue about locating the center of regular and irregular daylight openings in the test procedure for compliance testing and not in the regulatory text of the final rule. The regulatory text of the final rule outlines the general requirements and procedures of the standard and does not need to outline the specific measurement techniques and equipment the agency will use in compliance testing. Those details will be described in the applicable test procedure and that will be available on NHTSA’s website.¹³

As a related example, the test procedure associated with FMVSS No. 226, “Ejection Mitigation” is outlined in TP–226–00,¹⁴ specifies the use of a portable Coordinate Measuring Machine (CMM) for determining the center of the side daylight opening. A CMM can precisely measure the geometry of the daylight opening, allowing NHTSA to mathematically calculate the geometric center. NHTSA will use a similar approach to determine the center of daylight openings for FMVSS No. 217a.

¹⁰ Duffy, S., & Prasad, A., National Highway Traffic Safety Administration, Motorcoach Side Glazing Retention Research, (Report No. DOT HS 811 862) (Nov. 2013).

¹¹ 89 FR 86272.

¹² 81 FR 27917.

¹³ <https://www.nhtsa.gov/vehicle-manufacturers/test-procedures>.

¹⁴ Id.

The associated test procedure document will outline these details. Therefore, no further details will be included in the final rule regulatory text.

e. Other Clarifications

IC Bus also sought clarification from NHTSA on three additional points: (1) Whether restraining barriers, stanchions, and Lexan safety shields would be included or excluded from the periphery of the daylight opening; (2) if a stowed wheelchair lift needs to be within 100 mm of the interior window surface to be considered “blocking” the window; and (3) whether one window could be split up into multiple daylight openings if the window is blocked by something like a luggage rack or shelves, and whether each daylight opening would be tested separately. IC Bus provided graphical illustrations of the scenarios for points (2) and (3).

NHTSA provides responses below with the intent to assist in the understanding of the final rule for IC Bus and any other interested parties. However, these items are not petitions for reconsideration because they do not request regulatory text changes.

1. Components Excluded From the Daylight Opening Periphery

According to the daylight opening definition, the periphery includes surfaces within 100 mm inboard and 25 mm outboard of the glazing surface. The periphery excludes flexible gasket material or weather stripping used to create a waterproof seal between the glazing and the vehicle interior, grab handles used to facilitate occupant egress and ingress, and any part of a seat.

IC Bus requested clarification on whether restraining barriers, stanchions, and Lexan safety shields would be included or excluded from the periphery. IC Bus claimed restraining barriers are “essentially the same as seatbacks, and seats are specified as excluded. . . .” Thus, IC Bus sought confirmation that restraining barriers would be excluded from the periphery. For stanchions, IC Bus described them as “upright bars or posts used to support the roof, luggage, or storage compartment.” IC Bus sought confirmation that stanchions would not be excluded from the periphery. IC Bus stated Lexan safety shields are “used to separate interior sections or compartments or prevent passenger contact with interior items.” IC Bus sought confirmation that Lexan safety shields would not be excluded from the periphery.

Agency Response: The agency agrees with IC Bus’s evaluation that restraining

barriers are excluded from the periphery while stanchions and Lexan safety shields are not. In other words, if Lexan safety shields or stanchions are within 100 mm of the interior glazing surface or 25 mm of the exterior glazing surface, they would be included in the periphery of the daylight opening.

IC Bus manufactures primarily school buses and other buses based on school bus platforms.¹⁵ Restraining barriers are padded panels, similar to school bus seat backs, generally located in front of a school bus seat without any seat in front of it. Restraining barriers may also be in buses that are based on school bus platforms. Similar to school bus seat backs, restraining barriers provide passenger crash protection by absorbing impact energy and containing students within a designated safety zone. While restraining barriers are capable of preventing passenger movement past the barrier in a frontal crash or a sudden braking maneuver, these barriers are not designed to prevent passengers from being ejected through an ejection portal in a rollover or side impact crash. Therefore, NHTSA is excluding restraining barriers from the periphery of the daylight opening and will update the daylight opening definition to reflect this exclusion.

Stanchions are typically solid structures capable of providing a positive effect in terms of ejection mitigation. Stanchions are also distinct from “grab handles,” which are excluded from the periphery. Grab handles are excluded from the periphery in FMVSS No. 217a for the same reason they are excluded from the periphery in FMVSS No. 226. These grab handles are typically located on the A-pillar of the vehicle and often protrude into the daylight opening. They are also typically non-structural and unlikely to provide a positive effect in terms of ejection mitigation. Since stanchions are distinct from these grab handles, and they are expected to have a positive effect in terms of ejection mitigation, NHTSA confirms IC Bus’s understanding that they are not excluded from the periphery of the daylight opening.

Lexan, or polycarbonate, is a transparent thermoplastic material with high stiffness and impact resistance.¹⁶ This material is often installed in large buses and motorcoaches to prevent passengers from entering certain areas, to prevent occupants from throwing items at drivers, or as partitions between

sections of a bus’s interior. To leverage polycarbonate’s high stiffness, the sheet must be securely mounted within the bus to minimize deflection. Such an installation will block a passenger’s movement past the barrier. Since polycarbonate barriers are not listed as an exclusion to the periphery and are likely to have a positive effect on ejection mitigation due to the high stiffness of the material, NHTSA confirms IC Bus’s understanding that they will not be excluded from the periphery.

2. Daylight Opening With Partially Blocked Window

IC Bus stated its understanding that a stowed wheelchair lift would need to be within 100 mm of the interior window surface in order for it to be considered “blocking” the window. Additionally, IC Bus stated it understands that the portion of the wheelchair lift blocking the window becomes part of the periphery of the daylight opening, and the unblocked portion of the window becomes the daylight opening. IC Bus provided an illustration of the scenario it described on page 7 of its petition for reconsideration. The figure shows a graphical representation of a rectangular bus window with the bottom portion blocked by a stowed wheelchair lift. IC Bus sought confirmation that its understanding was correct, and that the resulting daylight opening as described would need a minimum surface dimension of 279 mm to be required to comply with the FMVSS No. 217a impact requirements.

Agency Response: IC Bus’s understanding of the scenario is correct. The daylight opening is the unblocked portion of the window when the wheelchair lift that blocks the bottom of the window is within 100 mm of the interior glazing surface.

3. One Window With Multiple Daylight Openings

IC Bus requested clarification on a scenario where a bus window may be split up into multiple daylight openings if it is blocked by equipment such as shelves, stanchions, or a luggage rack. Specifically, IC Bus asked whether each daylight opening for the window would require separate edge, center, and pre-broken glazing impact validation, assuming the minimum surface dimension measured through the center of each daylight opening was greater than or equal to 279 mm. IC Bus provided a figure to illustrate this scenario on page 8 of its petition for reconsideration. The figure is a graphical representation of a rectangular bus window blocked by two long,

¹⁵ <https://www.icbus.com/>.

¹⁶ Laminated Plastics, “Technical Data Sheet Polycarbonate,” <https://laminatedplastics.com/polycarbonate.pdf>, accessed August 25, 2025).

horizontal bars representing shelves or a luggage rack. When these bars are within 100 mm of the interior glazing surface, they are included in the periphery of the daylight opening. Additionally, because these bars are longer than the width of the window, the result is a single window split into three separate daylight openings. IC Bus specifies in the figure that two of the three daylight openings have a minimum surface dimension greater than 279 mm.

Agency Response: For the scenario described and illustrated by IC Bus, NHTSA agrees that the single window would be split into multiple daylight openings. If there are multiple daylight openings that meet the minimum size requirements, any of those daylight openings could be selected for impact test validation by NHTSA in a compliance test. Any daylight openings that do not meet the minimum size requirement would not be subject to any impact test validation.

III. Corrections

In addition to the requests discussed above, IC Bus also notified NHTSA of two typographical errors in the published version of the October 2024 final rule regulatory text. NHTSA is correcting both errors with this final rule.

The first correction is in paragraph S5 in the regulatory text. The letter “n” erroneously appears in the middle of the second sentence. NHTSA is deleting the letter “n” in this paragraph.

The second correction is in the figures in the regulatory text of the standard. As IC Bus noted, the figure numbers are not included in the figures. NHTSA is adding the figure numbers to those figures with this final rule.

IV. Good Cause

NHTSA finds that issuing this final rule without additional notice and comment is appropriate under the “good cause” exception in 5 U.S.C. 553(b)(B). The APA authorizes agencies to issue regulations without notice and public comment when an agency finds, for good cause, that notice and comment is “impracticable, unnecessary, or contrary to the public interest,” 5 U.S.C. 553(b)(B), and to make the rule effective immediately for good cause. 5 U.S.C. 553(d)(3). NHTSA has determined that an opportunity for notice and comment on this final rule is unnecessary. The changes in this final rule are made in response to petitions for reconsideration submitted to NHTSA in response to and docketed in the record of the October 2024 final rule, which is supported by an extensive administrative record, in

accordance with 49 CFR 553.35 and 49 CFR 553.37.¹⁷ This final rule makes only technical changes within the ambit of the comments already received and addressed in the October 2024 final rule. Specifically, NHTSA includes a figure from the Technical Support Document in the standard for illustrative purposes. NHTSA also updates the regulatory text to clarify that doors and roof hatches with a daylight opening whose minimum surface dimension is less than 279 mm are outside the scope of FMVSS No. 217a. NHTSA also substitutes the term “latch attachment point” for “discrete attachment point” and defines “latch attachment point” as the part of the latching mechanism that connects the window to the bus structure. This change is intended to clarify that the regulation refers to a latch, not hinges or other hardware with discrete attachment points that connect the window to the bus frame.

In addition, NHTSA notes that given the long development times involved in motor vehicle design and manufacturing, manufacturers are nearing the time at which design changes required by the October 2024 final rule must be made and finalized to meet production schedules for the model years that must comply.

IV. Rulemaking Analysis and Notices

Executive Order 12866, Executive Order 14192, and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rule under Executive Order 12866 and Executive Order 14192. NHTSA has considered the costs and benefits of the final rule under the principles of these executive and departmental orders. Please refer to the October 2024 final rule for this discussion. This rule, which clarifies certain aspects of the October 2024 final rule, may facilitate compliance by regulated entities, but is not expected to result in any costs or benefits beyond those examined in the October 2024 final rule. Therefore, this rule is neither a regulatory or a deregulatory action pursuant to E.O. 14192.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of

1996), whenever an agency is required to publish a notice of proposed rulemaking or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations and small governmental jurisdictions), unless the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Agencies must also provide a statement of the factual basis for this certification. Because NHTSA is not required to publish this rule for comment, the analytical requirements of the RFA do not apply.

NHTSA notes, however, that NHTSA does not believe this final rule will have a significant economic impact on affected small entities as identified in the October 2024 final rule. This final rule revises the minimum size requirement verbiage for applicable portals, adds a figure to illustrate a daylight opening periphery, and clarifies the target location for edge impact tests. These are minor adjustments to the October 2004 final rule and are not expected to impose costs above those already considered as part of the October 2024 final rule. NHTSA determined that the October 2024 final rule would not have a significant economic impact on a substantial number of small entities, and the amendments in this rule do not change that finding.

Executive Order 13132 (Federalism)

NHTSA has examined this final rule pursuant to E.O. 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. NHTSA has concluded that the rulemaking would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. This final 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.”

NHTSA rules can have preemptive effect in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision stating that, if NHTSA has established a standard for an aspect of motor vehicle or motor vehicle equipment performance, a State may only prescribe or continue in effect a

¹⁷ These regulations grant to the Administrator the authority, consistent with 5 U.S.C. 553b(B), to issue a final decision in response to petitions for reconsideration without further proceedings or with opportunity for further comment as the Administrator deems appropriate.

standard for that same aspect of performance if the State standard is identical to the Federal standard.¹⁸ It is this statutory command by Congress that preempts any non-identical State legislative and administrative law addressing the same aspect of performance.

The express preemption provision described above is subject to a savings clause under which “[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law.”¹⁹ Pursuant to this provision, State common law tort causes of action against motor vehicle manufacturers that might otherwise be preempted by the express preemption provision are generally preserved.

NHTSA rules can also preempt State law if complying with the FMVSS would render the motor vehicle manufacturers liable under State tort law. Because most NHTSA standards established by an FMVSS are minimum standards, a State common law tort cause of action that seeks to impose a higher standard on motor vehicle manufacturers will generally not be preempted. However, if and when such a conflict does exist—for example, when the standard at issue is both a minimum and a maximum standard—the State common law tort cause of action is impliedly preempted.²⁰

Pursuant to E.O. 13132, NHTSA has considered whether this final rule could or should preempt State common law causes of action. The agency’s ability to announce its conclusion regarding the preemptive effect of one of its rules reduces the likelihood that preemption will be an issue in any subsequent tort litigation. To this end, the agency has examined the nature (*e.g.*, the language and structure of the regulatory text) and objectives of this final rule and finds that this final rule, like many NHTSA rules, prescribes only a minimum safety standard. Accordingly, NHTSA does not intend that this final rule preempt state tort law that would effectively impose a higher standard on motor vehicle manufacturers than that established by this final rule. Establishment of a higher standard by means of State tort law would not conflict with the minimum standard finalized in this document. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, “Civil Justice Reform” (61 FR 4729, Feb. 7, 1996), requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

The issue of preemption is discussed in the section discussing Executive Order 13132 (Federalism). NHTSA believes that this final rule specifies clearly the changes made to FMVSS No. 217a and that this rule provides a clear legal standard for manufacturers to follow. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court.

Executive Order 13609 (Promoting International Regulatory Cooperation)

Executive Order 13609, “Promoting International Regulatory Cooperation,” promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

The agency participates in the negotiation and development of technical standards for Safety Glazing in the United Nations Economic Commission for Europe (UNECE) World Forum for Harmonization of Vehicle Regulations (WP.29). As a signatory member, NHTSA is obligated to initiate rulemaking to incorporate safety requirements and options specified in Global Technical Regulations (GTRs) if the U.S. votes in the affirmative to establish the GTR. No GTR for anti-ejection glazing for bus portals has been developed at this time.

NHTSA has analyzed this rule under the policies and agency responsibilities of Executive Order 13609 and has determined this rulemaking will have no effect on international regulatory cooperation.

National Environmental Policy Act

The Department has analyzed the environmental impacts of this rulemaking pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and DOT Order 5610.1D.²¹ Pursuant to 49 CFR 1.81, the Secretary has delegated the “functions” under NEPA to the Administrators “as they relate to the matters within the primary responsibility of each Operating Administration.” NHTSA has determined that this rule is categorically excluded pursuant to 23 CFR 771.118(c)(4). Categorical exclusions are actions identified in an agency’s NEPA procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). This rulemaking, which proposes to partially grant a petition for reconsideration of the October 30, 2024, final rule that established Federal Motor Vehicle Safety Standard (FMVSS) No. 217a, “Anti-ejection glazing for bus portals; Mandatory applicability beginning October 30, 2027,” revises the minimum size requirement verbiage for applicable portals; adds a figure to illustrate a daylight opening periphery; clarifies the target location for edge impact tests; and denies other portions of the petition for reconsideration, including revising the definition of “daylight opening.” This rulemaking is categorically excluded pursuant to 23 CFR 771.118(c)(4) (Planning and administrative activities not involving or leading directly to construction, such as: Training, technical assistance and research; promulgation of rules, regulations, directives, or program guidance; approval of project concepts; engineering; and operating assistance to transit authorities to continue existing service or increase service to meet routine demand). NHTSA does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

Paperwork Reduction Act

Under the procedures established by the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), a Federal agency must request and receive approval from OMB before it collects certain information from the public and a person is not required to respond to

¹⁸ 49 U.S.C. 30103(b)(1).

¹⁹ 49 U.S.C. 30103(e).

²⁰ See *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000).

²¹ DOT’s Procedures For Considering Environmental Impacts, DOT Order 5610.1D, July 2025, https://www.transportation.gov/sites/dot.gov/files/2025-07/DOT_Order_5610.1D_OST-P-250627-001_508_Compliant.pdf.

a collection of information by a Federal agency unless the collection displays a valid OMB control number. This rulemaking does not contain any information collection requirements as defined by OMB in 5 CFR part 1320.

National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), “all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.” Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as SAE. The NTTAA directs the agency to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards. The NTTAA requires agencies to use voluntary consensus standards in lieu of government-unique standards except where inconsistent with law or otherwise impractical. There are no voluntary consensus standards developed by voluntary consensus standards bodies pertaining to this final rule.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of regulatory actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of \$206 million (the value equivalent of \$100 million in 1995, adjusted for inflation to 2025) or more in any 1 year. This final rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and Tribal governments, or the private sector of \$206 million or more in any one year. Thus, the analytical requirements of the UMRA do not apply to this action.

Executive Order 13175

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

have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. NHTSA has assessed the impact of this rule on Indian tribes and determined that this rule does not have tribal implications that require consultation under Executive Order 13175.

Privacy Act

Petitions for review of the final rule will be placed in the docket. Anyone is able to search the electronic form of all documents received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT’s compliance with the Privacy Act, see DOT Privacy Program | U.S. Department of Transportation.²² To see the list of DOT’s systems of records notices, please visit <https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices>.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

List of Subjects in 49 CFR Part 571

Buses, Motor carriers, Motor vehicles, Motor vehicle safety.

Amended Regulatory Text

In consideration of the foregoing, NHTSA amends 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

- 1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.95.

- 2. Amend § 571.217a by:

- a. Revising the definition of “Daylight opening” and adding the definition of “Latch attachment point” in S4;
- b. Revising S5;

²² U.S. Department of Transp. Privacy Policy, <https://www.transportation.gov/privacy> (last updated Oct. 10, 2025).

- c. Revising the introductory text of S6.1.1;
- d. Revising Figure 1 and Figure 2; and
- e. Adding Figure 3.

The revisions and additions read as follows:

§ 571.217a Standard No. 217a; Anti-ejection glazing for bus portals; Mandatory applicability beginning October 30, 2027.

* * * * *

S4. * * *

Daylight opening means, for openings on the side of the vehicle (other than a door opening), the locus of all points where a horizontal line, perpendicular to the vehicle longitudinal centerline, is tangent to the periphery of the opening. For openings on the roof of the vehicle, daylight opening means the locus of all points where a vertical line is tangent to the periphery of the opening. The periphery includes surfaces 100 millimeters (mm) inboard of the inside surface of the window glazing and 25 mm outboard of the outside surface of the window glazing. The periphery excludes the following: Any flexible gasket material or weather stripping used to create a waterproof seal between the glazing and the vehicle interior; grab handles used to facilitate occupant egress and ingress; a restraining barrier; and any part of a seat. An example of a daylight opening periphery is provided in Figure 3 for illustrative purposes only.

Latch attachment point means the center point of the latch’s interface connecting the window and the bus structure when the window is closed, and the latch is in the locked position.

* * * * *

S5. *Requirements.* When tested according to the procedures specified in S6 of this section and under the conditions specified in paragraph S7 of this section, each applicable bus shall meet the following requirements specified in this section. The requirements of this paragraph S5 do not apply to portals other than side and roof portals, and do not apply to a side or roof portal with a daylight opening whose minimum surface dimension measured through the center of its area is less than 279 mm.

* * * * *

S6.1.1 *Edge impact.* Position the impactor face on the glazing adjacent to a latch attachment point such that, when viewed perpendicular to the glazing surface, the center of the impactor face plate is as close as practicable to the center of the latch attachment point with the impactor face plate either horizontal or vertical, whichever orientation provides the shortest distance between the two

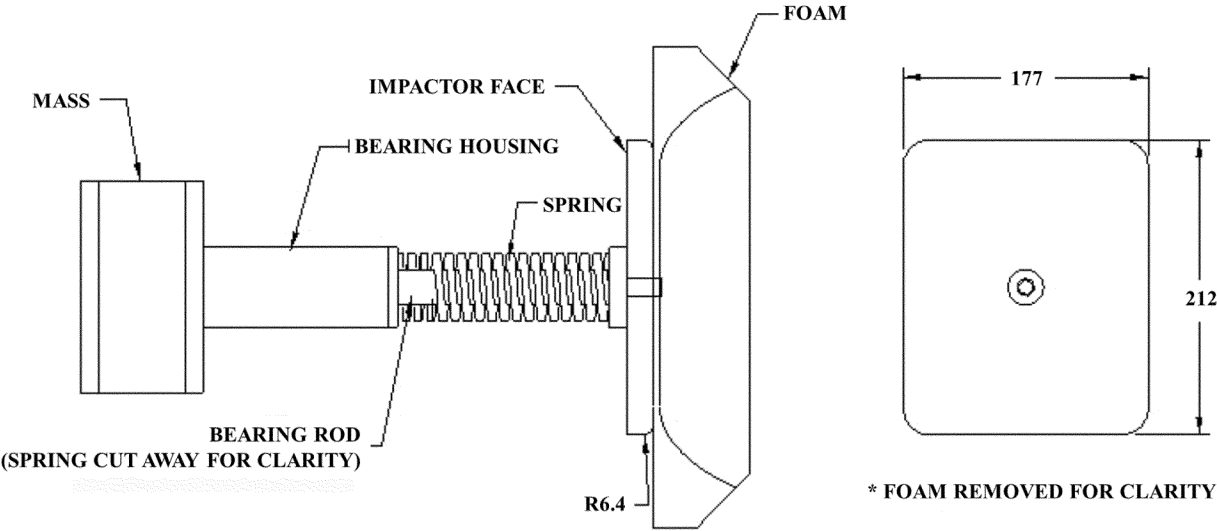
centers, while maintaining at least a 25 mm ± 2 mm distance between the impactor face plate edge and the window frame. “Window frame” includes latches, handles, attachments, and any solid structures other than the

glazing material or flexible gaskets. If the window does not have any latches (e.g., it is fully rubber bonded or glued), position the impactor as follows:

* * * * *

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Figure 1 to 49 CFR 571.217a—Guided Impactor



All dimensions shown are in millimeters

Figure 2 to 49 CFR 571.217a—Glazing Break Pattern

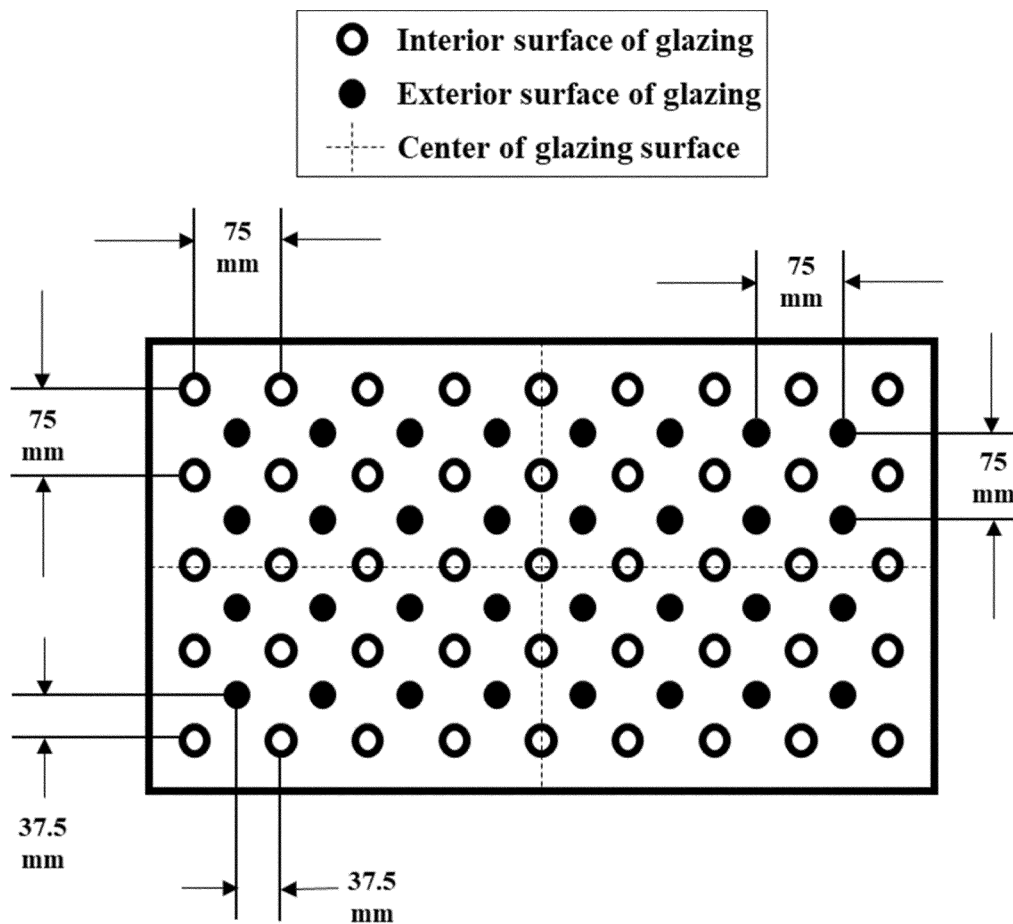
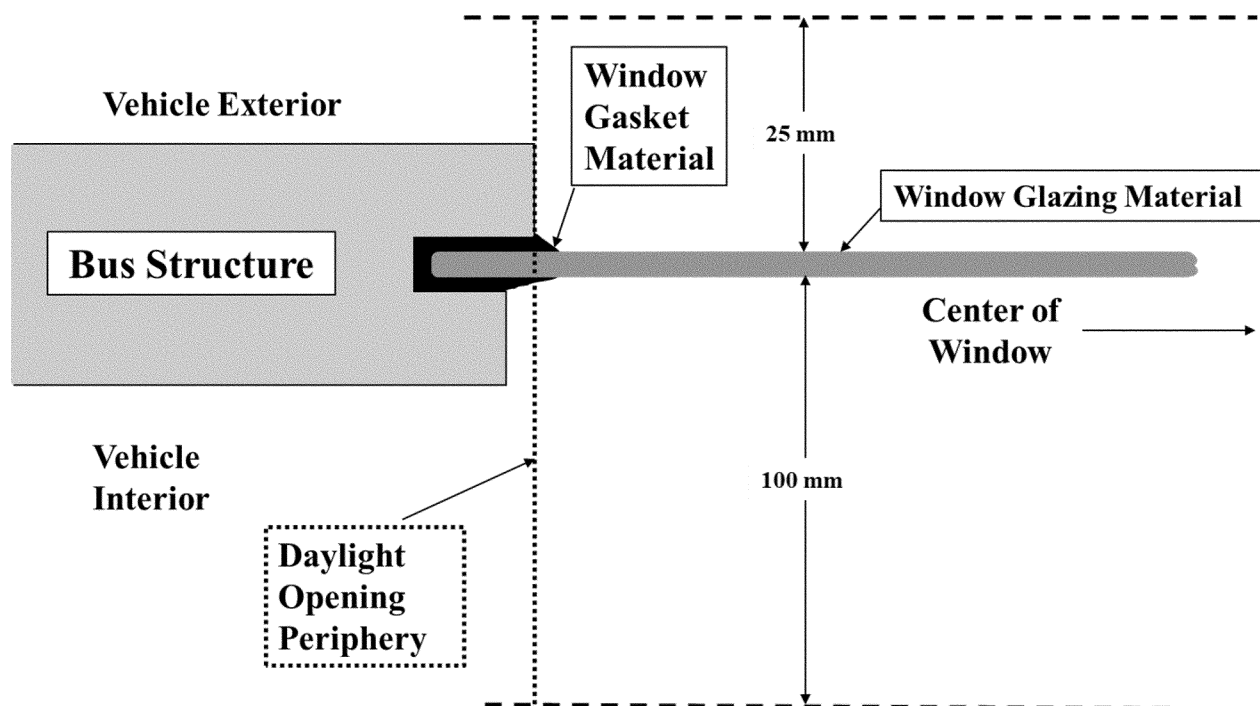


Figure 3 to 49 CFR 571.217a—An Example of a Daylight Opening Periphery (for Illustrative Purposes Only)



Issued under authority delegated in 49 CFR 1.95.

Jonathan Morrison,
Administrator.

[FR Doc. 2026-00728 Filed 1-14-26; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 26

[Docket No. FWS-HQ-NWRS-2025-0083;
FXRS12610900000-256-FF09R00000]

RIN 1018-B179

Rescission of Regulations Regarding Public Access, Use, and Recreation for Four National Wildlife Refuges

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Direct final rule; request for comments.

SUMMARY: This direct final rule removes certain regulations related to enforcement of various activities on Havasu National Wildlife Refuge, Pond Creek National Wildlife Refuge, St. Vincent National Wildlife Refuge, and Upper Mississippi River National Wildlife and Fish Refuge. Specifically, the rescinded regulations relate to activities such as use of fireworks, damaging vegetation, dogs that disturb wildlife or habitat, use of firearms and other weapons, littering, alcohol use, and boat speed. These regulations are redundant and therefore can be rescinded without adverse impact.

DATES: This final rule is effective on March 16, 2026, without further action, unless significant adverse comments are

received by February 17, 2026. If significant adverse comments are received, we will publish a notification in the **Federal Register** before the effective date either withdrawing the rule or issuing a new final rule that responds to any significant adverse comments.

ADDRESSES: You may submit comments by one of the following methods:

Electronically: Go to the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Search box, enter FWS-HQ-NWRS-2025-0083, which is the docket number for this rulemaking. Then, click the Search button. In the Search panel on the left side of the screen, under the Document Type heading, click on the box next to Rule to locate this document. You may submit a comment by clicking on "Comment."

By hard copy: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-HQ-NWRS-2025-0083, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W); 5275 Leesburg Pike, Falls Church, VA 22041-3803.

FOR FURTHER INFORMATION CONTACT:

Cynthia Martinez, Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, cynthia_martinez@fws.gov, (202) 208-4889. Individuals in the United States who are deaf, blind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The regulations contained in 50 CFR part 26 govern the circumstances under which the public can enter and use a national wildlife refuge. This rule will rescind redundant and therefore unnecessary regulations contained within 50 CFR part 26.34, special regulations concerning public access, use, and recreation for individual national wildlife refuges. The streamlining of these identified regulations will create consistency across National Wildlife Refuges and reduce confusion to the public due to the variance in wording of the regulations in multiple locations. Currently, a member of the public could be fined two different fine amounts for the same offense depending on which regulation is cited for the offense. As provided below, the identified sections will be revised and redesignated by removing redundant sections. The rescinded regulations relate to activities such as use of fireworks, damaging vegetation, dogs that disturb wildlife or habitat, use of firearms and other weapons, littering, alcohol use, and boat speed within Havasu National Wildlife Refuge, Pond Creek National Wildlife Refuge, St. Vincent National Wildlife Refuge, and Upper Mississippi River National Wildlife and Fish Refuge. The removal of these regulations is not anticipated to be controversial because they are redundant. Additionally, these revisions will not inhibit the U.S. Fish and Wildlife Service from successfully fulfilling its statutory mandate to manage these Refuges for the purposes for which they were established or managing each Refuge to fulfill the mission of the National Wildlife Refuge System. Table 1, below, summarizes the regulations to be removed from 50 CFR 26.34.

TABLE 1—SUMMARY OF DEREGULATION ACTIONS

Regulation for removal	Summary of current regulation	Summary of deregulation action
50 CFR 26.34(b)(2)(iii)(B) (Havasu National Wildlife Refuge, Arizona).	Limits watercraft speed as indicated by signs or regulatory buoys to no wake (as governed by State law) in all backwaters.	The Service adopts Arizona State regulations governing boating and the operation and use of boats per 50 CFR 27.32(b)(1)(ii). Enforcement of boating restrictions at Havasu National Wildlife Refuge will continue to follow State regulations. The Service-specific regulation is removed from 50 CFR 26.34 to allow for clarity and consistency with State regulations.
50 CFR 26.34(c)(7)(vi) (Pond Creek National Wildlife Refuge, Arkansas).	Prohibits possession or use of fireworks.	The possession or use of fireworks is prohibited on all Service lands per 50 CFR 27.41. The regulation is removed from 50 CFR 26.34 to allow for clarity and consistency with existing regulations.
50 CFR 26.34(h)(7)(ii) (St. Vincent National Wildlife Refuge, Florida).	Prohibits the use or possession of alcoholic beverages during the refuge hunt period.	The possession or use of alcoholic beverages while hunting is prohibited on all Service lands per 50 CFR 32.2(j). The regulation is removed from 50 CFR 26.34 to allow for clarity and consistency with existing regulations.

TABLE 1—SUMMARY OF DEREGULATION ACTIONS—Continued

Regulation for removal	Summary of current regulation	Summary of deregulation action
50 CFR 26.34(v)(2)(i)(F) (Upper Mississippi River National Wildlife and Fish Refuge, Minnesota).	Prohibits the cutting, removal, or damage of any tree or vegetation on the refuge as well as attaching nails, screws, or other hardware to any tree.	Cutting, removing, or damaging any tree or vegetation is prohibited on all Service lands per 50 CFR 27.51(a). Furthermore, attaching nails, screws, or other hardware to a tree is prohibited on all Service lands per 50 CFR 32.2(i). The regulation is removed from 50 CFR 26.34 to allow for clarity and consistency with existing regulations.
50 CFR 26.34(v)(2)(i)(H)(1) (Upper Mississippi River National Wildlife and Fish Refuge, Minnesota).	Prohibits dogs disturbing or endangering wildlife or people while on the refuge.	The disturbing or endangering of wildlife is prohibited on all Service lands per 50 CFR 27.51(a). The regulation is removed from 50 CFR 26.34 to allow for clarity and consistency with existing regulations.
50 CFR 26.34(v)(2)(i)(H)(3) (Upper Mississippi River National Wildlife and Fish Refuge, Minnesota).	Prohibits allowing dogs to roam	Allowing dogs to roam is prohibited on all Service lands per 50 CFR 26.21(b). The regulation is removed from 50 CFR 26.34 to allow for clarity and consistency with existing regulations.
50 CFR 26.34(v)(2)(i)(H)(6) (Upper Mississippi River National Wildlife and Fish Refuge, Minnesota).	Prohibits field trials and commercial/professional dog training.	Field trials are prohibited on all Service lands unless a special permit is granted per 50 CFR 27.91. The regulation is removed from 50 CFR 26.34 to allow for clarity and consistency with existing regulations.
50 CFR 26.34(v)(2)(i)(H)(7) (Upper Mississippi River National Wildlife and Fish Refuge, Minnesota).	Owners/handlers of dogs are responsible for disposal of dog droppings.	The littering, disposing, or dumping of any debris is prohibited on all Service lands per 50 CFR 27.94(a). The regulation is removed from 50 CFR 26.34 to allow for clarity and consistency with existing regulations.
50 CFR 26.34(v)(2)(i)(I) (Upper Mississippi River National Wildlife and Fish Refuge, Minnesota).	Prohibits the discharging of firearms, air guns, or any other weapons on the refuge, unless engaged in authorized activities during established seasons.	The discharge of firearms, air guns, or other weapons is prohibited on all Service lands unless engaged in authorized activities per 50 CFR 27.41 and 50 CFR 27.43. The regulation is removed from 50 CFR 26.34 to allow for clarity and consistency with existing regulations.
50 CFR 26.34(v)(2)(i)(K) (Upper Mississippi River National Wildlife and Fish Refuge, Minnesota).	Prohibits littering, abandonment of property, and disposal of human waste.	Littering and the disposal of human waste is prohibited on all Service lands per 50 CFR 27.94(a). Furthermore, the abandonment of property is prohibited on all Service lands per 50 CFR 27.93. The regulation is removed from 50 CFR 26.34 to allow for clarity and consistency with existing regulations.

The Department has determined that these reasons, independently and alone, justify revision of 50 CFR 26.34. The Department has no interest in maintaining regulations that are redundant.

The Department is issuing this rule as a direct final rule. Although the Administrative Procedure Act (APA; 5 U.S.C. 551–559) generally requires agencies to engage in notice and comment rulemaking, section 553 of the APA provides an exception when the agency “for good cause finds” that notice and comment are “impracticable, unnecessary, or contrary to the public interest.” The Department has determined that notice and comment are unnecessary because this rule is noncontroversial; of a minor, technical nature; involves little agency discretion; and is unlikely to receive any significant adverse comments. Significant adverse comments are those that oppose the revision of the rule and raise, alone or in combination, (1) reasons why the revision of the rule is inappropriate, including challenges to the revision’s underlying premise; or (2) serious unintended consequences of the revision. A comment recommending an addition to the rule will not be considered significant and adverse unless the comment explains how this

direct final rule would be ineffective without the addition.

Required Determinations

Executive Order (E.O.) 12866—Regulatory Planning and Review and E.O. 13563—Improving Regulation and Regulatory Review

E.O. 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866, while calling for improvements in the Nation’s regulatory system to promote predictability, reduce uncertainty, and use the best, most innovative, and least burdensome tools for achieving regulatory ends. E.O. 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that agencies must base regulations on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. The Department

developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA; 5 U.S.C. 601–612) requires an agency to prepare a regulatory flexibility analysis for all rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. As the Department is not required to publish a notice of proposed rulemaking for this direct final rule, the RFA does not apply.

Congressional Review Act

This direct final rule is not a major rule under the Congressional Review Act, 5 U.S.C. 804(2). Specifically, the direct final rule: (a) will not have an annual effect on the economy of \$100 million or more; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based

enterprises to compete with foreign-based enterprises in domestic and export markets.

Unfunded Mandates Reform Act

This direct final rule does not impose an unfunded mandate on State, local, or Tribal governments, or the private sector, of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments, or the private sector. The rule merely revises the Federal regulations to remove an obsolete provision that is no longer used. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

This direct final rule does not result in a taking of private property or otherwise have regulatory takings implications under E.O. 12630. The rule rescinds a redundant regulatory provision; therefore, the rule will not result in private property being taken for public use without just compensation. A takings implication assessment is therefore not required.

Federalism (E.O. 13132)

Under the criteria of section 1 of E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. A federalism summary impact statement is not required.

Civil Justice Reform (E.O. 12988)

In accordance with E.O. 12988, the Office of the Solicitor has determined that this rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), E.O. 13175, and 512 DM 2, we have evaluated potential effects on federally recognized Indian Tribes and have determined that this rule would not interfere with Tribes' abilities to manage themselves, their funds, or Tribal lands.

Paperwork Reduction Act

This direct final rule does not contain any new collection of information that requires approval by the OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

This direct final rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) is not required because this rule is covered by a categorical exclusion applicable to regulatory functions "that are of an administrative, financial, legal, technical, or procedural nature." 43 CFR 46.210(i). In addition, the Department has determined that this rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

Energy Supply, Distribution or Use (E.O. 13211)

This direct final rule is not a significant energy action as defined in E.O. 13211. Therefore, a Statement of Energy Effects is not required.

List of Subjects in 50 CFR 26

Recreation and recreation areas, Wildlife refuges.

Regulation Promulgation

For the reasons stated in the preamble, we amend part 26, subchapter C of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 26—PUBLIC ENTRY AND USE

■ 1. The authority citation for part 26 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd–668ee, and 715i; Pub. L. 96–315 (94 Stat. 958) and Pub. L. 98–146 (97 Stat. 955).

Subpart C—Public Use and Recreation

■ 2. Amend § 26.34 by:

- a. Revising and republishing paragraphs (b)(2)(iii), (c)(7), and (h)(7);
- b. Revising and publish paragraphs (v)(2)(i)(F) through (v)(2)(i)(H); and
- c. Removing paragraphs (v)(2)(i)(I) through (v)(2)(i)(K).

The revisions read as follows:

§ 26.34 What are the special regulations concerning public access, use, and recreation for individual national wildlife refuges?

* * * * *

(b) Arizona—

* * * * *

(2) Havasu National Wildlife Refuge.

* * * * *

(iii) The following conditions apply to all waters of the Colorado River within the refuge from the south regulatory buoy line to the north regulatory buoy line at Interstate 40 (approximately 17 miles (27.2 kilometers)):

(A) We prohibit personal watercraft (PWC, as governed by State law) as indicated by signs or regulatory buoys in all backwaters.

(B) We prohibit water-skiing, tubing, wake boarding, or other recreational-towed devices.

* * * * *

(c) Arkansas—

* * * * *

(7) Pond Creek National Wildlife Refuge.

(i) We allow camping only at designated primitive campground sites identified in the refuge hunt brochure. We restrict camping to the individuals involved in refuge wildlife-dependent activities. Campers may stay no more than 14 days during any consecutive 30-day period in a campground and must occupy the camps daily. We prohibit all disturbances, including use of generators, after 10 p.m.

(ii) You must unload all hunting firearms and crossbows (see § 27.42(b) of this chapter) within 100 yards (90 meters) of a campground.

(iii) We prohibit camping on the refuge while hunting off the refuge.

(iv) We prohibit consumption or possession of opened container(s) of alcoholic beverage(s) in parking lots, on roadways, and in plain view in campgrounds.

(v) We prohibit fires outside of campgrounds.

(vi) We prohibit geocaching.

* * * * *

(h) Florida—

* * * * *

(7) St. Vincent National Wildlife Refuge.

(i) We restrict camping and fires (see § 27.95(a) of this chapter) to the two designated camping areas. We may restrict or ban fires during dry periods.

(ii) We prohibit motorized equipment, generators, or land vehicles (except bicycles).

(iii) Visitors must observe quiet time in the campground between 9 p.m. and 5 a.m. We prohibit loud or boisterous behavior or activity.

(iv) We allow boats with electric motors. You must remove all other

motors from the boats and secure them to a designated motor rack with a lock and chain.

(v) We allow boats in refuge lakes from May 15 through September 30.

* * * * *

(v) *Minnesota—*

* * * * *

(2) *Upper Mississippi River National Wildlife and Fish Refuge—*

* * * * *

(F) We prohibit all vehicle use on or across refuge lands at any time except on designated routes of travel or on the ice over navigable waters accessed from boat landings. We prohibit parking beyond vehicle control barriers or on grass or other vegetation. We prohibit parking or operating vehicles in a manner that obstructs or impedes any road, trail, fire lane, boat ramp, access gate, or other facility, or in a manner that creates a safety hazard or endangers any person, property, or environmental feature. We may impound any vehicle left parked in violation at the owner's expense (see § 27.31(h) of this chapter).

(G) We allow dogs and other domestic animals on the refuge subject to the following conditions:

(1) While on the refuge, all dogs must be under the control of their owners/handlers at all times or on a leash.

(2) All dogs must be on a leash when on hiking trails, or other areas so posted.

(3) We allow working a dog in refuge waters by tossing a retrieval dummy or other object for out-and-back exercise.

(4) We prohibit horses and all other domestic animals on the refuge unless confined in a vehicle, boat, trailer, kennel, or other container (see § 26.21 of this chapter).

(H) We prohibit the use or possession of glass food and beverage containers on lands within the refuge.

* * * * *

Kevin Lilly,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks, Exercising the Delegated Authority of the Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2026-00734 Filed 1-14-26; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 80

[Docket No. FWS-HQ-OCI-2025-0080; FVWF51100900000-XXX-FF09W11000; FVWF94100900000-XXX-FF09W11000]

RIN 1018-BI83

Implementation of the Pittman-Robertson Wildlife Restoration and Dingell-Johnson Sport Fish Restoration Acts

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Direct final rule; request for comments.

SUMMARY: This direct final rule (DFR) rescinds portions of the U.S. Fish and Wildlife Service's (Service) regulations containing general provisions related to requirements for programs and subprograms authorized under the Pittman-Robertson Wildlife Restoration Act and the Dingell-Johnson Sport Fish Restoration Act. This DFR removes redundancies and eliminates superfluous sections. These rescissions will result in regulations that better serve the American public, streamline government operations, and increase efficiencies for recipients of our financial assistance programs.

DATES: This final rule is effective on March 16, 2026, without further action, unless significant adverse comments are received by February 17, 2026. If significant adverse comments are received, we will publish a notification in the **Federal Register** before the effective date either withdrawing the rule or issuing a new final rule that responds to any significant adverse comments.

ADDRESSES: You may submit comments by one of the following methods:

Electronically: Go to the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Search box, enter FWS-HQ-OCI-2025-0080, which is the docket number for this rulemaking. Then, click the Search button. In the Search panel on the left side of the screen, under the Document Type heading, click on the box next to Rule to locate this document. You may submit a comment by clicking on "Comment."

By hard copy: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-HQ-OCI-2025-0080, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W); 5275 Leesburg Pike, Falls Church, VA 22041-3803.

FOR FURTHER INFORMATION CONTACT:

Diana Swan-Pinion, Office of Conservation Investment, U.S. Fish and Wildlife Service, email: diana_swan-pinion@fws.gov, telephone: 404-821-6844. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The Department of the Interior's (Department) regulations governing the annual apportionments to fish and wildlife agencies of States, U.S. Territories, and the District of Columbia authorized under the Pittman-Robertson Wildlife Restoration Act (Wildlife Restoration Act, 50 Stat. 917, as amended; 16 U.S.C. 669 *et seq.*) and the Dingell-Johnson Sport Fish Restoration Act (Sport Fish Restoration Act, 64 Stat. 430, as amended; 16 U.S.C. 777-777m, except 777e-1 and g-1) (Acts) are contained in 50 CFR part 80. The Service regularly reviews its regulations implementing the Acts to ensure they are both efficient and effective. The Service has determined that certain regulations in 50 CFR part 80 are duplicative or redundant of the Acts or other regulations or are more appropriately located in the annual notice of funding opportunities (NOFO) which includes the information that is necessary for the effective communication of the program objectives.

Accordingly, the Department will remove §§ 80.10(a-c), 80.11, and 80.12 because they restate language that is found in the Acts. We further revise § 80.10 to only include language that is unique to the regulation.

We also remove §§ 80.66, 80.121, and 80.123 because these sections restate regulations that are found in 2 CFR part 200, the regulations for Federal financial assistance for all Federal agencies.

Finally, we will remove §§ 80.80 and 80.90 as they restate or explain language that is found in the annual NOFO for these grant programs.

The Department has determined that these reasons, independently and alone, justify revision of 50 CFR part 80. The Department has no interest in maintaining regulations that are obsolete or unclear.

The Department is issuing this rule as a direct final rule. Although the Administrative Procedure Act (APA; 5 U.S.C. 551-559) generally requires

agencies to engage in notice and comment rulemaking, section 553 of the APA provides an exception when the agency “for good cause finds” that notice and comment are “impracticable, unnecessary, or contrary to the public interest.” The Department has determined that notice and comment are unnecessary because this rule is noncontroversial; of a minor, technical nature; involves little agency discretion; and is unlikely to receive any significant adverse comments. Significant adverse comments are those that oppose the revision of the rule and raise, alone or in combination, (1) reasons why the revision of the rule is inappropriate, including challenges to the revision’s underlying premise; or (2) serious unintended consequences of the revision. A comment recommending an addition to the rule will not be considered significant and adverse unless the comment explains how this direct final rule would be ineffective without the addition.

Required Determinations

Executive Order (E.O.) 12866—Regulatory Planning and Review, E.O. 13563—Improving Regulation and Regulatory Review, and E.O. 14192—Unleashing Prosperity Through Deregulation

E.O. 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866, while calling for improvements in the Nation’s regulatory system to promote predictability, reduce uncertainty, and use the best, most innovative, and least burdensome tools for achieving regulatory ends. E.O. 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that agencies must base regulations on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. The Department developed this rule in a manner consistent with these requirements. This DFR is an E.O. 14192 deregulatory action.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA; 5 U.S.C. 601–612) requires an agency to prepare a regulatory flexibility analysis

for all rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. As the Department is not required to publish a notice of proposed rulemaking for this direct final rule, the RFA does not apply.

Congressional Review Act

This rule is not a major rule under the Congressional Review Act, 5 U.S.C. 804(2). Specifically, the direct final rule: (a) will not have an annual effect on the economy of \$100 million or more; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*)

This rule does not impose an unfunded mandate on State, local, or Tribal governments, or the private sector, of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments, or the private sector. The rule merely revises the Federal regulations to remove an obsolete provision that is no longer used. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

This rule does not result in a taking of private property or otherwise have regulatory takings implications under E.O. 12630. The rule rescinds an obsolete regulatory provision; therefore, the rule will not result in private property being taken for public use without just compensation. A takings implication assessment is therefore not required.

Federalism (E.O. 13132)

Under the criteria of section 1 of E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various

levels of government. A federalism summary impact statement is not required.

Civil Justice Reform (E.O. 12988)

In accordance with E.O. 12988, the Office of the Solicitor has determined that this rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of E.O. 12988.

Government-to-Government Relationship With Tribes

In accordance with the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951), E.O. 13175, and 512 DM 2, we have evaluated potential effects on federally recognized Indian Tribes and have determined that this rule would not interfere with Tribes’ abilities to manage themselves, their funds, or Tribal lands.

Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

This proposed rule does not contain any new collection of information that requires approval by the OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements associated with the Service’s grants and financial assistance activities and assigned OMB Control No. 1018–0100 (exp. 06/30/2028).

National Environmental Policy Act (42 U.S.C. 4321 *et seq.*)

This direct final rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) is not required because this rule is covered by a categorical exclusion applicable to regulatory functions “that are of an administrative, financial, legal, technical, or procedural nature.” 43 CFR 46.210(i). In addition, the Department has determined that this rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

Energy Supply, Distribution or Use (E.O. 13211)

This direct final rule is not a significant energy action as defined in

E.O. 13211. Therefore, a statement of energy effects is not required.

List of Subjects in 50 CFR 80

Fish, Fishing, Grant programs—natural resources, Grant programs—recreation, Grants administration, Hunting, Licensing and Registration, Natural resources, Rates and fares, Real property acquisition, Recreation and recreation areas, Reporting and recordkeeping requirements, Signs and symbols, Wildlife.

Regulation Promulgation

For the reasons stated in the preamble, we amend part 80, subchapter F of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 80—ADMINISTRATIVE REQUIREMENTS, PITTMAN-ROBERTSON WILDLIFE RESTORATION AND DINGELL-JOHNSON SPORT FISH RESTORATION ACTS

■ 1. The authority citation for part 80 continues to read as follows:

Authority: 16 U.S.C. 669–669k and 777–777n, except 777e–1 and g–1.

■ 2. Revise § 80.10 to read as follows:

§ 80.10 Who is eligible to receive the benefits of the Acts?

States acting through their fish and wildlife agencies are eligible for benefits of the Acts only if they pass and maintain legislation as described in the Acts and maintain control of revenue from hunting and fishing licenses. This revenue is to be used for administration of the State fish and wildlife agency, which includes the functions required to manage the agency and the fish- and wildlife-related resources for which the agency has authority under State law. A State becomes ineligible to receive the benefits of the Acts if they fail materially to comply with any law, regulation, or term of a grant as it relates to acceptance and use of funds under the Acts.

§ § 80.11 and 80.12 [Removed and Reserved]

■ 3. Remove and reserve §§ 80.11 and 80.12.

Subpart F—Allocation of Funds by an Agency

§ 80.66 [Removed and Reserved]

■ 4. Remove and reserve § 80.66.

Subpart G—Application for a Grant

§ 80.80 [Removed and Reserved]

■ 5. Remove and reserve § 80.80.

Subpart H—General Grant Administration

§ 80.90 [Removed and Reserved]

■ 6. Remove and reserve § 80.90.

Subpart I—Program Income

§ § 80.121 and 80.123 [Removed and Reserved]

■ 7. Remove and reserve §§ 80.121 and 80.123.

Kevin Lilly,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks, Exercising the Delegated Authority of the Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2026–00675 Filed 1–14–26; 8:45 am]

BILLING CODE 4333–15–P

Proposed Rules

Federal Register

Vol. 91, No. 10

Thursday, January 15, 2026

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 401, 404, 415, 417, 431, 435, 437, 450, and 453

[Docket No.: FAA-2023-1858; Notice No. 23-13]

RIN 2120-AK81

Mitigation Methods for Launch Vehicle Upper Stages on the Creation of Orbital Debris; Withdrawal

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

ACTION: Notice of Proposed Rulemaking (NPRM); withdrawal.

SUMMARY: This document informs the public that FAA has determined not to pursue the previously published NPRM, which proposed to require that upper stages of commercial launch vehicles and other components resulting from launch or reentry be removed from orbit within 25 years after launch, either through atmospheric disposal or maneuver to an acceptable disposal orbit. FAA is withdrawing this action to further consider comments received.

DATES: The NPRM published on September 26, 2023, at 88 FR 65835 is withdrawn, effective January 15, 2026.

FOR FURTHER INFORMATION CONTACT: Stephen Earle, Space Policy and Outreach Branch Manager, Office of Commercial Space Transportation (ASZ-220), Federal Aviation Administration, 800 Independence Ave. SW, Washington, DC 20591; telephone (202) 267-8376; email stephen.earle@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

On September 26, 2023, FAA published a Notice of Proposed Rulemaking (NPRM) titled “Mitigation Methods for Launch Vehicle Upper Stages on the Creation of Orbital

Debris.”¹ The proposed rule would require upper stages of commercial launch vehicles and other components resulting from launch or reentry be removed from orbit within 25 years after launch, either through atmospheric disposal or maneuver to an acceptable disposal orbit. The proposed rule would reduce the amount of additional debris created, as well as limit potential collisions with functional spacecraft and other debris already on-orbit.

Reason for Withdrawal

FAA has determined that this regulatory course of action requires further study. Therefore, FAA is withdrawing the NPRM to further consider the 40 comments received during the NPRM comment period. Of the 40 comments received, 6 comments related to the costs of remediating orbital debris, and 7 comments expressed concern with respect to FAA’s explicit authority to take some of the action proposed. The agency intends to review FAA’s authority as it relates to further regulating orbital debris mitigation. Additionally, FAA intends to review the space launch industry cost inputs and expectations with respect to debris mitigation activities.

Conclusion

Withdrawal of the NPRM does not preclude FAA from issuing a rulemaking action regarding orbital debris in the future nor does it commit the agency to any future course of action. The agency will propose any future changes to the Code of Federal Regulations through the appropriate rulemaking processes.

Therefore, FAA withdraws Notice No. 23-13, published at 88 FR 65835 on September 26, 2023.

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44703 in Washington, DC.

Bryan K. Bedford,
Administrator.

[FR Doc. 2026-00680 Filed 1-14-26; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF COMMERCE

15 CFR Part 28

[Docket ID 260107-0013]

RIN 0605-AA73

Removing Redundant, Obsolete, and Inefficient Provisions From the Regulations Governing Restrictions on Lobbying

AGENCY: Office of the Secretary of Commerce, Department of Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: The Department of Commerce (“Commerce”) is proposing to amend its regulations governing restrictions on lobbying. Specifically, Commerce is proposing to remove two redundant and unnecessary compliance provisions and remove two reporting requirements that are obsolete and unwarranted. This action is necessary to reduce regulatory complexity and streamline the regulations governing restrictions on lobbying. The intended effects of this action are to eliminate redundancy, promote administrative efficiency, and update Commerce’s lobbying regulations to properly reflect and implement the underlying statutory authority in its current form.

DATES: Comments must be received on or before February 17, 2026.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at <https://www.regulations.gov>, Document ID: DOC-2026-0001.

However, if you require an accommodation or cannot otherwise submit your comments via <https://www.regulations.gov>, please contact the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Comments that are not submitted via <https://www.regulations.gov> will not be accepted absent such a request.

Commerce will not accept comments submitted after the comment period closes. To ensure that Commerce does not receive duplicate copies, please submit your comments only once. Additionally, please include the Docket ID DOC-2026-0001 at the top of your comments.

Federal eRulemaking Portal: Please go to <https://www.regulations.gov> to submit your comments electronically. Information on using <https://www.regulations.gov>, including

¹ 88 FR 65835.

instructions for finding a rule on the site and submitting comments, is available on the site under “FAQ.”

Note: Commerce’s policy is generally to make comments received from members of the public available for public viewing on the Federal eRulemaking Portal at <https://www.regulations.gov>. Therefore, commenters should include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Daniel Sweeney, Senior Counsel, Office of the General Counsel, at (202) 482–1395.

SUPPLEMENTARY INFORMATION:

I. Background

Commerce is proposing to amend its regulations at 15 CFR part 28, “New Restrictions on Lobbying.” These regulations implement section 319 of Public Law 101–121 (31 U.S.C. 1352), which established government-wide restrictions on the use of appropriated funds for lobbying activities in connection with federal contracts, grants, loans, and cooperative agreements. The primary purpose of this part is to ensure transparency and accountability by requiring certification and disclosure of lobbying activities intended to influence federal executive or legislative branch officials regarding such federal awards.

Commerce, along with numerous other executive branch agencies, originally established these regulations through a government-wide interim final rule published on February 26, 1990 (55 FR 6735, 6748). This rule was developed to create uniform practices across the federal government and was based on interim final guidance issued by the Office of Management and Budget (“OMB”). The rule was issued in interim final form to meet a statutory deadline for implementation, and it provided a public comment period for interested parties to provide feedback before a final rule was issued.

Commerce is now proposing to amend the regulations located in Subpart D (“Penalty and Enforcement”) and Subpart F (“Agency Reports”) of 15 CFR part 28.

Subpart D describes the mechanisms for ensuring compliance with Part 28. Section 28.400, titled “Penalties,” sets forth various penalties, ranging from \$10,000 to \$100,000, for violations of Part 28. Section 28.405, titled “Penalty procedures,” states that agencies shall impose and collect civil penalties for violations of Part 28 pursuant to the provisions of the Program Fraud and Civil Remedies Act, insofar as those provisions are not inconsistent with the

requirements of Part 28. Section 28.410, titled “Enforcement,” states that the head of each agency shall take such actions as are necessary to ensure that the provisions of Part 28 are vigorously implemented and enforced by that agency.

Subpart F pertains to agency reporting requirements. Section 28.600, titled “Semi-annual compilation,” mandates that on May 31 and November 30 of each year, the agency must submit a report to the Secretary of the Senate and the Clerk of the House of Representatives containing a compilation of the information from disclosure reports received during the preceding six-month period. It also specifies that these compilations are to generally be made available for public inspection. Section 28.605, titled “Inspector General report,” requires Commerce’s Inspector General, or a comparable official, to prepare and submit an annual report to Congress. That report must provide an evaluation of the agency’s compliance with, and the effectiveness of, the lobbying restriction requirements, and it is required to be submitted at the same time as the agency’s annual budget justifications to Congress.

Following a review of Part 28 and the underlying statutory authority, Commerce has preliminarily determined that §§ 28.405, 28.410, 28.600, and 28.605 are appropriate for removal for the reasons discussed below. Commerce invites comment on the proposed amendments.

II. Discussion

Commerce is proposing to amend 15 CFR part 28 by (1) removing from Subpart D §§ 28.405 and 28.410, both of which merely restate the text of the underlying statute; and (2) removing Subpart F in its entirety, because neither of its two sections is required by statute or otherwise warranted. The removal of these regulations would reduce regulatory complexity without diminishing any substantive obligation currently required by statute.

Proposed Elimination of Regulations That Restate Statutory Text

Commerce is proposing to remove §§ 28.405 and 28.410 from Subpart D. Both of these sections restate underlying statutory text and do not provide any new detail or elaboration necessary to implement the statutory text.

Section 28.405 states that “[a]gencies shall impose and collect civil penalties pursuant to the provisions of the Program Fraud and Civil Remedies Act, 31 U.S.C. 3803 (except subsection (c)), 3804, 3805, 3806, 3807, 3808, and 3812,

insofar as these provisions are not inconsistent with the requirements herein.” This is a restatement of 31 U.S.C. 1352(c)(3), which provides that “[s]ections 3803 (except for subsection (c)), 3804, 3805, 3806, 3807, 3808, and 3812 of this title shall be applied, consistent with the requirements of this section, to the imposition and collection of civil penalties under this subsection.”

Section 28.410 states that “[t]he head of each agency shall take such actions as are necessary to ensure that the provisions herein are vigorously implemented and enforced in that agency.” This is a restatement of 31 U.S.C. 1352(f), which provides that “[t]he head of each Federal agency shall take such actions as are necessary to ensure that the provisions of this section are vigorously implemented and enforced in such agency.”

As these comparisons show, §§ 28.405 and 28.410 both restate underlying statutory provisions almost verbatim. Accordingly, §§ 28.405 and 28.410 do not provide any new detail or elaboration necessary to implement the underlying statutory authority. It is Commerce’s policy to eliminate such regulations in order to reduce clutter in the Code of Federal Regulations and encourage the public to directly consult the applicable statutory text. This approach minimizes the risk of confusion and promotes administrative efficiency. Commerce has preliminarily determined that the benefits from removing §§ 28.405 and 28.410 would outweigh any associated costs. Commerce is therefore proposing to amend Subpart D by removing §§ 28.405 and 28.410.

Proposed Elimination of Obsolete and Unwarranted Congressional Reporting Requirements

Commerce is also proposing to remove Subpart F, which consists of §§ 28.600 and 28.605. These sections describe reporting requirements that are no longer statutorily required or otherwise warranted.

Section 28.600 requires the agency to collect lobbying disclosure reports and submit a semi-annual compilation of this information to the Secretary of the Senate and the Clerk of the House of Representatives. However, the underlying statutory authority for this report, formerly located in 31 U.S.C. 1352, was removed by the Lobbying Disclosure Act of 1995 (Pub. L. 104–65) (“LDA”). Nor is there sufficient policy rationale to retain the regulation in the face of congressional action. This regulation, established in 1990, reflects an outdated approach to lobbying transparency. The LDA established a

comprehensive, publicly accessible, and government-wide database for the registration and reporting of lobbying activities. This centralized system, managed by Congress, provides a more efficient and effective mechanism for public transparency than the fragmented, agency-by-agency compilations mandated by the regulation. Continuing to produce a separate, semi-annual report is duplicative and constitutes an inefficient use of agency resources. Therefore, removing this regulation would align Commerce's regulations with current law and eliminate an obsolete and inefficient administrative task.

Section 28.605 mandates that Commerce's Inspector General submit a separate annual report to Congress evaluating the agency's compliance with lobbying restrictions. The specific statutory mandate for this report, also formerly in 31 U.S.C. 1352, was repealed by Congress through Public Law 104–65 and Public Law 104–66. Moreover, this requirement is duplicative of the Inspector General's pre-existing, broader oversight and reporting responsibilities. The Inspector General Act of 1978 provides a robust framework for agency oversight, including a requirement for semi-annual reports to Congress on significant problems, abuses, and deficiencies relating to the agency's programs and operations. Any material non-compliance with lobbying regulations would be addressed within this comprehensive reporting structure. Mandating a separate, stand-alone report on this single issue is an inefficient use of oversight resources and creates an unnecessary administrative burden. Eliminating this regulation would streamline reporting requirements and allow the Inspector General to allocate resources based on risk, consistent with the broader statutory framework for its mission. Accordingly, Commerce has preliminarily determined that the benefits from eliminating Subpart F would outweigh any associated costs. Commerce is therefore proposing to remove Subpart F in its entirety.

Commerce invites comments on its preliminary assessment that §§ 28.405, 28.410, 28.600, and 28.605 are appropriate for removal.

III. Classification

Executive Order 12866

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

Executive Order 14192

This proposed rule is expected to be an Executive Order 14192 deregulatory action.

Regulatory Flexibility Act (RFA)

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The regulations proposed to be removed affect the responsibilities of the federal government only and thus would not affect small entities.

Paperwork Reduction Act

This proposed rule contains no new information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects for 15 CFR Part 28

Administrative practice and procedure, Government contracts, Grant programs, Grants administration, Loan programs, Lobbying, Penalties, Reporting and recordkeeping requirements.

Dated: January 13, 2026.

Paul Dabbar,

Deputy Secretary of Commerce.

Accordingly, for the reasons set forth above, part 28 of title 15 of the Code of Federal Regulations is proposed to be amended as follows:

PART 28—NEW RESTRICTIONS ON LOBBYING

- 1. Revise the authority citation for part 28 to read as follows:

Authority: Sec. 319, Pub. L. 101–121 (31 U.S.C. 1352; 5 U.S.C. 301; Sec. 4, as amended, and sec. 5, Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104–134, 110 Stat. 1321, 28 U.S.C. 2461 note.

Subpart D—Penalties and Enforcement

§ 28.405 [Removed and Reserved]

- 2. Remove and reserve § 28.405.

§ 28.410 [Removed and Reserved]

- 3. Remove and reserve § 28.410.

Subpart F—Agency Reports

§ Subpart F [Removed and Reserved]

- 4. Remove and reserve subpart F, consisting of §§ 28.600 and 28.605.

[FR Doc. 2026–00687 Filed 1–14–26; 8:45 am]

BILLING CODE 3510–BW–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

[Docket No. VA–2025–VBA–0172]

RIN 2900–AS38

Edith Nourse Rogers STEM Scholarship

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend the Veteran Readiness and Employment and Education regulations to incorporate the provisions of the Harry W. Colmery Veterans Educational Assistance Act of 2017 (Colmery Act) that created the Edith Nourse Rogers STEM Scholarship (STEM Scholarship), which provides up to nine months of additional Post-9/11 GI Bill benefits to certain eligible individuals. This proposed rulemaking, which includes the rules necessary to provide this educational assistance to eligible individuals, would also incorporate the provisions of the Johnny Isakson and David P. Roe Veterans Health Care and Benefits Improvement Act of 2020 (Isakson-Roe Act) that further expanded the eligibility for the STEM Scholarship to individuals enrolled in a dual degree program that includes an undergraduate degree in a science, technology, engineering, and mathematics (STEM) field and to certain individuals enrolled in a covered clinical training program for health care professionals.

DATES: Comments must be received on or before March 16, 2026.

ADDRESSES: You may submit comments through www.regulations.gov under RIN 2900–AS38. That website includes a plain-language summary of this rulemaking. Instructions for accessing agency documents, submitting comments and viewing the rulemaking docket are available on www.regulations.gov under “FAQ.”

FOR FURTHER INFORMATION CONTACT:

Thomas Alphonso, Assistant Director, Policy and Procedures, Education Service, Veterans Benefits Administration, (202) 461–9800.

SUPPLEMENTARY INFORMATION: On August 16, 2017, the President signed into law the Colmery Act, Public Law 115–48. Section 111 of the Colmery Act added a new section, 38 U.S.C. 3320, and provided VA the authority to establish the STEM Scholarship to provide up to nine months of additional Post-9/11 GI Bill benefits to eligible individuals. These benefits cannot be transferred to

dependents. This section of the law was effective on August 1, 2019.

On January 5, 2021, the Isakson-Roe Act, Public Law 116–315, was signed into law. Section 1001 of the Isakson-Roe Act, entitled “Improvements to Edith Nourse Rogers STEM Scholarship Program of Department of Veterans Affairs,” amended 38 U.S.C. 3320. Previously, only individuals enrolled in a program of education leading to a standard, undergraduate college degree in an approved STEM field or enrolled in a program of education leading to a teaching certification after earning a post-secondary degree in a STEM field were eligible for the STEM Scholarship. The Isakson-Roe Act expanded the eligibility for the STEM Scholarship to include individuals enrolled in a dual degree program that includes a STEM undergraduate degree and certain individuals enrolled in a covered clinical training program for health care professionals.

The Isakson-Roe Act also authorized VA to prioritize certain individuals for selection for the program when sufficient funds are not available in a fiscal year to provide additional benefits under this section to all eligible individuals. In addition, the Isakson-Roe Act excluded additional months of assistance under the STEM Scholarship from the calculation of the aggregate months of benefits available under the 48-month benefits limitation under 38 U.S.C. 3695.

The STEM Scholarship enables veterans to earn degrees that prepare them for in-demand careers in the fast-growing science and technology economy. VA has been administering the STEM Scholarship since the statute was first effective on August 1, 2019, and is proposing to create a new regulation at 38 CFR 21.9800 to complete the implementation of the STEM Scholarship under 38 U.S.C. 3320.

Eligibility

Under 38 U.S.C. 3320(b), an individual is eligible for the STEM Scholarship if the individual is or was entitled to educational assistance under 38 U.S.C. 3311 (including spouses and children eligible for the Marine Gunnery Sergeant John David Fry Scholarship under 38 U.S.C. 3311(f) and Purple Heart recipients under 38 U.S.C. 3311(b)(11)) and either used all of the educational assistance to which they were entitled under section 3311 or will use all such assistance within 180 days of applying for benefits under 38 U.S.C. 3320. Individuals must either be pursuing a STEM degree or have already earned a STEM degree to be eligible for

the STEM Scholarship. The specific types of programs of education that qualify for assistance under the STEM Scholarship are: a program of education leading to a post-secondary undergraduate degree in a STEM field; a dual degree program that includes an undergraduate college degree in an approved STEM degree field; a program of education leading to a teaching certification; or a covered clinical training program for health care professionals.

Individuals pursuing a post-secondary degree must have completed at least 60 standard semester credit hours (or 90 quarter credit hours) in a STEM program requiring at least the standard 120 semester credit hours (or 180 quarter credit hours) for completion to be eligible for the STEM Scholarship. Individuals enrolled in a teaching certification program must have earned a post-secondary degree in a STEM field to be eligible for the STEM Scholarship. Regarding covered clinical training programs for health care professionals, 38 U.S.C. 3320(b)(4)(B) and (C) explicitly refer to a covered clinical training program as a program in which an individual is enrolled after earning a post-secondary degree or graduate degree, respectively, in a STEM field.

Section 3320(h) states that the term “covered clinical training program means any clinical training required by a health care professional to be licensed to practice in a State or locality.” Because section 3320(b)(4)(B) and (C) refers to clinical training programs that follow attainment of a post-secondary or graduate degree, covered clinical training programs for the purposes of the STEM Scholarship are separate, standalone clinical training programs that are not a component of an undergraduate or graduate degree program. For example, a medical residency after graduating from a Doctorate in Medicine program is considered to be a separate program of education than the Doctorate in Medicine program and is therefore eligible for the STEM Scholarship. Simply obtaining a Doctorate in Medicine does not automatically grant a license to practice medicine. The individual still needs to complete a medical residency to be eligible to become a licensed health care provider.

The eligibility requirements discussed in section 3320(b) are included in 38 CFR 21.9800(b) and (c). The definition for the term “covered clinical training program for health care professionals” is included in § 21.9800(m)(2).

Approval of the Selected Program of Education

To be approved for the STEM Scholarship, the student’s program of education must meet VA’s current definition of a program of education as defined in 38 CFR 21.9505. The student must be enrolled in a program of education approved under Chapter 36 for VA educational assistance benefits. In addition, the program of education must lead to an undergraduate college degree, a teaching certification, or dual degrees that include a STEM undergraduate degree, or the program can qualify as a covered clinical training program for health care professionals.

Originally, as enacted by section 111 of Public Law 115–48, only an individual enrolled in an approved STEM field while pursuing a standard, undergraduate college degree or an individual enrolled in a program of education leading to a teaching certification after earning a post-secondary degree in an approved STEM field was eligible for the STEM Scholarship. However, section 1001 of Public Law 116–315 expanded eligibility to include individuals enrolled in a dual degree program that includes an undergraduate degree in an approved STEM field, as well as individuals who have earned an undergraduate or graduate degree in an approved STEM degree field and are enrolled in a covered clinical training program for health care professionals. Covered clinical training, for the purposes of the STEM Scholarship, is defined as a separate, standalone clinical training program required for health care professionals to be able to practice in a State or locality and does not include clinical training that is part of an undergraduate or graduate degree program.

Further, section 1001 removed “a medical residency program” from the approved list of undergraduate STEM degree programs. Medical residency programs are graduate level programs and not a part of undergraduate degree programs. Therefore, the previous inclusion of “undergraduate college degree in . . . medical residency program[s]” was nonsensical. To eliminate any confusion and correctly categorize medical residencies, as well as to broaden the category to include other similar types of training programs, section 1001 created new categories for “clinical training program[s] for health care professionals” (post-undergraduate and post-graduate level). Therefore, the proposed regulation does not include “medical residency programs” in the list of approved STEM degree programs

with the knowledge that such programs are now included in the new category of “a covered clinical training program for health care professionals.”

VA proposes to define the term “STEM field” as a field included in the Department of Education’s (ED) Classification of Instructional Programs (CIP Code) taxonomy within the two-digit series containing biological or biomedical science, physical science, science technologies or technicians, computer and information science and support services, mathematics or statistics, engineering, engineering technologies or an engineering-related field, a health profession or related program, an agriculture science or natural resources science program, or other subjects and fields identified by the Secretary of Veterans Affairs as meeting national needs. In general, any other subjects and fields identified by the Secretary as meeting national needs would involve research, innovation, or development of new technologies using engineering, mathematics, health care, computer science, or natural sciences. VA would rely heavily on ED’s CIP Code to match the statute’s list of eligible STEM fields with individual programs of study. VA has made the decision to defer mostly to ED’s classification scheme to leverage ED’s expertise in these matters and ED’s efforts in developing and maintaining the comprehensive CIP Code taxonomy. Furthermore, it would be problematic for ED to classify a program as non-STEM while VA classifies it as STEM; VA does not want to create inconsistencies in similar determinations between two Federal agencies; therefore, VA will rely heavily on ED’s CIP Code categorization when determining the appropriate classification of a program of education. While VA recognizes that VA-designated STEM fields not listed under ED’s CIP Code taxonomy could create classification differences, VA has statutory authority to use discretion to identify emerging STEM disciplines meeting national needs, particularly those directly supporting veteran workforce integration. VA will coordinate with ED to minimize inconsistencies. VA proposes to codify this definition in 38 CFR 21.9800(m)(1).

After completing an undergraduate degree in an approved STEM program, individuals may also qualify for the additional benefits if they are pursuing a teaching certification (typically obtained through a teaching preparation program or alternative teaching certification program). Teaching certification is the process by which prospective educators get teacher

licensing to teach within a given area after completing required coursework, degrees, tests, and other specified criteria.

The Secretary, or his or her designee, will maintain the STEM Designated Degree Program List, which will be a complete list of qualifying degree program categories organized by the CIP Codes and will be published on the GI Bill website at https://benefits.va.gov/gibill/docs/fgib/STEM_Program_List.pdf. Changes that are made to the STEM Designated Degree Program List will also be published in a notice in the **Federal Register**. All program categories included on the list must be consistent with the definition set forth in § 21.9800(m)(1). If the Secretary, or his or her designee, identifies other subjects or fields as meeting national needs, VA will notify Congress 90 days before approving any additional approved fields of study or subjects and will submit any analysis of labor market supply and demand used to identify such subjects or fields. VA is proposing to implement the provisions of 38 U.S.C. 3320(b)(4)(A)(i) and (g) in 38 CFR 21.9800(m).

Applying for the STEM Scholarship

An eligible individual would be required to apply for the STEM Scholarship by completing VA Form 22–10203 online, which would then be processed by the designated Regional Processing Office. The application process is no longer completed through paper submissions but is now being handled electronically. This streamlined process enables the applicant to log directly into a secured application portal with identification verification. The online application also requires applicants to provide the name and address of the school or training establishment they plan to attend and date they plan to start training. The school information provided by the applicant will be matched to VA’s database of educational institution information. A portion of the application form must be completed by the School Certifying Official (SCO) within 12 months of the date VA receives the application. If VA does not receive a timely response from the school, a VA claims processor will follow up with the SCO, as only complete applications will be considered for the STEM Scholarship. If a school fails to provide the requested information within the allotted time frame, VA reserves the authority to deny the application. VA is proposing to codify these standard procedures implementing the above application requirements in § 21.9800(d).

In accordance with 38 U.S.C. 3320(c), if VA determines that there are insufficient funds in a fiscal year to provide STEM Scholarship benefits to all eligible applicants, VA would prioritize eligible applicants according to particular criteria as described in the *Priority selection* section below. The two ways that VA has considered performing this prioritization of applicants are to create application cohorts by either withholding application decisions for a certain time period or until a certain number of applications are received. To balance the potential need to prioritize applications with the need to provide timely decisions on applications, VA has decided to create monthly cohorts for the purposes of performing the section 3320(c) prioritization. Candidates would be selected from the monthly cohort on the 7th day of each month. A scholarship would be only awarded if funds are available at the time of selection (the 7th of each month) and the applicant is of sufficient priority over other applicants in the respective monthly cohort. VA proposes to provide the priority selection criteria in 38 CFR 21.9800(g).

After VA reviews a STEM Scholarship application, it would issue either a STEM Scholarship denial letter or a STEM Scholarship acknowledgement letter. VA would send a denial letter if the applicant is ineligible for the STEM Scholarship or if there are insufficient funds available to select the applicant for the STEM Scholarship. If the applicant is ineligible, the denial letter would state the specific eligibility criteria that the applicant failed to meet. The acknowledgement letter would inform the applicant that they meet the STEM Scholarship eligibility criteria but that the scholarship selection process has not yet occurred at that juncture. The STEM Scholarship acknowledgement letter was a more critical status update to applicants when the STEM Scholarship program was launched in 2019 because, at that time, the selection process was only done quarterly rather than monthly. Therefore, the acknowledgement letter served as an indication to applicants that they met the STEM Scholarship eligibility criteria, but that notification of a selection decision might have taken a few months until the end of each quarter. Even though selection is now done monthly, the acknowledgement letter would still serve as a useful indicator of the status of their application by advising the applicant that their STEM Scholarship application has been processed but they have yet to

be selected for the program. They would receive an additional STEM Scholarship selection letter if they are selected to participate.

Once the applicant is officially selected for the STEM Scholarship, VA would send a STEM Scholarship selection letter to the candidate who then must take this letter to their school to certify their enrollment to VA. This selection letter for the STEM Scholarship program would act as a Certificate of Eligibility. After VA receives an official enrollment certification from the school, VA would send an award letter to the applicant. VA is proposing to codify provisions regarding decisions and notices of decisions in § 21.9800(h).

Beginning and Discontinuance Dates

Funding for STEM Scholarships is released on an annual basis beginning October 1st of each fiscal year. August 1st is the date that marks the beginning of the new academic year for STEM Scholarships. In order to prevent STEM funds in each fiscal year from being underutilized, the recipient would be required to begin using the benefit within six months of their selection or their scholarship would be forfeited. Recipients can reapply if their scholarship is forfeited and reestablish eligibility for the scholarship. Once a STEM Scholarship is awarded, the recipient must use the additional benefits from the STEM Scholarship within two years from the date that the award was first made (the beginning date) or by a discontinuance date under § 21.9635, whichever comes first. VA is proposing to codify this beginning date language in § 21.9800(e) and discontinuance date language in § 21.9800(f).

Priority Selection

When first enacted under the Colmery Act, 38 U.S.C. 3320(c) required VA to prioritize applications from the following eligible individuals: (1) individuals requiring the most credit hours to complete their program of education, and (2) individuals entitled to 100 percent of Post-9/11 GI Bill benefits (which includes veterans and servicemembers who have met certain active-duty service requirements, spouses and children eligible for the Fry Scholarship, and Purple Heart recipients).

When Congress amended the statute under the Isakson-Roe Act, it made the groups listed above optional prioritization groups by stating that, in the event that funding is not sufficient, VA “may give priority” to those individuals, see section 3320(c)(1), and

added a new paragraph listing the following order of required prioritizations in section. 3320(c)(2): (1) individuals enrolled in an undergraduate STEM degree program; (2) individuals enrolled in a program of education leading to a teaching certificate; (3) individuals enrolled in a dual degree program where the individual is pursuing both a STEM undergraduate degree and a STEM graduate degree; (4) individuals who have earned an undergraduate degree and are enrolled in a covered clinical training program for health care professionals; (5) individuals who have earned a graduate degree and are enrolled in a covered clinical training program for health care professionals; and (6) all other eligible individuals.

Under proposed 38 CFR 21.9800(g)(1), for enrollment periods beginning before January 5, 2021 (the effective date of the Isakson-Roe Act amendments), VA would prioritize applications using the original mandatory prioritization criteria that were included in the Colmery Act. Under proposed § 21.9800(g)(2), for enrollment periods beginning on or after January 5, 2021, should VA need to prioritize applications among eligible STEM Scholarship applicants due to insufficient funds, VA would first group applications using the priority criteria under 38 U.S.C. 3320(c)(2), and would then prioritize the eligible individuals within each group based on which applicants within the group have the most remaining required credit hours, per section 3320(c)(1)(A). VA believes that using the priority criteria of most remaining required credit hours under section 3320(c)(1)(A) is preferable to using the priority criteria of all individuals entitled to 100 percent of Post-9/11 GI Bill benefits under section 3320(c)(1)(B). The reason for this is because many recipients of VA educational assistance are entitled to 100 percent of Post-9/11 GI Bill benefits and, therefore, applying that criterion to a large group of applicants would not effectively serve the purpose of narrowing the pool of eligible applicants for prioritization in the event of insufficient funds. The following is an example of how VA would use this prioritization scheme:

VA has enough funds to provide STEM Scholarship benefits to all eligible individuals pursuing undergraduate STEM degrees, including dual undergraduate STEM degrees (priority group 1), all eligible individuals enrolled in teacher certificate programs (priority group 2), all eligible individuals enrolled in dual degree programs where the

undergraduate and graduate degrees are both in a STEM field (priority group 3), but does not have enough funds to provide benefits to the rest of the STEM Scholarship eligible individuals. In this scenario, VA would prioritize within the group of individuals who have earned an undergraduate degree in a STEM field and are enrolled in a covered clinical training program for health care professionals (priority group 4) based on those who have the most remaining required credit hours to complete their program of education.

Section 1001 of Public Law 116–315 applies to terms that begin on or after January 5, 2021. Retroactive benefits would not be paid for terms or programs that began and ended prior to the January 5, 2021, date of enactment. However, students enrolled in programs of education that began prior to January 5, 2021, and have a completion date after January 5, 2021, would become eligible for assistance for any additional terms beginning on or after January 5, 2021.

In addition, these changes apply to individuals who were deemed eligible for the STEM Scholarship prior to the date of enactment, but who did not begin their STEM program terms until on or after January 5, 2021. For example, if a student was eligible for the STEM Scholarship and attended a term that ran from November 1, 2020, to January 31, 2021, that term would not have been covered by the STEM Scholarship. However, if that same student began a new term on February 1, 2021, then that new term would have been evaluated for eligibility under the revised statute, with the amendments made by section 1001 of Public Law 116–315.

VA is proposing to codify the prioritization requirements in 38 CFR 21.9800(g).

Amount of Assistance

Under the STEM Scholarship, VA is authorized to pay each eligible individual the monthly amount payable under 38 U.S.C. 3313 for not more than nine months, and the aggregate amount paid may not exceed \$30,000. Additionally, the total amount of STEM Scholarship benefits paid to all eligible individuals may not exceed \$25,000,000 for fiscal year 2019, \$75,000,000 for fiscal years 2020 to 2022, and \$100,000,000 for fiscal year 2023 and each subsequent fiscal year. In accordance with section 3313, students may be eligible for assistance with tuition and fees, a monthly housing stipend, and a stipend for books, supplies, equipment, and other educational costs. In accordance with section 3320(d), these same benefits are

payable under the STEM Scholarship. VA is proposing to implement these provisions regarding the amount of assistance in 38 CFR 21.9800(i).

Additional Assistance Under Yellow Ribbon Program

Individuals who are entitled to the 100-percent level of the educational assistance amounts listed in 38 U.S.C. 3313(c)(1) are also eligible to participate in the Yellow Ribbon Program under section 3317, if the schools they attend participate in this program. The Yellow Ribbon Program allows an institution of higher learning to voluntarily enter into an agreement with VA to fund half of the remaining tuition and fees in excess of the tuition and fees cap defined in the Post-9/11 GI Bill. Pursuant to section 3320(d)(2) and (3), colleges and universities are permitted to pay Yellow Ribbon benefits for STEM Scholarship recipients; however, VA is not authorized to match or issue any Yellow Ribbon payments for STEM Scholarship recipients. VA is proposing to implement the limits on the amount of VA benefits paid to educational institutions in 38 CFR 21.9800(j).

Prohibition on Benefits Transfer

Per 38 U.S.C. 3320(e), a participant who receives additional benefits under the STEM Scholarship cannot transfer any such benefits to his or her dependents. VA is proposing to implement this prohibition on transferring STEM Scholarship benefits in 38 CFR 21.9800(k).

Exclusion From Aggregate Assistance Limitation

Under 38 U.S.C. 3695, individuals who receive educational assistance under multiple VA programs are generally capped at 48 months of aggregate assistance (individuals who receive Chapter 35 Survivors' and Dependents' Educational Assistance have a higher aggregate cap of 81 months). Per section 3320(d)(4), assistance received under the STEM Scholarship program does not count towards the 48-month aggregate assistance limitations contained in section 3695(a). VA is proposing to implement this provision under 38 CFR 21.9800(l).

Executive Orders 12866, 13563, and 14192

VA examined the impact of this rulemaking as required by Executive Orders 12866 (Sept. 30, 1993) and 13563 (Jan. 18, 2011), which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory

approaches that maximize net benefits. The Office of Information and Regulatory Affairs has determined that this rulemaking is not a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. This rule is not an Executive Order 14192 regulatory action because this rule is not significant under Executive Order 12866. The regulatory impact analysis associated with this rulemaking can be found as a supporting document at www.regulations.gov.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). The factual basis for this certification is based on the fact that this rule would codify in regulations procedures for the Edith Nourse Rogers STEM Scholarship program that are already administered under current VA policies authorized by 38 U.S.C. 3320. The only operational requirement imposed on educational institutions is the certification of students' enrollment and information to VA, which would align with existing practices under VA education benefit programs. While some participating institutions may be small entities, VA anticipates that any economic impact would be minimal, as these administrative tasks are routine. Therefore, under 5 U.S.C. 605(b), the Secretary certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities, and an initial or final regulatory flexibility analysis is not required.

Unfunded Mandates

This proposed rule would not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year.

Paperwork Reduction Act

Although this proposed rule contains collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), there are no provisions associated with this rulemaking constituting any new collection of information or any revisions to the existing collection of information. The collection of information for section 111 of the Colmery Act, Public Law 115–48, and section 1001 of the Isakson-Roe Act, Public Law 116–315, is currently

approved by the Office of Management and Budget (OMB) and has been assigned OMB control number 2900–0878 under VA Form 22–10203, the Application for Edith Nourse Rogers STEM Scholarship. Both the applicants and their respective training institutions are required to complete the form. Applicants are required to provide the name and complete address of the school or training establishment they are planning to attend and date they plan to start training. Training institutions then certify the information provided to VA.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Claims, Colleges and universities, Education, Employment, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education.

Signing Authority

Douglas A. Collins, Secretary of Veterans Affairs, approved this document on December 12, 2025, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Taylor N. Mattson,

*Alternate Federal Register Liaison Officer,
Department of Veterans Affairs.*

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 21 as set forth below:

PART 21—VETERAN READINESS AND EMPLOYMENT AND EDUCATION

Subpart P—Post-9/11 GI Bill

- 1. The authority citation for part 21, subpart P continues to read as follows:

Authority: 38 U.S.C. 501(a), 512, chs. 33, 36 and as noted in specific sections.

- 2. Add § 21.9800 to read as follows:

§ 21.9800 Edith Nourse Rogers STEM Scholarship.

(a) *General.* The Edith Nourse Rogers STEM Scholarship provides additional Post-9/11 GI Bill benefits to certain eligible individuals. For the purposes of this section a post-secondary degree is defined as a standard, undergraduate degree. The Edith Nourse Rogers STEM Scholarship is hereinafter referred to as the “STEM Scholarship.”

(b) *Eligibility.*

(1) For the purposes of this section, an eligible individual is an individual who—

(i) Is or was entitled to Post-9/11 GI Bill educational assistance under § 21.9520;

(ii) Has used all the Post-9/11 GI Bill educational assistance to which the individual is entitled or, based on the individual's rate of usage, will use all his or her Post-9/11 GI Bill educational assistance within 180 days of applying for benefits under this section; and

(iii) Is enrolled, at the time the individual applies for the STEM Scholarship, in a program of education that meets the requirements of paragraph (c) of this section.

(2) Individuals seeking to use the STEM Scholarship while enrolled in a program of education that leads to a post-secondary degree under paragraph (c)(3) of this section must have completed 60 standard semester credit

hours or 90 quarter credit hours in a STEM field to be an eligible individual.

(3) Individuals seeking to use the STEM Scholarship while enrolled in a program of education leading to a teaching certification under paragraph (c)(4) of this section must have earned a post-secondary degree in a STEM field to be an eligible individual.

(4) Individuals seeking to use the STEM Scholarship while enrolled in a covered clinical training program for health care professionals under paragraph (c)(6) of this section must have earned either a post-secondary or graduate degree in a STEM field.

(c) *Approval of the selected program of education.* VA may approve a STEM Scholarship program of education if the program:

(1) Meets the definition of a program of education in § 21.9505;

(2) Meets the approval criteria as set in VA's current definition of a program of education as defined in § 21.9505 and;

(3) Is a program of education that:

(i) Leads to a post-secondary degree from an educational institution that requires at least the standard 120 semester (or 180 quarter) credit hours for completion in a STEM field; or

(ii) Leads to a teaching certification; or

(iii) Leads to dual degrees that include a STEM undergraduate degree; or

(iv) Is a covered clinical training program for health care professionals.

These criteria are described by the following table—

PROGRAM OF EDUCATION ELIGIBILITY FOR STEM SCHOLARSHIP

Initial degree/program type	Secondary degree/program type	Eligible for STEM scholarship
Enrolled in a standard, undergraduate degree program in an approved STEM field.	None	Yes.
Enrolled in a standard, undergraduate degree program in a non-STEM field.	Enrolled in a standard, undergraduate degree program in an approved STEM field.	Yes.
Enrolled in a standard, undergraduate degree program in a Non-STEM field.	Enrolled in a graduate degree program in an approved STEM field.	No.
Completed a standard, undergraduate degree program in an approved STEM field.	Enrolled in a covered clinical training program for health care professionals or a program of education leading to a teaching certification.	Yes.
Completed a graduate degree program in an approved STEM field.	Enrolled in a covered clinical training program for health care professionals.	Yes.
Enrolled in a graduate degree program in a non-STEM field	None	No.

* Chart assumes that all other requirements are met.

(d) *Applying for STEM Scholarship.* Individuals shall apply for the STEM Scholarship by completing the appropriate electronic form prescribed by the Secretary. A portion of the form must be completed by the School Certifying Official (SCO) within 12 months of the date VA receives the application. Only complete applications will be considered for the STEM Scholarship. VA reserves the authority to deny the application if the school fails to provide the requested information within the allotted time frame. Denied applicants may reapply; reapplications from scholarship recipients who reach their delimiting date per 38 U.S.C. 3321 or exhaust their scholarship award assistance under paragraph (i) of this section will be denied.

(e) *Beginning dates.* VA will determine the beginning date of a scholarship award under this section. In no case will the beginning date be earlier than August 1, 2019. The recipient is required to begin using the

benefit within six months of their selection or the scholarship will be forfeited. When an eligible individual enters or reenters into a program of education (including a reentrance following a change of program or educational institution), the beginning date of his or her award of educational assistance under this section will be the latest of the following dates:

(1) August 1, 2019;

(2) Participant's first day of class; or

(3) The first day of class after the participant exhausts the remaining Post 9/11 GI Bill entitlement.

(f) *Discontinuance date.* The period of eligibility for an individual awarded educational assistance under this section will terminate on the earliest of the following:

(1) A discontinuance date per § 21.9635 (discontinuance dates per § 21.9635 will be applied to this scholarship); or

(2) Two years from the beginning date of the award as specified under paragraph (e) of this section.

(g) *Priority selection.*

(1) VA will establish monthly cohorts of scholarship applicants for the purpose of performing prioritization under 38 U.S.C. 3320(c).

(i) Candidates will be selected from each monthly cohort on the 7th calendar day of each month.

(ii) A scholarship will be awarded if:

(A) Funds are available at the time of selection; and

(B) The applicant is of sufficient priority over other applicants in the respective monthly cohort.

(2) For enrollment periods that begin before January 5, 2021, VA will give the following individuals priority consideration:

(i) Eligible individuals who require the most remaining program credit hours to complete their program of education; and

(ii) Individuals who are entitled to the 100 percent educational assistance rate under 38 U.S.C. 3311(b)(1), (2), (8), (9), (10), or (11).

(3) For enrollment periods that begin on or after January 5, 2021, in the event that there are not sufficient funds

available in a fiscal year to provide additional benefits under this section to all eligible individuals, VA will give the following individuals priority consideration in the order listed.

Eligible applicants within each group will be further prioritized based on the most remaining required credit hours:

(i) Individuals enrolled in an undergraduate degree program in a STEM field;

(ii) Individuals enrolled in a program of education leading to a teaching certificate;

(iii) Individuals enrolled in a dual degree program where the individual is pursuing both an undergraduate degree in a STEM field and a graduate degree in a STEM field;

(iv) Individuals who have earned an undergraduate degree and are enrolled in a covered clinical training program for health care professionals;

(v) Individuals who have earned a graduate degree and are enrolled in a covered clinical training program for health care professionals;

(vi) All other eligible individuals.

(h) *Notices of decisions.*

(1) VA will provide written notice of a decision on an application made under this section, which shall clearly state the reasons for the decision and shall provide an explanation of the procedure for obtaining review of the decision. Each notification shall also include all of the following:

(i) Identification of the issues adjudicated.

(ii) A summary of the evidence considered by the Secretary.

(iii) A summary of the applicable laws and regulations.

(iv) Identification of findings favorable to the claimant.

(v) In the case of a denial, identification of elements not satisfied leading to the denial.

(vi) An explanation of how to obtain or access evidence used in making the decision.

(2) If VA denies an application due to ineligibility, VA shall state the specific eligibility criteria that the application did not satisfy. In the event that an applicant meets all the eligibility criteria but there is inadequate funding in the academic year, VA will notify the applicant that VA cannot approve the application due to limited funding. VA may issue an acknowledgement letter to inform the applicant that they meet the eligibility criteria but have not yet been selected. VA will issue a selection letter if they are selected.

(i) *Amount of assistance.* An eligible individual may receive additional educational assistance under this section, not to exceed a total of 9

months or \$30,000. Additional assistance under this section may consist of—

(1) Payment of tuition and fees directly to the educational institution in accordance with the rules in §§ 21.9640 and 21.9641;

(2) A monthly housing allowance in accordance with the rules in §§ 21.9640(b) and 21.9641(c); and

(3) A book stipend in accordance with the rules in §§ 21.9640(b) and 21.9641(d).

(j) *Additional assistance under Yellow Ribbon Program.* An eligible individual who receives additional assistance under the Yellow Ribbon Program may receive contributions from a school under § 21.9700. However, VA cannot match any dollar amount provided by the school.

(k) *Prohibition on transfer of benefits.* An eligible individual who receives additional educational assistance under this section is prohibited from transferring such additional assistance to a dependent.

(l) *Exclusion from aggregate assistance limitation.* Any additional benefits received under this section may not be counted toward the aggregate 48-month benefits limitation contained in 38 U.S.C. 3695(a).

(m) *Definitions.* For the purposes of this section the following definitions apply.

(1) *STEM field* means a field included in the Department of Education's Classification of Instructional Programs taxonomy within the two-digit series containing biological or biomedical science, physical science, science technologies or technicians, computer and information science and support services, mathematics or statistics, engineering, engineering technologies or an engineering-related field, a health profession or related program, an agriculture science or natural resources science program, or other subjects and fields identified by the Secretary as meeting national needs.

(i) The Secretary, or his or her designee, will maintain the STEM Designated Degree Program List, which will be a complete list of qualifying degree program categories, published on a website maintained by VA for such purposes. Changes that are made to the STEM Designated Degree Program List, including new subjects or fields identified by the Secretary to meet national needs, will be published in a notice in the **Federal Register**.

(ii) The Secretary, or his or her designee, may identify other subjects or fields as meeting national needs. In general, other subjects and fields identified as meeting national needs

will involve research, innovation, or development of new technologies using engineering, mathematics, health care, computer science, or natural sciences.

(iii) The Secretary, or his or her designee, shall notify Congress 90 days before approving any additional subjects or fields on the basis of meeting national needs and shall submit any analysis of labor market supply and demand used to identify such subjects or fields.

(2) *Covered clinical training program for health care professionals* means clinical training required for a health care professional to be licensed to practice in a state or locality. This includes medical residencies and does not include clinical training that is part of an undergraduate or graduate degree program.

(Authority: 38 U.S.C. 3311, 3313, 3320, 3321, 3471, 3695, 5101(a)(1)(A), 5104)

[FR Doc. 2026–00634 Filed 1–14–26; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2025–3127; FRL–13098–01–R9]

Determination of Attainment by the Attainment Date; 1997 Ozone Standards; California; Coachella Valley

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed determination.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to determine that the Riverside County (Coachella Valley) 1997 ozone extreme nonattainment area (“Coachella Valley”) attained the 1997 ozone national ambient air quality standards (NAAQS) by its June 15, 2025, attainment date. This proposed determination is based on quality-assured and certified ambient air quality monitoring data from 2022 through 2024. We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before February 17, 2026.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2025–3127 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: Tom Kelly, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105; phone: (415) 972-3856; email: kelly.thomas@epa.gov.

SUPPLEMENTARY INFORMATION:

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

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I. Background

A. Regulatory Context

The Clean Air Act (CAA or “Act”) requires the EPA to establish primary and secondary NAAQS for certain pervasive pollutants that “may reasonably be anticipated to endanger public health and welfare.”¹ The primary NAAQS is designed to protect public health with an adequate margin of safety, and the secondary NAAQS is designed to protect public welfare and the environment. The EPA has set

standards for six common air pollutants, referred to as criteria pollutants, including ozone. These standards represent the air quality levels an area must meet to comply with the CAA.

Ground-level ozone pollution is formed from the reaction of volatile organic compounds (VOC) and oxides of nitrogen (NO_x) in the presence of sunlight.² These two pollutants, referred to as ozone precursors, are emitted by many types of sources, including on- and off-road motor vehicles and engines, power plants and industrial facilities, and smaller area sources such as lawn and garden equipment and paints.

Scientific evidence indicates that adverse public health effects occur following exposure to ozone, particularly in children and adults with lung disease. Breathing air containing ozone can reduce lung function and inflame airways, which can increase respiratory symptoms and aggravate asthma or other lung diseases.³

On July 18, 1997, the EPA revised the primary and secondary NAAQS for ozone to set the acceptable level of ozone in the ambient air at 0.08 parts per million (ppm), averaged over an 8-hour period.⁴

The EPA set the 1997 ozone NAAQS over an 8-hour period based on scientific evidence demonstrating that ozone causes adverse health effects at lower concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone standards were set. The EPA determined that the 8-hour standards would be more protective of human health, especially for children and for adults who are active outdoors, and for individuals with a preexisting respiratory disease, such as asthma.

In March 2008, the EPA completed another review of the primary and secondary ozone standards and tightened them further by lowering the

level for both to 0.075 ppm.⁵ The EPA revoked the 1997 ozone NAAQS effective April 6, 2015;⁶ however, to comply with anti-backsliding requirements of the Act, areas designated nonattainment at the time that the 1997 ozone NAAQS was revoked remain subject to certain requirements based on their classification at the time of revocation.

The EPA’s determination that an area failed to attain by its attainment date, which is made under CAA section 301 and consistent with section 181(b)(2), triggers these anti-backsliding requirements. See *South Coast Air Quality Mgmt. Dist. v. EPA*, 882 F.3d 1138, 1147 (D.C. Cir. 2018). On October 26, 2015, the EPA again revised the level of the primary (and secondary) ozone NAAQS once more to 0.70 ppm.

B. Coachella Valley 1997 Ozone Designation, Classifications and SIP Revisions

Following promulgation of a new or revised NAAQS, the EPA is required by the CAA to designate areas throughout the nation as attaining or not attaining the standards. Effective June 15, 2004, we designated nonattainment areas for the 1997 ozone standards.⁷ The designations and classifications for the 1997 ozone standards for California areas are codified at 40 CFR 81.305. In a rule governing certain facets of implementation of the 1997 ozone standards (the Phase 1 Rule), the EPA classified the Coachella Valley as “Serious” for the 1997 ozone standards, with an attainment date no later than June 15, 2013.⁸ This classification applied to areas under the jurisdiction of the State of California and the areas of Indian country within the Coachella Valley.

The Coachella Valley includes a part of the Colorado Desert in Riverside County, California, as well as parts of the adjacent mountain ranges. For a precise description of the geographic boundaries of the area, see 40 CFR 81.305. The Coachella Valley is under the jurisdiction of the South Coast Air Quality Management District (SCAQMD or “District”). The District and California Air Resources Board (CARB or “State”) are responsible for adopting and submitting a state implementation plan (SIP) to attain the 1997 ozone standards for nonattainment areas in

² The State of California refers to reactive organic gases (ROG) rather than VOC in some of its ozone related SIP submissions. As a practical matter, ROG and VOC refer to the same set of chemical constituents, and for the sake of simplicity, we refer to this set of gases as VOC in this determination notification.

³ EPA, Health Effects of Ozone Pollution, available at <https://www.epa.gov/ground-level-ozone-pollution/health-effects-ozone-pollution>.

⁴ 62 FR 38856 (July 18, 1997). Primary standards provide public health protection, including protecting the health of “sensitive” populations such as asthmatics, children, and the elderly. Secondary standards provide public welfare protection, including protection against decreased visibility and damage to animals, crops, vegetation, and buildings. Since the primary and secondary standards established in 1997 are set at the same level, we refer to them herein using the singular “1997 ozone NAAQS” or “1997 ozone standards.”

⁵ 73 FR 16436 (March 27, 2008). The EPA further strengthened the primary and secondary eight-hour ozone NAAQS in October 2015 from 0.075 ppm to 0.070 ppm. 80 FR 65291 (October 26, 2015). This action relates only to the 1997 ozone NAAQS.

⁶ 80 FR 12264 (March 6, 2015).

⁷ 69 FR 23858 (April 30, 2004).

⁸ 69 FR 23858 (April 30, 2004).

¹ CAA section 108(a).

their jurisdiction. The District primarily regulates stationary sources while CARB regulates mobile sources.

On November 28, 2007, CARB requested that the EPA reclassify the Coachella Valley 1997 ozone nonattainment area from “Serious” to “Severe-15.” EPA’s proposed rulemaking explained that California’s request applied only to areas subject to the jurisdiction of the State of California.⁹ It further explained that the Tribes of the Coachella Valley had not requested authority to administer any Clean Air Act programs in Indian country. In such circumstances, the EPA implements relevant reclassification provisions of the CAA, and that EPA was proposing reclassification for the areas of Indian Country, following notification of Tribal leaders and an invitation for consultation.¹⁰ The EPA granted the reclassification request from CARB and finalized the reclassification of areas of Indian country to Severe, effective June 4, 2010, with an attainment date of not later than June 15, 2019.¹¹

On June 12, 2017, the EPA approved District and CARB submittals addressing many of the Severe nonattainment area planning requirements under the CAA for Coachella Valley.¹² On June 11, 2019, the State requested a reclassification of Coachella Valley from “Severe-15” to “Extreme,” which the EPA granted with an attainment date of not later than June 15, 2024.¹³ In a final rule dated September 5, 2025, EPA granted a one-year extension of the applicable attainment date to June 15, 2025 at the State’s request, upon finding the area satisfied the statutory criteria under CAA section 181(a)(5).¹⁴

As explained in the action reclassifying the area to Extreme nonattainment, the EPA’s reclassification only applied to the portions of the Coachella Valley subject to the State’s jurisdiction, and the EPA did not reclassify any areas of Indian country within the boundaries of the nonattainment area. The EPA only reclassifies nonattainment areas to Extreme nonattainment on a voluntary

basis. The timing of the State’s request so close to the Severe nonattainment date did not allow the EPA sufficient time to consult with the Tribes of the Coachella Valley on their interest in a reclassification to Extreme nonattainment; however, the Tribes were notified of the planned action for part of the Coachella Valley subject to State jurisdiction.¹⁵

On April 16, 2024, the EPA proposed approval of District and CARB submittals addressing many of the Extreme area planning requirements under the CAA for Coachella Valley.¹⁶ On June 12, 2024, the EPA finalized approval of certain elements of the Extreme area plan, including the attainment demonstration, but deferred action on the reasonable further progress demonstration and the vehicle miles traveled offset demonstration.¹⁷ On January 21, 2025, EPA finalized approval of the remaining elements of the plan, the vehicle miles traveled offset demonstration and the reasonable further progress demonstration.¹⁸ The State submitted a CAA 185 fee rule on August 13, 2024, but the EPA has yet to act on that submittal.¹⁹

The State submitted a contingency measure for the 1997 ozone NAAQS as part of the Severe Area attainment Plan,²⁰ but the State later withdrew the measure because it relied on previously implemented reductions.²¹ The nonattainment area’s Extreme Area attainment plan explained the District’s intent to amend SCAQMD Rule 445, “Wood Burning Devices,” to include potential contingency provisions for Coachella Valley for the 1997 ozone standards.²² To date, the EPA has not received a submittal to address the 1997 ozone contingency measures

requirements of CAA sections 172(c)(9) and 182(c)(9) for the Coachella Valley.

II. EPA Analysis

A. Applicable Statutory and Regulatory Provisions

For the revoked 1997 ozone NAAQS, the EPA is required to determine whether an ozone nonattainment area attained the ozone standard by the area’s attainment date solely for purposes of triggering any applicable anti-backsliding requirements. For Extreme areas, applicable requirements triggered upon a finding that an area failed to attain by the attainment date are nonattainment contingency measures and CAA section 185 fee programs.²³ A determination of whether an area’s air quality meets the 1997 ozone NAAQS is generally based on three years of complete, quality-assured, and certified air quality monitoring data gathered at established State and Local Air Monitoring Stations (“SLAMS”) in the area and entered into the EPA’s Air Quality System (AQS) database.²⁴ Data from ambient air monitors operated by state/local agencies in compliance with EPA monitoring requirements must be submitted to the AQS database. Monitoring agencies annually certify that these data are accurate to the best of their knowledge. Accordingly, the EPA relies primarily on data in its AQS database when determining the attainment status of an area.²⁵ All data are reviewed to determine the area’s air quality status in accordance with 40 CFR part 50, appendix I.

Under EPA regulations at 40 CFR 50.10, an area attains the 1997 ozone NAAQS when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone monitor concentrations is less than or equal to 0.08 ppm (*i.e.*, 0.084 ppm when rounding, based on the truncating conventions in 40 CFR part 50, appendix I). This 3-year average is referred to as the “design value.” When the design value is greater than 0.084 ppm at any monitor within the area, then the area is violating the NAAQS.²⁶

²³ 40 CFR 51.1105(d)(2)(iii).

²⁴ Generally, a “complete” data set for determining attainment of ozone NAAQS is one that includes three years of data. There are less stringent data requirements for showing that a monitor has failed an attainment test and thus has recorded a violation of the standard.

²⁵ 40 CFR 50.15; 40 CFR part 50, appendix I; 40 CFR part 53; 40 CFR part 58, appendices A, C, D, and E.

²⁶ The data handling convention in 40 CFR part 50, appendix I dictates that concentrations shall be reported in ppm to the third decimal place, with additional digits to the right being truncated. Thus, a computed 3-year average ozone concentration of 0.085 ppm is greater than 0.08 ppm and would

⁹ 74 FR 43654 (August 27, 2009).

¹⁰ Indian Country within the boundaries of the 1997 ozone nonattainment area are the Tribal lands of Agua Caliente Band of Cahuilla Indians of the Augustine Caliente Reservation, the Augustine Band of Cahuilla Indians, the Cabazon Band of Mission Indians, the Santa Rosa Band of Cahuilla Indians and the Torress Martinez Desert Cahuilla Indians and the Twenty-Nine Palms Band of Mission Indians of California.

¹¹ 75 FR 24409 (May 5, 2010).

¹² 82 FR 26854 (June 12, 2017).

¹³ 84 FR 32841 (July 10, 2019).

¹⁴ 90 FR 42844 (September 5, 2025).

¹⁵ 84 FR 32841, 32842 (July 10, 2019).

¹⁶ The proposal, 89 FR 26817 (April 16, 2024), did not address the submittal’s reasonably available control technology demonstration.

¹⁷ 89 FR 49815 (June 12, 2024).

¹⁸ 90 FR 6823 (January 21, 2025).

¹⁹ Letter from Steven S. Cliff CARB to Martha Guzman, EPA Region IX, dated August 9, 2024 and electronically submitted on August 13, 2024.

²⁰ Letter from James N. Goldstene, CARB, to Wayne Nastri, EPA Region IX, dated 11/28/2007.

²¹ Letter from Richard Corey, CARB, to John Busterud, EPA Region IX, dated April 28, 2020. In *Bahr v. EPA*, 836 F.3d 1218, 1235–1237 (9th Cir. 2016), the Ninth Circuit Court of Appeals held that already-implemented pollution control measures cannot be used as contingency measures. Instead, contingency measures must be conditional and prospective, meaning the measures are triggered by specific events and implemented to achieve emission reductions only after those events occur.

²² “Final Coachella Valley Extreme Area Plan for the 1997 8-Hour Ozone Standard,” South Coast Air Quality Management District, dated December 2020, and submitted to EPA in a letter from CARB dated December 29, 2020, p. 6–30.

The data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than or equal to 90 percent and no single year has less than 75 percent data completeness, as determined under appendix I of 40 CFR part 50.²⁷

B. Determination of Attainment

Section 179(c) of the CAA requires that within six months following the applicable attainment date, the EPA shall determine whether an ozone nonattainment area attained the standard based on the area's design value as of that date.²⁸ This determination, also referred to as a determination of attainment by the attainment date, is based on certified data leading up to the attainment date, *i.e.*, in this case, data for 2022–2024. Section 179(c)(2) of the CAA requires the EPA to publish the determination in the **Federal Register**.

The EPA is proposing to determine that the Coachella Valley has attained the 1997 ozone NAAQS by its applicable attainment date; that is, that the average of the annual fourth-highest daily maximum 8-hour average ozone concentrations was at or below 0.084 ppm in the three years leading up to the applicable attainment date. This proposed determination is based on three years of quality-assured and certified ambient air quality monitoring data in AQS for the 2022–2024 monitoring period.

The EPA's proposed determination of attainment is based upon data that have been collected and quality assured in

accordance with 40 CFR part 58 and recorded in the EPA's AQS database.²⁹ As discussed in section II.D of this document, ambient air quality monitoring data for the 3-year period preceding the attainment date (*i.e.*, 2022–2024 for the 1997 ozone NAAQS for the Coachella Valley, based on the applicable attainment date of June 15, 2025) meet the data completeness requirements in 40 CFR part 50, appendix I.

C. Monitoring Network Considerations

Section 110(a)(2)(B)(i) of the CAA requires states to establish and operate air monitoring networks to compile data on ambient air quality for all criteria pollutants. The ambient air monitoring network in the Coachella Valley includes air monitoring stations that are managed and operated by SCAQMD. SCAQMD submits annual network plans to the EPA. These plans document the status of the District's air monitoring networks, as required under 40 CFR 58.10. The EPA reviews these annual network plans for compliance with specific requirements in 40 CFR part 58. With respect to ozone, we have found that the annual network plans submitted by SCAQMD meet the minimum monitoring requirements of 40 CFR part 58.³⁰

Finally, the EPA conducts regular Technical Systems Audits (TSAs) to review and inspect state and local ambient air monitoring programs to assess compliance with applicable regulations concerning the collection, analysis, validation, and reporting of

ambient air quality data. As a Primary Quality Assurance Organization (PQAO) in California, SCAQMD is responsible for overseeing the quality of the data it collects. For the purposes of this determination, we reviewed the findings from the EPA's most recent TSA of the SCAQMD ambient air monitoring program.³¹ The results of this TSA found that the District's PQAO quality system was functioning well and produced ozone data suitable for use in regulatory decision-making. Therefore, the results of the TSA do not preclude the EPA from determining that the Coachella Valley has attained the 1997 ozone NAAQS.

D. Data Considerations

In accordance with 40 CFR 58.15, SCAQMD annually certifies that the previous year's ambient concentration and quality assurance data are completely submitted to AQS and that the ambient concentration data are accurate, taking into consideration the quality assurance findings.³² The monitoring sites within the Coachella Valley for calendar years 2022 through 2024 are located in Joshua Tree National Park, Palm Springs, and Indio. Table 1 of this document summarizes the ozone monitoring data from the monitoring sites by showing, if available, the annual 4th highest daily maximum concentrations and design values over the 2022–2024 period. The monitoring data is representative of the areas of Indian country as well as land under the jurisdiction of the State of California.

TABLE 1—COACHELLA VALLEY MONITORS WITH VALID FOURTH HIGH 8-HOUR OZONE AVERAGE CONCENTRATIONS AND DESIGN VALUES (ppm) FOR 2022–2024

AQS site ID	Site name	Design value (2022–2024)	4th Highest daily maximum		
			2022	2023	2024
060650010	Joshua Tree National Park, Cottonwood Visitor Center	0.070	0.070	0.071	0.070
060652007	Indio-Amistad High School ^a	Invalid ^b	^a N/A	^a N/A	0.079
060655001	Palm Springs-Fire Station	0.084	0.084	^c 0.083	0.087

^a The former Indio-Jackson station closed April 20, 2022 and SCAQMD relocated the monitoring site to the nearby Indio-Amistad High School and began monitoring January 1, 2024. EPA approved this relocation on October 29, 2024 after being notified via letter on April 2, 2024, and data from the old and new sites was combined to form one continuous data record for design value calculations.

^b The 2024 design value at the Indio—Amistad High School is invalid due to incomplete data capture in calendar years 2022 (30%) and 2023 (0%).

^c The 2023 design value excludes concurred upon wildfire-driven exceedances of the 1997 ozone NAAQS at the Palms Springs—Fire Station monitoring site on July 14–15, 2023, under the Exceptional Events Rule.

Source: EPA, AQS Design Value (AMP480), Report Request ID: May 27, 2025.

exceed the standard, but a design value of 0.084 is truncated to 0.08 and attains the 1997 ozone NAAQS.

²⁷ 40 CFR part 50, appendix I, section 2.3(b).

²⁸ A determination that an area has attained by the applicable attainment date does not constitute a redesignation to attainment.

²⁹ The EPA maintains the AQS, a database that contains ambient air pollution data collected by the EPA, state, local, and Tribal air pollution control agencies. The AQS also contains meteorological

data, descriptive information about each monitoring station (including its geographic location and its operator) and data quality assurance/quality control information. The AQS data is used to (1) assess air quality, (2) assist in attainment/non-attainment designations, (3) evaluate SIPs for nonattainment areas, (4) perform modeling for permit review analysis, and (5) prepare reports for Congress as mandated by the CAA. Access is through the website at <https://www.epa.gov/aqs>.

³⁰ We have included copies of CARB and SCAQMD's annual network plans for 2022–2024 in the docket for this action, along with our reviews of these plans and our associated transmittal correspondence.

³¹ Letter from Matthew Lakin, EPA to Dr. Jason Low, SCAQMD (Technical Systems Audit), dated June 6, 2025.

³² We have included SCAQMD's and CARB's annual data certifications for 2022, 2023, and 2024 in the docket for this action.

Consistent with the requirements contained in 40 CFR part 50, the EPA has reviewed the quality-assured and certified ozone ambient air monitoring data for completeness. The EPA reviewed the data as recorded in AQS for the applicable monitoring period, collected at the monitoring sites in the Coachella Valley, and has determined that the data are generally complete, with the exception of the Indio-Amistad High School monitor. The former Indio-Jackson monitoring site was closed April 20, 2022, due to loss of the lease and reopened at the nearby Indio-Amistad High School location on January 1, 2024. SCAQMD notified the EPA of this closure via letter on April 2, 2024, and documented it in its 2024 annual network plan. The combined data for the Indio-Jackson Street and Indio-Amistad monitoring sites had design values that were 0.003–0.013 ppm lower than the highest design value site for the previous ten valid design value years (2011–2022)³³ and has had design values below the 1997 ozone NAAQS since 2020. In addition, the 2024 4th highest daily maximum concentration observed at the Indio-Amistad High School monitoring site was below the level of the 1997 ozone NAAQS and 0.008 ppm lower than that observed at Palm Springs-Fire Station.

The remaining ozone monitoring sites meet the data completeness requirements of 40 CFR part 50, Appendix I, and, therefore, the data summarized in table 1 of this document are considered complete for the purposes of determining if the standard is met. In light of the extent and reliability of the applicable ozone monitoring network, and the data collected from that network and summarized in table 1 of this document, we are proposing to determine that the Coachella Valley attained the revoked 1997 ozone NAAQS (as defined in 40 CFR part 50, appendix I) by the applicable attainment date (*i.e.*, June 15, 2025).

E. Effects of This Proposed Determination

A determination of attainment by the attainment date does not have the effect of redesignating an area to attainment. Redesignation of an area to attainment requires that an area has met all applicable requirements of CAA section 110 and part D, and that the area has submitted, and the EPA has approved, a redesignation request and

maintenance plan.³⁴ Therefore, if we finalize this determination as proposed, Coachella Valley will remain designated nonattainment for the 1997 ozone NAAQS and will retain its current classification of Extreme for this standard. In addition, a final determination of attainment by the extended Extreme area attainment date would not apply to Tribal land, because areas of Indian country in the Coachella Valley nonattainment area remained classified as Severe nonattainment following EPA's action on the voluntary reclassification request to Extreme of state land from CARB and the SCAQMD.³⁵

If we finalize our proposed determination that the Coachella Valley has attained the 1997 ozone NAAQS by the attainment date, then attainment contingency measures for the 1997 ozone NAAQS would never be required to be implemented, regardless of whether the area continued to attain the NAAQS, and Reasonable Further Progress contingency measures could not be triggered and would therefore no longer be necessary.³⁶ In addition, the Coachella Valley would not collect CAA section 185 fees. A final determination of attainment, however, would not prevent the EPA from exercising its authority under the CAA to address any subsequent violations of the NAAQS.

III. Action Summary

We are proposing to determine that the Coachella Valley has attained the revoked 1997 ozone NAAQS by its June 15, 2025, attainment date, based on quality-assured and certified ambient air quality monitoring data from 2022 through 2024. The EPA is soliciting public comments on this proposed action, our rationale for the proposed action, and any other pertinent matters related to the proposed decision. We will accept comments from the public on this proposal for the next 30 days and will consider comments before taking final action.

³⁴ Memorandum dated September 4, 1992 from John Calcagni, EPA, to Regional Air Directors, titled "Procedures for Processing Requests to Redesignate Areas to Attainment."

³⁵ 84 FR 32841 (July 10, 2019).

³⁶ See, *e.g.*, 87 FR 42126, 42130 (July 14, 2022). See also 57 FR 13498, 13564 (April 16, 1992) and Memorandum dated May 10, 1995, from John D. Seitz, EPA, to EPA Regional Air Directors, Regions I–X, Subject: "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," p. 4.

IV. Statutory and Executive Order Reviews

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

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

In addition, the SIP is not approved to apply on any Tribal 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).

³³ AQS Design Value (AMP480), Report Request ID: 2294814, May 27, 2025.

List of Subjects in 40 CFR Part 52

Environmental protection, Air
pollution control, Incorporation by
reference, Intergovernmental relations,

Nitrogen oxides, Ozone, Reporting and
recordkeeping requirements, Volatile
organic compounds.

Dated: January 5, 2026.

Michael Martucci,

Acting Regional Administrator, Region IX.

[FR Doc. 2026-00782 Filed 1-14-26; 8:45 am]

BILLING CODE 6560-50-P

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and other forms of information technology.

Comments regarding this information collection received by February 17, 2026 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it

displays a currently valid OMB control number.

Forest Service

Title: Community Forest and Open Space Conservation Program.

OMB Control Number: 0596–0227.

Summary of Collection: The Forest Service is authorized to implement the Community Forest and Open Space Program (CFP) under Section 8003 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246; 122 Stat. 2043), which amends the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103d). On October 20, 2011, the Forest Service issued regulations (36 CFR part 230, subpart A) to govern the rules and procedure for the Community Forest Program. The final rule was revised on April 2, 2021.

Need and Use of the Information: The information requirements will be used to help the Forest Service in the following areas: (1) To determine that the applicant is eligible to receive funds under the program, (2) to determine if the proposal meets the qualifications in the law and regulations, (3) to evaluate and rank the proposals based on standard, consistent information; and (4) to determine if the projects costs are allowable and sufficient cost share is provided. Local governmental entities, Tribal Governments, and qualified nonprofit organizations are the only entities eligible for the program and therefore are the only organizations from which information will be collected.

Description of Respondents: Non-profit Organizations; State, Local and Tribal Governments.

Number of Respondents: 60.

Frequency of Responses: Annually; Quarterly; Reporting and Record Keeping.

Total Burden Hours: 3,810.

Forest Service

Title: The Stewardship Mapping and Assessment Project (STEW–MAP).

OMB Control Number: 0596–0240.

Summary of Collection: The Forest Service's mandate includes providing science-based information to land managers and decision-makers in regions across the country to support their management of natural resources and to provide the most possible benefits to local populations. The knowledge developed from stewardship mapping can support the development

of strategic partnerships in support of land management, wildfire adaptation, responsible recreation, and rural economies. This Information Collection will help the Forest Service better support expanding partnerships and volunteerism so that we can fulfill our role of guiding stewardship of forests and associated natural resources across the landscape in collaboration with a broad suite of partners. Since the last approval, STEW–MAP has successfully been applied on and around multiple national forests, helping to inform public outreach and engagement strategies, partnership and network development, and coordination at the landscape scale—particularly on the complex issue of wildfire adaptation and management.

Need and Use of the Information: The information will initially be collected once in each location. Ideally, data collection will then be repeated every 5–10 years so that stewardship groups can update their information and additional groups can have an opportunity to participate. For research purposes, collecting the information every 5–10 years allows analysis of how stewardship organizations and stewardship patterns change over time. STEW–MAP locations may elect to conduct yearly updates or hold open seasons where surveys are collected more often than every 5–10 years, to give initial nonrespondents an opportunity to reply. We estimate that these yearly/open season updates would add no more than 10% of the total number of responses at a given time.

Description of Respondents: Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Governments.

Number of Respondents: 13,600.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 3,892.

Forest Service

Title: Post-Hurricane Research and Assessment of Agriculture, Forestry, and Rural Communities in the U.S. Caribbean.

OMB Control Number: 0596–0246.

Summary of Collection: Agriculture and forestry systems in the U.S. Caribbean provide a vast range of goods and services but experience recurrent disturbances like hurricanes and tropical storms that can disrupt productivity and pose challenges to

effective management. Recent hurricanes affecting Puerto Rico and the U.S. Virgin Islands, including Irma and Maria (2017), Fiona (2022), and Ernesto (2024), underscore the frequency with which these types of disturbances can occur and their singular and compounding effects across multiple sectors and scales. For instance, in 2022, over 90 percent of Puerto Rico's commercial crops were lost to the effects and associated impacts of hurricane Fiona, just five years after damages from hurricanes Irma and Maria were reported to have destroyed 80 percent of the island's commercial crops (Rodríguez Serrano et al., 2024). Farms, forests, and the surrounding rural communities, which together comprise a large portion of the landscape in the U.S. Caribbean, have been particularly hard hit by hurricanes and other extreme weather events in recent years, resulting in widespread losses and damages that compromise commodity production, food security, and the provision and protection of ecosystem services (Álvarez et al., 2021, McGinley et al., 2022, Rodríguez Serrano et al., 2024). However, there remains limited information and understanding of hurricane preparedness, response, and recovery in these sectors and systems and the internal and external factors that help to explain related risks and response capacity. Therefore, this Information Collection Request seeks approval to continue to collect information on and extend knowledge of hurricane readiness, response, and recovery in agriculture, forestry, and rural communities in the U.S. Caribbean.

Need and Use of the Information: Information will be collected from a purposively selected, non-probability sample of individuals who own, lease, or otherwise actively manage agricultural and forest land in Puerto Rico and the U.S. Virgin Islands through a researcher-administered questionnaire. A non-probability, purposive sample is necessary for this research because a complete and accessible sampling frame of the populations of interest is not available. Available data on the agriculture and forest sectors in Puerto Rico and the U.S. Virgin Islands will be used by researchers to identify major production sectors (such as coffee, bananas/plantains, row crops, poultry, livestock, etc.), range in and average total landholding area held by farm and forest owners (for example, from Agriculture Census, Forest Inventory and Analysis), and other key criteria for selecting respondents. Researchers will

use farm and forest owner and operator databases maintained by USDA agencies, Puerto Rico Department of Agriculture and Department of Natural and Environmental Resources, and U.S. Virgin Islands Department of Agriculture, seeking representation across subregional geographies, production sectors, landholding size, and other key factors. Although data from a non-probability sample cannot be used to make statistical inferences or generalizations about the populations of interest, planned variation among participants is designed to capture a broad range of characteristics and perspectives approximating these populations.

Description of Respondents: Non-profit Organizations and Non-Federal Government entities.

Number of Respondents: 250.

Frequency of Responses: Reporting: Quarterly.

Total Burden Hours: 146.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2026–00758 Filed 1–14–26; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2025–0538]

Notice of Request for Revision to and Extension of Approval of an Information Collection; Communicable Diseases in Horses

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection associated with the regulations for the interstate movement of horses that have tested positive for equine infectious anemia and for approving laboratories to test for equine infectious anemia.

DATES: We will consider all comments that we receive on or before March 16, 2026.

ADDRESSES: You may submit comments by either of the following methods:

- **Federal eRulemaking Portal:** Go to www.regulations.gov. Enter APHIS–2025–0538 in the Search field. Select

the Documents tab, then select the Comment button in the list of documents.

- **Postal Mail/Commercial Delivery:** Send your comment to Docket No. APHIS–2025–0538, Regulatory Analysis and Development, PPD, APHIS, 5601 Sunnyside Ave., #AP760, Beltsville, MD 20705.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov> or in our reading room, which is located in room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the regulations for the interstate movement of horses that have tested positive for equine infectious anemia, contact Dr. Lisa Rochette, Director, Aquaculture, Swine, Equine, and Poultry, Strategy and Policy, VS, APHIS, 920 Campus Drive, Raleigh, NC 27606, Office No. 336; phone (919) 855–7276; email: lisa.t.rochette@usda.gov. For more information on the information collection reporting process, contact Ms. Sheniqua Harris, APHIS' Paperwork Reduction Act Coordinator, at (301) 851–2528 or email at APHIS.PRA@usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Communicable Diseases in Horses.

OMB Control Number: 0579–0127.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: Under the authority of the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture regulates the importation and interstate movement of animals and animal products, and conducts various other activities to protect the health of U.S. livestock and poultry.

Equine infectious anemia (EIA) is an infectious and potentially fatal viral disease of equines. There is no vaccine or treatment for the disease. It is often difficult to differentiate from other fever-producing diseases, including anthrax, influenza, and equine encephalitis.

The regulations in 9 CFR part 75 govern the interstate movement of equines that have tested positive to an official test for EIA (EIA reactors). Regulations at 9 CFR part 71 provide for

the approval of laboratories, diagnostic facilities, and research facilities to test for EIA. Ensuring the testing of equines and the safe movement of equines testing positive for EIA requires the use of several information collection activities, including an EIA laboratory test form, supplemental investigation if a horse tests positive for EIA, agreements, requests for hearing, and written notification of withdrawal of approval.

APHIS regulations also require laboratories conducting an official EIA test to be approved by the APHIS Administrator in consultation with the appropriate State animal health officials. Approval of a laboratory requires the collection of information, such as the name of the director, location, facilities, appropriate resources, and training and proficiency of employees. This information helps APHIS determine a laboratory's capacity to conduct accurate and reliable testing and to meet the requirements in the regulations. In addition, a laboratory must enter an agreement with APHIS, provide monthly reports, and undergo regular inspections to receive and maintain approval.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities, as described, for an additional 3 years. APHIS has amended this information collection due to a decrease in the number of Respondents reporting; however, the number of Responses and Total Burden Hours reported for the collection have increased.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

- (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 our 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
- (4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of

information is estimated to average .080 hours per response.

Respondents: Producers, veterinarians, State veterinarians, and laboratory directors.

Estimated annual number of respondents: 235,015.

Estimated annual number of responses per respondent: 5.

Estimated annual number of responses: 1,156,816.

Estimated total annual burden on respondents: 92,770 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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

Done in Washington, DC, this 8th day of January 2026.

Michael Watson,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2026-00613 Filed 1-14-26; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS-2025-0246]

Notice of Request To Renew an Approved Information Collection: Specified Risk Materials

AGENCY: Food Safety and Inspection Service (FSIS), U.S. Department of Agriculture (USDA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations, FSIS is announcing its intention to renew an approved information collection regarding specified risk materials (SRMs) in cattle. The approval for this information collection will expire on April 30, 2026. FSIS is making no changes to the information collection.

DATES: Submit comments on or before March 16, 2026.

ADDRESSES: FSIS invites interested persons to submit comments on this **Federal Register** notice. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This website provides commenters the ability to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Go

to <https://www.regulations.gov>. Follow the on-line instructions at that site for submitting comments.

- *Mail:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Washington, DC 20250-3700.

- *Hand- or courier-delivered submittals:* Deliver to 1400

Independence Avenue SW, Jamie L. Whitten Building, Room 350-E, Washington, DC 20250-3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS-2025-0246. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to <https://www.regulations.gov>.

Docket: For access to background documents or comments received, call (202) 286-2255 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Washington, DC 20250-3700.

FOR FURTHER INFORMATION CONTACT: Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Mailstop 3758, South Building, Washington, DC 20250-3700; 202-720-5046.

SUPPLEMENTARY INFORMATION:

Title: Specified Risk Materials.

OMB Number: 0583-0129.

Type of Request: Renewal of an approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary (7 CFR 2.18, 2.53) as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*). This statute mandates that FSIS protect the public by verifying that meat products are safe, wholesome, and properly labeled.

FSIS is requesting a renewal for the approved information collection regarding SRMs in cattle. The approval for this information collection will expire on April 30, 2026. FSIS is making no changes to the information collection.

FSIS requires official establishments that slaughter cattle or process carcasses or parts of cattle to develop written procedures for the removal, segregation, and disposition of SRMs. The Agency requires that these establishments maintain daily records to document the implementation and monitoring of their procedures for the removal, segregation, and disposition of SRMs, as well as any corrective actions that they take to ensure that the procedures are effective (9 CFR 310.22(e)).

FSIS also requires official slaughter establishments that transport carcasses or parts of cattle 30 months of age and older and containing vertebral columns to other federally inspected establishments to ensure that the carcasses and parts are accompanied by documentation stating that they contain vertebral columns from such cattle, to maintain records identifying the establishments that receive the carcasses and parts, and to maintain records verifying that the receiving establishments removed and properly disposed of the portions of the vertebral column designated as SRMs (9 CFR 310.22(g)).

This monitoring and recordkeeping is necessary for establishments to ensure, in a manner that can be verified by FSIS, that meat and meat products distributed in commerce for use as human food do not contain SRMs.

FSIS has made the following estimates for the renewal information collection:

Respondents: Official establishments that slaughter cattle or process parts of cattle.

Estimated No. of Respondents: 3,512.

Estimated No. of Annual Responses per Respondent: 303.

Estimated Total Annual Burden on Respondents: 123,916 hours.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record. Copies of this information collection assessment can be obtained from Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Mailstop 3758, South Building, Washington, DC 20250-3700; 202-720-5046.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of FSIS' functions, including whether the information will have practical utility; (b) the accuracy of FSIS' estimate of the burden of the proposed collection of information, including the validity of the method and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of

Management and Budget (OMB), Washington, DC 20253.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: <https://www.fsis.usda.gov/federal-register>.

FSIS will also announce and provide a link to this **Federal Register** publication through the FSIS *Constituent Update*, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS can provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service that provides automatic and customized access to selected food safety news and information. This service is available at: <https://www.fsis.usda.gov/subscribe>. The available information ranges from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

USDA Non-Discrimination Statement

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

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotope, American Sign Language, etc.) should contact the State or local Agency that administers the program or contact USDA through the Telecommunications Relay Service at 711 (voice and TTY). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at How to File a Program Discrimination Complaint and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Mail Stop 9410, Washington, DC 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.

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Justin Ransom,
Administrator.

[FR Doc. 2026-00749 Filed 1-14-26; 8:45 am]

BILLING CODE 3410-DM-P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS-2025-0247]

Notice of Request To Renew an Approved Information Collection: Advanced Meat Recovery

AGENCY: Food Safety and Inspection Service (FSIS), U.S. Department of Agriculture (USDA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations, FSIS is announcing its intention to renew an approved information collection regarding the regulatory requirements associated with the production of meat from advanced meat recovery (AMR) systems. The approval for this information collection will expire on June 30, 2026. FSIS is making no changes to the information collection.

DATES: Submit comments on or before March 16, 2026.

ADDRESSES: FSIS invites interested persons to submit comments on this **Federal Register** notice. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This website provides commenters the ability to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Go to <https://www.regulations.gov>. Follow

the on-line instructions at that site for submitting comments.

- *Mail:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Washington, DC 20250–3700.

- *Hand- or courier-delivered submittals:* Deliver to 1400 Independence Avenue SW, Jamie L. Whitten Building, Room 350–E, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2025–0247. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to <https://www.regulations.gov>.

Docket: For access to background documents or comments received, call (202) 286–2255 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Mailstop 3758, South Building, Washington, DC 20250–3700; 202–720–5046.

SUPPLEMENTARY INFORMATION:

Title: Advanced Meat Recovery.

OMB Number: 0583–0130.

Type of Request: Renewal of an approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary (7 CFR 2.18 and 2.53), as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*). This statute mandates that FSIS protect the public by verifying that meat products are safe, wholesome, and properly labeled.

FSIS is announcing its intention to request a renewal of the approved information collection regarding the regulatory requirements associated with the production of meat from AMR systems. There are no changes to the existing information collection. The approval for this information collection will expire on June 30, 2026.

The regulations at 9 CFR 318.24 state that meat, as defined in 9 CFR 301.2, may be derived by mechanically separating skeletal muscle tissue from the bones of livestock, other than skulls or vertebral column bones of cattle 30 months of age and older as provided in 9 CFR 310.22, using advances in mechanical meat/bone separation machinery (*i.e.*, AMR systems) that, recover meat (1) without significant

incorporation of bone solids or bone marrow as measured by the presence of calcium and iron in excess of the requirements in this section, and (2) without the presence of any brain, trigeminal ganglia, spinal cord, or dorsal root ganglia. As a prerequisite to labeling or using AMR product, establishments are required to develop, implement, and maintain written procedures that ensure that the establishment's production process is in control, which includes testing for calcium, iron, spinal cord, and dorsal root ganglia, documenting testing protocols, handling product in a manner that does not cause product to be misbranded or adulterated, and maintaining records on a daily basis sufficient to document the implementation and verification of its production process.

FSIS has made the following estimates based upon an information collection assessment related to the written procedures described above:

Respondents: Official establishments that produce meat from AMR systems.

Estimated Number of Respondents: 47.

Estimated Number of Annual Responses per Respondent: 900.

Estimated Total Annual Burden on Respondents: 21,159 hours. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record. Copies of this information collection assessment can be obtained from Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Mailstop 3758, South Building, Washington, DC 20250–3700; 202–720–5046.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of FSIS' functions, including whether the information will have practical utility; (b) the accuracy of FSIS' estimate of the burden of the proposed collection of information, including the validity of the method and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of

Management and Budget (OMB), Washington, DC 20253.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: <https://www.fsis.usda.gov/federal-register>.

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USDA Non-Discrimination Statement

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Persons with disabilities who require alternative means of communication for program information (*e.g.*, Braille, large print, audiotape, American Sign Language, etc.) should contact the State or local Agency that administers the program or contact USDA through the Telecommunications Relay Service at 711 (voice and TTY). Additionally, program information may be made available in languages other than English.

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Justin Ransom,
Administrator.

[FR Doc. 2026-00750 Filed 1-14-26; 8:45 am]

BILLING CODE 3410-DM-P

CENTRAL INTELLIGENCE AGENCY

Privacy Act of 1974; System of Records and Routine Uses

AGENCY: Central Intelligence Agency.

ACTION: Notice of Modified Systems of Records; General Routine Uses of the Central Intelligence Agency.

SUMMARY: Pursuant to the Privacy Act of 1974, as amended, and Office of Management and Budget (OMB) Circular No. A-108, notice is hereby given that the Central Intelligence Agency ("CIA" or "the Agency") proposes to modify the CIA System of Records Notices for the CIA systems of records, listed below. Specifically, CIA is adding one (1) General Routine Use to its "Statement of General Routine Uses," and modifying two (2) General Routine Uses in its "Statement of General Routine Uses."

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), this notice is subject to a 30-day period to comment on the modified routine uses, described below. Please submit any comments by February 17, 2026.

ADDRESSES: Comments may be submitted by the following methods: By mail to Mark Mouser, Privacy and Civil Liberties Officer, Central Intelligence Agency, Washington, DC 20505, by telephone at (571) 280-2700, or by email to FedRegLiaison@uce.cia.gov.

Please include "NOTICE OF CIA ROUTINE USES" in the subject line of the message.

FOR FURTHER INFORMATION CONTACT:

Mark Mouser, Privacy and Civil Liberties Officer, Central Intelligence Agency, Washington, DC 20505, (571) 280-2700.

SUPPLEMENTARY INFORMATION: CIA last published its "Statement of General Routine Uses for the Central Intelligence Agency" in 87 FR 73198 (November 28, 2022), in order to clarify and increase the public's knowledge of the circumstances in which the Agency may disclose, as a routine use, records from Privacy Act systems of records and to enhance the Agency's ability to share information essential to the conduct of its national security mission. CIA is now updating its "Statement of General Routine Uses for the Central Intelligence Agency," applicable to all of the CIA systems of records listed below, by adding one (1) General Routine Use and modifying two (2) General Routine Uses.

Modification to General Routine Use 7

The Agency proposes a minor edit to correct an error in the second sentence in General Routine Use 7, by adding the word "use" after the word "routine," to read: "This routine use is not intended to supplant the other routine uses published by the Central Intelligence Agency."

Modification to General Routine Use 19 and New General Routine Use 20

Executive Order 14249, Protecting America's Bank Account Against Fraud, Waste, and Abuse, 90 FR 14011 (March 25, 2025) requires agencies to review and modify, as applicable, the agency's relevant System of Records Notices to include a "routine use" that would allow for the disclosure of records to the U.S. Department of the Treasury for the purposes of identifying, preventing, or recouping fraud and improper payments, to the extent permissible by law. Following this Executive Order, the Office of Management and Budget (OMB) issued M-25-32, Preventing Improper Payments and Protecting Privacy Through Do Not Pay (August 20, 2025). OMB M-25-32 provided specific instructions to agencies on how to assess which agency systems of records may maintain information that would be relevant and necessary for the U.S. Department of the Treasury to identify, prevent, or recoup improper payments

through the Do Not Pay Working System, and provided agencies with the specific routine use to publish for its applicable System of Records Notice.

Following the Agency's review of Executive Order 14249 and OMB M-25-32, the Agency determined that it would add the routine use provided by OMB as a General Routine Use, to ensure that the U.S. Department of the Treasury will have access to any records relevant to identifying, preventing, or recouping improper payments, in accordance with federal law and OMB policy. The Agency proposes to insert this as a new General Routine Use 19, and modify the existing General Routine Use 19 by renumbering it as General Routine Use 20. The substance of the now renumbered General Routine Use 20 has not changed.

For ease of reference, the full Statement of General Routine Uses for the Central Intelligence Agency is republished, below. This notice modifies the previously published Statement of General Routine Uses for the Central Intelligence Agency, as detailed above, and does not affect any other routine uses that may apply to CIA systems of records.

Nothing in the new or modified General Routine Uses change the Central Intelligence Agency's authorities regarding the collection and maintenance of information about citizens and lawful permanent residents of the United States, nor do the changes impact any individual's rights to access or to amend their records pursuant to the Privacy Act.

The Agency is providing an opportunity for interested persons to submit comments on the Agency's new and modified General Routine Uses. Unless CIA determines that, based on the submitted comments, substantial modifications are required, the routine uses will take effect 30 days after publication. In accordance with 5 U.S.C. 552a(r), the Agency has provided a report to OMB and Congress on the new and modified General Routine Use.

Mark J. Mouser,

Privacy and Civil Liberties Officer, Central Intelligence Agency.

The CIA System of Records Notices modified by this notice and the citations to the last full **Federal Register** notice that included all of the elements that are required to be in a System of Records Notice, follow.

System No. and name	Federal Register citation(s)
CIA-01, Financial Records	87 FR 73198, 73200 (November 28, 2022).
CIA-02, Training Records	87 FR 73198, 73201 (November 28, 2022).

System No. and name	Federal Register citation(s)
CIA-03, Language Program Records	87 FR 73198, 73202 (November 28, 2022).
CIA-04, CIA Declassification Center (CDC) External Liaison Records	87 FR 73198, 73203 (November 28, 2022).
CIA-05, Center for the Study of Intelligence (CSI) Records	87 FR 73198, 73203 (November 28, 2022).
CIA-06, Manuscript Review Records	87 FR 73198, 73204 (November 28, 2022).
CIA-07, Security Access Records	87 FR 73198, 73205 (November 28, 2022).
CIA-08, Security Operations Records	87 FR 73198, 73206 (November 28, 2022).
CIA-09, Industrial Security Clearance Records	87 FR 73198, 73207 (November 28, 2022).
CIA-10, Parking Records	87 FR 73198, 73208 (November 28, 2022).
CIA-12, Vehicle Operator Records	87 FR 73198, 73208 (November 28, 2022).
CIA-13, Component Human Resource Records	87 FR 73198, 73209 (November 28, 2022).
CIA-14, Information Release Records	87 FR 73198, 73210 (November 28, 2022).
CIA-15, Guest Speaker Records	87 FR 73198, 73211 (November 28, 2022).
CIA-16, Employee Clinical and Psychiatric Records	87 FR 73198, 73212 (November 28, 2022).
CIA-17, Applicant Clinical and Psychiatric Records	87 FR 73198, 73213 (November 28, 2022).
CIA-18, Psychological Testing Data Records	87 FR 73198, 73214 (November 28, 2022).
CIA-19, Agency Human Resource Records	87 FR 73198, 73215 (November 28, 2022).
CIA-21, Applicant Records	87 FR 73198, 73216 (November 28, 2022).
CIA-22, Personnel Security Records	87 FR 73198, 73217 (November 28, 2022).
CIA-24, Polygraph Records	87 FR 73198, 73218 (November 28, 2022).
CIA-25, Office of the Director Action Center (DAC) Records	87 FR 73198, 73219 (November 28, 2022).
CIA-26, Office of General Counsel Records	87 FR 73198, 73220 (November 28, 2022).
CIA-27, Office of Equal Employment Opportunity (OEEO) Records	87 FR 73198, 73221 (November 28, 2022).
CIA-28, Congressional Liaison Records	87 FR 73198, 73222 (November 28, 2022).
CIA-29, Public Affairs Records	87 FR 73198, 73223 (November 28, 2022).
CIA-30, Inspector General Research Records	87 FR 73198, 73224 (November 28, 2022).
CIA-31, Inspector General Investigation and Interview Records	87 FR 73198, 73224 (November 28, 2022).
CIA-32, Office of the Deputy Director of Central Intelligence (DDCI) for Community Management Records.	70 FR 42418, 42445 (July 22, 2005).
CIA-34, Arms Control Records	87 FR 73198, 73226 (November 28, 2022).
CIA-35, Directorate of Science & Technology (DS&T) Private Sector Contact Information	87 FR 73198, 73227 (November 28, 2022).
CIA-36, Alumni Relations Records	90 FR 44625, 44626 (September 16, 2025).
CIA-37, Directorate of Operations Records	87 FR 73198, 73228 (November 28, 2022).
CIA-38, Academic and Business Contact Records	70 FR 42418, 42450 (July 22, 2005).
CIA-39, Customer Relations Records	87 FR 73198, 73229 (November 28, 2022).
CIA-40, Research System Records	87 FR 73198, 73230 (November 28, 2022).
CIA-41, Intelligence Analysis Records	87 FR 73198, 73231 (November 28, 2022).
CIA-42, Insider Threat Program Records	87 FR 73198, 73232 (November 28, 2022).
CIA-43, Environmental Safety Records	87 FR 73198, 73233 (November 28, 2022).
CIA-44, Business Analytics Records	89 FR 92891 (November 25, 2024).
CIA-45, Resolution Office Records	90 FR 44625, 44627 (September 16, 2025).

The “Statement of General Routine Uses for the Central Intelligence Agency,” last published in 87 FR 73198 (November 28, 2022), is hereby rescinded for the CIA System of Records Notices, listed above, and replaced as follows:

* * * * *

Statement of General Routine Uses for the Central Intelligence Agency

The following routine uses apply to, and are incorporated by reference into, each system of records maintained by the CIA:

1. Disclosure of a record indicating or relating to a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, to the appropriate agency whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation, charged with the responsibility to take appropriate administrative action, or charged with enforcing or implementing

the law related to the violation or potential violation.

2. Disclosure to a federal, state or local agency maintaining civil, criminal, relevant enforcement information, or other pertinent information, such as current licenses, to the extent necessary to obtain information relevant to a Central Intelligence Agency decision concerning hiring or retention of an employee, issuance of a security clearance or special access, or performance of the CIA’s acquisition functions.

3. Disclosure to a federal, state, or local agency, or other appropriate entities or individuals, in connection with the hiring or retention of an employee, the issuance of a security clearance or special access, the reporting or an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit, to the extent that the information is relevant and necessary to the entity’s decision on the matter.

4. Disclosure in the course of presenting information or evidence to a

court, magistrate, special master, administrative law judge, or administrative board or panel, including disclosures made pursuant to statutes or regulations governing the conduct of such proceedings.

5. Disclosure to the Office of Management and Budget (OMB) in connection with the review of private relief legislation, as set forth in OMB Circular No. A-19, or its successor, at any stage of the legislative coordination and clearance process.

6. Disclosure to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

7. Disclosure to a federal, state, or local agency, other appropriate entities or individuals, or, through established liaison channels, to select foreign governments, provided such disclosure is compatible with the purpose for which the record was collected and is undertaken to enable the Central Intelligence Agency to carry out its intelligence mission in support of U.S.

national security objectives under authorizing laws, statutes, policies, and regulations or any successor order, national security directives applicable to the Agency and implementing procedures approved by the Attorney General promulgated pursuant to such Orders and directives, as well as statutes, Executive orders and directives of general applicability. This routine use is not intended to supplant the other routine uses published by the Central Intelligence Agency.

8. Disclosure to a Member of Congress or Congressional staffer acting upon the Member's behalf in response to an inquiry from that Member or staffer made at the written request of the constituent who is the subject of the record.

9. Disclosure to the public or to the media for release to the public, to enable the CIA to respond to charges of illegal or improper activity, professional misconduct, or incompetence when such allegations have become publicly known, and the General Counsel in consultation with the Privacy and Civil Liberties Officer, determines that such disclosures are necessary to preserve public confidence in the Agency and the integrity of its processes, or to demonstrate the accountability of the Agency and its employees, and such disclosures do not clearly constitute an unwarranted invasion of personal privacy.

10. Disclosure to any Federal agency when information obtained from that agency is used in compiling the record, and the record is relevant to the official responsibilities of that agency.

11. Disclosure to representatives of the Department of Justice or of any other entity responsible for representing the interests of the Central Intelligence Agency in connection with judicial, administrative, or other proceedings. Records may also be disclosed to representatives of the Department of Justice and other U.S. Government entities designated by the CIA to represent CIA interests, to the extent necessary to obtain advice on any matter.

12. Disclosure to individual Members or staff of the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence in connection with the exercise of the Committees' intelligence oversight and legislative functions, when such limited disclosures are necessary to a lawful activity of the United States, and the CIA General Counsel has determined that such disclosures are otherwise lawful.

13. Disclosure to the President's Intelligence Advisory Board, the

Intelligence Oversight Board, any successor organizations, and other intelligence or independent oversight entities established by the President or Congress, when the Director of the Central Intelligence Agency determines that such disclosures will assist these entities in the performance of their oversight functions.

14. Disclosure to appropriate Federal agencies, entities, and individuals when the CIA: (1) suspects or has confirmed that there has been a breach of a Privacy Act system of records; (2) has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the CIA (including its information systems, programs and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and individuals is reasonably necessary to assist in connection with the CIA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

15. Disclosure to appropriate Federal agencies, entities, and individuals when the CIA determines that information from a Privacy Act system of records is reasonably necessary to assist the recipient agency, entity or individual in: (1) responding to a suspected or confirmed breach; or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

16. Disclosure to any individual or entity that the CIA has reason to believe possesses information regarding a matter within the jurisdiction of the CIA, to the extent deemed to be necessary in order to elicit such information or cooperation from the recipient for use in the performance of an authorized activity.

17. Disclosure to complainants, Responsible Management Officials (RMOs), witnesses, and other individuals to the extent necessary to conduct or report the progress and/or results of an investigation or inquiry into claims of discrimination or harassment brought pursuant to either federal employment laws or internal Agency regulations.

18. Disclosure to the Office of the Director of National Intelligence (ODNI) to the extent that CIA maintains ODNI or ODNI-related records pursuant to a service level agreement, when access to such records is necessary to perform the function or service for which the CIA has been engaged by ODNI.

19. Disclosure to the U.S. Department of the Treasury when disclosure of the information is relevant to review payment and award eligibility through the Do Not Pay Working System for the purposes of identifying, preventing, or recouping improper payments to an applicant for, or recipient of, Federal funds, including funds disbursed by a state (meaning a state of the United States, the District of Columbia, a territory or possession of the United States, or a federally recognized Indian tribe) in a state-administered, federally funded program.

20. In accordance with the CIA's approved Attorney General Guidelines, disclosure to other appropriate recipients, if such dissemination is necessary to a lawful activity of the United States, including for a foreign intelligence, counterintelligence, and counterterrorism purpose, with approval from the Director of the CIA or designee, concurrence by the Privacy and Civil Liberties Officer, and concurrence by the General Counsel after consultation with the National Security Division of the Department of Justice. Any such disclosure will require a written assessment that the anticipated benefits outweigh the potential risks resulting from dissemination and whether the receiving entities will be subject to further restrictions on the use and dissemination of the record.

[FR Doc. 2026-00727 Filed 1-14-26; 8:45 am]

BILLING CODE 6310-02-P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission public business meeting.

DATES: Friday, January 16, 2026, 10:00 a.m. EST.

ADDRESSES: Meeting to take place telephonically.

It will also be livestreamed on the Commission's YouTube page: <https://www.youtube.com/user/USCCR/videos>.

FOR FURTHER INFORMATION CONTACT: Joe Kim: 202-499-0263; publicaffairs@usccr.gov.

SUPPLEMENTARY INFORMATION: In accordance with the Government in Sunshine Act (5 U.S.C. 552b), the Commission on Civil Rights is holding a meeting to discuss the Commission's business for the month of January. This business meeting is open to the public. Computer assisted real-time

transcription (CART) will be provided. The web link to access CART (in English) on Friday, January 16, 2026, is <https://www.streamtext.net/player?event=USCCR>. Please note that CART is text-only translation that occurs in real time during the meeting and is not an exact transcript.

Meeting Agenda

- I. Approval of Agenda
- II. Business Meeting
 - A. State Advisory Committee Presentations
 - B. Management and Operations
 - Staff Director's Report
- III. Adjourn Meeting

Dated: January 12, 2026.

David Mussatt,

Supervisory Chief, Regional Programs Unit, USCCR.

[FR Doc. 2026-00636 Filed 1-13-26; 11:15 am]

BILLING CODE 6335-01-P

DEPARTMENT OF COMMERCE

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Office of the Secretary, Commerce.

ACTION: Notice of Information Collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before March 16, 2026.

ADDRESSES: Interested persons are invited to submit written comments by mail to the Departmental Paperwork Reduction Act Compliance Officer, Department of Commerce, 14th and Constitution Avenue NW, Washington, DC 20230 or by email at PRAComments@doc.gov. Please reference OMB Control Number 0690-0030 in the subject line of your comments. Do not submit Confidential

Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or specific questions related to collection activities should be directed to Sheleen Dumas, Departmental Paperwork Reduction Act Compliance Officer, Department of Commerce, 14th and Constitution Avenue NW, Washington, DC 20230 or by email at PRAComments@doc.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

Executive Order 12862 directs Federal agencies to provide service to the public that matches or exceeds the best service available in the private sector. In order to work continuously to ensure that the Department of Commerce (DOC) programs are effective and meet our customers' needs we use a generic clearance process to collect qualitative feedback on our service delivery. This collection of information is necessary to enable DOC to garner customer and stakeholder feedback in an efficient, timely manner, in accordance with our commitment to improving service delivery. The information collected from our customers and stakeholders will help ensure that users have an effective, efficient, and satisfying experience with the programs. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communication between DOC and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance.

II. Method of Collection

The methods of collection include but are not limited to in-person surveys, telephone interviews or questionnaires, mail and email surveys, web-based products, focus groups, and comment cards.

III. Data

OMB Control Number: 0690-0030.
Form Number(s): None.

Type of Review: Regular submission, extension of a current information collection.

Affected Public: Individuals or Households, Businesses or for-profit organizations, State, Local or Tribal Government, etc.

Estimated Number of Respondents: 150,000.

Estimated Time per Response: 5 to 30 minutes for surveys; 1 to 2 hours for focus groups; 30 minutes to 1 hour for interviews.

Estimated Total Annual Burden Hours: 12,500.

Estimated Total Annual Cost to Public: \$278,250.

Respondent's Obligation: Voluntary or Mandatory.

Legal Authority: Executive Order 12862.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Departmental PRA Compliance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2026-00723 Filed 1-14-26; 8:45 am]

BILLING CODE 3510-17-P

DEPARTMENT OF COMMERCE**Office of the Secretary****Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Generic Clearance Program Performance Progress Reports**

AGENCY: Office of the Secretary, Department of Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before March 16, 2026.

ADDRESSES: Interested persons are invited to submit written comments by mail to the Departmental PRA Compliance Officer, Office of the Under Secretary for Economic Affairs, at PRAComments@doc.gov. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to the Departmental PRA Compliance Officer, Office of the Under Secretary for Economic Affairs, at 1401 Constitution Avenue NW, Washington, DC 20230 or PRAComments@doc.gov.

SUPPLEMENTARY INFORMATION:**I. Abstract**

This is a request for a new generic clearance to collect performance and progress data from recipients and sub-recipients who receive funding from DOC under a discretionary grant or cooperative agreement. This information is required to monitor and report program performance.

DOC provides grants that promote the economic and social well-being of individuals and communities with partnerships, funding, guidance, training, and technical assistance. Currently, most program offices are using the standard grant forms (SF) for

progress reporting, which require grantees to only respond to a common set of questions that often solicits incomplete information. This one-size-fits-all approach does not adequately collect the specific data needed for particular grant programs or allow program offices to assess continuous quality improvement. Different grant programs vary in purpose, target population, and activities. Thus, a need for program offices to customize performance measurements has been identified.

Therefore, this generic Program Specific Performance Progress Report collection is being proposed.

II. Method of Collection

Some program offices may use some form of electronic collection. This could include web pages, email or other online data management systems. Recipients may be required to enter and retrieve information pertinent to their awards through electronic forms closely resembling the paper forms (*i.e.*, fillable PDFs or tailored online data management systems). Such technology support is expected to improve standardization and timeliness of recipient reporting and to ease further analyses of reported data.

III. Data

OMB Control Number: 0690–0038.

Form Number(s): Varies or None.

Type of Review: Regular submission, an extension of a currently approved collection.

Affected Public: Individuals or Households; Private Sector; Not-for-profit institutions; State, Local, or Tribal government.

Estimated Number of Respondents: 51,000.

Estimated Time per Response: Varies.

Estimated Total Annual Burden

Hours: 10,775.

Respondent's Obligation: Voluntary or Mandatory.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated

collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Departmental PRA Compliance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2026–00733 Filed 1–14–26; 8:45 am]

BILLING CODE 3510–17–P

DEPARTMENT OF COMMERCE**Bureau of Economic Analysis****Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Direct Investment Surveys: BE–605, Quarterly Survey of Foreign Direct Investment in the United States—Transactions of U.S. Affiliate With Foreign Parent**

AGENCY: Bureau of Economic Analysis, Department of Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: Written comments must be submitted on or before March 16, 2026.

ADDRESSES: Interested persons are invited to submit written comments to Amanda Budny, Chief, Direct Transactions and Positions Branch, Bureau of Economic Analysis, U.S. Department of Commerce, by email to amanda.budny@bea.gov and PRAComments@bea.gov. Please

reference OMB Control Number 0608–0009 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or specific questions related to collection activities should be directed to Amanda Budny, Chief, Direct Transactions and Positions Branch, Bureau of Economic Analysis, U.S. Department of Commerce; via phone at (301) 278–9154; or via email at Amanda.Budny@bea.gov.

SUPPLEMENTARY INFORMATION:

Abstract

The Quarterly Survey of Foreign Direct Investment in the United States—Transactions of U.S. Affiliate with Foreign Parent (Form BE–605) obtains quarterly data on transactions and positions between foreign-owned U.S. business enterprises and their “affiliated foreign groups” (*i.e.*, their foreign parents and foreign affiliates of their foreign parents). The survey is a sample survey that covers all U.S. affiliates above a size-exemption level. The sample data are used to derive universe estimates of direct investment transactions, positions, and income in nonbenchmark years from similar data reported in the BE–12, Benchmark Survey of Foreign Direct Investment in the United States, which is conducted every five years. The data collected through the BE–605 survey are essential for the preparation of the U.S. international transactions, national income and product, and net international investment position accounts of the United States. The data are needed to measure the size and economic significance of foreign direct investment in the United States, measure changes in such investment, and assess its impact on the U.S. economy.

The Bureau of Economic Analysis (BEA) is proposing a change to the BE–605 survey reporting requirements that will reduce respondent burden and increase the efficiency of data collection.

Description of Changes

The proposed change amends the reporting requirements for the BE–605 survey. Specifically, BEA proposes to increase the valuation threshold in the basic requirement for the survey. Currently, a BE–605 form is required for (1) each directly-owned U.S. affiliate for which total assets; annual sales or gross operating revenue, excluding sales

taxes; or annual net income after provision for U.S. income taxes was greater than \$60 million (positive or negative) at any time during the affiliate’s fiscal reporting year and (2) each indirectly-owned U.S. affiliate that met the \$60 million threshold and had an intercompany debt balance.

BEA proposes to increase the threshold for filing the BE–605 from \$60 million to \$500 million. BEA has determined that this increased threshold on the BE–605 would be sufficient to collect the information necessary to maintain data quality and to provide data users with insightful statistics measuring the economic impact of these investments. This proposed change would reduce respondent burden and the BEA resources needed to collect and process these investments.

II. Method of Collection

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to potential respondents each quarter. Reports are due 30 days after the close of each calendar or fiscal quarter, or 45 days if the report is for the final quarter of the respondent’s financial reporting year. Reports are required from every U.S. business enterprise in which a foreign entity owns, directly and/or indirectly, 10 percent or more of the voting securities of the U.S. business enterprise if it is incorporated, or an equivalent interest if it is unincorporated, at any time during the quarter, and that meets the additional conditions detailed in Form BE–605. Certain private funds are exempt from reporting. Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

Potential respondents include those U.S. business enterprises that were required to report on the BE–12, Benchmark Survey of Foreign Direct Investment in the United States—2022, along with those U.S. business enterprises that subsequently have become at least partly foreign owned. BEA offers electronic filing through its eFile system (www.bea.gov/efile) for use in reporting on the BE–605 survey forms. In addition, BEA posts its survey forms and reporting instructions on its website (www.bea.gov/fdi).

III. Data

OMB Control Number: 0608–0009.

Form Number: BE–605.

Type of Review: Revision.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 2,100 per quarter; 8,400 annually.

Estimated Time per Response: 1 hour is the average but may vary considerably among respondents because of differences in company structure and complexity.

Estimated Total Annual Burden Hours: 8,400.

Estimated Total Annual Cost to Public: \$0.

Respondent’s Obligation: Mandatory.

Legal Authority: International Investment and Trade in Services Survey Act (Pub. L. 94–472, 22 U.S.C. 3101–3108, as amended by Pub. L. 98–573 and Pub. L. 101–533).

IV. Request for Comments

We are soliciting public comments to permit the Department of Commerce/Bureau of Economic Analysis to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Departmental PRA Compliance Officer, Office of Undersecretary for Economic Affairs, Commerce Department.

[FR Doc. 2026–00736 Filed 1–14–26; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–3–2026]

Foreign-Trade Zone (FTZ) 204, Notification of Proposed Production Activity; Eastman Chemical Company; (Paraxylene Derivative Products); Kingsport, Tennessee

Eastman Chemical Company submitted a notification of proposed production activity to the FTZ Board (the Board) for its facility in Kingsport, Tennessee within Subzone 204B. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on January 9, 2026.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/ component(s) and specific finished product(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via www.trade.gov/ftz. The proposed finished products and materials/component would be added to the production authority that the Board previously approved for the operation, as reflected on the Board's website.

The proposed finished products include: Dimethyl Terephthalate; 1,4-Cyclohexanedimethanol; (DOTP/DBT) plasticizer; Polyethylene terephthalate (DMT based); Glycol modified Polyethylene terephthalate (DMT based); Glycol modified Polyethylene terephthalate (PTA based); Polycyclohexylenedimethylene terephthalate; Polycyclohexanedimethylene terephthalate (acid modified); Polycyclohexylenedimethylene terephthalate (modified); Polycyclohexylenedimethylene terephthalate (glycol modified); Polycyclohexanedimethylene cyclohexanedicarboxylate; and Polycyclohexanedimethylene cyclohexanedicarboxylate (glycol modified) (duty rate ranges from 5.5 to 6.5%).

The proposed foreign-status materials/components include: paraxylene (duty free). The request indicates that certain materials/ components are subject to duties under section 1702(a)(1)(B) of the International Emergency Economic Powers Act (section 1702) or section 301 of the Trade Act of 1974 (section 301), depending on the country of origin. The

applicable section 1702 and section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: ftz@trade.gov. The closing period for their receipt is February 24, 2026.

A copy of the notification will be available for public inspection in the "Online FTZ Information System" section of the Board's website.

For further information, contact John Frye at john.frye@trade.gov.

Dated: January 13, 2026.

Elizabeth Whiteman,
Executive Secretary.

[FR Doc. 2026–00738 Filed 1–14–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–2–2026]

Foreign-Trade Zone (FTZ) 72, Notification of Proposed Production Activity; Iwis Drive Systems, LLC; (Customized Parts and Drive System Components); Whitestown, Indiana

Iwis drive systems, LLC submitted a notification of proposed production activity to the FTZ Board (the Board) for its facility in Whitestown, Indiana within FTZ 72. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on January 9, 2026.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/ component(s) and specific finished product(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via www.trade.gov/ftz.

The proposed finished products include: roller chains; articulated link chains; roller chain links; stainless steel spacers; steel buckets; steel paddles; steel slats; steel bushings; steel retainer blocks; steel spindles; steel bars; steel collars; steel cylinder caps; steel pins; steel couplers; steel pivot shafts; steel sprockets; and, steel shafts (duty-free).

The proposed foreign-status materials/components include: grease lubrication; oil lubrication; plastic caps used to provide surface in flat top roller

chain; plastic caps used in conveyor chain assemblies; rubber paddles; wooden reels; stainless steel rods; stainless steel round bars; steel roller chains; steel engineered class chains; steel articulated link chains; steel roller chain links; steel welded link chains; steel threaded bolts; steel threaded nuts; steel washers; steel spacers steel cotter pins; steel tweezers; steel spindles; steel bar; steel collars; steel cylinder caps; steel pins; steel couplers; steel bushings; steel pivot shafts; mechanical chain cutters; mechanical crimping tools; steel buckets used with engineered class chains for mining industry; steel slats used with engineered class chains for mining industry; steel shafts; steel transmission shafts; structural steel support shafts; steel feeder slats; ductile iron feeder slats; hydraulic crimping tools; steel sprockets; steel gears; roller bearings; slip clutches; ductile iron slats; and, steel snap rings (duty rate ranges from duty-free to 10.7%). The request indicates that certain materials/ components are subject to duties under section 1702(a)(1)(B) of the International Emergency Economic Powers Act (section 1702), section 232 of the Trade Expansion Act of 1962 (section 232), or section 301 of the Trade Act of 1974 (section 301), depending on the country of origin. The applicable section 1702, section 232, and section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41). The request also indicates that tapered roller bearings, geogrids of plastics and rubber, stainless steel bar, and aluminum extrusions are subject to an antidumping/ countervailing duty (AD/CVD) order/ investigation if imported from certain countries. The Board's regulations (15 CFR 400.13(c)(2)) require that merchandise subject to AD/CVD orders, or items which would be otherwise subject to suspension of liquidation under AD/CVD procedures if they entered U.S. customs territory, be admitted to the zone in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: ftz@trade.gov. The closing period for their receipt is February 24, 2026.

A copy of the notification will be available for public inspection in the "Online FTZ Information System" section of the Board's website.

For further information, contact Brian Warnes at brian.warnes@trade.gov.

Dated: January 13, 2026.

Elizabeth Whiteman,
Executive Secretary.

[FR Doc. 2026–00737 Filed 1–14–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–831]

Stainless Steel Sheet and Strip in Coils From Taiwan: Final Results of Antidumping Duty Administrative Review, and Final Determination of No Shipments; 2023–2024

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that stainless steel sheet and strip in coils (SSSSC) from Taiwan was sold in the United States at less than normal value during the period of review (POR) July 1, 2023, through June 30, 2024. Commerce also determines that Yieh United Steel Company (YUSCO) had no shipments to the United States during the POR.

DATES: Applicable January 15, 2026.

FOR FURTHER INFORMATION CONTACT: Christopher Maciuba, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0413.

SUPPLEMENTARY INFORMATION:

Background

On July 7, 2025, Commerce published the *Preliminary Results* and invited interested parties to comment.¹ No interested party submitted comments on the *Preliminary Results*. Commerce made no changes from the *Preliminary Results*, which are herein adopted as the final results of review. Additionally, because these final results remain unchanged from the *Preliminary Results*, no memorandum accompanies this notice. Commerce conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

¹ See *Stainless Steel Sheet and Strip in Coils from Taiwan: Preliminary Results and Rescission of Antidumping Duty Administrative Review, in Part, and Preliminary Determination of No Shipments; 2023–2024*, 90 FR 29840 (July 7, 2025) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

Scope of the Order²

The merchandise covered by the Order is SSSSC from Taiwan. For a complete description of the scope of the Order, see the *Preliminary Results* PDM.

Final Determination of No Shipments

In the *Preliminary Results*, Commerce determined that YUSCO did not have suspended entries of subject merchandise during the POR.³ No parties commented on Commerce's preliminary no-shipment determination. Therefore, for these final results, we continue to determine that YUSCO had no shipments of subject merchandise during the POR.

Final Results of Review

We determine that the following weighted-average dumping margins exist for the POR, July 1, 2023, through June 30, 2024:

Exporter/producer	Weighted-average dumping margin (percent)
Shiner Steel International Ltd	21.10
Yuan Long Stainless Steel Ltd ...	21.10

Disclosure

Because we made no changes to the calculations performed in connection with the *Preliminary Results*, there are no new calculations to disclose in accordance with 19 CFR 351.224(b) for these final results.

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1), Commerce will determine and CBP shall assess, antidumping duties on all appropriate entries covered by this review. For these final results, we will instruct CBP to apply an *ad valorem* assessment rate equal to the dumping margins shown above to all entries of subject merchandise during the POR which were produced and/or exported by Shiner Steel and Yuan Long.

For YUSCO we will instruct CBP to liquidate any existing entries of merchandise produced by YUSCO but exported by other parties at the rate of the intermediate reseller, if available, or at the all-others rate.⁴

² See *Notice of Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils from United Kingdom, Taiwan, and South Korea*, 64 FR 40555 (July 27, 1999) (Order).

³ See *Preliminary Results*, 90 FR at 29841.

⁴ For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Commerce intends to issue appropriate assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the *Federal Register*. If a timely summon is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).⁵

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for each company listed above will be that established in the final results of this review; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment of this proceeding in which the company was reviewed; (3) if the exporter is not a firm covered in this review, or a previous segment, but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 12.61 percent, the all-others rate established in the less-than-fair-value investigation.⁶

These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

The notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

⁵ See *Notice of Discontinuation of Policy to Issue Liquidation Instructions After 15 Days in Applicable Antidumping and Countervailing Duty Administrative Proceedings*, 86 FR 3995 (January 15, 2021).

⁶ See Order.

Administrative Protective Order

This notice also serves as a final reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.221(b)(5).

Dated: January 12, 2026.

Christopher Abbott,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2026–00742 Filed 1–14–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–817]

Silicon Metal From the Russian Federation: Continuation of Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) that revocation of the antidumping duty (AD) order on silicon metal from the Russian Federation would likely lead to the continuation or recurrence of dumping and material injury to an industry in the United States, Commerce is publishing a notice of continuation of this AD order.

DATES: Applicable January 2, 2026.

FOR FURTHER INFORMATION CONTACT: Kamila Khamidova, Trade Agreements Policy and Negotiations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–8051.

SUPPLEMENTARY INFORMATION:

Background

On March 26, 2003, Commerce published in the **Federal Register** the AD order on silicon metal from the Russian Federation.¹ On May 1, 2025, the ITC instituted,² and Commerce initiated,³ the fourth sunset review of the *Order*, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its review, Commerce determined that revocation of the *Order* would likely lead to the continuation or recurrence of dumping, and therefore, notified the ITC of the magnitude of the margins of dumping likely to prevail should the *Order* be revoked.⁴

On January 2, 2026, the ITC published its determination, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *Order* would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.⁵

Scope of the Order

For purposes of this *Order*, the product covered is silicon metal, which generally contains at least 96.00 percent but less than 99.99 percent silicon by weight. The merchandise covered by this *Order* also includes silicon metal from Russia containing between 89.00 and 96.00 percent silicon by weight, but containing more aluminum than the silicon metal which contains at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal currently is classifiable under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule of the United States (HTSUS). This *Order* covers all silicon metal meeting the above specification, regardless of tariff classification.

Continuation of the Order

As a result of the determinations by Commerce and the ITC that revocation of the *Order* would likely lead to continuation or recurrence of dumping, countervailable subsidies, and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, Commerce hereby orders the

¹ See *Antidumping Duty Order: Silicon Metal from Russia*, 68 FR 14578 (March 26, 2003) (*Order*).

² See *Silicon Metal from Russia; Institution of a Five-Year Review*, 90 FR 18701 (May 1, 2025).

³ See *Initiation of Five-Year (Sunset) Reviews*, 90 FR 18642 (May 1, 2025).

⁴ See *Silicon Metal from the Russian Federation: Final Results of the Expedited Fourth Sunset Review of the Antidumping Duty Order*, 90 FR 42218 (August 29, 2025), and accompanying Issues and Decision Memorandum (IDM).

⁵ See *Silicon Metal from Russia; Determination*, 91 FR 154 (January 2, 2026) (*ITC Final Determination*).

continuation of the *Order*. U.S. Customs and Border Protection will continue to collect AD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the *Order* will be January 2, 2026.⁶ Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year reviews of the *Order* not later than 30 days prior to fifth anniversary of the date of the last determination by the ITC.

Administrative Protective Order (APO)

This notice also serves as a final reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This five-year (sunset) review and this notice are in accordance with sections 751(c) and 751(d)(2) of the Act and published in accordance with section 777(i) of the Act, and 19 CFR 351.218(f)(4).

Dated: January 12, 2026.

/s/Christopher Abbott

Christopher Abbott,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2026–00741 Filed 1–14–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–837, A–533–889, C–489–838, C–533–890]

Certain Quartz Surface Products From India and the Republic of Türkiye: Continuation of Antidumping and Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the U.S. Department of Commerce (Commerce) and the U.S.

⁶ See *ITC Final Determination*.

International Trade Commission (ITC) that revocation of the antidumping duty (AD) orders and countervailing duty (CVD) orders on certain quartz surface products from India and the Republic of Türkiye would likely lead to the continuation or recurrence of dumping, countervailable subsidies, and material injury to an industry in the United States, Commerce is publishing a notice of continuation of these AD and CVD orders.

DATES: Applicable December 18, 2025.

FOR FURTHER INFORMATION CONTACT:

Jonathan Christensen, Trade Agreements Policy and Negotiations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-3905.

SUPPLEMENTARY INFORMATION:

Background

On June 22, 2020, Commerce published in the **Federal Register** the AD and CVD orders on certain quartz surface products from India and the Republic of Türkiye.¹ On May 1, 2025, the ITC instituted,² and Commerce initiated,³ the first sunset reviews of the *Orders*, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its reviews, Commerce determined that revocation of the *Orders* would likely lead to the continuation or recurrence of dumping and countervailable subsidies, and therefore, notified the ITC of the magnitude of the margins of dumping and subsidy rates likely to prevail should the *Order* be revoked.⁴

On December 18, 2025, the ITC published its determination, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *Orders* would likely lead to continuation or recurrence of material injury to an industry in the

United States within a reasonably foreseeable time.⁵

Scope of the Orders

The merchandise covered by the *Orders* is certain quartz surface products. Quartz surface products consist of slabs and other surfaces created from a mixture of materials that includes predominately silica (e.g., quartz, quartz powder, cristobalite, glass powder) as well as a resin binder (e.g., an unsaturated polyester). The incorporation of other materials, including, but not limited to, pigments, cement, or other additives does not remove the merchandise from the scope of the *Orders*. However, the scope of the *Orders* only includes products where the silica content is greater than any other single material, by actual weight. Quartz surface products are typically sold as rectangular slabs with a total surface area of approximately 45 to 60 square feet and a nominal thickness of one, two, or three centimeters. However, the scope of the *Orders* includes surface products of all other sizes, thicknesses, and shapes. In addition to slabs, the scope of the *Orders* includes, but is not limited to, other surfaces such as countertops, backsplashes, vanity tops, bar tops, work tops, tabletops, flooring, wall facing, shower surrounds, fire place surrounds, mantels, and tiles. Certain quartz surface products are covered by the *Orders* whether polished or unpolished, cut or uncut, fabricated or not fabricated, cured or uncured, edged or not edged, finished or unfinished, thermoformed or not thermoformed, packaged or unpackaged, and regardless of the type of surface finish.

In addition, quartz surface products are covered by the *Orders* whether or not they are imported attached to, or in conjunction with, non-subject merchandise such as sinks, sink bowls, vanities, cabinets, and furniture. If quartz surface products are imported attached to, or in conjunction with, such non-subject merchandise, only the quartz surface product is covered by the scope.

Subject merchandise includes material matching the above description that has been finished, packaged, or otherwise fabricated in a third country, including by cutting, polishing, curing, edging, thermoforming, attaching to, or packaging with another product, or any other finishing, packaging, or fabrication that would not otherwise remove the merchandise from the scope of the

Order if performed in the country of manufacture of the quartz surface products.

The scope of the *Order* does not cover quarried stone surface products, such as granite, marble, soapstone, or quartzite. Specifically excluded from the scope of the *Order* are crushed glass surface products. Crushed glass surface products must meet each of the following criteria to qualify for this exclusion: (1) The crushed glass content is greater than any other single material, by actual weight; (2) there are pieces of crushed glass visible across the surface of the product; (3) at least some of the individual pieces of crushed glass that are visible across the surface are larger than 1 centimeter wide as measured at their widest cross-section (Glass Piece); and (4) the distance between any single Glass Piece and the closest separate Glass Piece does not exceed three inches.

The products subject to the scope are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under the following subheading: 6810.99.0010. Subject merchandise may also enter under subheadings 6810.11.0010, 6810.11.0070, 6810.19.1200, 6810.19.1400, 6810.19.5000, 6810.91.0000, 6810.99.0080, 6815.99.4070, 2506.10.0010, 2506.10.0050, 2506.20.0010, 2506.20.0080, and 7016.90.1050. The HTSUS subheadings set forth above are provided for convenience and U.S. Customs purposes only. The written description of the scope is dispositive.

Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the *Orders* would likely lead to continuation or recurrence of dumping, countervailable subsidies, and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, Commerce hereby orders the continuation of the *Orders*. U.S. Customs and Border Protection will continue to collect AD and CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the *Orders* will be December 18, 2025.⁶ Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year reviews of the *Orders* not later than 30 days prior to fifth anniversary of the date of the last determination by the ITC.

¹ See *Certain Quartz Surface Products from India and Turkey: Antidumping Duty Orders*, 85 FR 37422 (June 22, 2020); and *Certain Quartz Surface Products from India and the Republic of Turkey: Countervailing Duty Orders*, 85 FR 37431 (June 22, 2020) (collectively, *Orders*).

² See *Quartz Surface Products from India and Turkey: Institution of Five-Year Reviews*, 90 FR 18697 (May 1, 2025).

³ See *Initiation of Five-Year (Sunset) Reviews*, 90 FR 18642 (May 1, 2025).

⁴ See *Quartz Surface Products from India and the Republic of Türkiye: Final Results of the Expedited First Sunset Reviews of the Countervailing Duty Orders*, 90 FR 40340 (August 19, 2025); *Quartz Surface Products from India: Final Results of the Expedited First Sunset Review of the Antidumping Duty Order*, 90 FR 41993 (August 28, 2025); and *Certain Quartz Surface Products from the Republic of Türkiye: Final Results of the Expedited First Sunset Review of the Antidumping Duty Order*, 90 FR 42384 (September 2, 2025).

⁵ See *Quartz Surface Products from India and Turkey: Determinations*, 90 FR 59202 (December 18, 2025) (*ITC Final Determination*).

⁶ See *ITC Final Determination*.

Administrative Protective Order (APO)

This notice also serves as a final reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

These five-year (sunset) reviews and this notice are in accordance with sections 751(c) and 751(d)(2) of the Act and published in accordance with section 777(i) of the Act, and 19 CFR 351.218(f)(4).

Dated: December 19, 2025.

Christopher Abbott,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2026–00739 Filed 1–14–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; West Coast Region U.S. Pacific Highly Migratory Species Hook and Line Logbook

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Information Collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed

information collection must be received on or before March 16, 2026.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at NOAA.PRA@noaa.gov. Please reference OMB Control Number 0648–0223 in the subject line of your comments. All comments received are part of the public record and will generally be posted on <https://www.regulations.gov> without change. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Alexander Rayburn, Scientist, National Marine Fisheries Service, West Coast Region, Portland, OR 97232, (503) 321–2007, or alexander.rayburn@noaa.gov.

SUPPLEMENTARY INFORMATION:**I. Abstract**

This request is for extension of a currently approved collection. Under the Fishery Management Plan (FMP) for United States (U.S.) West Coast Fisheries for Highly Migratory Species (HMS), U.S. fishermen participating in the Pacific Hook and Line fishery (also known as the albacore troll and pole-and-line fishery) are required to obtain an HMS permit. Permit holders are required to complete and submit logbooks documenting their daily fishing activities, including catch and effort for each fishing trip. Logbook forms must be completed within 24 hours of the completion of each fishing day and submitted to the Southwest Fisheries Science Center (SWFSC) within 30 days of the end of each trip. These data and associated analyses help the SWFSC provide fisheries information to researchers and the needed management advice to the U.S. in its negotiations with foreign fishing nations exploiting HMS.

II. Method of Collection

Respondents have a choice of either electronic data submission or paper forms. Methods of submission include secure electronic transmission and mailing of paper forms.

III. Data

OMB Control Number: 0648–0223.
Form Number(s): NOAA Form 88–197.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 699.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden

Hours: 2,794.

Estimated Total Annual Cost to Public: \$2,179.32 in recordkeeping/reporting costs.

Respondent's Obligation: Mandatory.

Legal Authority: Fishery Management Plan for the United States West Coast Fisheries for Highly Migratory Species.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this information collection request. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Departmental PRA Compliance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2026–00743 Filed 1–14–26; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648–XF406]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management and New England Fishery Management Councils will hold a public meeting of their joint Northeast Trawl Advisory Panel.

DATES: The meeting will be held on Thursday, February 12, 2026, from 9 a.m.–5 p.m. For agenda details, see

SUPPLEMENTARY INFORMATION.

ADDRESSES: This meeting will be conducted in person with a virtual option available. The meeting will be held at the Virginia Institute of Marine Science (VIMS) Campus in the Davis Boardroom (7539 Spencer Road, Gloucester Point, VA 23062), telephone: (804) 684–7000. Connection information will be posted to the Council's calendar prior to the meeting at www.mafmc.org.

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; www.mafmc.org.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The Councils' Northeast Trawl Advisory Panel (NTAP) will meet to receive updates on recent Federal and cooperative surveys, as well as other communications from the Northeast Fisheries Science Center (NEFSC). The Panel will also review plans for the Regional Industry-Based Trawl Survey (RIBTS) Phase 1 pilot project, anticipated for Spring 2026, including a demonstration of Phase 1 survey equipment. In addition, NTAP will discuss ongoing planning for the RIBTS Phase 2 pilot project being developed by the NTAP Working Group.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shelley Spedden, (302) 526–5251 at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 13, 2026.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2026–00740 Filed 1–14–26; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes product(s) and service(s) from the Procurement List previously furnished by such agencies.

DATES: *Date added to and deleted from the Procurement List:* February 15, 2026.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington DC, 20024.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 489–1322, or email CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION:

Addition

On December 11, 2025, the Committee for Purchase From People Who Are Blind or Severely Disabled (operating as the U.S. AbilityOne Commission) published an initial notice of proposed additions to the Procurement List. (90 FR 57452). This final notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. The Committee has determined that the product(s) listed below is suitable for procurement by the Federal Government and has added this product(s) to the Procurement List as a mandatory purchase for Federal entities. In accordance with 41 CFR 51–5.2, the Committee has authorized the qualified nonprofit agencies described with the product(s) as the authorized source(s) of supply.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the product(s) and impact of the additions on the current or most recent contractors, the Committee has determined that the product(s) listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

**Regulatory Flexibility Act Certification
End of Certification**

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) added to the Procurement List.

End of Certification

Accordingly, the following product(s) are added to the Procurement List:

Product(s)

NSN(s)—Product Name(s): 5180–00–650–7821—Kit, Electrician's Tool, Quick Change, 23 PC

Authorized Source of Supply: Industries for the Blind and Visually Impaired, Inc., West Allis, WI

Mandatory For: Total Government Requirement

Contracting Activity: GENERAL SERVICES ADMINISTRATION, GSA/FSS GREATER SOUTHWEST ACQUISITI

Deletion

On December 11, 2025, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List. This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3.

After consideration of the relevant matter presented, the Committee has determined that the product(s) and service(s) listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product(s) and service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) and service(s) deleted from the Procurement List.

End of Certification

Accordingly, the following product(s) and service(s) are deleted from the Procurement List:

Product(s)

7920-01-215-6569—Cloth, Synthetic Shammy, Orange, 20' x 23'

Mandatory For: Total Government Requirement

Contracting Activity: DEPT OF VETERANS AFFAIRS, STRATEGIC ACQUISITION CENTER

Contracting Activity: GENERAL SERVICES ADMINISTRATION, GSA/FSS GREATER SOUTHWEST ACQUISITI

Service(s)

Service Type: Warehouse and Distribution Service

Mandatory for: National Institutes of Health, Information Resource Center, Rockville, MD, 6001 Executive Boulevard, Rockville, MD

Authorized Source of Supply: The ARC of the District of Columbia, Inc., Washington, DC

Contracting Activity: HEALTH AND HUMAN SERVICES, DEPARTMENT OF, NATIONAL INSTITUTES OF HEALTH NIDA

Service Type: Laundry Service

Mandatory for: US Coast Guard, US Coast Guard Base Portsmouth, Portsmouth, VA, 4000 Coast Guard Blvd., Portsmouth, VA

Authorized Source of Supply: Louise W. Eggleston Center, Inc., Norfolk, VA

Contracting Activity: DEPT OF HOMELAND SECURITY, BASE PORTSMOUTH(00027)

Service Type: Multi-Function Support Services

Mandatory for: US Army Corps of Engineers, Marine Corps Reserve Center, St. Paul, MN, 6400 Bloomington Road, St. Paul, MN

Authorized Source of Supply: AccessAbility, Inc., Minneapolis, MN

Contracting Activity: DEPT OF DEFENSE, W074 ENDIST CHARLESTON

Michael R. Jurkowski,

Director, Business Operations.

[FR Doc. 2026-00655 Filed 1-14-26; 8:45 am]

BILLING CODE 6353-01-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Public Meeting

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Notice of public meeting.

DATES: January 28, 2026, from 2 p.m. to 4 p.m. ET.

ADDRESSES: The meeting will be accessible to the public virtually via Zoom webinar.

FOR FURTHER INFORMATION CONTACT:

Angela Phifer, 355 E Street SW, Suite 325, Washington, DC 20024; (703) 798-5873; CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION:

Background: The Committee for Purchase From People Who Are Blind or Severely Disabled is an independent Federal agency operating as the U.S. AbilityOne Commission. It oversees the AbilityOne Program, which provides employment opportunities through Federal contracts for people who are blind or have significant disabilities in the manufacture and delivery of products and services to the Federal Government. The Javits-Wagner-O'Day Act (41 U.S.C. chapter 85) authorizes the contracts.

Registration: Attendees not requesting speaking time should register not later than January 27, 2026. Attendees requesting speaking time must register not later than January 20, 2026, and use the comment fields in the registration form to specify the intended speaking topic(s). The registration link will be available on the Commission's home page, www.abilityone.gov, under News and Events.

Commission Statement: This regular quarterly public meeting will include updates from the Commission Interim Chairperson, Executive Director, and Acting Inspector General.

Public Participation: The public engagement session will explore nontraditional and emerging service capabilities, including in the professional services category, that the Commission and AbilityOne Program participants might explore to create new employment opportunities for Americans who are blind or have significant disabilities. For the purposes of this session, emerging service capabilities include (1) a new or significantly improved ability to deliver a service, and/or (2) a nascent capability that is currently being tested or employed in the AbilityOne Program. Speakers are also invited to answer the question, "How can the AbilityOne Program identify and prepare for the service jobs of the future?"

The Commission looks forward to receiving comments and suggestions on the public engagement topics. During registration, you may choose to submit comments, or you may request speaking time at the meeting. The Commission may invite some attendees who submit advance comments to discuss their comments during the meeting. Comments submitted will be reviewed by staff and the Commission members before the meeting. Comments posted in the chat box during the meeting will be

shared with the Commission members after the meeting. The Commission is not subject to the requirements of 5 U.S.C. 552(b); however, the Commission published this notice to encourage the broadest possible participation in its meeting.

Personal Information: Speakers should not include any information that they do not want publicly disclosed.

Michael R. Jurkowski,

Director, Business Operations.

[FR Doc. 2026-00656 Filed 1-14-26; 8:45 am]

BILLING CODE 6353-01-P

CONSUMER FINANCIAL PROTECTION BUREAU

[Docket No: CFPB-2026-0003]

Privacy Act of 1974; System of Records

AGENCY: Consumer Financial Protection Bureau.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Consumer Financial Protection Bureau (CFPB or Bureau) proposes to modify a current Privacy Act System of Records titled, "CFPB.019—Nationwide Mortgage Licensing System and Registry." The system of records allows mortgage loan originators (MLOs) employed by Federal agency regulated institutions to register and submit required information about themselves and their backgrounds in a national registry, and for the administration of the registry.

DATES: Comments must be received no later than February 17, 2026. The modifications to this system of records will be effective February 17, 2026 unless the comments received result in a contrary determination.

ADDRESSES: You may submit comments, identified by the title and docket number (see above Docket No. CFPB-2026-0003), by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. A brief summary of this document will be available at <https://www.regulations.gov/docket/CFPB-2026-0003>.

- *Email:* privacy@cfpb.gov. Include Docket No. CFPB-2026-0003 in the subject line of the email.

- *Mail/Hand Delivery/Courier:* Kathryn Fong, Chief Privacy Officer, Consumer Financial Protection Bureau,

1700 G Street NW, Washington, DC 20552; (202) 435-7058. Because paper mail in the Washington, DC area and at CFPB is subject to delay, commenters are encouraged to submit comments electronically.

All submissions must include the agency name and docket number for this notice. In general, all comments received will be posted without change to <http://www.regulations.gov>. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT:

Kathryn Fong, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552; (202) 435-7058. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov. Please do not submit comments to this email box.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the CFPB is modifying a system of records titled, “CFPB.019—Nationwide Mortgage Licensing System and Registry.” The modified system of records described in this notice includes the following changes. First, the purpose of the system is updated to clarify that information is collected and used for the administration of the registry, which includes conducting background investigations on the MLOs and identity verification for users who are designated to perform administrative functions on behalf of the Federal agency regulated institution and employees designated as primary contacts for covered financial institutions. This identity verification process is required by the Department of Justice, Federal Bureau of Investigation for individuals who have access to Criminal History Record Information (CHRI) of MLOs. Second, the updates to the category of individuals include the addition of primary contacts from covered financial institutions; users who are designated to perform administrative functions on behalf of the covered financial institutions; and other individual users from Federal agencies and regulators. Third, the updates to the category of records include additional data elements that are collected from MLOs as part of the registry; the information from users designated to perform administrative functions on behalf of institutions to

conduct the identity verification; and basic name and contact information from other users (*i.e.*, from Federal regulators and agencies) of the registry. Institutions employing MLOs are required to be federally registered pursuant to sections 1504 and 1507 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E. Act), 12 U.S.C. 5103 and 5106. Fourth, the records retention schedule is updated to include the records retention schedule approved for this system of records. Fifth, a new routine use will enable disclosure to the U.S. National Archives and Records Administration (NARA) when engaging in records management inspections pursuant to 44 U.S.C. 2904 and 2906. Finally, the CFPB is making non-substantive revisions to the system of records notice to align with the Office of Management and Budget’s recommended model in Circular A-108, appendix II. The report of the revised system of records has been submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Circular A-108, “Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act” (Dec. 2016) and the Privacy Act of 1974, 5 U.S.C. 552a(r).

SYSTEM NAME AND NUMBER:

CFPB.019—Nationwide Mortgage Licensing System and Registry.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552. State Regulatory Registry LLC, 1129 20th Street NW, Washington, DC 20036.

SYSTEM MANAGER(S):

Consumer Financial Protection Bureau, Principal Deputy Assistant Director, Office of Supervision Policy & Operations, Division of Supervision, 1700 G Street NW, Washington, DC 20552; and, State Regulatory Registry LLC, 1129 20th Street NW, Washington, DC 20036.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E. Act), Public Law 110-289, Division A, title V, sections 1501-1517, 122 Stat. 2654, 2810-2824 (July 30, 2008), codified at 12 U.S.C. 5101 *et seq.*, as amended.

PURPOSE(S) OF THE SYSTEM:

The system allows for the registration of MLOs employed by Federal agency regulated institutions in a Nationwide Mortgage Licensing System and Registry (NMLSR), as required by the S.A.F.E. Act. The information is maintained to support Federal regulatory oversight while providing the public with access to certain information concerning MLOs employed by institutions regulated by a Federal banking agency (as defined in section 1503(2) of the S.A.F.E. Act, 12 U.S.C. 5102(2)) or the Farm Credit Administration (FCA), including names and employment histories of those MLOs. It also enables the administration of the registry, to include granting registration to users who are designated to perform administrative functions on behalf of the covered financial institution. Certain information collected in this system is used to conduct appropriate criminal background checks of MLOs, and identification verification of users who are designated to perform administrative functions on behalf of the Federal agency regulated institution and employees designated as primary contacts for covered financial institutions, as required by the S.A.F.E. Act, its implementing regulation, 12 CFR part 1007, and other Federal policies and standards. The information is used for additional administrative purposes to ensure quality control, performance, and improving management processes.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include: MLOs that are required to be registered under sections 1504 and 1507 of the S.A.F.E. Act, 12 U.S.C. 5103 and 5106, or the S.A.F.E. Act’s implementing regulation, 12 CFR part 1007; users who are designated to perform administrative functions on behalf of the covered financial institution under 12 CFR 1007.103(e)(1)(i)(F); employees designated as primary contacts for Federal agency regulated institutions under 12 CFR 1007.103(e)(1)(i)(E); and Bureau employees, contractors, or others, or authorized Federal users.

CATEGORIES OF RECORDS IN THE SYSTEM:

Category of records related to MLOs in this system include names and former or other names used; Social Security numbers; gender; dates and places of birth; home and business contact information (including physical and email addresses); financial services-related employment history for 10 years prior to the date of registration or

renewal of a registration; CHRI, including the results of criminal background checks; State license(s) held, status and license numbers, along with any disciplinary actions that have resulted in license revocations and suspensions (submitted in response to criminal, civil, regulatory, and financial services-related disclosure questions, which responses are then verified by State agencies); certain other criminal, civil, regulatory, disciplinary or enforcement actions taken against MLOs, including in connection with their employment in the financial services industry; fingerprint data; and unique identifiers assigned to NMLSR registrant and/or financial institution; copy or photo of government issued identification; and photograph.

Category of records related to the users who are designated to perform administrative functions on behalf of the covered financial institution and employees designated as the primary contact for Federal agency regulated institutions include name; email address; phone number(s); home address; Social Security number; date of birth; copy or photo of government issued identification; and photograph.

Category of records related to other individuals covered by this system include name and contact information, to include phone number and business email address.

RECORD SOURCE CATEGORIES:

Information maintained in this system is obtained from individuals who are required to be registered as MLOs, individuals who are designated to perform administrative functions on behalf of a covered financial institution, employees designated as primary contacts for Federal agency regulated institutions under 12 CFR 1007.103(e)(1)(i)(E); and CFPB employees, contractors, or other authorized Federal users.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed, consistent with the Bureau's Disclosure of Records and Information Rules, promulgated at 12 CFR 1070 et seq., to:

(1) Appropriate agencies, entities, and persons when (a) the Bureau suspects or has confirmed that there has been a breach of the system of records; (b) the Bureau has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Bureau (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to

such agencies, entities, and persons is reasonably necessary to assist in connection with the Bureau's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(2) Another Federal agency or entity, when the Bureau determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(3) Another Federal or State agency to (a) permit a decision as to access to or amendment or correction of records to be made in consultation with or by that agency, or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records.

(4) The Executive Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf.

(5) Congressional offices in response to an inquiry made at the request of the individual to whom the record pertains.

(6) Contractors, agents, or other authorized individuals performing work on a contract, service, cooperative agreement, job, or other activity on behalf of the Bureau or the U.S. Government and who have a need to access the information in the performance of their mission, including duties or activities.

(7) The Department of Justice (DOJ) for its use in providing legal advice to the Bureau or in representing the Bureau in a proceeding before a court, adjudicative body, or other administrative body, where the use of such information by the DOJ is deemed by the Bureau to be relevant and necessary to the advice or proceeding, and such proceeding names as a party in interest:

- a. The CFPB;
- b. Any employee of the Bureau in their official capacity;
- c. Any employee of the Bureau in their individual capacity where DOJ has agreed to represent the employee; or
- d. The United States, where the CFPB determines that litigation is likely to affect the Bureau or any of its components.

(8) A grand jury pursuant either to a Federal or State grand jury subpoena, or

to a prosecution request that such record be released for the purpose of its introduction to a grand jury, where the subpoena or request has been specifically approved by a court. In those cases where the Federal Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a judge.

(9) A court, magistrate, or administrative tribunal in the course of an administrative proceeding or judicial proceeding, including disclosures to opposing counsel or witnesses (including expert witnesses) in the course of discovery or other pre-hearing exchanges of information, litigation, or settlement negotiations, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings.

(10) Appropriate agencies, entities, and persons, including but not limited to potential expert witnesses or witnesses in the course of investigations, to the extent necessary to secure information relevant to the investigation.

(11) Appropriate Federal, State, local, foreign, Tribal, or self-regulatory organizations or agencies responsible for investigating, prosecuting, enforcing, implementing, issuing, or carrying out a statute, rule, regulation, order, policy, or license if the information may be relevant to a potential violation of civil or criminal law, rule, regulation, order, policy, or license.

(12) To the NARA or other Federal Government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

(13) Institutions employing MLOs that are required to be federally registered pursuant to sections 1504 and 1507 of the S.A.F.E. Act, 12 U.S.C. 5103 and 5106, or the S.A.F.E. Act's implementing regulation, 12 CFR part 1007, for use in administering registration.

(14) The public when the information relates to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, MLOs that is included in the NMLSR for access by the public in accordance with section 1507 of the S.A.F.E. Act, 12 U.S.C. 5106.

(15) Any Federal banking agency, as defined in section 1503(2) of the S.A.F.E. Act, 12 U.S.C. 5102(2), and the FCA to carry out their oversight responsibilities for MLOs employed by entities subject to their respective authorities.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records maintained in this system are stored electronically and in paper files.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrievable by a variety of fields including, but not limited to, an individual MLO or other individual's name or unique identification number; the financial institution's name or unique identification number; or by some combination thereof.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The records collected and maintained within NMLSR will be retained for five years after an individual's or an institution's NMLSR account status becomes inactive in accordance with the applicable CFPB Records Schedule DAA-0587-2021-0001.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Individuals who have access to CHRI undergo an identity verification process. Other records are maintained in locked file cabinets or rooms with access limited to those personnel whose official duties require access.

RECORD ACCESS PROCEDURES:

See "Contesting Record Procedures."

CONTESTING RECORD PROCEDURES:

If assistance is required to access, contest or amend such a record, individuals may contact the NMLS Call Center at (240) 386-4444, or may inquire in writing in accordance with instructions appearing in title 12, chapter 10 of the CFR, "Disclosure of Records and Information." Address such requests to: Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

NOTIFICATION PROCEDURES:

See "Contesting Record Procedures" above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

77 FR 35359 (June 13, 2012); 83 FR 23435 (May 21, 2018).

Kathryn Fong,

Chief Privacy Officer, Consumer Financial Protection Bureau.

[FR Doc. 2026-00704 Filed 1-14-26; 8:45 am]

BILLING CODE 4810-AM-P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE**Agency Information Collection Activities; Comment Request; Segal Education Award-Related Information Collection Requests**

AGENCY: Corporation for National and Community Service.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Corporation for National and Community Service (operating as AmeriCorps) is proposing to renew three information collections associated with the Segal Education Award: the voucher and payment request form, the forbearance request form, and the interest accrual form.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by March 16, 2026.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) Electronically through www.regulations.gov (preferred method)

(2) *By mail sent to:* AmeriCorps, Attention Nahid Jarrett, 250 E Street SW, Washington, DC 20525.

(3) By hand delivery or by courier to the AmeriCorps mailroom at the mail address given in paragraph (2) above, between 9 a.m. and 4 p.m. Eastern Time, Monday through Friday, except Federal holidays.

Comments submitted in response to this notice may be made available to the public through regulations.gov. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comment that may be made available to the public, notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT:

Nahid Jarrett, 202-606-6753, or by email at njarrett@cns.gov.

SUPPLEMENTARY INFORMATION:

1. *Title of Collection:* Voucher and Payment Request Form.

OMB Control Number: 3045-0014.

Type of Review: Renewal.

Respondents/Affected Public:

Individuals (AmeriCorps members and alumni that request payment on qualified student loans) and businesses (qualified student loan servicers).

Total Estimated Number of Annual Responses: 34,385.

Average Time per Response: 5 minutes.

Total Estimated Number of Annual Burden Hours: 2,865.

Abstract: The National Service Trust AmeriCorps Voucher and Payment Form/National Service Trust AmeriCorps—Manual Payment Request Form is used to make payments to repay qualified student loans and to pay for the cost of attending eligible post-secondary educational institutions and approved School-to-Work programs. Prior to making the payments, AmeriCorps will review information from the forms and compare it to information taken from the AmeriCorps member's education award account(s) to ensure that the payments meet the requirements of the law. This information collection is not required to be considered for obtaining grant funding support. The currently approved information collection is due to expire on March 31, 2026.

2. *Title of Collection:* Forbearance Request of National Service Form.

OMB Control Number: 3045-0030.

Type of Review: Renewal.

Respondents/Affected Public:

Individuals (AmeriCorps members and alumni that wish to request forbearance on qualified student loans) and businesses (qualified student loan servicers).

Total Estimated Number of Annual Responses: 13,182.

Frequency: One or more per education award.

Average Time per Response: 10 minutes.

Total Estimated Number of Annual Burden Hours: 2,197.

Abstract: The National Service Trust AmeriCorps Forbearance Request for National Service Form is used to certify that AmeriCorps members are eligible for forbearance based on their enrollment in a national service position. AmeriCorps members use the form, or its electronic equivalent, to request forbearance from their loan. This information collection is not required to be considered for obtaining grant funding support. The currently approved information collection is due to expire on March 31, 2026.

3. *Title of Collection:* Interest Accrual Form.

OMB Control Number: 3045-0053.

Type of Review: Renewal.

Respondents/Affected Public:

Individuals and Households OR
Businesses and Organizations OR State,
Local or Tribal Governments.

*Total Estimated Number of Annual
Responses:* 320.

Average Time per Response: 5
minutes.

*Total Estimated Number of Annual
Burden Hours:* 27.

Abstract: The National Service Trust Interest Payment Form is used by AmeriCorps members to request a payment of accrued interest on qualified student loans and to authorize the release of loan information to the National Service Trust; schools and lenders verify eligibility for the payments; and both parties verify certain legal requirements. AmeriCorps uses the information from the form to ensure that the accrued interest payment is allowable under law. AmeriCorps seeks to renew the currently approved information collection, which is due to expire on March 31, 2026.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information. All written comments will

be available for public inspection on [regulations.gov](https://www.regulations.gov).

Jerry Prentice,

Director, National Service Trust.

[FR Doc. 2026-00757 Filed 1-14-26; 8:45 am]

BILLING CODE 6050-28-P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF-2026-HQ-0034]

Proposed Collection; Comment Request

AGENCY: Department of the Air Force, Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the Department of the Air Force (AF) announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the information collection; ways to enhance the quality, utility, and clarity of the information collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 16, 2026.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Director of Administration and Management, Privacy, Civil Liberties, and Transparency Directorate, Regulatory Division, 4800 Mark Center Drive, Mailbox #24, Suite 05F16, Alexandria, VA 22350-1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any

personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Headquarters Air Force Safety Center, 9700 G. Ave., Kirtland AFB, NM 87117, ATTN: Mr. Douglas MacCurdy, or call 312-246-0675.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Air Force Safety Automated System; AF Form 978; OMB Control Number 0701-0164.

Needs and Uses: The Air Force Safety Center is seeking to extend its approval for a currently approved information collection used for mishap reporting. This collection is a key component of the AF Safety Program and is necessary for compliance with federal Occupational Safety and Health Administration regulations and Department of Defense policy.

When an incident occurs, information is gathered from witnesses and individuals involved or their supervisors using the AF Form 978, "Supervisor Mishap/Incident Report." To ensure the quality and utility of the information, the form is reviewed through the chain of command before being officially entered into the Air Force Safety Automated System. Safety professionals analyze this verified data to identify the root causes of accidents and develop recommendations, with the ultimate purpose of preventing future mishaps to save lives and preserve national assets.

Affected Public: Business or other for-profit; individuals or households.

Annual Burden Hours: 200.

Number of Respondents: 200.

Responses per Respondent: 1.

Annual Responses: 200.

Average Burden per Response: 1 hour.

Frequency: On occasion.

Dated: January 12, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2026-00630 Filed 1-14-26; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 25-0F]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Urooj Zahra at (703) 695-6233, urooj.zahra.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 25-0F.

Dated: January 12, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001-FR-P



DEFENSE SECURITY COOPERATION AGENCY
2800 Defense Pentagon
Washington, DC 20301-2800

April 28, 2025

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended, we are forwarding Transmittal No. 25-0F. This notification relates to enhancements or upgrades from the level of sensitivity of technology or capability described in the Section 36(b)(1) AECA certification 20-66 of October 9, 2020.

Sincerely,

Michael F. Miller
Director

Enclosure:

1. Transmittal

BILLING CODE 6001-FR-C

Transmittal No. 25-0F

**REPORT OF ENHANCEMENT OR
UPGRADE OF SENSITIVITY OF
TECHNOLOGY OR CAPABILITY (SEC.
36(B)(5)(C), AECA)**

(i) *Purchaser:* Government of Finland
(ii) *Sec. 36(b)(1), AECA Transmittal*
No.: 20-66

Date: October 9, 2020

Military Department: Air Force
(iii) *Description:* On October 9, 2020, Congress was notified by congressional certification transmittal number 20-66 of the possible sale, under Section 36(b)(1) of the Arms Export Control Act, of sixty-four (64) F-35 Joint Strike Fighter CTOL aircraft; sixty-six (66) Pratt & Whitney F-135 engines (64 installed and 2 spares); five hundred

(500) GBU-53/B Small Diameter Bomb II (SDB II) All-Up Round (AUR); twelve (12) GBU-53/B SDB II Guided Test Vehicles (GTV); twelve (12) GBU-53/B SDB II Captive Carry Vehicles (CCV); one hundred fifty (150) Sidewinder AIM-9X Block II+ (Plus) Tactical Missiles; thirty-two (32) Sidewinder AIM-9X Block II+ (Plus) Captive Air Training Missiles (CATMs); thirty (30) AIM-9X Block II+ (Plus) Sidewinder Tactical Guidance Units; eight (8) AIM-9X Block II Sidewinder CATM Guidance Units; one hundred (100) AGM-154C-1 Joint Stand Off Weapon (JSOW-C1) Tactical Missiles; two hundred (200) Joint Air-to-Surface Standoff Missile-Extended Range (JASSM-ER) AGM-158B-2 Missiles; two (2) AGM-158B-2 JASSM-ER

Separation Test Vehicles; two (2) AGM-158B-2 JASSM-ER Instrumented Test Vehicles; two (2) AGM-158B-2 JASSM-ER Jettison Test Vehicles; two (2) AGM-158B-2 Inert JASSM w/Intelligent Telemetry Instrumentation Kits; two (2) AGM-158 Dummy Air Training Missiles; one hundred twenty (120) KMU-556 JDAM Guidance Kits for GBU-31; three hundred (300) FMU-139D/B Fuzes; two (2) KMU-556(D-2)/B Trainer JDAM Guidance Kits for GBU-31; thirty (30) KMU-557 JDAM Guidance Kits for GBU-31; one hundred fifty (150) KMU-572 JDAM Guidance Kits for GBU-38/54; one hundred twenty (120) BLU-117, General Purpose Bombs; thirty-two (32) BLU-109, General Purpose Bomb; one hundred fifty (150) BLU-111, General Purpose

Bomb; six (6) MK-82, Inert Bomb; one (1) FMU-139D/B (D-1) Inert Fuze. Also included were Electronic Warfare Systems; Command, Control, Communications, Computer and Intelligence/Communications, Navigational, and Identification (C4I/CNI); Autonomic Logistics Global Support System (ALGS); Operational Data Integrated Network (ODIN); Air System Training Devices; Weapons Employment Capability and other Subsystems, Features, and Capabilities; F-35 unique infrared flares; reprogramming center access; F-35 Performance Based Logistics; software development/integration; aircraft ferry and tanker support; Detector Laser DSU-38A/B, Detector Laser DSU-38A(D-2)/B, KMU-572(D-2)/B Trainer (JDAM), 40 inch Wing Release Lanyard; GBU-53/B SDB II Weapon Load Crew Trainers (WLCT); GBU- 53/B SDB II Practical Explosive Ordnance Disposal System Trainers (PEST); AGM- 154C-1 JSOW Captive Flight Vehicles; AGM-154C-1 JSOW Dummy Air Training Missiles; AGM-154C-1 JSOW mission planning, integration support and testing, munitions storage security and training, weapon operational flight program software development; integration of the Joint Strike Missile; weapons containers; aircraft and munitions support and test equipment; communications equipment; provisioning, spares and repair parts; weapons repair and return support; personnel training and training equipment; weapon systems software, publications and technical documents; United States (U.S.) Government and contractor engineering, technical, and logistics support services; and other related elements of logistical and program support. The estimated total cost was \$12.5 billion. Major Defense Equipment (MDE) constituted \$8.4 billion of this total.

On March 19, 2021, Congress was notified by congressional certification transmittal number 21-0D of the possible sale, under Section 36(b)(1) of the Arms Export Control Act, of the addition of the following MDE items: fifty (50) Sidewinder AIM-9X Block II+ (Plus) tactical missiles; six hundred (600) AIM-120C-8 Advanced Medium Range Air-to-Air Missiles (AMRAAM); up to twelve (12) AMRAAM Guidance Sections (spares); one thousand five hundred (1,500) GBU-39 Small Diameter Bomb Increment 1 (SDB I) munitions; two (2) GBU-39 (T-1)/B inert practice bombs; three hundred (300) FMU-139D/B fuzes; twenty (20) KMU-557 JDAM Guidance Kits for GBU-31; two hundred seventy-five

(275) KMU-572 JDAM Guidance Kits for GBU-38/54; twenty (20) BLU-109, general purpose bombs; and two hundred seventy-five (275) BLU-111, general purpose bombs. The following non-MDE items were also be included: AMRAAM Control Sections; AMRAAM Captive Air Training Missiles (CATMs); GBU-39 Tactical Training Rounds; containers; weapon system support equipment; support and test equipment; site surveys; spare and repair parts; repair and return support; publications and technical data; maintenance and aircrew training; and other related elements of logistics support. The total cost of the new MDE articles was \$1.5 billion, and the total cost of the new non-MDE articles was \$80 million. The total notified cost of MDE increased to \$9.9 billion, and the total notified case value increased to \$14.08 billion.

This transmittal notifies the inclusion of the following additional MDE items: two hundred forty (240) Air Intercept Missiles 120D-3 (AIM-120D-3) Advanced Medium Range Air-to-Air Missiles (AMRAAM); eight (8) AIM-120D-3 AMRAAM guidance sections, including precise positioning provided by either Selective Availability Anti-Spoofing Modules or M-Code; and one (1) AIM-120D AMRAAM Instrumented Test Vehicle (ITV). The following non-MDE items will also be included: weapon system support including software; KGV-135A embedded communications security (COMSEC) device; transportation and airlift support; and other related elements of logistics and program support. The estimated total cost of the new items is \$625 million. The estimated total cost of the new MDE items is \$578 million and does not result in a net increase in total cost of MDE. The estimated total MDE cost remains \$9.9 billion. The estimated total cost of the new non-MDE items is \$47 million and does not result in a net increase in total cost of non-MDE. The total non-MDE remains \$4.18 billion. The total case value does not increase and remains \$14.08 billion.

(iv) *Significance*: This notification is being provided because the additional MDE items were not enumerated in the original notification. The inclusion of this MDE represents an increase in capability over what was previously notified. The proposed sale will provide Finland with a credible defense capability to deter aggression in the region and ensure interoperability with U.S. forces.

(v) *Justification*: This proposed sale will support the foreign policy goals and national security objectives of the United States by improving the security of a NATO Ally that is an important

force for political stability and economic progress in Europe.

(vi) *Sensitivity of Technology*:

The AIM-120D-series AMRAAM is a supersonic, air-launched, aerial intercept guided missile featuring digital technology and micro-miniature solid-state electronics. AMRAAM capabilities include look-down/shoot-down, multiple launches against multiple targets, resistance to electronic countermeasures, and interception of high and low-flying and maneuvering targets. The AIM-120D features a quadrangle target detection device and an electronics unit within the guidance section that performs all radar signal processing, mid-course and terminal guidance, flight control, target detection, and warhead detonation.

The ITV is a captive carry test vehicle used primarily for flight test integration. The ITV verifies and assesses the aircraft's ability to safely support an AMRAAM launch through the aircraft interface mechanism and the aircraft datalink antenna.

The KGV-135A is a high-speed general purpose encryptor and decryptor module used for wideband data encryption.

The Sensitivity of Technology Statement contained in the original notification applies to items reported here.

The highest level of classification of information included in this potential sale is SECRET.

(vii) *Date Report Delivered to Congress*: April 28, 2025

[FR Doc. 2026-00706 Filed 1-14-26; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 25-14]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Urooj Zahra at (703) 695-6233, urooj.zahra.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter

to the Speaker of the House of Representatives with attached Transmittal 25-14, Policy Justification, and Sensitive of Technology.

Dated: January 12, 2026.
Stephanie J. Bost,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
BILLING CODE 6001-FR-P



DEFENSE SECURITY COOPERATION AGENCY
 2800 Defense Pentagon
 Washington, DC 20301-2800

May 2, 2025

The Honorable Mike Johnson
 Speaker of the House
 U.S. House of Representatives
 H-209, The Capitol
 Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 25-14, concerning the Navy's proposed Letter(s) of Offer and Acceptance to the Government of Norway for defense articles and services estimated to cost \$370.9 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,


 Michael F. Miller
 Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 6001-FR-C

Transmittal No. 25-14

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Norway

(ii) *Total Estimated Value:*

Major Defense Equipment *	\$ 313.3 million
Other	\$ 57.6 million

TOTAL \$370.9 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Three hundred (300) AIM-9X Block II Sidewinder tactical missiles
 Two (2) AIM-9X Block II special air

training missiles (NATM)
 Twenty-four (24) AIM-9X Block II captive air training missiles (CATM)

Twenty (20) AIM-9X Block II tactical guidance units

Twenty (20) AIM-9X Block II CATM guidance units

Non-Major Defense Equipment:

The following non-MDE items will also be included: dummy air training missiles; missile containers; software; training; support equipment; spare and repair parts; publications and technical documentation; transportation; United States (U.S.) Government and contractor engineering, technical, and logistical support services; and

other related elements of logistics and program support.

(iv) *Military Department:* Navy (NO-P-AIH)

(v) *Prior Related Cases, if any:* NO-P-AHV

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None known at this time

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* May 2, 2025

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION**Norway—AIM-9X Block II Tactical Missiles**

The Government of Norway has requested to buy three hundred (300) AIM-9X Block II Sidewinder tactical missiles; two (2) AIM 9X Block II special air training missiles (NATM); twenty-four (24) AIM 9X Block II captive air training missiles (CATM); twenty (20) AIM 9X Block II Tactical Guidance Units; and twenty (20) AIM 9X Block II CATM Guidance Units. The following non-MDE items will also be included: dummy air training missiles; missile containers; software; training; support equipment; spare and repair parts; publications and technical documentation; transportation; U.S. Government and contractor engineering, technical, and logistical support services; and other related elements of logistics and program support. The estimated total program cost is \$370.9 million.

This proposed sale will support the foreign policy goals and national security objectives of the U.S. by improving the security of a NATO Ally that is a force for political stability and economic progress in Europe.

The proposed sale will improve Norway's capability to meet current and future threats by ensuring aviation forces' interoperability with the U.S. and other NATO members. Norway will have no difficulty absorbing these weapons into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be RTX Corporation, located in Tucson, AZ. At this time, the U.S. Government is not aware of any offset agreement proposed in connection with this potential sale. Any offset agreement will be defined in negotiations between the purchaser and the contractor.

Implementation of the proposed sale will require the assignment of three U.S.

Government and three contractor representatives to Norway on a temporary basis in conjunction with program technical oversight and support requirements.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 25-14

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The AIM-9X Block II Sidewinder missile represents a substantial increase in missile acquisition and kinematics performance over the AIM-9M and replaces the AIM-9X Block I missile configuration. The missile includes a high off-boresight seeker, an enhanced countermeasure rejection capability, a low drag/high angle of attack airframe, and the ability to integrate the Helmet Mounted Cueing System. The most current AIM-9X Block II operational flight software developed for all international partners, which is authorized by U. S. Government export policy, provides fifth-generation infrared missile capabilities such as lock-on-after-launch, Weapons Data Link, surface attack, and surface launch. No software source code or algorithms will be released.

2. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that Norway can provide substantially

the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Norway.

[FR Doc. 2026-00711 Filed 1-14-26; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE**Office of the Secretary**

[Transmittal No. 25-19]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Urooj Zahra at (703) 695-6233, urooj.zahra.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 25-19, Policy Justification, and Sensitive of Technology.

Dated: January 12, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001-FR-P



DEFENSE SECURITY COOPERATION AGENCY
2800 Defense Pentagon
Washington, DC 20301-2800

April 28, 2025

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 25-19, concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of Romania for defense articles and services estimated to cost \$280 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

Michael F. Miller
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 6001-FR-C

Transmittal No. 25-19

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Romania

(ii) *Total Estimated Value:*

Major Defense Equipment *	\$180 million
Other	\$100 million

TOTAL	\$280 million

Funding Source: National Funds and Foreign Military Financing

(iii) *Description and Quantity or Quantities of Articles and/or Services under Consideration for Purchase:*

Major Defense Equipment:

- One (1) AN/MPQ-65 Configuration 3+ Increment 3 radar set
- One (1) AN/MSQ-132 Engagement Control Station
- Two (2) M903 launching stations
- One (1) Electrical Power Plant (EPP)

III

Non-Major Defense Equipment:

The following non-MDE items will also be included: launching station modification kits; PATRIOT Advanced Capability-3 (PAC-3) Missile Segment Enhancement launcher conversion kit; generators; generator spare parts; prime movers; spare parts for prime movers; KG-250X encryptor; AN/TPX-57v1 identification friend or foe (IFF); KIV-77 encryptor; personnel communication equipment training; Defense Advanced Global Positioning Systems Receivers (DAGRs); United States (U.S.) Government and contractor representative technical assistance; engineering and logistics support services; publications and technical documentation; classified software; classified books and publications; and other related elements of logistics and program support.

(iv) *Military Department:* Army (RO-B-UHD)

(v) *Prior Related Cases, if any:* RO-B-UEM

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None known at this time

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* April 28, 2025

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Romania—PATRIOT Air Defense System

The Government of Romania has requested to buy one (1) AN/MPQ-65 Configuration 3+ Increment 3 radar set; one (1) AN/MSQ-132 Engagement Control Station; two (2) M903 launching stations; and one (1) Electrical Power Plant (EPP) III. The following non-MDE items will also be included: launching station modification kits; PATRIOT Advanced Capability-3 (PAC-3) Missile

Segment Enhancement launcher conversion kit; generators; generator spare parts; prime movers; spare parts for prime movers; KG-250X encryptor; AN/TPX-57v1 identification friend or foe (IFF); KIV-77 encryptor; personnel communication equipment training; Defense Advanced Global Positioning Systems Receivers (DAGRs); U.S. Government and contractor representative technical assistance; engineering and logistics support services; publications and technical documentation; classified software; classified books and publications; and other related elements of logistics and program support. The estimated total cost is \$280 million.

This proposed sale will support the foreign policy goals and national security objectives of the U.S. by improving the security of a NATO Ally that is an important force for political and economic stability in Europe.

The proposed sale will improve Romania's capability to meet current and future threats by enabling it to field a credible force to deter adversaries and support its participation in NATO operations. Romania will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors will be RTX Corporation, located in Andover, MA, and Lockheed Martin, located in Bethesda, MD. At this time, the U.S. Government is not aware of any offset agreement proposed in connection with this potential sale. Any offset agreement will be defined in negotiations between the purchaser and the contractor.

Implementation of this proposed sale will require approximately five U.S. Government and five U.S. contractor representatives to travel to Romania for a duration of up to three years to support equipment fielding and training.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 25-19

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The AN/MPQ-65 Configuration 3+ Increment 3 PATRIOT radar set (RS) consists of a multifunction phased-array radar mounted on a semitrailer. The RS is powered by the Electric Power Plant (EPP) and monitored and controlled by

the Engagement Control Station (ECS). The AN/MPQ-65 RS provides airspace surveillance, detection, target tracking, identification, missile tracking, missile guidance, and electronic counter-countermeasures. It has the capability to track a wide variety of targets under saturation raid conditions and support the simultaneous operation of multiple PATRIOT missiles to defend against a threat.

2. The AN/MSQ-132 Configuration 3+ Increment 3 ECS provides operational control of the PATRIOT Fire Unit (FU). The ECS exchanges FU initialization data, defense readiness conditions, states of alert, target evaluation data, engagement-related data, and ECS status with the Information and Coordination Central.

3. The M903 LS is a mobile tactical unit that transports, aims, and launches the PATRIOT Guidance Enhanced Missile (GEM-T) and PATRIOT Advanced Capability-3 (PAC-3) missiles. The LS is controlled from the Engagement Control Station (ECS) via the Data Link Terminal network.

4. The Power Generation Equipment Electric Power Plant (EPP) III provides tactical power for the ECS and RS. The EPP consists of two 15-kilowatt generator sets which are interconnected through the power distribution unit.

5. The KG-250X encryptor is a rugged, flexible, low-size, weight, and power (SWAP), high-speed inline network encryptor. It is used to secure sensitive data on military and government networks by encrypting network traffic, allowing for secure communication in high-risk environments.

6. The identification friend or foe (IFF) is an identification system designed for command and control. It enables military and civilian air traffic control interrogation systems to identify aircraft, vehicles, or forces as friendly, and to determine its bearing and range from the interrogator. The AN/TPX-57(V1) with KIV-77 encryptor is an Air Defense Interrogator (ADI) that is used to classify and re-classify targets in IFF systems.

7. The Defense Advanced Global Positioning System (GPS) Receiver (DAGR) is a small, commercial, NAVSTAR GPS receiver designed for military operations. The Selective Availability Anti-Spoofing Module (SAASM) is a security device controlling the encryption that enables Precise Positioning Service (PPS) Y-code signals from GPS satellites and resists adversary attempts to spoof GPS signals. The DAGR with SAASM will provide position and location information necessary for ground-based

operation. The DAGR has a graphical screen, 12-channel continuous satellite tracking, simultaneous L1/L2 dual frequency GPS signal reception, and extended performance in a diverse jamming environment.

8. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

9. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce system effectiveness or be used in the development of a system with similar or advanced capabilities.

10. A determination has been made that Romania can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

11. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Romania.

[FR Doc. 2026-00707 Filed 1-14-26; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 25-22]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Urooj Zahra at (703) 695-6233, urooj.zahra.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 25-22, Policy Justification, and Sensitive of Technology.

Dated: January 12, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001-FR-P



DEFENSE SECURITY COOPERATION AGENCY
2800 Defense Pentagon
Washington, DC 20301-2800

April 30, 2025

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 25-22, concerning the Navy's proposed Letter(s) of Offer and Acceptance to the Government of India for defense services estimated to cost \$131 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

Michael F. Miller
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 6001-FR-C

Transmittal No. 25-22

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of India

(ii) *Total Estimated Value:*

Major Defense Equipment *	\$ 0
Other	\$131 million
TOTAL	\$131 million

Funding Source: National Funds

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):
None

Non-Major Defense Equipment:

SeaVision software (including requested software enhancements); Technical Assistance Field Team (TAFT) training; remote software and analytic support; access to SeaVision documentation; and other related elements of logistics

and program support.

(iv) *Military Department:* Navy (IN-P-LBM)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None known at this time

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* April 30, 2025

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

India—Indo-Pacific Maritime Domain Awareness

The Government of India has requested to buy SeaVision software (including requested software enhancements); Technical Assistance Field Team (TAFT) training; remote software and analytic support; access to SeaVision documentation; and other related elements of logistics and

program support. The estimated total cost is \$131 million.

This proposed sale will support the foreign policy and national security objectives of the U.S. by helping to strengthen the U.S.-Indian strategic relationship and to improve the security of a major defense partner which continues to be an important force for political stability, peace, and economic progress in the Indo-Pacific and South Asia regions.

The proposed sale will improve India's capability to meet current and future threats by bolstering its maritime domain awareness, analytical capabilities, and strategic posture. India will have no difficulty absorbing these articles and services into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be Hawkeye 360, located in Herndon, VA. At this time, the U.S. Government is not aware of any offset agreement proposed

in connection with this potential sale. Any offset agreement will be defined in negotiations between the purchaser and the contractor.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to India.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 25–22

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. SeaVision is a web-based maritime situational awareness tool that enables users to view and share a broad array of maritime information to improve maritime operations, increase maritime security, and build partnerships within the maritime community. As part of its alignment with the Indo-Pacific Maritime Domain Awareness (IPMDA) initiative, SeaVision provides access to available commercial data sources, including commercial radio frequency (RF), Automatic Identification System (AIS), imagery, and ship registry data. This sale also offers Technical

Assistance Field Team (TAFT) training, remote software and analytic support, and comprehensive SeaVision documentation to further enhance maritime domain awareness and cooperation.

2. The highest level of classification of defense articles, components, and services included in this potential sale is UNCLASSIFIED.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that India can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of India.

[FR Doc. 2026–00710 Filed 1–14–26; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 25–33]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Urooj Zahra at (703) 695–6233, urooj.zahra.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 25–33, Policy Justification, and Sensitive of Technology.

Dated: January 12, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001–FR–P



DEFENSE SECURITY COOPERATION AGENCY

2800 Defense Pentagon
Washington, DC 20301-2800

MAY 02 2025

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 25-33, concerning the Air Force's proposed Letter(s) of Offer and Acceptance to the Kingdom of Saudi Arabia for defense articles and services estimated to cost \$3.50 billion. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

Michael F. Miller
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified document provided under separate cover)

BILLING CODE 6001-FR-C

Transmittal No. 25-33

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Kingdom of Saudi Arabia

(ii) *Total Estimated Value:*

Major Defense Equipment *	\$3.10 billion
Other	\$.40 billion

TOTAL \$3.50 billion

Funding Source: National Funds

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

One thousand (1,000) AIM-120C-8 Advanced Medium Range Air-to-Air Missiles (AMRAAM)
Fifty (50) AIM-120C-8 AMRAAM guidance sections

Non-Major Defense Equipment:

The following non-MDE items will

also be included: AMRAAM control section spares, missile containers, and support equipment; spare parts, consumables, accessories, and repair and return support; weapon system support; classified and unclassified software delivery and support; classified and unclassified publications and technical documentation; studies and surveys; United States (U.S.) Government and contractor engineering, technical, and logistics support services; and other related elements of logistics and program support.

(iv) *Military Department:* Air Force (SR-D-YAI)

(v) *Prior Related Cases, if any:* SR-D-YAG, SR-D-YAH

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None known at this time

(vii) *Sensitivity of Technology Contained in the Defense Article or*

Defense Services Proposed to be Sold: See Attached Annex

(viii) *Date Report Delivered to Congress:* May 2, 2025

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Kingdom of Saudi Arabia—AIM-120C-8 Advanced Medium Range Air-to-Air Missiles

The Kingdom of Saudi Arabia has requested to buy one thousand (1,000) AIM-120C-8 Advanced Medium Range Air-to-Air Missiles (AMRAAM) and fifty (50) AIM-120C-8 AMRAAM guidance sections. The following non-MDE items will also be included: AMRAAM control section spares, missile containers, and support equipment; spare parts, consumables, accessories, and repair and return support; weapon system support; classified and unclassified software delivery and support; classified and unclassified publications and

technical documentation; studies and surveys; U.S. Government and contractor engineering, technical, and logistics support services; and other related elements of logistics and program support. The estimated total cost is \$3.50 billion.

This proposed sale will support the foreign policy goals and national security objectives of the U.S. by improving the security of a partner country that contributes to political stability and economic progress in the Gulf Region.

The proposed sale of this equipment and support will not alter the military balance in the region.

The principal contractor will be RTX Corporation, located in Tucson, AZ. At this time, the U.S. Government is not aware of any offset agreement proposed in connection with this potential sale. Any offset agreement will be defined in negotiations between the purchaser and the contractor.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Kingdom of Saudi Arabia.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 25–33

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The AIM–120C–8 Advanced Medium Range Air-to-Air Missile (AMRAAM) is a supersonic, air-launched, aerial intercept guided missile featuring digital technology and micro-miniature solid-state electronics. AMRAAM capabilities include look-down/shoot-down, multiple launches against multiple targets, resistance to electronic countermeasures, and interception of high and low-flying maneuvering targets.

2. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that Saudi Arabia can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed in this transmittal have been authorized for release and export to the Kingdom of Saudi Arabia.

[FR Doc. 2026–00712 Filed 1–14–26; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 25–35]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Urooj Zahra at (703) 695–6233, urooj.zahra.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 25–35, Policy Justification, and Sensitive of Technology.

Dated: January 12, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001–FR–P



DEFENSE SECURITY COOPERATION AGENCY
2800 Defense Pentagon
Washington, DC 20301-2800

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

APR 25 2025

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 25-35, concerning the Navy's proposed Letter(s) of Offer and Acceptance to the Government of the Netherlands for defense articles and services estimated to cost \$2.19 billion. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

Michael F. Miller
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Offset Certificate (Classified document provided under separate cover)

BILLING CODE 6001-FR-C

Transmittal No. 25-35

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of the Netherlands

(ii) *Total Estimated Value:*

Major Defense Equipment *	\$0.95 billion
Other	\$1.24 billion

TOTAL	\$2.19 billion

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Up to one hundred sixty-three (163) Tomahawk Block V All Up Rounds (AURs)

Twelve (12) Tomahawk Block IV AURs

Up to ten (10) Tactical Tomahawk Weapons Control Systems (TTWCS)

Up to two (2) Tomahawk Block IV telemetry missiles

Non-Major Defense Equipment:

The following non-MDE items will also be included: satellite data link terminals (KIV-18A); integrated secure broadcast systems (KSX-5); communications security devices (KGV-135A); technical, programmatic, engineering, and logistical support for the Tomahawk AUR missiles, TTWCS, and Mission Distribution Software; missile containers; software; hardware; training; training devices; unscheduled missile maintenance; spares; in-service support; communication equipment; operational flight test; publications; engineering and technical expertise to maintain the capability; non-recurring engineering; transportation; and other related elements of logistics and program support.

(iv) *Military Department:* Navy (NE-P-AGR, NE-P-AGS, NE-P-AGT)

(v) *Prior Related Cases, if any:* NE-P-LHV

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None known at this time

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* April 25, 2025

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

The Netherlands—Tomahawk Land Attack Missiles

The Government of the Netherlands has requested to buy up to one hundred sixty-three (163) Tomahawk Block V All Up Rounds (AURs); twelve (12) Tomahawk Block IV AURs; up to ten (10) Tactical Tomahawk Weapons Control Systems (TTWCS); and up to two (2) Tomahawk Block IV telemetry missiles. The following non-MDE items

will also be included: satellite data link terminals (KIV-18A); integrated secure broadcast systems (KSX-5); communications security devices (KGV-135A); technical, programmatic, engineering, and logistical support for the Tomahawk AUR missiles, TTWCS, and Mission Distribution Software; missile containers; software; hardware; training; training devices; unscheduled missile maintenance; spares; in-service support; communication equipment; operational flight test; publications; engineering and technical expertise to maintain the capability; non-recurring engineering; transportation; and other related elements of logistics and program support. The estimated total cost is \$2.19 billion.

This proposed sale will support the foreign policy goals and national security objectives of the United States (U.S.) by improving the security of a NATO Ally that is a force for political stability and economic progress in Europe.

The proposed sale will improve the Netherlands' capability to meet current and future threats by utilizing long-range, conventional surface-to-surface missiles with significant standoff range that can neutralize growing threats. The Netherlands will have no difficulty absorbing these articles and services into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be RTX Corporation, located in Tucson, AZ. There are known offset requirements associated with this sale. See the attached annex for further details.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to the Netherlands.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 25-35

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The Tomahawk Block IV and V All Up Round (AUR) is a Tomahawk cruise missile assembled in a canister for surface launch. Tomahawk Block IV and V capabilities include increased system flexibility; improved system response times; improved lethality against an increased target set; improved accuracy; improved anti-jam GPS receiver with

Selective Availability Anti-Spoofing Module (SAASM) capability; enhanced availability due to a 15-year maintenance interval; and two-way communications between missile and strike or missile controllers via ultra-high frequency (UHF) Satellite Communications (SATCOM).

a. The two-way communication capability, provided by the Satellite Data Link Terminal (SDLT), enables mission planners and the strike or missile controllers to issue in-flight missile retargeting commands and receive in-flight missile status and information transmissions.

b. The Tactical Tomahawk Weapon Control System (TTWCS) provides command and control, targeting, mission planning, and distribution functions.

c. The Tomahawk Block IV telemetry missiles are test missiles to be launched from Netherlands' air defense and command frigates to certify the platform ahead of initial operational capability.

d. The SDLT (KIV-18A) inside the Block IV Tomahawk is a UHF SATCOM terminal used for data communications between the missile and strike or missile controller via satellite.

e. The Integrated Secure Broadcast Systems (KSX-5) satellite radio inside the Block V TLAM communicates via the Advanced Communications Architecture (ACA). It provides increased bandwidth, capacity, reliability, and resiliency over the previous SDLT radio. It is used for data communications between the missile and strike or missile controller via satellite and network service provider.

f. The communications security devices (KGV-135A) inside the Block IV telemetry missiles provide telemetry data during a test launch event.

2. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that the Netherlands can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed in this transmittal have been

authorized for release and export to the Government of the Netherlands.

[FR Doc. 2026-00705 Filed 1-14-26; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD-2026-OS-0034]

Proposed Collection; Comment Request

AGENCY: Defense Security Cooperation Agency (DSCA), Department of Defense (DoD).

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the DSCA announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 16, 2026.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Director of Administration and Management, Privacy, Civil Liberties, and Transparency Directorate, Regulatory Division, 4800 Mark Center Drive, Mailbox #24, Suite 0F516, Alexandria, VA 22350-1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this

proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write Defense Security Cooperation University ATTN: Jeremy Davis, 2800 Defense Pentagon, Washington, DC 20301-2800 Phone Number: (703) 571-3150.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: The GlobalNET Collection; OMB Control Number 0704-0558.

Needs and Uses: The purpose of the GlobalNET system is to provide a collaborative social networking environment/capability where students, alumni, faculty, partners, and other community members and subject matter experts can find relevant and timely information about pertinent subject matter experts and conduct required training. GlobalNET also collects information on students in order to allow regional center personnel to manage students while enrolled at regional centers.

Affected Public: Individuals and households.

Annual Burden Hours: 500.

Number of Respondents: 6,000.

Responses per Respondent: 1.

Annual Responses: 6,000.

Average Burden per Response: 5 minutes.

Frequency: On occasion.

Dated: January 12, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2026-00631 Filed 1-14-26; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 25-15]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Urooj Zahra at (703) 695-6233, urooj.zahra.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 25-15, Policy Justification, and Sensitive of Technology.

Dated: January 12, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001-FR-P



DEFENSE SECURITY COOPERATION AGENCY
2800 Defense Pentagon
Washington, DC 20301-2800

April 29, 2025

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 25-15, concerning the Air Force's proposed Letter(s) of Offer and Acceptance to the Government of Poland for defense articles and services estimated to cost \$1.33 billion. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

Michael F. Miller
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 6001-FR-C

Transmittal No. 25–15

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Poland

(ii) *Total Estimated Value:*

Major Defense Equipment *	\$1.20 billion
Other	\$.13 billion

TOTAL	\$1.33 billion

Funding Source: Foreign Military Financing and National Funds

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Four hundred (400) AIM–120D3

Advanced Medium-Range Air-to-Air Missiles

Sixteen (16) AIM–120D3 AMRAAM guidance sections, including either Selective Availability Anti-Spoofing Modules or M-Code

One (1) AIM–120 AMRAAM Instrumented Test Vehicle

Non-Major Defense Equipment:

The following non-MDE items will also be included: AMRAAM control sections, missile containers, and support equipment; Common Munitions Built-in-Test Reprogramming Equipment (CMBRE); ADU–891 adapter group test sets; KGV–135A encryption devices; Computer Program Identification Numbers (CPINs); spares and repair parts, consumables and accessories, and repair and return support; weapons system support and software; classified software delivery and support; classified publications and technical documentation; transportation support; studies and surveys; United States (U.S.) Government and contractor engineering, technical, and logistics support services; and other related elements of logistics and program support.

(iv) *Military Department:* Air Force (PL–D–YAC)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None known at this time

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* April 29, 2025

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Poland—AIM–120D Advanced Medium Range Air-to-Air Missiles

The Government of Poland has requested to buy four hundred (400) AIM–120D3 Advanced Medium-Range Air-to-Air Missiles (AMRAAM); sixteen (16) AIM–120D3 AMRAAM guidance sections, including either Selective Availability Anti-Spoofing Modules or M-Code; and one (1) AIM–120 AMRAAM Instrumented Test Vehicle. The following non-MDE items will also be included: AMRAAM control sections, missile containers, and support equipment; Common Munitions Built-in-Test Reprogramming Equipment (CMBRE); ADU–891 adapter group test sets; KGV–135A encryption devices; Computer Program Identification Numbers (CPINs); spares and repair parts, consumables and accessories, and repair and return support; weapons system support and software; classified software delivery and support; classified publications and technical documentation; transportation support; studies and surveys; U.S. Government and contractor engineering, technical, and logistics support services; and other related elements of logistics and program support. The estimated total cost is \$1.33 billion.

This proposed sale will support the foreign policy goals and national security of the U.S. by improving the security of a NATO Ally that is a force for political and economic stability in Europe.

The proposed sale will improve Poland's capability to meet current and future threats by providing air-to-air defense to protect Polish and allied forces in transition or combat and significantly improve the Polish contribution to NATO requirements. Poland already has AMRAAM in its inventory and will have no difficulty absorbing these articles into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be RTX Corporation, located in Tucson, AZ. At this time, the U.S. Government is not aware of any offset agreement proposed in connection with this potential sale. Any offset agreement will be defined in negotiations between the purchaser and the contractor.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Poland.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 25–15

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The AIM–120D-series Advanced Medium Range Air-to-Air Missile (AMRAAM) is a supersonic, air-launched, aerial intercept guided missile featuring digital technology and micro-miniature, solid-state electronics. AMRAAM capabilities include look-down/shoot-down, multiple launches against multiple targets, resistance to electronic countermeasures, and interception of high and low-flying and maneuvering targets. The AIM–120D features a quadrangle target detection device and an electronics unit within the guidance section that performs all radar signal processing, mid-course and terminal guidance, flight control, target detection, and warhead detonation.

2. The Common Munitions Built-In-Test Reprogramming Equipment (CMBRE) is support equipment used to interface with weapon systems to initiate and report BIT results and upload and download flight software. CMBRE supports multiple munitions platforms with a range of applications that perform preflight checks, periodic maintenance checks, loading of Operational Flight Program data, loading of munitions mission planning data, loading of Global Positioning System (GPS) cryptographic keys, and declassification of munitions memory.

3. The ADU–891 adapter group test set provides the physical and electrical interface between the CMBRE and the missile.

4. The KGV–135A is a high-speed, general purpose encryptor and decryptor module used for wideband data encryption.

5. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

6. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce system effectiveness or be used in the development of a system with similar or advanced capabilities.

7. A determination has been made that Poland can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security

objectives outlined in the Policy Justification.

8. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Poland.

[FR Doc. 2026-00708 Filed 1-14-26; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 25-07]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Urooj Zahra at (703) 695-6233, urooj.zahra.civ@mail.mil, or

dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 25-07 and Policy Justification.

Dated: January 12, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001-FR-P



DEFENSE SECURITY COOPERATION AGENCY
2800 Defense Pentagon
Washington, DC 20301-2800

APR 30 2026

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 25-07, concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of Kuwait for defense articles and services estimated to cost \$425 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

Michael F. Miller
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Regional Balance (Classified document provided under separate cover)

BILLING CODE 6001-FR-C

Transmittal No. 25-07

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Kuwait

(ii) *Total Estimated Value:*

Major Defense Equipment (MDE) *.	\$ 0
Other:	\$425 million
TOTAL	\$425 million

Funding Source: National Funds

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* The Government of Kuwait has requested to buy services, including delivery, installation, and upgrade, for PATRIOT Post-Deployment Build (PDB) 8.1. *Major Defense Equipment (MDE):*

None

Non-Major Defense Equipment:

The following non-MDE items will be included: software development; delivery and support; sustainment maintenance; spare and repair parts; personnel training and training equipment; United States (U.S.) Government and contractor engineering, technical, and logistics support services; integration and test support; and other related elements of logistics and program support.

(iv) *Military Department:* Army (KU-B-UYO)

(v) *Prior Related Cases, if any:* KU-B-UJO, KU-B-UMG

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None known at this time

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None

(viii) *Date Report Delivered to Congress:* April 30, 2025

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Kuwait—PATRIOT Post-Deployment Build 8.1

The Government of Kuwait has requested to buy services, including delivery, installation, and upgrade, for PATRIOT Post-Deployment Build (PDB) 8.1. The following non-MDE items will be included: software development; delivery and support; sustainment maintenance; spare and repair parts; personnel training and training

equipment; U.S. Government and contractor engineering, technical, and logistics support services; integration and test support; and other related elements of logistics and program support. The estimated total cost is \$425 million.

This proposed sale will support the foreign policy and national security objectives of the U.S. by helping to improve the infrastructure of a major non-NATO ally that has been an important force for political stability and economic progress in the Middle East.

The proposed sale will improve Kuwait's capability to meet current and future threats by assisting Kuwait in maintaining higher levels of operational readiness while meeting its modernization and professionalization goals. Kuwait will have no difficulty absorbing these articles and services into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be RTX Corporation, located in Waltham, MA. At this time, the U.S. Government is not aware of any offset agreement proposed in connection with this potential sale. Any offset agreement will be defined in negotiations between the purchaser and the contractor.

Implementation of this proposed sale will require the assignment of 3–5 additional U.S. Government or U.S. contractor representatives to travel to Kuwait periodically over an 8–10-year period to assist with maintenance and sustainment operations.

There will be no adverse impact on U.S. defense readiness because of this proposed sale.

[FR Doc. 2026–00709 Filed 1–14–26; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 25–23]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Urooj Zahra at (703) 695–6233, urooj.zahra.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 25–23, Policy Justification, and Sensitive of Technology.

Dated: January 12, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001–FR–P



DEFENSE SECURITY COOPERATION AGENCY
2800 Defense Pentagon
Washington, DC 20301-2800

May 5, 2025

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 25-23, concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of the Czech Republic for defense services estimated to cost \$181 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

Michael F. Miller
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 6001-FR-C

Transmittal No. 25-23

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of the Czech Republic

(ii) *Total Estimated Value:*

Major Defense Equipment *	\$ 0
Other	\$181 million

TOTAL \$181 million

Funding Source: National Funds

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):
None

Non-Major Defense Equipment:

The following non-MDE items will be included: AN/PYQ-10A(C) simple key loaders; AN/PRC-160, AN/PRC-163, and AN/PRC-167 radios; RF-300M-DL(C) small secure data links and support equipment; spare parts; United States (U.S.)

Government and contractor technical engineering, logistics, and personnel services; and other related elements of logistics and program support.

(iv) *Military Department:* Army (EZ-B-UEZ)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None known at this time

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* May 5, 2025

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Czech Republic—Communications Equipment

The Government of the Czech Republic has requested to buy AN/PYQ-10A(C) simple key loaders; AN/

PRC-160, AN/PRC-163, and AN/PRC-167 radios; RF-300M-DL(C) small secure data links and support equipment; spare parts; U.S. Government and contractor technical engineering, logistics, and personnel services; and other related elements of logistics and program support. The estimated total program cost is \$181 million.

This proposed sale will support the foreign policy goals and national security objectives of the U.S. by improving the security of a NATO Ally that is a force for political stability and economic progress in Europe.

The proposed sale will support the ongoing transformation of the Czech Armed Forces into a modern military that is properly trained, well equipped, and interoperable with U.S. and other NATO forces. The procurement would facilitate U.S. security goals by improving the Czech Republic's ability to contribute to NATO efforts to secure the eastern flank of the Alliance and deter aggression in the region. It would

also enhance the capabilities the Czech Republic could provide to NATO and coalition expeditionary operations.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be L3Harris Global Communications, Inc., located in Rochester, NY. At this time, the U.S. Government is not aware of any offset agreement proposed in connection with this potential sale. Any offset agreement will be defined in negotiations between the purchaser and the contractor.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to the Czech Republic.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 25–23

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The AN/PYQ–10A(C) simple key loader's (SKL) latest production version is called the SKL V3.1 and offers improved fill port ruggedization, an enhanced brightness/contrast LCD, and a touchscreen interface that supports both finger and stylus input. The AN/PYQ–10A (C) V3.1 SKL provides a secure means of distribution and storage of COMSEC material, mission data, and configuration files and continues to be compatible with a multitude of cryptographic systems.

2. The Falcon III AN/PRC–160(V) is the smallest, lightest, fastest, Type 1-certified manpack radio available today. Engineered for advanced security and performance, the wideband high frequency very high frequency tactical radio system features industry-leading encryption and breakthrough data performance and interoperability.

3. The AN/PRC–163 multi-channel handheld radio is a versatile, secure solution that leverages crossbanding to provide simultaneous data & voice across satellite communications (SATCOM), line-of-sight, and mobile ad-hoc networking (MANET) modes. As mission needs evolve, this software-defined handheld supports fast, in-field updates to new capabilities. An external mission module hardware interface allows warfighters to quickly add options including intelligence, surveillance, and reconnaissance (ISR) video and SATCOM.

4. The AN/PRC–167 harnesses the power of multiple tactical devices converged into a single manpack. The radio provides superior communications range extension, allowing for real-time situational awareness updates. Engineered to meet multi-domain challenges of any combination of ground, vehicular and airborne missions, the manpack simultaneously and independently runs a full frequency range of waveforms on each of two channels. As mission needs evolve, this software-defined manpack radio supports fast, in-field updates to new capabilities.

5. The RF300M–DL(C) small secure data link (SSDL) is a single-channel, easily embedded tactical radio with a reduced size, weight, and power (SWaP) engineered to meet challenging requirements in a variety of platforms, including ground vehicles, helicopters, and Unmanned Aerial Vehicles (UAVs). The SSDL provides multiband, multi-mode networking capabilities, ideal for warfighters on the tactical edge, allowing them to switch networks and waveforms on-the-move for real-time battle intelligence.

6. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

7. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce system effectiveness or be used in the development of a system with similar or advanced capabilities.

8. A determination has been made that the Czech Republic can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

9. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Czech Republic.

[FR Doc. 2026–00714 Filed 1–14–26; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2024–OS–0035]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Acquisition and

Sustainment (OUSD(A&S)), Department of Defense (DoD).

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the Office of the OUSD(A&S) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology

DATES: Consideration will be given to all comments received by March 16, 2026.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Director of Administration and Management, Privacy, Civil Liberties, and Transparency Directorate, Regulatory Division, 4800 Mark Center Drive, Mailbox #24, Suite 05F16, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Office of the Under Secretary of Defense, Attn: Defense Civilian Training Corps Director, 3000 Defense Pentagon, Washington, DC 20301–3000, Mr. Mark Krzykso, 410–340–7707.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Defense Civilian Training Corps (DCTC) Service Obligation

Agreement; DD form 3224; OMB Control Number 0704–DCOA.

Needs and Uses: Individuals selected for the Defense Civilian Training Corps agree to provide one year of DoD service for each year of DCTC program scholarship. Information provided is used for all actions directly related to documenting and ensuring disposition and/or satisfaction of the agreement.

Affected Public: Individuals or households.

DD Form 3224

Annual Burden Hours: 35.

Number of Respondents: 140.

Responses per Respondent: 1.

Annual Responses: 140.

Average Burden per Response: 15 minutes.

DCTC Student Application

Annual Burden Hours: 920.

Number of Respondents: 460.

Responses per Respondent: 1.

Annual Responses: 460.

Average Burden per Response: 2 hours.

Number of Respondents: 600.

Annual Responses: 600.

Annual Burden Hours: 955.

Frequency: One time; on occasion of selection acceptance into the DCTC program.

Dated: January 12, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2026–00632 Filed 1–14–26; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 25–32]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Urooj Zahra at (703) 695–6233, urooj.zahra.civ@mail.mil, or dsca.ncr.rsrgmgt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 25–32 and Policy Justification.

Dated: January 12, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001–FR–P



DEFENSE SECURITY COOPERATION AGENCY
2800 Defense Pentagon
Washington, DC 20301-2800

May 2, 2025

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 25-32, concerning the Air Force's proposed Letter(s) of Offer and Acceptance to the Government of Ukraine for defense articles and services estimated to cost \$310.5 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

Michael F. Miller
Director

Enclosures:

1. Transmittal
2. Policy Justification

BILLING CODE 6001–FR–C

Transmittal No. 25–32

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Ukraine

(ii) *Total Estimated Value:*

Major Defense Equipment ..	\$ 0
Other	\$310.5 million
TOTAL	\$310.5 million

Funding Source: Foreign Military Financing

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* The Government of Ukraine requests to buy equipment and services in support of its F–16 aircraft.

Major Defense Equipment (MDE):
None

Non-Major Defense Equipment:

The following non-MDE items will be included: aircraft modifications and upgrades; personnel training related to operation, maintenance, and sustainment support; spare parts, consumables and accessories, and repair and return support; ground handling equipment; classified and unclassified software delivery and support; classified and unclassified publications and technical documentation; studies and surveys; United States (U.S.) Government and contractor engineering, technical, and logistics support services; and other related elements of logistics and program support.

(iv) *Military Department:* Air Force (UP–D–TAD)

(v) *Prior Related Cases, if any:* NW–D–QAD, KA–D–QAE; JU–D–QAA; JU–D–QAB

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None known at this time

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None

(viii) *Date Report Delivered to Congress:* May 2, 2025

* as defined in Section 47(4) of the Arms Export Control Act.

POLICY JUSTIFICATION

Ukraine—F–16 Training and Sustainment

The Government of Ukraine requests to buy equipment and services in support of its F–16 aircraft. The following non-MDE items will be included: aircraft modifications and upgrades; personnel training related to

operation, maintenance, and sustainment support; spare parts, consumables and accessories, and repair and return support; ground handling equipment; classified and unclassified software delivery and support; classified and unclassified publications and technical documentation; studies and surveys; U.S. Government and contractor engineering, technical, and logistics support services; and other related elements of logistics and program support. The estimated total cost is \$310.5 million.

This proposed sale will support the foreign policy goals and national security objectives of the U.S. by improving the security of a partner country that is a force for political stability and economic progress in Europe.

The proposed sale will improve Ukraine's capability to meet current and future threats by ensuring its pilots are effectively trained and by increasing its interoperability with the U.S. through comprehensive training with the U.S. Air Force. This proposed sale aligns with international coalition contributions for the establishment of Ukraine's F–16 program and the overall modernization of Ukraine's air force. Ukraine will have no difficulty absorbing these articles and services into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors will be Valiant Integrated Services, located in Herndon, VA; Top Aces Corporation, located in Mesa, AZ; Lockheed Martin Aeronautics, located in Fort Worth, TX; Pratt and Whitney, located in East Hartford, CT; Snap-on, Inc., located in Kenosha, WI; BAE Systems, Inc., located in Falls Church, VA; AAR Corporation, located in Wood Dale, IL; and Comsetra, LLC, located in Grove, OK. At this time, the U.S. Government is not aware of any offset agreement proposed in connection with this potential sale. Any offset agreement will be defined in negotiations between the purchaser and the contractor.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Ukraine.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2026–00713 Filed 1–14–26; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2025–SCC–0647]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Federal Student Aid (FSA) Feedback System

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a reinstatement with change of a previously approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before February 17, 2026.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link www.reginfo.gov/public/do/PRAMain to access the site. Find this information collection request (ICR) by selecting “Department of Education” under “Currently Under Review,” then check the “Only Show ICR for Public Comment” checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the “View Information Collection (IC) List” link. Supporting statements and other supporting documentation may be found by clicking on the “View Supporting Statement and Other Documents” link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Carolyn Rose, (202) 453–5967.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Federal Student Aid (FSA) Feedback System.

OMB Control Number: 1845–0141.

Type of Review: Reinstatement with change of a previously approved ICR.

Respondents/Affected Public: Individual and Households.

Total Estimated Number of Annual Responses: 43,200.

Total Estimated Number of Annual Burden Hours: 7,344.

Abstract: This is a request for a reinstatement with change of the current information collection of the FSA Feedback System, OMB Control 1845–0141. On March 10, 2015, the White House issued a Student Aid Bill of Rights. Among the objectives identified was the creation of a centralized complaint system that is now resident and supported via the Federal Student Aid Feedback System. The purpose of the system is to meet the objective: “Create a Responsive Student Feedback System: The Secretary of Education will create a new website by July 1, 2016, to give students and borrowers a simple and straightforward way to file complaints and provide feedback about federal student loan lenders, servicers, collections agencies, and institutions of higher education. Students and borrowers will be able to ensure that their complaints will be directed to the right party for timely resolution, and the Department of Education will be able to more quickly respond to issues and strengthen its efforts to protect the integrity of the student financial aid programs.”

Brian Fu,

Program and Management Analyst, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2026–00681 Filed 1–14–26; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Portsmouth

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an in-person meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Portsmouth. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Tuesday, February 17, 2026; 6–8 p.m. EST.

ADDRESSES: The Ohio State University, Endeavor Center, 1862 Shyville Road, Room 165, Piketon, Ohio 45661.

FOR FURTHER INFORMATION CONTACT: Greg Simonton, Federal Coordinator, Phone: (740) 897–3737 or Email: greg.simonton@pppo.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to provide advice and recommendations concerning the following EM site-specific issues: clean-up activities and environmental restoration; waste and nuclear materials management and disposition; excess facilities; future land use and long-term stewardship. The Board may also be asked to provide advice and recommendations on other EM program components. The Board also provides an avenue to fulfill public participation requirements outlined in the National Environmental Policy Act (NEPA), the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), Federal Facility Agreements, Consent Orders, Consent Decrees and Settlement Agreements.

Tentative Agenda: (agenda topics are subject to change; please contact Greg Simonton for the most current agenda)

- Presentation to the Board
- Administrative Activities
- Public Comments

Public Participation: The meeting is open to the public and public comment can be given orally or in writing. Fifteen minutes are allocated during the meeting for public comment and those wishing to make oral comment will be given a minimum of two minutes to speak. Written comments received at least two working days prior to the meeting will be provided to the members and included in the meeting minutes. Written comments received within two working days after the meeting will be included in the minutes. For additional information on public comment and to submit written comment, please contact Greg Simonton. The EM SSAB, Portsmouth, welcomes the attendance of the public at its meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Greg Simonton at least seven days in advance of the meeting.

Meeting conduct: The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Questioning of board members

or presenters by the public is not permitted.

Minutes: Minutes will be available at the following website: <https://www.energy.gov/pppo/ports-ssab/listings/meeting-materials>.

Signing Authority: This document of the Department of Energy was signed on January 12, 2026, by David Borak, Committee Management Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on January 13, 2026.

Jennifer Hartzell,

Alternate Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2026–00700 Filed 1–14–26; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an in-person/virtual meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, February 18, 2026; 4–9 p.m. PST.

ADDRESSES: Molasky Corporate Center, 15th Floor Conference Room, 100 North City Parkway, Las Vegas, Nevada 89106. This meeting will be held in-person at the Molasky Corporate Center and virtually. To receive the virtual access information, please contact the Nevada Site Specific Advisory Board (NSSAB) Administrator at the telephone number or email listed below at least two days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Barbara Ulmer, NSSAB Administrator, NSSAB Office, by phone: 702–523–0894 or email: nssab@emcbc.doe.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to provide advice and recommendations concerning the following EM site-specific issues: clean-up activities and environmental restoration; waste and nuclear materials management and disposition; excess facilities; future land use and long-term stewardship. The Board may also be asked to provide advice and recommendations on other EM program components. The Board also provides an avenue to fulfill public participation requirements outlined in the National Environmental Policy Act (NEPA), the Comprehensive Environmental Response, Compensation, and Liability Act (CERLA), the Resource Conservation and Recovery Act (RCRA), Federal Facility Agreements, Consent Orders, Consent Decrees and Settlement Agreements.

Tentative Agenda: (agenda topics are subject to change; please contact the NSSAB Administrator for the most current agenda)

- Public Comment Period
- Update from Deputy Designated Federal Officer
- Update from National Nuclear Security Administration/Nevada Field Office
- Updates from NSSAB Liaisons
- Presentations to the Board
- Board Business

Public Participation: The meeting is open to the public and public comment can be given orally or in writing. Fifteen minutes are allocated during the meeting for public comment and those wishing to make oral comment will be given a minimum of two minutes to speak. Written comments received at least two working days prior to the meeting will be provided to the members and included in the meeting minutes. Written comments received within two working days after the meeting will be included in the minutes. For additional information on public comment and to submit written comment, please contact the NSSAB Administrator. The EM SSAB, Nevada, welcomes the attendance of the public at its meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact the NSSAB Administrator at least seven days in advance of the meeting.

Meeting conduct: The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Questioning of board members or presenters by the public is not permitted.

Minutes: Minutes will be available at the following website: <https://www.nnss.gov/nssab/nssab-meetings/>.

Signing Authority: This document of the Department of Energy was signed on January 12, 2026, by David Borak, Committee Management Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on January 13, 2026.

Jennifer Hartzell,

*Alternate Federal Register Liaison Officer,
U.S. Department of Energy.*

[FR Doc. 2026-00703 Filed 1-14-26; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY**Environmental Management Site-Specific Advisory Board, Hanford**

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a virtual meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, February 11, 2026; 8:30 a.m.–12 p.m. PST.

ADDRESSES: This meeting will be held virtually. To receive the virtual access information, please contact Meegan Tripp, Deputy Designated Federal Officer, at the telephone number or email listed below at least two days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Meegan Tripp, Deputy Designated Federal Officer, U.S. Department of Energy, Office of Environmental Management; Phone: (509) 376-2403; or Email: meegan.tripp@hanford.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to provide advice and recommendations concerning the following EM site-specific issues: clean-up activities and environmental

restoration; waste and nuclear materials management and disposition; excess facilities; future land use and long-term stewardship. The Board may also be asked to provide advice and recommendations on other EM program components. The Board also provides an avenue to fulfill public participation requirements outlined in the National Environmental Policy Act (NEPA), the Comprehensive Environmental Response, Compensation, and Liability Act (CERLA), the Resource Conservation and Recovery Act (RCRA), Federal Facility Agreements, Consent Orders, Consent Decrees and Settlement Agreements.

Tentative Agenda: (agenda topics are subject to change; please contact Meegan Tripp for the most current agenda)

- Public Comment Period
- Board Advice Discussion and Voting

Public Participation: The meeting is open to the public and public comment can be given orally or in writing. Fifteen minutes are allocated during the meeting for public comment and those wishing to make oral comment will be given a minimum of two minutes to speak. Written comments received at least two working days prior to the meeting will be provided to the members and included in the meeting minutes. Written comments received within two working days after the meeting will be included in the minutes. For additional information on public comment and to submit written comment, please contact Meegan Tripp. The EM SSAB, Hanford, welcomes the attendance of the public at its meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Meegan Tripp at least seven days in advance of the meeting.

Meeting conduct: The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Questioning of board members or presenters by the public is not permitted.

Minutes: Minutes will be available at the following website: <https://www.hanford.gov/page.cfm/hab/FullBoardMeetingInformation>.

Signing Authority: This document of the Department of Energy was signed on January 12, 2026, by David Borak, Committee Management Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative

purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on January 13, 2026.

Jennifer Hartzell,

*Alternate Federal Register Liaison Officer,
U.S. Department of Energy.*

[FR Doc. 2026-00699 Filed 1-14-26; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2547-095]

Village of Swanton, Vermont; Notice of Intent To Prepare an Environmental Assessment

On April 29, 2022, the Village of Swanton, Vermont (Village) filed a relicense application for the 11.372-megawatt Highgate Falls Hydroelectric Project No. 2547. The project is located on the Missisquoi River in Franklin County, Vermont.

In accordance with the Commission's regulations, on September 8, 2025, Commission staff issued a notice that the project was ready for environmental analysis (REA notice). Based on the information in the record, including comments filed on the REA notice, staff does not anticipate that licensing the project would constitute a major federal action significantly affecting the quality of the human environment. Therefore, staff intends to prepare an environmental assessment (EA) on the application to relicense the project.¹

The EA will be issued and circulated for review by all interested parties. All comments filed on the EA will be analyzed by staff and considered in the Commission's final licensing decision.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502-6595 or OPP@ferc.gov.

The application will be processed according to the following schedule.

Revisions to the schedule may be made as appropriate.

Milestone	Target date
Commission issues EA	September 17, 2026.

Any questions regarding this notice may be directed to Arash Barsari by telephone at (202) 502-6207 or by email at Arash.JalaliBarsari@ferc.gov.

(Authority: 18 CFR 2.1)

Dated: January 12, 2026.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2026-00721 Filed 1-14-26; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP26-372-000.

Applicants: Iroquois Gas

Transmission System, L.P.

Description: § 4(d) Rate Filing: 1.9.26 Negotiated Rates—Sequent Energy Management LLC H-3075-89 to be effective 1/9/2026.

Filed Date: 1/9/26.

Accession Number: 20260109-5135.

Comment Date: 5 p.m. ET 1/21/26.

Docket Numbers: RP26-373-000.

Applicants: Northern Natural Gas Company.

Description: § 4(d) Rate Filing: 20260109 Negotiated Rate Filing to be effective 1/10/2026.

Filed Date: 1/9/26.

Accession Number: 20260109-5154.

Comment Date: 5 p.m. ET 1/21/26.

Docket Numbers: RP26-374-000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 1.9.26 Negotiated Rates—Vitol Inc. H-7495-89 to be effective 1/9/2026.

Filed Date: 1/9/26.

Accession Number: 20260109-5175.

Comment Date: 5 p.m. ET 1/21/26.

Docket Numbers: RP26-375-000.

Applicants: Texas Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Sabine 35030 to Koch 60149) to be effective 1/7/2026.

Filed Date: 1/9/26.

Accession Number: 20260109-5202.

Comment Date: 5 p.m. ET 1/21/26.

Any person desiring to intervene, to protest, or to answer a complaint in any

of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP24-1103-004.

Applicants: Columbia Gas Transmission, LLC.

Description: Refund Report:

Settlement Refund Report to be effective N/A.

Filed Date: 1/9/26.

Accession Number: 20260109-5136.

Comment Date: 5 p.m. ET 1/21/26.

Docket Numbers: RP26-195-001.

Applicants: Gulf South Pipeline Company, LLC.

Description: Compliance filing:

Compliance Filing in Docket No. RP26-195 to be effective 12/15/2025.

Filed Date: 1/9/26.

Accession Number: 20260109-5213.

Comment Date: 5 p.m. ET 1/21/26.

Docket Numbers: RP26-344-001.

Applicants: Ruby Pipeline, L.L.C.

Description: Tariff Amendment: RP 2026-01-09 RP26-344 Amendment to be effective 1/1/2026.

Filed Date: 1/9/26.

Accession Number: 20260109-5171.

Comment Date: 5 p.m. ET 1/21/26.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or OPP@ferc.gov.

Dated: January 12, 2026.

Carlos D. Clay,
Deputy Secretary.

[FR Doc. 2026-00693 Filed 1-14-26; 8:45 am]

BILLING CODE 6717-01-P

¹ For tracking purposes under the National Environmental Policy Act, the unique identification number for documents relating to this environmental review is EAXX-019-20-000-176060606.

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****[Docket No. CP26–2–000]****Enable Mississippi River Transmission, LLC; Notice of Schedule for the Preparation of an Environmental Assessment for the Ameren–EMRT Big Hollow Project**

On October 6, 2025, Enable Mississippi River Transmission, LLC (EMRT) filed an application in Docket No. CP26–2–000 requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(c) of the Natural Gas Act to construct and operate certain natural gas pipeline facilities in Monroe County, Illinois and Jefferson County, Missouri. The proposed project is known as the Ameren–EMRT Big Hollow Project (Project) and would provide about 200,000 million standard cubic feet per day of transportation capacity to the Union Electric Company's d/b/a Ameren Missouri's (Ameren) new gas-fired electric generating plant at the Big Hollow Energy Center on the site of their retired Rush Island coal-fired Energy Center.

On October 15, 2025, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's environmental document for the Project.

This notice identifies Commission staff's intention to prepare an environmental assessment (EA) for the Project and the planned schedule for the completion of the environmental review.¹ The EA will be issued for a 30-day comment period.

Schedule for Environmental Review

Issuance of EA—April 10, 2026
90-day Federal Authorization Decision
Deadline²—July 9, 2026

¹ For tracking purposes under the National Environmental Policy Act, the unique identification number for documents relating to this environmental review is EAXX–019–20–000–1763644926.

² The Commission's deadline applies to the decisions of other federal agencies, and state agencies acting under federally delegated authority, that are responsible for federal authorizations, permits, and other approvals necessary for proposed projects under the Natural Gas Act. Per 18 CFR 157.22(a), the Commission's deadline for other agency's decisions applies unless a schedule is otherwise established by federal law.

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

The Project includes construction and operation of a lateral pipeline, measurement and regulation station, and appurtenant facilities to facilitate Union Electric Company's d/b/a Ameren Missouri's (Ameren) new gas-fired electric generating plant at the Big Hollow Energy Center on the site of their retired Rush Island coal-fired Energy Center.

The Ameren–EMRT Big Hollow Project would consist of the following facilities:

- an approximate 9.6-mile-long, 20-inch-diameter lateral pipeline, from a point of interconnection on EMRT's existing 22-inch-diameter Mainline 2 and 26-inch-diameter Mainline 3 pipelines, at Mile Post 415.5 in Monroe County, Illinois to the existing Big Hollow Energy Center site in Jefferson County, Missouri;
- a measurement and regulation station located downstream of the tie-in with Ameren's proposed Big Hollow Energy Center; and
- appurtenant pipeline facilities, including a 20-inch pig launcher, 20-inch pig receiver, and 20-inch hot taps on existing Mainline 2 and 3 at the lateral interconnect locations.

Background

On October 21, 2025, the Commission issued a *Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Ameren–EMRT Big Hollow Project* (Notice of Scoping). The Notice of Scoping was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries. In response to the Notice of Scoping, the Commission received comments from the Illinois Department of Natural Resources and two landowners. The primary issues raised by the commenters are air emissions and noise, and potential impacts to Illinois Nature Preserve Commission-protected lands within the Project vicinity. All substantive comments will be addressed in the EA.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of formal issuances and submittals in specific dockets, the Commission offers

a free service called eSubscription. This service provides automatic notification of filings made to subscribed dockets, document summaries, and direct links to the documents. Go to <https://www.ferc.gov/ferc-online/overview> to register for eSubscription.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or OPP@ferc.gov.

Additional information about the Project is available from the FERC website (www.ferc.gov). Using the “eLibrary” link, select “General Search” from the eLibrary menu, enter the selected date range and “Docket Number” excluding the last three digits (i.e., CP26–2–000), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at FERCOnlineSupport@ferc.gov. The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

(Authority: 18 CFR 2.1)

Dated: January 12, 2026.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2026–00715 Filed 1–14–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****[Docket No. UL26–2–000]****Carthusian Foundation in America; Notice of Pending Jurisdictional Inquiry and Soliciting Comments, Protests, and Motions To Intervene**

On November 14, 2025, the Federal Energy Regulatory Commission (Commission) received a request from the Vermont Department of Environmental Conservation (Vermont DEC) for a jurisdictional determination for the unlicensed Hopper Brook Hydroelectric Project. The project is located on Hopper Brook in Bennington County, Vermont.

Pursuant to section 23(b)(1) of the Federal Power Act (FPA),¹ a non-federal hydroelectric project must be licensed if it: (a) is located on a navigable water of the United States; (b) occupies lands or reservations of the United States; (c) utilizes surplus water or waterpower

¹ 16 U.S.C. 817(1).

from a government dam;² or (d) is located on a stream over which Congress has Commerce Clause jurisdiction, is constructed or modified on or after August 26, 1935, and affects the interests of interstate or foreign commerce.

Regarding condition (d) above, for purposes of FPA section 23(b)(1), headwaters and tributaries of navigable waters are Commerce Clause streams;³ “post-1935” construction or modification at an existing project includes enlarging a project, such as increasing size of the reservoir, height of the dam, or generating capacity;⁴ and projects that generate energy for transmission on the interstate grid affect interstate commerce.⁵

Vermont DEC requests that the Commission examine its jurisdiction for the Hopper Brook Project on the grounds that the project is located on a stream over which Congress has Commerce Clause jurisdiction, that much of the project was constructed after August 26, 1935, and that the project is connected to the transmission grid.⁶

In response to Vermont DEC’s request, Commission staff is investigating the jurisdictional status of the Hopper Brook Hydroelectric Project (UL26–2–000). A copy of Vermont DEC’s request may be viewed on the Commission’s website at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number, UL26–2–000. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email FERCOnlineSupport@ferc.gov, for TTY, call (202) 502–8659.

The Commission is soliciting comments, motions to intervene, and protests in this proceeding. Comments,

motions to intervene, and protests must be filed by 45 days from notice or February 26, 2026, by 5:00 p.m. Eastern Time. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules and Practice and Procedure, 18 CFR 385.210, 211, and 214. In determining the appropriate action to take, the Commission will consider all protests or comments filed, but only those who file a motion to intervene in accordance with the Commission’s Rules may become a party to the proceedings. Any comments, protests, or motions to intervene must be received on or before the specified comment date.

The Commission strongly encourages electronic filing. Please file comments, protests, and motions to intervene using the Commission’s eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include Docket Number UL26–2–000.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or OPP@ferc.gov.

For further information, please contact Kelly Fitzpatrick at (202) 502–8435 or kelly.fitzpatrick@ferc.gov.

(Authority: 18 CFR 2.1)

Dated: January 12, 2026.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2026–00716 Filed 1–14–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG26–126–000.

Applicants: Newton Solar BESS LLC.

Description: Newton Solar BESS LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 1/12/26.

Accession Number: 20260112–5140.

Comment Date: 5 p.m. ET 2/2/26.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1123–014.

Applicants: Union Electric Company.

Description: Notice of Non-Material Change in Status of Union Electric Company.

Filed Date: 1/7/26.

Accession Number: 20260107–5196.

Comment Date: 5 p.m. ET 1/28/26.

Docket Numbers: ER10–2010–009; ER10–2691–003.

Applicants: The Narragansett Electric Company, PPL Electric Utilities Corporation.

Description: Triennial Market Power Analysis for Northeast Region of PPL Electric Utilities Corporation, et al. and Supplement to 2022 Triennial.

Filed Date: 1/8/26.

Accession Number: 20260108–5227.

Comment Date: 5 p.m. ET 3/9/26.

Docket Numbers: ER22–2580–002.

Applicants: CPV Three Rivers, LLC.

Description: Response to 12/11/2025, Deficiency Letter of CPV Three Rivers, LLC.

Filed Date: 1/12/26.

Accession Number: 20260112–5157.

Comment Date: 5 p.m. ET 2/2/26.

Docket Numbers: ER26–221–001.

Applicants: Eagle Creek Reusens

Hydro, LLC.

Description: Compliance filing: Notice of Effective Date to be effective 1/8/2026.

Filed Date: 1/12/26.

Accession Number: 20260112–5121.

Comment Date: 5 p.m. ET 2/2/26.

Docket Numbers: ER26–222–001.

Applicants: Great Falls Hydroelectric Company.

Description: Compliance filing: Notice of Effective Date to be effective 1/8/2026.

Filed Date: 1/12/26.

Accession Number: 20260112–5122.

Comment Date: 5 p.m. ET 2/2/26.

Docket Numbers: ER26–224–001.

² A project that meets condition (a), (b), or (c) is not required to be licensed if it holds a still valid pre-1920 federal permit.

³ *FPC v. Union Electric Co.*, 381 U.S. 90, 94–96 (1965).

⁴ See, e.g., *L.S. Starrett Co. v. FERC*, 650 F.3d 19, 26–27 (1st Cir. 2011); *Cent. Vt. Pub. Serv. Corp.*, 54 FERC ¶ 61,132, at 61,434 (1991) (citing *Puget Sound Power & Light Co. v. FPC*, 557 F.2d 1311 (9th Cir. 1977); *Aquenergy Systems, Inc.*, 29 FERC ¶ 61,026 (1984)).

⁵ See *FPC v. Union Elec. Co.*, 381 U.S. at 94–95. Moreover, it is well settled that small hydroelectric projects that are connected to the interstate grid, even if they have no interstate sales, affect interstate commerce by displacing power from the grid, and the cumulative effect of the national class of these small projects is significant for purposes of FPA section 23(b)(1). See *Habersham Mills v. FERC*, 976 F.2d 1381, 1384–85 (11th Cir. 1992).

⁶ Vermont DEC November 14, 2025 Request for Determination of Commission Jurisdiction for the Hopper Brook Hydroelectric Project at 2–3.

Applicants: Lake Lynn Generation, LLC.
Description: Compliance filing: Notice of Effective Date to be effective 1/8/2026.

Filed Date: 1/12/26.

Accession Number: 20260112–5113.

Comment Date: 5 p.m. ET 2/2/26.

Docket Numbers: ER26–226–001.

Applicants: York Haven Power Company, LLC.

Description: Compliance filing: Notice of Effective Date to be effective 1/8/2026.

Filed Date: 1/12/26.

Accession Number: 20260112–5118.

Comment Date: 5 p.m. ET 2/2/26.

Docket Numbers: ER26–227–001.

Applicants: Mahoning Creek Hydroelectric Company, LLC.

Description: Compliance filing: Notice of Effective Date to be effective 1/8/2026.

Filed Date: 1/12/26.

Accession Number: 20260112–5116.

Comment Date: 5 p.m. ET 2/2/26.

Docket Numbers: ER26–229–001.

Applicants: All Dams Generation, LLC.

Description: Compliance filing: Notice of Effective Date to be effective 1/8/2026.

Filed Date: 1/12/26.

Accession Number: 20260112–5115.

Comment Date: 5 p.m. ET 2/2/26.

Docket Numbers: ER26–1001–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Notice of Cancellation of ISA, SA No. 4281; Queue No. AA1–100 to be effective 10/1/2024.

Filed Date: 1/9/26.

Accession Number: 20260109–5205.

Comment Date: 5 p.m. ET 1/30/26.

Docket Numbers: ER26–1002–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 4163R1 Canadian County Solar Project GIA to be effective 12/19/2025.

Filed Date: 1/12/26.

Accession Number: 20260112–5007.

Comment Date: 5 p.m. ET 2/2/26.

Docket Numbers: ER26–1003–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original Service Agreement No. 7767—NITSA among PJM and Hyperscale Energy to be effective 1/20/2026.

Filed Date: 1/12/26.

Accession Number: 20260112–5015.

Comment Date: 5 p.m. ET 2/2/26.

Docket Numbers: ER26–1004–000.

Applicants: Otisville PV I, LLC.

Description: Request for Limited and Prospective Waiver, et al. of Otisville PV I, LLC.

Filed Date: 1/9/26.

Accession Number: 20260109–5233.

Comment Date: 5 p.m. ET 1/30/26.

Docket Numbers: ER26–1005–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to GIA, SA No. 7425; Project Identifier No. E04 W20/AD2–110 to be effective 3/14/2026.

Filed Date: 1/12/26.

Accession Number: 20260112–5037.

Comment Date: 5 p.m. ET 2/2/26.

Docket Numbers: ER26–1006–000.

Applicants: Consolidated Edison Company of New York, Inc.

Description: § 205(d) Rate Filing: 102 January 2026 Enhanced EAP to be effective 1/13/2026.

Filed Date: 1/12/26.

Accession Number: 20260112–5052.

Comment Date: 5 p.m. ET 2/2/26.

Docket Numbers: ER26–1007–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2026–01–12 SA 4651 MidAmerican–MidAmerican GIA (E0002) to be effective 12/31/2025.

Filed Date: 1/12/26.

Accession Number: 20260112–5057.

Comment Date: 5 p.m. ET 2/2/26.

Docket Numbers: ER26–1008–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2026–01–12 SA 4652 MEC–OTP–NSP–ITC–MEC JT1Q CA (E0002) to be effective 1/5/2026.

Filed Date: 1/12/26.

Accession Number: 20260112–5061.

Comment Date: 5 p.m. ET 2/2/26.

Docket Numbers: ER26–1009–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Three GIAs, Service Agreement Nos. 7800, 7801, 7802; AF1–123, AF1–124, AF1–125 to be effective 12/19/2025.

Filed Date: 1/12/26.

Accession Number: 20260112–5069.

Comment Date: 5 p.m. ET 2/2/26.

Docket Numbers: ER26–1010–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Revisions to Allow Netting of Flows in the LTRC Allocation to be effective 12/31/9998.

Filed Date: 1/12/26.

Accession Number: 20260112–5087.

Comment Date: 5 p.m. ET 2/2/26.

Docket Numbers: ER26–1011–000.

Applicants: Newton Solar BESS LLC.

Description: Initial Rate Filing: Newton Solar BESS MBR Application to be effective 1/26/2026.

Filed Date: 1/12/26.

Accession Number: 20260112–5126.

Comment Date: 5 p.m. ET 2/2/26.

Docket Numbers: ER26–1012–000.

Applicants: Pastoria Power, LLC.

Description: Initial Rate Filing: Market-Based Rate Application and Request for Waivers and Blanket Approvals to be effective 1/13/2026.

Filed Date: 1/12/26.

Accession Number: 20260112–5148.

Comment Date: 5 p.m. ET 2/2/26.

Docket Numbers: ER26–1013–000.

Applicants: Pastoria Solar Energy Company, LLC.

Description: Initial Rate Filing: Market-Based Rate Application and Request for Waivers and Blanket Approvals to be effective 1/13/2026.

Filed Date: 1/12/26.

Accession Number: 20260112–5154.

Comment Date: 5 p.m. ET 2/2/26.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH26–5–000.

Applicants: LS Power Develop.m.ent, LLC.

Description: LS Power Develop.m.ent, LLC submits FERC 65–B Notice of Change in Fact to Waiver Notification.

Filed Date: 1/8/26.

Accession Number: 20260108–5228.

Comment Date: 5 p.m. ET 1/29/26.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number. Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding. eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or OPP@ferc.gov.

Dated: January 12, 2026.

Carlos D. Clay,
Deputy Secretary.

[FR Doc. 2026–00692 Filed 1–14–26; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2025-0027; FRL-12988-01-OCSPP]

SRC, Inc.; Access of Data**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will provide access to SRC, Inc., in accordance with the CBI regulations. SRC, Inc., has been awarded multiple contracts to perform work for OPP, and access to this information will enable SRC, Inc., to fulfill the obligations of the contract.

DATES: SRC, Inc., will be given access to this information on or before January 20, 2026.

FOR FURTHER INFORMATION CONTACT:

William Northern, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 566-1493 email address: northern.william@epa.gov.

SUPPLEMENTARY INFORMATION:**I. General Information***A. Does this action apply to me?*

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2025-0027, is available at <https://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (703) 305-5805. Please review

the visitor instructions and additional information about the docket available at <https://www.epa.gov/dockets>.

II. Contractor Requirements

Under Contract No. 68HERC25D0001, this contract involves contractors, but they will not be handling FIFRA CBI under this task.

OPP has determined that the contract described in this document involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA. Pursuant to 40 CFR 2.307(h)(3), OPP has determined that disclosure to SRC, Inc., of information claimed as CBI is necessary in order for SRC, Inc., to carry out the work required by this contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under FIFRA sections 3, 4, 6, and 7 and under FFDCA sections 408 and 409.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contract with SRC, Inc., prohibits use of the information for any purpose not specified in this contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the *FIFRA Information Security Manual*. In addition, SRC, Inc., is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to SRC, Inc., until the requirements in this document have been fully satisfied. Records of information provided to SRC, Inc., will be maintained by EPA project officers for this contract. All information supplied to SRC, Inc., by EPA for use in connection with the contract will be returned to EPA when SRC, Inc., has completed its work.

Authority: 7 U.S.C. 136 *et seq.*; 21 U.S.C. 301 *et seq.*

Dated: January 8, 2026.

Randolph L. Hill,

Associate General Counsel.

[FR Doc. 2026-00635 Filed 1-14-26; 8:45 am]

BILLING CODE 6560-50-P

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice: EIB-2026-003]

Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of \$100 Million: AP300102XX**AGENCY:** Export-Import Bank of the United States.**ACTION:** Notice.

SUMMARY: This Notice is to inform the public, in accordance with Section 3(c)(10) of the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635a(c)(10)), the Export-Import Bank of the United States ("EXIM") has received an application for final commitment for a long-term loan or financial guarantee in excess of \$100 million. Comments received within the comment period specified below will be presented to the EXIM Board of Directors prior to final action on this Transaction.

DATES: Comments must be received on or before February 9, 2026 to be assured of consideration before final consideration of the transaction by the Board of Directors of EXIM.

ADDRESSES: Comments may be submitted through *Regulations.gov* at WWW.REGULATIONS.GOV. To submit a comment, enter EIB-2026-003 under the heading "Enter Keyword or ID" and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and EIB-2026-003 on any attached document.

SUPPLEMENTARY INFORMATION:

Reference: AP300102XX.

Purpose and Use:

Brief description of the purpose of the transaction: To support the export of U.S.-manufactured commercial aircraft to Ethiopia.

Brief non-proprietary description of the anticipated use of the items being exported: To be used for passenger air transport services between Ethiopia and other countries.

To the extent that EXIM is reasonably aware, the items being exported are not expected to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

Parties:

Principal Supplier: The Boeing Company.

Obligor: Ethiopian Airlines Group.

Guarantor(s): N/A.

Description of Items Being Exported: Boeing commercial jet aircraft.

Information on Decision: Information on the final decision for this transaction

will be available in the “Board Agenda and Meeting Minutes” on <https://www.exim.gov/news/meeting-minutes>.

Confidential Information: Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

Deidre Hodge,

Assistant Corporate Secretary.

[FR Doc. 2026–00654 Filed 1–14–26; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

[OMB No. 3064–0169 and –0189]

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995, invites the general public and other Federal agencies to take this opportunity to comment on the request to renew the existing information collections described below (OMB Control No. 3064–0169, and –0189). The notices of proposed renewal for these information collections were previously published in the **Federal Register** on July 30, 2025, and August 11, 2025, respectively, allowing for a 60-day comment period. No comments were received.

DATES: Comments must be submitted on or before February 17, 2026.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- **Agency Website:** <https://www.fdic.gov/resources/regulations/federal-register-publications/>.
- **Email:** comments@fdic.gov. Include the name and number of the collection in the subject line of the message.
- **Mail:** Robert Meiers, Regulatory Attorney, MB–3013, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

- **Hand Delivery:** Comments may be hand-delivered to the guard station at the rear of the 17th Street NW building (located on F Street NW), on business days between 7 a.m. and 5 p.m.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find these information collections by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Robert Meiers, Regulatory Attorney, Romeiers@fdic.gov, MB–3013, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collection of information:

1. **Title:** Qualifications for Failed Bank Acquisitions.
OMB Number: 3064–0169.
Form Number: None.
Affected Public: Insured State non-member banks and State savings associations.
Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN (OMB No. 3064–0169)

Information Collection (IC) (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Average time per response (HH:MM)	Annual burden (hours)
1. Section D—Investor Reports on Affiliates (Required to Obtain Benefit) ...	Third-Party Disclosure (Annual).	3	12	2:00	72
2. Section E—Maintenance of Business Books and Records (Required to Obtain Benefit).	Recordkeeping (Annual)	3	4	2:00	24
3. Section I—Disclosures Regarding Investors and Entities in Ownership Chain (Required to Obtain Benefit).	Reporting (On occasion)	1	1	4:00	4
Total Annual Burden (Hours) .....	.....	.....	.....	.....	100

Source: FDIC.

General Description of Collection: The FDIC’s policy statement on Qualifications for Failed Bank Acquisitions provides guidance to private capital investors interested in acquiring or investing in failed insured depository institutions regarding the terms and conditions for such investments or acquisitions. The information collected pursuant to the policy statement allows the FDIC to

evaluate, among other things, whether such investors (and their related interests) could negatively impact the Deposit Insurance Fund, increase resolution costs, or operate in a manner that conflict with statutory safety and soundness principles and compliance requirements. There is no change in the method or substance of the collection. The estimated burden remains

unchanged from the previous submission.

2. **Title:** Stress Testing Recordkeeping and Reporting.

OMB Number: 3064–0189.

Form Number: None.

Affected Public: Insured State nonmember banks and State savings associations.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN (OMB No. 3064–0189)

Information Collection (IC) (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Average time per response (HH:MM)	Annual burden (hours)
1. Annual Stress Test Reporting Template and Documentation for covered banks with total consolidated assets of \$250 billion or more, 12 CFR 325.6 (Mandatory).	Reporting (Biennial)	1	0.667	240:00	240

SUMMARY OF ESTIMATED ANNUAL BURDEN (OMB NO. 3064–0189)—Continued

Information Collection (IC) (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Average time per response (HH:MM)	Annual burden (hours)
2. Methodologies and Practices for covered banks with total consolidated assets of \$250 billion or more, 12 CFR 325.5 (Mandatory).	Recordkeeping (Biennial)	1	0.667	640:00	640
3. Publication—covered banks with total consolidated assets of \$250 billion or more, 12 CFR 325.7 (Mandatory).	Third-Party Disclosure (Biennial)	1	0.667	160:00	160
4. Documentation of Assumptions, Uncertainties and Limitations for FDIC-supervised IDIs with total consolidated assets of \$10 billion or more, 2009 Interagency Guidance (Voluntary).	Recordkeeping (Annual)	48	1	40:00	1,920
5. Summary of Test Results for FDIC-supervised IDIs with total consolidated assets of \$10 billion or more, 2009 Interagency Guidance (Voluntary).	Recordkeeping (Annual)	48	1	40:00	1,920
6. Policies and Procedures for FDIC-supervised IDIs with total consolidated assets of \$10 billion or more, 2009 Interagency Guidance (Voluntary).	Recordkeeping (Annual)	9	1	180:00	1,620
Total Annual Burden (Hours) .....	.....	.....	.....	.....	6,500

Source: FDIC.

General Description of Collection: The FDIC has issued a rule requiring periodic stress testing by FDIC-supervised institutions having more than \$250 billion in total assets, consistent with changes made by section 401 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA). Section 165(i)(2) of the Dodd-Frank Act requires each primary Federal regulator to issue consistent and comparable regulations to (1) ensure that certain financial companies conduct stress tests, (2) establish the form and content of the required reports of such stress tests, and (3) require companies to publish a summary of the stress test results. As originally enacted, section 165(i)(2)(C) applied to all IDIs with average total consolidated assets of \$10 billion or greater, required such IDIs to conduct annual stress tests, and required the use of three scenarios: baseline, adverse, and severely adverse. Consistent with the requirements of section 165(i)(2)(C), as originally enacted, the FDIC published its final rule implementing section 165(i)(2) on October 15, 2012. The requirements under 12 CFR part 325 applied to FDIC-supervised IDIs with average total consolidated assets of \$10 billion or greater. The EGRRCPA, enacted on May 24, 2018, amended certain aspects of the company-run stress-testing requirements in section 165(i)(2) of the Dodd-Frank Act. The EGRRCPA amendments to the section 165(i)(2) stress testing requirements became effective eighteen months after enactment. The aspects of 12 CFR part 325 that constitute an information collection are those that require a banking organization to (1) file stress test reports to be filed periodically with the FDIC and the Board of Governors of the Federal Reserve System in the time, manner, and form specified by the FDIC

(12 CFR 325.6); (2) establish and maintain a system of controls, oversight, and documentation, including policies and procedures that describe the covered bank's stress test practices and methodologies, as well as processes for updating such bank's stress test practices, as well as specific calculations that must be made by the banking organization during its stress tests (12 CFR 325.5); and (3) publish a summary of the results of its stress tests (12 CFR 325.7). On May 17, 2012, the FDIC, the Office of the Comptroller of the Currency, and the Board of Governors of the Federal Reserve published the 2012 Interagency Guidance on the use of stress testing as a means to better understand the range of a banking organization's potential risk exposures. The guidance is intended for IDIs with total consolidated assets of more than \$10 billion and provides an overview of how a banking organization should structure its stress testing activities to ensure they fit into the banking organization's overall risk management program. The purpose of the guidance is to outline broad principles for a satisfactory stress testing framework and describe the manner in which stress testing should be used, that is as an integral component of risk management applicable at various levels of aggregation within a banking organization as well as a tool for capital and liquidity planning. The 2012 Interagency Guidance recommends that IDIs stress test in coordination with their "overall strategy and annual planning cycles and assess and review their stress testing frameworks at least once a year to ensure that stress testing coverage is comprehensive, tests are relevant and current, methodologies are sound, and results are properly considered." The aspects of the 2012 Interagency Guidance that constitute an

information collection are the provisions that state a banking organization should (1) have a stress testing framework that includes clearly defined objectives, well designed scenarios tailored to the banking organization's business and risks, well documented assumptions, conceptually sound methodologies to assess potential impact on the banking organization's financial condition (Section II); (2) maintain an internal summary of test results to document at a high level the range of its stress testing activities and outcomes, as well as proposed follow-up actions (Section III); and (3) have policies and procedures for a stress testing framework (Section VI). There has been no change in the substance or methodology of this information collection. The 774-hour increase in total estimated annual burden from 5,726 hours in 2023 to 6,500 hours currently is due to the doubling of annual responses to ICs 1–3 and the increased number of respondents to IC 6 and is attenuated by the decreased number of respondents to ICs 4 and 5.

Request for Comment

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on January 12, 2026.

Jennifer M. Jones,

Deputy Executive Secretary.

[FR Doc. 2026–00639 Filed 1–14–26; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10 a.m., Thursday, February 5, 2026.

PLACE: The Richard V. Backley Hearing Room, Room 511, 1331 Pennsylvania Avenue NW, Suite 504 North, Washington, DC 20004 (enter from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor v. W.G. Yates and Son's Construction Company*, Docket No. SE 2023–0094 (Issues include: (1) whether the Judge erred in concluding that the operator violated the safety standard at 30 CFR 56.4500 and (2) whether the Judge erred in concluding that the violation was significant and substantial).

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON OR MORE INFO: Rory P. Smith (202) 525–8649/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

PHONE NUMBER FOR LISTENING TO MEETING: 1 (866) 236–7472. Passcode: 678–100.

Authority: 5 U.S.C. 552b.

Dated: January 13, 2026.

Rory P. Smith,

Attorney-Advisor.

[FR Doc. 2026–00759 Filed 1–13–26; 4:15 pm]

BILLING CODE 6735–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Joint Report to Congressional Committees: Differences in Accounting and Capital Standards Among the Federal Banking Agencies as of September 30, 2025; Report to Congressional Committees

AGENCY: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; and Federal Deposit Insurance Corporation.

ACTION: Report to congressional committees.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) have prepared this report pursuant to section 37(c) of the Federal Deposit Insurance Act. Section 37(c) requires the agencies to jointly submit an annual report to the Committee on Financial Services of the U.S. House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the U.S. Senate describing differences among the accounting and capital standards used by the agencies for insured depository institutions (institutions). Section 37(c) requires that this report be published in the **Federal Register**. The agencies have not identified any material differences among the agencies' accounting and capital standards applicable to the institutions they regulate and supervise.

FOR FURTHER INFORMATION CONTACT:

OCC: Jung Sup Kim, Risk Specialist, Capital Policy, (202) 649–6528, Carl Kaminski, Assistant Director, Chief Counsel's Office, (202) 649–5869, Ethan Baliff, Senior Policy Accountant, Accounting Policy, (917) 344–3427, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

Board: Andrew Willis, Manager, (202) 912–4323, Shooka Saket, Financial Institution Policy Analyst III, (202) 951–0747, Division of Supervision and Regulation, Mark Buresh, Senior Special Counsel (202) 452–5270 and Jasmin Keskinen, Counsel, (202) 853–7872, Legal Division, Board of Governors of

the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. For users of Telecommunications Device for the Deaf (TDD) and TTY–TRS, please call 711 from any telephone, anywhere in the United States.

FDIC: Ernest Barkett, Financial Analyst, Division of Risk Management Supervision, Capital Policy Section, (202) 898–7288; Richard Smith, Capital Markets Policy Analyst, Division of Risk Management Supervision, Capital Policy Section, (703) 254–0782; Christine Bouvier, Assistant Chief Accountant, Division of Risk Management Supervision, Accounting Policy Section, (202) 898–7289; Merritt Pardini, Counsel, Legal Division, (202) 898–6680, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The text of the report follows:

Report to Congress

Report to the Committee on Financial Services of the U.S. House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the U.S. Senate Regarding Differences in Accounting and Capital Standards Among the Federal Banking Agencies

Introduction

In accordance with section 37(c) of the Federal Deposit Insurance Act,¹ the agencies are submitting this joint report, which covers differences among their accounting and capital standards existing as of September 30, 2025, applicable to institutions.² As of September 30, 2025, the agencies have not identified any material differences among the agencies' accounting standards applicable to institutions.

In 2013, the agencies revised the risk-based and leverage capital rule for institutions (capital rule),³ which harmonized the agencies' capital rule in

¹ 12 U.S.C. 1831n(c)(1) and (c)(3).

² Although not required under section 37(c), this report includes descriptions of certain of the Board's capital standards applicable to depository institution holding companies where such descriptions are relevant to the discussion of capital standards applicable to institutions.

³ See 78 FR 62018 (October 11, 2013) (final rule issued by the OCC and the Board); 78 FR 55340 (September 10, 2013) (interim final rule issued by the FDIC). The FDIC later issued its final rule in 79 FR 20754 (April 14, 2014). The agencies' respective capital rule is at 12 CFR part 3 (OCC), 12 CFR part 217 (Board), and 12 CFR part 324 (FDIC). The capital rule applies to institutions, as well as to certain bank holding companies (BHCs) and savings and loan holding companies (SLHCs). See also 12 CFR 217.1(c).

a comprehensive manner.⁴ Since 2013, the agencies have revised the capital rule on several occasions, further reducing the number of differences in the agencies' capital rule. Today, only a few differences remain, which are statutorily mandated for certain categories of institutions or which reflect certain technical, generally nonmaterial differences among the agencies' capital rule. No new material differences were identified in the capital standards applicable to institutions in this report compared to the previous report submitted by the agencies pursuant to section 37(c).

Differences in the Standards Among the Federal Banking Agencies

Differences in Accounting Standards

As of September 30, 2025, the agencies have not identified any material differences among themselves in the accounting standards applicable to institutions.

Differences in Capital Standards

The following are the remaining technical differences among the capital standards of the agencies' capital rule.⁵

Definitions

The agencies' capital rule largely contains the same definitions.⁶ The differences that exist generally serve to accommodate the different needs of the institutions that each agency charters, regulates, and/or supervises.

The agencies' capital rule has differing definitions of a pre-sold construction loan. The capital rule of all three agencies provides that a pre-sold construction loan means any "one-to-four family residential construction loan to a builder that meets the requirements of section 618(a)(1) or (2) of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 (12 U.S.C. 1831n), and, in addition to other criteria, the purchaser has not terminated the contract."⁷ The Board's definition provides further clarification that, if a purchaser has terminated the

contract, the institution must immediately apply a 100 percent risk weight to the loan and report the revised risk weight in the next quarterly Consolidated Reports of Condition and Income (Call Report).⁸ Similarly, if the purchaser has terminated the contract, the OCC and FDIC capital rule would immediately disqualify the loan from receiving a 50 percent risk weight, and would apply a 100 percent risk weight to the loan. The change in risk weight would be reflected in the next quarterly Call Report. Thus, the minor wording difference between the agencies should have no practical consequence.

Capital Components and Eligibility Criteria for Regulatory Capital Instruments

While the capital rule generally provides uniform eligibility criteria for regulatory capital instruments, there are some textual differences among the agencies' capital rule. The capital rule of each of the three agencies requires that, for an instrument to qualify as common equity tier 1 or additional tier 1 capital, cash dividend payments must be paid out of net income and retained earnings, but the Board's capital rule also allows cash dividend payments to be paid out of related surplus.⁹ The provision in the Board's capital rule that allows dividends to be paid out of related surplus is a difference in substance among the agencies' capital rule. However, due to the restrictions on institutions regulated by the Board in separate regulations, this additional language in the Board's rule has a practical impact only on BHCs and SLHCs and is not a difference as applied to institutions. The agencies apply the criteria for determining eligibility of regulatory capital instruments in a manner that ensures consistent outcomes for institutions.

Both the Board's capital rule and the FDIC's capital rule also include an additional sentence noting that institutions regulated by each agency are subject to restrictions independent of the capital rule on paying dividends out of surplus and/or that would result in a reduction of capital stock.¹⁰ These additional sentences do not create differences in substance between the

agencies' capital standards, but rather note that restrictions apply under separate regulations.

In addition, the Board's capital rule includes a requirement that a Board-regulated institution must obtain prior approval before redeeming regulatory capital instruments.¹¹ This requirement effectively applies only to a BHC or an SLHC and is, therefore, not included in the OCC's and FDIC's capital rule. All three agencies require institutions to obtain prior approval before redeeming regulatory capital instruments in other regulations.¹² The additional provision in the Board's capital rule, therefore, only has a practical impact on BHCs and SLHCs and is not a difference as applied to institutions.

Capital Deductions

There is a technical difference between the FDIC's capital rule and the OCC's and Board's capital rule with regard to an explicit requirement for deduction of examiner-identified losses. The agencies require their examiners to determine whether their respective supervised institutions have appropriately identified losses. The FDIC's capital rule, however, explicitly requires FDIC-supervised institutions to deduct identified losses from common equity tier 1 capital elements, to the extent that the institutions' common equity tier 1 capital would have been reduced if the appropriate accounting entries had been recorded.¹³ Generally, identified losses are those items that an examiner determines to be chargeable against income, capital, or general valuation allowances.

For example, identified losses may include, among other items, assets classified as loss, off-balance-sheet items classified as loss, any expenses that are necessary for the institution to record in order to replenish its general valuation allowances to an adequate level, and estimated losses on contingent liabilities. The Board and the OCC expect their supervised institutions to promptly recognize examiner-identified losses, but the requirement is not explicit under their capital rule. Instead, the Board and the OCC apply their supervisory authorities to ensure that their supervised institutions charge off any identified losses.

Subsidiaries of Savings Associations

There are special statutory requirements for the agencies' capital

⁴ The capital rule reflects the scope of each agency's regulatory jurisdiction. For example, the Board's capital rule includes requirements related to BHCs, SLHCs, and state member banks (SMBs), while the FDIC's capital rule includes provisions for state nonmember banks and state savings associations, and the OCC's capital rule includes provisions for national banks and federal savings associations.

⁵ Certain minor differences, such as terminology specific to each agency for the institutions that it supervises, are not included in this report.

⁶ See 12 CFR 3.2 (OCC); 12 CFR 217.2 (Board); 12 CFR 324.2 (FDIC).

⁷ 12 CFR 3.2 (OCC); 12 CFR 217.2 (Board); 12 CFR 324.2 (FDIC).

⁸ 12 CFR 217.2.

⁹ 12 CFR 217.20(b)(1)(v) and (c)(1)(viii) (Board).

¹⁰ 12 CFR 217.20(b)(1)(v) and (c)(1)(viii) (Board); 12 CFR 324.20(b)(1)(v) and (c)(1)(viii) (FDIC). Although not referenced in the capital rule, the OCC has similar restrictions on dividends; 12 CFR 5.55 and 5.63. Certain restrictions on the payment of dividends that apply under separate regulations, and therefore not discussed in this report, are different among the agencies. Compare 12 CFR 208.5 (Board) and 12 CFR 5.64 (OCC) with 12 CFR 303.241 (FDIC).

¹¹ Board-regulated institution refers to an SMB, a BHC, or an SLHC. See 12 CFR 217.2; 12 CFR 217.20(f); see also 12 CFR 217.20(b)(1)(iii).

¹² See 12 CFR 5.46, 5.47, 5.55, and 5.56 (OCC); 12 CFR 208.5 (Board); 12 CFR 303.241 (FDIC).

¹³ 12 CFR 324.22(a)(9).

treatment of a savings association's investment in or credit to its subsidiaries as compared with the capital treatment of such transactions between other types of institutions and their subsidiaries. Specifically, the Home Owners' Loan Act (HOLA) distinguishes between subsidiaries of savings associations engaged in activities that are permissible for national banks and those engaged in activities that are not permissible for national banks.¹⁴

When subsidiaries of a savings association are engaged in activities that are not permissible for national banks, the parent savings association generally must deduct the parent's investment in and extensions of credit to these subsidiaries from the capital of the parent savings association.¹⁵ If a subsidiary of a savings association engages solely in activities permissible for national banks, no deduction is required, and investments in and loans to that organization may be assigned the risk weight appropriate for the activity.¹⁶ As the appropriate Federal banking agencies for Federal and State savings associations, respectively, the OCC and the FDIC apply this capital treatment to those types of institutions. The Board's regulatory capital framework does not apply to savings associations and, therefore, does not include this requirement.

Tangible Capital Requirement

Federal law subjects savings associations to a specific tangible capital requirement but does not similarly do so with respect to banks. Under section 5(t)(2)(B) of HOLA, savings associations are required to maintain tangible capital in an amount not less than 1.5 percent of total assets.¹⁷ The capital rule of the OCC and the FDIC includes a requirement that savings associations maintain a tangible capital ratio of 1.5 percent.¹⁸ This statutory requirement does not apply to banks and, thus, there is no comparable regulatory provision for banks. The distinction is of little practical consequence, however, because under the Prompt Corrective

Action (PCA) framework, all institutions are considered critically undercapitalized if their tangible equity falls below 2 percent of total assets.¹⁹ Generally speaking, the appropriate Federal banking agency must appoint a receiver within 90 days after an institution becomes critically undercapitalized.²⁰

Enhanced Supplementary Leverage Ratio

The agencies adopted enhanced supplementary leverage ratio standards that took effect beginning on January 1, 2018.²¹ These standards require certain BHCs to exceed a 5 percent supplementary leverage ratio to avoid limitations on distributions and certain discretionary bonus payments and also require the subsidiary institutions of these BHCs to meet a 6 percent supplementary leverage ratio to be considered "well capitalized" under the PCA framework.²² The rule text establishing the scope of application for the enhanced supplementary leverage ratio differs among the agencies. The Board and the FDIC apply the enhanced supplementary leverage ratio standards for institutions based on parent BHCs being identified as global systemically important BHCs as defined in 12 CFR 217.2.²³ The OCC applies enhanced supplementary leverage ratio standards to the institution subsidiaries under their supervisory jurisdiction of a top-tier BHC that has more than \$700 billion in total assets or more than \$10 trillion in assets under custody.²⁴

Jonathan V. Gould,

Comptroller of the Currency.

Benjamin W. McDonough,

Deputy Secretary of the Board.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on January 12, 2026.

Jennifer M. Jones,

Deputy Executive Secretary.

[FR Doc. 2026-00642 Filed 1-14-26; 8:45 am]

BILLING CODE 6210-01-P; 6714-01-P; 4810-33-

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Benjamin W. McDonough, Deputy Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551-0001, not later than January 30, 2026.

A. Federal Reserve Bank of Dallas (Lindsey Wieck, Director, Mergers & Acquisitions) 2200 North Pearl Street, Dallas, Texas 75201-2272. Comments can also be sent electronically to Comments.applications@dal.frb.org:

1. *The First National Bank of McGregor Employee Stock Ownership Plan ("ESOP"), David Littlewood and Christy De Leon, individually and as co-trustees of the ESOP, all of McGregor, Texas; to acquire voting shares of McGregor Bancshares, Inc., and thereby indirectly acquire voting shares of The First National Bank of McGregor, both of McGregor, Texas.*

¹⁴ 12 U.S.C. 1464(t)(5).

¹⁵ Subsidiaries engaged in activities not permissible for national banks are considered non-includable subsidiaries.

¹⁶ A deduction from capital is only required to the extent that the savings association's investment exceeds the generally applicable thresholds for deduction of investments in the capital of an unconsolidated financial institution.

¹⁷ 12 U.S.C. 1464(t)(1)(A)(ii) and (t)(2)(B).

¹⁸ 12 CFR 3.10(a)(1)(vi) (OCC); 12 CFR 324.10(a)(1)(vi) (FDIC). The Board's regulatory capital framework does not apply to savings associations and, therefore, does not include this requirement.

¹⁹ See 12 U.S.C. 1831o(c)(3); see also 12 CFR 6.4 (OCC); 12 CFR 208.45 (Board); 12 CFR 324.403 (FDIC).

²⁰ 12 U.S.C. 1831o(h)(3)(A).

²¹ See 79 FR 24528 (May 1, 2014).

²² 12 CFR 6.4(b)(1)(i)(D)(2) (OCC); 12 CFR 208.43(b)(1)(i)(D)(2) (Board); 12 CFR 324.403(b)(1)(ii) (FDIC).

²³ 12 CFR 208.43(b)(1)(i)(D)(2) (Board); 12 CFR 324.403(b)(1)(ii) (FDIC).

²⁴ 12 CFR 6.4(b)(1)(i)(D)(2) (OCC).

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Associate Secretary of the Board.

[FR Doc. 2026-00751 Filed 1-14-26; 8:45 am]

BILLING CODE P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090-0330; Docket No. 2025-0001; Sequence No. 19]

Submission for OMB Review; Federal Audit Clearinghouse (FAC)

AGENCY: Technology Transformation Services (TTS), General Services Administration (GSA).

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA), the GSA is proposing a revision to an existing information collection request (ICR) for the Data Collection Form (SF-SAC) and associated FAC webform. The revisions add an optional resubmission pathway, optional structured fields within audit findings (questioned costs, criteria, condition, cause, effect, recommendation, response), optional Yes/No indicators to report whether the auditor became aware of known or likely fraud affecting a federal award or significant instances of abuse, and a new Yes/No webform field for auditor disclosures of a summary schedule of prior audit findings, consistent with 2 CFR 200.516(b)(6). This revision does not change the total estimated burden hours because the additions rely on information already required in audit reports.

DATES: Submit comments on or before February 17, 2026.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function. Comments are invited on: (1) whether this collection is necessary; (2) the accuracy of the burden estimate; (3) ways to enhance quality, utility, and clarity; and (4) ways to minimize burden.

FOR FURTHER INFORMATION CONTACT: Lynn Houston, Technology and Transformation Services Division, Federal Acquisition Service, GSA, at 845-594-1761 or lynn.houston@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

The SF-SAC form is used to collect information required under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200, subpart F). Auditees that expend \$1,000,000 or more (\$750,000 or more prior to 10/1/2024) in Federal awards in a fiscal year must submit the SF-SAC along with their Single Audit reporting package to the FAC.

This proposed revision includes:

1. An optional resubmission pathway, with fields for resubmission type, reason, and report ID.

2. Optional structured fields within each audit finding to capture questioned costs (known and likely), criteria, condition, cause, effect, recommendation, and response. These elements are typically included in narrative text; this change allows, but does not require, auditors to enter them in separate fields for improved clarity and data usability.

3. Optional indicators within the audit finding section to report whether the auditor became aware of known fraud, likely fraud, or significant instances of abuse.

4. New Yes/No field in the FAC webform to capture whether a summary schedule of prior audit findings is included, consistent with 2 CFR 200.516(b)(6).

B. Annual Reporting Burden

Respondents: 90,000 (45,000 auditees and 45,000 auditors).

Responses per Respondent: 1.

Total Annual Responses: 90,000 (45,000 auditees and 45,000 auditors).

Hours per Response: 100 hours for each of the 450 large respondents and 21 hours for each of the 89,550 small respondents.

Total Burden Hours: 1,925,550.

C. Public Comments

A 60-day notice was published in the **Federal Register** at 90 FR 42011 on August 28, 2025. Two comments were received.

Comment: Commenters expressed concern that the proposed structured fields for audit findings (criteria, cause, effect, etc.) would introduce unnecessary burden and deviate from existing audit standards. They recommended relying on the narrative text or improving PDF extraction instead. They also opposed the inclusion of fields for known fraud, likely fraud, and abuse.

Response: GSA appreciates the thoughtful feedback. No new mandatory reporting requirements are being

introduced. All structured fields and fraud/abuse indicators remain strictly optional and correspond to information already documented in the audit reporting package in narrative form. These fields provide an alternative, structured format to increase the practical utility of data already required under the Uniform Guidance and GAGAS, without expanding the scope of required audit procedures.

The optional structured fields for criteria, cause, effect, recommendation, and response support requests from Federal oversight entities for more consistent audit data to inform risk assessment and corrective action monitoring. Because auditors already provide this information in narrative format, the optional fields do not increase the amount of information respondents must prepare. Likewise, indicators for known fraud, likely fraud, and abuse simply reflect disclosures already documented in audit reports; retaining these optional fields supports analytic needs while avoiding any new reporting obligations.

GSA also considered the suggestion to rely solely on PDF extraction. Although GSA continues to explore improvements to PDF parsing, the variability in how audit reports are produced makes consistent automated extraction unreliable. Optional structured fields allow respondents to provide this existing information more clearly when feasible, thereby improving data quality and reducing manual review.

This approach preserves respondent flexibility while improving the usability of data for Federal oversight. The optional nature of all structured fields ensures that the burden estimates for this collection remain unchanged.

Patrick Dale,

Team Lead, Regulatory Secretariat Division, General Services Administration.

[FR Doc. 2026-00735 Filed 1-14-26; 8:45 am]

BILLING CODE 6820-AB-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-25-0743]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled “Assessment and Monitoring of Breastfeeding-Related

Maternity Care Practices in Intrapartum Care Facilities in the United States and Territories” to the Office of Management and Budget (OMB) for review and approval. CDC previously published a “Proposed Data Collection Submitted for Public Comment and Recommendations” notice on June 16, 2025 to obtain comments from the public and affected agencies. CDC received five comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

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

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639-7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the

Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395-5806. Provide written comments within 30 days of notice publication.

Proposed Project

Assessment and Monitoring of Breastfeeding-Related Maternity Care Practices in Intrapartum Care Facilities in the United States and Territories (OMB Control No. 0920-0743, Exp. 3/31/2025)—Reinstatement—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Substantial evidence demonstrates the social, economic, and health benefits of breastfeeding for both the mother and infant, as well as for society in general. Health professionals recommend exclusive breastfeeding for about the first six months and continued breastfeeding for at least 12 months; Healthy People 2030 establishes specific national breastfeeding goals related to breastfeeding exclusivity and duration. In addition to increasing overall rates, a public health priority in the U.S. is to reduce variation in breastfeeding rates across population subgroups. Although CDC surveillance data indicate that breastfeeding initiation rates in the United States are climbing, rates for duration and exclusivity continue to lag, and significant disparities in breastfeeding rates persist.

The health care system is one of the most important and effective settings to improve breastfeeding, and the birth hospital stay has a crucial influence on later breastfeeding outcomes. Every two years between 2007–2015, CDC conducted the national survey of Maternity Practices in Infant Nutrition and Care (mPINC survey) in hospitals and free-standing birth centers to better understand national breastfeeding-supportive maternity practices and changes in these practices over time. Breastfeeding supportive maternity care practices changed rapidly, and in 2018 CDC redesigned the survey items to reflect these practice changes. Every two years between 2018–2024, the revised

survey was administered to hospitals that routinely provide maternity care. The survey asks hospital maternity staff to report information about patient education and support for breastfeeding provided to their patients throughout the maternity stay, as well as staff training and maternity care policies.

The 2026 and 2028 mPINC survey will closely match those previously administered. As an ongoing national census of hospitals in the United States and territories that provide maternity care, it does not employ sampling methods. CDC uses the American Hospital Association (AHA) Annual Survey of Hospitals to identify potential participating hospitals. Hospitals invited to participate in the survey include those that participated in previous iterations, those that received an invitation but did not participate in the previous iterations, and those that have become eligible since the most recent mPINC survey. CDC will screen all hospitals with one or more registered maternity beds to assess their eligibility, identify the appropriate point of contact, and obtain contact information for the person identified. The response rates for previous iterations of the mPINC survey range from 70%–83%. CDC will provide direct feedback to participating hospitals in a private, individualized, hospital-specific report of their results. CDC will use information from the mPINC surveys to identify, document, and publicly share aggregated information related to changes in practices and processes over time at the hospital, state, regional, and national levels. Researchers also use the data to better understand relationships between hospital characteristics, maternity-care practices, state level factors, and breastfeeding initiation and continuation rates.

Participation in the survey is voluntary, and participants submit responses through a secure Web-based system. There are no costs to respondents other than their time. CDC requests OMB approval of 777 annual burden hours for three years to conduct the 2026 and 2028 surveys.

Estimated Annualized Burden Hours

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Maternity Hospitals	Screening Part A	567	1	3/60
Maternity Hospitals	Screening Part B	1,771	1	2/60
Maternity Hospitals	mPINC Hospital Survey	1,380	1	30/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office,
Office of Public Health Ethics and
Regulations, Office of Science, Centers for
Disease Control and Prevention.

[FR Doc. 2026-00717 Filed 1-14-26; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Meeting of the Advisory Board on Radiation and Worker Health, National Institute for Occupational Safety and Health

AGENCY: Centers for Disease Control and
Prevention (CDC), Department of Health
and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the
Federal Advisory Committee Act, the
Centers for Disease Control and
Prevention (CDC) announces the
following meeting of the Advisory
Board on Radiation and Worker Health
(ABRWH). This meeting is open to the
public, but without a public comment
period. The public is welcome to submit
written comments in advance of the
meeting, to the contact person below.
The public is also welcome to listen to
the meeting by joining the audio
conference (information below). The
audio conference line has 150 ports for
callers.

DATES: The meeting will be held on
February 19, 2026, from 11 a.m. to 1
p.m., EST.

Written comments must be received
on or before February 12, 2026.

ADDRESSES: You may submit comments
by mail to: Rashaun Roberts, Ph.D.,
Designated Federal Officer, National
Institute for Occupational Safety and
Health, Centers for Disease Control and
Prevention, 1090 Tusculum Avenue,
Mailstop C-24, Cincinnati, Ohio 45226.
Email: ocas@cdc.gov.

Written comments received in
advance of the meeting will be included
in the official record of the meeting.

Meeting Information: Audio
Conference Call via FTS Conferencing.
The USA toll-free dial-in number is 1-
866-659-0537; the passcode is 9933701.

FOR FURTHER INFORMATION CONTACT:
Rashaun Roberts, Ph.D., Designated
Federal Officer, National Institute for
Occupational Safety and Health, Centers
for Disease Control and Prevention,
1090 Tusculum Avenue, Mailstop C-24,
Cincinnati, Ohio 45226, Telephone:
(513) 533-6800, Email: ocas@cdc.gov.

SUPPLEMENTARY INFORMATION:

Background: The Advisory Board was
established under the Energy Employees
Occupational Illness Compensation
Program Act of 2000 to advise the
President on a variety of policy and
technical functions required to
implement and effectively manage the
compensation program. Key functions of
the Advisory Board include providing
advice on the development of
probability of causation guidelines,
which have been promulgated by the
Department of Health and Human
Services (HHS) as a final rule; advice on
methods of dose reconstruction, which
have also been promulgated by HHS as
a final rule; advice on the scientific
validity and quality of dose estimation
and reconstruction efforts being
performed for purposes of the
compensation program; and advice on
petitions to add classes of workers to the
Special Exposure Cohort (SEC). In
December 2000, the President delegated
responsibility for funding, staffing, and
operating the Advisory Board to HHS,
which subsequently delegated this
authority to the CDC. NIOSH
implements this responsibility for CDC.

The charter was issued on August 3,
2001, renewed at appropriate intervals,
and rechartered under Executive Order
14109 (September 29, 2023) on March
22, 2024. Unless continued by the
President, the Advisory Board will
terminate on September 30, 2027,
consistent with Executive Order 14354
of September 29, 2025.

Purpose: The Advisory Board is
charged with (a) providing advice to the
Secretary, HHS, on the development of
guidelines under Executive Order
13179; (b) providing advice to the
Secretary, HHS, on the scientific
validity and quality of dose
reconstruction efforts performed for this
program; and (c) upon request by the
Secretary, HHS, advising the Secretary
on whether there is a class of employees
at any Department of Energy facility
who were exposed to radiation but for
whom it is not feasible to estimate their
radiation dose, and on whether there is
reasonable likelihood that such
radiation doses may have endangered
the health of members of this class.

Matters to be Considered: The agenda
will include discussions on the
following: Program updates; workgroup
and subcommittee reports; update on
the status of SEC petitions; and
planning for an April 2026 Advisory
Board meeting. Agenda items are subject
to change as priorities dictate. For
additional information, please contact
Toll Free 1-800-232-4636.

The Director, Office of Strategic
Business Initiatives, Office of the Chief

Operating Officer, Centers for Disease
Control and Prevention, has been
delegated the authority to sign **Federal
Register** notices pertaining to
announcements of meetings and other
committee management activities, for
both the Centers for Disease Control and
Prevention and the Agency for Toxic
Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business
Initiatives, Office of the Chief Operating
Officer, Centers for Disease Control and
Prevention.

[FR Doc. 2026-00729 Filed 1-14-26; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-26-1335; Docket No. CDC-2025-
1047]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and
Prevention (CDC), Department of Health
and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease
Control and Prevention (CDC), as part of
its continuing effort to reduce public
burden and maximize the utility of
government information, invites the
general public and other federal
agencies the opportunity to comment on
a continuing information collection, as
required by the Paperwork Reduction
Act of 1995. This notice invites
comment on a proposed information
collection project titled Maritime
Activity Illness and Death Reporting.
This data collection is designed to
ensure that CDC is able to prevent the
introduction, transmission or spread of
communicable diseases from foreign
countries into the United States and
includes requirements for reporting
illnesses and deaths among maritime
travelers to CDC.

DATES: CDC must receive written
comments on or before March 16, 2026.

ADDRESSES: You may submit comments,
identified by Docket No. CDC-2025-
1047 by either of the following methods:

- **Federal eRulemaking Portal:**
www.regulations.gov. Follow the
instructions for submitting comments.
- **Mail:** Jeffrey M. Zirger, Information
Collection Review Office, Centers for
Disease Control and Prevention, 1600
Clifton Road NE, MS H21-8, Atlanta,
Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to www.regulations.gov.

Please note: Submit all comments through the Federal eRulemaking portal (www.regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21-8, Atlanta, Georgia 30329; Telephone: 404-639-7570; Email: omb@cdc.gov.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses; and

5. Assess information collection costs.

Proposed Project

Maritime Activity Illness and Death Reporting (OMB Control No. 0920-1335, Exp. 1/31/2026)—Revision—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The goal of this information collection is to ensure that, consistent with the authorities in the Public Health Service Act and 42 CFR parts 70 and 71, CDC is able to prevent the introduction, transmission or spread of communicable diseases from foreign countries into the United States or from one State or

possession into any other State or possession. This information collection focuses on collecting information necessary to conduct public health response and follow up related to certain illnesses and deaths among a ship's passengers or crew, including travelers who have disembarked or were removed from the ship due to illness or death. It includes requirements for reporting illnesses and deaths among maritime travelers to CDC.

To monitor respiratory illnesses occurring onboard cruise voyages, CDC further requests that ships submit cumulative reporting of acute respiratory illness (ARI) (e.g., influenza) once per voyage and earlier if 3% or more of crew or passengers are ill with an ARI. Thus, the purpose of this information collection is to facilitate the reporting of illness and deaths for travelers on maritime conveyances in CDC's reporting jurisdiction operating or intending to operate in U.S. waters. Historically, these maritime-related data collection activities were approved under different OMB control numbers, including ARI surveillance (0920-1335, Exp. 1/31/2026), maritime illness and death reporting (0920-0134, Exp. 3/31/2026), and pathogen-specific enhanced data collection (0920-0900, Exp. 9/30/2027). With this current submission, CDC is requesting a Revision with the aim of improving efficiency of CDC's maritime activities through aggregation under one OMB Control Number.

CDC requests OMB approval for an estimated 828 annual burden hours. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Maritime Vessel Operator/Ship Clinician.	Maritime Conveyance Illness or Death Investigation (Sections 1-4).	500	1	10/60	83
Maritime Vessel Operator/Ship Clinician.	Maritime Conveyance Illness or Death Investigation (Section 5).	100	1	5/60	8
Maritime Vessel Operator/Ship Clinician.	Cruise Ship Cumulative ARI Reporting (<3%).	100	40	10/60	667
Maritime Vessel Operator/Ship Clinician.	Cruise Ship Cumulative ARI Reporting (3% or more).	100	3	10/60	50
Maritime Vessel Operator/Ship Clinician.	Influenza Outbreak Enhanced Data Collection.	10	1	10/60	2
Maritime Vessel Operator/Ship Clinician.	TB Maritime Contact Investigation Worksheet.	17	1	10/60	3
Maritime Vessel Operator/Ship Clinician.	Varicella Outbreak Enhanced Data Collection.	74	1	10/60	12
Maritime Vessel Operator/Ship Clinician.	42 CFR 71.35 Report of Death Illness During Stay in Port (verbal, no form).	5	1	30/60	3
Total .....	.....	.....	.....	.....	828

Jeffrey M. Zirger,

*Lead, Information Collection Review Office,
Office of Public Health Ethics and
Regulations, Office of Science, Centers for
Disease Control and Prevention.*

[FR Doc. 2026-00719 Filed 1-14-26; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-26-1166; Docket No. CDC-2025-
1014]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Poison Center Collaborations for Public Health Emergencies (PCCPHE). PCCPHE creates a timely mechanism which will allow a network of poison centers, supported by CDC, to obtain critical exposure and health information during a public health emergency.

DATES: CDC must receive written comments on or before March 16, 2026.

ADDRESSES: You may submit comments, identified by Docket No. CDC-2025-1014 by either of the following methods:

- *Federal eRulemaking Portal:* www.regulations.gov. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21-8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to www.regulations.gov.

Please note: Submit all comments through the Federal eRulemaking portal (www.regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the

proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21-8, Atlanta, Georgia 30329; Telephone: 404-639-7570; Email: omb@cdc.gov.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected;
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses; and
5. Assess information collection costs.

Proposed Project

Poison Center Collaborations for Public Health Emergencies (PCCPHE) (OMB Control No. 0920-1166, Exp. 04/30/2026)—Revision—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) is requesting a three-year Paperwork Reduction Act (PRA)

Revision of the Generic Information Collection Request (Generic ICR) titled Poison Center Collaborations for Public Health Emergencies (PCCPHE) (OMB Control No. 0920-1166; Expiration date 04/30/2026).

CDC's key partner is America's Poison Centers™, formerly known as the American Association of Poison Centers (AAPCC). America's Poison Centers™ is a national network of 53 poison centers working to prevent and treat poison exposures. America's Poison Centers™ manages its existing surveillance system called the National Poison Data System (NPDS) and provides CDC access to monitor this system under a cooperative agreement and a data license agreement.

When a public health emergency of interest emerges in NPDS, the CDC and America's Poison Centers™ hold a meeting to mutually decide whether the incident needs further investigation. For a public health emergency to be selected for call-back, adverse health effects must have occurred, and a response is needed to prevent further morbidity and mortality. The incident must meet the following criteria: (1) the incident is a public health emergency causing adverse health effects; (2) timely data are urgently needed to inform rapid public health action to prevent or reduce injury, disease, or death; (3) the incident is characterized by a natural or man-made disaster, contaminated food or water, a new or existing consumer product, or an emerging public health threat; (4) the incident has resulted in calls to a poison center, and the poison center agrees to conduct the call-back data collection; (5) the incident is domestic; and (6) data collection will be completed in 60 days or less.

The purpose of this Generic ICR is to create a timely mechanism to allow poison centers, supported by CDC, to follow-up with callers during select public health emergencies on exposure and health. These PCCPHE Generic information collections (GenICs) will obtain information on sources of exposure, scenario of exposure, health seeking behaviors following exposure, and awareness of health communication messaging. These additional data can help CDC identify interventions to improve health messaging meant to reduce exposure; improve disaster and emergency response; and prevent future incidents for the specific area or incident of interest.

Trained poison center staff will conduct the call-back telephone survey or will facilitate the call-back web survey, after administering consent. Respondents will include individuals who call poison centers about exposures related to the select public health

emergencies. These respondents include adults, 18 years and older; adolescents, 15 to less than 18 years; and parents or guardians on behalf of their children less than 15 years of age.

In 2019, a PCCPHE GenIC, titled “Risk Factors for Harmful Algal Blooms (HABs),” was conducted to identify sources of and risk factors for HAB exposures. New information gained about HAB exposures were used to improve HAB incident response,

communication, and outreach at the state and national level.

No PCCPHE GenICs were conducted during the past three-year approval period. However, two NPDS-related follow-up studies were implemented during the 2020–2023 approval period using the Secretary’s Public Health Emergency PRA Waiver for COVID–19. During a non-pandemic situation, these two studies would have used this Generic ICR. These studies assessed

unintentional exposures associated with cleaning products (e.g., bleach, hand sanitizers) in home settings to determine knowledge, attitudes, and practices regarding cleaning behaviors and help guide public health messaging.

CDC requests OMB approval for an estimated 250 annual burden hours. No revisions affecting public burden are proposed and there is no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Adult Poison Center Callers	Call-back Questionnaire for Self	1,200	1	10/60	200
Adolescent Poison Center Callers	Call-back Questionnaire for Self	150	1	10/60	25
Parent or Guardian Poison Center Callers.	Call-back Questionnaire for Proxy ...	150	1	10/60	25
Total .....	.....	.....	.....	.....	250

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2026–00718 Filed 1–14–26; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Annual Update of the HHS Poverty Guidelines

AGENCY: Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice provides an update of the Department of Health and Human Services (HHS) poverty guidelines to account for last calendar year’s increase in prices as measured by the Consumer Price Index.

DATES: *Effective Date:* January 13, 2026 unless an office administering a program using the guidelines specifies a different effective date for that particular program.

ADDRESSES: Office of the Assistant Secretary for Planning and Evaluation, Room 404E, Humphrey Building, Department of Health and Human Services, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: For information about how the guidelines are used or how income is defined in a particular program, contact the Federal, state, or local office that is responsible for that program. For information about

poverty figures for immigration forms, the Hill-Burton Uncompensated Services Program, and the number of people in poverty, use the specific telephone numbers and addresses given below.

For general questions about the poverty guidelines themselves, visit <http://aspe.hhs.gov/poverty/> or contact Jennifer Burnszynski in the HHS Office of the Assistant Secretary for Planning and Evaluation at osaspeinfo@hhs.gov or (202) 690–7858.

For information about the percentage multiple of the poverty guidelines to be used on immigration forms such as USCIS Form I–864, Affidavit of Support, contact U.S. Citizenship and Immigration Services at 1–800–375–5283. You also may visit <https://www.uscis.gov/i-864>.

For information about the Hill-Burton Uncompensated Services Program (free or reduced-fee health care services at certain hospitals and other facilities for persons meeting eligibility criteria involving the poverty guidelines), visit <https://www.hrsa.gov/get-health-care/affordable/hill-burton/index.html>.

For information about the number of people in poverty, visit the Poverty section of the Census Bureau’s website at <https://www.census.gov/topics/income-poverty/poverty.html> or contact the Census Bureau’s Customer Service Center at 1–800–923–8282 (toll-free) or visit <https://ask.census.gov> for further information.

SUPPLEMENTARY INFORMATION:

Background

Section 673(2) of the Omnibus Budget Reconciliation Act (OBRA) of 1981 (42 U.S.C. 9902(2)) requires the Secretary of the Department of Health and Human Services to update the poverty guidelines at least annually, adjusting them on the basis of the Consumer Price Index for All Urban Consumers (CPI–U). The poverty guidelines are used by Medicaid and a number of other Federal programs as a criterion for some or all eligibility determinations. The *poverty guidelines* issued here are a simplified version of the *poverty thresholds* that the Census Bureau uses to prepare its estimates of the number of individuals and families in poverty.

As required by law, this update is accomplished by increasing the latest published Census Bureau poverty thresholds by the applicable percentage change in the Consumer Price Index for All Urban Consumers (CPI–U). The guidelines in this 2026 notice reflect the 2.63 percent price increase between calendar years 2024 and 2025. After updating for inflation, the guidelines are rounded and standardized to establish the same interval between each family size. In rare circumstances, rounding and standardizing in the formula result in small decreases in the poverty guidelines for some household sizes even when the inflation factor is not negative. In cases where the year-to-year change in inflation is not negative and rounding and standardizing in the formula result in reductions to the guidelines from the previous year for some household sizes, the guidelines for

the affected household sizes are fixed at the prior year's guidelines. As in prior years, these 2026 guidelines are roughly equal to the poverty thresholds for calendar year 2025, which the Census Bureau expects to publish in final form in September 2026.

The poverty guidelines continue to be derived from the Census Bureau's current official poverty thresholds; they are not derived from the Census Bureau's Supplemental Poverty Measure (SPM).

The following guideline figures represent annual income.

2026 POVERTY GUIDELINES FOR THE 48 CONTIGUOUS STATES AND THE DISTRICT OF COLUMBIA

Persons in family/household	Poverty guideline
1	\$15,960
2	21,640
3	27,320
4	33,000
5	38,680
6	44,360
7	50,040
8	55,720

For families/households with more than 8 persons, add \$5,680 for each additional person.

2026 POVERTY GUIDELINES FOR ALASKA

Persons in family/household	Poverty guideline
1	\$19,950
2	27,050
3	34,150
4	41,250
5	48,350
6	55,450
7	62,550
8	69,650

For families/households with more than 8 persons, add \$7,100 for each additional person.

2026 POVERTY GUIDELINES FOR HAWAII

Persons in family/household	Poverty guideline
1	\$18,360
2	24,890
3	31,420
4	37,950
5	44,480
6	51,010
7	57,540
8	64,070

For families/households with more than 8 persons, add \$6,530 for each additional person.

Separate poverty guideline figures for Alaska and Hawaii reflect Office of Economic Opportunity administrative practice beginning in the 1966–1970 period. (Note that the Census Bureau poverty thresholds—the version of the poverty measure used for statistical purposes—have never had separate figures for Alaska and Hawaii.) The poverty guidelines are not defined for Puerto Rico or other outlying jurisdictions. In cases in which a Federal program using the poverty guidelines serves any of those jurisdictions, the Federal office that administers the program is generally responsible for deciding whether to use the contiguous-states-and-DC guidelines for those jurisdictions or to follow some other procedure.

Due to confusing legislative language dating back to 1972, the poverty guidelines sometimes have been mistakenly referred to as the “OMB” (Office of Management and Budget) poverty guidelines or poverty line. In fact, OMB has never issued the guidelines; the guidelines are issued each year by the Department of Health and Human Services. The poverty guidelines may be formally referenced as “the poverty guidelines updated periodically in the **Federal Register** by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).”

Some federal programs use a percentage multiple of the guidelines (for example, 125 percent or 185 percent of the guidelines), as noted in relevant authorizing legislation or program regulations. Non-Federal organizations that use the poverty guidelines under their own authority in non-Federally-funded activities also may choose to use a percentage multiple of the guidelines.

The poverty guidelines do not make a distinction between farm and non-farm families, or between aged and non-aged units. (Only the Census Bureau poverty thresholds have separate figures for aged and non-aged one-person and two-person units.)

This notice does not provide definitions of such terms as “income” or “family” as there is considerable variation of these terms among programs that use the poverty guidelines. The legislation or regulations governing each program define these terms and determine how the program applies the poverty guidelines. In cases where legislation or regulations do not establish these definitions, the entity that administers or funds the program is responsible to define such terms as

“income” and “family.” Therefore, questions such as net or gross income, counted or excluded income, or household size should be directed to the entity that administers or funds the program.

Date: January 13, 2026.

Robert F. Kennedy, Jr.,
Secretary, Department of Health and Human Services.

[FR Doc. 2026–00755 Filed 1–14–26; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Population based Research in Infectious Disease Study Section, October 30, 2025, 10:00 a.m. to October 31, 2025, 06:00 p.m., National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on 9/24/2025 2025, 90 FR 45951, Doc Number 2025–18519

This meeting is being amended to change the date to January 12 to January 13, 2026.

Dated: January 12, 2026.

Bruce A. George,
Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026–00760 Filed 1–14–26; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Project: Cancer Research.

Date: February 24–25, 2026.

Time: 9:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Jennifer Ann Sanders, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 496–3553, jennifer.sanders@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Projects: Translational Cancer Research SPORE (P50).

Date: February 25–26, 2026.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: E. Tian, Ph.D., Scientific Review Officer, Basic and Translational Cancer Review Branch, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, (240) 205–0794, email: e.tian@nih.gov.

Name of Committee: Applied Therapeutics for Cancer Integrated Review Group; Advancing Therapeutics A Study Section.

Date: February 26, 2026.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Maureen Shuh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 480–4097, maureen.shuh@nih.gov.

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Clinical Translational Imaging Science Study Section.

Date: February 26–27, 2026.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Eleni Apostolos Liapi, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, (301) 867–5309, eleni.liapi@nih.gov.

Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS

Dated: January 12, 2026.

Sterlyn H. Gibson,

Program Specialist, Office of Federal Advisory Committee Policy.

[FR Doc. 2026–00679 Filed 1–14–26; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request; Correction

AGENCY: Substance Abuse and Mental Health Services Administration, Department of Health and Human Services.

ACTION: Notice; correction.

SUMMARY: The Substance Abuse and Mental Health Services Administration published a document in the **Federal Register** on November 20, 2025, concerning requests for comments on Proposed Project: SAMHSA Unified Performance Reporting Tool (SUPRT)—Project (P)—(OMB No. 0930–NEW). The document contained an incorrect website link to review a copy of the proposed Information Collection. All requests for review copies should be submitted to the SAMHSA Reports Clearance Officer at samhsapra@samhsa.hhs.gov.

DATES: Comments on the ICR must be received on or before January 20, 2026.

ADDRESSES: Submit your comments to SAMHSA Reports Clearance Officer at samhsapra@samhsa.hhs.gov.

FOR FURTHER INFORMATION CONTACT:

When submitting comments or requesting information, please include the project title for reference to the SAMHSA Reports Clearance Officer at samhsapra@samhsa.hhs.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 20, 2025, in FR Doc. 2025–20393, starting on page 52413, the following correction is made: On page 52414, in the second column, the first full sentence is corrected to read “The draft tool can be requested from the SAMHSA Reports Clearance Officer at samhsapra@samhsa.hhs.gov.”

Carlos Graham,

Reports Clearance Officer.

[FR Doc. 2026–00657 Filed 1–14–26; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2014–001]

Intent To Request Revision From OMB of One Current Public Collection of Information: TSA PreCheck® Application Program

AGENCY: Transportation Security Administration, Department of Homeland Security (DHS).

ACTION: 60-Day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0059, abstracted below that we will submit to OMB for a revision in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves the voluntary submission of biographic and biometric information that TSA uses to verify identity and conduct a security threat assessment (STA) for the TSA PreCheck® Application Program.

DATES: Send your comments by March 16, 2026.

ADDRESSES: Comments may be emailed to TSAPRA@tsa.dhs.gov or delivered to the TSA PRA Officer, Information Technology, TSA–11, Transportation Security Administration, 6595 Springfield Drive, Springfield, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh at the above address, or by telephone (571) 227–2062.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at <https://www.reginfo.gov> upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Pursuant to the statutory authorities explained below, TSA has implemented a voluntary enrollment program for individuals to apply for the TSA PreCheck Application Program. Section 109(a)(3) of the Aviation and Transportation Security Act, Public Law 107–71 (115 Stat. 597, 613, Nov. 19, 2001, codified at 49 U.S.C. 114 note) provides TSA with the authority to “establish requirements to implement trusted programs and use available technologies to expedite security screening of passengers who participate in such programs, thereby allowing security screening personnel to focus on those passengers who should be subject to more extensive screening.” In addition, TSA has express, statutory authority to establish and collect a fee for any registered traveler program by publication of a notice in the **Federal Register**, as outlined in the Department of Homeland Security Appropriations Act, 2006, Public Law 109–90 (119 Stat. 2064, 2088–89, Oct. 18, 2005).

Under the TSA PreCheck Application Program, individuals may submit biographic and biometric¹ information directly to TSA. Interested applicants must provide certain minimum required data elements, including, but not limited to, name, date of birth, sex, address, contact information, country of birth, images of identity documents, proof of citizenship or immigration status, and biometrics via a secure interface.

TSA uses this information to verify identity at enrollment, conduct an STA, make a final eligibility determination for the TSA PreCheck Application Program (including a review of criminal, immigration, intelligence, and regulatory violation databases), and verify the identities of TSA PreCheck-enrolled and approved individuals when they are traveling. For example, as part of this process, TSA sends the applicants' fingerprints and associated information to the Federal Bureau of Investigation (FBI) for the purpose of comparing their fingerprints to other

fingerprints in the FBI's Next Generation Identification (NGI) system or its successor systems including civil, criminal, and latent fingerprint repositories. The FBI may retain applicants' fingerprints and associated information in NGI after the completion of their application and, while retained, their fingerprints may continue to be compared against other fingerprints submitted to or retained by NGI as part of the FBI's Rap Back program.² In retaining applicants' fingerprints, the FBI conducts recurrent vetting of applicants' criminal history until the expiration date of the applicant's STA. TSA also transmits applicants' biometrics for enrollment into the Department of Homeland Security Automated Biometrics Identification System (IDENT)³ and its successor system, the Homeland Advanced Recognition Technology System (HART),⁴ for recurrent vetting of applicants' criminal history, lawful presence, and ties to terrorism and for future support of TSA's biometric-based identification at airport checkpoints.

TSA uses the STA results to decide if an individual poses a low risk to transportation or national security. TSA issues approved applicants a known traveler number (KTN) that they may use when making travel reservations. Airline passengers who submit a KTN when making airline reservations are eligible for expedited screening on flights originating from U.S. airports and select international locations including Nassau, Bahamas.⁵ TSA uses the traveler's KTN and other information during passenger prescreening to verify that the individual traveling matches the information on TSA's list of known travelers and to confirm TSA PreCheck expedited screening eligibility.

² The FBI's Rap Back service allows authorized agencies to receive on-going status notifications of any criminal history reported to the FBI after the initial processing and retention of criminal or civil transactions using fingerprint identification.

³ See U.S. Department of Homeland Security, Office of Biometric Identity Management (OBIM), Privacy Impact Assessment for Automated Biometric Identification System (IDENT), DHS/OBIM//PIA–001 (2012), available at DHS/OBIM/PIA–001 Automated Biometric Identification System | Homeland Security.

⁴ See U.S. Department of Homeland Security, Office of Biometric Identity Management (OBIM), Privacy Impact Assessment for Homeland Advanced Recognition Technology System, DHS/OBIM//PIA–004 (2024), available at DHS/OBIM/PIA–004 Homeland Advanced Recognition Technology System (HART) Increment 1 | Homeland Security.

⁵ Passengers who are eligible for expedited screening typically will receive less stringent physical screening; e.g., removal of shoes, light outerwear, and a belt may not be required; laptop may remain in its case; and the “3–1–1” compliant liquids/gels bag may stay in their carry-on.

When the STA is complete, TSA makes a final determination on eligibility for the TSA PreCheck Application Program and notifies applicants of its decision. Most applicants generally should expect to receive notification from TSA within 3 to 5 days and up to 60 days of the submission of their completed applications. If initially deemed ineligible by TSA, applicants will have an opportunity to correct cases of misidentification or inaccurate criminal records. Applicants must submit a correction of any information they believe to be inaccurate within 60 days of issuance of TSA's letter. If a corrected record is not received by TSA within the specified amount of time, the agency may make a final determination to deny eligibility. Individuals who TSA determines are ineligible for the TSA PreCheck Application Program will undergo standard or other screening at airport security checkpoints.

In 2025, TSA established a partnership with U.S. Customs and Border Protection (CBP) to reduce the risk profile of passengers who are members of CBP's Global Entry (GE) Trusted Traveler Program, expedite GE enrollment processing for existing TSA PreCheck members, and enhance the customer experience. This initiative is only available to members of TSA PreCheck who opt-in to CBP's expedited vetting.

For purposes of the partnership with CBP, once the fingerprints associated with each TSA PreCheck applicant opting-in to GE have been thoroughly vetted through the FBI NGI database during TSA PreCheck Application Program enrollment, TSA will authorize DHS IDENT/HART to share specified biographic and biometric data issued to TSA PreCheck applicants during the enrollment process (fingerprints, the Fingerprint Identification Number, and the Encounter Identification Number), with CBP for reuse during the CBP GE vetting process.

Collection Revisions: Enhancing Customer Experience for Vetted Populations

TSA is revising the collection to include the MyTSA PreCheck Identity (ID), which facilitates delivery of TSA PreCheck benefits to recipients; the development of the Customer Service Portal to enhance customer experience and data management; and the revision of post enrollment surveys to reduce customer burden to better serve the needs of the public.

DHS Trusted Traveler populations are vetted, low-risk travelers who have voluntarily opted-in to receive

¹ Unless otherwise specified, or the purposes of this document, “biometrics” refers to fingerprints and/or facial imagery.

expedited screening after undergoing a background check or STA. The MyTSA PreCheck ID is a mobile ID that provides eligible DHS Trusted Traveler members with TSA PreCheck benefits, including a way to verify their identity at security checkpoints and receive expedited screening; the ability to opt-in to TSA PreCheck Touchless ID;⁶ and potential future benefits, such as the ability to use the MyTSA PreCheck ID as a visitor pass to allow access to the sterile area. To participate in MyTSA PreCheck ID, eligible DHS Trusted Travelers voluntarily submit certain biographic and biometric information to confirm their TSA PreCheck status, verify their identity and facilitate provisioning of the ID to their mobile device.

The TSA Customer Service Portal is a user-friendly, centralized platform for individuals in various TSA vetted population programs to securely view and manage their profile information from these programs, including TSA PreCheck. Members can view their current program status, upload updated documents, and receive status updates and correspondence from TSA. Active TSA program members must have a *login.gov* account (which requires an email and password) to access and use the Customer Service Portal. TSA PreCheck Application Program members using the Customer Service Portal can view their TSA PreCheck membership information to include the KTN, the specified enrollment provider, and the renewal date as well as opt-in or out of specific program incentives such as TSA PreCheck Touchless ID. The ability to view and manage membership information will greatly enhance the customer experience while providing TSA with up-to-date member data and streamlined processes to manage the data. In the future, other TSA PreCheck benefit holders, to include CBP's Global Entry, will have the ability to view their applicable TSA PreCheck information and opt-in or out of TSA PreCheck Touchless ID.

The TSA PreCheck Application Program enhances aviation security by permitting TSA to better focus its limited security resources on passengers who are unknown to TSA and whose

level of risk is undetermined, while also facilitating and improving the commercial aviation travel experience for the public. Travelers who choose not to enroll in this initiative are not subject to any limitations on their travel because of their choice; they will be processed through normal TSA screening before entering the sterile areas of airports. TSA also retains the authority to perform standard or other screening on a random basis on TSA PreCheck Application Program participants and any other travelers authorized to receive expedited physical screening.

TSA estimates that there will be an average of 8,384,125 respondents over a 3-year period, for a total of 25,152,376 respondents. This estimate of respondents is based on current and projected enrollments with TSA's PreCheck Application Program. TSA estimates that there will be an average annual hour burden of 4,684,077 hours over a 3-year projection, for a total of 14,052,232 hours. This burden includes the new enrollment process for the mobile MyTSA PreCheck ID. There is no burden associated with the TSA Customer Service Portal.

The applicant fee per respondent for those who apply for the TSA PreCheck Application Program directly with TSA will average \$80 for initial enrollments, \$70 for online renewals, and \$75 for in-person renewals, which covers TSA's program costs, TSA's enrollment vendor's costs, and the FBI fee for the criminal history records check.

Dated: January 13, 2026.

Christina A. Walsh,
*Paperwork Reduction Act Officer,
Information Technology, Transportation
Security Administration.*

[FR Doc. 2026-00724 Filed 1-14-26; 8:45 am]

BILLING CODE 9110-05-P

DEPARTMENT OF THE INTERIOR

National Park Service

**[N6866; NPS-WASO-NAGPRA-
NPS0041844; PPWOCRADNO-
PCU00RP14.R50000]**

Notice of Inventory Completion: Museum of the Cherokee People, Cherokee, NC

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Museum of the Cherokee People (MotCP) has completed an inventory of

human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after February 17, 2026.

ADDRESSES: Send written requests for repatriation of the human remains and associated funerary objects in this notice to Evan Mathis, Museum of the Cherokee People, P.O. Box 1599, 589 Tsali Blvd., Cherokee, NC 28719, email evan.mathis@motcp.org.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Museum of the Cherokee People, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human ancestral remains representing, at least, two individuals have been identified from a comingled collection representing 40HW15, the Holston site; 40GN6, the Ebenezer site; and 40MR21, the Harrison Branch site. The two lots of associated funerary objects (consisting of 30 objects) are present. The one lot of associated funerary objects (consisting of 27 objects) are present with one ancestor, and one lot of associated funerary objects (consisting of three objects) are present with the other ancestor. The Holston site is situated on the Holston River in Hawkins County, Tennessee. The Ebenezer site is situated near the Nolichucky River in Greene County, Tennessee. The Harrison Branch site is situated on Harrison Branch in Monroe County, Tennessee. After completing the consultation process with federally recognized Tribal Nations, this site is culturally affiliated with the Cherokee Nation, the Eastern Band of Cherokee Indians, and the United Keetoowah Band of Cherokee Indians. It is unknown when or by whom the individuals and their associated funerary objects were removed. It is also unknown when the individuals and their associated funerary objects were transferred to the Museum of the Cherokee People, where they have been housed since that time. To our knowledge, no hazardous substances

⁶ TSA is using facial identification to verify a passenger's identity at its security checkpoints using the CBP Traveler Verification Service, which creates a secure biometric template of a passenger's live facial image taken at the checkpoint and matches it against a gallery of templates of pre-staged photos that the passenger previously provided to the government (e.g., U.S. Passport or Visa). Participation is optional. Passengers who have consented to participate may choose to opt-out at any time and instead go through the standard identity verification process by a Transportation Security Officer.

were used to treat any of the human ancestral remains.

Human ancestral remains representing, at least, one individual has been identified from an unknown archaeological site, accessioned as 3737/72. The one lot of funerary objects was commingled with this individual, (including three bone awls). After completing the consultation process with federally recognized Tribal Nations, this site is culturally affiliated with the Cherokee Nation, the Eastern Band of Cherokee Indians, and the United Keetoowah Band of Cherokee Indians. It is unknown when or by whom the individuals were removed, but the accession number indicates they were likely transferred to the Museum of the Cherokee People prior to 1958, where they have been housed since that time. To our knowledge, no hazardous substances were used to treat any of the human ancestral remains.

Human ancestral remains representing, at least, one individual has been identified from an unknown archaeological site, accessioned as 2593/72. The one lot of funerary objects was commingled with this individual, (including one lot of bone awls). After completing the consultation process with federally recognized Tribal Nations, this site is culturally affiliated with the Cherokee Nation, the Eastern Band of Cherokee Indians, and the United Keetoowah Band of Cherokee Indians. It is unknown when or by whom the individuals were removed, but the accession number indicates they were likely transferred to the Museum of the Cherokee People prior to 1958, where they have been housed since that time. To our knowledge, no hazardous substances were used to treat any of the human ancestral remains.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains and associated funerary objects described in this notice.

Determinations

The Museum of the Cherokee People has determined that:

- The human remains described in this notice represent the physical remains of four individuals of Native American ancestry.
- The four lots of objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.

- There is a connection between the human remains and associated funerary objects described in this notice and the Cherokee Nation; Eastern Band of Cherokee Indians; and the United Keetoowah Band of Cherokee Indians of Oklahoma.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains and associated funerary objects described in this notice to a requestor may occur on or after February 17, 2026. If competing requests for repatriation are received, the Museum of the Cherokee People must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The Museum of the Cherokee People is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: January 9, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026-00674 Filed 1-14-26; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[N6854; NPS-WASO-NAGPRA-NPS0041832; PPWOCRADNO-PCU00RP14.R50000]

Notice of Inventory Completion: Mercyhurst University, Erie, PA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and

Repatriation Act (NAGPRA), Mercyhurst University has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after February 17, 2026.

ADDRESSES: Send written requests for repatriation of the human remains and associated funerary objects in this notice to Anne Marjenin, Mercyhurst University, 501 East 38th Street, Erie, PA 16546, email nagpra@mercyhurst.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of Mercyhurst University, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing, at least, three individuals have been identified. The one associated funerary object is a lot of unmodified faunal remains.

Archaeological excavations were conducted at the Blain Village Site located in Ross County, Ohio, by Dr. Olaf Prufer and Dr. Orrin Shane in 1966 and 1968, respectively. A mound, identified as Blain Mound, was excavated in 1966, and multiple individuals were removed from this location. On an unknown date, minimally three individuals were acquired by Mercyhurst College (presently Mercyhurst University). How Mercyhurst College acquired the individuals and associated funerary objects is unknown.

While there is no record regarding potentially hazardous substances having been used to treat the human remains, an unidentified adhesive is present. It is unknown when the adhesive was applied. The human remains may have been treated with an unidentified preservative coating, consolidant, or sealant. It is unknown when this unidentified substance may have been applied.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains and associated funerary objects described in this notice.

Determinations

Mercyhurst University has determined that:

- The human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- The one object described in this notice is reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a connection between the human remains and associated funerary objects described in this notice and the Absentee-Shawnee Tribe of Indians of Oklahoma; Eastern Shawnee Tribe of Oklahoma; Miami Tribe of Oklahoma; and the Shawnee Tribe.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains and associated funerary objects described in this notice to a requestor may occur on or after February 17, 2026. If competing requests for repatriation are received, Mercyhurst University must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. Mercyhurst University is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: January 9, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026–00662 Filed 1–14–26; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

**[N6858; NPS–WASO–NAGPRA–
NPS0041836; PPWOCRADNO–
PCU00RP14.R50000]**

Notice of Inventory Completion: Museum of the Cherokee People, Cherokee, NC

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Museum of the Cherokee People (MotCP) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains in this notice may occur on or after February 17, 2026.

ADDRESSES: Send written requests for repatriation of the human remains in this notice to Evan Mathis, Museum of the Cherokee People, P.O. Box 1599, 589 Tsali Blvd., Cherokee, NC 28719, email evan.mathis@motcp.org.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Museum of the Cherokee People, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human ancestral remains representing, at least, two individuals have been identified from 9CB1, the Stallings Island Site. No associated funerary objects are present. 9CB1 is located on the Savannah River near Augusta, Columbia County, GA. After completing the consultation process with federally recognized Tribal Nations, this site is culturally affiliated with the Miccosukee Tribe of Indians of Florida, the Muscogee (Creek) Nation, the Poarch Band of Creek Indians, and

the Seminole Tribe of Florida. It is unknown when or by whom the two individuals were removed, but they were transferred to the Augusta Richmond County Museum (ARCM) sometime prior to 1981. Richard Wescott, the Executive Director of the ARCM, transferred the individuals to MotCP in 1992, where they have been housed since. To our knowledge, no hazardous substances were used to treat any of the human ancestral remains.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains described in this notice.

Determinations

The Museum of the Cherokee People has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- There is a connection between the human remains described in this notice and the Miccosukee Tribe of Indians; Poarch Band of Creek Indians; Seminole Tribe of Florida; and The Muscogee (Creek) Nation.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under

ADDRESSES. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains described in this notice to a requestor may occur on or after February 17, 2026. If competing requests for repatriation are received, the Museum of the Cherokee People must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The Museum of the Cherokee People is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: January 9, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026–00666 Filed 1–14–26; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[N6856; NPS–WASO–NAGPRA–NPS0041834; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: Tennessee Department of Environment and Conservation, Division of Archaeology, Nashville, TN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Tennessee Department of Environment and Conservation, Division of Archaeology (TDEC–DOA) intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after February 17, 2026.

ADDRESSES: Send additional, written requests for repatriation of the cultural items in this notice to Phillip R. Hodge, Tennessee Department of Environment and Conservation, Division of Archaeology (TDEC–DOA), 1216 Foster Avenue, Cole Building #3, Nashville, TN 37243, email Phil.Hodge@tn.gov.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the TDEC–DOA, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of one lot of cultural items from Arkansas have been requested for repatriation.

Unknown Site, Arkansas

A total of one lot of cultural items consisting of Mississippian period ceramic vessels, includes jars, bowls, and plates. These artifacts were donated to the Division of Archaeology in 1979. No information is available regarding the circumstances surrounding their original collection. There is no known exposure to hazardous substances or treatments.

Determinations

The TDEC–DOA has determined that:

- The one lot of cultural items described in this notice are reasonably believed to have been placed intentionally with or near human remains, and are connected, either at the time of death or later as part of the death rite or ceremony of a Native American culture according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization. The unassociated funerary objects have been identified by a preponderance of the evidence as related to human remains, specific individuals, or families, or removed from a specific burial site or burial area of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization.

- There is a reasonable connection between the cultural items described in this notice and the Quapaw Nation.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after February 17, 2026. If competing requests for repatriation are received, the TDEC–DOA must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The TDEC–DOA is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25

U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: January 9, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026–00664 Filed 1–14–26; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[N6850; NPS–WASO–NAGPRA–NPS0041828; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: Brooklyn Museum, Brooklyn, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Brooklyn Museum intends to repatriate certain cultural items that meet the definition of unassociated funerary objects, sacred objects, and/or objects of cultural patrimony and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after February 17, 2026.

ADDRESSES: Send additional, written requests for repatriation of the cultural items in this notice to Dare Turner, Brooklyn Museum, 200 Eastern Parkway, Brooklyn, NY 11238–6052, email dare.turner@brooklynmuseum.org.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Brooklyn Museum and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of two cultural items have been requested for repatriation. The two sacred objects/objects of cultural patrimony are masks.

In 1946, the Brooklyn Museum purchased one mask from the New York-based Plume Trading and Sales Company. In Museum records, the mask is documented as Seneca.

In 1972, the Brooklyn Museum purchased one mask from the Heye Foundation. The mask was acquired on the Cattaraugus Reservation, New York, by Alanson Skinner for the Heye Foundation.

There is no specific record of hazardous substances used in the treatment of either cultural item. However, the Brooklyn Museum has historically used pesticides containing arsenic and heavy metals on other collections and in collection spaces.

Determinations

The Brooklyn Museum has determined that:

- The two sacred objects/objects of cultural patrimony described in this notice are, according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization, specific ceremonial objects needed by a traditional Native American religious leader for present-day adherents to practice traditional Native American religion, and have ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision).
- There is a connection between the cultural items described in this notice and the Seneca Nation of Indians.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after February 17, 2026. If competing requests for repatriation are received, the Brooklyn Museum must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The Brooklyn Museum is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

(Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C.

3004 and the implementing regulations, 43 CFR 10.9.)

Dated: January 9, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026-00658 Filed 1-14-26; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[N6864; NPS-WASO-NAGPRA-NPS0041842; PPWOCRADNO-PCU00RP14.R50000]

Notice of Inventory Completion: Museum of the Cherokee People, Cherokee, NC

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Museum of the Cherokee People (MotCP) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after February 17, 2026.

ADDRESSES: Send written requests for repatriation of the human remains and associated funerary objects in this notice to Evan Mathis, Museum of the Cherokee People, P.O. Box 1599, 589 Tsali Blvd., Cherokee, NC 28719, email evan.mathis@motcp.org.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Museum of the Cherokee People, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human ancestral remains representing, at least, one individual has been identified from an unknown archaeological site referred to as "Cherokee Lake." A total of 115 associated funerary objects are present with this individual, including 83 pot sherds, two rocks, six lithic flakes, six

charcoal flakes, five pieces of shatter material, a complete calcaneus, a partial metapodial, six pieces of burned animal bone, and five pieces of burned turtle shell. The unknown archaeological site is situated in an undisclosed "Cherokee Lake." The undisclosed "Cherokee Lake" is most likely one of two locations. One "Cherokee Lake" is an artificial lake near Murphy, Cherokee County, North Carolina (an artificially dammed tributary of the Hiwassee River). The other "Cherokee Lake," also referred to as "Cherokee Reservoir," is an artificial lake in Jefferson County, Grainger County, Hamblen County, and Hawkins County in Tennessee (artificially dammed Holston River and its tributaries). After completing the consultation process with federally recognized Tribal Nations, this unknown site is culturally affiliated with the Cherokee Nation, the Eastern Band of Cherokee Indians, the Muscogee (Creek) Nation, and the United Keetoowah Band of Cherokee Indians. This individual was removed from the unknown "Cherokee Lake" site in the mid-1960s by the unnamed father of Charles H. Powell of Bristol, Tennessee. Charles H. Powell transferred this individual to the Museum of the Cherokee People on January 4th, 1997, where they have been housed since. To our knowledge, no hazardous substances were used to treat any of the human ancestral remains.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains and associated funerary objects described in this notice.

Determinations

The Museum of the Cherokee People has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- The 115 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a connection between the human remains and associated funerary objects described in this notice and the Cherokee Nation; Eastern Band of Cherokee Indians; The Muscogee (Creek) Nation; and the United Keetoowah Band of Cherokee Indians of Oklahoma.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains and associated funerary objects described in this notice to a requestor may occur on or after February 17, 2026. If competing requests for repatriation are received, the Museum of the Cherokee People must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The Museum of the Cherokee People is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: January 9, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026–00672 Filed 1–14–26; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[N6857; NPS–WASO–NAGPRA–NPS0041835; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Tennessee Department of Environment and Conservation, Division of Archaeology, Nashville, TN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Tennessee Department of Environment and Conservation, Division of Archaeology (TDEC–DOA) has completed an inventory of human

remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains in this notice may occur on or after February 17, 2026.

ADDRESSES: Send written requests for repatriation of the human remains in this notice to Phillip R. Hodge, Tennessee Department of Environment and Conservation, Division of Archaeology (TDEC–DOA), 1216 Foster Avenue, Cole Building #3, Nashville, TN 37243, email *Phil.Hodge@tn.gov*.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the TDEC–DOA, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing, at least, one individual has been identified.

Unknown Site, Arkansas

Human remains representing, at least, one individual. These remains were donated to TDEC–DOA by a private citizen in 1981. No information is available regarding the circumstances surrounding their original collection. There is no known exposure to hazardous substances or treatments.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains described in this notice.

Determinations

The TDEC–DOA has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a connection between the human remains described in this notice and the Quapaw Nation.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains described in this notice to a requestor may occur on or after February 17, 2026. If competing requests for repatriation are received, the TDEC–DOA must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The TDEC–DOA is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: January 9, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026–00665 Filed 1–14–26; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[N6852; NPS–WASO–NAGPRA–NPS0041830; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: University of Denver Museum of Anthropology, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Denver Museum of Anthropology intends to repatriate certain cultural items that meet the definition of sacred objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after February 17, 2026.

ADDRESSES: Send additional, written requests for repatriation of the cultural items in this notice to Dena Sedar, University of Denver Museum of Anthropology (DUMA), 2000 E. Asbury Street, Denver, CO 80210, email *dena.sedar@du.edu*.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the DUMA, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of five cultural items have been requested for repatriation. The five sacred objects are one adze, one wall fragment, one stone pestle, one sling stone, and one poi pounder. These cultural items were collected by Fallis F. Rees during a trip to the Hawaiian Islands in the early 1960s. The exact collection locations are unknown, but Rees visited both Hawai'i Island and O'ahu during his trip. Rees donated the five sacred objects to the DUMA in 1967. There is no record at DUMA that the items were treated with any potentially hazardous substance.

Determinations

The DUMA has determined that:

- The five sacred objects described in this notice are specific ceremonial objects needed by a traditional Native American religious leader for present-day adherents to practice traditional Native American religion, according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization.
- There is a reasonable connection between the cultural items described in this notice and Hui Iwi Kuamo'o.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after February 17, 2026. If competing requests for repatriation are received, the DUMA must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not

competing requests. The DUMA is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: January 9, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026-00660 Filed 1-14-26; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[N6853; NPS-WASO-NAGPRA-NPS0041831; PPWOCRADNO-PCU00RP14.R50000]

Notice of Inventory Completion: Field Museum, Chicago, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Field Museum has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains in this notice may occur on or after February 17, 2026.

ADDRESSES: Send written requests for repatriation of the human remains in this notice to June Carpenter, Field Museum, 1400 S Lake Shore Drive, Chicago, IL 60605, email jcarpenter@fieldmuseum.org.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Field Museum, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing, at least, eight individuals have been identified. No associated funerary objects are present. The human remains are hair clippings belonging to eight individuals, identified with the tribal designation

"Piegan" or "Blood, Piegan." Field Museum staff believe they were collected under the direction of Franz Boas and Frederick Ward Putnam for the 1893 World's Columbian Exposition in Chicago. The hair clippings were accessioned into the Field Museum's collection in 1939. No information regarding the individual's name, sex, age, or geographic location has been found. There is no known presence of any potentially hazardous substances.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains described in this notice.

Determinations

The Field Museum has determined that:

- The human remains described in this notice represent the physical remains of eight individuals of Native American ancestry.
- There is a connection between the human remains described in this notice and the Blackfeet Tribe of the Blackfeet Indian Reservation of Montana.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under

ADDRESSES. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains described in this notice to a requestor may occur on or after February 17, 2026. If competing requests for repatriation are received, the Field Museum must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The Field Museum is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: January 9, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026–00661 Filed 1–14–26; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

**[N6861; NPS–WASO–NAGPRA–
NPS0041839; PPWOCRADN0–
PCU00RP14.R50000]**

Notice of Inventory Completion: Museum of the Cherokee People, Cherokee, NC

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Museum of the Cherokee People (MotCP) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains in this notice may occur on or after February 17, 2026.

ADDRESSES: Send written requests for repatriation of the human remains in this notice to Evan Mathis, Museum of the Cherokee People, P.O. Box 1599, 589 Tsali Blvd., Cherokee, NC 28719, email evan.mathis@motcp.org.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Museum of the Cherokee People, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human ancestral remains representing, at least, one individual has been identified from an unknown archaeological site in Northern Georgia. No associated funerary objects are present. After completing the consultation process with federally recognized Tribal Nations, this site is culturally affiliated with the Cherokee Nation, the Eastern Band of the Cherokee Indians, the Muscogee (Creek) Nation, the Poarch Band of Creek Indians, the Seminole Nation, the

Seminole Tribe of Florida, and the United Keetoowah Band of Cherokee Indians. It is unknown when or by whom the individuals were removed, but they were transferred to the Augusta Richmond County Museum (ARCM) sometime prior to 1981. Richard Wescott, the Executive Director of the ARCM, transferred the individuals to the Museum of the Cherokee People in 1992, where they have been housed since that time. To our knowledge, no hazardous substances were used to treat any of the human ancestral remains.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains described in this notice.

Determinations

The Museum of the Cherokee People has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a connection between the human remains described in this notice and the Cherokee Nation; Eastern Band of Cherokee Indians; Poarch Band of Creek Indians; Seminole Tribe of Florida; The Muscogee (Creek) Nation; The Seminole Nation of Oklahoma; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains described in this notice to a requestor may occur on or after February 17, 2026. If competing requests for repatriation are received, the Museum of the Cherokee People must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The Museum of the Cherokee People is responsible for

sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: January 9, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026–00669 Filed 1–14–26; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

**[N6863; NPS–WASO–NAGPRA–
NPS0041841; PPWOCRADN0–
PCU00RP14.R50000]**

Notice of Inventory Completion: Museum of the Cherokee People, Cherokee, NC

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Museum of the Cherokee People (MotCP) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains in this notice may occur on or after February 17, 2026.

ADDRESSES: Send written requests for repatriation of the human remains in this notice to Evan Mathis, Museum of the Cherokee People, P.O. Box 1599, 589 Tsali Blvd., Cherokee, NC 28719, email evan.mathis@motcp.org.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Museum of the Cherokee People, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human ancestral remains representing, at least, one individual has been identified from an unknown site, potentially in Aiken County, South Carolina. No associated funerary objects

are present. After completing the consultation process with federally recognized Tribal Nations, this site is culturally affiliated with the Catawba Indian Nation, the Cherokee Nation, the Eastern Band of the Cherokee Indians, the Muscogee (Creek) Nation, and the United Keetoowah Band of Cherokee Indians. It is unknown when or by whom the individuals were removed, but they were transferred to the Augusta Richmond County Museum (ARCM) sometime prior to 1981. Richard Wescott, the Executive Director of the ARCM, transferred the individuals to the Museum of the Cherokee People in 1992, where they have been housed since that time. To our knowledge, no hazardous substances were used to treat any of the human ancestral remains.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains described in this notice.

Determinations

The Museum of the Cherokee People has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a connection between the human remains described in this notice and the Catawba Indian Nation; Cherokee Nation; Eastern Band of Cherokee Indians; The Muscogee (Creek) Nation; and the United Keetoowah Band of Cherokee Indians of Oklahoma.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under

ADDRESSES. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains described in this notice to a requestor may occur on or after February 17, 2026. If competing requests for repatriation are received, the Museum of the Cherokee People must determine the most appropriate requestor prior to

repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The Museum of the Cherokee People is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: January 9, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026–00671 Filed 1–14–26; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[N6859; NPS–WASO–NAGPRA–NPS0041837; PPWOCRADNO–PCU00RP14.R50000]

Notice of Inventory Completion: Museum of the Cherokee People, Cherokee, NC

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Museum of the Cherokee People (MotCP) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after February 17, 2026.

ADDRESSES: Send written requests for repatriation of the human remains and associated funerary objects in this notice to Evan Mathis, Museum of the Cherokee People, P.O. Box 1599, 589 Tsali Blvd., Cherokee, NC 28719, email evan.mathis@motcp.org.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Museum of the Cherokee People, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The

National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human ancestral remains representing, at least, three individuals have been identified from 9R14, the White's Mound Site. No associated funerary objects are present. The White's Mound site is situated on the Savannah River in Richmond County, Georgia. After completing the consultation process with federally recognized Tribal Nations, this site is culturally affiliated with the Miccosukee Tribe of Indians of Florida, the Muscogee (Creek) Nation, the Poarch Band of Creek Indians, the Seminole Nation, and the Seminole Tribe of Florida. It is unknown when or by whom the individuals were removed, but they were transferred to the Augusta Richmond County Museum (ARCM) sometime prior to 1981. Richard Wescott, the Executive Director of the ARCM, transferred the individuals to the Museum of the Cherokee People in 1992, where they have been housed since that time. To our knowledge, no hazardous substances were used to treat any of the human ancestral remains.

Human ancestral remains representing, at least, one individual has been identified from 9SN20, the Ebenezer Archaeological Site. The one associated funerary object is a canine of an unidentified animal that was stored with the individual. The Ebenezer Archaeological Site is situated in the Ebenezer Creek Watershed, located in Screven County, Georgia, near the Savannah River. After completing the consultation process with federally recognized Tribal Nations, this site is culturally affiliated with the Miccosukee Tribe of Indians of Florida, the Muscogee (Creek) Nation, the Poarch Band of Creek Indians, the Seminole Nation, and the Seminole Tribe of Florida. It is unknown when or by whom the individuals were removed, but they were transferred to the Augusta Richmond County Museum (ARCM) sometime prior to 1981. Richard Wescott, the Executive Director of the ARCM, transferred the individuals to the Museum of the Cherokee People in 1992, where they have been housed since that time. To our knowledge, no hazardous substances were used to treat any of the human ancestral remains or the associated funerary object.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains and

associated funerary objects described in this notice.

Determinations

The Museum of the Cherokee People has determined that:

- The human remains described in this notice represent the physical remains of four individuals of Native American ancestry.
- The one object described in this notice is reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a connection between the human remains and associated funerary objects described in this notice and the Miccosukee Tribe of Indians; Poarch Band of Creek Indians; Seminole Tribe of Florida; The Muscogee (Creek) Nation; and The Seminole Nation of Oklahoma.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains and associated funerary objects described in this notice to a requestor may occur on or after February 17, 2026. If competing requests for repatriation are received, the Museum of the Cherokee People must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The Museum of the Cherokee People is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: January 9, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026-00667 Filed 1-14-26; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[N6862; NPS-WASO-NAGPRA-NPS0041840; PPWOCRADNO-PCU00RP14.R50000]

Notice of Inventory Completion: Museum of the Cherokee People, Cherokee, NC

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Museum of the Cherokee People (MotCP) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains in this notice may occur on or after February 17, 2026.

ADDRESSES: Send written requests for repatriation of the human remains in this notice to Evan Mathis, Museum of the Cherokee People, P.O. Box 1599, 589 Tsalali Blvd., Cherokee, NC 28719, email evan.mathis@motcp.org.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Museum of the Cherokee People, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human ancestral remains representing, at least, one individual has been identified from an unknown archaeological site near Mule Key Beach in Monroe County, Florida, accessioned as 5506/82. No associated funerary objects are present. After completing the consultation process with federally recognized Tribal Nations, this site is culturally affiliated with the Miccosukee Tribe of Indians of Florida, the Seminole Nation, and the Seminole Tribe of Florida. It is unknown when or by whom the individuals were removed. It is unknown when or by whom the individuals were removed, but they were obtained by a private collector named Colonel Minthorne Reed. Jimmy Reed of Waynesville, North Carolina, the son and heir of Colonel Minthorne

Reed, transferred the human ancestral remains to the Museum of the Cherokee People on December 14, 1981, where they have been housed since that time. To our knowledge, no hazardous substances were used to treat any of the human ancestral remains.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains described in this notice.

Determinations

The Museum of the Cherokee People has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a connection between the human remains described in this notice and the Miccosukee Tribe of Indians; Seminole Tribe of Florida; and The Seminole Nation of Oklahoma.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under

ADDRESSES. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains described in this notice to a requestor may occur on or after February 17, 2026. If competing requests for repatriation are received, the Museum of the Cherokee People must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The Museum of the Cherokee People is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: January 9, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026-00670 Filed 1-14-26; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[N6855; NPS-WASO-NAGPRA-
NPS0041833; PPWOCRADNO-
PCU00RP14.R50000]

Notice of Inventory Completion: Mercyhurst University, Erie, PA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Mercyhurst University has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after February 17, 2026.

ADDRESSES: Send written requests for repatriation of the human remains and associated funerary objects in this notice to Anne Marjenin, Mercyhurst University, 501 East 38th Street, Erie, PA 16546, email nagpra@mercyhurst.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of Mercyhurst University, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing, at least, one individual have been identified. No associated funerary objects are present. The individual (VM-033) was removed from the Baker Site in Sandusky County, Ohio, likely in 1955. On an unknown date, the individual was obtained by Raymond C. Vietzen (1907–1995). While there is no record regarding potentially hazardous substances having been used to treat the

human remains, an unidentified adhesive is present. It is unknown when the adhesive was applied.

Human remains representing, at least, two individuals have been identified. No associated funerary objects are present. The individuals may have been removed from the Baker I Site in Sandusky County, Ohio, likely in 1985 or 1988. On an unknown date, the individuals were obtained by Raymond C. Vietzen (1907–1995). While there is no record regarding potentially hazardous substances having been used to treat the human remains, an unidentified adhesive is present. It is unknown when the adhesive was applied.

Human remains representing, at least, one individual have been identified. The three associated funerary objects are one lot geological material, one lot lithics, and one lot unmodified faunal remains. The individual and associated funerary objects may have been removed from the Baker II or Greek Creek Site in Sandusky County, Ohio, possibly in the mid to late 1980s or early 1990s. On an unknown date, the individual was obtained by Raymond C. Vietzen (1907–1995). While there is no record regarding potentially hazardous substances having been used to treat the human remains, an unidentified adhesive is present. It is unknown when the adhesive was applied.

Vietzen, an avocational archaeologist, collector, and author, established the Indian Ridge Museum in Elyria, Ohio, and the Archaeological Society of Ohio (formerly the Ohio Indian Relic Collectors Society). The Indian Ridge Museum, founded in the 1930s, served as Vietzen's laboratory and repository, and it remained in operation until the mid-1990s. After Vietzen's death, the facility fell into disrepair, and most of the items he had acquired and housed at the museum were sold. In 1998, the Ohio Historical Society (presently the Ohio History Connection) removed ancestral human remains and some of the remaining items from the facility and temporarily housed them at the Ohio Historical Society. In October of 2003, these remains were transferred from the Ohio Historical Society to Mercyhurst College (presently Mercyhurst University).

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains and associated funerary objects described in this notice.

Determinations

Mercyhurst University has determined that:

- The human remains described in this notice represent the physical remains of four individuals of Native American ancestry.
- The three objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a connection between the human remains and associated funerary objects described in this notice and the Absentee-Shawnee Tribe of Indians of Oklahoma; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Cayuga Nation; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana; Citizen Potawatomi Nation, Oklahoma; Delaware Nation, Oklahoma; Delaware Tribe of Indians; Eastern Shawnee Tribe of Oklahoma; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Kaw Nation, Oklahoma; Keweenaw Bay Indian Community, Michigan; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan; Omaha Tribe of Nebraska; Oneida Indian Nation; Oneida Nation; Onondaga Nation; Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Prairie Band Potawatomi Nation; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of

Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Saint Regis Mohawk Tribe; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Seneca Nation of Indians; Seneca-Cayuga Nation; Shawnee Tribe; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Tonawanda Band of Seneca; Turtle Mountain Band of Chippewa Indians of North Dakota; Tuscarora Nation; and the Wyandotte Nation.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains and associated funerary objects described in this notice to a requestor may occur on or after February 17, 2026. If competing requests for repatriation are received, Mercyhurst University must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. Mercyhurst University is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: January 9, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026-00663 Filed 1-14-26; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[N6860; NPS-WASO-NAGPRA-NPS0041838; PPWOCRADNO-PCU00RP14.R50000]

Notice of Inventory Completion: Museum of the Cherokee People, Cherokee, NC

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Museum of the Cherokee People (MotCP) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains in this notice may occur on or after February 17, 2026.

ADDRESSES: Send written requests for repatriation of the human remains in this notice to Evan Mathis, Museum of the Cherokee People, P.O. Box 1599, 589 Tsalali Blvd., Cherokee, NC 28719, email evan.mathis@motcp.org.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Museum of the Cherokee People, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human ancestral remains representing, at least, one individual has been identified from an unknown archaeological site in Florida. No associated funerary objects are present. After completing the consultation process with federally recognized Tribal Nations, this site is culturally affiliated with the Miccosukee Tribe of Indians of Florida, the Mississippi Band of Choctaw Indians, the Muscogee (Creek) Nation, the Poarch Band of Creek Indians, the Seminole Nation, and the Seminole Tribe of Florida. It is unknown when or by whom the individuals were removed, but they were transferred to the Augusta Richmond County Museum (ARCM) sometime prior to 1981. Richard Wescott, the Executive Director of the

ARCM, transferred the individuals to the Museum of the Cherokee People in 1992, where they have been housed since that time. To our knowledge, no hazardous substances were used to treat any of the human ancestral remains.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains described in this notice.

Determinations

The Museum of the Cherokee People has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a connection between the human remains described in this notice and the Miccosukee Tribe of Indians; Mississippi Band of Choctaw Indians; Poarch Band of Creek Indians; Seminole Tribe of Florida; The Muscogee (Creek) Nation; and The Seminole Nation of Oklahoma.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains described in this notice to a requestor may occur on or after February 17, 2026. If competing requests for repatriation are received, the Museum of the Cherokee People must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The Museum of the Cherokee People is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: January 9, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026–00668 Filed 1–14–26; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[N6865; NPS–WASO–NAGPRA–
NPS0041843; PPWOCRADNO–
PCU00RP14.R50000]

Notice of Inventory Completion: Museum of the Cherokee People, Cherokee, NC

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Museum of the Cherokee People (MotCP) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains in this notice may occur on or after February 17, 2026.

ADDRESSES: Send written requests for repatriation of the human remains in this notice to Evan Mathis, Museum of the Cherokee People, P.O. Box 1599, 589 Tsali Blvd., Cherokee, NC 28719, email evan.mathis@motcp.org.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Museum of the Cherokee People, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human ancestral remains representing, at least, two individuals have been identified from an unknown archaeological site near Claytor Lake in Pulaski County, Virginia. No associated funerary objects are present. After completing the consultation process with federally recognized Tribal Nations, this site is culturally affiliated with the Cherokee Nation, the Eastern Band of the Cherokee Indians, the Monacan Indian Nation, and the United Keetoowah Band of the Cherokee

Indians. These individuals were removed by an unnamed family friend of a Gary E. Mallory of Radford, Virginia. Gary E. Mallory transferred these human ancestral remains to the Eastern Band of Cherokee Indians on December 24th, 1998. They were then transferred to the Museum of the Cherokee People where they have been housed since. To our knowledge, no hazardous substances were used to treat any of the human ancestral remains.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains described in this notice.

Determinations

The Museum of the Cherokee People has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- There is a connection between the human remains described in this notice and the Cherokee Nation; Eastern Band of Cherokee Indians; Monacan Indian Nation; and the United Keetoowah Band of the Cherokee Indians of Oklahoma.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under

ADDRESSES. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains described in this notice to a requestor may occur on or after February 17, 2026. If competing requests for repatriation are received, the Museum of the Cherokee People must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The Museum of the Cherokee People is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: January 9, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026–00673 Filed 1–14–26; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[N6851; NPS–WASO–NAGPRA–
NPS0041829; PPWOCRADNO–
PCU00RP14.R50000]

Notice of Intended Repatriation: Kansas State Historical Society, Topeka, KS

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Kansas State Historical Society (KSHS) intends to repatriate certain cultural items that meet the definition of sacred objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after February 17, 2026.

ADDRESSES: Send additional, written requests for repatriation of the cultural items in this notice to Dr. Nicole Klarmann, Kansas State Historical Society, 6425 SW 6th Avenue, Topeka, KS 66615–1099, email kshs.nagpra@ks.gov.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the KSHS and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of three cultural items have been requested for repatriation. The three sacred objects are two bows and one arrow. Items 1898.6.86 (bow and arrow) were donated to KSHS in 1898 and were given to the donor's relative by a Modoc person during an encounter in southern Kansas prior to the Modoc people relocating to Indian Territory. Item 1980.229.85 (bow) was transferred

from the Pony Express Station State Historic Site in 1980 to KSHS and was originally donated by a resident of Hanover, KS. No known hazardous substances were used to treat any of the cultural items.

Determinations

The KSHS has determined that:

- The three sacred objects described in this notice are specific ceremonial objects needed by a traditional Native American religious leader for present-day adherents to practice traditional Native American religion, according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization.

- There is a connection between the cultural items described in this notice and the Modoc Nation.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after February 17, 2026. If competing requests for repatriation are received, the KSHS must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The KSHS is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: January 9, 2026.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2026-00659 Filed 1-14-26; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000
256S180110; S2D2S SS08011000
SX064A000 25XS01520]

Notice of Intent To Prepare an Environmental Impact Statement for Navajo Transitional Energy Company's No Name Permit Surface Mining Control & Reclamation Act Permit Application

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) is publishing this notice to announce that it will prepare an environmental impact statement (EIS) for Navajo Transitional Energy Company's (NTEC) proposed Surface Mining Control and Reclamation Act of 1977 (SMCRA) permit for the No Name Permit area within NTEC's existing Navajo Mine Lease 14-20-603-2505. With this notice, OSMRE is also providing notification to the public that it will hold a public scoping meeting and provide for a public scoping period to receive comments on the environmental issues that OSMRE should analyze in this EIS. If approved, the permit boundary would encompass 11,526 acres and authorize surface mining and reclamation operations on 9,042 acres and the recovery of 502 million tons of Navajo Nation coal.

DATES: OSMRE requests comments concerning the scope of the analysis in the EIS, as well as reasonable alternatives to be considered, and identification of relevant information, studies, and analyses that may be useful in evaluating potential impacts of the proposed action and alternatives. All comments must be received by February 4, 2026. The public scoping meeting will be held at the Burnham Chapter House on the Navajo Nation on Thursday, January 29, 2026, from 3:00 p.m. to 7:00 p.m.

ADDRESSES: You may submit comments related to the Project by either of the following methods:

- **Email:** NoNameNEPAComments@ce.solutions. Be sure to send emails with the subject line: ATTN: No Name SMCRA Permit EIS.

- **Mail:** ATTN No Name SMCRA Permit EIS, C/O Roberta Martínez Hernández, OSMRE Western Regions 5, 7-11, P.O. Box 25065, Lakewood, CO 80225-0065.

FOR FURTHER INFORMATION CONTACT:

Roberta Martínez Hernández, NEPA Project Manager, email: rmartinezhernandez@osmre.gov or at the address provided in the **ADDRESSES** section. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: OSMRE Regions 5, 7-11 will prepare an EIS for the No Name SMCRA Permit application (Project). In accordance with SMCRA, OSMRE must approve, disapprove, or approve the Project with conditions because the Project is on Indian lands, as that term is defined under SMCRA, including tribal lands with leased tribal coal (BIA Mine Lease 14-20-603-2505). The lease agreement grants NTEC the right to mine within the lease area; however, mining cannot occur until a SMCRA permit is obtained. The Navajo Nation owns the surface and mineral rights of the entire lease area and the permit areas located within it.

OSMRE will prepare an EIS to analyze the potential environmental effects of the Project. The EIS will analyze the potential environmental effects of mining, including the realignment of Burnham Road and the Pinabete Arroyo. The only current customer of the Navajo Mine Complex is the Four Corners Power Plant, which has an approved lease through 2041; therefore, it is reasonably foreseeable that all coal mined at the Project will be used at the plant until 2041. Beyond 2041, the ultimate destination for the coal from the Project is unknown.

The No Name Permit area is located on the Navajo Nation approximately 22 miles from Farmington, New Mexico. The proposed surface coal mine is within NTEC's existing Navajo Mine Lease 14-20-603-2505, located adjacent to the southern boundary of the current Navajo Mine (OSMRE Permit No. NM-0042B) and adjacent to NTEC's Pinabete permit southern boundary. The No Name boundary permit area covers 11,526 acres, completely within tribal lands, and the current surface land use is grazing. The Project would allow for 9,042 acres of additional surface disturbance and production of 502,984,700 tons of recoverable coal, extending the life of the mine to 2136. The initial permit will be for five years with a right of renewal for the life of the mine, as long as all legal requirements are met. The annual production rate for the Project is anticipated to be approximately 5 million tons per year,

starting in 2031, which is the rate OSMRE intends to use to consider potential environmental impacts resulting from the Project.

Purpose and Need for the Proposed Action

The purpose and need for this EIS is for OSMRE to fulfill its obligation to ensure compliance with the requirements of NEPA with respect to permitting actions for surface coal mining and reclamation operations on Indian lands under 30 CFR 750.6(a)(7). 516 DM 1, Sec. 2.2.

Under the Department's Handbook of National Environmental Policy Act Implementing Procedures, 516 DM 1, "when the proposed action concerns a bureau's duty to act on an application for authorization, the purpose and need for the proposed action will also be informed by the goals of the applicant." 516 DM 1, Sec. 2.2. Here, NTEC informed OSMRE that the Project is needed to allow NTEC to mine coal within its leased areas, to continue to provide coal to the Four Corners Power Plant for the duration of the Plant's continued operations, and to provide coal to future customers if the Four Corners Power Plant shuts down. NTEC was established by the Navajo Nation to exercise sovereignty over its natural resources. NTEC informed OSMRE that its purpose, including for the No Name Project, is to promote the development of the Navajo Nation's resources and new sources of energy, power, and transmission.

Preliminary Proposed Project and Alternatives

The Project proposes a new SMCR permit area within Area 4 South and Area 5 of NTEC's existing Navajo Mine Lease 14–20–603–2505, located on the western flank of the San Juan Structural Basin south of the Navajo Mine (the No Name SMCR Permit). The life of the mine would depend on the rate of production. The Project would require diversion of the Pinabete Arroyo into No Name Arroyo to mine in Area 4 South, as well as realignment of 7 miles of Burnham Road.

The EIS will evaluate the Proposed Action Alternative, a High Demand Alternative, and a No Action Alternative, and may evaluate additional action alternatives if other reasonable alternatives are identified that are technically and economically feasible, meet the purpose and need for the proposed action, are within the jurisdiction of OSMRE, and meet the goals of NTEC. Under the Proposed Action Alternative, mining would occur at a rate of 5 million tons per year, and

the mine would operate through 2136. Under a High Demand Alternative, mining would occur at a rate of 15 million tons per year starting in 2036, and the mine would operate through 2076. Under both the Proposed Action Alternative and the High Demand Alternative, the permit boundary would encompass 11,526 acres and authorize surface mining and reclamation operations on 9,042 acres and the recovery of 502 million tons of Navajo Nation coal. Under the No Action Alternative, OSMRE would not approve the Project and no mining disturbance would occur.

Summary of Expected Impacts

OSMRE has completed internal scoping and identified preliminary analysis issues that will be evaluated in the EIS. The following reasonably foreseeable effects of mining coal within the No Name permit area will be evaluated for the following resources:

- Impacts to surface water resources quality and quantity as a result of diverting the Pinabete Arroyo; potential wastewater discharges to the No Name and Pinabete Arroyos; and water use during mining and reclamation;
- Impacts to groundwater quality and quantity as a result of surface mining and reclamation activities that may require dewatering;
- Impacts to air resources as a result of the Project;
- Disturbances to potential archaeological and tribal cultural resources as a result of ground-disturbance from surface mining activities;
- Impacts to topography and physiography from surface mining and reclamation activities;
- Impacts to wildlife, vegetation, and federally listed and proposed threatened/endangered species from the Project (e.g., increased noise, ground disturbance, vegetation removal); and
- Potential increases in ambient noise and vibration at sensitive receptor locations as a result of mining and reclamation activities.

Anticipated Permits and Authorizations

OSMRE action on the federal SMCR permit.

Schedule for the Decision-Making Process

The Department plans to issue the Record of Decision in 2026.

Public Scoping Process

All public scoping comments must be submitted by email or by hard copy mail to the addresses listed under **ADDRESSES**. Before including your

address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made public at any time. While you may request in your comment to withhold your personal identifying information from public review, OSMRE cannot guarantee that this will occur.

The project web page located at (<https://www.osmre.gov/laws-and-regulations/nepa/projects>) includes the description of the Project, a map of the proposed mining area, and information about how to submit public comment on issues or concerns related to the Project. In addition to comments concerning the scope of the EIS analysis, commenters are encouraged to identify relevant information, studies, and analyses that would assist OSMRE in making its decision and in identifying potential alternatives to the Project.

OSMRE will review and consider all public scoping comments received and prepare a Scoping Summary Report. The Scoping Summary Report will be used by OSMRE to identify issues to be included in the EIS analysis, resources and issues that can be dismissed from detailed analysis because they are not present or not affected by the Project, and potential alternatives to be analyzed.

Lead and Cooperating Agencies

OSMRE is the lead agency for this EIS. The U.S. Environmental Protection Agency, Bureau of Land Management, Bureau of Indian Affairs, the Navajo Mineral Program, and Navajo Nation Environmental Protection Agency have been invited to be cooperating agencies. Other federal agencies, state, tribal, and local governments with jurisdiction by law or special expertise that are interested in participating in the preparation of this EIS should contact the above-mentioned NEPA Project Manager.

Decision Maker

Office of Surface Mining Reclamation and Enforcement.

Nature of Decision To Be Made

Informed, in part, by the EIS analysis, OSMRE will make a decision to approve, disapprove, or approve with conditions the No Name Permit area SMCR permit application.

Marcelo Calle,

Acting Regional Director, Unified Interior Regions 5, 7–11.

[FR Doc. 2026–00702 Filed 1–14–26; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Walter Walters, M.D.; Decision and Order

On June 25, 2025, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Walter Walters, M.D., of Evansville, Indiana (Registrant). Request for Final Agency Action (RFAA), Exhibit (RFAAX) 1, at 1, 4. The OSC proposed the revocation of Registrant's Certificate of Registration No. FW6683331, alleging that Registrant's registration should be revoked because Registrant is "currently without authority to prescribe, administer, dispense, or otherwise handle controlled substances in the State of Indiana, the state in which [he is] registered with DEA." *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

The OSC notified Registrant of his right to file a written request for hearing, and that if he failed to file such a request, he would be deemed to have waived his right to a hearing and be in default. *Id.* at 2–3 (citing 21 CFR 1301.43). Here, Registrant did not request a hearing, and the Agency finds him to be in default. RFAA, at 3.¹ "A default, unless excused, shall be deemed to constitute a waiver of the registrant's/applicant's right to a hearing and an admission of the factual allegations of the [OSC]." 21 CFR 1301.43(e).

Further, "[i]n the event that a registrant . . . is deemed to be in default . . . DEA may then file a request for final agency action with the

Administrator, along with a record to support its request. In such circumstances, the Administrator may enter a default final order pursuant to [21 CFR] 1316.67." *Id.* 1301.43(f)(1). Here, the Government has requested final agency action based on Registrant's default pursuant to 21 CFR 1301.43(c), (f), 1301.46. RFAA, at 1; *see also* 21 CFR 1316.67.

Findings of Fact

The Agency finds that, in light of Registrant's default, the factual allegations in the OSC are deemed admitted. According to the OSC, after Registrant's employer notified DEA of suspected diversion of controlled substances, Registrant sent a letter, dated September 3, 2024, to the Indiana Professional Licensing Agency, stating his desire to retire both his Indiana medical license (state license number 01076958A) and Indiana controlled substance registration (state license number 01076958B). RFAAX 1, at 2; *see also* RFAAX 3. According to Indiana online records, of which the Agency takes official notice,² Registrant's Indiana medical license is "retired", and Registrant's Indiana controlled substance registration is "expired." Indiana State License Search, <https://mylicense.in.gov/everification> (last visited date of signature of this Order). Accordingly, the Agency finds that Registrant is not licensed to practice medicine nor to handle controlled substances in Indiana, the state in which he is registered with DEA.³

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under 21 U.S.C. 823 "upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by

State law to engage in the . . . dispensing of controlled substances." With respect to a practitioner, DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *Gonzales v. Oregon*, 546 U.S. 243, 270 (2006) ("The Attorney General can register a physician to dispense controlled substances 'if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.' . . . The very definition of a 'practitioner' eligible to prescribe includes physicians 'licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices' to dispense controlled substances. 802(21).")⁴ The Agency has applied these principles consistently. *See, e.g., Byron L. Aucoin, M.D.*, 67 FR 35583 (2002); *Merry Alice Troupe, N.P.*, 89 FR 81549 (2024); *Rachel Jackson, P.A.*, 90 FR 13198 (2025).

According to Indiana statute, and subject to exceptions irrelevant here, "[e]very person who dispenses or proposes to dispense any controlled substance within Indiana must have a registration issued by the [Indiana Board of Pharmacy] in accordance with the board's rules." Ind. Code 35–48–3–3(b) (2025). Further, "dispense" means "to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner and includes the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery." Ind. Code 35–48–1.1–11 (2025).

Here, the undisputed evidence in the record is that Registrant currently lacks

¹ Based on the Government's submissions in its RFAA dated August 20, 2025, the Agency finds that service of the OSC on Registrant was adequate. The included declaration from a DEA Diversion Investigator (DI) indicates that on June 30, 2025, the DI arranged for personal service to Registrant at a personal residence and a business address, but the service was unsuccessful. RFAAX 2, at 1. On July 1, 2025, the DI arranged for personal service to Registrant at Registrant's "mail to" address associated with his DEA registration, but the service was unsuccessful. *Id.* The DI noted in the Declaration that Registrant was no longer employed at his DEA registered address. *Id.* at 2. Finally, on July 2, 2022, the DI emailed a copy of the OSC to Registrant's registered email address, and the email was not returned as undelivered. *Id.* at 2; *see also id.* at 3. Here, the Agency finds that Registrant was successfully served the OSC by email and that the DI's efforts to serve Registrant by other means were "reasonably calculated, under all the circumstances, to apprise [Registrant] of the pendency of the action." *Jones v. Flowers*, 547 U.S. 220, 226 (2006) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)); *see also Mohammed S. Aljanaby, M.D.*, 82 FR 34552, 34552 (2017) (finding that service by email satisfies due process where the email is not returned as undeliverable and other methods have been unsuccessful).

² Under the Administrative Procedure Act, an agency "may take official notice of facts at any stage in a proceeding—even in the final decision." United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979).

³ Pursuant to 5 U.S.C. 556(e), "[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary." The material fact here is that Registrant, as of the date of this decision, is not licensed to handle controlled substances in Indiana. Accordingly, Registrant may dispute the Agency's finding by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by email to the other party and to the DEA Office of the Administrator, Drug Enforcement Administration at dea.addo.attorneys@dea.gov.

⁴ This rule derives from the text of two provisions of the Controlled Substances Act (CSA). First, Congress defined the term "practitioner" to mean "a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice." 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that "[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices." 21 U.S.C. 823(g)(1). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., Adam T. Rodman, P.A.*, 87 FR at 21215 (2022); *Hazem Barnada, M.D.*, 90 FR 13201 (2025); *Don Bullens, J.R., N.P.*, 88 FR 21721 (2023).

authority to dispense controlled substances in Indiana because his Indiana controlled substance registration is expired. As discussed above, an individual must hold a controlled substances registration to dispense a controlled substance in Indiana. Thus, because Registrant lacks authority to handle controlled substances in Indiana, Registrant is not eligible to maintain a DEA registration. Accordingly, the Agency will order that Registrant's DEA registration be revoked.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. FW6683331 issued to Walter Walters, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Walter Walters, M.D., to renew or modify this registration, as well as any other pending application of Walter Walters, M.D., for additional registration in Indiana. This Order is effective February 17, 2026.

Signing Authority

This document of the Drug Enforcement Administration was signed on January 6, 2026, by Administrator Terrance C. Cole. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2026–00626 Filed 1–14–26; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Honorata Anna Itaman, N.P.; Decision and Order

On March 18, 2025, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Honorata Anna Itaman, N.P., of Orlando, Florida (Applicant). Request for Final Agency Action

(RFAA), Exhibit (RFAAX) 1, at 1, 4. The OSC proposed the denial of Applicant's application for a DEA Certificate of Registration, Control No. W24026383M, alleging that Applicant has been excluded from participation in Medicare, Medicaid, and all federal health care programs pursuant to 42 U.S.C. 1320a–7(a). *Id.* at 2 (citing 21 U.S.C. 824(a)(5)).¹

The OSC notified Applicant of her right to file a written request for hearing, and that if she failed to file such a request, she would be deemed to have waived her right to a hearing and be in default. RFAAX 1, at 2 (citing 21 CFR 1301.43). Here, Applicant did not request a hearing. RFAA, at 2. “A default, unless excused, shall be deemed to constitute a waiver of the registrant's right to a hearing and an admission of the factual allegations of the [OSC].” 21 CFR 1301.43(e). Further, “[i]n the event that a registrant . . . is deemed to be in default . . . DEA may then file a request for final agency action with the Administrator, along with a record to support its request. In such circumstances, the Administrator may enter a default final order pursuant to [21 CFR] 1316.67.” *Id.* 1301.43(f)(1). Here, the Government has requested final agency action based on Applicant's default pursuant to 21 CFR 1301.43(c), (f), and 1301.46. RFAA, at 3; *see also* 21 CFR 1316.67.²

¹ Based on the Government's submissions in its RFAA dated July 8, 2025, the Agency finds that service of the OSC on Applicant was adequate. Specifically, the Declaration from a DEA Diversion Investigator (DI) indicates that on March 25, 2025, the DI emailed the OSC to Applicant's registered email address, with the email successfully delivered, as well as mailed a copy of the OSC to Applicant's registered address. RFAAX 2, at 2; *see also* RFAAX 2A–2B. The DI's Declaration also indicates that on the same date, the DI, along with two DEA Special Agents and an additional DI, attempted personal service at Applicant's registered address without success. RFAAX 2, at 1. The Agency finds that the DI's efforts to serve Applicant were “‘reasonably calculated, under all the circumstances, to apprise [Applicant] of the pendency of the action.’” *Jones v. Flowers*, 547 U.S. 220, 226 (2006) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). Therefore, due process notice requirements have been satisfied. *See Mohammed S. Aljanaby, M.D.*, 82 FR 34552, 34552 (2017) (finding that service by email satisfies due process where the email is not returned as undeliverable and other methods have been unsuccessful); *Emilio Luna, M.D.*, 77 FR 4829, 4830 (2012) (same).

² The RFAA states that “the Administrator is authorized to render DEA's final order without . . . making any findings of fact in this matter.” RFAA, at 3 (citing 21 CFR 1301.43(c), (f), and 1301.46). However, 21 CFR 1316.67 requires that the Administrator's final order “set forth the final rule and findings of fact and conclusions of law upon which the rule is based.” *See JYA LLC d/b/a Webb's Square Pharmacy*, 90 FR 31244, 31246 n.7 (2025).

I. Findings of Fact

In light of Applicant's default, the factual allegations in the OSC are deemed admitted. 21 CFR 1301.43(e). Applicant is deemed to admit that on January 12, 2023, Applicant was indicted for wire fraud and conspiracy to commit wire fraud, both felonies, in connection to a scheme to sell fraudulent nursing school diplomas and transcripts obtained from accredited Florida-based nursing schools to individuals seeking licenses and jobs as registered nurses and licensed practical/vocational nurses. RFAAX 1, at 1–2.

On September 15, 2023, Applicant pleaded guilty to conspiracy to commit wire fraud. *Id.* at 2. On April 9, 2024, Applicant was convicted and sentenced to 21 months of imprisonment followed by three years of supervised release. *Id.* Based on Applicant's conviction, the U.S. Department of Health and Human Services, Office of Inspector General (HHS/OIG) mandatorily excluded Applicant, effective September 19, 2024, from participation in Medicare, Medicaid, and all federal health care programs pursuant to 42 U.S.C. 1320a–7(a) for a period of 11 years. *Id.* Accordingly, the Agency finds substantial record evidence that Applicant has been, and remains, excluded from federal healthcare programs.

II. Discussion

Pursuant to 21 U.S.C. 824(a)(5), the Attorney General is authorized to suspend or revoke a registration upon finding that the registrant “has been excluded (or directed to be excluded) from participation in a program pursuant to section 1320a–7(a) of Title 42.” The Agency has consistently held that it may also deny an application upon finding that an applicant has been excluded from a federal health care program.³ *Mark Agresti, M.D.*, 90 FR 30098, 30099 (2025); *Samirkumar Shah, M.D.*, 89 FR 71931, 71933 (2024); *Arvinder Singh, M.D.*, 81 FR 8247, 8248 (2016). The Agency found above based on substantial record evidence that Applicant has been, and remains, mandatorily excluded from federal health care programs pursuant to 42 U.S.C. 1320a–7(a).⁴ Accordingly, the

³ A statutory basis to deny an application pursuant to section 823 is also a basis to revoke or suspend a registration pursuant to section 824, and vice versa, because doing “otherwise would mean that all applications would have to be granted only to be revoked the next day” *Robert Wayne Locklear, M.D.*, 86 FR 33738, 33744–45 (2021) (collecting cases).

⁴ The Agency has consistently held that it may deny an application under 21 U.S.C. 824(a)(5) even

Continued

Agency finds that substantial record evidence establishes the Government's *prima facie* case for denial of Applicant's application under 21 U.S.C. 824(a)(5).

III. Sanction

Where, as here, the Government has met its *prima facie* burden of showing that Applicant's application for registration should be denied, the burden shifts to Applicant to show why she can be entrusted with a registration. *Morall v. Drug Enf't Admin.*, 412 F.3d 165, 174 (D.C. Cir. 2005); *Jones Total Health Care Pharmacy, LLC v. Drug Enf't Admin.*, 881 F.3d 823, 830 (11th Cir. 2018); *Garrett Howard Smith, M.D.*, 83 FR 18882 (2018). The issue of trust is necessarily a fact-dependent determination based on the circumstances presented by the individual registrant. *Jeffrey Stein, M.D.*, 84 FR 46968, 46972 (2019); *see also Jones Total Health Care Pharmacy*, 881 F.3d at 833. Moreover, as past performance is the best predictor of future performance, the Agency has required that a registrant who has committed acts inconsistent with the public interest must accept responsibility for those acts and demonstrate that he will not engage in future misconduct. *See Jones Total Health Care Pharmacy*, 881 F.3d at 833; *ALRA Labs, Inc. v. Drug Enf't Admin.*, 54 F.3d 450, 452 (7th Cir. 1995). The Agency requires a registrant's unequivocal acceptance of responsibility. *Janet S. Pettyjohn, D.O.*, 89 FR 82639, 82641 (2024); *Mohammed Asgar, M.D.*, 83 FR 29569, 29573 (2018); *see also Jones Total Health Care Pharmacy*, 881 F.3d at 830–31. In addition, a registrant's candor during the investigation and hearing is an important factor in determining acceptance of responsibility and the appropriate sanction. *See Jones Total Health Care Pharmacy*, 881 F.3d at 830–31; *Hoxie v. Drug Enf't Admin.*, 419 F.3d 477, 483–84 (6th Cir. 2005). Further, the Agency has found that the egregiousness and extent of the misconduct are significant factors in determining the appropriate sanction. *See Jones Total Health Care Pharmacy*, 881 F.3d at 833 n.4, 834. The Agency also considers the need to deter similar acts by a registrant and by the community of registrants. *Jeffrey Stein, M.D.*, 84 FR at 46972–73.

Here, Applicant did not request a hearing or answer the allegations in the

OSC and was therefore deemed to be in default. To date, Applicant has not filed a motion with the Office of the Administrator to excuse the default. 21 CFR 1301.43(c)(1). Applicant has thus failed to answer the allegations contained in the OSC and has not otherwise availed herself of the opportunity to refute the Government's case. As such, Applicant has not accepted responsibility for the proven violations, has made no representations regarding her future compliance with the CSA, and has not demonstrated that she can be trusted with registration. Accordingly, the Agency will order the denial of Applicant's application.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny the pending application for a DEA Certificate of Registration, Control No. W24026383M, submitted by Honorata Anna Itaman, N.P., as well as any other pending of Honorata Anna Itaman, N.P., for additional registration in Florida. This Order is effective February 17, 2026.

Signing Authority

This document of the Drug Enforcement Administration was signed on January 6, 2026, by Administrator Terrance C. Cole. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2026–00623 Filed 1–14–26; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Pine Pharmacy; Decision and Order

I. Introduction

On April 9, 2025, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause and Immediate Suspension of Registration (OSC/ISO) to Shreeji 16 Inc. d/b/a Pine Pharmacy, of Ocala, Florida (Registrant). Request for Final Agency

Action (RFAA), Exhibit (RFAAX) 1, at 1. The OSC/ISO informed Registrant of the immediate suspension of its DEA Certificate of Registration, No. FS1451222, pursuant to 21 U.S.C. 824(d), alleging that Registrant's continued registration constitutes “an imminent danger to the public health or safety.” *Id.* (quoting 21 U.S.C. 824(d)). The OSC/ISO also proposed the revocation of Registrant's registration, alleging that Registrant's continued registration is inconsistent with the public interest. *Id.* at 1–2 (citing 21 U.S.C. 823(g)(1), 824(a)(4)).

More specifically, the OSC/ISO alleged that as recently as December 5, 2024, Registrant repeatedly filled prescriptions for Schedule II through V controlled substances without addressing, resolving, and/or documenting resolution of red flags of abuse and diversion prior to dispensing. *Id.* The OSC/ISO alleges that filling these prescriptions violated federal and Florida state law. *Id.* (citing 21 CFR 1306.04(a), 1306.06; Fla. Admin. Code Ann. r. 64B16–27.810, 64B16–27.831).¹ The OSC/ISO also alleges that Registrant allowed a non-certificate holder to use Registrant's digital certificate and private key to order controlled substances in the Controlled Substances Ordering System (CSOS), in violation of 21 CFR 1311.30(a) and (b). *Id.* at 9. Finally, the OSC/ISO alleges that Registrant maintained a collection bin for pharmaceutical drugs without the authorization required under 21 CFR 1317.40(a). *Id.*

On June 3, 2025, the Government submitted a request for final agency action (RFAA) requesting that the Agency issue a default final order revoking Registrant's registration. RFAA, at 1–4. After carefully reviewing the entire record and conducting the analysis as set forth in more detail below, the Agency grants the Government's request for final agency action and revokes Registrant's registration.

II. Default Determination

Under 21 CFR 1301.43, a registrant entitled to a hearing who fails to file a timely hearing request “within 30 days after the date of receipt of the [OSC] . . . shall be deemed to have waived their right to a hearing and to be in default” unless “good cause” is established for the failure. 21 CFR 1301.43(a) & (c)(1). In the absence of a demonstration of good cause, a

¹ The Agency need not adjudicate the criminal violations alleged in the OSC/ISO. *Ruan v. United States*, 597 U.S. 450 (2022) (decided in the context of criminal proceedings).

if the conviction underlying the exclusion does not relate to controlled substances. *See, e.g., Phong H. Tran, M.D.*, 90 FR 14383, 14384 n.10 (2025) (collecting cases).

registrant who fails to timely file an answer also is “deemed to have waived their right to a hearing and to be in default.” 21 CFR 1301.43(c)(2). Unless excused, a default is deemed to constitute “an admission of the factual allegations of the [OSC].” 21 CFR 1301.43(e).

Here, the OSC/ISO notified Registrant of its right to file with DEA a written request for hearing and that if it failed to file such a request, it would be deemed to have waived its right to a hearing and be in default. RFAAX 1, at 11 (citing 21 CFR 1301.43). Here, Registrant did not request a hearing. RFAA, at 1.² Thus, the Agency finds that Registrant is in default and therefore has admitted to the factual allegations in the OSC/ISO. 21 CFR 1301.43(e); 21 CFR 1301.43(c)(1).

III. Applicable Law

A. The Alleged Statutory and Regulatory Violations

As discussed above, the OSC/ISO alleges that Registrant violated provisions of the CSA and its implementing regulations. As the Supreme Court stated in *Gonzales v. Raich*, 545 U.S. 1 (2005), “the main objectives of the [Controlled Substances Act (CSA)] were to conquer drug abuse and control the legitimate and illegitimate traffic in controlled substances.” 545 U.S. at 12. *Gonzales* explained that:

Congress was particularly concerned with the need to prevent the diversion of drugs from legitimate to illicit channels. To effectuate these goals, Congress devised a closed regulatory system making it unlawful to manufacture, distribute, dispense, or possess any controlled substance except in a manner authorized by the CSA The CSA and its implementing regulations set forth strict requirements regarding registration, labeling and packaging, production quotas, drug security, and recordkeeping.

Id. at 12–14.

The OSC’s allegations concern the CSA’s “statutory and regulatory provisions . . . mandating . . . compliance with . . . prescription requirements” and, therefore, go to the heart of the CSA’s “closed regulatory system” specifically designed “to conquer drug abuse and to control the legitimate and illegitimate traffic in controlled substances,” and “to prevent

the diversion of drugs from legitimate to illicit channels.” *Id.* at 12–14, 27.

B. The Allegation That Registrant Improperly Dispensed Controlled Substances

According to the CSA’s implementing regulations, a lawful controlled substance prescription is one that is “issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.” 21 CFR 1306.04(a). While the “responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, . . . a corresponding responsibility rests with the pharmacist who fills the prescription.” *Id.*

To prove that a pharmacist violated his corresponding responsibility, the Government must show that the pharmacist acted with the requisite degree of scienter. *See* 21 CFR 1306.04(a) (“[T]he person knowingly filling [a prescription issued not in the usual course of professional treatment] . . . shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances.”) (emphasis added). DEA has consistently interpreted the corresponding responsibility regulation such that “[w]hen prescriptions are clearly not issued for legitimate medical purposes, a pharmacist may not intentionally close his eyes and thereby avoid [actual] knowledge of the real purpose of the prescription.” *Ralph J. Bertolino, d/b/a Ralph J. Bertolino Pharmacy*, 55 FR 4729, 4730 (1990) (citations omitted); *see also JM Pharmacy Group, Inc. d/b/a Pharmacia Nueva and Best Pharmacy Corp.*, 80 FR 28667, 28670–72 (2015) (applying the standard of willful blindness in assessing whether a pharmacist acted with the requisite scienter).

Pursuant to their corresponding responsibility, pharmacists must exercise “common sense and professional judgment” when filling a prescription issued by a physician. *Bertolino*, 55 FR at 4730. When a pharmacist’s suspicions are aroused by a red flag, the pharmacist must question the prescription and, if unable to resolve the red flag, refuse to fill the prescription. *Id.*; *see also Med. Shoppe-Jonesborough v. Drug Enf’t Admin.*, 300 Fed. Appx. 409, 412 (6th Cir. 2008) (“When pharmacists’ suspicions are aroused as reasonable professionals, they must at least verify the prescription’s propriety, and if not satisfied by the answer they must refuse to dispense.”).

As for state law, Florida Administrative Code § 64B16–27.810

requires that, prior to dispensing, a pharmacist “review the patient record and each new and refill prescription . . . to promote therapeutic appropriateness by identifying: (a) Overutilization or under-utilization; (b) Therapeutic duplication; (c) Drug-disease contraindications; (d) Drug-drug interactions; (e) Incorrect drug dosage or duration of drug treatment; (f) Drug-allergy interactions; [and] (g) Clinical abuse/misuse.” Fla. Admin. Code § 64B16–27.810. The regulation further states that “[u]pon recognizing any of the above, the pharmacist shall take appropriate steps to avoid or resolve the potential problems which shall, if necessary, include consultation with the prescriber.” *Id.* § 64B16–27.810(2).

Additionally, Florida Administrative Code § 64B16–27.831 states that “in filling valid prescriptions for controlled substances,” pharmacists should “exercise[e] sound professional judgment,” and “dispens[e] controlled substances for a legitimate medical purpose in the usual course of professional practice” considering “each patient’s unique situation.” Fla. Admin. Code § 64B16–27.831.

C. The Allegation That Registrant Permitted Unauthorized Use of Its Digital Certificate for CSOS

Under the CSA’s implementing regulations, a person must “obtain a CSOS digital certificate from the DEA Certification Authority to sign electronic orders for controlled substances.” 21 CFR 1311.10. A person is eligible to obtain a CSOS digital certificate only if he/she: (1) is the person who “signed the most recent registration application or renewal application,” (2) is “a person authorized to sign a registration application,” or (3) has been “granted power of attorney by [the] registrant to sign orders for one or more schedules of controlled substances.” *Id.* The regulations further provide that “[o]nly the certificate holder may access or use his or her digital certificate and private key,” and “[a] certificate holder must ensure that no one else use the private key” and “prevent unauthorized use of that private key.” *Id.* § 1311.30.

D. The Allegation That Registrant Maintained an Unregistered Drug Collection Receptacle

The CSA’s implementing regulations provide that “retail pharmacies that desire to be collectors shall modify their registration to obtain authorization to be a collector in accordance with [21 CFR] § 1301.51 of this chapter.” 21 CFR 1317.40(a). The regulations further provide that collection may only occur at the “registered locations . . . that are

² Based on the Government’s submissions in its RFAA dated June 3, 2025, the Agency finds that service of the OSC/ISO on Registrant was adequate. Specifically, the RFAA represents that the OSC/ISO was personally served on Registrant, RFAA, at 1, and attaches a DEA Form 12 Receipt for Cash or Other Items signed by the Pharmacist in Charge. RFAAX 2, at 1.

authorized for collection” and “[l]ong-term care facilities at which registered hospitals/clinics or retail pharmacies are authorized to maintain collection receptacles.” *Id.* 1317.40(b).

IV. Findings of Fact

The Agency finds that, in light of Registrant’s default, the factual allegations in the OSC/ISO are deemed admitted.

A. The Allegation That Registrant Improperly Dispensed Controlled Substances

Registrant is deemed to have admitted and the Agency finds that from March 2023 through December 2024 Registrant repeatedly filled prescriptions for Schedule II through V controlled substances that evidenced multiple red flags indicative of diversion and/or abuse, without addressing, resolving, and/or documenting resolution of those red flags prior to dispensing. RFAAX 1, at 1–3.

Long-Term Use of Immediate-Release Opioids and High Opioid Dosages

As discussed above, *see supra* Section I, Florida law requires pharmacists to identify and address the red flag of over-utilization. *See Fla. Admin. Code Ann. r. 64B16–27.810.* Registrant is deemed to have admitted that DEA has found that extended use of immediate-release opioids is a red flag of abuse or diversion because extended-release opioids are generally more appropriate for treatment of chronic pain. RFAAX 1, at 3 (citing *Pharmacy 4 Less*, 86 FR 54550 (2021)). Registrant is deemed to have admitted that high dosages of opioids can be a red flag because they can significantly increase the risk of overdose and death. *Id.*

Registrant admits that it repeatedly filled prescriptions for oxycodone, an immediate-release Schedule II opioid, to the following individuals without addressing or resolving the red flag of extended use of immediate-release opioids:

A.G.: Between April 16, 2024, and December 5, 2024, Registrant filled approximately nine prescriptions for A.G. for oxycodone 30 mg (90 tablets). *Id.* at 4.

T.M.: Between August 15, 2023, and November 27, 2024, Registrant filled approximately 15 prescriptions for T.M. for oxycodone 30 mg (90 tablets). *Id.*

R.R.: Between April 8, 2024, and November 26, 2024, Registrant failed approximately nine prescriptions for R.R. for oxycodone 30 mg (90 tablets). *Id.*

C.P.: Between April 29, 2024, and November 21, 2024, Registrant filled

approximately eight prescriptions for C.P. for oxycodone 7.5 mg (120 tablets). *Id.*

J.J.: Between August 21, 2023, and November 18, 2024, Registrant filled approximately 14 prescriptions for J.J. for oxycodone 30 mg (90 tablets). *Id.* In addition, Registrant filled prescriptions for J.J. on September 20, 2023, for oxycodone 30 mg (42 tablets), and on October 3, 2023, for oxycodone (48 tablets). *Id.*

A.R.: Between August 9, 2023, and June 12, 2024, Registrant filled approximately 11 prescriptions for A.R. for oxycodone 20 mg (120 tablets). *Id.* On November 28, 2023, Registrant filled a prescription for A.R. for oxycodone 30 mg (90 tablets). *Id.*

J.P.: Between July 31, 2023, and May 6, 2024, Registrant filled approximately 10 prescriptions for J.P. for oxycodone 30 mg (90 tablets). *Id.*

C.R.: Between August 7, 2023, and April 5, 2024, Registrant filled approximately nine prescriptions for C.R. for oxycodone 30 mg (90 tablets). *Id.*

M.Sw.: Between March 16, 2023, and February 5, 2024, Registrant filled approximately 12 prescriptions for M.Sw. for oxycodone 30 mg (84 tablets). *Id.*

Accordingly, the Agency finds substantial record evidence that Registrant filled at least 100 oxycodone prescriptions without first resolving and documenting resolution of the red flag arising from extended use of immediate-release opioids.

Drug Cocktails and Commonly Abused Drugs

As discussed above, *see supra* Section I, Florida law requires pharmacists to identify and address the red flag of drug-drug interactions and clinical abuse or misuse. RFAAX 1, at 5; Fla. Admin. Code Ann. r. 64B16–27.810. Registrant admits that DEA has long recognized the prescribing of so-called “drug cocktails” as a red flag of abuse or diversion. RFAAX 1, at 5 (citing *Jones Total Health Care Pharmacy, LLC*, 81 FR 79,188, 79,199 (2016)). Drug cocktails are combinations of controlled substances that are widely known to be abused or diverted and that significantly increase the risk of serious medical consequences. *Id.* These risks require pharmacists to carefully review whether the prescriptions were issued for a legitimate medical purpose. *Id.*

Common drug cocktails include the combination of an opioid and a benzodiazepine, an opioid and a stimulant, or an opioid and a muscle relaxant. *Id.* Registrant admits that DEA has long held that these cocktails are

highly abused and associated with diversion. *Id.* (citing Craig Rosenblum, MD., 87 FR 21, 18 I, 21,189 (2022); *Jacobo Dreszer, MD.*, 76 FR 19,386, 19,389 (2011)).

Registrant admits that it repeatedly filled prescriptions for the following individuals without addressing, resolving, or documenting the resolution of the red flag of “drug cocktails”:

A.G.: On at least eight occasions between April 16, 2024, and December 5, 2024, Registrant filled prescriptions for A.G. for a drug cocktail consisting of oxycodone and cyclobenzaprine (an unscheduled muscle relaxer). *Id.* These prescriptions were filled on the same day or in close succession. *Id.* Registrant admits that this combination of controlled substances is a red flag associated with abuse, overdose, and death. *Id.*

R.R.: On at least eight occasions between May 13, 2024, and November 26, 2024, the Pharmacy filled prescriptions for R.R. for a drug cocktail consisting of oxycodone and cyclobenzaprine. *Id.* These prescriptions were filled on the same day or in close succession. *Id.*

C.R.: On at least eight occasions between September 7, 2023, and April 5, 2024, Registrant filled prescriptions for C.R. for a drug cocktail consisting of oxycodone and cyclobenzaprine. *Id.* These prescriptions were filled on the same day or in close succession. *Id.*

A.R.: On at least 11 occasions between August 9, 2023, and June 12, 2024, Registrant filled prescriptions for A.R. for a drug cocktail consisting of oxycodone and pregabalin (a Schedule V anticonvulsant). *Id.* at 6. These prescriptions were filled on the same day or in close succession. *Id.* Registrant admits that this combination of controlled substances is a red flag associated with abuse, overdose, and death. *Id.*

C.P.: On at least three occasions between August 27, 2024, and December 6, 2024, Registrant filled prescriptions for C.P. for a drug cocktail consisting of oxycodone and carisoprodol (a Schedule IV muscle relaxer). *Id.* Although not filled on the same day, each prescription was written for a 30-day supply and filled on a near-monthly schedule. *Id.* Registrant admits that this combination of controlled substances is a red flag associated with abuse, overdose, and death. *Id.*

Accordingly, the Agency finds that Registrant filled at least 38 prescriptions without first resolving and documenting resolution of the red flag arising from drug cocktails.

Long Distances

Registrant admits that DEA has found that traveling abnormally long distances to obtain or fill controlled substance prescriptions is a well-known red flag of abuse or diversion because patients ordinarily should be able to get their prescriptions filled without having to travel abnormally long distances. *Id.* (citing *E. Main St. Pharmacy*, 75 FR 66,149, 66,164 (2010)).

Registrant admits that it repeatedly filled controlled substance prescriptions for individuals whose addresses revealed they had traveled abnormally long distances to obtain and fill prescriptions, and Registrant admits that it consistently failed to resolve this red flag prior to dispensing. *Id.* Specifically, Registrant admits that it filled prescriptions for the following individuals, whose record addresses show that they traveled long distances:

T.M. at Fort Lauderdale Address: On at least eight occasions between August 15, 2023, and April 11, 2024, Registrant dispensed oxycodone to T.M. *Id.* T.M. had an approximately 634-mile round trip to obtain controlled substance prescriptions from his/her physician and fill them at Registrant. *Id.* This trip included approximately 314 miles from T.M.'s address in Fort Lauderdale, Florida, to the prescribing physician's office, approximately 41 miles from the prescribing physician's office to Registrant, and approximately 279 miles from Registrant back to T.M.'s address. *Id.*

T.M. at Gainesville Address: On at least eight occasions between May 10, 2024, and November 27, 2024, Registrant dispensed oxycodone to T.M. *Id.* at 7. T.M. had an approximately 86-mile round trip to obtain controlled substance prescriptions from his/her physician and fill them at Registrant. *Id.* This trip included approximately 3 miles from T.M.'s address in Gainesville, Florida, to the prescribing physician's office, approximately 41 miles from the prescribing physician's office to Registrant, and approximately 42 miles from Registrant back to T.M.'s address. *Id.*

J.J.: On at least 17 occasions between August 21, 2023, and November 18, 2024, Registrant dispensed oxycodone to J.J. *Id.* J.J. had an approximately 88-mile round trip to obtain controlled substance prescriptions from his/her physician and fill them at Registrant. *Id.* This trip included approximately six miles from J.J.'s address in Gainesville, Florida, to the prescribing physician's office, approximately 41 miles from the prescribing physician's office to Registrant, and approximately 41 miles from Registrant back to J.J.'s address. *Id.*

M.Sw.: On at least 11 occasions between April 27, 2023, and February 5, 2024, Registrant dispensed oxycodone to M.Sw. *Id.* M.Sw. had an approximately 151-mile round trip to obtain controlled substance prescriptions from his/her physician and fill them at Registrant. *Id.* This trip included approximately nine miles from M.Sw.'s address in Orlando, Florida, to the

prescribing physician's office, approximately 69 miles from the prescribing physician's office to Registrant, and approximately 68 miles from Registrant back to M.Sw.'s address. *Id.*

C.R.: On at least nine occasions between August 7, 2023, and April 5, 2024, Registrant dispensed oxycodone to C.R. *Id.* at 8. C.R. had an approximately 176-mile round trip to obtain controlled substance prescriptions from his/her physician and fill them at Registrant. *Id.* at 7. This trip included approximately 58 miles from C.R.'s address in Green Cove Springs, Florida, to the prescribing physician's office, approximately 41 miles from the prescribing physician's office to Registrant, and approximately 77 miles from Registrant back to C.R.'s address. *Id.*

A.R.: On at least seven occasions between November 2, 2023, and June 12, 2024, the Pharmacy dispensed pregabalin to A.R., and on at least seven occasions between these dates, Registrant dispensed oxycodone to A.R. *Id.* at 8. A.R. had an approximately 82-mile round trip to obtain controlled substance prescriptions from his/her physician and fill them at Registrant. *Id.* This trip included approximately 38 miles from A.R.'s address in Belleview, Florida, to the prescribing physician's office, approximately 34 miles from the prescribing physician's office to Registrant, and approximately 10 miles from Registrant back to A.R.'s address. *Id.*

Accordingly, the Agency finds substantial record evidence that Registrant filled at least 67 prescriptions without resolving the red flag that customers were traveling abnormally long distances to obtain and fill controlled substance prescriptions.

Pattern Prescribing

Registrant admits that "pattern prescribing"—which occurs when a practitioner prescribes the same controlled substance in identical or substantially similar quantities to multiple individuals—is a red flag because it indicates a lack of individualized therapy for each patient and it indicates that the "prescriber is not prescribing the controlled substances for a legitimate medical purpose." *Id.* (citing *Pharmacy Place*, 86 FR 21,008, 21,011 (2021)). Registrant admits that while "pattern prescribing can manifest over an extended period of time and may not be immediately recognizable to a pharmacist," a pharmacist still has an obligation to resolve such controlled substances prescriptions and should refuse to fill them if the pharmacist is unable to resolve this red flag. *Id.* (citing *Pharmacy Place*, 86 FR at 21,011; *Med. Pharmacy*, 86 FR 72,030, 72,049 (2021)).

Registrant admits that it filled approximately 64 prescriptions issued by Dr. N.A. to six different individuals for 90 tablets of oxycodone 30 mg

between July 31, 2023, and December 5, 2024.³ *Id.* at 8–9. Registrant admits that Dr. N.A. was engaging in pattern prescribing. *Id.* at 8. Accordingly, the Agency finds substantial record evidence that Registrant filled approximately 64 prescriptions without addressing, resolving, and documenting resolution of the red flag of pattern prescribing.

Expert Review

DEA retained an independent pharmacy expert who concluded that the above prescription data presented multiple red flags that were highly indicative of abuse and diversion. *Id.* at 9. The expert further concluded, and Registrant admits that, "[t]hese red flags were not resolved by a pharmacist acting in the usual course of professional practice prior to dispensing, and therefore, each prescription was filled outside the standard of care of pharmacy practice in Florida." *Id.*

Accordingly, the Agency finds substantial record evidence that Registrant filled at least 269 prescriptions without first resolving the red flags of long-term use of immediate-release opioids, drug cocktails, long distances, and pattern prescribing, and that Registrant's filling of these prescriptions was outside the usual course of professional practice.

B. The Allegation That Registrant Permitted Unauthorized Use of Its Digital Certificate for CSOS

Registrant admits and the Agency finds substantial evidence that between May 15, 2023, and April 9, 2024, a non-certificate holder used Registrant's digital certificate and private key to order controlled substances in CSOS. *Id.* Registrant admits that the authorized holder for the certificate was not present at the time these controlled substances were ordered. *Id.*

C. The Allegation That Registrant Maintained an Unregistered Drug Collection Receptacle

Registrant admits and the Agency finds substantial record evidence that it maintained a collection bin for

³ These prescriptions included approximately nine prescriptions for A.G filled between April 16, 2024, and December 5, 2024; approximately 13 prescriptions for T.M. filled between November 14, 2023, and November 27, 2024; approximately nine prescriptions for R.R. filled between April 8, 2024, and November 26, 2024; approximately 14 prescriptions for J.J. filled between October 20, 2023, and November 8, 2024; approximately 10 prescriptions for J.P. filled between July 31, 2023, and May 6, 2024; and approximately nine prescriptions for C.R. filled between August 7, 2023, and April 5, 2024. RFAAX 1, at 8–9.

pharmaceutical drugs without the authorization required under 21 CFR 1317.40(a).

V. Public Interest Determination

A. Legal Background on the Public Interest Determination

When the CSA's requirements are not met, the Attorney General "may deny, suspend, or revoke [a] registration if . . . the [registrant's] registration would be 'inconsistent with the public interest.'" *Gonzales v. Oregon*, 546 U.S. 243, 251 (2006) (quoting 21 U.S.C. 824(a)(4)). In the case of a "practitioner," which is defined in 21 U.S.C. 802(21) to include a "pharmacy," Congress directed the Attorney General to consider five factors in making the public interest determination. 21 U.S.C. 823(g)(1)(A)–(E).⁴

The five factors are considered in the disjunctive. *Gonzales v. Oregon*, 546 U.S. at 292–93 (Scalia, J., dissenting) ("It is well established that these factors are to be considered in the disjunctive," quoting *In re Arora*, 60 FR 4447, 4448 (1995)); *Robert A. Leslie, M.D.*, 68 FR 15227, 15230 (2003). Each factor is weighed on a case-by-case basis. *David H. Gillis, M.D.*, 58 FR 37507, 37508 (1993); see *Morall v. Drug Enf't Admin.*, 412 F.3d 165, 181 (D.C. Cir. 2005) (describing the Agency's adjudicative process as "applying a multi-factor test through case-by-case adjudication," quoting *LeMoyné-Owen Coll. v. N.L.R.B.*, 357 F.3d 55, 61 (D.C. Cir. 2004)). Any one factor, or combination of factors, may be decisive. *David H. Gillis, M.D.*, 58 FR at 37508, and the Agency "may give each factor the weight . . . deem[ed] appropriate in determining whether a registration should be revoked or an application for registration denied." *Morall*, 412 F.3d. at 185 n.2 (Henderson, J., concurring) (quoting *Robert A. Smith, M.D.*, 70 FR 33207, 33208 (2007)); see also *Penick Corp. v. Drug Enf't Admin.*, 491 F.3d 483, 490 (D.C. Cir. 2007).

Moreover, while the Agency is required to consider each of the factors, it "need not make explicit findings as to each one." *MacKay v. Drug Enf't*

Admin., 664 F.3d 808, 816 (10th Cir. 2011) (quoting *Volkman v. U.S. Drug Enf't Admin.*, 567 F.3d 215, 222 (6th Cir. 2009)); *Jones Total Health Care Pharmacy, LLC v. Drug Enf't Admin.*, 881 F.3d 823, 830 (11th Cir. 2018); *Hoxie v. Drug Enf't Admin.*, 419 F.3d 477, 482 (6th Cir. 2005). "In short, . . . the Agency is not required to mechanically count up the factors and determine how many favor the Government and how many favor the registrant. Rather, it is an inquiry which focuses on protecting the public interest; what matters is the seriousness of the registrant's misconduct." *Jayam Krishna-Iyer, M.D.*, 74 FR 459, 462 (2009). Accordingly, as the Tenth Circuit has recognized, Agency decisions have explained that findings under a single factor can support the revocation of a registration. *MacKay*, 664 F.3d at 821.

The Government has the burden of proof in this proceeding. 21 CFR 1301.44(e).

B. Registrant's Registration Is Inconsistent With the Public Interest

While the Agency has considered all the public interest factors of 21 U.S.C. 823(g)(1), the Government's evidence in support of its *prima facie* case for sanction is confined to Factors B and D. RFAA 2–4, RFAAX 1. Evidence is considered under Factors B and D when it reflects compliance or non-compliance with laws related to controlled substances and experience dispensing controlled substances. *Kareem Hubbard, M.D.*, 87 FR 21156, 21162 (2022).

i. The Allegation That Registrant Improperly Dispensed Controlled Substances

Here, as found above, Registrant is deemed to have admitted and the Agency finds that between March 2023 and December 2024, Registrant repeatedly filled at least 269 prescriptions without addressing, resolving, and documenting red flags of drug abuse and diversion. RFAAX 2, at 5–8. Registrant has further admitted and the Agency finds that all of the above-referenced prescriptions were filled outside the usual course of professional practice, beneath the standard of care in Florida, and in violation of the pharmacy's corresponding responsibility.⁵ *Id.* As such, the Agency

finds substantial record evidence that Registrant violated 21 CFR 1306.04 and Fla. Admin. Code Ann. r. 64B16–27.810(1).

ii. The Allegation That Registrant Permitted Unauthorized Use of Its Digital Certificate for CSOS

Further, as found above, Registrant is deemed to have admitted and the Agency finds that between May 15, 2023, and April 9, 2024, a non-certificate holder used Registrant's digital certificate and private key to order controlled substances in CSOS, while the authorized holder of the certificate was not present. *Id.* Accordingly, the Agency finds substantial record evidence that Registrant violated 21 CFR 1311.30(a), (c). *Id.*

iii. The Allegation That Registrant Maintained an Unregistered Drug Collection Receptacle

Here, as found above, Registrant is deemed to have admitted and the Agency finds that Registrant maintained a collection bin for pharmaceutical drugs without the authorization required under 21 CFR 1317.40(a). Accordingly, the Agency finds substantial record evidence that Registrant violated 21 CFR 1317.40(a). RFAAX 1, at 9.

The Agency further finds that after considering the factors of 21 U.S.C. 823(g)(1) Registrant's continued registration is "inconsistent with the public interest." 21 U.S.C. 824(a)(4). Accordingly, the Government satisfied its *prima facie* burden of showing that Registrant's continued registration would be "inconsistent with the public interest." 21 U.S.C. 824(a)(4). The Agency also finds that there is insufficient mitigating evidence to rebut the Government's *prima facie* case. Thus, the only remaining issue is whether, in spite of the public interest determination, Registrant can be trusted with a registration.

e.g., Morning Star Pharmacy and Medical Supply 1, 85 FR 51045, 51061 (2020) (pattern prescribing; distance; cash payments; high doses/quantities of high-alert controlled substances); *Pharmacy Doctors Enterprises d/b/a Zion Clinic Pharmacy*, 83 FR 10876, 10898 (2018), *pet. for rev. denied*, 789 F. App'x 724 (11th Cir. 2019) (long distances; pattern prescribing; cash payments); *Hills Pharmacy*, 81 FR 49816, 49836–39 (2016) (multiple customers presenting prescriptions written by the same prescriber for the same drugs in the same quantities; customers with the same last name and street address presenting similar prescriptions on the same day; long distances); *The Medicine Shoppe*, 79 FR 59504, 59507, 59512–13 (2014) (unusually large quantity of a controlled substance; pattern prescribing).

⁴ The five factors of 21 U.S.C. 823(g)(1)(A)–(E) are:

(A) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(B) The [registrant's] experience in dispensing, or conducting research with respect to controlled substances.

(C) The [registrant's] conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(D) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(E) Such other conduct which may threaten the public health and safety.

⁵ Agency decisions have consistently found that prescriptions with the same red flags at issue here were so suspicious as to support a finding that the pharmacists who filled them violated their corresponding responsibility rule due to actual knowledge of, or willful blindness to, the prescriptions' illegitimacy. 21 CFR 1306.04(a); see,

VI. Sanction

Where, as here, the Government has met the burden of showing that Registrant's continued registration is inconsistent with the public interest, the burden shifts to Registrant to show why it can be entrusted with a registration. *Morall*, 412 F.3d at 174; *Jones Total Health Care Pharmacy, LLC v. Drug Enf't Admin.*, 881 F.3d 823, 830 (11th Cir. 2018); *Garrett Howard Smith, M.D.*, 83 FR 18882, 18904 (2018). The issue of trust is necessarily a fact-dependent determination based on the circumstances presented by the individual registrant. *Jeffrey Stein, M.D.*, 84 FR 46968, 46972 (2019); *see also Jones Total Health Care Pharmacy*, 881 F.3d at 833. Moreover, as past performance is the best predictor of future performance, the Agency requires that a registrant that has committed acts inconsistent with the public interest accept responsibility for those acts and demonstrate that it will not engage in future misconduct. *See Jones Total Health Care Pharmacy*, 881 F.3d at 833; *ALRA Labs, Inc. v. Drug Enf't Admin.*, 54 F.3d 450, 452 (7th Cir. 1995). The Agency requires a registrant's unequivocal acceptance of responsibility. *Janet S. Pettyjohn, D.O.*, 89 FR 82639, 82641 (2024); *Mohammed Asgar, M.D.*, 83 FR 29569, 29573 (2018); *see also Jones Total Health Care Pharmacy*, 881 F.3d at 830–31. In addition, a registrant's candor during the investigation and hearing is an important factor in determining acceptance of responsibility and the appropriate sanction. *See Jones Total Health Care Pharmacy*, 881 F.3d at 830–31; *Hoxie*, 419 F.3d at 483–84. Further, the Agency considers the egregiousness and extent of the misconduct as significant factors in determining the appropriate sanction. *See Jones Total Health Care Pharmacy*, 881 F.3d at 834 & n.4. The Agency also considers the need to deter similar acts by a registrant and by the community of registrants. *Jeffrey Stein, M.D.*, 84 FR at 46972–73.

Here, Registrant did not request a hearing and was deemed to be in default. 21 CFR 1301.43(c)(1), (e), (f)(1); RFAA, at 1–2. To date, Registrant has not filed a motion with the Office of the Administrator to excuse the default. 21 CFR 1301.43(c)(1). Registrant has thus failed to answer the allegations contained in the OSC and has not otherwise availed itself of the opportunity to refute the Government's case. As such, Registrant has made no representations as to its future compliance with the CSA nor made any demonstration that it can be entrusted with registration. Moreover, the

evidence presented by the Government shows that Registrant filled hundreds of prescriptions outside the usual course of professional practice in Florida and in violation of the CSA, further indicating that Registrant cannot be entrusted.

Accordingly, the Agency will order the revocation of Registrant's registration.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a) and 21 U.S.C. 823(g)(1), I hereby revoke DEA Certificate of Registration No. FS1451222 issued to Pine Pharmacy. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a) and 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Pine Pharmacy to renew or modify the named registrations, as well as any other pending application of Pine Pharmacy for additional registration in Florida. This Order is effective February 17, 2026.

Signing Authority

This document of the Drug Enforcement Administration was signed on January 8, 2026, by Administrator Terrance C. Cole. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2026–00629 Filed 1–14–26; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Jason Vanshaar, M.D.; Decision and Order

On May 28, 2025, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause and Immediate Suspension of Registration (OSC/ISO) to Jason VanShaar, M.D., of Uintah, Utah (Registrant). OSC/ISO, at 1, 9; Request for Final Agency Action (RFAA), Exhibit (RFAAX) 1, at 1, 9. The OSC/ISO informed Registrant of the

immediate suspension of his DEA Certificate of Registration, No. FV2721694, based in Utah, pursuant to 21 U.S.C. 824(d), alleging that Registrant's continued registration constitutes "an imminent danger to the public health or safety." OSC/ISO, at 1; RFAAX 1, at 1 (quoting 21 U.S.C. 824(d)). The OSC/ISO also proposed the revocation of Registrant's DEA Certificate of Registration, No. FV2721694, and the denial of Registrant's application for an additional DEA Certificate of Registration, No. W24166810C, based in Arizona, alleging that Registrant's continued registration is inconsistent with the public interest. OSC/ISO, at 1; RFAAX 1, at 1 (citing 21 U.S.C. 823(g)(1); 824(a)(4)).¹

The OSC/ISO alleged that from at least February 2021 to at least March 2025, Registrant repeatedly violated federal and Utah state law by issuing at least 288 prescriptions for Schedule II–IV controlled substances to four patients outside the usual course of professional practice and not for a legitimate medical purpose, in violation of 21 CFR 1306.04(a); Utah Code Ann. §§ 58–1–501(2)(a)(xiii)(A), 58–37–6(7)(i), 58–37–19(2)(a)–(e), 58–37f–304(2)(a)–(b)(i); and Utah Admin. Code r. § 156–37–602(1)(b)–(c).² OSC/ISO, at 2–4; RFAAX 1, at 2–4. Specifically, the OSC/ISO alleged that, among other things, Registrant failed to determine medical necessity for prescribing controlled substances, failed to conduct appropriate physical exams, failed to maintain accurate medical records, and prescribed dangerous combinations of controlled substances. OSC/ISO, at 4; RFAAX 1, at 4.

On July 15, 2025, the Government submitted an RFAA requesting that the Agency issue a default final order revoking Registrant's registration and denying Registrant's application. RFAA, at 9–10. After carefully reviewing the entire record and conducting the analysis as set forth in more detail below, the Agency grants the Government's request for final agency action, revokes Registrant's registration, and denies Registrant's application.

¹ Based on the Government's submissions in its RFAA dated July 15, 2025, the Agency finds that service of the OSC/ISO on Registrant was adequate. Specifically, the Declaration from a DEA Diversion Investigator (DI) indicates that on May 29, 2025, the DI traveled to Registrant's registered address and personally served the OSC/ISO on Registrant. RFAAX 2, at 2; *see also id.* at 3 (Form DEA–12 signed by Registrant acknowledging receipt of the OSC/ISO).

² The Agency need not adjudicate the criminal violations alleged in the OSC/ISO. *Ruan v. United States*, 597 U.S. 450 (2022) (decided in the context of criminal proceedings).

I. Default Determination

Under 21 CFR 1301.43, a registrant entitled to a hearing who fails to file a timely hearing request “within 30 days after the date of receipt of the [OSC/ISO] . . . shall be deemed to have waived their right to a hearing and to be in default” unless “good cause” is established for the failure. 21 CFR 1301.43(a) & (c)(1). In the absence of a demonstration of good cause, a registrant who fails to timely file an answer also is “deemed to have waived their right to a hearing and to be in default.” 21 CFR 1301.43(c)(2). Unless excused, a default is deemed to constitute “an admission of the factual allegations of the [OSC/ISO].” 21 CFR 1301.43(e).

Here, the OSC/ISO notified Registrant of his right to file a written request for hearing, and that if he failed to file such a request, he would be deemed to have waived his right to a hearing and be in default. OSC/ISO, at 8–9; RFAAX 1, at 8–9 (citing 21 CFR 1301.43). According to the Government’s RFAA, Registrant failed to request a hearing. RFAA, at 2. Thus, the Agency finds that Registrant is in default and therefore has admitted to the factual allegations in the OSC/ISO. 21 CFR 1301.43(e).

II. Applicable Law

As the Supreme Court stated in *Gonzales v. Raich*, 545 U.S. 1 (2005), “the main objectives of the [Controlled Substances Act (CSA)] were to conquer drug abuse and control the legitimate and illegitimate traffic in controlled substances.” 545 U.S. at 12. *Gonzales* explained that:

Congress was particularly concerned with the need to prevent the diversion of drugs from legitimate to illicit channels. To effectuate these goals, Congress devised a closed regulatory system making it unlawful to manufacture, distribute, dispense, or possess any controlled substance except in a manner authorized by the CSA The CSA and its implementing regulations set forth strict requirements regarding registration, labeling and packaging, production quotas, drug security, and recordkeeping.

Id. at 12–14.

The OSC/ISO’s allegations concern the CSA’s “statutory and regulatory provisions . . . mandating . . . compliance with . . . prescription requirements” and, therefore, go to the heart of the CSA’s “closed regulatory system” specifically designed “to conquer drug abuse and to control the legitimate and illegitimate traffic in controlled substances,” and “to prevent the diversion of drugs from legitimate to illicit channels.” *Id.* at 12–14, 27.

A. Allegation That Registrant Improperly Prescribed Controlled Substances

According to the CSA’s implementing regulations, a lawful controlled substance prescription is one that is “issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.” 21 CFR 1306.04(a); see *Gonzales v. Oregon*, 546 U.S. 243, 274 (2006), *United States v. Hayes*, 595 F.2d 258 (5th Cir. 1979), *rehearing den.*, 598 F.2d 620 (5th Cir. 1979), *cert. denied*, 444 U.S. 866 (1979); RFAAX 1, at 2. A “practitioner must establish and maintain a *bona fide* doctor-patient relationship in order to act ‘in the usual course of . . . professional practice’ and to issue a prescription for a ‘legitimate medical purpose.’” *Dewey C. MacKay, M.D.*, 75 FR 49,956, 49,973 (2010).

As for state law, Utah regulations state that unprofessional conduct includes issuing a prescription “without first obtaining information in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify conditions, and to identify contraindications to the proposed treatment.” Utah Code Ann. § 58–1–501(2)(a)(xiii)(A); RFAAX 1, at 1–2.

The Utah Controlled Substances Act states that a practitioner “may not prescribe or administer dosages of a controlled substance in excess of medically recognized quantities necessary to treat the ailment, malady, or condition of the ultimate user.” Utah Code Ann. § 58–37–6(7)(i); RFAAX 1, at 2. The Utah Controlled Substances Act also requires that, subject to very limited exceptions not applicable here, “a prescriber may not issue an initial opiate prescription without discussing with the patient . . . (a) the risks of addiction and overdose associated with opiate drugs; (b) the dangers of taking opiates with alcohol, benzodiazepines, and other central nervous system depressants; (c) the reasons why the prescription is necessary; (d) alternative treatments that may be available; and (e) other risks associated with the use of the drugs being prescribed.” Utah Code Ann. § 58–37–19(2)(a)–(e); RFAAX 1, at 2.

Moreover, the Utah Controlled Substance Database Act requires that a prescriber check the Utah Controlled Substance Database for information about a patient before the first time prescribing him or her a Schedule II or III opioid. Utah Code Ann. § 58–37f–304(2)(a); RFAAX 1, at 2. The Utah Controlled Substance Database Act also requires that the prescriber repeatedly review information about the patient in

the Utah Controlled Substance Database if the prescriber is repeatedly prescribing a Schedule II or III opioid to the patient. Utah Code Ann. § 58–37f–304(2)(b)(i); RFAAX 1, at 2.

Finally, the Utah Administrative Code requires that “[p]rescribing practitioners shall keep accurate records for each patient reflecting: (i) examination; (ii) evaluation; and (iii) treatment.” Utah Admin. Code r. § 156–37–602(1)(b); RFAAX 1, at 2. The Utah Administrative Code also requires that “[p]atient medical records shall: (i) accurately reflect the prescription or administration of controlled substances in the treatment of the patient; (ii) the purpose for which the controlled substance is utilized; and (iii) information upon which the diagnosis is based.” Utah Admin. Code r. § 156–37–602(1)(c); RFAAX 1, at 2.

III. Findings of Fact

In light of Registrant’s default, the factual allegations in the OSC/ISO are deemed admitted. 21 CFR 1301.43(e). Accordingly, Registrant admits that from at least February 2021 to at least March 2025, Registrant repeatedly violated federal and Utah state law by issuing at least 288 prescriptions for Schedule II–IV controlled substances to four patients outside the course of professional practice and not for a legitimate medical purpose. OSC/ISO, at 2–4.

Patient C.B.

Registrant admits that between August 23, 2021, and February 3, 2025, Registrant issued at least 40 prescriptions for oxycodone ER 40 mg (a Schedule II opioid) to Patient C.B. OSC/ISO, at 4. Registrant also admits that between June 16, 2021, and February 3, 2025, Registrant issued at least 34 prescriptions for oxycodone 30 mg (a Schedule II opioid) to Patient C.B. *Id.* Registrant admits that Registrant issued all of these prescriptions despite, among other things: (a) failing to obtain information in the usual course of professional practice that is sufficient to establish a diagnosis; (b) failing to conduct and document an appropriate physical examination before prescribing opioids; (c) prescribing dosages of controlled substances in excess of medically recognized quantities necessary to treat the ailment, malady, or condition of the ultimate user; (d) failing to discuss with the patient the risks associated with opiates prior to prescribing opiates; (e) failing to periodically check the Utah Controlled Substance Database while repeatedly prescribing Schedule II opioids; and (f) failing to maintain accurate medical

records. *Id.* Registrant admits that the above prescriptions for controlled substances issued to Patient C.B. were not issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. *Id.*

Patient M.N.

Registrant admits that between February 8, 2021, and June 30, 2023, Registrant issued at least 31 prescriptions for alprazolam 2 mg (a Schedule IV benzodiazepine) to Patient M.N. *Id.* at 5. Registrant also admits that between February 8, 2021, and June 30, 2023, Registrant issued at least 32 prescriptions for carisoprodol 350 mg (a Schedule IV muscle relaxant) to Patient M.N. *Id.* Registrant further admits that between February 8, 2021, and June 30, 2023, Registrant issued at least 30 prescriptions for oxycodone 30 mg, at least one prescription for oxycodone 15 mg, and at least one prescription for oxycodone 5 mg to Patient M.N. *Id.* Registrant admits that Registrant issued all of these prescriptions despite, among other things: (a) repeatedly issuing overlapping prescriptions for controlled substances resulting in drug cocktails, including at least 29 Holy Trinity³ cocktails, without sufficiently establishing a diagnosis and identifying contraindications to the proposed treatment and without discussing with the patient the dangers of taking opioids in combination with benzodiazepines and other central nervous system depressants; (b) failing to conduct and document an appropriate physical examination before prescribing opioids; (c) prescribing dosages of controlled substances in excess of medically recognized quantities necessary to treat the ailment, malady, or condition of the ultimate user; (d) failing to periodically check the Utah Controlled Substance Database while repeatedly prescribing Schedule II opioids; and (e) failing to maintain accurate medical records. *Id.* Registrant admits that the above prescriptions for controlled substances issued to Patient M.N. were not issued for a legitimate medical purpose by an individual practitioner acting in the

usual course of his professional practice. *Id.*

Patient S.C.

Registrant admits that between March 5, 2021, and February 5, 2025, Registrant issued at least 38 prescriptions for alprazolam 2 mg to Patient S.C. *Id.* at 6. Registrant also admits that between March 5, 2021, and February 5, 2025, Registrant issued at least 40 prescriptions for oxycodone 30 mg to Patient S.C. *Id.* Registrant further admits that between March 5, 2021, and February 5, 2025, Registrant issued at least 38 prescriptions for carisoprodol 350 mg to Patient S.C. *Id.* Registrant admits that Registrant issued all of these prescriptions despite, among other things: (a) repeatedly issuing overlapping prescriptions for controlled substances resulting in drug cocktails, including at least 38 Holy Trinity cocktails, without sufficiently establishing a diagnosis and identifying contraindications to the proposed treatment and without discussing with the patient the dangers of taking opioids in combination with benzodiazepines and other central nervous system depressants; (b) failing to conduct and document an appropriate physical examination before prescribing opioids; (c) prescribing dosages of controlled substances in excess of medically recognized quantities necessary to treat the ailment, malady, or condition of the ultimate user; (d) failing to periodically check the Utah Controlled Substance Database while repeatedly prescribing Schedule II opioids; and (e) failing to maintain accurate medical records. *Id.* Registrant admits that the above prescriptions for controlled substances issued to Patient S.C. were not issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. *Id.*

Patient A.L.

Registrant admits that between September 20, 2024, and March 14, 2025, Registrant issued approximately 9 prescriptions for oxycodone 30 mg to Patient A.L. OSC/ISO, at 7. Registrant also admits that between September 20, 2024, and March 14, 2025, Registrant issued approximately 9 prescriptions for Adderall⁴ 15 mg (a Schedule II central nervous system stimulant) to Patient A.L. *Id.* Registrant admits that Registrant issued all of these prescriptions despite, among other things: (a) failing to obtain information in the usual course of professional practice that is sufficient to

establish a diagnosis; (b) failing to conduct and document an appropriate physical examination before prescribing opioids; (c) prescribing dosages of controlled substances in excess of medically recognized quantities necessary to treat the ailment, malady, or condition of the ultimate user; (d) failing to discuss with the patient the risks associated with opiates prior to prescribing opiates; (e) failing to periodically check the Utah Controlled Substance Database while repeatedly prescribing Schedule II opioids; and (f) failing to maintain accurate medical records. *Id.* Registrant admits that the above prescriptions for controlled substances issued to Patient A.L. were not issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. *Id.*

DEA retained an independent medical expert to review, among other materials, Registrant's patient files and/or prescribing history for Patients C.B., M.N., S.C., and A.L. *Id.* at 8. DEA's medical expert concluded that Registrant's issuance of the above prescriptions fell outside the standard of care applicable to the practice of medicine in Utah. *Id.*

In consideration of the above, the Agency finds substantial record evidence that Registrant issued at least 288 prescriptions that lacked a legitimate medical purpose and were issued outside the usual course of professional practice in Utah.

IV. Public Interest Determination

A. Legal Background on Public Interest Determinations

When the CSA's requirements are not met, the Attorney General "may deny, suspend, or revoke [a] registration if . . . the [registrant's] registration would be 'inconsistent with the public interest.'" *Gonzales v. Oregon*, 546 U.S. 243, 251 (2006) (quoting 21 U.S.C. 824(a)(4)). In the case of a "practitioner," Congress directed the Attorney General to consider five factors in making the public interest determination. *Id.*; 21 U.S.C. 823(g)(1)(A–E).⁵

⁵ The five factors are:

(A) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(B) The [registrant's] experience in dispensing, or conducting research with respect to controlled substances.

(C) The [registrant's] conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(D) Compliance with applicable State, Federal, or local laws relating to controlled substances.

Continued

³ "Holy Trinity" refers to opioids in combination with prescriptions for alprazolam and carisoprodol. *Id.* Registrant admits that the "Holy Trinity" cocktail greatly increases a patient's risk of sedation, respiratory depression, coma, and death, and that DEA has held that these cocktails are highly abused and associated with diversion. RFAAX 1, at 2 (citing *Jacobo Dreszer, M.D.*, 76 FR 19,386, 19,389 (2011) (describing combinations of opioids and benzodiazepines as "drug cocktails" and noting that when "used in combination, the potential for [a] drug overdose and death is increased").

⁴ Adderall is a brand name for amphetamine/dextroamphetamine mixed salts.

The five factors are considered in the disjunctive. *Gonzales v. Oregon*, 546 U.S. at 292–93 (Scalia, J., dissenting) (“It is well established that these factors are to be considered in the disjunctive,” quoting *In re Arora*, 60 FR 4447, 4448 (1995)); *Robert A. Leslie, M.D.*, 68 FR 15,227, 15,230 (2003). Each factor is weighed on a case-by-case basis. *David H. Gillis, M.D.*, 58 FR 37,507, 37,508 (1993); see *Morall v. Drug Enf’t Admin.*, 412 F.3d 165, 181 (D.C. Cir. 2005) (describing the Agency’s adjudicative process as “applying a multi-factor test through case-by-case adjudication,” quoting *LeMoyné-Owen Coll. v. N.L.R.B.*, 357 F.3d 55, 61 (D.C. Cir. 2004)). Any one factor, or combination of factors, may be decisive, *David H. Gillis, M.D.*, 58 FR at 37,508, and the Agency “may give each factor the weight . . . deem[ed] appropriate in determining whether a registration should be revoked or an application for registration denied.” *Morall*, 412 F.3d at 185 n.2 (Henderson, J., concurring) (quoting *Robert A. Smith, M.D.*, 70 FR 33,207, 33,208 (2007)); see also *Penick Corp. v. Drug Enf’t Admin.*, 491 F.3d 483, 490 (D.C. Cir. 2007).

Moreover, while the Agency is required to consider each of the factors, it “need not make explicit findings as to each one.” *MacKay v. Drug Enf’t Admin.*, 664 F.3d 808, 816 (10th Cir. 2011) (quoting *Volkman v. U.S. Drug Enf’t Admin.*, 567 F.3d 215, 222 (6th Cir. 2009)); *Jones Total Health Care Pharmacy, LLC v. Drug Enf’t Admin.*, 881 F.3d 823, 830 (11th Cir. 2018); *Hoxie v. Drug Enf’t Admin.*, 419 F.3d 477, 482 (6th Cir. 2005). “In short, . . . the Agency is not required to mechanically count up the factors and determine how many favor the Government and how many favor the registrant. Rather, it is an inquiry which focuses on protecting the public interest; what matters is the seriousness of the registrant’s misconduct.” *Jayam Krishna-Iyer, M.D.*, 74 FR 459, 462 (2009). Accordingly, as the Tenth Circuit has recognized, Agency decisions have explained that findings under a single factor can support the revocation of a registration. *MacKay*, 664 F.3d at 821.

The Government has the burden of proof in this proceeding. 21 CFR 1301.44(e).

B. Registrant’s Registration is Inconsistent With the Public Interest

While the Agency has considered all the public interest factors of 21 U.S.C.

823(g)(1),⁶ the Government’s evidence in support of its *prima facie* case is confined to Factors B and D. OSC/ISO, at 7. Evidence is considered under Factors B and D when it reflects compliance or non-compliance with laws related to controlled substances and experience dispensing controlled substances. *Kareem Hubbard, M.D.*, 87 FR 21,156, 21,162 (2022).

Here, as found above, Registrant is deemed to have admitted and the Agency finds that Registrant issued at least 288 prescriptions that lacked a legitimate medical purpose and were issued outside the usual course of professional practice. Accordingly, the Agency finds substantial record evidence that Registrant violated 21 CFR 1306.04(a); Utah Code Ann. §§ 58–1–501(2)(a)(xiii)(A), 58–37–6(7)(i), 58–37–19(2)(a)–(e), 58–37f–304(2)(a)–(b)(i); and Utah Admin. Code r. § 156–37–602(1)(b)–(c). The Agency further finds that after considering the factors of 21 U.S.C. 823(g)(1), Registrant’s continued registration is “inconsistent with the public interest.” 21 U.S.C. 824(a)(4). Accordingly, the Government satisfied its *prima facie* burden of showing that Registrant’s continued registration would be “inconsistent with the public interest.” 21 U.S.C. 824(a)(4). The Agency also finds that there is insufficient mitigating evidence to rebut the Government’s *prima facie* case. Thus, the only remaining issue is whether, in spite of Registrant’s misconduct, he can be trusted with a registration.

V. Sanction

Where, as here, the Government has met the burden of showing that Registrant’s registration is inconsistent with the public interest, the burden shifts to Registrant to show why he can

be entrusted with a registration. *Morall*, 412 F.3d at 174; *Jones Total Health Care Pharmacy, LLC v. Drug Enf’t Admin.*, 881 F.3d 823, 830 (11th Cir. 2018); *Garrett Howard Smith, M.D.*, 83 FR 18,882, 18,904 (2018). The issue of trust is necessarily a fact-dependent determination based on the circumstances presented by the individual registrant. *Jeffrey Stein, M.D.*, 84 FR 46,968, 46,972 (2019); see also *Jones Total Health Care Pharmacy*, 881 F.3d at 833. Moreover, as past performance is the best predictor of future performance, the Agency requires that a registrant who has committed acts inconsistent with the public interest accept responsibility for those acts and demonstrate that he will not engage in future misconduct. See *Jones Total Health Care Pharmacy*, 881 F.3d at 833; *ALRA Labs, Inc. v. Drug Enf’t Admin.*, 54 F.3d 450, 452 (7th Cir. 1995). The Agency requires a registrant’s unequivocal acceptance of responsibility. *Janet S. Pettyjohn, D.O.*, 89 FR 82,639, 82,641 (2024); *Mohammed Asgar, M.D.*, 83 FR 29,569, 29,573 (2018); see also *Jones Total Health Care Pharmacy*, 881 F.3d at 830–31. In addition, a registrant’s candor during the investigation and hearing is an important factor in determining acceptance of responsibility and the appropriate sanction. See *Jones Total Health Care Pharmacy*, 881 F.3d at 830–31; *Hoxie*, 419 F.3d at 483–84. Further, the Agency considers the egregiousness and extent of the misconduct as significant factors in determining the appropriate sanction. See *Jones Total Health Care Pharmacy*, 881 F.3d at 834 & n.4. The Agency also considers the need to deter similar acts by a registrant and by the community of registrants. *Jeffrey Stein, M.D.*, 84 FR at 46,972–73.

Here, Registrant did not request a hearing or answer the allegations in the OSC/ISO and was therefore deemed to be in default. See *supra* I. To date, Registrant has not filed a motion with the Office of the Administrator to excuse the default. 21 CFR 1301.43(c)(1). Registrant has thus failed to answer the allegations contained in the OSC/ISO and has not otherwise availed himself of the opportunity to refute the Government’s case. As such, Registrant has not accepted responsibility for the proven violations, has made no representations regarding his future compliance with the CSA, and has not demonstrated that he can be trusted with registration. Accordingly, the Agency will order the revocation of Registrant’s registration and the denial of Registrant’s application.

(E) Such other conduct which may threaten the public health and safety.

21 U.S.C. 823(g)(1)(A–E).

⁶ As to Factor A, there is no record evidence of disciplinary action against Registrant’s state medical license. 21 U.S.C. 823(g)(1)(A). State authority to practice medicine is “a necessary, but not a sufficient condition for registration.” *Robert A. Leslie, M.D.*, 68 FR at 15,230. Therefore, “[t]he fact that the record contains no evidence of a recommendation by a state licensing board does not weigh for or against a determination as to whether continuation of the [registrant’s] [registration] is consistent with the public interest.” *Roni Dreszer, M.D.*, 76 FR 19,434, 19,444 (2011). As to Factor C, there is no evidence in the record that Registrant has been convicted of any federal or state law offense “relating to the manufacture, distribution, or dispensing of controlled substances.” 21 U.S.C. 823(g)(1)(C). However, as Agency cases have noted, “the absence of such a conviction is of considerably less consequence in the public interest inquiry” and is therefore not dispositive. *Dewey C. MacKay, M.D.*, 75 FR at 49,973. As to Factor E, the Government’s evidence fits squarely within the parameters of Factors B and D and does not raise “other conduct which may threaten the public health and safety.” 21 U.S.C. 823(g)(1)(E). Accordingly, Factor E does not weigh for or against Registrant.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a) and 21 U.S.C. 823(g)(1), I hereby revoke DEA Certificate of Registration No. FV2721694 issued to Jason VanShaar, M.D., deny the pending application for a DEA Certificate of Registration No. W24166810C submitted by Jason VanShaar, M.D., and deny any other pending applications submitted by Jason VanShaar, M.D., in Utah or Arizona. This Order is effective February 17, 2026.

Signing Authority

This document of the Drug Enforcement Administration was signed on January 6, 2026, by Administrator Terrance C. Cole. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2026-00627 Filed 1-14-26; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Mark Huff, M.D.; Decision and Order

On May 4, 2025, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Mark Huff, M.D., of Murray, Utah (Respondent). Request for Final Agency Action (RFAA), Exhibit (RFAAX) 1, at 1, 5. The OSC proposed the revocation of Respondent's DEA Certificate of Registration (COR) No. FH6657716, alleging that Respondent has committed acts that are inconsistent with the public interest. *Id.* at 1 (citing 21 U.S.C. 823(g)(1); 824(a)(4)).

Specifically, the OSC alleged that during interactions with DEA investigators in 2024, Respondent repeatedly exhibited a lack of candor regarding his 2022 fentanyl abuse, subsequent treatment, and reasons for seeing a doctor, which is conduct that DEA may consider under 21 U.S.C. 823(g)(1)(E) because it may threaten public health and safety. *Id.* at 2–3

(citing *George R. Smith, M.D.*, 78 FR 44972, 44979 (2013) (observing that under Factor Five, “the DEA has consistently held that “[c]andor during DEA investigations, regardless of the severity of the violations alleged, is considered by the DEA to be an important factor when assessing whether a . . . registration is consistent with the public interest.”)).¹

On June 6, 2025, Respondent requested a hearing. RFAA, at 1; *see also* RFAAX 4, at 1; RFAAX 5, at 1. On June 9, 2025, Chief Administrative Law Judge John J. Mulrooney, II (the Chief ALJ) issued an Order for Prehearing Statements, which included detailed instructions for the submission of each party's prehearing statement. RFAA, at 1–2; *see also* RFAAX 4. On July 8, 2025, the Chief ALJ issued an Order Terminating Hearing Proceedings on the basis that Respondent's prehearing statements were “wholly unsatisfactory.”² RFAA, at 2; *see also* RFAAX 5.

On August 20, 2025, the Government submitted its RFAA requesting that the Agency issue a final order revoking Respondent's registration. RFAA, at 8. After carefully reviewing the entire record and conducting the analysis as set forth in more detail below, the Agency grants the Government's request for final agency action and revokes Respondent's registration because Respondent's continued registration is inconsistent with the public interest.

I. Applicable Law

As the Supreme Court stated in *Gonzales v. Raich*, 545 U.S. 1 (2005), “the main objectives of the CSA were to conquer drug abuse and control the legitimate and illegitimate traffic in

controlled substances.” 545 U.S. at 12. *Gonzales* explained that:

Congress was particularly concerned with the need to prevent the diversion of drugs from legitimate to illicit channels. To effectuate these goals, Congress devised a closed regulatory system making it unlawful to manufacture, distribute, dispense, or possess any controlled substance except in a manner authorized by the CSA The CSA and its implementing regulations set forth strict requirements regarding registration, labeling and packaging, production quotas, drug security, and recordkeeping.

Id. at 12–14.

The OSC's allegations concern the CSA's “statutory and regulatory provisions mandating registration with the DEA” and, therefore, go to the heart of the CSA's “closed regulatory system” specifically designed “to conquer drug abuse and to control the legitimate and illegitimate traffic in controlled substances,” and “to prevent the diversion of drugs from legitimate to illicit channels.” *Id.* at 12–14, 27.

II. Findings of Fact

The Agency finds substantial record evidence for the following findings of fact based on the uncontroverted evidence submitted by the Government in its RFAA dated August 20, 2025.

Respondent was previously registered with DEA under DEA COR BH9335351. RFAAX 3, at 2. On November 25, 2013, Respondent signed a DEA Form-104 voluntarily surrendering this previous registration for cause. *Id.*; *see also id.*, Attachment B. Respondent is currently registered with DEA under DEA COR No. FH6657716, with a registered address in Utah. RFAAX 3, Attachment A, at 1–2.

On January 8, 2024, Respondent requested to modify the address of DEA COR No. FH6657716 to an address in Georgia. RFAAX 3, at 1. Respondent's request was placed under review due to the prior suspension of Respondent's Utah medical license and Respondent's surrender of his prior DEA COR BH9335351. *Id.* at 1–2. Review of the prior suspension of Respondent's Utah medical license uncovered that in 2011, Respondent had entered into a diversion agreement with the Utah Division of Occupational and Professional Licensing (DOPL) due to fentanyl³ use. RFAAX 3, at 2. In 2013, Respondent's Utah medical license was suspended due to his failure to comply with the 2011 diversion agreement. *Id.* Further, Respondent's surrender of his prior DEA

¹ The OSC further alleged that on his application for a Georgia physician's license, Respondent gave false responses to questions regarding a previously surrendered controlled substance license. *Id.* at 3–4. The Agency need not address this allegation because there is substantial other evidence that Respondent's registration is inconsistent with the public interest.

² The ALJ's termination of proceedings on this basis was a reasonable exercise of discretion. *See* 5 U.S.C. 556(c) (granting the ALJ power to “regulate the course of the hearing” and “dispose of procedural requests or similar matters”); *see also Robert L. Carter, D.D.S.*, 90 FR 9631, 9632 (2025) (finding that the ALJ “acted within his authority” and “did not error in using his discretion to find that Respondent's failure to file a compliant prehearing statement amounted to an implied waiver of his hearing request”); *David H. Betat, M.D.*, 87 FR 21175, 21176, 21180 (2022) (deferring to the ALJ's finding that the registrant waived his right to a hearing by failing to respond to the ALJ's orders); *Care Point Pharmacy, Inc.*, 86 FR 40621, 40621 n.3 (2021) (“Agency precedent is clear that the unwillingness or inability of a party to comply with the directives of the [ALJ] may support an implied waiver of that party's right to a hearing.”) (internal quotations removed and collecting cases).

³ Fentanyl is a Schedule II opioid. 21 CFR 1308.12(c)(9).

COR BH9335351 was due to the state suspension. *Id.*

On January 29, 2024, during a phone call with DEA, Respondent stated that in 2013, due to fentanyl abuse, he was placed on probation and underwent intensive outpatient treatment, but since 2013, he had not received any other treatment. *Id.* at 3. Review of Prescription Drug Monitoring Program (PDMP) data pertaining to Respondent from Utah's Controlled Substance Database uncovered that from approximately March 2022 to July 2022, Respondent received six prescriptions for Suboxone.⁴ RFAAX 3, at 2–3; *see also id.*, Attachment D, Attachment F.

On February 2, 2024, during another phone call with DEA in which Respondent was asked about the above conflicting information, Respondent stated that he had decided to visit Dr. M.C., who prescribed him Suboxone, because his wife had been falsely accusing him of taking narcotics and he wanted to appease her. RFAAX 3, at 3. Respondent also stated that during the January 29, 2024 interview, he had answered “no” regarding any drug abuse treatment since 2013 because he had thought the question referred to intensive outpatient treatment (like his 2013 treatment). *Id.*

On March 12, 2024, during an in-person interview with DEA, Respondent stated that he had contacted Dr. M.C. on recommendation from his former mentor and sponsor, and he was prescribed Suboxone to prevent a relapse and for stress. *Id.* at 3–4. Respondent stated that taking the Suboxone was a protective mechanism and that he thought he could tolerate Suboxone without being on narcotics. *Id.* at 4. When asked about his February 2, 2024 statement that he had taken the Suboxone to appease his wife, Respondent stated that that was also part of the reason. *Id.*

Subsequent review of Respondent's medical records uncovered that in January 2022, Respondent relapsed and began abusing fentanyl. *Id.*; *see also id.*, Attachment H, at 1, 2, 4. After discontinuing fentanyl, Respondent experienced withdrawal symptoms and tried non-controlled propofol, but it did not work for him. RFAAX 3, at 4; *see also id.*, Attachment H, at 2. On March 7, 2022, Respondent was diagnosed by Dr. M.C. with “[s]evere opioid use disorder.” RFAAX 3, at 5; *see also id.*, Attachment H, at 1. From March 2022 through July 2022, Respondent received six prescriptions for Suboxone, with the

July prescription issued by a second doctor, Dr. S.H. *See* RFAAX 3, Attachments D, F, H, J.⁵ Respondent's records continually described Respondent's diagnosis and treatment as “opioid use disorder” and “on maintenance therapy,” respectively. RFAAX 3, at 5; *see also id.*, Attachment H–J.

On October 22, 2024, DEA interviewed Respondent a fourth time, in person. RFAAX 3, at 6. When asked about the multiple indications of a fentanyl relapse in his medical records, Respondent maintained that he had received Suboxone as a preventative measure and not because he had had a relapse. *Id.* Further, Respondent again stated that he had misunderstood the January 29, 2024 question about drug abuse treatment because he had thought the question referred to “participation in a program.” *Id.*

Accordingly, the Agency finds substantial record evidence that during his interactions with DEA in 2024, Respondent consistently showed a lack of candor regarding his 2022 fentanyl abuse, subsequent treatment, and reasons for seeing a doctor.

III. Public Interest Determination

A. Legal Background on Public Interest Determinations

When the CSA's requirements are not met, the Attorney General “may deny, suspend, or revoke [a] registration if . . . the [registrant's] registration would be ‘inconsistent with the public interest.’” *Gonzales v. Oregon*, 546 U.S. 243, 251 (quoting 21 U.S.C. 824(a)(4)). In the case of a “practitioner,” Congress directed the Attorney General to consider five factors in making the public interest determination. *Id.*; 21 U.S.C. 823(g)(1)(A–E).⁶

The five factors are considered in the disjunctive. *Gonzales v. Oregon*, 546 U.S. at 292–93 (Scalia, J., dissenting) (“It is well established that these factors are to be considered in the disjunctive,” (quoting *In re Arora*, 60 FR 4447, 4448

⁵ The documentation regarding Respondent's visit to Dr. H. was not included with the documentation provided by Respondent to DEA. RFAAX 3, at 5.

⁶ The five factors are:

(A) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(B) The [registrant's] experience in dispensing, or conducting research with respect to controlled substances.

(C) The [registrant's] conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(D) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(E) Such other conduct which may threaten the public health and safety.

21 U.S.C. 823(g)(1)(A–E).

(1995)); *Robert A. Leslie, M.D.*, 68 FR 15227, 15230 (2003). Each factor is weighed on a case-by-case basis. *David H. Gillis, M.D.*, 58 FR 37507, 37508 (1993). Any one factor, or combination of factors, may be decisive, *David H. Gillis, M.D.*, 58 FR at 37508, and the Agency “may give each factor the weight . . . deem[ed] appropriate in determining whether a registration should be revoked or an application for registration denied.” *Morall v. Drug Enf't Admin.*, 412 F.3d 165, 185 n.2 (D.C. Cir. 2005) (Henderson, J., concurring) (quoting *Robert A. Smith, M.D.*, 70 FR 33207, 33208 (2007)); *see also Penick Corp. v. Drug Enf't Admin.*, 491 F.3d 483, 490 (D.C. Cir. 2007).

Moreover, while the Agency is required to consider each of the factors, it “need not make explicit findings as to each one.” *MacKay v. Drug Enf't Admin.*, 664 F.3d 808, 816 (10th Cir. 2011) (quoting *Volkman v. U. S. Drug Enf't Admin.*, 567 F.3d 215, 222 (6th Cir. 2009)); *Jones Total Health Care Pharmacy, LLC v. Drug Enf't Admin.*, 881 F.3d 823, 830 (11th Cir. 2018); *Hoxie v. Drug Enf't Admin.*, 419 F.3d 477, 482 (6th Cir. 2005). “In short, . . . the Agency is not required to mechanically count up the factors and determine how many favor the Government and how many favor the registrant. Rather, it is an inquiry which focuses on protecting the public interest; what matters is the seriousness of the registrant's misconduct.” *Jayam Krishna-Iyer, M.D.*, 74 FR 459, 462 (2009). Accordingly, as the Tenth Circuit has recognized, Agency decisions have explained that findings under a single factor can support the revocation of a registration. *MacKay*, 664 F.3d at 821.

The Government has the burden of proof in this proceeding. 21 CFR 1301.44(e).

B. Respondent's Registration Is Inconsistent With the Public Interest

While the Agency has considered all the public interest factors of 21 U.S.C. 823(g)(1),⁷ the Agency finds that the

⁷ As to Factor A, the record contains no evidence of a recommendation from any State licensing board or professional disciplinary authority. 21 U.S.C. 823(g)(1)(A). Nonetheless, an absence of such evidence “does not weigh for or against a determination as to whether continuation of [or granting of a] DEA certification is consistent with the public interest.” *Roni Dreszer, M.D.*, 76 FR 19434, 19444 (2011). As to Factors B and D, evidence is considered under these two factors when it reflects experience dispensing controlled substances and compliance or non-compliance with laws related to controlled substances. *Kareem Hubbard, M.D.*, 87 FR 21156, 21162 (2022). Here, there is no evidence in the record reflecting Respondent's experience dispensing controlled substances nor evidence in the record reflecting

⁴ Suboxone is a brand name for the combination of buprenorphine (a Schedule III narcotic) and naloxone. 21 CFR 1308.13(e)(2)(i).

Government's evidence in support of its *prima facie* case is confined to Factor E. RFAA, at 4–7.

Evidence is considered under Factor E when it constitutes “[s]uch other conduct which may threaten the public health and safety.” 21 U.S.C. 823(g)(1)(E). The Agency has consistently found that a lack of candor is proper to consider under Factor E as something that threatens public health and safety. *OakmontScript Limited Partnership*, 87 FR 21516, 21532–33 (2022) (citing *John V. Scalera*, 78 FR 12092, 12093, 12100 (2013); *Jeri Hassman, M.D.*, 75 FR 8194, 8236 (2010)); *see also Annicol Marrocco, M.D.*, 80 FR 28695, 28705 (2015); *Alan H. Olefsky, M.D.*, 76 FR 20025, 20031 (2011) (“Because of the authority conveyed by a registration and the extraordinary potential for harm caused by those who misuse their registrations, DEA places significant weight on an applicant/registrant’s candor in the proceeding.”).

Here, as found above, the Agency finds that during his interactions with DEA in 2024, Respondent consistently showed a lack of candor regarding his 2022 fentanyl abuse, subsequent treatment, and reasons for seeing a doctor. *See supra* II. The Agency therefore finds that Factor E weighs towards a finding that Respondent’s registration is inconsistent with the public interest.

In sum, the Agency finds that after considering the factors of 21 U.S.C. 823(g)(1), Respondent’s continued registration is “inconsistent with the public interest.” 21 U.S.C. 824(a)(4). Accordingly, the Government satisfied its *prima facie* burden of showing that Respondent’s continued registration would be “inconsistent with the public interest.” *Id.* The Agency also finds that Respondent has presented no mitigating evidence to rebut the Government’s *prima facie* case. Thus, the only remaining issue is whether, in spite of Respondent’s misconduct, Respondent can be trusted with a registration.

IV. Sanction

Where, as here, the Government has met the burden of showing that Respondent’s registration is inconsistent

with the public interest, the burden shifts to Respondent to show why he can be entrusted with a registration. *Morall*, 412 F.3d at 174; *Jones Total Health Care Pharmacy*, 881 F.3d at 830; *Garrett Howard Smith, M.D.*, 83 FR 18882, 18904 (2018).

The issue of trust is necessarily a fact-dependent determination based on the circumstances presented by the individual registrant. *Jeffrey Stein, M.D.*, 84 FR 46968, 46972 (2019); *see also Jones Total Health Care Pharmacy*, 881 F.3d at 833. Moreover, as past performance is the best predictor of future performance, the Agency requires that a registrant who has committed acts inconsistent with the public interest accept responsibility for those acts and demonstrate that he will not engage in future misconduct. *See Jones Total Health Care Pharmacy*, 881 F.3d at 833; *ALRA Labs, Inc. v. Drug Enf’t Admin.*, 54 F.3d 450, 452 (7th Cir. 1995). The Agency requires a registrant’s unequivocal acceptance of responsibility. *Janet S. Pettyjohn, D.O.*, 89 FR 82639, 82641 (2024); *Mohammed Asgar, M.D.*, 83 FR 29569, 29573 (2018); *see also Jones Total Health Care Pharmacy*, 881 F.3d at 830–31.

In addition, a registrant’s candor during the investigation and hearing has been an important factor in determining acceptance of responsibility and the appropriate sanction. *See Jones Total Health Care Pharmacy*, 881 F.3d at 830–31; *Hoxie*, 419 F.3d at 483–84. Further, the Agency considers the egregiousness and extent of the misconduct as significant factors in determining the appropriate sanction. *See Jones Total Health Care Pharmacy*, 881 F.3d at 834 & n.4. The Agency also considers the need to deter similar acts by a registrant and by the community of registrants. *Jeffrey Stein, M.D.*, 84 FR at 46972–73.

Here, although Respondent initially requested a hearing, the proceedings were terminated in the prehearing stage on the basis that Respondent’s prehearing statements were “wholly unsatisfactory.” *See* RFAA, at 1–2; RFAAX 4–5. Moreover, Respondent did not otherwise avail himself of the opportunity to refute the Government’s case. As such, Respondent has not accepted responsibility for the proven violations, has made no representations regarding his future compliance with the CSA, and has not demonstrated that he can be entrusted with registration.

Accordingly, the Agency will order the revocation of Respondent’s registration.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C.

824(a) and 21 U.S.C. 823(g)(1), I hereby revoke DEA Certificate of Registration No. FH6657716 issued to Mark Huff, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Mark Huff, M.D., to renew or modify this registration, as well as any other pending application of Mark Huff, M.D., for additional registration in Utah. This Order is effective February 17, 2026.

Signing Authority

This document of the Drug Enforcement Administration was signed on January 6, 2026, by Administrator Terrance C. Cole. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,
Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2026–00621 Filed 1–14–26; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0001]

Agency Information Collection Activities; Proposed eCollection Requested; Extension of a Currently Approved Collection

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until March 16, 2026.

FOR FURTHER INFORMATION CONTACT: Written comments and/or suggestion regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Tiffany Watson, Office on Violence Against Women, at

Respondent’s compliance or non-compliance with laws related to controlled substances. 21 U.S.C. 823(g)(1)(B), (D). As to Factor C, there is no evidence in the record that Respondent has been convicted of an offense under either Federal or State law “relating to the manufacture, distribution, or dispensing of controlled substances.” 21 U.S.C. 823(g)(1)(C). However, as Agency cases have noted, “the absence of such a conviction is of considerably less consequence in the public interest inquiry” and is therefore not dispositive. *Dewey C. MacKay, M.D.*, 75 FR 49956, 49973 (2010).

202–307–6026 or Tiffany.Watson@usdoj.gov.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

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

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

(3) Evaluate whether, and if so, how the quality, utility, and clarity of the information to be collected can be enhanced; 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 submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Certification of Compliance with the Statutory Eligibility Requirements of the Violence Against Women Act as Amended, STOP Formula Grant Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0001. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes STOP formula grantees (50 states, the District of Columbia and five territories (Guam, Puerto Rico, American Samoa, Virgin Islands, Northern Mariana Islands)). The STOP Violence Against Women Formula Grant Program was authorized through the Violence Against Women Act of 1994 and reauthorized and amended in 2000, 2005, 2013 and 2022. The purpose of the STOP Formula Grant Program is to promote a coordinated, multi-disciplinary approach to improving the criminal justice system's response to violence

against women. It envisions a partnership among law enforcement, prosecution, courts, and victim advocacy organizations to enhance victim safety and hold offenders accountable for their crimes of violence against women. OVW administers the STOP Formula Grant Program funds, which must be distributed by STOP state administrators according to statutory formula (as amended in 2000, 2005, 2013, and 2022).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 56 respondents (state administrators from the STOP Formula Grant Program) less than one hour to complete a Certification of Compliance with the Statutory Eligibility Requirements of the Violence Against Women Act, as amended.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the Certification is less than 56 hours.

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Enterprise Portfolio Management, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: January 12, 2026.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2026–00610 Filed 1–14–26; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0032]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until March 16, 2026.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Tiffany Watson, Office on Violence Against Women, at 202–307–6026 or Tiffany.Watson@usdoj.gov.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Office, 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) Evaluate whether, and if so, how the quality, utility, and clarity of the information to be collected can be enhanced; 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 submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Justice for Families Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0032. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the current grantees under the Justice for Families Program. The Justice for Families Program improves the response of all aspects of the civil and criminal justice system to families with a history of domestic violence, dating violence, sexual assault and stalking, or in cases involving allegations of child sexual abuse. Eligible applicants are states,

units of local government, courts, Indian tribal governments, nonprofit organizations, legal service providers, and victim services providers. The affected public includes the approximately 28 Justice for Families Program grantees.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 28 respondents (Justice for Families Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A Justice for Families Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 56 hours, that is 28 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W-218, Washington, DC.

Dated: January 12, 2026.

Darwin Arceo,
Department Clearance Officer for PRA, U.S.
Department of Justice.

[FR Doc. 2026-00611 Filed 1-14-26; 8:45 am]

BILLING CODE 4410-FX-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA-26-0001; NARA-2026-005]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice of certain Federal agency requests for records disposition authority (records schedules). We publish notice in the **Federal Register** and on *regulations.gov* for records schedules in which agencies propose to dispose of records they no longer need

to conduct agency business. We invite public comments on such records schedules.

DATES: We must receive responses on the schedules listed in this notice by March 1, 2026.

ADDRESSES: To view a records schedule in this notice, or submit a comment on one, use the following address: <https://www.regulations.gov/docket/NARA-26-0001/document>.

This is a direct link to the schedules posted in the docket for this notice on *regulations.gov*. You may submit comments by the following method:

- **Federal eRulemaking Portal:**

<https://www.regulations.gov>. On the website, enter either of the numbers cited at the top of this notice into the search field. This will bring you to the docket for this notice, in which we have posted the records schedules open for comment. Each schedule has a 'comment' button so you can comment on that specific schedule. For more information on *regulations.gov* and on submitting comments, see their FAQs at <https://www.regulations.gov/faq>.

If you are unable to comment via *regulations.gov*, you may email us at request.schedule@nara.gov for instructions on submitting your comment. You must cite the control number of the schedule you wish to comment on. You can find the control number for each schedule in parentheses at the end of each schedule's entry in the list at the end of this notice.

FOR FURTHER INFORMATION CONTACT:

Richard Green, Records Management Operations, by email at richard.green@nara.gov or at 301-395-7825. For information about records schedules, contact Records Management Operations by email at request.schedule@nara.gov or by phone at 301-395-7825.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

We are publishing notice of records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on these records schedules, as required by 44 U.S.C. 3303a(a), and list the schedules at the end of this notice by agency and subdivision requesting disposition authority.

In addition, this notice lists the organizational unit(s) accumulating the records or states that the schedule has agency-wide applicability. It also provides the control number assigned to each schedule, which you will need if you submit comments on that schedule.

We have uploaded the records schedules and accompanying appraisal memoranda to the *regulations.gov* docket for this notice as "other" documents. Each records schedule contains a full description of the records at the file unit level as well as their proposed disposition. The appraisal memorandum for the schedule includes information about the records.

We will post comments, including any personal information and attachments, to the public docket unchanged. Because comments are public, you are responsible for ensuring that you do not include any confidential or other information that you or a third party may not wish to be publicly posted. If you want to submit a comment with confidential information or cannot otherwise use the *regulations.gov* portal, you may contact request.schedule@nara.gov for instructions on submitting your comment.

We will consider all comments submitted by the posted deadline and consult as needed with the Federal agency seeking the disposition authority. After considering comments, we may or may not make changes to the proposed records schedule. The schedule is then sent for final approval by the Archivist of the United States. After the schedule is approved, we will post on *regulations.gov* a "Consolidated Reply" summarizing the comments, responding to them, and noting any changes we made to the proposed schedule. You may elect at *regulations.gov* to receive updates on the docket, including an alert when we post the Consolidated Reply, whether or not you submit a comment. If you have a question, you can submit it as a comment, and can also submit any concerns or comments you would have to a possible response to the question. We will address these items in consolidated replies along with any other comments submitted on that schedule.

We will post schedules on our website in the Records Control Schedule (RCS) Repository, at <https://www.archives.gov/records-mgmt/rcs>, after the Archivist approves them. The RCS contains all schedules approved since 1973.

Background

Each year, Federal agencies create billions of records. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. Once approved by NARA, records schedules provide mandatory instructions on what

happens to records when no longer needed for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives or to destroy, after a specified period, records lacking continuing administrative, legal, research, or other value. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value. Public review and comment on these records schedules is part of the Archivist's consideration process.

Schedules Pending

1. Department of Veterans Affairs, Office of Accountability and Whistleblower Protection (OAWP) Investigation Case Files (DAA-0015-2025-0055).
2. Bureau of Economic Analysis, Records Schedule of the Communications Division (DAA-0375-2023-0003).
3. Bureau of Prisons, Management Preference Profile System (MPPS) Data (DAA-0129-2025-0016).
4. Defense Counterintelligence and Security Agency, Enterprise Policy (DAA-0446-2024-0001).
5. Federal Aviation Administration, Notice to Airmen (NOTAM) Modernization Service (NMS) (DAA-0237-2025-0007).
6. Social Security Advisory Board, Social Security Advisory Board Schedule of Records (DAA-0616-2025-0001).
7. United States Capitol Police, Mission-related Police Records Common to All or Most Bureaus (DAA-0603-2024-0006).
8. United States Patent and Trademark Office, USPTO Office of the Ombuds Records (DAA-0241-2025-0002).

William P. Fischer,

Acting Chief Records Officer for the U.S. Government.

[FR Doc. 2026-00684 Filed 1-14-26; 8:45 am]

BILLING CODE 7515-01-P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2026-148 and K2026-148; MC2026-149 and K2026-149]

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:* January 21, 2026.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <https://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. Public Proceeding(s)
- III. Summary Proceeding(s)

I. Introduction

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

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.¹

Section II identifies the docket number(s) associated with each Postal Service request, if any, that will be reviewed in a public proceeding as defined by 39 CFR 3010.101(p), the title of each such request, the request's acceptance date, and the authority cited

by the Postal Service for each request. For each such request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 and 39 CFR 3000.114 (Public Representative). The Public Representative does not represent any individual person, entity or particular point of view, and, when Commission attorneys are appointed, no attorney-client relationship is established. Section II also establishes comment deadline(s) pertaining to each such request.

The Commission invites comments on whether the Postal Service's request(s) identified in Section II, if any, are consistent with the policies of title 39. Applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3041. Comment deadline(s) for each such request, if any, appear in Section II.

Section III identifies the docket number(s) associated with each Postal Service request, if any, to add a standardized distinct product to the Competitive product list or to amend a standardized distinct product, the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. Standardized distinct products are negotiated service agreements that are variations of one or more Competitive products, and for which financial models, minimum rates, and classification criteria have undergone advance Commission review. *See* 39 CFR 3041.110(n); 39 CFR 3041.205(a). Such requests are reviewed in summary proceedings pursuant to 39 CFR 3041.325(c)(2) and 39 CFR 3041.505(f)(1). Pursuant to 39 CFR 3041.405(c)-(d), the Commission does not appoint a Public Representative or request public comment in proceedings to review such requests.

II. Public Proceeding(s)

1. *Docket No(s).*: MC2026-148 and K2026-148; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1476 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* January 12, 2026; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Almaroof Agoro; *Comments Due:* January 21, 2026.

2. *Docket No(s).*: MC2026-149 and K2026-149; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1477 to the Competitive

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

Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: January 12, 2026; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Jennaca Upperman; *Comments Due*: January 21, 2026.

III. Summary Proceeding(s)

None. See Section II for public proceedings.

This Notice will be published in the **Federal Register**.

Parvaneh Higareda,
Alternate Federal Register Liaison.

[FR Doc. 2026-00722 Filed 1-14-26; 8:45 am]

BILLING CODE 7710-FW-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104576; File No. SR-CboeEDGX-2026-001]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Market Data Fees

January 12, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 2, 2026, Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and

III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX Options”) proposes to establish fees for certain of its market data feeds. The text of the proposed rule change is also available on the Commission’s website (<https://www.sec.gov/rules/sro.shtml>), the Exchange’s website (https://www.cboe.com/us/equities/regulation/rule_filings/bzx/), and at the principal office of the Exchange.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, EDGX Options offers the following market data feeds for its options Simple Book³: EDGX Options Depth Feed⁴ (“EDGX Options Depth”), EDGX Options Top Feed⁵ (“EDGX Options Top”), and EDGX Options Auction Feed⁶ (“EDGX Options Auction”) (collectively, the “Simple Book Feeds”). Similarly, the Exchange also offers the following market data feeds for its options Complex Order Book⁷: EDGX Options Complex Depth,⁸ EDGX Options Complex Top,⁹ and EDGX Options Complex Auction¹⁰ (“Complex Order Feeds”). Currently, Distributors¹¹ of any one of the Simple Book Feeds/Complex Order Feeds may receive, at no additional charge, access to any of the aforementioned Simple Book Feeds/Complex Order Feeds.¹²

The Exchange now proposes to amend its fees for EDGX Options Top, and implement separate fees for EDGX Options Depth, EDGX Options Auction, and its Complex Order Feeds. The Exchange discusses each of these proposed changes in detail, below.

Simple Book Feeds

The Exchange seeks to modify its fee schedule to amend its fees for EDGX Options Top, and to implement separate fees EDGX Options Depth and EDGX Options Auction. The proposed fees are as follows:

EDGX OPTIONS TOP

Internal Distribution Fee	\$1250/month.
External Distribution Fee	\$1000/month.
Professional User Fee	\$5.00/month/user.
Non-Professional User Fee	\$.10/month/user.
Enterprise Fee	Tier 1: 0–1,500,000 Users: \$20,000/month. Tier 2: 1,500,001–2,500,000 Users: \$40,000/month. Tier 3: Greater than 2,500,001 Users: \$60,000/month.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The term “Simple Book” means the Exchange’s regular electronic book of orders. See EDGX Rule 21.210.

⁴ EDGX Options Depth is an uncompressed data feed that offers depth of book quotations and execution information based on options orders entered into the System. The Exchange offers separate EDGX Options Depth data feeds for the Exchange’s Simple Book and the Exchange’s Complex Order Book, as such terms are defined in Rule 21.20. See EDGX Rule 21.15.

⁵ EDGX Options Top is an uncompressed data feed that offers top of book quotations and execution information based on options orders

entered into the System. The Exchange offers separate EDGX Options Top data feeds for the Exchange’s Simple Book and the Exchange’s Complex Order Book, as such terms are defined in Rule 21.20. *Id.*

⁶ The EDGX Options Auction Feed is an uncompressed data product that provides information regarding the current status of price and size information related to auctions conducted by the Exchange. The Exchange offers separate EDGX Options Auction data feeds for the Exchange’s Simple Book and the Exchange’s Complex Order Book, as such terms are defined in Rule 21.20. *Id.*

⁷ The terms “Complex Order Book” and “COB” mean the Exchange’s electronic book of complex

orders used for all trading sessions. See EDGX Rule 21.20.

⁸ *Supra* note 4.

⁹ *Supra* note 5.

¹⁰ *Supra* note 6.

¹¹ A Distributor of an Exchange Market Data product is any entity that receives the Exchange Market Data product directly from the Exchange or indirectly through another entity and then distributes it internally or externally to a third party.

¹² For example: a subscriber to EDGX Options Depth may receive access, at no additional charge, to each of EDGX Options Top, EDGX Options Auction, EDGX Options Complex Top, EDGX Options Complex Depth, and EDGX Options Complex Auction Feeds.

EDGX OPTIONS DEPTH/EDGX OPTIONS AUCTION

Internal Distribution Fee	\$1250/month.
External Distribution Fee	\$1000/month.
Professional User Fee	\$20.00/month/user.
Non-Professional User Fee	\$1.00/month/user.

Distribution Fees—EDGX Options Top

The Exchange seeks to amend its fee schedule to implement new Distributor¹³ fees for EDGX Options Top. Specifically, the Exchange now proposes to charge Internal Distributors¹⁴ \$1,250.00/month, and External Distributors¹⁵ (collectively, “Distributors”) \$1,000/month, to access and distribute EDGX Options Top. A Distributor that is both an External and Internal Distributor of EDGX Options Top will be charged the greater of the two Distribution Fees.

As is currently the case, a Distributor of EDGX Options Top may request access to and distribute, at no additional charge, EDGX Options Depth and/or EDGX Options Auction. However, Distributors of any one of the Simple Book Feeds (including EDGX Top) will no longer have free access to the Complex Order Feeds and will now need to pay a separate fee in order to access and distribute a Complex Order Feed. Additionally, as is currently the case, new External Distributors of EDGX Options Top will not be charged the External Distribution Fee for their first three (3) months (the “New External Distributor Credit”). Furthermore, any trial usage period for EDGX Options Top will not be counted towards the first three (3) months.

Moreover, each External Distributor of EDGX Options Top will also be eligible to receive a credit against its monthly External Distributor Fee for the EDGX Options Top equal to the amount of its monthly User Fees or Enterprise Fee up to a maximum of the External Distributor Fee for the EDGX Options Top (the “Distributor Fee Credit”). External Distributors of EDGX Options Top will not be eligible to receive the Distributor Fee Credit during an

External Distributor’s trial usage period for EDGX Options Top or while they are receiving the New External Distributor Credit. The New External Distributor Credit and the Distributor Fee Credit will now apply only to the External Distribution Fee for EDGX Options Top and any External Distributor that also distributes EDGX Options Depth, and/or EDGX Options Auction.

Distribution Fees—EDGX Options Depth

The Exchange now proposes implementing separate Distribution Fees for EDGX Options Depth. Specifically, the Exchange proposes to charge Internal Distributors \$1,250/month to access and distribute EDGX Options Depth. Furthermore, the Exchange proposes charging External Distributors \$1,000/month to access and distribute EDGX Options Depth. A Distributor that is both an External and Internal Distributor of EDGX Options Depth will be charged the greater of the two Distribution fees.

A Distributor of any of EDGX Options Top, EDGX Options Depth, and/or EDGX Options Auction, will retain their ability to request access to and distribute, at no additional charge, any of the Simple Book Feeds. However, Distributors of any one of the Simple Book Feeds (including EDGX Options Depth) will no longer have free access to the Complex Order Feeds and will now need to pay a separate fee in order to access and distribute a Complex Order Feed.

Distribution Fees—EDGX Options Auction

The Exchange also proposes to implement separate Distribution fees for EDGX Options Auction. Specifically, the Exchange proposes to charge Internal Distributors \$1,250/month to access and distribute EDGX Options Auction. Furthermore, the Exchange proposes charging External Distributors \$1,000/month to access and distribute EDGX Options Auction. A Distributor that is both an External and Internal Distributor of EDGX Options Auction will be charged the greater of the two Distribution fees.

A Distributor of any of EDGX Options Top, EDGX Options Depth, and/or EDGX Options Auction, will retain their ability to request access to and distribute, at no additional charge, any

of the Simple Book Feeds. However, Distributors of any one of the Simple Book Feeds (including EDGX Options Auction) will no longer have free access to the Complex Order Feeds and will now need to pay a separate fee in order to access and distribute a Complex Order Feed.

User Fees—EDGX Options Top

The Exchange does not propose to amend its User¹⁶ fees, or Enterprise Fee for EDGX Options Top.

User Fees—EDGX Options Depth

The Exchange proposes to establish separate Professional User¹⁷ fees for EDGX Options Depth. Specifically, the Exchange now proposes to charge Distributors \$20/month per Professional User. The Exchange does not propose to amend its Non-Professional User¹⁸ fee. As is currently the case, Users of EDGX Options Depth may request, at no additional charge, access to EDGX Options Auction. Similarly, Users of EDGX Options Auction may receive access, at no additional charge, to EDGX Options Depth. However, Users of EDGX Options Depth and/or EDGX Options Auction will no longer have free access to Complex Order Feeds.

¹⁶ A User of an Exchange Market Data product is a natural person, a proprietorship, corporation, partnership, or entity, or device (computer or other automated service), that is entitled to receive Exchange data

¹⁷ A Professional User of an Exchange Market Data product is any User other than a Non-Professional User.

¹⁸ A “Non-Professional User” of an Exchange Market Data product is a natural person or qualifying trust that uses Data only for personal purposes and not for any commercial purpose and, for a natural person who works in the United States, is not: (i) registered or qualified in any capacity with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an “investment adviser” as that term is defined in Section 202(a)(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; or, for a natural person who works outside of the United States, does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States.

¹³ A Distributor of an Exchange Market Data product is any entity that receives the Exchange Market Data product directly from the Exchange or indirectly through another entity and then distributes it internally or externally to a third party.

¹⁴ An Internal Distributor of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to one or more Users within the Distributor’s own entity.

¹⁵ An External Distributor of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor’s own entity.

User Fees—EDGX Options Auction

The Exchange proposes to establish separate Professional User fees for EDGX Options Auction. Specifically, the Exchange now proposes to charge Distributors \$20/month per Professional User. The Exchange does not propose to amend its Non-Professional User fee. As

is currently the case, Users of EDGX Options Auction may request, at no additional charge, access to EDGX Options Depth. Similarly, Users of EDGX Options Depth may receive access, at no additional charge, to EDGX Options Auction. However, Users of EDGX Options Depth and/or EDGX

Options Auction will no longer have free access to Complex Order Feeds.

Complex Order Feeds

The Exchange proposes to amend its fee schedule to establish separate fees for its Complex Order Feeds. The proposed fees for the Complex Order Feeds are as follows:

Product	Internal distribution	External distribution
EDGX Options Complex Top	\$1,250/month	\$1,000/month.
EDGX Options Complex Depth	\$1,250/month	\$1,000/month.
EDGX Options Complex Auction	\$1,250/month	\$1,000/month.
Professional User Fee	\$20/month/Professional User	
Non-Professional User Fee	\$1.00/month/Non-Professional User	

Distribution Fees

Specifically, the Exchange proposes to charge Internal Distributors of a Complex Order Feed \$1,250/month, and External Distributors of a Complex Order Book Feed \$1,000/month. A Distributor that is both an External and Internal Distributor of a Complex Order Feed will be charged the greater of the two Distribution Fees. Moreover, a Distributor of any one of the Complex Order Feeds may receive access to and distribute, at no additional charge, any of the aforementioned Complex Order Feeds. However, Distributors of any one of the Complex Order Feeds will no longer have free access to the Simple Book Feeds and will now need to pay a separate fee in order to access and distribute a Simple Book Feed.

User Fees

The Exchange seeks to amend its fee schedule to establish separate User fees for its Complex Order Feeds. Specifically, the Exchange proposes to charge Distributors \$1.00/month per Non-Professional User. This is the same Non-Professional User fee for the Complex Order Feeds that exists today. Separately, the Exchange now proposes to charge \$20/month per Professional User. A User of any one of the Complex Order Feeds may receive access to, at no additional charge, any of the aforementioned Complex Order Feeds. However, Users of a Complex Order Feed will no longer have free access to Simple Book Feeds, unless their Distributor also subscribes to a Simple Book Feed.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of

Section 6(b) of the Act. Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act, which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) and broker dealers increased authority and flexibility to offer new and unique market data to consumers of such data. It was believed that this authority would expand the amount of data available to users and consumers of such data and also spur innovation and competition for the provision of market data. The Exchange believes that by offering its Simple Book Feeds and Complex Order Feeds for a fee, it is offering the sort of market data product that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation

NMS—by deregulating the market in proprietary data—would itself further the Act’s goals of facilitating efficiency and competition: “[E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.”

By removing “unnecessary regulatory restrictions” on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. The Exchange’s Simple Book Feeds and Complex Order Feeds provide investors with new options for receiving market data, which was a primary goal of the market data amendments adopted by Regulation NMS.

The Simple Book Feeds and Complex Order Feeds are designed for firms that are interested in gaining insight into the real time market data for the Exchange’s Simple Book and Complex Order Book. The Exchange believes that providing this optional data to interested market participants for a fee is consistent with facilitating transactions in securities, removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest because it provides additional information and insight to Exchange activity to market participants making routing decisions concerning their options order. The Simple Book Feeds and Complex Order Feeds will also enable market participants to make

informed decisions for trading on the Exchange's Simple Book and Complex Order Book by using the Exchange's Simple Book Feed and Complex Order Feed to assess current market conditions that directly affect such decisions.

The Exchange believes the proposed fees are reasonable as the Exchange is offering any market participant access to subscribe to its Simple Book Feeds and Complex Order Feeds in the subscribing firm's sole discretion and based on their own unique business needs. The Simple Book Feeds and Complex Order Feeds are optional for market participants to subscribe to if they believe it to be helpful and it is not required for Options Members to purchase in order to access the Exchange. Additionally, a subscriber may cancel their usage of a Simple Book Feed and/or a Complex Order Feed at any time.

In addition, the proposed fees would not permit unfair discrimination because all of the Exchange's subscribers and market data vendors will be subject to the proposed fees on an equivalent basis. The Simple Book Feeds and Complex Book Feeds are distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make this data available. Accordingly, Distributors and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Firms have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other exchanges and consolidated data. Moreover, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers.

The Exchange also believes that its proposal to implement separate fees for its Simple Book Feeds and Complex Order Feeds are reasonable in light of the similar pricing structures utilized by competitor exchanges. Specifically, as discussed further below, Nasdaq MRX,

Nasdaq PHLX LLC, and MIAX Options all charge separate distribution and user fees for their comparable simple and complex data feeds.

Distribution Fees—Simple Book Feeds

The Exchange believes that its proposed fees for the Simple Book Feeds are reasonable, equitably allocated, and not unreasonably discriminatory. Specifically, the fees for Options Members and non-Options Members are uniform except for reasonable distinctions with respect to Internal Distribution and External Distribution (\$1250 per month versus \$1000 per month). Furthermore, the fees are uniform for each Simple Book Feed—*i.e.*, the fees are the same for each of the EDGX Options Top, EDGX Options Depth, and EDGX Options Auction Feeds. Moreover, by subscribing to any one of the Simple Book Feeds, a Distributor may have access to and distribute, at no additional charge, any of the other aforementioned Simple Book Feeds.

While the Exchange is proposing to increase the existing Internal Distribution fee from \$500 per month to \$1250 per month, and the External Distribution fee from \$500 per month to \$1000 per month, the Exchange notes that the proposed pricing is still less expensive than that charged by the Exchange's competitor, MIAX Options ("MIAX"), whose comparable market data product is more expensive than Exchange's Simple Book Feeds. Specifically, MIAX charges its internal distributors \$2000 per month¹⁹ for MIAX Top of Market ("ToM"), which is a data feed that provides MIAX distributors with a direct data feed that includes the MIAX's best bid and offer, with aggregate size, and last sale information, based on displayable order and quoting interest on the Exchange.²⁰ The \$2000 per month fee is \$750 more than the Exchange's proposed Internal Distribution fee of \$1250. Similarly, MIAX charges external distributors \$3000 per month²¹ for MIAX ToM, which is \$2000 per month more than

the Exchange's proposed External Distribution fee of \$1000.

Distribution Fees—Complex Order Feeds

The Exchange believes that the proposed Distribution Fees for the Complex Order Feeds are also reasonable, equitably allocated, and not unreasonably discriminatory. Specifically, the fees for Options Members and non-Options Members are uniform except for reasonable distinctions with respect to Internal Distribution and External Distribution (\$1250 per month versus \$1000 per month). Furthermore, the fees are uniform for each Complex Order Feed product—*i.e.*, the fees are the same for each of the EDGX Options Complex Top, EDGX Options Complex Depth, and EDGX Options Complex Auction Feeds. Indeed, by subscribing to any one of the Complex Order Feeds, a Distributor may have access to and distribute, at no additional charge, any of the other aforementioned Complex Order Feeds.

The Exchange also believes that the Distribution Fees for the Complex Order Feeds are reasonable and fair in light of alternatives offered by other market centers. The Complex Order Feeds provide investors with alternative market data and compete with a similar market data product currently offered by Nasdaq PHLX LLC ("PHLX"). Specifically, PHLX charges a fee of \$5500 per month for internal distribution, and \$6000 per month for external distribution, of its TOPO Plus Order feed ("TOPO Plus").²² TOPO Plus provides subscribers with access to both simple and complex PHLX options order data.²³ While subscribers to an Exchange Complex Order Feed product must now separately purchase a Complex Order Feed and Simple Book Feed, the Exchange notes that the costs of doing so are still less than that charged by PHLX, for both internal and external distribution.

	Internal	External
EDGX Product:		
EDGX Options Top/EDGX Options Depth	\$1,250/month	\$1,000/month.
Complex Order Feed	\$1,250/month	\$1,000/month.
Total	\$2,500/month	\$2,000/month.

¹⁹ See MIAX Options Fee Schedule, MIAX Top of Market ("ToM") and Complex Top of Market ("cToM"), available at: https://www.miaxglobal.com/sites/default/files/fee-schedule-files/MIAX_Options_Fee_Schedule_09122025.pdf.

²⁰ See MIAX Options Exchange, Top of Market Feed, ToM Interface Specification, available at:

https://www.miaxglobal.com/sites/default/files/page-files/Top_Of_Market_Feed_ToM_v2.5-2.pdf.

²¹ *Supra* note 19.

²² See Price List—U.S. Derivatives Data, available at: <https://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListOptions>.

²³ See "Market Data Product Matrix and Specifications," PHLX—TOPO Plus Order, "Provides simple and complex PHLX order data from the PHLX Orders data feed as well as top of file quotation information and PHLX last sale data from the Top of PHLX Options (TOPO) data feed.:" available at: https://data.nasdaq.com/market-data-specifications#options_q.

	Internal	External
PHLX Product: TOPO Plus	\$5,500	\$6,000.

Specifically, an Exchange Internal Distributor who purchased both EDGX Options Top and/or EDGX Options Depth, as well as a Complex Order Feed, would be assessed a total monthly fee of \$2,500 (\$1,250 + \$1,250), which is less than the monthly fee of \$5,500 that an internal distributor would be assessed by PHLX for subscribing to TOPO Plus. Notably, by purchasing any one of EDGX Options Top or EDGX Options Depth, the Internal Distributor can access and distribute, at no additional charge, to both feeds. Likewise, by purchasing any one of the Complex Order Feeds, the Internal Distributor would have access to any of the aforementioned Complex Order Feeds.

Similarly, an Exchange External Distributor who purchased both EDGX Options Top and/or EDGX Options Depth, as well as a Complex Order Feed, would be assessed a total monthly fee of \$2,000 (\$1,000 + \$1,000), which is less than the monthly fee \$6,000 that an external distributor would be assessed by PHLX for subscribing to TOPO Plus. Notably, by purchasing any one of EDGX Options Top or EDGX Options Depth, the Internal Distributor would have, at no additional charge, access to both data feeds. Likewise, by purchasing any one of the Complex Order Feeds, the Internal Distributor would have access to any of the aforementioned Complex Order Feeds.

An Internal and External Distributor of EDGX Options Top and/or EDGX Options Depth, as well as a Complex Order Feed would be charged the greater of two fees for the Simple Book Feeds plus the Complex Order Feed, for a total of \$2,500 per month (\$1,250 + \$1,250). This fee is less than the fees charged by PHLX for either internal distribution (\$5,500 per month) or external distributions (\$6,000 per month). Furthermore, the Exchange also notes that PHLX charges internal distributors \$2,500 per month and external distributors \$3,000 per month for the Top of PHLX Options,²⁴ which includes PHLX top of book data. PHLX charges internal distributors \$4,232 per month and external distributors \$4,760

per month for the PHLX Depth Data,²⁵ which includes PHLX depth of book quotations. Notably, the Exchange's proposed fees are either equal to or greater than the fees charged by PHLX.

As an additional point of comparison, the Exchange notes that MIAAX charges internal distributors of its Complex Top of Market ("cToM")²⁶ \$2,000 per month,²⁷ and external distributors of cToM \$3,000 per month.²⁸ Both of these fees are more expensive than the Exchange's proposed fees of \$1,250 per month and \$1,000 per month, for Internal Distribution and External Distribution a Complex Order Feed, respectively. cToM is a real-time data feed provided by MIAAX that delivers market-wide information on complex options strategies.

User Fees—Simple Book Feeds

The Exchange believes its proposed Non-Professional and Professional User fees are reasonable because they are comparable to similar fees assessed by the Exchange's competitors or remain unchanged. In particular, the User fees for Cboe Options Top remain unchanged, and are less than those assessed by MIAAX for its ToM Data feed. Specifically, the Professional User fee for EDGX Options Top remains \$5.00/month per Professional User, and the Non-Professional User fee for EDGX Options Top remains at \$0.10/month per Non-Professional User. Both of these fees are less than the \$1.00/month per non-professional user, and \$20/month per professional user fees charged by MIAAX for its ToM data feed.²⁹ Similarly, the proposed \$1.00/month per Non-Professional User, and \$20/month per Professional User fees for EDGX Options Depth and EDGX Options Auction are equal to those charged by MIAAX for non-professional users of its ToM Data feed.³⁰

²⁵ *Id.*

²⁶ See MIAAX Options Exchange, Complex Top of Market Feed, cToM Interface Specification, available at: https://www.miaaxglobal.com/sites/default/files/2022-05/Complex_Top_Of_Market_Feed_cToM_v1.3a_re.pdf.

²⁷ *Supra* note 19.

²⁸ *Id.*

²⁹ *Supra* note 19.

³⁰ *Id.*

Additionally, Nasdaq Options Market charges \$1.00/month per non-professional user, and \$42.10/month per professional user.³¹ Here, both the Professional and Non-Professional User fees for EDGX Options Top are less than those charged by Nasdaq Options Market. Moreover, the proposed \$1.00/month per Non-Professional User fee, for EDGX Options Depth and EDGX Options Auction is equal to that charged by Nasdaq Options Market for their non-professional users. The proposed \$20/month per Professional User fee is also significantly less than the \$42.10/month per professional user charged by Nasdaq Options Market.

As an additional point of comparison, the Exchange also notes Nasdaq MRX charges Professional Users \$25.25 per month and Non-Professional Users \$1.00 per month for the Nasdaq MRX Top of Market feed.³² In this regard, Nasdaq MRX's professional user fee is more expensive than the existing Professional User fee for EDGX Options Top, as well as the proposed Professional User fees for EDGX Options Depth and EDGX Options Auction. Similarly, EDGX Options Top's existing fee of \$0.10/month per Non-Professional is less expensive than Nasdaq MRX's fee of \$1.00/month per non-professional user. Additionally, the proposed Non-Professional fee for EDGX Options Depth and EDGX Options Auction of \$20/month per User is less expensive than Nasdaq MRX's professional fee of \$25.25/month.

User Fees—Complex Order Feeds

Similarly, the Exchange believes that its proposed Non-Professional and Professional User fees are reasonable when compared to those charged by its competitors. Additionally, an Exchange User of any one of the Complex Order Feeds may have access to any or all of the other aforementioned Complex Order Feeds.

³¹ *Supra* note 22.

³² See Price List—U.S. Derivatives Data, available at: <https://data.nasdaq.com/price-list#NasdaqMRXSubscriberFees>.

²⁴ *Supra* note 22.

As noted above, Nasdaq Options Market charges \$1.00 per non-professional user, and \$42.10 per professional user.³³ Here, the Exchange also proposes to charge \$1.00 per Non-Professional User, but only \$20.00 per Professional User. The Exchange also notes that its proposed Non-Professional and Professional User fees are identical to those charged by MIAx Options for its Top of Market (“ToM”) and Complex Top of Market (“cToM”) data feed.³⁴ Moreover, like MIAx, an Exchange User of any one of the Complex Order Feeds may have access to any or all of the other aforementioned Complex Order Feeds.

Additionally, Nasdaq MRX charges Professional Users \$25.25 per month and Non-Professional Users \$1.00 per month for the Nasdaq MRX Top of Market feed and the Nasdaq MRX Depth of Market Feed.³⁵ The Exchange proposes to charge less than Nasdaq MRX for Professional Users and the same as Nasdaq MRX for Non-Professional Users. Specifically, for each Complex Order Feed the Exchange seeks to charge \$1.00 per month for each Non-Professional User and \$20.00 per month for each Professional User. The Exchange’s proposed Professional User fee (\$20.00/per user, per month) is lower than Nasdaq MRX’s professional user fee (\$25.25/per user, per month) and its Non-Professional User fee is equal to Nasdaq MRX’s non-professional user fee. Additionally, an Exchange User of any one of the Complex Order Feeds may have access to any or all of the other aforementioned Complex Order Feeds. Overall, each of the above examples of other exchanges’ market data fees support the proposition that the Exchange’s proposed User fees are comparable to those of other exchanges and therefore reasonable.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that charging for separately access to its Complex Order Feeds and Simple Book feeds is aligned with how other exchanges offer their

comparable data products. In this regard, the proposed fees will enhance competition by providing market participants with a new option for receiving market data. The Exchange’s proposed fees for its Simple Book and Feeds Complex Order Feeds will also further enhance competition between exchanges as other exchanges also offer market data feeds for their own complex order books. Additionally, the Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Market participants are not required to purchase the proposed Exchange’s Simple Book Feeds or Complex Order Feeds. Rather, the Exchange is making these additional order feeds available, and firms may choose to receive (and pay for) this data based on their own business needs. Potential purchasers may request the data at any time if they believe it to be valuable or may decline to purchase such data.

In addition, the proposed fees are constrained by competition. The existence of alternatives to the Exchange’s Simple Book Feeds and Complex Order Feeds further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect such alternatives. That is, the Exchange competes with other exchanges (and their affiliates) that provide similar market data products. If another exchange (or its affiliate) were to charge less to distribute its similar product than the Exchange charges to distribute its Simple Book Feeds and Complex Order Feeds, prospective Users likely would not subscribe to, or would cease subscribing to these market data products.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act³⁶ and paragraph (f) of Rule 19b-4³⁷ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may

temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeEDGX-2026-001 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-CboeEDGX-2026-001. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeEDGX-2026-001 and should be submitted on or before February 5, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁸

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2026-00646 Filed 1-14-26; 8:45 am]

BILLING CODE 8011-01-P

³³ *Id.*

³⁴ See “MIAx Options Fee Schedule,” MIAx Top of Market (“ToM”) and Complex Top of Market (“cToM”), available at: https://www.miaxglobal.com/sites/default/files/fee_schedule-files/MIAx_Options_Fee_Schedule_09122025.pdf.

³⁵ See Price List—U.S. Derivatives Data, available at: <https://data.nasdaq.com/price-list#NasdaqMRXSubscriberFees>.

³⁶ 15 U.S.C. 78s(b)(3)(A).

³⁷ 17 CFR 240.19b-4(f).

³⁸ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–104580; File No. SR–NYSEAMER–2025–77]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the NYSE American LLC Equities Proprietary Market Data Fees

January 12, 2026.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b–4 thereunder,³ notice is hereby given that, on December 30, 2025, NYSE American LLC (“NYSE American” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE American LLC Equities Proprietary Market Data Fees (the “Fee Schedule”) regarding the Multiple Data Feed Fee. The proposed rule change is available on the Exchange’s website at www.nyse.com and at the principal office of the Exchange.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule regarding the Multiple

Data Feed Fee, effective January 2, 2026. Specifically, the Exchange proposes to eliminate the Multiple Data Feed Fee for NYSE American BBO and NYSE American Trades. The Multiple Data Feed Fee applies to data recipients that take a data feed for a market data product in more than two locations. The Exchange proposes to eliminate this fee for the NYSE American BBO and NYSE American Trades market data products based on its limited application, as few data recipients have sought to take these data feeds in multiple locations. Accordingly, this proposed change would improve transparency and simplify the Fee Schedule by removing an underutilized fee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁴ in general, and Sections 6(b)(4) and 6(b)(5) of the Act,⁵ in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers.

The Exchange believes that the proposed rule change to eliminate the Multiple Data Feed Fee with respect to the NYSE American BBO and NYSE American Trades data feeds is reasonable because few data subscribers have opted to take these data feeds in multiple locations, resulting in limited application of this fee. The Exchange believes it is reasonable to eliminate a fee such as this one when it is underutilized, thereby simplifying the Fee Schedule and promoting clarity and transparency as to the fees currently charged by the Exchange. The Exchange also believes that the proposed change is equitable and not unfairly discriminatory because the Multiple Data Feed Fee for NYSE American BBO and NYSE American Trades would be eliminated entirely and would no longer apply to any data subscriber. Accordingly, all data subscribers that take these data feeds would continue to be subject to the same fee structure. The Exchange also believes that the proposed change would promote the protection of investors and the public interest because the deletion of underutilized fees would make the Fee Schedule more accessible and transparent and facilitate market participants’ understanding of the fees charged for the Exchange’s market data products.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Indeed, as demonstrated above, the Exchange believes the proposed rule change is pro-competitive.

Intramarket Competition. The Exchange believes that the proposed change would not place any undue burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, given the limited applicability of the fee it proposes to eliminate. As noted above, given the small number of data subscribers that have chosen to take the NYSE American BBO and NYSE American Trades data feeds in multiple locations, the Multiple Data Feed Fee has been underutilized. The Exchange also believes that the proposed change would neither favor nor penalize any data subscribers in a manner that would impose an undue burden on competition, as all data subscribers that take these data feeds would continue to be subject to the same fee structure.

Intermarket Competition. The Exchange believes that the proposed change does not impose a burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not intended to address any competitive issue and is intended only to simplify the Fee Schedule by eliminating an underutilized fee. In addition, because market data users remain free to seek alternative market data products to the extent they deem an exchange’s market data fees to be unsuitable, competitive pressures ensure that no one exchange’s market data fees can impose an unnecessary burden on competition, and the proposed change does not do so here.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4), (5).

19(b)(3)(A)⁶ of the Act and subparagraph (f)(2) of Rule 19b-4⁷ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)⁸ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEAMER-2025-77 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to file number SR-NYSEAMER-2025-77. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEAMER-2025-

77 and should be submitted on or before February 5, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2026-00650 Filed 1-14-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35866; 812-15916]

ETF Series Solutions and Defiance ETFs, LLC

January 12, 2026.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from Section 15(a) of the Act, as well as from certain disclosure requirements in Rule 20a-1 under the Act, Item 19(a)(3) of Form N-1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934, and Sections 6-07(2)(a), (b), and (c) of Regulation S-X ("Disclosure Requirements").

SUMMARY OF APPLICATION: The requested exemption would permit Applicants to enter into and materially amend subadvisory agreements with certain subadvisors without shareholder approval and grant relief from the Disclosure Requirements as they relate to fees paid to the subadvisors.

APPLICANTS: ETF Series Solutions and Defiance ETFs, LLC.

FILING DATES: The application was filed on October 14, 2025.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at Secretaries-Office@sec.gov and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on February 6, 2026, and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a

certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: The Commission:

Secretaries-Office@sec.gov. Applicants: Noelle-Nadia A. Filali, Assistant Secretary, ETF Series Solutions, c/o U.S. Bank Global Fund Services, 777 East Wisconsin Avenue, 10th Floor, Milwaukee, Wisconsin 53202; Christopher D. Menconi, Morgan, Lewis & Bockius LLP, 1111 Pennsylvania Avenue NW, Washington, DC 20004-2541.

FOR FURTHER INFORMATION CONTACT:

Jacob D. Krawitz, Senior Special Counsel, or Kaitlin C. Bottock, Assistant Director, at (202) 551-6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' application, dated October 14, 2025, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field on the SEC's EDGAR system. The SEC's EDGAR system may be searched at <https://www.sec.gov/edgar/search/>. You may also call the SEC's Office of Investor Education and Advocacy at (202) 551-8090.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2026-00637 Filed 1-14-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104577; File No. SR-Phlx-2025-78]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Fees for Two Newly Established Feeds, the Trades Feed and the Spread Feed

January 12, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(2).

⁸ 15 U.S.C. 78s(b)(2)(B).

⁹ 17 CFR 200.30-3(a)(12).

(“Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on December 30, 2025, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt fees for two newly established feeds, the Trades Feed and the Spread Feed.

The text of the proposed rule change is detailed below; proposed new language is italicized and proposed deletions are in brackets [sic].

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/phlx/rulefilings>, and at the principal office of the Exchange.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposal is to adopt fees for two data feeds, the Trades Feed and the Spread Feed. While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on January 1, 2026.³

The Trades Feed and the Spread Feed are recently established data feeds for

the Phlx exchange.⁴ These two new feeds, together with changes to three existing feeds—the Nasdaq Phlx Top of Market Feed, the Nasdaq Phlx Order Feed, and the Nasdaq Phlx Depth of Market Feed—are designed to harmonize the market data feed structure of the Phlx exchange with those of its affiliates ISE and MRX.

Nasdaq believes that this harmonization will allow customers to ingest data more efficiently and to tailor their purchase to only the data they need.

Ingestion of data will become more efficient because customers will be able to transition from multiple exchange formats to a single format for all Nasdaq exchanges, resulting in more efficient ingestion of data and possible cost savings. This is a change from current practice, in which each exchange offers its own unique set of market data feeds, requiring subscribers to separately program their systems to ingest information from each market. The new format also allows customers to configure hardware to balance system loads more efficiently.

The new feed structure will also allow customers to tailor their purchase to only the data they need. A customer that only needs last sale information, for example, would be able to purchase the Trades Feed as a standalone feed without being required to also purchase a best bid and offer feed. This is more efficient and cost effective than requiring customers to purchase a bundled feed with multiple types of information, possibly including information that the customer neither wants nor needs.

The new Phlx format is the same as that used for the ISE and MRX exchanges. Nasdaq is planning to submit future proposals to conform the BX Exchange and the Nasdaq Options Market to this format.

Trades Feed

Nasdaq Phlx Trades Feed (“Trades Feed”) displays last trade information. The data provided for each option series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, whether the option series is available for trading on Phlx, and identifies whether the series is available for closing transactions only. Prior to the harmonization of market data feeds across the Phlx, ISE, GEMX and MRX markets, last sale information

had been offered in the Nasdaq Phlx Top of Market (“TOPO”) data feed.

The Exchange currently offers the Trades Feed for no additional cost with the purchase of TOPO.

The Exchange proposes to establish a fee for the Trades Feed of \$1,000 per month for unlimited internal and/or external distribution. This will allow the customer to choose whether or not to purchase last sale information on a standalone basis or together with TOPO.⁵

Spread Feed

Nasdaq Phlx Spread Feed (“Spread Feed”) provides information on complex orders. It consists of: (1) options orders for all Complex Orders (*i.e.*, spreads, buy-writes, delta neutral strategies, etc.); (2) full Complex Order depth information, including prices, side, size, capacity, Attributable Complex Order tags when provided by a member or member organization, and order attributes (*e.g.*, OCC account number, give-up information, CMTA information), for individual Complex Orders on the Exchange book; (3) last trades information; and (4) a calculation of Phlx’s complex best bid and offer position, with aggregated size (including total size in aggregate, for Professional Order size in the aggregate and Public Customer Order size in the aggregate), based on displayable Complex Order interest in the System. The feed also provides Complex Order auction notifications.

While some of the information on the Spread Feed was included in the Order Feed prior to harmonization, the new Spread Feed also includes additional information not previously distributed by the Exchange. The old Order Feed had provided some information on complex orders (option order comprising of one or more legs), such as order messages, updates on resting orders, and auction notification messages. The new Spread Feed includes this information, but also significantly enhances customer insight into complex orders by associating top of market, order, depth of market and trade information with a unique strategy identification number that will allow customers to identify different stages of a trade as elements of a single complex order, providing market participants with much greater transparency into complex order activity. Such information is already an integral part of

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ This proposal was initially filed as SR–Phlx–2025–62. On December 5, 2025, that filing was withdrawn and replaced with SR–Phlx–2025–67. On December 30, 2025, SR–Phlx–2025–67 was withdrawn and replaced with the instant filing.

⁴ See Securities Exchange Act Release No. 104049 (September 25, 2025), 90 FR 47096 (September 30, 2025) (SR–Phlx–2025–53) (proposal to amend certain market data feed descriptions and fees).

⁵ Nasdaq noted in its product filing for the Trades Feed that it intended to propose a separate fee for the Trades Feed at a later date. See Securities Exchange Act Release No. 104049 (September 25, 2025), 90 FR 47096 (September 30, 2025) (SR–Phlx–2025–53).

the feeds available on the MRX and ISE exchanges.

The Exchange currently offers the Spread Feed for no additional cost with the purchase of the Order Feed.

The Exchange proposes to charge \$3,100 per month per distributor for unlimited internal and/or external distribution of the Phlx Spread Feed.⁶ This fee will allow the customer to choose whether or not to purchase the complex order information available on the Spread Feed together with the simple order information on the Order Feed or as a standalone feed.⁷

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁹ in particular, in that it

⁶ “A ‘distributor’ of Exchange data is any entity that receives a feed or data file of Exchange data directly from the Exchange or indirectly through another entity and then distributes it either internally (within that entity) or externally (outside that entity). All distributors shall execute an Exchange distributor agreement. The Exchange itself is a vendor of its data feed(s) and has executed an Exchange distributor agreement and pays the distributor charge.” Equity 7, Section 3.

⁷ Nasdaq noted in its product filing for the Spread Feed that it intended to propose a separate fee for the Spread Feed at a later date. *See Supra* n.4.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4) and (5).

provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. This belief is based on the fact that the proposal will enhance our market data products while at the same time maintaining fees that are comparable to those charged by similarly situated options exchanges.

The experience of other exchanges show that many customers will take advantage of the ability to purchase the TOPO feed and the Trades Feed separately. Our experience with the ISE Exchange—which already offers a trades feed that is distinct from its top of book feed—shows that nearly a third of customers take either take the top of market feed only (approximately 17%) or the trades feed only (about 14%), while the remaining customers take both. We expect the same pattern to hold true for Phlx—about a third of customers will take one feed or the other, ingesting less data than would be required for a combined feed, and the remaining customers to take both feeds.

We also expect customers to take advantage of the opportunity to purchase the Order Feed and the Spread feed separately, rather than bundled as part of a single product. The ISE

exchange currently offers an Order Feed and a Spread Feed configured in a similar manner. Our experience with the ISE Exchange shows that approximately 45% of customers take either the Spread Feed only (approximately 39%) or the Order Feed only (about 7%), while the remaining customers take both. We expect the same pattern to hold true for Phlx—somewhat less than half the customers will take one feed or the other, while the remaining customers will take both.

Comparability Analysis

Calculation of Market Share

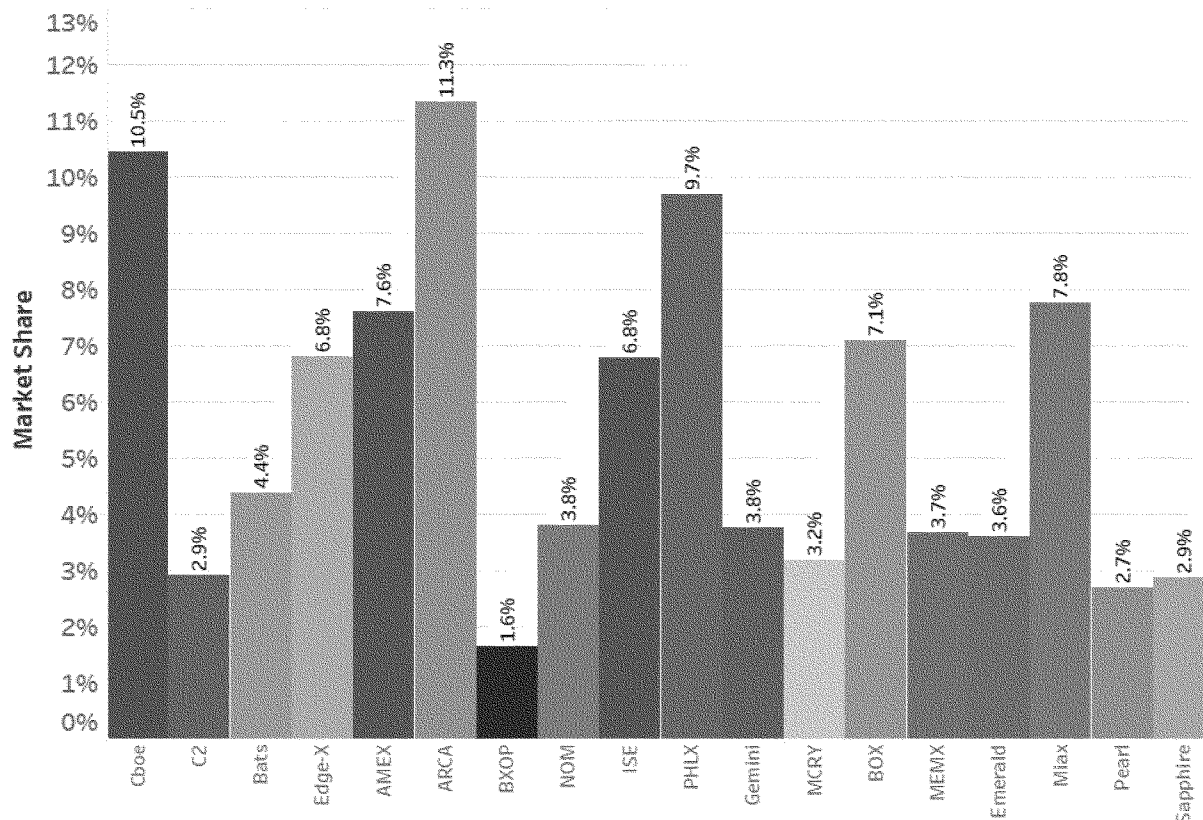
For the comparability analysis, the Exchange assessed market share¹⁰ for each of the eighteen options markets based on total options contracts traded in 2025 through October 20, 2025, as set forth in the graph below.

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¹⁰ Market share is the percentage of volume on a particular exchange relative to the total volume across all exchanges and indicates the amount of order flow directed to that exchange. High levels of market share enhance the value of trading and ports. Total contracts include both multi-list options and proprietary options products. Proprietary options products are products with intellectual property rights that are not multi-listed. Phlx lists proprietary products.

US Options Market Share

Data using total equity options contracts traded 2025 YTD through 10/20/25.



Source: OCC, Nasdaq Economic Research

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Trades Feed

The data feed formats used by Phlx, ISE, and MRX, composed of five different feeds—TOPO, the Order Feed, the Depth of Market Feed, the Trades

Feed, and the Spread Feed—are unique to the Nasdaq options exchanges. Because no exchange unaffiliated with Nasdaq offers a Trades Feed, a direct comparison of trades feeds with exchanges not affiliated with Nasdaq is not possible.

Comparing the proposed Trades Feed fees to those of the Nasdaq affiliates offering this feed shows that the proposed fees are comparable to, or less than, the fees charged by the Nasdaq affiliates for that product, based on market share.

Exchange	Market share (%)	Trades feed
Phlx	9.7	\$1,000/month internal and external distribution.
ISE	6.8	\$1,040/month internal and external distribution.
MRX	3.2	\$757/month internal distribution; \$1,010/month external distribution.
GEMX	3.8	\$520/month internal and external distribution.

ISE: The proposed fees for the Phlx Trades Feed of \$1,000 per month for internal and external distribution are less than the current ISE fees of \$1,040 per month for internal and external distribution.¹¹ The difference is even larger relative to market share, as Phlx

has a market share of 9.7% as compared to ISE's market share of 6.8%.

MRX: The proposed fees for the Phlx Trades Feed of \$1,000 per month for internal and external distribution are less than the combined MRX fees of \$757 per month for internal distribution and \$1,010 per month for external distribution, and also less than the MRX fee of \$1,010 for external distribution.¹²

While MRX charges less than the proposed Phlx fee for internal distribution, fees are nevertheless comparable relative to market share because Phlx has a market share of 9.7% as compared to 3.2% for MRX).

GEMX: The proposed fees for the Trades Feed are comparable to those charged by GEMX based on relative market share. While the proposed Phlx fees of \$1,000 per month for internal

¹¹ ISE Rulebook, Options 7, Section 10(f) (Nasdaq ISE Trade Feed). These are fees for 2025. As noted above, fees for the ISE Trade Feed are scheduled to be adjusted in 2026 and 2027 to account for the impact of past inflation. The proposed Phlx fees will not be adjusted for past inflation, which would not be applicable to new fees proposed herein.

¹² MRX Rulebook, Options 7, Distributor Fees, Section 7(4) (Trades Feed). These are fees for 2025. Fees for the MRX Trade Feed are scheduled to be adjusted in 2026 and 2027 to account for the impact

of past inflation. The proposed Phlx fees will not be adjusted for past inflation, which would not be applicable to the new fees proposed herein.

and external distribution are greater than GEMX's fees of \$520 per month for internal and external distribution,¹³ fees are nevertheless comparable relative to market share because Phlx has a market share (9.7% as compared to 3.8% for GEMX).

Although, as noted above, the proposed fees for the Trades Feed cannot be directly compared with those of exchanges not affiliated with Phlx because non-affiliated exchanges do not offer the same feed structure (such as a separate Trades Feed), a detailed analysis of Cboe exchange fees shows that the proposed fees are comparable to those charged by Cboe, an exchange with similar market share. (Cboe has a market share of 10.5% as compared to Phlx's market share of 9.7%). As demonstrated below, the proposed Phlx fees for TOPO Internal and External Distribution, the Trades Feed and the Spread Feed are less than those charged by Cboe for the same type of information, contained in Cboe Options Top and Complex Order Book.

Internal Distribution

We begin with a comparison of the proposed Phlx fees for internal distribution of top of book, last sale, and complex order book information with those fees currently charged by Cboe.

Cboe charges an internal distributor fee of \$9,000 per month for Cboe Options Top, which includes both best bid and offer and last sale information.¹⁴ This fee includes Complex Order Book information, as Cboe waives a separate fee of \$3,000 per month for customers that purchase Cboe Options Top for internal distribution.¹⁵

Phlx proposes to charge \$6,600 per month for internal distribution of the same information. This fee is composed of \$2,500 for internal distribution of Top of PHLX Options,¹⁶ \$1,000 for unlimited internal and/or external distribution of the Trades Feed, and

\$3,100 for unlimited internal and/or external distribution of the Spread Feed.

The proposed Phlx fees of \$6,600 per month for internal distribution of top of book, last sale, and complex order book information are less than the \$9,000 per month charged by Cboe, an exchange with comparable market share, for the same information.

External Distribution

We next compare the proposed Phlx fees for external (as opposed to internal) distribution of top of book, last sale, and complex order book information with those fees currently charged by Cboe.

Cboe charges an external distribution fee of \$5,000 for Cboe Options Top, but the waiver of the \$3,000 per month fee for the Cboe Options Complex Order Book applies only to internal, and not external, distribution of the Top Feed.¹⁷ As such, Cboe charges \$8,000 per month for external distribution of top of book, last sale, and complex order book information.

Phlx proposes to charge only \$7,100 per month for external distribution of the same information. This fee is comprised of an external distributor fee of \$3,000 per month, a Trades Feed fee of \$1,000 per month for unlimited internal and/or external distribution, and a Spread Feed fee of \$3,100 per month for unlimited internal and/or external distribution.

The proposed Phlx fees of \$7,100 per month for external distribution of top of book, last sale, and complex order book information are less than the \$8,000 per month charged by Cboe, an exchange with comparable market share, for the same information.

Internal and External Distribution

We lastly compare the proposed Phlx fees for both internal and external distribution (rather than fees for internal-only or external-only distribution) for top of book, last sale, and complex order book information

with those fees currently charged by Cboe.

Cboe charges an internal distribution fee of \$9,000 per month and an external distribution fee of \$5,000 per month for Cboe Options Top. The \$3,000 per month fee for the Cboe Options Complex Order Book would be waived due to internal distribution of the top feed. As such, total Cboe fees for internal and external distribution of top of book and the order book would be \$14,000 per month.

Phlx proposes to charge only \$9,600 per month for internal and external distribution of the same information. This includes an internal distribution fee of \$2,500, an external distribution fee of \$3,000,¹⁸ a Trades Feed fee of \$1,000 for unlimited internal and/or external distribution, and a Spread Feed fee of \$3,100 for unlimited internal and/or external distribution.

The proposed Phlx fees of \$9,600 per month for internal and external distribution of top of book, last sale, and complex order book information are less than the \$14,000 per month charged by Cboe, an exchange with comparable market share, for the same information.

As such, the proposed Phlx fees for internal-only, external-only, and both internal and external distribution of top of book, last sale, and complex order book information are all less than those charged by Cboe, an exchange of similar market share. This demonstrates that the proposed fees are also comparable to the fees charged by exchanges not affiliated with Phlx.

Spread Feed

The proposed fees for the Spread Feed are comparable to, or less than, the fees charged by Nasdaq affiliates ISE and MRX based on market share. No exchange unaffiliated with Nasdaq offers a Spread Feed, and neither does GEMX, and therefore no comparison with other exchanges is possible.

Exchange	Market share (%)	Spread feed
Phlx	9.7	\$3,100/month internal and/or external distribution.
ISE	6.8	\$3,100/month internal and/or external distribution.
MRX	3.2	\$1,010/month internal distribution; \$1,515/month external distribution.

¹³ GEMX Rulebook, Options 7, Section 7(H) (Nasdaq GEMX Trade Feed). These are fees for 2025. Fees for the GEMX Trade Feed are scheduled to be adjusted in 2026 and 2027 to account for the impact of past inflation. The proposed Phlx fees will not be adjusted for past inflation, which would not be applicable to the new fees proposed herein.

¹⁴ See Cboe Exchange, Inc., Fee Schedule—December 12, 2025, available at https://cdn.cboe.com/resources/membership/CboeFeeSchedule.pdf?_gl=1*dz37n1*_up*MQ..*_

*ga*MjQ3MzQyNDEuMTc1NjMwOTYwMQ..*_ga_5Q99WB9X71*czE3NTYzMDk2MDEkbzE kZzAkDDE3NTYzMDk2MDEkajYwJGwwJGg xNTA1Mzc5Mjly.*

¹⁵ See *id.* ("Distribution Fee [for Cboe Options Complex Order Book] applies for Internal and External distribution. The Distribution Fee for Cboe Options COB Feed is waived for Internal Distributors of Cboe Options Top Feed and/or Distributors (Internal or External) of Cboe Options Depth Feed.").

¹⁶ See Phlx Rulebook, Options 7, Section 10 (Top of PHLX Options).

¹⁷ See *id.* ("Distribution Fee [for Cboe Options Complex Order Book] applies for Internal and External distribution. The Distribution Fee for Cboe Options COB Feed is waived for Internal Distributors of Cboe Options Top Feed and/or Distributors (Internal or External) of Cboe Options Depth Feed.").

¹⁸ See Phlx Rulebook, Options 7, Section 10 (Top of PHLX Options).

ISE: The proposed fees for the Phlx Trades Feed of \$3,100/month internal and/or external distribution are the same as current ISE fees.¹⁹ Given that Phlx has a market share nearly 50 percent higher than that of ISE (9.7% for Phlx as compared to 6.8% for ISE), the proposed fees are lower than ISE fees relative to market share.

MRX: The proposed fees for the Phlx Trades Feed of \$3,100/month internal and/or external distribution are greater than the current MRX fees of \$1,010 for internal distribution and \$1,515 for external distribution (\$2,525 for internal and external distribution).²⁰ However, Phlx has a market share nearly four times greater than that of MRX (9.7% for Phlx relative to 3.2% for MRX), much greater than the fee differential for the Trades Feed, and therefore the proposed fees are comparable to those of MRX relative to market share.

No Unfair Discrimination

The Proposal is not unfairly discriminatory. The proposed fees are optional data fees available to all market participants on a non-discriminatory basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Nothing in the proposal burdens inter-market competition (the competition among self-regulatory organizations) because approval of the proposal does not impose any burden on the ability of other options exchanges to compete. The proposed fees for the Spread Feed and the Trades Feed are comparable to, and in some cases less than, those of the other exchanges that offer them relative to market share, as discussed above.

Nothing in the Proposal burdens intra-market competition (the competition among consumers of exchange data), because the Spread Feed and the Trades Feed are available to any market participant at the same

price and any market participant that elects to purchase either the Spread Feed or the Trades Feed may do so on a non-discriminatory basis.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.²¹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-Phlx-2025-78 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-Phlx-2025-78. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable

information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-Phlx-2025-78 and should be submitted on or before February 5, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2026-00647 Filed 1-14-26; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104579; File No. SR-NYSEARCA-2025-90]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the NYSE Arca Equities Proprietary Market Data Fees

January 12, 2026.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 ("Act") ² and Rule 19b-4 thereunder,³ notice is hereby given that, on December 30, 2025, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Proprietary Market Data Fees (the "Fee Schedule") regarding the Multiple Data Feed Fee. The proposed rule change is available on the Exchange's website at www.nyse.com and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included

²² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

¹⁹ ISE Rulebook, Options 7, Section 10(I) (Nasdaq ISE Spread Feed). These are fees for 2025. As noted above, fees for the ISE Trade Feed are scheduled to be adjusted in 2026 and 2027 to account for the impact of past inflation. The proposed Phlx fees will not be adjusted for past inflation, which would not be applicable to new fees proposed herein.

²⁰ MRX Rulebook, Options 7, Distributor Fees, Section 7(5) (Spread Feed). These are fees for 2025. Fees for the MRX Trade Feed are scheduled to be adjusted in 2026 and 2027 to account for the impact of past inflation. The proposed Phlx fees will not be adjusted for past inflation, which would not be applicable to the new fees proposed herein.

²¹ 15 U.S.C. 78s(b)(3)(A)(ii).

statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule regarding the Multiple Data Feed Fee, effective January 2, 2026. Specifically, the Exchange proposes to eliminate the Multiple Data Feed Fee for NYSE Arca BBO and NYSE Arca Trades. The Multiple Data Feed Fee applies to data recipients that take a data feed for a market data product in more than two locations. The Exchange proposes to eliminate this fee for the NYSE Arca BBO and NYSE Arca Trades market data products based on its limited application, as few data recipients have sought to take these data feeds in multiple locations. Accordingly, this proposed change would improve transparency and simplify the Fee Schedule by removing an underutilized fee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁴ in general, and Sections 6(b)(4) and 6(b)(5) of the Act,⁵ in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers.

The Exchange believes that the proposed rule change to eliminate the Multiple Data Feed Fee with respect to the NYSE Arca BBO and NYSE Arca Trades data feeds is reasonable because few data subscribers have opted to take these data feeds in multiple locations, resulting in limited application of this fee. The Exchange believes it is reasonable to eliminate a fee such as this one when it is underutilized, thereby simplifying the Fee Schedule and promoting clarity and transparency as to the fees currently charged by the Exchange. The Exchange also believes that the proposed change is equitable and not unfairly discriminatory because

the Multiple Data Feed Fee for NYSE Arca BBO and NYSE Arca Trades would be eliminated entirely and would no longer apply to any data subscriber. Accordingly, all data subscribers that take these data feeds would continue to be subject to the same fee structure. The Exchange also believes that the proposed change would promote the protection of investors and the public interest because the deletion of underutilized fees would make the Fee Schedule more accessible and transparent and facilitate market participants' understanding of the fees charged for the Exchange's market data products.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Indeed, as demonstrated above, the Exchange believes the proposed rule change is pro-competitive.

Intramarket Competition. The Exchange believes that the proposed change would not place any undue burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, given the limited applicability of the fee it proposes to eliminate. As noted above, given the small number of data subscribers that have chosen to take the NYSE Arca BBO and NYSE Arca Trades data feeds in multiple locations, the Multiple Data Feed Fee has been underutilized. The Exchange also believes that the proposed change would neither favor nor penalize any data subscribers in a manner that would impose an undue burden on competition, as all data subscribers that take these data feeds would continue to be subject to the same fee structure.

Intermarket Competition. The Exchange believes that the proposed change does not impose a burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not intended to address any competitive issue and is intended only to simplify the Fee Schedule by eliminating an underutilized fee. In addition, because market data users remain free to seek alternative market data products to the extent they deem an exchange's market data fees to be unsuitable, competitive pressures ensure that no one exchange's market data fees can impose an

unnecessary burden on competition, and the proposed change does not do so here.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)⁶ of the Act and subparagraph (f)(2) of Rule 19b-4⁷ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)⁸ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2025-90 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NYSEARCA-2025-90. This file number should be included on the subject line if email is used. To help the

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4), (5).

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(2).

⁸ 15 U.S.C. 78s(b)(2)(B).

Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEARCA-2025-90 and should be submitted on or before February 5, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2026-00649 Filed 1-14-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235-0562]

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension: Rule 17d-1

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Section 17(d) (15 U.S.C. 80a-17(d)) of the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*) (the "Act") prohibits first- and second-tier affiliates of a fund, the fund's principal underwriters, and affiliated persons of the fund's principal underwriters, acting as principal, to effect any transaction in which the fund or a company controlled by the fund is a joint or a joint and several participant in contravention of the Commission's rules. Rule 17d-1 (17 CFR 270.17d-1) prohibits an affiliated

person or principal underwriter for any fund (a "first-tier affiliate"), or any affiliated person of such person or underwriter (a "second-tier affiliate"), acting as principal, from participating in or effecting any transaction in connection with a joint enterprise or other joint arrangement in which the fund is a participant, unless prior to entering into the enterprise or arrangement "an application regarding [the transaction] has been filed with the Commission and has been granted by an order." In reviewing the proposed affiliated transaction, the rule provides that the Commission will consider whether the proposal is (i) consistent with the provisions, policies, and purposes of the Act, and (ii) on a basis different from or less advantageous than that of other participants in determining whether to grant an exemptive application for a proposed joint enterprise, joint arrangement, or profit-sharing plan.

Rule 17d-1 also contains a number of exceptions to the requirement that a fund must obtain Commission approval prior to entering into joint transactions or arrangements with affiliates. For example, funds do not have to obtain Commission approval for certain employee compensation plans, certain tax-deferred employee benefit plans, certain transactions involving small business investment companies, the receipt of securities or cash by certain affiliates pursuant to a plan of reorganization, certain arrangements regarding liability insurance policies and transactions with "portfolio affiliates" (companies that are affiliated with the fund solely as a result of the fund (or an affiliated fund) controlling them or owning more than five percent of their voting securities) so long as certain other affiliated persons of the fund (*e.g.*, the fund's adviser, persons controlling the fund, and persons under common control with the fund) are not parties to the transaction and do not have a "financial interest" in a party to the transaction. The rule excludes from the definition of "financial interest" any interest that the fund's board of directors (including a majority of the directors who are not interested persons of the fund) finds to be not material, as long as the board records the basis for its finding in their meeting minutes.

Thus, the rule contains two filing and recordkeeping requirements that constitute collections of information. First, rule 17d-1 requires funds that wish to engage in a joint transaction or arrangement with affiliates to meet the procedural requirements for obtaining exemptive relief from the rule's prohibition on joint transactions or

arrangements involving first- or second-tier affiliates. Second, rule 17d-1 permits a portfolio affiliate to enter into a joint transaction or arrangement with the fund if a prohibited participant has a financial interest that the fund's board determines is not material and records the basis for this finding in their meeting minutes. These requirements of rule 17d-1 are designed to prevent fund insiders from managing funds for their own benefit, rather than for the benefit of the funds' shareholders.

Based on an analysis of past filings, Commission staff estimates that 71 funds file applications under section 17(d) and rule 17d-1 per year. The staff understands that funds that file an application generally obtain assistance from outside counsel to prepare the application. The cost burden of using outside counsel is discussed below. The Commission staff estimates that each applicant will spend an average of 75 hours to comply with the Commission's applications process. The Commission staff therefore estimates the annual burden hours per year for all funds under rule 17d-1's application process to be 5,325 hours at a cost of \$2,651,850.¹ The Commission, therefore, requests authorization to increase the inventory of total burden hours per year for all funds under rule 17d-1 from the current authorized burden of 3,225 hours to 5,325 hours. The increase is due to an increase in the number of affected entities.

As noted above, the Commission staff understands that funds that file an application under rule 17d-1 generally use outside counsel to assist in preparing the application. The staff estimates that, on average, funds spend an additional \$58,400 for outside legal services in connection with seeking Commission approval of affiliated joint transactions. Thus, the staff estimates that the total annual cost burden imposed by the exemptive application requirements of rule 17d-1 is \$4,146,400.²

¹ This estimate is based on the following calculation: 75 hours per applicant × \$498 wage rate = \$37,350. \$37,350 × 71 exemption requests per year = \$2,651,850; this blended rate is based on the following: \$652 (hourly rate for a chief compliance officer); \$573 (hourly rate for an assistant general counsel); and \$268 (hourly rate for a paralegal); the Commission's estimates of the relevant wage rates are based on the salary information for the securities industry compiled by Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013, as modified by Commission staff ("SIFMA Wage Report"); the estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation.

² This estimated burden is based on the estimated wage rate of \$584/hour, for 100 hours, for outside

Continued

⁹ 17 CFR 200.30-3(a)(12).

We estimate that funds currently do not rely on the exemption from the term “financial interest” with respect to any interest that the fund’s board of directors (including a majority of the directors who are not interested persons of the fund) finds to be not material. Accordingly, we estimate that annually there will be no transactions under rule 17d–1 that will result in this aspect of the collection of information.

Based on these calculations, the total annual hour burden is estimated to be 5,325 hours and the total annual cost burden is estimated to be \$2,651,850.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Complying with these collections of information requirement is necessary to obtain the benefit of relying on rule 17d–1. Responses will not be kept confidential.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) whether this proposed collection of information is necessary for the proper performance of the functions of the SEC, including whether the information will have practical utility; (b) the accuracy of the SEC’s estimate of the burden imposed by the proposed collection of information, including the validity of the methodology and the assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated, electronic collection techniques or other forms of information technology.

Please direct your written comments on this 60-Day Collection Notice to Austin Gerig, Director/Chief Data Officer, Securities and Exchange Commission, c/o Tanya Ruttenberg via email to PaperworkReductionAct@sec.gov by March 16, 2026. There will be a second opportunity to comment on this SEC request following the **Federal Register** publishing a 30-Day Submission Notice.

legal services; the Commission’s estimates of the relevant wage rates for external time costs, such as outside legal services, take into account staff experience, a variety of sources including general information websites, and adjustments for inflation; the estimate is based on the following calculation: \$58,400 × 71 exemption requests per year = \$4,146,400.

Dated: January 12, 2026.

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2026–00641 Filed 1–14–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235–0258]

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension: Form F–1—Registration Statement

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (“Commission”) is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form F–1 (17 CFR 239.31) is used by certain foreign private issuers to register securities pursuant to the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). The information collected is intended to ensure the adequacy of information available to investors in connection with securities offerings. We estimate that Form F–1 takes approximately 1,610.36 hours per response and is filed once per year by approximately 270 respondents, for a total of approximately 270 responses annually. We estimate that 25% of the 1,610.36 hours per response is carried internally by the issuer for a total annual reporting burden of 108,699 hours ((1,610.36 hours per response × 25%) × 270 responses). We estimate that 75% of the 1,610.36 hours per response is carried externally by outside professionals retained by the issuer at an estimated rate of \$600 per hour for a total annual cost burden of \$195,658,740 ((75% × 1,610.36 hours per response) × \$600 per hour × 270 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency’s estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to

minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Please direct your written comments on this 60-Day Collection Notice to Austin Gerig, Director/Chief Data Officer, Securities and Exchange Commission, c/o Tanya Ruttenberg via email to PaperworkReductionAct@sec.gov by March 16, 2026. There will be a second opportunity to comment on this SEC request following the **Federal Register** publishing a 30-Day Submission Notice.

Dated: January 12, 2026.

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2026–00638 Filed 1–14–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–104575; File No. SR–NYSEARCA–2025–89]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the NYSE Arca Options Fees and Charges To Reflect Certain Central Registration Depository Fees Collected by the Financial Industry Regulatory Authority, Inc.

January 12, 2026.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”),² and Rule 19b–4 thereunder,³ notice is hereby given that on December 29, 2025, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fees and Charges (the “Fee Schedule”) with respect to certain system fees for the Central Registration Depository (“CRD” or “CRD system”) collected by the Financial Industry Regulatory Authority, Inc. (“FINRA”). The proposed rule change is

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

available on the Exchange's website at www.nyse.com and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule with respect to certain system fees for use of CRD collected by FINRA.⁴ The Exchange proposes to implement the fee change effective January 2, 2026.

FINRA collects and retains certain regulatory fees via CRD for session fees related to continuing education requirements, fees for qualification examinations, and the registration of associated persons of Exchange OTP Holders and OTP Firms that are not FINRA members ("Non-FINRA OTP Holders").⁵ CRD fees are user-based, and there is no distinction in the cost incurred by FINRA if the user is a FINRA member or a Non-FINRA OTP Holder.

In 2024, FINRA amended certain fees assessed for use of the CRD system for implementation between 2026 and

2028.⁶ The Exchange accordingly proposes to amend the Fee Schedule to mirror these fees assessed by FINRA, which will be implemented concurrently with the amended FINRA fees as of January 2026.⁷ Specifically, the Exchange proposes to amend the Fee Schedule to provide that the CRD session fee for the Continuing Education Regulatory Element will be \$25 and the CRD fee for the Series 57 examination will be \$105.⁸ The Exchange also proposes to amend the Fee Schedule to modify the system processing fees charged to Non-FINRA OTP Holders for each registered representative and principal from \$70 to the following, based on the number of securities regulators with which each such registered person is registered, excluding registration as an investment adviser representative:⁹

Number of securities regulators	Fee
1 to 5	\$70
6 to 20	95
21 to 40	110
41 or more	125

The Exchange notes that the proposed change is not otherwise intended to address any other issues surrounding regulatory fees, and the Exchange is not aware of any problems that OTP Holders would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(4)¹¹ of the Act, in particular, in that it is designed to provide for the

equitable allocation of reasonable dues, fees, and other charges. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹² in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed fee change is reasonable because the fees will be identical to those adopted by FINRA as of January 2026 for CRD session fees for continuing education requirements, CRD fees for qualification examinations, and use of the CRD system for each of the member's registered representatives and principals for system processing. The costs of operating and improving the CRD system are similarly borne by FINRA when a Non-FINRA OTP Holder uses the CRD system; accordingly, the fees collected for such use should, as proposed by the Exchange, mirror the fees assessed to FINRA members. In addition, as FINRA noted in amending its fees, it believes that its proposed pricing structure is reasonable and correlates fees with the components that drive its regulatory costs to the extent feasible. The Exchange further believes that the change is reasonable because it will provide greater specificity regarding CRD session fees for certain continuing education requirements, CRD fees for certain qualification examinations, and the CRD system fees that are applicable to Non-FINRA OTP Holders. All similarly situated OTP Holders are subject to the same fee structure, and every OTP Holder must use the CRD system to complete continuing education requirements and qualification examinations, as well as for registration and disclosure.

Accordingly, the Exchange believes that the fees collected for such use should likewise increase in lockstep with the fees assessed to FINRA members, as proposed by the Exchange.

The Exchange also believes that the proposed fee change provides for the equitable allocation of reasonable fees and other charges, and does not unfairly discriminate between customers, issuers, brokers, and dealers. The fees apply equally to all individuals and

⁴ CRD is the central licensing and registration system for the U.S. securities industry. The CRD system enables individuals and firms seeking registration with multiple states and self-regulatory organizations to do so by submitting a single form, fingerprint card, and a combined payment of fees to FINRA. Through the CRD system, FINRA maintains the qualification, employment, and disciplinary histories of registered associated persons of broker-dealers.

⁵ The Exchange originally adopted fees for use of the CRD system in 2005 and amended those fees in 2013, 2022, 2023, and 2024. *See* Securities Exchange Act Release Nos. 51641 (May 2, 2005), 70 FR 24155 (May 6, 2005) (SR-PCX-2005-49); 68590 (January 4, 2013), 78 FR 2470 (January 11, 2013) (SR-NYSEArca-2012-145); 93899 (January 5, 2022), 87 FR 1455 (January 11, 2022) (SR-NYSEArca-2021-106); 96698 (January 18, 2023), 88 FR 4260 (January 24, 2023) (SR-NYSEArca-2023-03); 99334 (January 11, 2024), 89 FR 3450 (January 18, 2024) (SR-NYSEArca-2023-88). While the Exchange lists these fees in its Fee Schedule, it does not collect or retain these fees.

⁶ *See* Securities Exchange Act Release No. 93709 [sic] (November 21, 2024), 89 FR 93709 (November 27, 2024) (SR-FINRA-2024-019).

⁷ The Exchange notes that it has only adopted the CRD system fees charged by FINRA to Non-FINRA OTP Holders when such fees are applicable. In this regard, certain FINRA CRD system fees and requirements are specific to FINRA members, but do not apply to NYSE Arca-only OTP Holders. Non-FINRA OTP Holders have been charged CRD system fees since 2001. *See* note 5, *supra*. OTP Holders that are also FINRA members are charged CRD system fees according to Section 4 of Schedule A to the FINRA By-Laws.

⁸ The Exchange notes that the Fee Schedule inadvertently reflects outdated fees; the current fee for the Regulatory Element is \$18, and the current fee for the Series 57 examination is \$80. In the section of the Fee Schedule reflecting CRD session fees for continuing education requirements, the Exchange is also proposing to delete the fee for the S101 Regulatory Element Program, which is no longer assessed by FINRA, and to make other non-substantive clarifying changes.

⁹ *See* Section 4(b)(7) of Schedule A to the FINRA By-laws.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4).

¹² 15 U.S.C. 78f(b)(5).

firms required to report information in the CRD system, and the proposed change will result in the same regulatory fees being charged to all OTP Holders required to report information to CRD and for services performed by FINRA regardless of whether such OTP Holders are FINRA members. Accordingly, the Exchange believes that the fees collected for such use should increase in lockstep with the fees adopted by FINRA as of January 2026, as proposed by the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that the proposed change will reflect fees that will be assessed by FINRA as of January 2026 and will thus result in the same regulatory fees being charged to all OTP Holders required to report information to the CRD system and for services performed by FINRA, regardless of whether or not such OTP Holders are FINRA members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)¹³ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁴ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁵ of the Act to determine whether the proposed rule

change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2025-89 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NYSEARCA-2025-89. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEARCA-2025-89 and should be submitted on or before February 5, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2026-00645 Filed 1-14-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235-0380]

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension: Form F-10—Registration Statement

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form F-10 (17 CFR 239.40) is a registration statement under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) that may be used by certain Canadian foreign private issuers. The information collected is intended to ensure the adequacy of information available to investors in connection with securities offerings. We estimate that Form F-10 takes approximately 30.23 hours per response and is filed once per year by approximately 52 respondents, for a total of approximately 52 responses annually. We estimate that 25% of the 30.23 hours per response is carried internally by the issuer for a total annual reporting burden of 393 hours ((30.23 hours per response × 25%) × 52 responses). We estimate that 75% of the 30.23 hours per response is carried externally by outside professionals retained by the issuer at an estimated rate of \$600 per hour for a total annual cost burden of \$707,382 ((75% × 30.23 hours per response) × \$600 per hour × 52 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(2).

¹⁵ 15 U.S.C. 78s(b)(2)(B).

¹⁶ 17 CFR 200.30-3(a)(12).

information on respondents, including through the use of automated collection techniques or other forms of information technology.

Please direct your written comments on this 60-Day Collection Notice to Austin Gerig, Director/Chief Data Officer, Securities and Exchange Commission, c/o Tanya Ruttenberg via email to PaperworkReductionAct@sec.gov by March 16, 2026. There will be a second opportunity to comment on this SEC request following the **Federal Register** publishing a 30-Day Submission Notice.

Dated: January 12, 2026.

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2026-00640 Filed 1-14-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104578; File No. SR-NYSE-2025-53]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the New York Stock Exchange LLC Equities Proprietary Market Data Fees

January 12, 2026.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 (“Act”) ² and Rule 19b-4 thereunder, ³ notice is hereby given that, on December 30, 2025, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Proprietary Market Data Fees (the “Fee Schedule”) regarding the Multiple Data Feed Fee. The proposed rule change is available on the Exchange’s website at www.nyse.com and at the principal office of the Exchange.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule regarding the Multiple Data Feed Fee, effective January 2, 2026. Specifically, the Exchange proposes to eliminate the Multiple Data Feed Fee for NYSE BBO and NYSE Trades. The Multiple Data Feed Fee applies to data recipients that take a data feed for a market data product in more than two locations. The Exchange proposes to eliminate this fee for the NYSE BBO and NYSE Trades market data products based on its limited application, as few data recipients have sought to take these data feeds in multiple locations. Accordingly, this proposed change would improve transparency and simplify the Fee Schedule by removing an underutilized fee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act, ⁴ in general, and Sections 6(b)(4) and 6(b)(5) of the Act, ⁵ in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers.

The Exchange believes that the proposed rule change to eliminate the Multiple Data Feed Fee with respect to the NYSE BBO and NYSE Trades data feeds is reasonable because few data subscribers have opted to take these data feeds in multiple locations, resulting in limited application of this fee. The Exchange believes it is reasonable to eliminate a fee such as this one when it is underutilized,

thereby simplifying the Fee Schedule and promoting clarity and transparency as to the fees currently charged by the Exchange. The Exchange also believes that the proposed change is equitable and not unfairly discriminatory because the Multiple Data Feed Fee for NYSE BBO and NYSE Trades would be eliminated entirely and would no longer apply to any data subscriber. Accordingly, all data subscribers that take these data feeds would continue to be subject to the same fee structure. The Exchange also believes that the proposed change would promote the protection of investors and the public interest because the deletion of underutilized fees would make the Fee Schedule more accessible and transparent and facilitate market participants’ understanding of the fees charged for the Exchange’s market data products.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Indeed, as demonstrated above, the Exchange believes the proposed rule change is pro-competitive.

Intramarket Competition. The Exchange believes that the proposed change would not place any undue burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, given the limited applicability of the fee it proposes to eliminate. As noted above, given the small number of data subscribers that have chosen to take the NYSE BBO and NYSE Trades data feeds in multiple locations, the Multiple Data Feed Fee has been underutilized. The Exchange also believes that the proposed change would neither favor nor penalize any data subscribers in a manner that would impose an undue burden on competition, as all data subscribers that take these data feeds would continue to be subject to the same fee structure.

Intermarket Competition. The Exchange believes that the proposed change does not impose a burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not intended to address any competitive issue and is intended only to simplify the Fee Schedule by eliminating an underutilized fee. In addition, because

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4), (5).

market data users remain free to seek alternative market data products to the extent they deem an exchange's market data fees to be unsuitable, competitive pressures ensure that no one exchange's market data fees can impose an unnecessary burden on competition, and the proposed change does not do so here.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) ⁶ of the Act and subparagraph (f)(2) of Rule 19b-4 ⁷ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) ⁸ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSE-2025-53 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NYSE-2025-53. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSE-2025-53 and should be submitted on or before February 5, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2026-00648 Filed 1-14-26; 8:45 am]

BILLING CODE 8011-01-P

DEPARTMENT OF STATE

[Public Notice 12911]

60-Day Notice of Proposed Information Collection: Request for Commodity Jurisdiction Determination

ACTION: Notice of request for public comment.

SUMMARY: The Department of State (the Department) is seeking Office of Management and Budget (OMB) approval for the revised information collection in support of its Commodity Jurisdiction (CJ) Determination process. In accordance with the Paperwork Reduction Act of 1995, the Department is requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding the Department's submission of the collection to OMB.

DATES: The Department will accept comments from the public up to *March 16, 2026*.

ADDRESSES: You may submit comments by any of the following methods:

- *Web:* Persons with access to the internet may comment on this notice by going to www.Regulations.gov. You can search for the document by entering

“Docket Number: DOS-2026-0034 in the Search field. Then click the “Comment Now” button and complete the comment form.

- *Email:* DDTCPublicComments@state.gov. Include “ATTN: OMB Approval, CJ Determination Information Collection” in the subject line of the email message.

- *Regular Mail:* Send written comments to: Directorate of Defense Trade Controls, Department of State, 2401 E St. NW, Suite H1205, Washington, DC 20522.

You must include the DS form number (DS-4076), information collection title (Commodity Jurisdiction Determination Form), and the OMB control number (1405-0163) in any correspondence.

FOR FURTHER INFORMATION CONTACT:

Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Andrea Battista, who may be reached at battistaal@state.gov or 202-992-0973.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Request for Commodity Jurisdiction Determination Form.
 - *OMB Control Number:* 1405-0163.
 - *Type of Request:* Renewal of a Currently Approved Collection.
 - *Originating Office:* Directorate of Defense Trade Controls (PM/DDTC).
 - *Form Number:* DS-4076.
 - *Respondents:* Any person requesting a commodity jurisdiction determination.
 - *Estimated Number of Respondents:* 300.
 - *Estimated Number of Responses:* 300.
 - *Average Time per Response:* 4 hours.
 - *Total Estimated Burden Time:* 1,200 hours.
 - *Frequency:* On occasion.
 - *Obligation to Respond:* Voluntary.
- The Department is soliciting public comments to permit it to:
- Evaluate whether the scope of the proposed information collection is both necessary and sufficient for administering the Department's CJ Determination function.
 - Evaluate the accuracy of the Department's estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
 - Enhance the quality, utility, and clarity of the information to be collected.
 - Minimize the reporting burden on those who are to respond, including the

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(2).

⁸ 15 U.S.C. 78s(b)(2)(B).

⁹ 17 CFR 200.30-3(a)(12).

use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

Pursuant to ITAR § 120.4, the commodity jurisdiction procedure may be used to request the Department's Directorate of Defense Trade Controls to provide a determination of whether a particular article or service is covered by the U.S. Munitions List (USML). Form DS-4076 is the means by which respondents may submit this request. Information submitted via Form DS-4076 will be shared with the Departments of War, Commerce, and other USG agencies, as needed, during the CJ determination review process. Determinations will be made on a case-by-case basis based on the commodity's form, fit, function, performance capability, and design history.

Methodology

Respondents must generally submit the DS-4076 electronically through DDTC's electronic system. Respondents may access the DS-4076 on DDTC's website, www.pmdtdc.state.gov, under "Commodity Jurisdictions (CJs)." Respondents who are unable to access DDTC's website may mail a signed DS-4076, along with a brief cover letter explaining their inability to file the electronic DS-4076, to the Office of Defense Trade Controls Policy, Department of State, 2401 E St. NW, Suite H1304, Washington, DC 20522.

Michael J. Vaccaro,

Deputy Assistant Secretary, Directorate of Defense Trade Controls, Department of State.

[FR Doc. 2026-00694 Filed 1-14-26; 8:45 am]

BILLING CODE 4710-25-P

DEPARTMENT OF STATE

[Public Notice 12907]

30-Day Notice of Proposed Information Collection: Eligibility Questionnaire for HAVANA Act Payments

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for

approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments up to February 17, 2026.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Carolina Linares, who may be reached on 771-205-0612 or at ahicct@state.gov.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Eligibility Questionnaire for HAVANA Act Payments.
 - *OMB Control Number:* 1405-0250.
 - *Type of Request:* Renewal of a Currently Approved Collection.
 - *Originating Office:* PERT, Office of Employee Relations, Employee Benefits and Assistance Division, Employee Assistance Branch (PERT/ER/EBA/EA).
 - *Form Number:* DS-4316.
 - *Respondents:* Department of State employees, former employees, and their dependents, and the qualified physicians whom they have consulted.
 - *Estimated Number of Respondents:* 30.
 - *Estimated Number of Responses:* 30.
 - *Average Time per Response:* 30 minutes.
 - *Total Estimated Burden Time:* 32.5 hours.
 - *Frequency:* On occasion.
 - *Obligation To Respond:* Required to Obtain or Retain a Benefit.
- We are soliciting public comments to permit the Department to:
- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
 - Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
 - Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology. Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

On October 8, 2021, the "Helping American Victims Affected by Neurological Attacks" (HAVANA) Act of 2021 (Pub. L. 117-46) was signed into law. In this statute, Congress authorized federal agencies to make payments to affected current employees, former employees, and their dependents for qualifying injuries to the brain. The DS-4316 provides the required medical substantiation for claims filed pursuant to the HAVANA Act and the Department's rules (22 CFR part 135). On December 18, 2025, section 5604 of the National Defense Authorization Act for FY 2026 changed the definition of qualifying injury to the brain to include such injuries occurring on or after September 11, 2001. The DS-4316 has been amended accordingly.

Methodology

An individual wishing to make a claim under the HAVANA Act will fill out the "Patient Demographics" portion of the DS-4316 and provide it to a U.S. board certified physician as defined in the Department rules. The physician will complete the form after examining the individual and reviewing their records and will fax or email the completed form to the Department.

Andrew L. Flashberg,

Acting Employee Relations Office Director, Bureau of Personnel and Training, U.S. Department of State.

[FR Doc. 2026-00652 Filed 1-14-26; 8:45 am]

BILLING CODE 4710-10-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36863]

South Central Florida Express, Inc.—Trackage Rights Exemption—Florida East Coast Railway, LLC

South Central Florida Express, Inc. (SCFE) has filed a verified notice of exemption under 49 CFR 1180.2(d)(7) for after-the-fact exemption authority to renew, and to revise, certain overhead and local trackage rights previously granted to it by the Florida East Coast

Railway Company (FEC), now known as Florida East Coast Railway, LLC (FECR).¹ SCFE states that its overhead trackage rights extend over FECR's line of railroad between milepost K-0.0 near Ft. Pierce, Fla., and milepost K-15.0, and that its local trackage rights extend between milepost K-15.0 and milepost K-70.9, at or near Lake Harbor, Fla. (the Line).

According to the verified notice, SCFE originally acquired the trackage rights from FEC in 1998.² SCFE states, however, that, in 2016, as the end of the 20-year term of its initial 1998 agreement approached, FECR³ and SCFE entered into a first amendment to the parties' trackage rights agreement, effective December 6, 2016 (the First Amendment). According to SCFE, the First Amendment extended the term of the trackage rights agreement and modified the rights granted to SCFE. Specifically, under the First Amendment, (1) SCFE was granted nonexclusive local trackage rights to operate its trains carrying certain carload products, operated by SCFE's crews, over the Line; (2) SCFE's local trackage rights would include the right to develop new customers between milepost K-15.0 and milepost 70.9; and (3) SCFE's use of the Line would be in common with FECR and other users permitted by FECR, along with other conditions. SCFE notes, however, that due to an inadvertent error, SCFE did not seek exemption authority for the renewal of the trackage rights in 2016. SCFE states that it now seeks after-the-fact authority to correct its error.⁴

The transaction may be consummated on or after January 29, 2026, the effective date of the exemption (30 days after the verified notice was filed).

As a condition to this exemption, any employees affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk &*

Western Railway—Trackage Rights—Burlington Northern, Inc., 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad*, 360 I.C.C. 653 (1980).

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than January 22, 2026 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36863, must be filed with the Surface Transportation Board via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423-0001. In addition, a copy of each pleading must be served on SCFE's representative, Thomas W. Wilcox, Law Office of Thomas W. Wilcox, LLC, 1629 K Street NW, Suite 300, Washington, DC 20006. According to SCFE, this action is categorically excluded from environmental review under 49 CFR 1105.6(c)(3) and from historic preservation reporting requirements under 49 CFR 1105.8(b)(3).

Board decisions and notices are available at www.stb.gov.

Decided: January 8, 2026.

By the Board, Anika S. Cooper, Chief Counsel, Office of Chief Counsel.

Kenyatta Clay,
Clearance Clerk.

[FR Doc. 2026-00625 Filed 1-14-26; 8:45 am]

BILLING CODE 4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36875]

Mason Railroad, Inc.—Acquisition Exemption—L. Neill Cartage Co., Inc.

Mason Railroad, Inc. (MRR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from L. Neill Cartage Co., Inc. (Cartage), and operate approximately 665 feet of rail line located at a transload facility owned by Cartage in Bedford Park, Ill. (the Line).¹ The Line has no mileposts.

According to the verified notice, the Line is used in conjunction with interchanging boxcar loads of bulk commodities (such as paper and

packaging-related materials, lumber, and polystyrene) to and from the Belt Railway Company of Chicago. The verified notice further states that MRR and Cartage have reached an agreement for MRR to operate over the Line and conduct transloading operations.

The transaction may be consummated on or after January 29, 2026, the effective date of the exemption (30 days after the verified notice was filed).

MRR certifies that its projected annual revenues will not exceed those that would qualify it as a Class III rail carrier. MRR also certifies that the transaction does not involve any provision that would prohibit or limit future interchange with any third-party connecting carrier.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than January 22, 2026 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36875, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423-0001. In addition, a copy of each pleading must be served on MRR's representative, Max Callahan, Fulcrum Rail, 180 North Wacker Drive, Suite 400, Chicago, IL 60606.

According to PRR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at www.stb.gov.

Decided: January 8, 2026.

By the Board, Anika S. Cooper, Chief Counsel, Office of Chief Counsel.

Tammy Lowery,
Clearance Clerk.

[FR Doc. 2026-00624 Filed 1-14-26; 8:45 am]

BILLING CODE 4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36874]

Proviso Railroad, Inc.—Acquisition Exemption—L. Neill Cartage Co., Inc.

Proviso Railroad, Inc. (PRR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from L. Neill Cartage Co., Inc.

¹ SCFE initially submitted its verified notice of exemption on November 18, 2025. However, by decision served on December 17, 2025, SCFE was directed to submit supplemental information to correct certain errors and omissions identified in its verified notice of exemption. SCFE filed the requested supplemental information on December 30, 2025. Therefore, December 30, 2025, is considered the filing date for SCFE's verified notice and is the basis for all dates in this notice of exemption.

² See *S. Cent. Fla. Express, Inc.—Trackage Rights Exemption—Fla. E. Coast Ry.*, FD 33562 (STB served Mar. 11, 1998). The Board's 1998 notice of exemption identified the endpoint for SCFE's local trackage rights as milepost K-70.4. SCFE confirmed in its December 30, 2025 supplemental filing that the endpoint of the Line is milepost K-70.9.

³ SCFE states that, upon FEC's merger with FECR, FECR was assigned FEC's obligations under the agreement.

⁴ SCFE states that it is not necessarily seeking retroactive authority.

¹ MRR supplemented its initial December 4, 2025 filing on December 29 and 30, 2025. The date of MRR's second supplement, December 30, 2025, is therefore considered the filing date of the verified notice.

(Cartage), and operate approximately 712.5 feet of rail line located at a transload facility owned by Cartage in Berkeley, Ill. (the Line).¹ The Line has no mileposts.

According to the verified notice, the Line is used in conjunction with interchanging boxcar loads of bulk commodities (such as paper and packaging-related materials, lumber, and polystyrene bead) to and from Union Pacific Railroad Company. The verified notice further states that PRR and Cartage have reached an agreement for PRR to operate over the Line and conduct transloading operations.

The transaction may be consummated on or after January 29, 2026, the effective date of the exemption (30 days after the verified notice was filed).

PRR certifies that its projected annual revenues will not exceed those that would qualify it as a Class III rail carrier. PRR also certifies that the transaction does not involve any provision that would prohibit or limit future interchange with any third-party connecting carrier.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than January 22, 2026 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36874, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423-0001. In addition, a copy of each pleading must be served on PRR's representative, Max Callahan, Fulcrum Rail, 180 North Wacker Drive, Suite 400, Chicago, IL 60606.

According to PRR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at www.stb.gov.

Decided: January 8, 2026.

By the Board, Anika S. Cooper, Chief Counsel, Office of Chief Counsel.

Tammy Lowery,
Clearance Clerk.

[FR Doc. 2026-00622 Filed 1-14-26; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Compatibility Program for Dane County Regional Airport, Madison, Wisconsin

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of receipt and request for review of the noise compatibility program

SUMMARY: The Federal Aviation Administration (FAA) announces the start of the FAA review of the noise compatibility program submitted for Dane County Regional Airport and the availability of this program for public review and comment. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted for Dane County Regional Airport were in compliance with applicable requirements, effective December 21, 2024. The Dane County Regional Airport noise compatibility program will be approved or disapproved on or before July 12, 2026.

DATES: The effective date of the FAA of the start of its review of the associated noise compatibility program is January 13, 2026. The public comment period ends March 14, 2026.

FOR FURTHER INFORMATION CONTACT: Emma Lienau, Chicago Airports District Office, 2300 E. Devon Avenue, Des Plaines, Illinois 60018, Tel: 847-294-7551. Comments on the proposed noise compatibility program should be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program (NCP) for Dane County Regional Airport which will be approved or disapproved on, or before, July 12, 2026. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps (NEM) that are found by FAA to be in compliance with the requirements of title 49, chapter 475 of the United States Code (U.S.C.) (Aviation Safety and Noise Abatement Act, hereinafter referred to as "the Act") and Title 14,

Code of Federal Regulations (CFR) part 150 (14 CFR 150), promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses. The FAA previously determined that the NEMs for Dane County Regional Airport were in compliance with applicable requirements under 14 CFR 150, effective December 21, 2024 (Noise Compatibility Program for Dane County Regional Airport/Truax Field, Dane County, Wisconsin, Volume 89, Number 28, **Federal Register**, pages 9284-5, February 9, 2024).

The FAA formally received the NCP for Dane County Regional Airport on December 4, 2025. The airport operator has requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as an NCP under Section 47504 of the Act. Preliminary review of the submitted materials indicates that it conforms to the requirements for the submittal of NCPs, but that further review will be necessary prior to approval or disapproval of the program for Dane County Regional Airport. The formal review period, limited to a maximum of 180 days, was initiated on January 13, 2026, and will be completed on or before July 12, 2026.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR 150.33 (<https://www.ecfr.gov/current/title-14/chapter-I/subchapter-I/part-150/subpart-C/section-150.33>). The primary considerations in the evaluation process are whether the proposed measures will reduce existing noncompatible uses and prevent or reduce the probability of additional noncompatible uses and whether the proposed measures will impose an undue burden on interstate and foreign commerce or reduce safety or adversely affect the safe and efficient use of airspace.

Interested persons are invited to comment on the proposed program with specific references to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the proposed NCP for Dane County Regional Airport are available for examination online at <https://msnairport.com/about/noise-abatement/part-150-study>. Dane County Regional Airport has also made a hard copy of the document available for review at 4000 International Lane,

¹ PRR supplemented its initial December 3, 2025 filing on December 29 and 30, 2025. The date of PRR's second supplement, December 30, 2025, is therefore considered the filing date of the verified notice.

Madison, Wisconsin 53704, Terminal Building, 2nd floor of the Airport Administration Office. Questions regarding this notice may be directed to the individual names above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Des Plaines, Illinois on January 13, 2026.

James Gregory Keefer,

Acting Director, Airports Division, Great Lakes Region.

[FR Doc. 2026-00683 Filed 1-14-26; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA-2025-0134]

Rescission of the National Transit Database Weekly Reference Reporting Requirement

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Final notice; response to comments.

SUMMARY: This notice finalizes and responds to comments on the proposed rescission of the National Transit Database's (NTD) Weekly Reference (WE-20) reporting requirement.

DATES: *Applicable date:* January 15, 2026.

FOR FURTHER INFORMATION CONTACT:

Chelsea Champlin, National Transit Database Program Manager, FTA Office of Budget and Policy, 202-366-4000, chelsea.champlin@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Congress established the NTD to be the Nation's primary source for information and statistics on the transit systems of the United States. During the COVID-19 pandemic, FTA found it did not have sufficient and timely data on transit ridership or transit service levels to inform decision-makers during the rapidly changing crisis situation. To better understand changes in the transit industry on a timely basis, FTA went through the notice and comment process (Docket number FTA-2022-0018) pursuant to 49 U.S.C. 5334(k) to, among other things, enable FTA to collect additional data from a sample set of modal reports from across the universe of full, reduced, tribal, and rural reporters on a weekly reference WE-20 Form. FTA finalized the WE-20 reporting requirements in March 2023 (88 FR 13497).

Although the WE-20 reporting requirement provided important data as the country recovered from the pandemic, it is not required by statute, and after two years of experience with this data collection, FTA determined the WE-20 reporting requirement no longer offers sufficient value relative to the administrative burden on transit agencies and is inconsistent with this Administration's deregulatory priorities.

II. Proposed Recission of the Weekly Reference Reporting Requirement (WE-20) and Responses to Comments

Pursuant to 49 U.S.C. 5334(k), FTA published a notice in the **Federal Register** on November 18, 2025 (90 FR 51809) requesting comments on the proposed rescission of the WE-20 reporting requirement. The comment period closed on December 2, 2025. FTA received five comments in support (including three who expressed strong support) of the proposal to rescind the required weekly NTD reporting requirement. Comments were received from three public transit agencies, a consortium consisting of five State Departments of Transportation, and one transportation association. Two of the comments in support of the change justified the rescission by quantifying the time the reporting took them away from other critical work, including transit operations, planning, and analysis. In addition, the consortium specifically noted the filing burden on rural states, where small transit operators have limited staff to attend to administrative and regulatory compliance. FTA received no comments in opposition or providing additional information.

FTA Response: FTA appreciates the support for this change and will move forward with the rescission as proposed. The proposed rescission takes effect immediately upon publication of this final notice.

Marcus J. Molinaro,

Administrator.

[FR Doc. 2026-00651 Filed 1-14-26; 8:45 am]

BILLING CODE 4910-57-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration (FTA)

Announcement of Fiscal Year 2025 Grants for Buses and Bus Facilities Program and Fiscal Year 2025 and 2026 Low or No Emission Program Project Selections

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of project selections and implementation guidance.

SUMMARY: The U.S. Department of Transportation's (DOT) Federal Transit Administration (FTA) announces the award of a total of \$2,027,948,082 for 165 projects. This includes \$397,665,476 under the FY 2025 Grants for Buses and Bus Facilities Competitive Program (Bus Competitive Program) for 62 projects and \$1,630,282,606 under the FY 2025 Low or No Emission (Low-No) Grants Program for 103 projects. This notice provides administrative guidance on project implementation.

FOR FURTHER INFORMATION CONTACT:

Successful applicants should contact the appropriate FTA Regional Office for information regarding applying for the funds or program-specific information. A list of Regional Offices can be found at <https://www.transit.dot.gov/about/regional-offices/regional-offices>. Unsuccessful applicants may contact Kirsten Wiard-Bauer, Office of Program Management, at ftalownobusnofo@dot.gov or (202) 366-2053 within 30 days of this announcement to arrange a proposal debriefing. Some unsuccessful applicants, such as those who received an overall rating of Highly Recommended or Ineligible, may receive feedback only via email. A TDD is available at 1-800-877-8339 (TDD/FIRS).

SUPPLEMENTARY INFORMATION: Federal public transportation law (49 U.S.C. 5339(b)) authorizes FTA to make competitive grants for the Bus Competitive Program. Federal public transportation law (49 U.S.C. 5339(c)) authorizes FTA to make competitive grants for the Low-No Program.

Federal public transportation law (49 U.S.C. 5338(a)(2)(M)) authorized \$398,103,239 in FY 2025 funds for the Bus Competitive Program after an oversight takedown. After the addition of available prior year funding, the total available funding for the Bus Program in FY 2025 is \$399,330,754.

For FY 2025, \$76,512,334 was authorized and appropriated for the FY 2025 Low-No Program, and the Infrastructure Investment and Jobs Act (IIJA, Pub. L. 117-58) appropriated an additional \$1,029,000,000 after accounting for the authorized takedown for administrative and oversight expenses and the Office of Inspector General (OIG). For FY 2026, \$1,029,000,000 is appropriated under the IIJA for the Low-No Program. After the oversight takedown and transfer to the OIG, and the addition of prior year(s) funding, the total available

funding for the Low-No Program is \$2,140,796,484.

On May 15, 2025, FTA published a joint Notice of Funding Opportunity (NOFO) announcing the availability of approximately \$398 million in FY 2025 Bus Competitive Program funds and approximately \$1.10 billion in Low-No Program funds (90 FR 20737). Consistent with the NOFO, which stated that FTA “may award additional funding that is made available to the programs prior to the announcement of project selections,” FTA is electing to allocate a portion of the appropriated FY 2026 Low-No Program funds, as well as available prior year funds for both programs. These funds will provide financial assistance to states and eligible public agencies to replace, rehabilitate, purchase, or lease buses, vans, and related equipment, and for capital projects to rehabilitate, purchase, construct, or lease bus-related facilities. For the Low-No Program, projects must be directly related to low or no-emission vehicles. In response to the NOFO, FTA received 479 eligible project proposals requesting approximately \$6.8 billion in Federal funds. Project proposals were evaluated based on each applicant’s responsiveness to the program evaluation criteria outlined in the NOFO.

Based on the criteria in the NOFO, FTA is funding 62 projects, as shown in Table 1, for a total of \$397,665,476 for the Bus Competitive Program, and 103 projects, as shown in Table 2, for a total of \$1,630,282,606 for the Low-No Program. A minimum of 15 percent of the amount made available for the Bus Competitive Program is set aside for projects located in rural areas, which is reflected in FTA’s selections. A statutory cap of 10 percent for any one applicant in the Bus Competitive Program is reflected as well. A minimum of 25 percent of the amount made available for the Low-No Program is set aside for projects related to the acquisition of low-emission buses or bus facilities.

Recipients selected for competitive funding are required to work with their FTA Regional Office to submit a grant application in FTA’s Transit Award Management System (TrAMS) for the projects identified in the attached tables to quickly obligate funds. A discretionary project identification number has been assigned to each project for tracking purposes and must be used in the TrAMS application. Grant applications must include only eligible activities applied for in the original project application.

When the allocated amount is less than the requested amount, recipients

must reduce scope or scale the project so that a complete phase or a usable segment of the originally proposed project is implemented. Amounts may be reduced because they were capped or scaled due to more funding being requested than available, ineligible expenses may have been removed from the funded project scope, or funding was allocated for only the low-emission elements of a mixed-emission project. In all such cases where the amount allocated is less than the amount requested, the recipient should work with its Regional Office to reduce the scope appropriately. Recipients may also provide additional local funds to complete a proposed project.

Selected projects are eligible to incur costs under pre-award authority no earlier than November 20, 2025. Pre-award costs are incurred at your own risk, and the announcement that a project was selected does not guarantee that FTA will, in fact, obligate a grant for the funding. FTA is not required to reimburse pre-award costs if you do not receive an obligated grant or if the obligated grant is less than anticipated and is inadequate to cover all pre-award costs. Eligibility for reimbursement is contingent upon planning and environmental requirements having been met, among other factors. For more about FTA’s policy on pre-award authority, please see the current FTA Apportionments, Allocations, and Program Information at <https://www.transit.dot.gov/funding/apportionments>.

Post-award reporting requirements include submission of Federal Financial Reports and Milestone Progress Reports in TrAMS (see FTA Circular 5010.1F). Recipients must comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal requirements in carrying out the project supported by the FTA grant. FTA emphasizes that recipients must follow all third-party procurement requirements set forth in Federal public transportation law (49 U.S.C. 5325(a)) and described in the FTA Third Party Contracting Guidance Circular (FTA Circular 4220.1G).

Funds allocated in this announcement must be obligated in a grant by September 30, 2029.

Technical Review and Evaluation Summary: The FTA assessed all project proposals that were submitted under the FY 2025 Buses and Bus Facilities Program and the Low-No Program competition according to the following evaluation criteria. The specific metrics for each criterion were described in the May 2025 NOFO:

1. Demonstration of Need

2. Demonstration of Benefits
3. Planning/Local Prioritization
4. Local Financial Commitment
5. Project Implementation Strategy
6. Technical, Legal, and Financial Capacity

For each project, a technical review panel assigned a rating of Highly Recommended, Recommended, or Not Recommended for each of the six criteria. The technical review panel then assigned an overall rating of Highly Recommended, Recommended, Not Recommended, or Ineligible to the project proposal.

FTA also used a streamlined application for tribal applicants requesting less than \$1 million in order to reduce the burden of application for tribes with smaller requests and encourage more tribal applications. Such applicants were only required to provide a full response to Demonstration of Need and Local Financial Commitment, and a shortened response to Project Implementation Strategy. Tribes with requests of less than \$1 million had to meet statutory requirements, such as attaching a fleet transition plan to zero-emission applications, but did not need to provide responses related to any Administration priorities.

Projects were assigned a final overall rating of Highly Recommended if they were rated Highly Recommended in at least four categories overall, with no Not Recommended ratings. Projects were assigned a final overall rating of Recommended if the projects had three or more Recommended ratings and no Not Recommended ratings. Projects were assigned a rating of Not Recommended if they received a Not Recommended rating in any criteria. A summary of the final overall ratings for all 479 eligible project proposals is shown in the table below.

Overall Project Ratings (eligible submissions):

	Bus	Low-No	Total
Highly Recommended	223	131	354
Recommended	30	21	51
Not Recommended	47	27	74
Total	300	179	479

Consistent with the NOFO, FTA made the final selections based on the technical ratings as well as geographic diversity; diversity in the size of transit systems receiving funding; vehicle propulsion type; and additional considerations/administration priorities including benefits to Opportunity Zones, intent to use cost-effective vehicle procurements, intent to use terms to strengthen the U.S. vehicle

manufacturing industry, benefits to families and communities, and

commitment to Buy America domestic preference standards.

Marcus J. Molinaro,
Administrator.

TABLE 1—FY 2025 BUSES AND BUS FACILITIES PROJECT SELECTIONS

[Note: Some projects have multiple project IDs.]

State	Recipient	Project ID	Project description	Award
AK	Kenaitze Indian Tribe	D2026–BUSC–001	Rehabilitate a bus facility	\$654,272
AL	Poarch Band of Creek Indians	D2026–BUSC–002	Purchase replacement buses and construct transportation hub.	1,939,904
AR	University of Arkansas—Fayetteville	D2026–BUSC–003 and D2026–BUSC–004.	Purchase replacement and expansion buses	13,175,000
AZ	Northern Arizona Intergovernmental Public Transportation Authority.	D2026–BUSC–005	Rehabilitate bus stops	3,207,678
CA	California Department of Transportation obo Eastern Sierra Transit Authority.	D2026–BUSC–006	Construct an operations and administration facility.	3,044,961
CA	California Department of Transportation obo Eastern Sierra Transit Authority.	D2026–BUSC–007	Purchase replacement buses	7,978,159
CA	California Department of Transportation obo Humboldt Transit Authority.	D2026–BUSC–008	Purchase replacement buses	2,394,000
CA	Eastern Contra Costa Transit Authority	D2026–BUSC–009	Rehabilitate operations facility	2,400,000
CA	Santa Cruz Metropolitan Transit District	D2026–BUSC–010	Purchase replacement and expansion buses	1,152,000
CA	Yuba-Sutter Transit Authority	D2026–BUSC–011 and D2026–BUSC–012.	Construct an administration, operations, and maintenance facility.	12,714,902
CO	Colorado Department of Transportation obo Eagle Valley Transportation Authority.	D2026–BUSC–013	Construct and rehabilitate bus stops	1,060,000
CO	Colorado Department of Transportation obo Gunnison Valley Transportation Authority (GVRTA).	D2026–BUSC–014	Purchase replacement bus	768,557
CO	Colorado Department of Transportation obo Miguel Authority for Regional Transportation (SMART).	D2026–BUSC–015	Purchase replacement buses	534,108
CO	Colorado Department of Transportation obo Mountain Express (MX).	D2026–BUSC–016	Construct bus storage, maintenance, and operations facility.	14,400,000
CO	Colorado Department of Transportation obo Mountain Express (MX).	D2026–BUSC–017	Purchase replacement buses	256,000
CO	Colorado Department of Transportation obo The Roaring Fork Transportation Authority (RFTA).	D2026–BUSC–018	Purchase replacement buses	6,745,942
CO	Colorado Department of Transportation obo Town of Winter Park.	D2026–BUSC–019	Rehabilitate maintenance facility	1,056,120
FL	Lakeland Area Mass Transit District dba Citrus Connection.	D2026–BUSC–020	Rehabilitate maintenance and administration facilities and purchase equipment.	1,104,080
IA	Ames Transit Agency dba CyRide	D2026–BUSC–021	Rehabilitate and convert buses to biodiesel, and expand bus storage facility.	14,648,686
IA	City of Iowa City	D2026–BUSC–022 and D2026–BUSC–023.	Purchase replacement buses and paratransit vehicles.	8,665,485
IA	Iowa Department of Transportation	D2026–BUSC–024	Purchase replacement buses	27,834,685
IL	Bloomington-Normal Public Transit System (dba Connect Transit).	D2026–BUSC–025	Construct transit center	5,000,000
KY	Kentucky Transportation Cabinet	D2026–BUSC–026	Purchase replacement and expansion vehicles, and purchase and rehabilitate bus facilities.	12,363,501
KY	Transit Authority of River City	D2026–BUSC–027	Rehabilitate and expand bus maintenance facility	2,624,000
KY	Transit Authority of the Lexington-Fayette Urban County Government.	D2026–BUSC–028	Purchase replacement paratransit vehicles	1,200,000
LA	Jefferson Transit	D2026–BUSC–029	Rehabilitate bus stops	2,975,000
MA	Berkshire Regional Transit Authority	D2026–BUSC–030	Rehabilitate bus facility and purchase equipment	3,000,000
MA	Pioneer Valley Transit Authority	D2026–BUSC–031	Rehabilitate bus garage	4,475,955
MD	Maryland Transit Administration obo Charles County Government.	D2026–BUSC–032	Construct maintenance and operations facility	10,000,016
ME	Greater Portland Transit District	D2026–BUSC–033	Purchase replacement and expansion vehicles ...	4,248,542
ME	Maine Department of Transportation	D2026–BUSC–034	Purchase replacement vehicles and rehabilitate administration facility.	1,062,220
MI	Bay Mills Indian Community	D2026–BUSC–035	Construct bus facility	320,000
MI	Central County Transportation Authority	D2026–BUSC–036	Purchase replacement buses	972,000
MI	Michigan Department of Transportation	D2026–BUSC–037	Purchase replacement buses, construct and rehabilitate bus facilities, and purchase equipment.	30,006,950
MI	Suburban Mobility Authority for Regional Transportation.	D2026–BUSC–038	Purchase replacement and expansion buses	1,249,500
MN	Minnesota Department of Transportation	D2026–BUSC–039	Purchase replacement buses	7,360,000
MN	Minnesota Department of Transportation	D2026–BUSC–040	Construct bus facilities	6,170,462
MN	Minnesota Valley Transit Authority	D2026–BUSC–041	Construct bus garage	2,720,000
MS	City of Jackson	D2026–BUSC–042	Rehabilitate bus stops	2,800,000
MT	Crow Tribe of Indians	D2026–BUSC–043	Construct new transit facility	996,740
NY	Village of Kiryas Joel	D2026–BUSC–044	Purchase expansion buses	5,780,000
OH	Allen County Regional Transit Authority	D2026–BUSC–045	Purchase replacement buses	2,354,425
OK	Cherokee Nation	D2026–BUSC–046	Construct transit facility	10,010,220
OK	Choctaw Nation of Oklahoma	D2026–BUSC–047	Purchase replacement buses	3,730,140
OK	Oklahoma Department of Transportation	D2026–BUSC–048	Purchase replacement buses	4,468,088
OR	Oregon Department of Transportation obo Benton County.	D2026–BUSC–049	Purchase replacement and expansion buses	833,000

TABLE 1—FY 2025 BUSES AND BUS FACILITIES PROJECT SELECTIONS—Continued

[Note: Some projects have multiple project IDs.]

State	Recipient	Project ID	Project description	Award
OR	Oregon Department of Transportation obo Coos County Area Transportation District.	D2026-BUSC-050	Construct transit center	8,839,155
OR	Oregon Department of Transportation obo Yamhill County-Yamhill County Transit Area (YCTA).	D2026-BUSC-051	Purchase replacement buses	1,921,000
SC	City of Spartanburg	D2026-BUSC-052	Purchase replacement buses	448,000
SD	City of Rapid City	D2026-BUSC-053	Purchase replacement buses	1,190,000
SD	City of Sioux Falls	D2026-BUSC-054	Rehabilitate bus stops	1,993,408
TN	Nashville Metropolitan Transit Authority	D2026-BUSC-055	Purchase replacement buses	10,000,001
TX	City of Amarillo	D2026-BUSC-056	Purchase replacement buses	5,440,000
TX	Denton County Transit Authority	D2026-BUSC-057	Purchase replacement buses	2,295,000
TX	Texas Department of Transportation	D2026-BUSC-058 and ≤ D2026-BUSC-059.	Purchase replacement and expansion buses and construct operations and maintenance facility.	36,000,000
UT	Utah Transit Authority	D2026-BUSC-060	Purchase replacement buses	21,330,000
VA	Virginia Department of Rail and Public Transportation (DRPT).	D2026-BUSC-061	Purchase replacement buses	8,621,909
VT	Green Mountain Transit Authority	D2026-BUSC-062	Purchase replacement buses and rehabilitate bus facility and bus stops.	4,755,647
WA	Skagit Transit	D2026-BUSC-063	Purchase replacement and expansion buses	9,368,858
WA	Washington State Department of Transportation obo Okanogan County Transit Authority (OCTA).	D2026-BUSC-064	Construct administrative, operations, and maintenance facility.	9,237,473
WV	Kanawha Valley Regional Transportation Authority.	D2026-BUSC-065	Construct maintenance and operations facility	21,254,847
WY	City of Cheyenne—Cheyenne Transit Program ...	D2026-BUSC-066	Rehabilitate administration and operations facility and transit hub.	2,514,880
Total				397,665,476

TABLE 2—FY 2025 AND FY 2026 LOW OR NO EMISSION PROJECT SELECTIONS

[Note: Some projects have multiple project IDs.]

State	Recipient	Project ID	Project description	Award
AK	Fairbanks North Star Borough	D2026-LWNO-001	Purchase replacement buses	\$3,150,360
AL	City of Huntsville	D2026-LWNO-002	Purchase replacement buses	6,098,667
AZ	Regional Public Transportation Authority (Valley Metro).	D2026-LWNO-003	Purchase replacement buses	18,630,264
CA	California Department of Transportation obo Humboldt Transit Authority.	D2026-LWNO-004	Purchase replacement buses	4,696,000
CA	City of Lynwood	D2026-LWNO-005	Purchase replacement buses	1,047,709
CA	City of Tracy	D2026-LWNO-006	Purchase expansion buses	7,140,000
CA	Culver City Municipal Bus Lines	D2026-LWNO-007	Purchase replacement buses	14,450,000
CA	Fresno, City of	D2026-LWNO-008	Rehabilitate buses and fueling station *	16,688,720
CA	Gold Coast Transit District	D2026-LWNO-009	Purchase replacement buses and paratransit vehicles.	3,615,006
CA	Golden Empire Transit District	D2026-LWNO-010	Purchase replacement buses and fueling infrastructure.	11,788,089
CA	Livermore Amador Valley Transit Authority	D2026-LWNO-011	Purchase replacement buses and construct operations and maintenance facility.	63,951,145
CA	Marin County Transit District	D2026-LWNO-012	Purchase replacement buses and rehabilitate operations facility.	5,640,020
CA	Monterey-Salinas Transit District	D2026-LWNO-013	Purchase bus equipment *	1,032,000
CA	Napa Valley Transportation Authority	D2026-LWNO-014	Purchase replacement buses	6,823,698
CA	North County Transit District (NCTD)	D2026-LWNO-015	Purchase replacement buses	16,774,170
CA	Redding Area Bus Authority	D2026-LWNO-016	Purchase replacement buses *	2,619,040
CA	Riverside Transit Agency	D2026-LWNO-017	Purchase replacement buses *	1,329,480
CA	Sacramento Regional Transit District (SacRT)	D2026-LWNO-018	Purchase replacement buses	39,670,302
CA	San Francisco Municipal Transportation Agency	D2026-LWNO-019 and D2026-LWNO-020	Purchase replacement buses	39,800,000
CA	San Joaquin Regional Transit District (RTD)	D2026-LWNO-021	Purchase replacement buses *	10,327,500
CA	Santa Clara Valley Transportation Authority (VTA).	D2026-LWNO-022	Purchase replacement vehicles *	20,311,640
CO	City of Colorado Springs dba Mountain Metropolitan Transit.	D2026-LWNO-023	Purchase expansion buses	7,623,000
CO	City of Fort Collins	D2026-LWNO-024	Purchase replacement buses *	4,838,610
CO	City of Pueblo	D2026-LWNO-025	Purchase replacement and expansion buses	15,687,944
CO	Colorado Department of Transportation obo City of Steamboat Springs Transit (SST).	D2026-LWNO-026	Purchase replacement buses	1,504,000
CO	Colorado Department of Transportation obo The Roaring Fork Transportation Authority (RFTA).	D2026-LWNO-027	Purchase replacement buses	3,745,800
CO	Mesa County	D2026-LWNO-028	Purchase replacement buses	2,097,033
CT	Connecticut Department of Transportation	D2026-LWNO-029	Expand and rehabilitate transit facility *	35,700,000
DC	Washington Metropolitan Area Transit Authority ..	D2026-LWNO-030 and D2026-LWNO-031.	Purchase replacement buses	50,322,380
FL	Broward County Transit	D2026-LWNO-032	Purchase replacement buses and equipment	20,480,000
FL	City of Tallahassee	D2026-LWNO-033	Purchase replacement buses and fueling station	8,798,487
FL	Hillsborough Transit Authority (HART)	D2026-LWNO-034	Purchase replacement buses	32,037,390
FL	Palm Beach County Board of Commissioners	D2026-LWNO-035	Purchase replacement buses	7,200,000

TABLE 2—FY 2025 AND FY 2026 LOW OR NO EMISSION PROJECT SELECTIONS—Continued

[Note: Some projects have multiple project IDs.]

State	Recipient	Project ID	Project description	Award
FL	Pinellas Suncoast Transit Authority	D2026-LWNO-036	Purchase bus equipment *	6,580,000
GA	Cobb County	D2026-LWNO-037	Purchase replacement and expansion buses and chargers.	6,632,101
GA	Metropolitan Atlanta Rapid Transit Authority (MARTA).	D2026-LWNO-038	Purchase replacement buses	20,735,040
IA	Iowa Department of Transportation	D2026-LWNO-039	Purchase replacement buses and construct and expand transit facilities *.	19,892,534
IA	University of Iowa	D2026-LWNO-040	Purchase replacement buses	6,171,174
ID	Valley Regional Transit	D2026-LWNO-041	Purchase fueling infrastructure	5,053,440
IL	Chicago Transit Authority (CTA)	D2026-LWNO-042 and D2026-LWNO-043.	Purchase replacement buses	121,125,000
IL	Pace, the Suburban Bus Division of the Regional Transportation Authority.	D2026-LWNO-044	Purchase replacement buses	39,780,000
IN	Columbus Transit	D2026-LWNO-045	Purchase replacement buses	256,281
IN	Indianapolis Public Transportation Corporation (IndyGo).	D2026-LWNO-046	Purchase replacement buses	14,747,166
KS	City of Wichita	D2026-LWNO-047	Purchase expansion buses and equipment *	2,066,786
KY	Transit Authority of Northern Kentucky	D2026-LWNO-048	Purchase replacement buses	7,331,800
KY	Transit Authority of the Lexington-Fayette Urban County Government.	D2026-LWNO-049	Purchase replacement buses	4,900,000
LA	Louisiana Governor's Office of Rural Development obo Rapides Area Planning Commission (RAPC).	D2026-LWNO-050	Purchase replacement buses and construct maintenance and parking facilities *.	1,580,000
MA	Berkshire Regional Transit Authority	D2026-LWNO-051	Purchase replacement buses and equipment	5,381,341
MA	Lowell Regional Transit Authority	D2026-LWNO-052	Purchase replacement buses	7,158,564
MA	Massachusetts Bay Transportation Authority	D2026-LWNO-053 and D2026-LWNO-054.	Purchase replacement buses	78,566,512
MA	Merrimack Valley Regional Transit Authority	D2026-LWNO-055	Purchase expansion buses	7,194,360
ME	Biddeford Saco Old Orchard Beach Transit	D2026-LWNO-056	Purchase replacement buses	1,537,650
MI	Capital Area Transportation Authority	D2026-LWNO-057	Purchase replacement buses	6,962,784
MI	Detroit Department of Transportation	D2026-LWNO-058	Purchase replacement buses *	50,854,529
MI	Interurban Transit Partnership	D2026-LWNO-059	Purchase replacement buses	7,523,235
MI	Michigan Department of Transportation	D2026-LWNO-060	Purchase replacement buses	12,053,626
MN	Metro Transit	D2026-LWNO-061	Purchase replacement buses	35,033,000
MN	Minnesota Department of Transportation	D2026-LWNO-062	Purchase replacement and expansion buses and fueling infrastructure.	4,437,600
MN	Minnesota Valley Transit Authority	D2026-LWNO-063	Purchase replacement buses	8,000,000
MN	SouthWest Transit	D2026-LWNO-064	Purchase replacement buses	5,080,042
MN	St Cloud Metropolitan Transit Commission	D2026-LWNO-065	Purchase replacement buses	14,289,325
MO	City of Jefferson	D2026-LWNO-066	Purchase replacement buses	2,024,860
NC	Cape Fear Public Transportation Authority	D2026-LWNO-067	Purchase replacement buses	1,020,000
NC	City of Winston-Salem/Winston-Salem Transit Authority.	D2026-LWNO-068	Purchase replacement buses	5,068,887
NE	Regional Metropolitan Transit Authority of Omaha d/b/a Metro.	D2026-LWNO-069	Purchase replacement buses	4,932,259
NM	City of Santa Fe	D2026-LWNO-070	Purchase replacement buses	3,844,125
NM	New Mexico Department of Transportation obo South Central Regional Transit District (SCRTD).	D2026-LWNO-071	Purchase expansion buses	4,049,179
NV	Regional Transportation Commission of Washoe County.	D2026-LWNO-072	Purchase replacement buses	21,551,453
NY	Capital District Transportation Authority	D2026-LWNO-073	Purchase replacement buses and equipment	31,787,140
NY	Nassau County NY—Nassau Inter County Express.	D2026-LWNO-074	Purchase replacement buses and rehabilitate maintenance facility.	42,000,000
NY	New York State Metropolitan Transportation Authority.	D2026-LWNO-100 and D2026-LWNO-101.	Rehabilitate facility	11,965,000
NY	The Central New York Regional Transportation Authority.	D2026-LWNO-102	Purchase expansion buses	9,280,000
OH	Central Ohio Transit Authority	D2026-LWNO-103	Purchase expansion buses and rehabilitate bus garage.	19,906,459
OH	Metro Regional Transit Authority (METRO RTA)	D2026-LWNO-104	Purchase replacement buses	9,741,172
OH	Southwest Ohio Regional Transit Authority (SORTA).	D2026-LWNO-105	Purchase replacement buses	11,498,030
OR	Oregon Department of Transportation obo Umpqua Public Transportation District.	D2026-LWNO-106	Purchase replacement buses	2,295,000
PA	Pennsylvania Department of Transportation	D2026-LWNO-107	Purchase replacement buses	2,000,000
PA	Southeastern Pennsylvania Transportation Authority.	D2026-LWNO-108	Purchase replacement buses	43,000,000
RI	Rhode Island Public Transit Authority	D2026-LWNO-109	Purchase replacement buses	25,000,000
SC	Central Midlands Regional Transit Authority	D2026-LWNO-110	Purchase replacement buses	15,750,000
SC	Greenville Transit Authority dba Greenlink	D2026-LWNO-111	Purchase expansion buses and equipment *	3,304,336
SC	The Waccamaw Regional Transportation Authority (d/b/a Coast RTA).	D2026-LWNO-112	Purchase replacement buses and construct bus maintenance, operations, and transit center facilities.	25,538,000
SD	South Dakota Department of Transportation	D2026-LWNO-113	Purchase replacement and expansion buses	1,101,750
TN	Chattanooga Area Regional Transportation Authority.	D2026-LWNO-114	Purchase replacement and expansion buses and paratransit vehicles, and equipment *.	757,486
TN	University of Tennessee	D2026-LWNO-115	Purchase replacement and expansion buses	9,801,300
TX	Brazos Transit District	D2026-LWNO-116	Purchase replacement buses	18,900,000

TABLE 2—FY 2025 AND FY 2026 LOW OR NO EMISSION PROJECT SELECTIONS—Continued

[Note: Some projects have multiple project IDs.]

State	Recipient	Project ID	Project description	Award
TX	City of El Paso Mass Transit Department—Sun Metro.	D2026-LWNO-117	Purchase replacement buses	1,963,500
TX	City of Lubbock/Citibus	D2026-LWNO-118	Purchase replacement buses	26,250,000
TX	City of San Marcos	D2026-LWNO-119	Purchase replacement buses	1,762,476
TX	Corpus Christi Regional Transportation Authority	D2026-LWNO-120	Construct maintenance facility	46,280,000
TX	Dallas Area Rapid Transit (DART)	D2026-LWNO-121	Purchase replacement buses	7,094,000
TX	Fort Bend County	D2026-LWNO-122	Purchase replacement and expansion buses, and rehabilitate maintenance facility.	13,747,775
TX	Metropolitan Transit Authority of Harris County (METRO).	D2026-LWNO-123	Purchase replacement buses and rehabilitate maintenance facility.	100,728,336
UT	Utah Transit Authority	D2026-LWNO-124	Purchase replacement buses	20,475,200
VA	City of Alexandria	D2026-LWNO-125	Purchase replacement buses	10,939,552
VT	Green Mountain Transit Authority	D2026-LWNO-126	Purchase replacement buses and fueling infrastructure.	2,064,459
WA	City of Everett (DBA Everett Transit)	D2026-LWNO-127	Purchase replacement buses	10,071,054
WA	Pierce County Public Transportation Benefit Area Corporation (DBA Pierce Transit).	D2026-LWNO-128	Purchase replacement buses	6,704,881
WA	Snohomish County Public Transportation Benefit Area Corporation.	D2026-LWNO-129	Purchase replacement buses	13,987,608
WA	Thurston County Public Transportation Benefit Area (DBA Intercity Transit).	D2026-LWNO-130	Purchase replacement buses	17,551,815
WA	Washington State Department of Transportation obo Grant Transit Authority.	D2026-LWNO-131	Purchase replacement and expansion buses *	3,852,628
WA	Whatcom Transportation Authority (WTA)	D2026-LWNO-132	Purchase replacement buses	16,717,842
WI	City of Madison	D2026-LWNO-133	Purchase replacement buses *	17,432,700
Total				1,630,282,606

* Consistent with the NOFO, FTA prioritized low-emission projects over zero-emission projects in the Low-No Program. Only low-emission elements of projects identified with an asterisk are selected.

[FR Doc. 2026–00643 Filed 1–14–26; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION**Federal Transit Administration****Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations**

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of calendar year 2026 random drug and alcohol testing rates.

SUMMARY: This notice announces the calendar year 2026 drug and alcohol random testing rates for specific recipients of FTA financial assistance. The minimum random drug testing rate will remain at 50 percent, and the random alcohol testing rate will remain at 10 percent.

DATES: *Applicability Date:* January 1, 2026.

FOR FURTHER INFORMATION CONTACT: Iyon Rosario, Senior Drug and Alcohol Program Manager, FTA Office of Transit Safety and Oversight, 1200 New Jersey Avenue SE, Washington, DC 20590 (telephone: 202–366–2010 or email: Iyon.Rosario@dot.gov).

SUPPLEMENTARY INFORMATION: On January 1, 1995, FTA required large transit employers to begin drug and alcohol testing of employees performing

safety-sensitive functions, and to submit annual reports by March 15 of each year beginning in 1996, pursuant to drug and alcohol regulations adopted by FTA at 49 CFR parts 653 and 654 in February 1994. The annual report includes the number of employees who had a verified positive test for the use of prohibited drugs, and the number of employees who tested positive for the misuse of alcohol during the reported year. Small employers commenced the required testing on January 1, 1996, and began reporting the same information as the large employers beginning March 15, 1997.

FTA updated the testing rules by merging them into a new 49 CFR part 655, effective August 1, 2001 (66 FR 41996). The regulation maintained a random testing rate for prohibited drugs at 50 percent and the misuse of alcohol at 10 percent. The Administrator may lower the random testing rate to 25 percent if the violation rates drop below 1.0 percent for drug testing and 0.5 percent for alcohol testing for two consecutive years. Accordingly, in 2007, FTA reduced the random drug testing rate from 50 percent to 25 percent (72 FR 1057). In 2018, however, FTA returned the random drug testing rate to 50 percent for calendar year 2019 based on verified industry data for calendar year 2017, which showed that the rate had exceeded 1 percent (83 FR 63812).

Pursuant to 49 CFR 655.45, the Administrator's decision to determine

the minimum annual percentage rate for random drug and alcohol testing is based, in part, on the reported positive drug and alcohol violation rates for the entire public transportation industry. The information used for this determination is drawn from the Drug and Alcohol Management Information System (MIS) reports required by 49 CFR 655.72. To ensure the reliability of the data, the Administrator must consider the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry's verified positive results and violation rates.

For calendar year 2026, the Administrator has determined that the minimum random drug testing rate for covered employees will remain at 50 percent based on a verified positive rate for prohibited drug use of 1.24 percent for calendar year 2024 and 1.23 percent for calendar year 2023. Further, the Administrator has determined that the minimum random alcohol testing rate for calendar year 2026 will remain at 10 percent, because the violation rate again was lower than 0.5 percent for calendar years 2024 and 2023. The random alcohol violation rates were 0.17 percent for 2024 and 0.18 for 2023.

Detailed reports on FTA's drug and alcohol testing data collected from transit employers may be obtained from FTA, Office of Transit Safety and

Oversight, 1200 New Jersey Avenue SE, Washington, DC 20590, (202) 366–2010, or at: <https://transit-safety.fta.dot.gov/DrugAndAlcohol/Publications/Default.aspx>.

Marcus J. Molinaro,
Administrator.

[FR Doc. 2026–00644 Filed 1–14–26; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2026–0003]

Request Notice: Use of Foreign-Built Small Passenger Vessel in United States Coastwise Trade, M/V Koukla

AGENCY: Maritime Administration (MARAD), U.S. Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: The Secretary of Transportation, as represented by MARAD, is authorized to make determinations regarding the coastwise use of foreign built; certain U.S. built; and U.S. and foreign rebuilt vessels that solely carry no more than twelve passengers for hire. MARAD has received such a determination request and is publishing this notice to solicit comments to assist with determining whether the proposed use of the vessel set forth in the request would have an adverse effect on U.S. vessel builders or U.S. coastwise trade businesses that use U.S.-built vessels in those businesses. Information about the requestor's vessel, including a description of the proposed service, is in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Submit comments on or before February 17, 2026.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2025–0003 by any one of the following methods:

- **Federal eRulemaking Portal:** Go to <https://www.regulations.gov>. Search the above DOT Docket Number and follow the instructions for submitting comments.
- **Mail or Hand Delivery:** Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include the DOT Docket Number, your name and a mailing address, an email address or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific DOT Docket Number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Mail Stop 2, MAR–620, Washington, DC 20590. Telephone: (202) 366–5400. Email: smallvessels@dot.gov.

SUPPLEMENTARY INFORMATION: Pursuant to 46 U.S.C. 12121(b), the U.S. Coast Guard may issue a certificate of documentation with a coastwise trade endorsement for eligible, small passenger vessels authorized to carry no more than 12 passengers for hire if MARAD, after notice and an opportunity for public comment, determines the use of the small passenger vessel in the coastwise trade will not adversely affect United States vessel builders or the coastwise trade business of any person that employs vessels built in the United States in that business.¹

MARAD has received an eligibility determination request. Further details about the requester's vessel and its proposed operations may be found in the determination request posted in the DOT Docket Number listed in the **ADDRESSES** section above at <https://www.regulations.gov>. Interested parties may comment on the undue adverse effect this action may have on U.S. vessel builders or coastwise trade businesses in the U.S. that employ U.S.-built vessels in those businesses. Comments should refer to the vessel name, state the commenter's interest in the request, and demonstrate, with supporting documentation, the undue adverse effect on U.S. vessel builders and coastwise trade businesses.

¹ The U.S. Coast Guard and MARAD have authority under 46 U.S.C. 12121(b) through the Secretary of the Department of Homeland Security and the Secretary of the Department of Transportation, respectively.

Public Participation

How do I submit comments?

Please submit comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. It may take a few hours or even days for comments to be reflected on the docket. Comments must be written in English. Provide concise comments and attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

The docket online is located at <https://www.regulations.gov>, keyword search the DOT Docket Number list in the **ADDRESSES** section above or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). Please periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

You may request that MARAD treat your comments as commercially confidential by submitting them to SmallVessels@dot.gov. Include in the email subject heading “Contains Confidential Commercial Information” or “Contains CCI” and state in your submission, with specificity, the basis for any such confidential treatment highlighting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

If MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit <https://www.transportation.gov/privacy>.

(Authority: 46 U.S.C. 12121, 49 CFR 1.93(a))

By Order of the Maritime Administrator.
T. Mitchell Hudson, Jr.,
Secretary, Maritime Administration.
 [FR Doc. 2026–00747 Filed 1–14–26; 8:45 am]
BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2026–0001]

Request Notice: Use of Foreign-Built Small Passenger Vessel in United States Coastwise Trade, M/V Halve Maan II

AGENCY: Maritime Administration (MARAD), U.S. Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: The Secretary of Transportation, as represented by MARAD, is authorized to make determinations regarding the coastwise use of foreign built; certain U.S. built; and U.S. and foreign rebuilt vessels that solely carry no more than twelve passengers for hire. MARAD has received such a determination request and is publishing this notice to solicit comments to assist with determining whether the proposed use of the vessel set forth in the request would have an adverse effect on U.S. vessel builders or U.S. coastwise trade businesses that use U.S.-built vessels in those businesses. Information about the requestor's vessel, including a description of the proposed service, is in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Submit comments on or before February 17, 2026.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2025–0001 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <https://www.regulations.gov>. Search the above DOT Docket Number and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include the DOT Docket Number, your name and a

mailing address, an email address or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific DOT Docket Number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Mail Stop 2, MAR–620, Washington, DC 20590. Telephone: (202) 366–5400. Email: smallvessels@dot.gov

SUPPLEMENTARY INFORMATION: Pursuant to 46 U.S.C. 12121(b), the U.S. Coast Guard may issue a certificate of documentation with a coastwise trade endorsement for eligible, small passenger vessels authorized to carry no more than 12 passengers for hire if MARAD, after notice and an opportunity for public comment, determines the use of the small passenger vessel in the coastwise trade will not adversely affect United States vessel builders or the coastwise trade business of any person that employs vessels built in the United States in that business.¹

MARAD has received an eligibility determination request. Further details about the requester's vessel and its proposed operations may be found in the determination request posted in the DOT Docket Number listed in the **ADDRESSES** section above at <https://www.regulations.gov>. Interested parties may comment on the undue adverse effect this action may have on U.S. vessel builders or coastwise trade businesses in the U.S. that employ U.S.-built vessels in those businesses. Comments should refer to the vessel name, state the commenter's interest in the request, and demonstrate, with supporting documentation, the undue adverse effect on U.S. vessel builders and coastwise trade businesses.

Public Participation

How do I submit comments?

Please submit comments, including the attachments, following the

¹ The U.S. Coast Guard and MARAD have authority under 46 U.S.C. 12121(b) through the Secretary of the Department of Homeland Security and the Secretary of the Department of Transportation, respectively.

instructions provided under the above heading entitled **ADDRESSES**. It may take a few hours or even days for comments to be reflected on the docket. Comments must be written in English. Provide concise comments and attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

The docket online is located at <https://www.regulations.gov>, keyword search the DOT Docket Number list in the **ADDRESSES** section above or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). Please periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

You may request that MARAD treat your comments as commercially confidential by submitting them to SmallVessels@dot.gov. Include in the email subject heading “Contains Confidential Commercial Information” or “Contains CCI” and state in your submission, with specificity, the basis for any such confidential treatment highlighting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

If MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit <https://www.transportation.gov/privacy>.

(Authority: 46 U.S.C. 12121, 49 CFR 1.93(a))

By Order of the Maritime Administrator.
T. Mitchell Hudson, Jr.,
Secretary, Maritime Administration.

[FR Doc. 2026–00746 Filed 1–14–26; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION**Maritime Administration****[Docket No. MARAD–2026–0002]****Request Notice: Use of Foreign-Built Small Passenger Vessel in United States Coastwise Trade, S/V ODYSSEY II****AGENCY:** Maritime Administration (MARAD), U.S. Department of Transportation (DOT).**ACTION:** Notice and request for comments.

SUMMARY: The Secretary of Transportation, as represented by MARAD, is authorized to make determinations regarding the coastwise use of foreign built; certain U.S. built; and U.S. and foreign rebuilt vessels that solely carry no more than twelve passengers for hire. MARAD has received such a determination request and is publishing this notice to solicit comments to assist with determining whether the proposed use of the vessel set forth in the request would have an adverse effect on U.S. vessel builders or U.S. coastwise trade businesses that use U.S.-built vessels in those businesses. Information about the requestor's vessel, including a description of the proposed service, is in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Submit comments on or before February 17, 2026.**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD–2025–0002 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <https://www.regulations.gov>. Search the above DOT Docket Number and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include the DOT Docket Number, your name and a mailing address, an email address or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and

specific DOT Docket Number. All comments received will be posted without change to the docket at www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Mail Stop 2, MAR–620, Washington, DC 20590. Telephone: (202) 366–5400. Email: smallvessels@dot.gov.

SUPPLEMENTARY INFORMATION: Pursuant to 46 U.S.C. 12121(b), the U.S. Coast Guard may issue a certificate of documentation with a coastwise trade endorsement for eligible, small passenger vessels authorized to carry no more than 12 passengers for hire if MARAD, after notice and an opportunity for public comment, determines the use of the small passenger vessel in the coastwise trade will not adversely affect United States vessel builders or the coastwise trade business of any person that employs vessels built in the United States in that business.¹

MARAD has received an eligibility determination request. Further details about the requester's vessel and its proposed operations may be found in the determination request posted in the DOT Docket Number listed in the **ADDRESSES** section above at <https://www.regulations.gov>. Interested parties may comment on the undue adverse effect this action may have on U.S. vessel builders or coastwise trade businesses in the U.S. that employ U.S.-built vessels in those businesses. Comments should refer to the vessel name, state the commenter's interest in the request, and demonstrate, with supporting documentation, the undue adverse effect on U.S. vessel builders and coastwise trade businesses.

Public Participation*How do I submit comments?*

Please submit comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. It may take a few hours or even days for comments to be reflected on the docket. Comments must be written in English. Provide

¹ The U.S. Coast Guard and MARAD have authority under 46 U.S.C. 12121(b) through the Secretary of the Department of Homeland Security and the Secretary of the Department of Transportation, respectively.

concise comments and attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

The docket online is located at <https://www.regulations.gov>, keyword search the DOT Docket Number list in the **ADDRESSES** section above or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). Please periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

You may request that MARAD treat your comments as commercially confidential by submitting them to SmallVessels@dot.gov. Include in the email subject heading “Contains Confidential Commercial Information” or “Contains CCI” and state in your submission, with specificity, the basis for any such confidential treatment highlighting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

If MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit <https://www.transportation.gov/privacy>.

(Authority: 46 U.S.C. 12121, 49 CFR 1.93(a))

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,
Secretary, Maritime Administration.

[FR Doc. 2026–00748 Filed 1–14–26; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY**Office of Foreign Assets Control****Notice of OFAC Sanctions Action**

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more

applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: This action was issued on January 13, 2025. See Supplementary Information for relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, 202-622-2420; Assistant Director for Licensing, 202-622-2480; Assistant Director for Sanctions Compliance, 202-622-2490 or <https://ofac.treasury.gov/contact-ofac>.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website: <https://ofac.treasury.gov>.

Notice of OFAC Action

On January 13, 2025, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

BILLING CODE 4810-AL-P

Entities

1. JORDANIAN MUSLIM BROTHERHOOD (a.k.a. MUSLIM BROTHERHOOD GROUP (Arabic: جماعة الإخوان المسلمين); a.k.a. MUSLIM BROTHERHOOD IN JORDAN (Arabic: الإخوان المسلمين في الأردن); a.k.a. MUSLIM BROTHERHOOD SOCIETY), Amman, Jordan; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 1945; Organization Type: Advocacy organization [SDGT] (Linked To: HAMAS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism," 66 FR 49079, 3 CFR, 2001 Comp., p. 786, as amended by Executive Order 13886 of September 9, 2019, "Modernizing Sanctions To Combat Terrorism," 84 FR 48041, 3 CFR, 2019 Comp., p. 356 (E.O. 13224, as amended), for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, HAMAS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

2. EGYPTIAN MUSLIM BROTHERHOOD (Arabic: الإخوان المسلمون), Egypt; Website www.ikhwaonline.com; alt. Website www.ikhwanweb.com; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 1928; Organization Type: Advocacy organization [SDGT] (Linked To: HAMAS).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, HAMAS, a person whose property and interests in property are blocked pursuant to E.O. 13224.

Bradley T. Smith,
Director, Office of Foreign Assets Control.
[FR Doc. 2026-00744 Filed 1-14-26; 8:45 am]

BILLING CODE 4810-AL-C

DEPARTMENT OF THE TREASURY**Office of Foreign Assets Control****Notice of OFAC Sanctions Actions**

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing updates to the identifying information of one or more entries currently included on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) and

Sectoral Sanctions Identifications List (SSI List).

DATES: See **SUPPLEMENTARY INFORMATION** for relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for the Office of Sanctions Support and Operations, 202–622–6943; Associate Director for Global Targeting, 202–622–2420; or <https://ofac.treasury.gov/contact-ofac>.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List, SSI List, and additional information concerning OFAC sanctions programs are available on OFAC's website: <https://ofac.treasury.gov>.

Notice of OFAC Actions

On January 8, 2026, OFAC updated the following names to improve data standardization and consistency and/or to correct records that were published with minor errors. The names and relevant sanctions authorities listed at the URL below: <https://ofac.treasury.gov/recent-actions/20260108>.

(Authority: 31 CFR chapter V.)

Bradley T. Smith,

*Director, Office of Foreign Assets Control,
Department of the Treasury.*

[FR Doc. 2026–00745 Filed 1–14–26; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Systems of Records

AGENCY: Office of Enterprise Integration (OEI), Department of Veterans Affairs (VA).

ACTION: Notice of a modified system of records.

SUMMARY: As required by the Privacy Act of 1974, notice is hereby given that VA is amending the system of records titled “Veterans, Dependents of Veterans, and VA Beneficiary Survey Records—VA” (43VA008) as set forth in the **Federal Register**. This system is used to collect data regarding the characteristics of America's Veteran, Service member, family member, and beneficiary populations through surveys that may be augmented with information from several existing VA systems of records and with information from non-VA sources.

DATES: Comments on this modified system of records must be received no later than 30 days after date of publication in the **Federal Register**. If no public comment is received during

the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the modified system of records will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Comments may be submitted through www.Regulations.gov or mailed to VA Privacy Service, 810 Vermont Avenue NW, (005X6F), Washington, DC 20420. Comments should indicate that they are submitted in response to “Veterans, Dependents of Veterans, and VA Beneficiary Survey Records” (43VA008). Comments received will be available at regulations.gov for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: OEI, Privacy Officer, VA, 810 Vermont Ave NW, Washington, DC 20420; telephone 202–461–5800.

SUPPLEMENTARY INFORMATION: VA is amending the System Location; Policies and Practices for Storage of Records; Policies and Practices for Retrieval of Records; Policies and Practices for Retention and Disposal of Records; Safeguards; System Manager; Record Access Procedures; Contesting Records Procedures; Notification Procedures; and Routine Uses.

System Location has been updated to add “Electronic records for “Veterans Signals” are stored within the Medallia FedRAMP High Rated AWS GovCloud. Cloud service hosting within the Amazon Web Service GovCloud primary sits in US-Gov-West-1 with duplication in US-Gov-West-2.”

Policies and Practices for Storage of Records is being updated to include “VSignals is implemented on Medallia GovCloud that is hosted on AWS GovCloud, though the physical segregation cannot be specified as it is a cloud implementation. VA sensitive information that includes health information is stored logically segregated and secured. All Medallia implemented VA programs are hosted within its own logically segregated VPC (virtual private cloud) and not shared with any other agency customer. The VSignals instance is implemented with its dedicated embedded database and that is only accessible via a specific application interface. Requestors of stored health and non-health information within VA, or from external individuals, contractors, organizations, and/or agencies with whom VA has a contract or agreement, must provide an equivalent level of security protection

and comply with current VA policies and procedures for storage and transmission as codified in VA directives such as but not limited to VA Handbook 6500, *Information Security Program* and Handbook 6513 *Secured Connections*.”

Policies and Practices for Retrieval of Records is being updated to state “Records in this system are retrieved by name, address, social security number, date of birth, military service number, claim or file number, Department of Defense identification numbers, or other personal identifiers.

Policies and Practices for Retention and Disposal of Records is being updated to state “Records are maintained and disposed of in accordance with the records disposition authority DAA–GRS–2016–0003–0002 approved by the Archivist of the United States, Records Control Schedule 10–1, Item number 150.”

Safeguards has been updated to include “VSignals does not allow physical and direct access to databases and storage devices. All access to data is via VA Single Sign On configuration on a web interface by authorized, certified VA employees who have been granted access through product owner approval.”

System Manager has been updated to state “OEI's System Manager is Executive Director, Lisa Rosenmerkel, Lisa.Rosenmerkel@va.gov. Office of Enterprise Integration, Data Governance and Analytics (008B1), VA Central Office, 810 Vermont Avenue NW, Washington, DC 20420.”

For Further Information Contact has been updated to include “Ronell.Smith@va.gov.”

Record Access Procedures has been updated to state “Individuals seeking information on the existence and content of records in this system pertaining to them should contact the system manager in writing as indicated above or may write or visit the VA facility location where they normally receive their care. A request for access to records must contain the requester's full name, address, telephone number, and signature, and describe the records sought in sufficient detail to enable VA personnel to locate them with a reasonable amount of effort.”

Contesting Records Procedures has been updated to state “Individuals seeking to contest or amend records in this system pertaining to them should contact the system manager in writing as indicated above or may write or visit the VA facility location where they normally receive their care. A request to contest or amend records must state clearly and concisely what record is

being contested, the reasons for contesting it, and the proposed amendment to the record.”

The Notification Procedure Section is being modified to state “Individuals who wish to be notified if a record in this system of records pertains to them should submit the request following the procedures described in “Record Access Procedures,” above.”

Routine uses are being modified to reflect current accepted language.

VA is republishing the system notice in its entirety.

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Eddie Pool, Deputy Chief Information Officer, Connectivity and Collaboration Services, Performing the Delegable Duties of the Assistant Secretary for Information and Technology and Chief Information Officer, approved this document on July 1, 2025, for publication.

Dated: January 8, 2026.

Saurav Devkota,

Government Information Specialist, VA Privacy Service, Office of Compliance, Risk and Remediation, Office of Information and Technology, Department of Veterans Affairs.

SYSTEM NAME AND NUMBER:

“Veterans, Dependents of Veterans, and VA Beneficiary Survey Records—VA” (43VA008)

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Electronic records for this system are stored on VA’s servers, secured via the AWS GovCloud and physical servers housed at VA’s Austin Information Technology Center, 1615 Woodward St., Austin, Texas 78772. Electronic records for “Veterans Signals” are stored within the Medallia FedRAMP High Rated AWS GovCloud. Cloud service hosting within the Amazon Web Service GovCloud primary sits in US-Gov-West-1 with duplication in US-Gov-West-2. Records necessary for a contractor to perform under a VA-approved contract are located at the respective contractor’s facility.

SYSTEM MANAGER(S):

OEL’s System Manager is Executive Director, Lisa Rosenmerkel, *Lisa.Rosenmerkel@va.gov*. Office of Enterprise Integration, Data Governance

and Analytics (008B1), VA Central Office, 810 Vermont Avenue NW, Washington, DC 20420.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 306, 38 U.S.C. 527.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system of records is to collect data about the characteristics of America’s Veteran, Service member, family member, and beneficiary populations through surveys that may be augmented with information from several existing VA systems of records and with information from non-VA sources to:

1. Conduct statistical studies and analyses relevant to VA programs and services;
2. Plan and improve services provided;
3. Decide about VA policies, programs, and services;
4. Study VA’s role in the use of VA and non-VA benefits and services; and
5. Study the relationship between the use of VA benefits and services and the use of related benefits and services from non-VA sources. These types of studies are needed for VA to forecast future demand for VA benefits and services.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Veterans;
2. Family members of veterans;
3. Military Service members;
4. Family members of Service members; and
5. Other VA beneficiaries.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records in the system contain information provided by veterans as well as their families, advocates, and dependents. Information is also obtained from other VA components, systems of records, and supplemented with information purchased from data brokers including:

1. Personal identifiers (e.g., respondents’ names, addresses, phone numbers, social security numbers, employer identification numbers);
2. Demographic and socioeconomic characteristics (e.g., date of birth, sex, race/ethnicity, education, marital status, employment and earnings, financial information, business ownership information);
3. Military service information (e.g., military occupational specialties, periods of active duty, branch of service including National Guard or Reserves, date of separation, rank);
4. Health status information (e.g., diagnostic, health care utilization, cost, and third-party health plan information);

5. Benefit and service information (e.g., data on transition assistance services, VA medical and other benefit eligibility, awareness, knowledge, understanding, and use; data on access and barriers to VA benefits or services; data about satisfaction with VA outreach, benefits, or services);

6. The records may also include information about Department of Defense (DoD) military personnel from DoD files (e.g., utilization files that contain inpatient and outpatient medical records, and eligibility files from the Defense Eligibility Enrollment Reporting System; and

7. The records may include information on Medicare beneficiaries from Centers for Medicare and Medicaid Services, and its predecessor, the Health Care Financing Administration, that are contained in databases (e.g., Denominator file identifies the population being studied; Standard Analytical files on inpatient, outpatient, physician supplier, nursing home, hospice, home care, durable medical equipment; and Group and other Health Plans).

RECORD SOURCE CATEGORIES:

Information provided by veterans as well as their families, advocates, and dependents. Information is also obtained from other VA components, systems of records, and supplemented with information purchased from data brokers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

To the extent that records contained in the system include information protected by 45 CFR parts 160 and 164 (i.e., individually identifiable health information), and 38 U.S.C. 7332 (i.e., medical treatment information related to drug abuse, alcoholism, or alcohol abuse, sickle cell anemia, or infection with the human immunodeficiency virus, that information cannot be disclosed under a routine use unless there is also specific statutory authority in 38 U.S.C. 7332 and regulatory authority in 45 CFR parts 160, 161, and 164 permitting disclosure).

1. *NARA*: To the National Archives and Records Administration (NARA) in records management inspections conducted under 44 U.S.C. 2904 and 2906, or other functions authorized by laws and policies governing NARA operations and VA records management responsibilities.

2. *Contractors*: To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative

agreement, or other assignment for VA, when reasonably necessary to accomplish an agency function related to the records.

3. Law Enforcement Authorities, for Reporting Violations of Law: To a Federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility of investigating or prosecuting a violation or potential violation of law, whether civil, criminal, or regulatory in nature, or charged with enforcing or implementing such law, provided that the disclosure is limited to information that, either alone or in conjunction with other information, indicates such a violation or potential violation. The disclosure of the names and addresses of veterans and their dependents from VA records under this routine use must also comply with the provisions of 38 U.S.C. 5701(f).

4. Federal Agencies, for Research: To a Federal agency for the purpose of conducting research and data analysis to perform a statutory purpose of that agency upon the prior written request of that agency.

5. Federal Agencies, for Computer Matches: To other Federal agencies for the purpose of conducting computer matches to obtain information to determine or verify eligibility of veterans receiving VA benefits or medical care under title 38.

6. Congress: To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

7. DOJ, Litigation, Administrative Proceeding: To the Department Of Justice (DOJ), or in a proceeding before a court, adjudicative body, or other administrative body before which VA is authorized to appear, when any of the following is a party to such proceedings or has an interest in such proceedings, and VA determines that use of such records is relevant and necessary to proceedings:

- (a) VA or any component thereof;
- (b) Any VA employee in his or her official capacity;
- (c) Any VA employee in his or her individual capacity where DOJ has agreed to represent the employee; or
- (d) The United States, where VA determines that litigation is likely to affect the agency or any of its components is a party to such proceedings or has an interest in such proceedings, and VA determines that use of such records is relevant and necessary to the proceedings.

8. Data Breach Response and Remediation, for VA: To appropriate

agencies, entities, and persons when (a) VA suspects or has confirmed that there has been a breach of the system of records, (b) VA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with VA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

9. Data Breach Response and Remediation, for Another Federal Agency: To another Federal Agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

10. EEOC: To the Equal Employment Opportunity Commission (EEOC) in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law.

11. FLRA: To the Federal Labor Relations Authority (FLRA) in connection with the investigation and resolution of allegations of unfair labor practices, the resolution of exceptions to arbitration awards when a question of material fact is raised, matters before the Federal Service Impasses Panel, and the investigation of representation petitions and the conduct or supervision of representation elections.

12. MSPB: To the Merit Systems Protection Board (MSPB) in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in this system are stored on a segregated secure server. For data match purposes and data storage, all databases are placed on secured servers located at the following location: VA's Austin Information Technology Center,

615 Woodward Street, Austin, Texas 78772. Requestors of stored health and non-health information within VA, or from external individuals, contractors, organizations, and/or agencies with whom VA has a contract or agreement, must provide an equivalent level of security protection and comply with current VA policies and procedures for storage and transmission as codified in VA directives such as but not limited to VA Handbook 6500, *Information Security Program* and Handbook 6513, *Secured Connections*.

VSignals is implemented on Medallia GovCloud that is hosted on AWS GovCloud, though the physical segregation cannot be specified as it is a cloud implementation. VA sensitive information that includes health information is stored logically segregated and secured. All Medallia implemented VA programs are hosted within its own logically segregated VPC (virtual private cloud) and not shared with any other agency customer. The VSignals instance is implemented with its dedicated embedded database and that is only accessible via a specific application interface. Requestors of stored health and non-health information within VA, or from external individuals, contractors, organizations, and/or agencies with whom VA has a contract or agreement, must provide an equivalent level of security protection and comply with current VA policies and procedures for storage and transmission as codified in VA directives such as but not limited to VA Handbook 6500, *Information Security Program* and Handbook 6513, *Secured Connections*.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system are retrieved by name, address, social security number, date of birth, military service number, claim or file number, DoD identification numbers, or other personal identifiers.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained and disposed of in accordance with the records disposition authority approved by the Archivist of the United States, General Records Schedule 4.2, 150.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

1. This list of safeguards furnished in this System of Record is not an exclusive list of measures that have been taken to protect individually identifiable information. The Health Insurance Portability and Accountability Act (HIPAA) provides

guidelines for protecting health information that will be followed by adopting health care industry best practices and the reporting of breaches to provide adequate safeguards. Further, VA staff and contractors through mandatory data privacy and security training will review VA policy directives that specify the standards that will be applied to protect health information.

2. Access to data servers and storage areas is restricted to authorized VA employees or contract staff who the Office of Operations, Security, and Preparedness clears. Access codes are used to restrict and protect access to OEI data servers used for storage. Health information file areas are locked after normal duty hours and the Federal Protective Service and/or other security personnel protect VA facilities from outside access. VSignals does not allow physical and direct access to databases and storage devices. All access to data is via VA Single Sign On configuration on a web interface by authorized, certified VA employees that have been granted access through product owner approval.

3. Access to health information provided by the Veterans Health Administration pursuant to a Business Associate Agreement (BAA) is restricted to those OEI employees and contractors who have a business need for the information in the performance of their official duties. As a general rule, full sets of health care information are not provided for use unless the System Manager authorizes. File extracts provided for specific official uses will be limited to contain only the information fields needed for the analysis. Data used for analyses will have individual identifying characteristics removed whenever possible.

4. Security complies with applicable Federal Information Processing Standards (FIPS) issued by the National Institute of Standards and Technology (NIST). Health and non-health information files containing unique identifiers such as social security numbers are encrypted to NIST-verified FIPS 140-2 standard or higher for storage, transport, or transmission. Any health information files transmitted on laptops, workstations, data storage devices or media are encrypted. Record level files are always kept encrypted except when data is in immediate use. These methods are applied in accordance with HIPAA regulations and VA Handbook 6500, *Information Security Handbook*.

5. Contractors and their subcontractors are required to maintain

the same level of security as VA staff for health care information that has been disclosed to them. Any data disclosed to a contractor, or use of a subcontractor to perform authorized analyses, requires use of Data Use Agreements or Memorandum of Understanding, Non-Disclosure Statements, and BAAs to protect health information. Unless VA explicitly authorizes in writing, sensitive or protected data made available to the contractor and subcontractors shall not be divulged or made known in any manner to any person. Other Federal or state agencies requesting health care information need to provide agreements to protect data.

6. The OEI work area is accessed for business-only needs. A limited amount of data is stored in a combination-protected safe which is secured inside a limited access room. Select individuals who possess background security clearances control direct access to the safe. Only a few employees with strict business needs or "need-to-know" access and completed background checks will ever handle the data once it is removed from the safe for data match purposes.

7. Data matches, analysis, and storage are conducted primarily on secured servers located in Austin, Texas, which are housed in a restricted access network area with appropriate locking devices. Three measures control access to such records: the application of a VA security identification card coded with special permissions network area's keypad, the proper input of a series of individually unique passwords/codes by a recognized user, and the entrance of those select individuals for the performance of their official information technology-related duties.

8. Access to Automated Data Processing files, record level files, and related statistical software code is controlled by using an individually unique pin number or password entered in combination with a personally identifiable variable card or other information.

9. Access to VA facilities where identification codes, passwords, security profiles, and information on possible security violations are maintained and controlled at all hours by the Federal Protective Service, VA, or other security personnel and security access control devices.

10. Public use files prepared for purposes of research and analysis are purged of personal identifiers.

11. Paper records, when they exist, are maintained in a locked room at the Washington National Records Center or at designated locations identified in this System Notice. The Federal Protective

Service protects paper records from unauthorized access.

RECORD ACCESS PROCEDURES:

Individuals seeking information on the existence and content of records in this system pertaining to them should contact the system manager in writing as indicated above or may write or visit the VA facility location where they normally receive their care. A request for access to records must contain the requester's full name, address, telephone number, and signature, and describe the records sought in sufficient detail to enable VA personnel to locate them with a reasonable amount of effort.

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest or amend records in this system pertaining to them should contact the system manager in writing as indicated above or may write or visit the VA facility location where they normally receive their care. A request to contest or amend records must state clearly and concisely what record is being contested, the reasons for contesting it, and the proposed amendment to the record.

NOTIFICATION PROCEDURES:

Individuals who wish to be notified if a record in this system of records pertains to them should submit the request following the procedures described in "Record Access Procedures," above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

40 FR 38095 (August 26, 1975); 48 FR 52798 (November 22, 1983); 54 FR 20667 (May 12, 1989); 65 FR 61022 (October 13, 2000); 72 FR 17229 (April 6, 2007); 86 FR 6992 (January 25, 2021).

[FR Doc. 2026-00726 Filed 1-14-26; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Veterans Affairs (VA) is modifying the systems of records listed in this notice to incorporate one routine use related to the disclosure of records to the U.S. Department of the Treasury pursuant to

the Office of Management and Budget's Memorandum 25–32. The new routine use permits disclosures of records to the U.S. Department of the Treasury when the information is relevant to review payment and award eligibility through the Do Not Pay Working System for the purposes of identifying, preventing, or recouping improper payments to an applicant for, or recipient of, Federal funds. For full descriptions of the systems of records, please see the chart below for a list of the System of Records Notices (SORNs) and their corresponding **Federal Register** citations.

DATES: Comments on these modified systems of records must be received no later than 30 days after the notice's date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the modified system of records will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Comments may be submitted through www.Regulations.gov or mailed to VA Privacy Service, 810 Vermont Avenue NW, (005X6F), Washington, DC 20420. Comments received will be available at regulations.gov for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Rita Grewal, Acting Director, VA Privacy Service, Rita.Grewal@va.gov, 202–870–1284.

SUPPLEMENTARY INFORMATION: On August 20, 2025, the Office of Management and Budget published Memorandum 25–32, Preventing Improper Payments and Protecting Privacy Through Do Not Pay, which established the routine use for the disclosure of information relevant to reviewing payment and award eligibility through the Do Not Pay Working System for the purposes of identifying, preventing, or recouping improper payments to an applicant for, or recipient of, Federal funds. The Department of Veterans Affairs is now modifying all the systems of records identified in this notice to include the routine use set forth in OMB Memorandum M–25–32.

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Merissa Larson, Acting Deputy Chief Information Officer, Compliance, Risk, and Remediation, Office of Information and Technology, and Chief Privacy Officer, Department of Veterans Affairs approved this document on September 19, 2025, for publication.

Dated: January 12, 2026.

Saurav Devkota,

Government Information Specialist, VA Privacy Service, Office of Compliance, Risk and Remediation, Office of Information and Technology, Department of Veterans Affairs.

SYSTEM NAME AND NUMBER:

The systems of records to be modified by including the routine use described below in this notice are set forth below. Any history prior to the last publication in the **Federal Register** is omitted for clarity.

SORN No.	SORN name	Federal Register citation
54VA10	Veterans and Beneficiaries Purchased Care	90 FR 44473
36VA29	Veterans and Uniformed Services Personnel Programs of U.S. Government Life Insurance—VA	83 FR 44407
37VA27	Beneficiary Fiduciary Field System (BFFS)—VA	79 FR 41744
23VA10	Non-VA Care (Fee) Records—VA	90 FR 39485
186VA10D	Community Care (CC) Provider Profile Management System (PPMS)	86 FR 6979
17VA26	Loan Guaranty Fee Personnel and Program Participant Records—VA	88 FR 44462
13VA047	Individuals Submitting Invoice Vouchers for Payment and Accounting Transactional Data—VA	88 FR 60269
138VA005Q	Veterans Affairs/Department of Defense Identity Repository (VADIR)—VA	89 FR 99335
89VA10	Income Verification Records—VA	88 FR 17639
58VA/21/22/28	Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records—VA ..	90 FR 44464
73VA10	Health Professional Scholarship Program, and Visual Impairment and Orientation and Mobility	88 FR 38131
44VA01	Veterans Appellate Records System—VA	88 FR 44185
208VA0478C	Payroll Processing and Reporting—VA	88 FR 63684
55VA26	Loan Guaranty Home Condominium and Manufactured Home Loan Applicants Records, Specially Adapted Housing Applicant Records and Vendee Loan Applicant Records—VA.	88 FR 63686
194VA189	PayVA (QCR) Debt Management	85 FR 84123
168VA005	Health Information Exchange—VA	89 FR 83949
131VA047	Corporate Travel and Charge Cards—VA	88 FR 63674
88VA244	Centralized Accounts Receivable System/Centralized Accounts Receivable On-Line System (CAR/ CAROLS, combined system referred to as CAO).	83 FR 40140
165VA05CCSP	VA Child Care Subsidy Program Records—VA	89 FR 83949
114VA10	The Revenue Program—Billing and Collections Records—VA	86 FR 6996
197VA10	Caregiver Support Program—Caregiver Record Management Application (CARMA)	89 FR 6568

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The applicable individual or office is identified in each notice.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in the systems identified above may be disclosed outside VA as

a routine use pursuant to 5 U.S.C. 552(a)(b)(3) as follows:

To the U.S. Department of the Treasury when disclosure of the information is relevant to review payment and award eligibility through the Do Not Pay Working System for the purposes of identifying, preventing, or recouping improper payments to an applicant for, or recipient of, Federal

funds, including funds disbursed by a state (meaning a state of the United States, the District of Columbia, a territory or possession of the United States, or a federally recognized Indian tribe) in a state-administered, federally funded program.

HISTORY:

See System Name and Number above.

[FR Doc. 2026–00682 Filed 1–14–26; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[Docket No. VA–2025–VACO–0001]

Privacy Act of 1974; System of Records

AGENCY: Office of Inspector General, Department of Veterans Affairs.

ACTION: Rescindment of a system of records.

SUMMARY: As required by the Privacy Act of 1974, notice is hereby given that the Department of Veterans Affairs (VA) is rescinding the system of records (SOR) known as “The Office of Inspector General Management Information System (MIS)—VA” (71VA53), which consists of records and information about the Office of Inspector General (OIG) employees for various management and human resources objectives. **DATES:** Comments on this rescinded SOR must be received no later than 30 days after publication in the **Federal Register**. If no public comment is received during the period

allowed for comment or unless otherwise published in the **Federal Register** by VA, the rescindment will become effective a minimum of 30 days after the date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Comments may be submitted through www.regulations.gov under docket number VA–2025–VACO–0001 or mailed to VA Privacy Service (005X6F), 810 Vermont Avenue NW, Washington, DC 20420. Comments must indicate that they are submitted in response to the SOR known as “The Office of Inspector General Management Information System (MIS)—VA” (71VA53). Comments received will be available at www.regulations.gov for public viewing, inspection, or copies.

FOR FURTHER INFORMATION CONTACT: Chris Wilbur, Counselor to the Inspector General (50C), Office of Inspector General, Chris.Wilbur@va.gov.

SUPPLEMENTARY INFORMATION: This publication is in accordance with the Privacy Act requirement that agencies publish their amended SOR in the **Federal Register** when there is revision, change, or addition. VA OIG has reviewed its SOR notices and has determined its record system, known as “The Office of Inspector General Management Information System (MIS)—VA” (71VA53), should be rescinded to reflect evolving technology and procedures, to conform to current practice, and to reflect current authorities. The SOR is being rescinded

because the records are maintained as part of Governmentwide SORs, including Office of Personnel Management (OPM) GOVT–1– General Personnel Records, and OPM GOVT–2– Employee Performance.

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Eddie Pool, Deputy Chief Information Officer, Connectivity and Collaboration Services, Performing the Delegable Duties of the Assistant Secretary for Information and Technology and Chief Information Officer, approved this document on November 14, 2025, for publication.

Dated: January 8, 2026.

Saurav Devkota,

Government Information Specialist, VA Privacy Service, Office of Compliance, Risk and Remediation, Office of Information and Technology, Department of Veterans Affairs.

SYSTEM NAME AND NUMBER:

The Office of Inspector General Management Information System (MIS)—VA (71VA53).

HISTORY:

73 FR 56633 (Sep. 29, 2008); 84 FR 16138 (Apr. 17, 2019).

[FR Doc. 2026–00725 Filed 1–14–26; 8:45 am]

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Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 80

Administrative Requirements; Pittman-Robertson Wildlife Restoration and
Dingell-Johnson Sport Fish Restoration Acts; Final Rule

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 80**

[Docket No. FWS-HQ-WSFR-2023-0125;
FVWF51100900000-XXX-FF09W11000;
FVWF94100900000-XXX-FF09W11000]

RIN 1018-BB84

Administrative Requirements; Pittman-Robertson Wildlife Restoration and Dingell-Johnson Sport Fish Restoration Acts

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, made deregulatory actions pertaining to Federal financial assistance programs and subprograms authorized under the Pittman-Robertson Wildlife Restoration Act and the Dingell-Johnson Sport Fish Restoration Act to better serve the American public, streamline government operations, and increase efficiencies for recipients of our financial assistance programs. This final rule reflects recent legislation; aligns with the Office of Management and Budget's administrative rules for Federal financial assistance; aligns with other laws, standards, and administrative processes; responds to comments and feedback on our 2019 rulemaking action; and provides clarity to help ensure consistency in administering our financial assistance programs and subprograms across the Nation.

DATES: This rule is effective March 16, 2026.

Information collection requirements: If you wish to comment on the information collection requirements in this rule, please note that the Office of Management and Budget (OMB) is required to make a decision concerning the collection of information contained in this rule between 30 and 60 days after the date of publication of this rule in the **Federal Register**. Therefore, comments should be submitted to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, (see "Information collection requirements" below under **ADDRESSES**) by February 17, 2026.

ADDRESSES: This final rule is available on the internet at <https://www.regulations.gov>. Comments and materials we received are available for public inspection at <https://www.regulations.gov> at Docket No. FWS-HQ-WSFR-2023-0125.

Information collection requirements: Written comments and suggestions on the information collection requirements should be submitted within 30 days of publication of this document to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting "Currently under Review—Open for Public Comments" or by using the search function. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041-3803 (mail); or Info_Coll@fws.gov (email). Please reference OMB Control Number 1018-0100 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT:

Diana Swan-Pinion, Office of Conservation Investment, U.S. Fish and Wildlife Service, email: diana_swan-pinion@fws.gov, telephone: 404-821-6844. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Fish and Wildlife Service's (Service) Office of Conservation Investment (OCI) annually apportions to fish and wildlife agencies of States, Territories, and the District of Columbia approximately \$1.6 billion for programs and subprograms under the Pittman-Robertson Wildlife Restoration Act (Wildlife Restoration Act, 50 Stat. 917, as amended; 16 U.S.C. 669 *et seq.*) and the Dingell-Johnson Sport Fish Restoration Act (Sport Fish Restoration Act, 64 Stat. 430, as amended; 16 U.S.C. 777-777m, except 777e-1 and g-1) (Acts). We are proposing to update the regulations in title 50 of the Code of Federal Regulations (CFR) at part 80, which is titled "Administrative Requirements, Pittman-Robertson Wildlife Restoration and Dingell-Johnson Sport Fish Restoration Acts."

The primary users of these regulations are the fish and wildlife agencies of the 50 States; the Commonwealths of Puerto Rico and the Northern Mariana Islands; the Territories of Guam, the U.S. Virgin Islands, and American Samoa; and the District of Columbia (DC). We use "State" or "States" collectively to refer to these entities. The Wildlife Restoration Act does not authorize

funding for DC, which receives funds only under the Sport Fish Restoration Act.

These regulations tell States how they may receive annual apportionments from the Federal Aid to Wildlife Restoration Fund (16 U.S.C. 669b) and the Sport Fish Restoration and Boating Trust Fund (26 U.S.C. 9504) and what requirements States must follow when participating in the programs and subprograms under the Acts. These programs and subprograms provide financial assistance to State fish and wildlife agencies to restore or manage wildlife and sport fish and associated habitats; offer hunter and recreational shooter education and safety programs, development, recruitment, retention, and reactivation; develop and increase recreational boating access; enhance the public's understanding of water resources, aquatic life forms, and sport fishing; and develop responsible attitudes and ethics toward aquatic and related environments.

Assistance Listings for these programs may be found at <https://sam.gov/content/assistance-listings>. On that website, search for numbers 15.605, 15.611, and 15.626 using the "Search Assistance Listings" function.

Please refer to the proposed rule published on December 2, 2024 (89 FR 95590) for a detailed description of the previous Federal actions revising these regulations. This rule finalizes the updates to our regulations proposed on December 2, 2024 (89 FR 95590). These updates improve clarity, consistency, readability, and alignment with current administrative practices, and reflect the currently applicable laws, standards, and practices.

Summary of Public Comments and Recommendations

In the proposed rule published on December 2, 2024 (89 FR 95590), we requested that all interested parties submit written comments on the proposal by January 31, 2025. All substantive information we received during the comment period has either been incorporated into this final rule or is addressed below. We received 18 comments in response to the proposed rule from 12 States, 2 fish and wildlife agency associations, 1 anonymous commenter and the public.

Comments From States

Investment of License Revenue

The New York Department of Environmental Conservation, Louisiana Department of Wildlife and Fisheries, Oklahoma Department of Wildlife Conservation, Tennessee Wildlife

Resources Agency, Arizona Game and Fish Department, Arkansas Game and Fish Commission, North Carolina Wildlife Resources Commission, Idaho Department of Fish and Game, South Carolina Department of Natural Resources, Nevada Department of Wildlife, Iowa Department of Natural Resources, New Hampshire Fish and Game Department, the Association of Fish and Wildlife Agencies and the Northeast Association of Fish and Wildlife Agencies all noted that language should be added to the rule to clarify that the investment of surplus license revenue not needed for the immediate administration of a State fish and wildlife agency does not constitute a loss of control of these funds. We agree and have amended § 80.20(e) to add this clarification and flexibility for States.

Other Comments

In addition to the comments regarding the investment of license revenue, the following comments were received from States:

Comment 1: The Arizona Game and Fish Department requested clarification regarding what activities are eligible for funding specifically related to the optimization of State websites.

Response 1: This level of specificity is not appropriate for the rule but will instead be addressed by communication between State agency and Service staff. States should contact their Regional OCI offices for clarification on specific grant questions.

Comment 2: The New Hampshire Fish and Game Department requested clarification that fish and culture activities necessary to raise fish for stocking are eligible for funding.

Response 2: We agree and have made an addition at § 80.51(a) to clarify that raising, acquiring and stocking fish is an eligible activity for funding.

Comment 3: The New York Department of Environmental Conservation requested, (1) an expanded definition for “law enforcement” to include public use regulations that govern access on Wildlife Management Areas and other state-owned and managed lands; (2) clarification that public target ranges can be maintained with traditional Wildlife Restoration funds; and, (3) clarification that the establishment of barter agreements is in compliance with 50 CFR part 80 provided state procurement laws are followed.

Response 3: Regarding item 1, the definition that was collaboratively developed for “law enforcement” is inclusive of regulations, so we are declining to expand it at this time.

Regarding item 2, we agree and added language to § 80.50(a) to clarify that traditional Wildlife Restoration funds can be used to maintain public target ranges.

Regarding item 3, § 80.97 and § 80.98 were updated to clarify that States may use barter to carry out a grant-funded project when following State policies and procedures. These sections were further revised to update the regulation to current standards set by the Governmental Accounting Standards Board. Therefore, no further changes will be made.

Public Comments

Comment 4: A member of the public requested, (1) a definition and examples of multipurpose projects; (2) the addition of examples to the definition of “useful life”; (3) an expanded definition of “law enforcement” to clarify why certain activities are excluded from funding; (4) further clarification of what constitutes pre-award costs; (5) examples of barter transactions; (6) editorial changes to include more use of plain language; and (7) in general, the removal of obsolete Service rules.

Response 4: Regarding item 1, § 80.66 has been removed and § 80.67 altered to include an explanation of multipurpose projects from § 80.66(a). We believe that no further definition is needed and therefore no further changes will be made to the regulation.

Regarding the request to add examples in item 1, item 2 and item 5, we believe that further examples are unnecessary in this regulation and States should contact their Regional OCI offices for clarification on specific grant questions related to these issues.

Regarding item 3, law enforcement is prohibited as an eligible activity under the Wildlife Restoration Act. Therefore, the States and the Service agreed it was important to add a definition to our regulations for “law enforcement” to clarify what is not eligible for funding. Ineligible activities associated with law enforcement were further clarified in § 80.55. Therefore, no further changes will be made to the definition. In addition, we added eligible activities to § 80.50 and § 80.52 that historically had been associated with law enforcement to clarify that those activities are eligible for funding.

Regarding item 4, pre-award costs are generally addressed at § 80.94. The specifics of pre-award costs are dependent on the grant program and project. Reimbursement of pre-award costs is approved at the grant level when awards are approved by OCI Regional Offices. Therefore, States should contact their Regional OCI

offices for clarification on specific grant questions related to pre-award costs.

Regarding item 6, we believe that the language is clear and note that it has been previously reviewed and amended collaboratively by the Service and our State partners. Therefore, no further changes will be made to the regulation.

Regarding item 7, we agree and note that the Service is in the process of reviewing its rules for deregulatory opportunities and have removed redundant and obsolete Service rules.

Summary of Changes From the Proposed Rule

In June 2025, in response to Executive Orders (E.O.s) directing regulatory review, the Service identified 16 regulations within 50 CFR part 80 that should be removed. The Service has determined that these regulations in 50 CFR part 80 are duplicative or redundant of the Acts or other regulations or are more appropriately located in the annual notice of funding opportunities (NOFO) which includes the information that is necessary for the effective communication of the program objectives. The revisions to 50 CFR 80.10, 80.11, 80.12, 80.66, 80.80, 80.90, 80.121, and 80.123 are addressed in that direct final rule. Previously proposed revisions to those regulations included in the December 2024 proposed rule do not appear in this final rule.

After further review, we identified the need for additional clarifying language at §§ 80.20(e), 80.50(a), 80.51(a), 80.67. See our responses to the State and public comments on these issues, above.

Additional Amendments to Existing Regulations

In addition to the changes to 50 CFR part 80 discussed above, we outline below further revisions to these regulations. Even though we are not finalizing revisions or additions to every section in part 80 with this rule, for clarity and readability, we are setting forth the entire part in the Regulation Promulgation, below.

The regulations at 2 CFR part 200 have a goal to standardize terms to support grant management business processes. To support those efforts and to assist grant management practitioners, we amend the following terms to align them more accurately with 2 CFR part 200: *Award* and *subaward* (primarily replacing *grant*), *recipient* and *subrecipient* (replacing *grantee* and *subgrantee*), and *period of performance* (replacing *grant period*). We insert the amended terms throughout 50 CFR part 80. We also incorporate helpful references in 50 CFR

part 80 to applicable sections of 2 CFR part 200.

In the information below, we do not discuss in detail editorial changes that we made to improve readability, clarity, consistency, or continuity. We instead focus on substantive changes to the current regulations.

Amendments and the rationale for changes are described here.

I. Subpart A—General

Section 80.1—What does this part do?

We update § 80.1 to include a new purpose under the Wildlife Restoration Act to facilitate the construction and expansion of public target ranges (per Pub. L. 116–17) and to add reference to activities for hunter recruitment and

recreational shooter recruitment (per Pub. L. 116–94).

Section 80.2—What terms do I need to know?

We add the following terms to the definitions section of the regulations for the following reasons:

New term	Purpose
90/10/5	In describing activities associated with Public Law 116–17 where the Federal cost share is up to 90 percent (and, therefore, the non-Federal cost share is 10 percent or more) and the period of availability of funds is 5 years when specifically engaging in activities for acquiring land for, expanding, or constructing public target ranges, we abbreviate this concept as “90/10/5”.
Acquisition	Supporting activities associated with Public Law 116–17 for acquiring real property for public target ranges, as well as the sections of the regulations pertaining to real property.
Allocate	Supporting the financial action of assigning funds to associated, eligible activities.
Allowable	Clarifying how we address permissibility of activities and costs under 2 CFR part 200 (distinguished from 50 CFR part 80).
Apportioned funds	Enhancing understanding of the grant process and how funds are disbursed to States.
Eligible	Clarifying how we address permissibility of funding activities under 50 CFR part 80 (distinguished from 2 CFR part 200).
Equipment	Responding to a request to include this term as defined at 2 CFR part 200 in the regulations at 50 CFR part 80.
Expanding	Supporting activities associated with Public Law 116–17 for physically expanding access to public target ranges, to mean acquiring land for or constructing public target ranges, or physical improvements to an existing public target range that add to the utility of the range in a manner that ultimately increases range capacity to accommodate more participants.
Facility	Supporting understanding and consistency throughout the rule.
Federal fiscal year	Differentiating the Federal definition from the State equivalent term.
Fiscal year	Adding as defined under Public Law 116–94 for State license years.
Fish restoration and management project	Adding a condensed version from the Sport Fish Restoration Act to provide parity to the definition of <i>Wildlife restoration project</i> (see below).
Hunter recruitment and recreational shooter recruitment	Adding as defined under Public Law 116–94, included in the Act under 16 U.S.C. 669c(c)(4).
Law enforcement	Resolving a longstanding issue that has caused confusion and inconsistencies for what activities may be eligible under the Acts; clarifying these parameters allow us to broaden the scope of eligible activities that support the Acts but do not fall into the ineligible categories.
Maintenance	Clarifying for those instances where maintenance and operations are not both eligible activities under a funding source.
Operations	Clarifying for those instances where maintenance and operations are not both eligible activities under a funding source, such as under 90/10/5 funding where operational activities are ineligible.
Public	Resolving a longstanding issue as to what constitutes “the public” because using Federal assistance funds for a project and then limiting access to an exclusive group is not permissible.
Public access	Resolving a longstanding issue as to physical access to projects funded under the Acts; supported also by 50 CFR 80.58.
Public relations	Adding because Public Law 116–94 removed public relations as a prohibited activity but 2 CFR part 200 restricts allowability, meaning public relations activities are not always eligible.
Public target range	Adding as defined under Public Law 116–17.
R3	Adding as an abbreviation for “recruiting, retaining, or reactivating” and applicable to both Acts, to support activities under Public Law 116–94.
Traditional Wildlife Restoration program	Adding to mean the activities that are funded under apportionments authorized at 16 U.S.C. 669c(b), which reflects the original program funded under the Wildlife Restoration Act, to support distinctions in funding sources due to passage of Public Law 116–17 and Public Law 116–94.
Wildlife restoration project	Supporting the part of the definition from the Wildlife Restoration Act that is applicable to the Wildlife Restoration Program, and not the sections of the Act amended by Public Law 106–553 to create the Wildlife Conservation and Restoration Program.

In this rule, we removed a term only when we replace it with a term that better aligns with 2 CFR part 200 and current grant management processes. We amended some terms to update to current standards, such as adding a clause to the term “construction” to accommodate projects under Public Law 116–17 for constructing public target ranges. Upon the advice of State representatives, we simplify the list of

terms by removing the term “agency” as a separate definition and instead adding “(agency)” after the term “State fish and wildlife agency” to indicate that those terms mean the same thing. We amended the term “angler” to acknowledge applicable Federal law, as one State reviewer commented that sometimes fishing in a State involves meeting standards of both State and Federal laws. Five of the 50 U.S. States

apply for Federal funds using a “comprehensive management system (CMS)” method of operations, which we define at § 80.2. We consulted representatives from those States to inform the updates to this term in this rule. We updated the term “personal property” to align better with the definition and use of that term in the Service Manual chapter at 520 FW 6, “Real Property—Overview.” We clarified

the term “subaccount” based on recommendations from the pre-regulatory review team. We amended the term “useful life” to apply to a capital asset or equipment in addition to a capital improvement, based on definitions and other regulatory requirements provided in 2 CFR part 200.

II. Subpart B—State Fish and Wildlife Agency Eligibility

We did not make any substantive changes to subpart B.

III. Subpart C—License Revenue

We did not make any substantive changes to subpart C.

IV. Subpart D—Certifying License Holders

In our August 27, 2019, final rule (84 FR 44772), we made significant changes to subpart D. Those regulatory changes included a compliance date of September 27, 2021 (2 years from the effective date of the 2019 final rule), for State fish and wildlife agencies to make the needed changes in their laws and processes to accommodate the new standards to licenses for the purposes of certifying paid license holders during the annual certification period. Certifying license holders is an important component to both the Wildlife Restoration and the Sport Fish Restoration programs because, under the Acts, annual apportionment to State fish and wildlife agencies is based in part, under the mandatory funding formulae in the Acts, on the number of paid hunting and fishing license holders that the agency certifies.

We made editorial changes to subpart D to change the title to reflect active voice, place more emphasis on “individual paid license holders,” and improve clarity and consistency in how we present information. At § 80.33, *How does a State fish and wildlife agency decide who to count as paid license holders in the annual certification?*, we addressed some misunderstandings that have come to our attention as to how different types of licenses allow license holders to be counted in the annual certification. State fish and wildlife agencies develop many varying structures for how they package and sell hunting and fishing licenses in their State.

As an example of the disparities and how we address them, consider these two scenarios. State A and State B both have “fiscal/license years” that are June 1–May 31. This is the “certification period” for both States when reporting individual paid license holders.

However, State A and State B follow different processes for issuing licenses:

- State A sells annual licenses that, regardless of when you purchase your license, are valid only during the “fiscal/license year.” For example, if you purchase your license on April 1, it will expire May 31 if you are buying that license for the current license year, or it will not be valid until June 1 if you are buying that license for the next license year.
- State B sells annual licenses that, regardless of when you purchase your license, are valid for a full year starting with the day you purchase the license and ending 1 year later (this type of license is also known as a “365-day license”). For example, if you purchase your license on April 1, it is good from that day (April 1) through the following March 31.

State A can easily determine which individual paid license holders may be counted during the certification period as they all fall into the fiscal/license year. However, State B has individual paid license holders that are holding a valid license in two different fiscal/license years. It would not be fair if State B certified license holders in two certification periods for licenses that are essentially the same in both States.

To align these scenarios, we clearly state the following:

- An individual paid license holder may be counted only in the certification period in which the license first becomes valid.
- A single-year license may be valid for any period from 1 day up to 2 years.
- A license that is valid for 2 years or more is considered a multiyear license.
- A license holder cannot be counted in more certification periods than a license is valid, *i.e.*, if holding a 5-year license, the holder can be counted only in five certification periods for that license.
- A license holder may be counted only for certification periods that align with the years the license is valid, *i.e.*, if a 5-year license is valid from June 1, 2018, through May 31, 2023, the license holder may not be counted for that license for the certification period that ends between October 1, 2024, and September 30, 2025, or any certification period after that.

The criterion above becomes important when considering multiyear licenses that were sold before the 2019 final rule became effective on September 26, 2019, and a State fish and wildlife agency is recalculating to determine if it may certify the license holder in an upcoming certification period. For example, a 10-year license that was sold in 2016 for \$100 could be

counted only once under the regulations in effect at that time. Under the 2019 final rule, the State fish and wildlife agency may apply the current standards in § 80.34 to that license and count the license holder in the certification periods that include 2019 until the license expires in 2025, so that license holder may potentially be counted in seven additional certification periods. The State agency cannot certify that license holder beyond that date, for that license, as it is no longer valid. Using the same example, except for a lifetime license, under the 2019 final rule, the State agency may certify the license holder for up to an additional 49 years, provided the license holder is still alive.

Under this proposal, a State will be allowed to certify a license holder only for the number of years that the license is valid and only in the certification years that correspond to the period that the license is valid.

We updated § 80.34, *Must a State fish and wildlife agency receive a minimum amount of revenue for each license holder certified?* related to the statement that all States must be following the requirements in § 80.34(b) by September 27, 2021, as that date is now in the past. The subpart includes other references to that date, and we made revisions to update the regulations appropriately.

We amended § 80.35, *What additional requirements apply to multiyear licenses?*, based on comments we have received since the 2019 final rule that certain language set forth by the 2019 final rule is unclear or confusing. We made no changes to the basic principles established in § 80.35 by the 2019 final rule; rather we made revisions similar to those we made for § 80.34 in removing language identifying dates for regulatory compliance that are no longer relevant. We also made revisions for simplicity and clarity, to encourage consistent understanding and implementation of the regulations.

At § 80.37, which pertains to the question of whether the State fish and wildlife agency can certify a license sold at a discount, we updated the regulation related to the phrase “when combined with another license or privilege,” as the answer to the question does not depend on combining the license with another privilege. It can be discounted under other circumstances. We also amended the heading of § 80.38, which asks whether an entity other than the State fish and wildlife agency may offer a discounted or free license under any circumstances, to instead ask whether a State fish and wildlife agency can certify a license when an entity other than the agency offers a discounted or free license. The emphasis will be

placed on the ability to certify the license holder, which ultimately is the concept that we want to establish throughout the regulations in subpart D.

Proposed amendments to the regulations in subpart D were presented to the JTF in December 2021 for review and input. Prior to the 2019 final rule, the Service relied on the advice of the JTF to inform the new standards for certifying license holders with the goal of establishing rules that were fair and could be consistently applied by State fish and wildlife agencies. The JTF again had the opportunity to review proposed subpart D regulations during one of the preliminary review and comment periods on the proposed rule.

V. Subpart E—Eligible Activities

We amended subpart E by editing the regulations for active voice, clarity, and better readability. We strategically amended the regulations in subpart E more than those in any other subpart in 50 CFR part 80 to accommodate activities newly eligible under the 2019 amendments to the Wildlife Restoration Act. The OCI pre-rulemaking policy process and preliminary guidance developed to address the amendments to the Act greatly informed the changes to this subpart.

We describe here several areas of focus that greatly expand eligible activities set forth in subpart E, how we reformatted the regulations in this subpart, the analyses we engaged in to determine how to improve the current regulations, and how we support certain concepts throughout this rule.

Background Information on the Wildlife Restoration Act

To better understand amendments to the Wildlife Restoration Act for programs and subprograms, additional eligible activities, and how all eligible activities under the Act intersect with funding sources under the Act and the Service's administration of awards, we provide some background on the Wildlife Restoration Act.

The Federal Aid in Wildlife Restoration Act (Sept. 2, 1937, ch. 899, section 1, 50 Stat. 917) set forth a program that apportioned funds to State fish and wildlife agencies for eligible activities related to acquiring land, improving habitat, and conducting research associated with wildlife restoration and management. Funding was available from revenue accrued during the Federal fiscal year (FFY) on taxes imposed on firearms, shells, and cartridges under the Revenue Act of 1932 (47 Stat. 169) and deposited into “the Federal aid to wildlife restoration

fund,” which we now refer to as the Wildlife Restoration Trust Fund.

Each of the Act's programs and subprograms has specific eligible activities, and costs must be assigned to separate fiscal subaccounts to support accurate administration of the funds. The Service tracks apportionments and available funding using the Department of the Interior's Financial and Business Management System (FBMS), which supports business management processes related to financial management, grants and cooperative agreements, real and personal property management, and several other functions. FBMS employs the use of subaccounts, which allows the Service to use a “first-in, first-out” method of accounting.

The Service also uses subaccounts to administer the specific use requirements for program and subprogram funding sources under the Act. States that have funding that has not been obligated to an award within the period of availability may encounter the possibility of having to return apportioned funds to the Service (see table 1 to § 80.92 under Regulation Promulgation, below, for information on how the Service disburses returned funds). The Service uses a “safety margin” system to track apportioned funds, obligated funds, and periods of availability and will alert a State agency if the agency is approaching a situation where they may need to return funds. (Note: the formulas for awarding funds and cost share requirements for insular areas, the Commonwealth of Puerto Rico, and the District of Columbia vary from the formula applied to the 50 States.)

Since enactment of the Wildlife Restoration Act, several amendments have revised the original eligibilities that impact changes addressed in this rule:

- The addition of maintenance of wildlife restoration projects as eligible (Pub. L. 79–533, July 24, 1946).
- Law enforcement and public relations excluded as eligible activities (Pub. L. 84–375, August 12, 1955).
- The addition of the Basic Hunter Education and Safety subprogram to the Act (Pub. L. 91–503, October 23, 1970).
- The addition of the Enhanced Hunter Education and Safety program to the Act (Pub. L. 106–408, November 1, 2000; also known as “the Improvement Act”).
- The addition of an administrative funding advantage to encourage and assist States in acquiring land for, expanding, and constructing public target ranges, under the Target Practice and Marksmanship Training Support

Act (Pub. L. 116–17, May 10, 2019), which we refer to as “90/10/5.”

- The addition of new eligible activities for hunter recruitment and recreational shooter recruitment (which we refer to as “R3”) under the Modernizing the Pittman-Robertson Fund for Tomorrow's Needs Act (Pub. L. 116–94, December 20, 2019), which also removed the exclusion of public relations activities that was added to the Act in 1955.

Section 80.50—What activities are eligible for funding under the Wildlife Restoration Act?

Updated Terms and Arrangement

As noted above, we begin using the term “Traditional Wildlife Restoration program” to refer to the original program that is funded under 16 U.S.C. 669c(b) and “90/10/5” to refer to activities for acquiring land for, expanding, or constructing public target ranges that qualify for the administrative advantage of a 90 percent Federal/10 percent non-Federal cost share, with a period of availability to obligate funds of 5 years.

We reorganized the regulations at § 80.50(b) under the general categories of Basic Hunter Education and Safety subprogram and Hunter Recruitment and Recreational Shooter Recruitment, and separate eligible activities for the Basic Hunter Education and Safety subprogram into § 80.50(b)(1) and eligible activities for recruiting, retaining, or reactivating hunters and recreational shooters (R3) into a new § 80.50(b)(2). This revision will allow us to recognize the common funding source, while providing the distinctions between eligible activities under each. We also removed regulations that describe activities that are eligible under all programs under the Acts from current § 80.50 and added them to § 80.52.

Traditional Wildlife Restoration Program

We added that eligible research may include social sciences, to assist States in improving communication and benefits to the public they serve. We also added that a State may use funds under a Traditional Wildlife Restoration program award for maintaining and operating projects or equipment under the ownership or management control of the State fish and wildlife agency and that support eligible activities under the Wildlife Restoration Act. This change is intended to support the ability for State agencies to use Traditional Wildlife Restoration program funds for eligible maintenance and operations on projects

or activities on Traditional Wildlife Restoration-managed land that may have been funded in accordance with regulations in another subpart or from an external source. As an example, a wildlife management area has a public target range. Maintenance activities such as mowing the lawn or operations such as providing lighting to the facility will be eligible activities using Traditional Wildlife Restoration program funds, as they are eligible Traditional Wildlife Restoration program activities, without the need to allocate costs to other funding sources. However, activities such as providing staff to run and operate the public target range will not be eligible Traditional Wildlife Restoration program activities and must be charged to an eligible funding source. For eligible activities related to constructing target ranges, we address this in § 80.61 that describes options for funding range construction from all of the funding sources under the Wildlife Restoration Act.

We also added to § 80.50 that a State agency may use funds under a Traditional Wildlife Restoration program award for maintaining and operating projects or equipment that a third party owns or manages provided a third-party binding agreement is in place that ensures the project continues to serve the intended purposes under the award. This third-party binding agreement may be in the form of a subaward.

Communication and Public Relations

With the passage of Public Law 116–94, the prohibition for funding public relations activities was removed from the Wildlife Restoration Act, making public relations potentially an eligible activity. The regulations at 2 CFR part 200 specifically define public relations and provide principles establishing when these costs are and are not allowable. We considered that perhaps the overlap of public relations with other communication terms (such as “outreach,” “marketing,” and “advertising”) would cause confusion and inconsistencies in determining which associated activities may be funded under the Acts. Using preliminary guidance that we had developed (“Implementing the Modernizing the Pittman-Robertson Fund for Tomorrow’s Needs Act,” July 14, 2021), in this rule we focus on public relations and other activities that will be considered eligible for communicating with the public.

We defined the term “public relations” by referencing 2 CFR part 200; therefore, “public relations” will mean activities that are dedicated to

maintaining the image of the State fish and wildlife agency or subrecipient or to maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public. As “public relations” activities are described in 2 CFR part 200, costs for the activities are unallowable unless meeting the objectives of, or necessary for the performance of, a Federal award, or when conducting general liaison on matters of public concern. To clarify, if the form of communication solely benefits the State or the State agency, then the costs are unallowable, but if the form of communication supports the objectives or performance of the Federal award then costs will likely be allowable. We included at § 80.50(a)(8) examples of eligible communication types that support a State’s ability to have an informed and engaged public. We describe at § 80.50(a)(9) which communication activities require prior approval.

Some of the eligible communication activities we describe in this rule are prompted by our engagement in the newly introduced activities associated with R3, but we do not limit the opportunity to expand on eligible communication activities to strictly R3. We made amendments throughout the regulations throughout that to clarify and allow for expanded communication activities that support other eligible activities.

Law Enforcement and Eligible Activities

We begin foundationally at § 80.2, as described above, by defining the term “law enforcement” to mean enforcing laws, orders, and regulations. We also describe at § 80.55 how activities for both law enforcement and the process of making State laws are ineligible for funding. Using these two standards of ineligible activities under the Acts allows us to take an approach with this rulemaking to clarify and more distinctly define those activities that are eligible, as the prohibition of activities connected to law enforcement has been interpreted over the years to extend beyond these restrictions. Based on this approach, we included the following activities in the regulation as eligible:

- Research, data collection, surveys, meeting with boards, and other preliminary activities that State agency staff do to collect information, make assessments, develop internal recommendations, and inform legislators, who then use the information when engaging in the ineligible activity associated with a formal legislative process for making public policy. These eligible activities

are also supported under both Acts. When defining “wildlife restoration project” and “fish restoration and management project,” the Acts include, respectively, “research into problems of wildlife management as may be necessary to efficient administration affecting wildlife resources” (16 U.S.C. 669a(11)) and “acquisition of such facts as are necessary to guide and direct the regulation of fishing by law” (16 U.S.C. 777a(1)(B)).

- Activities that are otherwise eligible being conducted by law enforcement personnel. Examples are activities such as participating in hunter education and safety courses, supporting public access at boat ramps, or conducting outreach to educate the public or for R3 purposes. If an activity is eligible, the staff involved with conducting the activity, even if law enforcement, may be included as an eligible part of an award. Of course, if law enforcement staff are involved in an eligible activity, and something occurs that activates them to conduct law enforcement activities, the State or subrecipient will have to prorate costs accordingly and charge only eligible activities to the award or subaward.

- Interpreting, translating, printing, or disseminating published State hunting regulations to inform and educate the public about their responsibilities to comply with laws, orders, and regulations. Once the laws are published in the official legal registry (State Register or other), the lawmaking process is complete. However, the State agency should then make this information readily available to members of the public in a manner they can understand. Such efforts to simplify the rules in a different format, translate the law into other languages, include information on the laws in hunter or angler guides, and other associated projects will be eligible.

Technology

Considering that State agencies may provide many forms of innovation in communication with the public, such as phone applications (apps), social media, websites, software products, and whatever is on the horizon, we added the flexibility for States to employ these methods and tools when associated with an eligible activity.

R3 Flexibility

We understand that the ability to use funds under these Acts for R3 activities will provide State fish and wildlife agencies opportunities to be somewhat creative in finding various ways to approach different audiences, thereby helping the agencies achieve the R3

success they are seeking. We provide flexibility in the regulations for States to take advantage of those opportunities as much as possible, while still meeting the requirements for being necessary and reasonable and supporting objectives in an award. We, therefore, list eligible activities that support R3 for items such as hiring shooting trainers and hunting guides, paying for optimizing State websites, acquiring supplies that help enhance the experience and skills of participants, and various types of education to include mentoring, field demonstrations, and training simulators. Many of the activities for R3 under Wildlife Restoration can be applied similarly to R3 under Sport Fish Restoration. We left sufficient flexibility to allow a State agency to have an award approved for activities that the agency can clearly demonstrate are targeted toward eligible R3 objectives.

Section 80.51—What activities are eligible for funding under the Sport Fish Restoration Act?

We amended eligible activities in § 80.51 to align with those in the revised § 80.50, as appropriate, including expansion of eligible activities for communication.

Recreational Boating Access Subprogram

We added some activities to provide more context, based on the Service Manual chapter at 517 FW 7. Based on recommendations from States, we clarified that projects may be for motorized or nonmotorized vessels and users.

State Outreach and Communications Subprogram

We added the word “State” to this subprogram. The Act provides for a National Outreach and Communications Program, which is a competitive program administered out of the Service’s Headquarters Office. The Act also provides for a State Outreach and Communications program (an R3 program), which is to be an extension of the National program focused on State priorities. Each State may use up to 15 percent of its Sport Fish Restoration program apportioned funds (16 U.S.C. 777c) for the costs of the combined Aquatic Resources Education and State Outreach and Communications subprograms. We added a provision for “Interpreting, translating, printing, or disseminating published State fishing regulations to inform and educate the public about their responsibilities to comply with laws, orders, and regulations” to the regulations to

provide parity with eligible activities under revised § 80.50.

Section 80.52—What activities are eligible for funding under all programs and subprograms under the Acts?

We added this new section to the regulations as we identified multiple activities currently discussed in §§ 80.50 and 80.51 and in this rule that are eligible to all programs and subprograms. Below we describe two new provisions to accommodate activities newly eligible under the 2019 amendments to the Wildlife Restoration Act.

State Electronic Data Systems

License sales are an important component of the congressionally mandated funding formula the Service uses for awarding annual apportionments to State agencies. Originally a manual process, tracking of license sales became automated as technology improved and State agencies began using automated point of sale or electronic licensing systems for collecting payments for hunting and fishing licenses and accounting for license sales. As the primary purpose for these electronic systems was management of hunting and fishing license revenue for the State fish and wildlife agency, using grant funds to support the system was considered ineligible for funding as activities conducted for the primary purpose of producing income (see 50 CFR 80.54(c)), and all associated costs, are ineligible. As technology has further improved and agency activities expanded over the years, traditional licensing systems evolved to accommodate a variety of needs and purposes and have been combined with other public-facing electronic systems designed to collect and share data and information as a public interface. A Director’s Memorandum issued on July 11, 1996 (Automated Sportsman’s Data Systems (ASDS)—Formerly Point of Sale), describes the Service’s awareness of the changing technology and the potential eligibility of some costs associated with the expanding system. More than 25 years later, systems have become a tool for a variety of actions related to the conservation of fish and wildlife resources and associated administration of a State agency. Some electronic systems may be combined within a State to accommodate multiple purposes or be used in conjunction with other State agencies. States are using technology to increase efficiency and generate cost savings, so it is possible that the electronic system that sells hunting and fishing licenses may include

components for collecting data and funds, distributing information, or administering activities for other purposes such as driver’s licenses, vehicle registrations, park entry permits, and other sources of revenue for States.

In June 2021, OCI published guidance that describes how States may apply costs of an electronic system that support eligible activities to a Wildlife Restoration or Sport Fish Restoration award. As we have had 2 years to implement and receive feedback on this guidance and have received no negative responses from States, we added such costs to the list of eligible activities in the regulations. The processes in the guidance will still have to be followed for costs to be eligible.

Oversight Activities

We added provisions to the regulations that clarify as eligible those activities pertaining to oversight, such as monitoring, evaluating, and reporting. We included as eligible the costs associated with monitoring and compliance activities when they lead to the discovery of an area of noncompliance with an award, a potential diversion of funds under the Acts, or a situation where property acquired under the Acts is infringed upon—improprieties that could result in an action in the legal system. This regulatory change builds on the flexibilities for activities that do not fall into the category of law enforcement or State lawmaking. The State agency will still be unable to use award funds for conducting law enforcement activities, such as issuing a citation, but the agency could use award funds for obtaining evidence, testifying in court, meeting with attorneys, and other activities to protect resource and property interests under an award. Here is an example: While a State is monitoring real property holdings that were acquired under an award, the State finds that an adjacent landowner has put a shed on a State-owned property. Eligible activities include the work that non-law enforcement staff do to collect information and evidence (*i.e.*, take photographs, check lot lines in the files, etc.), notify managers and officials, write letters to the other party informing them of the situation and offering an opportunity to correct, consult with attorneys to assess the situation and potential alternatives, and, if needed, testify and provide evidence in a court of law.

Section 80.53—May an activity be eligible for funding if it is not explicitly eligible in this part?

We added in § 80.53 that an activity must be allowable under 2 CFR part 200 to be eligible if the activity is not explicitly described as eligible in the regulations in part 80.

Section 80.55—What activities are ineligible for funding?

We expanded on the prohibition for law enforcement to include the definition of “law enforcement” but also the making of laws. We also removed “public relations” as ineligible under the Acts in response to Public Law 116–94.

State Lawmaking as Ineligible

We clearly describe as an ineligible activity participation in the State lawmaking process using Federal funds under an award. This provision is primarily because State agencies need to retain their State law authority to make policy decisions, and once these activities are included in a grant and paid for with Federal financial assistance funds, they are “federalized,” creating a Federal nexus to what is inherently a State responsibility. When a federally funded project includes the making of State laws, a Federal compliance review is automatically triggered. Even if the project is determined to be categorically excluded from some Federal compliance requirements, the Federal nexus on a State’s responsibility and authority to promulgate laws is inappropriate and is deemed ineligible. Therefore, this rule clarifies and more distinctly defines what law-related activities are eligible and ineligible under the Acts.

Public Access Denied

We also add that when public access is required under an award and is not provided, the project becomes ineligible for funding. This provision does not include temporary closings or closings because of reasons established at § 80.58 but refers to blatant exclusion or denial of public access when that access is required under an award.

Section 80.57—How does a proposed project qualify as substantial in character and design?

We added to § 80.57 planned approaches, appropriate procedures, and accepted principles that will relate to R3, access, and communication to accommodate additional eligible activities described in this rule.

Section 80.58—What are public access requirements for activities in an approved award under the Wildlife Restoration or Sport Fish Restoration programs?

The parameters for public access have been a longstanding issue for the Service and States, and we set some basic principles in the regulations to assist with understanding and encourage consistent application. We started with stating that there are certain eligible activities under an award for which the primary purpose is to provide public access. A prime example of such an activity is public target ranges, which are prominent in both Public Law 116–17, which focuses on offering advantages to States to encourage further development of such facilities, and Public Law 116–94, which seeks to provide public target ranges and other support to recruit, retain, or reactivate members of the public in hunting and recreational shooting activities. We have encountered situations where potential subrecipients were actively seeking to partner with States in using funds under the Wildlife Restoration Act for range projects but did not want the range open to the public. Often, we encounter situations where the desire is to limit access to members only, and membership costs are very high, or memberships are not offered to all. This includes projects under both Acts.

From the public side, we also have encountered situations where certain groups with specific interests want to access property acquired under an award for various purposes that are not consistent with the purposes of the award under which they were acquired. For example, a real property acquisition for the purposes of conserving a sensitive species in recovery may not be compatible with all-terrain vehicle use or horseback riding on that property. § 80.58 will give the State agency authority, within the purposes of the Acts, to set parameters for public access. We understand that many States have standards for public access already institutionalized in their laws and practices. § 80.58 will also describe how a State agency may work under a third-party binding agreement (which may be accomplished as a subaward) to partner with non-State entities on projects that must provide public access.

We purposely do not discuss in the regulations any set formulas for determining the amount of public access to provide when the project with a third party is not available for public access 100 percent of the time. In May 2017, the Service published Best Practices for Third-Party Agreements guidance (best

practices guidance), which we updated in September 2019. In the best practices guidance, we describe that the determination as to the adequacy of public access will be accomplished on a case-by-case basis and will be considered as follows:

The OCI-prescribed method used to determine the amount of public access is:

(1) A reasonable number of regularly scheduled and posted hours of availability must be available to the public that reflects, at minimum, the amount of the Federal and State investment;

(2) Hours of operation may take into consideration safety and security issues, but must not impose impediments such as mandatory membership or excessive fees beyond those needed to offset maintenance and management costs;

(3) If there is potential for closing a site for targeted, non-public use, the recipient must define a process whereby the third party must notify the public of any changes in availability and must compensate the recipient when it reduces the minimum public access defined in the agreement (the preferred method is for the third party to offer additional public access at an alternate time that compensates for the interruption); and

(4) If there are gates, locks, or other controls to access, the third party must clearly indicate at the control point how the public may gain access to the facility.

VI. Subpart F—Allocation of Funds by an Agency

With the passage of Public Law 116–17 and Public Law 116–94, many more interrelationships are available for developing projects and engaging in eligible activities that could potentially include using funds from a different funding source under the Wildlife Restoration Act. Because these statutory changes prompted a more holistic approach in subpart F, we expanded current § 80.60 and added three new sections as follows:

- § 80.60—What is the relationship between the Traditional Wildlife Restoration Program, the Basic Hunter Education and Safety subprogram (Basic Hunter Education), and the Enhanced Hunter Education and Safety program (Enhanced Hunter Education) for acquiring land for, expanding, or constructing public target ranges?

- § 80.61—What sources of funding in the Wildlife Restoration Act may a State fish and wildlife agency use to support public target range projects, and may funds from multiple sources be used in a single award?

- § 80.62—What are eligible and ineligible 90/10/5 activities?
- § 80.63—What exception is provided for Enhanced Hunter Education and Safety funds in relation to Basic Hunter Education and Safety funds?

We amended these sections, based on the “Interim Guidance for Applying Public Law 116–17, the Target Practice and Marksmanship Training Support Act, to the Pittman-Robertson Wildlife Restoration Act” (interim guidance), how a State may apply the 90 percent Federal/10 percent non-Federal cost share and period of availability of up to 5 years to eligible public target range projects. The sections also describe what amount of funds, if any, a State may allocate to public target range projects and the process a State agency must take when applying apportioned Traditional Wildlife Restoration program funds to those projects. The current regulations at § 80.60 focus on the differences between the Basic Hunter Education and Safety subprogram and the Enhanced Hunter Education and Safety program. We addressed the relationship between the two programs and one subprogram that may include public target range activities using the 90/10/5 approach as allowable under the amendments from Public Law 116–17.

§ 80.61 engages with all the options that a State may use when funding public target range projects. We identified, in a table to § 80.61, seven different potential approaches to use under the regulations.

§ 80.62 describes eligible and ineligible 90/10/5 activities. The revisions include a topic that we needed to address as, following a legal review of Public Law 116–17, it became clear that the intent of the law is to increase physical access to more or expanded public target ranges. In the interim guidance and this rule, we made it clear that “expanding” means, for the purposes of projects for acquiring land for, expanding, or constructing public target ranges (90/10/5), physical improvements to an existing public target range that add to the utility of the range in a manner that ultimately increases range capacity to accommodate more participants. Physical improvements do not necessarily have to increase the size of the facility but must result in an increase in physical usability that will accommodate more participants. This legal interpretation led us to include in this rule definitions for the terms “maintenance” and “operations.”

In the grant programs under the Acts, we tend to combine operations and

maintenance under single awards, and this approach is acceptable for most of the eligible activities under the Acts. However, for 90/10/5 awards, an activity defined as “operations” is not an eligible activity. An activity defined as “maintenance” may be, depending on whether it integrally supports a construction or expansion project. For example, if a project includes activities to expand a 6-stall range to a 12-stall range, but the roof and structure of the existing 6 lanes need repair and maintenance at the same time to allow for successful construction, it may be necessary and reasonable to support the expansion project and ensure that all 12 lanes will be accessible to the public. Other examples may include when a safety feature of a public target range needs maintenance, and closure of the facility will occur if the need is not resolved. When combined with other activities for expanding the range, this maintenance activity may be included as necessary and reasonable. A State fish and wildlife agency will have to clearly justify how the maintenance activity supports the 90/10/5 objectives and is not just a stand-alone maintenance activity that does nothing to increase range capacity for more participants.

We included in this rule that public target ranges may be on property where title is held by a third party provided the State agency holds a lease or other binding agreement that ensures the terms and conditions of the award will be met. Mobile public target ranges will also be eligible. Although personnel and administrative costs for managing and operating a public target range once the project is completed is ineligible, personnel and administrative costs associated with activities that directly support development of public target ranges, such as acquiring land and construction, will be eligible. Examples include those activities associated with planning for projects, which may include identifying potential parcels of land, investigating and obtaining permits, conducting real property appraisals, engineering, coordinating projects on a State level, and administering specific projects. Costs that are also eligible when combined with an expansion or construction project are the associated amenities that are necessary and reasonable to ensure the public can fully access and utilize the public target range, such as public restrooms, storage facilities, safety amenities, signs, roads and parking lots, and infrastructure for utilities. We also included as eligible the possibility to justify a project using the 90/10/5

approach when the range has deteriorated to a condition where it is no longer operable or accessible. We do not expect this situation to happen often, and anyone considering this option should consult the regional OCI office.

We listed the following activities as ineligible: operations, maintenance unless necessary for completing a construction or expansion project, long-term monitoring, and any other activities that are not directly related to the goals of 90/10/5 for providing new or increased physical capacity for public target ranges.

§ 80.63 describes the exception that is in the Wildlife Restoration Act (16 U.S.C. 669 *et seq.*) for use of Enhanced Hunter Education and Safety funds. The amendments to the Act from Public Law 116–94 complicate administration in some respects. The funding source for both the Basic Hunter Education and Safety subprogram and the newly added hunter recruitment and recreational shooter recruitment (which we refer to as “R3”) activities is described in the Act at 16 U.S.C. 669c(c)(1)–(3). When applied to the Basic Hunter Education and Safety subprogram, the eligible activities are described in the Act at 16 U.S.C. 669g(b). The new eligible activities for R3 are included in the Act under 16 U.S.C. 669c(c)(4). The Act also includes an exception for the Enhanced Hunter Education and Safety program that, if a State uses all its Basic Hunter Education and Safety subprogram funds for purposes under 16 U.S.C. 669g(b) during the FFY, the State may then use its Enhanced Hunter Education and Safety program funds for any purpose under the Act. When applying the amendments for R3 activities in the Act, if a State uses any of its funds under 16 U.S.C. 669c(c) for R3 activities, it voids the exception, and the State must use all its Enhanced Hunter Education and Safety program funds for Enhanced Hunter Education and Safety program purposes. We revised § 80.63 to explain and clarify the exception and associated restrictions when using those funds for R3 activities.

Section 80.64—What requirements apply to funds for the Recreational Boating Access subprogram?

We updated § 80.64 to clarify that a State need not set aside funds out of each annual apportionment for this subprogram, provided that the standard is accomplished within the designated 5-year period. We updated the 5-year periods starting with 2023.

Section 80.67—How does a State fish and wildlife agency allocate costs to an award in multipurpose projects and facilities?

We amended § 80.67 slightly to accommodate for various funding sources within the Acts and to support that a State agency may describe ineligible activities in a proposal that supports eligible activities provided that the proposal clearly shows that no costs for ineligible activities are part of the award. The Service has had a few instances in which auditors have identified any discussion of ineligible activities in a proposal as making the award ineligible. This determination is inaccurate. In many multipurpose projects, eligible and ineligible activities work together for the success of the overall project, and describing the ineligible activities makes it clearer to the grant reviewer how the entire project is supported. Therefore, this is an acceptable approach that supports the information required at § 80.82(b).

Section 80.69—What requirements apply to allocation of funds between marine and freshwater fisheries projects?

We amended § 80.69 to remove the term “obligated” and replace it with the term “allocated” to better align with current administrative practices.

VII. Subpart G—Applying for an Award

We amended the title of subpart G to reflect active voice and to replace the term “grant” with “award” to align with 2 CFR part 200.

The Service has had several changes to systems and processes for States applying for an award and for Service staff administering awards. In response to these changed circumstances, we revised subpart G to become more generic in some places, not referencing specific systems and processes and referring applicants to the notice of funding opportunity for specific information. As many actions that used to require hardcopy submissions and signatures are now accomplished electronically, we also made changes to reflect modern procedures.

Effective January 1, 2020, *SAM.gov* (<https://sam.gov/content/home>) became the central repository for common certifications and representations required of Federal grants recipients. Effective October 28, 2022, the Service no longer requires applicants to submit the “Assurances for Non-Construction Programs (SF-424B)” form or the “Assurances for Construction Programs (SF-424D)” form with their

applications. Therefore, we removed this requirement from the regulations.

Section 80.83—What is the Federal share of allowable costs? And section 80.84—How does the Service establish the non-Federal share of allowable costs?

On October 22, 2022, the U.S. Department of the Interior issued a notification (DOI-PGM-PAN Reference No: 2023-0022) that the Office of the Solicitor has determined Public Law 96-205, title VI, section 601, as amended, in conjunction with 48 U.S.C. 1469a(d), requires Department of the Interior offices and bureaus to waive the cost sharing requirement for grants to the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, commonly called “insular areas.” Based on this determination, we amended these sections of the regulations to show that the Service will not require those insular areas to provide cost share to awards under these Acts. The insular areas may provide voluntary cost share, but it is not required. The Commonwealth of Puerto Rico and the District of Columbia must still provide a minimum 25 percent cost share.

We also amended these sections to reflect that for those activities that meet the criteria for acquiring land for, expanding, or constructing public target ranges, the Federal share may be up to 90 percent of costs under an award, except for insular areas where it is 100 percent.

Section 80.85—What requirements apply to cost share or match?

We revised § 80.85 to refer only to the requirements for cost share as described at 2 CFR 200.306. We maintained the text that describes at what level of accounting to apply cost share.

VIII. Subpart H—General Award Administration

Section 80.92—How long are funds available for a Federal obligation?

We supplemented § 80.92 by providing a table that describes all programs and subprograms under the Acts and shows the name of the program or subprogram, the period of availability for obligation (how many FFYs), and the disbursement of funds at the end of the period of availability for obligation. This table clearly shows all sources of funding and what happens to the funding should it not be obligated within the period of availability.

Section 80.94—May a State fish and wildlife agency incur costs before the beginning of the period of performance?

A clause at the end of paragraph (c) of § 80.94 states that the agency can receive reimbursement for pre-award costs only after the beginning of the period of performance and, for activities requiring compliance, only after the compliance is satisfied. This revision emphasizes that if a State agency receives approval for pre-award costs that require compliance, the compliance must be completed to the satisfaction of the Service before reimbursement will be made. For activities that do not require compliance, reimbursement may be accomplished as soon as practicable.

Section 80.97—What is barter, and may a State fish and wildlife agency use barter of goods or services to carry out a grant-funded project? And section 80.98—How must a State fish and wildlife agency include barter in an award and report barter transactions?

The final rule published on August 1, 2011 (76 FR 46150), introduced in the regulations how a State agency may use the barter of goods and services to carry out a grant-funded project and how barter must be reported. This revision was in response to audit findings reported by the Office of the Inspector General in several States and recommendations that the Service provide clear guidance. In January 2020, the JTF began a process where, annually, OCI sends out a request for State agencies to submit topics of national concern in the programs under the Acts for our consideration and possible policy action. In 2021, we received a concern that barter transactions in a State had again been identified as an audit finding. This situation prompted OCI to reexamine the topic and determine how States were managing barter requirements. The JTF supported OCI staff working with the Federal Assistance Coordinators Working Subcommittee, a group of State representatives and subject matter experts chartered under the Association of Fish and Wildlife Agencies, to assist in reaching out to States and to provide advice on regulatory changes.

Barter is an accounting activity that is addressed under the Generally Accepted Accounting Principles (GAAP) and the associated standards for State and local governments set by the Governmental Accounting Standards Board (GASB). We determined that the current GASB standard that includes barter transactions was published after §§ 80.97 and 80.98 were set forth in the proposed rule (75 FR 32877, June 10,

2010) for the August 1, 2011, rule (76 FR 46150), and we were unaware of the change until consulting with our accounting experts when reassessing the topic in 2021. Therefore, we amended those sections of the regulations to reflect current standards. The revised sections assign the responsibility to each individual State for developing and maintaining processes that follow GAAP/GASB standards for how to manage barter transactions within that State fish and wildlife agency. This revision is consistent with 2 CFR part 200, which requires States to establish and follow their own processes under existing laws.

The definition for “barter transactions” remains the same—that it is an accounting term and means a nonmonetary exchange (reciprocal transfer) transaction. The requirement to report barter transactions in the Federal financial report also remains. The barter exchange needs to be accounted for according to the GAAP standard. The GAAP standard for States is dictated by the GASB Statement No. 62. In general, accounting for nonmonetary transactions should be based on the fair values of the assets (or services) involved, which is the same basis as that used in monetary transactions. Therefore, barter could result in an even exchange when the fair values of the assets exchanged are the same or result in a gain or a loss when one part of the exchange has a higher value than the other. A gain could be program income and a loss a project expense.

In the current regulations, the Service describes cooperative farming and grazing, a very typical activity with State agencies that is considered an even-exchange barter transaction. In this rule, we removed cooperative farming and grazing from § 80.98 not because it is no longer considered as an even-exchange barter transfer but because, under the current GASB standard, each State, and not the Service, is responsible for establishing processes for making those determinations for their State and then following the resulting processes. Therefore, any State desiring to include cooperative farming and grazing as an even-barter exchange must include it in the State’s processes. A State could potentially add more parameters within GAAP/GASB standards that could benefit the agency’s approaches and objectives. OCI has been providing technical assistance to States through the Federal Assistance Coordinators Working Subcommittee to assist them in identifying any existing State policies on barter transactions and establishing or refining barter policies for the State fish and wildlife agency to use. By

establishing State fish and wildlife agency policies on barter transactions that meet the standards established under GASB, and then following those policies, State agencies may avoid future audit findings related to barter.

One concern related to barter transactions that was brought to our attention is when a State agency wants to incentivize certain activities to support its program objectives and offers something of value to private entities in exchange for a desired action. We do not address incentives in this rulemaking but did address them in a policy advisory (Advisory 2020–016, October 15, 2020 (<https://fawiki.fws.gov/pages/viewpage.action?pageId=117669889>)) when the question was presented to OCI. We describe an “incentive” as something that motivates or encourages someone to do a desired behavior or action, that is, it stimulates a reaction or response. An incentive is not a barter transaction unless it meets the criteria for barter. A State agency offering incentives to prompt a desired reaction or response may take many forms, many of which are not barter transactions. When the incentive is more transactional and includes a nonmonetary exchange on both ends, it is a barter transaction and must follow the State processes and the regulations at 50 CFR part 80.

IX. Subpart I—Program Income

Section 80.120—What is program income?

We updated § 80.120 to better align with 2 CFR part 200. To this section, we added barter transactions as a form of program income when the value of goods or services received exceeds the value of goods or services the agency provided.

X. Subpart J—Real Property

We revised the heading of § 80.134 and make one substantive change to subpart J. We added a new paragraph (e) under § 80.134 stating that real property acquired with license revenue (see § 80.20(b)) must be controlled by the State fish and wildlife agency and used only for administration of the agency (see § 80.10). Paragraphs (a) through (d) of § 80.134 address how State agencies must use real property acquired under an award. The addition of new paragraph (e) to this section closes the loop by referring to § 80.20(b), which includes real or personal property acquired with license revenue as “hunting and fishing license revenue” that must be protected, and then back to § 80.10, which requires that hunting and

fishing license revenue be controlled by the State fish and wildlife agency and used only for the administration of that agency. We impose no new requirements by adding this new paragraph (e); rather, this addition aligns the requirements in a meaningful way in the real property subpart.

XI. Subpart K—Revisions and Appeals

We are not proposing any substantive changes to subpart K.

XII. Subpart L—Information Collection

We are proposing to update subpart L to the current standardized paragraph for information collection.

Statutory Authority

The authorities for this action are 16 U.S.C. 669 *et seq.*, and 777–777m, except 777e–1 and g–1.

Required Determinations

E.O. 12866—Regulatory Planning and Review, E.O. 13563—Improving Regulation and Regulatory Review, and E.O. 14192—Unleashing Prosperity Through Deregulation

E.O. 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation’s regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. E.O. 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas.

We have developed this rule in a manner consistent with these requirements. This final rule is an E.O. 14192 deregulatory action.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency publishes a proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that

describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

We have examined this rule's potential effects on small entities as required by the RFA. We have determined that this rule will not have a significant economic effect on a substantial number of small entities and does not require a regulatory flexibility analysis because only eligible State, Territorial, and the District of Columbia fish and wildlife agencies may receive funding under the Acts and regulations. Therefore, small entities (small businesses, small organizations, and small governmental jurisdictions) will not be affected by this rule.

In summary, we have considered whether this rule will result in a significant economic impact on a substantial number of small entities. We certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the RFA, as amended. An initial regulatory flexibility analysis is not required. Accordingly, a small entity compliance guide is not required.

Unfunded Mandates Reform Act

This rule will not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than \$100 million per year. The rule will not have a significant or unique effect on State, local, or Tribal governments or the private sector.

(a) As discussed above under *Regulatory Flexibility Act*, this rule will not have a significant economic effect on a substantial number of small entities.

(b) The regulations do not require a small government agency plan or any other requirement for expending local funds.

(c) The programs governed by the current regulations and enhanced by the amendments in this document potentially assist small governments financially when they occasionally and voluntarily participate as subrecipients of an eligible agency.

(d) The rule clarifies and improves upon the current regulations allowing State, local, and Tribal governments, and the private sector, to receive the

benefits of financial assistance funding in a more flexible, efficient, and effective manner.

(e) Any costs incurred by a State, local, or Tribal government or the private sector are voluntary. There are no mandated costs associated with the rule other than a required cost share, in some cases. No cost share is required under this rule for insular areas.

(f) The benefits of grant funding outweigh the costs. Of the 50 States and 6 other jurisdictions that voluntarily are eligible to apply for grants in these programs each year, all participate. This is clear evidence that the benefits of this grant funding outweigh the costs.

(g) This rule will not produce a Federal mandate of \$100 million or greater in any year, *i.e.*, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

This rule will not affect a taking of private property or otherwise have taking implications under E.O. 12630. This rule has no provision for taking private property. Any real property acquisitions with private landowners are strictly voluntary and only with willing sellers. A takings implication assessment is not required.

Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. It will not interfere with the States' ability to manage themselves or their funds. We work closely with the States administering these programs. They helped us identify those sections of the current regulations needing further consideration and new issues that prompted us to develop a regulatory response. A federalism summary impact statement is not required.

Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (E.O. 13175, Department Policy, and U.S. Fish and Wildlife Service Native American Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in E.O. 13175 and have determined that it will have no substantial direct effects on federally recognized Indian Tribes and that consultation under the Department's Tribal consultation policy is not required. This rule informs States, Territories, and the District of Columbia as the eligible recipients under the Acts how to apply for funding, what activities are eligible for funding, and other administrative requirements. Eligible entities may partner with Indian Tribes on projects, but Indian Tribes are not eligible to receive funds directly.

*Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)*

This rule contains existing and new information collections. All information collections require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OMB has reviewed and approved the information collection requirements associated with the administration of financial assistance through grants and cooperative agreement awards to States, local governments, Indian Tribes, institutions of higher education, nonprofit organizations, foreign organizations, foreign public entities, for-profit entities, and individuals and has assigned OMB Control Number 1018-0100, Administrative Procedures for U.S. Fish and Wildlife Service Financial Assistance Programs (expires 06/30/2025, and in accordance with 5 CFR 1320.10, an agency may continue to conduct or sponsor this collection of information while the submission is pending at OMB).

The proposed revisions to existing and new reporting and/or recordkeeping requirements identified below require approval by OMB:

(1) (*NEW*) *State Agency Hunting and Sport Fishing License Certification Revision (50 CFR 80.39)*—A State fish and wildlife agency must submit revised

certified data on license holders within 90 days after it becomes aware of errors in its certified data. The State may become ineligible to participate in the benefits of the relevant Act if the State becomes aware of errors in its certified data and does not resubmit accurate certified data within 90 days.

(2) *(NEW) Voluntary Display of Program Symbols (50 CFR 80.100)*—A State fish and wildlife agency does not have to display one of the symbols in § 80.99 on a project completed under the Acts. However, the Service encourages agencies to display the appropriate symbol as follows:

a. An agency may display the appropriate symbol(s) on:

1. Areas such as wildlife-management areas, shooting ranges, and sportfishing and boating-access facilities that were acquired, developed, operated, or maintained with funds authorized by the Acts; and

2. Printed or web-based material or other visual representations of project accomplishments.

b. An agency may establish a requirement for similar standards for displaying the appropriate symbol or symbols, in the places described in paragraph (a) of this section, that is passed through to subrecipients. An agency may require a subrecipient to display the appropriate symbol or symbols in the places described in paragraph (a) of this section.

c. The Director or Regional Director may authorize an agency to use the symbols in a manner other than as described in paragraph (a) of this section.

d. The Director or Regional Director may authorize other persons, organizations, agencies, or governments to use the symbols for purposes related to the Acts by entering into a written agreement with the user. An applicant must state how it intends to use the symbol(s), to what it will attach the symbol(s), and the relationship to the specific Act.

e. The user of the symbol(s) must indemnify and defend the United States and hold it harmless from any claims, suits, losses, and damages from:

1. Any allegedly unauthorized use of any patent, process, idea, method, or device by the user in connection with its use of the symbol(s), or any other alleged action of the user; and

2. Any claims, suits, losses, and damages arising from alleged defects in the articles or services associated with the symbol(s).

f. The appearance of the symbol(s) on projects or products indicates that the manufacturer of the product pays excise taxes in support of the respective Act(s)

and that the project was funded under the respective Act(s) (26 U.S.C. 4161, 4162, 4181, 4182, 9503, and 9504). The Service and the Department of the Interior make no representation or endorsement whatsoever by the display of the symbol(s) as to the quality, utility, suitability, or safety of any product, service, or project associated with the symbol(s).

g. No one may use any of the symbols in any other manner unless the Director or Regional Director authorizes it. Unauthorized use of the symbol(s) is a violation of 18 U.S.C. 701 and subjects the violator to possible fines and imprisonment.

(3) *(NEW) Required Display of CVA Program Symbol, Slogan, and Information (50 CFR 85.43 and 85.47)*—Facilities must display appropriate information signs at pumpout and portable toilet dump stations. Those signs should indicate fees, restrictions, hours of operation, operating instructions, a contact name, and 1–800–ASK–FISH telephone number for boaters to get additional information or to report an inoperable facility. As the source of funding for Clean Vessel Act facilities, the Sport Fish Restoration program should get credit through use of the Sport Fish Restoration logo. Grant recipients may use the crediting logo identified in 50 CFR 80.99 to identify projects funded by the Clean Vessel Act.

(4) *(REVISION) Adjust previously approved burden estimates as follows:*

- Reduce burden estimates due to the archival of the following programs: 15.641 Wildlife Without Borders—Mexico, 15.633 Landowner Incentive, and 15.656 Recovery Act Funds. We reduce burden estimates based on the number of awards under these programs that were pending closeout reports as of our previous clearance.

- Increase burden estimates associated with new 15.069 Zoonotic Disease Initiative program. This new program was funded and then defunded since our last renewal. We increase burden estimates for only post-award requirements (amendments and reporting) for the 21 awards issued by the program before funding rescission.

- Increase burden estimates for increased financial assistance funding and activities resulting from Infrastructure Investment and Jobs Act (BIL) appropriations supplementing 14 Service financial assistance programs.

- Add the new 15.685 National Fish Passage and 15.686 National Fish Habitat Partnership programs, but we have not proposed a corresponding increase in burden estimates. These longstanding programs were previously managed and reported as subprograms

under our 15.608 Fish and Wildlife Management Assistance program.

We also propose to renew the existing reporting and/or recordkeeping requirements identified below:

(1) *Application Package*—We use the information provided in applications to:

(1) Determine eligibility under the authorizing legislation and applicable program regulations; (2) determine allowability of major cost items under the Cost Principles at 2 CFR part 200; (3) select those projects that will provide the highest return on the Federal investment; and (4) assist in compliance with laws, as applicable, such as the National Environmental Policy Act, the National Historic Preservation Act, and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. The full application package (submitted by the applicant) generally includes the following:

- Required Federal financial assistance application forms (SF–424 suite of forms, as applicable to specified project).

- Project Narrative—generally includes items such as:

- Statement of need,
- Project goals and objectives,
- Methods used and timetable,
- Description of key personnel qualifications,
- Description of stakeholders or other relevant organizations/individuals involved and level of involvement,
- Project monitoring and evaluation plan, and/or
- Other pertinent project-specific information.

- Pertinent project budget-related information—generally includes items such as:

- Budget justification,
- Detail on costs requiring prior approval,
- Indirect cost statement,
- Federally funded equipment list, and/or
- Certifications and disclosures.

(2) *Amendments*—Recipients must provide written explanation and submit prior approval requests for budget or project plan revisions, due date extensions for required reports, or other changes to approved award terms and conditions. The information provided by the recipient is used by the Service to determine the eligibility and allowability of activities and to comply with the requirements of 2 CFR part 200.

(3) *Reporting Requirements*—Reporting requirements associated with financial assistance awards generally include the following types of reports:

- Federal Financial Reports (using the required SF-425),
- Performance Reports, and
- Real Property Status Reports, when applicable (using the required SF-429 forms series).

(4) *Recordkeeping Requirements*—In accordance with 2 CFR 200.334, financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of 3 years after the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity (in the case of a subrecipient) (unless an exemption as described in 2 CFR 200.334 applies that requires retention of records longer than 3 years).

(5) *Real Property Reporting/Recordkeeping Requirements*—Service recipients purchasing real property under their award in which the Federal Government retains an interest must report on the status and request approval to dispose of those per 2 CFR part 200 and 2 CFR part 1402 using the SF-429-A, Real Property Status Report (General Reporting) and the SF-429-C, Real Property Status Report (Disposition or Encumbrance Request), as appropriate. For real property acquisition awards in which the Service will retain an interest, we require recipients to submit certain information, including:

- Transactions, such as dates, method of transfer, title holder, and seller;
- Identifiers, such as State and Federal Record ID, parcel number, and property name;
- Values, such as appraised value, purchase price, and other cost information, and acres or acre feet;
- Encumbrances;
- Partners;
- Copies of any options, purchase agreements, mineral assessment reports, and draft conservation easements; and
- Documentation to demonstrate compliance with 2 CFR part 1402.

Title of Collection: Administrative Procedures for U.S. Fish and Wildlife Service Financial Assistance Programs.

OMB Control Number: 1018-0100.

Form Number: FWS Form 3-154.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Individuals/households, private sector, and State/local/Tribal governments.

Total Estimated Number of Annual Respondents: 15,199.

Total Estimated Number of Annual Responses: 17,170.

Estimated Completion Time per Response: Varies from 15 minutes to 100 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 403,086.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion, quarterly, or annually, depending on activity.

Total Estimated Annual Nonhour Burden Cost: None.

On December 2, 2024, we published in the **Federal Register** (87 FR 59598) a proposed rule (RIN 1018-BB84) that announced our intention to request OMB approval of the revisions to this collection explained above and the simultaneous renewal of OMB Control No. 1018-0100. In that proposed rule, we solicited comments for 60 days on the information collections in this submission, ending on January 31, 2025. We received no comments addressing the information collection requirements in response to that proposed rule.

In accordance with the PRA and its implementing regulations at 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on our proposal to revise OMB Control Number 1018-0100. This input will help us assess the impact of our information collection requirements and minimize the public's reporting burden. It will also help the public understand our information collection requirements and provide the requested data in the desired format.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of this information collection, including:

- (1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;
- (2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;
- (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and
- (4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of response.

Comments that you submit in response to this rulemaking are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Send your written comments and suggestions on this information collection by the date indicated in **DATES** to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB/PERMA (JAO), 5275 Leesburg Pike, Falls Church, VA 22041-3803 (mail); or by email to Info_Coll@fws.gov. Please reference OMB Control Number 1018-0100 in the subject line of your comments.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. The Service has determined that categorical exclusion 43 CFR 46.210(i) applies as the regulation is of an administrative nature and no extraordinary circumstances in 43 CFR 46.215 apply. Therefore, preparation of an environmental assessment or environmental impact statement associated with this rulemaking action is not required. Once eligible applicants have available funding, they will submit project proposals for review and consideration. Then, an assessment under the National Environmental Policy Act and appropriate compliance will be completed prior to awarding a grant.

Effects on Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E. O. 13211. This rule is not a significant regulatory action under E.O. 12866 or any successor order, and it will have no effect on energy supply, distribution, or use. A statement of energy effects is not required.

List of Subjects in 50 CFR Part 80

Fish, Fishing, Grant programs—natural resources, Grant programs—recreation, Grants administration, Hunting, Licensing and Registration, Natural resources, Rates and fares, Real property acquisition, Recreation and recreation areas, Reporting and recordkeeping requirements, Signs and symbols, Wildlife.

■ For the reasons discussed in the preamble, we revise 50 CFR part 80 to read as follows:

PART 80—ADMINISTRATIVE REQUIREMENTS, PITTMAN—ROBERTSON WILDLIFE RESTORATION AND DINGELL—JOHNSON SPORT FISH RESTORATION ACTS

Subpart A—General

Sec.

80.1 What does this part do?

80.2 What terms do I need to know?

Subpart B—State Fish and Wildlife Agency Eligibility

80.10 Who is eligible to receive the benefits of the Acts?

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80.12 [Reserved]

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80.20 What does revenue from hunting and fishing licenses include?

80.21 What if a State diverts license revenue from the control of its fish and wildlife agency?

80.22 What must a State do to resolve a declaration of diversion?

80.23 Does a declaration of diversion affect a previous Federal obligation of funds?

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80.30 Why must a State fish and wildlife agency certify the number of paid license holders?

80.31 How does a State fish and wildlife agency certify the number of paid license holders?

80.32 What is the certification period?

80.33 How does a State fish and wildlife agency decide who to count as paid license holders in the annual certification?

80.34 Must a State fish and wildlife agency receive a minimum amount of revenue for each year a license holder is certified?

80.35 What additional options and requirements apply to multiyear licenses?

80.36 May a State fish and wildlife agency count license holders in the annual certification if the agency receives funds from the State or other entity to cover the holders' license fees?

80.37 May the State fish and wildlife agency certify a license sold at a discount?

80.38 May a State fish and wildlife agency certify a license when an entity other

than the agency offers a discount on a license or offers a free license?

80.39 What must a State fish and wildlife agency do if it becomes aware of errors in its certified license data?

80.40 May the Service recalculate an apportionment if a State fish and wildlife agency submits revised data?

80.41 May the Director correct a Service error in apportioning funds?

Subpart E—Eligible Activities

80.50 What activities are eligible for funding under the Wildlife Restoration Act?

80.51 What activities are eligible for funding under the Sport Fish Restoration Act?

80.52 What activities are eligible for funding under all programs and subprograms under the Acts?

80.53 May an activity be eligible for funding if it is not explicitly eligible according to the regulations in this part?

80.54 Are costs of State central services eligible for funding?

80.55 What activities are ineligible for funding?

80.56 May a State fish and wildlife agency receive an award to carry out part of a larger project?

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80.58 What are public access requirements for activities in an approved award under the Wildlife Restoration or Sport Fish Restoration programs?

Subpart F—Allocation of Funds by an Agency

80.60 What is the relationship between the Traditional Wildlife Restoration Program, the Basic Hunter Education and Safety subprogram, and the Enhanced Hunter Education and Safety program for acquiring land for, expanding, or constructing public target ranges?

80.61 What sources of funding in the Wildlife Restoration Act may a State fish and wildlife agency use to support public target range projects, and may funds from multiple sources be used in a single award?

80.62 What are eligible and ineligible 90/10/5 activities?

80.63 What exception is provided for Enhanced Hunter Education and Safety program funds in relation to Basic Hunter Education and Safety subprogram funds?

80.64 What requirements apply to funds for the Recreational Boating Access subprogram?

80.65 What limitations apply to spending on the Aquatic Resource Education and the State Outreach and Communications subprograms?

80.66 [Reserved]

80.67 How does a State fish and wildlife agency allocate costs to an award in multipurpose projects and facilities?

80.68 Must a State fish and wildlife agency allocate funds between marine and freshwater fisheries projects?

80.69 What requirements apply to allocation of funds between marine and freshwater fisheries projects?

80.70 May a State fish and wildlife agency finance an activity from more than one annual apportionment?

80.71 What requirements apply to financing an activity from more than one annual apportionment?

Subpart G—Applying for an Award

80.80 [Reserved]

80.81 What must a State fish and wildlife agency submit when applying for a comprehensive-management-system award?

80.82 What must a State fish and wildlife agency submit when applying for a project-by-project award?

80.83 What is the Federal share of allowable costs?

80.84 How does the Service establish the non-Federal share of allowable costs?

80.85 What requirements apply to cost sharing?

Subpart H—General Award Administration

80.90 [Reserved]

80.91 What is a Federal obligation of funds, and how does it occur?

80.92 How long are funds available for a Federal obligation?

80.93 When may a State fish and wildlife agency incur costs under an award?

80.94 May a State fish and wildlife agency incur costs before the beginning of the period of performance?

80.95 How does a State fish and wildlife agency receive Federal award funds?

80.96 May a State fish and wildlife agency use Federal funds without using cost sharing?

80.97 What is barter, and may a State fish and wildlife agency use barter of goods or services to carry out a grant-funded project?

80.98 How must a State fish and wildlife agency include barter in an award and report barter transactions?

80.99 Are symbols available to identify projects?

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Subpart I—Program Income

80.120 What is program income?

80.121 [Reserved]

80.122 May a State fish and wildlife agency deduct the costs of generating program income from gross income?

80.123 [Reserved]

80.124 How may a State fish and wildlife agency use unexpended program income?

80.125 How must a State fish and wildlife agency treat income that it earns after the period of performance?

80.126 How must a State fish and wildlife agency treat income earned by a subrecipient after the period of performance?

Subpart J—Real Property

80.130 Must a State fish and wildlife agency hold title to real property acquired under an award?

80.131 Must a State fish and wildlife agency hold an easement acquired under an award?

- 80.132 Must a State fish and wildlife agency have control over the land or water where it completes capital improvements?
- 80.133 Must a State fish and wildlife agency maintain acquired or completed capital improvements?
- 80.134 How must a State fish and wildlife agency use real property?
- 80.135 What if a State fish and wildlife agency allows a use of real property that interferes with its authorized purpose?
- 80.136 Is it a diversion if a State fish and wildlife agency does not use real property acquired under an award for its authorized purpose?
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Subpart K—Revisions and Appeals

- 80.150 How does a State fish and wildlife agency revise an award?
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Subpart L—Information Collection

- 80.160 What are the information collection requirements of this part?

Authority: 16 U.S.C. 669 *et seq.*, except for provisions specific to the Wildlife Conservation and Restoration program, and 777–777m, except 777e–1 and g–1.

Subpart A—General

§ 80.1 What does this part do?

This part of the Code of Federal Regulations tells States how they may:

- (a) Use revenues derived from State hunting and fishing licenses in compliance with the Acts.
- (b) Receive annual apportionments from the Federal Aid to Wildlife Restoration Fund (16 U.S.C. 669(b)), if authorized, and the Sport Fish Restoration and Boating Trust Fund (26 U.S.C. 9504).
- (c) Receive Federal financial assistance awards for eligible activities under the Traditional Wildlife Restoration program, the Basic Hunter Education and Safety subprogram, and the Enhanced Hunter Education and Safety program, including those authorized for hunter recruitment and recreational shooter recruitment under 16 U.S.C. 669c.
- (d) Receive Federal financial assistance awards for eligible activities under the Sport Fish Restoration program, the Recreational Boating Access subprogram, the Aquatic Resources Education subprogram, and the State Outreach and Communications subprogram.
- (e) Comply with the requirements of the Acts.

§ 80.2 What terms do I need to know?

The terms in this section pertain only to the regulations in this part.

90/10/5 means activities authorized under Public Law 116–17 for acquiring

land for, expanding, or constructing public target ranges that apply a 90 percent Federal/10 percent non-Federal cost share and a 5-year period of availability for obligation.

Acquisition of real property means taking ownership or control of a designated area of land or an interest in land by purchase, assignment, reversion, gift, eminent domain, or any other method consistent with State or Federal law. The purpose of the acquisition must be for an eligible activity to meet the objective of an award.

Acts means the Pittman-Robertson Wildlife Restoration Act of September 2, 1937 (Wildlife Restoration Act), as amended (16 U.S.C. 669 *et seq.*, except for provisions specific to the Wildlife Conservation and Restoration program), and the Dingell-Johnson Sport Fish Restoration Act of August 9, 1950 (Sport Fish Restoration Act), as amended (16 U.S.C. 777–777m, except 777e–1 and g–1).

Allocate means the process by which States work with the Service to assign apportioned funds to a specific subaccount based on the eligible uses. Once allocated, the funding becomes available for obligation to Federal awards for eligible program activities.

Allowable refers to those costs that meet the general criteria to be charged to a Federal financial assistance award and comply with the basic considerations at 2 CFR 200.402 through 200.411, as well as the general principles for selected items of cost at 2 CFR 200.420 through 200.476.

Angler means a person who fishes for recreational purposes as permitted by State and/or Federal law.

Apportioned funds are those that are made available to a State based on formulas in the Acts. Traditional Wildlife Restoration program funds are apportioned using the formula at 16 U.S.C. 669c(b); Basic Hunter Education and Safety subprogram funds are apportioned using the formula at 16 U.S.C. 669c(c); Enhanced Hunter Education and Safety program funds are apportioned using the formula at 16 U.S.C. 669c(c) and according to the criteria at 16 U.S.C. 669h–1(a); and Sport Fish Restoration program funds are apportioned using the formula at 16 U.S.C. 777c(c).

Asset means all tangible and intangible real and personal property of monetary value. This includes “capital assets” as defined at 2 CFR 200.1, “equipment” as defined at 2 CFR 200.1, and real property of any value.

Award or grant has the same meaning as “Federal award” as defined at 2 CFR 200.1. The regulations in this part use

the terms “award” or “grant” for both a grant and a cooperative agreement for convenience of reference, and the use does not affect the legal distinction between the two instruments. An award includes all “project costs” as defined at 2 CFR 200.1. We use the term “grant” when making references to programs (*i.e.*, a grant program).

Capital improvement or capital expenditure for improvement means:

(1) A structure that costs at least \$25,000 to build, acquire, or install; or the alteration or repair of a structure or the replacement of a structural component, if it increases the structure’s useful life by at least 10 years or its market value by at least \$25,000.

(2) A State fish and wildlife agency may use its own definition of “capital improvement” if the agency’s definition includes all capital improvements as defined here.

Comprehensive management system (CMS) is a State fish and wildlife agency’s method of operations that links programs, financial systems, human resources, goals, products, and services. When using a CMS method of operations, a State fish and wildlife agency assesses the current, projected, and desired status of fish and wildlife; develops a strategic plan and carries it out through an operational planning process; and evaluates results. The planning period is at least 5 years using a minimum 15-year projection of the desires and needs of the State’s citizens. A CMS award funds all or part of a State’s CMS. For those States that employ a CMS method of operations, where we refer to a “project statement” in the regulations in this part, a CMS State might refer to activities as part of its “operational plan.”

Construction means the act of building or significantly renovating, altering, or repairing a structure. Acquiring, clearing, and reshaping land and demolishing structures are types or phases of construction. Examples of structures are buildings, roads, parking lots, utility lines, fences, piers, wells, pump stations, ditches, dams, dikes, water-control structures, fish-hatchery raceways, and shooting ranges. For the purposes of 90/10/5 projects (acquiring land for, expanding, or constructing public target ranges), *constructing* means building a public target range (see §§ 80.60 and 80.62, 16 U.S.C. 669g(b)(2) and 669h–1(b)(2)).

Cost sharing has the same meaning as at 2 CFR 200.1. Cost sharing must meet the requirements at 2 CFR 200.306(b)(1) through (7) and §§ 80.83 through 80.85.

Director has the same meaning as at 50 CFR 1.4 and, for the purposes of this part, means:

(1) The person whom the Secretary delegated to administer the Acts nationally; or

(2) A deputy or another person authorized temporarily to administer the Acts nationally.

Diversion means any use of revenue from hunting and fishing licenses for a purpose other than administration of the State fish and wildlife agency.

Eligible refers to activities or actions for a Federal financial assistance program that are authorized by Congress through a statute or by Federal agency regulations to accomplish a public purpose under that program.

Equipment has the same meaning as at 2 CFR 200.1.

Expanding means, for the purposes of projects for acquiring land for, expanding, or constructing public target ranges (90/10/5), physical improvements to an existing public target range that add to the utility of the range in a manner that ultimately increases range capacity to accommodate more participants. Physical improvements do not necessarily have to increase the size of the facility but must result in an increase in physical usability that will accommodate more participants.

Facility means the physical infrastructure and appurtenances necessary to support purposes under the Acts. The physical infrastructure includes land.

Federal fiscal year (FFY) means the annual period the Federal Government uses for budgets and accounting, beginning October 1 and ending September 30.

Fee interest means the right to possession, use, and enjoyment of a parcel of land or water for an indefinite period. A fee interest, as used in this part, may be the:

(1) Fee simple or full-fee interest, which includes all possible interests or rights that a person or legal entity can hold in a parcel of real property (land or water); or

(2) Fee with exceptions to title or less-than-full-fee interest, which excludes one or more real property interests that would otherwise be part of the fee simple.

Fiscal year, for the purposes of determining the number of paid hunting- or fishing-license holders in a State, means the State-determined (State fiscal year or license year) period that it identifies to certify license holders.

Fish restoration and management project means the restoration and management of any species of fish that has material value in connection with sport or recreation (see *Sport fish*) in the

marine and/or fresh waters of the United States.

Hunter recruitment and recreational shooter recruitment means any activity or project to recruit or retain and, for the purposes of the regulations in this part, reactivate hunters and recreational shooters including by:

(1) Outreach and communications as a means—

(i) To improve communications with hunters, recreational shooters, and the public with respect to hunting and recreational shooting opportunities;

(ii) To reduce barriers to participation in these activities;

(iii) To advance the adoption of sound hunting and recreational shooting practices;

(iv) To promote conservation and the responsible use of the wildlife resources of the United States; and

(v) To further safety in hunting and recreational shooting.

(2) Providing education, mentoring, and field demonstrations;

(3) Enhancing access for hunting and recreational shooting, including through range construction; and

(4) Providing education to the public about the role of hunting and recreational shooting in funding wildlife conservation.

Law enforcement means enforcing laws, orders, and regulations.

Lease means an agreement in which the owner of a fee interest transfers to a lessee the right of exclusive possession and use of an area of land or water for a fixed period, which may be renewable. The lessor cannot readily revoke the lease at their discretion. The lessee pays rent periodically or as a single payment. The lessor must be able to regain possession of the lessee's interest (leasehold interest) at the end of the lease term. An agreement that does not correspond to this definition is not a lease even if it is labeled as one.

Maintenance means keeping a facility or equipment in a condition to serve the intended purpose. It includes recurring, cyclical, or occasional actions to keep a facility or equipment fully functional that are less than the threshold for a capital improvement or capital expenditure for improvement. It does not include operations. Examples of maintenance activities include but are not limited to:

(1) Routine upkeep for physical and mechanical parts of a facility; and

(2) Replacing components of a facility or a piece of equipment that are expected to need replacement during its useful life.

Obligation has two meanings depending on the context:

(1) When a recipient of Federal financial assistance commits funds by

incurring costs for purposes of the award, the definition for “financial obligations” at 2 CFR 200.1 applies.

(2) When the Service sets aside funds in an award for disbursement immediately or at a later date in the formula-based programs under the Acts, the definition at § 80.91 applies.

Operations means supporting the availability of a facility and its components for current public or other intended use. Operations include necessary activities that occur frequently (daily, weekly, monthly). The term does not include maintenance. Operations may be divided into the categories of physical or administrative. Examples include but are not limited to:

(1) Physical activities such as trash removal, portable toilet services, and utility costs; and

(2) Administrative operations such as personnel costs to manage and keep a facility open.

Period of performance has the same meaning as at 2 CFR 200.1.

Personal property means anything tangible or intangible that is not real property.

(1) Tangible personal property includes:

(i) Objects, such as equipment and supplies, that are movable without substantive damage to the land or any structure to which they may be attached and not considered an inherent part of the land;

(ii) Soil, rock, gravel, minerals, gas, oil, or water after excavation or extraction from the surface or subsurface;

(iii) Commodities derived from trees or other vegetation after harvest or separation from the land; and

(iv) Annual crops before or after harvest.

(2) Intangible personal property has the same meaning as at 2 CFR 200.1 and includes:

(i) Intellectual property, such as patents or copyrights;

(ii) Securities, such as bonds and interest-bearing accounts; and

(iii) Licenses, which are personal privileges (not a real property interest) granted by consent of a landowner, lessee, or tenant to use an area of land or water that would otherwise be trespass or another violation of law, with at least one of the following attributes:

(A) Are revocable at the discretion of the entity consenting to the license;

(B) Terminate when the area of land or water passes to another owner, the lease or tenancy ends, or the landowner, lessee, or tenant dies; or

(C) Do not transfer a right of exclusive use and possession of an area of land or water.

Project means one or more related undertakings in a project-by-project award that are necessary to fulfill a need or needs, as defined by a State fish and wildlife agency, consistent with the purposes of the appropriate Act. For convenience of reference in this part, the meaning of “project” includes an agency’s fish and wildlife program under a CMS award.

Project-by-project award means an award of money based on a detailed statement of a project, or projects, and other supporting documentation.

Public means of, relating to, or affecting all people in general.

Public access means the public has opportunity, permission, and/or ability to enter, approach, pass to, from, and within, and appropriately use a place/facility for an authorized purpose (see § 80.58 for further requirements).

Public target range, including mobile public target ranges and privately owned target ranges during those times when open for public use, means a specific location that—

- (1) Is identified by a governmental agency for recreational shooting;
- (2) Is open to the public;
- (3) May be supervised; and
- (4) May accommodate archery or rifle, pistol, or shotgun shooting.

Public relations means those activities dedicated to maintaining the image of the non-Federal entity (recipient or subrecipient) or maintaining or promoting understanding and favorable relations with the community, public at large, or any segment of the public. This term could include communicating with the public about specific activities or accomplishments resulting from approved projects or communication and liaison necessary to keep the public informed on matters of public concern such as notices of funding opportunities. (See also “advertising and public relations” in 2 CFR part 200).

R3 means to recruit, retain, and/or reactivate members of the public to actively participate in the outdoor recreational activities of hunting, angling, boating, and recreational shooting. State fish and wildlife agencies and other involved partners may define R3 more broadly, but agencies must use funds under the Acts only for activities that are eligible under the regulations in this part.

Real property means one, several, or all interests, benefits, and rights inherent in the ownership of a parcel of land or water. Examples of real property include fees, conservation easements, access easements, utility easements, and mineral rights. A leasehold interest is also real property except in those States

where the State attorney general provides an official opinion that determines a lease is personal property under State law.

(1) A parcel includes (unless limited by its legal description) the space above and below it and anything physically affixed to it by a natural process or human action. Examples include standing timber, other vegetation (except annual crops), buildings, roads, fences, and other structures.

(2) A parcel may also have rights attached to it by a legally prescribed procedure. Examples include water rights or an access easement that allows the parcel’s owner to travel across an adjacent parcel.

(3) The legal classification of an interest, benefit, or right depends on its attributes rather than the name assigned to it. For example, a grazing permit is often incorrectly labeled a lease, which can be real property, but most grazing permits are actually licenses, which are not real property.

Recipient for the purposes of the regulations in this part means the entities eligible to receive apportionments under the Acts (see § 80.10).

Regional Director has the same meaning as at 50 CFR 1.7. This person’s responsibility does not extend to any administrative units that the Service’s Washington Office supervises directly in that geographic region.

Secretary has the same meaning as at 50 CFR 1.8.

Service has the same meaning as at 50 CFR 1.3.

Sport fish means aquatic, gill-breathing, vertebrate animals with paired fins, having material value for recreation in the marine and fresh waters of the United States.

State means any State of the United States, the Commonwealth of Puerto Rico, and the insular areas of the Commonwealth of the Northern Mariana Islands, the Territory of Guam, the Territory of the U.S. Virgin Islands, and the Territory of American Samoa.

(1) “State” also includes the District of Columbia for purposes of the Sport Fish Restoration Act, the Sport Fish Restoration program, and its subprograms. “State” does not include the District of Columbia for purposes of the Wildlife Restoration Act and the programs and subprogram under the Act because the Wildlife Restoration Act does not authorize funding for the District.

(2) References to “the 50 States” apply only to the 50 States of the United States and do not include the Commonwealths of Puerto Rico and the Northern Mariana Islands, the District of

Columbia, or the Territories of Guam, the U.S. Virgin Islands, and American Samoa.

State fish and wildlife agency (or *agency*) means the administrative unit designated by State law or regulation to carry out State laws for management of fish and wildlife resources. If an agency has other jurisdictional responsibilities, the agency is considered the State fish and wildlife agency only when exercising responsibilities specific to management of the State’s fish and wildlife resources.

Subaccount (and *account*) means the fiscal management designation used in the Service’s financial system to identify funds by program and subprogram allocation (see § 80.61 for a description of subaccounts and the financial system). Different subaccounts also distinguish between benefits to marine or freshwater fisheries in the programs and subprograms authorized by the Sport Fish Restoration Act.

Subaward has the same meaning as at 2 CFR 200.1. A subaward may serve as a third-party binding agreement where required.

Subrecipient has the same meaning as at 2 CFR 200.1.

Traditional Wildlife Restoration program, for the purposes of the regulations in this part and associated policies, means the activities that are funded under apportionments authorized at 16 U.S.C. 669c(b), which reflects the original program funded under the Wildlife Restoration Act of 1937 (see eligible activities at § 80.50(a)). We use this term for clarity when administering awards, as many eligible activities are specific to funding sources within the Act.

Useful life means the period during which a federally funded capital improvement, capital asset, or equipment is capable of fulfilling its intended purpose with adequate routine maintenance.

Wildlife means the indigenous or naturalized species of birds or mammals that are either:

- (1) Wild and free-ranging;
- (2) Held in a captive-breeding program established to reintroduce individuals of a depleted indigenous species into previously occupied range; or
- (3) Under the jurisdiction of a State fish and wildlife agency.

Wildlife restoration project means the selection, restoration, rehabilitation, and improvement of areas of land or water adaptable as feeding, resting, or breeding places for wildlife, including acquisition of such areas or estates or interests therein as are suitable or capable of being made suitable therefor,

and the construction thereon or therein of such works as may be necessary to make them available for such purposes and also including such research into problems of wildlife management as may be necessary to efficient administration affecting wildlife resources, and such preliminary or incidental costs and expenses as may be incurred in and about those projects.

Subpart B—State Fish and Wildlife Agency Eligibility

§ 80.10 Who is eligible to receive the benefits of the Acts?

States acting through their fish and wildlife agencies are eligible for benefits of the Acts only if they pass and maintain legislation as described in the Acts and maintain control of revenue from hunting and fishing licenses. This revenue is to be used for administration of the State fish and wildlife agency, which includes the functions required to manage the agency and the fish- and wildlife-related resources for which the agency has authority under State law. A State becomes ineligible to receive the benefits of the Acts if they fail materially to comply with any law, regulation, or term of a grant as it relates to acceptance and use of funds under the Acts.

§ 80.11 [Reserved]

§ 80.12 [Reserved]

Subpart C—License Revenue

§ 80.20 What does revenue from hunting and fishing licenses include?

Hunting and fishing license revenue includes:

- (a) All proceeds from State-issued general or special hunting and fishing licenses, permits, stamps, tags, access and use fees, and other State charges to hunt or fish for recreational purposes. Revenue from licenses sold by vendors is net income to the State after deducting reasonable sales fees or similar amounts retained by vendors.
- (b) Real or personal property acquired with license revenue.
- (c) Income from the sale, lease, or rental of, granting rights to, or a fee for access to real or personal property acquired or constructed with license revenue.
- (d) Income from the sale, lease, or rental of, granting rights to, or a fee for access to a recreational opportunity, product, or commodity derived from real or personal property acquired, managed, maintained, or produced by using license revenue.
- (e) Interest, dividends, or other income earned on license revenue.

(Although surplus or excess license revenue not needed for immediate administration of the State fish and wildlife agency *is* license revenue, use of such revenue for deposit or investment with the State [treasurer/fiscal agent/fiduciary agent] does not constitute a loss of control and would not be a diversion under § 80.21.)

(f) Reimbursements for expenditures originally paid with license revenue.

(g) Payments received for services funded by license revenue.

§ 80.21 What if a State diverts license revenue from the control of its fish and wildlife agency?

The Director may declare a State to be in diversion if it violates the requirements of § 80.10 by diverting license revenue from the control of its fish and wildlife agency to purposes other than the agency's administration. The State is then ineligible to receive benefits under the relevant Act from the date the Director signs the declaration until the date the State resolves the diversion. Only the Director may declare a State to be in diversion, and only the Director may rescind the declaration.

§ 80.22 What must a State do to resolve a declaration of diversion?

The State must complete the actions in paragraphs (a) through (e) of this section to resolve a declaration of diversion. The State must use a source of funds other than license revenue to fund the replacement of license revenue.

(a) If necessary, the State must enact adequate legislative prohibitions to prevent diversions of license revenue.

(b) The State fish and wildlife agency must replace all diverted funds derived from license revenue and the interest lost up to the date of repayment. The agency must update financial records for the receipt of the diverted funds and interest accordingly.

(c) The agency must receive either the revenue earned from diverted property during the period of diversion or the current market rental rate of any diverted property, whichever is greater.

(d) The agency must take one of the following actions to resolve a diversion of real, personal, or intellectual property:

- (1) Regain management control of the property, which must be in about the same condition as before diversion;
- (2) Receive replacement property that meets the criteria in paragraph (e) of this section; or
- (3) Receive an amount at least equal to the current market value of the diverted property only if the Director

agrees that the actions described in paragraphs (d)(1) and (2) of this section are impractical.

(e) To be acceptable under paragraph (d)(2) of this section:

(1) Replacement property must have both:

- (i) Market value that at least equals the current market value of the diverted property; and
- (ii) Fish or wildlife benefits that at least equal those of the property diverted.

(2) The Director must agree that the replacement property meets the requirements of paragraph (e)(1) of this section.

§ 80.23 Does a declaration of diversion affect a previous Federal obligation of funds?

No. Federal funds obligated before the date that the Director declares a diversion remain available for expenditure without regard to the intervening period of the State's ineligibility. See § 80.91 for when a Federal obligation occurs.

Subpart D—Certifying License Holders

§ 80.30 Why must a State fish and wildlife agency certify the number of paid license holders?

A State fish and wildlife agency must certify the number of individuals having paid licenses to hunt and paid licenses to fish because the Service uses these data in statutory formulas to apportion funds in the Wildlife Restoration and Sport Fish Restoration programs among the States.

§ 80.31 How does a State fish and wildlife agency certify the number of paid license holders?

(a) A State fish and wildlife agency certifies the number of paid license holders by responding to the Director's annual request for the following information:

(1) The number of individual paid hunting license holders in the State during the State-specified certification period (certification period); and

(2) The number of individual paid fishing license holders in the State during the certification period.

(b) The State fish and wildlife agency director or their designee:

- (1) Must certify the information described at paragraph (a) of this section in the format that the Director specifies;
- (2) Must provide documentation to support the accuracy of this information at the Director's request;
- (3) Is responsible for eliminating multiple counting of the same individuals in the information that they certify and may use statistical sampling,

automated record consolidation, or other techniques approved by the Director for this purpose.

(c) If a State fish and wildlife agency director uses statistical sampling to eliminate multiple counting of the same individuals, they must ensure that the sampling is complete by the earlier of the following:

- (1) Five years after the last statistical sample; or
- (2) Before completing the first certification following any change in the licensing system that could affect the number of license holders.

§ 80.32 What is the certification period?

A certification period must:

- (a) Be 12 consecutive months;
- (b) Correspond to the State's fiscal year or license year;
- (c) Be consistent from year to year unless the Director approves a change; and
- (d) End at least 1 year and no more than 2 years before the beginning of the FFY in which the apportioned funds first become available for expenditure.

§ 80.33 How does a State fish and wildlife agency decide who to count as paid license holders in the annual certification?

(a) A State fish and wildlife agency must count only those individuals who have a license issued:

- (1) In the license holder's name; or
- (2) With a unique identifier that is traceable to the license holder, who must be verifiable in State records.

(b) An agency must count an individual in the annual certification:

- (1) Only once, and in the certification period in which the license first becomes valid, when holding a single-year license. A single-year license is valid for any length of time from 1 day to less than 2 years. If valid 2 years or more, a license is considered a multiyear license and may be valid for a specific number of years that is 2 or more, or for the lifetime of the individual (see § 80.35(d)).

(2) Only for the number of years the license is valid and starting in the certification period in which the license first becomes valid, unless that year has already been certified in the case of multiyear licenses. An individual holding a multiyear license may be counted for only the number of years the license is valid and only during the applicable certification periods.

(3) Only for the number of years allowed under § 80.35, when holding a lifetime license.

(c) An individual is counted as a valid license holder when meeting requirements at § 80.34, even if the individual is not required to have a paid license.

(d) An individual having more than one valid hunting license is counted only once each certification period as a hunter. An individual having more than one valid fishing license is counted only once each certification period as an angler. An individual having both a valid hunting license and a valid fishing license, or a valid combination hunting/fishing license, may be counted once each certification period as a hunter and once each certification period as an angler. The license holder may have voluntarily obtained the license(s) or was required to obtain the license(s) to receive a different privilege.

(e) An individual who has a license that allows the license holder only to trap animals or only to engage in commercial fishing or other commercial activities must not be counted.

§ 80.34 Must a State fish and wildlife agency receive a minimum amount of revenue for each year a license holder is certified?

(a) Yes. A State fish and wildlife agency must receive a minimum amount of gross revenue for each year a license holder is certified.

(b) For the State fish and wildlife agency to certify a license holder, the agency must establish that it receives the following minimum gross revenue:

- (1) \$2 for each year the license is certified, for either the privilege to hunt or the privilege to fish; or
- (2) \$4 for each year the license is certified for a combination license that gives privileges to both hunt and fish.

§ 80.35 What additional options and requirements apply to multiyear licenses?

In addition to the requirements at § 80.34, the following provisions apply to multiyear licenses:

(a) An agency may spend the proceeds derived from a multiyear license fee as soon as the agency receives payment.

(b) A multiyear license may be valid for either a specific or indeterminate number of years, but it must be valid for at least 2 years.

(c) The agency may count a license holder for the number of certification

periods for which all the following requirements are met:

(1) The license holder meets all other requirements of this subpart;

(2) The license is currently valid;

(3) The agency received the minimum required revenue for each certification period during the duration of the license, in the case of a multiyear license with a specified ending date;

(4) The license holder remains alive (see paragraph (d) of this section), in the case of a lifetime license or other license with no specified ending date; and

(5) If the license is valid for less than the number of years that it meets the minimum required revenue, or the license exceeds the life expectancy of the holder, the agency may count the license holder only for the number of years during which all certification requirements are met. For example, an agency may count for 12 certification periods a license holder who purchased a single-privilege, multiyear license that sells for \$25 and is valid for at least 12 years.

(d) The agency must use and document a reasonable technique for deciding how many multiyear-license holders remain alive in the certification period. Some examples of reasonable techniques are specific identification of license holders, statistical sampling, life-expectancy tables, and mortality tables. The agency may instead use 80 years of age as a default for life expectancy.

(e) For currently valid multiyear licenses sold prior to September 26, 2019 (the effective date of the rule promulgated at 84 FR 44772, August 27, 2019), an agency may apply the provisions of § 80.34 to those multiyear licenses under the following situations:

(1) All the requirements in paragraph (c) of this section are met.

(2) The agency may count a multiyear license holder only once in any certification period (see § 80.33) when the license holder purchased another license with the same privilege within an allowable future certification period.

(3) An agency must count the license holder only for the appropriate number of current or future certification periods. The provisions of § 80.34 are not retroactive to past certification periods.

(4) For an illustration of the applications provided in this paragraph (e), see table 1 to paragraph (e):

TABLE 1 TO PARAGRAPH (e)—SCENARIOS FOR COUNTING LICENSE HOLDERS UNDER THE REQUIREMENTS FOR GROSS REVENUE AT § 80.34

[For use in counting valid multiyear licenses sold prior to September 26, 2019.]

An agency sold a single-privilege multiyear license, valid for 10 years, for \$100 in 2014 (term of license 2014–2023):

Scenario 1	Scenario 2
The agency spent the money and was able to count the license during only one certification period based on the regulations promulgated in 2014.	The agency invested the funds into an annuity that produced enough income to allow the license holder to be counted in all certification periods since the date of the license sale.
Applying the standard at § 80.34(b)(1) to the original license cost results in a potential for 50 certification periods (\$100/\$2 per year = 50).	Applying the standard at § 80.34(b)(1) to the original license cost results in a potential for 50 certification periods (\$100/\$2 per year = 50).
After subtracting the 1 certification period that was already counted, 49 potential certification periods remain.	After subtracting the 6 (2014–2019) certification periods already counted, 44 potential certification periods remain.
Because the license is valid for only 10 years, and through 2023, under scenario 1 the agency could count the license holder only from 2019 through the end of the term of the license (2023) or an additional five certification periods.	Because the license is valid for only 10 years, under scenario 2 the agency could count the license holder in an additional four (2020–2023) certification periods.

§ 80.36 May a State fish and wildlife agency count license holders in the annual certification if the agency receives funds from the State or other entity to cover the holders' license fees?

If a State fish and wildlife agency receives funds from the State or other entity to cover fees for some license holders, the agency may count those license holders in the annual certification only under the following conditions:

(a) The State funds to cover license fees must come from a source other than hunting- and fishing-license revenue.

(b) The State must identify funds to cover license fees separately from other funds provided to the agency.

(c) The State fish and wildlife agency must receive at least the average amount of State-provided discretionary funds that it received for the administration of the State's fish and wildlife agency during the State's 5 previous fiscal years.

(1) State-provided discretionary funds are those from the State's general fund that the State may increase or decrease if it chooses to do so.

(2) Some State-provided funds are from special taxes, trust funds, gifts, bequests, or other sources specifically dedicated to the support of the State fish and wildlife agency. These funds typically fluctuate annually due to interest rates, sales, or other factors. They are not discretionary funds for purposes of this part as long as the State does not take any action to reduce the amount available to its fish and wildlife agency.

(d) The State fish and wildlife agency must receive and account for the State or other entity funds as license revenue.

(e) The State fish and wildlife agency must issue licenses in the license holder's name or by using a unique identifier that is traceable to the license

holder, who is verifiable in State records.

(f) The license fees must meet all other requirements in this part.

§ 80.37 May the State fish and wildlife agency certify a license sold at a discount?

Yes. A State fish and wildlife agency may certify a license that is sold at a discount if the agency meets the rules for minimum gross revenue at § 80.34.

§ 80.38 May a State fish and wildlife agency certify a license when an entity other than the agency offers a discount on a license or offers a free license?

A State fish and wildlife agency may certify a license when an entity other than the agency offers a license that costs less than the regulated price only if:

(a) The license is issued to the individual according to the requirements at § 80.33;

(b) The amount received by the agency meets all other requirements in this subpart; and

(c) The license meets any other conditions required by the agency.

§ 80.39 What must a State fish and wildlife agency do if it becomes aware of errors in its certified license data?

A State fish and wildlife agency must submit revised certified data on license holders within 90 days after it becomes aware of errors in its certified data. The State may become ineligible to participate in the benefits of the relevant Act if the State becomes aware of errors in its certified data and does not resubmit accurate certified data within 90 days.

§ 80.40 May the Service recalculate an apportionment if a State fish and wildlife agency submits revised data?

The Service may recalculate an apportionment of funds based on

revised certified license data under the following conditions:

(a) If the Service receives revised certified data for a pending apportionment before the Director approves the final apportionment, the Service may recalculate the pending apportionment.

(b) If the Service receives revised certified data for an apportionment after the Director has approved the final version of that apportionment, the Service may recalculate the apportionment only if it would not reduce funds to other State fish and wildlife agencies.

§ 80.41 May the Director correct a Service error in apportioning funds?

Yes. The Director may correct any error that the Service makes in apportioning funds.

Subpart E—Eligible Activities

§ 80.50 What activities are eligible for funding under the Wildlife Restoration Act?

The following activities are eligible for funding in these programs and subprograms under the Wildlife Restoration Act:

(a) *Traditional Wildlife Restoration program.* The following wildlife restoration projects and other associated activities are eligible for funding under apportionments authorized at 16 U.S.C. 669c(b).

(1) Restoring and managing wildlife for the benefit of the public.

(2) Conducting research on the problems of managing wildlife and its habitat if necessary to administer wildlife resources efficiently. This research may include social science activities.

(3) Obtaining data to guide and direct the regulation of hunting.

(4) Acquiring real property suitable or capable of being made suitable for:

(i) Wildlife habitat or management;
(ii) Providing public access for hunting or other wildlife-oriented recreation; or

(iii) Supporting other eligible activities described under this paragraph (a), including maintaining and operating property under the ownership or management control of the State fish and wildlife agency and that support eligible activities under the Wildlife Restoration Act.

(5) Wildlife restoration projects for restoring, rehabilitating, improving, managing, or maintaining areas of lands or waters as wildlife habitat.

(6) Building structures or acquiring equipment, goods, and services for:

(i) Restoring, rehabilitating, or improving lands or waters as wildlife habitat;

(ii) Supporting wildlife management;

(iii) Providing public access for hunting or other wildlife-oriented recreation; or

(iv) Supporting other eligible activities described under this paragraph (a), including maintaining and operating equipment under the ownership or management control of the State fish and wildlife agency and that support eligible activities under the Wildlife Restoration Act.

(7) Acquiring land for, expanding, or constructing public target ranges following the requirements of § 80.60 when combining up to 10 percent of annually apportioned Traditional Wildlife Restoration funds (16 U.S.C. 669c(b)) with Enhanced Hunter Education and Safety funds (16 U.S.C. 669h–1). When Traditional Wildlife Restoration funds are committed to the Wildlife Restoration for Public Target Ranges 90/10/5 subaccount, they are no longer eligible for Traditional Wildlife Restoration activities.

(8) Communicating with the public (see § 80.52(h)), including:

(i) Outreach and sharing information on award activities, accomplishments, performance, or other communication related to meeting the objectives of an award;

(ii) Providing the public with information on Wildlife Management Areas; public access for hunting or other wildlife-associated recreation; notices on safety, rule changes, and topics of interest to the public related to wildlife management; and other opportunities available to the public as a result of a Traditional Wildlife Restoration award;

(iii) Liaising with the media or other venues to provide public information related to the objectives of an award; or

(iv) Other forms of communication that support a State's wildlife

restoration and management objectives in an award.

(9) Public relations, advertising as a form of outreach, and marketing that are associated with achieving eligible objectives require prior approval of the Service. These activities are allowable only when included in the approach of an approved award to accomplish eligible activities and meet award objectives. Communication that solely benefits the agency is unallowable public relations and is not eligible for funding under the Act.

(b) *Basic Hunter Education and Safety subprogram and Hunter Recruitment and Recreational Shooter Recruitment.*

(1) The following activities are eligible under the Basic Hunter Education and Safety subprogram for activities authorized at 16 U.S.C. 669g(b):

(i) Teaching the skills, knowledge, and attitudes necessary to be a responsible hunter.

(ii) Developing and improving access to public target ranges by:

(A) Acquiring real property suitable or capable of being made suitable for public target ranges, including through licenses or third-party binding agreements that provide assurances for public access (see § 80.58).

(B) Constructing, upgrading, or restoring public target ranges to a useful condition.

(C) Operating or maintaining public target ranges.

(D) Acquiring land for, expanding, or constructing public target ranges as 90/10/5 projects following §§ 80.60 and 80.62.

(E) Constructing, operating, or maintaining educational facilities to support Hunter Education.

(2) The following activities are eligible when directly supporting recruiting, retaining, or reactivating hunters or recreational shooters (R3), as authorized at 16 U.S.C. 669c(c)(4).

(i) Communicating with hunters, recreational shooters, and the public about hunting and recreational shooting and associated opportunities by:

(A) Promoting conservation and the responsible use of the wildlife resources of the United States as part of an effort to recruit, retain, or reactivate hunters or recreational shooters.

(B) Promoting a State's R3 program, special events, and opportunities.

(C) Providing outreach on public target range availability, access, and locations.

(D) Marketing, publications, press releases, and media relations for content directly related to R3 activities.

(ii) Interpreting, translating, printing, or disseminating published State hunting regulations to inform and

educate the public about their responsibilities to comply with laws, orders, and regulations.

(iii) Using a State fish and wildlife agency's website, cell phone or software products, online support systems, or other appropriate communication tools to engage the public in activities supporting a State's R3 efforts (see § 80.55(c) for exclusions related to income-producing activities).

(iv) Supporting the scope and impact of a State's R3 program by:

(A) Reducing barriers to hunting and recreational shooting opportunities;

(B) Furthering safety in hunting and recreational shooting;

(C) Providing education, mentoring, field demonstrations, and other similar opportunities to recruit, retain, or reactivate hunters or recreational shooters;

(D) Constructing, operating, or maintaining educational facilities to the extent they support R3 activities;

(E) Supporting programs for hunting or recreational shooting that have been developed or are delivered by other entities; and

(F) Offering activities that support R3 for youth and beginner hunters or recreational shooters, such as R3 camps and mentoring programs.

(v) Constructing, operating, or maintaining public target ranges, including mobile public target ranges.

(vi) Educating the public about the role of hunting and recreational shooting in funding wildlife conservation.

(vii) Supplying services that support R3 activities, such as hunt guides, trainers for shooting, and celebrity endorsements.

(viii) Acquiring supplies that enhance the experience and skills for hunters and recreational shooters.

(ix) Engaging in other allowable activities that directly support recruiting, retaining, or reactivating hunters or recreational shooters.

(c) *Enhanced Hunter Education and Safety program.* The following activities are eligible under Enhanced Hunter Education and Safety for activities authorized at 16 U.S.C. 669h–1:

(1) Enhancing programs for hunter education, hunter development, and firearm and archery safety. Hunter-development programs introduce individuals to and recruit them to take part in hunting, bow hunting, target shooting, or archery.

(2) Enhancing interstate coordination and developing hunter-education and public target range programs.

(3) Enhancing programs for education, safety, or development of firearm and bow hunters and recreational shooters.

(4) Enhancing development, construction, upgrades, rehabilitation, and improved safety features at public target ranges.

(5) Acquiring real property suitable or capable of being made suitable for public target ranges.

(6) Enhancing operation and maintenance of public target ranges.

(7) Enhancing access for hunting and recreational shooting opportunities.

(8) Acquiring land for, expanding, or constructing public target ranges following the regulations at § 80.60.

(9) Enhancing the hunter and recreational shooter R3 activities listed at paragraph (b)(2) of this section.

§ 80.51 What activities are eligible for funding under the Sport Fish Restoration Act?

The following activities are eligible for funding in these programs and subprograms under the Sport Fish Restoration Act:

(a) *Sport Fish Restoration program.* The following fish restoration and management projects and other associated activities are eligible for funding under apportionments authorized at 16 U.S.C. 777c(c)(1).

(1) Restoring and managing sport fish for the benefit of the public.

(2) Conducting research on the problems of managing fish and their habitat and the problems of fish culture if necessary to administer sport fish resources efficiently. This research may include social science activities.

(3) Obtaining data to guide and direct the regulation of fishing. These data may be on:

(i) Size and geographic range of sport fish populations;

(ii) Changes in sport fish populations due to fishing, other human activities, or natural causes; and

(iii) Effects of any measures or regulations applied.

(4) Developing and adopting plans to restock sport fish and forage fish in the natural areas or districts covered by the plans and obtain data to develop, carry out, and test the effectiveness of the plans.

(5) Raise, acquire or stockfish for recreational purposes.

(6) Acquiring real property suitable or capable of being made suitable for:

(i) Sport fish habitat, as a buffer to protect that habitat, or sport fish management;

(ii) Providing public access for sport fishing; or

(iii) Supporting other eligible activities described under this paragraph (a).

(7) Implementing fish restoration and management projects to restore,

rehabilitate, improve, manage, or maintain:

(i) Aquatic areas adaptable for sport fish habitat; or

(ii) Land adaptable as a buffer to protect sport fish habitat.

(8) Building structures or acquiring equipment, goods, and services for:

(i) Restoring, rehabilitating, or improving aquatic habitat for sport fish or land as a buffer to protect aquatic habitat for sport fish;

(ii) Supporting sport fish management;

(iii) Providing public access for sport fishing; or

(iv) Supporting other eligible activities described under this paragraph (a).

(9) Constructing, renovating, operating, or maintaining pumpout and dump stations. A pumpout station is a facility that pumps or receives sewage from a type III marine sanitation device that the U.S. Coast Guard requires on some vessels. A dump station, also referred to as a “waste reception facility,” is specifically designed to receive waste from portable toilets on vessels.

(10) Communicating with the public (see § 80.52(h)) to include:

(i) Conducting outreach and sharing information on award activities, accomplishments, performance, or other communication related to meeting the objectives of an award;

(ii) Providing the public with information on sport fish management areas; public access for fishing or other sport fish-associated recreation; notices on safety, rule changes, and topics of interest to the public related to sport fish management; and other opportunities available to the public as a result of a Sport Fish Restoration award;

(iii) Liaising with the media or other venues to provide public information related to the objectives of an award; or

(iv) Engaging in other forms of communication that support a State’s sport fish restoration and management objectives in an award.

(11) Conducting public relations, advertising as a form of outreach, and marketing that are associated with achieving eligible objectives require prior approval of the Service. These activities are allowable only when included in the approach of an approved award to accomplish eligible activities and meet award objectives. Communication that solely benefits the agency is unallowable public relations and is not eligible for funding under the Act.

(b) *Sport Fish Restoration—Recreational Boating Access*

subprogram. (1) Conducting projects and activities that may include those for motorized or nonmotorized vessels and users.

(2) Acquiring real property, including water rights, suitable or capable of being made suitable for:

(i) Building, renovating, or improving facilities to create or enhance public access to the waters of the United States;

(ii) Improving the suitability of these waters for recreational boating; or

(iii) Providing benefits for recreational boating.

(3) Constructing a broad range of recreational boating access facilities that also may provide services or amenities to recreational boaters. “Facilities” includes auxiliary structures necessary to ensure safe use of recreational boating access facilities.

(4) Conducting surveys to determine the adequacy, number, location, and quality of facilities providing access to recreational waters for all sizes of recreational boats.

(5) Developing new, or redeveloping or expanding existing, boating access sites.

(c) *Sport Fish Restoration—Aquatic Resource Education subprogram.*

Enhancing the public’s understanding of water resources, aquatic life forms, and sport fishing, and developing responsible attitudes and ethics toward the aquatic environment.

(d) *Sport Fish Restoration—State Outreach and Communications subprogram.*

(1) Improving communications with anglers, boaters, and the public on sport fishing and boating opportunities.

(2) Interpreting, translating, printing, or disseminating published State fishing regulations to inform and educate the public about their responsibilities to comply with laws, orders, and regulations.

(3) Increasing participation in sport fishing and boating through R3 programs and activities.

(4) Advancing the adoption of sound fishing and boating practices including safety.

(5) Promoting conservation and responsible use of the aquatic resources of the United States.

§ 80.52 What activities are eligible for funding under all programs and subprograms under the Acts?

The following activities, when supporting other eligible activities under a program or subprogram and costs are allocated to the appropriate funding source, are eligible for funding:

(a) Conducting planning and compliance activities such as engineering, designing, surveying,

obtaining permits or appraisals, and conducting environmental and archeological assessments.

(b) Engaging in oversight activities related to an award, such as:

- (1) Monitoring, evaluating, and reporting;
- (2) Investigating noncompliance or diversions; and

(3) Protecting property rights for real property that is carrying out the purposes of the Acts.

(c) Maintaining and operating facilities and equipment under the ownership or management control of the State fish and wildlife agency, or under a third-party binding agreement, that support eligible activities under the Wildlife Restoration Act or Sport Fish Restoration Act.

(d) Covering costs associated with State electronic data systems (SEDS), when appropriately allocated and approved by the Service. A SEDS is an electronic system used by a State fish and wildlife agency to sell licenses or support other financial transactions, collect and manage data, and communicate information. The functions and abilities of a SEDS may vary depending on the State fish and wildlife agency needs and organization.

(e) Administering awards (see also § 80.54) and coordinating awards in associated programs and subprograms.

(f) Providing technical assistance.

(g) Making payments in lieu of taxes on real property under the control of the State fish and wildlife agency when the payment is:

- (1) Required by State or local law; and
- (2) Required for all State lands, including those acquired with Federal funds and those acquired with non-Federal funds.

(h) Communicating with the public on eligible activities in an award, when allowable under 2 CFR part 200, subpart E. This communication may include using various forms of media and technology and does not require prior approval (see also §§ 80.50(a)(8) and 80.51(a)(10)).

(i) Advertising (see 2 CFR 200.421) to hire personnel for eligible activities, for procuring goods or services for an eligible activity, or to inform the public or a target audience about events or opportunities that support purposes of the Acts.

§ 80.53 May an activity be eligible for funding if it is not explicitly eligible according to the regulations in this part?

Yes. An activity may be eligible for funding even if the regulations in this part do not explicitly designate it as an eligible activity if:

- (a) The State fish and wildlife agency justifies in the project statement how

the activity will help carry out the purposes of the program or subprogram under the Wildlife Restoration Act or the Sport Fish Restoration Act;

(b) The activities are allowable under 2 CFR part 200; and

(c) The Regional Director concurs with the justification.

§ 80.54 Are costs of State central services eligible for funding?

Yes. Administrative costs in the form of overhead or indirect costs for State central services outside of the State fish and wildlife agency are eligible for funding under the Acts and must follow an approved cost-allocation plan. These expenses must not exceed 3 percent of the funds apportioned annually to the State under the Acts.

§ 80.55 What activities are ineligible for funding?

The following activities are ineligible for funding under the Acts, except when necessary to carry out project purposes approved by the Regional Director:

(a) Law enforcement activities (see definition at § 80.2).

(b) The formal administrative process for establishing State fish and wildlife agency regulations. This process:

(1) Begins when boards, commissions, or other policymakers receive information and recommendations from State fish and wildlife agencies and use this input to develop and implement public policy.

(2) Involves official filing and publication of regulations, including State administrative procedures to officially adopt rules and laws to meet authoritative requirements.

(3) Includes printing and distributing the official code of regulations, or State equivalent, except as provided for under §§ 80.50(b)(2)(ii) and 80.51(d)(2) (which pertains to the agency's interpretive guides and regulatory resources for the public) for the purposes of R3.

(c) License sales and other activities conducted for the primary purpose of producing income. These activities include processes and procedures directly related to the sale of items listed at § 80.20(a).

(d) Activities, projects, or programs that promote or encourage opposition to the regulated taking of fish, hunting, or the trapping of wildlife.

(e) Activities or projects that do not provide public access when access is a purpose of the funding or an objective of the award (see § 80.58).

§ 80.56 May a State fish and wildlife agency receive an award to carry out part of a larger project?

Yes. A State fish and wildlife agency may receive an award to carry out part

of a larger project that uses funds unrelated to the award. The part of the larger project funded by the award must:

(a) Result in an identifiable outcome consistent with the purposes of the grant program;

(b) Be substantial in character and design (see § 80.57);

(c) Meet the requirements of §§ 80.130 through 80.137 for any real property acquired under the award and any capital improvements completed under the award; and

(d) Meet all other requirements of the grant program.

§ 80.57 How does a proposed project qualify as substantial in character and design?

A proposed project qualifies as substantial in character and design if it:

(a) Describes a need consistent with the Acts;

(b) States a purpose and sets objectives, both of which are based on the need;

(c) Uses a planned approach, appropriate procedures, and accepted principles of fish and wildlife conservation and management, research, construction, wildlife- and fish-associated-recreation participation and access, communication, education, or other eligible purposes; and

(d) Is cost effective.

§ 80.58 What are public access requirements for activities in an approved award under the Wildlife Restoration or Sport Fish Restoration programs?

(a) Public access is required for some eligible activities (see §§ 80.50 and 80.51) when supporting the purpose of an award.

(b) The State fish and wildlife agency has the authority, within the purposes of the Acts, to establish parameters for public access and may limit or restrict public access when the management of natural resources and public access are not compatible. Additionally, the agency may limit or restrict public access when the funded project or facility is closed for business or temporarily closed due to an emergency, repairs, construction, or as a safety precaution.

(c) When public access is required for projects and facilities that are under the ownership or management control of a third party, the State fish and wildlife agency, following its own State laws and processes, must ensure a legally binding instrument setting forth the terms and conditions, such as a subaward or third-party agreement, is in place as follows:

- (1) The instrument must be sufficient to ensure public access is provided as

expected by the agency and described in the approved award from the Service.

(2) The third-party binding agreement must include or reference agency approval for reasonable fees, any rules and requirements for use, circumstances for temporary closure or reduction to public access, duration of the agreement and any useful life expectations, and procedures for any modifications to the agreement.

(3) The Service does not have authority to approve or reject a State's third-party binding agreement but will include a special award term and condition to require minimum standards and that third-party binding agreements be maintained in agency award files and provided to the Service, upon request, for all awards where funds under the Acts are being used for renovating, constructing, operating, or maintaining property that a third party owns or controls.

Subpart F—Allocation of Funds by an Agency

§ 80.60 What is the relationship between the Traditional Wildlife Restoration Program, the Basic Hunter Education and Safety subprogram, and the Enhanced Hunter Education and Safety program for acquiring land for, expanding, or constructing public target ranges?

(a) The Target Practice and Marksmanship Training Support Act (Pub. L. 116–17, March 10, 2019) amended the Wildlife Restoration Act (16 U.S.C. 669 *et seq.*) to include activities for acquiring land for, expanding, or constructing public target ranges but does not authorize any new

sources of funding. The law became effective for States beginning October 1, 2019.

(b) When a State fish and wildlife agency allocates funds to activities for acquiring land for, expanding, or constructing public target ranges under this law, it may apply a 90 percent Federal/10 percent non-Federal cost share and funds are available for obligation up to 5 years, beginning October 1 of the year the funds first become available. We abbreviate this funding method as “90/10/5.”

(c) An agency may allocate annually apportioned funds for 90/10/5 activities from the Traditional Wildlife Restoration program (not to exceed 10 percent), Basic Hunter Education and Safety subprogram (any amount from 0 up to 100 percent), and/or Enhanced Hunter Education and Safety program (any amount from 0 up to 100 percent) to projects for acquiring land for, expanding, or constructing public target ranges. There is no requirement for States to allocate any amount of funds to 90/10/5 activities.

(d) When using up to 10 percent of annually apportioned Traditional Wildlife Restoration program funds for 90/10/5 activities, the funds must be allocated to the designated subaccount and must be used only for eligible 90/10/5 purposes. Some amount of available Enhanced Hunter Education and Safety program funds, at least \$1, must be combined with the Traditional Wildlife Restoration program funds allocated to 90/10/5 activities.

(e) An agency must allocate funds to a 90/10/5 subaccount within the FFY

that funds are first apportioned. Funds allocated to a 90/10/5 subaccount during a prior FFY must remain in that 90/10/5 subaccount for obligation during the period of availability and until expended.

(f) Acquiring land for, expanding, or constructing public target ranges may also be accomplished, in total or when combined with 90/10/5 funds, using funds under the Basic Hunter Education and Safety subprogram, the Enhanced Hunter Education and Safety program, or both, but the agency must apply cost share and period of availability according to table 1 to § 80.61.

§ 80.61 What sources of funding in the Wildlife Restoration Act may a State fish and wildlife agency use to support public target range projects, and may funds from multiple sources be used in a single award?

Table 1 to § 80.61 describes the sources of funding available for public target range projects and identifies their subaccount number. The Service uses subaccounts in the Department of the Interior's financial management system, the Financial and Business Management System or FBMS, to administer the specific use requirements for program and subprogram funding sources under the Acts. A State fish and wildlife agency may combine funds from multiple sources within the Act for eligible public target range activities. Your Regional OCI staff Wildlife and Sport Fish Restoration Program Office can provide technical assistance on best practices for allocating costs to multiple eligible funding sources.

TABLE 1 TO § 80.61

[BHE = Basic Hunter Education and Safety subprogram; EHE = Enhanced Hunter Education and Safety program; TWR = Traditional Wildlife Restoration program]

Program/subprogram	Funding source; method	Period available for obligation (years)	Cost share	Conditions	Eligible activities described in this part at:
Options for Funding Public Target Ranges					
Traditional Wildlife Restoration program (Subaccount 5222).	16 U.S.C. 669c(b); apportioned.	2	75 percent Federal/25 percent non-Federal.	May use apportioned funds for maintenance activities at public target ranges owned or under the management control of the agency; may allocate to 90/10/5 projects as described for subaccount 5252.	§ 80.50(a).
Traditional Wildlife Restoration program for Public Target Ranges (90/10/5) (Subaccount 5252).	16 U.S.C. 669c(b); allocated by an agency from TWR funds.	5	90 percent Federal/10 percent non-Federal.	May allocate up to 10 percent of TWR funds during the year apportioned to be combined with at least \$1 of EHE funds for acquiring land for, expanding, or constructing public target ranges.	§§ 80.50(a)(7) and 80.60.
Basic Hunter Education and Safety program for activities described at 16 U.S.C. 669g(b) (Subaccount 5221).	16 U.S.C. 669c(c); apportioned.	2	75 percent Federal/25 percent non-Federal.	May allocate up to 100 percent of apportioned funds for acquiring land for, constructing, operation of, and maintenance for public target ranges; does not have to be part of a hunter education program.	§ 80.50(b)(1).

TABLE 1 TO § 80.61—Continued

[BHE = Basic Hunter Education and Safety subprogram; EHE = Enhanced Hunter Education and Safety program; TWR = Traditional Wildlife Restoration program]

Program/subprogram	Funding source; method	Period available for obligation (years)	Cost share	Conditions	Eligible activities described in this part at:
Activities for hunter recruitment and recreational shooter recruitment as described at 16 U.S.C. 669c(c)(4) (Subaccount 5221).	16 U.S.C. 669c(c); assigned by an agency from BHE funds.	2	75 percent Federal/25 percent non-Federal.	May be used for constructing public target ranges or other eligible public target range activities that directly support R3.	§ 80.50(b)(2).
Basic Hunter Education and Safety subprogram for Public Target Ranges (90/10/5) (Subaccount 5251).	16 U.S.C. 669c(c); allocated by an agency from BHE funds.	5	90 percent Federal/10 percent non-Federal.	May allocate up to 100 percent of apportioned funds for acquiring land for, expanding, or constructing a public target range.	§§ 80.50(b)(1)(ii)(E) and 80.60.
Enhanced Hunter Education and Safety program (Subaccount 5231).	16 U.S.C. 669h–1; apportioned.	1	75 percent Federal/25 percent non-Federal.	May allocate up to 100 percent of apportioned funds for acquiring land for, constructing, developing, or improving safety features at public target ranges.	§ 80.50(c).
Enhanced Hunter Education and Safety program for Public Target Ranges (90/10/5) (Subaccount 5241).	16 U.S.C. 669h–1; allocated by an agency from EHE funds.	5	90 percent Federal/10 percent non-Federal.	May allocate up to 100 percent of apportioned funds for acquiring land for, expanding, or constructing a public target range.	§§ 80.50(c)(9) and 80.60.

§ 80.62 What are eligible and ineligible 90/10/5 activities?

(a) The following are eligible 90/10/5 activities:

(1) Acquiring real property suitable or capable of being made suitable for constructing or expanding public target ranges (see subpart J of this part).

(2) Acquiring title to real property with an existing target range when the acquisition will increase public access or includes construction or expansion activities on the existing target range.

(3) Constructing a public target range on land owned or under management control of the State fish and wildlife agency. Construction may occur on land when title is held by a third party provided the agency holds a lease or other third-party binding agreement under State law that ensures the terms and conditions of the award will be met.

(4) Constructing or acquiring a mobile public target range.

(5) Expanding the physical footprint or configuration of an existing public target range in a manner that increases range capacity to accommodate more participants, provides additional range activities or functions, or physically modifies to accommodate all participants, regardless of ability. Examples include adding more lanes at a range, adding structures that provide access that is compliant with the Americans With Disabilities Act (42 U.S.C. 12101 *et seq.*), and expanding the facility to provide new opportunities that did not exist before, such as adding an archery range to a former firearm-only facility.

(6) Coordinating 90/10/5 awards that directly support acquiring land for, constructing, or expanding public target ranges through necessary activities that

address planning, compliance, appraisals, engineering, and administering a project.

(7) Auxiliary activities and amenities that support the primary project and are necessary to the public's ability to fully utilize the public target range. Examples include public restrooms, storage facilities, protective bunkers and barriers, signs and markers, roads and parking areas, and utilities.

(8) Improvements may be approved if they are needed to prevent a public target range facility from becoming inoperable or suffering from significant diminished capacity. Consult with your Regional Wildlife and Sport Fish Restoration Program Office.

(9) Constructing or expanding public target range projects on federally owned land.

(b) The following are ineligible 90/10/5 activities:

(1) Operations at a public target range.

(2) Maintenance at a public target range, unless necessary for completing a project for constructing or expanding a public target range.

(3) Construction that is not to build a new or expand an existing public target range. This includes auxiliary activities and amenities not associated with an approved new or expansion project.

(4) Long-term monitoring of a public target range facility.

(5) Activities that do not provide or support new or increased physical capacity for public target ranges.

§ 80.63 What exception is provided for Enhanced Hunter Education and Safety program funds in relation to Basic Hunter Education and Safety program funds?

(a) If Basic Hunter Education and Safety program funds are fully obligated for activities listed at § 80.50(b)(1) (see

16 U.S.C. 669g(b)), the State fish and wildlife agency may use Enhanced Hunter Education and Safety program funds for Enhanced Hunter Education and Safety program eligible activities or may allocate any portion of that FFY's Enhanced Hunter Education and Safety program funds to any eligible activity under the Wildlife Restoration Act.

(b) If Basic Hunter Education and Safety program funds are used for R3 activities listed at § 80.50(b)(2), the exception set forth at paragraph (a) of this section does not apply and Enhanced Hunter Education and Safety program funds must be used for Enhanced Hunter Education and Safety program activities.

§ 80.64 What requirements apply to funds for the Recreational Boating Access subprogram?

The requirements of this section apply to allocating and obligating funds for the Recreational Boating Access subprogram.

(a) A State fish and wildlife agency must allocate funds from annual apportionments under the Sport Fish Restoration Act for use in the subprogram.

(b) Over each 5-year period, the total allocation for the subprogram in each of the Service's geographic regions must average at least 15 percent of the Sport Fish Restoration funds apportioned to the States in that Region. If this requirement is met, an individual State fish and wildlife agency may allocate more or less than 15 percent of its annual apportionment.

(c) The Regional Director calculates regional allocation averages for separate 5-year periods that coincide with FFYs 2023–2027, 2028–2032, 2033–2037, and each subsequent 5-year period.

(d) If the total regional allocation for a 5-year period is less than 15 percent, the State agencies may, in a memorandum of understanding, agree among themselves which of them will make the additional allocations to eliminate the regional shortfall.

(e) The regulations in this paragraph (e) apply if State fish and wildlife agencies in a Service region do not agree on which of them will make additional allocations to bring the average regional allocation to at least 15 percent over a 5-year period. If the agencies do not agree:

(1) The Regional Director may require States in the region to make changes needed to achieve the minimum 15-percent regional average before the end of the fifth year; and

(2) The Regional Director must not require a State to increase or decrease its allocation if the State has allocated at least 15 percent over the 5-year period.

(f) A Federal obligation of these allocated funds must occur by the end of the fourth consecutive FFY after the FFY in which the funds first became available for allocation.

(g) If the agency's application to use these funds has not led to a Federal obligation by that time, these allocated funds become available for reapportionment among the State fish and wildlife agencies for the following FFY.

§ 80.65 What limitations apply to spending on the Aquatic Resource Education and the State Outreach and Communications subprograms?

The limitations in this section apply to State fish and wildlife agency spending on the Aquatic Resource Education and State Outreach and Communications subprograms.

(a) Each State's fish and wildlife agency may spend a maximum of 15 percent of the annual amount apportioned to the State from the Sport Fish Restoration and Boating Trust Fund for activities in both subprograms. The 15-percent maximum applies to both subprograms as if they were one.

(b) The 15-percent maximum for the subprograms does not apply to the Commonwealths of Puerto Rico and the Northern Mariana Islands, the District of Columbia, and the Territories of Guam, the U.S. Virgin Islands, and American Samoa. These jurisdictions may spend more than 15 percent of their annual apportionments for both subprograms with the approval of the Regional Director.

§ 80.66 [Reserved]

§ 80.67 How does a State fish and wildlife agency allocate costs to an award in multipurpose projects and facilities?

A grant-funded project or facility is multipurpose if it carries out the purposes of:

(1) A single grant program under the Acts; and

(2) Another grant program, subprogram, a different funding source under the Acts, a grant program not under the Acts, or an activity unrelated to awards.

In accordance with 2 CFR 200.405, a State fish and wildlife agency must allocate costs in multipurpose projects based on eligible activities authorized, sources of funding, and the uses or benefits for each purpose that will result from the completed project or facility. The agency must describe the method used to allocate costs in multipurpose projects or facilities in the project statement included in the award application.

§ 80.68 Must a State fish and wildlife agency allocate funds between marine and freshwater fisheries projects?

Yes. Each coastal State's fish and wildlife agency must equitably allocate the funds apportioned under the Sport Fish Restoration Act between projects with benefits for marine fisheries and projects with benefits for freshwater fisheries.

(a) The subprograms authorized by the Sport Fish Restoration Act do not have to allocate funding in the same manner if the State fish and wildlife agency allocates Sport Fish Restoration funds equitably between marine and freshwater fisheries.

(b) The coastal States for purposes of this allocation are:

(1) Alabama, Alaska, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Oregon, Rhode Island, South Carolina, Texas, Virginia, and Washington;

(2) The Commonwealths of Puerto Rico and the Northern Mariana Islands; and

(3) The Territories of Guam, the U.S. Virgin Islands, and American Samoa.

§ 80.69 What requirements apply to allocation of funds between marine and freshwater fisheries projects?

The requirements of this section apply to allocation of funds between marine and freshwater fisheries projects.

(a) When a State fish and wildlife agency allocates funds, it must meet the following requirements:

(1) The ratio of total funds allocated for marine fisheries projects to total funds allocated for marine and freshwater fisheries projects combined must equal the ratio of resident marine anglers to the total number of resident anglers in the State; and

(2) The ratio of total funds allocated for freshwater fisheries projects to total funds allocated for marine and freshwater fisheries projects combined must equal the ratio of resident freshwater anglers to the total number of resident anglers in the State.

(b) A resident angler is one who fishes for recreational purposes in the same State where that person maintains legal residence.

(c) Agencies must determine the relative distribution of resident anglers in the State between those who fish in marine environments and those who fish in freshwater environments. Agencies must use the National Survey of Fishing, Hunting, and Wildlife-Associated Recreation, or another statistically reliable survey or technique approved by the Regional Director, for this purpose.

(d) If an agency uses statistical sampling to determine the relative distribution of resident anglers in the State between those who fish in marine environments and those who fish in freshwater environments, the sampling must be complete by the earlier of the following:

(1) Five years after the last statistical sample; or

(2) Before completing the first certification following any change in the licensing system that could affect the number of sportfishing license holders.

(e) The amounts allocated from each year's apportionment do not necessarily have to result in an equitable allocation for each year. However, the amounts allocated over a variable period, not to exceed 3 years, must result in an equitable allocation between marine and freshwater fisheries projects.

(f) Agencies that fail to allocate funds equitably between marine and freshwater fisheries projects may become ineligible to use Sport Fish Restoration program funds. These agencies must remain ineligible until corrective action is taken and the funds have been allocated equitably.

§ 80.70 May a State fish and wildlife agency finance an activity from more than one annual apportionment?

A State fish and wildlife agency may use funds from more than one annual apportionment to finance projects, such as construction or acquisition of lands or interests in lands, including water rights. An agency may use funds in this

manner, according to a plan approved by the Regional Director and subject to the availability of funds, in either of the following ways:

(a) Finance the entire cost of the acquisition or construction from a non-Federal funding source. The Service will reimburse funds to the agency in succeeding apportionment years.

(b) Negotiate an installment purchase or contract in which the agency pays periodic and specified amounts to the seller or contractor according to a plan that schedules either reimbursements or advances of funds immediately before need.

§ 80.71 What requirements apply to financing an activity from more than one annual apportionment?

The following conditions apply to financing an activity from more than one annual apportionment:

(a) A State fish and wildlife agency must agree to complete the project even if Federal funds are not available. If an agency does not complete the project, the agency must recover any expended Federal funds that did not result in commensurate wildlife or sport-fishery benefits. The agency must then reallocate the recovered funds to approved projects in the same program.

(b) The project statement included with the application must have a complete schedule of payments to finish the project.

(c) Interest and other financing costs may be allowable subject to the restrictions in the applicable Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200).

Subpart G—Applying for an Award

§ 80.80 [Reserved]

§ 80.81 What must a State fish and wildlife agency submit when applying for a comprehensive-management-system award?

A State fish and wildlife agency must submit the following documents when applying for a comprehensive-management-system award:

(a) The standard form for an application for Federal assistance in a mandatory grant program.

(b) A statement of cost estimates by subaccount. Agencies may obtain the subaccount numbers from the Regional Wildlife and Sport Fish Restoration Program Office.

(c) Supporting documentation explaining how the proposed work complies with the Acts, the regulations in this part, and other applicable laws and regulations.

(d) A statement of the agency's intent to carry out and fund part or all of its

comprehensive management system through an award.

(e) A description of the agency's comprehensive management system including inventory, strategic plan, operational plan, and evaluation. "Inventory" refers to the process or processes that an agency uses to:

(1) Determine actual, projected, and desired resource and asset status; and

(2) Identify management problems, issues, needs, and opportunities.

(f) A description of the State fish and wildlife agency program covered by the comprehensive management system.

(g) Contact information for the State fish and wildlife agency employee who is directly responsible for the integrity and operation of the comprehensive management system.

(h) A description of how the public can take part in decision making for the comprehensive management system.

§ 80.82 What must a State fish and wildlife agency submit when applying for a project-by-project award?

A State fish and wildlife agency must submit the following documents when applying for a project-by-project award:

(a) The standard form for an application for Federal assistance in a mandatory grant program.

(b) A project statement that describes each proposed project and provides the following information:

(1) *Need*. Explain why the project is necessary and how it fulfills the purposes of the relevant Act.

(2) *Purpose*. State the purpose and base it on the need. The purpose states the desired outcome of the proposed project in general or abstract terms.

(3) *Objectives*. State the objectives and base them on an identified need(s). The objectives state the desired outcome of the proposed project in terms that are specific and quantified.

(4) *Results*. Describe the results or benefits expected.

(5) *Approach*. Describe the methods used to achieve the stated objectives.

(6) *Useful life*. Propose a useful life for each capital improvement and reference the method used to determine the useful life of a capital improvement with a value greater than \$100,000.

(7) *Geographic location*. Describe the geographic location(s) where activities will occur. Maps or other geographic aids are encouraged and may be attached. Include geographic coordinates in decimal degrees, if relevant and available.

(8) *Principal investigator for research projects*. Record the principal investigator's name, work address, and work telephone number.

(9) *Program income*. (i) Estimate the amount of program income that the project is likely to generate.

(ii) Indicate the method or combination of methods (deduction, addition, or cost sharing) of applying program income to Federal and non-Federal outlays.

(iii) Request the Regional Director's approval for the additive or cost-sharing method. Describe how the agency proposes to use the program income and the expected results. Describe the essential need when using program income as cost sharing.

(iv) Indicate whether the agency wants to treat income that it earns after the period of performance as either license revenue or additional funding for purposes consistent with the award terms and conditions or program regulations.

(v) Indicate whether the agency wants to treat income that the subrecipient earns after the period of performance as license revenue, additional funding for the purposes consistent with the award or subprogram, or income subject only to the terms of the subaward agreement.

(10) *Budget narrative*. (i) Provide costs by project and subaccount with additional information sufficient to show that the project is cost effective.

Agencies may obtain the subaccount numbers from the Regional Wildlife and Sport Fish Restoration Program Office.

(ii) Describe any item that requires the Service's approval and estimate its cost. Examples are pre-award costs, capital improvements or expenditures, real property acquisitions, or equipment purchases.

(iii) Include a schedule of payments to finish the project if an agency proposes to use funds from two or more annual apportionments.

(11) *Multipurpose projects*. Describe the method for allocating costs in multipurpose projects and facilities as described in § 80.67.

(12) *Relationship with other awards*. Describe any relationship between this project and other work funded by Federal awards that is planned, anticipated, or under way.

(13) *Timeline*. Describe significant milestones in completing the project and any accomplishments to date.

(14) *General*. Provide information in the project statement that:

(i) Shows that the proposed activities are eligible for funding and substantial in character and design; and

(ii) Enables the Service to comply with the applicable requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 and 4331–4347), the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), the National

Historic Preservation Act (16 U.S.C. 470s), and other laws, regulations, and policies.

§ 80.83 What is the Federal share of allowable costs?

(a) Except as provided at paragraphs (e) and (f) of this section, the Regional Director must provide at least 10 percent and no more than 75 percent of the allowable costs of a grant-funded project to the fish and wildlife agencies of the 50 States. The Regional Director generally approves any Federal share from 10 to 75 percent as proposed by 1 of the 50 States if the:

- (1) Funds are available; and
- (2) Application is complete and consistent with laws, regulations, and policies.

(b) The Regional Director may provide funds to the District of Columbia to pay 75 to 100 percent of the allowable costs of a grant-funded project in a program or subprogram authorized by the Sport Fish Restoration Act. The decision on the specific Federal share between 75 and 100 percent will be based on what the Regional Director decides is fair, just, and equitable. The Regional Director may reduce the Federal share to less than 75 percent of allowable project costs only if the District of Columbia provides voluntary committed cost sharing to pay the remaining allowable costs. However, the Regional Director must not reduce the Federal share below 10 percent unless the procedure set forth at paragraph (e) of this section is followed.

(c) The Regional Director may provide funds to pay 75 to 100 percent of the allowable costs of a grant-funded project to the fish and wildlife agency of the Commonwealth of Puerto Rico. The decision on the specific Federal share between 75 and 100 percent will be based on what the Regional Director decides is fair, just, and equitable. The Regional Director may reduce the Federal share to less than 75 percent of allowable project costs only if the Commonwealth voluntarily provides cost sharing to pay the remaining allowable costs. However, the Regional Director must not reduce the Federal share below 10 percent unless the procedure set forth at paragraph (e) of this section is followed.

(d) The Regional Director must provide funds to pay 100 percent of the allowable costs of a grant-funded project to a fish and wildlife agency of the Commonwealth of the Northern Mariana

Islands and the Territories of Guam, the U.S. Virgin Islands, and American Samoa. The Service is required to waive all cost sharing requirements for these insular areas.

(e) The Regional Director may waive the 10-percent minimum Federal share of allowable costs if the State, District of Columbia, Commonwealth, or territory requests a waiver and provides compelling reasons to justify why it is necessary for the Federal Government to fund less than 10 percent of the allowable costs of a project.

(f) The Regional Director must provide no more than 90 percent of the allowable costs of a project to a State, the Commonwealth of Puerto Rico, or the District of Columbia for the purposes of acquiring land for, expanding, or constructing a public target range when the agency identifies a project that meets the criteria for 90/10/5 activities.

§ 80.84 How does the Service establish the non-Federal share of allowable costs?

(a) To establish the non-Federal share of a grant-funded project for the 50 States, the Regional Director approves an application for Federal assistance in which the State fish and wildlife agency proposes the specific non-Federal share by estimating the Federal and cost-sharing dollars, consistent with § 80.83(a), (e), and (f).

(b) To establish the non-Federal share of a grant-funded project for the District of Columbia and the Commonwealth of Puerto Rico, the Regional Director:

- (1) Decides which percentage is fair, just, and equitable for the Federal share consistent with § 80.83(b) and (c);
- (2) Subtracts the Federal share percentage from 100 percent to determine the percentage of non-Federal share; and
- (3) Applies the percentage of non-Federal share to the allowable costs of a grant-funded project to determine the cost sharing requirement.

(c) For the Commonwealth of the Northern Mariana Islands and the Territories of Guam, the U.S. Virgin Islands, and American Samoa (insular areas), the Service must waive all non-Federal cost sharing requirements (see 48 U.S.C. 1469a).

§ 80.85 What requirements apply to cost sharing?

(a) The requirements that apply to cost sharing are at 2 CFR 200.306.

(b) The State fish and wildlife agency must fulfill cost sharing requirements at the:

- (1) Award level if the award has funds from a single subaccount; or
- (2) Subaccount level if the award has funds from more than one subaccount.

Subpart H—General Award Administration

§ 80.90 [Reserved]

§ 80.91 What is a Federal obligation of funds, and how does it occur?

An obligation of funds is a legal liability to disburse funds immediately or later based on a series of actions. All these actions must occur to obligate funds for the formula-based grant programs authorized by the Acts:

(a) The Service sends to a State fish and wildlife agency an annual certificate of apportionment, which tells the agency how much funding is available according to formulas in the Acts.

(b) The agency sends the Regional Director an application for Federal assistance to use the funds available to the agency under the Acts and commits to provide the required cost sharing to carry out projects that are substantial in character and design.

(c) The Regional Director notifies the agency that the application for Federal assistance is approved and states the terms and conditions of the award.

(d) The agency accepts the terms and conditions of the award in one of the following ways:

- (1) Starts work on the grant-funded project by placing an order, entering into a contract, entering into a subaward, receiving goods or services, or otherwise incurring allowable costs during the period of performance that will require payment immediately or in the future;
- (2) Draws down funds for an allowable activity under the award; or
- (3) Accepts the award via electronic means.

§ 80.92 How long are funds available for a Federal obligation?

Funds are available for a Federal obligation starting October 1 of the FFY in which they are apportioned and for the number of years indicated in table 1 to § 80.92. Funds not obligated within the required period of availability will revert to the Service and be disbursed as described in the table.

TABLE 1 TO § 80.92

Program/subprogram	Period of availability for obligation (FFYs)	Disbursement of unobligated funds at the end of the period of availability for obligation
Wildlife Restoration Act		
Enhanced Hunter Education and Safety program	1	Reapportioned the following year only to States that have fully obligated the current year's Basic Hunter Education and Safety program funds to activities at 16 U.S.C. 669g(b) (see §§ 80.50(b) and 80.63).
Traditional Wildlife Restoration program	2	Made available to the Secretary for carrying out the provisions of the Migratory Bird Conservation Act (16 U.S.C. 715 <i>et seq.</i>); hereafter referred to as "migratory bird conservation" (see 16 U.S.C. 669b(a)(1)).
Basic Hunter Education and Safety subprogram	2	Migratory bird conservation.
Basic Hunter Education and Safety subprogram for R3 activities at 16 U.S.C. 669c(c)(4).	2	Migratory bird conservation.
Traditional Wildlife Restoration program for public target ranges (90/10/5).	5	Migratory bird conservation.
Basic Hunter Education and Safety subprogram for public target ranges (90/10/5).	5	Migratory bird conservation.
Enhanced Hunter Education and Safety program for public target ranges (90/10/5).	5	Reapportioned the following year only to States that have fully obligated the current year's Basic Hunter Education and Safety funds to activities at 16 U.S.C. 669g(b) (see §§ 80.50(b) and 80.63).
Sport Fish Restoration Act		
Sport Fish Restoration program	2	Available for expenditure by the Secretary of the Interior to supplement the Sport Fish Restoration apportionment, as provided for in 16 U.S.C. 777c(c), the following year.
Aquatic Resource Education program	2	Same as apportioned Sport Fish Restoration funds.
State Outreach and Communications program	2	Same as apportioned Sport Fish Restoration funds.
Recreational Boating Access subprogram	5	Same as apportioned Sport Fish Restoration funds.

§ 80.93 When may a State fish and wildlife agency incur costs under an award?

A State fish and wildlife agency may incur costs under an award from the effective date of the period of performance to the end of the period of performance except for pre-award costs that meet the conditions in § 80.94.

§ 80.94 May a State fish and wildlife agency incur costs before the beginning of the period of performance?

(a) A State fish and wildlife agency may incur costs of a proposed project before the beginning of the period of performance (*i.e.*, pre-award costs). However, the agency has no assurance that it will receive reimbursement until the Regional Director approves an award that incorporates a project statement demonstrating that the pre-award costs conform to all the conditions set forth in paragraph (b) of this section.

(b) Pre-award costs must meet the following requirements:

(1) The costs are necessary and reasonable for accomplishing the award objectives.

(2) The Regional Director would have approved the costs if the State fish and wildlife agency incurred them during the period of performance.

(3) The agency incurs these costs in anticipation of the award and in conformity with the negotiation of the award with the Regional Director.

(4) The activities associated with the pre-award costs comply with all laws, regulations, and policies applicable to a grant-funded project.

(5) The agency must:

(i) Obtain the Regional Director's concurrence that the Service will be able to comply with the applicable laws, regulations, and policies before the agency starts work on the ground; and

(ii) Provide the Service all the necessary information with enough lead time for the Service to comply with the applicable laws, regulations, and policies.

(6) The agency must not complete the project before the beginning of the period of performance unless the Regional Director concurs that doing so is necessary to take advantage of temporary circumstances favorable to the project or to meet legal deadlines. An agency completes a project when it incurs all costs and finishes all work necessary to achieve the project objectives.

(c) The agency can receive reimbursement for pre-award costs only after the beginning of the period of

performance, and, for activities requiring compliance, only after the compliance is satisfied.

§ 80.95 How does a State fish and wildlife agency receive Federal award funds?

(a) A State fish and wildlife agency may receive Federal award funds through either:

(1) A request for reimbursement; or

(2) A request for an advance of funds if the agency maintains or demonstrates that it will maintain procedures to minimize time between transfer of funds and disbursement by the agency or its subrecipient.

(b) An agency must use the following procedures to receive a reimbursement or an advance of funds:

(1) Request funds through an electronic payment system designated by the Regional Director; or

(2) Request funds on a standard form for that purpose only if the agency is unable to use the electronic payment system.

(c) The Regional Director will reimburse or advance funds only to the office or official designated by the agency and authorized by State law to receive public funds for the State.

(d) All payments are subject to final determination of allowability based on audit or a Service review. The State fish

and wildlife agency must repay any overpayment as directed by the Regional Director.

(e) The Regional Director may withhold payments pending receipt of all required reports or documentation for the project.

§ 80.96 May a State fish and wildlife agency use Federal funds without using cost sharing?

(a) The State fish and wildlife agency must not draw down any Federal funds for a grant-funded project under the Acts in greater proportion to the use of cost sharing than total Federal funds bear to total cost sharing unless:

(1) The recipient draws down Federal award funds to pay for construction, including land acquisition;

(2) A third-party in-kind contribution of cost sharing is not yet available for delivery to the recipient or subrecipient; or

(3) The project is not at the point where it can accommodate a third-party in-kind contribution.

(b) If an agency draws down Federal funds in greater proportion to the use of cost sharing than total Federal funds bear to total cost sharing under the conditions described at paragraphs (a)(1) through (3) of this section, the agency must:

(1) Obtain the Regional Director's prior approval; and

(2) Satisfy the project's cost sharing requirement before submitting the final Federal financial report.

§ 80.97 What is barter, and may a State fish and wildlife agency use barter of goods or services to carry out a grant-funded project?

(a) Barter is a nonmonetary exchange of goods or services with another entity (reciprocal transfer). If goods or services are given or received without expectation of a reciprocal transfer, the activity is not barter and is an expense of or donation to the agency.

(b) A State fish and wildlife agency may use barter to carry out a grant-funded project when following approved State policies and procedures

that comply with the generally accepted accounting practices as defined by the Governmental Accounting Standards Board. The State processes, as applied by the agency, may identify types of barter (e.g., cooperative farming or grazing) for which the agency will consider the barter transaction to be an even exchange.

§ 80.98 How must a State fish and wildlife agency include barter in an award and report barter transactions?

(a) A State fish and wildlife agency must identify when barter exchanges are anticipated in the project when applying for, or carrying out, an award. All activities included in a barter transaction are subject to Federal compliance requirements under an award.

(b) An agency must follow its State processes for authorizing, valuing, and documenting barter transactions, and report barter transactions under an award in the Federal financial report according to table 1 to § 80.98:

TABLE 1 TO § 80.98

If, following the State processes for barter transactions	Then the agency must
(1) The barter transaction is determined to be an even exchange of goods or services.	Disclose in the remarks section that the barter transaction(s) occurred, and the barter transaction(s) resulted in no gain or loss to the agency.
(2) The fair value of the goods or services provided by the State fish and wildlife agency exceeds the fair value of the goods and services received.	Disclose in the remarks section that the barter transaction(s) occurred and report the difference in fair value as award expenses in the Federal financial report.
(3) The fair value of the goods or services received exceeds the fair value of the goods and services the State fish and wildlife agency provided.	Disclose in the remarks section that the barter transaction(s) occurred and report the difference in fair value as program income in the Federal financial report.

§ 80.99 Are symbols available to identify projects?

Yes. The following distinctive symbols are available to identify projects funded by the Acts and products on which taxes and duties have been collected to support the Acts:

(a) The symbol of the Wildlife Restoration Act follows:

Image 1 to paragraph (a)



(b) The symbol of the Sport Fish Restoration Act follows:

Image 2 to paragraph (b)



(c) The symbol of the Acts when used in combination follows:

Image 3 to paragraph (c)



§ 80.100 Must a State fish and wildlife agency display one of the symbols set forth in this part on a completed project?

No. A State fish and wildlife agency is not required to display one of the symbols in § 80.99 on a project completed under the Acts.

(a) However, the Service encourages agencies to display the appropriate symbol on projects funded by the Acts. Appropriate use and requirements for symbols are as follows:

(1) An agency may display the appropriate symbol(s) on:

(i) Areas such as wildlife-management areas, shooting ranges, and sportfishing

and boating-access facilities that were acquired, developed, operated, or maintained with funds authorized by the Acts; and

(ii) Printed or web-based material or other visual representations of project accomplishments.

(2) An agency may establish a requirement for similar standards for displaying the appropriate symbol or symbols, in the places described in paragraph (a) of this section, that is passed through to subrecipients.

(3) An agency may use the symbols in a manner other than as described in paragraph (a) of this section if authorized by the Director or a Regional Director.

(b) The Director or Regional Director may authorize other persons, organizations, agencies, or governments to use the symbols for purposes related to the Acts.

(c) Restrictions and requirements on use of symbols for either agencies or other entities are as follows:

(1) Users of the symbol(s) indemnify and defend the United States and hold it harmless from any claims, suits, losses, and damages from:

(i) Any allegedly unauthorized use of any patent, process, idea, method, or device by the user in connection with its use of the symbol(s), or any other alleged action of the user; and

(ii) Any claims, suits, losses, and damages arising from alleged defects in the articles or services associated with the symbol(s).

(2) The appearance of the symbol(s) on projects or products indicates that the manufacturer of the product pays excise taxes in support of the respective Act(s) and that the project was funded under the respective Act(s) (26 U.S.C. 4161, 4162, 4181, 4182, 9503, and 9504). The Service and the Department of the Interior make no representation or endorsement whatsoever by the display of the symbol(s) as to the quality, utility, suitability, or safety of any product, service, or project associated with the symbol(s).

(3) No one may use any of the symbols in any other manner unless authorized by the Director or Regional Director. Unauthorized use of the symbol(s) is a violation of 18 U.S.C. 701 and subjects the violator to possible fines and imprisonment.

Subpart I—Program Income

§ 80.120 What is program income?

(a) Program income is gross income earned by the recipient or subrecipient that is directly generated by an award activity or earned as a result of the Federal award during the period of performance (see 2 CFR 200.1 and 200.307).

(b) Program income includes revenue from:

(1) Services performed under an award.

(2) Use or rental of real or personal property acquired, constructed, or managed with award funds.

(3) Payments by concessioners or contractors under an arrangement with the agency or subrecipient to provide a service in support of award objectives on real property acquired, constructed, or managed with award funds.

(4) Sale of items produced under an award.

(5) Fees collected by the agency for delivering or providing hunter education, aquatic education, or other courses.

(6) Royalties and license fees for copyrighted material, patents, and inventions developed as a result of an award.

(7) Sale of a product of mining, drilling, forestry, or agriculture during

the period of performance that supports the:

(i) Mining, drilling, forestry, or agriculture; or

(ii) Acquisition of the land on which these activities occurred.

(8) Barter transactions when the value of goods or services received exceeds the value of goods or services the agency provided.

(c) Program income does not include any of the following:

(1) Interest on award funds, rebates, credits, discounts, or refunds.

(2) Sales receipts retained by concessioners or contractors under an arrangement with the agency to provide a service in support of award objectives on real property acquired, constructed, or managed with award funds.

(3) Cash received by the agency or by volunteer instructors to cover incidental costs of hunter education, aquatic education, or other classes. Incidental costs are small amounts and typically not essential to the training delivery. Materials purchased at cost by the student, separate from course fees, are incidental costs.

(4) Proceeds from the sale of real property, equipment, or supplies.

§ 80.121 [Reserved]

§ 80.122 May a State fish and wildlife agency deduct the costs of generating program income from gross income?

(a) A State fish and wildlife agency may deduct the costs of generating program income from gross income when the agency calculates program income if the agency does not:

(1) Pay these costs with:

(i) Federal or cost-sharing funds under a Federal award; or

(ii) Federal funds unrelated to an award.

(2) Cover these costs by accepting:

(i) Cost-sharing contributions for a Federal award; or

(ii) Donations of services, personal property, or real property unrelated to a Federal award.

(b) Examples of costs of generating program income that may qualify for deduction from gross income if they are consistent with the regulations in paragraph (a) of this section are:

(1) The cost of estimating the amount of commercially acceptable timber in a forest and marking it for harvest if the commercial harvest is incidental to a grant-funded habitat-management or facilities-construction project.

(2) The cost of publishing research results as a pamphlet or book for sale if the publication is incidental to a grant-funded research project.

§ 80.123 [Reserved]

§ 80.124 How may a State fish and wildlife agency use unexpended program income?

A State fish and wildlife agency must spend program income before requesting additional payments under an award. If the agency has unexpended program income on its final Federal financial report, it may use the income under a subsequent award for any activity eligible for funding in the grant program that generated the program income.

§ 80.125 How must a State fish and wildlife agency treat income that it earns after the period of performance?

(a) The State fish and wildlife agency must treat income that it earns after the period of performance as either:

(1) License revenue for the administration of the agency; or

(2) Additional funding for purposes consistent with the award or the program.

(b) The agency must indicate its choice of one of the alternatives set forth in paragraph (a) of this section in the project statement that the agency submits with each application for Federal assistance. If the agency does not record its choice in the project statement, the agency must treat the income earned after the period of performance as license revenue.

§ 80.126 How must a State fish and wildlife agency treat income earned by a subrecipient after the period of performance?

(a) The State fish and wildlife agency must treat income earned by a subrecipient after the period of performance as:

(1) License revenue for the administration of the agency;

(2) Additional funding for purposes consistent with the award or the program; or

(3) Income subject only to the terms of the subaward agreement and any subsequent contractual agreements between the agency and the subrecipient.

(b) The agency must indicate its choice of one of the above alternatives in the project statement that the agency submits with each application for Federal assistance. If the agency does not indicate its choice in the project statement, the subrecipient does not have to account for any income earned after the period of performance unless required to do so in the subaward agreement or in any subsequent contractual agreement.

Subpart J—Real Property**§ 80.130 Must a State fish and wildlife agency hold title to real property acquired under an award?**

A State fish and wildlife agency must hold title to an ownership interest in real property acquired under an award to the extent possible under State law.

(a) Some States do not authorize their fish and wildlife agency to hold the title to real property that the agency manages. In these cases, the State or one of its administrative units may hold the title to grant-funded real property if the agency has the authority to manage the real property for its authorized purpose under the award. The agency, the State, or another administrative unit of State government must not hold title to an undivided ownership interest in the real property concurrently with a subrecipient or any other entity.

(b) An ownership interest is an interest in real property that gives the person who holds it the right to use and occupy a parcel of land or water and to exclude others. Ownership interests include fee and leasehold interests but not easements.

§ 80.131 Must a State fish and wildlife agency hold an easement acquired under an award?

A State fish and wildlife agency must hold an easement acquired under an award, but it may share certain rights or responsibilities as described in paragraph (b) of this section if consistent with State law.

(a) Any sharing of rights or responsibilities does not diminish the agency's responsibility to manage the easement for its authorized purpose.

(b) The agency may share the holding or enforcement of an easement only in the following situations:

(1) The State or an administrative unit of State government may hold an easement on behalf of its fish and wildlife agency.

(2) The agency may issue a subaward with the concurrent right to hold the easement to a nonprofit organization or to a local or Tribal government. A concurrent right to hold an easement means that both the State agency and the subrecipient hold the easement and share its rights and responsibilities.

(3) The agency may issue a subaward with a right of enforcement to a nonprofit organization or to a local or Tribal government. This right of enforcement may allow the subrecipient to have reasonable access and entry to property protected under the easement for purposes of inspection, monitoring, and enforcement. The subrecipient's right of enforcement must not supersede

and must be concurrent with the agency's right of enforcement.

§ 80.132 Must a State fish and wildlife agency have control over the land or water where it completes capital improvements?

Yes. A State fish and wildlife agency must control the parcel of land or water on which the agency completes a grant-funded capital improvement. An agency must exercise this control by holding title to a fee or leasehold interest or through another legally binding agreement. Control must be adequate for the protection, maintenance, and use of the improvement for its authorized purpose during its useful life even if the agency did not acquire the parcel with award funds.

§ 80.133 Must a State fish and wildlife agency maintain acquired or completed capital improvements?

Yes. A State fish and wildlife agency is responsible for maintaining capital improvements acquired or completed under an award to ensure that each capital improvement continues to serve its authorized purpose during its useful life.

§ 80.134 How must a State fish and wildlife agency use real property?

(a) If an award funds acquisition of an interest in a parcel of land or water, the State fish and wildlife agency must use the land or water for the purpose authorized in the award.

(b) If an award funds construction of a capital improvement, the agency must use the capital improvement for the purpose authorized in the award during the useful life of the capital improvement. The agency must comply with this requirement even if the agency did not use award funds to:

(1) Acquire the parcel on which the capital improvement is located; or

(2) Build the structure in which the capital improvement is a component.

(c) If an award funds management, operation, or maintenance of a parcel of land or water, or a capital improvement, the agency must use the parcel or capital improvement for the purpose authorized in the award during the period of performance. The agency must comply with this requirement even if the agency did not acquire the parcel or construct the capital improvement with award funds.

(d) A State agency may allow commercial, recreational, and other secondary uses of a grant-funded parcel of land or water or capital improvement if these secondary uses do not interfere with the authorized purpose of the award.

(e) Real property acquired with license revenue (see § 80.20(b)) must be

controlled by the State fish and wildlife agency and used only for administration of the agency (see § 80.10).

§ 80.135 What if a State fish and wildlife agency allows a use of real property that interferes with its authorized purpose?

(a) When a State fish and wildlife agency allows a use of real property that interferes with the authorized purpose of the real property under an award, the agency must fully restore the real property to its authorized purpose.

(b) If the agency cannot fully restore the real property to its authorized purpose, then the agency must replace the real property using non-Federal funds.

(c) The agency must determine that the replacement property:

(1) Is of at least equal value at current market prices; and

(2) Has fish-, wildlife-, and public-use benefits consistent with the purposes of the original award.

(d) The Regional Director may require the agency to obtain an appraisal and appraisal review to estimate the value of the replacement property at current market prices if the agency cannot support its assessment of value.

(e) The agency must obtain the Regional Director's approval of:

(1) The agency's determination of the value and benefits of the replacement property; and

(2) The documentation supporting this determination.

(f) The agency may have up to 3 years from the date of notification by the Regional Director to restore the real property to its authorized purpose or acquire replacement property. If the agency does not restore the real property to its authorized purpose or acquire replacement property within 3 years, the Director may declare the agency ineligible to receive new awards in the program or programs that funded the original acquisition.

§ 80.136 Is it a diversion if a State fish and wildlife agency does not use real property acquired under an award for its authorized purpose?

If a State fish and wildlife agency does not use real property acquired under an award for its authorized purpose, a diversion occurs only if both of the following conditions apply:

(a) The agency used license revenue as cost sharing for the award; and

(b) The unauthorized use is for a purpose other than management of the fish-and-wildlife-related resources for which the agency has authority under State law.

§ 80.137 What if real property is no longer useful or needed for its original purpose?

If the director of the State fish and wildlife agency and the Regional Director jointly decide that real property acquired with award funds is no longer useful or needed for the original purpose of the real property under the award, the director of the agency must:

(a) Propose another eligible purpose for the real property under the grant program and ask the Regional Director to approve this proposed purpose; or

(b) Follow the regulations at 2 CFR 200.311 and consult with the Regional Director on how to treat proceeds from the disposition of real property.

Subpart K—Revisions and Appeals**§ 80.150 How does a State fish and wildlife agency revise an award?**

(a) A State fish and wildlife agency requests approval for a revision to a project or award by providing the Service the following documents:

(1) The Office of Management and Budget (OMB)-approved common application information for Federal assistance, approved by the director of the agency or the director's designee, to update or request a change in the information that the agency submitted in an approved application.

(2) A statement that explains:

(i) How the requested revision would affect the information that the agency submitted with the original grant application; and

(ii) Why the requested revision is necessary.

(b) If the State maintains the process under Executive Order 12372, Intergovernmental Review of Federal Programs, the agency must follow its processes for sending any requested revision of the purpose or objectives of a project or award to the State Clearinghouse or Single Point of Contact.

§ 80.151 May a State fish and wildlife agency appeal a decision?

Yes. A State fish and wildlife agency may appeal the Director's or Regional Director's decision on any matter subject to this part.

(a) The agency must send the appeal to the Director within 30 days of the date that the Director or Regional Director mails or otherwise informs an agency of a decision.

(b) The agency may appeal the Director's decision on an appeal made under paragraph (a) of this section to the Secretary. An appeal to the Secretary must be made within 30 days of the date the decision was mailed and must follow procedures in 43 CFR part 4, subpart G.

Subpart L—Information Collection**§ 80.160 What are the information collection requirements of this part?**

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this part 80 and assigned the following OMB Control Numbers 1018–0088, “National Survey of Fishing, Hunting, and Wildlife-Associated Recreation (FHWAR)” and 1018–0100, “Administrative Procedures for U.S. Fish and Wildlife Service Financial Assistance Programs.” Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Direct comments regarding the burden estimate or any other aspect of the information collection to the Service's Information Collection Clearance Officer at the address provided at 50 CFR 2.1(b).

Kevin Lilly,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks, Exercising the Delegated Authority of the Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2026–00676 Filed 1–14–26; 8:45 am]

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Part III

Environmental Protection Agency

40 CFR Part 60

New Source Performance Standards Review for Stationary Combustion
Turbines and Stationary Gas Turbines; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA-HQ-OAR-2024-0419; FRL-11542-02-OAR]

RIN 2060-AW21

New Source Performance Standards Review for Stationary Combustion Turbines and Stationary Gas Turbines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA, or Agency) is finalizing amendments to the new source performance standards (NSPS) for stationary combustion turbines and stationary gas turbines pursuant to a review required by the Clean Air Act (CAA). As a result of this review, the EPA is establishing subcategories for new, modified, or reconstructed stationary combustion turbines based on size, rates of utilization, design efficiency, and fuel type. The EPA determined that combustion controls are the best system of emission reduction (BSER) for nitrogen oxide (NO_x) emissions for most new, modified, or reconstructed stationary combustion turbines. For one subcategory, the BSER for NO_x is combustion controls with the addition of selective catalytic reduction (SCR). The EPA further determined that the BSER for sulfur dioxide (SO₂) emissions has not changed since the last NSPS review. Based on these determinations, the Agency is promulgating standards of performance in a new subpart of the Code of Federal Regulations (CFR). The Agency is also adding a subcategory for stationary combustion turbines that are used in temporary applications, exempting certain sources from title V requirements, and finalizing other provisions. The EPA is finalizing amendments to existing regulations to address or clarify specific technical and editorial issues.

DATES: This final rule is effective on January 15, 2026. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of January 15, 2026. The incorporation by reference of certain other material listed in the rule was approved by the Director of the Federal Register as of July 8, 2004, and July 6, 2006.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2024-0419. All documents in the docket are listed on

the <https://www.regulations.gov> website. Although listed, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only as portable document format (PDF) versions that can only be accessed on the EPA computers in the docket office reading room. Certain databases and physical items cannot be downloaded from the docket but may be requested by contacting the docket office at (202) 566-1744. The docket office has up to 10 business days to respond to these requests. Except for such material, all documents are available electronically in *Regulations.gov* or on the EPA computers in the docket office reading room at the EPA Docket Center, WJC West Building, Room Number 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: For information about this final rule, contact John Ashley, Industrial Processing and Power Division (D243-02), Office of Clean Air Programs, U.S. Environmental Protection Agency, 109 T.W. Alexander Drive, P.O. Box 12055, RTP, North Carolina 27711; telephone number: (919) 541-1458; and email address: ashley.john@epa.gov.

SUPPLEMENTARY INFORMATION:

Preamble acronyms and abbreviations. Throughout this document the use of “we,” “us,” or “our” is intended to refer to the EPA. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

ANSI American National Standards Institute
ASME American Society of Mechanical Engineers
ASTM American Society for Testing and Materials
BPT benefit-per-ton
BSER best system of emission reduction
Btu British thermal unit
CAA Clean Air Act
CAMPD Clean Air Markets Program Data
CBI Confidential Business Information
CDX Central Data Exchange

CEDRI Compliance and Emissions Data Reporting Interface
CEMS continuous emissions monitoring system
CFR Code of Federal Regulations
CHP combined heat and power
CMS continuous monitoring system
CO carbon monoxide
CO₂ carbon dioxide
DLE dry low-emission
DLN dry low-NO_x
EIA Economic Impact Analysis
EPA Environmental Protection Agency
ERT Electronic Reporting Tool
FR Federal Register
GE General Electric
GHG greenhouse gas
GJ gigajoule(s)
gr grains
HAP hazardous air pollutant
HHV higher heating value
HRSG heat recovery steam generator
ICR information collection request
ISA Integrated Science Assessment
kW kilowatt
LAER lowest achievable emission rate
LCOE leveled cost of electricity
lb/MWh pounds per megawatt-hour
lb/MMBtu pounds per million British thermal units
MJ megajoules
MMBtu/h million British thermal units per hour
MW megawatt
MWh megawatt-hour
NAICS North American Industry Classification System
NEI National Emissions Inventory
NESHAP national emission standards for hazardous air pollutants
NETL National Energy Technology Laboratory
ng/J nanograms per joule
NO_x nitrogen oxide
NSPS new source performance standards
NSR New Source Review
NSSN National Standards System Network
NTTAA National Technology Transfer and Advancement Act
O₂ oxygen gas
O&M operating and maintenance
OEM original equipment manufacturers
OMB Office of Management and Budget
PDF portable document format
PM particulate matter
PM_{2.5} particulate matter (diameter less than or equal to 2.5 micrometers)
ppm parts per million
ppmv parts per million by volume
ppmvd parts per million by volume dry
ppmw parts per million by weight
PRA Paperwork Reduction Act
PSD Prevention of Significant Deterioration
RATA relative accuracy test audit
RFA Regulatory Flexibility Act
RICE reciprocating internal combustion engines
scf standard cubic feet
scm standard cubic meter
SCR selective catalytic reduction
SO₂ sulfur dioxide
SSM startup, shutdown, and malfunction
ULSD ultra-low-sulfur diesel
UMRA Unfunded Mandates Reform Act
U.S.C. United States Code
VCS voluntary consensus standard

VOC volatile organic compound(s)

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 - C. Paperwork Reduction Act (PRA)
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 - E. Unfunded Mandates Reform Act (UMRA)
 - F. Executive Order 13132: Federalism
 - G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
 - H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
 - I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
 - J. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51
 - K. Congressional Review Act (CRA)

I. General Information

A. Does this action apply to me?

The source category that is the subject of this final action is composed of stationary combustion turbines and stationary gas turbines regulated under CAA section 111. Based on the number of sources of stationary combustion turbines listed in the 2020 National Emissions Inventory (NEI), most, but not all, are accounted for by the following 2022 North American Industry Classification System (NAICS) codes. These include 2111 (Oil and Gas Extraction), 2211 (Electric Power Generation, Transmission, and Distribution), 2212 (Natural Gas Distribution), 3251 (Basic Chemical Manufacturing), 4862 (Pipeline Transportation of Natural Gas), and 518210 (Data Processing, Hosting, and Related Services). The NAICS codes serve as a guide for readers outlining the types of entities that this final action is likely to affect.

The NSPS codified in 40 CFR part 60, subpart KKKKa, are directly applicable to affected facilities that began construction, modification, or reconstruction after December 13, 2024. Federal, State, local, and Tribal government entities that own and/or operate stationary combustion turbines subject to 40 CFR part 60, subpart KKKKa, are affected by these amendments and standards. If you have any questions regarding the applicability of this action to a particular entity, you should carefully examine the applicability criteria found in 40 CFR part 60, subparts GG, KKKK, and KKKKa, and consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble, your State air pollution control agency with delegated authority for NSPS, or your EPA Regional Office.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this final action is available on the internet at <https://www.epa.gov/stationary-sources-air-pollution/stationary-gas-and-combustion-turbines-new-source-performance>. Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the final rule and key technical documents at this same website.

C. Judicial Review and Administrative Review

Under CAA section 307(b)(1), judicial review of this final action is available only by filing a petition for review in

the United States Court of Appeals for the District of Columbia Circuit by March 16, 2026. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

CAA section 307(d)(7)(B) further provides that “[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review.” This section also provides a mechanism for the EPA to convene a proceeding for reconsideration “[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment, (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.” Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, U.S. Environmental Protection Agency, Room 3000, WJC South Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

II. Background

A. What is the statutory authority for this final action?

The EPA’s authority for this final rule is CAA section 111, which governs the establishment of standards of performance for stationary sources. CAA section 111(b)(1)(A) requires the EPA Administrator to promulgate a list of categories of stationary sources that the Administrator, “in his judgment,” finds “causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.” The EPA has the authority under this section to define the scope of the source categories; to determine, consistent with the statutory requirements, the pollutants for which standards should be developed; and to distinguish among classes, types, and sizes within categories in establishing

the standards.¹ Once the EPA lists a source category that contributes significantly to dangerous air pollution, the EPA must, under CAA section 111(b)(1)(B), establish “standards of performance” for “new sources” in the source category. These standards are referred to as new source performance standards, or NSPS. The NSPS are national requirements that apply directly to the sources subject to them.

Under CAA section 111(a)(1), a “standard of performance” is defined as “a standard for emissions of air pollutants” that is determined in a specified manner. When the EPA establishes or revises a performance standard, CAA section 111(a)(1) provides that such standard must “reflect[] the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.” Thus, the term “standard of performance” as used in CAA section 111 makes clear that the EPA must determine both the “best system of emission reduction . . . adequately demonstrated” (BSER) for emissions of the relevant air pollutants by regulated sources in the source category and the “degree of emission limitation achievable through the application of the [BSER].”² As explained further below, to determine the BSER, the EPA first identifies the “system[s] of emission reduction” that are “adequately demonstrated,” and then determines the “best” of those adequately demonstrated systems, “taking into account” factors including “cost,” “nonair quality health and environmental impact,” and “energy requirements.” The EPA then derives from that system an “achievable” “degree of emission limitation.” The EPA must then, under CAA section 111(b)(1)(B), promulgate “standard[s] for emissions”—the NSPS—that reflect that level of stringency. The EPA may determine that different sets of sources have different characteristics relevant for determining the BSER for emissions of the relevant air pollutants and may subcategorize sources accordingly.³ CAA section 111(b)(5) generally precludes the EPA from prescribing a particular technological system that must be used to comply with a standard

of performance. Rather, sources can select any measure or combination of measures that will achieve the standard.

Pursuant to the definition of new source in CAA section 111(a)(2), standards of performance apply to facilities that begin construction, modification, or reconstruction after the date of publication of the proposed standards in the **Federal Register**. Under CAA section 111(a)(4), “modification” means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted. Changes to an existing facility that do not result in an increase in emissions are not considered modifications. Under the provisions in 40 CFR 60.15, reconstruction means the replacement of components of an existing facility such that: (1) the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility; and (2) it is technologically and economically feasible to meet the applicable standards. Pursuant to CAA section 111(b)(1)(B), the standards of performance or revisions thereof shall become effective upon promulgation.

1. Key Elements of Determining a Standard of Performance

Congress first defined the term “standard of performance” when enacting CAA section 111 in the 1970 Clean Air Act, amended the definition in the Clean Air Act Amendments (CAAA) of 1977, and then amended the definition again in the 1990 CAAA to largely restore the definition as it read in the 1970 CAA. The D.C. Circuit has reviewed CAA section 111 rulemakings on numerous occasions since 1973 and has developed a body of caselaw that interprets the term.⁴

The basis for standards of performance is the “degree of emission limitation” that is “achievable” by sources in the source category by application of the “best system of emission reduction” that the EPA determines is “adequately demonstrated” (BSER). As explained further below in this section, the D.C.

Circuit has explained that systems are not “adequately demonstrated” if they are “purely theoretical or experimental.”⁵ The D.C. Circuit has stated that in determining the “best” adequately demonstrated system for the pollutants at issue, the EPA must also take into account “the amount of air pollution” reduced.⁶ The D.C. Circuit has also stated that the EPA may weigh the various factors identified in the statute and caselaw to determine the “best” system and has emphasized that the EPA has significant discretion in weighing the factors.⁷

After determining the BSER, the EPA sets an achievable emission limit based on application of the BSER.⁸ For a CAA section 111(b) rule, the EPA determines the standard of performance that reflects the achievable emission limit. For a CAA section 111(d) rule, the States have the obligation of establishing standards of performance for the affected sources that reflect the degree of emission limitation that the EPA has determined and provided to States as part of an emission guideline. In applying these standards to existing sources, States are permitted to take a source’s remaining useful life and other factors into account.

In identifying “system[s] of emission reduction, the EPA has historically followed a “technology-based approach” that focuses on “measures that improve the pollution performance of individual sources,” such as “add-on controls.”⁹ The EPA departed from its historical approach in a significant way in the 2015 Clean Power Plan (CPP)¹⁰ by setting a BSER in which the “system” of emissions reduction involved shifting electricity generation from one type of fuel to another. In *West Virginia v. EPA*, the Supreme Court applied the major questions doctrine to hold that the term “system” did not provide the requisite clear authorization to support the CPP’s BSER, which the Court described as “carbon emissions

⁵ *Essex Chem. Corp. v. Ruckelshaus*, 486 F.2d 427, 433–34 (D.C. Cir. 1973).

⁶ See *Sierra Club v. Costle*, 657 F.2d 298, 326 (D.C. Cir. 1981). The D.C. Circuit has stated that EPA must also take into account “technological innovation.” See *id.* at 347.

⁷ See *Lignite Energy Council*, 198 F.3d at 933 (“Because section 111 does not set forth the weight that should be assigned to each of these factors, we have granted the agency a great degree of discretion in balancing them.”).

⁸ See, e.g., Oil and Natural Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air pollutants Reviews (77 FR 49494; August 16, 2012) (describing the three-step analysis in setting a standard of performance).

⁹ See *West Virginia v. EPA*, 597 U.S. at 727 (internal quotations removed).

¹⁰ 80 FR 64662 (Oct. 23, 2015).

¹ 42 U.S.C. 7411(b)(2) provides the EPA the authority to establish subcategories.

² *West Virginia v. EPA*, 597 U.S. 697, 709 (2022).

³ 42 U.S.C. 7411(b)(2).

⁴ *Portland Cement Ass’n v. Ruckelshaus*, 486 F.2d 375 (D.C. Cir. 1973); *Essex Chemical Corp. v. Ruckelshaus*, 486 F.2d 427 (D.C. Cir. 1973); *Sierra Club v. Costle*, 657 F.2d 298 (D.C. Cir. 1981); *Lignite Energy Council v. EPA*, 198 F.3d 930 (D.C. Cir. 1999); *Portland Cement Ass’n v. EPA*, 665 F.3d 177 (D.C. Cir. 2011); *American Lung Ass’n v. EPA*, 985 F.3d 914 (D.C. Cir. 2021), *rev’d in part*, *West Virginia v. EPA*, 597 U.S. 697 (2022). See also *Delaware v. EPA*, 785 F.3d 1 (D.C. Cir. 2015).

caps based on a generation shifting approach”¹¹ that capped “emissions at a level that will force a nationwide transition away from the use of coal to generate electricity[.]”¹² The Court explained that the EPA’s BSER “forc[es] a shift throughout the power grid from one type of energy source to another,” which constituted “‘unprecedented power over American industry’” and was different in kind from the type of “system” of emissions reduction envisioned by CAA section 111(d).¹³

To qualify for selection as the BSER, the system of emission reduction must be “adequately demonstrated” as “the Administrator determines.” The plain text of CAA section 111(a)(1), and in particular the terms “adequately” and “the Administrator determines,” confer discretion to the EPA in identifying the appropriate system, including making scientific and technological determinations and considering a broad range of policy considerations.¹⁴ However, the terms “adequately” and “demonstrated,” as well as applicable caselaw, make clear that the EPA may not determine that a “purely theoretical or experimental” system is “adequately demonstrated.”¹⁵

In addition, CAA section 111(a)(1) requires the EPA to account for “the cost of achieving [the emission] reduction” in determining the adequately demonstrated BSER. Although the CAA does not describe how the EPA is to account for costs to affected sources, the D.C. Circuit has formulated the cost standard in various ways, including stating that the EPA may not adopt a standard the cost of which would be “excessive” or “unreasonable.”¹⁶ The EPA has considerable discretion in considering cost under section 111(a), both in determining the appropriate level of costs and in balancing costs with other BSER factors.¹⁷ The D.C. Circuit has repeatedly upheld the EPA’s

consideration of cost in reviewing standards of performance.¹⁸

The Agency does not apply a brightline test in determining what level of cost is reasonable. In evaluating whether the cost reasonableness of a particular system of emission reduction, the EPA considers various costs associated with the particular air pollution control measure or a level of control, including capital costs and operating costs, and the emission reductions that the control measure or particular level of control can achieve. The Agency considers these costs in the context of the industry’s overall capital expenditures and revenues. The Agency also considers cost effectiveness analysis as a useful metric, and a means of evaluating whether a given control achieves emission reduction at a reasonable cost. A cost effectiveness analysis allows comparisons of relative costs and outcomes (effects) of two or more options. In general, cost effectiveness is a measure of the outcomes produced by resources spent. In the context of air pollution control options, cost effectiveness typically refers to the annualized cost of implementing an air pollution control option divided by the amount of pollutant reductions realized annually. Notably, a cost effectiveness analysis is not intended to constitute or approximate a benefit-cost analysis in which benefits are compared to costs but rather is intended to provide a metric to compare the relative cost of different air pollution control options. The EPA typically has considered cost effectiveness along with various associated cost metrics, such as capital costs and operating costs, total costs, costs as a percentage of capital for a new facility, and the cost per unit of production. In many contexts, the cost per unit of production may be passed on to consumers, including ratepayers in the utility context and consumers of end products in other contexts.

Under CAA section 111(a)(1), the EPA is required to take into account “any nonair quality health and environmental impact and energy requirements” in determining the BSER. Nonair quality health and environmental impacts may include the impacts of the disposal of byproducts of the air pollution controls, or requirements of the air pollution control equipment for water.¹⁹ Energy

requirements may include the impact, if any, of the air pollution controls on the source’s own energy needs.²⁰ In addition, based on the D.C. Circuit’s interpretations of CAA section 111, energy requirements may also include the impact, if any, of the air pollution controls on the energy supply for a particular area or nationwide.²¹ In addition, the EPA has considered under this statutory factor whether possible controls would create risks to the reliability of the electricity system.

After the EPA evaluates the statutory factors with respect to adequately demonstrated control technologies, the EPA compares the various systems of emission reductions and determines which system is “best,” and therefore represents the BSER. The D.C. Circuit has also held that the term “best” authorizes the EPA to consider factors in addition to the ones enumerated in CAA section 111(a)(1) that further the purpose of the statute. In particular, consistent with the plain language and the purpose of CAA section 111(a)(1), which requires the EPA to determine the “best system of *emission reduction*” (emphasis added), the EPA must consider the quantity of emissions at issue.²² In determining which adequately demonstrated system of emission reduction is the “best,” the EPA has broad discretion. In *Sierra Club v. Costle*, 657 F.2d 298 (D.C. Cir. 1981), the court explained that “section 111(a) explicitly instructs the EPA to balance multiple concerns when promulgating a NSPS”²³ and emphasized that “[t]he text gives the EPA broad discretion to weigh different factors in setting the standard,” including the amount of emission reductions, the cost of the controls, and the non-air quality environmental impacts and energy requirements.²⁴

The EPA then establishes a standard of performance that reflects the degree of emission limitation achievable through the implementation of the BSER. A standard of performance is

¹¹ *West Virginia v. EPA*, 597 U.S. at 732.

¹² *Id.* at 734.

¹³ *Id.* at 728 (citation omitted).

¹⁴ *Nat’l Asphalt Pavement Ass’n v. Train*, 539 F.2d 775, 786 (D.C. Cir. 1976); *Essex Chem. Corp. v. Ruckelshaus*, 486 F.2d 427, 434 (D.C. Cir. 1973).

¹⁵ *Essex Chem. Corp.*, 486 F.2d at 433–34; see *Portland Cement Ass’n v. Ruckelshaus*, 486 F.2d 375, 391–92 (D.C. Cir. 1973) (EPA may not base an “adequately demonstrated” determination on a “‘crystal ball’ inquiry”) (citation omitted).

¹⁶ *Sierra Club v. Costle*, 657 F.2d 298, 343 (D.C. Cir. 1981). See 79 FR 1430, 1464 (January 8, 2014); *Lignite Energy Council*, 198 F.3d at 933 (costs may not be “exorbitant”); *Portland Cement Ass’n v. EPA*, 513 F.2d 506, 508 (D.C. Cir. 1975) (costs may not be “greater than the industry could bear and survive”).

¹⁷ *Sierra Club v. Costle*, 657 F.2d 298, 343 (D.C. Cir. 1981).

¹⁸ See *Essex Chemical Corp. v. Ruckelshaus*, 486 F.2d 427, 440 (D.C. Cir. 1973); *Portland Cement Ass’n v. Ruckelshaus*, 486 F.2d 375, 387–88 (D.C. Cir. 1973); *Sierra Club v. Costle*, 657 F.2d 298, 313 (D.C. Cir. 1981).

¹⁹ *Portland Cement Ass’n v. Ruckelshaus*, 465 F.2d 375, 387–88 (D.C. Cir. 1973), cert. denied, 417 U.S. 921 (1974).

²⁰ For details on the modeled energy requirements associated with CCS, please see section 6.4 of the RIA for this rule.

²¹ See *Sierra Club v. Costle*, 657 F.2d at 327–28 (quoting 44 FR 33583–84; June 11, 1979); 79 FR 1430, 1465 (January 8, 2014) (citing *Sierra Club v. Costle*, 657 F.2d at 351).

²² *Sierra Club v. Costle*, 657 F.2d 298, 326 (D.C. Cir. 1981). The D.C. Circuit has also held that Congress intended for CAA section 111 to create incentives for new technology and therefore that the EPA is required to consider technological innovation as one of the factors in determining the “best system of emission reduction.” See *id.* at 346–47.

²³ *Sierra Club v. Costle*, 657 F.2d at 319; see also *AEP v. Connecticut*, 564 U.S. 410, 427 (2011).

²⁴ *Sierra Club v. Costle*, 657 F.2d at 321; see also *New York v. Reilly*, 969 F.2d at 1150.

“achievable” if a technology can reasonably be projected to be available to an individual source at the time it is constructed so as to allow it to meet the standard.²⁵ For purposes of evaluating the source category and determining BSER, the EPA can determine whether subcategorization is appropriate based on classes, types, and sizes of sources, and may identify a different BSER and establish different performance standards for each subcategory. The result of the analysis and BSER determination leads to standards of performance that apply to facilities that begin construction, reconstruction, or modification after the date of publication of the proposed standards in the **Federal Register**. Because the NSPS reflect the BSER under conditions of proper operation and maintenance, in doing its review, the EPA also evaluates and determines the proper testing, monitoring, recordkeeping and reporting requirements needed to ensure compliance with the emission standards.

B. How does the EPA perform the NSPS review?

CAA section 111(b)(1)(B) requires the EPA to, “at least every 8 years, review and, if appropriate, revise” the standards of performance applicable to new, modified, or reconstructed sources. However, the Administrator need not review any such standard if the “Administrator determines that such review is not appropriate in light of readily available information on the efficacy” of the standard. If the EPA revises the standards of performance, they must reflect the degree of emission limitation achievable through the application of the BSER, which is selected from among adequately demonstrated technologies after consideration of the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements.²⁶ When conducting a review of an existing performance standard, the EPA may, as appropriate and consistent with the statutory requirements, add emission limits for pollutants or emission sources not currently regulated for that source category.

In reviewing an NSPS for a source category to determine whether it is “appropriate” to revise the standards of performance, the EPA evaluates the statutory factors, which may include

consideration of the following information:²⁷

- Expected growth for the source category, including how many new facilities, modifications, or reconstructions may trigger NSPS in the future.
- Pollution control measures, including advances in control technologies, process operations, design or efficiency improvements, or other systems of emission reduction, that the Administrator determines have been “adequately demonstrated” in the regulated industry.
- Available information from the implementation and enforcement of current requirements indicating that emission limitations and percent reductions beyond those required by the current standards are achieved in practice.
- Costs (including capital and annual costs) associated with implementation of the available pollution control measures.
- The amount of emission reductions achievable through application of such pollution control measures.
- Any non-air quality health and environmental impact and energy requirements associated with those control measures.

C. What is the source category regulated in this final action?

The EPA first promulgated NSPS for stationary gas turbines on September 10, 1979.²⁸ These standards of performance are codified in 40 CFR part 60, subpart GG, and are applicable to sources that commenced construction, modification, or reconstruction after October 3, 1977. The standards of performance in subpart GG regulate emissions of NO_x and SO₂ from all new, modified, or reconstructed simple and regenerative cycle gas turbines and the gas turbine portion of a combined cycle steam/electric generating system. The EPA last reviewed and revised the NO_x and SO₂ standards of performance on July 6, 2006, and promulgated 40 CFR part 60, subpart KKKK, which is applicable to stationary combustion turbines that commenced construction, modification, or reconstruction after February 18, 2005.²⁹ In subpart KKKK, the definition of the source was expanded to include all equipment, including but not limited to the combustion turbine; the fuel, air, lubrication, and exhaust gas systems; the control systems (except emission control equipment); the heat recovery

system (including heat recovery steam generators (HRSG) and duct burners); and any ancillary components and sub-components comprising any simple cycle, regenerative/recuperative cycle, and combined cycle stationary combustion turbine, and any combined heat and power (CHP) stationary combustion turbine-based system.

The stationary combustion turbine source category consists of combustion turbines with design base load ratings (*i.e.*, maximum heat input at ISO conditions) equal to or greater than 10.7 gigajoules per hour (GJ/h) (10 million British thermal units per hour (MMBtu/h))³⁰ based on the higher heating value (HHV) of the fuel and applies to combustion turbines and their associated HRSG and duct burners, as described above. The source is “stationary” because the combustion turbine is not self-propelled or intended to be propelled while performing its function. Combustion turbines may, however, be mounted on a vehicle (or trailer) for portability and still be considered stationary. As discussed in section IV.B.2.e of this preamble, the EPA is amending the applicability of subparts KKKK and KKKKa to provide that combustion turbines that are subject to applicable CAA title II standards are not subject to the NSPS. To the EPA’s knowledge, no such stationary combustion turbines are currently being used in temporary applications.

The NO_x standards in subparts GG and KKKK are generally based on the application of combustion controls (as the BSER) and allow the turbine owner or operator the choice of meeting a concentration-based emission standard or an output-based emission standard. The concentration-based emission limits are in units of parts per million by volume dry (ppmvd) at 15 percent oxygen gas (O₂).³¹ The output-based emission limits are in units of mass per unit of useful recovered energy, nanograms per joule (ng/J) or pounds per megawatt-hour (lb/MWh). Each NO_x limit in subparts GG and KKKK is based on the application of combustion controls as the BSER, but individual standards may differ for individual

³⁰ The base load rating is based on the heat input to the combustion turbine engine. Any additional heat input from duct burners used with HRSG units or fuel preheaters is not included in the heat input value used to determine the applicability of this subpart to a given stationary combustion turbine. However, this subpart does apply to emissions from any HRSG and duct burners that are associated with a combustion turbine subject to this subpart.

³¹ Throughout this document, all references to parts per million (ppm) NO_x are intended to be interpreted as ppmvd at 15 percent O₂, unless otherwise noted.

²⁵ *Sierra Club v. Costle*, 657 F.2d at 364, n.276.

²⁶ See 42 U.S.C. 7411(a)(1).

²⁷ See generally 42 U.S.C. 7411; 76 FR 65653, 65658 (Oct. 24, 2011).

²⁸ See 44 FR 52792 (Sept. 10, 1979).

²⁹ See 71 FR 38482 (July 6, 2006).

subcategories of combustion turbines based on the following factors: the fuel input rating at base load, the fuel used, the application, the load, and the location of the turbine.³² The fuel input rating of the turbine does not include any supplemental fuel input to the heat recovery system and refers to the rating of the combustion turbine itself.

The standards of performance for SO₂ emissions in subparts GG and KKKK reflect the BSER of using low-sulfur fuels for all new, modified, or reconstructed combustion turbines, regardless of class, size, or type. The input-based SO₂ standard applies to the sulfur content of the fuel combusted in the turbine. The NSPS also includes an optional output-based standard that limits the discharge of excess SO₂ into the atmosphere as a fraction of the gross energy output of the combustion turbine.³³

Combustion turbines are a large and diverse source category. Thousands of stationary combustion turbines are operating across numerous industrial sectors. For instance, in the utility sector alone, there are approximately 3,400 existing stationary combustion turbines.³⁴ Generally, existing combustion turbine sources are subject to either subpart KKKK or subpart GG.

The EPA last revised the NSPS for stationary combustion turbines in 2006, when it promulgated subpart KKKK. In 2022, certain parties filed a complaint in Federal district court pursuant to CAA section 304 alleging that the EPA had failed to fulfill a nondiscretionary duty under CAA section 111(b)(1)(B) to review and, if appropriate, revise this NSPS within 8 years of the 2006 revision. The EPA resolved this litigation through entering a consent decree establishing judicially enforceable deadlines for the EPA to propose and finalize this NSPS review.³⁵ The EPA is discharging its obligations under the consent decree in this final rule.

The EPA proposed the current review of the stationary combustion turbines NSPS on December 13, 2024. We received 167 unique comments from

private citizens, environmental and public health advocacy groups, community organizations, Tribes, and States. The EPA also received unique comments from numerous industrial sectors, including electric utilities, public power cooperatives, original equipment manufacturers (OEMs), trade groups and associations, and certain sectors of the oil and gas industry. In addition, thousands of similar comments were submitted by individuals as part of mass mailer campaigns. A summary of significant comments we timely received regarding the 2024 Proposed Rule and our responses are provided in this preamble. A summary of all other public comments on the proposal and the EPA's responses to those comments is available in the *Summary of Public Comments and Responses: Review of New Source Performance Standards for Stationary Combustion Turbines and Stationary Gas Turbines*, Docket ID No. EPA-HQ-OAR-2024-0419. In this action, the EPA is finalizing decisions and revisions pursuant to its CAA section 111(b)(1)(B) review of the NSPS for stationary combustion turbines and stationary gas turbines that reflect our consideration of all the comments received.

D. The Role of the NSPS

The role of NSPS in relation to other requirements of the Act is to establish a minimum Federal baseline for pollution control performance that all new, modified, or reconstructed facilities within a specific source category must meet. While independently established by the EPA and based strictly on the statutory criteria, in practice, NSPS often act as a starting point for permitting requirements, such as emission limits and standards that may be established through other programs (e.g., the New Source Review (NSR) permitting program or State and local requirements). NSPS are directly enforceable against sources.³⁶ However, effective implementation is often achieved through collaboration with State and local authorities, who may have delegated authority to implement NSPS and who are typically responsible for incorporating NSPS requirements into operating permits.

Permitting decisions may result in more stringent emissions standards for individual sources than the NSPS based on different legal requirements and case-by-case assessments of the appropriate requirements for individual facilities considering source-specific

information, such as the local air quality conditions.³⁷ For example, a permitting authority evaluating permit requirements for a new combustion turbine in an area that has been designated as non-attainment for ozone under the National Ambient Air Quality Standards (NAAQS) program must set a standard based on the “lowest achievable emissions rate” (LAER) (and also must offset new emissions with reductions from other sources).³⁸ Under a LAER analysis, a NO_x emissions standard lower than what is required in this final rule may be appropriate (e.g., an emissions standard of less than 5 ppm NO_x based on the application of SCR). That decision does not necessarily mean the same level of emissions performance must be required for all combustion turbines in the country through the NSPS. The reverse is also true—it is not necessarily appropriate to use the emission standards in an NSPS as the sole justification for not requiring additional emissions reduction measures under facility-specific permitting authorities.

III. What changes did we propose for the stationary combustion turbines and stationary gas turbines NSPS?

On December 13, 2024, the EPA proposed the current review of, and several revisions to, the stationary combustion turbines and stationary gas turbines NSPS. In that action, we proposed to establish size-based subcategories for new, modified, or reconstructed stationary combustion turbines in 40 CFR part 60, subpart KKKKa that also recognized distinctions between those sources that operate at varying loads or capacity factors, those firing natural gas or non-natural gas fuels, and those that operate in unique locations. Capacity factor or “utilization” level or rate is a ratio that measures how often a stationary combustion turbine is operating at its maximum rated heat input. The ratio is based on heat input, or *actual* heat input, compared to the base load rating, or *potential* maximum heat input, under specified conditions.

The EPA proposed post-combustion SCR in addition to combustion controls to be the BSER for limiting NO_x emissions from certain combustion turbines in the small, medium, and large size-based subcategories. The EPA proposed SCR to be adequately demonstrated and generally cost-effective for combustion turbines in this

³² Throughout this document, all uses of the term “turbine” refer to a “combustion turbine” as defined in subparts KKKK and KKKKa.

³³ See the 2024 Proposed Rule (89 FR 101310; Dec. 13, 2024) for further discussion of the specific subcategories in previous NSPS and the applicable limits for NO_x and SO₂ emissions in those rules.

³⁴ See the U.S. Environmental Protection Agency's (EPA) National Electric Energy Data System database. NEEDS rev 06-06-2024. Accessed at <https://www.epa.gov/power-sector-modeling/national-electric-energy-data-system-needs>.

³⁵ See Consent Decree, *Environmental Defense Fund et al. v. EPA*, No. 3:22-cv-07731-WHO (N.D. Cal. July 27, 2023).

³⁶ See 42 U.S.C. 7411(e).

³⁷ Experience with emissions control technologies gained through permitting for specific projects can often help inform the EPA when conducting its periodic reviews of the NSPS.

³⁸ 42 U.S.C. 7503.

source category when those turbines are operated at higher utilization rates. The EPA also proposed that a BSER that includes SCR satisfies the other statutory criteria under CAA section 111(a)(1). We sought comment on these proposed determinations, including on the issues set forth below.

However, the EPA recognized that as the size of a combustion turbine diminishes and/or as the level of operation (*i.e.*, utilization on an annual basis) of a combustion turbine diminishes or becomes more variable, the incremental cost-effectiveness on a per-ton basis and efficacy of SCR technology also diminishes. Thus, at smaller sizes and at lower rates of utilization, we proposed to establish standards of performance based on a BSER of combustion controls without SCR. Specifically, for small combustion turbines (*i.e.*, at proposal, those that have a base load heat input rating less than or equal to 250 MMBtu/h) that operate at an annual capacity factor less than or equal to 40 percent (*i.e.*, at proposal, “low” and “intermediate” utilization combustion turbines), we proposed that the use of combustion controls alone remains the BSER. For medium combustion turbines (*i.e.*, at proposal, those that have a base load heat input rating greater than 250 MMBtu/h and less than or equal to 850 MMBtu/h) that operate at capacity factors less than or equal to 20 percent (*i.e.*, low-utilization combustion turbines), we proposed that combustion controls alone remain the BSER. Likewise, for large combustion turbines (*i.e.*, those that have a base load heat input rating greater than 850 MMBtu/h) that operate at capacity factors less than or equal to 20 percent (*i.e.*, low-utilization combustion turbines), we proposed that combustion controls alone remain the BSER.

Based on the application of these NO_x control technologies, the EPA proposed to lower the NO_x standards of performance for most of the stationary combustion turbines in this source category relative to subpart KKKK. In addition, the EPA proposed to maintain the current standards for SO₂ emissions after finding that the use of low-sulfur fuels remains the BSER.

The Agency also proposed amendments or requested comment to address several technical and editorial issues that had arisen under the existing regulations in subparts GG and KKKK, which also could be relevant to the new subpart KKKKa. These included, among other things, whether to revise the definition of “reconstruction” for this source category; how to address unique challenges faced by newer higher

efficiency combustion turbines in meeting the current subpart KKKK standard of performance of 15 ppm NO_x for large turbines; whether to include alternative, optional mass-based NO_x standards of performance; whether to adjust the current approach to the part-load NO_x standards; whether to provide a process for site-specific NO_x standards of performance when burning byproduct fuels; how to address co-firing of non-natural gas fuels, including hydrogen; whether and how to handle certain kinds of emergency operations; whether to include an exemption from title V permitting for non-major sources under CAA section 502(a); whether to address other criteria air pollutants; and whether to create a subcategory or exemption for combustion turbines used in temporary applications, such as for less than 1 year, similar to current NSPS and national emission standards for hazardous air pollutants (NESHAP) provisions for internal combustion engines and industrial boilers.³⁹

IV. What actions are we finalizing and what is our rationale for such decisions?

The EPA is finalizing revisions to the NSPS for stationary combustion turbines and stationary gas turbines pursuant to its CAA section 111(b)(1)(B) review. The EPA is promulgating the NSPS revisions in a new subpart, 40 CFR part 60, subpart KKKKa. The revised NSPS subpart is applicable to affected sources constructed, modified, or reconstructed after December 13, 2024. A complete list of the final subcategories and associated emissions standards being finalized in this action is provided in Table 1 in section IV.B.5 of this preamble.

After considering comments critical of the proposed size-based subcategory threshold between small and medium combustion turbines, the EPA has decided to retain in subpart KKKKa the general size-based subcategories from subpart KKKK. This includes subcategories for new, modified, or reconstructed stationary combustion turbines with base load ratings greater than 850 MMBtu/h of heat input (*i.e.*, large), base load ratings greater than 50 MMBtu/h and less than or equal to 850 MMBtu/h of heat input (*i.e.*, medium), and base load ratings less than or equal to 50 MMBtu/h of heat input (*i.e.*,

small). In addition, certain subcategories of new stationary combustion turbines in subpart KKKKa reflect the correlation between the level of utilization of a combustion turbine and the cost effectiveness of available control technologies in limiting NO_x emissions. This correlation was discussed in the proposed rule and generated significant input in public comments.⁴⁰ The final rule therefore subcategorizes large and medium combustion turbines according to how they are operated—either at high rates of utilization or low rates of utilization. A new large or medium combustion turbine with a 12-calendar-month capacity factor greater than 45 percent is subcategorized as a high-utilization source. A new large or medium combustion turbine with a 12-calendar-month capacity factor less than or equal to 45 percent is subcategorized as a low-utilization source. Small combustion turbines are not being further subcategorized based on utilization.

In addition, taking into consideration public comments in response to the EPA’s discussion in the proposal of the unique challenges faced by new large higher efficiency combustion turbines, we are finalizing two subcategories for large low-utilization turbines based on the design efficiency of the turbine, which accounts for different levels of emissions performance that can be achieved by combustion controls alone (*i.e.*, without SCR).⁴¹ Specifically, for new large turbines with low rates of utilization (*i.e.*, a 12-calendar-month capacity factor less than or equal to 45 percent) and design efficiencies greater than or equal to 38 percent on a HHV basis, the EPA is finalizing a determination that the BSER is the use of combustion controls alone.⁴² For new large turbines with low rates of utilization (*i.e.*, a 12-calendar-month capacity factor less than or equal to 45 percent) and design efficiencies less than 38 percent, the EPA is finalizing a

⁴⁰ The proposal differentiated the cost effectiveness of combustion controls and SCR for combustion turbines operating at low, intermediate, and base load levels. See 89 FR 101315.

⁴¹ Efficiency for purposes of subcategorization in 40 CFR part 60, subpart KKKKa refers to the design efficiency of a specific class or type of stationary combustion turbine according to manufacturer specifications. Turbine manufacturers list this value as a percentage based on the HHV of the individual turbine design.

⁴² The 38 percent HHV design efficiency is equal to 42 percent on a lower heating value (LHV) basis. In relation to the design efficiency rating of a combustion turbine, ratings based on the HHV will appear lower, as the calculation includes a portion of heat that may not be recoverable in many applications. Efficiency ratings based on the LHV will appear higher because they exclude the energy lost with the water vapor in the exhaust.

³⁹ See the proposed rule preamble for additional discussion about these and other proposals and requests for comment (89 FR 101306; Dec. 13, 2024). See section IV of this preamble for discussion of the proposals being finalized in subpart KKKKa and section VI of this preamble for discussion of the proposals not being finalized in this action.

determination that the BSER is the use of combustion controls with NO_x emissions rate guarantees based on the use of technologies such as lean premix combustion and dry low-NO_x (DLN) or ultra DLN burners.⁴³

The EPA is finalizing a determination that the BSER is the use of various types of combustion controls (*i.e.*, without SCR) for all but one subcategory of new, modified, or reconstructed stationary combustion turbines. For that one subcategory—new large turbines with high rates of utilization (*i.e.*, 12-calendar-month capacity factors greater than 45 percent)—the BSER is combustion controls with SCR.

The standards of performance for each subcategory of stationary combustion turbine in subpart KKKKa reflect the degree of emission limitation achievable based upon application of the BSER. For new large high-utilization turbines firing natural gas with a BSER of combustion controls with SCR, the NO_x standard is 5 ppm. For new large natural gas-fired turbines with low rates of utilization, the NO_x standard is 25 ppm for higher efficiency classes of turbines and 9 ppm for lower efficiency classes.

For new medium high-utilization combustion turbines firing natural gas, the NO_x standard is 15 ppm based on the performance of dry combustion controls. For new medium low-utilization turbines firing natural gas, the NO_x standard is 25 ppm based on the performance of water- or steam-injection combustion controls. The high/low utilization threshold—greater than or less than or equal to a 45 percent capacity factor—is the same for new medium combustion turbines as for new large combustion turbines. And for all new small combustion turbines firing natural gas, the NO_x standard is 25 ppm based on combustion controls regardless of the level of utilization.⁴⁴

This action maintains subcategories for modified and reconstructed stationary combustion turbines that are generally consistent with the subcategories in subpart KKKK. As discussed in section IV.B.6, these subcategories are based on a BSER of combustion controls with associated

NO_x standards of performance. As discussed in section VI.A of this preamble, the EPA is not finalizing the proposed, category-specific definition of “reconstruction” for combustion turbines.

Some of the other final determinations reflected in subpart KKKKa include: the creation of a new subcategory for stationary temporary combustion turbines; lowering the threshold that defines part-load operations to any hour when the heat input of the combustion turbine is less than or equal to 70 percent of the base load rating; allowing owners or operators to petition the Administrator for a site-specific NO_x standard when burning byproduct fuels; a provision that operation during a “system emergency” (Energy Emergency Alert levels 1, 2, or 3) is not included in calculating a turbine’s 12-calendar-month utilization; an exemption from title V permitting for combustion turbines that are not major sources or located at major sources under CAA section 502(a); and retention of the SO₂ standards from subpart KKKK for all new, modified, or reconstructed stationary combustion turbines.^{45 46}

The EPA is finalizing corresponding amendments in subparts GG and KKKK with respect to several of these ancillary issues, which will be applicable to combustion turbines subject to those subparts as of the effective date of this final rule. Specifically:

- In subpart GG, the EPA is finalizing that turbines subject to subparts Da, KKKK, or KKKKa are not subject to subpart GG.
- In subpart KKKK, the EPA is finalizing a clarification that only the heat input to the combustion turbine engine is used for applicability purposes and that combustion turbines regulated under subpart KKKK are exempt from subparts KKKKa and GG. The EPA is also finalizing that emergency, military, and firefighting combustion turbines are exempt from the NO_x emission standards in subpart KKKK. Additionally, the EPA is finalizing flexibilities regarding when performance tests must be conducted after long periods of non-operation and that owners or operators can use fuel

records to comply with their SO₂ standard. The EPA is finalizing a low-Btu alternative to the SO₂ standard in subpart KKKK, as well as a concentration-based alternate SO₂ standard. Finally, the EPA is finalizing the requirement for approval from the delegated authority for certain monitoring and compliance tasks that are already covered under 40 CFR part 75 and specifications about including duct burners in performance tests.

- In both subparts GG and KKKK, the EPA is finalizing that as an alternative to being subject to either of those subparts, owners or operators of combustion turbines that otherwise meet those subparts’ applicability criteria may petition the Administrator to become subject to subpart KKKKa instead. The EPA is also finalizing in both subparts GG and KKKK that turbines subject to subparts J or Ja are not subject to the respective SO₂ standard in subparts GG or KKKK and that NO_x continuous emissions monitoring systems (CEMS) installed and certified according to 40 CFR part 75 can be used to monitor NO_x emissions, where approved. The EPA is finalizing standard electronic reporting requirements for turbines subject to subparts GG or KKKK and that an additional test method (EPA Method 320) can be used to determine NO_x and diluent concentration in subparts GG and KKKK.

It is the EPA’s understanding and intention that none of these changes alter the stringency or increase any regulatory burdens with respect to the existing combustion turbines subject to subparts GG and KKKK, and nothing in this final rule is intended to have retroactive effect (that is, to govern any conduct or activities occurring prior to the effective date of this final rule).

This action finalizes standards of performance in subpart KKKKa that apply at all times, including during periods of startup, shutdown, and malfunction (SSM), and other changes such as electronic reporting that also apply to previous NSPS subparts GG and KKKK. These topics are discussed below in sections IV.F–H.

A. Applicability

The source category that is the subject of this final action is composed of new, modified, or reconstructed stationary combustion turbines with a base load rating of greater than 10 MMBtu/h of heat input.⁴⁷ The standards of

⁴³ Dry combustion controls that include the use of lean premix, DLN, ultra DLN, and other technologies are often referred to as “advanced” combustion controls by turbine manufacturers and the regulated community. These technologies are generally more effective at NO_x control than other dry combustion controls but are not available for all types, sizes, and applications of new, modified, or reconstructed stationary combustion turbines. The EPA uses the same terminology in this preamble to make the same distinction.

⁴⁴ See Table 1 of this preamble for a complete listing of subcategories and associated NO_x emissions standards.

⁴⁵ Energy Emergency Alert levels 1, 2, and 3 are defined by the North American Electric Reliability Corporation (NERC) Reliability Standard EOP-011-2, or its successor, or equivalent.

⁴⁶ See section IV.B.7.d of this preamble for discussion of site-specific NO_x standards for stationary combustion turbines in subpart KKKKa. See sections IV.B.3–4 for discussion of the BSER for the different subcategories of stationary combustion turbines. See section IV.B.5 for discussion of the associated NO_x standards based on the application of the BSER.

⁴⁷ The base load rating is the maximum heat input of the combustion turbine engine at ISO conditions. The EPA uses the HHV when specifying heat input ratings.

performance, codified in 40 CFR part 60, subpart KKKKa, are directly applicable to affected sources that began construction, modification, or reconstruction after December 13, 2024—the date of publication of the proposed standards in the **Federal Register**. The final amendments to subparts GG and KKKK are directly applicable to the affected facilities already subject to those subparts. Stationary combustion turbines subject to the standards in subpart KKKKa are not subject to the requirements of subparts GG or KKKK. The HRSG and duct burners subject to the standards in subpart KKKKa are exempt from the requirements of 40 CFR part 60, subpart Da (the Utility Boiler NSPS) as well as subparts Db and Dc (the Industrial/Commercial/Institutional Boiler NSPS), continuing the approach previously established in subpart KKKK.

Subpart KKKKa maintains certain exemptions from NO_x emissions standards promulgated previously in subparts GG and KKKK. In 1977, in subpart GG, the EPA determined that it was appropriate to exempt emergency combustion turbines from the NO_x limits. These included emergency-standby combustion turbines, military combustion turbines, and firefighting combustion turbines. Subpart KKKK further defined emergency combustion turbines as units that operate in emergency situations, such as turbines that supply electric power when the local utility service is interrupted. Additional exemptions being maintained from subpart KKKK include: (1) stationary combustion turbine test cells/stands, (2) integrated gasification combined cycle (IGCC) combustion turbine facilities covered by subpart Da of 40 CFR part 60 (the Utility Boiler NSPS), and (3) stationary combustion turbines that, as determined by the Administrator or delegated authority, are used exclusively for the research and development of control techniques and/or efficiency improvements relevant to stationary combustion turbine emissions.

In general, and as discussed in the following sections, the EPA is finalizing minor changes in wording and writing style to add clarity to the applicability language in subparts GG and KKKK and to track with language being finalized in subpart KKKKa. The Agency does not intend for these editorial revisions to applicability and/or updates to the test methods to substantively change any of the technical requirements of existing subparts GG and KKKK.

1. Exemptions for Combustion Turbines Subject to More Stringent Standards

The EPA is finalizing as proposed provisions to make clear that stationary combustion turbines at petroleum refineries subject to 40 CFR part 60, subparts J or Ja are not subject to the SO₂ performance standards in subparts GG, KKKK, or KKKKa. The SO₂ standards in subparts J and Ja are more stringent than the SO₂ limits in subparts GG, KKKK, or KKKKa. This clarification simplifies compliance for owners or operators of petroleum refineries without an increase in pollutant emissions by minimizing overlap of competing NSPS for different source categories. The EPA received supportive and no adverse comments on the subpart J and Ja related amendments. The EPA is unaware of additional source categories or facilities with stationary combustion turbines that are subject to more stringent NSPS that should not be subject to the SO₂ and/or NO_x performance standards in subparts GG, KKKK, or KKKKa. Further, no commenters identified any such categories or facilities.

2. Petition To Comply With 40 CFR Part 60, Subpart KKKKa

The EPA is finalizing as proposed a provision that will allow owners or operators of stationary combustion turbines currently covered by subparts GG or KKKK, and any associated steam generating unit subject to an NSPS, to petition the Administrator to comply with subpart KKKKa in lieu of complying with subparts GG, KKKK, and any associated steam generating unit NSPS. Since the applicability of subpart KKKKa encompasses any associated heat recovery equipment, owners or operators can have the flexibility to comply with one NSPS instead of multiple NSPS. The Administrator will only grant the petition if it is determined that compliance with subpart KKKKa would be equivalent to, or more stringent than, compliance with subparts GG, KKKK, or any associated steam generating unit NSPS.

Also, if any solid fuel as defined in subpart KKKKa is burned in the HRSG, the HRSG is covered by the applicable steam generating unit NSPS and not subpart KKKKa. The intent of the solid fuel exclusion in subpart KKKKa is that it is only applicable to new turbines burning liquid and gaseous fuels. The exclusion prevents a large solid fuel-fired boiler from using the exhaust from a combustion turbine engine to avoid the requirements of the applicable steam generating unit NSPS.

B. NO_x Emissions Standards

1. Overview

This section discusses the EPA's final BSER determinations for NO_x emissions for each of the subcategories of new, modified, or reconstructed stationary combustion turbines and the associated standards of performance. The EPA explains in section IV.B.2 of this preamble the subcategory approach it is adopting in subpart KKKKa. Sections IV.B.3 and IV.B.4 of this preamble present the EPA's BSER analysis of the NO_x control technologies the EPA evaluated as part of this review of the NSPS, which include dry combustion controls, wet combustion controls (*e.g.*, water or steam injection), and post-combustion SCR. Dry combustion controls include "advanced" systems that incorporate lean premix with dry low-NO_x (DLN) or ultra DLN burners to reduce the flame temperature and further limit NO_x formation. In section IV.B.5 of this preamble, the EPA sets out the final NO_x performance standards, based on the application of a particular BSER for each subcategory of stationary combustion turbine.

In determining the subcategories, BSER, and NO_x standards in this action, the EPA considered multiple characteristics of combustion turbines within the source category. These included whether the size of a new, modified, or reconstructed stationary combustion turbine is small, medium, or large; whether the affected source is of a type that typically operates at high or low annual capacity factors (*i.e.*, utilization); whether certain affected sources are higher or lower efficiency designs; whether the affected source operates at full load or part load; and whether the affected source burns natural gas, non-natural gas (such as gaseous hydrogen or liquid distillate), or a combination of fuels.

In section IV.B.6 of this preamble, the EPA explains the final BSER determinations and NO_x emission standards for modified and reconstructed sources. The EPA is finalizing NO_x emission standards for modified and reconstructed stationary combustion turbines that are different than those for new sources and reflect the EPA's determination that combustion controls without SCR are the BSER for these sources. This approach reflects comments that explained that many existing turbines undergoing modification or reconstruction face unique, site-specific challenges to retrofitting SCR, which can dramatically increase costs.

Furthermore, in sections IV.B.2.d and IV.B.7.b of this preamble, the EPA

discusses the NO_x control technologies that the EPA has determined to be the BSER for each of the non-natural gas subcategories and also explains its approach to characterizing new, modified, or reconstructed stationary combustion turbines that elect to co-fire with hydrogen as either natural gas-fired or non-natural gas-fired. Specifically, combustion turbines that elect to co-fire with natural gas blended with hydrogen are subject to the same BSER and NO_x performance standards as those applicable to either natural gas-fired or non-natural gas-fired combustion turbines, depending on the size- and utilization-based subcategory. Section IV.B.2.e of this preamble includes discussion of the new subcategory for stationary combustion turbines used in temporary applications.

2. Subcategorization

This section describes the subcategorization approach being finalized in subpart KKKKa. The discussion that follows begins with a summary of the subcategories in the proposed rule and concludes with a discussion of the final subcategory determinations and the Agency's rationale in support of those decisions. As noted in the proposal, the EPA bases subcategories on the characteristics of combustion turbines that are relevant to the reasonableness of potential BSER controls (*i.e.*, characteristics that make potential controls reasonable or unreasonable in accordance with one or more of the BSER factors in CAA section 111(a)(1)). Therefore, the availability and performance of NO_x controls for different designs, sizes, *etc.*, of stationary combustion turbines have informed the Agency's subcategorization decisions.

To this end, this section discusses the characteristics of various combustion turbines—such as their size, utilization level, and efficiency—and why these characteristics are appropriate bases for subcategorization of sources, as well as how they impact the determinations of the BSER and associated NO_x standards of performance.⁴⁸ Summaries of significant comments received during the public comment period and the EPA's responses to those comments are included in the appropriate sections below. The EPA's further response to comments on the proposal, including any comments not discussed in this preamble, can be found in the EPA's response to comments document in the docket for this rule.^{49 50}

a. Subcategorization Based on Size

At proposal, the EPA continued the approach from subpart KKKK of determining subcategories based on combustion turbine size, as reflected by the base load rated heat input of an individual combustion turbine.⁵¹ As discussed in the proposal, the size of a combustion turbine is related to its intended application, whether industrial or utility, and the combination of those factors influences the availability and performance of NO_x combustion controls, making it a relevant consideration for subcategorization and subsequent BSER determinations.⁵² The EPA proposed to maintain some of the size cutoffs for defining subcategories from subpart KKKK and proposed to revise others.

The proposed subcategory of large combustion turbines included new, modified, or reconstructed sources with base load ratings greater than 850 MMBtu/h of heat input. This subcategory of large turbines maintained the size-based threshold from subpart KKKK. However, the proposed size-based thresholds for medium and small combustion turbines were revised relative to subpart KKKK. The EPA proposed that the size-based subcategory for medium combustion turbines included new, modified, or reconstructed sources with base load ratings greater than 250 MMBtu/h of heat input and less than or equal to 850 MMBtu/h. The EPA proposed that the size-based subcategory for small combustion turbines included new, modified, or reconstructed sources with base load ratings less than or equal to 250 MMBtu/h of heat input. In addition, for the subcategories of medium and small combustion turbines, the EPA proposed to include both new and reconstructed units in the same size subcategory; and the EPA proposed to determine the same BSER and NO_x emission standards for both new and reconstructed units. This was also in contrast to subcategorizations in subpart KKKK.

In particular, the proposed subcategorization approach for small stationary combustion turbines

represented a significant shift from that in subpart KKKK. The EPA proposed that a separate subcategory of combustion turbines smaller than 50 MMBtu/h of heat input is not necessary because multiple turbine manufacturers have developed dry combustion controls capable of limiting NO_x emissions to the same rates as those achieved by larger combustion turbines (*e.g.*, those up to 250 MMBtu/h of heat input) for both electrical and mechanical drive applications. This same rationale also led the EPA to propose that separate subcategories for new small combustion turbines, based on whether they serve electrical or mechanical drive applications, are no longer necessary.

The EPA received significant comments on the size-based subcategorization approach for large, medium, and small stationary combustion turbines.

Many commenters opposed the proposed elimination of the 50 MMBtu/h threshold that distinguishes between the small and medium size subcategories of combustion turbines in the previous NSPS (subpart KKKK). Specifically, the commenters stated that the elimination of the subcategory for very small combustion turbines impacted the EPA's proposed determination of the BSER and associated standards of performance, which they argued were not appropriate for the smallest turbines, *i.e.*, those less than 50 MMBtu/h of heat input. Separately, commenters asserted that the proposed 250 MMBtu/h size threshold did not meaningfully correspond with the emissions performance or other characteristics of models of combustion turbines currently on the market. For example, commenters from the natural gas pipeline industry indicated that they use industrial turbines in sizes of up to 320 MMBtu/h at compressor stations and advocated that the small size subcategory should be increased to that, while the BSER of combustion controls from subpart KKKK should be maintained. There was consistent agreement among these commenters that the subcategory of small combustion turbines with base load ratings less than or equal to 50 MMBtu/h of heat input should be maintained in subpart KKKKa. One commenter indicated that turbines with base load ratings less than 20 MMBtu/h should have their own subcategory.

The EPA agrees with the commenters that it is appropriate to maintain a subcategory for new combustion turbines with base load ratings less than or equal to 50 MMBtu/h of heat input.

Performance Standards for Stationary Combustion Turbines and Stationary Gas Turbines.

⁵⁰ See sections IV.B.3–7 of this preamble and Table 1 in section IV.B.5 of this preamble for information about the final BSER determinations and NO_x standards of performance for all new, modified, or reconstructed stationary combustion turbines in subpart KKKKa.

⁵¹ The base load rating only includes the heat input to the combustion turbine engine and does not include the rated input from associated duct burners.

⁵² See 89 FR 101317 (Dec. 13, 2024).

⁴⁸ See Table 1 in section IV.B.5 of this preamble.

⁴⁹ EPA–HQ–OAR–2024–0419. *Summary of Public Comments and Responses: Review of New Source*

As described in sections IV.B.3–5 of this preamble, the Agency has further examined the available controls for the source category and their reasonableness based on the varying characteristics of different types of combustion turbines. At proposal, the EPA believed that 250 MMBtu/h represented an inflection point above which SCR would be cost-reasonable at intermediate and high levels of utilization (and therefore the BSER) and below which SCR would not be cost-reasonable (and combustion controls would comprise the BSER) except for high-utilization turbines. However, based on updated information, the Agency is not determining that SCR is the BSER for any units smaller than 850 MMBtu/h. There is therefore no reason to define the boundary between small and medium combustion turbines at 250 MMBtu/h.⁵³

Moreover, the EPA's review also indicates that the available combustion controls for turbines with base load ratings less than or equal to 50 MMBtu/h of heat input are more limited and can achieve different emission reductions relative to combustion turbines with base load ratings greater than 50 MMBtu/h of heat input.⁵⁴ For example, the manufacturer guaranteed NO_x emission rates for these small combustion turbines is generally 25 ppm based on the use of dry combustion controls. However, as the size of the combustion turbine increases above 50 MMBtu/h, manufacturers have developed more effective dry combustion controls with manufacturer guaranteed NO_x emissions rates decreasing to 15 ppm. This includes many models of industrial and frame type combustion turbines larger than 50 MMBtu/h and smaller than 250 MMBtu/h that would have fallen into the proposed small turbine subcategory. These differences between combustion turbines smaller or larger than 50 MMBtu/h and the availability and performance of the different combustion controls each sized group can employ leads the Agency to conclude that subpart KKKK's size-based cutoff of 50 MMBtu/h between small and medium combustion turbines remains the appropriate threshold for differentiating

between small- and medium-sized combustion turbines in subpart KKKKa.

The EPA disagrees with commenters that a subcategory for new combustion turbines with base load ratings less than or equal to 20 MMBtu/h of heat input is appropriate, as there are no significant differences in the performance of new combustion controls for turbines less than or equal to 20 MMBtu/h and combustion turbines greater than 20 MMBtu/h and less than or equal to 50 MMBtu/h.⁵⁵ However, combustion controls that achieve emission rates of 25 ppm or lower for small combustion turbines are not available for certain existing small combustion turbines that modify or reconstruct, and SCR is not cost reasonable. Therefore, the EPA agrees that a subcategory for combustion turbines with base load ratings less than or equal to 20 MMBtu/h of heat input—with higher NO_x standards based on application of different BSER—is appropriate for modified and reconstructed combustion turbines only.

The EPA is finalizing, as proposed, that subpart KKKKa will not include additional subcategories for new, modified, or reconstructed small combustion turbines to distinguish between those that are electrical drive versus those that are mechanical drive. While the EPA did receive comments requesting that it maintain the distinction between electrical and mechanical drive turbines as in subpart KKKK, the Agency does not believe it is necessary given that the final rule does not treat new and reconstructed combustion turbines the same way, and existing electrical or mechanical drive turbines that modify or reconstruct can meet the final NO_x standards of performance for small modified or reconstructed units in subpart KKKKa using combustion controls.⁵⁶

In subpart KKKKa, after completion of the technology review and consideration of comments provided by stakeholders, the EPA is finalizing the same size-based subcategory approach as the previous combustion turbine criteria pollutant NSPS (subpart KKKK). The final subcategories in subpart KKKKa include combustion turbines with base load ratings greater than 850 MMBtu/h of heat input (*i.e.*, large), those with base load ratings greater than 50 MMBtu/h and less than or equal to 850 MMBtu/h of heat input (*i.e.*, medium), and those with base load

ratings less than or equal to 50 MMBtu/h of heat input (*i.e.*, small). Like subpart KKKK, these subcategories are based on the base load rating of the turbine engine and do not include any supplemental fuel input to the heat recovery system.

b. Subcategorization Based on Utilization

In the proposed rule, in addition to subcategorizing combustion turbines according to size, the EPA proposed to subcategorize stationary combustion turbines further depending on 12-calendar-month capacity factors (*i.e.*, utilization). Although the EPA had not previously subcategorized on this basis in subparts GG or KKKK, it has differentiated between combustion turbines on the basis of utilization in other contexts since 2015.⁵⁷ Subcategorizing on this basis is appropriate for combustion turbines in the utility sector because a source's pattern of operation (*e.g.*, how often it is in operation over different time frames) generally tracks with how turbines are configured (*e.g.*, as simple cycle versus combined cycle, *etc.*). Patterns of utilization and configuration in turn impact the feasibility, emission reductions that would be achieved by, and cost-reasonableness of different types of NO_x emissions controls. For example, in the utility sector, project developers do not typically construct combined cycle combustion turbine systems to serve peak demand where they would be expected to start and stop often. Similarly, project developers in the utility sector do not typically construct and install simple cycle combustion turbines to operate at higher capacity factors to provide base load power. Combustion turbines used in the utility sector typically fall into both the medium and large subcategories. Similar patterns exist for combustion turbines used in the commercial, institutional, and industrial power generating sectors, which are typically turbines in the small and medium subcategories. In the non-utility sector, project developers typically construct CHP turbines for high-utilization applications and simple cycle turbines for low-utilization applications, such as providing backup power. Thus, turbine utilization is a useful proxy for certain characteristics of turbines—classes, types, sizes, and modes of operation—that are relevant for the systems of emission reduction that the EPA may

⁵³ The EPA noted in the proposal that “if the EPA were to determine that SCR was not an appropriate BSER for all small stationary combustion turbines, then it may be appropriate to adjust the size-based thresholds such that turbines of greater than 50, 100, or 150 MMBtu/h of heat input should be treated as ‘medium’ turbines.” 89 FR 101318.

⁵⁴ See the discussion of the determination of the BSER and NO_x standards for new small combustion turbines in section IV.B.5.c of this preamble.

⁵⁵ See the manufacturer specification sheet in the rulemaking docket for additional information about available models of stationary combustion turbines.

⁵⁶ See section IV.B.6 of this preamble for discussion of the subcategory for small modified and reconstructed combustion turbines.

⁵⁷ See, *e.g.*, *Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units* (88 FR 33318; Oct. 23, 2015).

evaluate to be the BSER and therefore for the resulting standards of performance.

While it is generally the case that utilization tracks turbine size and mode of operation (e.g., simple versus combined cycle), there are exceptions. Industrial mechanical drive applications (i.e., not electric generating) primarily use turbines from the small and medium subcategories but have different utilization characteristics. These turbines tend to operate at more variable loads as compared to combustion turbines used to generate electricity. Their frequent operation may result in their subcategorization as high-utilization facilities, but they are primarily in simple cycle configurations because heat recovery is generally not a technically or economically viable option. However, the amount of utilization and the mode of operation remain relevant for the systems of emission reduction that the EPA may evaluate to be the BSER and therefore for the resulting standards of performance.

The EPA proposed that combustion turbines with 12-calendar-month capacity factors greater than 40 percent would be subcategorized as high capacity factor (i.e., base load or high-utilization) units, those with capacity factors greater than 20 percent and less than or equal to 40 percent were proposed to be subcategorized as intermediate capacity factor/utilization units, and those with capacity factors less than or equal to 20 percent were proposed to be subcategorized as low capacity factor/utilization units. The proposed capacity factor/utilization thresholds were chosen to reflect what, at proposal, were believed to be reasonable cut points above and below which different NO_x controls would be cost-effective based on sources' operational characteristics. The proposed thresholds were also designed to align with thresholds in the 2024 NSPS for greenhouse gas (GHG) emissions from new combustion turbines.⁵⁸

The EPA received significant comments on the subcategorization of stationary combustion turbines according to capacity factor (i.e., utilization). Several commenters recommended that the upper capacity factor threshold for defining small low-utilization combustion turbines be increased to at least 25 percent or as high as 40 percent in subpart KKKKa to

not restrict the operation of simple cycle peaking units that will have to support higher demand variability in the future due to increased deployment of intermittent generation. According to the commenters, a lower capacity factor threshold coupled with an emission limit based on SCR would exacerbate the risk and complexity of operating combustion turbines essential for grid firming generation and reliability during extreme weather events and seasonal demands, and constraining these assets could lead to capacity shortfalls that increase the potential of higher-emitting generation being called upon. Another commenter stated that the EPA should set the capacity factor-based subcategories in subpart KKKKa to better reflect the changing operational characteristics for certain combustion turbines used in simple cycle mode and the typical capacity factors of combined cycle units. Specifically, the commenter stated that an annual capacity factor of 60 percent is a more appropriate demarcation between simple cycle and combined cycle turbines. The commenter expects that some frame type simple cycle turbines will be required to operate at capacity factors of more than 40 percent in the future as demand for power climbs, largely due to the boom in artificial intelligence and the associated data centers. In addition, the commenter stated that a threshold of 60 percent would help differentiate between units that operate in simple cycle mode and those that operate in combined cycle mode.

Based on the EPA's updated analysis of the cost and feasibility of available controls for combustion turbines, the Agency is determining in this final rule that SCR does not qualify as the BSER for any subcategory of stationary combustion turbines with 12-calendar-month capacity factors less than or equal to 45 percent.⁵⁹ Therefore, the proposed "intermediate load" subcategory that would have covered combustion turbines operating at annual capacity factors greater than 20 percent and less than or equal to 40 percent is no longer necessary. Moreover, the EPA has not found differences in the reasonableness of combustion controls based on a combustion turbine's utilization that would make distinguishing between "low" and "intermediate" load turbines appropriate. Therefore, the proposed low-utilization threshold referenced by the commenter is not included in final subpart KKKKa.

After deciding that three utilization-based subcategories are unnecessary and

shifting to just two in this final rule ("high utilization" and "low utilization"), the EPA further considered the cutoff between these two subcategories. To determine an appropriate capacity factor that generally reflects the differences between turbines that operate in simple cycle mode and those that operate in combined cycle mode, the EPA evaluated the 12-calendar-month capacity factors of simple cycle turbines in the electric utility power sector that have commenced operation since January 1, 2020. To account for variability, the EPA calculated the 99 percent confidence maximum capacity factor for each combustion turbine. The 99 percent confidence maximum 12-calendar-month capacity factor for recently constructed simple cycle turbines was 43 percent. To account for potential future uncertainty, the EPA is finalizing a 12-calendar-month utilization rate threshold of 45 percent to delineate between low- and high-utilization turbines.^{60 61}

In this final rule, the EPA is subcategorizing large and medium combustion turbines as high- or low-utilization units depending on 12-calendar-month capacity factors (i.e., utilization rates). The high-utilization subcategories include large and medium turbines utilized at 12-calendar-month capacity factors greater than 45 percent. The low-utilization subcategories include large and medium combustion turbines utilized at 12-calendar-month capacity factors less than or equal to 45 percent. Large and medium combustion turbines that exceed the 12-calendar-month capacity factor threshold of 45 percent will be subject to the high-utilization NO_x standards, and owners or operators of such facilities must achieve the applicable NO_x standard, presumably through the operation of additional emission control technology relative to that required for low-utilization combustion turbines. The EPA is not subcategorizing small combustion turbines by utilization and the same BSER and emissions standard is applicable to all new small combustion turbines regardless of the utilization level because utilization level is not determinative of the

⁶⁰ While the fleetwide average capacity factor of both medium and large simple cycle turbines is increasing, the average and maximum capacity factors of both medium and large simple cycle turbines that have recently commenced operation has remained relatively constant.

⁶¹ See section IV.B.2.g of this preamble for discussion of the EPA's decision not to establish subcategories based on whether a combustion turbine operates in a simple cycle or combined cycle configuration.

⁵⁸ See 89 FR 39798, 39913 (May 9, 2024). The EPA proposed to repeal the 2024 NSPS for GHG emissions for new combustion turbines, as well as for other new and existing fossil fuel-fired power plants, on June 17, 2025. 90 FR 25752.

⁵⁹ See sections IV.B.3 and IV.B.5 of this preamble.

reasonableness of NO_x controls for these units.

Even combustion turbines that operate at consistent utilization levels for the life of the facility, the 12-calendar-month utilization rates vary over the life of the turbine. To estimate the variability in 12-calendar-month utilization rates, the EPA reviewed the maximum 12-calendar-month capacity factors and the average capacity factors of combined cycle and simple cycle turbines in the power sector that have commenced operation since 2020. The median percentage that the maximum capacity factor is greater than the average capacity factor is 11 percent for combined cycle turbines and 15 percent for simple cycle turbines. Assuming this is the only factor impacting the relationship between the maximum and average capacity factor, the maximum 12-calendar-month capacity factors of combined cycle and simple cycle turbines with average capacity factors of 40 percent is 44 and 46 percent, respectively. Therefore, the EPA used a 45 percent applicability threshold as representative of combustion turbines with an average capacity factor of 40 percent. The 40 percent value was used when evaluating cost and other BSER factors for control technologies for combustion turbines in the high-utilization subcategories. The EPA acknowledges that this approach is conservative. Once that investment is made, the control technology would likely be used for the life of the facility even if the combustion turbine were to be subcategorized as low utilization in the future. For example, in the utility sector, the average 30-year capacity factor of combined cycle and simple cycle combustion turbines is 51 percent and 9 percent, respectively. Combined cycle turbines initially operate on average at a capacity factor of 66 percent, and by year 30, the capacity factor drops to 37 percent.⁶² Simple cycle combustion turbines initially operate at a capacity factor of 13 percent and drop to 5 percent by year 30. For combined cycle and simple cycle turbines, the maximum capacity factor is 28 percent higher and 49 percent higher than the 30-year lifetime average capacity factor, respectively. In conclusion, the EPA determined it is appropriate to use a 40 percent utilization rate when evaluating the

BSER factors, but this translates for implementation purposes into a utilization subcategory threshold of 45 percent based on the 12-calendar-month capacity factor to accommodate for the variability of a combustion turbine that operates at a consistent utilization over the life of the unit.

c. Subcategorization Based on Efficiency

The Agency noted in the proposed rule that “[t]he EPA’s review of combustion turbine emissions data and applied control technologies . . . demonstrates a correlation between the efficiency of new turbine designs and NO_x emissions using combustion controls.”⁶³ We went on to state that turbine manufacturers have endeavored to increase the efficiency of new turbine designs, but that there is a tradeoff between efficiency and NO_x emissions such that some models of large higher efficiency turbines cannot meet a 15 ppm NO_x standard.⁶⁴ We discussed and requested comment on the relationship between turbine efficiency and the effectiveness of combustion controls in our analysis of combustion controls for large combustion turbines.⁶⁵ Based on comments received in response to its requests, the EPA is determining that it is appropriate to further subcategorize large low-utilization combustion turbines in subpart KKKKa based on the manufacturer’s design efficiency rating.

When subpart KKKK was finalized in 2006, the largest available aeroderivative combustion turbine had a base load rating of less than 850 MMBtu/h of heat input, and less efficient frame units greater than 850 MMBtu were available with manufacturer guaranteed NO_x emission rates of 15 ppm or less. Thus, the subcategories in subpart KKKK were designed to reflect the distinctions between the sizes and feasibility of different types of combustion controls between more efficient turbines that were less than 850 MMBtu/h and less efficient turbines that were greater than 850 MMBtu/h.

Since subpart KKKK was finalized, incremental advances have been made to the design of the aeroderivative turbine that had been used to define the 850 MMBtu/h threshold, and the base load rating of that specific turbine model is now approximately 1,000

MMBtu/h.⁶⁶ Further, new frame type turbines have become available that have higher efficiencies. The most common way to increase the efficiency of a combustion turbine is to increase the firing temperature. However, an increase in firing temperature also results in increased formation of thermal NO_x. Several frame turbines have become commercially available since 2013 that have design efficiencies of at least 38 percent on a HHV basis⁶⁷ and guaranteed NO_x emission rates of 25 ppm. In essence, the state of the source category has evolved since 2006 so that there are now more types of large combustion turbines available, and those combustion turbines have a broader range of efficiencies, which affects NO_x formation and the emission reductions that can be achieved using combustion controls. Given the subsequent development of the industry and the EPA’s further understanding of how large, higher efficiency turbines are operated today (*i.e.*, of the intersection between size, utilization, and efficiency), for the purposes of subpart KKKKa, the Agency is determining it is appropriate to subcategorize large, low-utilization combustion turbines depending on whether their design efficiency is less than 38 percent or greater than or equal to 38 percent.⁶⁸

Several commenters requested that the EPA consider subcategorizing large combustion turbines further to reflect the performance of available combustion controls in relation to the utilization and design efficiencies of certain classes or types of available combustion turbines. Other commenters stated that the EPA should revise the size-based subcategories in subpart KKKKa to capture and accommodate variations within certain classes of combustion turbines that could bear significantly on the cost of NO_x controls. Specifically, commenters suggested that the EPA should create additional subcategories for large combustion turbines to distinguish between classes of turbines with distinct NO_x profiles and for which SCR has materially different marginal costs and benefits. The commenters asserted that doing so would account for variation in the BSER, NO_x reductions, and cost effectiveness for three classes of large

⁶² At year 24, combined cycle turbines would become low-utilization turbines and the NSPS BSER would no longer be based on the use of SCR. The EPA costing analysis assumes the high-utilization BSER (*i.e.*, SCR) continues to operate the entire 30-year period. Assuming the SCR ceases operation in year 24 would decrease the cost effectiveness of SCR.

⁶³ 89 FR at 101325.

⁶⁴ *Id.*

⁶⁵ See, *e.g.*, *id.* at 101333 (solicitation for comment on whether combustion controls are being developed for large, high-efficiency turbines currently guaranteed at 25 ppm that would reduce the NO_x emission rate).

⁶⁶ The larger version became available in 2013. See the Excel file docket item titled *combustion turbine manufacturer specifications proposal docket number EPA-HQ-OAR-2024-0419-0020 attachment 3*.

⁶⁷ This value is equal to a design efficiency rating of 42 percent on a lower heating value (LHV) basis.

⁶⁸ This characteristic was not analyzed or understood to be relevant at the time the BSER analysis was conducted for subpart KKKK.

frame turbines used in the power industry. Specifically, the commenters suggested the following:

- Simple cycle frame turbines (90 to 150 MW) with a NO_x performance standard of 5 ppm reflecting advanced DLN combustion controls as BSER for intermediate and base load. The performance standard should be 15 ppm based on DLN for the low-utilization subcategory.
- Simple cycle frame turbines (200 to 320 MW) with a performance standard of 9 ppm reflecting advanced DLN combustion controls as BSER for intermediate and base load. The performance standard should be 15 ppm based on DLN for the low-utilization subcategory.
- Simple cycle frame turbines (greater than 320 MW) with a performance standard of 25 ppm reflecting DLN combustion controls as BSER for all load subcategories. There is no advanced DLN technology for these very large turbines.
- All units in combined cycle mode (*i.e.*, base load) with a performance standard based on SCR as BSER.

The EPA agrees with the commenters that since subpart KKKK was finalized in 2006, new higher efficiency classes of frame type combustion turbines have become commercially available, and the sizes of these large turbines range from approximately 290 MW to 450 MW. There are also two aeroderivative turbine designs that are large higher efficiency units with NO_x emission rates of 25 ppm.⁶⁹ As pointed out by the commenters, these classes of combustion turbines are generally larger than earlier generation designs and these frame type turbines are differentiated from earlier models by their higher firing temperatures that result in higher NO_x emissions.⁷⁰

As discussed above, the EPA is determining that it is appropriate to further subcategorize large, low-utilization combustion turbines according to efficiency. The new subcategorization approach for these turbines reflects the distinctions between large, higher efficiency turbines and large, lower efficiency turbines when those turbines are operating at low levels of utilization. This distinction is not relevant when these turbines are operating at high utilization because, regardless of the efficiency of the turbine, combustion controls with the addition of SCR is reasonable for

large turbines operating at high utilization.⁷¹ However, at low utilization, there is a clear distinction between the technical feasibility of achieving different emission rates using combustion controls based on the efficiency of the turbine. Efficiency is thus an appropriate basis for subcategorization for large combustion turbines operating at low utilization.

Further subcategorization according to design efficiency is only reasonable for combustion turbines in the large subcategory. For instance, the EPA is not aware of any commercially available models of new medium combustion turbines with design efficiencies greater than 38 percent on a HHV basis. For the subcategory of new small combustion turbines, the most efficient model of which we are aware achieves an efficiency of 35 percent on a HHV basis. Regardless of the design efficiencies of new small and medium combustion turbines, we did not identify a distinct correlation between efficiency and the manufacturer guaranteed NO_x emission rates. On the other hand, for combustion turbines in the large subcategory, we identified a clear correlation between design efficiency and manufacturer guaranteed NO_x emissions.

For subpart KKKKa, the EPA determines this additional subcategorization is appropriate because it reflects, in part, improvements in the design efficiency of stationary combustion turbines. These developments in the current combustion turbine marketplace—as evidenced by a review of manufacturer specification data and as stated in public comments—continued to evolve since the promulgation of subpart KKKK in 2006. Additionally, distinguishing between combustion turbines in subpart KKKKa based on utilization has the effect of elucidating distinctions in the reasonableness of controls when turbines are operating at low versus high utilization; these distinctions were not evident based on the subcategorization approach in subpart KKKK. As discussed in section IV.B.5 of this preamble, this results in a higher NO_x emissions standard for the class of large low-utilization higher efficiency combustion turbines relative to subpart KKKK. It also results in a lower NO_x emissions standard for the class of large low-utilization lower efficiency combustion turbines than was determined for other classes of large turbines in subpart KKKK.

The EPA notes that subcategorizing large low-utilization combustion turbines by design efficiency can impact

the availability of large turbines for use as high-utilization units. For example, combined cycle facilities can be built in stages—initially the simple cycle portion is installed and the HRSG and steam turbine are installed later. This occurs when developers elect to go ahead and install the simple cycle portion to meet current low-utilization loads, and as demand increases over time, they add the steam portion of the combined cycle facility to meet high-utilization loads. Under this planned staging of construction and generation, the combustion turbine could operate as a simple cycle unit for years. For other installations, the simple cycle portion of the combined cycle facility is completed prior to the remainder of the combined cycle facility due to unforeseen events, such as delays in the availability of materials necessary to complete the steam portion of the facility or delays in the availability of a second (or third) combustion turbine engine for a combined cycle facility with multiple turbines serving a single steam turbine. The ability to begin operating the simple cycle portion of the facility prior to the completion of the combined cycle project could have significant financial benefit to the developer and provide additional resources to assist in grid stability. And because the SCR for combined cycle turbines is included in the HRSG, the simple cycle turbine would be operating without SCR in both scenarios.

Without a subcategory for large low-utilization combustion turbines based on efficiency, developers would not be able to use models with efficiencies of 38 percent or greater as simple cycle turbines—even on a short-term basis. The lack of a subcategory would provide a perverse regulatory incentive to install lower efficiency combustion turbines so that they could be operated on a short-term basis in simple cycle mode. This would result in higher overall emissions because when the HRSG becomes operational, the resulting lower efficiency combined cycle facility with a lower efficiency turbine engine would have higher emissions compared to these higher efficiency turbine engines that result in a more efficient and lower emitting combined cycle facility.

d. Subcategorization of Non-Natural Gas-Fired Combustion Turbines

Consistent with subpart KKKK, the EPA proposed that when a combustion turbine fires a fuel that is more than 50 percent non-natural gas (*e.g.*, either a gaseous fuel, such as hydrogen, or a liquid fuel, such as oil) while under full load for a portion of an hour of operation, then that combustion turbine

⁶⁹ Variations of the General Electric (GE) LMS100.

⁷⁰ Examples include GE's 7HA series (7HA.01, 7HA.02, and 7HA.03), Siemens' 9000HL, and Mitsubishi's M501J series that includes the M501JAC.

⁷¹ See section IV.B.3 of this preamble.

is subject to the appropriate non-natural gas NO_x emission standard—based on the application of the BSER—for that entire hour of full-load operation. However, we also solicited comment on eliminating the 50 percent requirement so that the non-natural gas emissions standard would apply when any amount of non-natural gas fuel is burned in the combustion turbine engine at full load. In general, we proposed that the BSER for most sources firing non-natural gas fuels is the use of wet combustion controls (*i.e.*, water or steam injection) and/or diffusion flame combustion. (Diffusion flame combustion is where fuel and air are injected at the combustor and are mixed only by diffusion prior to ignition. Generally, it is not considered a type of combustion control technology *per se* because the EPA is not aware of diffusion flame combustors broadly available that are able to achieve significant NO_x reduction in combustion turbines, though for some subcategories the EPA identifies this technology as the BSER in the absence of any other method of control.) Accordingly, we proposed NO_x standards for non-natural gas-fired sources in subpart KKKKa based on the application of the BSER for each size-based subcategory.

Several commenters opposed the EPA's proposal to define sources in subpart KKKKa as non-natural gas-fired when more than 50 percent of the heat input is from a non-natural gas fuel at full load. For example, according to one commenter, widespread industry practice when switching from natural gas to oil is to reduce load and switch from lean premix/DLN combustion controls (for natural gas) to diffusion flame (for oil). This can lead to a short-term spike in emissions, which, according to the commenter, necessitates a higher, less stringent NO_x limit. Should such a spike in NO_x emissions occur when less than 50 percent of the fuel being combusted is fuel oil, the source would be subject to the (lower, more stringent) NO_x standard for natural gas.⁷² Commenters further explained that given the effect on emissions of switching fuels, it could be difficult for a source to meet a lower NO_x standard for natural gas combustion when a non-natural gas fuel is being combusted, including when the non-natural gas fuel represents less than 50 percent of the total heat input during the hour. The commenters asserted that a more reasonable approach would be to apply the highest applicable NO_x

emissions standard for *any* hour when *any* amount of non-natural gas fuel is combusted—as in the Industrial Boiler NESHAP—and pointed out the EPA's acknowledgement in the proposal that eliminating the 50 percent threshold “could provide a more accurate representation of the performance of applicable control technologies.”^{73 74}

Other commenters stated the EPA's concern that eliminating the 50 percent requirement would incentivize operators to burn a small amount of non-natural gas fuel to be subject to a higher NO_x emissions limit is unfounded. Specifically, the commenters asserted that reducing load makes fuel switching impractical by causing generation to be less efficient, meaning there is little to no incentive for an operator to conduct a fuel switch to take advantage of a less stringent standard.

Further, several commenters responded to a solicitation for comment in the proposal regarding whether multiple fuels could be combusted simultaneously in a combustion turbine engine and whether it is necessary to temporarily cease operation or reduce load to switch from natural gas to distillate oil. According to commenters, the design and operation of combustion systems do not allow for multiple fuels to be combusted simultaneously in turbines operating under full load—except for specific designs of dual-fuel combustion turbines used in certain industrial processes. The commenters explained that for combustion turbines not designed to operate in dual-fuel mode, different gaseous fuel streams can be premixed and fired (*e.g.*, natural gas and refinery fuel gas or natural gas and hydrogen). A combustion turbine operator cannot simply switch between liquid and gaseous fuels while operating at full load if the turbine is not designed for dual-fuel operation. In general, most combustion turbines are not dual-fuel designs and either start on gas or oil and continue to operate on the same fuel as the unit loads, or, to improve reliability in cold weather, units will start on gas and transition to oil at or before the full speed no load (FSNL) operating condition. In all cases, turbines with dry or wet combustion controls never operate at full load while simultaneously firing both natural gas and fuel oil. The combustion characteristics of the higher hydrocarbon, distillate oil differ from the combustion characteristics of natural gas. These fuels are incompatible with systems that were

engineered for methane gas, most notably regarding poor flashback margin, which can result in significant damage to premixed, dry combustion controls.

In subpart KKKKa, the EPA is maintaining the provision from subpart KKKK that non-natural gas hours are defined as any hour when more than 50 percent non-natural gas fuels are fired in the combustion turbine at full load (*i.e.*, when the heat input is greater than 70 percent of the base load rating). In these situations, the non-natural gas NO_x standard applies for the entire reporting hour—even if non-natural gas fuel was fired for only a portion of the hour.⁷⁵ Specifically, if the total heat input is greater than 50 percent from non-natural gas fuels (*e.g.*, distillate oil, hydrogen, and fuels other than natural gas), the combustion turbine is subject to the applicable NO_x standard in the non-natural gas-fired subcategory and that NO_x standard must be met for the entire hour. This is consistent with the approach for subcategorizing hours based on load. For example, if the turbine is operated at part load (*i.e.*, 75 percent and 70 percent of the base load rating in subparts KKKK and KKKKa, respectively) at any point during the hour, the part-load standard is applicable for the entire hour even if the average load exceeds the full load threshold. While the EPA appreciates commenters' explanation that fuel switching to obtain more lenient emissions standards is unlikely to occur because it is not economical, the 50 percent non-natural gas threshold has proven workable in subpart KKKK and retaining this threshold in subpart KKKKa avoids any regulatory incentive to unnecessarily combust small amounts of non-natural gas fuels. Similarly, if multiple fuels are burned during an hour of operation and the total heat input is less than or equal to 50 percent non-natural gas (and more than 50 percent natural gas), then the turbine is subject to a NO_x limit that is prorated based on the heat input of the fuels during the hour. For example, if a turbine burns 75 percent by heat input natural gas and 25 percent non-natural gas, the applicable hourly NO_x standard is 0.75 times the applicable natural gas standard, plus 0.25 times the applicable non-natural gas standard.⁷⁶

⁷⁵ For example, an affected facility could burn 51 percent non-natural gas fuel for 1 minute of an hour and 100 percent natural gas for the remaining 59 minutes. In this extreme situation, the entire hour would be considered a non-natural gas-fired hour.

⁷⁶ This example assumes the natural gas and non-natural gas fuels are using different fuel nozzles. If the fuels are mixed prior to combustion, the natural gas/non-natural gas determination is based on the

⁷² See Table 1 in section IV.B.5 of this preamble for the NO_x standards for subcategories of natural gas-fired stationary combustion turbines.

⁷³ See 40 CFR part 63, subpart DDDDD.

⁷⁴ See 89 FR 101318 (Dec. 13, 2024).

It is important to make clear that the NO_x standards for natural gas and non-natural gas hours apply *only* when combustion turbines are operating at *full load*. As explained by commenters, most combustion turbines decrease load during fuel switching, and regardless of the heat input from a particular fuel being fired for a portion of an operating hour, those turbines would be subject to the part-load NO_x standards, which are higher than the individual natural gas- and non-natural gas-fired NO_x standards. See section IV.B.2.f of this preamble for an explanation of subcategorization for turbines operating at part load.

In subpart KKKKa, the EPA is also finalizing as proposed, with one exception, that the NO_x standards of performance are based on the type of fuel being burned in the combustion turbine engine alone. Fuel choice impacts combustion turbine engine NO_x emissions to a greater degree than it impacts such emissions from a duct burner. Therefore, the EPA concludes that this approach provides a more accurate representation of the performance of applicable control technologies. The natural gas standard applies at those times when the fuel input to the combustion turbine engine meets the definition of natural gas, regardless of the fuel, if any, that is burned in the duct burners. The one exception is for byproduct fuels. For turbines burning byproduct fuels, the applicable emissions standard is based on the total heat input to the turbine, including and fuel burned in the duct burners. See section IV.B.7.d of this preamble for further discussion of turbines burning byproduct fuels.

e. Subcategory for Temporary Combustion Turbines

At proposal, the EPA requested comment on creating either a subcategory or an exemption for stationary combustion turbines used in temporary applications. Many commenters generally supported some form of streamlined compliance for temporary applications. Some commenters raised concerns that a full exemption could have unintended consequences. After considering these comments, the Agency is finalizing a new subcategory in subpart KKKKa for small and medium stationary combustion turbines (*i.e.*, up to 850 MMBtu/h in size) used in temporary applications. This subcategory reflects a

fuel mixture. If the mixture meets the definition of natural gas, the natural gas standard is applicable. And if the mixture does not meet the definition of natural gas, the non-natural gas standard is applicable.

BSER determination of combustion controls with an associated standard of 25 ppm NO_x when combusting natural gas and 74 ppm NO_x when burning non-natural gas fuels, along with a streamlined approach to compliance that primarily relies on maintaining documentation of manufacturer certification. Such turbines may be used in a single location for up to 24 months. The EPA is also amending subpart KKKK to include an optional subcategory for stationary temporary combustion turbines with the same BSER, NO_x standards, and recordkeeping and reporting requirements as for the subcategory of stationary temporary combustion turbines in subpart KKKKa.⁷⁷

As discussed in the proposal, a streamlined approach to NSPS compliance for temporary combustion turbine applications would bring this NSPS into alignment with similar approaches that are available in the boilers NSPS and in the reciprocating internal combustion engines (RICE) NSPS. The EPA has historically considered portable boilers and RICE used for limited periods of time to be temporary equipment not subject to regulation under their respective NSPS or NESHAP subparts.⁷⁸ The Agency observed at proposal that the absence of any such provisions in the combustion turbines NSPS is anomalous insofar as combustion turbines tend to have lower air pollutant emissions than are emitted by an equivalent level of power generation from RICE. Further, in the proposal, the EPA noted that the permitting, testing, and monitoring requirements typically applicable for a combustion turbine subject to an NSPS may not be appropriate or suitable for combustion turbines needed quickly and only for limited periods of time. Temporary combustion turbines are generally operated in short-term situations but can also provide power during extended emergency or emergency-like situations (*e.g.*, a natural disaster damages the electric grid) while the primary generating equipment is not available, while transmission and/or generation capacity is being repaired and/or upgraded, or for some other unforeseen event.⁷⁹ Since permitting

⁷⁷ The emission standards for temporary turbines are consistent with the standards in subpart KKKK.

⁷⁸ See, *e.g.*, 40 CFR 60.4200(a), 60.4230(a), 60.40b(m), and 60.40c(i). (We note that at proposal we inadvertently cited similar but separate provisions of the RICE NSPS related to “replacement” engines. *Cf.* 40 CFR 60.4200(e), 60.4230(f).)

⁷⁹ Note that a separate exemption is available for “emergency turbines” in subpart KKKK, which is also being included in subpart KKKKa. See 40 CFR 60.4310(a); *id.* 60.4420 (definition of “emergency

itself could take longer than the need for temporary generation, the Agency solicited comment on whether an applicability exemption or subcategorization would be appropriate for temporary combustion turbines under subparts GG, KKKK, and KKKKa.

The EPA also requested comment at proposal on whether the BSER for temporary combustion turbines is the use of combustion control technology consistent with the otherwise applicable subcategory—25 ppm NO_x for units with base load ratings of 850 MMBtu/h or less and 15 ppm NO_x for larger units. Relatedly, we solicited comment on the appropriate testing and recordkeeping criteria for such regulatory provisions.

Multiple commenters supported the idea of a subcategory or exemption. Comments, particularly from industry stakeholders, supported a BSER of combustion controls and indicated that turbines used in temporary applications are generally capable of meeting a NO_x standard of 25 ppm using combustion controls. The same commenters also generally opposed requiring SCR for temporary turbines, the complexity of which would tend to defeat the purpose of being able to bring in such turbines quickly for immediate and short-term power supply. The EPA agrees that combustion controls are the BSER for temporary turbines, and the Agency applies the BSER analysis set forth in section IV.B.3 of this preamble explaining why SCR is not the BSER for small and medium turbines.

The Agency is limiting the scope of the temporary combustion turbines subcategory so that large combustion turbines (*i.e.*, those with a base load rated heat input greater than 850 MMBtu/h) cannot qualify for treatment as temporary combustion turbines. In general, large combustion turbines are not used in temporary applications—these turbines tend to be frame type units that are more challenging to transport and operate without more extensive onsite preparation.

The EPA finds 25 ppm to be the appropriate standard of performance for NO_x emissions from temporary combustion turbines. (The EPA is not establishing a separate SO₂ standard of performance for this subcategory—in other words, the otherwise applicable SO₂ standard will apply.) Most trailer-mounted turbines, which would likely be intended to remain in the same location for less than 2 years and so can be considered representative of typical temporary turbines, have standard

combustion turbine”). However, this provision may not be clearly applicable in all circumstances in which temporary turbines are needed.

emission guarantees of 25 ppm NO_x. There are some trailer-mounted turbines with lower standard emission guarantees, but these are less efficient designs with lower rated outputs. For example, an emissions standard of 15 ppm NO_x would limit the availability of temporary turbines to those less efficient models with lower rated outputs—significantly increasing costs for the regulated community and resulting in increased fuel use. Combustion systems capable of achieving 15 ppm NO_x are generally more complex and physically larger than comparable combustion systems capable of achieving 25 ppm NO_x. For example, more complex combustion control systems generally have more fuel nozzles and burners, premix larger amounts of air with the fuel, and have more sophisticated control systems. This increases the physical size and cost of a combustion turbine for a given rated output. Furthermore, aeroderivative turbines are generally physically smaller than frame units for the same rated output. Most aeroderivative turbines have guaranteed emission rates of 25 ppm NO_x. The ability to transport a temporary turbine is a critical feature and an emissions standard of less than 25 ppm NO_x would increase the physical size per rated output of combustion turbines that could meet that emissions standard and undermine the purpose of the subcategory. In addition, as discussed in section IV.B.4 of this preamble, combustion controls capable of achieving 25 ppm NO_x qualify as the BSER for small combustion turbines and low-utilization medium turbines—both of which are potential temporary turbines. While some medium temporary turbines may operate at high utilization levels for limited periods of time, there will be periods when the turbine will be in storage, being transported to a new location, or otherwise not operating. On balance, the EPA anticipates that medium temporary turbines will have utilization levels of less than 45 percent. Therefore, we conclude that combustion controls capable of achieving 25 ppm NO_x are the BSER for the temporary turbines subcategory.

Commenters recommended increasing the allowable period of operation at a single location to 18 months or 2 years to account for situations where temporary power is needed for longer than the 12-month period mentioned in the proposal. The Agency agrees with commenters that a 12-calendar-month period may not be sufficient for all situations. In addition, a 24-month period is consistent with a longstanding

policy within the Prevention of Significant Deterioration (PSD) permitting program, which recognizes that emissions occurring for no longer than that period of time may be considered temporary and therefore excluded from modeling analysis.⁸⁰ We note that 24 months is the total residence time permitted from when a temporary turbine commences operation. The final temporary turbine subcategory is for turbines used at a single location for up to 24 months.

Some commenters also stated that the subcategory should be available to combustion turbines used in temporary applications regardless of whether they meet criteria for portability. To simplify compliance and avoid potentially complicated regulatory determinations, the EPA is not requiring temporary combustion turbines to be portable in nature or meet indicia of portability to qualify for this subcategory.⁸¹ Commenters noted there may be applications where a temporary combustion turbine can be transported to a location and installed onsite for a time-limited purpose, but may not meet a definition of “portable” such as that included, for example, in the definition of “temporary boilers.”⁸² Given other criteria the EPA is finalizing that limit the scope of a new subcategory for temporary combustion turbines, we agree a requirement to be portable serves little benefit and is not needed.⁸³

Monitoring, recordkeeping, and reporting requirements are substantially reduced for the subcategory of temporary turbines. In the final rule, the EPA is requiring only that the owner or operator of a turbine falling within the temporary turbines subcategory maintain documentation onsite that each temporary turbine has been certified by its manufacturer to meet a NO_x emissions rate of 25 ppm, and that each turbine has been performance tested at least once in the prior 5 years (for turbines older than 5 years, after the initial sale by the manufacturer). Annual performance testing is not required for turbines in the temporary subcategory. We anticipate that a test every 5 years will be sufficient to ensure that temporary turbines are properly

maintained so as to continue to meet the 25-ppm limit.

Consistent with the proposal, the EPA finds that several conditions on the use or replacement of temporary turbines are necessary to ensure the subcategory does not inadvertently create a means of avoiding requirements that apply under the NSPS for turbines used in non-temporary capacities. Under the final rule, should a temporary combustion turbine remain in place for longer than 24 months, then it would not be considered temporary for any period of its operation, and any failure of the owner or operator to comply with the otherwise applicable requirements of the relevant NSPS, even in the initial 24 months of operation, would be an enforceable violation of the Act. In addition, the final rule does not allow the replacement of a temporary combustion turbine with another temporary combustion turbine to maintain temporary status beyond the 24-month period. However, as an anticipated normal function for these types of turbines, temporary turbines may be used to replace or substitute the generation provided by non-temporary turbines (or other types of generators) when those units are taken offline (*e.g.*, for maintenance work). In addition, the relocation of a temporary stationary combustion turbine within a facility does not restart the 24-calendar month residence time.

The EPA is not finalizing a complete exemption from the NSPS for temporary combustion turbines. In response to the alternative exemption approach on which the Agency sought comment, multiple commenters supported an exemption approach like the NSPS for RICE. However, for RICE, the exemption from the NSPS for equipment operating in a single location of up to 12 months works in conjunction with regulations promulgated under title II of the Act to bring these RICE within the definition of “nonroad engines” as set forth at 40 CFR 1068.30. Such units are then subject to regulations that the EPA has promulgated for nonroad engines pursuant to title II of the Act.⁸⁴

Under both the statute and EPA regulations, combustion turbines in general are considered a kind of internal combustion engine that therefore could in theory be regulated as nonroad engines.⁸⁵ Historically, however, the EPA has not regulated combustion turbines, even those that may be portable, as nonroad engines, but rather

⁸⁰ See 43 FR 26380, 26394 (June 19, 1978).

⁸¹ Note that combustion turbines that are mounted on a vehicle for portability continue to be subject to the NSPS, as they have been under subparts GG and KKKK. See, *e.g.*, 40 CFR 60.4420 (definition of “stationary combustion turbine”).

⁸² See 40 CFR 60.41b.

⁸³ Note that, as a separate matter, to be considered a “nonroad engine” for purposes of mobile source regulation under Title II, a unit must, among other things, meet the criteria in the definition at 40 CFR 1068.30, paragraph 1, such as being “portable or transportable.”

⁸⁴ See 42 U.S.C. 7547; see also, *e.g.*, 40 CFR 60, subparts III and JJJ; 40 CFR part 1039.

⁸⁵ See 42 U.S.C. 7550(1) and 7602(z).

as stationary sources.⁸⁶ The current definition of “nonroad engine” at 40 CFR 1068.30 excludes engines that are subject to an NSPS. All combustion turbines meeting the applicability criteria of the NSPS for combustion turbines are subject to those NSPS standards (including portable turbines) and thus have been excluded from the definition of nonroad engines. An exemption from the NSPS for qualifying stationary temporary applications would potentially bring portable combustion turbines within the definition of nonroad engine at 40 CFR 1068.30. However, the kinds of turbines that are used in stationary temporary applications are not currently subject to any title II regulations or standards. Finalizing an exemption for temporary or portable combustion turbines without ensuring a workable framework for compliance under title II could leave these engines subject to no emission standards at all.

Nonetheless, the Agency recognizes the significant interest several stakeholders have expressed in treating combustion turbines used in stationary temporary applications as nonroad engines subject to regulation under title II. There could be benefits in the form of reduced permitting burden and further streamlined compliance obligations for the purchasers and users of such turbines. At the same time, manufacturers of combustion turbines that are treated as nonroad engines would be subject to compliance obligations under title II, including, for example, obtaining certificates of conformity. Such turbines would be treated as other nonroad engines under title II and permitting requirements would not apply to emissions from the engine because such turbines would no longer be considered a part of the stationary source. Commenters on this rule identified concerns with the air quality effects if many temporary combustion turbines were brought together and operated in a single location and suggested imposing operating or total-emissions constraints and air quality considerations to prevent these consequences.⁸⁷

The EPA believes these matters deserve further investigation before rulemaking action is taken to consider

regulating portable combustion turbines used in temporary applications under title II rather than under the NSPS. The EPA is not promulgating any such regulations under title II in this action. In this final rule, the EPA is including a conditional exclusion in subpart KKKKa that will exclude combustion turbines from the definition of “stationary combustion turbine,” if the turbine meets the definition of “nonroad engine” under title II of the Act and applicable regulations, and is certified to meet emission standards promulgated pursuant to title II of the Act, along with all related requirements. This provision will become operative if the EPA in the future adopts nonroad emission standards and certification requirements for portable combustion turbines.

Even in the absence of a complete exemption from the NSPS, the EPA believes creating the subcategory for temporary combustion turbines in this action can facilitate actions that reduce the permitting burden faced both by sources and permitting authorities. Note that the EPA is separately exercising authority granted to it under CAA section 502(a) to exempt from title V permitting any combustion turbines that are not major sources.⁸⁸ The EPA expects that the application of combustion turbines at sites with a potential to emit below the title V permitting major source threshold (as referenced in the last sentence of CAA section 502(a)) would also emit below major NSR emissions thresholds and thus only be subject to minor NSR program requirements. CAA section 110(a)(2)(C) requires States to develop a program to regulate the construction and modification of any stationary source, including minor NSR requirements as necessary, to assure that NAAQS are achieved. Minor NSR requirements are required to be approved into a State Implementation Plan (SIP), Tribal Implementation Plan (TIP), or Federal Implementation Plans (FIP) and are often mechanisms to assist in achieving and maintaining the NAAQS.⁸⁹ The CAA and the EPA’s regulations are less prescriptive regarding the minor NSR program requirements. Therefore, reviewing authorities generally have significant flexibility in designing their minor NSR programs, including any air permitting programs for minor sources. Minor NSR permits are almost exclusively issued by State, local, and other authorized reviewing authorities, although the EPA issues minor NSR permits for most areas

of Indian country where Tribes have not developed TIPs or requested delegation to administer minor NSR permitting programs for their jurisdictions. With the creation of the temporary combustion turbines subcategory in this action, the EPA believes authorized reviewing authorities may find it efficient to pursue further streamlining of minor-source permitting for such sources, including developing a general permit for such sources, or issuing a permit by rule for these sources.

Even where temporary combustion turbines comprise or are part of a major source for purposes of NSR permitting, the temporary turbines subcategory will assist States in identifying emissions from such sources that may be excluded from parts of the permit review because they are temporary. Under the EPA’s PSD regulations, temporary emissions can be excluded from the analysis of whether the emissions increases that would result from construction or modification of a major stationary source cause or contribute to a violation of air quality standards.⁹⁰ As discussed above, the 24-month period we are finalizing for this subcategory accords with the duration the EPA has used for decades to classify temporary emissions in the PSD program. Sources with characteristics that place them within this subcategory will have a straightforward means of showing that emissions from these sources are temporary to apply this PSD exemption for temporary emissions in the review of a PSD permit application.

Further, the standards of performance in this final rule are legally and practically enforceable and thus can serve to inform calculations of the potential to emit of these sources for purposes of determining whether they are major sources for NSR applicability purposes. Sources may, of course, also voluntarily accept, in an enforceable permit condition, more stringent emissions limits, or limit their operating time, to reduce their potential to emit so as to become synthetic-minor sources for NSR applicability purposes.

f. Subcategory for Combustion Turbines Operating at Part Loads, Located North of the Arctic Circle, or Operating at Ambient Temperatures of Less Than 0 °F

When the EPA promulgated subpart GG (the original stationary gas turbine criteria pollutant NSPS) in 1979, the NO_x standards and compliance requirements were based on performance testing. Based on subsequent rulemakings, owners or

⁸⁶ See 42 U.S.C. 7411(a)(3). See 40 CFR 60.331(a); 40 CFR 60.4420 (definition of “stationary combustion turbine”).

⁸⁷ The EPA notes that under the subcategory approach to temporary stationary combustion turbines, which was are finalizing in subpart KKKKa, permitting authorities may take these kinds of considerations into account in determining appropriate emissions limitations or other requirements.

⁸⁸ See section IV.E.5 of this preamble for further discussion.

⁸⁹ See 42 U.S.C. 7410(a)(2)(C).

⁹⁰ See 40 CFR 51.166(i)(3); 40 CFR 52.21(i)(3).

operators of a gas turbine subject to subpart GG with a NO_x CEMS began determining excess emissions on a 4-hour rolling average basis. The EPA found that a 4-hour basis is the approximate time required to conduct a performance test using the performance test methods specified in subpart GG. This 4-hour rolling average became the default for determining the emission rates of gas turbines, and, in 2006, the EPA retained it in the subsequent review of the stationary combustion turbine criteria pollutant NSPS.

When the EPA proposed subpart KKKK in 2005, the NO_x performance emissions data were based on stack performance tests, which are representative of emission rates at high hourly loads, rather than CEMS data. The final NO_x standards for high hourly loads were consistent with the performance test data and manufacturer guarantees. To avoid confusion with the annual “utilization” levels discussed elsewhere in this document, we will refer to high hourly loads as “full loads,” in contrast with “part loads”; utilization levels on an annual basis are referred to as “low-utilization” and “high-utilization.” Manufacturer guarantees are only applicable during specific conditions, which include the load of the combustion turbine (*i.e.*, when the load meets certain specifications) and the ambient temperature (*i.e.*, generally above 0 °F). When combustion turbines are operated at part loads and/or at low ambient temperatures, low-NO_x combustion controls—the identified BSER in subpart KKKK—were not as effective at reducing NO_x from a technical standpoint.⁹¹ At part-load operation and low ambient temperatures, it is more challenging to maintain stable combustion using DLN and adjustments to the combustion system are required—resulting in higher NO_x emission rates. Therefore, in subpart KKKK, the Agency identified diffusion flame combustion as the BSER for hours of part-load operation or low ambient temperatures.⁹²

⁹¹ The ambient temperature of combustion turbines located north of the Arctic Circle would often be below 0 °F, and these units are included in the low ambient temperature subcategory regardless of the actual ambient temperature. As we found with subpart KKKK, the costs of requiring combustion controls that would rarely be used are not reasonable.

⁹² Combustion turbines have multiple modes of operation that are applicable at different operating loads and when the combustion turbine is changing loads. The modes are specific to each combustion turbine model. The identified BSER of diffusion flame combustion also includes periods of operation that use less effective DLN compared to operation at full loads.

In subpart KKKK, a part-load hour is defined as any hour when the heat input rate is less than 75 percent of the base load rating of the combustion turbine. If the heat input rate drops below 75 percent at any point during the hour, the entire hour is considered a part-load hour, and the part-load standard is applicable during that hour. Determination of the 4-hour emissions standard is calculated by averaging the four previous hourly emission standards. Under this approach, the “full load” standard (*i.e.*, the standard of performance that has been established for the relevant subcategory as discussed elsewhere in this notice) would not be applicable until a minimum of 6 continuous operating hours. The initial and final hours would be startup and shutdown, respectively, and the part-load standard is applicable during those hours. If the combustion turbines were operating at full load during the middle 4 hours, the full load standard would be applicable to that 4-hour average. The emission standards for the remaining hours would be a blended standard that is between the part-load and full load standards. This approach was viewed as appropriate to account for the different applicable BSERs. Subpart KKKK also includes a 30-operating-day rolling average standard that is applicable to combustion turbines with a HRSG. The 30-operating-day rolling average was included in subpart KKKK because the HRSG was part of the affected facility, and a longer averaging period is necessary to account for variability when complying with the alternate output-based emissions standard.

The EPA is finalizing the same short-term 4-hour standard for part load in subpart KKKKa along with the blended standard approach. Specifically, the applicable emissions standard is based on the heat input weighted average of the four applicable hourly emissions standards. However, as discussed at proposal, the EPA is finalizing two changes to the part-load subcategory. First, the CEMS data analyzed by the EPA indicates that emissions tend to slowly increase at lower loads, but, in general, combustion turbines can maintain compliance with the emissions standards at hourly loads of 70 percent and greater, not just at loads of 75 percent and greater, as reflected in subpart KKKK.⁹³ Therefore, the EPA

⁹³ To maintain flame stability during part-load operation, dry combustion controls must increase the relative amount of the fuel going to the diffusion flame portion of combustion system. This inherently results in an increase in the NO_x emissions rate. Similarly, to maintain stable operation during part-load operation, the relative

determines in subpart KKKKa that this subcategory applies for any hour when the heat input is less than or equal to 70 percent of the base load rating. The EPA notes that lowering the part-load threshold brings more operating periods under the otherwise-applicable standards of performance.

Second, the EPA is finalizing a different size threshold for subcategorizing the part-load emission standards. Subpart KKKK subcategorizes the part-load emissions standard based on the rated output of the turbine (*i.e.*, combustion turbines with outputs greater than 30 MW have a more stringent part-load standard than smaller combustion turbines). For subpart KKKKa, the EPA proposed to subcategorize the part-load standard based on the heat input rating (*i.e.*, turbines with base load heat input ratings greater 250 MMBtu/h would have a more stringent standard (96 ppm NO_x) than smaller combustion turbines at part load (150 ppm NO_x)).

In this action, since the final size-based subcategorization approach no longer includes the proposed 250 MMBtu/h of heat input size threshold for combustion turbines operating at full load, and because the proposal did not otherwise identify a basis for amending the part-load size threshold, the EPA is retaining in subpart KKKKa a size threshold that is comparable to the 30 MW output threshold in subpart KKKK. However, instead of using an output metric, subpart KKKKa sets a threshold to distinguish the two size-based, part-load subcategories at less than, or equal to or greater than, 300 MMBtu/h of heat input. All new combustion turbines with base load ratings of greater than 300 MMBtu/h have design rated outputs of greater than 30 MW, and all new combustion turbines with base load ratings of less than 300 MMBtu/h have design rated outputs of less than 30 MW. This maintains consistency with the use of a heat-input metric for other size-based subcategories in the NSPS.

In the proposed rule for subpart KKKKa, the EPA solicited comment with respect to a concern that the standards for the part-load subcategory are significantly less stringent than the otherwise applicable standards of performance and could create a perverse incentive to operate at part loads. The Agency also solicited comment on possible solutions. Commenters largely disagreed that the part-load standards substantially eroded the stringency of the NSPS or created a perverse incentive for sources to operate at lower hourly

amount of water injected for wet combustion controls must be reduced.

loads to obtain the higher emissions standards. One commenter submitted graphical data illustrating that it typically will not be economically advantageous to operate at part-load for extended periods of time, and other commenters that own or operate combustion turbines stated that extended part-load operations are not consistent with their practices.

After considering these comments, the EPA agrees that further changes from subpart KKKK's approach to part-load operations are not needed in subpart KKKKa. The EPA finds the commenters' explanations credible that the part-load subcategory does not unduly weaken the NSPS. Nonetheless, as the EPA discussed in the proposal, we believe the use of an optional, alternative approach to compliance using mass-based limits could be an effective way to simplify compliance for some combustion turbines while also ensuring overall good emissions performance consistent with the revised standards of performance in subpart KKKKa.⁹⁴

Additionally, in subpart KKKKa, the EPA is maintaining as proposed the same ambient temperature subcategorization and BSER as in subpart KKKK. If at any point during an operating hour the ambient temperature is below 0 °F, or if the combustion turbine is located north of the Arctic Circle, the BSER is the use of diffusion flame combustion with the corresponding part-load standard.

Dry combustion controls are less effective at reducing NO_x emissions at part-load operations and low ambient temperatures. In addition, SCR is only effective at reducing NO_x under certain temperatures at part loads and is not as effective at reducing NO_x as at design conditions. The only technology the EPA has identified for all part-load operations and/or low ambient temperatures is the use of diffusion flame combustion. Therefore, in subpart KKKKa, the EPA determines that diffusion flame combustion is the BSER for these conditions as proposed.⁹⁵

g. Subcategorization Based on Other Factors

In response to the proposed rule, several commenters recommended that subpart KKKKa subcategorize stationary combustion turbines based on whether they operate as simple or combined cycle units and/or whether they are

aeroderivative or frame type units. These commenters recommended that the EPA re-evaluate its BSER determinations to better address the physical and operational differences between simple and combined cycle turbine configurations because of the technical and economic effects these differences have on controlling emissions. Specifically, the commenters cited the higher exhaust temperatures of simple cycle frame turbines and noted the challenges this would create for operating SCR. One commenter noted that due to the different capabilities of the equipment, the base load subcategory should be split so that simple cycle and combined cycle units are not in the same group.

While the EPA appreciates the differences between these types of units and discusses such differences as appropriate throughout this preamble, it is not subcategorizing based on simple versus combined cycle or aeroderivative versus frame type combustion turbines in subpart KKKKa. For aeroderivative and frame type combustion turbines, separate subcategories might not be technically viable. For example, aeroderivative turbines share components and are adapted from aircraft jet engines, and while they tend to be lighter and have higher pressure ratios and efficiencies than similar-sized frame units, there is overlap and no clear distinction between the technologies. In addition, and critically, there are no inherent differences in the performance of combustion controls or SCR between aeroderivative and frame type combustion turbines.⁹⁶

Further, the EPA believes it is more appropriate to address the differences between combustion turbines operating in simple cycle and combined cycle configurations through subcategorizing by utilization.⁹⁷ While there are clearly differences between simple and combined cycle configurations, those differences are not necessarily determinative of the reasonableness of different types of NO_x controls because they are superseded by another basis or bases for subcategorization. That is, there are other characteristics of turbines that, when accounted for under the EPA's subcategorization approach in this final rule, obviate the need to subcategorize by simple cycle versus combined cycle configuration because such differences are already effectively

accounted for by the utilization subcategories.

In the utility sector, simple cycle turbines tend to operate at much lower capacity factors (*e.g.*, the average lifetime capacity factor is 9 percent) than combined cycle turbines (*e.g.*, the average lifetime capacity factor is 51 percent). However, there is some overlap in capacity factors. For example, in 2024, 3 percent of simple cycle turbines operated at capacity factors greater than 30 percent, and 19 percent of combined cycle turbines operated at capacity factors less than 30 percent. As discussed in section IV.B.2.b of this preamble, the capacity factor or utilization level impacts the cost effectiveness of NO_x controls. This is the case regardless of whether a turbine is in a simple cycle versus a combined cycle configuration. After accounting for utilization (in addition to the other types of subcategorizations the EPA is providing in this final rule), there is no further basis for differentiating between simple and combined cycle turbines from the perspective of selecting the BSER and standards for NO_x. Furthermore, establishing separate subcategories could create a regulatory incentive to install simple cycle turbines instead of combined cycle turbines—although the same controls are reasonable for both, and simple cycle turbines emit more NO_x per unit of useful energy output. To avoid this perverse environmental outcome, the EPA is establishing standards of performance that are achievable by both simple and combined cycle combustion turbines under the subcategories in this final rule. In addition, to establish separate subcategories for simple and combined cycle turbines, the Agency would have to determine how to subcategorize CHP facilities that operate with and without an associated steam turbine, turbines using steam injection, and recuperated turbines. While these turbines recover energy from the turbine exhaust, that energy is not necessarily used to generate electricity with a steam turbine, so these would not be considered a combined cycle since they are not using two separate thermodynamic cycles. However, since these types of combustion turbines are recovering thermal energy and the exhaust gas temperatures are lower, the costs of SCR are lower compared to simple cycle turbines. The EPA notes that new CHP facilities often replace existing boilers (or boilers that would have been built if CHP were not installed) and offer significant environmental benefit compared to generating the electricity and thermal

⁹⁴ See section IV.E.4 of this preamble for discussion of the optional, alternative mass-based NO_x standards.

⁹⁵ A BSER of diffusion flame combustion includes DLN that is less effective at reducing NO_x than DLN under design conditions.

⁹⁶ See the manufacturer specification sheet in the rulemaking docket for additional information about available models of stationary combustion turbines.

⁹⁷ See discussion in section IV.B.2.b of this preamble.

energy separately. Increasing the costs of new small, medium or low-utilization CHP to the point that sources are disincentivized from using CHP could have the perverse environmental outcome of increasing overall emissions. The Agency has considered these broader impacts in determining not to subcategorize between simple and combined cycle turbines.

3. Evaluation of SCR Under BSER Factors

In the proposal of subpart KKKKa in December 2024, the EPA proposed to find SCR justified under the BSER factors for combustion turbines of all sizes, albeit not below a 40 percent capacity factor for turbines equal to or smaller than a base load rating of 250 MMBtu/h of heat input, and not below a 20 percent capacity factor for turbines larger than that size.⁹⁸ Since the proposal, the EPA has undertaken a review of the BSER criteria in relation to SCR considering the extensive technical comments submitted. The EPA's closer evaluation of cost information concerning SCR as well as information concerning the difficulty of application of SCR for certain subcategories, and other downsides of SCR in terms of its emissions and energy impacts have led the EPA to conclude that SCR is not justified under the BSER factors for all but new large high-utilization combustion turbines.

The EPA is determining for subpart KKKKa that SCR is part of the BSER for new large high-utilization stationary combustion turbines (*i.e.*, that are utilized at 12-calendar-month capacity factors greater than 45 percent). For these types of combustion turbines, SCR has been nearly universally adopted in recent years, and the EPA has determined it is cost-effective, achieving substantial reductions in NO_x emissions at costs that are comparable to those that the EPA has found reasonable in other rules over the past several decades. The EPA received no significant, adverse comments asserting that SCR is not appropriately part of the BSER for this subcategory of new combustion turbines.

A review of recent rules and determinations, multiple relevant cost metrics, and the adoption of SCR technology across certain types and sizes of power sector stationary combustion turbines in recent years, all support our determination that this technology is cost-reasonable for the subcategory of large high-utilization turbines, to which we apply it as BSER in subpart KKKKa.

However, for all other combustion turbine subcategories, the EPA is determining that SCR is not part of the BSER under present circumstances. For these other subcategories, SCR is not cost reasonable in relation to the amount of NO_x emission reductions that can be achieved, presents implementation and operational challenges, has high energy impacts, and has other non-air quality and environmental impacts that are not justified in relation to the relatively small reduction in NO_x emissions beyond the standards that can be achieved with combustion controls.

The SCR process is based on the chemical reduction of NO_x via a reducing agent (reagent) and a solid catalyst. To remove NO_x, the reagent, commonly ammonia (NH₃, anhydrous and aqueous) or urea-derived ammonia, is injected into the post-combustion flue gas of the combustion turbine. The reagent reacts selectively with the flue gas NO_x within a specific temperature range and in the presence of the catalyst and oxygen to reduce the NO_x into molecular nitrogen (N₂) and water vapor (H₂O). SCR employs a ceramic honeycomb or metal-based surface with activated catalytic sites to increase the rate of the reduction reaction. Over time, however, the catalyst activity decreases, requiring replacement, washing/cleaning, rejuvenation, or regeneration to extend the life of the catalyst. Catalyst designs and formulations are generally proprietary. The primary components of the SCR include the ammonia storage and delivery system, ammonia injection grid, and the catalyst reactor. The technology can be applied as a standalone NO_x control or combined with other technologies, including wet and dry combustion controls.

The EPA's proposed BSER of combustion controls with the addition of post-combustion SCR for most new and reconstructed combustion turbines generated a significant adverse response from the regulated community and certain States during the public comment period. Other commenters supported broad application of SCR as the BSER.

Many commenters stated that the proposed BSER is problematic and impractical because it would require SCR on industrial combustion turbines as well as those that operate at variable loads. According to the commenters, this would introduce significant operating complexity, increase annual operating costs, and result in unreasonable costs and operating burden for these installations. Instead, these commenters argued that the need

for SCR should be determined on a site-specific basis as part of NSR air permitting.

Additionally, commenters stated that SCR systems on simple cycle turbines are complicated, expensive, and pose design challenges when compared to combined cycle operations. For example:

- SCR systems require specific temperature ranges to operate effectively, typically between 315 °C and 400 °C (600 °F and 750 °F). For simple cycle turbines with higher exhaust temperatures, additional cooling air may be needed to cool the exhaust flow and avoid damage to the SCR catalyst structure and operation. The costs associated with installation, operation, and maintenance of such cooling air systems were not adequately addressed by the EPA in the proposal.

- The installation of SCR systems requires sufficient space for the catalyst and ammonia injection systems. Therefore, it can be infeasible to install SCR on an existing installation that is modifying or reconstructing; the cost of SCR on a simple cycle frame turbine can be 30 percent to 50 percent of the cost of the turbine alone while doubling the space requirements.

- SCR is difficult even for combined cycle units in the case of existing turbines going through modifications or reconstructions. An existing turbine may have been installed without SCR in mind, so replacement of the HRSG could be required for a combined cycle unit, which is more expensive (estimated at \$50 million) than the SCR system itself (estimated at \$14 million).

- SCR systems are generally more effective in steady-state operations. Combustion turbines that frequently start and stop or operate under variable loads could face challenges in optimizing SCR performance.

- Implementing and operating an SCR system involves not only engineering, design, and installation costs but also additional maintenance and operational costs, including the handling and storage of ammonia or urea, catalyst replacement, and monitoring. For this reason, SCR is not viable for remote sites that have no full-time operator (*e.g.*, unattended compressor stations).

- The EPA developed the proposed limits based on utility data, not data adequately characterizing industrial installations. The EPA should revise its cost analysis, which will demonstrate the requirement to achieve emissions rates associated with SCR is inappropriate for non-utility units.

Due in part to these concerns, several commenters stated that the EPA underestimated the cost for SCR relative

⁹⁸ See 89 FR 101322–23.

to recent cost estimates received from manufacturers and technology providers and submitted information to that effect. Furthermore, the commenters contended that considering more accurate cost estimates, SCR costs would not be “relatively low,” as the EPA stated at proposal, and the technology would not be the BSER for medium and small combustion turbines, including industrial turbines, low-utilization turbines, and existing sources that modify or reconstruct.

These commenters stated that the EPA should re-analyze its proposed BSER determination based on the design and operational differences among different types of combustion turbines. In addition, commenters provided several cost estimates that result in the incremental cost effectiveness of installing SCR at values generally greater than \$20,000/ton NO_x abated to achieve the proposed NO_x emissions limits, which exceed the levels that the EPA has historically considered to be cost effective.

Taking into consideration the SCR cost information submitted by commenters, the EPA has updated the BSER cost analysis from proposal. This cost analysis supports a conclusion that the BSER for most subcategories of new, modified, or reconstructed combustion turbines subject to subpart KKKKa is the use of combustion controls alone (*i.e.*, without SCR). The updated cost analysis nonetheless also supports our conclusion that SCR is the BSER for large high-utilization turbines—turbines with base load ratings greater than 850 MMBtu/h of heat input that are utilized at capacity factors greater than 45 percent on a 12-calendar-month basis. The new combustion turbines subject to a standard of performance based on the BSER of combustion controls with SCR have, over the past 5 years, almost exclusively used combined cycle technology and have operated as base load units (*i.e.*, at high utilization rates). This means that the technical issues associated with SCR raised by commenters are not a factor for new large high-utilization sources in this subcategory.

a. Adequately Demonstrated

SCR is a mature and well-understood post-combustion add-on NO_x control that has been installed on combustion turbines (both simple and combined cycle), utility boilers, industrial boilers, process heaters, and reciprocating internal combustion engines. Many natural gas-fired combustion turbines in the power sector currently utilize SCR. While costs and operational challenges can vary quite dramatically among

different types of combustion turbines in ways that are relevant to other BSER factors (as discussed in the sections that follow), the EPA is not aware that SCR is completely unavailable to any type of natural gas-fired combustion turbine. Therefore, in general the EPA considers SCR to be a technically feasible and available technology for control of NO_x emissions from natural gas-fired stationary combustion turbines. In that sense, SCR can be considered to be “adequately demonstrated”; however, after considering all of the BSER factors as described in the sections that follow, the EPA finds that SCR in a number of combustion turbine applications is not the BSER for most subcategories of combustion turbines.

For non-natural gas-fired combustion turbines, commenters noted that SCR has not been demonstrated on liquid fuel-fired turbines (including distillate and biofuels) operating at high-utilization rates and that biofuels can poison SCR catalysts. The EPA does not have long-term performance information for various types of non-natural gas-fired combustion turbines and due to potential complications, such as catalyst deactivation due to impurities in the fuel, the EPA is not determining that SCR is technically feasible for all non-natural gas-fired turbines.

b. Extent of Reductions in NO_x Emissions

The percent reduction in NO_x emissions from SCR depends on the level of control achieved through combustion controls. For a combustion turbine using standard combustion controls (*i.e.*, a guaranteed full load emissions rate of 25 p.m. NO_x) reductions can approach 90 percent. The percent reduction across SCR is lower if the combustion turbine is equipped with advanced combustion controls. In conjunction with dry combustion controls on natural gas-fired combustion turbines, SCR has been demonstrated to reduce long-term NO_x emission rates to approximately 3 ppm for multiple types of turbines.⁹⁹

c. Costs

In response to significant adverse comments concerning the EPA’s proposed cost analysis for SCR, the EPA has revised its cost analysis. The full, final cost analysis is available in the *SCR Costing* technical support document available in the docket for

this action.¹⁰⁰ This section summarizes key findings from this updated analysis.

In 2006, when subpart KKKK was promulgated, SCR was evaluated as a potential BSER and was determined to not meet the statutory criteria. The estimated cost of achieving incremental NO_x reductions with the use of SCR was \$9,000/ton (adjusted to 2024\$) compared to the lean premix and DLN systems that were available at that time. The EPA determined that these costs were not reasonable in promulgating subpart KKKK.

SCR is widely adopted as a NO_x emissions control strategy for certain stationary combustion turbines, particularly for large turbines in the utility sector. However, during the technology review for this action, the EPA found that information contained in the records of permitting actions requiring SCR on combustion turbines is not consistent or well-developed for purposes of informing a detailed cost analysis for an NSPS. Generally, if a source was required (or chose voluntarily) to install SCR and went forward with a new combustion turbine project or installation, the cost of SCR presumably did not undermine the economic viability of that project. Nonetheless, just because individual projects have been economically viable with SCR installation does not necessarily mean SCR installation on all combustion turbines is cost-justified on a national basis, nor does it necessarily reflect the best or most cost-effective means of achieving overall reductions in NO_x emissions. These considerations will be discussed further in sections IV.B.3.c.ii and iii below.

Before proceeding with our evaluation of SCR under the BSER factors, the Agency first notes that standalone SCR (*i.e.*, without combustion controls) is not the BSER. The EPA estimates that SCR without combustion controls would be able to reduce NO_x emissions by 90 percent and achieve emission rates like turbines with 25 ppm and 15 ppm NO_x guarantees based on combustion controls alone. The exact achievable level would depend on the uncontrolled NO_x emissions rate of the relevant turbine. The estimated cost effectiveness of SCR without combustion controls is approximately \$5,000/ton for low-utilization large turbines and \$2,000/ton for high-utilization large turbines. However, the combustion controls analyzed in this technology review can achieve the same level of emissions reduction at significantly lower cost. As discussed in greater detail in section IV.B.4.c of this

⁹⁹ See section IV.B.5.a.i of this preamble for discussion of the determination of the NO_x standards of performance for the subcategory of combustion turbines subject to a BSER that includes SCR in subpart KKKKa.

¹⁰⁰ See Docket ID No. EPA–HQ–OAR–2024–0419.

preamble, combustion control costs are approximately \$2,000/ton for low-utilization large turbines and \$100/ton for high-utilization large turbines, without any of the secondary environmental and energy impacts associated with SCR.¹⁰¹ Therefore, SCR alone is not the BSER for any subcategory. The remainder of this section considers whether SCR should be a part of the BSER, as a technology applied in addition to combustion controls.

For this final rule, as in the proposal, the EPA estimated the capital and operating costs of SCR primarily using information from the U.S. Department of Energy's (DOE) National Energy Technology Laboratory (NETL) flexible generation report.¹⁰² The NETL report includes detailed costing information on aeroderivative simple cycle turbines using hot SCR and frame combined cycle turbines using conventional SCR. For information not available in the NETL report, the EPA used information from its cost control manual and applied Agency engineering judgment.¹⁰³ One commenter provided detailed comments on the SCR costing analysis that the EPA incorporated, as appropriate, into the cost estimations. Other commenters provided cost comparisons that suggest the costs of SCR for simple cycle turbines have been underestimated.¹⁰⁴

The EPA determines for purposes of subpart KKKKa that the costs of SCR are reasonable on a nationwide basis for new large high-utilization stationary combustion turbines (*i.e.*, with base load ratings greater than 850 MMBtu/h of heat input and utilized at 12-calendar-month capacity factors greater than 45 percent) and therefore that SCR is part of the BSER for this subcategory. However, for new large low-utilization stationary combustion turbines (*i.e.*, utilized at 12-calendar-month capacity factors less than or equal to 45 percent), and for all medium and small combustion turbines, the EPA determines that the costs of SCR are not reasonable and therefore that SCR is not

part of the BSER for these subcategories, particularly in light of the other factors discussed in the following sections.

i. Large High-Utilization Combustion Turbines

Based on information reported to EPA's Clean Air Markets Program Data (CAMPD), most new construction of large high-utilization combustion turbines is projected to be combined cycle facilities. As described in section IV.B.5 of this preamble, the maximum 12-calendar-month capacity factor of recently constructed large simple cycle turbines is less than 45 percent. Large turbines are almost exclusively used to generate electrical power, and at high levels of utilization, the levelized cost of electricity (LCOE) of combined cycle turbines is approximately the same as or lower than the LCOE for simple cycle turbines. Therefore, the EPA's primary costing analysis for large high-utilization turbines is based only on the impacts and costs of using SCR on combined cycle turbines. The costs for large high capacity factor simple cycle turbines are provided for completeness, and while these costs are higher than for combined cycle turbines, simple cycle turbines are generally not expected to operate at the high utilization levels that would trigger the SCR-based BSER subcategory.

There are several indicators that broadly support the cost-reasonableness of SCR as part of the BSER for new large combined cycle turbines that plan to operate at high rates of utilization. The cost of SCR as a percentage of the capital costs associated with constructing a new combined cycle turbine is estimated to be approximately 1 percent. The estimation of spent capital cost for SCR is approximately \$3 million to \$7 million (2024\$) depending on the size of the combined cycle turbine. The capital costs of SCR on a capacity basis range from \$10 per kilowatt (kW) to \$20/kW, depending on the size of the combined cycle turbine. These costs translate into a relatively low cost per unit of energy output, and their effects on prices or costs to the consumer are relatively small and manageable. Total SCR cost (annualized capital costs, fixed costs, and operating costs) per unit of production (*i.e.*, electricity generation) is approximately \$0.66/MWh, which represents a 2 percent increase in the LCOE for a new 370 MW combined cycle combustion turbine operating at a 12-calendar-month capacity factor of 51 percent for 30 years. This effect on the cost of electricity generation compares

favorably with cost analyses that have been conducted in the past.¹⁰⁵

Turning to the \$/ton cost-effectiveness metric: In the final cost analysis for this rule, the EPA finds that the cost effectiveness on a \$/ton of NO_x controlled basis varies significantly based on the percent reduction and the size of the combined cycle turbine. SCR costs decrease with economies of scale and there is no single \$/ton figure that can be used to broadly represent SCR costs.

For combined cycle turbines with combustion controls guaranteed at 25 ppm NO_x, the incremental costs to reduce NO_x concentrations to 3 ppm range from \$3,200/ton to \$4,600/ton.¹⁰⁶ For combined cycle turbines with combustion controls guaranteed at 15 ppm NO_x, the incremental costs to reduce NO_x concentrations to 3 ppm range from \$4,400/ton to \$6,800/ton.¹⁰⁷ For combined cycle turbines with combustion controls guaranteed at 9 ppm NO_x, the incremental costs to reduce NO_x concentrations to 3 ppm range from \$7,300/ton to \$12,000/ton.¹⁰⁸ For combined cycle turbines with combustion controls guaranteed at 5 ppm NO_x, the incremental costs to reduce the NO_x concentration to 3 ppm range from \$13,000/ton to \$22,000/ton.¹⁰⁹

SCR costs decrease with economies of scale, and the low end of each range is more representative of the typical size of new combined cycle turbines. The EPA has concluded that the costs of SCR for large high-utilization turbines with combustion controls and guaranteed NO_x emission rates of 9 ppm or greater are reasonable. Therefore, for these types of turbines, the EPA finds SCR to be cost-effective. While the Agency finds the incremental costs of SCR from

¹⁰⁵ See, *e.g.*, 80 FR 64510, 64565, tbl. 9 (Oct. 23, 2015). While this comparison is useful to illustrate in a relative sense this cost metric as used in prior EPA analyses, reference to this prior rulemaking notice should not be understood as endorsing any legal or factual determinations made at that time.

¹⁰⁶ The EPA reviewed the previous 5 years of emissions data to determine long-term emission rates of turbines. A long-term emissions rate of 3 ppm NO_x was used for a turbine complying with a short-term emissions rate of 5 ppm NO_x. The long-term emissions rate of a turbine with a 25 ppm NO_x guarantee is 20 ppm NO_x. Using a long-term emissions rate of 2 ppm or 4 ppm as representative for a combustion turbine with SCR would not change the BSER determinations.

¹⁰⁷ The long-term emissions rate of a turbine with a 15 ppm NO_x guarantee is 14 ppm NO_x.

¹⁰⁸ The long-term emissions rate of a turbine with a 9 ppm NO_x guarantee is 7 ppm NO_x. The SCR costs are estimated by assuming the SCR uses two catalyst layers instead of three.

¹⁰⁹ The EPA assumed the long-term emissions rate of a turbine with a 5 ppm NO_x guarantee is 5 ppm NO_x. The SCR costs are estimated by assuming the SCR uses two catalyst layers instead of three.

¹⁰¹ See section IV.B.3.d of this preamble.

¹⁰² Oakes, M.; Konrade, J.; Bleckinger, M.; Turner, M.; Hughes, S.; Hoffman, H.; Shultz, T.; and Lewis, E. (May 5, 2023). *Cost and Performance Baseline for Fossil Energy Plants, Volume 5: Natural Gas Electricity Generating Units for Flexible Operation*. U.S. Department of Energy (DOE). Office of Scientific and Technical Information (OSTI). Available at <https://www.osti.gov/biblio/1973266>.

¹⁰³ EPA Air Pollution Control Manual, Chapter 2 Selective Catalytic Reduction, June 2019. Available at <https://www.epa.gov/economic-and-cost-analysis-air-pollution-regulations/cost-reports-and-guidance-air-pollution>.

¹⁰⁴ For detailed information on the costing analysis, see the *SCR Costing* technical support document included in the docket for this action.

a 5-ppm baseline would not be considered cost-effective, the large high-utilization turbines for which the EPA is including SCR in the BSER do not achieve an emissions rate this low with combustion controls alone. (Further, as discussed in more detail below, the EPA is setting the standard of performance associated with SCR at 5 ppm, meaning that to the extent large, high-utilization combustion turbines are, or come to be, capable of achieving 5 ppm with combustion controls alone, SCR would not need to be installed to meet the emissions standard.)

The costs of SCR for new large high-utilization combustion turbines on a per-ton of NO_x abated basis (*i.e.*, \$/ton) compare favorably with prior EPA rulemakings that regulate NO_x emissions. Although determinations concerning cost reasonableness in one statutory or programmatic context may not necessarily translate to another, these regulatory precedents offer points of comparison with respect to the same pollutant that can be informative in evaluating the most cost-effective opportunities for abatement of a common pollutant across multiple program arenas and therefore are relevant to the BSER analysis. That is particularly true when the relevant statutory provisions involve cost considerations similar to CAA section 111(a)(1).

In prior NSPS and CAA rules, the EPA generally found incremental costs in the range of \$7,400/ton of NO_x abated to be cost effective (escalated to 2024\$).¹¹⁰ The EPA has also recognized that an SCR with incremental costs of approximately \$12,000/ton of NO_x abated may be justifiably rejected as not cost-reasonable (escalated to 2024\$).¹¹¹

In the proposed rule, the EPA cited the *Federal Implementation Plan Addressing Regional Ozone Transport for the 2015 Ozone National Ambient Air Quality Standard* rulemaking (commonly known as the Good Neighbor Plan), as a comparison point. In that rule, the EPA estimated SCR costs for retrofit applications of \$14,000/ton of NO_x abated (escalated to 2024\$) as the appropriate representative cost threshold for defining “significant contribution” under CAA section 110(a)(2)(D)(i)(I).¹¹² However, upon further review and taking into account comments with respect to this particular rule comparison, the EPA no longer

believes the Good Neighbor Plan is an appropriate comparator. First, we did not grapple at proposal with the Supreme Court’s decision to stay enforcement of the Good Neighbor Plan as likely arbitrary and capricious.¹¹³ Although the Court addressed the Agency’s failure to consider a different aspect of the problem, its opinion raised significant doubts about the adequacy of the EPA’s analysis and engagement with comments received. Because the Good Neighbor Plan was never implemented and its assumptions about cost reasonableness were not tested in the real world, we do not believe the cost analysis in that rule is entitled to significant weight as a regulatory precedent. Second, the cost analysis in the Good Neighbor Plan assessed retrofit costs for coal units for the purpose of promoting attainment of the NAAQS and therefore does not directly translate to the situation here. As noted elsewhere in this preamble, more stringent standards may be appropriate under the specific set of facts presented in an individual permitting context than would be appropriate for a NSPS. Similarly, more stringent standards, and greater associated costs, may be appropriate when necessary to meet statutory requirements for nonattainment areas. Finally, the EPA is in the process of reconsidering the Good Neighbor Plan, and as such, no longer believes this cost-per-ton figure should serve as an appropriate comparison point. Although that process is not yet complete, its initiation reflects the Agency’s significant concerns with the analysis and justifications underlying the Good Neighbor Plan.

Turning to simple cycle turbines: The costs of SCR for simple cycle combustion turbines are higher, especially for frame type turbines. SCR catalysts require specific operating temperatures to control NO_x effectively, and the exhaust temperatures of simple cycle turbines are generally too high to be used directly in the SCR. The exhaust gases need to be cooled, generally through injecting tempering air to cool the exhaust to avoid damaging the SCR catalyst. Frame turbines require higher amounts of air tempering than aeroderivative turbines because the exhaust temperature of the most efficient frame-type combustion turbine is approximately 200°C higher than the most efficient aeroderivative combustion turbines. For utility units at high utilization rates, it is generally more cost effective to cool the exhaust prior to the SCR using the HRSG instead of tempering air. Since a HRSG does not

increase the volume of exhaust gas entering the SCR, the SCR can be smaller and less costly, and the recovered thermal energy can be used to generate additional useful output. The EPA notes that there are technologies other than air tempering and a traditional HRSG that can be used to cool the exhaust gas prior to the SCR reactor. For example, a new combined cycle turbine could be designed with a relatively simple, lower cost HRSG and the recovered thermal energy (*i.e.*, steam) could be used in a relatively simple, lower cost steam turbine or injected into the combustion turbine itself (*i.e.*, a steam injection combustion turbine). These technologies have efficiencies and costs that range between more standard simple and combined cycle turbine configurations.

To estimate the costs of SCR on large simple cycle turbines, the EPA scaled costs based on the NETL 50 MW simple cycle turbine using dry combustion controls. These costs incorporate tempering air and are more representative of the SCR costs for large simple cycle turbines than the 100 MW simple cycle model plant the EPA used at proposal. The 100 MW aeroderivative model plant is a simple cycle turbine that uses compressor intercooling and wet combustion controls—both of which lower the exhaust temperature and reduce the need for tempering air. In response to specific concerns raised by commenters, the EPA incorporated several of the suggested adjustments to the SCR costing equations.¹¹⁴ However, for simple cycle turbines, even with these adjustments the EPA’s estimated costs are significantly less than the example costs provided by other commenters. Because the EPA finds commenters’ information credible and representative, this suggests that actual costs could be as high as twice the EPA’s derived costs. Consequently, the EPA’s cost analysis for simple cycle turbines likely represents best-case scenario costs.

The cost of SCR as a percentage of the capital costs associated with constructing a new simple cycle turbine is estimated to be approximately 5 percent. The estimation of spent capital cost of the SCR reactor is approximately \$8 million to \$18 million (2024\$), depending on the size of the turbine.

¹¹⁴ The EPA continues to primarily use SCR costs derived from the NETL Flexible Generation Report. Differences in the final rule include using SCR fixed costs derived from the EPA’s Pollution Control Manual, accounting for capacity payments, using the base cost of the combustion turbine without SCR when determining the value of the lost electric sales, and using the six-tenths rule when estimating the capital costs of SCR for different combustion turbine sizes.

¹¹⁰ See, e.g., 71 FR 9866, 9870 (Feb. 27, 2006) (finding an incremental cost for SCR on boilers of approximately \$5,000/ton to be reasonable).

¹¹¹ See, e.g., 77 FR 20894, 20929 (Apr. 6, 2012) (approving State determination rejecting SCR where incremental cost was estimated at \$8,845).

¹¹² See 88 FR 36654 and 36746 (June 5, 2023).

¹¹³ *Ohio v. EPA*, 603 U.S. 279, 292–94 (2024).

The capital costs on a capacity basis range from \$45/kW to \$80/kW, depending on the size of the simple cycle turbine. These costs translate into a higher cost per unit of energy output, and in terms of their likely effect on prices or costs to the consumer, are higher than for combined cycle turbines. Total costs (annualized capital costs, fixed costs, and operating costs) in terms of cost per unit of production (in terms of electricity generation) translate to \$2/MWh, a 4 percent increase in the LCOE for a 240 MW simple cycle combustion turbine operating at a 12-calendar-month capacity factor of 51 percent for 30 years.

For a simple cycle turbine with combustion controls guaranteed at 25 ppm NO_x, the incremental costs to reduce the NO_x concentration to 3 ppm range from \$6,800/ton to \$10,000/ton. For a simple cycle turbine with combustion controls guaranteed at 15 ppm NO_x, the incremental costs to reduce the NO_x concentration to 3 ppm range from \$10,000/ton to \$16,000/ton. For a simple cycle turbine with combustion controls guaranteed at 9 ppm NO_x, the incremental costs to reduce the NO_x concentration to 3 ppm range from \$17,000/ton to \$28,000/ton. And for simple cycle turbines with combustion controls guaranteed at 5 ppm NO_x, the incremental costs to reduce the NO_x concentration to 3 ppm NO_x range from \$33,000/ton to \$54,000/ton. While these estimates generally exceed what has historically been considered cost-reasonable for NO_x emissions reductions, the EPA does not anticipate simple cycle turbines will generally fall into the large high-utilization subcategory because they will not be utilized at or above the 45 percent capacity factor on a 12-calendar-month basis. At high levels of utilization, the fuel savings of combined cycle turbine outweigh the increase in capital costs and the large high-utilization subcategory is almost exclusively combined cycle and combined heat and power turbines. Therefore, these costs do not change the EPA's determination that the costs of SCR are reasonable for large high utilization combustion turbines.

ii. Large Low-Utilization Combustion Turbines

The EPA concludes that SCR is not cost-reasonable for all other subcategories of new stationary combustion turbines, including large combustion turbines that are designed and operated as low-utilization units.

Most large low-utilization combustion turbines operate as simple cycle turbines in the utility sector. Historical

data indicates that simple cycle turbines in the utility sector typically have utilization rates of less than 20 percent, considerably lower than the 45 percent utilization level that defines the high-utilization subcategory. The long-term, fleetwide average utilization for large simple cycle turbines is approximately 9 percent. While some combined cycle turbines may also occasionally operate below a 45 percent utilization level on a 12-month basis, this is more unusual. Therefore, the EPA uses the costs of SCR for simple cycle turbines rather than combined cycle turbines when evaluating low-utilization turbines.

While some indicators could support the cost-reasonableness of SCR as a part of the BSER for large simple cycle turbines operated at low rates of utilization, others do not. In particular, the EPA finds that the incremental \$/ton cost ranges for NO_x abatement are substantially higher than the EPA has found reasonable in prior rules (see section IV.B.3.c.ii). Therefore, the EPA is determining in subpart KKKKa that the costs of SCR are not reasonable for new large low-utilization combustion turbines.

The EPA estimates using its SCR cost model that the capital cost of SCR as a percentage of the capital costs associated with constructing new simple cycle turbines is estimated to be approximately 3 to 4 percent. The estimation of spent capital cost is approximately \$5 million to \$17 million (2024\$) depending on the size of the simple cycle turbine. The capital cost on a capacity basis ranges from \$40/kW to \$80/kW depending on the size of the simple cycle turbine. These costs translate into significantly higher costs per unit of energy output relative to large high-utilization turbines. Total costs (annualized capital costs, fixed costs, and operating costs) in terms of costs per unit of production (in terms of electricity generation) for a simple cycle turbine operated at a 9 percent capacity factor for 30 years translate to \$8/MWh to \$14/MWh, a 5 to 8 percent increase in the LCOE, depending on the size of the turbine. However, several industry commenters asserted that estimated SCR costs for large simple cycle turbines are far higher than the estimates derived from the EPA's primary data sources. As discussed in the *SCR Costing* technical support document included in the docket, as a reasonable bounding assumption we assume the capital costs that could be experienced by some firms may be up to three times higher than the estimates derived from our primary data sources. Increasing the EPA estimated capital costs by a factor of three results in an increase in the costs of electricity

generation for a typical simple cycle turbine that is higher than prior EPA rules. Nonetheless, the EPA notes that at the upper end of the utilization threshold, the increase in the cost of electricity from simple cycle turbines would still be comparable with previous EPA rules.

In contrast, the costs on a per-ton basis, even using the EPA-derived costs, do not compare favorably with prior EPA rulemakings regulating NO_x emissions. The cost effectiveness of the \$/ton of NO_x controlled vary significantly based on the utilization of the simple cycle turbine, the percent reduction, and the size of the simple cycle turbine. Nonetheless, the historical, long-term capacity factor of 9 percent, along with a relatively conservative 25 ppm manufacturer guaranteed emissions rate, is a reasonably accurate representative example. For simple cycle turbines with combustion controls guaranteed at 25 ppm NO_x operating at a 30-year capacity factor of 9 percent, the incremental costs to reduce the NO_x concentration to 3 ppm range from \$27,000/ton to \$46,000/ton. The \$/ton costs would be even higher for turbines with lower guaranteed NO_x emission rates (such as 15 or 9 ppm).¹¹⁵ The EPA has determined these costs to be not reasonable.

Even assuming a simple cycle turbine is operated at an average capacity factor of 40 percent for 30 years (the upper end of the subcategory threshold), the EPA has determined the costs are not reasonable. For simple cycle turbines with combustion controls guaranteed at 25 ppm NO_x, the incremental costs to reduce the NO_x concentration to 3 ppm range from \$8,000/ton to \$12,000/ton. While these costs are closer to the range of costs the EPA has considered reasonable in previous rulemakings, commenters with experience in this area provided information indicating a range of capital costs that may be considerably higher than used in our primary cost analysis. As described earlier in this section, to incorporate this information, we use a three-fold increase in capital cost as a bounding assumption, and we applied adjustments to the cost model to reflect these additional inputs to illustrate the increase in cost that may be associated with SCR installation on at least some large simple cycle turbines. This results in an incremental cost effectiveness of \$15,000/ton to \$25,000/ton. Again, costs on a \$/ton basis would be even higher for turbines with lower guaranteed NO_x emission

¹¹⁵ See *SCR Costing* technical support document in the docket.

rates based on combustion controls. Therefore, the Agency determines that the costs of SCR are not reasonable for large low-utilization turbines in subpart KKKKa.

iii. Medium and Small Turbines

Unlike the large combustion turbine subcategory, which is dominated by utility units, the medium and small size subcategories include a significant number of combustion turbines used in the industrial and institutional sectors.

The medium low-utilization subcategory is primarily comprised of utility sector simple cycle turbines. Due to economies of scale, the relative costs of SCR are higher for medium simple cycle turbines than for large simple cycle turbines. The incremental control costs of SCR on medium combustion turbines with a guaranteed NO_x emissions rate of 25 ppm range from \$32,000/ton to \$150,000/ton depending on the turbine size. This corresponds to a 5 to 18 percent increase in the cost of electricity and the \$/MWh costs range from \$10/MWh to \$47/MWh. Even assuming a new medium simple cycle combustion turbine operates near the 45 percent utilization threshold, the incremental control costs range from \$9,000/ton to \$37,000/ton NO_x abated. The Agency has determined the costs of SCR are not reasonable for any new, modified, or reconstructed medium low-utilization combustion turbines.

The medium high-utilization subcategory is primarily comprised of industrial simple cycle combustion turbines that serve mechanical drive applications, and about one-third of the units operate in either industrial CHP or utility sector combined cycle applications. Consistent with the proposed rule, the EPA used a 30-year capacity factor of 60 percent when estimating the incremental impacts of SCR for CHP and mechanical drive applications. Mechanical drive applications are projected to comprise most of the new medium high-utilization turbines. For medium mechanical drive applications using a turbine with a 25 ppm NO_x guarantee, the incremental control costs range from \$10,000/ton to \$25,000/ton NO_x abated depending on the size of the turbine. These costs are higher than the Agency considers reasonable. (See prior rule examples in section IV.B.3.c.i.) The control costs would be even higher on a per-ton basis for combustion turbines using combustion controls with lower NO_x guarantees. In addition, turbines with mechanical drive applications tend to be at the smaller end of the medium size subcategory—resulting in even higher control costs (on a \$/ton basis)

for such units. Finally, commenters provided cost information that suggest the EPA's estimated SCR costs may be unreasonably low for simple cycle turbines.¹¹⁶ Therefore, SCR does not qualify as the BSER for new, modified, or reconstructed medium mechanical applications.

For medium CHP and combined cycle turbine applications using a turbine with a 25 ppm NO_x guarantee, the NO_x control costs for SCR range from \$5,000/ton to \$15,000/ton depending on the size of the turbine and the application. For medium CHP and combined cycle turbine applications using a turbine with a 15 ppm NO_x guarantee, the control costs for SCR range from \$7,000/ton to \$23,000/ton depending on the size of the turbine and the application. The average base load rating of medium institutional and industrial CHP combustion turbines is 220 MMBtu/h, and the corresponding cost of control is \$10,000/ton NO_x abated. SCR would not be cost reasonable for medium-sized CHP applications using a turbine with an emissions guarantee less than or equal to 15 ppm NO_x.

The average base load rating of medium combined cycle combustion turbines is 740 MMBtu/h, and the corresponding cost of control is \$7,000/ton NO_x abated for facilities using a turbine with a guaranteed NO_x emissions rate of 15 ppm. The cost of control for medium combined cycle applications using a turbine with a guaranteed NO_x emissions rate of 9 ppm using combustion controls is \$13,000/ton.

Reviewing the cost-estimate ranges for all the types of turbines included in the medium subcategory, we observe that certain cost-per-ton figures at the lower end of the range fall within or approach a level that may be considered reasonable. However, the Agency has determined that it is not appropriate to subcategorize by turbine type (*i.e.*, simple cycle vs. combined cycle or aeroderivative vs. frame type) as discussed earlier in section IV.B.2.g of this preamble. As discussed further in section IV.B.3.d below, issues with SCR on small and medium turbines addressed under other BSER factors, including operational and maintenance challenges, ammonia slip, and energy requirements, tip the scale against SCR as the BSER for any new, modified, or reconstructed medium turbine regardless of size or level of utilization within that subcategory.

Small combustion turbines are used primarily in the industrial and institutional sectors. For small

combustion turbines, the incremental costs of SCR for a 50 MMBtu/h combined cycle turbine with NO_x combustion control guarantees of 25 ppm is \$13,000/ton NO_x abated. The Agency has determined that this cost is not reasonable. Since SCR costs on a \$/ton basis will be even higher for small low-utilization combustion turbines and for small combustion turbines with lower guaranteed NO_x emission rates based on the use of combustion controls, the EPA has determined that the costs of SCR are not reasonable for all new, modified, or reconstructed small combustion turbines regardless of the level of utilization.

iv. Response to Comments Regarding SCR Costs

With respect to the “cost of emissions reduction” BSER factor, one commenter opposed the cost analysis presented at proposal as over-reliant on the incremental \$/ton metric in evaluating SCR as the BSER. The commenter contended that judicial precedents as well as longstanding EPA practice take a more flexible view of the role of cost, that the cost can be assessed for BSER as a whole rather than by the incremental costs of individual components, and that under CAA section 111, costs simply need not be excessive, *i.e.*, so great that they would drive the industry to ruin.

As an initial matter, the EPA agrees that the Agency has traditionally looked at several metrics to evaluate cost as part of the BSER analysis, and that the statute affords the Agency discretion in how this factor can be considered under CAA section 111(a)(1).¹¹⁷ In this rulemaking, as the analysis above sets forth, the Agency evaluated costs using those same metrics that have been used in prior NSPS rulemakings, including total cost, cost as a percentage of capital cost, incremental cost-per-ton of pollutant reduced, and cost per unit of production (in this case, electricity production or LCOE). Overall, our cost analysis shows that while some of these cost metrics suggested at proposal that SCR may be cost-reasonable for more subcategories of combustion turbines than the large high-utilization subcategory, the incremental cost-per-ton in many of these circumstances far exceed what the Agency has found to be cost-effective in prior CAA rulemakings. That is particularly true considering the additional information submitted by commenters experienced in the procurement of SCR technologies showing that the EPA underestimated the actual costs of procurement,

¹¹⁶ See *SCR Costing* technical support document.

¹¹⁷ See *Lignite Energy Council*, 198 F.3d at 933.

installation, and operation at proposal, which the Agency has since incorporated into its analysis through adjustments to the cost model. In addition, for reasons further explained in the following section, other BSER factors weigh against identifying SCR as the BSER, including that SCR involves ammonia slip, which can lead to the formation of criteria pollutants.

With respect to the claim that the EPA is giving undue weight to the incremental cost effectiveness of SCR and is using more rigid cost tests than supported by relevant case law, the EPA disagrees. Use of that metric here, including the incorporation of emissions reductions achieved through technologies used to comply with existing subpart KKKK as a baseline, is consistent with many prior NSPS rulemakings and applicable case law confirming the EPA's broad discretion in analyzing costs under CAA section 111(a)(1).¹¹⁸ Particularly in the NSPS technology review context, considering incremental costs and emissions reductions of a relevant emissions technology is necessarily part of the "review" required by CAA section 111(b)(1)(B). The EPA has given weight to incremental cost-effectiveness (on a \$/ton basis) in evaluating different technologies within BSER analysis in many rules while, as here, also considering several other cost metrics.

The EPA has historically used incremental costing as part of NSPS technology reviews as a way of evaluating whether the marginal cost of an adequately demonstrated additional emissions control supports selecting that control as the BSER. For example, when the EPA first determined SCR to be the BSER for coal-fired utility boilers, we used the existing NSPS standards, which were based on combustion control technologies, as the baseline when determining whether the incremental costs of SCR were reasonable and whether the technology qualified as the BSER.¹¹⁹ That cost analysis was upheld by the D.C. Circuit in *Lignite*.¹²⁰ In addition, when the EPA later reviewed the NSPS for coal-fired electric generating units, the Agency evaluated the incremental impacts of additional NO_x reductions from the SCR when determining the amended emissions standard and did not include the reductions from the use of combustion controls when determining the cost effectiveness of the amended

emissions standard.¹²¹ Furthermore, when promulgating subpart KKKK, the EPA did not use the original NSPS subpart GG as the baseline, because the NO_x performance standards in subpart GG were primarily based on diffusion flame combustion, and the EPA recognized that combustion controls would meet BSER factors. Thus, the Agency first evaluated the level of combustion control that could be achieved and then determined if the incremental impacts of SCR were reasonable.¹²² The EPA has also considered incremental costs in any number of other NSPS rulemakings in addition to these.¹²³ The EPA disagrees with commenter's assertion that considering the incremental costs of a technology from a baseline of either an existing standard or a less costly emissions control technology is inconsistent with longstanding practice or case law.

Further, cost-effectiveness figures evaluated across other CAA rules and programs provide a meaningful comparison to assist in determining what level of cost has generally been considered cost-effective for reducing emissions of a given pollutant. Here, for the subcategories of combustion turbines for which the EPA finds SCR is not cost-reasonable, the incremental \$/ton values are well in excess of incremental cost values that have been deemed cost-effective in the past (see examples cited in section IV.B.3.c.i.).

For this category of sources, and in the context of conducting an NSPS review where the previous BSER was combustion controls, the EPA finds it particularly important to focus on the incremental \$/ton of SCR rather than looking only at the total cost-effectiveness of an "SCR with combustion control" BSER as a whole. The SCR in this case is an additional control, to be combined with controls that are already widely used to comply with the current NSPS (and, indeed, largely built directly into most turbine models by the manufacturer). Failing to present or consider the incremental cost

of SCR to the use of combustion controls alone would effectively mask the true driver of a large portion of the cost of a revised BSER that includes SCR.

In the case of combustion turbines, dry combustion controls are an inherent part of the affected facility and cannot be easily removed or modified and the end user has limited ability to change the way the combustion controls are operated. For turbines with wet combustion controls, if the water injection is turned off, thermal NO_x would increase, but the increased combustion flame temperature and exhaust gas temperature potentially will result in damage to turbine components.

For this source category, it is generally the case that combustion turbine manufacturers have integrated combustion control technologies into the design of the turbine itself for decades, and turbines are sold with manufacturer guarantees of a specific level of NO_x performance already built into the machine. Given that these controls are essentially priced into the retail cost of the turbine itself, it is difficult to generate reliable cost estimates for many types of combustion control technologies in isolation. Substantial improvements in NO_x performance are readily achieved through combustion control technologies integrated into the turbine at the time of manufacture, and the cost of these controls is reflected in the price of purchase of the unit itself.

In contrast, SCR is an add-on technology that typically must be purchased separately and installed on-site, often through dedicated vendors and sub-contracts. The SCR is essentially an additional facility that must be constructed separately with its own footprint. As a practical matter, the costs associated with SCR are borne separately and are clearly additional to the costs of combustion controls. Further, combustion controls are now capable of achieving relatively low NO_x emissions rates that approach what can be achieved with SCR. It makes sense to consider the incremental cost-effectiveness of a technology when that technology comes at substantially increased capital costs and operating and maintenance (O&M) costs over the life of its operation and, compared with a baseline level of emissions performance that is reflective of current or revised BSER determinations for combustion controls, only achieves modestly improved emissions performance compared to a far less costly technology.

The commenter also argues that SCR costs must be reasonable because many combustion turbines in recent years

¹¹⁸ See Section II.A.1 of this preamble for further discussion of the case law under CAA section 111.

¹¹⁹ See 62 FR 36948, 36955, 36958 (July 9, 1997).

¹²⁰ See 198 F.3d 930, 933.

¹²¹ See 71 FR 9870 (Feb. 27, 2006).

¹²² See Memorandum, NO_x Control Technology Cost Per Ton for Stationary Combustion Turbines 7–8 (December 21, 2004), available at docket ID EPA–HQ–OAR–2004–0490–0114; Memorandum, Response to Public Comments on Proposed Standards of Performance for Stationary Combustion Turbines 53, available at docket ID EPA–HQ–OAR–0490–0322.

¹²³ See, e.g., 89 FR 16820, 16864 (Mar. 8, 2024); 87 FR 35608, 35627 (June 10, 2022); 80 FR 64510, 64559 (Oct. 23, 2015); and 77 FR 56422, 56443 (Sept. 12, 2012). Citations to these examples are not intended to imply endorsement of the rules themselves, only that the Agency has had a consistent practice of looking at incremental costs in NSPS rulemakings.

have been required to install or have voluntarily installed SCR, citing to a variety of permitting decisions. The EPA agrees that SCR is generally an adequately demonstrated technology for combustion turbines. However, this commenter's argument collapses the statutory requirement that the Administrator find that a potential control technology is "adequately demonstrated" with the factors the Administrator must consider, including the cost of emissions reduction, when selecting the BSER. Many of the permitting decisions cited by the commenter lack meaningful or probative cost analysis with respect to SCR and focus instead on whether SCR is capable of being installed on the particular source at issue. In addition, many of the commenter's examples are for large high-utilization combined cycle turbines for which the EPA agrees that SCR is cost reasonable. However, the Agency disagrees that SCR is cost-reasonable for all subcategories on a nationwide basis, such that it must be included as part of the BSER for all combustion turbines. Whether SCR is cost-reasonable for smaller or lower utilization combustion turbines in particular permitting contexts is a determination that should continue to be made on a case-by-case basis by local and State permitting authorities, taking into consideration an array of localized factors, including air quality planning and NAAQS attainment status.¹²⁴

d. Non-Air Quality Health and Environmental Impacts and Energy Requirements

Post-combustion SCR has several drawbacks compared to combustion controls technologies. SCR operation has associated ammonia emissions, a criteria pollutant precursor, reduces the output of the combustion turbine, and requires energy to operate. That auxiliary load energy is typically drawn from the combustion turbine itself, reducing the efficiency of its overall power generation and resulting in proportionally increased emissions of other air pollutants that result from combustion turbine operation.¹²⁵

¹²⁴ The EPA further notes that the analysis required in promulgating or reviewing an NSPS is materially different than the analysis required for permitting. For example, CAA section 111(b)(2) authorizes the Agency to distinguish only among classes, types, and sizes of new sources, whereas permitting decisions focus on particular sources in a facility-specific way. 42 U.S.C. 7411(b)(2).

¹²⁵ Note that in this section we evaluate a range of environmental impacts associated with SCR. To the extent these impacts are not explicitly covered under the "nonair quality health and environmental impact" factor, they are nonetheless statutorily relevant in identifying the "best" system of

Post-combustion SCR uses ammonia as a reagent, and some ammonia is emitted either by passing through the catalyst bed without reacting with NO_x (unreacted ammonia) or by passing around the catalyst bed through leaks in the seals. Both types of excess ammonia emissions are referred to as "ammonia slip." Ammonia is a precursor to the formation of fine particulate matter (*i.e.*, PM_{2.5}). Ammonia slip typically increases as the catalyst beds age and is often limited to 10 ppm or less in operating permits. Ammonia catalysts, consisting of an additional catalyst bed after the SCR catalyst, reacts with the ammonia that passes through and around the catalyst to reduce overall ammonia slip. In the NETL model plants used in the EPA's analysis of SCR, no additional ammonia catalyst was included, and ammonia emissions were limited to 10 ppm at the end of the catalyst's service life. For estimating secondary impacts, the EPA assumed average ammonia emissions of 3.5 ppm. Assuming the ammonia slip is 3.5 ppm regardless of the NO_x emissions rate prior to the SCR, the amount of ammonia emitted per ton of NO_x controlled increases with combustion controls that achieve lower NO_x emission rates prior to the SCR. For example, assuming the NO_x emissions rate is decreased from the manufacturer guaranteed rate of 15 ppm to 3 ppm with the addition of SCR, the EPA estimates that for each ton of NO_x controlled, 0.12 tons of ammonia will be emitted from SCR controls. For combustion turbines with guaranteed NO_x emission rates of 9 ppm and 5 ppm, the EPA estimates the relative ammonia emissions increase to 0.33 tons and 0.65 tons of ammonia per ton of NO_x controlled, respectively.¹²⁶ According to information submitted by commenters, ammonia slip increases as the percentage of NO_x reduced by SCR increases above 80 percent. For example, the ammonia slip at 85 percent reduction is nearly double the ammonia slip at 80 percent reduction. And at 94 percent reduction, the ammonia slip is 10 times as high relative to 80 percent reduction.

Several commenters supportive of SCR technology called on the EPA to establish standards of performance for ammonia slip and took the view that this would be sufficient to mitigate this downside of SCR technology. First, as

emissions reduction. See section II.A.1 of this preamble.

¹²⁶ Ammonia has a lower molecular weight (17) than NO₂ (46). Thus, although more molecules of ammonia are being emitted in the example of a combustion turbine with a guaranteed NO_x emissions rate of 5 ppm, the mass of NO_x is greater.

these and other comments acknowledged, ammonia slip is typically addressed through identifying facility-specific practices and conditions in the permitting process, and the EPA continues to view permitting as the appropriate mechanism for addressing this concern. Second, a standard of performance would still not eliminate ammonia emissions from SCR operation. Our analysis assumes ammonia emissions of 3.5 ppm, while these commenters called for setting an emissions limit of 2 ppm. Other commenters, however, stated that permitted ammonia emissions rates are often in the range of 7 to 10 ppm. In short, ammonia emissions of some level are a downside of SCR that at present cannot be entirely avoided, regardless of whether a limit is set, and it is reasonable to assume that such a hypothetical limit would be at or near the rate already assumed in our analysis.

The use of SCR also reduces the efficiency of a combustion turbine through the auxiliary/parasitic load requirements to run the SCR and the backpressure created from the catalyst bed. This not only reduces the net energy output of combustion turbines but also translates into increases in other types of emissions to the extent the turbine must run longer to produce the same amount of energy to meet energy requirements.¹²⁷

In general, the EPA does not believe that these effects, on their own, exclude SCR from being part of the BSER. However, these impacts are sufficiently adverse that, in the case of minimal incremental NO_x reductions from SCR as compared with combustion controls alone, they support a conclusion that SCR is not part of the BSER. Thus, the non-air quality health and environmental impacts and energy requirements of SCR support the conclusion that SCR does not qualify as the BSER for turbines with combustion controls capable of achieving 5 ppm NO_x. For combined cycle turbines using less effective combustion controls, the non-air quality and environmental impacts do not necessarily eliminate SCR as the BSER, and these effects do not change our determination that SCR is part of the BSER for large high-utilization combustion turbines. With respect to the low-utilization and small and medium combustion turbines for which the EPA identifies a range of cost-

¹²⁷ Among the pollutants that would potentially increase in association with this increase in operation is formaldehyde, a hazardous air pollutant regulated for combustion turbines at major sources under CAA section 112. See generally 40 CFR part 63, subpart YYYYY.

effectiveness values for SCR, the lower ends of which may be considered reasonable at least under some scenarios, the EPA finds these downsides to SCR are sufficient to tip the scale away from including SCR in the BSER.

Some commenters asserted that SCR, when used in combination with combustion controls, is clearly the BSER even if it has downsides under some BSER factors. These commenters asserted that statutory language and case law requires the EPA to prioritize and maximize emissions reductions.

The EPA agrees with the commenter that adequately demonstrated technologies that achieve the greatest amount of emissions reduction need to be carefully considered under all the BSER factors. However, the statutory language does not bear out the commenters' claim that the EPA must always mandate the most emissions reductions possible through our BSER determinations, heedless of the other statutory factors Congress directed the Agency to consider in CAA section 111(a)(1). In general, the courts have recognized that the EPA has considerable discretion in weighing those factors,¹²⁸ and a general policy of selecting the technology with the greatest emissions reductions irrespective of the "cost of achieving such reduction," "nonair quality health and environmental impact[s]," and "energy requirements" would be inconsistent with the statute.¹²⁹

Here, the analyses above supply important and persuasive information that SCR is not the BSER for many types of combustion turbine applications for cost and other reasons. If the Agency were to follow the approach suggested by some commenters and include a stringent standard of performance across the board for combustion turbines that could only be met with SCR, it could discourage the development of other control technologies that do not suffer from similar drawbacks and would likely increase emissions of other pollutants.¹³⁰ For example, a BSER that includes SCR could substantially reduce the incentive to improve combustion

control design and performance. Once SCR is installed on a unit, the type of combustion control used matters less. Taking ammonia costs as an example, while less ammonia is required and those costs are reduced with improved combustion controls in combination with SCR, the savings are small relative to the overall annual costs of SCR. All else being equal, the annual SCR costs for a 50 MW simple cycle turbine with a 15 ppm NO_x guarantee is 0.9 percent lower than for a turbine with a 25 ppm NO_x guarantee (an annual savings of \$6,000).¹³¹ Similarly, the annual costs of a turbine with a 9 ppm NO_x guarantee are 0.7 percent (\$5,000) lower than a comparable turbine with a 15 ppm NO_x guarantee. These incremental reductions in SCR costs are relatively low and not likely to offer a competitive advantage for an end user purchasing a turbine with combustion controls with lower guaranteed NO_x emission rates. The economic incentive for manufacturers to invest in improved combustion controls is to gain a competitive advantage by developing turbines that do not require SCR, at least in certain situations. If a BSER determination is made that effectively mandates SCR for all new combustion turbines, regardless of the level of emissions reduction achieved with combustion controls, there would be little incentive for manufacturers to invest in improved combustion controls. This could lead to increased costs for users of energy, increased fuel use (from the efficiency loss associated with SCR), and increased ammonia emissions.

Other commenters stated in response to the proposed rule that the EPA should exclude SCR as a component of the BSER for large combustion turbines utilized at lower capacity factors because the proposed SCR costs, as well as the proposed 3 ppm NO_x standards for large simple cycle turbines that result from including SCR in the BSER, are arbitrary and unreasonable. Instead, according to the commenters, the BSER for these large turbines should be advanced DLN or DLN combustion controls with associated NO_x emission limits, as appropriate. The commenters argued that the proposed determination of the BSER did not consider the full costs of adding SCR to larger simple cycle turbines (*i.e.*, those greater than 850 MMBtu/h). Specifically, the hot exhaust gases require cooling prior to

the SCR, resulting in an approximate doubling of capital costs. Such costs would cause an entire class of larger frame-type turbines to be eliminated from consideration for use due to cost. According to two commenters, large turbines have guaranteed NO_x emission rates ranging from 5 ppm to 25 ppm by utilizing only combustion controls. The commenters added that the exclusion of SCR as the BSER for these turbines would support the creation of additional subcategories for combustion turbines with base load rated heat inputs greater than 850 MMBtu/h.

Based on a review of comments, the EPA is not including in subpart KKKKa the proposed subcategory for all sizes of new and reconstructed combustion turbines that would operate at intermediate loads (*i.e.*, at 12-calendar-month capacity factors greater than 20 percent and less than or equal to 40 percent). The EPA is also determining in subpart KKKKa that SCR does not qualify as the BSER for large low-utilization combustion turbines (*i.e.*, with 12-calendar-month utilization levels less than or equal to 45 percent). Instead, the EPA is determining that the BSER is the use of combustion controls for all sizes of new low-utilization combustion turbines. These changes address commenters' concerns about being required to install SCR for simple cycle turbines, which, as discussed in section IV.B.2, have not historically operated at high utilization levels. For large high-utilization combustion turbines, including simple cycle turbines, the BSER includes the use of SCR as proposed, for the reasons discussed above.

4. Evaluation of Combustion Controls Under BSER Factors

Since proposal, the EPA has undertaken a careful review of the BSER criteria in relation to combustion controls and has considered the extensive technical comments submitted. This includes information about the availability and performance of wet combustion controls (*i.e.*, steam or water injection), dry combustion controls, and the performance of advanced combustion controls for certain types and classes of available stationary combustion turbines. Advanced combustion controls generally refer to dry combustion controls that have been tuned, upgraded, or modified to improve the combustion process in such a manner as to limit the formation of thermal NO_x. These include technologies such as lean premixed combustion, DLN and ultra DLN burners, staged combustion, and flue gas recirculation, which generally

¹²⁸ See, *e.g.*, *Sierra Club v. Costle*, 657 F.2d 298, 346–47 (D.C. Cir. 1981).

¹²⁹ 42 U.S.C. 7411(a)(1).

¹³⁰ See *id.* ("We have no reason to believe Congress meant to foreclose in section 111(a) any consideration by EPA of the stimulation of technologies that promise significant cost, energy, nonair health and environmental benefits. . . . [W]hen balancing the enumerated factors to determine the basic standard it is appropriate to consider which level of required control will encourage or preclude development of a technology that promises significant advantages with respect to those concerns.").

¹³¹ These costs are derived using the EPA's cost model as proposed and without adjusting based on the information provided by commenters intended to demonstrate that the EPA's estimated capital costs of SCR for simple cycle turbine are low. Using higher capital costs would reduce the percent reduction in savings from improved combustion controls.

result in lower NO_x emission rates than non-advanced combustion controls.¹³²

The basis of dry combustion control or DLN combustion control is to premix the fuel and air and supply the combustion zone with a homogenous, lean mixture of fuel and air. Lean premix means the air-to-fuel ratio contains a low quantity of fuel, and the DLN combustors in the turbine are designed to sustain ignition of this lean premix air/fuel mixture at a lower peak flame temperature, thereby limiting the formation of thermal NO_x. Lean combustion may be combined with staged combustion to achieve additional NO_x reductions. Staged combustion is designed to reduce the residence time of the combustion air in the presence of the flame at peak temperature. The longer the residence time, the greater the potential for thermal NO_x formation. When increasing the air/fuel ratio, excess air is added to the mixture, which both leans the combustion air by adding more air to the air/fuel ratio and decreases the residence time at peak flame temperatures.

Wet combustion controls involve the injection of water (or steam) into the flame area of the combustion reaction to reduce the peak flame temperature in the combustion zone and limit thermal NO_x formation.¹³³ Wet control systems are designed to a specific water-to-fuel ratio that has a direct impact on the controlled NO_x emission rate and is generally controlled by the combustion turbine inlet temperature and ambient temperature. Water injection also increases the mass flow rate and the power output, but the energy required to vaporize the water can reduce overall efficiency.

Steam injection is like water injection, except that steam is injected into the compressor and/or through the fuel nozzles directly into the combustion chamber instead of water. Steam injection reduces NO_x emissions and has the advantage of improved efficiency and larger increases in the output of the combustion turbine. When compared to standard simple cycle turbines, combustion turbines using steam injection are more efficient but more complex with higher capital costs. Conversely, compared to standard combined cycle combustion turbines,

the combustion turbines using steam injection are simpler and have shorter construction times and lower capital costs but also lower efficiencies.¹³⁴ Combustion turbines using steam injection can start quickly, have good part-load performance, and can respond to rapid changes in demand. Since the exhaust gas is cooled, it reduces or eliminates the need for air tempering prior to any associated SCR and thereby lowers the costs of SCR.

The EPA is determining that combustion controls continue to be either the BSER or part of the BSER for all subcategories of new, modified, or reconstructed stationary combustion turbines in subpart KKKKa. This is the result of a revised BSER analysis since proposal that supports the conclusion that combustion controls alone, without the addition of SCR, are the BSER for all but one subcategory of new stationary combustion turbines and for all modified or reconstructed turbines.

The different types of dry combustion controls have been standard equipment on stationary combustion turbines for decades and have been shown to be cost-effective while achieving substantial reductions in NO_x. Furthermore, the technology has continued to improve, as demonstrated by the lower guaranteed NO_x emission rates of advanced combustion controls for certain sizes, classes, and types of new turbines compared to the performance of combustion controls that were available when subpart KKKK was promulgated in 2006. For certain classes of turbines, advanced combustion controls with DLN or ultra DLN have demonstrated the ability to achieve NO_x emission rates comparable to the NO_x emission rates achieved by combustion turbines that operate with SCR but at lower cost and without the drawbacks of SCR discussed elsewhere in this preamble.

Wet combustion controls (including steam-injection), by contrast, are also a mature combustion control technology but generally there have not been significant improvements in emissions performance with these technologies over time. Wet combustion controls remain the appropriate control type for non-gaseous fuels. However, in general, for natural gas-fired combustion turbines, the EPA bases its BSER determinations and emissions standards

on dry combustion controls.

Nonetheless, this preamble also discusses circumstances in which wet controls may be able to meet the selected emissions standards for certain subcategories firing natural gas.

Based on the EPA's revised analysis, the BSER for most subcategories of new, modified, and reconstructed combustion turbines subject to subpart KKKKa is the use of wet, dry, or advanced dry combustion controls alone (*i.e.*, without SCR).

a. Adequately Demonstrated

Combustion controls were determined to be the BSER in subpart KKKK and continue to be widely used as NO_x emission controls on new stationary combustion turbines.¹³⁵ In that sense, combustion controls can be considered to be "adequately demonstrated"; however, after considering all of the BSER factors as described in the sections that follow, the EPA finds that different types of combustion controls have varying degrees of feasibility and emissions performance in relation to specific combustion turbine applications. Thus, in generally finding that combustion controls are an "adequately demonstrated" technology for the source category, the EPA does not mean to imply that the most stringent combustion control technologies necessarily qualify as the BSER for all subcategories of combustion turbines. The various combustion control technologies and our evaluation of them under the BSER factors are further discussed in this and the sections that follow.

Combustion control systems were commercially introduced more than 30 years ago and consist of operational or design modifications that govern combustion conditions to reduce NO_x formation. The control technology is widely available from major manufacturers of natural gas-fired aeroderivative and frame type stationary combustion turbines and is a mature technology that has been demonstrated in various end-use applications.¹³⁶ In

¹³⁵ See 71 FR 38482 (July 6, 2006).

¹³⁶ Combustion turbine manufacturers publish information about their products, including the different combustion controls for each model of combustion turbine commercially available. This includes combustion turbine size, rated output, emission controls, and guaranteed NO_x emission rates. This information is also summarized in the combustion turbine specification sheet included in the docket for this rulemaking (Docket ID: EPA-HQ-OAR-2024-0419); See also Siemens gas turbines at <https://www.siemens-energy.com/global/en/home/products-services/product-offerings/gas-turbines.html>; GE/Vernova gas turbines at <https://www.governova.com/gas-power/products/gas-turbines>; Mitsubishi Power gas turbines at <https://gasturbines/technology/smart-ahat>.

¹³² Unless otherwise indicated, "combustion controls" is used in this preamble as an umbrella term to refer to both combustion controls and advanced combustion controls. Advanced combustion controls have guaranteed emission rates of less than 25 ppm NO_x.

¹³³ In general, the addition of water or steam will not increase emissions of carbon monoxide (CO) or unburned hydrocarbons. However, at higher injection rates, emissions of CO and unburned hydrocarbons can increase.

¹³⁴ Bahrami, S., et al (2015), *Performance Comparison between Steam Injected Gas Turbine and Combined Cycle during Frequency Drops*. Energies 2015, Volume 8. Accessed at <https://doi.org/10.3390/en8087582>; Mitsubishi Power, *Smart-AHAT (Advanced Humid Air Turbine)*. Accessed at <https://power.mhi.com/products/gasturbines/technology/smart-ahat>.

subpart KKKKa, the EPA maintains that combustion controls are, as a general matter, adequately demonstrated for new, modified, or reconstructed natural gas-fired turbines of all sizes. However, the availability of dry combustion controls that can achieve a particular guaranteed NO_x emission rate (e.g., 25 ppm, 15 ppm, 9 ppm, and 5 ppm) varies between the subcategories and applications. The availability of more advanced combustion controls that can achieve NO_x emission rates less than 25 ppm tends to correlate with turbine size. For example, according to turbine manufacturer specifications and information in *Gas Turbine World*, most models of combustion turbines with guaranteed NO_x emission rates of 9 ppm would fall within the large turbine subcategory, whereas the availability of 9 ppm NO_x turbines is generally more limited in the medium and small subcategories. Similarly, as discussed in section IV.B.2.c of this preamble, dry combustion controls can achieve differing NO_x emission rates depending in part on the efficiency of the turbine model to which they are applied. Thus, the EPA is determining that combustion controls with different guaranteed NO_x emission rates are adequately demonstrated for different subcategories of combustion turbines, based primarily on the current state of development of those controls as evidenced by availability of turbines of different sizes and efficiencies that meet certain guaranteed NO_x emission rates.

Specifically, for the subcategory of large low-utilization combustion turbines, the EPA finds that advanced combustion controls that have guaranteed NO_x emission rates of 9 ppm are adequately demonstrated for less efficient turbine designs. For large low-utilization combustion turbines with higher efficiencies, advanced combustion control technologies are not as effective, i.e., cannot achieve the same emission rates due to the higher combustion temperatures necessary for increased efficiency. Therefore, based on the capabilities of controls available for such turbines, the EPA finds that advanced combustion controls with guaranteed NO_x emission rates lower than 25 ppm are not adequately demonstrated for these higher efficiency turbine models, whereas dry combustion controls with guaranteed rates of 25 ppm are adequately demonstrated for this subcategory of large low-utilization combustion turbines.

The subcategories of medium combustion turbines include many models of combustion turbines designed to be operated at higher levels of utilization. For these applications and turbine sizes, dry combustion controls have manufacturer guaranteed NO_x emission rates of 15 ppm, and the EPA is determining that such controls are adequately demonstrated for medium high-utilization combustion turbines. For many models of medium combustion turbines designed to be operated at lower levels of utilization, both wet and dry combustion controls achieve the same manufacturer guaranteed emission rate of 25 ppm NO_x. Wet combustion controls have particular benefits for medium turbines operating at approximately 20 percent annual utilization or less, while at utilizations of 20 to 40 percent, dry combustion controls are more cost effective. However, as stated above, both wet and dry combustion controls achieve the same NO_x emission rate for combustion turbines in the medium low-utilization subcategory and both are adequately demonstrated.

While some small combustion turbines can be equipped with advanced combustion controls with guaranteed NO_x emission rates of less than 25 ppm, such controls are not widely available across the entire subcategory. Therefore, the EPA has determined that such advanced combustion controls have not been adequately demonstrated for the small combustion turbine subcategory. Based on information from turbine manufacturers and commenters, the EPA determines combustion controls, both wet and dry, with guaranteed NO_x emission rates of 25 ppm are adequately demonstrated for all small combustion turbines.

For new turbines that burn non-natural gas fuels (e.g., distillate oil), the EPA maintains that wet combustion controls only are adequately demonstrated for control of NO_x emissions. I.e., dry combustion controls are not adequately demonstrated for such turbines because, as discussed in sections IV.B.2.d and IV.7.a of this preamble, dry combustion controls have limited applicability to limit NO_x emissions when liquid fuels are fired. Wet combustion controls (e.g., water or steam injection) are a mature combustion control technology that has been used since the 1970s to control NO_x emissions from combustion turbines. As discussed above, the EPA also maintains that wet combustion controls are available for certain natural gas-fired combustion turbines as an alternative to dry combustion controls. The emission standards for small and

medium turbines in subpart KKKK could be achieved using either wet or dry combustion controls. However, wet combustion controls were not part of the BSER for large natural gas-fired combustion turbines in subpart KKKK because the technology had not demonstrated the ability to achieve NO_x emissions rates of less than 25 ppm.¹³⁷

b. Extent of Reductions in NO_x Emissions

Combustion turbines without NO_x controls use combustors that are diffusion controlled where fuel and air are injected separately. The resultant diffusion flame combustion can lead to the creation of hot spots that produce high levels of thermal NO_x—as high as 200 ppm. Combustion controls are widely available for new combustion turbines and provide substantial reductions in NO_x emissions relative to combustion turbines without combustion controls.

The level of NO_x reduction that can be achieved with dry combustion controls depends on the combustion systems that have been developed for the specific turbine product line. Development of dry combustion systems is a research intensive and expensive undertaking that is specific to each turbine product line (i.e., combustors developed for a specific turbine model cannot be used on a different turbine model). While almost all combustion systems developed by manufacturers and third parties can achieve 25 ppm NO_x when burning natural gas, some combustion systems with more advanced technologies can achieve 15 ppm, 9 ppm, or 5 ppm NO_x. The feasibility of lower NO_x emissions is additionally impacted by the characteristics of the turbine. For example, compact turbines that can start and stop quickly (typical of aeroderivative turbines) and turbines with high firing temperatures (typical of higher efficiency turbines) have emission guarantees of 25 ppm NO_x. And turbines that are physically larger on a per MW of output basis, and turbines with lower firing temperatures, frequently have available combustion systems with emission guarantees of 15 ppm NO_x or less. The operating parameters that influence guaranteed NO_x emission rates include turbine load, fuel, and ambient conditions, which are like the parameters used to determine the applicable hourly emissions standards in this final rule, meaning that the EPA's BSER determinations and standards reflect the

¹³⁷ [power.mhi.com/products/gasturbines](https://www.power.mhi.com/products/gasturbines); and Solar Turbines at https://www.solarturbines.com/en_US/products.html.

¹³⁷ The emissions standard in subpart KKKK for large natural gas-fired turbines is 15 ppm NO_x.

real-world conditions in which turbines will be operating. Based on emissions information reported to CAMPD, these guaranteed emission rates are being achieved in practice. For all these reasons, the EPA has determined that it is appropriate to use manufacturer guarantees for the purposes of assessing the extent of NO_x emission reductions for the BSER analysis, as well as for establishing emission standards in subpart KKKKa.

Wet control systems are simpler to implement and have demonstrated the ability to limit NO_x emissions to as low as 25 ppm for stationary combustion turbines firing natural gas and between 42 ppm and 74 ppm for sources firing non-natural gas fuels. The EPA is not aware of any advances in combustion controls for non-natural gas-fired fuels relative to the analysis it conducted for subpart KKKK in 2006.

c. Costs

The EPA initially assessed costs relative to a starting point of a combustion turbine with a base load rating of less than 850 MMBtu/h of heat input using combustion controls with a NO_x emissions rate guarantee of 25 ppm, and a guarantee of 15 ppm NO_x for a turbine with a base load rating greater than 850 MMBtu/h of heat input. These are appropriate initial baselines because, absent the revisions to the NSPS being finalized in this action, they are the standards to which natural gas-fired combustion turbines are subject under subpart KKKK. Thus, in this rulemaking, the EPA is assessing incremental costs associated with revising the existing NO_x standards.

Importantly, the EPA believes that the costs of combustion controls are reasonable for the source category because turbine manufacturers are currently making, and end users (including in the utility, industrial, and institutional sectors) are currently purchasing and operating, combustion turbines with guaranteed NO_x emission rates of 25 ppm, 15 ppm, and 9 ppm.¹³⁸ In general, due to more complex combustion systems (e.g., additional fuel nozzles and burners, premixing larger amounts of air with the fuel, and more sophisticated control systems) and/or maintenance requirements, costs increase as the guaranteed NO_x emissions rate of a combustion turbine decreases. Moreover, assessing the incremental costs of combustion controls is different from assessing the costs of other, add-on pollution controls because combustion controls are

integrated into the up-front design and manufacture of combustion turbines. It can therefore be difficult to disentangle the costs of the controls from the costs of the turbines themselves. The EPA has endeavored to do so, but this cost analysis of combustion controls relies more heavily on the overall availability and costs of different sizes, classes, etc., of turbines and their associated controls, as well as the current use of specific types of turbines in specific applications, as indicators of cost reasonableness than might be appropriate in other contexts.

As stated above, the fact that turbines with combustion controls guaranteeing NO_x emission rates ranging from 9 ppm to 25 ppm are being purchased and used today is an indicator that the incremental capital and operating costs of combustion controls (including advanced combustion controls) relative to diffusion flame turbines are reasonable.¹³⁹ However, the characteristics of how a turbine is operated can impact the cost effectiveness of combustion controls. For example, if a unit is operating less it will emit less NO_x, while the capital cost of the combustion controls remains relatively unaffected. As a result, all else being held equal, the cost per ton of NO_x reduced increases as utilization decreases. Therefore, while the capital costs of combustion controls are generally reasonable for the source category, for certain subcategories of combustion turbines, the cost effectiveness of certain combustion controls to meet particular guaranteed NO_x emission rates may not be.

In the 2024 proposed rule, the Agency solicited comment on detailed capital and O&M cost information and other impacts for combustion turbines with NO_x guarantees of 15 ppm, 9 ppm and 5 ppm relative to the costs of comparable combustion turbines with 25 ppm NO_x guarantees. The EPA stated in the proposal that to the extent the Agency received information that the costs of more advanced combustion controls are reasonable, NO_x emission standards consistent with these guaranteed levels could be finalized.¹⁴⁰

¹³⁹ As discussed in section IV.B.4.a of this preamble, while combustion controls are broadly available for and used in the source category, advanced combustion controls are currently less available for smaller turbine sizes and are not available for large, high-efficiency turbines. As a corollary to their lack of general availability for such turbines, advanced combustion controls would also de facto not be cost reasonable for small and large, high-efficiency turbines.

¹⁴⁰ See 89 FR at 101328, 101331, 101333 (requesting information on, among other things, the capital and O&M costs of combustion controls to meet varying emission rates for small, medium, and large combustion turbines).

In response, commenters did not provide significant additional information on the incremental cost impacts of combustion controls with different guaranteed NO_x emission rates (i.e., on the differences in costs between 25 ppm, 15 ppm, 9 ppm, and 5 ppm combustion systems, respectively); however, they did provide information on the cost of combustion controls capable of achieving 25 ppm NO_x emissions relative to diffusion flame combustion. According to commenters' information, adding dry combustion controls increased the capital costs relative to a comparable combustion turbine using diffusion flame combustion but the efficiency and operating costs for turbines were unaffected by controlling emissions to 25 ppm NO_x.¹⁴¹ In contrast, the EPA's estimates of incremental emissions reductions from combustion systems capable of achieving 15 ppm and 9 ppm NO_x relative to a 25 ppm NO_x combustion system include capital costs as well as efficiency and operating costs of controls. This indicates that the EPA's estimated impacts of the incremental costs and efficiency impacts of improvements in combustion controls may be conservatively high.

In evaluating the costs and cost reasonableness of different types of combustion controls, the EPA considered the applications for which turbines in different subcategories are designed and the corresponding ways in which they are operated. Small- and medium-sized turbines that operate at low levels of utilization include, but are not limited to, peaking turbines, which are often simple cycle turbines used to provide power during peak summer demand when ambient temperatures are high. They also include turbines that are not, strictly speaking, peaking turbines but that operate 40 percent of the time or less on an annual basis. For both types of turbines (i.e., peaking turbines and other low-utilization turbines), wet and dry combustion controls that achieve a NO_x emission rate of 25 ppm are adequately demonstrated. Thus, for the purposes of these revisions to subpart KKKKa, the EPA estimated the costs of wet combustion controls at 25 ppm NO_x compared to dry combustion controls at 25 ppm NO_x. Although wet combustion controls are sometimes less effective at reducing emissions than dry combustion controls, the use of wet combustion controls increases the design output of simple cycle turbines and can reduce capacity and efficiency losses because of high ambient

¹³⁸ See the inventory in the docket of turbines that have recently commenced operation in the U.S.

¹⁴¹ See the Electric Power Research Institute (EPRI) supporting materials.

temperatures relative to the use of dry combustion controls. Wet combustion controls also have lower capital costs than dry combustion controls. However, wet combustion controls require highly purified water and reduce the turbine efficiency, which contributes to higher operating costs relative to the use of dry combustion controls. Based on information provided by commenters, at a NO_x emissions standard of 25 ppm, the use of wet combustion controls results in lower overall costs than the use of dry combustion controls, but only up to a utilization rate of approximately 20 percent, which is consistent with a turbine that is operated in peaking applications.¹⁴² The costs of dry combustion controls at these relatively low rates of utilization would be higher.¹⁴³ For annual utilization rates above 20 percent, dry combustion controls are generally more cost reasonable than wet combustion controls. Given that the low-utilization subcategory for medium combustion turbines encompasses both of these applications—peaking turbines at the lowest end of the utilization spectrum and turbines that operate more frequently but still below 40 percent annual utilization—and that both wet and dry combustion controls for turbines with these characteristics achieve 25 ppm NO_x, the EPA is determining that the costs of combustion controls that can meet this emission rate, whether wet or dry, are reasonable.

Notwithstanding the preceding analysis of and conclusions about the costs of wet and dry combustion controls that achieve 25 ppm NO_x for certain small and medium turbines, the EPA also evaluated the costs of advanced combustion controls for all sizes of combustion turbines (*i.e.*, including small and medium turbines). For medium and small turbines with combustion systems with emission guarantees of less than 25 ppm NO_x, most are 15 ppm NO_x turbines with the availability of 9 ppm NO_x turbines being more limited. Since combustion turbines with 9 ppm NO_x are not widely

available within the medium and small turbines subcategories, the EPA is not considering combustion controls with 9 ppm NO_x guarantees as a potential BSER for these subcategories.

To estimate the costs of advanced dry combustion controls capable of achieving 15 ppm NO_x, relative to a turbine with a combustion system capable of achieving 25 ppm NO_x, the EPA used three costing models.¹⁴⁴ The first reduced the efficiency of the combustion turbine and the corresponding output by 2 percent while leaving everything else constant. The second approach is based on available information for an aeroderivative turbine with multiple combustion system options and reduced the heat rate, output, and variable costs of the lower NO_x turbine. The third assumed an increase in capital costs of the turbine with lower NO_x emission rates but similar performance.¹⁴⁵

For medium low-utilization turbines operating at a capacity factor of 9 percent, the cost effectiveness of advanced combustion controls with 15 ppm NO_x guarantees ranges from \$22,000/ton to \$46,000/ton NO_x abated.¹⁴⁶ The EPA does not consider these costs reasonable and therefore, based on both the preceding analysis of wet and dry combustion controls that achieve 25 ppm NO_x for medium low-utilization turbines and the high cost-per-ton figures here, the Agency is determining that the use of combustion controls capable of achieving 15 ppm NO_x does not qualify as the BSER for medium low-utilization turbines. Due to economies of scale, the incremental control costs would be even higher for small turbines relative to those for medium turbines. Therefore, the Agency also does not consider the use of

combustion controls capable of achieving 15 ppm NO_x as the BSER for small low-utilization turbines.¹⁴⁷ However, at a utilization level of 40 percent, the cost effectiveness of combustion controls for medium turbines is \$8,000/ton to \$10,000/ton NO_x abated. Considering that this is likely an overestimate and that there are limited, if any, secondary environmental impacts, the EPA considers these costs reasonable, and the use of combustion controls with guaranteed emission rates of 15 ppm NO_x could qualify as the BSER for medium high-utilization turbines. The incremental control costs of more advanced combustion controls for small turbines are higher than for medium turbines and, although the costs may appear reasonable before considering cost adjustments as discussed in section IV.B.4.a of this preamble, the EPA has determined that small turbines with 15 ppm NO_x guarantees are not available across the entire subcategory and therefore do not qualify as the BSER.

As explained in sections IV.B.3 and IV.B.5 of this preamble, the EPA is determining that the BSER for large high-utilization turbines of any efficiency is combustion controls with SCR. Further, as discussed in section IV.B.4.a of this preamble, advanced combustion controls are not adequately demonstrated for large, higher efficiency combustion turbines operating at lower levels of utilization. Therefore, the EPA's cost analysis of advanced combustion controls for large turbines focuses on low-utilization, lower efficiency combustion turbines.

For large low-utilization, lower efficiency combustion turbines, the EPA considered advanced combustion controls that can achieve NO_x emission rates of 9 ppm. At a capacity factor of 9 percent, the cost effectiveness of combustion controls for large turbines with 9 ppm NO_x guarantees ranges from \$15,000/ton to \$33,000/ton NO_x abated relative to a baseline of 15 ppm NO_x. The Agency reviewed the design information in *Gas Turbine World* to assess the impacts on turbine performance of advanced combustion controls to achieve NO_x guarantees of 9 ppm versus 15 ppm. This assessment revealed that, when accounting for size (which the Agency did not do at proposal), there was no significant difference in performance between

¹⁴² This does not account for potential financial benefits of certain wet combustion controls (*e.g.*, inlet fogging and wet compression used in combination with direct injection of water into the combustor or steam injection) reducing the efficiency and output losses that result from high ambient temperatures. However, given that the cutoff for the low utilization subcategory is 40 percent and that, below this threshold, both dry and wet combustion controls are reasonable under various circumstances and regardless can achieve the same NO_x emission rate, we did not find it necessary to further account for these potential benefits.

¹⁴³ See the Electric Power Research Institute (EPRI) supporting materials.

¹⁴⁴ See the NO_x control technology technical support document included in the docket for this rulemaking.

¹⁴⁵ The costs of advanced DLN may be approximately \$24/kW (2024\$). See *Control Technologies Review for Gas Turbines in Simple, Combined Cycle and Cogeneration Systems*, Eastern Research Group, Inc., September 1, 2014. The third costing model may be more relevant to frame type turbine because the size of the combustor is less of an issue relative to aeroderivative turbines. Other sources report the costs of advanced DLN as approximately \$2.6/kW. See *Cost Analysis of NO_x Control Alternatives for Stationary Gas Turbines*. Onsite Sycom Energy Corporation. November 5, 1999.

¹⁴⁶ For the medium low-utilization subcategory, most affected facilities will use simple cycle turbines. The EPA has already determined that wet combustion controls have not been demonstrated to be able to achieve 15 ppm NO_x and these costs are shown for completeness. Even if the costs were reasonable the Agency would not necessarily determine the dry combustion controls with emission guarantees of 15 ppm NO_x is the BSER for the low-utilization medium turbine subcategory or the small turbine subcategory.

¹⁴⁷ Even if the incremental control costs of more advanced combustion controls for small turbines were reasonable, as discussed in section IV.B.4.a, the EPA has determined that small turbines with 15 ppm NO_x guarantees are not available across the entire subcategory and therefore would not qualify as the BSER.

turbines with 15 ppm and 9 ppm NO_x guarantees (at proposal, the EPA estimated a 2 percent increase in heat rate). In addition, within the large low-utilization, lower efficiency combustion turbine subcategory (large low-utilization turbines with design efficiencies of less than 38 percent), most new turbines have emission guarantees of 9 ppm NO_x or less. Due to the similar design performance characteristics of large turbines with 15 ppm and 9 ppm NO_x emission guarantees, and that most of the large lower efficiency combustion turbines available have NO_x emission guarantees of 9 ppm, for the purposes of this analysis, the Agency is assuming that the costs and performance of large lower efficiency turbines are similar regardless of whether the NO_x emissions guarantee is 15 ppm or 9 ppm. Therefore, the incremental costs of amending the NO_x emissions standard for large low-utilization, lower efficiency combustion turbines from 15 ppm to 9 ppm is minimal. Furthermore, relative to a baseline of 25 ppm NO_x, the cost effectiveness ranges from \$8,000/ton to \$17,000/ton. The EPA has determined that the cost effectiveness values are likely on the low end of this range, \$8,000/ton. The EPA considers these costs reasonable. Therefore, it is not appropriate to amend the standard to 25 ppm NO_x. Moreover, the EPA estimates that the incremental costs of a BSER based on the use of advanced combustion controls guaranteed at 9 ppm NO_x relative to advanced combustion controls guaranteed to achieve 15 ppm NO_x likely does not represent a significant cost and could qualify as the BSER, at least for the large low-utilization turbine subcategory.¹⁴⁸

d. Non-Air Quality Health and Environmental Impacts and Energy Requirements¹⁴⁹

Due to the potential efficiency loss of a combustion turbine with NO_x guarantees of 15 ppm and 9 ppm

relative to a combustion turbine with NO_x guarantees of 25 ppm, for each ton of NO_x reduced, additional emissions may be generated. This reduction in efficiency is in the combustion turbine engine and at least a portion of the lost turbine engine efficiency can be partially recovered in the HRSG of combined cycle and CHP facilities. If emission rates of other pollutants are unchanged by the low-NO_x combustor, the loss of efficiency would mean that emissions of other criteria and hazardous air pollutants (HAP) would increase by a maximum of approximately 2 percent. However, as noted previously, the efficiency differences between large turbines with 15 ppm NO_x and 9 ppm NO_x guarantees is negligible and actual reductions in efficiency may be less.

In general, the EPA finds that the non-air quality health and environmental impacts and energy requirements of both dry and wet combustion controls are acceptable, whether in conjunction with controls capable of meeting 25 ppm, 15 ppm, 9 ppm, or 5 ppm NO_x emission standards when firing natural gas.

5. Revised NSPS for Stationary Combustion Turbines

The following sections describe the EPA's determinations of the BSER and the degree of NO_x emission limitation achievable through application of the BSER for each subcategory of stationary combustion turbine in subpart KKKKa. These determinations are based on the results of a technology review of demonstrated NO_x emission controls, including information received during the public comment period. The following sections describe each of the combustion turbine subcategories, each BSER technology determination, and the associated NO_x standards of performance in subpart KKKKa.

The control technologies the EPA evaluated for each size-based subcategory, whether the combustion

turbine is utilized at a high or low rate on a 12-calendar-month basis, whether the combustion turbine is more or less efficient, whether the combustion turbine burns natural gas or non-natural gas fuels, or whether the combustion turbine is operated at full or part loads on an hourly basis, include dry combustion controls (*i.e.*, lean premix/DLN), wet combustion controls (*i.e.*, water or steam injection) (together, "combustion controls"), and post-combustion SCR.¹⁵⁰

The EPA used three primary sources of information for determining appropriate emission standards—combustion turbine manufacturer guaranteed NO_x emission rates, information provided in public comments, and hourly emissions database information reported to the EPA and available from CAMPD. The EPA considered, but did not use, permitted emission rates (*i.e.*, emission rates included in permits to construct or operate) because the numeric standards differ in terms of the averaging period used for compliance purposes and the operating conditions under which the standards are applicable. Similarly, the EPA did not base the NO_x emission standards on stack performance test information because these emission rates are representative of what can be achieved under the conditions of a performance test and do not necessarily represent what is achievable under other operating conditions. Therefore, the EPA determines that manufacturer guarantees represent appropriate NO_x emission standards for determination of the BSER based on the use combustion controls. The EPA also determines that the analysis of hourly emissions data allows the Agency to evaluate the appropriate numeric NO_x standards associated with a BSER based on the use of post-combustion SCR in combination with combustion controls while also identifying under what conditions the emission standards are applicable.

TABLE 1—SUBPART KKKKa NO_x EMISSION STANDARDS

Combustion turbine type	Combustion turbine base load rated heat input (HHV)	NO _x emission standard
New, firing natural gas with utilization rate >45 percent	>850 MMBtu/h	5 ppm at 15 percent O ₂ or 0.018 lb/MMBtu.

¹⁴⁸ The capital costs may be approximately the same for turbines with NO_x emission guarantees of 15 ppm or 9 ppm. The operation and maintenance costs are higher due to more rigorous maintenance requirements. *Cost Analysis of NO_x Control Alternative for Stationary Gas Turbines*, ONSITE SYCOM Energy Corporation, November 5, 1999.

¹⁴⁹ To the extent any impacts are not explicitly covered under the "nonair quality health and

environmental impact" factor, they are nonetheless statutorily relevant in identifying the "best" system of emissions reduction. See Section II.A.1 of this preamble.

¹⁵⁰ See section IV.B.2 of this preamble for additional discussion of the EPA's approach to subcategorization. See sections IV.B.3–4 for discussion of the EPA's application of the BSER criteria for these general control technology types,

including further consideration of costs, emission reductions, and non-air quality health and environmental impacts and energy requirements, as applies to combustion turbines in the large, medium, and small subcategories. For additional discussion of the EPA's review of these control technologies, see the proposal, 89 FR 101323, and the technical support documents included in the docket for this rulemaking.

TABLE 1—SUBPART KKKKa NO_x EMISSION STANDARDS—Continued

Combustion turbine type	Combustion turbine base load rated heat input (HHV)	NO _x emission standard
New, firing natural gas with utilization rate ≤45 percent and with design efficiency ≥38 percent.	>850 MMBtu/h	25 ppm at 15 percent O ₂ or 0.092 lb/MMBtu.
New, firing natural gas with utilization rate ≤45 percent and with design efficiency <38 percent.	>850 MMBtu/h	9 ppm at 15 percent O ₂ or 0.035 lb/MMBtu.
New, modified, or reconstructed, firing non-natural gas	>850 MMBtu/h	42 ppm at 15 percent O ₂ or 0.16 lb/MMBtu.
Modified or reconstructed, firing natural gas, at all utilization rates with design efficiency ≥38 percent.	>850 MMBtu/h	25 ppm at 15 percent O ₂ or 0.092 lb/MMBtu.
Modified or reconstructed, firing natural gas, at all utilization rates with design efficiency <38 percent.	>850 MMBtu/h	15 ppm at 15 percent O ₂ or 0.055 lb/MMBtu.
New, firing natural gas at utilization rates >45 percent	>50 MMBtu/h and ≤850 MMBtu/h.	15 ppm at 15 percent O ₂ or 0.055 lb/MMBtu.
New, firing natural gas at utilization rates ≤45 percent	>50 MMBtu/h and ≤850 MMBtu/h.	25 ppm at 15 percent O ₂ or 0.092 lb/MMBtu.
Modified or reconstructed, firing natural gas	>20 MMBtu/h and ≤850 MMBtu/h.	42 ppm at 15 percent O ₂ or 0.15 lb/MMBtu.
New, firing non-natural gas	>50 MMBtu/h and ≤850 MMBtu/h.	74 ppm at 15 percent O ₂ or 0.29 lb/MMBtu.
Modified or reconstructed, firing non-natural gas	>20 MMBtu/h and ≤850 MMBtu/h.	96 ppm at 15 percent O ₂ or 0.37 lb/MMBtu.
New, firing natural gas	≤50 MMBtu/h	25 ppm at 15 percent O ₂ or 0.092 lb/MMBtu.
New, firing non-natural gas	≤50 MMBtu/h	96 ppm at 15 percent O ₂ or 0.37 lb/MMBtu.
Modified or reconstructed, all fuels	≤20 MMBtu/h	150 ppm at 15 percent O ₂ or 0.55 lb/MMBtu.
New, firing natural gas, either offshore turbines, turbines bypassing the heat recovery unit, and/or temporary turbines.	>50 MMBtu/h	25 ppm at 15 percent O ₂ or 0.092 lb/MMBtu.
Located north of the Arctic Circle (latitude 66.5 degrees north), operating at ambient temperatures less than 0 °F (–18 °C), modified or reconstructed offshore turbines, operated during periods of turbine tuning, byproduct-fired turbines, and/or operating at less than 70 percent of the base load rating.	≤300 MMBtu/h	150 ppm at 15 percent O ₂ or 0.55 lb/MMBtu.
Located north of the Arctic Circle (latitude 66.5 degrees north), operating at ambient temperatures less than 0 °F (–18 °C), modified or reconstructed offshore turbines, operated during periods of turbine tuning, byproduct-fired turbines and/or operating at less than 70 percent of the base load rating.	>300 MMBtu/h	96 ppm at 15 percent O ₂ or 0.35 lb/MMBtu.
Heat recovery units operating independent of the combustion turbine	All sizes	54 ppm at 15 percent O ₂ or 0.20 lb/MMBtu.

a. Large Combustion Turbines

As noted previously, the EPA is finalizing a size-based subcategory for stationary combustion turbines with base load ratings greater than 850 MMBtu/h of heat input (*i.e.*, large turbines).¹⁵¹ The subcategory is divided further based on whether the annual utilization of the combustion turbine is greater than or less than or equal to a 12-calendar-month capacity factor of 45 percent. The large low-utilization combustion turbine subcategory includes separate subcategories based on whether the design efficiency of the turbine engine is 38 percent or greater based on the HHV of the fuel.

These emission standards for large combustion turbines only apply to new natural gas-fired sources operating at full load. In subpart KKKKa, the EPA establishes separate subcategories,

BSER, and NO_x standards for turbines operating at part load, turbines burning non-natural as fuels, and modified and reconstructed combustion turbines.

i. Large High-Utilization Combustion Turbines

This section describes the emissions standards in subpart KKKKa, based on the identified BSER, for the subcategory of new large stationary combustion turbines operated at high rates of utilization. The EPA is finalizing, largely as proposed, a determination that the use of combustion controls in combination with SCR is the BSER for large high-utilization combustion turbines operating at full load. The EPA proposed a NO_x emission standard of 3 ppm for large natural gas-fired combustion turbines utilized at intermediate and high capacity factors and 5 ppm for the same combustion turbines when firing non-natural gas fuels. In the proposed rule, the EPA solicited comment on a range of 2 ppm

to 5 ppm NO_x when firing natural gas in recognition of the potential for some variation in SCR performance among different units and operating conditions.¹⁵²

In response to the proposed rule, several commenters stated that the proposed emissions standard for large, high-utilization turbines firing natural gas of 3 ppm NO_x is too stringent and not consistently achievable. Commenters provided descriptions and examples of how the effectiveness of SCR can be impacted by many factors, such as load changes and ambient conditions. For example, during variable load operation, the absolute mass of NO_x entering the SCR system, the temperature of the combustion turbine exhaust, and exhaust flow characteristics change. Furthermore,

¹⁵¹ Subcategories are based on the base load rating of the turbine engine and do not include any supplemental fuel input to the heat recovery system.

¹⁵² See sections IV.7.a and IV.7.c for the final BSER determinations and NO_x standards of performance for the subcategories of combustion turbines firing non-natural gas fuels and turbines operating at part load.

SCR performance is impacted by catalyst temperature and flow characteristics, and the ammonia injection rate must be adjusted to maintain the exhaust NO_x emissions concentration. Too much ammonia injection can result in excess ammonia emissions (*i.e.*, ammonia slip) and too little can result in higher NO_x emissions. In addition, commenters stated that it can be challenging to adjust ammonia injection rates during rapid load changes to maintain NO_x emissions rates while at the same time minimizing ammonia slip, particularly for combustion turbines not selling electricity to the electric grid. Other commenters stated that emission standards of combustion turbines required to meet LAER should not be used to support the cost effectiveness of SCR as a control technology. Other commenters supported an emissions standard consistent with the lowest emitting turbines—2 ppm NO_x.

In consideration of these comments, to determine the appropriate NO_x standard of performance for large high-utilization combustion turbines firing natural gas, the EPA also reviewed additional NO_x emissions data reported to CAMPD. Specifically, the EPA reviewed the NO_x emission rates of 91 combined cycle and CHP turbines at 46 separate stationary sources, and the NO_x emissions rates of 143 simple cycle turbines at 43 separate stationary sources. The demonstrated natural gas-fired high-load emissions rates of the 26 recent large combined cycle and CHP turbines with SCR range from 1.5 ppm NO_x to 8.4 ppm NO_x with a median reported value of 2.7 ppm NO_x.¹⁵³ Two facilities had demonstrated emission rates greater than 5 ppm NO_x. One of the facilities is the first installation of a highly efficient combined cycle turbine that recently became commercially available.¹⁵⁴ While this turbine has a relatively high NO_x emissions rate, the Agency anticipates that the manufacturer and owners or operators of future installations will learn from the performance of this initial installation. The other facility had

higher emissions during the initial 6 months of operation and has demonstrated an emissions rate below 5 ppm NO_x after this initial period. All other turbines have demonstrated that an emissions standard of 5 ppm NO_x is achievable for combined cycle turbines. There are three turbines with emission rates between 4.3 ppm and 4.8 ppm NO_x. These are all high-efficiency turbines equipped with combustion controls capable of achieving 25 ppm NO_x in combination with SCR. While not the only combined cycle facilities using these higher efficiency models, they account for the variability in performance at different locations. A more stringent standard could restrict the use of these highly efficient turbines and result in greater overall fuel use and the environmental impacts associated with increased fuel use.

While the EPA's SCR costing analysis primarily focused on large high-utilization combined cycle turbines, the EPA also evaluated the performance of large low-utilization simple cycle turbines with SCR to determine the achievability of the NSPS for these units in case owners or operators of new simple cycle combustion turbines choose to operate as high-utilization sources, assuming installation of SCR. The achievable NO_x emissions rate of the four recent large simple cycle turbines with SCR ranges from 2.2 ppm to 30 ppm NO_x with a median reported value of 11 ppm NO_x. Like the combined cycle turbine mentioned above, the highest emitting simple cycle turbine is the first installation of a higher efficiency model that recently became commercially available. While this turbine has a relatively high NO_x emissions rate, the Agency anticipates that the manufacturer and owners or operators of future installations will learn from the performance of this initial installation. The NO_x emissions standards for the remaining three turbines range from 2.2 ppm to 7.3 ppm NO_x. There is one other highly efficient large simple cycle turbine with SCR that has been installed. This facility uses a different turbine model that began operation in 2019 and has been able to achieve an emission rate of 9 ppm NO_x. While none of the large higher efficiency simple cycle turbines have demonstrated that 5 ppm NO_x is consistently achievable, the Agency does not project any large simple cycle turbine operating as high-utilization turbines. However, the mass-based standard allows large higher efficiency simple turbines with SCR to operate in excess of a 12-calendar-month

utilization rate of 45 percent while maintaining compliance with the NSPS.

Due to the limited number of large simple cycle turbines with SCR, the EPA also reviewed the performance of recent medium low-utilization simple cycle turbines with SCR. The NO_x emissions rate of the 62 recent medium simple cycle turbines with SCR ranges from 2 ppm to 26 ppm NO_x with a median reported value of 6.8 ppm NO_x. While only 37 percent of recent medium simple cycle turbines have maintained an emissions rate of 5 ppm NO_x or less, the Agency finds that 5 ppm is an appropriate emissions standard for high-utilization large simple cycle turbines. Turbines operating at higher utilizations would have steadier loads and the operator would be able to optimize the SCR for greater emission reduction.

Considering these factors, the EPA is finalizing a NO_x standard of performance of 5 ppm for large high-utilization turbines firing natural gas based on the application of a BSER of combustion controls in combination with SCR. Available data indicate that SCR installed on new large stationary combustion turbines, when operated in conjunction with combustion controls, is generally capable of achieving a NO_x emissions rate of 5 ppm when combustion turbines are operating at high rates of utilization and firing natural gas. Therefore, for this subcategory of stationary combustion turbines for which the EPA determines SCR is a component of the BSER and which are firing natural gas, the EPA determines that the emissions standard is 5 ppm. For new large combustion turbines operating at high rates of utilization and firing non-natural gas fuels, the EPA determines the NO_x standard to be 42 ppm based on the application of a BSER of wet combustion controls with the addition of post-combustion SCR.

While some combustion turbine facilities have generally been capable of reaching an emissions rate of 3 ppm or less, the 5-ppm emissions standard in this case will allow sources to use higher efficiency classes of turbines in combined cycle configurations, to use combustion controls without SCR, and to minimize ammonia emissions.

The EPA finds some commenters' call for a 2 ppm NO_x emissions standard to be unrealistically stringent. Only two-thirds of recent (*i.e.*, since 2020 large, combined cycle turbines and no simple cycle facility evaluated by the EPA have been able to achieve an emissions rate of 2 ppm NO_x. As a practical matter, it would prohibit the use of high-utilization simple cycle turbines with SCR, and to maintain any compliance

¹⁵³ The EPA determined the achievable emissions rate for each turbine by calculating the 99.9 percentile of the 4-hour rolling averages using full load hours when only natural gas was the reported fuel. Combustion turbines with reported achievable emission rates that are 10 percent or higher than the applicable standard under subpart KKKK were excluded from the calculations when reporting the demonstrated emission rates for combustion turbines.

¹⁵⁴ The EPA only evaluated the reported data 6 months after initial operation to account for the initial shake down period. The EPA is also excluding the initial 6 months of operation for combustion turbines where it appears the SCR might not have been consistently operated.

margin, would at a minimum restrict developers of new combined cycle turbines to use turbine designs with the lowest emitting combustion controls in combination with SCR and high ammonia injection rates. This would result in increased costs, fuel use, and ammonia emissions. Thus, while the EPA acknowledges that some combustion turbine facilities have generally been capable of reaching an emissions rate of 2 or 3 ppm using SCR, the Agency believes it is important that all of the combustion turbines in the subcategory for which SCR is the BSER are capable of achieving the emissions standard, taking into account natural variability and temporary fluctuations in emissions performance, as well as cost, fuel, and emissions downsides associated with a more stringent emissions standard.

Finally, as the EPA noted at proposal, an emissions standard of 5 ppm can also potentially be met by certain classes of stationary combustion turbines solely with the use of advanced combustion controls rather than SCR. Given that SCR has some additional cost, pollutant, and energy impacts associated with it, there is benefit to a standard that at least some sources may be capable of meeting without installing SCR, and which will help incentivize the further development and deployment of increasingly advanced combustion controls. Thus, the NO_x standard for large high-utilization turbines is set at an emissions rate that also recognizes the environmental benefit of continued development of combustion controls, which, if capable of achieving the same or similar emissions performance, have substantial advantages over SCR.

ii. Large Low-Utilization Combustion Turbines

For large combustion turbines utilized at low capacity factors, the EPA proposed that the BSER is the use of dry combustion controls when firing natural gas and wet combustion controls when firing non-natural gas fuels. The EPA proposed on that basis to maintain the same NO_x emission standards as in subpart KKKK for large combustion turbines utilized at low capacity factors—15 ppm for natural gas-fired turbines and 42 ppm for non-natural gas-fired turbines.

(A.) Higher Efficiency Combustion Turbines

This section describes the emissions standards the EPA is finalizing in subpart KKKKa, based on the identified BSER, for the subcategory of new large stationary combustion turbines operated at low rates of utilization and with

higher efficiencies. Specifically, this subcategory includes combustion turbines with a base load rating greater than 850 MMBtu/h of heat input, a 12-calendar-month capacity factor less than or equal to 45 percent, and a design efficiency greater than or equal to 38 percent based on the HHV of the fuel.

Commenters noted that large turbines with simple cycle design efficiencies of 38 percent or greater all have guaranteed NO_x emission rates of 25 ppm and have become commercially available since subpart KKKK was finalized. Based on the BSER analysis in section IV.B.3 of this preamble, the EPA determines that SCR does not qualify as the BSER for these turbines. The only commercially available combustion controls are guaranteed at 25 ppm NO_x. Therefore, for this subcategory of stationary combustion turbines for which the EPA determines combustion controls to be the BSER and which are firing natural gas, the EPA determines that the NO_x standard of performance is 25 ppm. Likewise, for this subcategory, the EPA determines that the NO_x emissions standard is 42 ppm when firing non-natural gas fuels (based on the use of wet combustion controls) and 96 ppm when operating at less than 70 percent of the base load rating (based on the use of diffusion flame combustion). The EPA is not aware of any advances in wet combustion controls that would reduce NO_x emissions lower than the emission standards in subpart KKKK when large combustion turbines are using non-natural gas fuels.

(B.) Lower Efficiency Combustion Turbines

This section describes the emissions standards for new large stationary combustion turbines operated at low rates of utilization and with lower efficiencies. Specifically, this subcategory includes combustion turbines with a base load rated heat input greater than 850 MMBtu/h, a 12-calendar-month capacity factor less than or equal to 45 percent, and a design efficiency less than 38 percent based on the HHV of the fuel.

For this subcategory, the EPA determines that SCR does not meet the BSER criteria and that the BSER is the use of advanced dry combustion controls when firing natural gas, the use of wet combustion controls when firing non-natural gas fuels, and the use of diffusion flame combustion when operating at less than 70 percent of the base load rating (*i.e.*, when operating at part load).

The BSER for large, low-utilization, lower efficiency combustion turbines burning natural gas is the use of

advanced combustion controls. The EPA reviewed the standard NO_x guaranteed emission rates of 13 commercially available large combustion turbines with design efficiencies less than 38 percent. Five of the turbines have standard guarantees of 9 ppm NO_x. Four of the turbines have standard guarantees of 15 ppm NO_x, and four of the turbines have standard guarantees of 25 ppm NO_x.

Of the four turbines with 15 ppm NO_x standard guarantees, two have available upgrade packages that reduce the guaranteed emissions rate to 9 ppm NO_x or less. In addition, the manufacturer of one of the other turbines has developed a newer design that is similar in size, more efficient, and available with combustion controls guaranteed at 9 ppm NO_x. The remaining 15-ppm turbine is on the lower end of the large turbine subcategory (905 MMBtu/h and 88 MW) and the manufacturer offers a similar size, but less efficient, frame type turbine with emission guarantees of 9 ppm NO_x or less. The same manufacturer also offers similar sized aeroderivative turbines with significantly higher efficiencies that would be classified as a medium turbine (660 MMBtu/h and 71 MW) that can meet the low-utilization medium turbine emissions standard without SCR. As noted previously, large low-utilization turbines are primarily used in the utility sector and the fuel flexibility and other characteristics of frame type turbines are not as critical. Therefore, the EPA finds that many turbine models with emission guarantees of 9 ppm NO_x exist that can meet the needs for all owners or operators. As such, the EPA finds that 9 ppm is the appropriate standard of performance for new large low-utilization lower efficiency combustion turbines firing natural gas.

Even for large, lower efficiency turbine models not manufactured to meet a 9-ppm emissions standard, the EPA generally anticipates that these models will continue to be sold and operated at little incremental cost under this rule, because this is already occurring in the commercial marketplace. Three of the four large, lower efficiency turbine models with 25 ppm NO_x guarantees were available when subpart KKKK was finalized and have been subject to an emissions standard of 15 ppm NO_x since 2006. The remaining large turbine with a 25 ppm NO_x guarantee became commercially available in 2013 but is primarily intended for combined cycle

applications.¹⁵⁵ In any case, under subpart KKKK, these turbine models have continued to be marketed and typically install and operate SCR to meet the subpart KKKK 15 ppm standard. The EPA anticipates that updating the emissions standard for turbines in this subcategory from an emissions rate of 15 ppm to 9 ppm will not induce a change in how these turbine models are currently brought to market or used. In other words, even if their manufacturers, owners, or operators elect not to upgrade the combustion control performance to achieve a 9-ppm rate, they will still be able to meet the new standard using SCR, as is already occurring in the baseline under subpart KKKK. In the case of continued use of SCR for these turbine models, the EPA calculates a slight increase in incremental costs associated with going from a 15 ppm NO_x emissions standard to a 9 ppm NO_x emissions standard. Specifically, the Agency estimates that the incremental costs to achieve the standard in KKKKa for these turbines using SCR is from the use of additional ammonia for a cost effectiveness of \$1,000/ton. These costs are reasonable.

To confirm that a 9 ppm NO_x standard is appropriate, the EPA also reviewed the turbine models of the 20 large simple cycle turbines that have commenced operation in the utility sector since 2020. Four of these units use SCR and the other 16 units do not. The 16 turbines without SCR are models that have emission guarantees of 9 ppm NO_x and the reported emission rates support that the combustors are achieving 9 ppm NO_x. As discussed previously, these data support finding that the BSER need not include SCR. Therefore, lowering the emissions standard from 15 ppm to 9 ppm for large low-utilization, lower efficiency turbines would not represent significant costs to the regulated community.

For this subcategory, the EPA determines that the NO_x emissions standard is 42 ppm when firing non-natural gas fuels and 96 ppm when operating at less than 70 percent of the base load rating.

b. Medium Combustion Turbines

The EPA is finalizing a size-based subcategory for stationary combustion turbines with base load ratings greater than 50 MMBtu/h and less than or equal to 850 MMBtu/h of heat input (*i.e.*,

medium). As discussed in section IV.B.2.b of this preamble, the subcategory is divided further based on whether the annual utilization of the combustion turbine is greater than or less than or equal to a 12-calendar-month capacity factor of 45 percent.

i. Medium High-Utilization Combustion Turbines

The EPA proposed the use of combustion controls with SCR as the BSER for medium intermediate- and high-utilization combustion turbines operating at full load and a NO_x emissions standard of 3 ppm when firing natural gas and 9 ppm when firing non-natural gas. The EPA proposed the use of diffusion flame combustion as the BSER when operating at part load with a NO_x emissions standard of 96 ppm or 150 ppm (depending on the base load rating of the individual turbine). For this subcategory, as described in section IV.B.3, the EPA has determined that SCR does not meet the BSER criteria for new medium high-utilization combustion turbines (*i.e.*, those with 12-calendar-month capacity factors greater than 45 percent). In subpart KKKKa, the BSER for medium high-utilization combustion turbines is the use of advanced dry combustion controls when firing natural gas, wet combustion controls when firing non-natural gas fuels, and diffusion flame combustion when operating at part load (*i.e.*, less than 70 percent of the base load rating).

In response to the proposed rule, several commenters stated that the proposed 3 ppm NO_x limit for medium-sized units operating at 20 percent to 40 percent capacity factors are not achievable without SCR. The commenters added that based on guarantees from manufacturers, the EPA should increase the proposed NO_x limit from 3 ppm to 9 ppm for medium-sized units operating at capacity factors of less than 40 percent based on the use of dry combustion controls. Furthermore, a review of EPRI research found that most dry combustion control NO_x guarantees ranged from 9 ppm to 25 ppm. The commenters stated that the EPA's data showed that not all dry combustion controls can achieve 15 ppm NO_x for medium-sized turbines. The commenters stated that the most efficient combustion turbines operate at higher temperatures, which results in higher NO_x emissions.

The EPA agrees with the commenters that manufacturer NO_x emission rate performance guarantees for medium natural gas-fired stationary combustion turbines using dry combustion controls range from 9 ppm to 25 ppm. While a few natural gas-fired high-efficiency

aeroderivative combustion turbines have available combustor upgrades that have NO_x emission rate performance guarantees of 15 ppm, most have standard NO_x emission rate performance guarantees of 25 ppm. However, most natural gas-fired frame units using dry combustion controls have available guaranteed NO_x emissions rates of 15 ppm or lower; of these, half have standard emission guarantees of 15 ppm NO_x or less and only four frame units do not have available combustor options with guarantees of less than 25 ppm NO_x. The manufacturer of these four turbines offers models with similar outputs, often with higher efficiencies, that have guaranteed emission rates of 15 ppm NO_x or less available. The fact that frame units with dry combustion controls are more common than aeroderivative or turbines using wet controls at high utilization rates supports a standard for medium high-utilization turbines of 15 ppm NO_x. The EPA considered, but rejected, the use of combustion controls with guaranteed emission rates of 9 ppm NO_x as the BSER. Many of the most efficient medium turbines are aeroderivative turbines and only a select few have available emission guarantees of less than 25 ppm NO_x. Maintaining a high-utilization emissions standard of 15 ppm NO_x provides a strong incentive for manufacturers to invest in technology development and commercialize combustors with 15 ppm NO_x emission guarantees. In addition, while 13 turbines offer available combustor upgrades with NO_x emission guarantees of 9 ppm, only two models have standard guarantees of 9 ppm NO_x. An emissions standard more stringent than 15 ppm would likely require the use of SCR for many applications, and the Agency has determined that SCR does not meet the BSER criteria for medium turbines.

With the adjustments in subcategories described in section IV.B.2, and the associated BSER analysis for combustion controls in section IV.B.4, the EPA is finalizing a NO_x emissions standard of 15 ppm for this subcategory when firing natural gas. The NO_x emission standards are 74 ppm when combusting non-natural gas fuels and 96 ppm or 150 ppm (depending on the base load rating) when operating at part load. These NO_x standards are based on the application of dry and/or wet combustion controls at full load and diffusion flame combustion at part load.

ii. Medium Low-Utilization Combustion Turbines

The medium low-utilization turbine subcategory is primarily composed of

¹⁵⁵ The same manufacturer offers a slightly smaller turbine (260 MW compared to 310 MW) that was commercially available when subpart KKKK was finalized. The smaller turbine has the same simple cycle efficiency and has a guaranteed NO_x emissions rate of 9 ppm.

utility sector simple cycle turbines, the majority of which are aeroderivative designs equipped with SCR. However, as described in section IV.B.3 of this preamble, the EPA has determined that SCR does not meet the BSER criteria for any medium combustion turbines. The EPA proposed a NO_x emissions standard of 25 ppm for medium low-utilization combustion turbines (*i.e.*, those with 12-calendar-month capacity factors less than or equal to 45 percent) firing natural gas, 74 ppm NO_x when firing non-natural gas, and 96 ppm or 150 ppm (depending on the base load rating) when operating at part load (*i.e.*, at less than 70 percent of the base load rating).

Regarding emission standards associated with combustion controls, some commenters supported the proposed emission standards, stating that most aeroderivative combustion turbines and combustion turbines using wet combustion controls have emission guarantees of 25 ppm NO_x.

The EPA agrees with commenters and is finalizing a BSER of combustion controls for this subcategory. The reported emissions rates of these turbines indicate that they are using combustion turbines and controls with emission guarantees of 25 ppm NO_x or less. The medium low-utilization turbines without SCR appear to be using units with NO_x emission guarantees of 25 ppm NO_x. An emissions standard of 25 ppm NO_x is consistent with the guaranteed emissions rate of most aeroderivative turbines that have characteristics that make them valuable for low-utilization applications—they can start quickly without increasing maintenance requirements and they have relatively high efficiency. Although the EPA's BSER determination is based on its conclusion that dry combustion controls are reasonable for the subcategory, in certain applications or circumstances (notably for the lowest utilization peaking turbines), wet combustion controls that can achieve the same emission rate (25 ppm NO_x) potentially have comparative advantages in terms of cost. This overlap corroborates the reasonableness of a final emission standard of 25 ppm NO_x, which can be achieved using either wet or dry combustion controls. Therefore, the Agency is finalizing the emissions standard as proposed.

The emission standards for new medium stationary combustion turbines operating at low rates of utilization (*i.e.*, at 12-calendar-month capacity factors less than or equal to 45 percent) is 25 ppm. For low-utilization medium turbines firing non-natural gas fuels, the

NO_x standard in subpart KKKKa is 74 ppm.

c. Small Combustion Turbines

The EPA is finalizing a size-based subcategory for stationary combustion turbines with base load ratings less than or equal to 50 MMBtu/h of heat input (*i.e.*, small). The final BSER for all turbines in this subcategory is combustion controls.

The EPA proposed NO_x emission standards of 3 ppm for small natural gas-fired combustion turbines that operate at high utilization rates and 9 ppm for the same combustion turbines when firing non-natural gas fuels. The EPA proposed NO_x emission standards for small combustion turbines utilized at intermediate and low utilization rates of 25 ppm for natural gas-fired turbines, 74 ppm for non-natural gas-fired turbines, and 150 ppm for turbine operating at part loads.

With respect to emission standards associated with combustion controls, some commenters supported maintaining the subpart KKKK emission standard for small turbines—42 ppm NO_x for electric generating and 100 ppm NO_x for mechanical drive applications. Other commenters stated that space constraints do not allow the same combustor design considerations as for larger turbines and that small turbines cannot achieve less than 25 ppm NO_x.

As discussed in section IV.B.3 of this preamble, the EPA has determined that SCR does not meet the BSER criteria for small combustion turbines at any utilization level. The Agency therefore has determined that combustion controls remain the BSER for the subcategory. The EPA agrees with commenters that combustion controls are more limited for small turbines than medium and large turbines. To determine the appropriate emissions standard the EPA reviewed information on manufacturer NO_x emission guarantees. One small turbine has a NO_x emissions rate guarantee of 5 ppm and a high design efficiency. However, this is a higher-cost recuperated turbine model that is only capable of burning natural gas (*i.e.*, not dual-fuel capable). The fuel limitation does not cover the source category as a whole and the EPA has determined the performance of this single turbine should not be used when establishing the NO_x emissions standard for this subcategory. Most of the remaining turbines have emission guarantees of 25 ppm NO_x. The EPA considered, but rejected, an emissions standard of 15 ppm NO_x. Turbines with 15 ppm NO_x guarantees are only available in the 2 MW size category and

this would require the use of SCR on the 1.5 MW and 3.5 MW turbines in the source category. As many of these turbines are used in industrial mechanical applications, it is necessary to match the load to the output of the turbine. Restricting the availability of turbines would result in turbines running at part load, which would result in inefficient operation and higher NO_x emission rates or the use of higher-emitting reciprocating engines. Therefore, the EPA has determined that the BSER for small natural gas-fired turbines is dry combustion controls that can meet a NO_x emission rate of 25 ppm, and the emissions standard for these turbines is 25 ppm. The EPA notes that this emissions standard is also achievable using wet combustion controls.

The EPA is not aware of any improvements in the performance of wet combustion controls or improvements in the part-load performance for these combustion turbines. Therefore, the EPA is maintaining the same standards as in subpart KKKK—96 ppm when firing non-natural gas fuels and 150 ppm when operating at part load (*i.e.*, at less than 70 percent of the base load rating).

6. Revised NSPS for Modified and Reconstructed Stationary Combustion Turbines

This section describes the BSER and emission standards for modified and reconstructed stationary combustion turbines subject to subpart KKKKa. The EPA proposed to include reconstructed stationary combustion turbines in the same size-based subcategories as new stationary combustion turbines. The EPA believed at proposal that reconstructed turbines could likely incorporate the same technologies to reduce NO_x as part of the reconstruction process at little or no additional cost compared to a greenfield facility. Therefore, the EPA proposed BSERs and NO_x standards of performance for large, medium, and small reconstructed combustion turbines were identical to those proposed for new combustion turbines for each size-based subcategory. Identical rationale applied to modified large combustion turbines, which we proposed to subcategorize with the same BSER and NO_x standards of performance as new and reconstructed large turbines.

For modified medium and small combustion turbines, the EPA proposed that the BSER is the use of combustion controls and that SCR did not qualify as part of the BSER for these sources due to potentially high retrofit costs, regardless of level of utilization. Based

on the BSER of combustion controls, the EPA proposed NO_x standards of performance for all modified medium and small combustion turbines of 25 ppm when firing natural gas and 74 ppm when firing non-natural gas fuels.

Several commenters criticized the EPA's proposal to subcategorize modified and reconstructed turbines with BSER and NO_x emission standards identical to new turbines, including the proposed BSER determinations with respect to SCR. These commenters stated that subpart KKKKa should group reconstructed units with modified turbines because the same retrofit technology limitations and cost factors apply. Another commenter, however, asserted that it is more difficult and expensive to retrofit an existing unit to meet more stringent standards. For example, some owners or operators might have to pay millions of dollars to replace and redesign the HRSG to retrofit the unit with SCR in addition to the millions of dollars spent in SCR capital costs. Reconstruction costs are also higher because of factors such as downtime, demolition, space constraints, and replacement of equipment. The commenter stated that the EPA did not adequately support grouping reconstructed and new combustion turbines together and that the proposed NSPS should have included a more thorough analysis before applying SCR as part of the BSER for reconstructed turbines.

The EPA agrees with commenters' assertions that the costs of retrofitting combustion turbines with SCR is significantly higher than for new turbines. Consequently, the EPA is determining that SCR does not qualify as the BSER for reconstructed or modified large high-utilization combustion turbines and is finalizing separate BSER and standards for such turbines. In subpart KKKK, the standards for modified and reconstructed combustion turbines are generally higher for a given subcategory than for newly constructed turbines because combustion controls can be more challenging to apply to modified and reconstructed combustion turbines compared to newly constructed combustion turbines. The different NO_x standards for modified and reconstructed combustion turbines with the same BSER as new combustion turbines are necessary because lean premix/DLN technology is specific to each combustion turbine model (*i.e.*, a combustor designed for a particular turbine model cannot simply be installed on a different turbine model).

In subpart KKKKa, the EPA is determining that the use of combustion

controls alone (without SCR) is the BSER for modified and reconstructed combustion turbines of all sizes. For modified and reconstructed stationary combustion turbines with base load ratings less than or equal to 20 MMBtu/h of heat input (*i.e.*, small), the EPA is not aware of technology developments and therefore the numerical NO_x standard for all small modified and reconstructed turbines in subpart KKKKa is the same as the NO_x standard in subpart KKKK. All small modified and reconstructed stationary combustion turbines are subject to a NO_x emissions standard of 150 ppm whether they burn natural gas or non-natural gas fuels. The EPA has determined that modified and reconstructed combustion turbines with base load ratings between 20 MMBtu/h and 850 MMBtu/h can achieve the same emissions rates as larger turbines and these turbines are subcategorized as medium turbines. The EPA is not aware of technological developments for modified or reconstructed medium combustion turbines and is therefore maintaining the emission standards in subpart KKKK—42 ppm NO_x for modified and reconstructed medium natural gas-fired combustion turbines and 96 ppm NO_x for modified and reconstructed medium non-natural gas-fired combustion turbines. Modified and reconstructed combustion turbines cannot achieve the same emissions rates as new combustion turbines because manufacturers have not developed combustor upgrade packages for all combustion turbines and even for specific models with combustor upgrade packages there might physical space constraints making the combustor upgrade impractical. Similarly, for modified and reconstructed large lower efficiency and non-natural gas-fired turbines the EPA is finalizing emissions standards consistent with subpart KKKK—15 ppm NO_x for large lower efficiency natural gas-fired combustion turbines and 42 ppm NO_x for large non-natural gas-fired combustion turbines. For modified and reconstructed large natural gas-fired higher efficiency combustion turbines the EPA is finalizing an emissions standard consistent with that for newly constructed combustion turbines—25 ppm NO_x. For modified and reconstructed large high utilization turbines that EPA has determined that even if the practical limitations can be overcome the cost of retrofitting SCR is not reasonable.

7. Revised NSPS for Other Subcategories of Stationary Combustion Turbines

a. Non-Natural Gas Emissions Standard

The EPA is not aware of any advances in NO_x combustion controls for non-natural gas-fired fuels relative to the analysis it conducted for subpart KKKK in 2006. Dry combustion controls have limited applicability to liquid fuels because the technology typically functions by premixing gaseous fuels and air into a homogenous mixture prior to combustion, which is not possible with liquid fuels. Advancements in wet combustion controls are limited by the amount of water that can be injected before the flame is prematurely quenched, resulting in increased CO and unburned hydrocarbon emissions. Contrary to dry combustion controls, this limitation of wet combustion controls does not prevent the technology from effectively reducing NO_x emissions during the combustion of liquid fuels. Wet combustion controls just do not reduce NO_x emissions as effectively as dry combustion controls when gaseous fuels are burned. Therefore, in subpart KKKKa, the EPA maintains that wet combustion controls (*i.e.*, water or steam injection) are the BSER for new, modified, or reconstructed stationary combustion turbines that burn non-natural gas fuels.

In subpart KKKKa, based on application of the BSER of wet combustion controls, the EPA maintains the NO_x emissions standards for each subcategory of new, modified, or reconstructed combustion turbines firing non-natural gas.¹⁵⁶ Specifically, for large turbines, the EPA maintains a NO_x standard of 42 ppm for all new, modified, or reconstructed turbines firing non-natural gas fuels. For medium combustion turbines, the EPA maintains NO_x standards of 74 ppm NO_x for new turbines and 96 ppm for modified and reconstructed combustion turbines when firing non-natural gas fuels. For small combustion turbines, the EPA maintains a NO_x standard of 96 ppm for new turbines and 150 ppm NO_x for modified and reconstructed turbines.

b. Combustion Turbines Firing Hydrogen

The EPA proposed that combustion turbines that burn less than or equal to 30 percent (by volume) hydrogen (blended with natural gas) should be subcategorized as natural gas-fired combustion turbines and subject to the same BSER and NO_x standards of performance as other new, modified, or reconstructed natural gas-fired

¹⁵⁶ See table 1 in section IV.B.5 of this preamble.

combustion turbines.¹⁵⁷ For combustion turbines that burn greater than 30 percent (by volume) hydrogen (blended with natural gas), the EPA proposed to subcategorize these sources as non-natural gas-fired combustion turbines and the applicable NO_x limit was proposed to be the same as the standard for non-natural gas-fired combustion turbines, again, depending on the particular size-based subcategory listed in table 1 of this preamble.

The proposal also included a solicitation for comment on the proposed 30 percent (by volume) hydrogen threshold and its appropriateness for determining whether an affected source should be subject to the NO_x standard for natural gas or non-natural gas fuels. We also sought comment on the costs associated with co-firing high percentages (by volume) of hydrogen, including information about hydrogen-ready turbine designs, components, upgrades, and retrofits. The EPA also requested data from co-firing demonstrations, especially NO_x emissions data associated with the performance of various combustion controls with and without SCR.

In response to the proposed rule, commenters asserted that the importance of establishing NO_x standards of performance for combustion turbines co-firing hydrogen in subpart KKKKa considering the characteristics of hydrogen gas and the potential for increased formation of thermal NO_x from its combustion. Some commenters stressed the need for further research because the efficacy of hydrogen co-firing, including critical issues of fuel costs and availability, is not yet fully established. Other commenters stated that while some demonstrations of co-firing hydrogen with natural gas have been conducted, and the results have been promising regarding NO_x emissions, there is insufficient industry experience and data at this time to support the EPA's proposal that turbines co-firing up to 30 percent hydrogen (by volume) can consistently meet the natural gas NO_x standard for each size-based subcategory. Several of the commenters who stated that it is premature to establish NO_x standards of performance for hydrogen co-firing commensurate with the NO_x standards for natural gas-fired combustion turbines also stated that the EPA should subcategorize hydrogen co-firing like the approach for

non-natural gas fuels with a separate BSER and NO_x standards.

In accordance with the limited data received in response to the proposal, the EPA agrees that the NO_x emissions rate of combustion turbines co-firing hydrogen includes uncertainty and remains in the early stages of research and development. The EPA also recognizes the concerns of several commenters that the co-firing of hydrogen gas does increase the temperature of combustion, and a higher firing temperature leads to the formation of thermal NO_x. However, until more data is available about the performance of different sizes and designs of combustion turbines co-firing various percentages of hydrogen (by volume), and the performance of different combustion controls under those conditions, at this time the Agency is not able to establish hydrogen-specific NO_x standards of performance in subpart KKKKa as proposed.

Even though subpart KKKKa does not establish NO_x standards for hydrogen co-firing that are determined according to a specific percentage of hydrogen (by volume) blended with natural gas, in this final action, the subcategories of fuel-based NO_x standards in subpart KKKKa would apply to all new, modified, and reconstructed combustion turbines that elect to co-fire hydrogen. It is the EPA's understanding that hydrogen is generally mixed with natural gas prior to entering the combustor, and once the heating value or the methane concentration of the fuel blend no longer meets the definition of natural gas in 40 CFR 60.4420a, the fuel would be considered a non-natural gas fuel and subject to the non-natural gas NO_x standards for those operating hours.

In terms of percentages of hydrogen (by volume), this means that when a combustion turbine co-fires up to approximately 25 percent hydrogen (by volume), the blended fuel meets the definition of natural gas and would be subject to the size-based subcategory NO_x standard for a turbine firing natural gas. If the blended fuel is greater than approximately 25 percent (by volume) hydrogen, the fuel no longer meets the definition of natural gas and the size-based subcategory NO_x standards for non-natural gas fuels apply.

The EPA acknowledges that there is not much practical difference between establishing a subcategory and NO_x standard based on a co-firing limit of 30 percent (by volume) hydrogen and the approximate 25 percent threshold that results from the application of the definition of natural gas in subpart KKKKa. But based on limited data, we

are not able to support a determination that more stringent NO_x standards for hydrogen co-firing are applicable at this time.

Again, based on limited data, the EPA expects that the performance of combustion controls without SCR will be effective at limiting the formation of thermal NO_x in accordance with the NO_x standards for natural gas and non-natural gas fuels when co-firing with hydrogen. The EPA notes that if the hydrogen and natural gas are fed into the combustor with separate burners, the applicable NO_x standard would be calculated differently. If the energy content is greater than 50 percent of the heat input, the non-natural gas standard would be applicable. At lower mixing levels, the applicable hourly NO_x standard would be prorated based on the relative heat input of the hydrogen and natural gas.¹⁵⁸

See the 2024 Proposed Rule preamble (89 FR 101338; December 13, 2024) for additional information about hydrogen co-firing in stationary combustion turbines, including sections III.B.14.a through III.B.14.d for discussions of the characteristics of hydrogen gas that impact NO_x emissions, hydrogen and combustion controls, hydrogen and SCR, and future combustion turbine capabilities.

c. Part-Load NO_x Standards

As discussed previously in section IV.B.2.g of this preamble, existing subpart KKKK subcategorizes stationary combustion turbines operating at part load (*i.e.*, less than 75 percent of the base load rating) and combustion turbines operating at low ambient temperatures.¹⁵⁹ The hourly NO_x emissions standard is less stringent during any hour when either of these conditions is met regardless of the type of fuel being burned. Subpart KKKK also has different hourly NO_x emissions standards depending on if the output of the combustion turbine is less than or equal to 30 MW (150 ppm NO_x) or greater than 30 MW (96 ppm NO_x) during part-load operation or when operating at low ambient temperatures. As described in section IV.B.2.g of this preamble, in subpart KKKKa, the EPA is changing this size threshold for this subcategory such that the 150 ppm NO_x

¹⁵⁸ Instructions for calculating NO_x emissions on a lb/MMBtu basis, based upon the ratio of natural gas to hydrogen (by percent volume) in the fuel blend, is included in the memorandum *Fuel-Based F-Factors for Firing of Hydrogen and Hydrogen Blends in Combustion Turbines* located in the docket for this rulemaking (See Docket ID No. EPA-HQ-OAR-2024-0419).

¹⁵⁹ While the EPA refers to this as the part-load standard, it includes an independent temperature component as well.

¹⁵⁷ See table 1 in section IV.B.5 for a list of the size-based subcategories in subpart KKKKa and see 40 CFR 60.4420a for the definition of natural gas.

emissions standard would be applicable to combustion turbines with base load ratings less than or equal to 300 MMBtu/h of heat input and the 96 ppm NO_x emissions standard would be applicable to combustion turbines with base load ratings greater than 300 MMBtu/h. In subpart KKKKa, the EPA maintains that the BSER for turbines operating at part load or at low ambient temperatures is diffusion flame combustion for all fuel types. Thus, the EPA also maintains, based on the application of diffusion flame combustion, that the part-load and low ambient temperature NO_x emission standards are 150 ppm for turbines with base load ratings of less than or equal to 300 MMBtu/h of heat input and 96 ppm for combustion turbines with base load ratings greater than 300 MMBtu/h. In addition, the proposed part-load standard includes all periods of part-load operation, including startup and shutdown. However, in contrast to the part-load standards in subpart KKKK, in subpart KKKKa, the EPA lowers the part-load threshold from less than 75 percent load to less than 70 percent of the combustion turbine's base load rating.¹⁶⁰

The part-load emissions standards effectively accommodate periods of startup and shutdown for this source category. The determination to maintain the BSER and NO_x emission standards in subpart KKKKa for combustion turbines operating at part load or low ambient temperatures is based on a review of reported maximum emissions rate data for recently constructed combustion turbines. The data includes all periods of operation, including periods of startup and shutdown. For combustion turbines with base load ratings of greater than 300 MMBtu/h and that recently commenced operation, 80 percent of simple cycle turbines and 98 percent of combined cycle turbines reported a maximum NO_x emissions rate of less than 96 ppm. Based on this information, in subpart KKKKa, the EPA maintains that a part-load standard of 96 ppm, which includes periods of startup and shutdown, is appropriate for combustion turbines with base load ratings of greater than 300 MMBtu/h of heat input. The EPA does not have CEMS data for combustion turbines with base load ratings of less than 250 MMBtu/h of heat input and maintains the existing part-load standard in subpart KKKKa of 150 ppm NO_x.

Since startups and shutdowns are part of the regular operating practices of

stationary combustion turbines, subpart KKKKa includes a part-load NO_x emissions standard that applies during periods of startup and shutdown. Since periods of startup and shutdown are by definition periods of part load, and since the "part-load standard" is based on the emissions rate achieved by a diffusion flame combustor instead of the combustion controls and/or SCR otherwise identified as the BSER, the Agency concludes that this standard is appropriate to accommodate periods of startup and shutdown. Through analysis of CEMS data, the EPA determines that, given the part-load limits, including periods of startup and shutdown would not result in non-compliance with the NSPS. This also ensures this rule complies with the statutory requirement that NSPS standards of performance apply on a continuous basis.¹⁶¹ The EPA analyzed NO_x CEMS data from existing multiple combustion turbines and the theoretical compliance rate with a 4-hour rolling average, including all periods of operation, was demonstrated to be achievable.¹⁶²

d. Site-Specific NO_x Standard

The EPA is finalizing as proposed a provision allowing for a site-specific NO_x standard for an owner or operator of a stationary combustion turbine that burns byproduct fuels. The owner or operator would be required to petition the Administrator for a site-specific standard, and, if appropriate, the Agency would conduct a notice and comment rulemaking to establish a site-specific standard. The Agency considers it appropriate to promulgate this provision because subpart KKKKa covers the HRSG that was previously covered by subpart Db when the site-specific NO_x standard was adopted for industrial boilers. The Agency also solicited comment on and is finalizing amending subpart KKKK to provide a provision allowing for a site-specific NO_x standard for an owner or operator of an existing stationary combustion turbine that burns byproduct fuels.

Several commenters supported finalizing a provision allowing for a site-specific NO_x standard for combustion turbines burning byproduct fuels. Several commenters explained that

there are environmental benefits to combusting byproduct fuels (*a.k.a.*, associated gas or opportunity fuels) in a turbine and that a case-by-case or site-specific NO_x standard would encourage their use as an alternative to flaring, diesel gensets, or spark ignition gas engines, especially for byproduct fuels recovered from oil and gas drilling operations. However, one commenter noted that associated gas is not the same as "pipeline quality" natural gas and typically contains higher amounts of heavy alkanes and diluents such as carbon dioxide. According to the commenter, these substances create changes in fuel composition and increase the variability of emissions that, in turn, increase the operational variability of these types of combustion turbines. Another commenter supported amending subpart KKKK with the same rule language to maintain consistency with subpart KKKKa and added that this provision should be expanded so that facilities can request a site-specific standard for other reasons, such as using turbine exhaust to provide direct heat to a process.

Another commenter stated that the EPA's proposal to allow for a site-specific NO_x standard for turbines using byproduct fuels is too broad or loosely defined. The commenter expressed concern that facilities could blend small amounts of waste gases with regular fuels to claim byproduct status while allowing for higher NO_x emissions than otherwise allowed under the NSPS. To address these concerns, the commenter suggested that the final NSPS narrow the definition of "byproduct fuels" to prevent misuse, require periodic emissions testing to ensure compliance, set a minimum NO_x reduction requirement as it relates to site-specific facilities using byproduct fuels, and limit the scope of this exemption so only unavoidable cases qualify.

For byproduct fuels not meeting the combustion characteristics of natural gas, DLN combustion systems have limited technical availability. In addition, byproduct fuels can contain high amounts of fuel-bound nitrogen. Since fuel-bound nitrogen forms NO_x by a reaction of nitrogen bound in the fuel with oxygen in the combustion air directly (*i.e.*, is not thermally dependent), water injection also has limited technical availability to reduce fuel-bound NO_x. Subpart GG includes a provision for increasing the applicable NO_x emission standards by up to 50 ppm based on the amount of fuel-bound nitrogen.¹⁶³ The EPA considered

¹⁶¹ See 42 U.S.C. 7411(a)(1), 7602(k), 7602(l).

¹⁶² When determining the applicable standard for the hour in conducting this analysis, the EPA assumed the combustion turbine was operated at the hourly average capacity factor for the entire 60-minute period. However, under the rule, the part-load standard is applicable to the entire hour if the combustion turbine operates at part-load at *any point* during the hour. Note that for this analysis, hours with less than 60 minutes of operation were assigned the part-load standard regardless of the reported hourly average capacity factor.

¹⁶³ See 40 CFR 60.332(a)(4).

¹⁶⁰ See section IV.B.2.g of this preamble for additional discussion of this reduction in the part-load threshold.

including a similar provision in subparts KKKK and KKKKa. With this provision, a turbine using water injection to reduce thermal NO_x and burning byproduct fuels with high fuel-bound nitrogen must comply with a standard between 92 ppm NO_x and 146 ppm NO_x. These emission standards are similar to the part-load standards in subparts KKKK and KKKKa, which are based on the use of diffusion flame combustion while burning fuels with low fuel-bound nitrogen. Further, for locations where byproduct fuels are available, high-purity water required for wet combustion controls is not necessarily available. In these situations, if the fuel-bound nitrogen is low, the expected emission rates would be similar to the part-load standards in subpart KKKKa. The EPA is finalizing a BSEr of diffusion flame combustion for byproduct fuel-fired combustion turbines with low fuel-bound nitrogen, and diffusion flame combustion with wet combustion controls for byproduct fuel-fired combustion turbines with high fuel-bound nitrogen. Therefore, the Agency is determining in subpart KKKKa that it is appropriate to apply the same NO_x standard developed for the part-load subcategory to facilities burning byproduct fuels.¹⁶⁴ This NO_x standard recognizes the environmental benefit of reduced flaring or direct venting to the atmosphere. To address concerns about misuse of the provision, the emissions standard would be determined using the weighed emissions standard approach similar to turbines that are co-firing natural gas and non-natural gas fuels. Turbines that are only co-firing a small portion of byproduct fuel with natural gas would be subject to an emissions standard that is close to that of natural gas.

The EPA appreciates commenters' concern regarding breadth but ultimately disagrees that the provision, as proposed, was unnecessarily broad. If the NSPS is overly restrictive in the use of byproduct fuels in a combustion turbine, then those byproduct fuels would be flared or vented directly to the atmosphere. While the Agency expects that the byproduct NO_x standard in subpart KKKKa will allow most types of byproducts fuels to be combusted in turbines some may still exceed the standard (e.g., byproduct fuel with high fuel bound nitrogen content without available water for wet combustion controls). Therefore, to not limit the use of byproduct fuels the EPA is including the provision to allow owners or

operators to petition for a site-specific standard.

e. Subcategory for HRSG Units Operating Independent of the Combustion Turbine

The affected facility under subpart KKKK (and the proposed affected facility under subpart KKKKa) includes the HRSG of CHP and combined cycle facilities. Although not common practice, it is possible that the HRSG could operate and generate useful thermal output while the combustion turbine itself is not operating. In subpart KKKK, the EPA subcategorized this type of operation and based the NO_x emissions standard on the use of combustion controls for a steam generating unit under one of the steam generating unit NSPS. The EPA proposed the same BSEr and emissions standard in subpart KKKKa and received no comments. In subpart KKKKa, the EPA maintains the same approach and subcategorizes operation of the HRSG independent of the combustion turbine engine with the same emissions standard as in subpart KKKK.

8. Additional Amendments to the NO_x Standards

a. Form of the Standard

The form of the concentration-based NO_x standards of performance in subpart KKKK is based on ppm corrected to 15 percent O₂ and the form of alternate output-based NO_x standards is determined on a pounds per megawatt hour-gross (lb/MWh-gross) basis. Manufacturer guarantees are often reported and operating permits are often issued in ppm (corrected to an O₂ or CO₂ basis). Aligning the form of the NSPS with common practice simplifies the understanding of the emission standards and reduces the burden to the regulated community. While not the primary form of the standard, the alternate output-based form of lb/MWh-gross in subpart KKKK recognizes the environmental benefit of highly efficient generation.

In subpart KKKKa, the EPA is continuing the approach of expressing the primary form of the standard on an input basis. The EPA is including input-based NO_x standards on both a ppm basis and in the form of pounds per million British thermal units (lb/MMBtu). The EPA is also finalizing optional, alternate output-based standards in both a gross- and net-output form.

There are advantages to allowing the input-based standard to be expressed on either a ppm or lb/MMBtu basis. As

described in section IV.B.7.b of this preamble, co-firing hydrogen can increase the NO_x emissions rate on a ppm basis when corrected to 15 percent O₂ while absolute NO_x emissions may not significantly change. Since actual emissions to the atmosphere are the true measure of environmental impacts, the NO_x emission standards in the form of lb/MMBtu are a superior measure of environmental performance when comparing emissions from different fuel types. However, throughout this document, the EPA refers to NO_x emission rates using ppm for ease of comparison with performance guarantees and permitted emission rates. The standards in subpart KKKKa include both a ppm and equivalent lb/MMBtu for a natural gas-fired combustion turbine or a distillate oil-fired combustion turbine for the natural gas- and non-natural gas-fired NO_x emission standards, respectively.

The EPA also proposed optional, alternate output-based NO_x standards that owners or operators could elect to comply with instead of the input-based standards. Commenters opposed the output-based standards as proposed because, in their view, the values would allow greater NO_x emissions than the input-based standards. The Agency disagrees that the output-based standards are less environmentally protective and is including them in subpart KKKKa. For the large high-utilization and large low-utilization subcategories, the EPA evaluated operating data and amended the efficiency value used to calculate the output-based standard. Based on available data and likely operating parameters, the EPA believes the optional output-based standards are likely to be most relevant to large high-utilization combustion turbines. The other output-based standards currently in subpart KKKK are largely maintained.

Subpart KKKK uses an assumed efficiency of 23 percent, 27 percent, and 44 percent to convert from the input to equivalent output-based standards for small, medium, and large turbines, respectively.¹⁶⁵ The lower efficiencies were intended to be representative of the performance of simple cycle turbines while the higher efficiency is representative of the performance of combined cycle turbines. For purposes of subpart KKKKa, the EPA reviewed the 30-operating-day efficiencies of combined cycle turbines, including all periods of operation (*i.e.*, including part-load and non-natural gas-fired hours) that have recently commenced operation. The achievable 30-operating-

¹⁶⁴ See section IV.B.7.c of this preamble for discussion of the part-load NO_x standards in subpart KKKKa.)

¹⁶⁵ See 71 FR 38489.

day gross efficiencies vary from 37 to 59 percent with an average of 50 percent. The EPA also reviewed the 30-operating-day emission rates of combined cycle turbines that recently commenced operation. The demonstrated achievable emission rates vary from 0.030 lb NO_x/MWh-gross to 0.10 lb NO_x/MWh-gross. The upper range includes turbines that have maintained 4-hour full load emission rates of less than 5 ppm NO_x. Based on this review, for the large high-utilization combustion turbine subcategory, the EPA has determined it is appropriate to increase the efficiency used to convert the input-based standard to an equivalent output-based standard to 50 percent, and therefore the optional output-based standard is 0.12 lb NO_x/MWh-gross during all periods of operation.¹⁶⁶ (Note that part-load subcategorization is not available for combustion turbines opting to comply with the output-based standards. Among other things, the much longer 30-day averaging time makes the part-load standard less necessary.)

For the large low-utilization subcategories, the EPA uses a 38 percent efficiency to determine the optional output-based standards for the high-efficiency subcategory. The BSER analysis for this subcategory is based on the use of simple cycle turbine technology and 38 percent is the subcategorization criteria. For the low-efficiency subcategory, the average lower efficiency simple cycle turbines that recently commenced operation is 30 percent. The EPA used this value to determine the optional output-based standards for the subcategory.

As noted above, for subcategories where the input-based standard was not changed the EPA is finalizing the same optional output-based standards currently in subpart KKKK.

The EPA determines in subpart KKKKa that owners/operators can elect to comply the alternate output-based standards in either the form of gross- or net-output. Net output is the combination of the gross electrical (or mechanical) output of the combustion turbine engine and any output generated by the HRSG minus the parasitic power requirements. A parasitic load for a stationary combustion turbine represents any of the auxiliary loads or devices powered by electricity, steam, hot water, or directly by the gross output of the stationary combustion turbine that does not contribute to electrical, mechanical, or thermal output. One reason for including

alternate net-output based standards is that while combustion turbine engines that require high fuel gas feed pressures typically have higher gross efficiencies, they also often require fuel compressors that have potentially larger parasitic loads than combustion turbine engines that require lower fuel gas pressures. Gross output from electrical utility units is reported to CAPD and the EPA can evaluate gross output-based emission rates directly.¹⁶⁷ For units calculating net-output, as an alternative to continuously monitoring parasitic loads, the EPA determines in subpart KKKKa that estimating parasitic loads is adequate and would minimize compliance costs. A calibration would be required to determine the parasitic loads at four load points: less than 25 percent load; 25 to 50 percent load; 50 to 75 percent load; and greater than 75 percent load. Once the parasitic load curve is determined, the appropriate amount would be subtracted from the gross output to determine the net output.

b. Recognizing the Benefit of Avoided Line Losses for CHP Facilities

In subpart KKKKa, the EPA recognizes the environmental benefit of generating electricity on-site by CHP facilities, which avoids line losses associated with the transmission and distribution of electricity over long distances. Actual line losses vary from location to location, but to recognize the benefit of avoided transmission and distribution losses of electricity, subpart KKKKa includes a benefit of 5 percent when determining the electric output for CHP facilities. This benefit applies only to CHP facilities where at least 20 percent of the annual output is useful thermal output. This restriction is intended to prevent CHP facilities that provide a trivial amount of thermal energy from qualifying for the 5 percent transmission and distribution benefit.

C. SO₂ Emissions Standards

For new, modified, or reconstructed stationary combustion turbines, the BSER for limiting emissions of SO₂ has been demonstrated to be the firing of low-sulfur fuels. Since the promulgation of the original NSPS in 1979 (subpart GG), the sulfur content of natural gas has continued to decline, and the increased stringency of this best system was reflected in an updated BSER analysis for combustion turbines when the EPA promulgated subpart KKKK in 2006, which lowered the SO₂ standards for this source category.

In conducting our review of the SO₂ standards for purposes of new subpart KKKKa, we continue to find, as proposed, that natural gas continues to be the primary fuel fired in most stationary combustion turbines, and the sulfur content of delivered natural gas in the U.S. is limited to 20 grains or less total sulfur per 100 standard cubic feet (gr/100 scf).¹⁶⁸ Distillate fuel oil (*i.e.*, diesel fuel) is a secondary or backup fuel for most combustion turbines, and due to EPA regulations dating back to 1993, its sulfur content must be limited by fuel producers. The sulfur content of distillate fuel oil in continental areas must not contain more than 500 parts per million by weight (ppmw) sulfur. This is considered low-sulfur diesel and is widely available as a fuel for stationary combustion turbines. However, in noncontinental areas, the availability of this low-sulfur fuel is uncertain, and fuel oil can contain as much as 4,000 ppmw sulfur. These sulfur contents are approximately equivalent to 0.05 percent by weight sulfur in continental areas and 0.4 percent by weight in noncontinental areas.

In subpart KKKKa, we are retaining the existing standards of performance from subpart KKKK. In the proposed rule, the EPA explained how the regulation and production of low-sulfur fuels has changed since the promulgation of subpart KKKK in 2006. This includes the availability in continental areas of "pipeline" quality natural gas with a sulfur content often less than 20 gr/100 scf. For example, depending on the U.S. region, the sulfur content of pipeline natural gas can be as low as 0.5 gr/100 scf. And for combustion turbines that potentially fire liquefied natural gas (LNG), the fuel is typically sulfur-free other than the sulfur added as an odorant for safety. Regarding diesel fuel, the sulfur content has also been reduced over time, generally in reaction to the promulgation of increasingly stringent diesel production standards for on-road and nonroad vehicles, locomotives, and certain types of marine vessels.¹⁶⁹ Today, ultra-low sulfur diesel (ULSD) that is limited to 15 ppmw is produced and available to combustion turbine facilities in continental areas. Therefore, in the proposal, we acknowledged that pipeline natural gas and ultra-low sulfur diesel (ULSD) are available fuels that can be fired in stationary combustion turbines in continental areas and solicited comment on the extent of the

¹⁶⁶ The output-based emissions standard is scaled by a factor of 1.4 for non-natural gas fuels.

¹⁶⁷ Net output is not reported to CAMPD.

¹⁶⁸ See generally 40 CFR part 72; see also 58 FR 3650 (Jan. 11, 1993).

¹⁶⁹ See 69 FR 38958 (June 29, 2004).

current use of ULSD at affected facilities, including information on the availability of ULSD in both continental and noncontinental areas.

Commenters stated that natural gas remains the primary fuel fired in most stationary combustion turbines, and the burning of distillate fuel oil is a secondary or backup/emergency fuel in many cases. However, reliable access to ULSD in certain areas remains questionable, as does documented information about its consistent use in non-utility sectors that operate stationary combustion turbines. Therefore, for purposes of subpart KKKKa, the EPA does not have sufficient information to support a determination that lower sulfur fuels than those we identified in 2006 are the BSER or to amend the associated SO₂ standards relative to subpart KKKK. The EPA notes that owners or operators of stationary combustion turbines typically use natural gas and fuel oil as delivered without additional processing. Technically there are limited viable options for end users to remove additional sulfur, and even if the technology was viable, the costs would be high. Moreover, while most of the pipeline and liquified natural gas available in the continental U.S. may contain less than 20 gr/scf sulfur, demonstrations of compliance with the SO₂ standard in the NSPS may be based on the use of tariff sheets. Setting an SO₂ standard that cannot use tariff sheets for the initial and ongoing compliance determinations would require site-specific performance testing. These tests could be costly when proper sampling is accounted for, with limited to no environmental benefit, given the already-very-low amount of sulfur in the typical fuel supply. Therefore, to align the SO₂ standards with the lower sulfur content of natural gas and ULSD in continental areas, the allowable sulfur content in tariff sheets would also need to be updated, or an exemption would need to be established for owners or operators of combustion turbines burning pipeline quality natural gas or LNG. Such impacts and alternatives would need to be considered when weighing the potential cost of compliance against potential environmental benefits. Based on this review, the EPA maintains that, as in subpart KKKK, limiting burning to low-sulfur fuels continues to be the BSER for SO₂ emissions from new, modified, or reconstructed stationary combustion turbines, regardless of the rated heat input, size, or utilization of the turbine. Accordingly, the application of this BSER is reflected in

the SO₂ standards in subpart KKKKa, which are identical to those promulgated in subpart KKKK and are the same for all turbines.

Specifically, an affected source may not cause to be discharged into the atmosphere from a new, modified, or reconstructed stationary combustion turbine any gases that contain SO₂ in excess of 110 ng/J (0.90 lb/MWh) gross energy output or 26 ng SO₂/J (0.060 lb SO₂/MMBtu) heat input. The EPA continues to recognize that low-sulfur fuels may be less available on islands and other offshore areas. For turbines located in noncontinental areas (including offshore turbines), an affected source may not cause to be discharged into the atmosphere any gases that contain SO₂ in excess of 780 ng/J (6.2 lb/MWh) gross energy output or 180 ng SO₂/J (0.42 lb SO₂/MMBtu) heat input.

The EPA expects no additional SO₂ emissions reductions based on the standards in subpart KKKKa. Although the EPA anticipates that the demand for electric output from stationary combustion turbines in the power and industrial sectors will increase during the next 8 years, the Agency does not expect significant increases in SO₂ emissions from the sector prior to the next CAA-required review of the NSPS. The EPA also does not expect any adverse energy impacts from the SO₂ standards in subpart KKKKa. All affected sources can comply with the rule without any additional controls, and the BSER and standards have not changed from subpart KKKK in 2006.

In terms of compliance with subpart KKKKa, the use of low-sulfur fuels may be demonstrated by using the fuel quality characteristics in a current, valid purchase contract, tariff sheet, or transportation contract, or through representative fuel sampling data that show that the potential sulfur emissions of the fuel do not exceed the standard. This is consistent with the monitoring and reporting requirements in subpart KKKK.

D. Consideration of Other Criteria Pollutants

In the proposal, the EPA discussed whether there was any need to establish standards of performance for criteria pollutants beyond NO_x and SO₂, including for CO and particulate matter (PM). Although such consideration of additional criteria pollutants is not required by CAA section 111(b)(1)(B) as part of the review of existing standards of performance for particular air pollutants, the EPA has authority to regulate additional air pollutants when doing so is consistent with CAA section

111. As in the proposed rule, the EPA does not believe that standards of performance for CO or PM are necessary for this source category at this time but will continue to consider these topics.

1. Carbon Monoxide

Carbon monoxide is a product of incomplete combustion when there is insufficient residence time at high temperature, or incomplete mixing to complete the final step in fuel carbon oxidation. Turbine manufacturers have significantly reduced CO emissions from combustion turbines by developing lean premix technology, which is incorporated into most current turbine designs. Lean premix combustion not only produces lower NO_x than diffusion flame technology but also lowers CO and volatile organic compounds (VOC). In the 2005 NSPS proposal, the EPA determined that “with the advancement of turbine technology and more complete combustion through increased efficiencies, and the prevalence of lean premix combustion technology in new turbines, it is not necessary to further reduce CO in the proposed rule,” and the EPA retained its view that no CO emission limitation need be developed for the combustion turbine NSPS.¹⁷⁰

2. Particulate Matter

Particulate matter (PM) emissions from combustion turbines result primarily from carryover of noncombustible trace constituents in the fuel. Particulate matter emissions are negligible with natural gas firing due to the low sulfur content of natural gas. Emissions of PM are only marginally significant with distillate oil firing because of the low ash content and are expected to decline further as the sulfur content of distillate oil decreases due to other regulatory requirements as discussed previously. As such, the EPA retains its view that no PM emission limitation need be developed for the combustion turbine NSPS.

E. Additional Amendments

1. Clarification of Fuel Analysis Requirements for Determination of SO₂ Compliance

The EPA is adding rule language in subpart KKKKa to clarify the intent of the rule in that if a source elects to perform fuel sampling to demonstrate compliance with the SO₂ standard, the initial test must be conducted using a method that measures multiple sulfur compounds (e.g., hydrogen sulfide, dimethyl sulfide, carbonyl sulfide, and thiol compounds). Alternate test procedures can be used only if the

¹⁷⁰ 70 FR 8314, 8320–21 (Feb. 18, 2005).

measured sulfur content is less than half of the applicable standard. In addition, subpart KKKKa allows fuel blending to achieve the applicable SO₂ standard. Under the rule language, an owner or operator of an affected facility may burn higher sulfur fuels if the average fuel fired meets the applicable SO₂ standard at all times. Finally, the primary method of controlling emissions is through selecting fuels containing low amounts of sulfur or through fuel pretreatment operations that can operate at all times, including periods of startup and shutdown as discussed below in section IV.F.

2. Expanding the Application of Low-Btu Gases

For stationary combustion turbines combusting 50 percent or more biogas (based on total heat input) per calendar month, subpart KKKK established a maximum allowable SO₂ emissions standard of 65 ng SO₂/J (0.15 lb SO₂/MMBtu) heat input. This standard was set to avoid discouraging the development of energy recovery projects that burn landfill gases to generate electricity in stationary combustion turbines.¹⁷¹ Stationary combustion turbine technologies using other low-Btu gases are also commercially available. These technologies can burn low-Btu content gases recovered from other activities, such as steelmaking (e.g., blast furnace gas and coke oven gas) and coal bed methane. Like biogas, substantial environmental benefits can be achieved by using these low-Btu gases to fuel combustion turbines instead of flaring or direct venting to the atmosphere. Therefore, in subparts KKKK and KKKKa, the EPA is amending and expanding the application of the existing 65 ng SO₂/J (0.15 lb SO₂/MMBtu) heat input emissions standard to include stationary combustion turbines combusting 50 percent or more (on a heat input basis) any gaseous fuels that have heating values less than 26 megajoules per standard cubic meter (MJ/scm) (700 Btu/scf) per calendar month.

To account for the environmental benefit of productive use and simplify compliance for low-Btu gases, the Agency considers it appropriate to base the SO₂ standard on a fuel concentration basis as an alternative to a lb/MMBtu basis. The original proposed subpart KKKK standard for SO₂ was based on the sulfur content in distillate oil and included a standard of 0.05 percent sulfur by weight (500 ppmw).¹⁷² In general, emission standards are applied

to a gaseous mixture by volume (parts per million by volume (ppmv)), not by weight (ppmw). Basing the standard on a volume basis would simplify compliance and minimize burden to the regulated community. Therefore, the EPA includes in subparts KKKK and KKKKa a fuel specification standard of 650 mg sulfur/scm (or 28 gr sulfur/100 scf) for low-Btu gases. This is approximately equivalent to a standard of 500 ppmv sulfur and is in the units directly reported by most test methods.

3. Amendments To Simplify NSPS

This rulemaking includes some additional amendments for subparts KKKK and KKKKa that are intended to simplify the regulatory burden.

a. Compliance Demonstration Exemption for Units Out of Operation

The EPA includes in subpart KKKKa, and is amending in subpart KKKK, that units that have been out of operation for 60 days or longer at the time of a required performance test are not required to conduct the performance test until 45 days after the facility is brought back into operation, or until after 10 operating days, whichever is longer. The EPA concludes that it is not appropriate to require an affected facility that is not currently in operation to start up for the sole purpose of conducting a performance test to demonstrate compliance with the NSPS.

Similarly, owners or operators of a combustion turbine that has operated 50 hours or less since the previous performance test was required to be conducted can request an extension of the otherwise required performance test from the appropriate EPA Regional Office until the turbine has operated more than 50 hours. This provision is specific to a particular fuel, and an owner or operator permitted to burn a backup fuel, but that rarely does so, can request an extension on testing on that particular fuel until it has been burned for more than 50 hours.

b. Authorization of a Single Emissions Test

For both subparts KKKKa and KKKK, we are finalizing the availability of a streamlined emissions test procedure for groups of no more than five similar stationary combustion turbines at a single source under common ownership. Such units (or “affected facilities”) may not be equipped with SCR and use dry combustion control equipment. Specifically, for any given calendar year, the Administrator or delegated authority may authorize a single emissions test as adequate demonstration for up to five units of the

same combustion turbine model and using the same dry combustion control technology, so long as: (1) the most recent performance test for each affected facility shows that performance of each affected facility is 75 percent or less of the applicable emissions standard; (2) the manufacturer’s recommended maintenance procedures for each turbine and its control device are followed; and (3) each affected facility conducts a performance test for each pollutant for which it is subject to a standard at least once every 5 years.

DLN combustion results in relatively stable emission rates. Furthermore, the DLN combustor is a fundamental part of a combustion turbine, and if similar maintenance procedures are followed, the Agency concludes that emission rates will likely be comparable between combustion turbines of the same make and model. Therefore, the additional compliance costs associated with testing each affected facility (*i.e.*, each individual combustion turbine) are not needed to ensure emissions standards are being met, under the conditions specified.

c. Verification of Proper Operation of Emission Controls

Turbine engine performance can deteriorate with operation and age. Operational parameters need to be verified periodically to ensure proper operation of emission controls. Therefore, the EPA is finalizing a requirement in subpart KKKKa that facilities using the water- or steam-to-fuel ratio as a demonstration of continuous compliance with the NO_x emissions standard to verify the appropriate ratio or parameters at a minimum of once every 60 months. The Agency concludes this would not add significant burden since most affected facilities are already required to conduct performance testing at least every 5 years through title V requirements or other State permitting requirements.

d. Compliance for Multiple Turbine Engines With a Single HRSG

The previous NSPS (subpart KKKK) does not state how multiple combustion turbine engines that are exhausted through a single HRSG would demonstrate compliance with the NO_x standards. Therefore, the EPA includes procedures in subpart KKKKa for demonstrating compliance when multiple combustion turbine engines are exhausted through a single HRSG and when steam from multiple combustion turbine HRSGs is used in a single steam turbine. Subpart KKKK is being amended to include the same procedures.

¹⁷¹ See 74 FR 11858 (Mar. 20, 2009).

¹⁷² See 70 FR at 8319–20.

Furthermore, subpart KKKK requires approval from the permitting authority for any use of the 40 CFR part 75 NO_x monitoring provisions in lieu of the specified 40 CFR part 60 procedures, but the Agency's review concludes that approval is an unnecessary burden for facilities using combustion controls only. Therefore, the EPA includes in subpart KKKKa and is amending subpart KKKK to allow sources using only combustion controls to use the NO_x monitoring in 40 CFR part 75 to demonstrate continuous compliance without requiring prior approval. However, if the source is using post-combustion control technology (*i.e.*, SCR) to comply with the requirements of the NSPS, then approval from the delegated authority is required prior to using the 40 CFR part 75 CEMS procedures instead of the 40 CFR part 60 procedures.

e. System Emergency

The EPA determines it is appropriate to add a provision to subpart KKKKa clarifying the calculation of utilization levels when turbines are operated for "system emergencies." Operation during system emergencies would not be included when determining the utilization-based subcategorization. In addition, for owners or operators that elect to comply with the mass-based standards, emissions during system emergencies would not be included when determining 12-calendar-month emissions.¹⁷³ The Agency concludes that this subcategorization approach is necessary to provide flexibility, maintain system reliability, and minimize overall costs to the sector.¹⁷⁴ The EPA defines system emergency in subpart KKKKa to mean periods when the Reliability Coordinator has declared an Energy Emergency Alert levels 1, 2, or 3 which should follow NERC Reliability Standard EOP-011-2 or its successor, or equivalent.¹⁷⁵ This

¹⁷³ See discussion of the optional, alternative mass-based NO_x emission standards in section IV.E.4 of this preamble. During system emergencies the owner/operator of a combustion turbine complying with the mass-based standard still would be subject to a 4-hour emissions standard of 0.83 lb NO_x/MW-rated output or the current hourly emissions rate necessary to comply with the 12-calendar month emissions standard of 0.48 tons NO_x/MW-rated output, whichever is more stringent. For example, if a combustion turbine operated for 4,000 hours prior to the system emergency the 4-hour emissions standard during the system emergency would be 0.24 lb NO_x/MW-rated output.

¹⁷⁴ See 80 FR 64612 (Oct. 23, 2015) and 89 FR 39914-15 (May 9, 2024).

¹⁷⁵ The EPA determines it necessary to add "or equivalent" for areas not covered by NERC Reliability Standard EOP-011-2, for example Puerto Rico. The definition therefore differs slightly

provision ensures that stationary combustion turbines intended for less frequent operation are available for grid reliability purposes during grid emergencies without being subject to an emission standard that the unit might not be able to meet without an investment in additional controls.

These provisions in subpart KKKKa are like those included in other EPA rulemakings that affect facilities in the power sector, such as in *Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units* in 2015, and in the Carbon Pollution Standards promulgated in May 2024.¹⁷⁶

f. Exemptions Included From Subpart GG

The EPA included exemptions for combustion turbines used in certain military applications and firefighting applications from the standards of performance for stationary gas turbines in 40 CFR part 60, subpart GG.¹⁷⁷ The EPA is finalizing including these exemptions from subpart GG in subparts KKKK and KKKKa. The exemptions include military combustion turbines for use in other than a garrison facility, military combustion turbines installed for use as military training facilities, and firefighting combustion turbines. These combustion turbines only operate during critical situations.

4. Alternative Mass-Based NO_x Standards

The EPA solicited comment on and is finalizing short-term and long-term mass-based NO_x standards in subpart KKKKa as an optional alternative to the input- and output-based NO_x standards for stationary combustion turbines. Owners or operators can choose to comply with both a short-term, 4-operating-hour rolling mass-based NO_x standard and a long-term, 12-calendar-month rolling mass-based NO_x standard. The optional, alternative mass-based NO_x standards are designed to provide regulatory flexibility and potentially reduce compliance burden.

The implementation of mass-based NO_x standards is more straightforward than for the input- and output-based standards because there is no consideration of separate standards for full- and part-load hours. Mass-based standards are a better indicator of environmental impact because, in subpart KKKKa, mass-based standards

from the definition that had been promulgated in subpart TTTTa.

¹⁷⁶ See 40 CFR 60.5580 and 60.5580a. See also 40 CFR part 60, subparts TTTT and TTTTa.

¹⁷⁷ See 40 CFR 60.332(g).

are based on total NO_x emitted by the turbine. In addition, mass-based standards recognize the environmental benefit of efficient generation and provide a regulatory incentive for owners or operators of new combustion turbines to purchase the most efficient turbine designs.

The short-term, 4-operating-hour rolling mass-based standard is 0.83 lb NO_x/MW-rated output and the long-term, 12-calendar-month rolling mass-based standard is 0.48 tons NO_x/MW-rated output when combusting natural gas. As noted in the proposed rule, the 4-operating-hour rolling mass-based NO_x standard is calculated based on the short-term NO_x emissions from large low-utilization combustion turbines with a BSER of combustion controls; the 12-calendar-month rolling mass-based NO_x standard is calculated based on the long-term NO_x emissions from large high-utilization combustion turbines with a BSER of combustion controls with SCR.¹⁷⁸

For owners or operators that elect to comply with the NSPS according to the 4-operating-hour and 12-calendar-month rolling mass-based NO_x standards, the individual combustion turbine is not subject to the input-based NO_x emission standards in table 1 of subpart KKKKa or subcategorization according to its 12-calendar-month capacity factor.¹⁷⁹ Instead, the combustion turbine is subject to the same 4-operating-hour rolling mass-based NO_x emissions standard regardless of the actual utilization in addition to the 12-calendar-month rolling mass-based NO_x standard. The EPA discussed in the proposed rule that an optional, alternative short-term rolling mass-based NO_x emission standard functions as an alternative to the 4-operating-hour input-based low-utilization NO_x standard. The 4-operating-hour rolling mass-based NO_x emission standard ensures the use of combustion controls at all times. Likewise, the 12-calendar-month rolling mass-based NO_x emission standard functions as an alternative to the 4-operating-hour input-based high-utilization NO_x standard. The 12-calendar-month rolling mass-based NO_x standard ensures that high-utilization combustion turbines achieve greater NO_x reductions with advanced

¹⁷⁸ The short- and long-term mass-based NO_x standards are most relevant to combustion turbines where the low-utilization and high-utilization input-based (or output-based) emission standards vary significantly.

¹⁷⁹ The optional output-based NO_x standards would also not be applicable.

combustion controls or combustion controls with SCR.

Some commenters disagreed with the optional, alternative mass-based NO_x standards being the primary NO_x standards in subpart KKKKa. The commenters stated that such mass-based standards could restrict the use of high-utilization, simple cycle combustion turbines as well as the operation of combustion turbines at part load. While the EPA agrees that a mass-based NO_x standard is not appropriate as the primary NO_x standard for this source category, it increases regulatory flexibility and could reduce regulatory compliance burden for certain owners or operators of combustion turbines. For example, some permits for combustion turbines include annual mass limitations and EGUs in the utility sector are often subject to emissions trading programs. Optional, alternative mass-based NO_x standards can reduce compliance burden for owners or operators of these turbines. Therefore, alternative, mass-based NO_x standards are included as a compliance option in subpart KKKKa.

In establishing appropriate mass-based NO_x standards, the Agency considered the hourly standards that would otherwise be applicable. In subpart KKKKa, owners or operators of all new natural gas-fired combustion turbines operating at full load that comply with the input-based NO_x standard are subject to a 4-operating-hour standard of no more than 25 ppm (0.092 lb NO_x/MMBtu).¹⁸⁰ The maximum hourly mass-based emissions of NO_x can be determined according to this input-based NO_x emissions standard and the design efficiency of the turbine. Further, the maximum mass-based NO_x emissions rate can be normalized based on the design rated output of the turbine.¹⁸¹ Similar to input-based standards, while the absolute allowable NO_x emissions are

determined according to the size of the turbine, the emissions standard is not. Based on reported design efficiencies and NO_x emission rate guarantees, the EPA determined the design mass-based NO_x emission rates of available new simple cycle turbines. The maximum hourly design mass-based NO_x emissions rate of a large turbine meeting the full load, input-based emissions standard is 0.83 lb NO_x/MW-rated output.¹⁸² Therefore, in subpart KKKKa, the EPA is finalizing a 4-operating-hour emissions standard of 0.83 lb NO_x/MW-rated output when firing natural gas. For example, a turbine with a 100 MW rated output at design conditions could comply with the 4-operating-hour standard if the cumulative emissions are maintained at or below 332 lb NO_x (83 lb NO_x/h over a 4-hour period). Similarly, the 4-operating-hour mass-based emissions standard for a turbine with a 200 MW rated design output is 664 lb NO_x. The corresponding emissions standard for non-natural gas fuels is 1.5 lb NO_x/MW-rated output.¹⁸³ The objective of the 4-operating-hour standard is to establish an emissions standard based on the use of the BSER for low-utilization turbines (*i.e.*, combustion controls) and a more stringent standard cannot be established without restricting the use of a turbine model beyond what was determined as the BSER for low-utilization turbines.

As the Agency has noted, a challenge of establishing standards of performance for combustion turbines is that emission rates increase at lower loads. In the NSPS, the EPA addresses this issue for input-based NO_x standards by subcategorizing turbine operating hours as either full-load or part-load hours. A lower numeric NO_x standard (*e.g.*, 25 ppm) applies during operation at full

load and a higher numeric NO_x standard (*e.g.*, 96 ppm) is applicable during hours of operation at part load. The relationship between the emissions and load is complex and the Agency must balance the stringency of the full-load emissions standard and the full-load threshold and the part-load standard.¹⁸⁴ Since the same 4-operating-hour mass-based NO_x standard applies during all periods of operation (*i.e.*, hours are not subcategorized as full- or part-load) and the relative stringency of the input-based and mass-based standards varies with the load of the turbine. At the base load rating of the turbine, the mass-based standard and the input-based standard (*i.e.*, 25 ppm NO_x) are essentially equivalent. When the turbine is operating above the base load rating (*e.g.*, during periods of operation at cold ambient conditions), the mass-based standard is more stringent, and compliance requires a lower input-based emissions rate. Consequently, turbines that are not able to reduce emissions below 25 ppm NO_x might not be able to operate above the base load rating of the turbine. When the turbine is operated between 70 and 100 percent of the base load rating (*e.g.*, at full load but below the base load rating) the input-based standard is theoretically more stringent. However, combustion control guarantees extend to 70 percent of the base load rating or lower and owners or operators are not able to adjust the operation of DLN systems, and, in practice, compliance with the mass-based standard would not result in an increase in NO_x emissions during operation between 70 and 100 percent of the base load rating.

During part-load operation, the BSER is diffusion flame combustion for both high- and low-utilization turbines. At 70 percent of the base load rating (the part-load threshold), the input-based emission standard is 3.8 times higher than the full-load input-based emissions standard, and the allowable mass-based emissions are 2.7 times higher than the allowable mass-based NO_x emissions for a natural gas-fired turbine operating at full load.¹⁸⁵ This is difficult to avoid using the input-based NO_x standard since the part-load standard includes all periods of operation at part load, including periods of startup and shutdown, and an achievable emissions standard has to account for all periods of operation when the NO_x standard is applicable. While the part-load emission

¹⁸⁰ Large high-utilization combustion turbines are subject to an emissions standard of 25 ppm NO_x when the HRSG is bypassed regardless of the efficiency of the turbine engine.

¹⁸¹ The hourly design mass-based NO_x emissions standard is calculated by multiplying the input-based emissions rate (lb NO_x/MMBtu) by the base load rating of the turbine (MMBtu/h). The product is the design output of the turbine in lb NO_x/h. The design output can be normalized to the rated output of the turbine by dividing the design output (lb NO_x/h) by the rated output of the turbine (MW). This produces units of lb NO_x/MW·h, but the hour in the denominator is eliminated when the value is multiplied by an hour. This results in a mass-based emissions standard of lb NO_x/MW-design rated output. Numerically this value is the same as the value of the design output-based emissions rate, which is calculated by multiplying the input-based emissions rate (lb NO_x/MMBtu) by 3.412 MMBtu/MWh and dividing the product by the efficiency (in HHV) of the turbine.

¹⁸² For large low-utilization combustion turbines, the mass-based NO_x emissions standard depends on the efficiency of the turbine. The maximum hourly design emissions rate varies between 0.31 and 0.37 lb NO_x/MW-rated output for large lower efficiency turbines with 9 ppm NO_x guarantees to 0.79 and 0.83 lb NO_x/MW-capacity for large higher efficiency turbines with 25 ppm NO_x guarantees. While combined cycle turbines would use combustion controls with SCR to comply with the high-utilization standard, hours when the HRSG is bypassed would be subcategorized. The input-based emissions standard for these hours is 25 ppm NO_x without any efficiency requirement of the turbine engine itself. The design emissions rate for these turbines could be as high as 1.0 including only the output from the turbine engine. When the output of the steam turbine is included, the maximum design emissions rate is 0.68 lb NO_x/MW-rated output.

¹⁸³ The non-natural gas standard was calculated using an input-based emissions rate of 42 ppm NO_x (0.16 lb NO_x/MMBtu) and an efficiency of 30.5 percent. This represents the emissions rate that is achievable for all large simple cycle turbines in compliance with the input = based non-natural gas standard.

¹⁸⁴ See 89 FR 101320 (Dec. 13, 2024).

¹⁸⁵ The comparisons are done assuming a full load standard of 25 ppm NO_x and a part-load standard of 25 ppm NO_x. The part load input-based emissions standard is 19 times higher than the 5 ppm NO_x standard.

standards are significantly higher than the full-load emission standards, the absolute hourly emissions do not vary as much between part-load and full-load hours.¹⁸⁶ Since the mass-based standards are not subcategorized for part-load operation they are more environmentally protective when turbines are operating between approximately 25 and 70 percent of the base load rating. For example, the input-based part-load NO_x emissions standard for large turbines is 96 ppm. For a 100 MW simple cycle turbine, the allowable hourly emission rates when complying with the input-based, part-load NO_x emissions standard are 220 lb/h and 80 lb/h at 70 percent and 25 percent of the base load rating, respectively. The mass-based NO_x emissions standard is 83 lb/h regardless of the load of the turbine. At these loads, demonstrating compliance with the mass-based standard requires operating at an input-based NO_x emissions rate that is lower than the NSPS input-based NO_x emissions standard. Turbines rarely operate at less than 25 percent of the base load rating, and most part-load emissions occur between 25 and 70 percent of the base load rating. Therefore, the optional, alternative mass-based NO_x standard offers superior environmental protection compared to the input-based standards by recognizing the environmental benefit of reducing emissions below what is required by the input-based NO_x emissions standard. Mass-based standards also eliminate any potential regulatory incentive to switch to part-load operation so that the higher part-load, input-based NO_x standard is applicable during that hour.

The 12-calendar-month mass-based standard functions as an alternative to the 4-operating-hour input-based high-utilization standard and ensures that high-utilization turbines achieve greater reductions in NO_x based on a BSER of combustion controls with SCR. In subpart KKKKa, new high-utilization natural gas-fired turbines operating at full load and complying with the input-based NO_x emissions standard are subject to a 4-operating-hour emissions standard of 5 ppm. Like the 4-operating-hour standard, the maximum 12-calendar-month mass-based NO_x emissions of a turbine can be determined based on the input-based emissions standard and the design efficiency of the turbine. Based on reported design efficiencies and using

an input-based NO_x emissions rate of 5 ppm, the EPA determined the average 12-calendar-month design mass-based NO_x emission rates of new large combined cycle turbines to be 0.52 ton NO_x/MW-rated output and range from 0.48 to 0.60 ton NO_x/MW-rated output. At a constant, input-based emissions rate, the potential annual NO_x emissions (when corrected to the design rated output) is strictly a function of the design efficiency—more efficient turbines have lower design mass-based emission rates. The EPA considered, but rejected, using these values to set the 12-calendar-month mass-based NO_x emissions standard. A 4-operating-hour average accounts for short-term spikes in emissions, and on a 12-calendar-month basis, the EPA projects that high-utilization turbines will emit at a rate of 4 ppm NO_x. The EPA, therefore, used 4 ppm NO_x when determining the 12-calendar-month mass-based NO_x emissions standard. Based on design efficiencies, the average maximum 12-calendar-month mass-based emissions rate of large, combined cycle turbines is 0.42 ton NO_x/MW-rated output and range from 0.38 to 0.48 ton NO_x/MW-rated output. Therefore, the 12-calendar-month mass-based NO_x standard is 0.48 tons NO_x/MW-rated output. A turbine with a 400 MW rated output at design conditions could comply with the 12-calendar-month standard if the cumulative NO_x emissions are maintained at or below 192 tons over each rolling 12-calendar-month period. Setting a lower standard would restrict turbine models beyond what was determined to be the BSER (*i.e.*, combustion controls with SCR) for high-utilization turbines.¹⁸⁷ The corresponding mass-based NO_x standard for non-natural gas-fired turbines is 0.81 tons NO_x/MW-rated output.¹⁸⁸

Like the 4-operating-hour mass-based standard, the 12-calendar-month mass-based NO_x standard is not subcategorized by full- and part-load hours. While the 12-calendar-month

mass-based standard provides short-term flexibilities relative to the input-based standards for high-utilization turbines operating at full loads (*e.g.*, an owner or operator of a large high-utilization turbine operating at full load would not be in violation of the mass-based NO_x emissions standard in the NSPS if a single 4-operating-hour period at full load exceeds 5 ppm NO_x), it is more environmentally protective over a 12-calendar-month period. Under the input-based standards, the average allowable NO_x emissions rate of a large high-utilization turbine where 95 percent of the heat input is during full-load hours and 5 percent during part-load hours is 9.6 ppm NO_x. This is 2.4 times higher than the emissions rate used to derive the 12-calendar-month mass-based emissions rate. Even at a 12-calendar-month capacity factor of 50 percent, the allowable mass-based NO_x emissions of a turbine complying with the input-based standards are higher than the allowable mass-based NO_x emissions of the same turbine operating at a 12-calendar-month capacity factor of 100 percent and complying with the mass-based standards. For example, the allowable annual emissions of a 400 MW combined cycle turbine operating at a 12-calendar-month capacity factor of 50 percent and complying with the input-based standards is 228 tons NO_x. The same combined cycle turbine operating at a 100 percent capacity factor over a 12-calendar-month period complying with the mass-based emission standards would be limited to 192 tons of NO_x.

The benefits of mass-based NO_x standards include recognizing the environmental benefit of efficiency—more efficient combustion turbines achieving the same input-based emissions rate (*e.g.*, lb NO_x/MMBtu) would be able to operate at higher capacity factors while still maintaining emissions below the annual standard. This approach also incentivizes reduced emissions during all periods of operation, including during startup and shutdown. It ensures that part-load operation is either kept to a minimum or emissions are lower than required by the NSPS so that both the 4-operating-hour and 12-calendar-month absolute mass-based NO_x limits are fulfilled. The mass-based standards eliminate regulatory incentive to switch to part-load operation so that the higher part-load NO_x standard is applicable during an operating hour. The mass-based standards also complement each other. As finalized, the 4-operating-hour mass-based NO_x emissions standard is more stringent at 12-calendar-month

¹⁸⁶ Even though the concentration of NO_x emissions is higher at part loads (which increases the mass emissions rate) the lower amount of fuel being combusted reduces the mass emissions rate.

¹⁸⁷ The most efficient combined cycle design could emit at an emission rate of 5 ppm NO_x and still comply with the 12-calendar month emissions standard. To operate at a 100 percent capacity factor, owners or operators of simple cycle turbines would have to reduce the NO_x emissions rate to between 2.6 ppm to 3.4 ppm depending on the efficiency of the turbine.

¹⁸⁸ While the EPA has determined that SCR is not the BSER for non-natural gas-fired turbines, natural gas-fired combined cycle turbines can fire distillate for short periods of time as a backup fuel. The EPA used a factor of 1.7 to determine the 12-calendar-month non-natural gas-fired mass-based standard. The 12-calendar-month standard is determined based on the relative heat inputs of natural gas and non-natural gas fuels during the 12-calendar-month period.

utilization rates of 13 percent and less. At higher utilization rates, the 12-calendar-month mass-based NO_x emissions standard is more stringent. For example, the potential 12-calendar-month NO_x emissions of a 100 MW simple cycle turbine operating at a 9 percent capacity factor complying with the 4-operating-hour mass-based emissions standard is approximately 33 tons NO_x. The corresponding 12-calendar-month mass-based NO_x emissions standard is less stringent (48 tons NO_x). At a 20 percent utilization rate, the potential 12-calendar-month NO_x emissions based on compliance with the 4-operating-hour mass-based emissions standard is 73 tons NO_x. The corresponding 12-calendar-month mass-based emissions standard is more stringent (48 tons NO_x). Further, to maintain compliance with the 12-calendar-month mass-based emissions standard, the turbine would have to emit at an input-based emissions rate of 16 ppm NO_x. To the extent this approach results in lower overall emissions while also avoiding the need to use SCR control technology, it provides an incentive for manufacturers to continue to improve combustion controls and to expand the operating conditions over which the combustion controls can operate.

Additional benefits include lowering compliance costs and providing flexibility to the regulated community—like conditions often included in operating permits. In addition, a 12-calendar-month mass-based NO_x emissions standard recognizes the complex relationship between the choice of combustion controls (and the impact of those controls on other pollutants), the anticipated operation of the combustion turbine, and the use of SCR. The flexibility would allow the owner or operator of the combustion turbine to work with the permitting authority to determine the appropriate emissions reduction strategy for each specific project.

5. Exemption of Non-Major Sources From Title V Permitting

The EPA has decided to exempt certain lower-emitting stationary combustion turbines subject to subparts GG, KKKK, or subpart KKKKa from title V permitting requirements. CAA section 502(a) authorizes the Administrator to exempt certain sources subject to CAA section 111 (NSPS) standards from the requirements of title V if the Administrator finds that compliance with such requirements is “impracticable, infeasible, or unnecessarily burdensome” on such

sources.¹⁸⁹ However, any exemption from title V permitting under this provision cannot extend to any sources that are “major sources” as that term is defined at CAA section 501(2).¹⁹⁰

The EPA has previously established permitting exemptions under this provision for several NSPS, particularly in circumstances where the affected facilities are numerous and relatively low-emitting, the burdens and process of obtaining permits would be substantial for permitting authorities and the sources (such as numerous small businesses, farms, or residences), and where compliance with applicable standards can be assured through the manufacture or design of the equipment or facility in question.¹⁹¹

At proposal, the EPA explained that it had not determined that title V permitting is “impracticable, infeasible, or unnecessarily burdensome” for sources subject to subparts GG, KKKK, or KKKKa. However, the EPA discussed the statutory factors and requested comment as to whether there are circumstances in which the burdens and costs of going through title V permitting for combustion turbines would not be justified in light of the purposes of title V. The EPA specifically requested comment on whether there are appropriate size, emissions, or other characteristics that could be appropriately used to define sources that may warrant exemption under CAA section 502(a), and what specific features of these sources would justify such an exemption in light of the statutory criteria.

The EPA previously proposed a title V exemption for combustion turbines in a reconsideration proceeding concerning subparts GG and KKKK.¹⁹² In conjunction with that proposal, the EPA prepared a memorandum in 2012 describing the proposed section 502(a) exemption from title V permitting requirements for non-major stationary combustion turbines subject to subparts GG or KKKK under the relevant statutory factors. The Agency cited to

¹⁸⁹ 42 U.S.C. 7661a(a).

¹⁹⁰ *Id.*; see also *id.* 7661(2).

¹⁹¹ See, e.g., 40 CFR 60.4200(c) (“If you are an owner or operator of an area source subject to this subpart, you are exempt from the obligation to obtain a permit under 40 CFR part 70 or 40 CFR part 71, provided you are not required to obtain a permit under 40 CFR 70.3(a) or 40 CFR 71.3(a) for a reason other than your status as an area source under this subpart.”) and 40 CFR 70.3(b)(4)(i) (“The following source categories are exempted from the obligation to obtain a part 70 permit: All sources and source categories that would be required to obtain a permit solely because they are subject to part 60, subpart AAA—Standards of Performance for New Residential Wood Heaters.”).

¹⁹² See 77 FR 52554, 52557–58 (Aug. 29, 2012).

this document in the proposal in seeking comment.¹⁹³

After considering comments, the EPA is finalizing a title V exemption for non-major combustion turbines that fall into the small and medium subcategories and the large low-utilization subcategory under subpart KKKKa and for all non-major combustion turbines under subparts GG and KKKK. For combustion turbines in these subcategories and/or under these subparts, the EPA finds that compliance with title V permitting is unnecessarily burdensome, as discussed in the 2012 Memorandum.

The EPA has developed a four-factor balancing test in determining under CAA section 502(a) whether compliance with title V is “unnecessarily burdensome.” These four factors are: (1) whether Title V permitting would result in significant improvements in compliance with emission standards; (2) whether Title V permitting would impose significant burdens on the area source category; (3) whether the costs are justified, taking into account potential gains; and (4) whether there are existing enforcement programs in place sufficient to ensure compliance.¹⁹⁴ The EPA has historically also considered whether such an exemption would adversely affect public health, welfare, or the environment.¹⁹⁵ In exercising the discretion conferred by statute, the Administrator considers the factors in combination, and not every factor must point in the same direction to support an exemption.

As explained in the 2012 Memorandum, the EPA has considered and balanced these factors and finds that they support granting the title V exemption for the identified non-major combustion turbines. Please refer to that memorandum for a full explanation of our reasoning.

We note that in adopting the analysis set forth in the 2012 Memorandum included in the docket as the primary rationale for this exemption, we have specifically considered whether any information or analysis in that document is out of date. The circumstances described there remain applicable. The 2012 Memorandum noted that as many as 1 in 10 new

¹⁹³ See 89 FR 101347; U.S. EPA, *Exemption of non-major source subject to new source performance standards for stationary gas combustion turbines under 40 CFR subpart KKKK from Title V permitting requirements* (June 2012) (EPA-HQ-OAR-2004-0490-0331) (hereinafter “2012 Memorandum”), available in the docket.

¹⁹⁴ 70 FR 75320, 75323 (Dec. 19, 2005); see *U.S. Sugar Corp. v. EPA*, 830 F.3d 579, 647 (D.C. Cir. 2016).

¹⁹⁵ See, e.g., 70 FR 75323.

combustion turbines may be owned by small entities, and in the EIA for this action, we identify that a comparable percentage of new affected units may be owned by small entities. See EIA section 5.2.2.

The EPA is not extending the title V exemption to large high-utilization combustion turbines under subpart KKKKa. We note that for the small, medium, and low-utilization subcategories, and for turbines subject to subparts GG or KKKK, combustion controls are the BSER, and these controls typically are integrated into the unit itself and come with manufacturer guarantees of NO_x performance that are generally sufficient to comply with the relevant standards. Similarly, the vast majority of combustion turbines comply with the applicable SO₂ standards through firing low-sulfur fuels and do not need to install or operate add-on control technologies. In contrast, turbines in the large high-utilization subcategory are subject to a NO_x standard that is premised on a BSER that includes SCR, which is an add-on control technology. Effective emissions control with SCR depends on continuing operational and maintenance practices, and a title V operating permit is typically appropriate to establish facility-specific conditions to ensure those practices are in place. Further, in most cases, large high-utilization turbines have sufficiently high potential to emit that they are often either individually large enough to constitute a major source, at a facility that is a major source, and/or are affected sources under acid rain rules.¹⁹⁶ Because the EPA cannot extend title V permitting exemptions to major sources, there is therefore little practical effect in including such turbines within the scope of the exemption.

Many commenters generally supported finalizing a title V exemption. One commenter opposed any title V exemption for any sources on grounds that title V permitting is an important mechanism for transparency and accountability. The commenter stated that permitting authorities have strengthened permit conditions to ensure adequate monitoring and other compliance assurance requirements through the public participation process required by title V.

While the EPA recognizes the value of title V permitting, the Act clearly

contemplates that title V permitting may be impracticable, infeasible, or unnecessarily burdensome in the case of smaller, lower-emitting units that are not located at major sources or constitute major sources in their own right. The commenter did not supply any information to counter with specificity the findings set forth in the 2012 Memorandum cited at proposal. The 2012 Memorandum explained, for example, that the monitoring and recordkeeping requirements of subpart KKKK (which generally are being carried over into subpart KKKKa) are sufficient to demonstrate compliance. The commenter did not offer any information that that conclusion is flawed, and the Agency continues to find that the monitoring and recordkeeping requirements in subparts KKKK and KKKKa are sufficient to demonstrate compliance.

We note that States remain free to subject all stationary combustion turbines to their operating permits programs if they so choose. Further, new source review (NSR) construction permitting generally applies and is not included in the title V exemption being finalized in this action. NSR permitting processes afford public participation. Thus, the EPA is finalizing a title V exemption for small and medium combustion turbines and large low-utilization turbines that are subject KKKKa and all turbines subject to GG and KKKK unless the units are co-located at a major source or major sources themselves.

F. NSPS Subpart KKKKa Without Startup, Shutdown, Malfunction Exemptions

Consistent with *Sierra Club v. EPA*, 551 F.3d 1019 (D.C. Cir. 2008), the EPA has established standards in this rule that apply at all times. We are finalizing in subpart KKKKa a provision at 40 CFR 60.4320a(d) that overrides 40 CFR 60.8(c). In finalizing the standards in this rule, the EPA has considered startup and shutdown periods. These periods are accounted for through the adjusted emissions standards that apply during part-load operation and potentially when firing non-natural gas fuels. This approach continues the approach applied in subpart KKKK, which has, to the EPA's knowledge, worked well and has not created compliance challenges. The EPA received several adverse comments against the inclusion of 40 CFR 60.4320a(d) in subpart KKKKa, and we have responded to these comments in the response to comments document in the docket.

Periods of startup, normal operations, and shutdown are all predictable and routine aspects of a source's operations. Malfunctions, in contrast, are neither predictable nor routine. Instead, they are, by definition, sudden, infrequent, and not reasonably preventable failures of emissions control, process, or monitoring equipment.¹⁹⁷ The EPA interprets CAA section 111 as not requiring emissions that occur during periods of malfunction to be factored into development of CAA section 111 standards. Nothing in CAA section 111 or in case law requires that the EPA consider malfunctions when determining what standards of performance reflect the degree of emission limitation achievable through "the application of the best system of emission reduction" that the EPA determines is adequately demonstrated. While the EPA accounts for variability in setting emissions standards, nothing in CAA section 111 requires the Agency to consider malfunctions as part of that analysis. The EPA is not required to treat a malfunction in the same manner as the type of variation in performance that occurs during routine operations of a source. A malfunction is a failure of the source to perform in a "normal or usual manner" and no statutory language compels the EPA to consider such events in setting CAA section 111 standards of performance. The EPA's approach to malfunctions in the analogous circumstances (setting "achievable" standards under CAA section 112) has been upheld as reasonable by the D.C. Circuit in *U.S. Sugar Corp. v. EPA*, 830 F.3d 579, 606–610 (2016).

G. Testing and Monitoring Requirements

1. Averaging Period

The NO_x emission standards in existing subpart KKKK are based on a 4-hour rolling average for simple cycle turbines and a 30-operating-day average for combustion turbines with a HRSG (e.g., combined cycle and CHP combustion turbines). The EPA solicited comment on finalizing a 4-hour average for all turbines, finalizing a daily standard, or finalizing a 30-operating-day standard. Some commenters supported a 4-hour standard for all turbines while others supported maintaining the 30-operating-day standard for combined cycle turbines, stating that it is necessary to address variability, periods of startup, and when the SCR has not reached the design temperature.

¹⁹⁶ A 200 MW combined cycle facility complying with the standards in this final rule would have an annual potential emissions rate of approximately 100 tons of NO_x. Affected sources under acid rain rules are required to obtain title V permits regardless of their potential emissions. See 42 U.S.C. 7651g.

¹⁹⁷ See 40 CFR 60.2.

For subpart KKKKa, the EPA analyzed hourly emissions data using 4-hour full-load rolling averages for both simple and combined cycle turbines. Since the analysis was done using reported 4-hour averages, the Agency disagrees with commenters that a longer averaging period is necessary to account for variability and periods of startup. As discussed in section IV.B.8.b above, periods of startup and shutdown would be considered part-load hours (if the turbine operates at less than 70 percent of the base load rating at any point during an hour, the entire hour is considered a part-load hour). The emissions standard for part-load hour is based on the use of diffusion flame combustion and not the use of combustion controls or combustion controls in combination with SCR. Further, when exhaust gases are bypassing the HRSG (e.g., as may occur during startup, shutdown, or when the turbine is intentionally operated in simple cycle mode) those hours are subcategorized with an emissions standard of 25 ppm NO_x. The higher hourly emission standards would be blended with any full-load hours in the same 4-operating-hour period to determine a blended average for that 4-operating-hour period. The data analysis demonstrates that the emission standards in this final rule are achievable on a 4-operating-hour basis. Therefore, the EPA is finalizing in subpart KKKKa that the emission standards for all combustion turbines complying with the input-based standard (ppm or lb NO_x/MMBtu) would be determined on a 4-hour rolling average.

Subpart KKKK currently includes alternate output-based standards that owners or operators can elect to comply with instead of the input-based standard. The EPA proposed output-based standards, on both a gross- and net-output basis, as an alternative to the heat input-based standards. Owners or operators electing to use the output-based standards would demonstrate compliance on a 30-operating-day average. The longer averaging period is appropriate because both the NO_x emissions rate on a lb NO_x/MMBtu basis and the efficiency of the combustion turbine can vary—increasing the overall variability. See section IV.B.8.a for further discussion of this topic.

2. Demonstrating Compliance With NO_x Emissions Standards Using CEMS

All affected sources must conduct an initial performance test pursuant to 40 CFR 60.8 (and as further specified in subparts KKKK and KKKKa). Thereafter,

varying monitoring and performance test methods apply depending on the type of emissions control used.

For combustion turbines using SCR or other post-combustion controls, subpart KKKKa requires that continuous compliance with the applicable NO_x standard must be demonstrated with a NO_x CEMS. Among other things, those NO_x measurements must be used to determine and report excess emissions of NO_x as well as monitor availability. In addition, if a stationary combustion turbine is equipped with a NO_x CEMS, those measurements must be used to determine excess emissions. Owners or operators of combustion turbines not using post-combustion controls may elect to install a NO_x CEMS as an alternative to the otherwise required monitoring methods.

For combustion turbines that do not use post-combustion controls and that do not have installed CEMS, subpart KKKKa provides two NO_x monitoring approaches to demonstrate compliance depending on the nature of the combustion controls used, as described in sections IV.G.3 and IV.G.4.

3. Demonstrating Compliance With NO_x eMissions Standards Without Using CEMS for Water or Steam Injection Combustion Controls

Owners or operators of affected sources that (1) use water or steam injection but not post-combustion controls and (2) elect not to use a NO_x CEMS, must continuously monitor the water- or steam-to-fuel ratio of the affected source to demonstrate compliance. This requires the installation and operation of a continuous monitoring system (CMS) that monitors and records both the fuel consumption and the ratio of water- or steam-to-fuel being fired in the turbine. Owners or operators of affected combustion turbines using combustion controls that elect not to use a NO_x CEMS must conduct performance testing at a minimum of once every 12 months, except as otherwise specified in 40 CFR 60.4331a(c)(2), 40 CFR 60.4333a(b)(2), and 40 CFR 60.4333a(b)(5)(v).

4. Demonstrating Compliance With NO_x Emissions Standards Without Using CEMS for Non-Water or Non-Steam Injection Combustion Controls

Owners or operators of affected sources that (1) do not use water or steam injection or post-combustion controls and (2) elect not to use a NO_x CEMS, must then (a) conduct performance tests according to 40 CFR 60.4400a, (b) monitor the NO_x emissions rate using the Appendix E or

low mass emissions methodology of 40 CFR part 75, or (c) install, calibrate, maintain, and operate an operating parameter CMS according to 40 CFR 60.4340a(b)(1)–(4).

H. Electronic Reporting

To increase the ease and efficiency of data submittal and data accessibility, the EPA is finalizing, as proposed, a requirement that owners or operators of stationary combustion turbine facilities subject to existing NSPS subparts GG and KKKK and subpart KKKKa submit electronic copies of initial and periodic performance test reports (including relative accuracy test audits (RATAs)), and compliance reports through the EPA's Central Data Exchange (CDX) using the Compliance and Emissions Data Reporting Interface (CEDRI). A description of the electronic data submission process is provided in the memorandum, *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules*, available in the docket for this action. The final rule requires that performance test results be submitted in the format generated through the use of the EPA's Electronic Reporting Tool (ERT) or an electronic file consistent with the xml schema on the ERT website.¹⁹⁸ Similarly, performance evaluation results of CEMS that include a RATA must be submitted in the format generated through the use of the ERT or an electronic file consistent with the xml schema on the ERT website. Alternatively, electronic files consistent with the xml schema on the ERT website accompanied by all the information required by 40 CFR 60.8(f)(2) in PDF may be submitted.¹⁹⁹

Specifically, the final requires that (1) for NSPS subpart GG, the reports specified in 40 CFR 60.334(k), (2) for NSPS subpart KKKK, the reports specified in 40 CFR 60.4375, and (3) for NSPS subpart KKKKa, the reports specified in 40 CFR 60.4375a, owners or operators use the appropriate spreadsheet template to submit information to CEDRI.²⁰⁰ The final version of the template[s] for these

¹⁹⁸ <https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert>.

¹⁹⁹ A PDF of the full stack test report (i.e., performance test report and/or RATA) may optionally be submitted as an attachment to the ERT package test data but is not required.

²⁰⁰ 40 CFR 60.334(k), 60.4375, and 60.4375a also now include updated language reflecting the EPA's current report submittal procedures regarding CDX, CEDRI, ERT, and CBI.

reports will be located on the CEDRI website.²⁰¹

Furthermore, the EPA is finalizing in subparts GG, KKKK, and KKKKa, as proposed, provisions that allow owners or operators the ability to seek extensions for submitting electronic reports for circumstances beyond the control of the facility, *i.e.*, for a possible outage in CDX or CEDRI or for a *force majeure* event, in the time just prior to a report's due date, as well as the process to assert such a claim.

I. Other Final Amendments

The EPA requested comment on whether it is appropriate in subpart KKKKa to divide the thermal output from district energy systems by a factor (*i.e.*, 0.95 or 0.90) that would account for the net efficiency benefits of district energy systems. The Agency received no comments on the solicitation and is finalizing a factor of 0.95, which is the same as the electric transmission and distribution factor.

J. Effective Date and Compliance Dates

Pursuant to CAA section 111(b)(1)(B), the effective date of the final rule requirements in subparts KKKKa, KKKK, and GG will be the promulgation date. Affected sources that commence construction, reconstruction, or modification after December 13, 2024, must comply with all requirements of subpart KKKKa no later than the effective date of the final rule or upon startup, whichever is later.

K. Severability

This final action contains several discrete components, which the EPA views as severable as a practical matter—*i.e.*, they are functionally independent and operate in practice independently of the other components. These discrete components are generally delineated by the section headings within section IV of this document. In general, each of the final BSER determinations and associated emissions standards for each subcategory function independently of the others, as do any differences in the rule associated with modified or reconstructed units. In addition, the several other provisions of subpart KKKKa included in this final rule (and any associated changes to subparts GG and KKKK) generally function independently of one another.

V. Summary of Cost, Environmental, and Economic Impacts

A. What are the air quality impacts?

During the period 2025–2032, the EPA estimates that approximately 44 new stationary combustion turbines per year will be installed in the U.S. and would be affected by this rule. The EPA estimates that 26 of these combustion turbines will be in the electric utility power sector. For affected combustion turbines in the electric utility power sector, the BSER in subpart KKKKa is generally consistent with the control technologies in the baseline. That is, based on data reported to the EPA, the

Agency anticipates that new combined cycle facilities (including combined cycle CHP facilities) would already have plans to use controls or otherwise achieve emissions rates equivalent to the emissions standards finalized in this NSPS, though in some cases new combined cycle turbines may have to upgrade and/or operate the controls more intensively than existing counterparts to meet the NSPS requirements in subpart KKKKa. The EPA estimates that most new simple cycle combustion turbines generating electricity would be in the low-utilization subcategory and have combustion controls consistent with the standards and would not be impacted by this action. The EIA for this final rule includes additional details of EPA's methodology for estimating cost, environmental, and other economic impacts, as well as a discussion of the limitations and uncertainties.

Based on information collected as part of a separate combustion turbine NESHAP rulemaking, the EPA projects that each year approximately 10 new, modified, or reconstructed direct mechanical drive combustion turbines (*e.g.*, compressors) will be subject to the NO_x standards in subpart KKKKa. However, none of these units are expected to incur increased costs because of this rule.

Table 2 below presents the projected change in NO_x emissions under the final rule from 2025 to 2032. NO_x emissions are a precursor to ozone and fine particulate matter.

TABLE 2—NET NO_x EMISSION CHANGES IN FIRST 8 YEARS AFTER THE RULE IS FINAL
[tons]

Year	Net annual NO _x emission changes relative to baseline (tons)
2025	0 to 0
2026	0 to 0
2027	41 to 88
2028	– 26 to 68
2029	– 94 to 47
2030	– 161 to 27
2031	– 229 to 5
2032	– 296 to – 15

The range in the projected emissions changes in Table 2 is due to the uncertainty in the number of higher efficiency turbines that will be constructed in the future. See section V.C of this preamble for further discussion on this topic. We also note that there are no expected SO₂

reductions because of the rule. All estimates and assumptions of emissions reductions have been documented in the rulemaking docket.

B. What are the secondary impacts?

The requirements in subpart KKKKa are not anticipated to result in

significant energy impacts. The only energy requirement is a potential small increase in fuel consumption, resulting from operating the NO_x control equipment and back pressure caused by an add-on emission control device, such as an SCR. However, many entities will be able to comply with the final rule

²⁰¹ <https://www.epa.gov/electronic-reporting-air-emissions/cedri>.

without the use of add-on control devices. Because the cost of the identified BSER control technologies is a relatively small percentage of the total costs associated with building and operating combustion turbines in the various subcategories for which those technologies are BSER, the EPA does not anticipate significant secondary effects in terms of switching to other methods of electricity generation or mechanical output.

While no new installations of SCR beyond the baseline are anticipated to be required by this rule, some large high-utilization combustion turbines may need to run their SCR more to comply with the NO_x emission limit. The slightly increased application of SCR for large high-utilization combustion turbines is estimated to modestly increase emissions of ammonia (NH₃). Therefore, subpart KKKKa is estimated to increase NH₃ emissions by 1 ton in 2027; 12 tons in 2028; 22 tons in 2029; 33 tons in 2030; 44 tons in 2031; and 54 tons in 2032. It should be noted that these are likely overestimates, because we assumed SCR installation as a proxy for combustion controls for industrial sources in this analysis, given the lack of data on combustion control costs. Compliance in many cases will likely be achieved through combustion controls, which would lead to reduced ammonia emissions compared to these estimates. The EPA notes that emissions may also increase generally to the extent that emissions control strategies used make a turbine less efficient and therefore result in additional utilization.

C. What are the cost impacts?

To comply with the requirements of this final rule, some new units will incur capital costs associated with installation of controls or upgrades to planned controls, while some units that modify or reconstruct are expected to incur some increased operating costs of their controls to meet the rule requirements. These capital costs and increased operating costs were estimated based on model plants from the DOE NETL flexible generation report.²⁰² For the analysis period 2025–2032, the total estimated capital cost is \$13.7 million (2024\$), and the operation and maintenance costs are \$9.5 million (2024\$). Combined, this represents a

present value in 2024 of \$19.4 million (2024\$) and an equivalent annualized value of \$2.77 million (2024\$) at a 3 percent discount rate, and a present value of \$15.5 million (2024\$) and an equivalent annualized value of \$2.59 million (2024\$) at a 7 percent discount rate.

There is also a deregulatory aspect of this rule. New natural gas-fired combustion turbines in the large, low-utilization subcategory that are higher efficiency (*i.e.*, with a base load rated heat input greater than 850 MMBtu/h, utilized at a 12-calendar-month capacity factor less than or equal to 45 percent, and with a design efficiency greater than or equal to 38 percent on a HHV basis) are subject to a less stringent NO_x emission limit than they otherwise would have been subject to under the previous NSPS. When subpart KKKK was promulgated in 2006, these classes of large, higher efficiency turbines did not exist. They are a newer technology that is now commercially available, and subpart KKKKa is recognizing this fact along with the environmental and economic benefits of operating higher efficiency designs at lower levels of utilization.

To account for the rule accommodating these higher efficiency turbines, we conduct an additional analysis where we compare the construction and operations of these higher efficiency turbines under the final rule to a baseline where lower efficiency turbines compliant with the 2006 NO_x standards are constructed instead. How many new turbines will take advantage of this subcategory in the future is uncertain, so we assume two to four single turbines are constructed for each 5-year period beginning in 2027. Specifically, EPA has identified 28 frame-type combustion turbines that have commenced operation in the previous 5 years. One of these turbines was a large high-efficiency combustion turbine with SCR controls. An additional six large turbines completed during this period have comparable or higher utilization rates. The EPA presumes that a subset of these turbines would have considered the new large higher efficiency subcategory had it been available. Therefore, the EPA identified two to four turbines per 5-year period as a likely range for the rate of new turbines availing themselves of this higher efficiency subcategory. Although we assume that the higher efficiency turbines have more expensive capital costs, the fuel savings lead to overall cost savings for the turbine operators. The present value in 2024 of the combined capital cost and fuel savings for these turbines under the

deregulatory provision is projected to be \$53.2 million to \$106.2 million (2024\$) with an equivalent annualized value of \$7.58 million to \$15.2 million (2024\$) at a 3 percent discount rate, and a present value of \$21.5 million to \$43.0 million (2024\$) with an equivalent annualized value of \$3.60 million to \$7.19 million (2024\$) at a 7 percent discount rate, where the range reflects the assumption of two to four higher efficiency turbines constructed during the analysis period.

The present value in 2024 of the net regulatory cost savings is projected to be \$33.8 million to \$87.0 million (2024\$) with an equivalent annualized value of \$4.81 million to \$12.4 million (2024\$) at a 3 percent discount rate, and a present value of \$5.98 million to \$27.5 million (2024\$) with an equivalent annualized value of \$1.01 million to \$4.60 million (2024\$) at a 7 percent discount rate, where the range again reflects uncertainty about the number of higher efficiency turbines that will be constructed during the analysis period.

D. What are the economic impacts?

Economic impact analyses focus on changes in market prices and output levels. If changes in market prices and output levels in the primary markets are significant enough, impacts on other markets may also be examined. Both the magnitude of costs needed to comply with a rule and the distribution of these costs among affected facilities can have a role in determining how the market will change in response to a rule.

This final rule generally requires new, modified, or reconstructed stationary combustion turbines to meet more stringent emission standards for the release of NO_x into the environment than required under subparts GG or KKKK. While the units impacted by these requirements are generally expected to construct using emissions control devices that would already be compliant with the revised NSPS, some units may incur some increased costs to meet the rule requirements. These changes may result in higher costs of production for affected producers and impact broader markets these entities serve. As shown in section 2.5 of the EIA, the types of turbines affected by this rulemaking are primarily used in the power sector and in the oil and natural gas transmission sector but are located in smaller numbers in many economic sectors.

However, because the increased costs discussed in the previous section are small in comparison to the sales of the average owner of a combustion turbine, the costs of this rule are not expected to result in a significant market impact, regardless of whether they are passed on

²⁰² Oakes, M.; Konrade, J.; Bleckinger, M.; Turner, M.; Hughes, S.; Hoffman, H.; Shultz, T.; and Lewis, E. (May 5, 2023). *Cost and Performance Baseline for Fossil Energy Plants, Volume 5: Natural Gas Electricity Generating Units for Flexible Operation*. U.S. Department of Energy (DOE). Office of Scientific and Technical Information (OSTI). Available at <https://www.osti.gov/biblio/1973266>.

through market relationships or absorbed by the firms. For more information on these impacts, please refer to the economic impact analysis in the rulemaking docket.

E. What are the benefits?

Combustion turbines are a source of NO_x and SO₂ emissions. The health effects of exposure to these pollutants are briefly discussed in this section. The revised NSPS is expected to result in reductions of NO_x emissions from new, modified, or reconstructed units.

The EPA is obligated to present the Agency's best scientific understanding when developing policies and regulations and to ensure the public is not misled regarding the level of scientific understanding. Historically, however, the EPA's analytical practices often provided the public with a false sense of precision and more confidence regarding the monetized impacts of fine particulate matter (PM_{2.5}) and ozone than the underlying science could fully support, especially as overall emissions have significantly decreased, and impacts have become more uncertain. The EPA has seen the uncertainties expand even further with the use of benefit-per-ton (BPT) monetized values. Although intended as a screening tool when full-form photochemical modeling was not feasible, the BPT approach reduces complex spatial and atmospheric relationships into an average value per ton, which magnifies uncertainty in the resulting monetized estimates. Examples of uncertainties include but are not limited to: epidemiological uncertainty (*e.g.*, concentration-response functions, mortality valuation); economic factors (*e.g.*, discount rates, income growth); and methodological assumptions (*e.g.*, health thresholds, linear relationships, spatial relationships).

However, the EPA historically provided point estimates instead of just ranges or only quantifying emissions, which leads the public to believe the Agency has a better understanding of the monetized impacts of exposure to PM_{2.5} and ozone than in reality. Therefore, to rectify this error, the EPA is no longer monetizing benefits from PM_{2.5} and ozone but will continue to quantify the emissions until the Agency is confident enough in the modeling to properly monetize those impacts.

Historically, the EPA estimated the monetized benefits of avoided PM_{2.5}- and ozone-related impacts, which accounted for most, if not all, of the monetized benefits of many air regulations—even when the regulation was not regulating PM_{2.5} or ozone—within Regulatory Impact Analyses

(RIAs).²⁰³ Throughout these analyses, the EPA acknowledged significant uncertainties related to monetized PM_{2.5} and ozone impacts. The EPA has and is considering various techniques for characterizing the uncertainty in such estimates, such as estimating the fraction of avoided health effects occurring at various concentration ranges, sensitivity analyses, and alternate concentration-response assumptions. Because of the significant impacts of environmental regulations on the U.S. economy, it is essential that the Agency have confidence in the estimated benefits of an action prior to utilizing these estimates in a regulatory context.

In particular, the EPA is interested in evaluating the validity of estimating the benefits of air quality improvements relative to the National Ambient Air Quality Standards (NAAQS) for PM_{2.5} and ozone. These standards, which have been set at a level which the Administrator judges to be requisite to protect public health or welfare with an adequate margin of safety, are widely understood to represent the divide between clean air and air with an unacceptable level of pollution.

The limitations of the BPT approach are even more pronounced due to the compounding effects of emissions reductions typically occurring across many geographic areas simultaneously, with varying proximity to population centers; differing atmospheric transformation pathways for nitrous oxides (NO_x), Volatile Organic Compounds (VOCs), and secondary PM_{2.5}; and region-specific photochemical and meteorological conditions. Using a national BPT estimate implicitly assumes uniform marginal health benefits for each ton of reduced emissions, an assumption not supported given heterogeneity in exposure patterns and atmospheric chemistry. As more areas achieve or maintain attainment with the NAAQS, the uncertainties associated with low-concentration health effects grow, and marginal benefits become more difficult to characterize with precision.

Therefore, it may be appropriate for the EPA to separate exposures and impacts above the level of the standard from those occurring at lower ambient concentrations. The EPA will investigate this prior to estimating these impacts in a regulatory analysis even for

informational purposes. The EPA will seek peer review for new methods developed from this work consistent with the OMB's Peer Review Guidance.²⁰⁴

1. Benefits of NO_x Reductions

Nitrogen dioxide (NO₂) is the criteria pollutant that is central to the formation of nitrogen oxides (NO_x), and NO_x emissions are a precursor to ozone and fine particulate matter.²⁰⁵

Based on many recent studies discussed in the ozone Integrated Science Assessment (ISA),²⁰⁶ the EPA has identified several key health effects that may be associated with exposure to elevated levels of ozone. Exposures to high ambient ozone concentrations have been linked to increased hospital admissions and emergency room visits for respiratory problems. Repeated exposure to ozone may increase susceptibility to respiratory infection and lung inflammation and can aggravate preexisting respiratory disease, such as asthma. Prolonged exposures can lead to inflammation of the lung, impairment of lung defense mechanisms, and irreversible changes in lung structure, which could in turn lead to premature aging of the lungs and/or chronic respiratory illnesses such as emphysema, chronic bronchitis, and asthma.

Children typically have the highest ozone exposures since they are active outside during the summer when ozone levels are the highest. Further, children are more at risk than adults from the effects of ozone exposure because their respiratory systems are still developing. Adults who are outdoors and moderately active during the summer months, such as construction workers and other outdoor workers, also are among those with the highest exposures. These individuals, as well as people with respiratory illnesses such as asthma, especially children with asthma, experience reduced lung function and increased respiratory symptoms, such as chest pain and cough, when exposed to relatively low ozone levels during periods of moderate exertion.

NO_x emissions can react with ammonia, VOCs, and other compounds

²⁰⁴ OMB Memorandum M-05-03, Memorandum for the Heads of Executive Departments and Agencies: Issuance of OMB's "Final Information Quality Bulletin for Peer Review" (2005), available at <https://www.federalregister.gov/documents/2005/01/14/05-769/final-information-quality-bulletin-for-peer-review>.

²⁰⁵ Additional information is available in the ISA at <https://www.epa.gov/isa/integrated-science-assessment-isa-oxides-nitrogen-health-criteria>.

²⁰⁶ See Ozone ISA at <https://assessments.epa.gov/isa/document/?deid=348522>.

²⁰³ See OMB's 2017 Report to Congress on Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act for fuller discussion on uncertainties at https://trumpwhitehouse.archives.gov/wp-content/uploads/2019/12/2019-CATS-5885-REV_DOC-2017Cost_BenefitReport11_18_2019.docx.pdf.

to form PM_{2.5}.²⁰⁷ Studies have linked PM_{2.5} (alone or in combination with other air pollutants) with a series of negative health effects. Short-term exposure to PM_{2.5} has been associated with premature mortality, increased hospital admissions, bronchitis, asthma attacks, and other cardiovascular outcomes. Long-term exposure to PM_{2.5} has been associated with premature death, particularly in people with chronic heart or lung disease. Children, the elderly, and people with cardiopulmonary disease, such as asthma, are most at risk from these health effects.

Reducing the emissions of NO_x from stationary combustion turbines can help to improve some of the effects mentioned above, either those directly related to NO_x emissions, or the effects of ozone and PM_{2.5} resulting from the combination of NO_x with other pollutants.

2. Benefits of SO₂ Reductions

High concentrations of SO₂ can cause inflammation and irritation of the respiratory system, especially during physical activity.²⁰⁸ Exposure to very high levels of SO₂ can lead to burning of the nose and throat, breathing difficulties, severe airway obstruction, and can be life threatening. Long-term exposure to persistent levels of SO₂ can lead to changes in lung function.

Sensitive populations include asthmatics, individuals with bronchitis or emphysema, children, and the elderly. PM can also be formed from SO₂ emissions. Secondary PM is formed in the ambient air through a number of physical and chemical processes that transform gases, such as SO₂, into particles. Overall, emissions of SO₂ can lead to some of the effects discussed in this section—either those directly related to SO₂ emissions, or the effects of PM resulting from the combination of SO₂ with other pollutants. Maintaining the standards of performance for emissions of SO₂ from all stationary combustion turbines will continue to protect human health and the environment from the adverse effects mentioned above.

3. Disbenefits From Increased Emissions of NH₃ and NO_x

Ammonia is a precursor to PM_{2.5} formation and an increase in NH₃ formation may lead to an increase in

PM_{2.5}. An increase in PM_{2.5} is associated with significant mortality and morbidity health outcomes such as premature mortality, stroke, lung cancer, metabolic and reproductive effects, among others.

There are also potential NO_x disbenefits associated with the use of higher efficiency combustion turbines. As previously noted, new natural gas-fired combustion turbines in the large, low-utilization subcategory that are higher efficiency (*i.e.*, with a base load rated heat input greater than 850 MMBtu/h, operating at a 12-calendar-month capacity factor less than or equal to 45 percent, and with a design efficiency greater than or equal to 38 percent) are subject to a less stringent NO_x emission limit than otherwise applicable under the previous NSPS (subpart KKKK). These higher NO_x emissions create disbenefits relative to the baseline with lower efficiency turbines.

VI. What actions are we not finalizing and what is our rationale for such decisions?

The EPA is not finalizing certain proposed revisions to the NSPS for stationary combustion turbines and stationary gas turbines pursuant to CAA section 111(b)(1)(B) review.

A. Clarification to the Definition of Stationary Combustion Turbine

To clarify the applicability of the definition of a stationary combustion turbine when determining whether an existing combined cycle or CHP facility should be considered “new” or “reconstructed,” the EPA proposed to amend the rule language in subpart KKKKa. In subpart KKKK, the definition of the affected source includes the HRSG and associated duct burners at combined cycle and CHP facilities.²⁰⁹ The amended language was intended to clarify that the test for determining if an existing facility is a new source would be based on whether only the combustion turbine portion of the affected combined cycle/CHP facility (*i.e.*, HRSG, etc.) was entirely replaced. The reconstruction applicability determination was proposed to be based on whether the fixed capital costs of the replacement of components of the combustion turbine portion (*i.e.*, the air compressor, combustor, and turbine sections) exceeded 50 percent of the fixed capital costs of installing *only* a comparable new combustion turbine portion of the affected facility. The EPA proposed that it was appropriate for owners or operators of combined cycle and CHP facilities that entirely replace

or undertake major capital investments in the combustion turbine portion of the facility to invest in emissions control equipment as well.

This specific portion of the 2024 Proposed Rule raised numerous questions and concerns in public comments and opposition to amending the definition of the source as proposed in subpart KKKKa was consistent across all sectors. Therefore, in this final action, the EPA is not finalizing any proposed revisions to the definition of stationary combustion turbines that would impact a reconstruction analysis to determine whether an existing combined cycle or CHP combustion turbine should be subject to the requirements for new sources under subpart KKKKa.

See the EPA’s response to comments document in the docket for this rule for complete summaries of comments regarding this specific proposal and the EPA’s responses.

B. Definition of Noncontinental Area

The EPA’s review of low-sulfur fuels for this NSPS indicates that since subpart KKKK was promulgated, the availability of low-sulfur diesel has increased in States and territories previously defined as noncontinental areas for purposes of compliance with the SO₂ emission standards in subpart KKKK. As a result, in subpart KKKKa, the EPA proposed to remove Hawaii, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands from the definition of noncontinental area. This proposed change would require new, modified, or reconstructed stationary combustion turbines in Hawaii, Puerto Rico, and the Virgin Islands to demonstrate compliance with the lower SO₂ standards in subpart KKKKa for affected sources in continental areas. The continental standards are based on fuel oil with sulfur content limited to approximately 0.05 percent sulfur by weight (500 ppmw).

Based on available information, the EPA also proposed to maintain in subpart KKKKa that Guam, American Samoa, the Northern Mariana Islands, and offshore platforms be included in the definition of noncontinental area and those locations would continue to be allowed to meet the existing standards for higher sulfur fuels. This is due to the fact these locations continue to have limited access to the same low-sulfur fuels as facilities in continental areas.

In response to the proposal, several commenters, including commenters from the State of Hawaii, opposed the removal of Hawaii, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands from the definition of

²⁰⁷ PM_{2.5} health effects are discussed in detail in the ISA at <https://www.epa.gov/isa/integrated-science-assessment-isa-particulate-matter>.

²⁰⁸ Health effects are discussed in detail in the ISA available at <https://www.epa.gov/isa/integrated-science-assessment-isa-sulfur-oxides-health-criteria>.

²⁰⁹ See 71 FR 38483; July 6, 2006.

noncontinental area. Specifically, commenters stated that the proposal would disproportionately affect island utilities that must rely on liquid fuels and that lack the compliance options of utilities located in continental areas. The commenters also highlighted some of the regulatory precedents that exist in rules previously promulgated in the power sector in which the EPA has acknowledged the need to set more relaxed standards in Hawaii and other remote islands. The commenters also stated that an additional supporting factor for the non-continental exemption is the attainment status of Hawaii for all regulated pollutants. Another commenter stated that before proposing to determine that these locations have the same access to low-sulfur fuels as continental areas, the EPA should provide additional information to support the proposed new SO₂ standards for affected sources located in Hawaii, Puerto Rico, and the Virgin Islands (*i.e.*, cost effectiveness analysis). Should additional EPA analyses support the proposed new SO₂ standards, the EPA should include a delayed compliance date (*i.e.*, 5 years) for affected sources to use their remaining higher sulfur fuel oil supplies and to allow fuel oil suppliers time to develop

reliable long-term supplies of low sulfur fuel oil to those areas.

This specific proposal raised numerous questions and concerns in public comments and opposition to amending the definition of the noncontinental areas as proposed in subpart KKKKa was consistent from affected stakeholders. Therefore, in this action, the EPA is not finalizing the proposed revisions to the definition of noncontinental area for new sources under subpart KKKKa.

C. Affected Facility

The EPA requested comment on treating multiple combustion turbine engines connected to a single generator, separate combustion turbine engines using a single HRSG, and separate combustion turbine engines with separate HRSG that use a single steam turbine or otherwise combine the useful thermal output as single affected facilities. The Agency is not finalizing any changes that would treat multiple turbines as a single affected facility.

VII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket. An economic impact analysis (EIA) was prepared for this action and is available in the docket.

The EIA estimates the costs from 2025–2032 associated with the application of the BSER to stationary combustion turbines with a heat input at peak load equal to or greater than 10.7 GJ/h (10 MMBtu/h), based on the HHV of the fuel, that commence construction, modification, or reconstruction after the date of publication of the 2024 Proposed Rule in the **Federal Register**. These costs are relative to the baseline of the existing NSPS (subpart KKKK). Table 3 below provides a summary of the estimated costs associated with the application of the BSER to these new, modified, or reconstructed stationary combustion turbines and stationary gas turbines.

TABLE 3—ESTIMATED MONETIZED COSTS OF COMBUSTION TURBINES NSPS
[Millions, 2024\$]

		3% Discount rate		7% Discount rate	
		PV	EAV	PV	EAV
Impacts associated with subcategories with increased stringency.	Costs	\$19.4	\$2.77	\$15.5	\$2.59.
Impacts associated with subcategories with decreased stringency.	Avoided Costs ...	\$53.2 to \$106	\$7.58 to \$15.2	\$21.5 to \$43.0	\$3.60 to \$7.19.
Net Costs .....	.....	– \$87.0 to – \$33.8	– \$12.4 to – \$4.81	– \$27.5 to – \$5.98	– \$4.60 to – \$1.01.

Notes: Values rounded to three significant figures. The range reflect the assumption of two to four higher efficiency turbines constructed during the analysis period.

The net benefits associated with the regulated pollutants are the net cost savings of this final action presented above in Table 3. Potential non-quantified impacts are expected from changes in NO_x emissions. The EIA presents a discussion of the projected costs and benefits of this action, as well as a discussion of uncertainty and additional impacts that the EPA could not quantify or monetize.

B. Executive Order 14192: Unleashing Prosperity Through Deregulation

This action is considered an Executive Order 14192 deregulatory action. Details on the estimated cost savings of this final rule can be found in EPA's analysis of the potential costs and benefits associated with this action.

C. Paperwork Reduction Act (PRA)

The information collection activities in this rule have been submitted for approval to OMB under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 7810.01. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them. As noted in section IV.H, the template for the semiannual report for these subparts will be on the CEDRI website.²¹⁰

²¹⁰ See <https://www.epa.gov/electronic-reporting-air-emissions/cedri>.

The EPA is finalizing amendments to the NSPS for stationary combustion turbines and stationary gas turbines to establish size-based subcategories for new, modified, or reconstructed stationary combustion turbines, update NO_x standards of performance for certain stationary combustion turbines and address specific technical and editorial issues to clarify the existing regulations. The EPA is also finalizing amendments to add electronic reporting requirements for submittal of certain reports and performance test results.

This information will be collected to assure compliance with 40 CFR part 60, existing subparts GG, KKKK, and new subpart KKKKa. The total estimated burden and cost for reporting and recordkeeping due to these amendments

are presented here and are not intended to be cumulative estimates that include the burden associated with the requirements of the existing 40 CFR part 60, subparts GG and KKKK, and new 40 CFR part 60, subpart KKKKa. The ICR reflects both the total burden for subject units to comply with GG, KKKK, and KKKKa and the incremental burden associated with the requirements of these final amendments.

- *Respondents/affected entities:* Owners or operators of new, modified, or reconstructed stationary combustion turbines.

- *Respondent's obligation to respond:* Mandatory.

- *Estimated number of respondents:* 5.

- *Frequency of response:* Semi-annual.

- *Total estimated burden:* 310 hours per year. Burden is defined at 5 CFR 1320.3(b).

- *Total estimated cost:* \$36,000 per year, includes \$0 annualized capital or operation & maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the EPA concludes that the impact of concern for this rule is any significant adverse economic impact on small entities and that the Agency is certifying that this rule will not have a significant economic impact on a substantial number of small entities because the rule relieves regulatory burden. The small entities subject to the requirements of this action include small businesses and small governmental entities. The rule relieves regulatory burden by modifying several provisions that could impact small entities. Amendments to simplify the NSPS are discussed in section IV.E.3 of this preamble, and other flexibilities in this final rule, including an exemption from title V permitting for certain non-major combustion turbines, are also discussed in section IV.E. While not quantified, these amendments are

expected to result in cost savings for affected entities. In addition, section V.C of this preamble discusses cost savings associated with the less stringent NO_x emission limit for certain large, higher efficiency turbines. Because this is a relatively new technology, the EPA is unable to estimate the number of small entities that will experience regulatory relief under this provision. For this reason, the EIA only considers potential costs as a conservative approach. For all small entities projected to experience economic impact, those impacts are estimated to be less than one percent of revenues.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of \$100 million (adjusted annually for inflation) or more (in 1995 dollars) as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The costs involved in this action are estimated not to exceed \$187 million in 2024\$ (\$100 million in 1995\$ adjusted for inflation using the GDP implicit price deflator) or more in any one year.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have Tribal implications as specified in Executive Order 13175. The EPA is not aware of any stationary combustion turbine owned or operated by Indian Tribal governments. However, if there are any, it will neither impose direct compliance costs on federally recognized Tribal governments nor preempt Tribal law. Thus, Executive Order 13175 does not apply to this final rule.

Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, the EPA offered government-to-government consultation with Tribes in April 2024. The offer of direct consultation was declined.

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

Executive Order 13045 directs Federal agencies to include an evaluation of the

health and safety effects of the planned regulation on children in Federal health and safety standards and explain why the regulation is preferable to potentially effective and reasonably feasible alternatives. This action is not subject to Executive Order 13045 because it is not a significant regulatory action under section 3(f)(1) of Executive Order 12866.

However, the EPA's *Policy on Children's Health* applies to this action. This action is consistent with the EPA's *Policy on Children's Health* because the new technology-based standards provide a maximum level of emission control that is implementable for all stationary combustion turbines. As described in the proposal, the EPA also considered more stringent NO_x standards for most subcategories of new, modified, or reconstructed units based on an expanded application post-combustion control technology, but determined that this technology (specifically, SCR) is not the BSER other than for new large high-utilization combustion turbines.

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

This action is not a "significant energy action" because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action includes defining and setting emission limits for affected new, modified, and reconstructed sources; applicability-related and definitional changes; changes to the startup, shutdown, and malfunction (SSM) provisions; and the testing, monitoring, recordkeeping, and reporting requirements. This does not impact energy supply, distribution, or use and the EPA does not expect a significant change in retail electricity prices or availability on average across the contiguous U.S. for natural gas-fired generation, or significant impacts on utility power sector delivered natural gas prices.

J. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This action involves technical standards. As discussed in the proposal preamble,²¹¹ the EPA conducted searches for the Review of New Source Performance Standards for Stationary Combustion Turbines through the Enhanced National Standards Systems Network (NSSN) Database managed by the American National Standards

²¹¹ 89 FR 101306 (Dec. 13, 2024).

Institute (ANSI). Searches were conducted for EPA Methods 1, 2, 3A, 6, 6C, 7E, 8, 19, and 20 of 40 CFR part 60, appendix A. No applicable voluntary consensus standards (VCS) were identified for EPA Methods 1, 2, 3A, 6, 6C, 7E, 8, 19, and 20. All potential standards were reviewed to determine the practicality of the VCS for this rulemaking. One VCS was identified as an acceptable alternative to EPA test methods for the purpose of this final rule:²¹²

- American Society for Testing and Materials (ASTM) D6348–12 (R2020), “Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform (FTIR) Spectroscopy,” is an acceptable alternative to EPA Method 320, with the conditions discussed below.

When using ASTM D6348–12 (R2020), the following conditions must be met:

(1) The test plan preparation and implementation in the Annexes to ASTM D 6348–12 (R2020), Sections A1 through A8 are mandatory; and

(2) In ASTM D6348–12 (R2020) Annex A5 (Analyte Spiking Technique), the percent (%) R must be determined for each target analyte (Equation A5.5). For the test data to be acceptable for a compound, %R must be $70\% \leq R \leq 130\%$. If the %R value does not meet this criterion for a target compound, the test data is not acceptable for that compound and the test must be repeated for that analyte (*i.e.*, the sampling and/or analytical procedure should be adjusted before a retest). The %R value for each compound must be reported in the test report, and all field measurements must be corrected with the calculated %R value for that compound by using the following equation:

$$\text{Reported Results} = ((\text{Measured Concentration in Stack}) / (\%R) \times 100)$$

The search identified 13 VCS that were potentially applicable for this final rule in lieu of EPA reference methods. However, these have been determined to not be practical due to lack of equivalency, documentation, validation of data, and other important technical and policy considerations. Additional information for the VCS search and determinations can be found in the memorandum titled, *Voluntary Consensus Standard Search Results for New Source Performance Standards Review for Stationary Combustion*

²¹² ANSI/ASME PTC 19.10–1981 Part 10 (2010) has been removed as a VCS alternative due to withdrawn or outdated testing methodologies.

Turbines and Stationary Gas Turbines (40 CFR part 60, subpart KKKKa).

In addition, final rule updates to 40 CFR 60.17 (incorporations by reference) are to include additional test methods identified in subpart KKKKa. The Agency does not intend for these editorial revisions to substantively change any of the technical requirements of existing subparts GG and KKKK. These test methods are: ASTM D129–00; ASTM D240–19; ASTM D396–98; ASTM D975–08a; ASTM D1072–90 (Reapproved 1999); ASTM D1266–98 (Reapproved 2003); ASTM D1552–03; ASTM D1826–94 (Reapproved 2003); ASTM D2622–05; ASTM D3246–05; ASTM D3588–98 (Reapproved 2003); ASTM D3699–08; ASTM D4057–95 (Reapproved 2000); ASTM D4084–05; ASTM D4177–95 (Reapproved 2000); ASTM D4294–03; ASTM D4468–85 (Reapproved 2000); ASTM D4809–18; ASTM D4810–88 (Reapproved 1999); ASTM D4891–89 (Reapproved 2006); ASTM D5287–97 (Reapproved 2002); ASTM D5453–05; ASTM D5504–20; ASTM D5623–24; ASTM D6228–98 (Reapproved 2003); ASTM D6348–12 (Reapproved 2020); ASTM D6522–20; ASTM D6667–04; ASTM D6751–11b; ASTM D7039–24; ASTM D7467–10; GPA 2140–17; GPA 2166–17; GPA 2172–09; GPA 2174–14; and GPA 2377–86.

The EPA is also finalizing the option for facilities to use 40 CFR part 63, Appendix A, EPA Method 320 for NO_x testing of sources subject to either subparts GG, KKKK, or KKKKa.²¹³ This will also provide testing flexibility and increase efficiency for test firms concurrently performing formaldehyde testing on KKKK and KKKKa sources subject to the stationary combustion turbine NESHAP requirements under 40 CFR part 63, subpart YYYYY. Similarly, the EPA allows the option to use ASTM Method D6348–12 (2020) as an equivalent FTIR alternative to Method 320 provided the conditions specified above are met.

In accordance with the requirements of 1 CFR part 51, the EPA is incorporating the following four voluntary consensus standards by reference in the final rule.

- ASTM D5504–20, Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and

Chemiluminescence, covers the determination of sulfur-containing compounds in high methane content gaseous fuels such as natural gas. It can be used to determine the sulfur content of gaseous fuels in the rule.

- ASTM D5623–24, Standard Test Method for Sulfur Compounds in Light Petroleum Liquids by Gas Chromatography and Sulfur Selective Detection, covers the determination of volatile sulfur-containing compounds in light petroleum liquids. It can be used to determine the sulfur content of liquid fuels in the rule.

- ASTM D6348–12, Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform (FTIR) Spectroscopy. It can be used as an equivalent FTIR alternative to Method 320 provided the conditions specified above are met.

- ASTM D7039–24, Standard Test Method of Sulfur in Gasoline, Diesel Fuel, Jet Fuel, Kerosine, Biodiesel, Biodiesel Blends, and Gasoline-Ethanol Blends by Monochromatic Wavelengths Dispersive X-ray Fluorescence Spectrometry, covers the determination of total sulfur by monochromatic wavelength-dispersive X-ray fluorescence spectrometry in various fuels. It can be used to determine the sulfur content of liquid fuels in the rule.

The EPA determined that the ASTM standards are reasonably available because they are available for purchase or access from the following addresses: ASTM International, 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428–2959, +1.610.832.9500, www.astm.org.

K. Congressional Review Act (CRA)

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

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedures, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements.

Lee Zeldin,
Administrator.

For the reasons set forth in the preamble, the Environmental Protection Agency amends part 60 of title 40, chapter I, of the Code of Federal Regulations as follows:

²¹³ EPA Method 320 can also be used to determine moisture (H₂O) content, when necessary. However, EPA Method 320 cannot be used to determine the O₂ content of the flue gas stream. The oxygen content must be determined via a method prescribed by the NSPS, which in turn is used to correct the NO_x ppm concentration to 15 percent O₂, where applicable.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

■ 1. The authority citation for part 60 continues to read as follows:

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

Subpart A—General Provisions

■ 2. Amend § 60.17 by revising paragraphs (h) and (m)(1) through (4) and (6) to read as follows:

§ 60.17 Incorporations by reference.

* * * * *

(h) ASTM International, 100 Barr Harbor Drive, P.O. Box CB700, West Conshohocken, Pennsylvania 19428–2959; phone: (800) 262–1373; website: www.astm.org.

(1) ASTM A99–76, Standard Specification for Ferromanganese; IBR approved for § 60.261.

(2) ASTM A99–82 (Reapproved 1987), Standard Specification for Ferromanganese; IBR approved for § 60.261.

(3) ASTM A100–69, Standard Specification for Ferrosilicon; IBR approved for § 60.261.

(4) ASTM A100–74, Standard Specification for Ferrosilicon; IBR approved for § 60.261.

(5) ASTM A100–93, Standard Specification for Ferrosilicon; IBR approved for § 60.261.

(6) ASTM A101–73, Standard Specification for Ferrochromium; IBR approved for § 60.261.

(7) ASTM A101–93, Standard Specification for Ferrochromium; IBR approved for § 60.261.

(8) ASTM A482–76, Standard Specification for Ferrochromesilicon; IBR approved for § 60.261.

(9) ASTM A482–93, Standard Specification for Ferrochromesilicon; IBR approved for § 60.261.

(10) ASTM A483–64, Standard Specification for Silicomanganese; IBR approved for § 60.261.

(11) ASTM A483–74 (Reapproved 1988), Standard Specification for Silicomanganese; IBR approved for § 60.261.

(12) ASTM A495–76, Standard Specification for Calcium-Silicon and Calcium Manganese-Silicon; IBR approved for § 60.261.

(13) ASTM A495–94, Standard Specification for Calcium-Silicon and Calcium Manganese-Silicon; IBR approved for § 60.261.

(14) ASTM D86–78, Distillation of Petroleum Products; IBR approved for §§ 60.562–2(d); 60.593(d); 60.593a(d); 60.633(h).

(15) ASTM D86–82, Distillation of Petroleum Products; IBR approved for

§§ 60.562–2(d); 60.593(d); 60.593a(d); 60.633(h).

(16) ASTM D86–90, Distillation of Petroleum Products; IBR approved for §§ 60.562–2(d); 60.593(d); 60.593a(d); 60.633(h).

(17) ASTM D86–93, Distillation of Petroleum Products; IBR approved for § 60.593a(d).

(18) ASTM D86–95, Distillation of Petroleum Products; IBR approved for §§ 60.562–2(d); 60.593(d); 60.593a(d); 60.633(h).

(19) ASTM D86–96, Distillation of Petroleum Products, approved April 10, 1996; IBR approved for §§ 60.562–2(d); 60.593(d); 60.593a(d); 60.633(h); 60.5401(f); 60.5401a(f); 60.5402b(d); 60.5402c(d).

(20) ASTM D129–64, Standard Test Method for Sulfur in Petroleum Products (General Bomb Method); IBR approved for § 60.106(j) and appendix A–7 to part 60: Method 19, Section 12.5.2.2.3.

(21) ASTM D129–78, Standard Test Method for Sulfur in Petroleum Products (General Bomb Method); IBR approved for § 60.106(j) and appendix A–7 to part 60: Method 19, Section 12.5.2.2.3.

(22) ASTM D129–95, Standard Test Method for Sulfur in Petroleum Products (General Bomb Method); IBR approved for § 60.106(j) and appendix A–7 to part 60: Method 19, Section 12.5.2.2.3.

(23) ASTM D129–00, Standard Test Method for Sulfur in Petroleum Products (General Bomb Method); IBR approved for § 60.335(b).

(24) ASTM D129–00 (Reapproved 2005), Standard Test Method for Sulfur in Petroleum Products (General Bomb Method); IBR Approved for §§ 60.4360a(c) and 60.4415(a).

(25) ASTM D240–76, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter; IBR approved for §§ 60.46(c); 60.296(b); and appendix A–7 to part 60: Method 19, Section 12.5.2.2.3.

(26) ASTM D240–92, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter; IBR approved for §§ 60.46(c); 60.296(b); and appendix A–7: Method 19, Section 12.5.2.2.3.

(27) ASTM D240–02 (Reapproved 2007), Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter, approved May 1, 2007; IBR approved for § 60.107a(d).

(28) ASTM D240–19, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter, approved November 1,

2019; IBR approved for §§ 60.485b(g) and 60.4360a(c).

(29) ASTM D270–65, Standard Method of Sampling Petroleum and Petroleum Products; IBR approved for appendix A–7 to part 60: Method 19, Section 12.5.2.2.1.

(30) ASTM D270–75, Standard Method of Sampling Petroleum and Petroleum Products; IBR approved for appendix A–7 to part 60: Method 19, Section 12.5.2.2.1.

(31) ASTM D323–82, Test Method for Vapor Pressure of Petroleum Products (Reid Method); IBR approved for §§ 60.111(l); 60.111a(g); 60.111b; 60.116b(f).

(32) ASTM D323–94, Test Method for Vapor Pressure of Petroleum Products (Reid Method); IBR approved for §§ 60.111(l); 60.111a(g); 60.111b; 60.116b(f).

(33) ASTM D388–77, Standard Specification for Classification of Coals by Rank; IBR approved for §§ 60.41; 60.45(f); 60.41Da; 60.41b; 60.41c; 60.251.

(34) ASTM D388–90, Standard Specification for Classification of Coals by Rank; IBR approved for §§ 60.41; 60.45(f); 60.41Da; 60.41b; 60.41c; 60.251.

(35) ASTM D388–91, Standard Specification for Classification of Coals by Rank; IBR approved for §§ 60.41; 60.45(f); 60.41Da; 60.41b; 60.41c; 60.251.

(36) ASTM D388–95, Standard Specification for Classification of Coals by Rank; IBR approved for §§ 60.41; 60.45(f); 60.41Da; 60.41b; 60.41c; 60.251.

(37) ASTM D388–98a, Standard Specification for Classification of Coals by Rank; IBR approved for §§ 60.41; 60.45(f); 60.41Da; 60.41b; 60.41c; 60.251.

(38) ASTM D388–99 (Reapproved 2004)^{e1}(ASTM D388–99R04), Standard Classification of Coals by Rank, approved June 1, 2004; IBR approved for §§ 60.41; 60.45(f); 60.41Da; 60.41b; 60.41c; 60.251; 60.5580; 60.5580a.

(39) ASTM D396–78, Standard Specification for Fuel Oils; IBR approved for §§ 60.41b; 60.41c; 60.111(b); 60.111a(b).

(40) ASTM D396–89, Standard Specification for Fuel Oils; IBR approved for §§ 60.41b; 60.41c; 60.111(b); 60.111a(b).

(41) ASTM D396–90, Standard Specification for Fuel Oils; IBR approved for §§ 60.41b; 60.41c; 60.111(b); 60.111a(b).

(42) ASTM D396–92, Standard Specification for Fuel Oils; IBR approved for §§ 60.41b; 60.41c; 60.111(b); 60.111a(b).

(43) ASTM D396–98, Standard Specification for Fuel Oils, approved April 10, 1998; IBR approved for §§ 60.41b; 60.41c; 60.111(b); 60.111a(b); 60.4420a; 60.5580; 60.5580a.

(44) ASTM D975–78, Standard Specification for Diesel Fuel Oils; IBR approved for §§ 60.111(b) and 60.111a(b).

(45) ASTM D975–96, Standard Specification for Diesel Fuel Oils; IBR approved for §§ 60.111(b) and 60.111a(b).

(46) ASTM D975–98a, Standard Specification for Diesel Fuel Oils; IBR approved for §§ 60.111(b) and 60.111a(b).

(47) ASTM D975–08a, Standard Specification for Diesel Fuel Oils, approved October 1, 2008; IBR approved for §§ 60.41b; 60.41c; 60.4420a; 60.5580; 60.5580a.

(48) ASTM D1072–80, Standard Test Method for Total Sulfur in Fuel Gases; IBR approved for § 60.335(b).

(49) ASTM D1072–90 (Reapproved 1994), Standard Test Method for Total Sulfur in Fuel Gases; IBR approved for § 60.335(b).

(50) ASTM D1072–90 (Reapproved 1999), Standard Test Method for Total Sulfur in Fuel Gases; IBR approved for §§ 60.4360a(c) and 60.4415(a).

(51) ASTM D1137–53, Standard Method for Analysis of Natural Gases and Related Types of Gaseous Mixtures by the Mass Spectrometer; IBR approved for § 60.45(f).

(52) ASTM D1137–75, Standard Method for Analysis of Natural Gases and Related Types of Gaseous Mixtures by the Mass Spectrometer; IBR approved for § 60.45(f).

(53) ASTM D1193–77, Standard Specification for Reagent Water; IBR approved for appendix A–3 to part 60: Method 5, Section 7.1.3; Method 5E, Section 7.2.1; Method 5F, Section 7.2.1; appendix A–4 to part 60: Method 6, Section 7.1.1; Method 7, Section 7.1.1; Method 7C, Section 7.1.1; Method 7D, Section 7.1.1; Method 10A, Section 7.1.1; appendix A–5 to part 60: Method 11, Section 7.1.3; Method 12, Section 7.1.3; Method 13A, Section 7.1.2; appendix A–8 to part 60: Method 26, Section 7.1.2; Method 26A, Section 7.1.2; Method 29, Section 7.2.2.

(54) ASTM D1193–91, Standard Specification for Reagent Water; IBR approved for appendix A–3 to part 60: Method 5, Section 7.1.3; Method 5E, Section 7.2.1; Method 5F, Section 7.2.1; appendix A–4 to part 60: Method 6, Section 7.1.1; Method 7, Section 7.1.1; Method 7C, Section 7.1.1; Method 7D, Section 7.1.1; Method 10A, Section 7.1.1; appendix A–5 to part 60: Method 11, Section 7.1.3; Method 12, Section

7.1.3; Method 13A, Section 7.1.2; appendix A–8 to part 60: Method 26, Section 7.1.2; Method 26A, Section 7.1.2; Method 29, Section 7.2.2.

(55) ASTM D1266–87, Standard Test Method for Sulfur in Petroleum Products (Lamp Method); IBR approved for § 60.106(j).

(56) ASTM D1266–91, Standard Test Method for Sulfur in Petroleum Products (Lamp Method); IBR approved for § 60.106(j).

(57) ASTM D1266–98, Standard Test Method for Sulfur in Petroleum Products (Lamp Method); IBR approved for §§ 60.106(j) and 60.335(b).

(58) ASTM D1266–98 (Reapproved 2003)^{ε, 1} Standard Test Method for Sulfur in Petroleum Products (Lamp Method); IBR approved for §§ 60.4360a(c) and 60.4415(a).

(59) ASTM D1475–60 (Reapproved 1980), Standard Test Method for Density of Paint, Varnish Lacquer, and Related Products; IBR approved for § 60.435(d), appendix A–7 to part 60: Method 24, Sections 6.1 and 11.3.3; Method 24A, Sections 6.5, 7.1, 11.2, 11.3, and 16.0.

(60) ASTM D1475–90, Standard Test Method for Density of Paint, Varnish Lacquer, and Related Products; IBR approved for § 60.435(d); appendix A–7 to part 60: Method 24, Sections 6.1 and 11.3.3; Method 24A, Sections 6.5, 7.1, 11.2, 11.3, and 16.0.

(61) ASTM D1475–13, Standard Test Method for Density of Liquid Coatings, Inks, and Related Products, approved November 1, 2013; IBR approved for § 60.393a(f).

(62) ASTM D1552–83, Standard Test Method for Sulfur in Petroleum Products (High-Temperature Method); IBR approved for § 60.106(j) and appendix A–7 to part 60: Method 19, Section 12.5.2.2.3.

(63) ASTM D1552–95, Standard Test Method for Sulfur in Petroleum Products (High-Temperature Method); IBR approved for § 60.106(j) and appendix A–7 to part 60: Method 19, Section 12.5.2.2.3.

(64) ASTM D1552–01, Standard Test Method for Sulfur in Petroleum Products (High-Temperature Method); IBR approved for § 60.335(b).

(65) ASTM D1552–03, Standard Test Method for Sulfur in Petroleum Products (High-Temperature Method); IBR approved for §§ 60.4360a(c) and 60.4415(a).

(66) ASTM D1826–77, Standard Test Method for Calorific Value of Gases in Natural Gas Range by Continuous Recording Calorimeter; IBR approved for §§ 60.45(f); 60.46(c); 60.296(b); appendix A–7 to part 60: Method 19, Section 12.3.2.4.

(67) ASTM D1826–94, Standard Test Method for Calorific Value of Gases in Natural Gas Range by Continuous Recording Calorimeter; IBR approved for §§ 60.45(f); 60.46(c); 60.296(b); appendix A–7 to part 60: Method 19, Section 12.3.2.4.

(68) ASTM D1826–94 (Reapproved 2003), Standard Test Method for Calorific (Heating) Value of Gases in Natural Gas Range by Continuous Recording Calorimeter, approved May 10, 2003; IBR approved for §§ 60.107a(d) and 60.4360a(c).

(69) ASTM D1835–87, Standard Specification for Liquefied Petroleum (LP) Gases; IBR approved for §§ 60.41b; 60.41c.

(70) ASTM D1835–91, Standard Specification for Liquefied Petroleum (LP) Gases; IBR approved for §§ 60.41Da; 60.41b; 60.41c.

(71) ASTM D1835–97, Standard Specification for Liquefied Petroleum (LP) Gases; IBR approved for §§ 60.41Da; 60.41b; 60.41c.

(72) ASTM D1835–03a, Standard Specification for Liquefied Petroleum (LP) Gases; IBR approved for §§ 60.41Da; 60.41b; 60.41c; 60.4420a.

(73) ASTM D1945–64, Standard Method for Analysis of Natural Gas by Gas Chromatography; IBR approved for § 60.45(f).

(74) ASTM D1945–76, Standard Method for Analysis of Natural Gas by Gas Chromatography; IBR approved for § 60.45(f).

(75) ASTM D1945–91, Standard Method for Analysis of Natural Gas by Gas Chromatography; IBR approved for § 60.45(f).

(76) ASTM D1945–96, Standard Method for Analysis of Natural Gas by Gas Chromatography; IBR approved for § 60.45(f).

(77) ASTM D1945–03 (Reapproved 2010), Standard Method for Analysis of Natural Gas by Gas Chromatography, approved January 1, 2010; IBR approved for §§ 60.107a(d); 60.5413(d); 60.5413a(d); 60.5413b(d); 60.5413c(d).

(78) ASTM D1945–14 (Reapproved 2019), Standard Test Method for Analysis of Natural Gas by Gas Chromatography, approved December 1, 2019; IBR approved for § 60.485b(g).

(79) ASTM D1946–77, Standard Method for Analysis of Reformulated Gas by Gas Chromatography; IBR approved for §§ 60.18(f); 60.45(f); 60.564(f); 60.614(e); 60.664(e); 60.704(d).

(80) ASTM D1946–90 (Reapproved 1994), Standard Method for Analysis of Reformulated Gas by Gas Chromatography; IBR approved for §§ 60.18(f); 60.45(f); 60.564(f); 60.614(e); 60.664(e); 60.704(d).

(81) ASTM D1946–90 (Reapproved 2006), Standard Method for Analysis of Reformed Gas by Gas Chromatography, approved June 1, 2006; IBR approved for § 60.107a(d).

(82) ASTM D2013–72, Standard Method of Preparing Coal Samples for Analysis; IBR approved for appendix A–7 to part 60: Method 19, Section 12.5.2.1.3.

(83) ASTM D2013–86, Standard Method of Preparing Coal Samples for Analysis; IBR approved for appendix A–7 to part 60: Method 19, Section 12.5.2.1.3.

(84) ASTM D2015–77 (Reapproved 1978), Standard Test Method for Gross Calorific Value of Solid Fuel by the Adiabatic Bomb Calorimeter; IBR approved for §§ 60.45(f); 60.46(c); and appendix A–7 to part 60: Method 19, Section 12.5.2.1.3.

(85) ASTM D2015–96, Standard Test Method for Gross Calorific Value of Solid Fuel by the Adiabatic Bomb Calorimeter; IBR approved for §§ 60.45(f); 60.46(c); and appendix A–7 to part 60: Method 19, Section 12.5.2.1.3.

(86) ASTM D2016–74, Standard Test Methods for Moisture Content of Wood; IBR approved for appendix A–8 to part 60: Method 28, Section 16.1.1.

(87) ASTM D2016–83, Standard Test Methods for Moisture Content of Wood; IBR approved for appendix A–8 to part 60: Method 28, Section 16.1.1.

(88) ASTM D2234–76, Standard Methods for Collection of a Gross Sample of Coal; IBR approved for appendix A–7 to part 60: Method 19, Section 12.5.2.1.1.

(89) ASTM D2234–96, Standard Methods for Collection of a Gross Sample of Coal; IBR approved for appendix A–7 to part 60: Method 19, Section 12.5.2.1.1.

(90) ASTM D2234–97a, Standard Methods for Collection of a Gross Sample of Coal; IBR approved for appendix A–7 to part 60: Method 19, Section 12.5.2.1.1.

(91) ASTM D2234–98, Standard Methods for Collection of a Gross Sample of Coal; IBR approved for appendix A–7 to part 60: Method 19, Section 12.5.2.1.1.

(92) ASTM D2369–81, Standard Test Method for Volatile Content of Coatings; IBR approved for appendix A–7 to part 60: Method 24, Section 6.2.

(93) ASTM D2369–87, Standard Test Method for Volatile Content of Coatings; IBR approved for appendix A–7 to part 60: Method 24, Section 6.2.

(94) ASTM D2369–90, Standard Test Method for Volatile Content of Coatings; IBR approved for appendix A–7 to part 60: Method 24, Section 6.2.

(95) ASTM D2369–92, Standard Test Method for Volatile Content of Coatings; IBR approved for appendix A–7 to part 60: Method 24, Section 6.2.

(96) ASTM D2369–93, Standard Test Method for Volatile Content of Coatings; IBR approved for appendix A–7 to part 60: Method 24, Section 6.2.

(97) ASTM D2369–95, Standard Test Method for Volatile Content of Coatings; IBR approved for appendix A–7 to part 60: Method 24, Section 6.2.

(98) ASTM D2369–10 (Reapproved 2015)e1, Standard Test Method for Volatile Content of Coatings, approved June 1, 2015; IBR approved for appendix A–7 to part 60: Method 24, Section 6.2.

(99) ASTM D2369–20, Standard Test Method for Volatile Content of Coatings, approved June 1, 2020; IBR approved for §§ 60.393a(f); 60.723(b); 60.724(a); 60.725(b); 60.723a(b); 60.724a(a); 60.725a(b).

(100) ASTM D2382–76, Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-Precision Method); IBR approved for §§ 60.18(f); 60.485(g); 60.485a(g); 60.564(f); 60.664(e); 60.704(d).

(101) ASTM D2382–88, Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-Precision Method); IBR approved for §§ 60.18(f); 60.485(g); 60.485a(g); 60.564(f); 60.704(d).

(102) ASTM D2504–67, Noncondensable Gases in C3 and Lighter Hydrocarbon Products by Gas Chromatography; IBR approved for §§ 60.485(g) and 60.485a(g).

(103) ASTM D2504–77, Noncondensable Gases in C3 and Lighter Hydrocarbon Products by Gas Chromatography; IBR approved for §§ 60.485(g) and 60.485a(g).

(104) ASTM D2504–88 (Reapproved 1993), Noncondensable Gases in C3 and Lighter Hydrocarbon Products by Gas Chromatography; IBR approved for §§ 60.485(g) and 60.485a(g).

(105) ASTM D2584–68 (Reapproved 1985), Standard Test Method for Ignition Loss of Cured Reinforced Resins; IBR approved for § 60.685(c).

(106) ASTM D2584–94, Standard Test Method for Ignition Loss of Cured Reinforced Resins; IBR approved for § 60.685(c).

(107) ASTM D2597–94 (Reapproved 1999), Standard Test Method for Analysis of Demethanized Hydrocarbon Liquid Mixtures Containing Nitrogen and Carbon Dioxide by Gas Chromatography; IBR approved for § 60.335(b).

(108) ASTM D2622–87, Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-

Ray Fluorescence Spectrometry; IBR approved for § 60.106(j).

(109) ASTM D2622–94, Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry; IBR approved for § 60.106(j).

(110) ASTM D2622–98, Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry; IBR approved for §§ 60.106(j) and 60.335(b).

(111) ASTM D2622–05, Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry; IBR approved for §§ 60.4360a(c) and 60.4415(a).

(112) ASTM D2697–22, Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings, approved July 1, 2022; IBR approved for §§ 60.393a(g); 60.723(b); 60.724(a); 60.725(b); 60.723a(b); 60.724a(a); 60.725a(b).

(113) ASTM D2879–83, Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope, approved 1983; IBR approved for §§ 60.111b; 60.116b(e) and (f); 60.485(e); 60.485a(e); 60.5403b(d); 60.5406c(d).

(114) ASTM D2879–96, Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope, approved 1996; IBR approved for §§ 60.111b; 60.116b(e) and (f); 60.485(e); 60.485a(e); 60.5403b(d); 60.5406c(d).

(115) ASTM D2879–97, Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope, approved 1997; IBR approved for §§ 60.111b; 60.116b(e) and (f); 60.485(e); 60.485a(e); 60.5403b(d); 60.5406c(d).

(116) ASTM D2879–23, Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope, approved December 1, 2019; IBR approved for § 60.485b(e).

(117) ASTM D2880–78, Standard Specification for Gas Turbine Fuel Oils; IBR approved for §§ 60.111(b) and 60.111a(b).

(118) ASTM D2880–96, Standard Specification for Gas Turbine Fuel Oils; IBR Approved for §§ 60.111(b) and 60.111a(b).

(119) ASTM D2908–74, Standard Practice for Measuring Volatile Organic Matter in Water by Aqueous-Injection Gas Chromatography; IBR approved for § 60.564(j).

(120) ASTM D2908–91, Standard Practice for Measuring Volatile Organic Matter in Water by Aqueous-Injection

Gas Chromatography; IBR approved for § 60.564(j).

(121) ASTM D2986–71, Standard Method for Evaluation of Air, Assay Media by the Monodisperse DOP (Diethyl Phthalate) Smoke Test; IBR approved for appendix A–3 to part 60: Method 5, Section 7.1.1; appendix A–5 to part 60: Method 12, Section 7.1.1; and Method 13A, Section 7.1.1.2.

(122) ASTM D2986–78, Standard Method for Evaluation of Air, Assay Media by the Monodisperse DOP (Diethyl Phthalate) Smoke Test; IBR approved for appendix A–3 to part 60: Method 5, Section 7.1.1; appendix A–5 to part 60: Method 12, Section 7.1.1; and Method 13A, Section 7.1.1.2.

(123) ASTM D2986–95a, Standard Method for Evaluation of Air, Assay Media by the Monodisperse DOP (Diethyl Phthalate) Smoke Test; IBR approved for appendix A–3 to part 60: Method 5, Section 7.1.1; appendix A–5 to part 60: Method 12, Section 7.1.1; and Method 13A, Section 7.1.1.2.

(124) ASTM D3173–73, Standard Test Method for Moisture in the Analysis Sample of Coal and Coke; IBR approved for appendix A–7 to part 60: Method 19, Section 12.5.2.1.3.

(125) ASTM D3173–87, Standard Test Method for Moisture in the Analysis Sample of Coal and Coke; IBR approved for appendix A–7 to part 60: Method 19, Section 12.5.2.1.3.

(126) ASTM D3176–74, Standard Method for Ultimate Analysis of Coal and Coke; IBR approved for § 60.45(f) and appendix A–7 to part 60: Method 19, Section 12.3.2.3.

(127) ASTM D3176–89, Standard Method for Ultimate Analysis of Coal and Coke; IBR approved for § 60.45(f) and appendix A–7 to part 60: Method 19, Section 12.3.2.3.

(128) ASTM D3177–75, Standard Test Method for Total Sulfur in the Analysis Sample of Coal and Coke; IBR approved for appendix A–7 to part 60: Method 19, Section 12.5.2.1.3.

(129) ASTM D3177–89, Standard Test Method for Total Sulfur in the Analysis Sample of Coal and Coke; IBR approved for appendix A–7 to part 60: Method 19, Section 12.5.2.1.3.

(130) ASTM D3178–73 (Reapproved 1979), Standard Test Methods for Carbon and Hydrogen in the Analysis Sample of Coal and Coke; IBR approved for § 60.45(f).

(131) ASTM D3178–89, Standard Test Methods for Carbon and Hydrogen in the Analysis Sample of Coal and Coke; IBR approved for § 60.45(f).

(132) ASTM D3246–81, Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry; IBR approved for § 60.335(b).

(133) ASTM D3246–92, Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry; IBR approved for § 60.335(b).

(134) ASTM D3246–96, Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry; IBR approved for § 60.335(b).

(135) ASTM D3246–05, Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry; IBR approved for §§ 60.4360a(c) and 60.4415(a).

(136) ASTM D3270–73T, Standard Test Methods for Analysis for Fluoride Content of the Atmosphere and Plant Tissues (Semiautomated Method); IBR approved for appendix A–5 to part 60: Method 13A, Section 16.1.

(137) ASTM D3270–80, Standard Test Methods for Analysis for Fluoride Content of the Atmosphere and Plant Tissues (Semiautomated Method); IBR approved for appendix A–5 to part 60: Method 13A, Section 16.1.

(138) ASTM D3270–91, Standard Test Methods for Analysis for Fluoride Content of the Atmosphere and Plant Tissues (Semiautomated Method); IBR approved for appendix A–5 to part 60: Method 13A, Section 16.1.

(139) ASTM D3270–95, Standard Test Methods for Analysis for Fluoride Content of the Atmosphere and Plant Tissues (Semiautomated Method); IBR approved for appendix A–5 to part 60: Method 13A, Section 16.1.

(140) ASTM D3286–85, Standard Test Method for Gross Calorific Value of Coal and Coke by the Isoperibol Bomb Calorimeter; IBR approved for appendix A–7 to part 60: Method 19, Section 12.5.2.1.3.

(141) ASTM D3286–96, Standard Test Method for Gross Calorific Value of Coal and Coke by the Isoperibol Bomb Calorimeter; IBR approved for appendix A–7 to part 60: Method 19, Section 12.5.2.1.3.

(142) ASTM D3370–76, Standard Practices for Sampling Water; IBR approved for § 60.564(j).

(143) ASTM D3370–95a, Standard Practices for Sampling Water; IBR approved for § 60.564(j).

(144) ASTM D3588–98 (Reapproved 2003), Standard Practice for Calculating Heat Value, Compressibility Factor, and Relative Density of Gaseous Fuels, approved May 10, 2003; IBR approved for §§ 60.107a(d); 60.4360a(c); 60.5413(d); 60.5413a(d); 60.5413b(d); 60.5413c(d).

(145) ASTM D3699–08, Standard Specification for Kerosene, including Appendix X1, approved September 1, 2008; IBR approved for §§ 60.41b; 60.41c; 60.4420a; 60.5580; 60.5580a.

(146) ASTM D3792–79, Standard Test Method for Water Content of Water-Reducible Paints by Direct Injection into a Gas Chromatograph; IBR approved for appendix A–7 to part 60: Method 24, Section 6.3.

(147) ASTM D3792–91, Standard Test Method for Water Content of Water-Reducible Paints by Direct Injection into a Gas Chromatograph; IBR approved for appendix A–7 to part 60: Method 24, Section 6.3.

(148) ASTM D4017–81, Standard Test Method for Water in Paints and Paint Materials by the Karl Fischer Titration Method; IBR approved for appendix A–7 to part 60: Method 24, Section 6.4.

(149) ASTM D4017–90, Standard Test Method for Water in Paints and Paint Materials by the Karl Fischer Titration Method; IBR approved for appendix A–7 to part 60: Method 24, Section 6.4.

(150) ASTM D4017–96a, Standard Test Method for Water in Paints and Paint Materials by the Karl Fischer Titration Method; IBR approved for appendix A–7 to part 60: Method 24, Section 6.4.

(151) ASTM D4057–81, Standard Practice for Manual Sampling of Petroleum and Petroleum Products; IBR approved for appendix A–7 to part 60: Method 19, Section 12.5.2.2.3.

(152) ASTM D4057–95, Standard Practice for Manual Sampling of Petroleum and Petroleum Products; IBR approved for appendix A–7 to part 60: Method 19, Section 12.5.2.2.3.

(153) ASTM D4057–95 (Reapproved 2000), Standard Practice for Manual Sampling of Petroleum and Petroleum Products; IBR approved for §§ 60.4360a(b) and 60.4415(a).

(154) ASTM D4084–82, Standard Test Method for Analysis of Hydrogen Sulfide in Gaseous Fuels (Lead Acetate Reaction Rate Method); IBR approved for § 60.334(h).

(155) ASTM D4084–94, Standard Test Method for Analysis of Hydrogen Sulfide in Gaseous Fuels (Lead Acetate Reaction Rate Method); IBR approved for § 60.334(h).

(156) ASTM D4084–05, Standard Test Method for Analysis of Hydrogen Sulfide in Gaseous Fuels (Lead Acetate Reaction Rate Method); IBR approved for §§ 60.4360; 60.4360a(c); 60.4415(a).

(157) ASTM D4177–95, Standard Practice for Automatic Sampling of Petroleum and Petroleum Products; IBR approved for appendix A–7 to part 60: Method 19, Section 12.5.2.2.1.

(158) ASTM D4177–95 (Reapproved 2000), Standard Practice for Automatic Sampling of Petroleum and Petroleum Products; IBR approved for §§ 60.4360a(b) and 60.4415(a).

(159) ASTM D4239–85, Standard Test Methods for Sulfur in the Analysis Sample of Coal and Coke Using High Temperature Tube Furnace Combustion Methods; IBR approved for appendix A–7 to part 60: Method 19, Section 12.5.2.1.3.

(160) ASTM D4239–94, Standard Test Methods for Sulfur in the Analysis Sample of Coal and Coke Using High Temperature Tube Furnace Combustion Methods; IBR approved for appendix A–7 to part 60: Method 19, Section 12.5.2.1.3.

(161) ASTM D4239–97, Standard Test Methods for Sulfur in the Analysis Sample of Coal and Coke Using High Temperature Tube Furnace Combustion Methods; IBR approved for appendix A–7 to part 60: Method 19, Section 12.5.2.1.3.

(162) ASTM D4294–02, Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectrometry; IBR approved for § 60.335(b).

(163) ASTM D4294–03, Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectrometry; IBR approved for §§ 60.4360a(c) and 60.4415(a).

(164) ASTM D4442–84, Standard Test Methods for Direct Moisture Content Measurement in Wood and Wood-base Materials; IBR approved for appendix A–8 to part 60: Method 28, Section 16.1.1.

(165) ASTM D4442–92, Standard Test Methods for Direct Moisture Content Measurement in Wood and Wood-base Materials; IBR approved for appendix A–8 to part 60: Method 28, Section 16.1.1.

(166) ASTM D4444–92, Standard Test Methods for Use and Calibration of Hand-Held Moisture Meters; IBR approved for appendix A–8 to part 60: Method 28, Section 16.1.1.

(167) ASTM D4457–85 (Reapproved 1991), Test Method for Determination of Dichloromethane and 1,1,1-Trichloroethane in Paints and Coatings by Direct Injection into a Gas Chromatograph; IBR approved for appendix A–7 to part 60: Method 24, Section 6.5.

(168) ASTM D4468–85 (Reapproved 2000), Standard Test Method for Total Sulfur in Gaseous Fuels by Hydrogenolysis and Rateometric Colorimetry; IBR approved for §§ 60.335(b); 60.4360a(c); 60.4415(a).

(169) ASTM D4468–85 (Reapproved 2006), Standard Test Method for Total Sulfur in Gaseous Fuels by Hydrogenolysis and Rateometric

Colorimetry, approved June 1, 2006; IBR approved for § 60.107a(e).

(170) ASTM D4629–02, Standard Test Method for Trace Nitrogen in Liquid Petroleum Hydrocarbons by Syringe/Inlet Oxidative Combustion and Chemiluminescence Detection; IBR approved for §§ 60.49b(e) and 60.335(b).

(171) ASTM D4809–95, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter (Precision Method); IBR approved for §§ 60.18(f); 60.485(g); 60.485a(g); 60.564(f); 60.704(d).

(172) ASTM D4809–06, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter (Precision Method), approved December 1, 2006; IBR approved for § 60.107a(d).

(173) ASTM D4809–18, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter (Precision Method), approved July 1, 2018; IBR approved for §§ 60.485b(g) and 60.4360a(c).

(174) ASTM D4810–88 (Reapproved 1999), Standard Test Method for Hydrogen Sulfide in Natural Gas Using Length of Stain Detector Tubes; IBR approved for §§ 60.4360; 60.4360a(c); 60.4415(a).

(175) ASTM D4840–99(2018)e1, Standard Guide for Sample Chain-of-Custody Procedures, approved August 2018; IBR approved for Appendix A–7: Method 23, Section 8.2.12.

(176) ASTM D4891–89 (Reapproved 2006), Standard Test Method for Heating Value of Gases in Natural Gas Range by Stoichiometric Combustion, approved June 1, 2006; IBR approved for §§ 60.107a(d); 60.4360a(c); 60.5413(d); 60.5413a(d); 60.5413b(d); 60.5413c(d).

(177) ASTM D5066–91 (Reapproved 2017), Standard Test Method for Determination of the Transfer Efficiency Under Production Conditions for Spray Application of Automotive Paints—Weight Basis, approved June 1, 2017; IBR approved for § 60.393a(h).

(178) ASTM D5087–02 (Reapproved 2021), Standard Test Method for Determining Amount of Volatile Organic Compound (VOC) Released from Solventborne Automotive Coatings and Available for Removal in a VOC Control Device (Abatement), approved February 1, 2021; IBR approved for § 60.397a(e) and appendix A to subpart MMa.

(179) ASTM D5287–97 (Reapproved 2002), Standard Practice for Automatic Sampling of Gaseous Fuels; IBR approved for §§ 60.4360a(b) and 60.4415(a).

(180) ASTM D5403–93, Standard Test Methods for Volatile Content of Radiation Curable Materials; IBR

approved for appendix A–7 to part 60: Method 24, Section 6.6.

(181) ASTM D5453–00, Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Motor Fuels and Oils by Ultraviolet Fluorescence; IBR approved for § 60.335(b).

(182) ASTM D5453–05, Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Motor Fuels and Oils by Ultraviolet Fluorescence; IBR approved for §§ 60.4360a(c) and 60.4415(a).

(183) ASTM D5504–01, Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Chemiluminescence; IBR approved for §§ 60.334(h) and 60.4360.

(184) ASTM D5504–08, Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Chemiluminescence, approved June 15, 2008; IBR approved for § 60.107a(e).

(185) ASTM D5504–20, Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Chemiluminescence, approved November 1, 2020; IBR approved for § 60.4360a(c).

(186) ASTM D5623–19, Standard Test Method for Sulfur Compounds in Light Petroleum Liquids by Gas Chromatography and Sulfur Selective Detection, approved July 1, 2019; IBR approved for § 60.4415(a).

(187) ASTM D5623–24, Standard Test Method for Sulfur Compounds in Light Petroleum Liquids by Gas Chromatography and Sulfur Selective Detection, approved March 1, 2024; IBR approved for § 60.4360a(c).

(188) ASTM D5762–02, Standard Test Method for Nitrogen in Petroleum and Petroleum Products by Boat-Inlet Chemiluminescence; IBR approved for § 60.335(b).

(189) ASTM D5865–98, Standard Test Method for Gross Calorific Value of Coal and Coke; IBR approved for §§ 60.45(f); 60.46(c); and appendix A–7 to part 60: Method 19, Section 12.5.2.1.3.

(190) ASTM D5865–10, Standard Test Method for Gross Calorific Value of Coal and Coke, approved January 1, 2010; IBR approved for §§ 60.45(f); 60.46(c); and appendix A–7 to part 60: Method 19, section 12.5.2.1.3.

(191) ASTM D5965–02 (Reapproved 2013), Standard Test Methods for Specific Gravity of Coating Powders, approved June 1, 2013; IBR approved for § 60.393a(f).

(192) ASTM D6093–97 (Reapproved 2016), Standard Test Method for Percent Volume Nonvolatile Matter in Clear or

Pigmented Coatings Using a Helium Gas Pycnometer, approved December 1, 2016; IBR approved for §§ 60.393a(g); 60.723(b); 60.724(a); 60.725(b); 60.723a(b); 60.724a(a); 60.725a(b).

(193) ASTM D6216–20, Standard Practice for Opacity Monitor Manufacturers to Certify Conformance with Design and Performance Specifications, approved September 1, 2020; IBR approved for appendix B to part 60.

(194) ASTM D6228–98, Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Flame Photometric Detection; IBR approved for § 60.334(h).

(195) ASTM D6228–98 (Reapproved 2003), Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Flame Photometric Detection; IBR approved for §§ 60.4360; 60.4360a(c); 60.4415(a).

(196) ASTM D6266–00a (Reapproved 2017), Standard Test Method for Determining the Amount of Volatile Organic Compound (VOC) Released from Waterborne Automotive Coatings and Available for Removal in a VOC Control Device (Abatement), approved July 1, 2017; IBR approved for § 60.397a(e).

(197) ASTM D6348–03, Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy, approved October 1, 2003; IBR approved for § 60.73a(b); table 7 to subpart III; table 2 to subpart JJJ; § 60.4245(d).

(198) ASTM D6348–12e1, Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy, approved February 1, 2012; IBR approved for § 60.5413c(b).

(199) ASTM D6348–12 (Reapproved 2020), Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy, approved December 1, 2020; IBR approved for §§ 60.4400(a) and 60.4400a(b).

(200) ASTM D6366–99, Standard Test Method for Total Trace Nitrogen and Its Derivatives in Liquid Aromatic Hydrocarbons by Oxidative Combustion and Electrochemical Detection; IBR approved for § 60.335(b).

(201) ASTM D6377–20, Standard Test Method for Determination of Vapor Pressure of Crude Oil: VPCR_x (Expansion Method), approved June 1, 2020; IBR approved for § 60.113c(d).

(202) ASTM D6378–22, Standard Test Method for Determination of Vapor Pressure (VPX) of Petroleum Products, Hydrocarbons, and Hydrocarbon-Oxygenate Mixtures (Triple Expansion Method), approved July 1, 2022; IBR approved for § 60.113c(d).

(203) ASTM D6420–99 (Reapproved 2004), Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry, approved October 1, 2004; IBR approved for § 60.107a(d).

(204) ASTM D6420–18, Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry, approved November 1, 2018; IBR approved for §§ 60.485(g); 60.485a(g); 60.485b(g); 60.611a; 60.614(b) and (e); 60.614a(b) and (e), 60.664(b) and (e); 60.664a(b) and (f); 60.700(c); 60.704(b) (d), and (h); 60.705(l); 60.704a(b) and (f).

(205) ASTM D6522–00, Standard Test Method for Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas-Fired Reciprocating Engines, Combustion Turbines, Boilers, and Process Heaters Using Portable Analyzers; IBR approved for §§ 60.335(a) and (b).

(206) ASTM D6522–00 (Reapproved 2005), Standard Test Method for Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas-Fired Reciprocating Engines, Combustion Turbines, Boilers, and Process Heaters Using Portable Analyzers, approved October 1, 2005; IBR approved for table 2 to subpart JJJ, §§ 60.5413(b); 60.5413a(b).

(207) ASTM D6522–11 Standard Test Method for Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas-Fired Reciprocating Engines, Combustion Turbines, Boilers, and Process Heaters Using Portable Analyzers, approved December 1, 2011; IBR approved for §§ 60.37f(a) and 60.766(a).

(208) ASTM D6522–20, Standard Test Method for Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas-Fired Reciprocating Engines, Combustion Turbines, Boilers, and Process Heaters Using Portable Analyzers, approved June 1, 2020; IBR approved for §§ 60.4400(a); 60.4400a(b); 60.5413b(b); 60.5413c(b).

(209) ASTM D6667–01, Standard Test Method for Determination of Total Volatile Sulfur in Gaseous Hydrocarbons and Liquefied Petroleum

Gases by Ultraviolet Fluorescence; IBR approved for § 60.335(b).

(210) ASTM D6667–04, Standard Test Method for Determination of Total Volatile Sulfur in Gaseous Hydrocarbons and Liquefied Petroleum Gases by Ultraviolet Fluorescence; IBR approved for §§ 60.4360a(c) and 60.4415(a).

(211) ASTM D6751–11b, Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels, including Appendices X1 through X3, approved July 15, 2011; IBR approved for §§ 60.41b; 60.41c; 60.4420a; 60.5580; 60.5580a.

(212) ASTM D6784–02, Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method); IBR approved for § 60.56c(b).

(213) ASTM D6784–02 (Reapproved 2008), Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method), approved April 1, 2008; IBR approved for § 60.56c(b).

(214) ASTM D6784–16, Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method), approved March 1, 2016; IBR approved for appendix B to part 60.

(215) ASTM D6911–15 Standard Guide for Packaging and Shipping Environmental Samples for Laboratory Analysis, approved January 15, 2015; IBR approved for Appendix A–7: Method 23, Section 8.2.11; Appendix A–8: Method 30B, Section 8.3.3.8.

(216) ASTM D7039–15a, Standard Test Method for Sulfur in Gasoline, Diesel Fuel, Jet Fuel, Kerosine, Biodiesel, Biodiesel Blends, and Gasoline-Ethanol Blends by Monochromatic Wavelength Dispersive X-ray Fluorescence Spectrometry, approved July 1, 2015; IBR approved for § 60.4415(a).

(217) ASTM D7039–24, Standard Test Method for Sulfur in Gasoline, Diesel Fuel, Jet Fuel, Kerosine, Biodiesel, Biodiesel Blends, and Gasoline-Ethanol Blends by Monochromatic Wavelength Dispersive X-ray Fluorescence Spectrometry, approved December 1, 2024; IBR approved for § 60.4360a(c).

(218) ASTM D7467–10, Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6 to B20), including Appendices X1 through X3, approved August 1, 2010; IBR approved for §§ 60.41b; 60.41c; 60.4420a; 60.5580; 60.5580a.

(219) ASTM D7520–16, Standard Test Method for Determining the Opacity of a Plume in the Outdoor Ambient Atmosphere, approved April 1, 2016; IBR approved for §§ 60.123(c); 60.123a(c); 60.271(k); 60.272(a) and (b); 60.273(c) and (d); 60.274(i); 60.275(e); 60.276(c); 60.271a; 60.272a(a) and (b); 60.273a(c) and (d); 60.274a(h); 60.275a(e); 60.276a(f); 60.271b; 60.272b(a) and (b); 60.273b(c) and (d); 60.274b(h); 60.275b(e); 60.276b(f); 60.374a(d); 60.2972(a); tables 1, 1a, and 1b to subpart EEEE; § 60.3067(a); tables 2 and 2a to subpart FFFF.

(220) ASTM E168–67, General Techniques of Infrared Quantitative Analysis; IBR approved for §§ 60.485a(d); 60.593(b); 60.593a(b); 60.632(f).

(221) ASTM E168–77, General Techniques of Infrared Quantitative Analysis; IBR approved for §§ 60.485a(d); 60.593(b); 60.593a(b); 60.632(f).

(222) ASTM E168–92, General Techniques of Infrared Quantitative Analysis; IBR approved for §§ 60.485a(d); 60.593(b); 60.593a(b); 60.632(f); 60.5400; 60.5400a(f).

(223) ASTM E168–16 (Reapproved 2023), Standard Practices for General Techniques of Infrared Quantitative Analysis, approved January 1, 2023; IBR approved for §§ 60.485b(d); 60.5400b(a); 60.5400c(a); 60.5401c(a).

(224) ASTM E169–63, General Techniques of Ultraviolet Quantitative Analysis; IBR approved for §§ 60.485a(d); 60.593(b); 60.593a(b); 60.632(f).

(225) ASTM E169–77, General Techniques of Ultraviolet Quantitative Analysis; IBR approved for §§ 60.485a(d); 60.593(b); 60.593a(b); 60.632(f).

(226) ASTM E169–93, General Techniques of Ultraviolet Quantitative Analysis, approved May 15, 1993; IBR approved for §§ 60.485a(d); 60.593(b); 60.593a(b); 60.632(f); 60.5400(f); 60.5400a(f).

(227) ASTM E169–16 (Reapproved 2022), Standard Practices for General Techniques of Ultraviolet-Visible Quantitative Analysis, approved November 1, 2022; IBR approved for § 60.485b(d); 60.5400b(a); 60.5401b(a); 60.5400c(a); 60.5401c(a).

(228) ASTM E260–73, General Gas Chromatography Procedures; IBR approved for §§ 60.485a(d); 60.593(b); 60.593a(b); 60.632(f).

(229) ASTM E260–91, General Gas Chromatography Procedures; IBR approved for §§ 60.485a(d); 60.593(b); 60.593a(b); 60.632(f).

(230) ASTM E260–96, General Gas Chromatography Procedures, approved

April 10, 1996; IBR approved for §§ 60.485a(d); 60.593(b); 60.593a(b); 60.632(f); 60.5400(f); 60.5400a(f); 60.5406(b); 60.5406a(b)(3); 60.5400b(a)(2); 60.5401b(a)(2); 60.5406b(b)(3); 60.5400c(a); 60.5401c(a).

(231) ASTM E260–96 (Reapproved 2019), Standard Practice for Packed Column Gas Chromatography, approved September 1, 2019; IBR approved for § 60.485b(d).

(232) ASTM E617–13, Standard Specification for Laboratory Weights and Precision Mass Standards, approved May 1, 2013; IBR approved for appendix A–3: Methods 4, 5, 5H, 5I, and appendix A–8: Method 29.

(233) ASTM E871–82 (Reapproved 2013), Standard Test Method for Moisture Analysis of Particulate Wood Fuels, approved August 15, 2013; IBR approved for appendix A–8: Method 28R.

(234) ASTM E1584–11, Standard Test Method for Assay of Nitric Acid, approved August 1, 2011; IBR approved for § 60.73a(c).

(235) ASTM E2515–11, Standard Test Method for Determination of Particulate Matter Emissions Collected by a Dilution Tunnel, approved November 1, 2011; IBR approved for §§ 60.534(c) and (d); 60.5476(f).

(236) ASTM E2618–13 Standard Test Method for Measurement of Particulate Matter Emissions and Heating Efficiency of Outdoor Solid Fuel-Fired Hydronic Heating Appliances, approved September 1, 2013; IBR approved for § 60.5476(g).

(237) ASTM E2779–10, Standard Test Method for Determining Particulate Matter Emissions from Pellet Heaters, approved October 1, 2010; IBR approved for § 60.534(a) and (f).

(238) ASTM E2780–10, Standard Test Method for Determining Particulate Matter Emissions from Wood Heaters, approved October 1, 2010; IBR approved for appendix A: Method 28R.

(239) ASTM UOP539–97, Refinery Gas Analysis by Gas Chromatography, (Copyright 1997); IBR approved for § 60.107a(d).

* * * * *

(m) * * *

(1) GPA Midstream Standard 2140–17 (GPA 2140–17), Liquefied Petroleum Gas Specifications and Test Methods (Revised 2017); IBR approved for §§ 60.4360a(c) and 60.4415(a).

(2) GPA Midstream Standard 2166–17 (GPA 2166–17), Obtaining Natural Gas Samples for Analysis by Gas Chromatography, (Reaffirmed 2017); IBR approved for §§ 60.4360a(b) and 60.4415(a).

(3) GPA Standard 2172–09 (GPA 2172–09), Calculation of Gross Heating

Value, Relative Density, Compressibility and Theoretical Hydrocarbon Liquid Content for Natural Gas Mixtures for Custody Transfer (2009); IBR approved for §§ 60.107a(d) and 60.4360a(c).

(4) GPA Standard 2174–14 (GPA 2174–14), Obtaining Liquid Hydrocarbon Samples for Analysis by Gas Chromatography, (Revised 2014); IBR approved for §§ 60.4360a(b) and 60.4415(a).

* * * * *

(6) GPA Standard 2377–86 (GPA 2377–84), Test for Hydrogen Sulfide and Carbon Dioxide in Natural Gas Using Length of Stain Tubes, 1986 Revision; IBR approved for §§ 60.105(b); 60.107a(b); 60.334(h); 60.4360; 60.4360a(c); and 60.4415(a).

* * * * *

Subpart GG—Standards of Performance for Stationary Gas Turbines

■ 3. Amend § 60.330 by revising paragraph (a) and adding paragraphs (c) through (e) to read as follows:

§ 60.330 Applicability and designation of affected facility.

(a) Except as provided for in paragraphs (c) through (e) of this section, the provisions of this subpart are applicable to the following affected facilities: All stationary gas turbines with a heat input at peak load equal to or greater than 10.7 gigajoules (10 million Btu) per hour, based on the lower heating value of the fuel fired.

* * * * *

(c) As an alternative to being subject to this subpart, the owner or operator of a stationary combustion turbine meeting the applicability of this subpart may petition the Administrator (in writing) to become subject to the requirements for modified units in subpart KKKKa of this part. If the Administrator grants the petition, the affected facility is no longer subject to this subpart and is subject to (unless the unit is modified or reconstructed in the future) the requirements for modified units in subpart KKKKa of this part. The Administrator can only grant the petition if it is determined that compliance with subpart KKKKa of this part would be equivalent to, or more stringent than, compliance with this subpart.

(d) Stationary gas turbines subject to subpart Da, KKKK, or KKKKa of this part are not subject to this subpart.

(e) A combustion turbine that is subject to this subpart and is not a “major source” or located at a “major source” (as that term is defined at 42

U.S.C. 7661 (2)) is exempt from the requirements of 42 U.S.C. 7661a(a).

■ 4. Amend § 60.331 by:

- a. Revising paragraphs (a) and (g);
- b. Removing and reserving paragraphs (m) and (n); and
- c. Revising paragraphs (p) and (u).

The revisions read as follows:

§ 60.331 Definitions.

(a) *Stationary gas turbine* means any simple cycle gas turbine, regenerative cycle gas turbine, or any gas turbine portion of a combined cycle steam/electric generating system that is not self-propelled. It may, however, be mounted on a vehicle for portability. Portable combustion turbines are excluded from the definition of “stationary combustion turbine,” and not regulated under this part, if the turbine meets the definition of “nonroad engine” under title II of the Clean Air Act and applicable regulations and is certified to meet emission standards promulgated pursuant to title II of the Clean Air Act, along with all related requirements.

(g) *ISO standard day conditions* means 288 degrees Kelvin (15 °C, 59 °F), 60 percent relative humidity, and 101.3 kilopascals (14.69 psi, 1 atm) pressure.

(p) *Gas turbine model* means a group of gas turbines having the same nominal air flow, combustor inlet pressure, combustor inlet temperature, firing temperature, turbine inlet temperature, and turbine inlet pressure.

(u) *Natural gas* means a fluid mixture of hydrocarbons (e.g., methane, ethane, or propane) that maintains a gaseous state at standard atmospheric temperature and pressure under ordinary conditions. Natural gas contains 20.0 grains or less of total sulfur per 100 standard cubic feet. Equivalents of this in other units are as follows: 0.068 weight percent total sulfur, 680 parts per million by weight (ppmw) total sulfur, and 338 parts per million by volume (ppmv) at 15.5 degrees Celsius total sulfur. Additionally, natural gas must be composed of at least 70 percent methane by volume and have a gross calorific value between 950 and 1100 British thermal units (Btu) per standard cubic foot. Unless refined to meet the definition of natural gas in this paragraph (u), natural gas does not include the following gaseous fuels: landfill gas, digester gas, refinery gas, sour gas, blast furnace gas, coal-derived gas, producer gas, coke oven gas, or any

gaseous fuel produced in a process which might result in highly variable sulfur content or heating value.

- 5. Amend § 60.332 by revising paragraphs (f) through (h) to read as follows:

§ 60.332 Standard for nitrogen oxides.

(f) Stationary gas turbines using water or steam injection for control of NO_x emissions are exempt from paragraph (a) of this section when ice fog is deemed a traffic hazard by the owner or operator of the gas turbine.

(g) Emergency gas turbines, military gas turbines for use in other than a garrison facility, military gas turbines installed for use as military training facilities, and firefighting gas turbines are exempt from paragraph (a) of this section.

(h) Stationary gas turbines engaged by manufacturers in research and development of equipment for both gas turbine emission control techniques and gas turbine efficiency improvements are exempt from paragraph (a) of this section on a case-by-case basis as determined by the Administrator.

- 6. Amend § 60.333 by revising the introductory text and paragraph (a) and adding paragraph (c) to read as follows:

§ 60.333 Standard for sulfur dioxide.

Except as provided in paragraph (c) of this section, on and after the date on which the performance test required to be conducted by § 60.8 is completed, every owner or operator subject to the provisions of this subpart shall comply with one or the other of the following conditions in paragraphs (a) and (b) of this section:

(a) No owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any stationary gas turbine any gases which contain sulfur dioxide in excess of 0.015 percent by volume at 15 percent oxygen and on a dry basis; or

(c) Stationary gas turbines subject to either subpart J or Ja of this part are not subject to the SO₂ standards in this subpart.

- 7. Amend § 60.334 by revising paragraphs (b)(3)(iii), (h)(1), and (j)(3) and adding paragraph (k) to read as follows:

§ 60.334 Monitoring of operations.

- (b) * * *
- (3) * * *

(iii) If the owner or operator has installed a NO_x CEMS to meet the

requirements of part 75 of this chapter, and is continuing to meet the ongoing requirements of part 75, the CEMS may be used to meet the requirements of this section, except that the missing data substitution methodology provided for at subpart D of part 75, is not required for purposes of identifying excess emissions. Instead, periods of missing CEMS data are to be reported as monitor downtime in the excess emissions and monitoring performance report required in § 60.7(c). For affected units that are also regulated under part 75, the NO_x emission rate may be monitored using a NO_x diluent CEMS that is installed and certified in accordance with appendix A to part 75 and the QA program in appendix E to part 75, or the low mass emissions methodology in § 75.19 of this chapter.

(1) Shall monitor the total sulfur content of the fuel being fired in the turbine, except as provided in paragraph (h)(3) of this section. The sulfur content of the fuel must be determined using total sulfur methods described in § 60.335(b)(10). Alternatively, if the total sulfur content of the gaseous fuel during the most recent performance test was less than 0.4 weight percent (4,000 ppmw), ASTM D4084–82, D4084–94, D5504–01, D6228–98, or Gas Processors Association Standard 2377–86 (all of which are incorporated by reference, see § 60.17), which measure the major sulfur compounds may be used; and

(3) *Ice fog*. Each period during which an exemption provided in § 60.332(f) is in effect shall be reported in writing to the Administrator in the semiannual report described in paragraph (k)(3) of this section. For each period, the ambient conditions existing during the period, the date and time the air pollution control system was deactivated, and the date and time the air pollution control system was reactivated shall be reported.

(k) The reporting requirements for this subpart shall be as follows:

(1) *Reporting frequency*. All reports required under § 60.7(c) must be electronically submitted via the Compliance and Emissions Data Reporting Interface (CEDRI) by the 30th day following the end of each 6-month period.

(2) *Electronic reporting*. Beginning on March 16, 2026, within 60 days after the date of completing each performance test or CEMS performance evaluation that includes a RATA, you must submit

the results following the procedures specified in paragraph (k)(4) of this section. You must submit the report in a file format generated using the EPA's Electronic Reporting Tool (ERT). Alternatively, you may submit an electronic file consistent with the extensible markup language (XML) schema listed on the EPA's ERT website (<https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert>) accompanied by the other information required by § 60.8(f)(2) in PDF format.

(3) *General reporting requirements.* You must submit to the Administrator semiannual reports of the following recorded information. Beginning on January 15, 2027, or once the report template for this subpart has been available on the CEDRI website (<https://www.epa.gov/electronic-reporting-air-emissions/cedri>) for one year, whichever date is later, submit all subsequent reports using the appropriate electronic report template on the CEDRI website for this subpart and following the procedure specified in paragraph (k)(4) of this section. The date report templates become available will be listed on the CEDRI website. Unless the Administrator or delegated State agency or other authority has approved a different schedule for submission of reports, the report must be submitted by the deadline specified in this subpart, regardless of the method in which the report is submitted.

(4) *CEDRI and CBI.* If you are required to submit notifications or reports following the procedure specified in this paragraph (k)(4), you must submit notifications or reports to the EPA via CEDRI, which can be accessed through the EPA's Central Data Exchange (CDX) (<https://cdx.epa.gov/>). The EPA will make all the information submitted through CEDRI available to the public without further notice to you. Do not use CEDRI to submit information you claim as CBI. Although we do not expect persons to assert a claim of CBI, if you wish to assert a CBI claim for some of the information in the report or notification, you must submit a complete file in the format specified in this subpart, including information claimed to be CBI, to the EPA following the procedures in paragraphs (k)(4)(i) and (ii) of this section. Clearly mark the part or all of the information that you claim to be CBI. Information not marked as CBI may be authorized for public release without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. All CBI claims must be asserted at the time of submission. Anything submitted

using CEDRI cannot later be claimed CBI. Furthermore, under CAA section 114(c), emissions data is not entitled to confidential treatment, and the EPA is required to make emissions data available to the public. Thus, emissions data will not be protected as CBI and will be made publicly available. You must submit the same file submitted to the CBI office with the CBI omitted to the EPA via the EPA's CDX as described earlier in this paragraph (k)(4).

(i) The preferred method to receive CBI is for it to be transmitted electronically using email attachments, File Transfer Protocol, or other online file sharing services. Electronic submissions must be transmitted directly to the OAQPS CBI Office at the email address oaqps_cbi@epa.gov, and as described above, should include clear CBI markings. ERT files should be flagged to the attention of the Group Leader, Measurement Policy Group; all other files should be flagged to the attention of the Stationary Combustion Turbine Sector Lead. If assistance is needed with submitting large electronic files that exceed the file size limit for email attachments, and if you do not have your own file sharing service, please email oaqps_cbi@epa.gov to request a file transfer link.

(ii) If you cannot transmit the file electronically, you may send CBI information through the postal service to the following address: U.S. EPA, Attn: OAQPS Document Control Office, Mail Drop: C404-02, 109 T.W. Alexander Drive, P.O. Box 12055, RTP, NC 27711. In addition to the OAQPS Document Control Officer, ERT files should also be sent to the attention of the Group Leader, Measurement Policy Group, and all other files should also be sent to the attention of the Stationary Combustion Turbine Sector Lead. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope.

(5) *System outage.* If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of EPA system outage for failure to timely comply with that reporting requirement. To assert a claim of EPA system outage, you must meet the requirements outlined in paragraphs (k)(5)(i) through (vii) of this section.

(i) You must have been or will be precluded from accessing CEDRI and submitting a required report within the time prescribed due to an outage of either the EPA's CEDRI or CDX systems.

(ii) The outage must have occurred within the period of time beginning 5 business days prior to the date that the submission is due.

(iii) The outage may be planned or unplanned.

(iv) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(v) You must provide to the Administrator a written description identifying:

(A) The date(s) and time(s) when CDX or CEDRI was accessed and the system was unavailable;

(B) A rationale for attributing the delay in reporting beyond the regulatory deadline to EPA system outage;

(C) A description of measures taken or to be taken to minimize the delay in reporting; and

(D) The date by which you propose to report, or if you have already met the reporting requirement at the time of notification, the date you reported.

(vi) The decision to accept the claim of EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(vii) In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved.

(6) *Force majeure.* If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of *force majeure* for failure to timely comply with that reporting requirement. To assert a claim of *force majeure*, you must meet the requirements outlined in paragraphs (k)(6)(i) through (v) of this section.

(i) You may submit a claim if a *force majeure* event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning five business days prior to the date the submission is due. For the purposes of this section, a *force majeure* event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents you from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (e.g., hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility (e.g., large scale power outage).

(ii) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should

have known, that the event may cause or has caused a delay in reporting.

(iii) You must provide to the Administrator:

(A) A written description of the *force majeure* event;

(B) A rationale for attributing the delay in reporting beyond the regulatory deadline to the *force majeure* event;

(C) A description of measures taken or to be taken to minimize the delay in reporting; and

(D) The date by which you propose to report, or if you have already met the reporting requirement at the time of notification, the date you reported.

(iv) The decision to accept the claim of *force majeure* and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(v) In any circumstance, the reporting must occur as soon as possible after the *force majeure* event occurs.

(7) *Record availability.* Any records required to be maintained by this subpart that are submitted electronically via the EPA's CEDRI may be maintained in electronic format. This ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to a delegated air agency or the EPA as part of an on-site compliance evaluation.

■ 8. Amend § 60.335 by revising paragraphs (a)(3), (a)(5)(ii)(A) and (B), (b)(2), (b)(7)(i), (b)(9)(ii), and (b)(10)(ii) to read as follows:

§ 60.335 Test methods and procedures.

(a) * * *

(3) To determine NO_x and diluent concentration:

(i) Either EPA Method 7E in appendix A–4 to this part or EPA Method 320 in appendix A to part 63 of this chapter; and

(ii) Either EPA Method 3 or 3A in appendix A to this part.

* * * * *

(5) * * *

(ii) * * *

(A) If each of the individual traverse point NO_x concentrations, normalized to 15 percent O₂, is within ±10 percent of the mean normalized concentration for all traverse points, then you may use 3 points (located either 16.7, 50.0, and 83.3 percent of the way across the stack or duct, or, for circular stacks or ducts greater than 2.4 meters (7.8 feet) in diameter, at 0.4, 1.2, and 2.0 meters from the wall). The 3 points shall be located along the measurement line that exhibited the highest average normalized NO_x concentration during the stratification test; or

(B) If each of the individual traverse point NO_x concentrations, normalized to 15 percent O₂, is within ±5 percent of the mean normalized concentration for all traverse points, then you may sample at a single point, located at least 1 meter from the stack wall or at the stack centroid.

* * * * *

(b) * * *

(2) The 3-run performance test required by § 60.8 must be performed within ±5 percent at 30, 50, 75, and 90-to-100 percent of peak load or at four evenly-spaced load points in the normal operating range of the gas turbine, including the minimum point in the operating range and 90-to-100 percent of peak load, or at the highest achievable load point if 90-to-100 percent of peak load cannot be physically achieved in practice. If the turbine combusts both oil and gas as primary or backup fuels, separate performance testing is required for each fuel. Notwithstanding these requirements, performance testing is not required for any emergency fuel (as defined in § 60.331).

* * * * *

(7) * * *

(i) Perform a minimum of 9 reference method runs, with a minimum time per run of 21 minutes, at a single load level, between 90 and 100 percent of peak (or the highest physically achievable) load while the source is combusting the fuel that is a normal primary fuel for that source.

* * * * *

(9) * * *

(ii) For gaseous fuels, shall use analytical methods and procedures that are accurate within ±5 percent of the instrument range and are approved by the Administrator.

(10) * * *

(ii) For gaseous fuels, ASTM D1072–80, D1072–90 (Reapproved 1994); D3246–81, D3246–92, D3246–96; D4468–85 (Reapproved 2000); or D6667–01 (all of which are incorporated by reference, see § 60.17). The applicable ranges of some ASTM methods mentioned above are not adequate to measure the levels of sulfur in some fuel gases. Dilution of samples before analysis (with verification of the dilution ratio) may be used, subject to the prior approval of the Administrator.

* * * * *

Subpart KKKK—Standards of Performance for Stationary Combustion Turbines

■ 9. Revise § 60.4305 to read as follows:

§ 60.4305 Does this subpart apply to my stationary combustion turbine?

(a) If you are the owner or operator of a stationary combustion turbine with a heat input at peak load equal to or greater than 10.7 gigajoules (10 MMBtu) per hour, based on the higher heating value of the fuel, which commenced construction, modification, or reconstruction after February 18, 2005, your turbine is subject to this subpart. Only heat input to the combustion turbine engine should be included when determining whether or not this subpart is applicable to your combustion turbine. Any additional heat input to associated heat recovery steam generators (HRSG) or duct burners should not be included when determining your peak heat input. However, this subpart does apply to emissions from any associated HRSG and duct burners.

(b) Stationary combustion turbines regulated under this subpart are not subject to subpart GG of this part. Heat recovery steam generators and duct burners regulated under this subpart are not subject to subparts Da, Db, and Dc of this part.

(c) Stationary combustion turbines subject to subpart KKKKa of this part are not subject to this subpart.

(d) As an alternative to being subject to this subpart, the owner or operator of an affected stationary combustion turbine meeting the applicability of this subpart may petition the Administrator (in writing) to become subject to the requirements for modified units in subpart KKKKa of this part. If the Administrator grants the petition, the affected facility is no longer subject to this subpart and is subject to (unless the unit is modified or reconstructed in the future) the requirements for modified units under subpart KKKKa of this part. The Administrator can only grant the petition if it is determined that compliance with subpart KKKKa of this part would be equivalent to, or more stringent than, compliance with this subpart.

(e) Stationary gas turbines subject to title II of the Clean Air Act are not subject to this subpart.

■ 10. Amend § 60.4310 by adding paragraphs (e) and (f) to read as follows:

§ 60.4310 What types of operations are exempt from these standards of performance?

* * * * *

(e) Military combustion turbines for use in other than a garrison facility and military combustion turbines installed for use as military training facilities are exempt from the NO_x standards in this subpart.

(f) A combustion turbine that is subject to this subpart and is not a “major source” or located at a “major source” (as that term is defined at 42 U.S.C. 7661 (2)) is exempt from the requirements of 42 U.S.C. 7661a(a).

■ 11. Amend § 60.4320 by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 60.4320 What emission limits must I meet for nitrogen oxides (NO_x)?

(a) Except as provided for in paragraph (c) of this section, you must meet the emission limits for NO_x specified in table 1 to this subpart.

* * * * *

(c) A stationary combustion turbine that combusts byproduct fuels for which a facility-specific NO_x emission standard has been established by the Administrator or delegated authority according to the requirements of paragraphs (c)(1) and (2) of this section is exempt from the emission limits specified in table 1 to this subpart.

(1) You may request a facility-specific NO_x emission standard by submitting a written request to the Administrator or delegated authority explaining why your affected facility, when combusting the byproduct fuel, is unable to comply with the applicable NO_x emission standard determined using table 1 to this subpart.

(2) If the Administrator or delegated authority approves the request, a facility-specific NO_x emissions standard will be established in a manner that the Administrator or delegated authority determines to be consistent with minimizing NO_x emissions.

■ 12. Revise § 60.4325 to read as follows:

§ 60.4325 What emission limits must I meet for NO_x if my turbine burns both natural gas and distillate oil (or some other combination of fuels)?

You must meet the emission limits specified in table 1 to this subpart. If your turbine operates below 75 percent of the peak load at any point during an operating hour, the part load standard is applicable during the entire operating hour. For non-part load operating hours, if your heat input is greater than or equal to 50 percent fuels other than natural gas at any point during an operating hour, you must meet the corresponding limit for fuels other than natural gas for that operating hour. For non-part load operating hours when your total heat input is greater than 50 percent natural gas for the entire operating hour while combusting some portion of non-natural gas fuels, you must meet the corresponding emissions standard as determined by prorating the

applicable NO_x standards, based on the applicable size category in table 1 to this subpart, by the heat input from each fuel type.

■ 13. Amend § 60.4330 by revising the section heading and paragraph (a)(3) and adding paragraph (c) to read as follows:

§ 60.4330 What emission limits must I meet for sulfur dioxide (SO₂)?

(a) * * *

(3) For each stationary combustion turbine burning 50 percent or more biogas and/or low-Btu gas on a calendar month basis, as determined based on total heat input, you must not cause to be discharged into the atmosphere from the affected source any gases that contain SO₂ in excess of:

- (i) 650 milligrams of sulfur per standard cubic meter (mg/scm) (28 grains (gr) of sulfur per 100 standard cubic feet (scf)); or
- (ii) 65 ng SO₂/J (0.15 lb SO₂/MMBtu) heat input.

* * * * *

(c) A stationary combustion turbine subject to either subpart J or Ja of this part is not subject to the SO₂ performance standards in this subpart.

■ 14. Add § 60.4331 to read as follows:

§ 60.4331 What are the requirements for operating a stationary temporary combustion turbine?

(a) Notwithstanding any other provision of this subpart, you may operate a small- or medium-size stationary combustion turbine (*i.e.*, combustion turbine with a base load rating less than or equal to 850 MMBtu/h) at a single location for up to 24 consecutive months, so long as you comply with all of the requirements in paragraphs (b) through (e) of this section.

(b) You must meet the NO_x emissions standard for stationary temporary combustion turbines in table 1 to this subpart and the applicable SO₂ emissions standard in § 60.4330.

(c) Unless you elect to demonstrate compliance through the otherwise-applicable monitoring, recordkeeping, and reporting requirements of this subpart, compliance with the NO_x emissions standard must be demonstrated through maintaining the documentation in paragraphs (c)(1) and (2) of this section on-site:

(1) Each stationary temporary combustion turbine has a manufacturer's emissions guarantee at or below the full load NO_x emissions standard in table 1 to this subpart; and

(2) Each such turbine has been performance tested at least once in the

prior 5 years as meeting the NO_x emissions standard in table 1 to this subpart.

(d) Unless you elect to demonstrate compliance through the otherwise-applicable monitoring, recordkeeping, and reporting requirements of this subpart, compliance with the SO₂ emissions standard must be demonstrated through complying with the provisions in § 60.4365.

(e) The conditions in paragraphs (e)(1) through (3) of this section apply in determining whether your stationary combustion turbine qualifies as a stationary temporary combustion turbine.

(1) The turbine may only be located at the same stationary source (or group of stationary sources located within a contiguous area and under common control) for a total period of 24 consecutive months. This is the total period of residence time allowed after the turbine commences operation at the location, regardless of whether the turbine is in operation for the entire 24-consecutive-month period.

(2) Any temporary combustion turbine that replaces a temporary combustion turbine at a stationary source and performs the same or similar function will be included in calculating the consecutive time period.

(3) The relocation of a stationary temporary combustion turbine within a single stationary source (or a group of stationary sources located within a contiguous area and under common control) while performing the same or similar function (*i.e.*, serving the same electric, mechanical, or thermal load) does not restart the 24-calendar-month residence time period.

■ 15. Amend § 60.4333 by revising paragraph (b) to read as follows:

§ 60.4333 What are my general requirements for complying with this subpart?

* * * * *

(b) For multiple combustion turbines and with a common heat recovery unit, heat recovery units utilizing a common steam header, or using a common stack, the owner or operator shall either:

(1) Determine compliance with the applicable NO_x emissions limits by measuring the emissions combined with the emissions from the other unit(s) utilizing the common heat recovery unit. The applicable emissions standard for the affected facility is equal to the prorated (by heat input) emissions standards of each of the individual combustion turbine engines that are exhausted through the single heat recovery steam generating unit;

(2) For combustion turbines complying with an output-based standard, develop, demonstrate, and provide information satisfactory to the Administrator on methods for apportioning the combined gross energy output from the heat recovery unit for each of the affected combustion turbines. The Administrator may approve such demonstrated substitute methods for apportioning the combined gross energy output measured at the steam turbine whenever the demonstration ensures accurate estimation of emissions related under this part; or

(3) Monitor each combustion turbine separately by measuring the NO_x emissions prior to mixing in the common stack.

■ 16. Amend § 60.4335 by adding paragraph (b)(5) to read as follows:

§ 60.4335 How do I demonstrate compliance for NO_x if I use water or steam injection?

* * * * *

(b) * * *

(5) For affected units that are also regulated under part 75 of this chapter, the NO_x emission rate may be monitored using a NO_x diluent CEMS that is installed and certified in accordance with appendix A to part 75 and the QA program in appendix E to part 75, or the low mass emissions methodology in § 75.19 of this chapter.

■ 17. Amend § 60.4340 by revising paragraphs (a) and (b)(2)(iv) to read as follows:

§ 60.4340 How do I demonstrate continuous compliance for NO_x if I do not use water or steam injection?

(a) Except as provided for in paragraphs (a)(1) through (4) of this section, if you are not using water or steam injection to control NO_x emissions, you must perform annual performance tests (no more than 14 calendar months following the previous performance test) in accordance with § 60.4400 to demonstrate continuous compliance.

(1) If the NO_x emission result from the performance test is less than or equal to 75 percent of the NO_x emission limit for the turbine, you may reduce the frequency of subsequent performance tests to once every 2 years (no more than 26 calendar months following the previous performance test). If the results of any subsequent performance test exceed 75 percent of the NO_x emission limit for the turbine, you must resume annual performance tests.

(2) An affected facility that has not operated for the 60 calendar days prior

to the due date of a performance test is not required to perform the subsequent performance test until 45 calendar days after the next operating day. The Administrator or delegated authority must be notified of recommencement of operation consistent with § 60.4375(d).

(3) If you own or operate an affected facility that has operated 168 operating hours or less in total or with a particular fuel since the date the previous performance test was required to be conducted, you may request an extension from the otherwise required performance test until after the affected facility has operated more than 168 operating hours in total or with a particular fuel since the date of the previous performance test was required to be conducted. A request for an extension under this paragraph (a)(3) must be addressed to the relevant air division or office director of the appropriate Regional Office of the U.S. EPA as identified in § 60.4(a) for his or her approval at least 30 calendar days prior to the date on which the performance test is required to be conducted. If an extension is approved, a performance test must be conducted within 45 calendar days after the day the facility reaches 168 hours of operation since the date the previous performance test was required to be conducted. When the facility has operated more than 168 operating hours since the date the previous performance test was required to be conducted, the Administrator or delegated authority must be notified consistent with § 60.4375(d).

(4) For a facility at which a group consisting of no more than five similar stationary combustion turbines (*i.e.*, same manufacturer and model number) is operated, you may request the use of a custom testing schedule by submitting a written request to the Administrator or delegated authority. The minimum requirements of the custom schedule include the conditions specified in paragraphs (a)(4)(i) through (v) of this section.

(i) Emissions from the most recent performance test for each individual affected facility are 75 percent or less of the applicable standard;

(ii) Each stationary combustion turbine uses the same emissions control technology;

(iii) Each stationary combustion turbine is operated in a similar manner;

(iv) Each stationary combustion turbine and its emissions control equipment are maintained according to the manufacturer's recommended maintenance procedures; and

(v) A performance test is conducted on each facility at least once every 5 calendar years.

(b) * * *

(2) * * *

(iv) For affected units that are also regulated under part 75 of this chapter, you can monitor the NO_x emission rate using the methodology in appendix E to part 75, or the low mass emissions methodology in § 75.19 of this chapter, the requirements of this paragraph (b) may be met by performing the parametric monitoring described in section 2.3 of appendix E to part 75 or in § 75.19(c)(1)(iv)(H).

■ 18. Amend § 60.4345 by revising paragraphs (a), (c), and (e) to read as follows:

§ 60.4345 What are the requirements for the continuous emission monitoring system equipment, if I choose to use this option?

* * * * *

(a) Each NO_x diluent CEMS must be installed and certified according to Performance Specification 2 (PS 2) in appendix B to this part, except the 7-day calibration drift is based on unit operating days, not calendar days. Procedure 1 in appendix F to this part is not required. Alternatively, a NO_x diluent CEMS that is installed and certified according to appendix A to part 75 of this chapter is acceptable for use under this subpart. The relative accuracy test audit (RATA) of the CEMS shall be performed on a lb/MMBtu basis.

* * * * *

(c) Each fuel flowmeter shall be installed, calibrated, maintained, and operated according to the manufacturer's instructions. Alternatively, fuel flowmeters that meet the installation, certification, and quality assurance requirements of appendix D to part 75 of this chapter are acceptable for use under this subpart.

* * * * *

(e) The owner or operator shall develop and keep on-site a quality assurance (QA) plan for all of the continuous monitoring equipment described in paragraphs (a), (c), and (d) of this section. For the CEMS and fuel flow meters, the owner or operator may satisfy the requirements of this paragraph (e) by implementing the QA program and plan described in section 1 of appendix B to part 75 of this chapter.

■ 19. Amend § 60.4350 by:

■ a. Removing and reserving paragraph (c); and

■ b. Revising paragraphs (d) and (f)(1).

The revisions read as follows:

§ 60.4350 How do I use data from the continuous emission monitoring equipment to identify excess emissions?

* * * * *

(d) If you have installed and certified a NO_x diluent CEMS to meet the requirements of part 75 of this chapter, only quality assured data from the CEMS shall be used to identify excess emissions under this subpart. Periods where the missing data substitution procedures in subpart D of part 75 are applied are to be reported as monitor downtime in the excess emissions and monitoring performance report required under § 60.7(c).

* * * * *

(f) * * *

(1) For simple-cycle operation:

Equation 1 to Paragraph (f)(1)

$$E = \frac{(NO_x)_h \times (HI)_h}{P} \quad (Eq. 1)$$

Where:

E = hourly NO_x emission rate, in lb/MWh;

(NO_x)_h = hourly NO_x emission rate, in lb/MMBtu;

(HI)_h = hourly heat input rate to the unit, in MMBtu/h, measured using the fuel flowmeter(s), e.g., calculated using Equation D-15a in appendix D to part 75 of this chapter; and

P = gross energy output of the combustion turbine in MW. For an hour in which there is zero electrical load, you may calculate the pollutant emission rate using a default electrical load value equivalent to 5 percent of the maximum sustainable electrical load of the turbine.

* * * * *

■ 20. Amend § 60.4355 by revising paragraph (b) to read as follows:

§ 60.4355 How do I establish and document a proper parameter monitoring plan?

* * * * *

(b) For affected units that are also subject to part 75 of this chapter, you may meet the requirements of this paragraph (b) by developing and keeping on-site (or at a central location for unmanned facilities) a QA plan, as described in § 75.19(e)(5) of this chapter or in section 2.3 of appendix E to part 75 and section 1.3.6 of appendix B to part 75.

■ 21. Revise § 60.4360 to read as follows:

§ 60.4360 How do I determine the total sulfur content of the turbine's combustion fuel?

You must monitor the total sulfur content of the fuel being fired in the turbine, except as provided in § 60.4365. The sulfur content of the fuel must be determined using total sulfur methods described in § 60.4415. Alternatively, if

the total sulfur content of the gaseous fuel during the most recent performance test was less than half the applicable limit, ASTM D4084-05, D4810-88 (Reapproved 1999), D5504-01, or D6228-98 (Reapproved 2003), or Gas Processors Association Standard 2377-86 (all of which are incorporated by reference, see § 60.17), which measure the major sulfur compounds, may be used.

■ 22. Amend § 60.4375 by revising paragraph (b) and adding paragraphs (c) through (j) to read as follows:

§ 60.4375 What reports must I submit?

* * * * *

(b) The notification requirements of § 60.8 apply to the initial and subsequent performance tests.

(c) An owner or operator of an affected facility complying with § 60.4340(a)(2) must notify the Administrator or delegated authority within 15 calendar days after the facility recommences operation.

(d) An owner or operator of an affected facility complying with § 60.4340(a)(3) must notify the Administrator or delegated authority within 15 calendar days after the facility has operated more than 168 operating hours since the date the previous performance test was required to be conducted.

(e) Beginning on [March 16, 2026, within 60 days after the date of completing each performance test or continuous emissions monitoring systems (CEMS) performance evaluation that includes a RATA, you must submit the results following the procedures specified in paragraph (g) of this section. You must submit the report in a file format generated using the EPA's Electronic Reporting Tool (ERT). Alternatively, you may submit an electronic file consistent with the extensible markup language (XML) schema listed on the EPA's ERT website (<https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert>) accompanied by the other information required by § 60.8(f)(2) in PDF format.

(f) You must submit to the Administrator semiannual reports of the following recorded information. Beginning on January 15, 2027, or once the report template for this subpart has been available on the Compliance and Emissions Data Reporting Interface (CEDRI) website (<https://www.epa.gov/electronic-reporting-air-emissions/cedri>) for one year, whichever date is later, submit all subsequent reports using the appropriate electronic report template on the CEDRI website for this subpart and following the procedure specified

in paragraph (g) of this section. The date report templates become available will be listed on the CEDRI website. Unless the Administrator or delegated State agency or other authority has approved a different schedule for submission of reports, the report must be submitted by the deadline specified in this subpart, regardless of the method in which the report is submitted.

(g) If you are required to submit notifications or reports following the procedure specified in this paragraph (g), you must submit notifications or reports to the EPA via CEDRI, which can be accessed through the EPA's Central Data Exchange (CDX) (<https://cdx.epa.gov/>). The EPA will make all the information submitted through CEDRI available to the public without further notice to you. Do not use CEDRI to submit information you claim as CBI. Although we do not expect persons to assert a claim of CBI, if you wish to assert a CBI claim for some of the information in the report or notification, you must submit a complete file in the format specified in this subpart, including information claimed to be CBI, to the EPA following the procedures in paragraphs (g)(1) and (2) of this section. Clearly mark the part or all of the information that you claim to be CBI. Information not marked as CBI may be authorized for public release without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. All CBI claims must be asserted at the time of submission. Anything submitted using CEDRI cannot later be claimed CBI. Furthermore, under CAA section 114(c), emissions data is not entitled to confidential treatment, and the EPA is required to make emissions data available to the public. Thus, emissions data will not be protected as CBI and will be made publicly available. You must submit the same file submitted to the CBI office with the CBI omitted to the EPA via the EPA's CDX as described earlier in this paragraph (g).

(1) The preferred method to receive CBI is for it to be transmitted electronically using email attachments, File Transfer Protocol, or other online file sharing services. Electronic submissions must be transmitted directly to the OAQPS CBI Office at the email address oaqps_cbi@epa.gov, and as described above, should include clear CBI markings. ERT files should be flagged to the attention of the Group Leader, Measurement Policy Group; all other files should be flagged to the attention of the Stationary Combustion Turbine Sector Lead. If assistance is needed with submitting large electronic

files that exceed the file size limit for email attachments, and if you do not have your own file sharing service, please email oaqps_cbi@epa.gov to request a file transfer link.

(2) If you cannot transmit the file electronically, you may send CBI information through the postal service to the following address: U.S. EPA, Attn: OAQPS Document Control Office, Mail Drop: C404-02, 109 T.W. Alexander Drive, P.O. Box 12055, RTP, NC 27711. In addition to the OAQPS Document Control Officer, ERT files should also be sent to the attention of the Group Leader, Measurement Policy Group, and all other files should also be sent to the attention of the Stationary Combustion Turbine Sector Lead. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope.

(h) If you are required to electronically submit a report through CEDRI in EPA's CDX, you may assert a claim of EPA system outage for failure to timely comply with that reporting requirement. To assert a claim of EPA system outage, you must meet the requirements outlined in paragraphs (h)(1) through (7) of this section.

(1) You must have been or will be precluded from accessing CEDRI and submitting a required report within the time prescribed due to an outage of either the EPA's CEDRI or CDX systems.

(2) The outage must have occurred within the period of time beginning 5 business days prior to the date that the submission is due.

(3) The outage may be planned or unplanned.

(4) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(5) You must provide to the Administrator a written description identifying:

(i) The date(s) and time(s) when CDX or CEDRI was accessed and the system was unavailable;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to EPA system outage;

(iii) A description of measures taken or to be taken to minimize the delay in reporting; and

(iv) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(6) The decision to accept the claim of EPA system outage and allow an

extension to the reporting deadline is solely within the discretion of the Administrator.

(7) In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved.

(i) If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of *force majeure* for failure to timely comply with that reporting requirement. To assert a claim of *force majeure*, you must meet the requirements outlined in paragraphs (i)(1) through (5) of this section.

(1) You may submit a claim if a *force majeure* event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning five business days prior to the date the submission is due. For the purposes of this section, a *force majeure* event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents you from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (e.g., hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility (e.g., large-scale power outage).

(2) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(3) You must provide to the Administrator:

(i) A written description of the *force majeure* event;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to the *force majeure* event;

(iii) A description of measures taken or to be taken to minimize the delay in reporting; and

(iv) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(4) The decision to accept the claim of *force majeure* and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(5) In any circumstance, the reporting must occur as soon as possible after the *force majeure* event occurs.

(j) Any records required to be maintained by this subpart that are submitted electronically via the EPA's CEDRI may be maintained in electronic format. This ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to a delegated air agency or the EPA as part of an on-site compliance evaluation.

■ 23. Amend § 60.4380 by revising paragraph (b)(3) to read as follows:

§ 60.4380 How are excess emissions and monitor downtime defined for NO_x?

* * * * *

(b) * * *

(3) For averaging periods during which multiple emissions standards apply, the applicable standard for the averaging period is the heat input weighted average of the applicable standards during each hour. For hours with multiple emission standards, the applicable limit for that hour is determined based on the condition that corresponded to the highest emissions standard.

* * * * *

■ 24. Revise § 60.4395 to read as follows:

§ 60.4395 What must I submit my reports?

All reports required under § 60.7(c) must be electronically submitted via CEDRI by the 30th day following the end of each 6-month period.

■ 25. Amend § 60.4400 by revising paragraphs (a)(1)(i) and (ii) and (b)(2) to read as follows:

§ 60.4400 How do I conduct the initial and subsequent performance tests, regarding NO_x?

(a) * * *

(1) * * *

(i) Measure the NO_x concentration (in parts per million (ppm)), using EPA Method 7E in appendix A-4 to this part, EPA Method 20 in appendix A-7 to this part, EPA Method 320 in appendix A of part 63 of this chapter, or ASTM D6348-12 (Reapproved 2020) (incorporated by reference, see § 60.17). For units complying with the output-based standard, concurrently measure the stack gas flow rate, using EPA Methods 1 and 2 in appendix A to this part, and measure and record the electrical and thermal output from the unit. Then, use the following equation to calculate the NO_x emission rate:

Equation 1 to Paragraph (a)(1)(i)

$$E = \frac{1.194 \times 10^{-7} \times (NO_X)_c \times Q_{std}}{P} \quad (Eq. 1)$$

Where:

E = NO_x emission rate, in lb/MWh;

1.194 × 10⁻⁷ = conversion constant, in lb/dscf-ppm;

(NO_x)_c = average NO_x concentration for the run, in ppm;

Q_{std} = stack gas volumetric flow rate, in dscf/hr; and

P = gross electrical and mechanical energy output of the combustion turbine, in MW (for simple cycle operation), for combined cycle operation, the sum of all electrical and mechanical output from the combustion and steam turbines, or, for combined heat and power operation, the sum of all electrical and mechanical output from the combustion and steam turbines plus all useful recovered thermal output not used for additional electric or mechanical generation, in MW, calculated according to § 60.4350(f)(2); or

(ii) Measure the NO_x and diluent gas concentrations, using either EPA Methods 7E and 3A or EPA Method 20 in appendix A to this part. In addition, when only natural gas is being combusted, ASTM D6522-20 (incorporated by reference, see § 60.17) can be used instead of EPA Method 3A in appendix A-2 to this part or EPA Method 20 in appendix A-7 to this part to determine the oxygen content in the exhaust gas. Concurrently measure the heat input to the unit, using a fuel flowmeter (or flowmeters), and measure the electrical and thermal output of the unit. Use EPA Method 19 in appendix A to this part to calculate the NO_x emission rate in lb/MMBtu. Then, use equations 1 and, if necessary, 2 and 3 in § 60.4350(f) to calculate the NO_x emission rate in lb/MWh.

* * * * *

(b) * * *

(2) For a combined cycle and CHP turbine systems with supplemental heat (duct burner), you must measure the total NO_x emissions after the duct burner rather than directly after the turbine. The duct burner must be in operation within 25 percent of 100 percent of the peak load rating of the

duct burners or the highest achievable load if at least 75 percent of the peak load of the duct burners cannot be achieved during the performance test.

* * * * *

■ 26. Amend § 60.4405 by revising paragraph (a) to read as follows:

§ 60.4405 How do I perform the initial performance test if I have chosen to install a NO_x-diluent CEMS?

* * * * *

(a) Perform a minimum of nine RATA reference method runs, with a minimum time per run of 21 minutes, at a single load level, within plus or minus 25 percent of 100 percent of peak load, while the source is combusting the fuel that is a normal primary fuel for that source. The ambient temperature must be greater than 0 °F during the RATA runs.

* * * * *

■ 27. Amend § 60.4415 by revising paragraphs (a) introductory text and (a)(2) through (4) to read as follows:

§ 60.4415 How do I conduct the initial and subsequent performance tests for sulfur?

(a) You must conduct an initial performance test, as required in § 60.8. An owner or operator of an affected facility complying with the fuel-based standard may use fuel records (such as a current, valid purchase contract, tariff sheet, transportation contract, or results of a fuel analysis) to satisfy the requirements of § 60.8. Subsequent SO₂ performance tests shall be conducted on an annual basis (no more than 14 calendar months following the previous performance test). There are four methodologies that you may use to conduct the performance tests.

* * * * *

(2) Periodically determine the sulfur content of the fuel combusted in the turbine, a representative fuel sample may be collected either by an automatic sampling system or manually. For automatic sampling, follow ASTM

D5287-97 (Reapproved 2002)

(incorporated by reference, see § 60.17) for gaseous fuels or ASTM D4177-95 (Reapproved 2000) (incorporated by reference, see § 60.17) for liquid fuels. For manual sampling of gaseous fuels, follow API Manual of Petroleum Measurement Standards, Chapter 14, Section 1; GPA 2166-17; or ISO 10715:1997(E) (all incorporated by reference, see § 60.17). For manual sampling of liquid fuels, follow GPA 2174-14 or the procedures for manual pipeline sampling in section 14 of ASTM D4057-95 (Reapproved 2000) (both incorporated by reference, see § 60.17). The fuel analyses of this section may be performed either by you, a service contractor retained by you, the fuel vendor, or any other qualified agency. Analyze the samples for the total sulfur content of the fuel using:

(i) For liquid fuels, ASTM D129-00 (Reapproved 2005), or alternatively D1266-98 (Reapproved 2003), D1552-03, D2622-05, D4294-03, D5453-05, D5623-19, or D7039-15a (all incorporated by reference, see § 60.17); or

(ii) For gaseous fuels, ASTM D1072-90 (Reapproved 1999), or alternatively D3246-05, D4084-05, D4468-85 (Reapproved 2000), D4810-88 (Reapproved 1999), D6228-98 (Reapproved 2003), D6667-04, or GPA 2140-17, 2261-19, or 2377-86 (all incorporated by reference, see § 60.17).

(3) Measure the SO₂ concentration (in parts per million (ppm)), using EPA Method 6, 6C, 8, or 20 in appendix A to this part. For units complying with the output-based standard, concurrently measure the stack gas flow rate, using EPA Methods 1 and 2 in appendix A to this part, and measure and record the electrical and thermal output from the unit. Then use the following equation to calculate the SO₂ emission rate:

Equation 1 to Paragraph (a)(3)

$$E = \frac{1.664 \times 10^{-7} \times (SO_2)_c \times Q_{std}}{P} \quad (Eq. 1)$$

Where:

E = SO₂ emission rate, in lb/MWh;

1.664 × 10⁻⁷ = conversion constant, in lb/dscf-ppm;

(SO₂)_c = average SO₂ concentration for the run, in ppm;

Q_{std} = stack gas volumetric flow rate, in dscf/hr; and

P = gross electrical and mechanical energy output of the combustion turbine, in MW (for simple-cycle operation), for combined-cycle operation, the sum of all electrical and mechanical output from

the combustion and steam turbines, or, for combined heat and power operation, the sum of all electrical and mechanical output from the combustion and steam turbines plus all useful recovered thermal output not used for additional electric or mechanical generation, in

MW, calculated according to § 60.4350(f)(2); or

(4) Measure the SO₂ and diluent gas concentrations, using either EPA Method 6, 6C, or 8 and 3A, or 20 in appendix A to this part. Concurrently measure the heat input to the unit, using a fuel flowmeter (or flowmeters), and measure the electrical and thermal output of the unit. Use EPA Method 19 in appendix A to this part to calculate the SO₂ emission rate in lb/MMBtu. Then, use equations 1 and, if necessary, 2 and 3 in § 60.4350(f) to calculate the SO₂ emission rate in lb/MWh.

* * * * *

■ 28. Amend § 60.4420 by:

■ a. Adding the definition of *Byproduct* in alphabetical order;

■ b. Revising the definitions of *Duct burner* and *Emergency combustion turbine*;

■ c. Adding the definitions of *Firefighting turbine*, *Garrison facility*, and *Low-Btu gas* in alphabetical order;

■ d. Revising the definitions of *Natural gas* and *Noncontinental area*;

■ e. Adding the definition of *Offshore turbine* in alphabetical order;

■ f. Revising the definition of *Stationary combustion turbine*; and

■ g. Adding the definition of *Temporary combustion turbine* in alphabetical order.

The additions and revisions read as follows:

§ 60.4420 What definitions apply to this subpart?

* * * * *

Byproduct means any liquid or gaseous substance produced at chemical manufacturing plants, petroleum refineries, pulp and paper mills, or other industrial facilities (except natural gas and fuel oil).

* * * * *

Duct burner means a device that combusts fuel and that is placed in the exhaust duct from another source, such as a stationary combustion turbine, internal combustion engine, kiln, etc., to allow the firing of additional fuel to heat the exhaust gases.

* * * * *

Emergency combustion turbine means any stationary combustion turbine which operates in an emergency

situation. Examples include stationary combustion turbines used to produce power for critical networks or equipment, including power supplied to portions of a facility, when electric power from the local utility is interrupted, or stationary combustion turbines used to pump water in the case of fire (e.g., firefighting turbine) or flood, etc. Emergency combustion turbines may be operated for the purpose of maintenance checks and readiness testing, provided that the tests are recommended by Federal, State, or local government, agencies, or departments, voluntary consensus standards, the manufacturer, the vendor, the regional transmission organization or equivalent balancing authority and transmission operator, or the insurance company associated with the combustion turbine. Required testing of such units should be minimized, but there is no time limit on the use of emergency combustion turbines. Emergency combustion turbines do not include combustion turbines used as peaking units at electric utilities or stationary combustion turbines at industrial facilities that typically operate at low capacity factors.

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Firefighting turbine means any stationary combustion turbine that is used solely to pump water for extinguishing fires.

Garrison facility means any permanent military installation.

* * * * *

Low-Btu gas means any gaseous fuels that have heating values less than 26 megajoules per standard cubic meter (MJ/scm) (700 Btu/scf).

Natural gas means a fluid mixture of hydrocarbons (e.g., methane, ethane, or propane) that maintains a gaseous state at standard atmospheric temperature and pressure under ordinary conditions. Additionally, natural gas must be composed of at least 70 percent methane by volume and have a gross calorific value between 950 and 1,100 British thermal units (Btu) per standard cubic foot. Unless refined to meet this definition of natural gas, natural gas does not include the following gaseous fuels: landfill gas, digester gas, refinery gas, sour gas, blast furnace gas, coal-derived gas, producer gas, coke oven

gas, or any gaseous fuel produced in a process which might result in highly variable sulfur content or heating value.

Noncontinental area means the State of Hawaii, the Virgin Islands, Guam, American Samoa, the Commonwealth of Puerto Rico, the Northern Mariana Islands, or offshore turbines.

Offshore turbine means a stationary combustion turbine located on a platform or facility in an ocean, territorial sea, the outer continental shelf, or the Great Lakes of North America and stationary combustion turbines located in a coastal management zone and elevated on a platform.

* * * * *

Stationary combustion turbine means all equipment, including but not limited to the turbine, the fuel, air, lubrication and exhaust gas systems, control systems (except emissions control equipment), heat recovery system, and any ancillary components and sub-components comprising any simple cycle stationary combustion turbine, any regenerative/recuperative cycle stationary combustion turbine, any combined cycle combustion turbine, and any combined heat and power combustion turbine based system. Stationary means that the combustion turbine is not self-propelled or intended to be propelled while performing its function. It may, however, be mounted on a vehicle for portability. Portable combustion turbines are excluded from the definition of “stationary combustion turbine,” and not regulated under this part, if the turbine meets the definition of “nonroad engine” under title II of the Clean Air Act and applicable regulations and is certified to meet emission standards promulgated pursuant to title II of the Clean Air Act, along with all related requirements.

Temporary combustion turbine means a combustion turbine that is intended to and remains at a single stationary source (or group of stationary sources located within a contiguous area and under common control) for 24 consecutive months or less.

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■ 29. Revise table 1 to subpart KKKK to read as follows:

TABLE 1 TO SUBPART KKKK OF PART 60—NITROGEN OXIDE EMISSION LIMITS FOR NEW STATIONARY COMBUSTION TURBINES

Combustion turbine type	Combustion turbine heat input at peak load (HHV)	NO _x emission standard
New turbine firing natural gas, electric generating	≤50 MMBtu/h	42 ppm at 15 percent O ₂ or 290 ng/J of useful output (2.3 lb/MWh).

TABLE 1 TO SUBPART KKKK OF PART 60—NITROGEN OXIDE EMISSION LIMITS FOR NEW STATIONARY COMBUSTION TURBINES—Continued

Combustion turbine type	Combustion turbine heat input at peak load (HHV)	NO _x emission standard
New turbine firing natural gas, mechanical drive	≤50 MMBtu/h	100 ppm at 15 percent O ₂ or 690 ng/J of useful output (5.5 lb/MWh).
New turbine firing natural gas	>50 MMBtu/h and ≤850 MMBtu/h	25 ppm at 15 percent O ₂ or 150 ng/J of useful output (1.2 lb/MWh).
New, modified, or reconstructed turbine firing natural gas	>850 MMBtu/h	15 ppm at 15 percent O ₂ or 54 ng/J of useful output (0.43 lb/MWh).
New turbine firing fuels other than natural gas, electric generating ..	≤50 MMBtu/h	96 ppm at 15 percent O ₂ or 700 ng/J of useful output (5.5 lb/MWh).
New turbine firing fuels other than natural gas, mechanical drive	≤50 MMBtu/h	150 ppm at 15 percent O ₂ or 1,100 ng/J of useful output (8.7 lb/MWh).
New turbine firing fuels other than natural gas	>50 MMBtu/h and ≤850 MMBtu/h	74 ppm at 15 percent O ₂ or 460 ng/J of useful output (3.6 lb/MWh).
New, modified, or reconstructed turbine firing fuels other than natural gas.	>850 MMBtu/h	42 ppm at 15 percent O ₂ or 160 ng/J of useful output (1.3 lb/MWh).
Modified or reconstructed turbine	≤50 MMBtu/h	150 ppm at 15 percent O ₂ or 1,100 ng/J of useful output (8.7 lb/MWh).
Modified or reconstructed turbine firing natural gas	>50 MMBtu/h and ≤850 MMBtu/h	42 ppm at 15 percent O ₂ or 250 ng/J of useful output (2.0 lb/MWh).
Modified or reconstructed turbine firing fuels other than natural gas	>50 MMBtu/h and ≤850 MMBtu/h	96 ppm at 15 percent O ₂ or 590 ng/J of useful output (4.7 lb/MWh).
Turbines located north of the Arctic Circle (latitude 66.5 degrees north), turbines operating at less than 75 percent of peak load, modified and reconstructed offshore turbines, and turbine operating at temperatures less than 0 °F.	≤300 MMBtu/h or ≤30 MW output	150 ppm at 15 percent O ₂ or 1,100 ng/J of useful output (8.7 lb/MWh).
Turbines located north of the Arctic Circle (latitude 66.5 degrees north), turbines operating at less than 75 percent of peak load, modified and reconstructed offshore turbines, and turbine operating at temperatures less than 0 °F.	>300 MMBtu/h and >30 MW output	96 ppm at 15 percent O ₂ or 590 ng/J of useful output (4.7 lb/MWh).
Heat recovery units operating independent of the combustion turbine.	All sizes	54 ppm at 15 percent O ₂ or 110 ng/J of useful output (0.86 lb/MWh).
Combustion turbines bypassing the heat recovery unit	>50 MMBtu/h	25 ppm at 15 percent O ₂ or 150 ng/J of useful output (1.2 lb/MWh).

■ 30. Add subpart KKKKa to read as follows:

Subpart KKKKa—Standards of Performance for Stationary Combustion Turbines

Sec.

Introduction

60.4300a What is the purpose of this subpart?

Applicability

60.4305a Does this subpart apply to my stationary combustion turbine?
60.4310a What stationary combustion turbines are not subject to this subpart?

Emission Standards

60.4315a What pollutants are regulated by this subpart?
60.4320a What NO_x emissions standard must I meet?
60.4325a What emission limit must I meet for NO_x if my turbine burns both natural gas and distillate oil (or some other combination of fuels)?
60.4330a What SO₂ emissions standard must I meet?
60.4331a What are the requirements for operating a stationary temporary combustion turbine?

General Compliance Requirements

60.4333a What are my general requirements for complying with this subpart?

Monitoring

60.4335a How do I demonstrate compliance with my NO_x emissions standard without using a NO_x CEMS if I use water or steam injection?
60.4340a How do I demonstrate compliance with my NO_x emissions standard without using a NO_x CEMS if I do not use water or steam injection?
60.4342a How do I monitor NO_x control operating parameters?
60.4345a How do I demonstrate compliance with my NO_x emissions standard using a NO_x CEMS?
60.4350a How do I use the NO_x CEMS data to determine excess emissions?
60.4360a How do I use fuel sulfur analysis to determine the total sulfur content of the fuel combusted in my stationary combustion turbine?
60.4370a How frequently must I determine the fuel sulfur content?
60.4372a How can I demonstrate compliance with my SO₂ emissions standard using records of the fuel sulfur content?
60.4374a How do I demonstrate compliance with my SO₂ emissions standard and determine excess emissions using a SO₂ CEMS?

Recordkeeping and Reporting

60.4375a What reports must I submit?
60.4380a How are NO_x excess emissions and monitor downtime reported?
60.4385a How are SO₂ excess emissions and monitor downtime reported?
60.4390a What records must I maintain?

60.4395a When must I submit my reports?

Performance Tests

60.4400a How do I conduct performance tests to demonstrate compliance with my NO_x emissions standard if I do not have a NO_x CEMS?
60.4405a How do I conduct a performance test if I use a NO_x CEMS?
60.4415a How do I conduct performance tests to demonstrate compliance with my SO₂ emissions standard?

Other Requirements and Information

60.4416a What parts of the general provisions apply to my affected EGU?
60.4417a Who implements and enforces this subpart?
60.4420a What definitions apply to this subpart?
Table 1 to Subpart KKKKa of Part 60—Nitrogen Oxide Emission Standards for Stationary Combustion Turbines
Table 2 to Subpart KKKKa of Part 60—Alternative Mass-Based NO_x Emission Standards for Stationary Combustion Turbines
Table 3 to Subpart KKKKa of Part 60—Applicability of Subpart A of This Part to This Subpart

Introduction

§ 60.4300a What is the purpose of this subpart?

This subpart establishes emission standards and compliance schedules for the control of emissions from stationary combustion turbines that commenced

construction, modification, or reconstruction after December 13, 2024.

Applicability

§ 60.4305a Does this subpart apply to my stationary combustion turbine?

(a) Except as provided for in § 60.4310a, you are subject to this subpart if you own or operate a stationary combustion turbine that commenced construction, modification, or reconstruction after December 13, 2024, and that has a base load rating equal to or greater than 10.7 gigajoules per hour (GJ/h) (10 million British thermal units per hour (MMBtu/h)). Any additional heat input from duct burners used with heat recovery steam generating (HRSG) units or fuel preheaters is not included in the heat input value used to determine the applicability of this subpart to a given stationary combustion turbine. However, this subpart does apply to emissions from any associated HRSG and duct burner(s) that are associated with a combustion turbine subject to this subpart.

(b) A stationary combustion turbine subject to this subpart is not subject to subpart GG or KKKK of this part.

(c) Duct burners are not subject to subpart D, Da, Db, or Dc of this part (as applicable) if the duct burner is used with a HRSG unit that is part of a combustion turbine that is subject to this subpart.

(d) If you own or operate a stationary combustion turbine (including a combined cycle combustion turbine or a CHP combustion turbine) that commenced construction, modification, or reconstruction on or before December 13, 2024, you may submit a written petition to the Administrator requesting that the stationary combustion turbine comply with the applicable requirements for modified units under this subpart as an alternative to complying with subpart GG or KKKK of this part, and with subparts D, Da, Db, and Dc of this part, as applicable. If the Administrator or delegated authority approves the petitioner's request, the affected facility must comply with the requirements for modified units under this subpart unless the stationary combustion turbine is reconstructed or replaced with a new facility in the future.

(e) If you own or operate a combined cycle combustion turbine or combined heat and power combustion turbine, and changes are made after December 13, 2024, to allow the existing combustion turbine to also operate in simple cycle mode and those changes are determined a modification for NSPS purposes, this

subpart shall apply to the combustion turbine only as it operates in simple cycle mode, and not to its existing configuration in combined cycle mode.

§ 60.4310a What stationary combustion turbines are not subject to this subpart?

(a) An integrated gasification combined cycle electric utility steam generating unit subject to subpart Da of this part is not subject to this subpart.

(b) A stationary combustion turbine used in a combustion turbine test cell/stand, as defined in § 60.4420a, is not subject to this subpart.

(c) If any solid fuel is combusted in the HRSG, the HRSG is not subject to this subpart.

(d) Stationary gas turbines subject to title II of the Clean Air Act are not subject to this subpart.

Emission Standards

§ 60.4315a What pollutants are regulated by this subpart?

The pollutants regulated by this subpart are nitrogen oxide (NO_x) and sulfur dioxide (SO₂).

§ 60.4320a What NO_x emissions standard must I meet?

(a) Except as provided for in paragraph (c) of this section, for each stationary combustion turbine you must not discharge into the atmosphere from the affected facility any gases that contain an amount of NO_x that exceeds the applicable emissions standard and be in accordance with the requirements specified in paragraph (b) of this section. If you choose to use NO_x CEMS, input-based emission rates and standards are determined on a 4-operating-hour rolling basis and output-based emission rates and standards are determined on a 30-operating-day rolling basis. Mass-based emission rates are determined on both a 4-operating-hour and 12-calendar-month rolling basis.

(b) For the purpose of determining compliance with the applicable emissions standard, you must also meet the requirements specified in paragraphs (b)(1) through (4) of this section, as applicable to your affected facility.

(1) The NO_x emission standard that is applicable to your affected facility shall be determined on an operating-hour basis, unless you elect to use the alternative provided for in paragraph (b)(2) of this section. Determining the hourly NO_x emission standards for your affected facility requires recording hourly data and maintaining records according to the requirements in § 60.4390a. For hours with multiple emission standards, the applicable

standard for that hour is determined based on the condition, excluding periods of monitor downtime, that corresponds to the highest emissions standard. For example, if your affected facility operates at 70 percent or less of its base load rating for any portion of the hour, the emission limit(s) in table 1 to this subpart for combustion turbines operating at 70 percent or less of base load rating shall apply for that hour.

(2) As an alternative to the requirements specified in paragraph (b)(1) of this section, you may elect to use the lowest NO_x emission standard that is applicable to your affected facility, as determined using table 1 to this subpart, for the entire required compliance period.

(3) During each operating hour when only natural gas is combusted, you must meet the NO_x emission standard as determined by the applicable size category in table 1 or 2 to this subpart, as applicable, which corresponds to a stationary combustion turbine firing natural gas for that operating hour. During each operating hour when the heat input (based on the HHV of the fuels) of the combustion turbine engine is less than 50 percent natural gas (*i.e.*, 50 percent or greater non-natural gas), as defined in § 60.4420a, at any point during an operating hour, you must meet the NO_x emission standard as determined by the applicable size category in table 1 or 2 to this subpart, as applicable, which corresponds to a stationary combustion turbine firing fuels other than natural gas for that operating hour. During each operating hour when the heat input to the combustion turbine engine is greater than 50 percent natural gas, as defined in § 60.4420a, during an entire operating hour while combusting some portion of non-natural gas fuels, you must meet the NO_x emission standard as determined by prorating the applicable NO_x standards, based on the applicable size category in table 1 or 2 to this subpart, as applicable, by the heat input from each fuel type.

(4) If you have two or more combustion turbine engines share a common stack, are connected to a single electric generator, or share a steam turbine, except as provided for in paragraph (b)(4)(i) of this section, you must monitor the hourly NO_x emissions at the common stack in lieu of monitoring each combustion turbine separately. If you choose to comply with the output-based emissions standard, the hourly gross or net energy output (electric, thermal, or mechanical, as applicable) must be the sum of the hourly loads for the individual affected combustion turbines, and you must

express the operating time as “stack operating hours” (as defined in 40 CFR 72.2). If you attain compliance with the most stringent applicable emission standard in table 1 or 2 to this subpart, as applicable, at the common stack, each affected combustion turbine sharing the stack is in compliance.

(i) As an alternative to the requirements in this paragraph (b)(4), you may either:

(A) Monitor each combustion turbine separately by measuring the NO_x emissions prior to mixing in the common stack; or

(B) Apportion the NO_x emissions based on the unit's heat input contribution to the total heat input associated with the common stack and the appropriate F-factors. If you chose to comply with the output-based standard, output from a common steam turbine shall be apportioned based on the heat input to each combustion turbine. You may also elect to develop, demonstrate, and provide information satisfactory to the Administrator on alternate methods to apportion the NO_x emissions. The Administrator may approve such alternate methods for apportioning the NO_x emissions whenever the demonstration ensures accurate estimation of emissions regulated under this part.

(ii) [Reserved]

(c) Stationary combustion turbines that meet at least one of the specifications described in paragraphs (c)(1) through (4) of this section are exempt from the applicable NO_x emission standard in paragraphs (a) and (b) of this section.

(1) An emergency combustion turbine, as defined in § 60.4420a;

(2) A stationary combustion turbine that, as determined by the Administrator or delegated authority, is used for the research and development of control techniques and/or efficiency improvements relevant to stationary combustion turbine emissions; or

(3) A stationary combustion turbine that combusts byproduct fuels for which a facility-specific NO_x emissions standard has been established by the Administrator or delegated authority according to the requirements of paragraphs (c)(3)(i) and (ii) of this section is exempt from the emission limits specified in tables 1 and 2 to this subpart.

(i) You may request a facility-specific NO_x emission standard by submitting a written request to the Administrator or delegated authority explaining why your affected facility, when combusting the byproduct fuel, is unable to comply with the applicable NO_x emission

standard determined using table 1 or 2 to this subpart.

(ii) If the Administrator or delegated authority approves the request, a facility-specific NO_x emissions standard will be established in a manner that the Administrator or delegated authority determines to be consistent with minimizing NO_x emissions.

(4) Military combustion turbines for use in other than a garrison facility and military combustion turbines installed for use as military training facilities.

(d) You must meet the applicable NO_x emissions standard to your affected facility during all times that the affected facility is operating (including periods of startup, shutdown, and malfunction).

§ 60.4325a What emission limit must I meet for NO_x if my turbine burns both natural gas and distillate oil (or some other combination of fuels)?

You must meet the emission limits specified in table 1 or 2 to this subpart. If your turbine operates below 70 percent of the base load rating at any point during an operating hour, the part load standard is applicable during the entire operating hour. For non-part load operating hours, if your stationary combustion turbine's heat input is greater than or equal to 50 percent fuels other than natural gas at any point during an operating hour, your combustion turbine must meet the corresponding limit for non-natural gas. For non-part load operating hours when your total heat input is greater than 50 percent natural gas while combusting some portion of non-natural gas fuels, you must meet the corresponding emissions standard as determined by prorating the applicable NO_x standards, based on the applicable size category in table 1 or 2 to this subpart, as applicable, by the heat input from each fuel type.

§ 60.4330a What SO₂ emissions standard must I meet?

(a) Except as provided for in paragraphs (b) through (e) of this section, for each new, modified, or reconstructed stationary combustion turbine you must not cause to be discharged from the affected facility and into the atmosphere any gases that contain an amount of SO₂ exceeding either:

- (1) 110 nanograms per Joule (ng/J) (0.90 pounds per megawatt-hour (lb/MWh)) gross energy output; or
- (2) 26 ng SO₂/J (0.060 lb SO₂/MMBtu) heat input.

(b) For each new, modified, or reconstructed stationary combustion turbine combusting 50 percent or more low-Btu gas per calendar month based

on total heat input (using the HHV of the fuel), you must not cause to be discharged from the affected facility and into the atmosphere any gases that contain an amount of SO₂ exceeding either:

- (1) 650 milligrams of sulfur per standard cubic meter (mg/scm) (28 grains (gr) of sulfur per 100 standard cubic feet (scf)); or
- (2) 65 ng SO₂/J (0.15 lb SO₂/MMBtu) heat input.

(c) For each new, modified, or reconstructed stationary combustion turbine located in a noncontinental area, you must not cause to be discharged from the affected facility and into the atmosphere any gases that contain an amount of SO₂ exceeding either:

- (1) 780 ng/J (6.2 lb/MWh) gross energy output; or
- (2) 180 ng SO₂/J (0.42 lb SO₂/MMBtu) heat input.

(d) For each new, modified, or reconstructed stationary combustion turbine for which the Administrator determines that the affected facility does not have access to natural gas and that the removal of sulfur compounds from the fuel would cause more environmental harm than benefit, you must not cause to be discharged from the affected facility and into the atmosphere any gases that contain an amount of SO₂ exceeding either:

- (1) 780 ng/J (6.2 lb/MWh) gross energy output; or
- (2) 180 ng SO₂/J (0.42 lb SO₂/MMBtu) heat input.

(e) A stationary combustion turbine subject to either subpart J or Ja of this part is not subject to the SO₂ performance standards in this subpart.

§ 60.4331a What are the requirements for operating a stationary temporary combustion turbine?

(a) Notwithstanding any other provision of this subpart, you may operate a small- or medium-size stationary combustion turbine (*i.e.*, a combustion turbine with a base load rating less than or equal to 850 MMBtu/h) at a single location for up to 24 consecutive months, so long as you comply with all of the requirements in paragraphs (b) through (e) of this section.

(b) You must meet the NO_x emissions standard for stationary temporary combustion turbines in table 1 to this subpart and the applicable SO₂ emissions standard in § 60.4330a.

(c) Unless you elect to demonstrate compliance through the otherwise-applicable monitoring, recordkeeping, and reporting requirements of this subpart, compliance with the NO_x emissions standard must be

demonstrated through maintaining the documentation in paragraphs (c)(1) and (2) of this section on-site:

(1) Each stationary temporary combustion turbine in use at the location has a manufacturer's emissions guarantee at or below the full load NO_x emissions standard in table 1 to this subpart; and

(2) Each such turbine has been performance tested at least once in the prior 5 years as meeting the NO_x emissions standard in table 1 to this subpart.

(d) Unless you elect to demonstrate compliance through the otherwise-applicable monitoring, recordkeeping, and reporting requirements of this subpart, compliance with the SO₂ emissions standard must be demonstrated through complying with the provisions in § 60.4372a.

(e) The conditions in paragraphs (e)(1) through (3) of this section apply in determining whether your stationary combustion turbine qualifies as a stationary temporary combustion turbine.

(1) The turbine may only be located at the same stationary source (or group of stationary sources located within a contiguous area and under common control) for a total period of 24 consecutive months. This is the total period of residence time allowed after the turbine commences operation at the location, regardless of whether the turbine is in operation for the entire 24 consecutive month period.

(2) Any temporary combustion turbine that replaces a temporary combustion turbine at a location and performs the same or similar function will be included in calculating the consecutive time period.

(3) The relocation of a stationary temporary combustion turbine within a single stationary source (or group of stationary sources located within a contiguous area and under common control) while performing the same or similar function (*i.e.*, serving the same electric, mechanical, or thermal load) does not restart the 24-calendar month residence time period.

General Compliance Requirements

§ 60.4333a What are my general requirements for complying with this subpart?

(a) You must operate and maintain your stationary combustion turbine, air pollution control equipment, and monitoring equipment in a manner consistent with good air pollution control practices for minimizing emissions at all times, including during startup, shutdown, and malfunction.

(b) If you own or operate a stationary combustion turbine subject to a NO_x emissions standard in § 60.4320a, you must conduct an initial performance test according to § 60.8 using the applicable methods in § 60.4400a or § 60.4405a. Thereafter, unless you perform continuous monitoring consistent with § 60.4335a, § 60.4340a, or § 60.4345a, you must conduct subsequent performance tests according to the applicable requirements in paragraphs (b)(1) through (6) of this section.

(1) Except as provided for in paragraphs (b)(2) through (5) of this section, you must conduct subsequent performance tests within 12 calendar months of the date that the previous performance test was conducted.

(2) If the NO_x emission result from the most recent performance test is less than or equal to 75 percent of the NO_x emissions standard for the stationary combustion turbine, you may reduce the frequency of subsequent performance tests to 26 calendar months following the date the previous performance test was conducted. If the results of any subsequent performance test exceed 75 percent of the NO_x emissions standard for the stationary combustion turbine, you must resume 14-calendar-month performance testing.

(3) An affected facility that has not operated for the 60 calendar days prior to the due date of a performance test is not required to perform the subsequent performance test until 45 calendar days or 10 operating days, whichever is longer, after the next operating day. The Administrator or delegated authority must be notified of recommencement of operation consistent with § 60.4375a(d).

(4) If you own or operate an affected facility that has operated 168 operating hours or less, either in total or using a particular fuel, since the date on which the previous performance test was conducted, you may request that the otherwise required performance test be postponed until the affected facility has operated more than 168 operating hours, either in total or using a particular fuel, since the date on which the previous performance test was conducted. A request for an extension under this paragraph (b)(4) must be addressed to the relevant air division or office director of the appropriate Regional Office of the U.S. EPA as identified in § 60.4(a) for his or her approval at least 30 calendar days prior to the date on which the performance test is required to be conducted. If a postponement is approved, a performance test must be conducted within 45 calendar days after the day that the facility reaches 168 hours of operation since the date on which the previous performance test

was conducted. When the facility has operated more than 168 operating hours since the date on which the previous performance test was conducted, the Administrator or delegated authority must be notified consistent with § 60.4375a(e).

(5) For a facility at which a group consisting of no more than five similar stationary combustion turbines (*i.e.*, same manufacturer and model number) is operated, you may request the use of a custom testing schedule by submitting a written request to the Administrator or delegated authority. The minimum requirements of the custom schedule include the conditions specified in paragraphs (b)(5)(i) through (v) of this section.

(i) Emissions from the most recent performance test for each individual affected facility are 75 percent or less of the applicable standard;

(ii) Each stationary combustion turbine uses the same emissions control technology;

(iii) Each stationary combustion turbine is operated in a similar manner;

(iv) Each stationary combustion turbine and its emissions control equipment are maintained according to the manufacturer's recommended maintenance procedures; and

(v) A performance test is conducted on each affected facility at least once every 5 calendar years.

(6) A stationary combustion turbine subject to a NO_x emissions standard in § 60.4320a that exchanges the combustion turbine engine for an overhauled combustion turbine engine as part of an exchange program, must conduct an initial performance test according to § 60.8 using the applicable methods in § 60.4400a or § 60.4405a. (as applicable).

(c) Except as provided for in paragraph (c)(1) or (2) of this section, for each stationary combustion turbine subject to a NO_x emissions standard in § 60.4320a, you must demonstrate continuous compliance using a continuous emissions monitoring system (CEMS) for measuring NO_x emissions according to the provisions in § 60.4345a. If your stationary combustion turbine is equipped with a NO_x CEMS, those measurements must be used to determine excess emissions.

(1) If your stationary combustion turbine uses water or steam injection but not post-combustion controls to meet the applicable NO_x emissions standard in § 60.4320a, you may elect to demonstrate continuous compliance using the pounds per million British thermal units (lb/MMBtu) or parts per million (ppm) input-based standard

according to the provisions in § 60.4335a.

(2) If your stationary combustion turbine does not use water injection, steam injection, or post-combustion controls to meet the applicable NO_x emissions standard in § 60.4320a, you may elect to demonstrate continuous compliance with an input-based standard according to the provisions in § 60.4340a.

(d) An owner or operator of a stationary combustion turbine subject to an SO₂ emissions standard in § 60.4330a must demonstrate compliance using one of the methods specified in paragraphs (d)(1) through (4) of this section.

(1) Conduct an initial performance test according to § 60.8 and use the applicable methods in § 60.4415a. Thereafter, you must conduct subsequent performance tests within 12 calendar months following the date the previous performance test was conducted. An affected facility that has not operated for the 60 calendar days prior to the due date of a performance test is not required to perform the subsequent performance test until 45 calendar days after the next operating day;

(2) Conduct an initial performance test according to § 60.8 and use the applicable methods in § 60.4415a. Thereafter, conduct subsequent fuel sulfur analyses using the applicable methods specified in § 60.4360a and at the frequency specified in § 60.4370a;

(3) Conduct an initial performance test according to § 60.8 and use the applicable methods in § 60.4415a. Thereafter, maintain records (such as a current, valid purchase contract, tariff sheet, or transportation contract) documenting that total sulfur content for the initial and subsequent fuel combusted in your stationary combustion turbine at all times does not exceed applicable conditions specified in § 60.4370a; or

(4) Conduct an initial performance test according to § 60.8 using the applicable methods in § 60.4415a. Thereafter, continue to monitor SO₂ emissions using a CEMS according to the requirements specified in § 60.4374a.

(e) If you elect to comply with an input-based standard (lb/MMBtu or ppm) and your affected facility includes use of one or more heat recovery steam generating units, then you must determine compliance with the applicable NO_x and SO₂ emission standards according to the procedures specified in paragraph (e)(1) or (2) of this section as applicable to the heat recovery steam generating unit

configuration used for your affected facility.

(1) For a configuration where a single combustion turbine engine is exhausted through the heat recovery steam generating unit, you must measure both the emissions at the exhaust stack for the heat recovery steam generating unit and the fuel flow to the combustion turbine engine and any associated duct burners.

(2) For a configuration where two or more combustion turbine engines are exhausted through a single heat recovery steam generating unit, you must measure both the total emissions at the exhaust stack for the heat recovery steam generating unit and the total fuel flow to each combustion turbine engine and any associated duct burners. The applicable emissions standard for the affected facility is equal to the prorated (by heat input) emissions standards of each of the individual combustion turbine engines that are exhausted through the single heat recovery steam generating unit.

(f) If you elect to comply with an output-based standard (lb/MWh) and your affected facility includes use of one or more heat recovery steam generating units, then you must determine compliance with the applicable NO_x and SO₂ emission standards according to the procedures in paragraph (f)(1), (2), or (3) of this section as applicable to the heat recovery steam generating unit configuration used for your affected facility.

(1) For a configuration where a single combustion turbine engine is exhausted through the heat recovery steam generating unit, you must measure both the emissions at the exhaust stack for the heat recovery steam generating unit and the total electrical, mechanical energy, and useful thermal output of the stationary combustion turbine (as applicable).

(2) For a configuration where two or more combustion turbine engines are exhausted through a single heat recovery steam generating unit, you must measure both the total emissions at the exhaust stack for the heat recovery steam generating unit, and the total electrical, mechanical energy, and useful thermal output of the heat recovery steam generating unit and each combustion turbine engine (as applicable). The applicable emissions standard for the affected facility is equal to the most stringent emissions standard for any individual combustion turbine engines.

(3) For a configuration where your combustion turbine engines are exhausted through two or more heat recovery steam generating units which

serve a common steam turbine or steam header, you must measure both the emissions at the exhaust stack for each heat recovery steam generating unit and the total electrical or mechanical energy output of each combustion turbine engine (as applicable). To determine the net or gross energy output of the steam produced by the heat recovery steam generating unit, you must develop a custom method and provide information, satisfactory to the Administrator or delegated authority, apportioning the net or gross energy output of the steam produced by the heat recovery steam generating units to each of the affected stationary combustion turbines.

(g) If you elect to comply with the mass-based standard, you must demonstrate continuous compliance using either a CEMS for measuring NO_x emissions according to the provisions in § 60.4345a or using the methodology in appendix E to part 75 of this chapter.

Monitoring

§ 60.4335a How do I demonstrate compliance with my NO_x emissions standard without using a NO_x CEMS if I use water or steam injection?

If you qualify and elect to demonstrate continuous compliance according to the provisions of § 60.4333a(c)(1), you must install, calibrate, maintain, and operate a continuous monitoring system to monitor and record the fuel consumption and the water or steam to fuel ratio fired in the combustion turbine engine consistent with the requirements in § 60.4342a. Water or steam only needs to be injected when a fuel is being combusted that requires water or steam injection for compliance with the applicable NO_x emissions standard.

§ 60.4340a How do I demonstrate compliance with my NO_x emissions standard without using a NO_x CEMS if I do not use water or steam injection?

(a) If you qualify and elect to demonstrate continuous compliance according to the provisions of § 60.4333a(c)(2), you must demonstrate compliance with the NO_x emissions standard using one of the methods specified in paragraphs (a)(1) through (3) of this section.

(1) Conduct performance tests according to requirements in § 60.4400a;

(2) Monitor the NO_x emissions rate using the methodology in appendix E to part 75 of this chapter, or the low mass emissions methodology in § 75.19 of this chapter; or

(3) Install, calibrate, maintain, and operate an operating parameter

continuous monitoring system according to the requirements specified in paragraph (b) of this section and consistent with the requirements specified in § 60.4342a.

(b) If you opt to demonstrate compliance according to the procedures described in paragraph (a)(3) of this section, continuous operating parameter monitoring must be performed using the methods specified in paragraphs (b)(1) through (4) of this section as applicable to the stationary combustion turbine.

(1) Selection of the operating parameters used to comply with this paragraph (b) must be identified in the performance test report. The selection of operating parameters is subject to the review and approval of the Administrator or delegated authority.

(2) For a lean premix stationary combustion turbine, you must continuously monitor the appropriate parameters to determine whether the unit is operating in low-NO_x mode during periods when low-NO_x operation is required to comply with the applicable emission NO_x standard.

(3) For a stationary combustion turbine other than a lean premix stationary combustion turbine, you must define parameters indicative of the unit's NO_x formation characteristics and monitor these parameters continuously.

(4) You must perform the parametric monitoring described in section 2.3 in appendix E to part 75 of this chapter or in § 75.19(c)(1)(iv)(H) of this chapter.

§ 60.4342a How do I monitor NO_x control operating parameters?

(a) If you monitor steam or water to fuel ratio according to § 60.4335a or other parameters according to § 60.4340a, the applicable parameters must be continuously monitored and recorded during the performance test, to establish acceptable values and ranges. You may supplement the performance test data with engineering analyses, design specifications, manufacturer's recommendations, and other relevant information to define the acceptable parametric ranges more precisely. You must develop and keep on-site a parameter monitoring plan which explains the procedures used to document proper operation of the NO_x emission controls. The plan must include the information specified in paragraphs (a)(1) through (6) of this section:

(1) Identification of the parameters to be monitored and show there is a significant relationship to emissions and proper operation of the NO_x emission controls;

(2) Selected parameter ranges (or designated conditions) indicative of

proper operation of the stationary combustion turbine NO_x emission controls, or describe the process by which such range (or designated condition) will be established;

(3) Explanation of the process you will use to make certain that you obtain data that are representative of the emissions or parameters being monitored (such as detector location, installation specification if applicable);

(4) Description of quality assurance and control practices used to ensure the continuing validity of the data;

(5) Description of the frequency of monitoring and the data collection procedures which you will use (*e.g.*, you are using a computerized data acquisition over a number of discrete data points with the average (or maximum value) being used for purposes of determining whether an exceedance has occurred); and

(6) Justification for the proposed elements of the monitoring. If a proposed performance specification differs from manufacturer recommendation, you must explain the reasons for the differences. You must submit the data supporting the justification, but you may refer to generally available sources of information used to support the justification. You may rely on engineering assessments and other data, provided you demonstrate factors which assure compliance or explain why performance testing is unnecessary to establish indicator ranges.

(b) The water or steam to fuel ratio and parameter continuous monitoring system ranges must be confirmed or reestablished at least once every 60 calendar months following the previous calibration and each time the combustion turbine engine is replaced with an overhauled turbine engine as part of an exchange program. An affected facility that has not operated for 60 calendar days prior to the due date of a recalibration or has had the combustion turbine replaced with an overhauled turbine engine as part of an exchange program is not required to perform the subsequent recalibration until 45 calendar days after the next operating day.

§ 60.4345a How do I demonstrate compliance with my NO_x emissions standard using a NO_x CEMS?

(a) Each CEMS measuring NO_x emissions used to meet the requirements of this subpart, must meet the requirements in paragraphs (a)(1) through (6) of this section.

(1) You must install, certify, maintain, and operate a NO_x monitor to determine the hourly average NO_x emissions in the

units of the standard with which you are complying.

(2) If you elect to comply with an input-based or mass-based emissions standard, you must install, calibrate, maintain, and operate either a fuel flow meter (or flow meters) or an O₂ or CO₂ CEMS and a stack flow monitor to continuously measure the heat input to the affected facility.

(3) If you elect to comply with an output-based emissions standard, you must also install, calibrate, maintain, and operate both a watt meter (or meters) to continuously measure the gross electrical output from the affected facility and either a fuel flow meter (or flow meters) or an O₂ or CO₂ CEMS and a stack flow monitor. If you have a CHP combustion turbine and elect to comply with an output-based emissions standard, you must also install, calibrate, maintain, and operate meters to continuously determine the total useful recovered thermal energy. For steam this includes flow rate, temperature, and pressure. If you have a direct mechanical drive application and elect to comply with the output-based emissions standard you must submit a plan to the Administrator or delegated authority for approval of how energy output will be determined.

(4) If you elect to comply with the part-load NO_x emissions standard, you must install, calibrate, maintain, and operate either a fuel flow meter (or flow meters) or an O₂ or CO₂ CEMS and a stack flow monitor to continuously measure the heat input to the affected facility.

(5) If you elect to comply with the temperature dependent NO_x emissions standard, you must install, calibrate, maintain, and operate a thermometer to continuously monitor the ambient temperature.

(6) If you combust natural gas with fuels other than natural gas and elect to comply with the fuels other than natural gas NO_x emissions standard, you must install, calibrate, maintain, and operate a device to continuously monitor when a fuel other than natural gas fuel is combusted in the combustion turbine engine.

(b) Each NO_x CEMS must be installed and certified according to Performance Specification 2 (PS 2) in appendix B to this part. The span value must be 125 percent of the highest applicable standard or highest anticipated hourly NO_x emissions rate. Alternatively, span values determined according to section 2.1.2 in appendix A to part 75 may be used. For stationary combustion turbines that do not use post-combustion technology to reduce emissions of NO_x to comply with the

requirements of this subpart, you may use NO_x and diluent CEMS that are installed and certified according to appendix A to part 75 in lieu of Procedure 1 in appendix F to this part and the requirements of § 60.13, except that the relative accuracy test audit (RATA) of the CEMS must be performed on a lb/MMBtu basis. For stationary combustion turbines that use post-combustion technology to reduce emissions of NO_x to comply with the requirements of this subpart, you may use NO_x and diluent CEMS that are installed and certified according to appendix A to part 75 in lieu of Procedure 1 in appendix F to this part and the requirements of § 60.13 with approval from the Administrator or delegated authority, except that the relative accuracy test audit (RATA) of the CEMS must be performed on a lb/MMBtu basis.

(c) During each full operating hour, both the NO_x monitor and the diluent monitor must complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each 15-minute quadrant of the hour. For partial operating hours, at least one data point must be obtained with each monitor for each quadrant of the hour in which the unit operates. For operating hours in which required quality assurance and maintenance activities are performed on the CEMS, a minimum of two data points (one in each of two quadrants) are required for each monitor.

(d) Each fuel flow meter must be installed, calibrated, maintained, and operated according to the manufacturer's instructions. Alternatively, fuel flow meters that meet the installation, certification, and quality assurance requirements in appendix D to part 75 of this chapter are acceptable for use under this subpart.

(e) Each watt meter, steam flow meter, and each pressure or temperature measurement device must be installed, calibrated, maintained, and operated according to manufacturer's instructions.

(f) You must develop, submit to the Administrator or delegated authority for approval, maintain, and adhere to an on-site quality assurance (QA) plan for all of the continuous monitoring equipment you use to comply with this subpart. At a minimum, such a QA plan must address the requirements of

§ 60.13(d), (e), and (h). For the CEMS and fuel flow meters, the owner or operator of a stationary combustion turbine that does not use post-combustion technology to reduce emissions of NO_x to comply with the requirements of this subpart may, with approval of the Administrator or delegated authority, satisfy the requirements of this paragraph (f) by implementing the QA program and plan described in section 1 in appendix B to part 75 of this chapter in lieu of the requirements in § 60.13(d)(1).

(g) At a minimum, non-out-of-control CEMS hourly averages shall be obtained for 90 percent of all operating hours on a 30-operating-day rolling average basis.

§ 60.4350a How do I use the NO_x CEMS data to determine excess emissions?

(a) If you demonstrate continuous compliance using a CEMS for measuring NO_x emissions, excess emissions are defined as the applicable compliance period for the stationary combustion turbine (either 4-operating-hours, 30-operating-days, or 12-calendar-month), during which the average NO_x emissions from your affected facility measured by the CEMS is greater than the applicable maximum allowable NO_x emissions standard specified in § 60.4320a as determined using the procedures specified in this section that apply to your stationary combustion turbine.

(b) The NO_x CEMS data for each operating hour as measured according to the requirements in § 60.4345a must be used to determine the hourly average NO_x emissions. The hourly average for a given operating hour is the average of all data points for the operating hour. However, for any periods during which the NO_x, diluent, flow, watt, steam pressure, or steam temperature monitors (as applicable) are out-of-control, the data points are not used in determining the hourly average NO_x emissions. All data points that are not collected during out-of-control periods must be used to determine the hourly average NO_x emissions.

(c) For each operating hour in which an hourly average is obtained, the data acquisition and handling system must calculate and record the hourly average NO_x emissions in units of lb/MMBtu or lbs, as applicable, using the appropriate equation from EPA Method 19 in appendix A–7 to this part. For any hour

in which the hourly average O₂ concentration exceeds 19.0 percent O₂ (or the hourly average CO₂ concentration is less than 1.0 percent CO₂), a diluent cap value of 19.0 percent O₂ or 1.0 percent CO₂ (as applicable) may be used in the emission calculations.

(d) Data used to meet the requirements of this subpart shall not include substitute data values derived from the missing data procedures of part 75 of this chapter, nor shall the data be bias adjusted according to the procedures of part 75. For units complying with the 12-calendar-month mass-based standard, emissions for hours of missing data shall be estimated by using the average emissions rate of non-out-of-control hours within ±10 percent of the hour of missing data within the 12-calendar-month period. If non-out-of-control data is not available, the maximum hourly emissions rate during the 12-calendar-month period shall be used.

(e) All required fuel flow rate, steam flow rate, temperature, pressure, and megawatt data must be reduced to hourly averages. However, for any periods during which the flow, watt, steam pressure, or steam temperature monitors (as applicable) are out-of-control, the data points are not used in determining the appropriate hourly average value.

(f) Calculate the hourly average NO_x emissions rate, in units of the emissions standard under § 60.4320a, using lb/MMBtu or ppm for units complying with the input-based standard, using lbs for units complying with the mass-based standard, or lb/MWh or kg/MWh for units complying with the output-based standard:

(1) The gross or net energy output is calculated as the sum of the total electrical and mechanical energy generated by the combustion turbine engine; the additional electrical or mechanical energy (if any) generated by the steam turbine following the heat recovery steam generating unit; the total useful thermal energy output that is not used to generate additional electricity or mechanical output, expressed in equivalent MWh, minus the auxiliary load as calculated using equations 1 and 2 to this paragraph (f)(1):

Equation 1 to Paragraph (f)(1)

$$P = \frac{(Pe)_t}{T} + \frac{(Pe)_c}{T} - Pe_A + P_s + P_o \text{ (Eq. 1)}$$

Where:

P = Gross or net energy output of the stationary combustion turbine system in MWh;
 (Pe)_i = Electrical or mechanical energy output of the combustion turbine engine in MWh;
 (Pe)_c = Electrical or mechanical energy output (if any) of the steam turbine in MWh;
 Pe_A = Electric energy used for any auxiliary loads in MWh (only applicable to

owners/operators electing to demonstrate compliance on a net output basis);
 P_s = Useful thermal energy of the steam, measured relative to ISO conditions, not used to generate additional electric or mechanical output, in MWh;
 P_o = Other useful heat recovery, measured relative to ISO conditions, not used for steam generation or performance enhancement of the stationary combustion turbine; and

T = Electric Transmission and Distribution Factor. Equal to 0.95 for CHP combustion turbine where at least 20.0 percent of the total gross useful energy output consists of electric or direct mechanical output and 20.0 percent of the total gross useful energy output consists of useful thermal output on an annual basis. Equal to 1.0 for all other combustion turbines.

Equation 2 to Paragraph (f)(1)

$$P_s = \frac{Q_m \times H}{3.413 \times 10^6 \text{ Btu/MWh}} \quad (\text{Eq. 2})$$

Where:

P_s = Useful thermal energy of the steam, measured relative to ISO conditions, not used to generate additional electric or mechanical output, in MWh;
 Q_m = Measured steam flow in lb;
 H = Enthalpy of the steam at measured temperature and pressure relative to ISO conditions, in Btu/lb; and
 3.413 × 10⁶ = Conversion factor from Btu to MWh.

(2) For mechanical drive applications complying with the output-based standard, use equation 3 to this paragraph (f)(2):

Equation 3 to Paragraph (f)(2)

$$E = \frac{(\text{NO}_x)_m}{\text{BL} \times \text{AL}} \quad (\text{Eq. 3})$$

Where:

E = NO_x emissions rate in lb/MWh;
 (NO_x)_m = NO_x emissions rate in lb/h;
 BL = Manufacturer's base load rating of turbine, in MW; and
 AL = Actual load as a percentage of the base load rating.

(g) For each stationary combustion turbine demonstrating compliance on a heat input-based emissions standard, excess NO_x emissions are determined on a 4-operating-hour averaging period basis using the NO_x CEMS data and procedures specified in paragraphs (g)(1) and (2) of this section as applicable to the NO_x emissions standard in table 1 to this subpart.

(1) For each 4-operating-hour period, compute the 4-operating-hour rolling average NO_x emissions as the heat input weighted average of the hourly average of NO_x emissions for a given operating hour and the 3 operating hours preceding that operating hour using the applicable equation in paragraph (g)(2) of this section. Calculate a 4-operating-hour rolling average NO_x emissions rate for any 4-operating-hour period when you have valid CEMS data for at least 3 of those hours (e.g., a valid 4-operating-hour rolling average NO_x emissions rate

cannot be calculated if 1 or more continuous monitors was out-of-control for the entire hour for more than 1 hour during the 4-operating-hour period).

(2) If you elect to comply with the applicable heat input-based emissions rate standard, calculate both the 4-operating-hour rolling average NO_x emissions rate and the applicable 4-operating-hour rolling average NO_x emissions standard, calculated using hourly values in table 1 to this subpart, using equation 4 to this paragraph (g)(2).

Equation 4 to Paragraph (g)(2)

$$E = \frac{\sum_{i=1}^4 (E_i \times Q_i)}{\sum_{i=1}^4 Q_i} \quad (\text{Eq. 4})$$

Where:

E = 4-operating-hour rolling average NO_x emissions (lb/MMBtu or ng/J);
 E_i = Hourly average NO_x emissions rate or emissions standard for operating hour "i" (lb/MMBtu or ng/J); and
 Q_i = Total heat input to stationary combustion turbine for operating hour "i" (MMBtu or J as appropriate).

(h)(1) For each combustion turbine demonstrating compliance on an output-based standard, you must determine excess emissions on a 30-operating-day rolling average basis. The measured emissions rate is the NO_x emissions measured by the CEMS for a given operating day and the 29 operating days preceding that day. Once each day, calculate a new 30-operating-day average measured emissions rate using all hourly average values based on non-out-of-control NO_x emission data for all operating hours during the previous 30-operating-day operating period. Report any 30-operating-day periods for which you have less than 90 percent data availability as monitor downtime. If you elect to comply with

the applicable output-based emissions rate standard, calculate the measured emissions rate using equation 5 to this paragraph (h)(1) and calculate the applicable emissions standard using equation 6 to this paragraph (h)(1). If you elect to comply with the applicable output-based emissions rate standard and determine the heat input on an hourly basis, calculate the 30-operating-day rolling average NO_x emissions rate using equation 5, and determine the applicable 30-operating-day rolling average NO_x emissions standard, calculated using values in table 1 to this subpart, using equation 6. Hours are not subcategorized by load for the purposes of determining the applicable output-based standard. The emissions standard for all hours, regardless of load, is the otherwise applicable full load emissions standard.

Equation 5 to Paragraph (h)(1)

$$E = \frac{\sum_{i=1}^n (E_i \times Q_i)}{\sum_{i=1}^n P_i} \quad (\text{Eq. 5})$$

Where:

E = 30-operating-day average NO_x measured emissions rate combustion turbines (lb/MWh or ng/J);
 E_i = Hourly average NO_x emissions rate or emissions standard for non-out-of-control operating hour "i" (lb/MMBtu or ng/J);
 Q_i = Total heat input to stationary combustion turbine for non-out-of-control operating hour "i" (MMBtu or J as appropriate);
 P_i = Total gross or net energy output from stationary combustion turbine for non-out-of-control operating hour "i" (MWh or J); and
 n = Total number of operating non-out-of-control hours in the 30-operating-day period.

Equation 6 to Paragraph (h)(1)

$$E = E_{NG} \times \frac{H_{NG}}{H_T} + E_{non-NG} \times \frac{H_{non-NG}}{H_T} \quad (\text{Eq. 6})$$

E = 30-operating-day rolling NO_x emissions standard (lb/MWh or kg/MWh);

E_{NG} = 30-operating-day emissions standard for natural gas-fired combustion turbines (lb/MWh or kg/MWh);

E_{non-NG} = 30-operating-day emissions standard for non-natural gas-fired combustion turbines (lb/MWh or kg/MWh);

H_{NG} = Hours of operation combusting natural gas during the 30-operating-day period;

H_{non-NG} = Hours of operation combusting non-natural gas fuels during the 30-operating-day period; and

H_T = Total hours of operation during the 30-operating-day period.

(2) If you elect to comply with the applicable output-based emissions rate standard and elect to not determine the heat input on an hourly basis, the applicable 30-operating-day emissions rolling NO_x standard is the most stringent standard applicable to the combustion turbine. The 30-operating-day rolling NO_x emissions rate is determined as the sum of the hourly emissions divided by the sum of the gross or net output over the 30-operating-day period.

(i) For each combustion turbine demonstrating compliance on a mass-based standard, you must determine excess NO_x emissions on both a rolling

4-operating-hour and rolling 12-calendar-month basis using the NO_x CEMS data and procedures specified in paragraphs (i)(1) through (4) of this section as applicable to the NO_x emissions standard in table 2 to this subpart. In addition, during system emergencies each combustion turbine must determine excess NO_x emissions using the procedures specified in paragraph (i)(5) of this section.

(1) For each 4-operating-hour period, compute the 4-operating-hour rolling NO_x emissions as the sum of the hourly NO_x emissions for a given operating hour and the 3 operating hours preceding that operating hour. Calculate a 4-operating-hour NO_x emissions rate for any 4-operating-hour period when you have valid CEMS data for at least 3 of those hours (e.g., a valid 4-operating-hour rolling NO_x emissions rate cannot be calculated if 1 or more continuous monitors was out-of-control for the entire hour for more than 1 hour during the 4-operating-hour period).

(2) Calculate the applicable 4-operating-hour rolling NO_x emissions standard, calculated using hourly values in table 2 to this subpart, using equation 7 to this paragraph (i)(2).

Equation 7 to Paragraph (i)(2)

$$E = \sum_{i=1}^4 (E_i) \quad (\text{Eq. 7})$$

Where:

E = 4-operating-hour rolling NO_x emissions (kg or lbs); and

E_i = Hourly NO_x emissions rate or emissions standard for operating hour “i” (kg or lbs).

(3) For each 12-calendar-month period, compute the 12-calendar-month rolling NO_x emissions as the sum of the hourly NO_x emissions for a given month and the 11 calendar months preceding the calendar month. Emissions during system emergencies are not included when calculating the 12-calendar-month emissions rate.

(4) Calculate the applicable 12-calendar-month rolling NO_x emissions standard, calculated using hourly values in table 2 to this subpart, using equation 8 to this paragraph (i)(4). Heat input during system emergencies is not included when calculating the 12-calendar-month emissions standard.

Equation 8 to Paragraph (i)(4)

$$E = E_{NG} \times \frac{H_{NG}}{H_T} + E_{Non-NG} \times \frac{H_{non-NG}}{H_T} \quad (\text{Eq. 8})$$

Where:

E = 12-calendar-month rolling NO_x emissions (tonnes or tons);

E_{NG} = 12-calendar-month emissions standard for natural gas-fired combustion turbines (tonnes or tons);

E_{non-NG} = 12-calendar-month emissions standard for non-natural gas-fired combustion turbines (tonnes or tons);

H_{NG} = Hours of operation combusting natural gas during the 12-calendar-month period;

H_{non-NG} = Hours of operation combusting non-natural gas fuels during the 12-calendar-month period; and

H_T = Total hours of operation during the 12-calendar-month period.

(5) During system emergencies during which the owner or operator elects to not include emissions or heat input in the 12-calendar month calculations, the applicable average natural gas-fired emissions standard is 0.83 lb NO_x/MW-rated output (1.8 lb NO_x/MW-rated output when firing non-natural gas) or the current emissions rate necessary to comply with the 12-calendar month

natural gas-fired emissions standard of 0.48 tons NO_x/MW-rated output (0.81 tons NO_x/MW-rated output when firing non-natural gas) whichever is more stringent. For example, if a combustion turbine operated for 4,000 hours during the current 12-calendar month period the applicable average natural gas-fired emissions standard during the system emergency would be 0.24 lb NO_x/MW-rated output and the applicable average non-natural gas-fired emissions standard during the system emergency would be 0.41 lb NO_x/MW-rated output.

§ 60.4360a How do I use fuel sulfur analysis to determine the total sulfur content of the fuel combusted in my stationary combustion turbine?

(a) If you elect to demonstrate compliance with a SO₂ emissions standard according to § 60.4333a(d)(2), the fuel analyses may be performed either by you, a service contractor retained by you, the fuel vendor, or any other qualified agency as determined by

the Administrator or delegated authority using the sampling frequency specified in § 60.4370a.

(b) Representative fuel analysis samples may be collected either by an automatic sampling system or manually. For automatic sampling, follow ASTM D5287–97 (Reapproved 2002) (incorporated by reference, see § 60.17) for gaseous fuels or ASTM D4177–95 (Reapproved 2000) (incorporated by reference, see § 60.17) for liquid fuels. For reference purposes when manually collecting gaseous samples, see Gas Processors Association Standard 2166–17 (incorporated by reference, see § 60.17). For reference purposes when manually collecting liquid samples, see either Gas Processors Association Standard 2174–14 or the procedures for manual pipeline sampling in section 14 of ASTM D4057–95 (Reapproved 2000) (both of which are incorporated by reference, see § 60.17).

(c) Each collected fuel analysis sample must be analyzed for the total

sulfur content of the fuel and heating value using the methods specified in paragraph (c)(1) or (2) of this section, as applicable to the fuel type.

(1) For the sulfur content of liquid fuels, ASTM D129–00 (Reapproved 2005), or alternatively D1266–98 (Reapproved 2003), D1552–03, D2622–05, D4294–03, D5453–05, D5623–24, or D7039–24 (all of which are incorporated by reference, see § 60.17). For the heating value of liquid fuels, ASTM D240–19 or D4809–18 (both of which are incorporated by reference, see § 60.17); or

(2) For the sulfur content of gaseous fuels, ASTM D1072–90 (Reapproved 1999), or alternatively D3246–05, D4468–85 (Reapproved 2000), D6667–04, or D5504–20 (all of which are incorporated by reference, see § 60.17). If the total sulfur content of the gaseous fuel during the most recent compliance demonstration was less than half the applicable standard, ASTM D4084–05, D4810–88 (Reapproved 1999), D5504–20, or D6228–98 (Reapproved 2003), or Gas Processors Association Standard 2140–17 or 2377–86 (all of which are incorporated by reference, see § 60.17), which measure the major sulfur compounds, may be used. For the heating value of gaseous fuels, ASTM D1826–94 (Reapproved 2003), or alternatively D3588–98 (Reapproved 2003), D4891–89 (Reapproved 2006), or Gas Processors Association Standard 2172–09 (all of which are incorporated by reference, see § 60.17).

§ 60.4370a How frequently must I determine the fuel sulfur content?

(a) If you are complying with requirements in § 60.4360a, the total sulfur content of all fuels combusted in each stationary combustion turbine subject to an SO₂ emissions standard in § 60.4330a must be determined according to the schedule specified in paragraph (a)(1) or (2) of this section, as applicable to the fuel type, unless you determine a custom schedule for the stationary combustion turbine according to paragraph (b) of this section.

(1) Use one of the total sulfur sampling options and the associated sampling frequency described in sections 2.2.3, 2.2.4.1, 2.2.4.2, and 2.2.4.3 in appendix D to part 75 of this chapter (*i.e.*, flow proportional sampling, daily sampling, sampling from the unit's storage tank after each addition of fuel to the tank or sampling each delivery prior to combining it with liquid fuel already in the intended storage tank).

(2) If the fuel is supplied without intermediate bulk storage, the sulfur content value of the gaseous fuel must

be determined and recorded once per operating day.

(b) As an alternative to the requirements of paragraph (a) of this section, you may implement custom schedules for determination of the total sulfur content of gaseous fuels, based on the design and operation of the affected facility and the characteristics of the fuel supply using the procedures provided in either paragraph (b)(1) or (2) of this section. Either you or the fuel vendor may perform the sampling. As an alternative to using one of these procedures, you may use a custom schedule that has been substantiated with data and approved by the Administrator or delegated authority as a change in monitoring prior to being used to comply with the applicable standard in § 60.4330a.

(1) You may determine and implement a custom sulfur sampling schedule for your stationary combustion turbine using the procedure specified in paragraphs (b)(1)(i) through (iv) of this section.

(i) Obtain daily total sulfur content measurements for 30 consecutive operating days, using the applicable methods specified in this subpart. Based on the results of the 30 daily samples, the required frequency for subsequent monitoring of the fuel's total sulfur content must be as specified in paragraph (b)(1)(ii), (iii), or (iv) of this section, as applicable.

(ii) If none of the 30 daily measurements of the fuel's total sulfur content exceeds half the applicable standard, subsequent sulfur content monitoring may be performed at 12-month intervals provided the fuel source or supplier does not change. If any of the samples taken at 12-month intervals has a total sulfur content greater than half but less than the applicable standard, follow the procedures in paragraph (b)(1)(iii) of this section. If any measurement exceeds the applicable standard, follow the procedures in paragraph (b)(1)(iv) of this section.

(iii) If at least one of the 30 daily measurements of the fuel's total sulfur content is greater than half but less than the applicable standard, but none exceeds the applicable standard, then:

(A) Collect and analyze a sample every 30 days for 3 months. If any sulfur content measurement exceeds the applicable standard, follow the procedures in paragraph (b)(1)(iv) of this section. Otherwise, follow the procedures in paragraph (b)(1)(iii)(B) of this section.

(B) Begin monitoring at 6-month intervals for 12 months. If any sulfur content measurement exceeds the

applicable standard, follow the procedures in paragraph (b)(1)(iv) of this section. Otherwise, follow the procedures in paragraph (b)(1)(iii)(C) of this section.

(C) Begin monitoring at 12-month intervals. If any sulfur content measurement exceeds the applicable standard, follow the procedures in paragraph (b)(1)(iv) of this section. Otherwise, continue to monitor at this frequency.

(iv) If a sulfur content measurement exceeds the applicable standard, immediately begin daily monitoring according to paragraph (b)(1)(i) of this section. Daily monitoring must continue until 30 consecutive daily samples, each having a sulfur content no greater than the applicable standard, are obtained. At that point, the applicable procedures of paragraph (b)(1)(ii) or (iii) of this section must be followed.

(2) You may use the data collected from the 720-hour sulfur sampling demonstration described in section 2.3.6 in appendix D to part 75 of this chapter to determine and implement a sulfur sampling schedule for your stationary combustion turbine using the procedure specified in paragraphs (b)(2)(i) through (iii) of this section.

(i) If the maximum fuel sulfur content obtained from any of the 720 hourly samples does not exceed half the applicable standard, then the minimum required sampling frequency must be one sample at 12-month intervals.

(ii) If any sample result exceeds half the applicable standard, but none exceeds the applicable standard, follow the provisions of paragraph (b)(1)(iii) of this section.

(iii) If the sulfur content of any of the 720 hourly samples exceeds the applicable standard, follow the provisions of paragraph (b)(1)(iv) of this section.

§ 60.4372a How can I demonstrate compliance with my SO₂ emissions standard using records of the fuel sulfur content?

(a) If you elect to demonstrate compliance with a SO₂ emissions standard according to § 60.4333a(d)(3), you must maintain on-site records (such as a current, valid purchase contract, tariff sheet, or transportation contract) documenting that total sulfur content for the fuel combusted in your stationary combustion turbine at all times does not exceed the conditions specified in paragraph (b) through (e) of this section, as applicable to your stationary combustion turbine.

(b) If your stationary combustion turbine is subject to the SO₂ emissions standard in § 60.4330a(a), then the fuel

combusted must have a potential SO₂ emissions rate of 26 ng/J (0.060 lb/MMBtu) heat input or less.

(c) If your stationary combustion turbine is subject to the SO₂ emissions standard in § 60.4330a(b), then the total sulfur content of the gaseous fuel combusted must be 650 (mg/scm) (28 gr/100 scf).

(d) If your stationary combustion turbine is subject to the SO₂ emissions standard in § 60.4330a(c) or (d), the total sulfur content of the fuel combusted must be:

(1) For natural gas, 140 gr/100 scf or less.

(2) For fuel oil, 0.40 weight percent (4,000 ppmw) or less.

(3) For other fuels, potential SO₂ emissions of 180 ng/J (0.42 lb/MMBtu) heat input or less.

(e) Representative fuel sampling data following the procedures specified in section 2.3.1.4 or 2.3.2.4 in appendix D to part 75 of this chapter documenting that the fuel meets the part 75 requirements to be considered either pipeline natural gas or natural gas. Your stationary combustion turbine may not cause to be discharged into the atmosphere any gases that contain SO₂ in excess of:

(1) 110 ng SO₂/J (0.90 lb SO₂/MWh) gross energy output or 26 ng SO₂/J (0.060 lb SO₂/MMBtu) heat input; or

(2) 780 ng SO₂/J (6.2 lb SO₂/MWh) gross energy output or 180 ng SO₂/J (0.42 lb SO₂/MMBtu) heat input if your combustion turbine is in a noncontinental area.

§ 60.4374a How do I demonstrate compliance with my SO₂ emissions standard and determine excess emissions using a SO₂ CEMS?

(a) If you demonstrate continuous compliance using a CEMS for measuring SO₂ emissions, excess emissions are defined as the applicable averaging period, either 4-operating-hour or 30-operating-day, during which the average SO₂ emissions from your stationary combustion turbine measured by the

CEMS exceeds the applicable SO₂ emissions standard specified in § 60.4330a as determined using the procedures specified in this section that apply to your stationary combustion turbine.

(b) You must install, calibrate, maintain, and operate a CEMS for measuring SO₂ concentrations and either O₂ or CO₂ concentrations at the outlet of your stationary combustion turbine, and record the output of the system.

(c) The 1-hour average SO₂ emissions rate measured by a CEMS must be expressed in ng/J or lb/MMBtu heat input and must be used to calculate the average emissions rate under § 60.4330a.

(d) You must use the procedures for installation, evaluation, and operation of the CEMS as specified in § 60.13 and paragraphs (d)(1) through (3) of this section.

(1) Each CEMS must be operated according to the applicable procedures under Performance Specifications 1, 2, and 3 in appendix B to this part;

(2) Quarterly accuracy determinations and daily calibration drift tests must be performed according to Procedure 1 in appendix F to this part; and

(3) The span value of the SO₂ CEMS at the outlet from the SO₂ control device (or outlet of the stationary combustion turbine if no SO₂ control device is used) must be 125 percent of either the highest applicable standard or highest potential SO₂ emissions rate of the fuel combusted. Alternatively, SO₂ span values determined according to section 2.1.1 in appendix A to part 75 of this chapter may be used.

(e) If you have installed and certified a SO₂ CEMS that meets the requirements of part 75 of this chapter, the Administrator or delegated authority can approve that only quality assured data from the CEMS must be used to identify excess emissions under this subpart. You must report periods where the missing data substitution procedures in subpart D of part 75 are applied as monitoring system downtime in the

excess emissions and monitoring performance report required under § 60.7(c).

(f) All required fuel flow rate, steam flow rate, temperature, pressure, and megawatt data must be reduced to hourly averages.

(g) Calculate the hourly average SO₂ emissions rate, in units of the emissions standard under § 60.4330a, using lb/MMBtu for units complying with the input-based standard or using equation 1 to paragraph (g)(1) of this section for units complying with the output-based standard:

(1) For simple cycle operation:

Equation 1 to Paragraph (g)(1)

$$E = \frac{(SO_2)_h \times Q}{P} \quad (\text{Eq. 1})$$

Where:

E = Hourly SO₂ emissions rate, in lb/MWh;
(SO₂)_h = Average hourly SO₂ emissions rate, in lb/MMBtu;

Q = Hourly heat input rate to the stationary combustion turbine, in MMBtu, measured using the fuel flow meter(s), e.g., calculated using Equation D-15a in appendix D to part 75 of this chapter, an O₂ or CO₂ CEMS and a stack flow monitor, or the methodologies in appendix F to part 75 of this chapter; and

P = Gross or net energy output of the stationary combustion turbine in MWh.

(2) The gross or net energy output is calculated as the sum of the total electrical and mechanical energy generated by the stationary combustion turbine; the additional electrical or mechanical energy (if any) generated by the steam turbine following the heat recovery steam generating unit; the total useful thermal energy output that is not used to generate additional electricity or mechanical output, expressed in equivalent MWh, minus the auxiliary load as calculated using equations 2 and 3 to this paragraph (g)(2); and any auxiliary load.

Equation 2 to Paragraph (g)(2)

$$P = \frac{(Pe)_t}{T} + \frac{(Pe)_c}{T} - Pe_A + P_s + P_o \quad (\text{Eq. 2})$$

Where:

P = Gross energy output of the stationary combustion turbine system in MWh;

(Pe)_t = Electrical or mechanical energy output of the stationary combustion turbine in MWh;

(Pe)_c = Electrical or mechanical energy output (if any) of the steam turbine in MWh;

Pe_A = Electric energy used for any auxiliary loads in MWh;

P_s = Useful thermal energy of the steam, measured relative to ISO conditions, not used to generate additional electric or mechanical output, in MWh;

P_o = Other useful heat recovery, measured relative to ISO conditions, not used for steam generation or performance enhancement of the stationary combustion turbine; and

T = Electric Transmission and Distribution Factor. Equal to 0.95 for CHP combustion turbine where at least 20.0 percent of the total gross useful energy output consists of electric or direct mechanical output and 20.0 percent of the total gross useful energy output consists of useful thermal output on an annual basis. Equal to 1.0 for all other combustion turbines.

Equation 3 to Paragraph (g)(2)

$$P_s = \frac{Q_m \times H}{3.413 \times 10^6 \text{ Btu/MWh}} \quad (\text{Eq. 3})$$

Where:

P_s = Useful thermal energy of the steam, measured relative to ISO conditions, not used to generate additional electric or mechanical output, in MWh;

Q_m = Measured steam flow rate in lb;

H = Enthalpy of the steam at measured temperature and pressure relative to ISO conditions, in Btu/lb; and

3.413×10^6 = Conversion factor from Btu to MWh.

(3) For mechanical drive applications complying with the output-based standard, use equation 4 to this paragraph (g)(3):

Equation 4 to Paragraph (g)(3)

$$E = \frac{(\text{SO}_2)_m}{\text{BL} \times \text{AL}} \quad (\text{Eq. 4})$$

Where:

E = SO_2 emissions rate in lb/MWh;

$(\text{SO}_2)_m$ = SO_2 emissions rate in lb/h;

BL = Manufacturer's base load rating of turbine, in MW; and

AL = Actual load as a percentage of the base load rating.

(h) For each stationary combustion turbine demonstrating compliance on a heat input-based emissions standard, excess SO_2 emissions are determined on a 4-operating-hour averaging period basis using the SO_2 CEMS data and procedures specified in paragraphs (i)(1) and (2) of this section and as applicable to the SO_2 emission standard.

(1) For each 4-operating-hour period, compute the 4-operating-hour rolling average SO_2 emissions as the heat input weighted average of the hourly average of SO_2 emissions for a given operating hour and the 3 operating hours preceding that operating hour using the applicable equation in paragraph (i)(2) of this section. Calculate a 4-operating-hour rolling average SO_2 emissions rate for any 4-operating-hour period when you have valid CEMS data for at least 3 of those hours (e.g., a valid 4-operating-hour rolling average SO_2 emissions rate cannot be calculated if 1 or more continuous monitors was out-of-control for the entire hour for more than 1 hour during the 4-operating-hour period).

(2) If you elect to comply with the applicable heat input-based emissions rate standard, calculate both the 4-operating-hour rolling average SO_2 emissions rate and the applicable 4-operating-hour rolling average SO_2 emission standard using equation 5 to this paragraph (h)(2).

Equation 5 to Paragraph (h)(2)

$$E = \frac{\sum_{i=1}^4 (E_i \times Q_i)}{\sum_{i=1}^4 Q_i} \quad (\text{Eq. 5})$$

Where:

E = 4-operating-hour rolling average SO_2 emissions (lb/MMBtu or ng/J);

E_i = Hourly average SO_2 emissions rate or emissions standard for operating hour "i" (lb/MMBtu or ng/J); and

Q_i = Total heat input to stationary combustion turbine for operating hour "i" (MMBtu or J as appropriate).

(i) For each combustion turbine demonstrating compliance on an output-based standard, you must determine excess emissions on a 30-operating-day rolling average basis. The measured emissions rate is the SO_2 emissions measured by the CEMS for a given operating day and the 29 operating days preceding that day. Once each operating day, calculate a new 30-operating-day average measured emissions rate using all hourly average values based on non-out-of-control SO_2 emission data for all operating hours during the previous 30-operating-day operating period. Report any 30-operating-day periods for which you have less than 90 percent data availability as monitor downtime. Calculate both the 30-operating-day rolling average SO_2 emissions rate and the applicable 30-operating-day rolling average SO_2 emissions standard using equation 6 to this paragraph (i).

Equation 6 to Paragraph (i)

$$E = \frac{\sum_{i=1}^n (E_i \times Q_i)}{\sum_{i=1}^n P_i} \quad (\text{Eq. 6})$$

Where:

E = 30-operating-day average SO_2 measured emissions rate (lb/MWh or ng/J);

E_i = Hourly average SO_2 measured emissions rate for non-out-of-control operating hour "i" (lb/MMBtu or ng/J);

Q_i = Total heat input to stationary combustion turbine for non-out-of-control operating hour "i" (MMBtu or J as appropriate);

P_i = Total gross energy output from stationary combustion turbine for non-out-of-control operating hour "i" (MWh or J); and

n = Total number of non-out-of-control operating hours in the 30-operating-day period.

(j) At a minimum, non-out-of-control CEMS hourly averages shall be obtained for 90 percent of all operating hours on a 30-operating-day rolling average basis.

Recordkeeping and Reporting

§ 60.4375a What reports must I submit?

(a) An owner or operator of a stationary combustion turbine that elects to continuously monitor parameters or emissions, or to periodically determine the fuel sulfur content under this subpart, must submit reports of excess emissions and monitor downtime, according to § 60.7(c). Excess emissions must be reported for all periods of unit operation, including startup, shutdown, and malfunction.

(b) The notification requirements of § 60.8 apply to the initial and subsequent performance tests.

(c) An owner or operator of an affected facility complying with § 60.4333a(b)(3) must notify the Administrator or delegated authority within 15 calendar days after the facility recommences operation.

(d) An owner or operator of an affected facility complying with § 60.4333a(b)(4) must notify the Administrator or delegated authority within 15 calendar days after the facility has operated more than 168 operating hours since the date the previous performance test was required to be conducted.

(e) Within 60 days after the date of completing each performance test or continuous emissions monitoring systems (CEMS) performance evaluation that includes a relative accuracy test audit (RATA), you must submit the results following the procedures specified in paragraph (g) of this section. You must submit the report in a file format generated using the EPA's Electronic Reporting Tool (ERT). Alternatively, you may submit an electronic file consistent with the extensible markup language (XML) schema listed on the EPA's ERT website (<https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert>) accompanied by the other information required by § 60.8(f)(2) in PDF format.

(f) You must submit to the Administrator semiannual reports of the following recorded information. Beginning on January 15, 2027, or once the report template for this subpart has

been available on the Compliance and Emissions Data Reporting Interface (CEDRI) website (<https://www.epa.gov/electronic-reporting-air-emissions/cedri>) for one year, whichever date is later, submit all subsequent reports using the appropriate electronic report template on the CEDRI website for this subpart and following the procedure specified in paragraph (g) of this section. The date report templates become available will be listed on the CEDRI website. Unless the Administrator or delegated State agency or other authority has approved a different schedule for submission of reports, the report must be submitted by the deadline specified in this subpart, regardless of the method in which the report is submitted.

(g) If you are required to submit notifications or reports following the procedure specified in this paragraph (g), you must submit notifications or reports to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI), which can be accessed through the EPA's Central Data Exchange (CDX) (<https://cdx.epa.gov/>). The EPA will make all the information submitted through CEDRI available to the public without further notice to you. Do not use CEDRI to submit information you claim as CBI. Although we do not expect persons to assert a claim of CBI, if you wish to assert a CBI claim for some of the information in the report or notification, you must submit a complete file in the format specified in this subpart, including information claimed to be CBI, to the EPA following the procedures in paragraphs (g)(1) and (2) of this section. Clearly mark the part or all of the information that you claim to be CBI. Information not marked as CBI may be authorized for public release without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. All CBI claims must be asserted at the time of submission. Anything submitted using CEDRI cannot later be claimed CBI. Furthermore, under CAA section 114(c), emissions data is not entitled to confidential treatment, and the EPA is required to make emissions data available to the public. Thus, emissions data will not be protected as CBI and will be made publicly available. You must submit the same file submitted to the CBI office with the CBI omitted to the EPA via the EPA's CDX as described earlier in this paragraph (g).

(1) The preferred method to receive CBI is for it to be transmitted electronically using email attachments, File Transfer Protocol, or other online file sharing services. Electronic submissions must be transmitted

directly to the OAQPS CBI Office at the email address oaqps_cbi@epa.gov, and as described above, should include clear CBI markings. ERT files should be flagged to the attention of the Group Leader, Measurement Policy Group; all other files should be flagged to the attention of the Stationary Combustion Turbine Sector Lead. If assistance is needed with submitting large electronic files that exceed the file size limit for email attachments, and if you do not have your own file sharing service, please email oaqps_cbi@epa.gov to request a file transfer link.

(2) If you cannot transmit the file electronically, you may send CBI information through the postal service to the following address: U.S. EPA, Attn: OAQPS Document Control Officer, Mail Drop: C404-02, 109 T.W. Alexander Drive, P.O. Box 12055, RTP, NC 27711. In addition to the OAQPS Document Control Officer, ERT files should also be sent to the attention of the Group Leader, Measurement Policy Group, and all other files should also be sent to the attention of the Stationary Combustion Turbine Sector Lead. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope.

(h) If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of EPA system outage for failure to timely comply with that reporting requirement. To assert a claim of EPA system outage, you must meet the requirements outlined in paragraphs (h)(1) through (7) of this section.

(1) You must have been or will be precluded from accessing CEDRI and submitting a required report within the time prescribed due to an outage of either the EPA's CEDRI or CDX systems.

(2) The outage must have occurred within the period of time beginning 5 business days prior to the date that the submission is due.

(3) The outage may be planned or unplanned.

(4) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(5) You must provide to the Administrator a written description identifying:

(i) The date(s) and time(s) when CDX or CEDRI was accessed and the system was unavailable;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to EPA system outage;

(iii) A description of measures taken or to be taken to minimize the delay in reporting; and

(iv) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(6) The decision to accept the claim of EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(7) In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved.

(i) If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of *force majeure* for failure to timely comply with that reporting requirement. To assert a claim of *force majeure*, you must meet the requirements outlined in paragraphs (i)(1) through (5) of this section.

(1) You may submit a claim if a *force majeure* event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning 5 business days prior to the date the submission is due. For the purposes of this section, a *force majeure* event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents you from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (e.g., hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility (e.g., large scale power outage).

(2) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(3) You must provide to the Administrator:

(i) A written description of the *force majeure* event;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to the *force majeure* event;

(iii) A description of measures taken or to be taken to minimize the delay in reporting; and

(iv) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(4) The decision to accept the claim of *force majeure* and allow an extension

to the reporting deadline is solely within the discretion of the Administrator.

(5) In any circumstance, the reporting must occur as soon as possible after the *force majeure* event occurs.

(j) Any records required to be maintained by this subpart that are submitted electronically via the EPA's CEDRI may be maintained in electronic format. This ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to a delegated air agency or the EPA as part of an on-site compliance evaluation.

§ 60.4380a How are NO_x excess emissions and monitor downtime reported?

(a) For a stationary combustion turbine that uses water or steam to fuel ratio monitoring and is subject to the reporting requirements under § 60.4375a(a), periods of excess emissions and monitor downtime must be reported as specified in paragraphs (a)(1) through (3) of this section.

(1) An excess emission that must be reported is any operating hour for which the 4-operating-hour rolling average steam or water to fuel ratio, as measured by the continuous monitoring system, is less than the acceptable steam or water to fuel ratio needed to demonstrate compliance with § 60.4320a, as established during the most recent performance test. Any operating hour during which no water or steam is injected into the turbine when the specific conditions require water or steam injection for NO_x control will also be considered an excess emission.

(2) A period of monitor downtime that must be reported is any operating hour in which water or steam is injected into the turbine, but the parametric data needed to determine the steam or water to fuel ratio are unavailable or out-of-control.

(3) Each report must include the average steam or water to fuel ratio, average fuel consumption, and the stationary combustion turbine load during each excess emission.

(b) For reports required under § 60.4375a(a), periods of excess emissions and monitor downtime for stationary combustion turbines using a CEMS, excess emissions are reported as specified in paragraphs (b)(1) and (2) of this section.

(1) An excess emission that must be reported is any unit operating period in which the 4-operating-hour average NO_x emissions rate, 30-operating-day rolling average NO_x emissions rate, 4-hour mass-based emissions rate, or the 12-calendar-month mass-based

emissions rate exceeds the applicable emissions standard in § 60.4320a as determined in § 60.4350a.

(2) A period of monitor downtime that must be reported is any operating hour in which the data for any of the following parameters that you use to calculate the emission rate, as applicable, used to determine compliance, are either missing or out-of-control: NO_x concentration, CO₂ or O₂ concentration, stack flow rate, heat input rate, steam flow rate, steam temperature, steam pressure, or megawatts. You are only required to monitor parameters used for compliance purposes.

(c) For reports required under § 60.4375a(a), periods of excess emissions and monitor downtime for stationary combustion turbines using combustion parameters or parameters that document proper operation of the NO_x emission controls excess emissions and monitor downtime are reported as specified in paragraphs (c)(1) and (2) of this section.

(1) Excess emissions that must be reported are each 4-operating-hour rolling average in which any monitored parameter (as averaged over the 4-operating-hour period) does not achieve the target value or is outside the acceptable range defined in the parameter monitoring plan for the unit.

(2) Periods of monitor downtime that must be reported are each operating hour in which any of the required parametric data that are used to calculate the emission rate, as applicable, used to determine compliance, are either not recorded or are out-of-control.

§ 60.4385a How are SO₂ excess emissions and monitor downtime reported?

(a) If you choose the option to monitor the sulfur content of the fuel, excess emissions and monitor downtime are defined as follows:

(1) For samples obtained using daily sampling, flow proportional sampling, or sampling from the unit's storage tank, excess emissions occur each operating hour included in the period beginning on the date and hour of any sample for which the sulfur content of the fuel being fired in the stationary combustion turbine exceeds the applicable standard and ending on the date and hour that a subsequent sample is taken that demonstrates compliance with the sulfur standard.

(2) If the option to sample each delivery of fuel oil has been selected, you must immediately switch to one of the other oil sampling options (*i.e.*, daily sampling, flow proportional sampling, or sampling from the unit's storage tank)

if the sulfur content of a delivery exceeds 0.05 weight percent, 0.15 weight percent, or 0.40 weight percent as applicable. You must continue to use one of the other sampling options until all of the oil from the delivery has been combusted, and you must evaluate excess emissions according to paragraph (a) of this section. When all of the fuel from the delivery has been combusted, you may resume using the as-delivered sampling option.

(3) A period of monitor downtime begins when a required sample is not taken by its due date. A period of monitor downtime also begins on the date and hour of a required sample, if invalid results are obtained. The period of monitor downtime ends on the date and hour of the next valid sample.

(b) If you choose the option to maintain records of the fuel sulfur content, excess emissions are defined as any period during which you combust a fuel that you do not have appropriate fuel records or that fuel contains sulfur greater than the applicable standard.

(c) For reports required under § 60.4375a(a), periods of excess emissions and monitor downtime for stationary combustion turbines using a CEMS, excess emissions are reported as specified in paragraphs (c)(1) and (2) of this section.

(1) An excess emission that must be reported is any unit operating period in which the 4-operating-hour or 30-operating-day rolling average SO₂ emissions rate exceeds the applicable emissions standard in § 60.4330a as determined in § 60.4374a.

(2) A period of monitor downtime that must be reported is any operating hour in which the data for any of the following parameters that you use to calculate the emission rate, as applicable, used to determine compliance, are either missing or out-of-control: SO₂ concentration, CO₂ or O₂ concentration, stack flow rate, heat input rate, steam flow rate, steam temperature, steam pressure, or megawatts. You are only required to monitor parameters used for compliance purposes.

§ 60.4390a What records must I maintain?

(a) You must maintain records of your information used to demonstrate compliance with this subpart as specified in § 60.7.

(b) An owner or operator of a stationary combustion turbine that uses the other fuels, part-load, or low temperature NO_x standards in the compliance demonstration must maintain concurrent records of the hourly heat input, percent load, ambient

temperature, and emissions data as applicable.

(c) An owner or operator of a stationary combustion turbine that uses the tuning NO_x standard in the compliance demonstration must identify the hours on which the maintenance was performed and a description of the maintenance.

(d) An owner or operator of a stationary combustion turbine that demonstrates compliance using the output-based standard must maintain concurrent records of the total gross or net energy output and emissions data.

(e) An owner or operator of a stationary combustion turbine that demonstrates compliance using the water or steam to fuel ratio or a parameter continuous monitoring system must maintain continuous records of the appropriate parameters.

(f) An owner or operator of a stationary combustion turbine

complying with the fuel-based SO₂ standard must maintain records of the results of all fuel analyses or a current, valid purchase contract, tariff sheet, or transportation contract.

§ 60.4395a When must I submit my reports?

Consistent with § 60.7(c), all reports required under § 60.7(c) must be electronically submitted via CEDRI by the 30th day following the end of each 6-month period.

Performance Tests

§ 60.4400a How do I conduct performance tests to demonstrate compliance with my NO_x emissions standard if I do not have a NO_x CEMS?

(a) You must conduct the performance test according to the requirements in § 60.8 and paragraphs (b) through (d) of this section.

(b) You must use the methods in either paragraph (b)(1) or (2) of this section to measure the NO_x concentration for each test run.

(1) Measure the NO_x concentration using EPA Method 7E in appendix A–4 to this part, EPA Method 20 in appendix A–7 to this part, EPA Method 320 in appendix A to part 63 of this chapter, or ASTM D6348–12 (Reapproved 2020) (incorporated by reference, see § 60.17). For units complying with the output-based standard, concurrently measure the stack gas flow rate, using EPA Methods 1 and 2 in appendix A–1 to this part, and measure and record the electrical and thermal output from the unit. Then, use equation 1 to this paragraph (b)(1) to calculate the NO_x emissions rate:

Equation 1 to Paragraph (b)(1)

$$E = \frac{1.194 \times 10^{-7} \times (\text{NO}_x)_c \times Q_{\text{std}}}{P} \quad (\text{Eq. 1})$$

Where:

E = NO_x emissions rate, in lb/MWh;

1.194×10^{-7} = Conversion constant, in lb/dscf-ppm;

(NO_x)_c = Average NO_x concentration for the run, in ppm;

Q_{std} = Average stack gas volumetric flow rate, in dscf/h; and

P = Average gross or net electrical and mechanical energy output of the stationary combustion turbine, in MW (for simple cycle operation), for combined cycle operation, the sum of all electrical and mechanical output from the combustion and steam turbines, or, for CHP operation, the sum of all electrical and mechanical output from the combustion and steam turbines plus all useful recovered thermal output not used for additional electric or mechanical generation or to enhance the performance of the stationary combustion turbine, in MW, calculated according to § 60.4350a.

(2) Measure the NO_x and diluent gas concentrations using either EPA Method 7E in appendix A–4 to this part and EPA Method 3A in appendix A–2 to this part, or EPA Method 20 in appendix A–7 to this part. In addition, when only natural gas is being combusted ASTM D6522–20 (incorporated by reference, see § 60.17) can be used instead of EPA Method 3A in appendix A–2 to this part or EPA Method 20 in appendix A–7 to this part to determine the oxygen content in the exhaust gas. Concurrently measure the heat input to the unit, using a fuel flowmeter (or flowmeters), an O₂ or CO₂ CEMS along with a stack flow

monitor, or the methodologies in appendix F to part 75 of this chapter, and for units complying with the output-based standard measure the electrical, mechanical, and thermal output of the unit. Use EPA Method 19 in appendix A–7 to this part to calculate the NO_x emissions rate in lb/MMBtu. Then, use equations 1 and, if necessary, 2 and 3 in § 60.4350a(f) to calculate the NO_x emissions rate in lb/MWh.

(c) You must use the methods in either paragraph (c)(1) or (2) of this section to select the sampling traverse points for NO_x and (if applicable) diluent gas.

(1) You must select the sampling traverse points for NO_x and (if applicable) diluent gas according to EPA Method 20 in appendix A–7 to this part or EPA Method 1 in appendix A–1 to this part (non-particulate procedures) and sampled for equal time intervals. The sampling must be performed with a traversing single-hole probe, or, if feasible, with a stationary multi-hole probe that samples each of the points sequentially. Alternatively, a multi-hole probe designed and documented to sample equal volumes from each hole may be used to sample simultaneously at the required points.

(2) As an alternative to paragraph (c)(1) of this section, you may select the sampling traverse points for NO_x and (if applicable) diluent gas according to requirements in paragraphs (c)(2)(i) and (ii) of this section.

(i) You perform a stratification test for NO_x and diluent pursuant to the procedures specified in section 6.5.6.1(a) through (e) in appendix A to part 75 of this chapter.

(ii) Once the stratification sampling is completed, you use the following alternative sample point selection criteria for the performance test specified in paragraphs (c)(2)(ii)(A) through (C) of this section.

(A) If each of the individual traverse point NO_x concentrations is within ±10 percent of the mean concentration for all traverse points, or the individual traverse point diluent concentrations differs by no more than ±0.5 percent CO₂ (or O₂) from the mean for all traverse points, then you may use three points (located either 16.7, 50.0 and 83.3 percent of the way across the stack or duct, or, for circular stacks or ducts greater than 2.4 meters (7.8 feet) in diameter, at 0.4, 1.2, and 2.0 meters from the wall). The three points must be located along the measurement line that exhibited the highest average NO_x concentration during the stratification test; or

(B) For a stationary combustion turbine subject to a NO_x emissions standard greater than 15 ppm at 15 percent O₂, you may sample at a single point, located at least 1 meter from the stack wall or at the stack centroid if each of the individual traverse point NO_x concentrations is within ±5 percent of the mean concentration for all

traverse points, or the individual traverse point diluent concentrations differs by no more than ± 0.3 percent CO_2 (or O_2) from the mean for all traverse points; or

(C) For a stationary combustion turbine subject to a NO_x emissions standard less than or equal to 15 ppm at 15 percent O_2 , you may sample at a single point, located at least 1 meter from the stack wall or at the stack centroid if each of the individual traverse point NO_x concentrations is within ± 2.5 percent of the mean concentration for all traverse points, or the individual traverse point diluent concentrations differs by no more than ± 0.15 percent CO_2 (or O_2) from the mean for all traverse points.

(d) The performance test must be done at any load condition within ± 25 percent of 100 percent of the base load rating. You may perform testing at the highest achievable load point, if at least 75 percent of the base load rating cannot be achieved in practice. You must conduct three separate test runs for each performance test. The minimum time per run is 20 minutes.

(1) If the stationary combustion turbine combusts both natural gas and fuels other than natural gas as primary or backup fuels, separate performance testing is required for each fuel.

(2) For a combined cycle or CHP combustion turbine with supplemental heat (duct burner), you must measure the total NO_x emissions downstream of the duct burner. The duct burner must be in operation within ± 25 percent of 100 percent of the base load rating of the duct burners or the highest achievable load if at least 75 percent of the base load rating of the duct burners cannot be achieved during the performance test.

(3) If water or steam injection is used to control NO_x with no additional post-combustion NO_x control and you choose to monitor the steam or water to fuel ratio in accordance with § 60.4335a, then that monitoring system must be operated concurrently with each EPA Method 20 in appendix A-7 to this part or EPA Method 7E in appendix A-4 to

this part run and must be used to determine the fuel consumption and the steam or water to fuel ratio necessary to comply with the applicable § 60.4320a NO_x emissions standard.

(4) If you elect to install a CEMS, the performance evaluation of the CEMS may either be conducted separately or (as described in § 60.4405a) as part of the initial performance test of the affected unit.

(5) The ambient temperature must be greater than 0°F during the performance test. The Administrator or delegated authority may approve performance testing below 0°F if the timing of the required performance test and environmental conditions make it impractical to test at ambient conditions greater than 0°F .

§ 60.4405a How do I conduct a performance test if I use a NO_x CEMS?

(a) If you use a CEMS the performance test must be performed according to the procedures specified in paragraph (b) of this section.

(b) The initial performance test must use the procedure specified in paragraphs (b)(1) through (4) of this section.

(1) Perform a minimum of nine RATA reference method runs, with a minimum time per run of 21 minutes, at a single load level, within ± 25 percent of 100 percent of the base load rating while the source is combusting the fuel that is a normal primary fuel for that source. You may perform testing at the highest achievable load point, if at least 75 percent of the base load rating cannot be achieved in practice. The ambient temperature must be greater than 0°F during the RATA runs. The Administrator or delegated authority may approve performance testing below 0°F if the timing of the required performance test and environmental conditions make it impractical to test at ambient conditions greater than 0°F .

(2) For each RATA run, concurrently measure the heat input to the unit using a fuel flow meter (or flow meters) or the methodologies in appendix F to part 75

of this chapter, and for units complying with the output-based standard, measure the electrical and thermal output from the unit.

(3) Use the test data both to demonstrate compliance with the applicable NO_x emissions standard under § 60.4320a and to provide the required reference method data for the RATA of the CEMS described under § 60.4342a.

(4) Compliance with the applicable emissions standard in § 60.4320a is achieved if the sum of the NO_x emissions divided by the heat input (or gross or net energy output) for all the RATA runs, expressed in units of lb/MMBtu, ppm, lb/MWh, or kgs, does not exceed the emissions standard.

§ 60.4415a How do I conduct performance tests to demonstrate compliance with my SO_2 emissions standard?

(a) If you are an owner or operator of an affected facility complying with the fuel-based standard must submit fuel records (such as a current, valid purchase contract, tariff sheet, transportation contract, or results of a fuel analysis) to satisfy the requirements of § 60.8.

(b) If you are an owner or operator of an affected facility complying with the SO_2 emissions standard must conduct the performance test by measuring the SO_2 emissions in the stationary combustion turbine exhaust gases using the methods in either paragraph (b)(1) or (2) of this section.

(1) Measure the SO_2 concentration using EPA Method 6, 6C, or 8 in appendix A-4 to this part or EPA Method 20 in appendix A-7 to this part. For units complying with the output-based standard, concurrently measure the stack gas flow rate, using EPA Methods 1 and 2 in appendix A-1 to this part, and measure and record the electrical and thermal output from the unit. Then use equation 1 to this paragraph (b)(1) to calculate the SO_2 emissions rate:

Equation 1 to Paragraph (b)(1)

$$E = \frac{1.664 \times 10^{-7} \times (\text{SO}_2)_c \times Q_{std}}{P} \quad (\text{Eq. 1})$$

Where:

E = SO_2 emissions rate, in lb/MWh;

1.664×10^{-7} = Conversion constant, in lb/dscf-ppm;

$(\text{SO}_2)_c$ = Average SO_2 concentration for the run, in ppm;

Q_{std} = Average stack gas volumetric flow rate, in dscf/h; and

P = Average gross electrical and mechanical energy output of the stationary combustion turbine, in MW (for simple cycle operation), for combined cycle operation, the sum of all electrical and mechanical output from the combustion and steam turbines, or, for CHP operation, the sum of all electrical and

mechanical output from the combustion and steam turbines plus all useful recovered thermal output not used for additional electric or mechanical generation or to enhance the performance of the stationary combustion turbine, in MW, calculated according to § 60.4350a(f)(2).

(2) Measure the SO₂ and diluent gas concentrations, using either EPA Method 6, 6C, or 8 in appendix A–4 to this part and EPA Method 3A in appendix A–2 to this part, or EPA Method 20 in appendix A–7 to this part. Concurrently measure the heat input to the unit, using a fuel flowmeter (or flowmeters), an O₂ or CO₂ CEMS along with a stack flow monitor, or the methodologies in appendix F to part 75 of this chapter, and for units complying with the output based standard measure the electrical and thermal output of the unit. Use EPA Method 19 in appendix A–7 to this part to calculate the SO₂ emissions rate in lb/MMBtu. Then, use equations 1 and, if necessary, 2, 3, and 4 in § 60.4374a to calculate the SO₂ emissions rate in lb/MWh.

Other Requirements and Information

§ 60.4416a What parts of the general provisions apply to my affected EGU?

(a) Notwithstanding any other provision of this chapter, certain parts of the general provisions in §§ 60.1 through 60.19, listed in table 2 to this subpart, do not apply to your affected combustion turbine.

(b) Small, medium, and low utilization large combustion turbines that are subject to this subpart and are not a “major source” or located at a “major source” (as that term is defined at 42 U.S.C. 7661(2)) are exempt from the requirements of 42 U.S.C. 7661a(a).

§ 60.4417a Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the EPA, or a delegated authority such as your State, local, or Tribal agency. If the Administrator has delegated authority to your State, local, or Tribal agency, then that agency, (as well as the EPA) has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out if this subpart is delegated to your State, local, or Tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency, the Administrator retains the authorities listed in paragraphs (b)(1) through (6) of this section and does not transfer them to the State, local, or Tribal agency. In addition, the EPA retains oversight of this subpart and can take enforcement actions, as appropriate.

(1) Approval of alternatives to the emissions standards.

(2) Approval of major alternatives to test methods.

(3) Approval of major alternatives to monitoring.

(4) Approval of major alternatives to recordkeeping and reporting.

(5) Performance test and data reduction waivers under § 60.8(b).

(6) Approval of an alternative to any electronic reporting to the EPA required by this subpart.

§ 60.4420a What definitions apply to this subpart?

As used in this subpart, all terms not defined in this section will have the meaning given them in the Clean Air Act and in subpart A of this part.

Annual capacity factor means the ratio between the actual heat input to a stationary combustion turbine during a calendar year and the potential heat input to the stationary combustion turbine had it been operated for 8,760 hours during a calendar year at the base load rating. Heat input during a system emergency as defined in § 60.4420a is excluded when determining the annual capacity factor. Actual and potential heat input derived from non-combustion sources (e.g., solar thermal) are not included when calculating the annual capacity factor.

Base load rating means 100 percent of the manufacturer's design heat input capacity of the combustion turbine engine at ISO conditions using the higher heating value of the fuel. The base load rating does not include any potential heat input to an HRSG.

Biogas means gas produced by the anaerobic digestion or fermentation of organic matter including manure, sewage sludge, municipal solid waste, biodegradable waste, or any other biodegradable feedstock, under anaerobic conditions. Biogas is comprised primarily of methane and CO₂.

Byproduct means any liquid or gaseous substance produced at chemical manufacturing plants, petroleum refineries, pulp and paper mills, or other industrial facilities (except natural gas and fuel oil).

Combined cycle combustion turbine means any stationary combustion turbine which recovers heat from the combustion turbine engine exhaust gases to generate steam that is used to create additional electric power output in a steam turbine.

Combined heat and power (CHP) combustion turbine means any stationary combustion turbine which recovers heat from the combustion turbine engine exhaust gases to heat water or another medium, generate steam for useful purposes other than exclusively for additional electric generation, or directly uses the heat in the exhaust gases for a useful purpose.

Combustion turbine engine means the air compressor, combustor, and turbine sections of a stationary combustion turbine.

Combustion turbine test cell/stand means any apparatus used for testing uninstalled stationary or uninstalled mobile (motive) combustion turbines.

Diffusion flame stationary combustion turbine means any stationary combustion turbine where fuel and air are injected at the combustor and are mixed only by diffusion prior to ignition.

Distillate oil means fuel oils that comply with the specifications for fuel oil numbers 1 or 2, as defined in ASTM D396–98 (incorporated by reference, see § 60.17), diesel fuel oil numbers 1 or 2, as defined in ASTM D975–08a (incorporated by reference, see § 60.17), kerosene, as defined in ASTM D3699–08 (incorporated by reference, see § 60.17), biodiesel as defined in ASTM D6751–11b (incorporated by reference, see § 60.17), or biodiesel blends as defined in ASTM D7467–10 (incorporated by reference, see § 60.17).

District energy system means a central plant producing hot water, steam, and/or chilled water, which then flows through a network of insulated pipes to provide hot water, space heating, and/or air conditioning for commercial, institutional, or residential buildings.

Dry standard cubic foot (dscf) means the quantity of gas, free of uncombined water, that would occupy a volume of 1 cubic foot at 293 Kelvin (20 °C, 68 °F) and 101.325 kPa (14.69 psi, 1 atm) of pressure.

Duct burner means a device that combusts fuel and that is placed in the exhaust duct from another source, such as a stationary combustion turbine, internal combustion engine, kiln, etc., to allow the firing of additional fuel to heat the exhaust gases.

Emergency combustion turbine means any stationary combustion turbine which operates in an emergency situation. Examples include stationary combustion turbines used to produce power for critical networks or equipment, including power supplied to portions of a facility, when electric power from the local utility is interrupted, or stationary combustion turbines used to pump water in the case of fire (e.g., firefighting turbine) or flood, etc. Emergency combustion turbines may be operated for maintenance checks and readiness testing to retain their status as emergency combustion turbines, provided that the tests are recommended by Federal, State, or local government, agencies, or departments, voluntary consensus standards, the manufacturer, the vendor, the regional

transmission organization or equivalent balancing authority and transmission operator, or the insurance company associated with the combustion turbine. Required testing of such units should be minimized, but there is no time limit on the use of emergency combustion turbines. Emergency combustion turbines do not include combustion turbines used as peaking units at electric utilities or combustion turbines at industrial facilities that typically operate at low capacity factors.

Excess emissions means a specified averaging period over which either:

(1) The NO_x or SO₂ emissions rate are higher than the applicable emissions standard in § 60.4320a or § 60.4330a;

(2) The total sulfur content of the fuel being combusted in the affected facility or the SO₂ emissions exceeds the standard specified in § 60.4330a; or

(3) The recorded value of a particular monitored parameter, including the water or steam to fuel ratio, is outside the acceptable range specified in the parameter monitoring plan for the affected unit.

Federally enforceable means all limitations and conditions that are enforceable by the Administrator or delegated authority, including the requirements of this part and part 61 of this chapter, requirements within any applicable State Implementation Plan, and any permit requirements established under § 52.21 or §§ CFR 51.18 and 51.24 of this chapter.

Firefighting combustion turbine means any stationary combustion turbine that is used solely to pump water for extinguishing fires.

Fuel oil means a fluid mixture of hydrocarbons that maintains a liquid state at ISO conditions. Additionally, fuel oil must meet the definition of either distillate oil (as defined in this subpart) or liquefied petroleum (LP) gas as defined in ASTM D1835–03a (incorporated by reference, see § 60.17).

Garrison facility means any permanent military installation.

Gross energy output means:

(1) For simple cycle and combined cycle combustion turbines, the gross useful work performed is the gross electrical or direct mechanical output from both the combustion turbine engine and any associated steam turbine(s).

(2) For a CHP combustion turbine, the gross useful work performed is the gross electrical or direct mechanical output from both the combustion turbine engine and any associated steam turbine(s) plus any useful thermal output measured relative to ISO conditions that is not used to generate additional electrical or mechanical

output or to enhance the performance of the unit (i.e., steam delivered to an industrial process).

(3) For a CHP combustion turbine where at least 20.0 percent of the total gross useful energy output consists of useful thermal output on an annual basis, the gross useful work performed is the gross electrical or direct mechanical output from both the combustion turbine engine and any associated steam turbine(s) divided by 0.95 plus any useful thermal output measured relative to ISO conditions that is not used to generate additional electrical or mechanical output or to enhance the performance of the unit (i.e., steam delivered to an industrial process).

(4) For a district energy CHP combustion turbine where at least 20.0 percent of the total gross useful energy output consists of useful thermal output on a 12-calendar-month basis, the gross useful work performed is the gross electrical or direct mechanical output from both the combustion turbine engine and any associated steam turbine(s) divided by 0.95 plus any useful thermal output measured relative to ISO conditions that is not used to generate additional electrical or mechanical output or to enhance the performance of the unit (e.g., steam delivered to an industrial process) divided by 0.95.

Heat recovery steam generating unit (HRSG) means a unit where the hot exhaust gases from the combustion turbine engine are routed in order to extract heat from the gases and generate useful output. Heat recovery steam generating units can be used with or without duct burners. A heat recovery steam generating unit operating independent of the combustion turbine engine may operate burners using ambient air.

High-utilization source means a new medium or large stationary combustion turbine with a 12-calendar-month capacity factor greater than 45 percent.

Integrated gasification combined cycle electric utility steam generating unit (IGCC) means an electric utility steam generating unit that combusts solid-derived fuels in a combined cycle combustion turbine. No solid fuel is directly combusted in the unit during operation.

ISO conditions mean 288 Kelvin (15 °C, 59 °F), 60 percent relative humidity, and 101.325 kilopascals (14.69 psi, 1 atm) pressure.

Large combustion turbine means a stationary combustion turbine with a base load rating greater than 850 MMBtu/h of heat input.

Lean premix stationary combustion turbine means any stationary combustion turbine where the air and fuel are thoroughly mixed to form a lean mixture before delivery to the combustor. Mixing may occur before or in the combustion chamber. A lean premixed turbine may operate in diffusion flame mode during operating conditions such as startup and shutdown, extreme ambient temperature, or low or transient load.

Low-Btu gas means biogas or any gas with a heating value of less than 26 megajoules per standard cubic meter (MJ/scm) (700 Btu/scf).

Low-utilization source means a new medium or large stationary combustion turbine with a 12-calendar-month capacity factor less than or equal to 45 percent.

Medium combustion turbine means a stationary combustion turbine with a base load rating greater than 50 MMBtu/h and less than or equal to 850 MMBtu/h of heat input.

Natural gas means a fluid mixture of hydrocarbons, composed of at least 70 percent methane by volume, that has a gross calorific value between 35 and 41 MJ/scm (950 and 1,100 Btu/scf), and that maintains a gaseous state under ISO conditions. Unless processed to meet this definition of natural gas, natural gas does not include the following gaseous fuels: Landfill gas, digester gas, refinery gas, sour gas, blast furnace gas, coal-derived gas, producer gas, coke oven gas, or any gaseous fuel produced in a process which might result in highly variable CO₂ content or heating value.

Net-electric output means the amount of gross generation the generator(s) produces (including, but not limited to, output from steam turbine(s), combustion turbine(s), and gas expander(s)), as measured at the generator terminals, less the electricity used to operate the plant (i.e., auxiliary loads); such uses include fuel handling equipment, pumps, fans, pollution control equipment, other electricity needs, and transformer losses as measured at the transmission side of the step up transformer (e.g., the point of sale).

Net energy output means:

(1) The net electric or mechanical output from the affected facility plus 100 percent of the useful thermal output; or

(2) For CHP facilities, where at least 20.0 percent of the total gross or net energy output consists of useful thermal output on a 12-calendar-month rolling average basis, the net electric or mechanical output from the affected turbine divided by 0.95, plus 100 percent of the useful thermal output.

(3) For district energy CHP facilities, where at least 20.0 percent of the total gross or net energy output consists of useful thermal output on a 12-calendar-month rolling average basis, the net electric or mechanical output from the affected turbine divided by 0.95, plus 100 percent of the useful thermal output divided by 0.95.

Noncontinental area means the State of Hawaii, the Virgin Islands, Guam, American Samoa, the Commonwealth of Puerto Rico, the Northern Mariana Islands, or offshore turbines.

Offshore turbine means a stationary combustion turbine located on a platform or facility in an ocean, territorial sea, the outer continental shelf, or the Great Lakes of North America and stationary combustion turbines located in a coastal management zone and elevated on a platform.

Operating day means a 24-hour period between midnight and the following midnight during which any fuel is combusted at any time in the unit. It is not necessary for fuel to be combusted continuously for the entire 24-hour period.

Operating hour means a clock hour during which any fuel is combusted in the affected unit. If the unit combusts fuel for the entire clock hour, the operating hour is a full operating hour. If the unit combusts fuel for only part of the clock hour, the operating hour is a partial operating hour.

Out-of-control period means any period beginning with the hour corresponding to the completion of a daily calibration error, linearity check, or quality assurance audit that indicates that the instrument is not measuring and recording within the applicable performance specifications and ending with the hour corresponding to the completion of an additional calibration error, linearity check, or quality assurance audit following corrective action that demonstrates that the instrument is measuring and recording within the applicable performance specifications.

Simple cycle combustion turbine means any stationary combustion turbine which does not recover heat from the combustion turbine engine exhaust gases for purposes other than enhancing the performance of the stationary combustion turbine itself.

Small combustion turbine means a stationary combustion turbine with a base load rating less than or equal to 50 MMBtu/h of heat input.

Solid fuel means any fuel that has a definite shape and volume, has no tendency to flow or disperse under moderate stress, and is not liquid or

gaseous at ISO conditions. This includes, but is not limited to, coal, biomass, and pulverized solid fuels.

Stationary combustion turbine means all equipment including, but not limited to, the combustion turbine engine, the fuel, air, lubrication and exhaust gas systems, control systems (except post combustion emissions control equipment), heat recovery system (including heat recovery steam generators and duct burners); steam turbine; fuel compressor and/or pump, any ancillary components and sub-components comprising any simple cycle stationary combustion turbine, any combined cycle combustion turbine, and any combined heat and power combustion turbine based system; plus any integrated equipment that provides electricity or useful thermal output to the combustion turbine engine (e.g., onsite photovoltaics), heat recovery system, or auxiliary equipment. Stationary means that the combustion turbine is not self-propelled or intended to be propelled while performing its function. It may, however, be mounted on a vehicle for portability. Portable combustion turbines are excluded from the definition of "stationary combustion turbine," and not regulated under this part, if the turbine meets the definition of "nonroad engine" under title II of the Clean Air Act and applicable regulations and is certified to meet emissions standards promulgated pursuant to title II of the Clean Air Act, along with all related requirements.

Standard cubic foot (scf) means the quantity of gas that would occupy a volume of 1 cubic foot at 293 Kelvin (20.0 °C, 68 °F) and 101.325 kPa (14.69 psi, 1 atm) of pressure.

Standard cubic meter (scm) means the quantity of gas that would occupy a volume of 1 cubic meter at 293 Kelvin (20.0 °C, 68 °F) and 101.325 kPa (14.69 psi, 1 atm) of pressure.

System emergency means periods when the Reliability Coordinator has declared an Energy Emergency Alert level 1, 2, or 3, which should follow NERC Reliability Standard EOP-011-2, its successor, or equivalent.

Temporary combustion turbine means a combustion turbine that is intended to and remains at a single stationary source (or group of stationary sources located within a contiguous area and under common control) for 24 consecutive months or less.

Turbine tuning means planned maintenance or parameter performance testing of a combustion turbine engine involving adjustment of the operating configuration to maintain proper combustion dynamics or testing

machine operating performance. Turbine tuning is limited to 30 hours annually.

Useful thermal output means the thermal energy made available for use in any heating application (e.g., steam delivered to an industrial process for a heating application, including thermal cooling applications) that is not used for electric generation or mechanical output at the affected facility to directly enhance the performance of the affected facility (e.g., economizer output is not useful thermal output, but thermal energy used to reduce fuel moisture is considered useful thermal output) or to supply energy to a pollution control device at the affected facility (e.g., steam provided to a carbon capture system would not be considered useful thermal output). Useful thermal output for affected facilities with no condensate return (or other thermal energy input to affected facilities) or where measuring the energy in the condensate (or other thermal energy input to the affected facilities) would not meaningfully impact the emission rate calculation is measured against the energy in the thermal output at SATP conditions (e.g. liquid water). Affected facilities with meaningful energy in the condensate return (or other thermal energy input to the affected facility) must measure the energy in the condensate and subtract that energy relative to SATP conditions from the measured thermal output.

Valid data means quality-assured data generated by continuous monitoring systems that are installed, operated, and maintained according to this part or part 75 of this chapter as applicable. For CEMS maintained according to part 75, the initial certification requirements in § 75.20 and appendix A to part 75 must be met before quality-assured data are reported under this subpart; for on-going quality assurance, the daily, quarterly, and semiannual/annual test requirements in sections 2.1, 2.2, and 2.3 of appendix B to part 75 must be met and the data validation criteria in sections 2.1.5, 2.2.3, and 2.3.2 of appendix B to part 75 must be met. For fuel flow meters maintained according to part 75, the initial certification requirements in section 2.1.5 of appendix D to part 75 must be met before quality-assured data are reported under this subpart (except for qualifying commercial billing meters under section 2.1.4.2 of appendix D to part 75), and for on-going quality assurance, the provisions in section 2.1.6 of appendix D to part 75 apply (except for qualifying commercial billing meters). Any out-of-control data is not considered valid data.

TABLE 1 TO SUBPART KKKKa OF PART 60—NITROGEN OXIDE EMISSION STANDARDS FOR STATIONARY COMBUSTION TURBINES

Combustion turbine type	Combustion turbine base load rated heat input (HHV)	Input-based NO _x emission standard ¹	Optional output-based NO _x standard ²
New, firing natural gas with utilization rate >45 percent.	>850 MMBtu/h	5 ppm at 15 percent O ₂ or 7.9 ng/J (0.018 lb/MMBtu).	0.054 kg/MWh-gross (0.12 lb/MWh-gross) 0.055 kg/MWh-net (0.12 lb/MWh-net).
New, firing natural gas with utilization rate ≤45 percent and with design efficiency ≥38 percent.	>850 MMBtu/h	25 ppm at 15 percent O ₂ or 40 ng/J (0.092 lb/MMBtu).	0.38 kg/MWh-gross (0.83 lb/MWh-gross) 0.39 kg/MWh-net (0.85 lb/MWh-net).
New, firing natural gas with utilization rate ≤45 percent and with design efficiency <38 percent.	>850 MMBtu/h	9 ppm at 15 percent O ₂ or 14 ng/J (0.033 lb/MMBtu).	0.17 kg/MWh-gross (0.37 lb/MWh-gross) 0.17 kg/MWh-net (0.38 lb/MWh-net).
New, modified, or reconstructed, firing non-natural gas.	>850 MMBtu/h	42 ppm at 15 percent O ₂ or 70 ng/J (0.16 lb/MMBtu).	0.45 kg/MWh-gross (1.0 lb/MWh-gross) 0.46 kg/MWh-net (1.0 lb/MWh-net).
Modified or reconstructed, firing natural gas, at all utilization rates, with design efficiency ≥38 percent.	>850 MMBtu/h	25 ppm at 15 percent O ₂ or 40 ng/J (0.092 lb/MMBtu).	0.38 kg/MWh-gross (0.83 lb/MWh-gross) 0.39 kg/MWh-net (0.85 lb/MWh-net).
Modified or reconstructed, firing natural gas, at all utilization rates, with design efficiency <38 percent.	>850 MMBtu/h	15 ppm at 15 percent O ₂ or 24 ng/J (0.055 lb/MMBtu).	0.28 kg/MWh-gross (0.62 lb/MWh-gross) 0.29 kg/MWh-net (0.30 lb/MWh-net).
New, firing natural gas, at utilization rate >45 percent.	>50 MMBtu/h and ≤850 MMBtu/h.	15 ppm at 15 percent O ₂ or 24 ng/J (0.055 lb/MMBtu).	0.20 kg/MWh-gross (0.43 lb/MWh-gross) 0.20 kg/MWh-net (0.44 lb/MWh-net).
New, firing natural gas, at utilization rate ≤45 percent.	>50 MMBtu/h and ≤850 MMBtu/h.	25 ppm at 15 percent O ₂ or 40 ng/J (0.092 lb/MMBtu).	0.54 kg/MWh-gross (1.2 lb/MWh-gross) 0.56 kg/MWh-net (1.2 lb/MWh-net).
Modified or reconstructed, firing natural gas	>20 MMBtu/h and ≤850 MMBtu/h.	42 ppm at 15 percent O ₂ or 67 ng/J (0.15 lb/MMBtu).	0.91 kg/MWh-gross (2.0 lb/MWh-gross) 0.92 kg/MWh-net (2.0 lb/MWh-net).
New, firing non-natural gas	>50 MMBtu/h and ≤850 MMBtu/h.	74 ppm at 15 percent O ₂ or 120 ng/J (0.29 lb/MMBtu).	1.6 kg/MWh-gross (3.6 lb/MWh-gross) 1.6 kg/MWh-net (3.7 lb/MWh-net).
Modified or reconstructed, firing non-natural gas ..	>20 MMBtu/h and ≤850 MMBtu/h.	96 ppm at 15 percent O ₂ or 160 ng/J (0.37 lb/MMBtu).	2.1 kg/MWh-gross (4.7 lb/MWh-gross) 2.2 kg/MWh-net (4.8 lb/MWh-net).
New, firing natural gas	≤50 MMBtu/h	25 ppm at 15 percent O ₂ or 40 ng/J (0.092 lb/MMBtu).	0.64 kg/MWh-gross (1.4 lb/MWh-gross) 0.65 kg/MWh-net (1.4 lb/MWh-net).
New, firing non-natural gas	≤50 MMBtu/h	96 ppm at 15 percent O ₂ or 160 ng/J (0.37 lb/MMBtu).	2.4 kg/MWh-gross (5.3 lb/MWh-gross) 2.5 kg/MWh-net (5.4 lb/MWh-net).
Modified or reconstructed, all fuels	≤20 MMBtu/h	150 ppm at 15 percent O ₂ or 240 ng/J (0.55 lb/MMBtu).	3.9 kg/MWh-gross (8.7 lb/MWh-gross) 4.0 kg/MWh-net (8.9 lb/MWh-net).
New, firing natural gas, either offshore turbines, turbines bypassing the heat recovery unit, and/or temporary turbines.	>50 MMBtu/h	25 ppm at 15 percent O ₂ or 40 ng/J (0.092 lb/MMBtu).	N/A.
Located north of the Arctic Circle (latitude 66.5 degrees north), operating at ambient temperatures less than 0° F (–18° C), modified or reconstructed offshore turbines, operated during periods of turbine tuning, byproduct-fired turbines, and/or operating at less than 70 percent of the base load rating.	≤300 MMBtu/h	150 ppm at 15 percent O ₂ or 240 ng/J (0.55 lb/MMBtu).	N/A.
Located north of the Arctic Circle (latitude 66.5 degrees north), operating at ambient temperatures less than 0° F (–18° C), modified or reconstructed offshore turbines, operated during periods of turbine tuning, byproduct-fired turbines, and/or operating at less than 70 percent of the base load rating.	>300 MMBtu/h	96 ppm at 15 percent O ₂ or 150 ng/J (0.35 lb/MMBtu).	N/A.
Heat recovery units operating independent of the combustion turbine.	All sizes	54 ppm at 15 percent O ₂ or 86 ng/J (0.20 lb/MMBtu).	N/A.

¹ Input-based standards are determined on a 4-operating-hour rolling average basis.² Output-based standards are determined on a 30-operating-day average basis.TABLE 2 TO SUBPART KKKKa OF PART 60—ALTERNATIVE MASS-BASED NO_x EMISSION STANDARDS FOR STATIONARY COMBUSTION TURBINES

Combustion turbine type	4-Hour emissions rate (lb NO _x /MW-rated output)	12-Calendar-month emissions rate (ton NO _x /MW-rated output)
Natural Gas	0.38 kg NO _x /MW-rated output (0.83 lb NO _x /MW-rated output).	0.44 tonne NO _x /MW-rated output (0.48 ton NO _x /MW-rated output).
Non-Natural Gas	0.82 kg NO _x /MW-rated output (1.8 lb NO _x /MW-rated output).	0.74 tonne NO _x /MW-rated output (0.81 ton NO _x /MW-rated output).

TABLE 3 TO SUBPART KKKKa OF PART 60—APPLICABILITY OF SUBPART A OF THIS PART TO THIS SUBPART

General provisions citation	Subject of citation	Applies to subpart KKKKa	Explanation
§ 60.1	Applicability	Yes.	Additional terms defined in § 60.4420a.
§ 60.2	Definitions	Yes	
§ 60.3	Units and Abbreviations	Yes.	

TABLE 3 TO SUBPART KKKKa OF PART 60—APPLICABILITY OF SUBPART A OF THIS PART TO THIS SUBPART—Continued

General provisions citation	Subject of citation	Applies to subpart KKKKa	Explanation
§ 60.4	Address	Yes	Does not apply to information reported electronically through ECMPS. Duplicate submittals are not required.
§ 60.5	Determination of construction or modification.	Yes.	
§ 60.6	Review of plans	Yes.	
§ 60.7	Notification and Recordkeeping	Yes	Only the requirements to submit the notifications in § 60.7(a)(1) and (3) and to keep records of malfunctions in § 60.7(b), if applicable.
§ 60.8(a)	Performance tests	Yes.	
§ 60.8(b)	Performance test method alternatives	Yes	Administrator can approve alternate methods.
§ 60.8(c)	Conducting performance tests	No	
§ 60.8(d)–(f)	Conducting performance tests	Yes.	Overridden by § 60.4320a(d).
§ 60.9	Availability of Information	Yes.	
§ 60.10	State authority	Yes.	Administrator can approve alternative monitoring procedures or requirements.
§ 60.11	Compliance with standards and maintenance requirements.	No.	
§ 60.12	Circumvention	Yes.	Administrator can approve alternative monitoring procedures or requirements.
§ 60.13(a)–(h), (j)	Monitoring requirements	Yes.	
§ 60.13(i)	Monitoring requirements	Yes	
§ 60.14	Modification	Yes.	Does not apply to notifications under § 75.61 of this chapter or to information reported through ECMPS.
§ 60.15	Reconstruction	Yes.	
§ 60.16	Priority list	No.	
§ 60.17	Incorporations by reference	Yes.	
§ 60.18	General control device requirements	Yes.	
§ 60.19	General notification and reporting requirements.	Yes	

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Part IV

Environmental Protection Agency

40 CFR Part 121

Updating the Water Quality Certification Regulations; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 121

[EPA-HQ-OW-2025-2929; FRL-6976.2-01-OW]

RIN 2040-AG47

Updating the Water Quality Certification Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is publishing this proposed rule to update and clarify several substantive and procedural requirements for water quality certification under Clean Water Act (CWA or the Act) section 401. CWA section 401 is a direct grant of authority to States (and Tribes that have been approved for “treatment as a State” status) to review for compliance with appropriate Federal, State, and Tribal water quality requirements any discharge into waters of the United States that may result from a proposed activity that requires a Federal license or permit. This proposed rule is intended to clarify several aspects of the certification process consistent with the statutory framework.

DATES: Comments must be received on or before February 17, 2026. Comments on the information collection provisions of the proposed rule under the Paperwork Reduction Act (PRA) must be received by the Office of Management and Budget’s Office of Information and Regulatory Affairs (OMB-OIRA) on or before February 17, 2026. Please refer to the PRA section under “Statutory and Executive Order Reviews” in this preamble for specific instructions. *Public meeting:* EPA will hold a virtual public meeting following publication of this proposed action. Please refer to the **SUPPLEMENTARY INFORMATION** section for additional information on the public meeting.

ADDRESSES: You may send comments, identified by Docket ID No. EPA-HQ-OW-2025-2929, by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov/> (our preferred method). Follow the online instructions for submitting comments.

- *Email:* OW-Docket@epa.gov. Include Docket ID No. EPA-HQ-OW-2025-2929 in the subject line of the message.

- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Water Docket, Mail Code 28221T, 1200

Pennsylvania Avenue NW, Washington, DC 20460.

- *Hand Delivery/Courier:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center’s hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. EPA-HQ-OW-2025-2929 for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

The virtual meeting will be held after publication of the proposed action; the date and time will be available at <https://www.epa.gov/cwa-401>. Refer to the **SUPPLEMENTARY INFORMATION** section below for additional information.

FOR FURTHER INFORMATION CONTACT: Lauren Kasparek, Oceans, Wetlands, and Communities Division, Office of Water (4504-T), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 564-3351; email address: cwa401@epa.gov.

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I. Executive Summary

A. Purpose of the Proposed Regulatory Action

The U.S. Environmental Protection Agency is seeking public comment on a proposed rule that would revise several procedural and substantive aspects of the *Clean Water Act Section 401 Water Quality Certification Improvement Rule* (hereinafter, the 2023 Rule) to address areas of regulatory uncertainty and implementation challenges.

In July 2025, the Agency published a **Federal Register** notice seeking input on regulatory uncertainty and implementation challenges associated with the 2023 Rule after stakeholders¹ raised questions about application of the 2023 Rule’s scope of certification. 90 FR 29828, 29829 (July 7, 2025). In response, industry stakeholders and States supported revisions to the 2023 Rule to increase clarity and transparency around the certification process, in particular the scope of certification. Conversely, some States, Tribes, and individuals opposed revisions to the 2023 Rule. With this action, the Agency is proposing to revise the 2023 Rule to align the regulations with the scope of the Clean Water Act, increase transparency, efficiency, and predictability for certifying authorities

¹ See, e.g., America Builds: Clean Water Permitting and Project Delivery Hearing before Subcommittee on Water Resources and Environment, 119th Cong. (2025) (statement of Robert D. Singletary, Executive Director, Oklahoma Department of Environmental Quality; statement of Noah Hanners, Executive Vice President, Nucor Corporation, on behalf of the National Association of Manufacturers).

and the regulated community, and to ensure that States and authorized Tribes understand and adhere to their section 401 role. The proposed rule, while focused on the relevant statutory provisions and case law interpreting those provisions, is informed by the Agency's expertise developed in implementing the Clean Water Act for over 50 years and policy considerations where appropriate. A plain language summary of this proposed rule is available on [regulations.gov](https://www.regulations.gov).

B. Summary of the Major Provisions of the Proposed Regulatory Action

The Agency is proposing to revise the following provisions in 40 CFR part 121: the contents of a request for certification at 40 CFR 121.5; the scope of certification at 40 CFR 121.3; the contents of a certification decision at 40 CFR 121.7; the modification process at 40 CFR 121.10; and the section 401(a)(2) process at subpart B. The Agency is also proposing to add regulatory text at 40 CFR 121.6 regarding withdrawal and resubmittal of requests for certification and proposing to remove regulatory text at 40 CFR 121.11 regarding treatment in a similar manner as a State for Tribes. The Agency is also proposing several clarifying and conforming revisions throughout part 121.

C. Costs and Benefits

Potential costs and benefits would be incurred as a result of actions taken by applicants,² certifying authorities, and Federal agencies acting pursuant to or implementing the proposed rule. The Agency prepared the economic analysis for the proposed rule ("Economic Analysis"), available in the rulemaking docket, for informational purposes to analyze the potential cost savings and benefits associated with this proposed action. The Agency analyzed the potential cost savings and benefits against the baseline of the 2023 Rule. This analysis is summarized in section VI of this preamble.

II. Public Participation

A. Written Comments

Submit your comments, identified by Docket ID No. EPA-HQ-OW-2025-2929, at <https://www.regulations.gov> (our preferred method), or the other methods identified in the **ADDRESSES**

section. Once submitted, comments cannot be edited or removed from the docket. EPA may publish any comment received to its public docket. Do not submit to EPA's docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. 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). Please visit <https://www.epa.gov/dockets/commenting-epa-dockets> for additional submission methods; the full EPA public comment policy; information about CBI, PBI, or multimedia submissions; and general guidance on making effective comments.

B. Participation in Virtual Public Meeting

The Agency will hold one virtual public meeting after publication of the proposed action. The meeting date and time will be available on <https://www.epa.gov/cwa-401>. The Agency will begin pre-registering speakers for the meeting upon publication of this document in the **Federal Register**. To register to speak at the public meeting, please use the online registration forms available at <https://www.epa.gov/cwa-401> or contact EPA staff at cwa401@epa.gov to register to speak at the meeting. The last day to pre-register to speak at the meeting will be the day before the meeting. On the last working day before the meeting, EPA will post a general agenda for the meeting that will list pre-registered speakers in approximate order at: <https://www.epa.gov/cwa-401>.

The Agency will make every effort to follow the schedule as closely as possible on the day of the meeting; however, please plan for the hearing to run either ahead of schedule or behind schedule. EPA will make every effort to accommodate all speakers who register and joining the meeting, although preferences on speaking times may not be able to be fulfilled. Additionally, as time allows, EPA will accept requests to speak the day of the meeting.

Each commenter will have three minutes to provide oral testimony. EPA encourages commenters to provide the Agency with a copy of their oral testimony electronically by emailing it

to cwa401@epa.gov. EPA also recommends submitting the text of your oral comments as written comments to the rulemaking docket.

The Agency may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public meeting.

Please note that any updates made to any aspect of the meeting will be posted online at <https://www.epa.gov/cwa-401>. While EPA expects the meeting to go forward as set forth above, please monitor our website or contact cwa401@epa.gov to determine if there are any updates. EPA does not intend to publish a document in the **Federal Register** announcing updates.

If you require the services of an interpreter or special accommodations such as audio description, please pre-register for the meeting with cwa401@epa.gov and describe your needs by one week before the meeting. The Agency may not be able to arrange accommodations without advance notice.

III. General Information

A. What action is the Agency proposing to take?

In this rulemaking, the Agency is publishing a proposed rule updating certain provisions in the water quality certification regulations in 40 CFR 121.

B. What is the Agency's authority for taking this proposed action?

The authority for this action is the Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, including, but not limited to, sections 304(h), 401, and 501(a).

C. What are the incremental costs and benefits of this proposed action?

The Agency prepared the Economic Analysis for the proposed rule, available in the rulemaking docket, for informational purposes to analyze the potential costs and benefits associated with this proposed action. The analysis is summarized in section VI of this preamble.

IV. Background

Congress enacted section 401 of the Clean Water Act (CWA) to provide States and authorized Tribes with an important tool to help protect the water quality of federally regulated waters within their borders in collaboration with Federal agencies. Under section

² Throughout this document, the Agency will use the term "applicant" to refer to the individual responsible for obtaining certification. The current regulations refer to applicants as the "project proponent." See 40 CFR 121.1(h). However, EPA is proposing to remove this term and instead rely on the term "applicant" consistent with the statutory text. See section V.A of this preamble for further discussion.

401, a Federal agency may not issue a license or permit to conduct any activity that may result in any discharge into waters of the United States,³ unless the State or authorized Tribe where the discharge would originate either issues a section 401 water quality certification finding compliance with applicable water quality requirements or certification is waived. Section 401 envisions a robust State and Tribal role in the Federal licensing or permitting proceedings, including those in which local authority may otherwise be preempted by Federal law. Section 401 also places important limitations on how that role may be implemented to maintain an efficient process, consistent with the overall cooperative federalism construct established by the CWA.

Section 401 provides that a State or authorized Tribe must act on a section 401 request for certification “within a reasonable period of time (which shall not exceed one year).”⁴ Section 401 does not guarantee a State or Tribe a full year to act on a request for certification, as the statute only grants as much time as is reasonable. 33 U.S.C. 1341(a)(1). The CWA provides that the timeline for action on a section 401 certification begins “after receipt” of a request for certification. *Id.* If a State or Tribe does not grant, grant with conditions, deny, or expressly waive the section 401 certification within a reasonable time period, section 401 states that the “the certification requirements of this subsection shall be waived with respect to such Federal application.” *Id.* If the certification requirement has been waived and the Federal license or permit is issued, any subsequent action by a State or Tribe to grant, grant with conditions, or deny section 401 certification has no legal force or effect.

Section 401 authorizes States and Tribes to certify that a discharge into waters of the United States that may result from a proposed activity will comply with certain enumerated sections of the CWA, including the effluent limitations and standards of performance for new and existing discharge sources (sections 301, 302, and 306 of the CWA), water quality standards and implementation plans (section 303), and toxic pretreatment effluent standards (section 307). When

granting a section 401 certification, States and Tribes are directed by CWA section 401(d) to include conditions, including “effluent limitations and other limitations, and monitoring requirements” that are necessary to assure that the applicant for a Federal license or permit will comply with applicable provisions of CWA sections 301, 302, 306, and 307, and with “any other appropriate requirement of State law.”

As the Agency charged with administering the CWA,⁵ as well as a certifying authority in certain instances, the EPA is responsible for developing a common regulatory framework for certifying authorities to follow when completing section 401 certifications. *See* 33 U.S.C. 1251(d), 1361(a). In 1971, the EPA promulgated regulations for implementing the water quality certification provisions pursuant to section 21(b) of the Federal Water Pollution Control Act of 1948 (FWPCA) (hereinafter, the 1971 Rule).⁶ The 1971 Rule was promulgated prior to enactment of the 1972 amendments to the FWPCA (commonly known as the Clean Water Act or CWA),⁷ which included amendments to the water quality certification provisions. In 1979, the Agency recognized the need to update the 1971 Rule, in part to be consistent with the 1972 amendments. *See* 44 FR 32854, 32856 (June 7, 1979) (noting the 40 CFR part 121 regulations predated the 1972 amendments). However, the Agency declined to update the 1971 Rule at the time because it had not consulted with other Federal agencies impacted by the water quality certification process and instead promulgated regulations applicable to water quality certifications on EPA-issued National Pollutant Discharge Elimination System (NPDES) permits. *Id.*; *see, e.g.*, 40 CFR 124.53 through 124.55. As a result, for many years, the 1971 Rule did not fully reflect the amended statutory language.

EPA revised the 1971 Rule in 2020.⁸ The 2020 Rule was the Agency’s first comprehensive effort to promulgate

Federal rules governing the implementation of CWA section 401, informed by a holistic analysis of the statutory text, legislative history, and relevant case law. In 2023, the Agency revised the 2020 Rule and made several material revisions to procedural and substantive aspects of the certification process, including the scope of certification, the contents of a request for certification and certification decision, and modification to certification decisions.⁹ In July 2025, the Agency published a **Federal Register** document seeking input on regulatory uncertainty and implementation challenges with the 2023 Rule after stakeholders raised questions about applications of the 2023 Rule’s scope of certification. 90 FR 29828, 29829 (July 7, 2025).

The Agency is proposing revisions to several aspects of the 2023 Rule, including the contents of a request for certification, the scope of certification, the contents of a certification decision, and the modification process. The Agency is also adding regulatory text regarding withdrawal and resubmittal of requests for certification, removing regulatory text on the automatic extension process to the reasonable period of time, and removing regulatory text regarding “treatment in a similar manner as a State” (TAS) for Tribes and instead relying on the existing regulatory process for TAS for section 303(c). The proposed rule, while focused on the relevant statutory provisions and case law interpreting those provisions, is informed by the Agency’s expertise developed in implementing the CWA for over 50 years and policy considerations where appropriate.

The following sections describe the regulatory framework and history of the 1972 CWA amendments, how section 401 fits within that framework, previous rulemaking efforts, and recent stakeholder outreach and engagement that provide the foundation for this proposed rule.

A. The Clean Water Act

In 1972, Congress amended the CWA to address longstanding concerns regarding the quality of the nation’s waters and the Federal Government’s ability to address those concerns under existing law. Prior to 1972, responsibility for controlling and redressing water pollution in the nation’s waters largely fell to the Corps under the Rivers and Harbors Act of

³ The CWA, including section 401, uses “navigable waters,” defined as “waters of the United States, including territorial seas.” 33 U.S.C. 1362(7). This proposed rulemaking uses “waters of the United States” throughout.

⁴ In some circumstances, the EPA can act as the certifying authority. 33 U.S.C. 1341(a)(1) (“In any case where a State or interstate agency has no authority to give such a certification, such certification shall be from the Administrator.”).

⁵ The EPA co-administers section 404 with the Army Corps of Engineers (the Corps).

⁶ 36 FR 8563 (May 8, 1971), redesignated at 36 FR 22369, 22487 (November 25, 1971), further redesignated at 37 FR 21441 (October 11, 1972), further redesignated at 44 FR 32854, 32899 (June 7, 1979).

⁷ The FWPCA has been commonly referred to as the CWA following the 1977 amendments to the FWPCA. Public Law 95–217, 91 Stat. 1566 (1977). For ease of reference, the Agency will generally refer to the FWPCA in this rulemaking as the CWA or the Act.

⁸ Clean Water Act Section 401 Certification Rule, 85 FR 42210 (July 13, 2020) (hereinafter, the 2020 Rule).

⁹ Clean Water Act Section 401 Water Quality Certification Improvement Rule, 88 FR 66558 (September 27, 2023) (hereinafter, the 2023 Rule).

1899 (RHA). While much of that statute focused on restricting obstructions to navigation on the nation's major waterways, section 13 of the RHA made it unlawful to discharge refuse "into any navigable water of the United States, or into any tributary of any navigable water from which the same shall float or be washed into such navigable water."¹⁰ 33 U.S.C. 407. Congress had also enacted the Water Pollution Control Act of 1948, Public Law 80–845, 62 Stat. 1155 (June 30, 1948), to address interstate water pollution, and subsequently amended that statute in 1956 (giving the statute its current formal name), in 1961, and in 1965. The early versions of the CWA promoted the development of pollution abatement programs, required States to develop water quality standards, and authorized the Federal Government to bring enforcement actions to abate water pollution.

These earlier statutory frameworks, however, proved challenging for regulators, who often worked backward from an overly polluted waterway to determine which dischargers and which sources of pollution may be responsible. *See EPA v. State Water Resources Control Bd.*, 426 U.S. 200, 204 (1976). In fact, Congress determined that the prior statutes were inadequate to address the decline in the quality of the nation's waters, *see City of Milwaukee v. Illinois*, 451 U.S. 304, 310 (1981), so Congress performed a "total restructuring" and "complete rewriting" of the existing statutory framework of the Act in 1972, *id.* at 317 (quoting legislative history of 1972 amendments). That restructuring resulted in the enactment of a comprehensive scheme designed to prevent, reduce, and eliminate pollution in the nation's waters generally, and to regulate the discharge of pollutants into waters of the United States specifically. *See, e.g., S.D. Warren Co. v. Maine Bd. of Envtl. Prot.*, 547 U.S. 370, 385 (2006) ("[T]he Act does not stop at controlling the 'addition of pollutants,' but deals with 'pollution' generally[.]").

The objective of the new statutory scheme was "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. 1251(a). In order to meet that objective, Congress declared two national goals: (1) "that the discharge of

pollutants into the navigable waters be eliminated by 1985;" and (2) "that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983" *Id.* at 1251(a)(1)–(2).

Congress established several key policies that direct the work of the Agency to effectuate those goals. For example, Congress declared as a national policy "that the discharge of toxic pollutants in toxic amounts be prohibited; . . . that Federal financial assistance be provided to construct publicly owned waste treatment works; . . . that areawide waste treatment management planning processes be developed and implemented to assure adequate control of sources of pollutants in each State; . . . [and] that programs for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of this Act to be met through the control of both point and nonpoint sources of pollution." *Id.* at 1251(a)(3)–(7).

Congress gave States a major role in implementing the CWA. This balanced the traditional power of States to regulate land and water resources within their borders with the need for a national water quality regulation. For example, the statute highlighted "the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution" and "to plan the development and use . . . of land and water resources" *Id.* at 1251(b). Congress also declared as a national policy that States manage the major construction grant program and implement the core permitting programs authorized by the statute, among other responsibilities. *Id.* Congress added that "[e]xcept as expressly provided in this Act, nothing in this Act shall . . . be construed as impairing or in any manner affecting any right or jurisdiction of the States with respect to the waters (including boundary waters) of such States." *Id.* at 1370.¹¹ Congress also pledged to provide technical support and financial aid to the States "in connection with the prevention, reduction, and elimination of pollution." *Id.* at 1251(b).

To carry out these policies, Congress broadly defined "pollution" to mean

"the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water," *id.* at 1362(19), to parallel the broad objective of the Act "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." *Id.* at 1251(a). Congress then crafted a non-regulatory statutory framework to provide technical and financial assistance to the States to prevent, reduce, and eliminate pollution in the nation's waters generally. *See, e.g., id.* at 1256(a) (authorizing the EPA to issue "grants to States and to interstate agencies to assist them in administering programs for the prevention, reduction, and elimination of pollution").

In addition to the Act's non-regulatory measures to control pollution of the nation's waters, Congress created a Federal regulatory program designed to address the discharge of pollutants into a subset of those waters identified as "the waters of the United States." *See* 33 U.S.C. 1362(7). Section 301 contains the key regulatory mechanism: "Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act, the discharge of any pollutant by any person shall be unlawful." *Id.* at 1311(a). A "discharge of a pollutant" is defined to include "any addition of any pollutant to navigable waters from any point source," such as a pipe, ditch or other "discernible, confined and discrete conveyance." *Id.* at 1362(12), (14). The term "pollutant" means "dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water." *Id.* at 1362(6). Thus, it is unlawful to discharge pollutants into waters of the United States from a point source unless the discharge is in compliance with certain enumerated sections of the CWA, including by obtaining authorizations pursuant to the section 402 NPDES permit program or the section 404 dredged or fill material permit program. *See id.* at 1342, 1344. Congress therefore intended to achieve the Act's objective "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters" by addressing pollution of all waters via non-regulatory means and federally regulating the discharge of

¹⁰ The term "navigable water of the United States" is a term of art used to refer to a water subject to Federal jurisdiction under the RHA. *See, e.g.,* 33 CFR 329.1. The term is not synonymous with the phrase "waters of the United States" under the CWA, *see id.*, and the general term "navigable waters" has different meanings depending on the context of the statute in which it is used. *See, e.g., PPL Montana, LLC v. Montana*, 132 S. Ct. 1215, 1228 (2012).

¹¹ 33 U.S.C. 1370 also prohibits States with EPA-approved CWA programs from adopting any limitations, prohibitions, or standards that are less stringent than required by the CWA.

pollutants to the subset of waters identified as “navigable waters.”¹²

The regulatory programs established by the Act focus on the development of point source effluent limitations that directly restrict discharges, with compliance achieved through NPDES permits. *See EPA v. State Water Resources Control Bd.*, 426 U.S. at 204 (discussing the major changes to the methods to abate and control water pollution in the 1972 amendments). This provides a framework for the Agency to focus on reducing or eliminating discharges while creating accountability for each regulated entity that discharges into a waterbody, facilitating greater enforcement and overall achievement of the CWA water quality goals. *Id.*; *see Oregon Natural Desert Association v. Dombeck*, 172 F.3d 1092, 1096 (9th Cir. 1998) (observing that 1972 amendments “largely supplanted” earlier versions of CWA “by replacing water quality standards with point source effluent limitations”).

Under this statutory scheme, the States¹³ are authorized to assume program authority for issuing section 402 and 404 permits within their borders, subject to certain limitations. 33 U.S.C. 1342(b), 1344(g). States are also responsible for developing water quality standards for “waters of the

United States” within their borders and reporting on the condition of those waters to the EPA every two years. *Id.* at 1313, 1315. States must develop total maximum daily loads (TMDLs) for waters that are not meeting established CWA water quality standards and must submit those TMDLs to the EPA for approval. *Id.* at 1313(d). And, central to this proposed rule, States under CWA section 401 have authority to grant, grant with conditions, deny, or waive water quality certifications for every Federal license or permit issued within their borders that may result in a discharge into waters of the United States. *Id.* at 1341. These same regulatory authorities can be assumed by Indian Tribes under section 518 of the CWA, which authorizes the EPA to treat eligible Tribes with reservations in a similar manner to States (referred to as “treatment as States” or TAS) for a variety of purposes, including administering the principal CWA regulatory programs. *Id.* at 1377(e). In addition, States and Tribes retain authority to protect and manage the use of those waters that are not waters of the United States under the CWA. *See, e.g., id.* at 1251(b), 1251(g), 1370, 1377(a).

B. Clean Water Act Section 401

Legislative history indicates that Congress created the water quality certification requirement to “recognize[] the responsibility of Federal agencies to protect water quality wherever their activities affect public waterways.” S. Rep. No. 91–351, at 3 (1969). “In the past, these [Federal] licenses and permits have been granted without any assurance that the [water quality] standards will be met or even considered.” *Id.* Instead of helping States cooperatively achieve Federal policy objectives related to water quality standards, Federal agencies were “sometimes . . . a culprit with considerable responsibility for the pollution problem which is present.” 115 Cong. Rec. 9011, 9030 (April 15, 1969). As an example, the legislative history discusses the Atomic Energy Commission’s failure to consider the impact of thermal pollution on receiving waters when evaluating “site selection, construction, and design or operation of nuclear powerplants.” S. Rep. No. 91–351, at 3. As a result, States, industry groups, conservation groups, and the public alike “questioned the justification for requiring compliance with water quality standards” if Federal agencies themselves would not comply with those standards. S. Rep. No. 91–351, at 7 (August 7, 1969).

The water quality certification requirement first appeared in section

21(b) of the FWPCA, and it required States to certify that “such activity will be conducted in a manner which will not violate applicable water quality standards.” Public Law 91–224, 21(b)(1), 84 Stat. 91 (1970) (emphasis added). As described above, the 1972 amendments restructured the CWA and created a framework for compliance with effluent limitations that would be established in discharge permits issued pursuant to the new Federal permitting program. The pre-existing water quality certification requirement was retained in section 401 of the 1972 amendments but modified to be consistent with the overall restructuring of the CWA. The new section 401 required a water quality certification to assure that the “discharge will comply” with effluent limitations and other enumerated regulatory provisions of the Act. 33 U.S.C. 1341(a) (emphasis added). The 1972 amendments also established a new section 401(d), which provides that certifications “shall set forth any effluent limitations and other limitations, and monitoring requirements necessary to assure” compliance with the same enumerated CWA provisions and with “any other appropriate requirement” of State or Tribal law. 33 U.S.C. 1341(d).

In enacting section 401, Congress recognized that where States and Tribes do not have direct permitting authority (because they do not have section 402 or 404 program authorization or where Congress has preempted a regulatory field, *e.g.*, under the Federal Power Act), they may still play a valuable role in protecting the water quality of federally regulated waters within their borders in collaboration with Federal agencies. Under section 401, a Federal agency may not issue a license or permit for an activity that may result in a discharge into waters of the United States, unless the appropriate State or Tribal authority provides a section 401 certification or waives its ability to do so. The authority to certify a Federal license or permit lies with the agency (the certifying authority) that has jurisdiction over the location of the discharge (or potential discharge) to the receiving water of the United States. *Id.* at 1341(a)(1). Examples of Federal licenses or permits potentially subject to section 401 certification include, but are not limited to, CWA section 402 NPDES permits in States where the EPA administers the permitting program; CWA section 404 and RHA sections 9 and 10 permits issued by the Corps; bridge permits issued by the U.S. Coast Guard (USCG); and hydropower and pipeline licenses

¹² Fundamental principles of statutory interpretation support the Agency’s recognition of a distinction between “nation’s waters” and “navigable waters.” As the Supreme Court has observed, “[w]e assume that Congress used two terms because it intended each term to have a particular, nonsuperfluous meaning.” *Bailey v. United States*, 516 U.S. 137, 146 (1995) (recognizing the canon of statutory construction against superfluity). Further, “the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.” *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (internal quotation marks and citation omitted); *see also United Savings Ass’n v. Timbers of Inwood Forest Associates*, 484 U.S. 365, 371 (1988) (“Statutory construction . . . is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme—because the same terminology is used elsewhere in a context that makes its meaning clear[.]”) (citation omitted). The non-regulatory sections of the CWA reveal Congress’ intent to restore and maintain the integrity of the nation’s waters using Federal assistance to support State and local partnerships to control pollution in the nation’s waters in addition to a Federal regulatory prohibition on the discharge of pollutants into the navigable waters. If Congress intended the terms to be synonymous, it would have used identical terminology. Instead, Congress chose to use separate terms, and the Agency is instructed by the Supreme Court to presume Congress did so intentionally.

¹³ The CWA defines “State” as “a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.” 33 U.S.C. 1362(3).

issued by the Federal Energy Regulatory Commission (FERC).

Under section 401, a certifying authority may grant, grant with conditions, deny, or waive certification in response to a request from an applicant. The certifying authority determines whether the potential discharge or discharges from the proposed activity will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of the CWA and any other appropriate requirement of State law. *Id.* at 1341(a)(1), (d). Certifying authorities also add to a certification “any effluent limitations and other limitations, and monitoring requirements” necessary to assure compliance. *Id.* at 1341(d). These limitations and requirements must become conditions of the Federal license or permit should it be issued. *Id.* A certifying authority may deny certification if it is unable to determine that the discharge from the proposed activity will comply with the applicable sections of the CWA and appropriate requirements of State or Tribal law. If a certifying authority denies certification, the Federal license or permit may not be issued. *Id.* at 1341(a)(1). A certifying authority may waive certification by “fail[ing] or refus[ing] to act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of such request.” *Id.*

C. The EPA’s Role in Implementing Section 401

The EPA, as the Federal agency charged with administering the CWA, is responsible for developing regulations and guidance to ensure effective implementation of all CWA programs, including section 401.¹⁴ In addition to administering the statute and promulgating implementing regulations, the Agency has several other roles under section 401.

The EPA is required to provide certification or waiver where no State, Tribe, or interstate agency has the authority to provide certification. 33 U.S.C. 1341(a)(1) (“In any case where a State or interstate agency has no authority to give such a certification, such certification shall be from the Administrator.”). Currently, EPA acts as

the certifying authority in two scenarios (1) on behalf of Tribes without “treatment in a similar manner as a State” (TAS) and (2) on lands of exclusive Federal jurisdiction in relevant respects.¹⁵

The EPA also notifies other States when the Administrator determines that a discharge may affect the quality of such State’s waters. *Id.* at 1341(a)(2). Although section 401 certification authority lies with the jurisdiction where the discharge originates, another State whose water quality is potentially affected by the discharge may have an opportunity to raise objections to, and request a hearing on, the relevant Federal license or permit before issuance. Where the EPA determines that a discharge subject to section 401 “may affect” the water quality of another State, the EPA is required to notify that State. *Id.* If the notified other State determines that the discharge “will affect” the quality of its waters in violation of a water quality requirement of that State, it may notify the EPA and the Federal licensing or permitting agency of its objection to the license or permit. *Id.* It may also request a hearing on its objection with the Federal licensing or permitting agency. At such a hearing, section 401 requires the EPA to submit its evaluation and recommendations with respect to the objection. The Federal agency will consider the State’s and the EPA’s recommendations, and any additional evidence presented at the hearing, and “shall condition such license or permit in such manner as may be necessary to ensure compliance with the applicable water quality requirements” of the other State. *Id.* If the conditions cannot ensure compliance, the Federal agency shall not issue the license or permit.

The EPA must also provide technical assistance for section 401 certifications upon the request of any Federal or State agency or applicant. *Id.* at 1341(b). Technical assistance might include the provision of any relevant information or comment on methods to comply with applicable effluent limitations,

standards, regulations, requirements, or water quality standards.

D. Prior Rulemaking Efforts Addressing Section 401

The EPA is responsible for developing regulations and guidance to ensure effective implementation of all CWA programs, including section 401. Because the EPA has been charged by Congress with administering the CWA, some courts have concluded that other Federal agencies are not entitled to deference on their interpretations of section 401. *See Ala. Rivers Alliance v. FERC*, 325 F.3d 290, 296–97 (D.C. Cir. 2002); *Am. Rivers, Inc. v. FERC*, 129 F.3d 99, 107 (2d. Cir. 1997). In the last 50-plus years, EPA has undertaken three rulemaking efforts focused solely on addressing water quality certification, one of which preceded the 1972 amendments to the CWA. The Agency has also developed several guidance documents on the section 401 certification process. This section of the preamble discusses EPA’s major rulemaking efforts over the last 50-plus years, including most recently, the 2023 Rule.

1. 1971 Rule

In February 1971, EPA proposed regulations implementing section 401’s predecessor provision, section 21(b) of the FWPCA. 36 FR 2516 (February 5, 1971). Those proposed regulations were divided into four subparts, one of which provided “definitions of general applicability for the regulations and . . . provide[d] for the uniform content and form of certification.” *Id.* The other three subparts focused on EPA’s roles. *Id.* In May 1971, after receiving public comments, EPA finalized the water quality certification regulations with the proposed four-part structure at 18 CFR part 615. 36 FR 8563 (May 8, 1971) (“1971 Rule”).

The EPA’s 1971 Rule required certifying authorities to act on a certification request within a “reasonable period of time.” 40 CFR 121.16(b) (2019). The regulations provided that the Federal licensing or permitting agency determines what constitutes a “reasonable period,” and that the period shall generally be six months but in any event shall not exceed one year. *Id.*

The 1971 Rule also provided that certifying authorities may waive the certification requirement under two circumstances: first, when the certifying authority sends written notification expressly waiving its authority to act on a request for certification; and second, when the Federal licensing or permitting agency sends written

¹⁴ See 33 U.S.C. 1251(d) (“Except as otherwise expressly provided in this chapter, the Administrator of the Environmental Protection Agency . . . shall administer this chapter.”); *id.* at 1361(a); *Mayo Found. for Medical Educ. and Res. v. United States*, 562 U.S. 44, 45 (2011); *Hoopa Valley Tribe v. FERC*, 913 F.3d 1099, 1104 (D.C. Cir. 2019); *Ala. Rivers Alliance v. FERC*, 325 F.3d 290, 296–97 (D.C. Cir. 2003); *Cal. Trout v. FERC*, 313 F.3d 1131, 1133 (9th Cir. 2002); *Am. Rivers, Inc. v. FERC*, 129 F. 3d 99, 107 (2d Cir. 1997).

¹⁵ Exclusive Federal jurisdiction is established only under limited circumstances pursuant to the Enclave Clause of the U.S. Constitution, article 1, section 8, clause 17. These circumstances include (1) where the Federal Government purchases land with state consent to jurisdiction, consistent with article 1, section 8, clause 17 of the U.S. Constitution; (2) where a State chooses to cede jurisdiction to the Federal Government, and (3) where the Federal Government reserved jurisdiction upon granting statehood. *See Paul v. United States*, 371 U.S. 245, 263–65 (1963); *Collins v. Yosemite Park Co.*, 304 U.S. 518, 529–30 (1938); *James v. Dravo Contracting Co.*, 302 U.S. 134, 141–42 (1937); *Surplus Trading Co. v. Cook*, 281 U.S. 647, 650–52 (1930); *Fort Leavenworth Railroad Co. v. Lowe*, 114 U.S. 525, 527 (1885).

notification to the EPA Regional Administrator that the certifying authority failed to act on a certification request within a reasonable period of time after receipt of such a request. *Id.* at 121.16(a)–(b) (2019). Once waiver occurs, certification is not required, and the Federal license or permit may be issued. 33 U.S.C. 1341(a).

The 1971 Rule also established requirements that applied only when the EPA was the certifying authority, including specific information that must be included in a certification request and additional procedures. For example, the regulations required the applicant to submit to the EPA Regional Administrator the name and address of the applicant, a description of the facility or activity and of any related discharge into waters of the United States, a description of the function and operation of wastewater treatment equipment, dates on which the activity and associated discharge would begin and end, and a description of the methods to be used to monitor the quality and characteristics of the discharge. 40 CFR 121.22 (2019). Once the request was submitted to the EPA, the regulations required the Regional Administrator to provide public notice of the request and an opportunity to comment, specifically stating that “all interested and affected parties will be given reasonable opportunity to present evidence and testimony at a public hearing on the question whether to grant or deny certification if the Regional Administrator determines that such a hearing is necessary or appropriate.” *Id.* at 121.23 (2019). If, after consideration of relevant information, the Regional Administrator determined that there was “reasonable assurance that the proposed activity will not result in a violation of applicable water quality standards,” the Regional Administrator would grant certification.¹⁶ *Id.* at 121.24 (2019).

The 1971 Rule identified a number of requirements that all certifying authorities must include in a section 401 certification. *Id.* at 121.2 (2019). For example, the regulations provided that a section 401 certification shall include the name and address of the applicant. *Id.* at 121.2(a)(2). They also provided that the certification shall include a statement that the certifying authority examined the application made by the

applicant to the Federal licensing or permitting agency and bases its certification upon an evaluation of the application materials which are relevant to water quality considerations or that it examined other information sufficient to permit the certifying authority to make a statement that there is a “reasonable assurance that the activity will be conducted in a manner which will not violate applicable water quality standards.” *Id.* at 121.2(a)(2)–(3) (2019). Finally, the regulations provided that the certification shall state “any conditions which the certifying agency deems necessary or desirable with respect to the discharge of the activity,” and other information that the certifying authority deems appropriate.¹⁷ *Id.* at 121.2(a)(4)–(5) (2019).

The 1971 Rule also established a process for the EPA to provide notification to other States in a manner that is similar to that provided in CWA section 401(a)(2). Under the 1971 certification regulations, the Regional Administrator was required to review the Federal license or permit application, the certification, and any supplemental information provided to the EPA by the Federal licensing or permitting agency, and if the Regional Administrator determined that there was “reason to believe that a discharge may affect the quality of the waters of any State or States other than the State in which the discharge originates,” the Regional Administrator would notify each affected State within thirty days of receipt of the application materials and certification. *Id.* at 121.13 (2019). If the documents provided were insufficient to make the determination, the Regional Administrator could request any supplemental information “as may be required to make the determination.” *Id.* at 121.12 (2019). In cases where the Federal licensing or permitting agency held a public hearing on the objection raised by another State, notice of such objection was required to be forwarded to the Regional Administrator by the licensing or permitting agency no later than 30 days prior to the hearing. *Id.* at 121.15 (2019). At the hearing, the Regional Administrator was required to submit an evaluation and “recommendations as to whether and under what conditions the license or permit should be issued.” *Id.*

The 1971 Rule established that the Regional Administrator “may, and upon request shall” provide Federal licensing and permitting agencies with information regarding water quality standards and advise them as to the

status of compliance by dischargers with the conditions and requirements of applicable water quality standards. *Id.* at 121.30 (2019).

Finally, the 1971 Rule established an oversight role for the EPA when a certifying authority modified a prior certification. The regulation provided that a certifying authority could modify its certification “in such manner as may be agreed upon by the certifying agency, the licensing or permitting agency, and the Regional Administrator.” *Id.* at 121.2(b) (2019) (emphasis added).

In November 1971, EPA reorganized and transferred several regulations, including the water quality certification regulations, into title 40 of the Code of Federal Regulations. EPA subsequently redesignated the water quality certification regulations twice in the 1970s.¹⁸ The last redesignation effort was part of a rulemaking that extensively revised the Agency’s NPDES regulations. In the revised NPDES regulations, EPA addressed water quality certifications on EPA-issued NPDES permits separately from the 1971 Rule. EPA acknowledged that the 1971 Rule was “in need of revision” because the “substance of these regulations predates the 1972 amendments to the Clean Water Act.” 44 FR 32880 (June 7, 1979). However, EPA declined to revise the 1971 Rule because it had not consulted the other Federal agencies impacted by the water quality certification process. *Id.* at 32856. Instead, the Agency finalized regulations applicable only to certification on EPA-issued NPDES permits. *Id.* at 32880. EPA developed these regulations, which included a default reasonable period of time of 60 days, limitations on certification modifications, and requirements for certification conditions, in response to practical challenges and issues arising from certification on EPA-issued permits. *Id.* Ultimately, despite the changes Congress made to the statutory text in 1972 and opportunities the Agency had to revisit the regulatory text during redesignation efforts in the 1970s, EPA did not substantively change the 1971 Rule until 2020.

2. Development of the 2020 Rule

Executive Order 13868, entitled Promoting Energy Infrastructure and Economic Growth, directed EPA to propose new regulations governing section 401 consistent with the policy set forth to encourage greater investment

¹⁶ Use of the terms “reasonable assurance,” “water quality standards,” and “activity” in the EPA’s 1971 certification regulations was consistent with section 21(b) of the pre-1972 statutory language. However, those terms are not used in the current text of CWA section 401, which replaced the pre-1972 language. See Public Law 91–224, 21(b)(1), 84 Stat. 91 (1970).

¹⁷ The term “desirable” is also not used in CWA section 401.

¹⁸ See 36 FR 22369, 22487 (November 25, 1971), redesignated at 37 FR 21441 (October 11, 1972), further redesignated at 44 FR 32854, 32899 (June 7, 1979).

in energy infrastructure in the United States by promoting efficient Federal licensing and permitting processes and reducing regulatory uncertainty. 84 FR 13495 (April 15, 2019). EPA issued the proposed rule on August 22, 2019.¹⁹ EPA promulgated a final rule on July 13, 2020. Clean Water Act Section 401 Certification Rule, 85 FR 42210 (July 13, 2020) (“2020 Rule”).

The 2020 Rule rejected the “activity as a whole” scope of certification review in favor of the “discharge-only” approach and provided guidelines on the appropriate scope of conditions. See 85 FR 42258 (“The scope of certification extends to the scope of conditions that are appropriate for inclusion in a certification—specifically, that these conditions must be necessary to assure that the discharge from a federally licensed or permitted activity will comply with water quality requirements . . .”). The 2020 Rule clarified that the certification requirement was triggered by a point source discharge from a Federally licensed or permitted activity into “waters of the United States,” and reaffirmed that certifying authorities may explicitly waive certification. The 2020 Rule also introduced several new features, including requiring applicants to request a pre-filing meeting with the certifying authority at least 30 days prior to requesting certification, and defining the contents of a request for certification and certification decisions for all certifying authorities. The 2020 Rule also prohibited a certifying authority from requesting a project applicant to withdraw and resubmit a certification request; and removed the certification modification provision from the 1971 Rule.

3. Development of the 2023 Rule

In Spring 2021, EPA reviewed the 2020 Rule in accordance with Executive Order 13990 and determined that it would propose revisions to the 2020 Rule through a new rulemaking effort.²⁰ The Agency issued a proposed rule on June 9, 2022.²¹ EPA promulgated a final rule on September 27, 2023.²²

The 2023 Rule retained several aspects of the 2020 Rule, including when the certification requirement was triggered, pre-filing meeting requests,

and the ability to explicitly waive certification. However, the 2023 Rule differed from the 2020 Rule in several material respects, including adopting an “activity as a whole” approach to the scope of certification review, allowing certifying authorities to define additional components in a request for certification, removing the regulatory prohibition on certifying authorities requesting the withdrawal of requests for certification, declining to define required components for all certification decisions, and reintroducing a provision on modifications to certification decisions.

4. Review of the 2023 Rule

In early 2025, stakeholders raised questions about multiple features of the 2023 Rule, including applications of the 2023 Rule’s scope of certification.²³ As a result, in May 2025, the Agency released a memorandum titled *Clarification regarding Application of Clean Water Act Section 401 Certification*²⁴ to reiterate the EPA’s longstanding position that States and Tribes must utilize CWA section 401 only for its statutory purpose—to protect water quality. In the Memorandum, the Agency announced its intention to publish a **Federal Register** notice seeking stakeholder feedback regarding additional areas of implementation challenges and regulatory uncertainty related to the 2023 Rule to be later addressed through additional guidance or rulemaking. On July 7, 2025, the EPA published a **Federal Register** document²⁵ to initiate a series of stakeholder listening sessions and invite written feedback on multiple topics, including the scope of certification, the 2023 Rule definition of “water quality requirements,” the Agency’s “may affect” analysis under CWA section 401(a)(2), and experiences with the 2023 Rule. See Section IV.E of this preamble for further discussion on pre-proposal stakeholder engagement and outreach.

The Agency reviewed input received on implementation challenges and regulatory uncertainty associated with the 2023 Rule and determined to propose revising specific aspects of the 2023 Rule, as discussed in this preamble. EPA is now proposing revisions to the 2023 Rule to reflect the

best reading of the CWA’s statutory text, the legislative history regarding section 401, to support an efficient and transparent certification process, and to address stakeholder feedback gathered in its preliminary engagement and outreach. A decision to revise a regulation need not be based upon a change of facts or circumstances. “[A]gencies are free to change their existing policies as long as they provide a reasoned explanation for the change,” ‘display awareness that [they are] changing position,’ and consider ‘serious reliance interests.’” *FDA v. Wages & White Lion Invs., L.L.C.*, 145 S. Ct. 898, 917 (2025) (“*Wages & White Lion*”) (citing *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016) (“*Encino*”) (quoting *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (“*Fox*”))).²⁶ A revised rulemaking based “on a reevaluation of which policy would be better in light of the facts” before the agency is “well within an agency’s discretion.” *Nat’l Ass’n of Home Builders v. EPA*, 682 F.3d 1032, 1038 & 1043 (D.C. Cir. 2012) (citing *Fox*, 556 U.S. at 514–15). The Agency’s proposal is based in part on additional facts and considerations raised in stakeholder feedback and will continue to be informed by additional facts or considerations raised during the public comment period.

In *Loper Bright v. Raimondo*, 603 U.S. 369 (2024), the Supreme Court overruled the longstanding *Chevron* deference doctrine. In *Loper Bright*, the Supreme Court emphasized that reviewing courts must “exercise independent judgment in determining the meaning of statutory provisions.” *Id.* at 394. To resolve the meaning of disputed statutory language, a court must adopt the interpretation that the court “after applying all relevant interpretive tools concludes is best.” *Id.* at 400. When a court reviews an agency’s statutory interpretations, *Loper Bright* noted that “courts may . . . seek aid from the interpretations of those responsible for implementing particular statutes.” *Id.* at 394. The Court also recognized that Congress has often enacted statutes that delegate discretionary authority to agencies, such

²⁶ Although “longstanding policies” may engender “serious reliance interests,” *Wages & White Lion*, 145 S. Ct. at 918 (citations omitted), the 2023 Rule has been in effect for less than two years and subject to litigation for most of that time. *Louisiana, et al., v. EPA*, No. 2:23-cv-01714 (W.D. La.). Supreme Court decisions “have set a much higher bar, requiring, for example, ‘decades of industry reliance on [an agency’s] prior policy.’” *Id.* at 927 (citing *Encino*, 579 U.S. at 222) (referring to another short-term agency policy). However, EPA will consider all asserted reliance interests raised by commenters.

¹⁹ Updating Regulations on Water Quality Certifications, 84 FR 44080 (August 22, 2019).

²⁰ See Notice of Intention to Reconsider and Revise the Clean Water Act Section 401 Certification Rule, 86 FR 29541 (June 2, 2021).

²¹ Clean Water Act Water Quality Certification Improvement Rule, 87 FR 35318 (June 9, 2022).

²² Clean Water Act Section 401 Water Quality Certification Improvement Rule, 88 FR 66558 (September 27, 2023).

²³ See *supra* footnote 1.

²⁴ Memorandum from Peggy S. Browne, Acting Assistant Administrator for Water, *Clarification regarding Application of Clean Water Act Section 401 Certification*, May 21, 2025.

²⁵ Establishment of Public Docket and Listening Sessions on Implementation Challenges Associated with Clean Water Act Section 401, 90 FR 29828 (July 7, 2025).

as statutes that empower an agency to prescribe rules to “fill up the details” of a statutory scheme. *Id.* at 394–95. When the best reading of a statute is that it delegates discretionary authority to an agency, reviewing courts “need only fulfill their obligations under the APA to independently identify and respect such delegations of authority, police the outer statutory boundaries of those delegations, and ensure that agencies exercise their discretion consistent with the APA.” *Id.* at 404.

E. Summary of Stakeholder Outreach

Following the publication of the July 2025 **Federal Register** notice, the Agency opened a 30-day recommendations docket beginning on July 7, 2025, and concluding on August 6, 2025. The Agency received over 170 written recommendations from members of the public, which can be found in the recommendations docket. See Docket ID No. EPA–HQ–OW–2025–0272. The **Federal Register** notice requested feedback related to implementation challenges and regulatory uncertainty related to the 2023 Rule and asked several questions related to the scope of certification, the definition of “water quality requirements,” the Agency’s “may affect” analysis under CWA section 401(a)(2), and experiences with the 2023 Rule. See 90 FR 29828 for the list of questions for consideration.

EPA also hosted two webinar-based listening sessions open to States, Tribes, applicants, and the public on July 16 and July 30, 2025, to gain further input. A summary of the verbal input received at the listening sessions can be found in the docket for this proposed rulemaking. The Agency also met with stakeholders upon request during development of the proposed rule. The Agency initiated formal consultation efforts under Executive Order 13132 on Federalism with States and Executive Order 13175 on Consultation and Coordination with Indian Tribal Governments regarding areas of regulatory uncertainty and implementation challenges associated with the 2023 Rule. The Agency held an initial federalism consultation meeting on July 22, 2025, and held an initial Tribal consultation meeting on July 23, 2025. Consultation ran from June 7, 2025, through September 7, 2025. A summary of the Tribal consultation and federalism efforts is available in the docket for this proposed rule. See section VII of this preamble for further details on the Agency’s federalism and Tribal consultations.

During the consultation period, the Agency participated in virtual meetings with inter-governmental and Tribal

associations, including the Region 9 Regional Tribal Operations Caucus, the National Tribal Water Council, the Environmental Council of States, the National Association of Wetland Managers, the Association of Clean Water Administrators, and the Western States Water Council. At the listening sessions and other meetings, EPA sought input on experiences with the 2023 Rule, including the scope of certification. Stakeholders addressed topics related to the 2023 Rule’s interpretation of the scope of certification and definition of water quality requirements, the “may affect” process and categorical determinations, and experiences with the implementation of the 2023 Rule. While some stakeholders stated the 2023 Rule established clear and transparent processes, other stakeholders provided recommendations to help improve the overall implementation of the certification process. Additionally, several themes emerged throughout this process, including support for ongoing State and Tribal engagement and recognition of the importance of clarity, consistency, and effective protection of water resources within the regulatory framework. The Agency has incorporated relevant input into section V of this preamble. EPA considered all of this information and stakeholder input during the development of this proposed rulemaking, including all recommendations submitted to the docket and through the consultation process.

V. Proposed Rule

EPA is the primary agency responsible for developing regulations and guidance to ensure effective implementation of CWA programs, including section 401. See 33 U.S.C. 1251(d), 1361(a). The Agency is proposing to revise several procedural and substantive aspects of the current water quality certification regulations at 40 CFR part 121 to better align its regulations with the text and legislative history of the CWA, increase transparency, efficiency, and predictability for certifying authorities and the regulated community, and to ensure States and authorized Tribes understand and adhere to their section 401 role. The following sections further explain the Agency’s rationale for the proposed rule. EPA intends for this rulemaking to be informed by stakeholder input and welcomes comment on all facets of this proposal.

This section of the proposed rule preamble includes seven sub-sections that each discuss (1) the proposed rule provisions, and (2) a summary of the

Agency’s proposed rule rationale. Section V.A of this preamble discusses the contents of a request for certification. Section V.B of this preamble discusses two aspects of the timeframe for a certifying authority’s analysis, including extensions to the reasonable period of time and withdrawal and resubmission of requests for certification. Section V.C of this preamble discusses the appropriate scope of certification, including the scope of any certification conditions. Section V.D of this preamble discusses the required contents of a certification decision. Section V.E of this preamble discusses modifications of a certification. Section V.F of this preamble discusses aspects of the section 401(a)(2) process, including the contents of a notification, factors the Agency considers in making a may affect determination, the contents of another State’s objection to the issuance of a Federal license or permit, and the Federal agency process upon receipt of an objection. Lastly, section V.G of this preamble discusses the proposed repeal of the provisions for Tribes to obtain treatment in a similar manner as a State (TAS) for section 401 or section 401(a)(2).

The Agency is not proposing any revisions to the regulations at subpart C that specifically apply to EPA when it acts as a certifying authority. However, EPA is seeking comment on whether it should add regulatory text to limit the duration of the public comment period that accompanies EPA’s public notice on a request for certification. Consistent with section 401(a)(1), EPA defines its public notice procedures at 40 CFR 121.17. See 33 U.S.C. 1341(a)(1) (“Such State or interstate agency shall establish procedures for public notice in the case of all applications for certification by it and, to the extent it deems appropriate, procedures for public hearings in connection with specific applications.”); 88 FR 66626. EPA declined to define the length of the public comment period and stated it would determine it on a case-by-case basis but acknowledged that it expected the comment period generally to be 30 days. 88 FR 66626. EPA is requesting comment on whether it should codify a comment period of no more than 30 days in its regulations currently located at 40 CFR 121.17(a).

The Agency is not proposing revisions to subpart E, which provides that the provisions of 40 CFR part 121 are separate and severable from one another, and if any provision is stayed or determined to be invalid, the remaining provisions shall continue in effect. EPA is proposing to retain this

regulatory text because EPA continues to view the provisions of 40 CFR part 121 as severable taking into account the revisions proposed here.

A. Request for Certification

1. What is the Agency proposing?

Under this proposed rulemaking, an applicant must submit a request for certification to a certifying authority to initiate an action under CWA section 401. Consistent with the text of the CWA, the proposed rule provides that the statutory timeline for certification review starts when the certifying authority receives a request for certification. In order for a request for certification to start the statutory timeline for review, it must meet the requirements as defined in this proposed rule, rather than as defined by the certifying authority. The proposed 40 CFR 121.5 includes a singular enumerated list of documents and information that must be included in a request for certification for all Federal licenses or permits, including a copy of the Federal license or permit application submitted to the Federal agency or a copy of the draft Federal license or permit; any readily available water quality-related materials on any potential discharges from a point source into waters of the United States from the Federally licensed or permitted activity that informed the development of the application or draft license or permit; and any additional project information as proposed in 40 CFR 121.5(c) not already included in the request for certification.

Under this proposed rulemaking, a request for certification must include all applicable components to start the statutory clock. In the interest of ensuring certifying authorities do not “blur” the “bright-line rule regarding the beginning of [the certification] review” process, which states that the timeline for a certifying authority’s action regarding a request for certification “shall not exceed one year” after “receipt of such request,” the Agency is proposing to remove the text currently located at 40 CFR 121.5(c) which allows State and Tribal certifying authorities to define additional contents in a request for certification, consistent with the Agency’s rulemaking authority. *N.Y. State Dep’t of Env’tl. Conservation v. FERC*, 884 F.3d 450, 455–56 (2d Cir. 2018) (“*NYSDEC*”).

EPA is proposing revisions throughout 40 CFR 121.5 to reflect the proposed scope of certification. See section V.C of this preamble. Consistent with this proposed revised scope, the Agency is also proposing to add a

definition for “discharge” at 40 CFR 121.1(c) to clarify that usage of the term throughout 40 CFR part 121 refers to a discharge from a point source into waters of the United States.²⁷ Consistent with this revision, the Agency proposes to delete the text “from a point source into waters of the United States” from 40 CFR 121.2 and “into waters of the United States” from the definition of “license or permit” at 40 CFR 121.1(f) to reduce redundancy in these provisions. This proposed definition and revision to 40 CFR 121.2 are consistent with the Agency’s longstanding position on the meaning of the term “discharge” for purposes of CWA section 401. See 88 FR 66568, 85 FR 42237.²⁸ The Agency welcomes comments on whether the proposed definition is necessary and addresses concerns related to clarity as drafted, or whether 40 CFR 121.2 clearly conveys the meaning of the term discharge for purposes of CWA section 401.

EPA is also proposing to remove the definition of “project proponent” currently located at 40 CFR 121.1(h) and instead leverage the statutory term “applicant” throughout 40 CFR part 121. The term “project proponent” does not appear in CWA section 401, and the Agency believes it is most appropriate to adhere to the statutory text where, as here, a term has a readily understandable ordinary meaning reinforced by the surrounding context. The term “applicant” as used in the EPA’s proposed regulations, like the text of CWA section 401, would refer to the applicant for a Federal license or permit that is subject to CWA section 401 certification. Using the term “applicant” throughout 40 CFR part 121 carries this established usage throughout the regulatory scheme. To be clear, the term “applicant” may refer to the person or entity applying for a Federal license or permit themselves, contractors or other agents of that person or entity, or any other entity that may seek certification. The Agency is also proposing additional revisions to 40 CFR 121.5 to remove redundant provisions and further

streamline the contents of a request for certification.

Ultimately, these proposed revisions would provide greater certainty for applicants, certifying authorities, and Federal agencies concerning when the reasonable period of time for review of a request for certification has started.

2. Summary of Proposed Rule Rationale

The Act places the burden on the applicant to obtain a CWA section 401 certification from a certifying authority in order to receive a Federal license or permit. The CWA section 401 certification process begins on the date when the certifying authority receives a request for certification. The statute limits the time for a certifying authority to act on a request as follows:

If the State, interstate agency, or Administrator, as the case may be, fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of such request, the certification requirements of this subsection shall be waived with respect to such Federal application.

33 U.S.C. 1341(a)(1) (emphasis added). The plain language of the Act requires that the reasonable period of time to act on certification not exceed one year after the “receipt” of the “request for certification.” The statute, however, does not define those terms. As the agency that Congress charged with administering the CWA,²⁹ Congress empowered EPA “to prescribe rules to ‘fill up the details’ of a statutory scheme.” *Loper Bright*, 603 U.S. 369, 395 (2024) (noting that in such circumstances, an “agency is authorized to exercise a degree of discretion”) (citation omitted). In defining the terms “receipt,” at 40 CFR 121.6(a), and “request for certification,” at 40 CFR 121.5, EPA is “filling up the details” of the CWA section 401 certification process. See 33 U.S.C. 1361(a) (“The Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this chapter.”).

In 2018, the Second Circuit addressed the question of when the statutory review clock begins. *NYSDEC*, 884 F.3d at 455–56. The certifying authority in the case, NY State Department of Environmental Conservation, “contend[ed] that the review process under Section 401 begins only once it, a state agency, deems an application ‘complete.’” *Id.* at 455. The court disagreed and held that the statutory time limit is *not* triggered when a certifying authority determines that a request for certification is “complete,”

²⁷ The Agency will use the term “discharge” throughout the preamble to refer to point source discharges into waters of the United States, *i.e.*, the proposed definition of “discharge” at 40 CFR 121.1(c), unless use of the full terminology is necessary for readability and clarity.

²⁸ The Agency continues to rely on the definition of “point source” in section 502(14) of the CWA. 33 U.S.C. 1362(14). For example, courts have concluded that bulldozers, mechanized land clearing machinery, and similar types of equipment used for discharging dredge or fill material are “point sources” for purposes of the CWA. See, *e.g.*, *Avoyelles Sportsmen’s League v. Marsh*, 715 F.2d 897 (5th Cir. 1983); *United States v. Larkins*, 657 F. Supp. 76 (W.D. Ky. 1987), *aff’d*, 852 F.2d 189 (6th Cir. 1988).

²⁹ See footnote 14.

but that the “plain language of Section 401 outlines a bright-line rule regarding the beginning of review,” and that the clock starts after “receipt of such request” by the certifying authority. *Id.* at 455–56. Otherwise, the court noted that State certifying authorities could “blur this bright-line into a subjective standard, dictating that applications are complete only when state agencies decide that they have all the information they need. The state agencies could thus theoretically request supplemental information indefinitely.” *Id.* at 456.

Under the current regulations, the Agency defined the minimum contents in all requests for certification and allowed State and Tribal certifying authorities to define additional contents of a request for certification. 40 CFR 121.5(a), (c). In the July 2025 **Federal Register** publication, the Agency asked stakeholders for any data or information on their experiences with the 2023 Rule, including certification procedures. 90 FR 29829. Several stakeholders, including some certifying authorities, supported the current regulation’s approach to the request for certification, asserting that it provided certifying authorities with the necessary information to make a certification decision and reduced the time in the certification process. Conversely, several industry stakeholders expressed concern that the current regulation’s authorization for State and Tribal certifying authorities to add additional contents could lead to uncertainty about when the reasonable period of time began.

Given the large number of requests for certification submitted each year,³⁰ the statutory requirement that those requests be acted on “within a reasonable period of time (which shall not exceed one year) after receipt of such a request,” and the potential for uncertainty or delays associated with the absence of a nationally consistent definition for request for certification, the EPA is proposing to standardize the contents of a “request for certification” to provide applicants, certifying authorities, and Federal agencies with clear regulatory text identifying when the statutory reasonable period of time begins.

The Agency is proposing to revise 40 CFR 121.5 to define one complete list of components for all requests for certification. Consistent with the existing regulatory requirements, all requests must be in writing, signed, and dated by the applicant. The proposed regulatory text retains the minimum

components currently included in all requests for certification, *e.g.*, a copy of the Federal license or permit application, with structural revisions to consolidate these requirements into one list instead of bifurcating between individual and general licenses or permits, and additional revisions to ensure consistency across the proposed regulatory text. The proposed text also identifies additional project information for inclusion in a request for certification that is similar to the current default list of additional components, with revisions to further streamline and clarify the contents of a request.

As discussed in more detail below, the Agency believes these are the components that would be necessary to provide a certifying authority with clear notice that a request has been submitted and a sufficient baseline of information for the certifying authority to begin its review. It is important to distinguish between the amount of information appropriate to start the certifying authority’s reasonable period of time and the amount of information that may be necessary for the certifying authority to take final action on a request for certification. The components of a request for certification identified in the proposed rule—including a copy of the Federal license or permit application or draft license or permit and any readily available water quality-related materials on any potential discharges from the Federally licensed or permitted activity that informed the development of the application or draft license or permit—are intended to be sufficient information to start the reasonable period of time but may not necessarily represent the totality of information a certifying authority may need to act on a request. Nothing in the proposed rule would preclude an applicant from submitting additional relevant information or preclude a certifying authority from requesting and evaluating additional information within the reasonable period of time. However, the Agency expects any additional information requested by the certifying authority to relate to the discharge, consistent with the proposed scope of certification at 40 CFR 121.3, because any decision must include a statement that the *discharge* will comply with water quality requirements. *See* Section V.D of this preamble for further discussion on the contents of a certification decision.

The Agency is proposing to retain the requirement that all requests for certification include either a copy of the Federal license or permit application submitted to the Federal agency (for an individual license or permit), or a copy of the draft Federal license or permit

(for a general license or permit)³¹. This means that a request for certification could not precede submission of an application to the Federal agency (for individual licenses or permits), providing applicants and others with clear direction on when the certification process begins in relation to the Federal licensing or permitting process. Furthermore, this would be consistent with several Federal agency practices that allow applicants to submit requests for certification shortly after the license or permit application is received. *See, e.g.*, 18 CFR 5.23 (requiring a FERC hydropower license applicant to file a copy of a water quality certification, request for certification, or evidence of a waiver “within 60 days from the date of issuance of the notice of ready for environmental analysis”); 33 CFR 325.2(b)(1) (requiring a Corps district engineer to notify the applicant if they determine that a water quality certification is necessary in processing an application).

The Agency is also proposing that all requests for certification include any readily available water quality-related materials on any potential discharges from the Federally licensed or permitted activity that informed the development of the application or the draft license or permit. This information is similar to the existing requirement currently located at 40 CFR 121.5(a)(1)(ii) and (a)(2)(ii), with revisions to ensure the information is appropriately limited and related to the potential discharges, consistent with proposed revisions to the scope of certification. *See* Section V.C of this preamble. The term “readily available” refers to existing materials that are in the applicant’s possession or easily obtainable.³² The phrase “that informed development of the application or the draft license or permit” refers to materials that were considered by the applicant during its development of the application or draft license or permit. These terms provide a predictable, objective endpoint for applicants because they are limited to data or information existing at the time of, and that was used in, the development of the Federal license or permit application or the draft Federal license or permit. This information may also reduce the need for duplicative

³¹ The Agency notes that the draft Federal license or permit required in a request for certification on the issuance of a general license or permit refers to the draft used at the time of the request for certification.

³² For example, this could include maps, studies, or a reference to a website or literature that contain information that the applicant considered during the development of the application or draft license or permit.

³⁰ *See* section 3 of the Economic Analysis.

studies and analyses during the certification process. Consistent with the scope of review under this proposed rule, the proposed rule would limit any such materials to “water quality-related materials on any potential discharges.” Accordingly, applicants may redact or exclude personally identifiable information (e.g., personal addresses, personal finance information) and/or other sensitive information.

The components proposed at 40 CFR 121.5(a) and (b) should be familiar to stakeholders and provide a reasonable baseline of information to initiate the certification process, including information on the project and its discharge-related water quality impacts. However, in the event a Federal license or permit application or draft Federal license or permit does not include certain baseline information on discharge-related water quality impacts, the Agency is proposing five additional components for inclusion in a request for certification to ensure all requests for certification include the same predictable, baseline information. To ensure the additional information is not duplicative of the proposed components at 40 CFR 121.5(a) and (b), the proposed regulatory text specifies that such additional information is only required if not already included in the request for certification. For example, if the Federal license or permit application already includes a map or diagram of the proposed discharges from the Federally licensed or permitted activity, the applicant would not be required to submit a second copy of the map or diagram. To ensure the certifying authority understands where these components are located in a request for certification, the Agency observes that the applicant could simply indicate where the components identified in proposed 40 CFR 121.5(c) are already included in the materials proposed at 40 CFR 121.5(a) and (b). The proposed additional components are based on the current regulatory text that applies to EPA when it acts as a certifying authority or when a State or Tribe does not define additional components in a request for certification with revisions. 40 CFR 121.5(b), (d). Based on the Agency’s experience, these proposed components are those that are necessary to initiate a certifying authority’s analysis on a request for certification. The following paragraphs discuss these additional components.

The Agency is proposing to require additional components related to the location and type of discharges from a Federally licensed or permitted activity at 40 CFR 121.5(c)(1)–(4). These additional components, including a

description of the proposed discharges, the specific location of any discharges, a map or diagram of the proposed discharges, and a description of current site conditions, are similar to those in the 2020 Rule, *see* 40 CFR 121.5(b)(4) (2020), and the current regulation, *see* 40 CFR 121.5(b)(1)–(4), with revisions to ensure the information is appropriately limited and related to the potential discharges, consistent with proposed revisions to the scope of certification. *See* section V.C of this preamble. The Agency recognizes that some of these components may not be appropriate for a Federal agency seeking CWA section 401 certification for the issuance of general license or permit. For example, at the time of certification, a Federal agency may not know the location of every potential discharge that may in the future be covered under a general license or permit. Accordingly, the Agency has proposed regulatory text at 40 CFR 121.5(c) to clarify that additional project information only needs to be included in a request for certification “as applicable.”

Consistent with prior regulations, the Agency is proposing that applicants must provide documentation that a pre-filing meeting request was submitted to the certifying authority in accordance with applicable submission procedures (unless the pre-filing meeting request was waived) at 40 CFR 121.5(c)(5). This provision is intended to create additional accountability on the part of the applicant to ensure that the applicant has complied with the requirement to request a pre-filing meeting with the certifying authority. If the certifying authority waives the requirement for a pre-filing meeting request, then the applicant would not need to produce documentation of the pre-filing meeting request.

The Agency is proposing to remove the additional contents currently required at 40 CFR 121.5(b)(5) and (6). 40 CFR 121.5(b)(5) requires the applicant to include “[t]he date(s) on which the proposed activity is planned to begin and end and, if known, the approximate date(s) when any discharge(s) may commence,” while 40 CFR 121.5(b)(6) requires the applicant to include “[a] list of all other Federal, interstate, Tribal, state, territorial, or local agency authorizations required for the proposed activity and the current status of each authorization.” While this information may be helpful to certifying authorities as they develop certification decisions, this information may not be available at the time the applicant submits a request for certification, or at all in the case of the issuance of general permits. *See* 88 FR 66580 (discussing

the lack of information on other authorizations at the time of a request for certification on the issuance of a general permit). Certifying authorities would be free to leverage the pre-filing meeting or other communications with the applicant to discuss related items, to the extent they are relevant to the certifying authority’s analysis, including work windows and any expected authorizations. The Agency requests comment on the proposed contents of a request for certification, including whether the Agency should further revise the required components proposed at 40 CFR 121.5.

EPA proposes to remove the text currently located at 40 CFR 121.5(c) which allows State and Tribal certifying authorities to define additional contents in a request for certification. The court in *NYSDEC* held that the reasonable period of time begins after receipt of a request for certification and not when the certifying authority deems it “complete.” 88 FR 66574. The 2023 Rule asserted that *NYSDEC* did not address the separate question of whether EPA or certifying authorities have the authority to establish a list of required contents for a request in advance of the request and opted to allow State and Tribal certifying authorities the ability to add additional requirements to a request for certification. *Id.* at 66577. After considering stakeholder input, the Agency has determined that EPA, and not certifying authorities, has the authority to establish a list of contents for a request for certification. Accordingly, the Agency is proposing to define one list of contents for all requests for certification to reduce uncertainty and enable applicants and certifying authorities to objectively and transparently understand which submittals start the reasonable period of time clock.

As an initial matter, the approach taken in the current regulation is not compelled by either the statutory text or *NYSDEC*. The Agency does not find that defining an exclusive list would delay or hinder the certification process. Rather, the Agency finds the current regulatory approach could introduce uncertainty and delays where certifying authorities fail to transparently and objectively convey the additional required contents of a request, including requesting information unrelated to certification of project-related discharges, leading certifying authorities to “blur this bright-line into a subjective standard,” *NYSDEC*, 884 F.3d at 456, contrary to the holding in *NYSDEC* and the statutory text. As discussed above, nothing in the proposed rule would

preclude an applicant from submitting additional relevant information or preclude a certifying authority from requesting and evaluating additional information within the reasonable period of time. Indeed, in many cases it may be in the interest of the applicant and provide a more efficient certification process if relevant information about discharges and potential impacts to the receiving waters is provided to the certifying authority early in the certification process. The Agency also observes that the applicants and certifying authorities could use the pre-filing meeting process to discuss the proposed project and to determine what information (if any), in addition to that required to be submitted as part of the request, may be needed to enable the certifying authority to take final action on the request in the reasonable period of time.

The EPA acknowledges the desire of certifying authorities to have all necessary information as soon as possible in the certification process, but the Agency must balance that desire against the need for transparency related to when the reasonable period of time starts and the need for certainty regarding the required contents of a request for certification. The Agency finds that its proposed rule would strike the appropriate balance by identifying the kinds of information that provide a reasonable baseline about any project while recognizing the ability of certifying authorities and applicants to request and provide additional information both before and after the reasonable period of time clock starts.

It is important to reiterate that the burden is on the applicant to submit a request for certification to the certifying authority and work cooperatively to provide additional information as appropriate to facilitate the certification process. Likewise, the burden is on the certifying authority to evaluate the request for certification in good faith and to request information, documents, and materials that are within the scope of section 401 as provided in this proposed rule and that can be produced and evaluated within the reasonable period of time. If an applicant fails to supply the certifying authority with information necessary to assure that the discharge from the proposed project complies with the water quality requirements, the certifying authority may so specify in a denial of the certification. If the certifying authority requests information from the applicant that is beyond the scope of section 401, the applicant's remedy would lie with a court of competent jurisdiction. To avoid situations where the certifying

authority requests information from applicants that cannot be developed and submitted within the reasonable period of time, the EPA recommends that both the applicant and the certifying authority work in good faith, consistent with CWA section 401, and have early and sustained coordination and communication to streamline the overall certification process. The Agency requests comment on the proposed approach to remove the text currently located at 40 CFR 121.5(c) which allows State and Tribal certifying authorities to define additional contents in a request for certification.

Consistent with proposed revisions to define one list of components for all requests for certification, the Agency is proposing to remove 40 CFR 121.5(d), which directed applicants to provide defined additional contents in a request for certification if the State or Tribal certifying authority had not established its own list of requirements for a request for certification. This provision is unnecessary and redundant in light of the proposed requirements at 40 CFR 121.5(a)–(c). As noted above, the proposed components provide familiar regulatory text with clear direction for stakeholders regarding what is required in a request for certification that begins the statutory reasonable period of time. The Agency sees value in proposing to define components that are objective and do not require subjective determinations by a certifying authority about whether the request submittal requirements have been satisfied. Pursuant to 40 CFR 121.6(a), which would remain unchanged from the current regulations, the reasonable period of time begins on the date that the certifying authority receives a request for certification as defined in 40 CFR 121.5 (and in accordance with the certifying authority's applicable submission procedures). Thus, a request for certification must include all components listed in 40 CFR 121.5 of the proposed rule to start the statutory reasonable period of time. If any of the components of proposed 40 CFR 121.5 are missing from the request, the statutory reasonable period of time would not start. The inclusion of the proposed information would provide the certifying authority with clear notice that the applicant has submitted a request for certification and a sufficient baseline of information to allow it to begin its evaluation in a timely manner. If there are additional information needs aside from the proposed components provided in a request for certification, the certifying authority and applicant could discuss those needs during the

pre-filing meeting (*i.e.*, discuss anticipated additional information needs prior to the request for certification submittal) or during the reasonable period of time (*i.e.*, discuss additional information needs that emerged during the certifying authority's analysis of the request). The regulatory requirement that requests be received "in accordance with applicable submission procedures" should not be used by certifying authorities to introduce unreasonable delay between when a certifying authority receives a request and when "receipt" occurs, as this would contravene this proposed rule.

Finally, the Agency is proposing to remove the definition of "project proponent" at 40 CFR 121.1(h) and revise corresponding regulatory language throughout 40 CFR part 121 to use the statutory term "applicant." CWA section 401 applies to any "applicant for a Federal license or permit to conduct any activity . . . which may result in any discharge into the navigable waters." 33 U.S.C. 1341(a)(1). Such an "applicant . . . shall provide the licensing or permitting agency a certification from" the relevant certifying authority. *Id.* The remainder of the statute carries through this basic applicability language—the CWA section 401(a)(2) provision triggers "[u]pon receipt of such application and certification," *id.* 1341(a)(2), and any certification must include conditions "necessary to assure that any applicant for a Federal license or permit will comply" with applicable water quality requirements. *Id.* 1341(d). The term "project proponent" does not appear in CWA section 401 or any related provisions. The term "applicant" is most consistent with the statutory text and would also improve the clarity and administrability of the regulatory provisions intended to implement the statute.

In light of this revision, and in light of the statutory text of CWA section 401 discussed above, which requires an "applicant for a Federal license or permit" to request certification and otherwise carries through this basic applicability language, the EPA also requests comment on whether the best reading of the statute supports extending the CWA section 401 certification requirement to general permits, even in the absence of an "applicant." See *Loper Bright*, 603 U.S. at 400. EPA's position, as reflected in the current regulation (and the prior 2020 Rule), is that CWA section 401 certification "is not limited to individual Federal licenses or permits, but also extends to general licenses and

permits such as CWA section 404 general permits . . . and CWA section 402 general permits[.]” 88 FR 66570; *see also* 85 FR 42243 (noting the definition of “project proponent” “extends all of the substantive and procedural requirements [of the 2020 Rule] to federal agencies seeking certification for a general license or permit.”). In taking this position, the Agency previously asserted that “both case law and prior Agency rulemakings and guidance recognize that general Federal licenses or permits are subject to section 401 certification.” 88 FR 66571 (citing, *inter alia*, *United States v. Marathon Dev. Corp.*, 867 F.2d 96, 100 (1st Cir. 1989)); 85 FR 42285–86. By defining “project proponent” to include “the applicant for a Federal license or permit, or the entity seeking certification,” 40 CFR 121.1(h) (emphasis added), the EPA sought for the regulation to include, as a categorical matter, general permits and other instances of non-applicants requesting certification. However, general permits do not involve an “applicant,” such as the issuance of nationwide and regional general permits for dredged and fill material issued by the Corps pursuant to an express grant of statutory authority in CWA section 404(e), 33 U.S.C. 1344(e). There are also instances where individual projects do not involve an “application,” such as Corps’ civil works projects, but the Federal agency still requires a certification. *See* 33 CFR 336.1(a)(1) (“The CWA requires the Corps to seek state water quality certification for discharges of dredged or fill material into waters of the U.S.”); 33 CFR 335.2 (“[T]he Corps does not issue itself a CWA permit to authorize Corps discharges of dredged material or fill material into U.S. waters but does apply the 404(b)(1) guidelines and other substantive requirements of the CWA and other environmental laws.”). The Agency requests comment on whether the best reading of section 401 extends the certification requirement even to those situations where there are no “applicants,” but there nevertheless is a potential for a point source discharge from a Federally licensed or permitted activity into waters of the United States. The Agency also seeks comment on whether reliance interests exist for the Agency’s prior statements regarding the applicability of CWA section 401 in the absence of applicants, and, if so, how the Agency should weigh them against returning to the plain language of the statute. The EPA notes that this alternative approach would not be intended to alter the scope of permits to

which CWA section 401 applies of its own force.

B. Timeframe for Certification Analysis and Decision

1. What is the Agency proposing?

Section 401(a)(1) of the CWA provides that a certifying authority waives its ability to certify a Federal license or permit if it does not act on a request for certification within the reasonable period of time. 33 U.S.C. 1341(a)(1) (“If the State, interstate agency, or Administrator, as the case may be, fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of such request, the certification requirements of this subsection shall be waived with respect to such Federal application.”). As discussed in further detail below, the Agency is proposing to repeal the provision allowing for automatic extensions to the reasonable period of time to accommodate a certifying authority’s public notice procedures and force majeure events and instead rely on the joint extension process. Furthermore, the Agency is proposing regulatory text to bar certifying authorities from requesting applicants to withdraw a request for certification to avoid exceeding the reasonable period of time.

2. Summary of Proposed Rule Rationale

i. Extensions to the Reasonable Period of Time

Under this proposed rulemaking, the EPA is removing the provision at 40 CFR 121.6(d) that allows for automatic extensions to the reasonable period of time if a longer period of time was necessary to accommodate the certifying authority’s public notice procedures or force majeure events. The current regulations identify two circumstances that would require an extension to the reasonable period of time: (1) where a certification decision cannot be rendered within the negotiated or default reasonable period of time due to force majeure events (including, but not limited to, government closure or natural disasters); and (2) when State or Tribal public notice procedures necessitate a longer reasonable period of time. 40 CFR 121.6(d).

In response to EPA’s July 2025 request for stakeholder feedback, several industry stakeholders were not supportive of the extension provisions under the 2023 Rule arguing that State processes (*i.e.*, public notice procedures) should not override the agreed upon reasonable period of time. Further, one industry stakeholder added

that the certifying authority should not be allowed to extend the reasonable period of time and instead the Federal agency should do so only at the request of the applicant. On the other hand, several State, Tribal, and public stakeholders supported extensions of the six-month default period where necessary.

Upon reconsideration, the Agency finds that automatic extensions which accommodate the certifying authority’s public notice procedures or force majeure events are unnecessary. As an initial matter, the certifying authority and Federal agency can discuss the certifying authority’s public notice procedures when jointly setting and agreeing to the reasonable period of time. *See* 88 FR 66586 (discussing factors Federal agencies and certifying authorities may consider in setting the reasonable period of time, including the certifying authority’s administrative procedures). Since administrative procedures, like public notice procedures, should be established and readily predictable, EPA encourages the creation of memorandums of agreement (MOAs) between Federal agencies and certifying authorities as appropriate to help reduce the need for determining the reasonable period of time on a case-by-case basis for every request. Likewise, certifying authorities and Federal agencies can agree to extend the reasonable period of time, not beyond one year, as necessary to address unforeseen events like extensions to the public notice process or force majeure events, and develop MOAs to standardize the process in such scenarios.

Aside from being able to jointly set and extend the reasonable period of time, the Agency also finds the automatic extensions unnecessary in light of the default reasonable period of time. The reasonable period of time defaults to six months if the certifying authority and Federal agency cannot jointly agree to a reasonable period of time. 40 CFR 121.6(c). The Agency is unaware of any implementation issues with the default reasonable period of time and meeting public notice requirements. In any case, the Agency expects Federal agencies and certifying authorities to negotiate and collaborate on setting the reasonable period of time and any extensions in good faith.

Considering these other aspects of the existing regulations for setting and extending the reasonable period of time, the Agency finds the automatic extension provision to be duplicative and anticipates that the proposed approach would provide clarity and added predictability to the certification

timeline. The Agency is requesting comment on the proposed approach.

ii. Withdrawal and Resubmittal

The EPA is proposing to add regulatory text in 40 CFR 121.6(e) providing that the certifying authority may not request the applicant to withdraw a request for certification or take any action to extend the reasonable period of time other than specified in proposed 40 CFR 121.6(d), which provides that any extension “shall not cause the reasonable period of time to exceed one year from the date that the request for certification was received.” As described in greater detail below, this proposed language is consistent with the plain statutory text of CWA section 401(a)(1) providing that the reasonable period of time shall not exceed one year and is further supported by the legislative history and body of case law addressing withdrawal and resubmission of certification requests. Moreover, as discussed below, this proposed approach addresses concerns raised by stakeholders in pre-proposal outreach seeking regulatory clarity regarding withdrawal and resubmission.

Although CWA section 401(a)(1) does not address withdrawal and resubmission expressly, the plain text provides that the reasonable period of time upon which a certifying authority may act on a request for certification “shall not exceed one year.” This language unequivocally sets the maximum limit of the reasonable period of time to act on a request for certification as one year and does not provide for exceptions to this restriction. As the Court of Appeals for the D.C. Circuit correctly observed, through this text, “Congress plainly intended to limit the amount of time that a State could delay a federal licensing proceeding without making a decision on the certification request.” *Alcoa Power Generating Inc. v. FERC*, 643 F.3d 963, 972, (D.C. Cir. 2011). This purpose is clearly documented in the legislative history for CWA section 401. The Conference Report on Section 401 identifies that the purpose of the one-year maximum time limit is to ensure that “sheer inactivity by the State . . . will not frustrate the Federal application.” H.R. Rep. 91–940, at 56 (1970), *reprinted in* 1970 U.S.C.C.A.N. 2741. Allowing a certifying authority to circumvent the set maximum period of time to act on a request for certification, either by requesting that an applicant withdraw and resubmit the request for certification or otherwise extending the reasonable period of time beyond a year, conflicts with the plain statutory

language and statutory purpose of precluding a certifying authority from thwarting a project through continued inaction. Thus, the proposed text recognizes the one-year maximum and ensures that certifying authorities do not request withdrawal and resubmission to evade this restriction.

The proposed approach is consistent with the body of case law addressing withdrawal and resubmission of certification requests, which recognizes that certifying authorities may not use withdrawal and resubmission to extend the one-year maximum on the reasonable period of time to act on a request for certification in section 401. In *Hoopa Valley Tribe v. FERC*, 913 F.3d 1099, 1104 (D.C. Cir. 2019), the Court of Appeals for the D.C. Circuit held that State certifying authorities had improperly entered into an agreement with an applicant whereby the “very same” request for certification of its relicensing application was automatically withdrawn and resubmitted every year by operation of “the same one-page letter,” submitted to the certifying authorities before the statute’s one-year waiver deadline. *Hoopa Valley Tribe v. FERC*, 913 F.3d 1099, 1104 (D.C. Cir. 2019). The court found that under the coordinated “withdrawal-and-resubmission scheme,” the certifying authorities had not rendered a certification decision for “more than a decade” after the initial request was submitted to them, and that such “deliberate and contractual idleness” defied the statute’s one-year limitation. *Id.* In its analysis, the court found that “[s]uch an arrangement does not exploit a statutory loophole,” but rather impermissibly circumvents the congressionally granted authority of the Federal agency licensing the project. *Id.* Specifically, the court reasoned that such a scheme “could be used to indefinitely delay federal licensing proceedings,” thereby undermining the authority of the Federal licensing agency to regulate such matters. *Id.*

Case law surrounding withdrawal and resubmission has continued to develop since the limitation identified in *Hoopa Valley Tribe*. Subsequent to its decision in *Hoopa Valley Tribe*, the Court of Appeals for the D.C. Circuit distinguished unilateral withdrawals initiated by an applicant as distinct from the impermissible withdrawal-and-resubmission scheme at issue in *Hoopa Valley Tribe*, finding that “where a party unilaterally withdraws and resubmits its certification application, those actions outside of the State’s control do not waive its statutory authority.” *Vill. of Morrisville v. FERC*, 136 F.4th 1117, 1127 (D.C. Cir. 2025). In drawing this

distinction, the court noted that its decision in *Hoopa Valley Tribe* centered on a mutual agreement between a State certifying authorities and the applicant to circumvent the one-year maximum limit of the reasonable period of time and delay the certification process, and the court explained that the “evidence of the State’s decision to delay was central to [the court’s] holding” in that case. *Id.* Consistently, the Fourth and Ninth Circuit Courts of Appeals have declined to find that agency records support finding impermissible withdrawal-and-resubmission schemes where such records demonstrate unilateral withdrawal initiated by an applicant, even where there has been acquiescence to the withdrawal by a certifying authority. See *N.C. Dep’t of Envtl. Quality v. FERC*, 3 F.4th 655, 675 (4th Cir. 2021); *Cal. State Water Res. Control Bd. v. FERC*, 43 F.4th 920, 931–32 (9th Cir. 2022).

The proposed regulatory text in 40 CFR 121.6(e) is consistent with this body of case law regarding withdrawal and resubmission, as it recognizes the impermissibility of a certifying authority applying withdrawal and resubmission to evade the statutory one-year maximum reasonable period of time to act on a request for certification, as addressed in *Hoopa Valley Tribe*, without precluding unilateral withdrawal initiated by an applicant found to be permissible in subsequent cases. This regulatory provision also does not preclude a certifying authority from acting within the statutory one-year maximum reasonable period of time to deny a request for certification without prejudice, which the Court of Appeals for the D.C. Circuit has distinguished from the withdrawal-and-resubmittal scheme at issue in *Hoopa Valley Tribe* and has recognized involves action from the certifying authority within the meaning of section 401 on a certification request. See *Turlock Irrigation Dist. v. FERC*, 36 F.4th 1179, 1183 (D.C. Cir. 2022).

The Agency’s proposed approach addresses concerns raised by multiple stakeholders in response to the EPA’s July 2025 request for stakeholder feedback regarding the lack of clarity under the current regulations regarding circumstances under which withdrawal and resubmission is impermissible. Rather than proposing an intent-based standard to evaluate the objectives of a certifying authority regarding withdrawal and resubmission, which would likely prove difficult to apply and would not provide regulatory certainty for certifying authorities or industry, EPA’s proposed approach provides a clear, bright-line limitation on certifying

authorities requesting an applicant withdraw a request for certification or otherwise taking action to extend the reasonable period of time beyond the one-year statutory maximum.

EPA seeks comment on its proposed text in 40 CFR 121.6(e), including but not limited to whether the proposed approach sufficiently addresses the regulatory uncertainty surrounding withdrawal and resubmission identified by stakeholders in feedback received in response to the Agency's July 2025 request.

C. Appropriate Scope for Section 401 Certification Review

1. What is the agency proposing?

The proposed rule would narrow the current regulation's broad "activity"-based scope of certifying authority review to what Congress clearly intended: an assessment of whether a facility's point source *discharges*³³ into waters of the United States will comply with specified water quality requirements. To explain this fundamental change in overall scope of review, this section will explain the history of EPA's interpretations, why the Agency chose to address the issue again in this rulemaking, and most importantly, the basis for the proposed new interpretation. Lastly, the preamble turns to other changes the Agency proposes to correct, related to the definition of "water quality requirements" and the scope of waters subject to certification.

i. The History of EPA's Interpretation of Scope

The proposed rule is the Agency's fourth interpretation regarding the scope of water quality certification since 1971. EPA first issued regulations addressing water quality certification in 1971, implementing a version that predated the modern CWA enacted in 1972 including the current CWA section 401. The 1971 Rule included language that was consistent with the statute at that time, indicating that the scope of certification prior to the modern CWA extended to the entire "activity" at issue in the Federal license or permit. In 1972, Congress amended the CWA and required certifying authorities to certify that "any such discharge shall comply" with certain provisions of the CWA. EPA did not revise its 1971 Rule following those amendments. In 1994, the Supreme Court reviewed EPA's 1971 Rule under the *Chevron* framework, whereby courts deferred to agency interpretations of ambiguous provisions

of statutes the agency implements so long as they were reasonable. *PUD No. 1 of Jefferson County v. Washington Department of Ecology*, 511 U.S. 700 (1994) ("*PUD No. 1*"). The Court upheld EPA's 1971 interpretation as reasonable. *Id.* at 712.

As for the more recent interpretations in 2020 and 2023, they were made under an evolving and progressively unclear landscape for judicial interpretation wherein courts, including the Supreme Court, were reducing reliance on, or calling into question, *Chevron* deference. Against this backdrop, the 2020 Rule analyzed the statute under *Chevron* (which was applicable at the time) and adopted an interpretation largely consistent with this proposal. The 2023 Rule subsequently reversed the 2020 interpretation to largely return to the interpretation upheld by the Supreme Court in *PUD No. 1*. The Agency did not cite *Chevron*, but in the absence of any other applicable framework, instead relied heavily on the *PUD No. 1* precedent and interpretive tools.

ii. Reevaluation of the 2023 Rule Interpretation

In June 2024, the Supreme Court issued its decision in *Loper Bright*, 603 U.S. 369, overruling *Chevron* and announcing a new framework for judicial review that largely eliminates judicial deference to administrative agencies regarding statutory interpretation, demanding instead that statutory interpretations be based on the "best reading" of the statute, starting with the language of the statute and using other traditional tools of statutory construction where appropriate. With the benefit of this direction from the Supreme Court, the Agency has reevaluated CWA section 401's language, structure, and history and concluded that CWA section 401 clearly limits the certification analysis to ensuring that any point source discharge into waters of the United States from a federally licensed or permitted activity will comply with appropriate and applicable water quality requirements. The 2023 Rule interpretation underpinning the current regulation does not reflect this best reading of the statute. This presents the Agency with a compelling reason to update its interpretation and, consequently, its regulations. EPA's proposal also reflects public feedback regarding uncertainty associated with the 2023 Rule provisions regarding the scope of certification.

2. Summary of Proposed Rule Rationale

EPA is proposing the following regulatory text at 40 CFR 121.3 regarding the scope of certification:

The scope of a Clean Water Act section 401 certification is limited to assuring that a discharge from a federally licensed or permitted activity will comply with applicable and appropriate water quality requirements.

Under the new definition of "discharge," the discharge in this section is further limited by the fact that the discharge must be a discharge from a point source into "waters of the United States." This section first explains why EPA's proposal is supported by the statutory text of CWA section 401, the history of the CWA and, in particular, the 1972 amendments to the Act, and related legislative history. After reviewing the statutory text and 1972 amendments, this section then discusses the Supreme Court's decision in *PUD No. 1* regarding the scope of certification including the Court's discussion of CWA section 401(d). The section then turns to EPA's proposed definition of "water quality requirements" and EPA's related proposed interpretation of the statutory phrase "other appropriate requirement of State law;" and finally to EPA's proposed approach to which waters a certifying authority considers when acting on a request for certification (referred to as "scope of waters" below).

i. The CWA Limits the Scope of Section 401 Certifications to "Discharges"

The best reading of the text of CWA section 401 limits scope of certification to "discharges" and not to the "activity." The first sentence in CWA section 401(a)(1) provides that "[a]ny applicant for a Federal license or permit to conduct any *activity* including, but not limited to, the construction or operation of facilities, which may result in any *discharge* into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which *the discharge* originates or will originate . . . that any *such discharge* will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of this Act" (emphasis added). The plain language of CWA section 401(a) directs States to certify that any discharge resulting from the proposed Federally licensed or permitted activity will comply with the enumerated provisions of the CWA. The use of the phrase "such discharge" in the very sentence that identifies what a State must certify is strong textual support for EPA's proposed interpretation. See *Park 'N Fly, Inc. v.*

³³ See footnote 27.

Dollar Park & Fly, Inc., 469 U.S. 189, 194 (1985) (“Statutory construction must begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose.”); *PG&E v. FERC*, 113 F.4th 943, 948 (D.C. Cir. 2024) (explaining that, “when ‘addressing a question of statutory interpretation, we begin with the text’”) (quoting *City of Clarksville v. FERC*, 888 F.3d 477, 482 (D.C. Cir. 2018)).

Section 401(a)(1) of the CWA uses the term “activity,” but not in reference to the scope of certification. The term “activity” describes the type of Federal license or permit that triggers CWA section 401 certification—namely, a “Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters.” Whereas “such discharge” identifies the scope of certification. Or, in the phrasing of the statutory text, if a Federal license or permit to conduct an activity may result in a discharge, then the certifying authority would certify that “any such discharge” will comply with the enumerated provisions of the CWA.

The language of the rest of CWA section 401 supports this reading. Section 401(a)(2) of the CWA, regarding the neighboring jurisdiction process discussed at section V.F of this preamble, is clearly limited to discharges.³⁴ Section 401(a)(2) of the CWA requires EPA to determine whether “such a discharge may affect” the quality of the waters of any other State beyond the State in which the discharge originates (emphasis added), and subsequently notify that affected other State. Section 401(a)(2) of the CWA also requires a notified State that objects to a Federal license or permit to determine whether “such discharge will affect the quality of its waters so as to violate any water quality requirements” (emphasis added). These references to “discharge” are clear indications that the subject of the entire CWA section 401 process—from certification pursuant to CWA section 401(a)(1) to the neighboring jurisdiction process pursuant to CWA section 401(a)(2)—is focused on discharges, not the broader

activity. The scope of the CWA section 401(a)(2) process is clearly limited to discharges, and this provides strong support that the scope of certification in CWA section 401(a) is also clearly limited to discharges.³⁵

ii. The 1972 Amendments to the CWA Support EPA’s Proposed Interpretation

The 1972 amendments to the CWA and related legislative history provide additional support to interpret scope as limited to discharges. As discussed in detail in Section IV.A, before it was amended in 1972, the CWA “employed ambient water quality standards specifying the acceptable levels of pollution in a State’s interstate navigable waters as the primary mechanism in its program for the control of water pollution.” *EPA v. Cal. ex rel. State Water Res. Control Bd.*, 426 U.S. 200, 202 (1976). In 1972, Congress determined that this program had “been inadequate in every vital aspect,” *id.* at 203 (quoting legislative history of the 1972 amendments), and performed a “total restructuring” and “complete rewriting” of the existing regulatory framework. *City of Milwaukee v. Illinois*, 451 U.S. 304, 317 (quoting legislative history of the 1972 amendments). The new regulatory framework involved imposing effluent limitations on point source discharges through NPDES permits. *State Water Resources Control Bd.*, 426 U.S. at 204–05 (describing the new framework).

CWA section 401 was updated as part of the 1972 CWA amendments to reflect the restructuring of the Act. The 1970 version provided that a certifying authority must certify “that such activity . . . will not violate water quality standards.” Public Law 91–224, 21(b)(1), 84 Stat. 91, 108 (1970) (emphasis added). Significantly, Congress modified this language in 1972, requiring a certifying authority to certify “that any such discharge shall comply with the applicable provisions of [the CWA].” Public Law 92–500, 401(a)(1), 86 Stat. 816, 877 (1972) (codified at 33 U.S.C. 1341(a)(1)) (emphasis added).

This change from “activity” to “discharge” is consistent with the broader amended regulatory regime and statutory construct of the CWA by focusing on regulating point source

discharges into “waters of the United States.” It is also strong evidence that Congress intended the scope of certification to change from the entire “activity” subject to the Federal license or permit to the “discharges” of that activity. Had Congress intended the 1972 amendments to retain the original “activity” scope, Congress could have retained the phrase “such activity” instead of changing it to “such discharge.” However, Congress specifically did not carry forward the term “activity” in the operative phrase in CWA section 401(a). Under basic canons of statutory construction, EPA begins with the presumption that Congress chose its words intentionally. *See, e.g., Stone v. INS*, 514 U.S. 386, 397 (1995) (“When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect.”).

The legislative history also supports the conclusion that Congress intended its changed framing from “activity” to “discharge” to have real meaning, with the purpose of making the new CWA section 401 consistent with the new regulatory framework of the Act. The 1971 Senate Report reiterates that CWA section 401 involves “certification from the State in which the discharge occurs that any such discharge will comply” with water quality requirements. S. Rep. No. 92–414, at 69 (1971) (emphasis added). The report continues that CWA section 401 “is substantially section 21(b) of existing law . . . amended to assure consistency with the bill’s changed emphasis from water quality standards to effluent limitations based on the elimination of any discharge of pollutants.” *Id.*; *see also* H.R. Rep. No. 92–911 at 121 (1972) (“Section 401 is substantially section 21(b) of the existing law amended to assure that it conforms and is consistent with the new requirements of the [1972 Act].”). The legislative history indicates that Congress amended the existing water quality certification framework to “assure consistency” with the 1972 Act’s “changed emphasis” of controlling “discharges.” The 2023 Rule makes much of the statements in the Congressional reports that CWA section 401 is “substantially section 21(b) of existing law,” suggesting that this demonstrates that Congress did not intend to change the scope of certification when it amended “such activity” to “such discharge.” 88 FR 66596. However, the better understanding of these statements, and the explicit amendment of the text of the Act, is that they reflect that Congress did in fact largely retain the water

³⁴ The 2023 Rule goes to great lengths to explain why it interprets “such discharge” in CWA section 401(a)(1) to effectively mean “such activity” while interpreting “such discharge” in CWA section 401(a)(2) to mean precisely what it says. 88 FR 66637–38 (discussing “scope of the neighboring jurisdiction process”). EPA now proposes that the far simpler and more coherent reading, indeed the best reading, is that both provisions are limited to discharges.

³⁵ The text of section 401(a)(3) and (a)(4) also support a reading that the scope of certification is limited to discharges. Section 401(a)(3) refers to “such discharge,” another reference back up to the triggering discharge. Section 401(a)(4) also refers to discharges and applies to “any federally licensed or permitted facility or activity which may result in any discharge into the navigable waters and with respect to which a certification has been obtained” pursuant to section 401(a)(1) (emphasis added).

quality certification framework from section 21(b) and continued to allow States to ensure that Federally authorized projects would not violate applicable water quality requirements, even if Congress also made important revisions to assure the retained certification framework is consistent with the 1972 Act.

iii. The Supreme Court's Ruling Under Chevron on Scope of Certification

In 1994, the Supreme Court reviewed a CWA section 401 certification issued by the State of Washington for a new hydroelectric project on the Dosewallips River. See *PUD No. 1*, 511 U.S. 700, 703–04 (1994). This decision, though narrow in its holding, has been read by the EPA in the past (including in the 2023 Rule) and by some States and Tribes to significantly broaden the scope of CWA section 401 beyond what the statutory text allows. After considering the Court's holding and EPA's prior interpretations, EPA now appropriately interprets CWA section 401 using the "best reading" standard recently provided by the Supreme Court in *Loper Bright*.

The principal dispute adjudicated in *PUD No. 1* was whether the State of Washington could impose a minimum stream flow as a condition in a certification issued under CWA section 401. There were two potential discharges from the proposed hydroelectric facility: "the release of dredged and fill material during construction of the project, and the discharge of water at the end of the tailrace after the water has been used to generate electricity." *Id.* at 711. The applicant argued that the minimum stream flow condition was unrelated to these discharges and therefore beyond the scope of the State's authority under CWA section 401. *Id.*

The Court considered the text of sections 401(a) and 401(d) and, specifically, the use of "discharge" in CWA section 401(a) and "applicant" in CWA section 401(d). *Id.* at 711–13. Section 401(a) of the CWA requires the certifying authority to certify that the discharge from a proposed Federally licensed or permitted project will comply with enumerated CWA provisions, and CWA section 401(d) allows the certifying authority to include conditions to assure that the applicant will comply with enumerated CWA provisions and "any other appropriate State law requirements." Emphasizing that the text of CWA section 401(d) "refers to the compliance of the applicant, not the discharge," the Court explained that CWA section 401(d) "is most reasonably read as

authorizing additional conditions and limitations on the activity as a whole once the threshold condition, the existence of a discharge, is satisfied." *Id.* at 712.

The Court then ultimately deferred to EPA's 1971 Rule, affording it *Chevron* deference. The Court found that "[o]ur view of the statute is consistent with EPA's regulations implementing § 401." *Id.* The Court favorably quoted EPA's 1971 Rule, which indicated that certifying authorities certify the "activity" (and an EPA guidance document from 1989). *Id.* The Court then held that "EPA's conclusion that activities—not merely discharges—must comply with state water quality standards is a reasonable interpretation of § 401 and is entitled to deference." *Id.* at 712 (citing, *inter alia*, *Chevron*) (emphasis in the original). The Court therefore reached its holding at *Chevron* "step two," finding the statutory text to be ambiguous and EPA's interpretation embodied in the 1971 Rule to be a "reasonable" interpretation.

While the Court in *PUD No. 1* upheld one interpretation of CWA section 401 as reasonable, that does not preclude the Agency from adopting a different interpretation. When a court, even the Supreme Court, has upheld an agency interpretation of a statute as reasonable under *Chevron*, the agency is not precluded from revising its regulation to ensure it reflects the best reading of the statute. See *Loper Bright*, 603 U.S. at 400 (reviewing courts determine whether an agency interpretation is the "best" reading of the statute). Nothing in *Loper Bright* changed the proposition that agencies may update their interpretations of the statutes that they implement, even interpretations previously upheld by a court as reasonable under *Chevron*, particularly to align the agency's interpretation with the best reading of the statute. *Lopez v. Garland*, 116 F.4th 1032, 1038–41 (9th Cir. 2024) (upholding post-*Loper Bright* an agency's updated interpretation of a statute after that circuit court of appeals had "historically endorsed [the] prior [agency] interpretation under *Chevron*"). See *White Lion*, 604 U.S. 542, 568 (2025) (affirming, post-*Loper Bright*, that agencies remain "free to change their existing policies as long as they provide a reasoned explanation for the change"); *Ozurumba v. Bondi*, 2025 U.S. App. LEXIS 22523, *22 (4th Cir. 2025) (noting that it "strikes us as arbitrary" if "we would be stuck—forever—with the most recent agency

interpretation that we upheld [under *Chevron*] before *Loper Bright*").³⁶

It is significant that, not only did the majority in *PUD No. 1* employ *Chevron* deference to EPA regulations, those regulations were not based on the statutory text before the Court. The Court relied on EPA regulations that predated the 1972 CWA amendments and therefore contained outdated statutory terminology, most importantly "activity" rather than "discharge" in CWA section 401(a)(1). This is yet another important reason not to treat *PUD No. 1* as the final word on the proper scope of certification.

The *PUD No. 1* majority's short discussion of the statutory text focused on the use of the term "applicant" in CWA section 401(d), noting that the "text refers to the compliance of the applicant, not the discharge." 511 U.S. at 711. While CWA section 401(d) does not expressly refer back to "such discharge," it also does not use the phrase "activity." Ultimately, CWA section 401(d) applies to "[a]ny certification provided under this section," which is most naturally read as operating within the bounds set by CWA section 401(a)(1): discharges into waters of the United States.³⁷ Furthermore, CWA section 401(d) requires certifications to set forth conditions necessary to assure compliance with enumerated provisions of the CWA which all regulate point source discharges into waters of the United States.³⁸ The ordinary meaning of the word "applicant" is "[o]ne who applies, as for a job or admission." See *Webster's II, New Riverside University Dictionary* (1994). The use of the term

³⁶ Granted, if the court upholding the prior agency interpretation offered a reasoned analysis explaining its support for the prior agency interpretation, it would behoove an agency to engage with that analysis to ensure the agency's new interpretation is the best interpretation. EPA does that here, for example, by analyzing the discussion in *PUD No. 1* regarding the text of section 401(d).

³⁷ This interpretation mirrors some of the reasoning discussed in the dissenting opinion in *PUD No. 1*, which the Agency examined in its efforts to discern "the best" interpretation of section 401. *Loper Bright*, 603 U.S. at 400. As the dissent reasoned, "subsections 401(a)(1) and (d) can easily be reconciled to avoid this problem." *PUD No. 1*, 511 U.S. at 726 (Thomas, J., dissenting). As described above, the Agency also is persuaded that reading section 401 "as a whole" indicates that "while § 401(d) permits a State to place conditions on a certification to ensure compliance of the 'applicant,' those conditions must still be related to discharges." *Id.* at 726–27. As the dissent concluded, "this interpretation best harmonizes the subsections of § 401." *Id.* at 727.

³⁸ Sections 301, 302, and 306 address the applicable effluent limitations for new and existing sources, while Section 307 addresses the effluent limitations for toxic pollutants and pretreatment standards for industrial pollutants discharged into publicly owned treatment works.

“applicant for a Federal license or permit” is best read to simply describe the person or entity that applied for the Federal license or permit that requires a certification, not to greatly expand the scope of CWA section 401 beyond what the rest of the text clearly indicates.

This view of CWA section 401(d) is supported by the Supreme Court’s “clear statement” rule regarding federalism. The Supreme Court “require[s] Congress to enact exceedingly clear language if it wishes to significantly alter the balance between federal and state power . . .” *Sackett v. EPA*, 598 U.S. 651, 679 (2023) (citations omitted). In the 1972 amendments to the Clean Water Act, Congress maintained traditional State sovereignty principles while also adopting a new approach to federal regulation of waters of the United States by choosing to regulate discharges into waters of the United States instead of the prior water quality goal-based approach. It is improbable and highly unlikely that, despite Congress’ actions to narrow the scope of State certifications in line with the discharge approach in regulation, Congress attempted to create a work-around to expand the scope of allowable certification conditions authorized under CWA section 401(d). Such a theory necessarily fails to satisfy the clear statement rule to alter the traditional Federal-State balance enshrined throughout the 1972 Act. As States continue to maintain their traditional land and water management authority, so too does the Federal government continue to maintain its traditional authority, as provided through the Commerce Clause, to determine how waters of the United States are to be regulated according to the Act’s discharge-based approach. There is no “exceedingly clear language” in CWA section 401 indicating that Congress intended the scope of certification to go beyond discharges.

The Court has recently cautioned agencies against assertions of authority with vast “economic and political significance” without “clear congressional authorization.” *West Virginia v. EPA*, 597 U.S. 697, 723–30 (2022) (articulating the “major questions doctrine”); *see also Biden v. Nebraska*, 600 U.S. 477, 511 (Barrett, J., concurring) (describing the doctrine as “an interpretive tool reflecting ‘common sense as to the manner in which Congress is likely to delegate a policy decision of such economic and political magnitude to an administrative agency.’”) (citations omitted). The assertion in the 2023 Rule that the scope

of certification encompassed the entire “activity as a whole” has vast economic and political significance, as it provides States with sweeping authority to decide the fate of nationally important infrastructure projects, such as natural gas pipelines and hydropower dams, based on potentially speculative water quality impacts not linked to a point source discharge into waters of the United States. And the 2023 Rule did so without “clear congressional authorization,” instead ignoring the statutory language of CWA section 401(a) limiting certification review to discharges likely resulting from the permitted activity and relying heavily on the “vague term” “applicant” in CWA section 401(d). 88 FR 66594; *West Virginia*, 597 U.S. at 723 (“Extraordinary grants of regulatory authority are rarely accomplished through ‘modest words,’ ‘vague terms,’ or ‘subtle device[s].’”); *Nebraska*, 600 U.S. at 515 (Barrett, J. concurring) (“The expectation of clarity is rooted in the basic premise that Congress normally ‘intends to make major policy decisions itself, not leave those decisions to agencies.’”). As the Supreme Court has recently reiterated, “Congress does not ‘hide elephants in mouseholes.’” *Sackett*, 598 U.S. at 677. Applying that principle here, EPA should not assume that Congress intended to greatly expand the scope of certification simply by use of the term “applicant” in CWA section 401(d). Instead, for the reasons described above, the best interpretation of the text of CWA section 401, as informed by the statutory and legislative history of the CWA, is that the scope of certification is limited to discharges, not the entire activity subject to the Federal license or permit.

iv. Scope for Granting Certification Conditions

EPA is proposing to retain the position from both the current regulation and the 2020 Rule that the scope for purposes of conditioning a grant of certification is the same as the scope for purposes of deciding whether to grant or deny certification. As EPA explained in the 2020 Rule, interpreting CWA section 401 as establishing different standards for issuing a denial under CWA section 401(a) and for requiring conditions under CWA section 401(d) is likely to lead to implementation challenges, including confusion by applicants, certifying authorities, and Federal licensing and permitting agencies. 85 FR 42252. Moreover, if a certifying authority determines that it must add conditions under CWA section 401(d) to justify a grant of certification under CWA section

401(a), that is equivalent to deciding that—without those conditions—it must deny certification. The standard is therefore essentially the same. The outcome of the certifying authority’s analysis does not dictate the scope of review.

EPA is proposing to remove current paragraph (b) in 40 CFR 121.3 regarding the scope of certification conditions as unnecessary. The proposed new text at 121.3, which applies to a “section 401 certification,” is sufficiently clear that it applies to all aspects of CWA section 401 certification, including conditions added to a grant of certification. The 2020 Rule included regulatory text similar to what EPA now proposes, and EPA is not aware of any confusion on this point stemming from the 2020 Rule.

v. “Water Quality Requirements”

Under the proposed rule, a certifying authority certifies compliance with “water quality requirements.” EPA is proposing to define “water quality requirements” at 40 CFR 121.1(f) as “applicable provisions of sections 301, 302, 303, 306, and 307 of the Clean Water Act, and applicable and appropriate state or tribal water quality-related regulatory requirements for discharges.” This would return the definition of “water quality requirements” to essentially what it was under the 2020 Rule. The first part of EPA’s proposed definition simply repeats the CWA provisions identified in CWA section 401(a)(1) to which a certifying authority certifies compliance. The second part of EPA’s proposed definition interprets the statutory phrase “other appropriate requirement of State law” in CWA section 401(d). Section 401(d) of the CWA directs certifying authorities to add conditions to a grant of certification necessary to assure compliance with enumerated provisions of the CWA and “any other appropriate requirement of State law.” EPA proposes to interpret “other appropriate requirement of State law” as “applicable and appropriate state or tribal water quality-related regulatory requirements for discharges,” consistent with the proposed scope of certification.³⁹ This would be a change from the current regulation, which interpreted “other appropriate requirement of State law” to broadly mean “other water quality-related requirement of state or Tribal law.”

Congress delegated authority to EPA under CWA section 401(d) to identify what constitutes “any other appropriate

³⁹EPA is also proposing to define “discharge” for purposes of section 401 as “a discharge from a point source into waters of the United States.”

requirement of State law.” *Loper Bright*, 603 U.S. at 395–96 (reiterating that terms like “appropriate” “empower an agency to . . . regulate subject to the limits imposed by” that term and “leaves agencies with flexibility”) (citations omitted). The phrase “other appropriate requirement of State law” indicates that Congress meant to empower EPA to regulate what State law requirements are “appropriate” for forming the basis of a certification decision.

In exercising this discretion, EPA proposes to interpret “other appropriate requirement of State law” to mean appropriate and applicable State or Tribal water quality-related regulatory requirements for point source discharges into waters of the United States. This interpretation is consistent with the approach the Agency took in 2020 and would appropriately limit “other appropriate requirement of State law” to such laws that address impacts that are within the scope of the certification and applicable to the discharges and receiving waters subject to the certification. However, consistent with the cooperative federalism central to CWA section 401, the proposed interpretation does not otherwise restrict which State or Tribal laws may form the basis of a certification decision within the universe of those laws establishing requirements for point source discharges into waters of the United States.⁴⁰

EPA’s interpretation of “other appropriate requirement of State law” is informed by the principle *ejusdem generis*. Under this principle, where general words follow an enumeration of two or more things, they apply only to things of the same general kind or class specifically mentioned. *See Wash. State Dept. of Soc. & Health Servs. v. Keffeler*, 537 U.S. 371, 383–85 (2003). The use of the word “appropriate” in CWA section 401(d) indicates that Congress intended to limit the phrase “requirement of State law” in some meaningful manner. The best reading is that Congress intended that limitation to be informed by the enumerated provisions of the CWA that appear in section 401(d) directly before “other appropriate requirement of State law”—which all regulate point source

discharges into waters of the United States—as well as other key statutory touchstones in CWA section 401 like the terms “discharge” and “navigable waters,” *i.e.*, “waters of the United States.” The phrase “any other appropriate requirement of State law” in CWA section 401(d) is not unlimited or expansive, but rather it contains limiting language (“appropriate”) that must not be read out of the statute. *See PUD No. 1*, 511 U.S. at 712 (holding that a State’s authority to add conditions pursuant to CWA section 401(d) “is not unbounded”).

The phrase “state or tribal water quality-related regulatory requirements for discharges” in the proposed rule’s definition includes those water quality-related provisions of State or Tribal law that are more stringent than federal law, as authorized in CWA section 510. *See* 33 U.S.C. 1370 (establishing the authority of States to set more stringent standards and limitations for discharges of pollutants under the CWA). The legislative history supports the EPA’s proposed interpretation. *See* S. Rep. No. 92–414, at 69 (1971) (“In addition, the provision makes clear that any water quality requirements established under State law, more stringent than those requirements established under this Act, also shall through certification become conditions on any Federal license or permit.”). It is important to note, however, that these more stringent provisions may not alter the scope of certification as provided in this proposed rule. *See, e.g.*, 40 CFR 123.1(i) (contrasting “more stringent” requirements of a State NPDES program with requirements “with a greater scope of coverage” and therefore not part of the EPA-approved NPDES program). For example, if a State law addresses nonpoint source discharges or discharges to non-Federal waters, both of which are not within the proposed scope of certification, they are still not factors the State may consider when acting on certification requests.

The proposed definition does not require State and Tribal provisions to be EPA-approved. EPA recognizes that there may be State or Tribal regulatory provisions that address point source discharges into waters of the United States that only partially implement certain CWA programs or that were not submitted to the EPA for approval, including water quality protective ordinances or water quality standards adopted by Tribes under Tribal law. For this reason, EPA is not proposing to limit State or Tribal regulatory provisions to EPA-approved provisions.

EPA notes that the proposed definition of “water quality

requirements” would not limit States to evaluating only numeric water quality criteria in a certification review. While numeric water quality criteria are a central element of a water quality certification, the proposed definition allows States and Tribes to evaluate narrative water quality standards and other regulatory requirements that apply to point source discharges into waters of the United States. EPA is requesting comment on whether it should limit “water quality requirements” to only numeric water quality criteria.

EPA is requesting comment on an alternative interpretation of “other appropriate requirement of State law” as limited to those State and Tribal regulatory requirements that implement the enumerated provisions of the CWA that appear in section 401(d). As discussed above, the Agency finds the best reading of the statutory text is that Congress intended the phrase to be informed by the enumerated provisions of the CWA. The Agency seeks comment on whether to interpret “other appropriate requirement of State law” to be the subset of State or Tribal regulatory requirements for point source discharges that implement the CWA provisions enumerated in section 401(d). EPA also seeks comment on the potential delta between these two interpretations. EPA is also seeking comment on whether State or Tribal regulatory provisions should be limited to EPA-approved provisions if the Agency were to finalize the above alternative interpretation.

Additionally, EPA seeks comment on whether to interpret “other appropriate requirement of State law” as referring solely to the text in CWA section 401(d) regarding “monitoring requirements” for specific enumerated provisions of the CWA. EPA takes comment on whether to finalize a requirement that certifying authorities may only include certification conditions based on State or Tribal law if such conditions relate to a monitoring requirement necessary to demonstrate compliance with the specified provisions of the CWA (sections 301, 302, 306, and 307). This interpretation would rely principally on the placement of a comma after the phrase “effluent limitations and other limitations” and before the phrase “and monitoring requirements” in CWA section 401(d). Given the placement of the comma, EPA seeks comment on whether to limit certification conditions based on State or Tribal law to monitoring requirements necessary to implement the enumerated CWA provisions in section 401(d) and how this proposed approach could be implemented.

⁴⁰ Section 401 certification is required for Federal licenses or permits that authorize any activity which may result in any discharge from a point source into waters of the United States. EPA and the Corps recently published a proposed rule that would define the scope of “waters of the United States.” *See* “Updated Definition of ‘Waters of the United States,’” 90 FR 52498 (November 20, 2025). Any changes in which waters qualify as waters of the United States will impact the waters in which federally licensed or permitted activities must seek section 401 certification.

vi. Scope of Waters

EPA is proposing to define “discharge” for purposes of CWA section 401, at 40 CFR 121.1(c), as “a discharge from a point source into waters of the United States.” Accordingly, under the Agency’s proposal, certifying authorities cannot consider water quality impacts to waters beyond waters of the United States, or impacts from outside the discharge itself. This would be a departure from the current regulations, which allow for consideration of State waters that are not waters of the United States in certain circumstances. Specifically, under the current regulations, certifying authorities may consider waters beyond waters of the United States when certifying compliance with requirements of State or Tribal law that otherwise apply to waters of the State or Tribe beyond waters of the United States. 88 FR 66604. EPA proposes that this approach was misguided and exceeded the Agency’s authority under the CWA.

The text of CWA section 401 provides that an applicant must seek CWA section 401 certification for any activity requiring a Federal license or permit “which may result in any discharge into the *navigable waters*” (emphasis added). Thus, the text is clear that the trigger for CWA section 401 certification is a potential discharge into “navigable waters,” also known as waters of the United States. 33 U.S.C. 1362(7). EPA has always recognized that the trigger for certification involves a discharge into waters of the United States, including in both the 2020 and 2023 Rules.

EPA proposes that it is equally clear that the scope of certification is likewise limited to waters of the United States. Pursuant to CWA section 401(a)(1), a certifying authority certifies that any “such discharge” will comply with water quality requirements, and “such discharge” is a clear reference back to the triggering discharge.

This conclusion is supported by much of the same analysis as discussed above in support of a scope interpretation limited to discharges, as well as the regulatory framework of the CWA. As described Section IV.A, the CWA is structured such that the Federal government provides assistance, technical support, and grant money to assist States in managing *all* of the nation’s waters. By contrast, the Federal regulatory provisions, including CWA sections 402 and 404, apply only to point source discharges to a subset of those waters—waters of the United States. CWA section 401 certification is

another Federal regulatory provision and should be interpreted consistent with the other provisions as addressing point source discharges into waters of the United States.

Moreover, EPA’s proposed interpretation is supported by Supreme Court precedent that “require[s] Congress to enact exceedingly clear language if it wishes to significantly alter the balance between federal and state power and the power of the Government over private property.” *Sackett v. EPA*, 598 U.S. at 679 (citations omitted). The Court in *Sackett* continued that “[r]egulation of land and water use lies at the core of traditional state authority” and that “[a]n overly broad interpretation of the CWA’s reach would impinge on this authority.” *Id.* at 679–80 (citations omitted). Congress has offered nothing approaching a clear statement that CWA section 401 extends beyond the waters of the United States, the point at which all other CWA regulatory provisions end. Accordingly, the scope of waters under CWA section 401 is limited to impacts from point source discharges into waters of the United States.

D. Contents of a Certification Decision

1. What is the Agency proposing?

Under the proposed rule, any action by the certifying authority to grant, grant with conditions, deny, or explicitly waive a request for certification must be in writing and must include certain supporting information as proposed in 40 CFR 121.7(c)–(f), including stating whether the certifying authority has chosen to grant, grant with conditions, deny, or expressly waive certification, and identifying the applicable Federal license or permit. The Agency is also proposing to require that each certification decision must include a statement indicating whether the discharge⁴¹ will comply with water quality requirements, and if not, must include additional supporting information. In circumstances where a certifying authority grants certification with conditions, EPA proposes that each condition must include a statement explaining why the condition is necessary to assure that the discharge(s) from the proposed project will comply with water quality requirements, and a citation to the applicable water quality requirement upon which the condition is based. In circumstances where certification is denied, the EPA is proposing that the written notification of denial state the reasons for denial, including the specific water quality

requirements with which the discharge(s) will not comply; a statement explaining why the discharge will not comply with the identified water quality requirements; or if the denial is due to insufficient information, a description of any missing water quality-related information.

The Agency is also making revisions throughout 40 CFR 121.7 to align with proposed revisions to the scope of certification. See section V.C of this preamble for further discussion on the scope of certification. The Agency is proposing to delete the text at 40 CFR 121.7(c)(4), (d)(4), (e)(4), and (f)(4), which suggested that certification decisions indicate that the certifying authority complied with its public notice procedures established pursuant to CWA section 401(a)(1), to ensure the decision documents focus on providing information about the nature and rationale of the certification decision. Ultimately, the Agency finds these revisions would support a transparent and consistent certification process that allows applicants, Federal agencies, and the public at large to understand the rationale behind certification decisions.

2. Summary of Proposed Rule Rationale

The CWA allows certifying authorities to make one of four decisions on a request for certification pursuant to their CWA section 401 authority. A certifying authority may grant certification, grant certification with conditions, deny certification, or it may expressly waive certification. A certifying authority may also waive certification by failing or refusing to act in the reasonable period of time. The CWA does not define the term “certification,” identify what it means to “act” on a request for certification, or offer a definitive list of its contents or elements. As the agency that Congress charged with administering the CWA,⁴² Congress empowered EPA “to prescribe rules to ‘fill up the details’ of a statutory scheme.” *Loper Bright*, 603 U.S. at 395 (citation omitted). In identifying the contents of those decisions, EPA is “filling up the details” of the CWA section 401 certification process.⁴³

Prior to the current regulations, the Agency defined the required contents for certification decisions. See 40 CFR 121.2(a), 121.16 (2019) (defining the contents of a grant of certification with or without conditions and a waiver for all certifying authorities); 40 CFR 121.7

⁴² See footnote 14.

⁴³ Section 304(h) of the CWA requires the EPA to promulgate factors which must be provided in any section 401 certification. 33 U.S.C. 1314(h). EPA is also acting pursuant to this authority when identifying the contents of certification decisions.

⁴¹ See footnote 27.

(2020) (defining the contents of all certification decisions). In a change from past practice, in 2023 the Agency defined recommended contents for all certification decisions in the current regulations, but did not require certifying authorities to include these contents in their decisions. 40 CFR 121.7(c)–(f).

In the July 2025 **Federal Register** publication, the Agency asked stakeholders “whether justification is necessary to demonstrate that certification conditions included in a certification decision are within the appropriate scope.” 90 FR 29829. Several industry stakeholders and one State recommended that the Agency require certifying authorities to justify certification conditions to ensure conditions are within the appropriate scope of certification. Another State discussed how providing justifications for certification conditions allowed them to ensure conditions were within the appropriate scope of certification and communicate their necessity to a Federal agency. Conversely, a few States and several non-governmental advocacy organizations opposed requiring justifications for certification conditions and asserted that it was time consuming and unnecessary.

After evaluating stakeholder input, EPA is proposing to revise 40 CFR 121.7 to require certifying authorities to include specific contents in all certification decisions. As discussed in more detail below, the Agency is proposing to retain all components currently listed at 40 CFR 121.7, except the component on the certifying authority’s compliance with public notice procedures, with minor revisions to ensure consistency with the proposed scope of certification. See section V.C of this preamble for additional discussion on the scope of certification. The Agency is also proposing to require that all certification conditions include a citation to the applicable water quality requirement upon which each condition is based. The proposed approach will promote transparency and efficiency and ensure applicants and Federal agencies understand the reasoning and rationale behind a certifying authority’s action. The Agency does not anticipate that this proposed approach will increase workload burden on certifying authorities because certifying authorities should already be generating this type of information to build complete and legally defensible administrative records to support their certification actions. Furthermore, this approach should be familiar to certifying authorities that incorporated required components from the 2020

Rule and/or 2023 Rule into their certification decisions.

The Agency is proposing to retain the requirement that all certification decisions be in writing. While the Agency is not aware of any certification decisions being provided in a different manner (e.g., verbally), EPA is maintaining the requirement that all certification decisions be in writing to ensure the applicant and Federal agency can clearly understand the certification decision and, for a certification with conditions, any conditions that must be included in the Federal license or permit. The Agency is unaware of any issues with certifying authorities complying with this requirement under either the 2020 Rule or the 2023 Rule.

EPA is proposing to require that certifying authorities include two components that are the same or similar in all four types of certification decisions: (1) identification of the applicable Federal license or permit, and (2) identification of the certification decision type (i.e., grant, grant with conditions, denial, or waiver). These components are similar, if not identical in some cases, to components currently listed at 40 CFR 121.7(c)–(f). EPA is also proposing conforming revisions throughout 40 CFR 121.7 to clarify that certification decisions should indicate whether the discharge, as opposed to the activity, will comply with applicable water quality requirements. See section V.C of this preamble for further discussion on the scope of certification.

The Agency is proposing to remove the component that requires a certifying authority to indicate that it complied with its public notice procedures established pursuant to CWA section 401(a)(1). See 40 CFR 121.7(c)(4), (d)(4), (e)(4), (f)(4). Under CWA section 401(a)(1), certifying authorities are required to establish procedures for public notice and, to the extent a certifying authority deems appropriate, procedures for public hearings. 33 U.S.C. 1341(a)(1). At least one Circuit Court has concluded that Federal agencies must determine whether a certifying authority has complied with its public notice procedures at least where compliance has been “called into question.” See *City of Tacoma v. FERC*, 460 F.3d 53, 68 (D.C. Cir. 2006) (finding that FERC had an obligation to “confirm, at least facially, that the state has complied with section 401(a)(1)’s public notice requirements.”). EPA’s current regulations do not require Federal agencies to review for certifying authority compliance with public notice procedures but instead acknowledge that Federal agencies can verify

compliance with certain requirements of the text of CWA section 401 identified in case law, including compliance with public notice procedures. See 40 CFR 121.8. While an indication of the certifying authority’s compliance with public notice procedures could be helpful in the event a Federal agency chooses to review the decision for such purpose (e.g., compliance is called into question), the primary purpose of the certification decision is to communicate the nature and rationale behind the decision so that applicants and Federal agencies can effectively comply with and implement the decision. The proposed components for a certification decision would further that objective (i.e., identify the decision type, the applicable Federal license or permit, and a statement regarding the basis of the decision). The Agency finds it unnecessary to mandate that certifying authorities include for every certification decision an indication of compliance with the public notice procedures in the decision document itself, particularly in light of the discretionary nature of Federal agency review. However, nothing in this proposed rule would prevent Federal agencies from requesting confirmation from the certifying authority that it complied with its public notice procedures (e.g., providing a copy of its public notice), nor alters the statutory obligation for certifying authorities to establish and comply with public notice procedures consistent with CWA section 401(a)(1).

To ensure applicants and Federal agencies clearly understand the rationale behind certification conditions and denials, the Agency is proposing that such decisions include additional information to explain the basis of the decision. The following paragraphs discuss the additional information required for certifications with conditions and denials.

The Agency proposes to require (as opposed to the recommendation in the 2023 Rule) that a certifying authority must include a statement explaining each certification condition. See 40 CFR 121.7(d)(3). To provide additional transparency for Federal agencies, applicants, and the public, the Agency proposes to also require that each condition include a citation to the water quality requirement (as defined in this proposed rulemaking) upon which the condition is based. In other words, for each condition, the certifying authority must cite to the applicable “water quality requirement” (as proposed at 40 CFR 121.1(f)) for which the condition is necessary to assure compliance. The EPA intends this provision to require

citation to the specific State or Tribal statute or regulation or the specific CWA provision, *e.g.*, CWA section 301(b)(1)(C), and that general citations to CWA section 401 or other general authorization or policy provisions in Federal, State, or Tribal law would be insufficient to satisfy the proposed requirement.

It is important for Federal agencies to have a clear understanding of the basis for certification conditions, because such conditions must be included in a Federal license or permit. Several appellate courts have analyzed the plain language of the CWA and concluded that the Act “leaves no room for interpretation” and that “state conditions *must* be” included in the Federal license or permit. *Sierra Club v. U.S. Army Corps of Eng’rs*, 909 F.3d 635, 645 (4th Cir. 2018) (emphasis in original); *see also U.S. Dep’t of Interior v. FERC*, 952 F.2d 538, 548 (D.C. Cir. 1992) (“FERC may not alter or reject conditions imposed by the states through section 401 certificates.”); *Am. Rivers, Inc. v. FERC*, 129 F.3d 99, 107 (2d Cir. 1997) (recognizing the “unequivocal” and “mandatory” language of CWA section 401(d)); *Snoqualmie Indian Tribe v. FERC*, 545 F.3d 1207, 1218 (9th Cir. 2008) (collecting cases). Providing an explanation of the condition and a citation to the water quality requirement underpinning the condition is one way to make it easier for Federal agencies to understand how best to implement and, if needed, enforce conditions.

In addition, including a citation and explanation with each condition would provide transparency for the overall certification process and allow the applicant to understand the legal and/or technical basis for each condition, to assess whether a condition is within the statute’s lawful scope, and to identify what recourse may be available to challenge it in an appropriate court of competent jurisdiction. Certifying authorities should already be generating this type of information to build complete and legally defensible administrative records to support their certification actions and thus this requirement should not unduly burden the certifying authority. As a general matter, if a certifying authority determines that one or more conditions are necessary for a CWA section 401 certification, the certifying authority should clearly understand and articulate why it is necessary and should identify the specific water quality requirements which necessitate the conditions. Including this information in the certification itself would provide transparency for the applicant, the

Federal licensing and permitting agency, and the public at large. For these reasons, the EPA proposes that these are appropriate requirements, and that the benefits of providing this information would significantly outweigh any additional administrative burden that certifying authorities may incur because of these requirements.

The Agency is also proposing that a certifying authority must include (as opposed to the 2023 Rule’s recommendation to include) a statement explaining why it is denying certification. *See* 40 CFR 121.7(e)(3). However, the Agency proposes additional revisions to the text currently at 40 CFR 121.7(e)(3) to require certifying authorities to identify the specific water quality requirements that may be violated, unless the denial is based on insufficient information, in which case the statement must include a description of any missing water quality-related information. The proposed required information would lead to more transparent decision-making and a more complete record of the administrative action. If a certifying authority denies certification, its denial should be issued with information sufficient to allow the applicant to understand the basis for denial and have an opportunity to modify the project or to provide new or additional information in a new request for certification. This information may also facilitate discussions between certifying authorities and applicants about what may be necessary to obtain a certification should the applicant submit a new certification request in the future. A certifying authority’s explanation of why a discharge from a proposed project will not comply with relevant water quality requirements would also assist reviewing courts in understanding whether the denial is appropriately based on the scope of certification discussed in section V.C of this proposal. If the certifying authority determines that there is no specific data or information that would allow the certifying authority to determine that the discharge will comply with water quality requirements, it should indicate as such and provide the basis for the determination in its written decision to deny certification. This proposed requirement is intended to reaffirm and clarify that insufficient information about the proposed project can be a basis for a certification denial.

While the proposed text of 121.7(c)–(f) makes clear that certifying authorities are required to include the defined components, applicants may challenge a certification decision in court in the event the required components are

missing. The ability of applicants to challenge certification decisions in court is supported by the legislative history, which indicates that certification decisions should be challenged in courts of competent jurisdiction. *See, e.g.*, 116 Cong. Rec. 8805, 8988 (1970) (Conf. Rep.) (“If a State refuses to give a certification, the courts of that State are the forum in which the applicant must challenge that refusal if the applicant wishes to do so.”); H.R. Rep. No. 92–911, at 122 (1972) (same); *Lake Carriers’ Ass’n v. EPA*, 652 F.3d 1, 10 (D.C. Cir. 2011) (quoting *Roosevelt Campobello Int’l Park Comm’n v. EPA*, 684 F.2d 1041, 1056 (1st Cir. 1982) for the proposition that “the courts have consistently agreed . . . that the proper forum to review the appropriateness of a state’s certification is the state court”); 40 CFR 124.55(d) (“Review and appeals of limitations and conditions attributable to State certification shall be made through the applicable procedures of the State and may not be made through the procedures in this part.”).

The Agency is requesting comment on the proposed approach to define the contents for a certification decision, including but not limited to the mandatory nature of the proposal and the proposed components.

E. Modifications

1. What is the Agency proposing?

The EPA is proposing to revise the regulatory text to require the Federal agency, the certifying authority, and the applicant to all agree before the certifying authority may modify a grant of certification. Under the current regulations, only the certifying authority and the Federal agency had to agree to modification; this proposal includes the applicant as part of the modification process. Further, the Agency is proposing that the certifying authority is required to obtain the applicant’s agreement on the language of the modification.

The Agency is proposing to retain that a certifying authority may not unilaterally modify a grant of certification. EPA intends that a modification to a grant of certification means a change to an element or a portion of a certification or its conditions—it does not mean a wholesale change or unilateral modification in the type of certification decision or a reconsideration of the decision whether to certify (*e.g.*, changing a grant of certification to a denial of certification). The Agency therefore proposes to maintain regulatory text at 121.10(b) providing

that a certifying authority may not revoke a grant of certification or change it into a denial or waiver.

2. Summary of Proposed Rule Rationale

CWA section 401 does not expressly authorize or prohibit modifications of certifications. The current regulations reintroduced a modification provision with restrictions to protect applicant and Federal agency reliance interests (*i.e.*, modifications cannot be made unilaterally, the agreement must be in writing, a grant of certification cannot be changed into a denial, etc.).

In response to EPA's July 2025 request for stakeholder feedback on their experiences with the 2023 Rule, in general, most stakeholders supported retaining a modification process noting that modifications were particularly useful for addressing small changes to a project schedule or planned activities, enhanced efficiencies during the certification process, and helped ensure that waters were protected in light of project changes. Other stakeholder feedback warned that modifications beyond the reasonable period of time could undermine trust and certainty in the permitting process and should be limited to material changes to the project's Federal license or permit.

EPA is proposing to retain the ability for a certifying authority to modify a grant of certification (with or without conditions) provided that the Federal agency, certifying authority, and applicant agree in writing that the certifying authority may modify the certification. However, the EPA proposes to maintain its longstanding position that CWA section 401 does not provide authority for a certifying authority to unilaterally modify a certification, either through certification conditions that purport to authorize the certifying authority to reopen the certification in the future or through any other mechanism. This proposal remains consistent with the position in the 2020 Rule and 2023 Rule that CWA section 401 does not provide the authority for unilateral modifications to a certification decision—either by the certifying authority or by the Federal licensing or permitting agency—after the statutory reasonable period of time has ended. *See* 88 FR 66631; 85 FR 42279. Additionally, the Agency does not intend for modifications to be used to avoid or extend the reasonable period of time because 40 CFR 121.10 in the proposed rule only applies to previously granted certifications.

The Agency also notes that the ability to unilaterally modify a certification after issuance is unnecessary. First, the certifying authority has the ability under

the proposed rule to modify a certification with the agreement of the Federal agency and applicant. Even if agreement cannot be reached, circumstances that may necessitate modifications often will be linked to other actions that have established procedures. For example, if a Federal license or permit is modified or the underlying project is changed such that the Federal license or permit requires modification, it may trigger the requirement for a new certification, depending on the Federal agency's procedures.

The Agency is proposing to provide a direct role for the applicant in the modification process. Specifically, in 40 CFR 121.10(a) of this proposal, EPA is adding that the applicant agree in writing, along with the Federal agency and certifying authority, that the certifying authority may modify a grant of certification (with or without conditions). Some stakeholder feedback expressed support for a modification process that is collaborative and includes the applicants in the process to agree upon reasonable modifications after certifications have been issued. Stakeholder feedback also highlighted that applicants play a necessary role in making project changes (*i.e.*, changes in construction methods, re-routes avoiding newly identified resources, etc.) to accommodate potential modifications. One stakeholder suggested that at a minimum applicants should be given an opportunity to submit comments during the modification process. EPA agrees that the applicant has an important role in implementing any conditions of a grant of certification and should therefore be included in the agreement process of a modification. The Agency is requesting comment on whether the applicant be involved in agreeing to the modification, as proposed, or if some other variation should be considered.

While the Federal agency must agree to a modification of the certification, the current regulation does not require the certifying authority to obtain Federal agency agreement to the substance or language of such a modification. EPA proposes to retain this dynamic between the certifying authority and Federal agency while also proposing to require the certifying authority to obtain the applicant's agreement on the language of the modification. EPA is proposing this for the same reasons as discussed above for including the applicant in the modification process. The applicant would ultimately need to implement any modified certification conditions and therefore should have a role in determining what any modified

conditions will look like. To be clear, the proposed rule would not give the applicant (or Federal agency) a direct role in determining the language of an initial certification decision (although the applicant presumably may participate in the certifying authority's public participation procedures like any other stakeholder). However, it is EPA's view that if the certifying authority desires to change certification conditions after the reasonable period of time has expired, particularly after the Federal license or permit has been issued or the applicant has already expended resources or initiated or finalized the project, the applicant should participate in crafting the language of any modified condition. EPA continues to recommend that the modification process be collaborative.

As mentioned above, with the revisions to 40 CFR 121.10 currently proposed, the Federal agency would not need to agree to the language of the modification. The Agency proposes to remove the text currently located at 40 CFR 121.10(a) that explicitly states this, since the proposed text now focuses on who can agree to the language of a modification (*i.e.*, the certifying authority and applicant). It should be clear that the absence of the Federal agency from the list of those involved with agreeing on the language of the modification means the Federal agency would not be involved in that specific step of the modification. The Agency requests comment on whether there should be explicit text stating that Federal agency agreement on the language of the modification is not required, or if the proposed text is clear enough to convey that approach. Some stakeholder feedback raised the fact that modified certification conditions would also require the Federal license or permit to be modified to include the modified conditions. The Agency is requesting comment on whether the Federal agency should also be involved in the agreement on the language of the modification, if just the certifying authority and applicant should be involved (as proposed), or if some other variation should be considered.

F. Section 401(a)(2) Process

1. What is the Agency proposing?

EPA is proposing several revisions to the regulations addressing the CWA section 401(a)(2) process. First, the Agency is proposing to remove the definition of "neighboring jurisdiction" located at 40 CFR 121.1(g) and make conforming revisions throughout subpart B of part 121 to use the statutory language "other State" when referring to

the jurisdiction engaged in the CWA section 401(a)(2) process. Second, the Agency is proposing to remove the definition of “Regional Administrator” located at 40 CFR 121.1(i), revise the definition of “Administrator” located at 40 CFR 121.1(a) to acknowledge the term may include any authorized representative, and make conforming revisions throughout subpart B of part 121 to use the statutory language “Administrator” when referring to EPA’s role in the CWA section 401(a)(2) process. Third, the Agency is proposing minor revisions to the contents of a Federal agency’s notification to EPA to clarify that the size or scope of the activity referred to in the project summary is only that which is relevant to the discharge. Fourth, EPA is proposing to remove the current text at 40 CFR 121.13(c) that allows an EPA Regional Administrator to request supplemental information from a Federal agency as needed to make a determination and to enter into agreements with Federal agencies. Fifth, EPA is proposing to add regulatory text that acknowledges that the Agency may conduct “may affect” determinations on a categorical or case-by-case basis. Sixth, the Agency proposes that any other State’s objection must include a citation to the water quality requirements that will be violated to be valid. The Agency is also proposing several revisions to internal citations throughout subpart B to reflect the proposed regulatory provisions. Lastly, the proposed rule provides Federal agencies with 90 days to hold a public hearing on State’s objection and make a determination on the objection. These proposed revisions are discussed in further detail below.

2. Summary of Proposed Rule Rationale

Section 401(a)(2) provides a mechanism for the EPA to notify other States and authorized Tribes where the EPA has determined the point source discharge into waters of the United States⁴⁴ from a proposed Federally licensed or permitted project subject to section 401 may affect the quality of their waters.⁴⁵ Although the statutory text refers to these States and authorized Tribes as “other State[s],” both the 2020 and 2023 Rule defined a new term, “neighboring jurisdictions,” to characterize these States and Tribes. *See* 40 CFR 121.1(g) (defining neighboring

jurisdictions as “any state, or Tribe with treatment in a similar manner as a state for Clean Water Act section 401 in its entirety or only for Clean Water Act section 401(a)(2), other than the jurisdiction in which the discharge originates or will originate”); 40 CFR 121.1(i) (2020) (defining neighboring jurisdictions as “any other state or authorized tribe whose water quality the Administrator determines may be affected by a discharge for which a certification is granted pursuant to Clean Water Act section 401 and this part.”). Upon reconsideration, the Agency proposes to remove the definition of “neighboring jurisdiction” currently located at 40 CFR 121.1(g) and instead make conforming edits throughout subpart B to use the statutory language “other States” to refer to States or Tribes with TAS for section 401 that may be notified for purposes of Section 401(a)(2) review. The term “other State” is self-explanatory when read in the statutory and regulatory text, *i.e.*, a jurisdiction that is not otherwise the certifying authority and that EPA has determined has waters that may be affected by a discharge. This proposed revision reflects the statutory text, but the Agency acknowledges that since the term “neighboring jurisdiction” was introduced in 2020, it has been incorporated into stakeholder vernacular around this topic. As such, the Agency will continue to use the term “neighboring jurisdiction” interchangeably with “other State” and “neighboring jurisdiction process” interchangeably with the section 401(a)(2) process throughout this preamble and any subsequent materials. However, the Agency does not believe a definition of the term is necessary for reasons discussed above. The Agency requests comment on this proposed revision.

Section 401(a)(2) requires Federal agencies to immediately notify the EPA upon receipt of a certification and Federal license or permit application. Although the statute refers to the Administrator throughout the section 401(a)(2) process, the current regulations refer to the Regional Administrator because section 401(a)(2) duties have been delegated from the Administrator to the Regional Administrators. To ensure the regulations reflect the statutory text, the Agency is proposing to remove the term “Regional Administrator” from 40 CFR 121.1(i), revise the definition of “Administrator” to acknowledge the term may refer to any authorized representative of the EPA

Administrator, and replace references to the Regional Administrator throughout subpart B. The Agency does not intend for this revision to change current practice (*e.g.*, Federal agencies should continue to provide notification pursuant to section 401(a)(2) to the appropriate EPA representative) but instead it ensures the regulatory text remains durable in the event the delegation of authority changes to a different representative. The Agency requests comment on this proposed revision.

EPA has 30 days from the date it receives Federal agency notification to determine whether a discharge from the proposed activity may affect the water quality of another State and, if so, to notify that State, the Federal licensing or permitting agency, and the applicant. Although the text of section 401(a)(2) requires a Federal agency to notify EPA upon receipt of a Federal license or permit application and certification, it does not define the contents of such notification. *Id.* The current regulations define the minimum level of information that must be included in the notification to EPA to provide consistency in practices across Federal agencies and to streamline the notification process. 40 CFR 121.12(a). These components include a copy of the certification or notice of waiver, and the Federal license or permit application, a general description of the proposed project, including but not limited to the Federal license or permit identifier, project location information, a project summary including the nature of any discharge into waters of the United States, and whether the Federal agency is aware of any neighboring jurisdiction providing comment on the project along with a copy of any such comments. 40 CFR 121.12(a)(2). The Agency is proposing a minor revision to the text at 40 CFR 121.12(a)(2) to clarify that the project summary must be relevant to the discharge. The Agency continues to find that as a practical matter, it is both reasonable and in the best interests of the Federal licensing or permitting agency and the applicant for the Agency to have adequate information to inform its “may affect” determination.

The regulations allow an EPA Regional Administrator to request supplemental information from a Federal agency as needed to make a determination and to enter into agreements with Federal agencies to refine the notification and supplemental information process. 40 CFR 121.12(b)–(c). In Summer 2025, EPA developed and launched a new online notification

⁴⁴ *See* footnote 27.

⁴⁵ Consistent with the Agency’s longstanding position, the scope of the CWA section 401(a)(2) process is limited to point source discharges into waters of the United States. *See also* section V.C of this preamble for further discussion on the scope as it relates to CWA section 401(a)(2).

portal⁴⁶ to standardize and increase efficiencies in the Federal agency notification process. As a result, EPA no longer finds the text at 40 CFR 121.12(c) necessary because the portal standardizes the notification process for all Federal licenses and permits, which obviates the need for the Regional Administrator to enter into separate agreements regarding the manner of notification. The online notification portal also includes a field for additional information, which Federal agencies can leverage to provide additional information to the Agency as needed. Accordingly, EPA proposes to repeal the text at 40 CFR 121.12(c) and leverage its new online portal to standardize the notification process and procurement of any additional information. The Agency requests comment on this approach and whether there is any necessity in retaining this provision.

Section 401(a)(2) provides that whenever a discharge “may affect, as determined by the Administrator, the quality of the waters of any other State,” the Administrator must notify the neighboring jurisdiction, Federal agency, and the applicant of the determination within thirty days of the date of notice of the application. 33 U.S.C. 1341(a)(2). However, the statute does not delineate specific factors for the Agency to consider in determining whether a discharge may affect the water quality of a neighboring jurisdiction. EPA declined to define specific factors EPA must consider in making a “may affect” determination in its current regulations, noting that it was in the Agency’s sole discretion to examine the facts and determine whether a discharge “may affect” the quality of another State’s waters. 88 FR 66644. However, the preamble to the current regulations identified factors it may consider in making its determination, including the type of project and discharge covered in the Federal license or permit, the proximity of the project and discharge to other States, certification conditions and, as applicable, other conditions already contained in the draft Federal license or permit, the other State’s water quality requirements, the views of the other State on the effect of discharge from the project on its water quality, and current water quality and characteristics of the water receiving the discharge. *See id.* at 66645.

In the July 2025 **Federal Register** publication, the Agency asked stakeholders for data or information on parameters the Agency should consider

in making a “may affect” determination. 90 FR 29829. Many stakeholders agreed with the existing parameters discussed above, with a few stakeholders focusing on the proximity of the project and discharge to the other State. A few stakeholders recommended that the Agency also consider other factors, including the chemical and physical parameters of the discharge. In addition to highlighting relevant parameters, several stakeholders emphasized the importance of the Agency having data and documentation that supports a may affect determination.

The Agency appreciates stakeholder input on this topic and agrees that it is important for Agency may affect determinations to be well-informed by relevant data and documentation. As a practical matter, the Agency’s current practice generally involves consideration of more than just the parameters listed in the preamble to the current regulation when making a may affect determination,⁴⁷ considering other factors such as the chemical and physical characteristics of the discharge, whether a discharge into waters of the United States is occurring in a shared water, water features, stream miles between the discharge and any other State, and whether there are existing impairments in the receiving waterbody. Not all parameters may be relevant in every circumstance; for example, if a discharge is into a waterbody with no hydrologic connection to another State’s waters, then it is unnecessary for the Agency to consider the other State’s water quality requirements in its analysis. Conversely, if a discharge is into a waterbody one mile upstream of another State, the Agency may consider parameters such as the chemical and physical characteristics of the discharge, whether any conditions in the certification or aspects of the project

⁴⁷ The standard applied by EPA in its “may affect” analysis requires determining whether a discharge into CWA jurisdictional waters *may* have water quality effects on a neighboring jurisdiction. 33 U.S.C. 1341(a)(2). In applying this standard, EPA does not consider whether a covered discharge “will affect” water quality by violating the water quality requirements of a neighboring jurisdiction. *Id.*; *see* 88 FR 66645. EPA’s “may affect” determination does not imply or assert any particular likelihood of water quality effects or water quality violations in the neighboring jurisdiction and should not be understood to suggest such effects or violations. Rather, EPA’s “may affect” determination triggers an opportunity for the neighboring jurisdiction to provide evidence to the licensing agency on the question whether such discharge will result in a violation of its water quality standards. EPA reserves the right to recommend, in response to any objection by a neighboring jurisdiction, that the discharge *does not* meet the “will affect” standard and will not violate the water quality requirements asserted by the neighboring jurisdiction.

design would attenuate or prevent discharge movement, the receiving waterbodies characteristics, and the other State’s applicable water quality requirements. However, given the range of Federal licenses or permits that are covered by section 401(a)(2) and EPA’s discretion to examine various factors, EPA is not proposing to identify specific factors EPA must analyze in making a “may affect” determination. The Agency acknowledges that some factors may carry greater weight than others in certain circumstances, but no single factor alone dictates EPA’s determination. For example, on Corps general permits, the nature of the discharge, size and scope of activity relevant to the discharge, and any conditions would likely be the most relevant factors for EPA’s analysis. This could support not making a may affect determination on Corps general permits because projects covered under these permits have no more than minimal individual and cumulative adverse environmental effects⁴⁸ that could be further mitigated by certification conditions or draft permit conditions, require compliance with other applicable environmental statutes prior to issuance (*e.g.*, the CWA 404(b)(1) guidelines and the National Environmental Policy Act), and are subject to public notice and comment procedures providing awareness and opportunity for input from stakeholders and other States. However, in the interest of transparency, EPA is asking for comment on whether some or all of the factors listed above should be set forth in regulation. In lieu of a regulatory requirement, the Agency requests comments on whether there are other components the Agency may consider in its may affect analysis, in addition to those identified above, and the relevant fact patterns that would necessitate consideration of those components. The Agency is also requesting comment on whether there are factors that would inform any threshold regarding the may affect analysis, consistent with the Agency’s July 2025 **Federal Register** notice request for stakeholder input on data or information about how the Agency should conduct a may affect analysis.

Because the Agency receives section 401(a)(2) notifications on all certifications and waivers, *see* 40 CFR 121.12(a), on average, the Agency conducts hundreds of may affect determinations each month. As a result, the Agency has noticed emerging trends regarding certain circumstances where the Agency made, or did not make, a

⁴⁶ <https://cwa401a2notifications.epa.gov>.

⁴⁸ *See* 33 U.S.C. 1344(e).

may affect determination. For example, for projects on the U.S. Virgin Islands, the Agency reviewed the relevant certifications and applications and consistently determined, in light of the U.S. Virgin Island's location to other States and prevailing ocean currents, it would not make a may affect determination because any discharges would not reach any other States. Recognizing there may be other trends that emerge from this process, the July 2025 **Federal Register** notice requested stakeholder data or information on whether there are specific types of activities, geographic regions, types of waterbodies, or other circumstances that may support the development of categorical determinations. 90 FR 29829. Some stakeholders supported the development of categorical determinations and gave examples of circumstances that may lend themselves to such an approach, such as small, temporary discharges that do not travel downstream, projects in areas with no hydrological connection with other States, and discharges with no reasonable potential to affect water quality based on flow, pollutant characteristics, and site-specific attenuation. Conversely, other stakeholders opposed the development of categorical determinations, asserting that the analysis is inherently fact specific, and that section 401(a)(2) did not authorize the Agency to develop such determinations. Some of these stakeholders referred to the determinations as categorical exclusions or exceptions, which they asserted Congress allowed in other contexts but not in section 401.

As an initial matter, the idea of a categorical determination is not the same as a "categorical exclusion," which would imply the Agency would not conduct the section 401(a)(2) process for certain categories of projects or discharges. A categorical determination refers to a standardized way of reviewing and acting upon notifications that meet a set of criteria for a "category" of discharge types, project types, and/or projects in specific locations. For example, in instances where a project discharges into waters of the United States that will not reach other States (e.g., discharges into the ocean or bordering international jurisdictions), the Agency would confirm the project's location and lack of hydrological connectivity, before concluding that it does not have reason to believe a discharge may affect the water quality of another jurisdiction. Because the discharge cannot reach other States, the Agency would not need

to consider other factors such as the discharge type, or conditions on the project. This approach allows the Agency to continue receiving notices on a case-by-case basis, while standardizing and expediting the Agency's review process when it has determined from the notification that the project meets certain criteria. The Agency only has 30 days to review a notification and make a may affect determination. By leveraging the Agency's experience with section 401(a)(2) notifications and creating a process to review notifications that categorically meet certain criteria, the Agency can efficiently review notifications while still ensuring the determination is well-informed by relevant data and documentation. The Agency appreciates stakeholder input on possible categories to explore for this purpose; for its part, the Agency plans to develop categories and supporting documentation to substantiate selected criteria for such categories, such as instances where there are no neighboring jurisdictions. The Agency is proposing to codify this approach at 40 CFR 121.12(a), which would acknowledge that may affect determinations may be made on a categorical or case-by-case basis. To be clear, the Agency is not proposing to codify specific categorical determinations but rather merely proposing to acknowledge the development of categorical determinations in regulatory text. The Agency emphasizes that projects may not always be subject to the categorical review process, even in instances where they meet the criteria for that category. In keeping with the Agency's sole discretion to determine factors for a may affect analysis, the Agency may determine that other factors or considerations require closer analysis. The Agency welcomes additional comments on possible categories and any relevant water quality data or other information that would substantiate such a category, and what scenarios or types of information would necessitate a closer analysis even if it meets the criteria for a category.

If EPA determines that the discharge may affect another State's water quality, EPA must notify the other State, the Federal licensing or permitting agency, and the applicant. The other State has sixty days after receipt of the notification from EPA to determine whether such discharge will affect the quality of its waters so as to violate any water quality requirements in its jurisdiction, object to the issuance of the license or permit, and provide a request

for hearing to EPA and the Federal licensing or permitting agency. *See* 33 U.S.C. 1341(a)(2). The statutory text, however, does not further describe the contents of this objection. The current regulations require that the notification of objection and request for hearing be in writing and include (1) a statement that the notified neighboring jurisdiction objects to the issuance of the Federal license or permit; (2) an explanation of the reasons supporting the notified neighboring jurisdiction's determination that the discharge from the project will violate its water quality requirements, including but not limited to, an identification of those water quality requirements that will be violated; and (3) a request for public hearing from the Federal agency on the notified neighboring jurisdiction's objection. 40 CFR 121.14(b).

The Agency is proposing minor revisions to the current text at 40 CFR 121.14(b)(2) to require a citation to the water quality requirements that will be violated. The EPA intends this provision to require citation to the specific State or Tribal statute or regulation or the specific CWA provision, e.g., CWA section 301(b)(1)(C), and finds that general citations to CWA section 401 or other general authorization or policy provisions in Federal, State, or Tribal law would be insufficient to satisfy the proposed requirement. The Agency does not expect that it would be burdensome for notified neighboring jurisdictions to include an explanation of the reasons supporting the "will violate" determination, including a citation to the water quality requirements that will be violated. Section 401(a)(2) of the CWA states that a notified neighboring jurisdiction may make an objection and request a hearing "[i]f . . . such other State *determines* that such discharge will affect the quality of its waters so as to violate any water quality requirements" 33 U.S.C. 1341(a)(2) (emphasis added). To accomplish this, the neighboring jurisdiction necessarily must consider its water quality requirements and complete an analysis or evaluation to determine that a discharge from the project will violate such water quality requirements. The EPA is simply proposing that the other State provide an explanation of that analysis or evaluation in its notification of objection and request for hearing, including the identification of and citation to the water quality requirements that will be violated. This would inform the Federal licensing or permitting agency, EPA, and the

applicant of the reasoning for the objection; allow the Federal agency and EPA to prepare for a hearing on the objection; and may assist in determining whether there is a way to resolve the objection before the public hearing through the potential inclusion of a condition to address the subject of the objection. EPA is requesting comment on this revision, and whether any additional information would be helpful to include in the neighboring jurisdiction's objection.

CWA section 401(a)(2) requires the Federal licensing or permitting agency to hold a public hearing on the objection of another State if such other State provides notification of its objection and request for hearing in the required 60-day timeframe. 33 U.S.C. 1341(a)(2). The current regulations provide a process for neighboring jurisdictions to withdraw an objection, which would relieve the Federal agency from proceeding with a public hearing. *See* 40 CFR 121.15(a). Otherwise, consistent with section 401(a)(2), current regulations require the Federal agency to hold a public hearing upon a request for hearing from the notified other State. Section 401(a)(2) does not provide for a specific process for the public hearing conducted by the Federal licensing or permitting agency. It merely states that the hearing is public and shall be held by the Federal licensing or permitting agency. 33 U.S.C. 1341(a)(2). The statute further provides that the EPA Administrator must submit an evaluation and recommendations regarding the objection at the hearing. *Id.* Further, section 401(a)(2) states that additional evidence may be presented at the hearing. After the public hearing, the Federal licensing or permitting agency must consider the recommendations of the other State and EPA Administrator as well as any additional evidence presented at the hearing and, based on that information, must condition the Federal license or permit as the Federal licensing or permitting agency determines may be necessary to ensure compliance with applicable water quality requirements. If additional conditions cannot ensure compliance with applicable water quality requirements, the Federal agency shall not issue the license or permit. *Id.* Notably, the statute is silent as to the nature of, and specific procedures for, the public hearing, and the timing of the public hearing process and Federal agency's final determination. Aside from requiring the Federal agency to provide notice at least 30 days prior to a public hearing, *see* 40 CFR 121.15(b), the Agency previously declined to

establish a deadline by which the Federal licensing or permitting agency must make a determination after the public hearing on the other State's objection.

In response to the July 2025 **Federal Register** notice, multiple stakeholders expressed concern over delays associated with the lack of deadline for the Federal agency, including one stakeholder who discussed one example where the Federal agency took nearly two years to conclude the process following receipt of an objection. The Agency shares these concerns and is proposing to give Federal agencies 90 days from the receipt of the other State's objection to hold a public hearing and make a determination on the objection. The Agency finds it reasonable to provide a timeline for the public hearing process. Section 401(a)(2) provides discrete timeframes for every aspect of the process, *i.e.*, the Federal agency must immediately notify EPA, EPA has 30 days to make a may affect determination, and a notified other State has 60 days to make a will violate determination. Considering the focus on ensuring projects are not unreasonably delayed elsewhere in Section 401, *see, e.g.*, 33 U.S.C. 1341(a)(1), it is reasonable to infer Congress did not intend for Federal agencies to otherwise unreasonably delay projects through the public hearing process. The proposed timeline would provide Federal agencies with enough time to provide the prerequisite 30-day notice of the public hearing, conduct the hearing, and resolve the process. The proposed timeline would also provide stakeholders with greater certainty and transparency around the timing for the conclusion of the section 401(a)(2) process and potentially allow for the process to conclude within one year of the receipt of the request for certification.⁴⁹ The Agency requests comment on its proposed approach, including the proposed timeline. Consistent with the Agency's interest in ensuring a timely resolution to the section 401(a)(2) process, the Agency also requests comment on an alternative approach whereby the section 401(a)(2) process would start at the six-month mark, coinciding with the conclusion of the default reasonable period of time, for any project certifications that have not been completed within that interval. For example, if a certifying authority

⁴⁹ For those projects that take longer than the default reasonable period of time, EPA encourages Federal agencies to engage in ongoing dialogue and coordination with the certifying authority, EPA, and any potential other State to proactively address potential adverse water quality impacts from discharges in other State waters.

takes the full year to review a proposed FERC licensed project, under this approach, FERC would provide the notification to EPA required by section 401(a)(2) at the six-month mark. This approach could allow for the section 401(a)(2) process to conclude within one year of the request for certification. This approach would require further amendments to the regulations at proposed 40 CFR 121.11(a) in the final regulation to specify when the notification is triggered (*i.e.*, either when the certification decision is completed if it occurs before the conclusion of the six month default, or at the conclusion of the six month default if the certification decision is not completed) and the contents of such notification. At least one stakeholder suggested the Agency consider a concurrent process in its input on the July 2025 **Federal Register** publication; the Agency welcomes additional input on this approach including any supporting legal rationale for such a concurrent process and potential regulatory text changes that may be required.

G. Treatment in a Similar Manner as a State

1. What is the Agency proposing?

EPA is proposing to repeal the regulations currently located at 40 CFR 121.11(a)–(c) that provide for Tribes to obtain treatment in a similar manner as a State (TAS) solely for CWA section 401 and instead, appropriately direct Tribes to utilize the existing regulation at 40 CFR 131.8 if they are interested in pursuing TAS for CWA section 401.⁵⁰ Additionally, the Agency is proposing to repeal the regulation at 40 CFR 121.11(d) that provides for Tribes to obtain TAS for the limited purpose of participating as a neighboring jurisdiction under CWA section 401(a)(2). The Agency is also proposing to repeal the definitions for “Federal Indian Reservation, Indian reservation, or reservation,” currently located at 40 CFR 121.1(d), and “Indian Tribe or Tribe,” currently located at 40 CFR 121.1(e), because these terms are only used in the context of the TAS 401 regulation located at 40 CFR 121.11 which EPA is proposing to repeal.

⁵⁰ 40 CFR 131.8 establishes the basic regulatory requirements for eligible federally recognized Indian Tribes to meet in order to obtain TAS to administer the CWA section 303(c) water quality standards program. 40 CFR 131.4(c) states: “Where EPA determines that a Tribe is eligible to the same extend as a State for purposes of water quality standards, the Tribe likewise is eligible to the same extend as a State for purposes of certifications conducted under Clean Water Act section 401.”

2. Summary of Proposed Rule Rationale

Under section 518 of the CWA, EPA may treat Federally-recognized Indian Tribes in a similar manner as a State for purposes of administering most CWA programs over Federal Indian reservations. 33 U.S.C. 1377. Under section 518 and EPA's implementing regulations, an Indian Tribe is eligible for TAS to administer certain CWA regulatory programs, including section 401, if it can demonstrate that (1) it is Federally-recognized and exercises governmental authority over a Federal Indian reservation;⁵¹ (2) it has a governing body carrying out substantial governmental duties and power; (3) it has the appropriate authority to perform the functions to administer the program; and (4) it is reasonably expected to be capable of carrying out the functions of the program it applied to administer. See 33 U.S.C. 1377(e), (h); *see also, e.g.*, 40 CFR 131.8.

Upon receiving TAS for CWA section 401, Tribes have two roles. First, Tribes that receive section 401 TAS are responsible for acting as a certifying authority for projects that may result in a discharge⁵² on their Indian reservations. As certifying authorities, Tribes with TAS may grant, grant with conditions, deny, or waive certification based on whether a Federally licensed or permitted project will comply with sections 301, 302, 303, 306, and 307 of the CWA and any other appropriate requirement of Tribal law. See 33 U.S.C. 1341(a)(1) and (d). Second, Tribes that receive section 401 TAS are accorded the status of "neighboring jurisdiction" for purposes of CWA section 401(a)(2). If EPA makes a "may affect" determination with respect to a neighboring jurisdiction, that neighboring jurisdiction may object to the Federal license or permit if they determine that the discharge "will violate" their water quality requirements, and may subsequently request a public hearing from the Federal licensing or permitting agency. 33 U.S.C. 1341(a)(2).

Tribes receive TAS for section 401 when they apply for and are approved by EPA, pursuant to 40 CFR 131.8, for TAS to administer the CWA section 303(c) water quality standards (WQS) program. 40 CFR 131.4(c) ("Where EPA determines that a Tribe is eligible to the same extent as a State for purposes of

water quality standards, the Tribe likewise is eligible to the same extent as a State for purposes of certifications conducted under Clean Water Act section 401."). At this time, 84 Federally-recognized Tribes (out of approximately 330 Tribes with reservation lands) have received TAS for CWA section 401 concurrently with obtaining TAS for CWA section 303(c).⁵³

Under the 2023 Rule, EPA added new provisions to enable Tribes to obtain TAS solely for CWA section 401 at 40 CFR 121.11, as well as provisions on how Tribes could obtain TAS for the limited purpose of participating as a neighboring jurisdiction under CWA section 401(a)(2). 88 FR 66651. The Agency anticipated that these new standalone provisions would encourage more Tribes to seek TAS for section 401. See *id.* at 66653. The provisions were modeled after the TAS regulatory requirements for the CWA section 303(c) WQS program, located at 40 CFR 131.8, and the TAS regulatory requirements for the CWA section 303(d) impaired water listing and total maximum daily load program, located at 40 CFR 130.16. The regulation at 40 CFR 121.11 includes the criteria an applicant Tribe would be required to meet to be treated in a similar manner as States, the information the Tribe would be required to provide in its application to EPA, and the procedure EPA would use to review the Tribal application.

In the July 2025 **Federal Register** notice, the Agency asked stakeholders for any data and information on their experiences with the 2023 Rule, including the provisions regarding TAS solely for section 401. 90 FR 29829. A few Tribes and Tribal associations expressed support for the TAS provisions, noting they provide a tool for Tribes with limited resources to protect their water quality, but acknowledged the process had not been used to date. A few of these Tribes noted the lack of use was not indicative of a lack of effectiveness. As of the publication of this proposed rule, the Agency has not received any applications for TAS solely for section 401; the Agency has received one application for TAS for the limited purpose of participating as a neighboring jurisdiction under section 401(a)(2). One industry stakeholder questioned whether the Agency had authority to allow Tribes to be treated as States for the purpose of Section 401, while another industry stakeholder suggested that the Agency better

communicate how TAS designations are shared with neighboring jurisdictions.

After considering stakeholder input, and in the interest of reducing redundancies across Agency regulations, as stated above, EPA is proposing to repeal 40 CFR 121.11(a)–(c) and instead appropriately direct Tribes to utilize the existing regulations at section 131.8 if they are interested in pursuing TAS for section 401. As an initial matter, the Agency sees several benefits to pursuing TAS for section 401 concurrently with TAS for section 303(c). Administration of the section 303(c) and section 401 programs are intrinsically related because WQS are one of the primary water quality requirements with which a certifying authority must certify compliance, *i.e.*, see proposed definition of water quality requirements at 40 CFR 121.1(f). By pursuing TAS for section 303(c) concurrently with CWA section 401, Tribes could develop WQS that can be implemented and enforced through the certification process, providing genuine and rigorous scientific and legal protection for their waters.

Additionally, the existing application process to obtain TAS to administer the WQS program found at 40 CFR 131.8, and by extension, obtain TAS for section 401 certification as provided by 40 CFR 131.4(c), is virtually identical to the standalone TAS section 401 certification application process that EPA is currently proposing to repeal. EPA does not, therefore, anticipate any significant additional burden in the TAS application requirements and review process for a Tribe to obtain TAS for section 401 under the preexisting regulations. As noted above, for instance, all TAS applications for CWA regulatory programs must demonstrate that a Tribe meets the same basic four criteria. In order to reduce duplication across regulatory programs, the Agency is proposing to remove 40 CFR 121.11 and related definitions for the reasons discussed above. The Agency is requesting comment on its proposed approach.

The Agency is also proposing to repeal the regulation at 40 CFR 121.11(d) which provides Tribes with the opportunity to apply for TAS for the limited purpose of participating as a neighboring jurisdiction under CWA section 401(a)(2). If a Tribe receives TAS for CWA section 401 as a whole, it is treated in a manner similar to a State and considered an "authorized Tribe" for purposes of exercising the statutory authority under section 401. Generally, the Federal statutory and regulatory requirements for State water quality certification would apply to authorized

⁵¹ "Federal Indian reservation" means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation. 33 U.S.C. 1377(h)(1).

⁵² See footnote 27.

⁵³ See <https://www.epa.gov/tribal/tribes-approved-treatment-state-tas>.

Tribes, including acting as a certifying authority and neighboring jurisdiction, as appropriate. Prior to the 2023 Rule, only Tribes with TAS for section 401 as a whole were able to participate as a neighboring jurisdiction under section 401(a)(2). There was no separate regulation providing for TAS solely for the section 401(a)(2) neighboring jurisdiction function. In the 2023 Rule, however, EPA promulgated 40 CFR 121.11(d) to provide Tribes with the ability to apply for TAS solely for the limited purpose of being a neighboring jurisdiction under CWA section 401(a)(2). *See* 88 FR 66653. The Agency asserted at the time that the neighboring jurisdiction role under section 401(a)(2) was reasonably severable from the statute's other water quality certification activities because section 401 provided "separate and distinct roles for certifying authorities and neighboring jurisdictions." 87 FR 35372–73. As a result, EPA asserted that a Tribe could seek TAS authorization for the limited purpose of being a neighboring jurisdiction. *See id.* at 35373.

Upon reconsideration of this provision and the Agency's rationale, the Agency does not believe the neighboring jurisdiction role under section 401(a)(2) is reasonably severable from the statute's other water quality certification activities.⁵⁴ Fundamentally, both the certification and neighboring jurisdiction functions inform the Federal licensing or permitting process. While the neighboring jurisdiction's role in the section 401(a)(2) process is largely procedural, *see* 87 FR 35372, the neighboring jurisdiction may still play a significant role in the final disposition of a Federally licensed or permitted activity above and beyond merely providing comment on a project. Both a neighboring jurisdiction and a certifying authority evaluate and determine whether a discharge will comply with applicable water quality requirements. *See id.* at 1341(a)(1)–(2). If a neighboring jurisdiction determines that a discharge will violate its water quality requirement, it may object to the issuance of the Federal license or permit and request a public hearing from the Federal agency. The neighboring jurisdiction may recommend conditions to be added to the Federal license or permit or recommend that that license or permit not be issued. The Federal agency must consider the objection and recommended conditions or denial as

part of its broader analysis and must either impose a neighboring jurisdiction's recommended conditions to the extent they are necessary to assure compliance with the neighboring jurisdiction's applicable water quality requirements, or if imposition of conditions cannot assure compliance, not issue the license or permit. *Id.* at 1341(a)(2). This is procedurally similar to the certification process. If a certifying authority places conditions on a Federal license or permit through a water quality certification, the Federal agency must incorporate those conditions into the license or permit. *Id.* at 1341(d). If a certifying authority denies certification, then the Federal agency may not issue the license or permit. *Id.* at 1341(a)(1).

A few Tribes and Tribal associations expressed support for the TAS provisions, including the standalone section 401(a)(2) TAS process. Although the proposed approach would eliminate TAS solely for the limited purpose of being a neighboring jurisdiction under section 401(a)(2), it does not prevent Tribes from obtaining TAS for this function through preexisting regulations. Tribes may still obtain TAS for section 401(a)(2) by pursuing TAS for section 303(c) and section 401, as discussed above. As discussed above, administration of the section 303(c) and section 401 programs are intrinsically related. By pursuing TAS for section 303(c) concurrently with section 401, Tribes could develop WQS that can be implemented and enforced through the section 401(a)(2) process, providing genuine and rigorous scientific and legal protection for their waters. The Agency is requesting comment on its proposed approach to repeal 40 CFR 121.11(d).

VI. Supporting Information

A. Economic Analysis

Consistent with Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review), and 14192 (Unleashing Prosperity Through Deregulation) the Agency has prepared an economic analysis to inform the public of potential effects associated with this proposed rulemaking. The analysis is contained and described more fully in the document *Economic Analysis for the proposed rule, titled Updating the Water Quality Certification Regulations* ("the Economic Analysis"). A copy of this document is available in the docket for this action.

To support the proposed rulemaking, the EPA prepared an economic analysis and other related rule analyses to assess

potential impact of the rule. These analyses seek to evaluate the benefits and costs of the proposed rulemaking and the effects of the rule on small entities. The economic analysis presents an overview of practice under the 2023 Rule (baseline), a description of proposed changes, and an assessment of the potential impacts of the proposed rulemaking on applicants and certifying authorities when transitioning from the baseline of regulatory practice to the new proposed requirements.

Section 401 certification decisions have varying effects on certifying authorities and applicants. However, the Agency has limited data regarding the number of requests for certification submitted and the outcome of those requests (*i.e.*, whether the requests for certification were granted, granted with conditions, denied, or waived). The lack of a national-level dataset on section 401 certification reviews limited the EPA's ability to perform a quantitative analysis of the incremental impacts of the proposed rule. The EPA has historically only received copies of the application for a Federal license and certification when the EPA is the permitting Federal agency or is acting as the certifying authority. Thus, the EPA lacks sufficient data to estimate the number of certification decisions (grant, grant with conditions, deny, or waive) per year. The EPA, however, evaluated the number of certification decisions received by the U.S. Army Corps of Engineers (Corps) since the 2023 Rule went into effect. These are the best data available to the EPA on certification actions and, because the Corps issues the majority of Federal permits, this dataset serves as a reasonable representation of certification decision trends.

The EPA anticipates the proposed rule would result in more predictable, efficient decision-making by certifying authorities which would result in a cost decrease and reduction in burden to certifying authorities and applicants. The Agency is seeking comment on the Economic Analysis and the information collection request, including the information used to inform the Agency's understanding of baseline conditions. Additionally, the EPA is requesting comment on any additional data sources that can be used to characterize the baseline for section 401 implementation and serve as the basis for understanding the potential impacts of any of these proposed regulatory changes.

B. Children's Health

This proposed action is not subject to the EPA's Children's Health Policy (<https://www.epa.gov/children/>)

⁵⁴ The Agency notes that CWA section 518 does not list CWA section 401(a)(2) as one of the provisions for Tribes to establish treatment in a similar manner as a State. *See* 33 U.S.C. 1377(e).

childrens-health-policy-and-plan) because EPA does not believe the action has considerations for human health. The proposed rule addresses procedural and substantive aspects of the certification process, but does not concern human health.

VII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. The EPA prepared an economic analysis of the potential costs and benefits associated with this action. The “Economic Analysis for the Proposed Updating the Water Quality Certification Regulations” is available in the docket and briefly summarized in Section VI.

B. Executive Order 14192: Unleashing Prosperity Through Deregulation

This action is expected to be an Executive Order 14192 deregulatory action. This proposed rule is expected to provide burden reduction by establishing a more predictable, efficient decision-making certification process. Additionally, the proposed changes would be expected to result in clear, unambiguous procedural requirements. Although the proposed rule could impose some additional burdens on certifying authorities and applicants (e.g., modifications), many of the revisions would improve section 401 procedural efficiencies for both certifying authorities and applicants. The proposed rule clarifies ambiguities in the current section 401 processes (e.g., request for certification, timeframe for certification analysis and decisions, contents of certification decision, and neighboring jurisdictions). Overall, these revisions are expected to reduce overall costs associated with section 401 reviews.

C. Paperwork Reduction Act

The information collection activities in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2603.09 (OMB Control No. 2040–0295).

You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

The information collected under section 401 is used by certifying authorities and EPA to evaluate potential water quality impacts from Federally licensed or permitted projects. When States or Tribes with TAS act as the certifying authority, the primary collection of this information is performed by Federal agencies issuing licenses or permits or the States and Tribes acting as certifying authorities. When EPA acts as the certifying authority or evaluates potential neighboring jurisdiction impacts pursuant to section 401(a)(2), the information is collected by EPA. Information collected directly by the EPA under section 401 in support of the section 402 program is already captured under existing EPA ICR No. 0229.225 (OMB Control No. 2040–0004). The proposed rule specifies the information that applicants must provide to request a section 401 certification and provides a role for applicants in the certification modification process. The proposed rule also specifies the scope of a certifying authority’s analysis and defines information that certifying authorities must provide when acting on a request for certification. The proposed rule also removes provisions regarding Tribes obtaining TAS solely for either section 401 or section 401(a)(2). EPA solicits comment on whether there are ways it can increase clarity, reduce the information collection burden, or improve the quality or utility of the information collected, or the information collection process itself, in furtherance of goals and requirements of section 401.

In the interest of transparency and public understanding, the EPA has provided here relevant portions of the burden assessment of the proposed rule. More information about the burden assessment can be found in the supporting statement for the ICR.

Respondents/affected entities: Applicants, State and Tribal reviewers (certifying authorities).

Respondent’s obligation to respond: Required to obtain 401 water quality certification (33 U.S.C. 1341(a)(1)).

Estimated number of respondents: 154,000 responses from 77,147 respondents annually.

Frequency of response: Variable (one per Federal license or permit application, or only once) depending on type of information collected.

Total estimated burden: 786,965 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$49.7 Million (per year), includes \$0 Million annualized capital or operation & maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA’s regulations in title 40 of the CFR are listed in 40 CFR part 9.

Submit your comments on the Agency’s need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this proposed rule. The EPA will respond to any ICR-related comments in the final rule. You may also send your ICR-related comments to OMB’s Office of Information and Regulatory Affairs using the interface at www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function. OMB must receive comments no later than February 17, 2026.

D. Regulatory Flexibility Act

I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (RFA). In making this determination, the EPA concludes that the impact of concern for this rule is any significant adverse economic impact on small entities and that the agency is certifying that this rule is not expected to have a significant economic impact on a substantial number of small entities because the proposed rule relieves regulatory burden (relative to the 2023 Rule baseline) on the small entities subject to the rule.

The small entities subject to the requirements of this action are applicants that are small businesses applying for Federal licenses or permits subject to section 401 certification, which includes construction, manufacturing, mining, and utility businesses. Section 401 requires applicants to obtain a water quality certification from the certifying authority where the potential discharge originates or will originate before it may obtain such Federal license or permit. This proposed action provides applicants with greater clarity and regulatory certainty on the substantive and procedural requirements for obtaining a water quality certification (i.e., contents of a request for certification, certification decisions, and

the scope of certification). The Agency anticipates this proposed action could result in faster, more efficient and more transparent decision-making by certifying authorities. As discussed in the Economic Analysis accompanying this proposed rule, the Agency concludes that improved clarity concerning the scope for certification review and updated procedural requirements (*e.g.*, contents of a certification request and decision, modifications, and section 401(a)(2) processes) may make the certification process more efficient for applicants, including small entities, and does not expect the cost of the rule to result in a significant economic impact on a substantial number of small entities. The Agency has therefore concluded that this action will relieve regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act

This action does not contain an unfunded mandate of \$100 million (adjusted annually for inflation) or more (in 1995 dollars) as described in the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. While this action creates enforceable duties for the private sector, the cost does not exceed \$100 million or more. This action does not create enforceable duties for State and Tribal governments. See Section VI of this notice for further discussion on the Economic Analysis.

F. Executive Order 13132: Federalism

The EPA has concluded that this action could have federalism implications because it may impact how some States have historically implemented water quality certification programs. This proposed rule makes the EPA's CWA section 401 regulations consistent with the best reading of the statutory language.

The EPA provides the following federalism summary impact statement. The EPA consulted with State and local officials, or their representative national organizations, early in the process of the developing of the proposed action as required under the terms of Executive Order 13132 to permit them to have meaningful and timely input into its development. On July 7, 2025, the EPA initiated a 60-day Federalism consultation period prior to proposing this rule to allow for meaningful input from State and local governments. The kickoff Federalism consultation meeting occurred on July 22, 2025; attendees included representatives of intergovernmental associations and

other associations representing State and local government. Organizations in attendance included: the Association of Clean Water Administrators, US Conference of Mayors, and National Association of Wetland Managers. This consultation process closed on September 7, 2025. Additionally, on July 16 and July 30, 2025, the EPA hosted two webinar-based listening sessions to hear input on six topics identified in the **Federal Register** notice. These sessions were open to States, Tribes, applicants, and the public. The EPA accepted written feedback for 30 days (July 7 through August 6, 2025).

These webinars, meetings, and letters provided a diverse range of interests, positions, and recommendations to the Agency. Letters received by the Agency during Federalism consultation may be found on the pre-proposal recommendations docket (Docket ID No. EPA-HQ-OW-2025-0272). The Agency has prepared a report summarizing its consultation and additional outreach to State and local governments and the results of this outreach. A copy of this report is available in the docket (Docket ID No. EPA-HQ-OW-2025-2929) for this proposed rule.

During Federalism consultation and engagement efforts, some States and State organizations expressed support for the 2023 Rule and recommended that the Agency continue engaging with co-regulators to identify any implementation challenges. Meanwhile, other States supported revising specific aspects of the 2023 Rule, namely the scope of certification provisions to align with the 2020 Rule approach.

The Agency acknowledges that the proposed rule may change how States administer the section 401 program but anticipates that that the proposed rule would result in greater consistency with the best reading of the Clean Water Act, efficient decision-making by certifying authorities, and certainty in the certification process.

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

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, Nov. 9, 2000), requires agencies to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This action has Tribal implications. However, it will neither impose substantial direct compliance costs on Federally recognized Tribal governments nor preempt Tribal law.

During both Tribal consultation and engagement efforts, Tribes underscored the importance of preserving Tribal sovereignty and the integrity of the CWA section 401 certification process as outlined in the 2023 Rule, and expressed significant concern over potential changes that could undermine their ability to protect water quality and uphold treaty rights. Tribes were concerned with how changes to the 2023 Rule might affect how Tribes obtain TAS for section 401 and how Tribes with TAS for CWA section 401 administer their section 401 program; such changes would not have an administrative impact on Tribes for whom the EPA certifies on their behalf. The proposed rule maintains the ability for Tribes to provide input in the certification process and preserves the robust Tribal role in the certification process in a manner consistent with the CWA.

The Agency consulted with Tribal officials to permit meaningful and timely input, consistent with the EPA Policy on Consultation and Coordination with Indian Tribes. The EPA initiated a Tribal consultation and coordination process before proposing this rule by sending a “Notification of Consultation and Coordination” letter dated July 7, 2025, to all 574 Federally recognized Tribes. The letter invited Tribal leaders and designated consultation representatives to participate in the Tribal consultation and coordination process. The Agency held one webinar on this action for Tribal representatives on July 23, 2025. The Agency also presented on this action at the National Tribal Water Council meeting on July 17, 2025, and the Region 9 Regional Tribal Operations Committee meeting on July 30, 2025. Additionally, Tribes were invited to two webinars for the public on July 16, 2025, and July 30, 2025. Tribes and Tribal organizations sent 12 pre-proposal recommendation letters (including two letters from two Tribes) to the Agency as part of the consultation process. All Tribal and Tribal organization letters may be found on the pre-proposal recommendations docket (Docket ID No. EPA-HQ-OW-2025-0272). The Agency met with Tribes requesting engagement or consultation, holding staff-level meetings with one Tribe and leader-to-leader meetings with two Tribes.

The Agency has prepared a report summarizing the consultation and further engagement with Tribal nations. This report is available in the docket for this proposed rule.

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. Therefore, this action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk. Since this action does not concern human health, EPA’s Policy on Children’s Health also does not apply.

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

This action is not a “significant energy action” as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

J. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

List of Subjects in 40 CFR Part 121

Environmental protection, Administrative practice and procedure, Intergovernmental relations, Water pollution control.

Lee Zeldin,
Administrator.

For the reasons set out in the preamble, EPA proposes to amend 40 CFR part 121 as follows:

PART 121—STATE CERTIFICATION OF ACTIVITIES REQUIRING A FEDERAL LICENSE OR PERMIT

- 1. The authority citation for part 121 continues to read as follows:

Authority: 33 U.S.C. 1251 *et. seq.*

- 2. Revise the table of contents for part 121 to read as follows:

Subpart A—General

- 121.1 Definitions.
- 121.2 When certification is required.
- 121.3 Scope of certification.
- 121.4 Pre-filing meeting requests.
- 121.5 Request for certification.
- 121.6 Reasonable period of time.
- 121.7 Certification decisions.
- 121.8 Extent of Federal agency review.
- 121.9 Failure or refusal to act.
- 121.10 Modification to a grant of certification.

Subpart B—Other States

- 121.11 Notification to the Regional Administrator.
- 121.12 Determination of effects on other States.
- 121.13 Objection from notified other State and request for a public hearing.
- 121.14 Public hearing and Federal agency evaluation of objection.

Subpart C—Certification by the Administrator

- 121.15 When the Administrator certifies.
- 121.16 Public notice and hearing.

Subpart D—Review and Advice

- 121.17 Review and advice.

Subpart E—Severability

- 121.18 Severability.
- 3. Amend § 121.1 by:
 - a. Revising paragraph (a);
 - b. Removing paragraphs (d), (e), (g), (h), and (i);
 - c. Redesignating paragraphs (c), (f), and (j) as paragraphs (d), (e), and (f);
 - d. Adding new paragraph (c); and
 - e. Revising the newly designated paragraphs (e) and (f).

The revisions and additions read as follows:

§ 121.1 Definitions.

(a) *Administrator* means the Administrator, Environmental Protection Agency (EPA), or any authorized representative.

* * * * *

(c) *Discharge* for purposes of this part means a discharge from a point source into waters of the United States.

(d) *Federal agency* means any agency of the Federal Government to which application is made for a Federal license or permit that is subject to Clean Water Act section 401.

(e) *License or permit* means any license or permit issued or granted by an agency of the Federal Government to conduct any activity which may result in any discharge.

(f) *Water quality requirements* means applicable provisions of sections 301, 302, 303, 306, and 307 of the Clean Water Act, and applicable and appropriate state or tribal water quality-related regulatory requirements for discharges.

- 4. Revise § 121.2 to read as follows:

§ 121.2 When certification is required.

Certification or waiver is required for any Federal license or permit that authorizes any activity which may result in any discharge.

- 5. Revise § 121.3 to read as follows:

§ 121.3 Scope of certification.

The scope of a Clean Water Act section 401 certification is limited to assuring that a discharge from a

federally licensed or permitted activity will comply with applicable and appropriate water quality requirements.

■ 6. Revise § 121.4 to read as follows:

§ 121.4 Pre-filing meeting requests.

The applicant shall request a pre-filing meeting with the certifying authority at least 30 days prior to submitting a request for certification in accordance with the certifying authority’s applicable submission procedures, unless the certifying authority waives or shortens the requirement for a pre-filing meeting request.

- 7. Revise § 121.5 to read as follows:

§ 121.5 Request for certification.

Where an applicant is seeking certification from any certifying authority, the request for certification shall be in writing, signed, and dated, and shall include:

(a) A copy of the Federal license or permit application submitted to the Federal agency or a copy of the draft Federal license or permit;

(b) Any readily available water quality-related materials on any potential discharges from the federally licensed or permitted activity that informed the development of the application or draft license or permit; and

(c) Additional project information if not already included in the request for certification in accordance with paragraphs (a) and (b) of this section, as applicable:

(1) A description of the proposed discharge(s) from the federally licensed or permitted activity;

(2) The specific location of any discharge(s) that may result from the federally licensed or permitted activity;

(3) A map or diagram of the proposed discharge(s) from the federally licensed or permitted activity, including the proposed activity boundaries in relation to local streets, roads, and highways;

(4) A description of current site conditions where discharges are proposed, including but not limited to relevant site data, photographs that represent current site conditions, or other relevant documentation; and

(5) Documentation that a pre-filing meeting request was submitted to the certifying authority in accordance with applicable submission procedures, unless the pre-filing meeting request requirement was waived.

- 8. Amend § 121.6 by:

- a. Revising paragraph (a);
- b. Removing paragraph (d);
- c. Redesignate paragraph (e) as paragraph (d); and
- d. Adding new paragraph (e).

The revisions and additions read as follows:

§ 121.6 Reasonable period of time.

(a) The reasonable period of time begins on the date that the certifying authority receives a request for certification, as defined in § 121.5, in accordance with the certifying authority's applicable submission procedures. The certifying authority shall send written confirmation to the applicant and Federal agency of the date that the request for certification was received.

* * * * *

(d) The Federal agency and certifying authority may agree in writing to extend the reasonable period of time for any reason, provided that the extension shall not cause the reasonable period of time to exceed one year from the date that the request for certification was received.

(e) The certifying authority may not request the applicant to withdraw a request for certification and may not take any action to extend the reasonable period of time other than specified in § 121.6(d).

■ 9. Amend § 121.7 by revising paragraphs (c) through (g) as follows:

§ 121.7 Certification decisions.

* * * * *

(c) A grant of certification shall be in writing and shall include the following:

(1) Identification of the decision as a grant of certification;

(2) Identification of the applicable Federal license or permit; and

(3) A statement that the discharge(s) will comply with water quality requirements.

(d) A grant of certification with conditions shall be in writing and shall include the following:

(1) Identification of the decision as a grant of certification with conditions;

(2) Identification of the applicable Federal license or permit;

(3) A statement explaining why each of the included conditions is necessary to assure that the discharge(s) will comply with water quality requirements; and

(4) A citation to the water quality requirement upon which each condition is based.

(e) A denial of certification shall be in writing and shall include the following:

(1) Identification of the decision as a denial of certification;

(2) Identification of the applicable Federal license or permit; and

(3) A statement explaining why the certifying authority cannot certify that the discharge(s) will comply with water quality requirements, including the

specific water quality requirements that may be violated, or if the denial is based on insufficient information, a description of any missing water quality-related information.

(f) An express waiver shall be in writing and shall include the following:

(1) Identification of the decision as an express waiver of certification;

(2) Identification of the applicable Federal license or permit; and

(3) A statement that the certifying authority expressly waives its authority to act on the request for certification.

(g) If the certifying authority determines that no water quality requirements are applicable to the discharge(s) from the federally licensed or permitted activity, the certifying authority shall grant certification.

■ 10. Amend § 121.9 by revising paragraph (b) to read as follows:

§ 121.9 Failure or refusal to act.

* * * * *

(b) If the Federal agency determines that the certifying authority did not act on a request for certification within the reasonable period of time, the Federal agency shall promptly notify the certifying authority and applicant in writing that the certification requirement has been waived in accordance with § 121.8. Such notice shall satisfy the applicant's requirement to obtain certification.

■ 11. Amend § 121.10 by revising paragraph (a) to read as follows:

§ 121.10 Modification to a grant of certification.

(a) Provided that the Federal agency, the certifying authority, and applicant agree in writing that the certifying authority may modify a grant of certification (with or without conditions), the certifying authority may modify only the agreed-upon portions of the certification. The certifying authority is required to obtain the applicant's agreement on the language of the modification.

* * * * *

§ 121.11 [Removed]

■ 12. Remove § 121.11.

Subpart B—Other States

■ 13. Revise the subpart heading of subpart B to read as set forth above.

§§ 121.12 through 121.19 [Redesignated]

■ 14. Redesignate §§ 121.12 through 121.19 as follows.

Old Section and subpart	New section and subpart
121.12, subpart B	121.11, subpart B.
121.13, subpart B	121.12, subpart B.
121.14, subpart B	121.13, subpart B.

Old Section and subpart	New section and subpart
121.15, subpart B	121.14, subpart B.
121.16, subpart C	121.15, subpart C.
121.17, subpart C	121.16, subpart C.
121.18, subpart D	121.17, subpart D.
121.19, subpart E	121.18, subpart E.

■ 15. Amend the newly designated § 121.11 by:

■ a. Revising the section heading and paragraphs (a) introductory text, (a)(2), and (b); and

■ b. Removing paragraph (c).

The revisions read as follows:

§ 121.11 Notification to the Administrator.

(a) Within five days of the date that it has received both the application and either a certification or waiver for a Federal license or permit, the Federal agency shall provide written notification to the Administrator.

(1) * * *

(2) The notification shall also contain a general description of the proposed project, including but not limited to the Federal license or permit identifier, project location (e.g., latitude and longitude), a project summary including the nature of any discharge(s) and size or scope of activity relevant to the discharge(s), and whether the Federal agency is aware of any other State providing comment about the project. If the Federal agency is aware that another State provided comment about the project, it shall include a copy of those comments in the notification.

(b) If the Administrator determines there is a need for supplemental information to make a determination about potential effects to other States pursuant to Clean Water Act section 401(a)(2), the Administrator may make a written request to the Federal agency that such information be provided in a timely manner for EPA's determination, and the Federal agency shall obtain that information from the applicant and forward the additional information to the Administrator within such timeframe.

■ 16. Revise the newly designated § 121.12 to read as follows:

§ 121.12 Determination of effects on other States.

(a) Within 30 days after the Administrator receives notice in accordance with § 121.11(a), the Administrator shall determine either categorically or on a case-by-case basis whether a discharge from the project may affect water quality in another State.

(b) If the Administrator determines that the discharge from the project may affect water quality in another State, within 30 days after receiving notice in

accordance with § 121.11(a), the Administrator shall notify the other State, the Federal agency, and the applicant in accordance with paragraph (c) of this section.

(c) Notification from the Administrator shall be in writing and shall include:

(1) A statement that the Administrator has determined that a discharge from the project may affect the other State's water quality;

(2) A copy of the Federal license or permit application and related certification or waiver; and

(3) A statement that the other State has 60 days after such notification to notify the Administrator and the Federal agency, in writing, if it has determined that the discharge will violate any of its water quality requirements, to object to the issuance of the Federal license or permit, and to request a public hearing from the Federal agency.

(d) A Federal license or permit shall not be issued pending the conclusion of the process described in this section, and §§ 121.13 and 121.14.

■ 17. Revise the newly designated § 121.13 to read as follows:

§ 121.13 Objection from notified other State and request for a public hearing.

(a) If another State notified by the Administrator pursuant to § 121.12(b) determines that a discharge from the project will violate any of its water quality requirements, it shall notify the Administrator and the Federal agency in accordance with paragraph (b) of this section within 60 days after receiving such notice from the Administrator.

(b) Notification from the notified other State shall be in writing and shall include:

(1) A statement that the notified other State objects to the issuance of the Federal license or permit;

(2) An explanation of the reasons supporting the notified other State's determination that the discharge from the project will violate its water quality requirements, including but not limited to, an identification of and citation to those water quality requirements that will be violated; and

(3) A request for a public hearing from the Federal agency on the notified other State's objection.

(c) The notified other State may withdraw its objection prior to the public hearing. If the notified other State withdraws its objection, it shall notify the Administrator and the Federal agency, in writing, of such withdrawal.

■ 18. Revise the newly designated § 121.14 to read as follows:

§ 121.14 Public hearing and Federal agency evaluation of objection.

(a) Upon a request for hearing from a notified other State in accordance with § 121.13(b), the Federal agency shall hold a public hearing on the notified other State's objection to the Federal license or permit and take an action in accordance with paragraphs (d) and (e) of this section within 90 days of the receipt of the objection, unless the objection is withdrawn in accordance with § 121.13(c).

(b) The Federal agency shall provide public notice at least 30 days in advance of the hearing to interested parties, including but not limited to the notified other State, the certifying authority, the applicant, and the Administrator.

(c) At the hearing, the Administrator shall submit to the Federal agency its

evaluation and recommendation(s) concerning the objection.

(d) The Federal agency shall consider recommendations from the notified other State and the Administrator, and any additional evidence presented to the Federal agency at the hearing, and determine whether additional Federal license or permit conditions may be necessary to ensure that any discharge from the project will comply with the other State's water quality requirements. If such conditions may be necessary, the Federal agency shall include them in the Federal license or permit.

(e) If additional Federal license or permit conditions cannot ensure that the discharge from the project will comply with the notified other State's water quality requirements, the Federal agency shall not issue the Federal license or permit.

■ 19. Revise the newly designated § 121.17 to read as follows:

§ 121.17 Review and advice.

Upon the request of any Federal agency, certifying authority, or applicant, the Administrator shall provide any relevant information on applicable effluent limitations, or other limitations, standards, regulations, or requirements, or water quality criteria, and shall, when requested by any Federal agency, certifying authority, or applicant, comment on any methods to comply with such limitations, standards, regulations, requirements, or criteria.

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Part V

The President

Executive Order 14373—Safeguarding Venezuelan Oil Revenue for the Good of the American and Venezuelan People

Presidential Documents

Title 3—**Executive Order 14373 of January 9, 2026****The President****Safeguarding Venezuelan Oil Revenue for the Good of the American and Venezuelan People**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA), and section 301 of title 3, United States Code, it is hereby ordered:

Section 1. Findings. As Chief Executive and Commander in Chief, I find that the threat of attachment or the imposition of other judicial process against the Foreign Government Deposit Funds, as defined in section 2 of this order, will materially harm the national security and foreign policy of the United States.

Specifically, the attachment or the imposition of other judicial process against the Foreign Government Deposit Funds will substantially interfere with our critical efforts to ensure economic and political stability in Venezuela. The failure of these critical efforts would jeopardize major foreign policy objectives of the United States, including: ending the dangerous influx of illegal immigrants and the flood of illicit narcotics, which has resulted in the death of countless thousands of American citizens; protecting American interests against malign actors such as Iran and Hezbollah; and bringing peace, prosperity, and stability to the Venezuelan people and to the Western Hemisphere more generally.

Accordingly, the preservation of the Foreign Government Deposit Funds is of the utmost importance to the United States. I therefore find that the possibility of attachment or the imposition of judicial process against the Foreign Government Deposit Funds constitutes an unusual and extraordinary threat to the national security and foreign policy of the United States, which has its source in whole or substantial part outside the United States, and I hereby declare a national emergency to deal with that threat.

Sec. 2. Definition. For the purposes of this order, “Foreign Government Deposit Funds” means funds paid to or held by the United States Government in designated United States Department of the Treasury accounts or funds on behalf of the Government of Venezuela or its agencies or instrumentalities, including the Central Bank of Venezuela and Petroleos de Venezuela, S.A., that are derived from either the sale of natural resources from, or the sale of diluents to, the Government of Venezuela or its agencies or instrumentalities.

Sec. 3. Preservation of Foreign Government Deposit Funds. (a) Unless licensed or otherwise authorized pursuant to this order, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is prohibited, and shall be deemed null and void, with respect to the Foreign Government Deposit Funds.

(b) No Foreign Government Deposit Funds may be transferred, paid, exported, withdrawn, or otherwise dealt in, except to the extent provided by regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order.

(c) This order and actions taken pursuant to this order shall apply notwithstanding any previously issued Executive Order, and any action taken pursuant to such an order, to the extent such order or action blocks, regulates, or otherwise affects the Foreign Government Deposit Funds. This order and actions taken pursuant to this order shall supersede any previously issued Executive Order, and any action taken pursuant to such an order, to the extent such order or action blocks, regulates, or otherwise affects the Foreign Government Deposit Funds.

Sec. 4. *Additional Presidential Findings and Determinations.* I hereby determine and find that:

(a) *Ownership.* The Foreign Government Deposit Funds constitute property of the Government of Venezuela and do not constitute the property of any private party, including judgment creditors of Venezuela or its agencies or instrumentalities, or commercial actors that transacted or are transacting business with Venezuela or its agencies or instrumentalities.

(b) *Custodial Nature of United States Possession.* The United States Government will hold the Foreign Government Deposit Funds solely in a custodial and governmental capacity, and not as a market participant.

(c) *Absence of Commercial Use in the United States.* The Foreign Government Deposit Funds:

(i) have not been, and shall not be, used for any commercial activity in the United States; and

(ii) shall be held pending sovereign disposition for public, governmental, or diplomatic purposes determined by the Secretary of State, on behalf of the Government of Venezuela.

(d) *Governmental Purpose.* The retention and administration of the Foreign Government Deposit Funds serve public sovereign purposes, including compliance with international obligations, the performance of government functions, and the maintenance of diplomatic and foreign policy objectives.

(e) *No Waiver of Immunity.* Neither the placement of the Foreign Government Deposit Funds in a United States Department of the Treasury deposit account nor any related arrangement or activity constitutes an express or implied waiver of sovereign immunity from any attachment, judgment, decree, lien, execution, garnishment, or other judicial process, or consent to the jurisdiction of any court for purposes of enforcing private claims against such funds.

(f) *International Comity and Foreign Relations.* Any attachment, judgment, decree, lien, execution, garnishment, or other judicial process against the Foreign Government Deposit Funds would interfere with the conduct of the foreign relations of the United States and undermine principles of international comity.

Sec. 5. *Treatment of Foreign Government Deposit Funds.* (a) In holding the Foreign Government Deposit Funds, the Secretary of the Treasury shall:

(i) designate such funds in a manner that clearly reflects their status as sovereign property of the Government of Venezuela held in custody by the United States, and not as the property of the United States;

(ii) comply with instructions regarding disbursements or transfers of the Foreign Government Deposit Funds as may be determined by the Secretary of State, and not permit such funds to be used for any other purpose; and

(iii) consult, as appropriate, with the Secretary of State, the Attorney General, and the Secretary of Energy.

(b) The Secretary of the Treasury and the Attorney General are authorized and directed to assert, in any judicial or administrative proceeding, the sovereign immunity of the Foreign Government Deposit Funds consistent with this order and applicable law.

Sec. 6. *Administration.* (a) The Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and the Secretary of

Energy, is authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may, consistent with applicable law, redelegate any of these functions within the Department of the Treasury. The head of each executive department and agency (agency) of the United States Government shall take all appropriate measures within the agency's authority to implement this order.

(b) The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to submit recurring and final reports to the Congress on the national emergency declared in this order, consistent with section 401(c) of the NEA (50 U.S.C. 1641(c)) and section 204(c) of IEEPA (50 U.S.C. 1703(c)).

Sec. 7. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

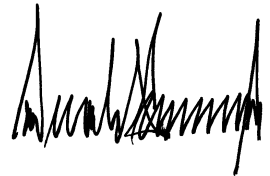
(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The costs for publication of this order shall be borne by the Department of the Treasury.



THE WHITE HOUSE,
January 9, 2026.

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